Twelve Tips to Help You Avoid Disciplinary Proceedings

By: Theresa M. Gronkiewicz†

No lawyer sets out to become a disciplinary statistic. Some lawyers, however, find themselves corresponding more often with disciplinary authorities than others. Solo and small firm practitioners, especially with practices in criminal, family or personal injury law, receive the highest number of client complaint letters. During the many years of representing lawyers in disciplinary proceedings, I found that many disciplinary complaints could have been avoided if the lawyers had implemented strong practice management habits early in their careers or followed a common sense approach to practicing law. With today’s economic challenges, many recently licensed as well as experienced lawyers, forced to re-evaluate their career paths, are going solo or practicing in small firm settings. The training received in law school, however, may not sufficiently prepare young lawyers in particular for the ethical and related business challenges encountered in a solo or small firm practice. This leaves young lawyers in these practice environments more vulnerable to disciplinary complaints. Although rewarding, having your own law practice can expose you to certain hazards. To reduce the risk of facing disciplinary proceedings, implement these twelve tips (not listed in order of importance).

1. Implement Strong Law Office Management Procedures

Plan ahead and before you open your office doors, (or if you are a virtual law office, your website) become an educated consumer and implement strong law practice management practices and systems. If your jurisdiction has a law practice management advisor, consult with him or her. The ABA Law Practice Management Section has many resources available online.1 In addition to ensuring your ability to meet your client’s needs, a good law office management system is essential for avoiding disciplinary charges. Poor file maintenance, lost files, unanswered phone calls or emails, poor bookkeeping practices or missed court dates are all sure ways to come to the attention of the disciplinary agency. System basics should include a diary and docketing system to keep track of filing deadlines, court hearings and statute of limitation dates. Set up a tickler system for file review and make sure you do that at regular intervals. Doing so will prevent files from “falling through the cracks.”

Make sure you have the technological resources and support staff to meet the demands of your practice, initially and when it grows. Often a solo practitioner runs his or her law office without adequate support staff, if any. If you do, it is essential that you have the ability to devote the time necessary to each matter and meet all of your clients’ demands. At the onset, get into the habit of documenting everything and implement a follow-up procedure to update the information on client matters on a regular basis. Maintaining a master list of your client matters with current status information will help. If you find that you are unable to keep up with the demands of the practice, consider

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1 See ABA Law Practice Division at: http://www.americanbar.org/groups/law_practice_management.html.
hiring support staff, even on a part time basis. Establish a system for responding to telephone calls and emails in a timely manner. Setting aside a particular time of day to respond to telephone messages or emails within a twenty-four hour window as a matter of practice can be helpful and reassures clients that you are being attentive to their matter. Procrastination, whether in returning telephone calls or writing a brief, not only undermines a client’s confidence in the lawyer’s trustworthiness, but can lead to neglect charges.  

Clients often complain about the legal fees they are charged. Create a good billing system. Keep detailed and contemporaneous records of the time spent on client matters, even if you are charging a flat fee. Send billing statements on a timely basis. If the fees start to escalate beyond what the client expected or agreed to, promptly discuss the situation with your client so that the client can decide how to proceed. You have an ethical duty to account to your clients for all fees and costs charged, whether on an hourly, contingent or flat-fee basis. Keeping track of your time is helpful not only in generating an invoice to the client but also when responding to a disciplinary complaint. Be prepared to review your fees and make a refund if it could be considered unreasonable. Do not overlook the factors outlined in Model Rule 1.5 of the Model Rules of Professional Conduct that describe reasonableness standards for all fees.

2. Intake Is Critical

Learn when to accept a potential client’s matter and when to reject it. The ability to discern whether a potential client will turn into a “problem client” is an important skill to develop. Remember, you are not required to accept every potential client’s case. Do not fall into the trap of practicing “door law” (taking every case that comes through the door to meet expenses). Use discretion in selecting clients. At the initial interview, learn how to evaluate clients’ needs, assess their goals and expectations, and most importantly, determine whether you are competent to handle the matter as required by the applicable rules of professional conduct. Remember that undertaking too many diverse matters requires you to learn many areas of law, and can therefore leave you feeling not only overwhelmed, but also may offer little opportunity to develop an expertise that you can market.

Do not be embarrassed to tell a potential client that you do not have sufficient expertise in a particular area of law. You can always, with the client’s consent, refer the matter to a more experienced lawyer or consult with that lawyer to assist you with the representation. The worst thing you can do is agree to represent a client who has a complex legal matter and then have no idea what to do with the case. Lawyers who find themselves in this type of situation often get flustered, panic because they do not know how to proceed with the case, and then neglect the matter or do a poor job for the client.

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3 See, e.g., Model Rule 1.1 (providing that lawyers must have the requisite knowledge, skill or training to undertake the representation, including the benefits and risks associated with relevant technology).
In either case, the client is harmed, becomes dissatisfied, and a complaint letter is generated. Creating and implementing an effective client screening process to weed out matters for which you do not have the resources to handle will be an invaluable tool.

Pay attention to red flags. If a potential client asks that you to do something dishonest or makes you uncomfortable with demands, remember your ethical obligations. If you learn during the initial meeting that the potential client had four prior lawyers and was dissatisfied with each of them, think long and hard about taking the case. Some people cannot be satisfied, especially if they have an unreasonable expectation of how their legal matter should be resolved. If you agree to undertake that representation, be prepared to become the fifth lawyer who fails to make the grade. Knowing when not to accept a case may avert an untold number of headaches, a potential malpractice claim, or a complaint letter from the disciplinary agency.

Set clear expectations for the representation at the onset of the client-lawyer relationship. Use a written fee agreement or engagement letter that clearly sets forth the scope of the relationship. Dissatisfied clients often file grievances alleging that their lawyer did not do what was promised or what the client expected. While not required in every situation, written fee agreements stating, at a minimum, the nature of the legal services to be provided, the lawyer’s responsibilities, the client’s responsibilities, and the fees and costs to be charged can help you later rebut allegations of wrongdoing by your client to the disciplinary agency or court. A document created at the onset of the client-lawyer relationship outlining the fee agreement is often an important exhibit that can be submitted with your response letter and can facilitate a speedy closure of a disciplinary investigation.

3. **Client and Third Party Funds and Property Are Sacrosanct.**

Include the above mantra in your daily ritual. You have an ethical and fiduciary duty to handle and disburse client funds only for their intended purpose and consistent with relevant rules and applicable law. There are few guarantees in life, but rest assured that if you use client funds for your own personal or business purposes you will face disciplinary sanctions. Misuse of client’s funds continues to be a frequent problem that has escalated during the current economic crisis. There is no excuse or reason that will be sufficient to warrant straying from these obligations or avoiding discipline.

Become familiar with the trust accounting rules in your jurisdiction. At the outset, implement an appropriate technology-based bookkeeping system to manage your client fund accounts. If you need assistance, hire an accountant or consult with a law practice management advisor. You can delegate the bookkeeping responsibilities for your client fund account to support staff, but as the lawyer you are responsible for supervising that staff and making sure that the account is not being mishandled.

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3. See, e.g., [MODEL RULE 1.15](https://www.americanbar.org/middle-engagement-ethics/drafting-ethical-standards/1_15.shtml) (outlines steps lawyers must take to ensure safekeeping of client and third party property).

5. See e.g., [MODEL RULE 5.3](https://www.americanbar.org/middle-engagement-ethics/drafting-ethical-standards/5_3.shtml) (requires lawyers to make reasonable efforts to ensure that the conduct of non-lawyers in the law firm comports with the lawyer's professional and ethical obligations).
Schedule a time every month to review your bank records regularly. Do not allow a client or third party to have access to your client trust account for use as a “pass through” or for any purpose other than what is intended. Be vigilant with your trust accounts and obtain lawful authentic verifications before funds are disbursed.

4. Communicate, Communicate, Communicate

In today’s technological world, with the ability of instant contact, “lack of communication” remains one of the most frequent complaints made against lawyers. Clients quickly become frustrated and dissatisfied when their lawyers do not promptly respond to telephone calls or emails, often concluding that the lawyer is not being attentive to their matter. Lawyers have a two-part affirmative duty under the professional conduct rules to communicate with clients. You must keep the client reasonably informed about their matters and you must promptly comply with reasonable requests from the client for information.

Establish good communication habits early in your practice. Effective communication skills are the foundation of successful, loyal and long-lasting client-lawyer relationships. If you are not available to speak to your clients, instruct your office staff to return the call and provide the information necessary to address the client’s concerns. Be sure to explain matters to your clients so they can understand what is happening with their cases and are able to make informed decisions. Share the good news with your clients; always give them bad news promptly. Be careful not to give your clients false hope or promise to do something that is impossible to achieve.

Send your clients regular updates as their case progresses via monthly letters or monthly billing invoices. Sufficiently detailed billing statements apprise your clients of the work you are doing and allow your clients to evaluate the reasonableness of your fees. Some lawyers send clients copies of all court filings and orders as a matter of routine. The key is to reasonably document your communication efforts. A well informed client is usually a happy client who is less likely to complain about you to the disciplinary agency and more likely to accept the legal advice you give. Also, a client who speaks well of you promotes your legal practice to others.

5. Be Diligent

Neglect of client matters usually goes hand-in-hand with lack of communication as formal disciplinary charges. Such charges can arise if you simply stop or delay

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6 See, e.g., In re Conduct of Albrecht, 42 P. 3d 887 (Or. Sup. Ct. 2002) (lawyer allowed his trust account to be used as an accommodation through which money from unlawful activities was cycled); In re Mulroe, 956 N.E.2d 422 (Ill. 2011) (lawyer involved in non-law related businesses used his client trust account to park money for all businesses); In re Beverly, 08 CH 23 (Ill. Hrg. Bd., Reprimand, Sept. 15, 2008) (lawyer allowed non-lawyer friend access to her client trust account for business purposes).

7 See MODEL RULE 1.4 (sets out the minimum expected requirements for lawyers to communicate and explain matters to their clients).
working on a client’s matter. Accepting responsibility for a legal matter requires diligent follow-through until the representation is completed or terminated.⁸

If a dispute arises between you and your client over the payment of your fees or litigation strategy or you cannot continue with the representation for any reason, (e.g., if you withdraw from the representation) make sure that your actions comport with the applicable professional conduct rules, and where appropriate, the rules of the tribunal. Take steps to document that the representation has ended. It is unwise to simply stop working on a client’s matter without doing what is necessary to protect your client’s interests and your law license.

Sometimes neglect of client matters suggests other problems in a lawyer’s life. The practice of law can be stressful and overwhelming at times. Lawyers who struggle with depression, anxiety, alcohol or substance abuse quite often find that these problems lead to inattention to their law practices, resulting in neglected client matters. There are numerous resources available for lawyers who are struggling with mental illness or substance abuse problems. Many bar associations offer lawyer assistance programs.⁹ Get the help you need early and before it becomes a threat to your law license.

6. Be Honest

A lawyer’s reputation for honesty and integrity is a crucial and essential commodity. Demonstrating good character for admission to the bar does not end after licensure. Lawyers have a duty of absolute candor and should always be truthful when dealing with clients, adversaries and the court.¹⁰ You easily gain instant credibility with a judge, your opponent and your client if you are true to your word. Potentially any act of omission or commission by a lawyer evidencing a lack of honesty may be sufficient to warrant disciplinary action. Take appropriate action if you have knowledge that your client has made a material misrepresentation, whether in court or a deposition. If you are not sure what to do, seek advice.

A dishonest motive is not required to justify the imposition of a disciplinary sanction.¹¹ For example, lawyers can be sanctioned for misrepresenting the facts or law in written documents or statements in court; inflating their time on billing records; exaggerating their credentials in advertisements; using subterfuge or pretext to access information that is restricted or confidential; and lying to clients or opposing counsel. Do not compound a mistake or aggravate a minor matter by not being truthful. It is simply

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⁸ See MODEL RULE 1.3 (“A lawyer shall act with reasonable diligence and promptness in representing a client.”).
⁹ See, e.g., ABA Commission on Lawyer Assistance Programs at: http://www.americanbar.org/groups/lawyer_assistance.html.
¹⁰ See, e.g., MODEL RULES 3.3 (Candor Toward a Tribunal), 3.4 (Fairness to Opposing Party and Counsel) & 4.1 (Truthfulness in Statements to Others).
¹¹ See, e.g., Ohio State Bar Ass’n v. Wick, 116 Ohio St. 3d 193 (Ohio Sup. Ct. 2007) (a reprimand was the appropriate sanction where there was no evidence of a dishonest motive for a lawyer who engaged in a conflict of interest when he agreed to represent a client in a criminal matter in the same court in which he served as the village prosecutor).
not worth the effort and often can lead to an enhanced sanction. Above all, be honest in all of your dealings, including with the disciplinary agency.

You can face disciplinary charges for engaging in dishonest conduct outside the practice of law. For example, false statements or fraudulent conduct in personal matters, such as your own divorce or bankruptcy case; material misrepresentations in government documents or lying to law enforcement authorities can become a disciplinary issue. If convicted of breaking the law, in addition to the criminal penalties, you will likely face disciplinary sanctions. Lawyers are charged with the responsibility of knowing and upholding the law.

7. Honor Client Confidences

The client-lawyer relationship is built on trust. In order to effectively represent a client, a lawyer must obtain all information relevant to the representation. A client will be reluctant to be candid unless assured that you will keep their confidences and reveal only what is necessary to achieve the representation and is otherwise permitted under the professional conduct rules. A lawyer has a fiduciary duty to not disclose any information about a client or prospective client, unless that individual consents or an exception is allowed within the relevant rules. Become familiar with the rules of professional conduct governing confidentiality and refer to them often. Do not abuse your position of trust and use client information in retaliation against your client if a dispute or disciplinary complaint arises; use it only as permitted by the rules. Seek advice if you are uncertain. Often lawyers who face disciplinary charges for violating confidentiality rules have not considered their conduct to fall within the proscriptions of these rules. Bear in mind, your confidentiality obligations may be breached if you “talk shop” at the local pub, on an elevator, or on your Facebook page. Disciplinary consequences may result if you blog or tweet about a particular client matter, even if using pseudonyms. In addition to disciplinary action, a breach of a client’s confidence can lead to a subsequent waiver of the privilege or raise disqualification issues.

You are also responsible for safeguarding client confidences when dealing with third-party vendors, whether outsourcing or utilizing an off-site network, to store client information. You must take reasonable steps to ensure that the third-party vendor will not make unauthorized disclosures of client information.

8. The Internet Is Not a Safe Haven

Do not overlook that all of the rules of professional conduct equally apply to all of your communications via the Internet. Your writings on the Internet are a permanent record which can be easily retrieved. E-mail communications with clients should be encrypted; electronic communications with opposing counsel should be carefully

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12 See MODEL RULE 1.6 (rule governs the parameters for disclosure of client information).
13 See In re Peshek, MR 23794, 09 CH 89 (III. May 18, 2010) (a sixty day suspension was imposed on a assistant public defender for misconduct which included the posting of confidential client information and discussing client matters on her blog).
reviewed before sending. Do not short-cut the formality of these communications. If you are away from the office know and understand the risks of communicating with your client (and of your client communicating with you) from a hotel or public wi-fi connection. Various issues relating to professional conduct can potentially come into play when using the Internet. Relevant Model Rules of Professional Conduct include: Rule 1.1 (Competence); Rule 1.6 (Confidentiality of Information); Rule 1.18 (Duties to Prospective Client); Rule 3.4 (Fairness to Opposing Party and Counsel); Rule 5.3 (Responsibilities Regarding Non-lawyer Assistants); Rule 7.1 (Communications Concerning a Lawyer’s Services); Rule 7.2 (Advertising); and Rule 7.3 (Direct Contact with Prospective Client). Review the relevant rules and ethics opinions that address the issues concerning lawyer websites, postings and social networking.  

Any Internet marketing you create must be truthful and not misleading. Be careful that the legal information you post on your law website is accurate. Do not forget that the information you post on the Internet is accessible worldwide and that you may need to identify the jurisdictional limitations of your law license. If you have multiple law licenses, become familiar with the advertising restrictions for each jurisdiction. Do not create a website or a profile which exaggerates your qualifications, experience, or skills. Even improper Craig’s List postings can result in a disciplinary inquiry. See e.g., In re Samir Zia Chowhan, M.R. 24851, 2009PR00053 (III. Nov. 22, 2011). In Chowan, an investigation was initiated when a woman complained about a lawyer after she responded to a job placement advertisement in the “Adult’s Gig” section of Craig’s List posted by the lawyer. The lawyer exchanged emails with the candidate detailing duties of the secretarial position included her engaging in “sexual interaction with him and his law partner.” Chowan was not sanctioned for posting the advertisement but for lying about it to the disciplinary agency when he was questioned.

Be careful not to create inadvertently a client-lawyer relationship when communicating with a prospective client who accesses your law firm’s web site. Post clear disclaimers and discourage the flow of information if you do not intend to create a relationship. In addition to potential disciplinary problems, creating an unintended relationship can result in disqualification issues later down the road. Be careful about the information you post on your social networking pages. Posting photos which contradict prior statements made in court may result in a disciplinary inquiry. Using pretext to access an opposing party’s Facebook page may be considered deceptive. Do not accept confidential emails or an adversaries’ confidential social network page from your client or any third party. You may be charged with violating the rules of professional conduct if you knowingly do so through the acts of another.

15 See, e.g., MODEL RULE 1.18 (Duties to Prospective Client).
17 See MODEL RULE 8.4(a) (a lawyer can be charged with professional misconduct if he violates the Rules by knowingly assisting or inducing another or acting through another).
9. **Conflicts of Interest Are Real**

Often lawyers find themselves facing disciplinary charges alleging violations of the conflicts of interest rules when they fail to think through the circumstance of trying to serve two masters. The law of conflicts of interest is complex. Read the applicable conflicts rules carefully and learn to recognize when a conflict occurs. Each client is entitled to a lawyer’s undivided loyalty and independent judgment. Current conflicts, for example, are generally divided into two categories: the conflicts that occur between two clients where the interest of one client is adverse to another (Rule 1.7 of the Model Rules of Professional Conduct), and conflicts that occur when a lawyer’s personal interests conflicts with the client’s (Rule 1.8 of the Model Rules of Professional Conduct). Some conflicts may be waived by the client. Such waivers are valid only if the client is provided with all of the information necessary to give an informed consent and has an opportunity to consult with independent counsel. Establish a good conflicts of interest check system to incorporate in processing a potential client matter.

If you encounter a conflict of interest as a result of representing two clients, keep in mind that it may not be appropriate to simply choose one client over another by severing the relationship with the less lucrative client. Consider that the wisest course may be for you to consult with an ethics expert. These situations can be complex and may require a more experienced lawyer’s evaluation of the matter.

You must also recognize circumstances when your personal interests conflicts with those of the client’s. These situations can arise when a lawyer enters into a business transaction with a client for purposes other than providing legal services. Also, it is almost never a good idea to continue representing a non-relative client if they wish to give you a substantial gift or if you enter into a personal, romantic relationship with your client. Again, if you continue with the representation, know what is required for the client to knowingly waive any conflict of interest. Some conflicts, however, can not be waived.

10. **Be Civil and Professional**

Zealous advocacy must occur within the bounds of the rules of professional conduct and should be civil and professional. Consider approaching each matter with the following in mind: respect, resolution, reconciliation and rationality. You are an officer of the court. Zealous advocacy does not require abusive, overly aggressive or sharp tactics. If you employ such methods, you lose your credibility with judges, juries and opponents and may face disciplinary or other sanctions. Often such conduct results in hurting the client’s case rather than helping it. Do not send letters threatening bodily harm.

See *In re Johnson*, 84 P. 3d 637 (Mont. Sup. Ct. 2004) (the court imposed a public censure noting that a lawyer cannot drop one client like a hot potato in order to keep the more lucrative client happy when a conflict of interest arises).

Lawyers are permitted to disclose client information when seeking advice about the lawyer’s compliance with professional conduct rules. See MODEL RULE 1.6(b).
harm, using profanity or demeaning slurs. This does happen and lawyers can be sanctioned for it. Never get physical during a disagreement, whether in court or during a deposition. Do not allow resentment and anger to build as you deal with client demands, pressing deadlines, combative opposing counsel or an unsympathetic judge. Endeavor to achieve balance in your life by creating appropriate outlets for stress and taking time away from your law practice to be with family and friends.

Also, remember that your law license does not give you carte blanche to right every wrong with a legal action. You have a duty to use the law only for legitimate purposes and not to simply harass or intimidate others. Do not blindly follow your client’s edicts, especially if the client is asking you to take action that will cause you to compromise your professional and ethical obligations. Always strive to conduct yourself in a manner that engenders respect for the law and the profession.

11. Take the Time to Think It Through

The practice of law will present many circumstances which will require a critical analysis of your ethical duties. When representing lawyers facing disciplinary complaints, I found myself often asking my clients “what were you thinking?” The inevitable responses led me to conclude that many lawyers did not take the time to think through the ethical dilemmas they faced until it was too late. Some lawyers just acted impulsively; others took the view that their course of conduct was “just this one time” and believed no one would find out. Adopt these approaches and you will likely receive a disciplinary complaint. If you are uncertain about a course of action, seek advice. Pay attention to red flags. All lawyers make mistakes. If you do, do not compound your error. If your mistake affects your client, your disclosure to the client must be consistent with the rules of professional conduct. Your disclosure must be truthful. Do not panic and exacerbate the mistake either by trying to cover it up, ignoring it or lying about it. Do not ask your client not to pursue a disciplinary complaint against you. This can be grounds for a separate disciplinary charge. Depending upon the circumstances, one mistake typically will not result in disciplinary action. Seek counsel from an experienced lawyer or even your malpractice carrier to see if the error can be remedied. In every jurisdiction there exists a group of lawyers who represent other lawyers in professional liability and disciplinary matters.

12. Stay Current

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20 See, e.g., Preamble, MODEL RULES OF PROF’L CONDUCT (“A lawyer should use the law’s procedures only for legitimate purposes and not to harass or intimidate others.”).
21 See, e.g., MODEL RULE 1.8(h). (A lawyer can not make an agreement limiting the lawyer’s liability to a client for malpractice or settle a claim with a client unless the client is independently represented.)
22 See MODEL RULE 8.4(c). (A lawyer cannot engage in conduct involving dishonesty, fraud, deceit or misrepresentation).
23 The Association of Professional Responsibility Lawyers (APRL) is a national organization of lawyers who represent other lawyers in ethics and disciplinary matters. See Association of Professional Responsibility Lawyers, at: http://www.aprl.net.
You have an obligation to keep abreast of the law. This means more than attending the obligatory CLE classes. Seek out advice from experienced lawyers. Choose a lawyer with unquestionable integrity who you may wish to emulate and who is willing to share practice tips with you. As a solo practitioner do not isolate yourself. Although you may not have the oversight and tutoring opportunities that benefit young lawyers in larger law firms, do not overlook the availability of other solo practitioners willing to mentor or offer advice. Interact with colleagues with whom you can share experiences. In addition to your state and local bar associations, the American Bar Association and its Center for Professional Responsibility, Young Lawyers Division and Solo, Small Firm and General Practice Division offer invaluable resources. The Center offers free help on its ETHICSearch hotline.  

Adopting these twelve tips does not guarantee that you will never be the subject of a disciplinary complaint, but they will go a long way toward helping you serve your clients well, achieve a successful law practice, develop stellar professional credentials and establish a reputation that is above reproach. Remember that your law license is a privilege you worked hard to attain. Strive, throughout your legal career, to protect your license and conduct yourself professionally and ethically to ensure that you maintain it.

24 See ABA ETHICSearch at: http://www.americanbar.org/groups/professional_responsibility/services/ethicsearch.html.

†Theresa M. Gronkiewicz is Deputy Regulation Counsel at the ABA Center for Professional Responsibility. The opinions stated in this article are those of the author and do not reflect the opinion of the American Bar Association or the ABA Center for Professional Responsibility nor are they intended as legal advice. Readers should consult with their own lawyers for legal advice pertaining to their individual situations.