

12 Steps to Prepare Your Practice for the New Millennium

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Your mission, should you choose to accept it, is to take a gut-wrenching look at your practice over the next 12 months from a risk management perspective. Just like that diet you've been putting off, it's time to get serious and prepare your practice for the next millennium.

January: If you haven't already done so, take your head out of the sand and assess your practice for potential Year 2000 problems from a business interruption and legal malpractice standpoint (see Todd Flaming's article beginning at page 697). *This is a real threat to all lawyers.*

Consider a few facts. A large percentage of lawyers are using software and hardware that are not fully Y2K compliant. In addition, if your computer appears to be accepting dates of January 1, 2000 and beyond, it doesn't mean that the system is foolproof or that the data will be retrievable after the computer's internal clock turns to 2000. Even if your office has recently purchased new "Y2K compliant" computers, your system may crash or malfunction if you unwittingly download corrupted data from older, non-compliant systems (for more, see the free ISBA online seminar "What Every Lawyer Should Know About the Year 2000 Issue," accessible at www.illinoisbar.org).

February: Reassess the areas of law in which you practice from three angles: competency (Am I keeping abreast of substantive legal issues?); profitability (Am I making any money?); and personal satisfaction (Do I enjoy this type of work?). Selecting the right practice areas is critical to avoiding malpractice. If, for example, you cannot possibly read all of the advance sheets and practice updates for the areas of law in which you currently practice, you're spread too thin. It's



This 12-step plan will help you enter the 21st Century with a fresh approach to your practice and a lower risk of malpractice.

only a matter time before you will commit a substantive legal mistake.

On the other hand, it is equally important to enjoy what you do and make a profit. Not surprisingly, lawyers often drop the ball on the cases or matters they just plain hate or that are losers financially. Happy, successful lawyers learn how to say no.

March: Stop looking at client relations from your perspective and start looking at it from the client's. Although it offends our sensibilities, client surveys consistently show that our clients rate a lawyer's legal prowess and intelligence at the bottom of the priority list. If your definition of good client relations consists solely of providing a good legal product to your client, you are missing the mark.

So what do clients want? It's simple,

really. They want to feel that their counsel cares about them and is diligently working on their matter. It all comes down to responsiveness and communication: answering telephone calls quickly; listening attentively to the client's needs; taking the time to explain to the client what is going to happen at his or her divorce hearing, real estate closing, or deposition; copying the client on all correspondence; and writing a short status letter to the client every 60 days. Remember that clients often

equate their lawyer's silence with inattention or even negligence.

In short, clients want the same things we all expect from our doctors. According to that standard, would you be an attentive, caring doctor or a detached, impatient medical technician?

April: Evaluate the relationships you maintain with other lawyers, including co-counsel, office sharers, of counsels, independent contractors and lawyers to whom you refer matters for a fee. Who are these guys, anyway? Require proof of professional liability insurance by swapping dec pages and make sure the client is always apprised of the exact nature of the relationship.

May: Behind every great lawyer is a great checklist. In fact, superb lawyers have an almost religious reverence for detailed checklists. They know that the difference between an average lawyer and a great one is in the details.

Today, checklists are available in book or disk format for every conceivable area of law. There is no excuse for failing to maintain a checklist for every type of work you handle, from a residential real estate closing or divorce to incorporating a business or settling a personal injury claim.

June: If you practice in a partnership format, consider whether you are a

partner in name only. We have seen well-respected small and mid-size firms hit with malpractice claims because the partners operated in their own fiefdoms with virtually no partner-to-partner communication and no firm-wide controls.

Do you have weekly partnership meetings to discuss firm business, including all new matters that have been accepted? Does each partner support and follow the firm's office procedures with respect to client intake, calendaring, conflicts of interest, file documentation, and billing and collection issues? Do you look out for and assist one another in stressful times at work or at home? Finally, who's watching the money? Are the firm's accounts audited regularly?

July: Institute procedures for documenting *all* incoming and outgoing telephone calls. These records are vital in defending yourself against an ethical or malpractice complaint. Think about all of the business you conduct by telephone. It is equally important to keep a record of the number of times you have attempted to contact a client with no success.

Don't use the tired excuse that documenting all those calls takes hours. It doesn't. You can make a record of the call while you're on the phone by using the notepad section of your computer, a preprinted telephone log, or even a yellow notepad. Once you get in the habit of recording all calls, it will become second nature. It will also impress your clients and opposing counsel when you can effortlessly recall the substance of a conversation

that occurred months ago.

August: If you haven't had an uninterrupted week of vacation by this point in the year, do everyone a favor and take one.

September: Examine whether your support staff is helping or hindering your risk management goals. A revolving door of inexperienced personnel can lead to malpractice disaster. Conversely, a well-trained staff can be a valuable tool in your loss prevention program. The first step is to sit down and explain to your staff the ethical rules by which a lawyer is bound and the common causes of legal malpractice. It's hard to work as a team if some of the players don't know the rules. Many firms include office staff in their weekly or monthly meetings to foster a team approach.

Discuss ways the staff can act as a safeguard against ethical and malpractice problems. For example, establish a policy that a secretary cannot open a new file without a completed and initialed conflicts-of-interest form, engagement letter, or fee agreement, and if applicable, a preliminary statute-of-limitations date. Your staff can also be indispensable in responding to telephone calls. I'm always impressed when another lawyer's secretary calls to inform me that the lawyer is out of the office and inquires as to whether the matter can wait or must be handled immediately.

October: Focus this month on weeding out "stealth" conflicts. These are the less obvious conflicts that have a way of sneaking up on lawyers and becoming fodder for breach of fiduciary duty claims. Stealth conflicts arise when a lawyer simultaneously represents mul-

iple parties, such as a husband and wife in an estate planning matter, siblings in a guardianship proceeding concerning a parent, or "best friends" forming a new partnership.

Just when you think everything is fine, the interests of your co-clients start to diverge. Despite the fact that you may have obtained a detailed waiver at the beginning of the representation, you may need to withdraw when an actual conflict pops up. Keep an eye out for stealth conflicts and get a second opinion whenever you have doubts as to the proper course of action.

November: Most successful lawyers possess stellar time-management and organizational skills. Be honest with yourself. Are you a chronic procrastinator? Is your day spent dealing with one self-imposed emergency after another? It's never too late to improve your work habits. Start by enrolling in one of the many seminars offered on this topic. This will allow you to spend a full day away from the office concentrating on time management issues. Once the seminar is complete, take two or three concepts discussed at the seminar and integrate them into your workday.

December: Find a nice bomb shelter, stock up on canned goods and bottled water, and prepare for the *big change*. Or, if you have studiously completed the other 11 steps, pat yourself on the back for a job well done and take yourself out to lunch. You've learned that by focusing on sound risk management procedures, you can also increase the efficiency and profitability of your law practice. You're ready to take on the new millennium.