

# Legal Malpractice, Ethics, and Your Support Staff

By Anne E. Thar, Vice President and General Counsel, ISBA Mutual

James Bond would have been toast in about five seconds without the behind-the-scenes efforts of Miss Money-penny and Agent "Q." In today's world of high-stakes malpractice claims and ethical quagmires, your office staff is just as important to your professional survival. Receptionists, secretaries, office managers, file and docketing clerks, and paralegals can be indispensable in the fight against malpractice and ethical lapses.

Left untrained, however, the same assistants can sabotage your loss prevention efforts and even generate claims. This column will describe how your support staff can hurt or help you in the day-to-day struggle to avoid malpractice claims and ethical complaints.

### Don't let this happen to you

Let's first look at what can happen when support staff are not adequately trained and supervised:

- Secretary accidentally misfiles client John Smith's file into client Mary Smith's file. As a result, the client's matter is neglected and the case is dismissed for want of prosecution. On another occasion, Secretary files client Murphy's 2000 workers' compensation file into Murphy's 1998 personal injury file.
- Firm regularly represents Bank in mortgage foreclosures. In preparing the default judgment order in the foreclosure action, Paralegal fails to list the fee interest mortgage as well as the leasehold mortgage. Consequently, only the leasehold interest is foreclosed on.
- Client requests that Lawyer transfer certain stock certificates into Client's trust. Secretary incorrectly types the address and Social Security number when transferring the stock. Shortly after the stock transfer, the stock splits. Because



*Learn in chilling detail the enormous risk you take when you cut corners on staff training and supervision, and find out what to do about it.*

of the typographical error, the stock certificate resulting from the stock split and all related dividends are sent to the state's unclaimed property department. Client learns about the lost certificate through an unclaimed funds notice in the newspaper.

- Sole Practitioner's longtime secretary retires to Arizona. Sole Practitioner hires a replacement secretary but doesn't take time to train or supervise her. When angry telephone calls start pouring in from clients, Sole Practitioner discovers that Secretary has been stashing mail and other unfinished work in her desk drawer. As a result, several critical matters have not been handled within the required time period.

- After Client's divorce decree is entered, Secretary places Client's file in the closed-file cabinets even though Lawyer has not finalized the QDRO with respect

to Client's divorce. Lawyer generally leaves the files that require clean-up work on her floor as a reminder rather than entering follow-up dates on her calendar. Since Client's file has been misplaced with the closed files, the QDRO is never completed by Lawyer. Client's former spouse dies and Client does not receive any of her former spouse's retirement benefits.

- Firm is thrown into upheaval when it loses two support personnel in the space of a few months. One of the departing staff members is a paralegal who routinely assisted Firm in preparing and filing tax returns on behalf of clients. No other employee at Firm has been cross-trained in the basics of Paralegal's duties and no procedural manual exists. In the turmoil, a corporate tax return is not prepared and filed on behalf of Corporate Client. As a result, certain losses are not passed through to the owner-shareholders that would have reduced their individual tax liability.

- Client Lopez is waiting in the reception room of Lawyer's office in suburban Chicago. Client Lopez is appalled when she overhears Receptionist tell Lawyer, "Mrs. Cohen is calling for a status on her upcoming divorce hearing." Mrs. Cohen happens to be a neighbor of Mrs. Lopez. Ten minutes later, Lopez fires Lawyer, citing Receptionist's public airing of Client Cohen's private legal affairs.

- Secretary frequently talks on the telephone and listens to music while typing and adding dates to Lawyer's automated calendaring system. One Monday morning while Secretary is recapping her weekend escapades via phone with her best friend, Secretary mistakenly inverts the statute of limita-

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tions date for a personal injury matter from 1-3-01 to 3-1-01. January 3 comes and goes without a complaint being filed because Lawyer erroneously assumes that she has two more months in which to file the suit.

• Secretary routinely opens Lawyer's mail, reviews it for new dates, inputs the new dates into the calendar and then gives the mail to Lawyer. Secretary does not, however, initial or highlight the dates to let Lawyer know that the dates have been calendared. While Secretary is out ill one day, another office clerk opens Lawyer's mail. This clerk has not been trained to review the mail for dates and therefore does not calendar a new status call for one of Lawyer's workers' compensation matters. Lawyer, on the other hand, assumes that the date has been calendared by the clerk and throws the notice into the filing pile. Lawyer fails to appear at the status call and the matter is dismissed by the Commission.

#### **Put staff on your loss-prevention team**

By taking the following steps, lawyers can turn their staff members from potential risks into valuable participants in the firm's loss-prevention program.

**Explain the concept of legal malpractice to your staff.** We recommend that lawyers review the common causes of professional negligence in their chosen practice areas with their support personnel and use day-to-day scenarios to bring the concepts home.

A personal injury secretary who has

been taught that missed deadlines are the number one cause of legal malpractice claims will be more vigilant about entering dates and reminding his boss of impending statutes of limitations. Similarly, assistants who know that unfiled QDROs are a leading cause of malpractice in the domestic-relations field can be trained to enter follow-up dates for QDRO work.

**Review the Rules of Professional Conduct with office personnel.** Lawyers who educate their staff about the ethical rules by which all lawyers are bound are less likely to suffer ethical lapses in their offices. For example, a receptionist who understands a lawyer's duty of confidentiality will think twice before announcing in front of a packed reception room that "Mr. Goodman is calling regarding his bankruptcy."

Other important ethical rules to discuss with your support personnel include those governing conflicts of interest, written fee agreements, and client trust accounts. While no one likes filling out detailed conflict-of-interest search forms, your staff will have a new appreciation for these requirements if they know the consequences of failing to enter a maiden name or the name of a parent or predecessor corporation or of a simple misspelling in the conflicts database.

**Put detailed job descriptions and office procedures in writing.** Could you describe even half of the essential tasks that your secretary performs to a replacement or temporary secretary? Do you know the correct margins and formatting requirement for briefs? How

about the duties of the paralegal who files annual reports for your corporate clients or prepares real estate closing documents for your review?

**Don't over-rely on your staff.** Just as an inadequate staff can spell disaster, so can an attorney's over-reliance on assistants. Attorneys are responsible for everything that happens in their office and must supervise their staffs accordingly. Lawyers who blindly rely on their office staff – even longtime employees – to take care of the "business" side of the practice can suffer devastating consequences.

**Communicate with your support personnel and seek their input.** It amazes me when, for example, lawyers purchase new computer systems without soliciting any comment from the people who will ultimately be using the technology.

In my experience, staff members frequently have excellent suggestions about office procedures and can offer keen insight into the dynamics of the office. They know which lawyer never returns client telephone calls and which associate is dangerously overworked but can't seem to ask for help. That is why smart firms have quarterly meetings with their staff members to elicit complaints and suggestions for improvements and to keep the staff informed on important new developments.

Loss prevention is a team effort. Lawyers who appreciate this and train their staff accordingly can reduce the risk of malpractice claims and ethical grievances. ■