

# Top 10 Lame Excuses for Ignoring Loss Prevention

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

**1. "I've practiced the same way for 20 years and have never had a legal malpractice claim."**

The fact that you have practiced successfully and claims-free for many years will not guarantee you a claims-free future: *the rules have changed*. Just ask the many distressed attorneys who reported their first-ever malpractice claim over the past year. The only way to truly reduce the likelihood of legal malpractice claims is to appreciate that law practice has changed dramatically and to educate yourself to the new and sometimes hidden risks facing lawyers today.

**2. "Lawyers in my practice area are never sued for malpractice."**

No area of law is immune from legal malpractice today. Even traditionally "low risk" practice areas such as defense and criminal law are experiencing an increasing number of claims.

**3. "I don't make mistakes."**

Does the phrase "famous last words" ring any bells?

**4. "My clients will complain if I bill them for time spent drafting self-serving drivel such as engagement letters, conflict waivers, and file update memos."**

While you may get some negative comments from a few clients initially, most will understand the need to put your work product and the parameters of your relationship in writing. You might also mention that much of this documentation is required by the Illinois Rules of Professional Conduct. As for file updates, if a client bitterly complains about the nominal charge for these updates every 60 to 90 days, don't bill the client. The choice is yours: 10 minutes of billable time versus the cost of a malpractice claim because you failed to have a reliable file review system.



**Do any of these sound familiar? If so, it's not too late to mend your ways.**

Ten years ago, doctors had the same fears about loss prevention. Most patients today, however, have come to expect their doctors to take careful notes and order follow-up tests, even if the ultimate cost to the patient is greater.

If you still need convincing, call me and I'll give you 10 horror stories about attorneys who now wish they had that self-serving drivel in their files.

**5. "Only incompetent attorneys are sued for malpractice."**

Au contraire, mon ami! Nothing could be further from the truth. Most legal malpractice claims today are generated by attorneys with good legal skills but poor practice management.

**6. "We've had malpractice claims in the past but they were caused by a few bad apples."**

Perhaps you should figure out how

the worm got into the apple in the first place.

**7. "I don't worry about claims. That's why I have malpractice insurance."**

With an attitude like that, you won't have malpractice insurance for long. While ISBA Mutual doesn't want its insured attorneys to be up at 2:00 a.m. fretting over the perils of malpractice in the 21st century, we do hate to see claims that could have been easily prevented, such as those caused by fee disputes, the lack of an engagement letter, or a failure to calendar a critical deadline.

**8. "My clients would never sue me."**

Seek psychiatric care immediately.

**9. "I'll get to it next month when I have more free time."**

When you get a legal malpractice complaint in the mail, you'll wonder why you didn't find the time to investigate that new computerized calendaring system or institute client screening procedures, draft a sample engagement letter, etc., etc. To paraphrase an old adage, "The road to malpractice is paved with good intentions."

**10. "I delegated that responsibility to someone else in the office."**

To be effective, a loss prevention program requires the support and participation of every person in your firm from the top down. Many firms make the mistake of focusing all of their attention on supervision of newer attorneys. Statistically speaking, attorneys who have been practicing 10 or more years generate far more malpractice claims than new attorneys. Your support staff also needs to be fully engaged in the fight against malpractice claims.

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All kidding aside, you're putting yourself and your practice at great risk if you're currently using one of the above excuses to avoid implementing a thorough loss prevention program at your firm. There are many avenues available to attorneys who want to educate themselves about loss prevention. Your malpractice carrier should be a great source of information. You can also find useful resources at the library and through the ABA. The first step is to stop making excuses and start taking some action. Why not start today?