

Update Your Practice to Avoid Malpractice Claims

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Little tragedies are being played out every day in law firms across America. The story is always the same: a respected attorney who has practiced law in his or her community for 20 or 30 years with an unblemished record is sued for legal malpractice. The tragedy is not that the attorney has proved human and committed an error, but that in most cases he or she has not made a "legal" mistake at all.

Instead, the attorney is being sued because she obtained the client's consent to settlement by telephone rather than in writing. Or perhaps after sitting on the board of directors of a long-time client for many years, he is being sued for an alleged conflict of interest. Or maybe a client can't accept the financial consequences of a business deal gone sour. Even worse, the claim may be filed by someone with whom the attorney never had an attorney-client relationship.

In short, if you're practicing law today as you did 20 years ago, you may be in for a rough ride. The statistics are daunting. Ron Mallon, a national expert on legal malpractice, recently estimated that attorneys nationwide will experience an average of three malpractice claims each during their careers. The ABA's groundbreaking study in the early 1980s on the causes of legal malpractice revealed that fewer than half of all claims nationwide result from a "substantive" error. Finally, ISBA Mutual's own claims statistics confirm another disturbing trend in legal malpractice: over 15 percent of the company's claims are generated by nonclients.

At this point you may be wondering what you can do to survive in today's legal environment. The answer is to be ready to make fundamental and radical changes in the way you manage your



Follow these pointers and start a malpractice prevention revolution in your office.

office and practice law. Lawyers who cannot change will continue to suffer malpractice claims that could be avoided through a comprehensive loss prevention program. Here are three important changes you can make today to avoid unwarranted legal malpractice claims tomorrow:

1. Get serious about loss prevention. Dedicate at least one afternoon a month to loss prevention. If you practice in a partnership, appoint one or more partners as resident experts on loss prevention. Then start educating yourself and your firm on risk management techniques. Read articles, attend seminars, and purchase risk management guides. You can also call your malpractice carrier for additional assistance.

After you've completed the initial research, set up a realistic but firm

timetable for implementing the various loss prevention techniques. I suggest implementing one technique per month until the job is done.

2. Embrace technology. Advances in technology can help you reduce your malpractice exposure. Computerized conflict-of-interest systems can store huge quantities of information and uncover conflicts in seconds. Many software programs automatically calendar reminders of critical deadlines 90, 60, and 30

days in advance with one simple entry. Computerized calendaring systems can also help you keep on top of each file. For example, a good system will remind your secretary to pull each of your files at least once every three months. This procedure prevents files from falling through the cracks during stressful periods in the office.

You can also use technology to improve the quality of your legal work. Place sample pleadings, letters, and agreements on your word processor so you can revise them quickly and cost-effectively. Putting master documents onto your system will also reduce the risk that you'll omit key provisions. (Don't forget, however, that careful proofreading is still essential. Many lawyers have been burned by relying on automated spell checkers.)

If you don't know where to begin your technological revolution, there are several options. First, talk with colleagues with similar practices about their systems. Fellow attorneys are usually delighted to hold forth on their latest piece of hardware or software and can give you a frank opinion of what works and what doesn't.

Or, consider hiring a computer consultant to evaluate your computer needs. The consultant may discover

that you have the basic tools for automating the work process but don't know how to use them, or that your staff needs a few good hours of computer training.

Last but not least, contact members of the ISBA Standing Committee on Legal Technology. The committee is dedicated to helping lawyers integrate technology into their practices and sponsors seminars for novice computer users.

3. Take a good long look at your client relations. The only element common to all malpractice claims is an unhappy client. More often than not, the client is not dissatisfied with the legal work but with the treatment he or she received from the attorney. The client may be angered over a large, unexpected bill or by how long it took to complete the work. Or the client may

feel neglected because he or she hasn't heard from counsel in several months. (Clients don't know that you're waiting for a judge to rule on a dispositive motion unless you tell them.)

The most common complaint among clients is that their attorneys fail to return telephone calls promptly. Every unanswered call plants a seed of discontent. Another frequent client complaint, according to a recent ABA study, is that lawyers don't listen to clients.

Train yourself to elicit not just the facts of the matter from the client, but his or her expectations as well. For example, if a corporate client's main objective is to clear the company name in court, it won't be satisfied with the pre-trial settlement that you negotiated, regardless how economically attractive.

One of the best ways to keep clients happy is to keep them fully informed by copying them on all of the paper that comes in or goes out of the office relating to their matter. It takes a secretary only a few seconds to make a copy for the client. Even if your clients don't understand every aspect of the correspondence, they'll know that you care enough to keep them informed and that you're working diligently on their behalf.

These suggestions are just the tip of the iceberg. Once you delve into a full-fledged loss prevention program, you'll discover new avenues for change. You'll also undoubtedly find that these changes will improve your legal product and make the practice of law less stressful and more fun. Start your own personal office revolution today.