

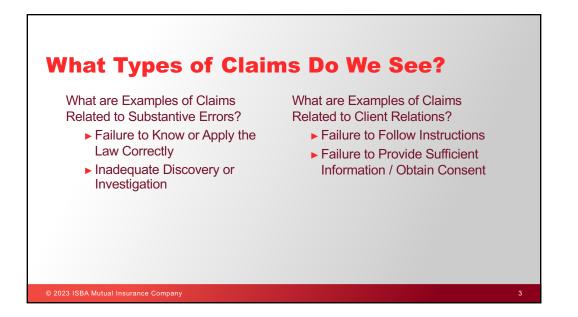




## What are We Talking About?

What we are observing in claims, not only in legal professional malpractice, but how those malpractice issues relate to additional areas of risk management generally, including cyber liability.

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# Failure to Know Or Apply the Law Correctly

**Definition:** This category applies when a lawyer is unaware of the legal principles involved, or when a lawyer does the research but fails to ascertain the appropriate principles. It applies in instances of erroneous reasoning from known principles.

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Source: The Fundamentals of Loss Prevention for Lawyers, ISBA Mutual







# **Inadequate Discovery/Investigation**

**Definition:** This category includes cases where the claimant alleges that certain facts which should have been discovered by the lawyer in a careful investigation or in the use of discovery procedures were not discovered or ascertained.

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### Inadequate Discovery/Investigation

#### Practice Tips

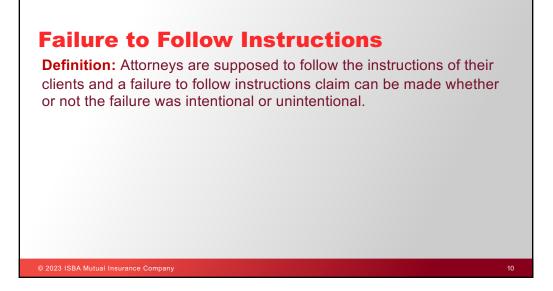
- ► Ask questions... and then ask more
- ► Pay attention to details
- ► Take thorough notes
- Verify all levels of ownership: Government, Corporations, Private Companies.
- Methods of discovery:
  - Client Interviews
  - Non-party Interviews
  - E-Discovery
  - Interrogatories
  - Deposition

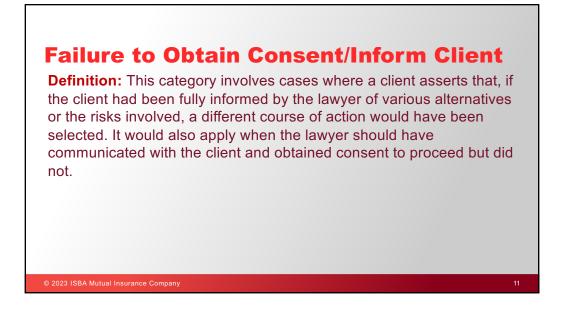
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Source: The Fundamentals of Loss Prevention for Lawyers, ISBA Mutual















### **Client Relation Claims**

#### **Practice Tips**

- Prepare an engagement letter and have it signed by client
- Increase your documentation
- Send letters to unrepresented parties
- ▶ Retain a record of your research
- Retain copies of all drafts of agreements and contracts
- Send a disengagement letter when you are withdrawing from representation. Contact your insurance carrier's risk management support for examples
- Communicate in writing
- Get written confirmation from client. Get it signed
- Document. Document. Document.

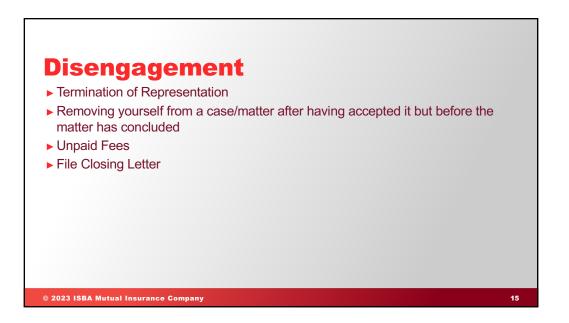




# **Elements of an Engagement Letter or Fee Agreement**

- A clear identification of who the client is.
- A detailed description of the legal work to be performed.
- A description of any critical aspects of the matter for which the lawyer will not be responsible.
- A detailed description of the fee arrangement.
- ▶ In the case of solo lawyers, the identification of a backup lawyer designee.
- ▶ File retention and destruction procedures.
- Language that indicates that your firm will not be delivering wire transfer instructions.
  - For sample engagement letters and fee arrangements, contact your bar association & various online resources.

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14



# **Non-Engagement**

- If the firm declines representation, always send a letter to the individual or entity that has been declined.
- The Non-Engagement letter should clearly state your decision not to represent the declined client
  - ▶ Never give an opinion as to the viability of a particular case or matter.
  - ► Do not specify the statute of limitations date in your letter.
- This can be accomplished quickly with a form letter you can obtain from your bar association & various online resources.

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# Client Relation Claims Tips on What to Document

- Client's consent to all major decisions.
- Client's instructions to proceed in a manner against the client's best interests.
- Anything unusual.
- ► All demands/offers and the client's response.
- ► Telephone calls.
- Err on the side of everything.

Source: The Fundamentals of Loss Prevention for Lawyers, ISBA Mutual

16

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- Inter-related Business Relationships
  - Lawyer Involved in Start-up as Attorney and Investor
  - Lawyer Accused of Stealing Intellectual Property
  - Lawyer's Defense: Business Had Other Counsel to Handle IP
  - Insured involved in multi-state litigation with over \$200k spent in defense.
  - ► Coverage?

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# Legal Malpractice Claims

#### Examples

- Friends as Clients
  - Lawyer Handles Real Estate Closing For Friend (Seller)
  - ► Friend's Deal is with Lawyer's Existing Client (Buyer)
  - ▶ Buyer Does Not Have Lawyer. Why?
  - ► Error: Insured Fails to Convey Two Parcels
  - ▶ Buyer Realizes House on Property was Sold in Tax Sale
  - Insured sued by Buyer for damages.
  - ► Conflict Waiver?



### Legal Malpractice Claims Examples

- ► Family as Clients
  - Lawyer's cousin would call him with legal questions;
  - Cousin bought property at sheriff's sale with lien on it;
  - Lawyer said he told cousin to pay off lien as soon as possible but no documentation
  - Eventually the property was sold to the judgment holder and cousin sued Lawyer.
  - Insured had never charged cousin or was paid any fees.

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# Legal Malpractice Claims

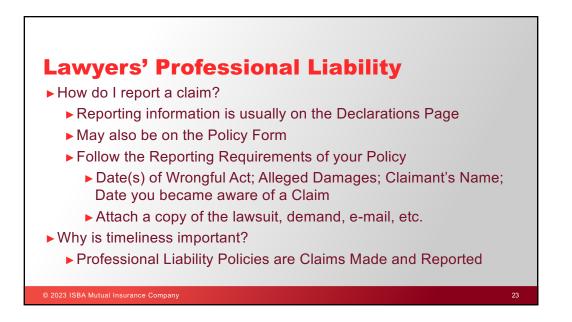
#### Examples

- Family vs. Family
  - Sister v. Brother (Lawyer): Allegation is that Brother Failed to Advise Sister to Get a Survey of Deceased Mother's Home
  - ▶ Sister Sole Owner after buying out Brother Lawyer
  - ► Flood damaged Home
  - Home Cannot Be Repaired or Rebuilt Because of Easement
  - Expert v. Expert: Was A Survey Required Prior to Being Bought Out?
  - Mediated Settlement

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### **Questions?**

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