

Commercial Insurance

E&O Edge

Lawyers Professional Liability Ten Lawyers Risk Management Tips

Lawyers Risk Management Note: All too often, we all tend to laser in on the task at hand and run the risk of losing sight of the “big picture” at least in the short run. In that regard, and after reviewing the data on recurring claim drivers, we offer the following high level tips.

Tip # 1 – Don’t Get Caught in the “Time Trap”

Failure to timely file is the single most frequent wrongful act alleged against our insured lawyers. Maintaining an effective docket/calendar system is essential. It should be maintained in at least two places, easy to use, used by all and encompass all critical dates.

Tip # 2 – Avoid Conflicts of Interest

Allegations of conflict of interest drive both frequency and severity. Watch carefully for conflicts arising from dealings with former or current clients and avoid those arising from your own interests in a client’s business.

Tip # 3 – Properly Screen Potential Clients

All too often, we hear “I just knew that client would be trouble.” While gut feelings about a prospective client should not be ignored, there is no substitute for having a client-screening questionnaire. This should be a living document that is revised to meet the firm’s needs, changes in practice areas, expertise of firm personnel or a shift in client characteristics.

Tip # 4 – Maintain Clear Lines of Communication with Clients

Individual clients constitute over half of the claimants in matters reported to us by insured lawyers. Developing a rapport with clients can reduce the likelihood of a simple error becoming a claim for malpractice. Focusing on

the non-technical aspects of the practice of law, while certainly not eliminating professional errors or omissions, can serve to reduce the risk of or mitigate malpractice claims.

Tip # 5 – Know the Law and Apply It Properly

Improper advice, improper strategy, defective research and other substantive errors account for approximately half of the claims reported to us. Avoid accepting matters outside your areas of expertise. Keep abreast of emerging issues through continuing legal education, law journals, advance sheets, etc.

Tip # 6 – Document, Document, Document

Many claims reported to us could have been avoided or minimized if the attorney had documented in a letter the terms of engagement or had documented the decision not to accept a particular client. Further, good file management/documentation is critical to avoiding malpractice claims due to poor attorney/client relations caused by unclear or infrequent client communication.

Tip # 7 – Focus on the Workplace

Like any business, a law firm is susceptible to damage to its reputation caused by poor employee morale, work/life balance issues or erratic behavior by staff or attorneys. Oversight of associates and support staff is critical. Watch for signs of excessive stress, alcohol or drug abuse, mental illness or lapses in concentration.

Tip # 8 – Don’t Ignore Risks Third Parties Pose

Third parties, both individual and corporate, constitute a troublesome aggregate of plaintiffs in malpractice matters filed against lawyers. These actions typically take the form

of claims for malicious prosecution or abuse of process. Many of these actions could have been avoided if the attorney had not used litigation to “settle a score” or had conducted an adequate investigation before naming parties in a suit.

Tip # 9 – Avoid Needless Fee Disputes

Ensure that your clients understand what hourly rates are being charged, any other fee structure, potential expenses to be passed on to the client and billing practices. Bill monthly if possible. Realize that, if you sue for fees, there is a substantial risk of a counter claim for malpractice.

Tip # 10 – Don’t Assume You Won’t Get Sued

The numbers don’t lie. Our claims professionals handle well over a thousand new malpractice cases each year, many from attorneys who thought it could not happen to them. However, you can reduce your risk by taking advantage of risk management services provided by your local or state bar associations, the Swiss Re Commercial Insurance Lawyers Hotline and websites such as LawyeringLaw.com.

Products underwritten by either Westport Insurance Corporation or First Specialty Insurance Corporation, a member of the Swiss Re group.

This information is merely a guide and does not include all potential risk management practices and in no way should be considered a representation that, if the above tips are practiced consistently, there will not a claim made against you. The above information is necessarily high level and is based on generally recommended risk management practices and is not intended to be exhaustive or all-inclusive. It should, under no circumstances, be construed to constitute legal advice.