



Commercial Insurance

# E&O Edge

## Lawyers Professional Liability Attorney-Client Relationships

**Lawyers Risk Management Note:** Absent the elements of malpractice (Duty – Breach of that Duty – Causally Related Damages), claims are still made against lawyers. In fact, over half of the claims reported to us are closed without any payment made on behalf of the insured lawyer. Further, there are claims that are settled with the insured lawyer's consent primarily to avoid costly litigation and time away from the actual practice of law. Thus, to reduce claims, we should focus on more than just reducing errors. This begs the question: **how many claims could have been avoided through improved attorney-client relations?**

A study of claims recently reported revealed that well over half of the reported matters arose out of dealings with individual clients. The most common areas of practice involved were personal injury plaintiff work and residential real estate transactions. Thus, it is reasonable to conclude that any deterioration in or failure to establish a healthy relationship with one's client could increase the risk of a claim being made for legal malpractice.

### Client Perceptions

Without regard to the merits of any matter, it is not uncommon for the uninitiated to assess an attorney's competence based on criteria not directly related to the attorney's performance as a legal professional. Some examples are:

- The client's perception that the attorney does not give the case the attention it deserves.
- Less than exemplary communication between the attorney and the client leading to an impression that the case was not handled with due care even though that is not the case from technical and procedural perspectives.
- The attorney's failure to return phone calls as promptly as the client's expects can lead the client to conclude that the attorney simply does not care about the case, is disorganized or outright dilatory.
- day in court" as a matter of principle?
- Do I tend to ignore advice from colleagues or staff that a particular individual is "bad news?"
- Has a prospective client already gone through one or more attorneys?
- Are your clients "crystal clear" about the fee arrangement, be it hourly rate on contingency?
- Does the client understand what out-of-pocket expenses will be passed on for payment by the client?
- Do you strive for a healthy balance of professional objectivity and empathy in dealings with your clients?

### Areas for Self-Examination

Here are some items to consider in focusing on improved attorney-client relations:

- Have I focused solely on technical expertise at the expense of developing sound interpersonal skills?
- Have I concentrated on public speaking and negotiating acumen in an adversarial setting at the expense of one-to-one client communication?
- Do I do a good job of picking up on danger signals from prospective clients?
- Do clients or potential clients have unrealistic expectations or a proclivity for not trusting professionals?
- Are clients or potential clients plagued by constant indecision or are they out "for their

Focusing on these non-technical aspects of the practice of law, while certainly not eliminating the risk of a legal malpractice claim, can serve to reduce the risk or perhaps mitigate its impact.

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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 be 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.