

Title:

Reducing Legal Malpractice Exposure

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Summary:

Many legal malpractice claims share common allegations/themes that can be avoided if law firms have the proper risk management measures in place. Implementation and maintained use of some very rudimentary systems and procedures can reduce the likelihood of being sued, or in the event you are sued, can bolster your defense. Below are some basic tips law firms can utilize to help reduce their legal malpractice exposure.

Keywords:

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Article Body:

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Engagement Letters - Legal malpractice claims often hinge on whether or not the claimant can establish that they were a client of the attorney (or at least owed a duty of care in 3rd party claims) and that the attorney agreed to handle the matter in question. A written engagement letter prepared for each client or potential client can serve to establish the facts of the lawyer-client agreement. Ideally an engagement letter would include the following:

- Name of client
- Scope of services (and in certain circumstances specifying what services are not being performed/included is also appropriate)
- Fee amount and billing schedule, including payment expectations
- Identification of any potential conflicts of interest
- Name and contact information of primary attorney handling the matter including outline of firm's communication guidelines (i.e. timeframes for responses to phone calls, faxes, letters, etc.)
- Client's obligations to the attorney and/or firm

- Dispute resolution method and initiation procedure

Non-Engagement/Declination Letters - These are often the difference in getting a meritless claim dismissed. As important as engagement letters are, non-engagement/declination letters are equally important. Written documentation to the former potential client advising that you will not be representing them is critical in establishing that no professional relationship existed. Non-Engagement/Declination letters should include the following:

- Name of potential client
- Date the attorney and/or firm met with potential client to discuss representation
- Details of the potential case which were discussed
- Statement clearly advising the potential client of the attorney's/firm's decision not to accept the case

Disengagement Letters - Various circumstances may arise that prompt a severing of the professional relationship between a lawyer and client. This often occurs before the matter for which the attorney was hired has reached a final resolution. In such circumstances it is crucial the "disengagement" be documented in a letter to the client. If the client subsequently hires new counsel who makes an error, the disengagement letter may be the best defense to establish who the responsible attorney was at the time the error occurred. Disengagement letters should include the following:

- Name of client
- Date the attorney and/or firm are terminating their representation of the client
- Statement clearly advising the client of the attorney's/firm's reason for disengagement (i.e. case concluded, client request, non-payment of fees, etc)
- Successor counsel: if known include their name, if not include a statement advising client to seek new counsel

Professional Liability Insurance - Consistent use of the letters described above may help you reduce the possibility of being named in a malpractice suit, however they won't eliminate the possibility of claims. Lawyers professional liability insurance won't eliminate claims either, but it can serve to minimize the impact a malpractice claim might have on your firm.

When deciding whether or not to carry professional liability insurance, consider the following:

- Frequency of client claims and malpractice law suits are on the rise.

The National Law Journal has reported that an attorney can now expect to be sued at least once during their career.

- Defending a malpractice claim is expensive. History tells us that approximately 35% of loss payments in professional liability claims are due to litigation expenses, so even if you prevail with your defense it will be costly.
- Your personal assets may be at risk without appropriate professional liability insurance in place.
- Many clients, especially larger companies, are now requiring proof of professional liability insurance before they will enter into an engagement.
- Many, if not most, referral services require the attorney or firm have professional liability insurance in place before they will begin referring cases.
- Some states and jurisdictions now require that you disclose to clients whether or not professional liability insurance is in place.

If you are a small or mid-sized law firm that has experienced difficulty finding lawyers professional liability insurance due to paid claims or disciplinary actions, DefenseProSM Lawyers Professional Liability may be able to help. Administered by Lockton Risk Services, a subsidiary of Kansas City-based Lockton Companies, the largest independently-owned commercial insurance broker in the United States, DefenseProSM is specifically designed to meet the professional liability needs of distressed law firms. For more information, visit the DefenseProSM website at <http://www.defenseproliability.com>.

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