

10 WAYS TO MINIMIZE THE CHANCE OF A LEGAL MALPRACTICE SUIT

By Cal Watson, JD

Despite best efforts, dissatisfied clients sometimes file legal malpractice suits. Although there are no guaranteed methods preventing suits from being filed, there are tried and true ways that often reduce the risk of being sued, or minimize exposure once suits are filed. Below are ten steps that are frequently effective as risk management techniques for reducing the risk of suit for attorneys in any area of practice:

- 1 Screen clients carefully:** Don't ignore the warning signs of a problem-client (i.e., overly-litigious, multiple prior lawyers, and unbending and unrealistic expectations). Resist the temptation to take every client.
- 2 Always guard against conflicts of interest:** Be vigilant about possible conflicts of interest. When a waivable conflict arises, make sure consent is timely, informed, in writing, and signed by the client. The waiver should clearly set out the complete nature of the conflict. Also, be aware that not all conflicts can be waived.
- 3 Always send an engagement letter:** Always send an engagement letter that plainly sets out what you are retained to do and how you will be paid. In cases involving multiple related parties, make certain that you identify which parties you represent and which parties you do not represent. In cases where you are refusing representation, send a non-engagement letter documenting your refusal to accept the matter.
- 4 Manage client expectations:** Make every effort to understand your client's goals and expectations. Listen. Ask questions. Make sure you and your client are on the same page. Inform the client of bad news directly and quickly. Be honest about what is possible, and what is not. Don't ever overpromise.
- 5 Maintain active communication:** In all stages of the matter, make sure your client is informed. With email and other readily available technology, this process can be simple and, in some cases, automated.
- 6 Stay current:** Don't dabble in unfamiliar areas. Regularly review new opinions, statutes, rulings, articles, or other guidance available in your practice areas. Attend continuing legal education seminars that apply to your practice.
- 7 Maintain procedural and administrative safeguards:** A common malpractice claim stems from a missed statute of limitations or other deadline. Consistently use calendars, docketing systems, and other safeguards to ensure that no deadlines are missed. Make sure you have a backup system so that if one system fails, the other kicks in to prevent misses.
- 8 Make and preserve paper (or electronic) trails:** Documented instructions and written advice to clients is critical in defending legal malpractice suits. Reduce your communication to writing in the event your client has a different recollection in the future. After important conversations, especially when conveying bad news or when setting expectations, follow up with a confirming email documenting the conversation.
- 9 Confirm resolution of the matter:** When involved in negotiations or other efforts to resolve a matter or case, actively involve clients in the discussions and make sure your client agrees to the resolution. Make sure much of the process is in writing. Reduce the client's agreement to writing.
- 10 Always send an end-of-engagement (or disengagement) letter:** When the case or matter is over, make sure the client understands that the attorney-client relationship has ended. A letter confirming the end of your engagement can easily be included with the final invoice.

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