



## Risks and Resources Tips For Law Firms

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### Helpful Resources for Law Firms:

**For ABA Ethics Links by State:**

[www.abanet.org/cpr/links.html](http://www.abanet.org/cpr/links.html)

**For ABA Model Rules:**

[www.abanet.org/cpr/mrpc/mrpc\\_toc.html](http://www.abanet.org/cpr/mrpc/mrpc_toc.html)

**For Time Management Tips:**

[www.timemanagementforlawyers.com](http://www.timemanagementforlawyers.com)

**For Technology Information and Reviews:**

[www.law.com/jsp/lawtechnologynews/index.jsp](http://www.law.com/jsp/lawtechnologynews/index.jsp)

**For Marketing Information:**

[www.lawmarketing.com](http://www.lawmarketing.com)

**For Various Legal Topics:**

[www.thecompletelawyer.com](http://www.thecompletelawyer.com)

**For Ethics Articles:**

[www.legaethicsforum.com/blog](http://www.legaethicsforum.com/blog)

**For Legal News:**

[www.law.com/jsp/law/index.jsp](http://www.law.com/jsp/law/index.jsp)

**For the ABA Directory of**

**State Lawyer Assistance Programs:**

<http://www.abanet.org/legalservices/colap/colapdirectory.html>

**For Information on**

**Alternative Fee Arrangements:**

[www.acc.com/valuechallenge](http://www.acc.com/valuechallenge)

**For Business Advice For  
Solo and Small Law Firms:**

[www.myshingle.com](http://www.myshingle.com)

[www.buildasolopractice.solopracticeuniversity.com](http://www.buildasolopractice.solopracticeuniversity.com)

**For Information on Government  
Regulation of Businesses:**

[www.business.gov](http://www.business.gov)

**For Tips, Tools, Newsletters  
and Webinars:**

[www.attorneyprotective.com](http://www.attorneyprotective.com)  
(some features available only to insureds)

## Some Areas to Consider...

1. **Missed Deadlines** – a very common error that causes numerous claims every year. To avoid a lawsuit resulting from a missed deadline, it's a good idea for every attorney to have his/her own well-organized calendaring system designed for multiple independent inputs, whether kept in time management software, Outlook, or an organized paper system. It's a good idea for each system to have a backup, if at all possible. In law firms with more than one attorney practicing, the best calendaring systems are firm-wide, with dates entered through a single data entry point, and everyone required to send all dates to the same contact person. The firm system would then generate an automatic reminder to the responsible attorney, and to his/her secretary or assistant. In a perfect world, the attorney will also keep an independent calendar as a double check. Even this process does not necessarily eliminate all errors, especially deadlines that are missed when the wrong date is entered into the calendaring system. Thus, it's always a good practice to assign a detail-oriented person to input the calendar entries, and to have a process to double check entries after they are entered.

2. **Too Much Stress** – a cause of increased errors. Learn to recognize the signs of stress, substance abuse and other emotional troubles in members or employees of your firm. You may want to consider having procedures in place to recognize and address these issues as they arise, including appropriate procedures for intervention. Many local bar chapters offer information on support groups. The ABA Commission on Lawyers Assistance offers a number of resource and educational materials on this topic on their website at [www.abanet.org/legalservices/colap](http://www.abanet.org/legalservices/colap).

3. **Fee Suits** – a growing trigger of malpractice counterclaims. Suing your client for fees results in a counterclaim for malpractice in a high percentage of cases. Moreover, during these challenging economic times, it is more important than ever to have procedures in place to avoid fee disputes. The process begins at client intake, with a proper evaluation of the client's ability to pay the fees, and with an engagement letter that clearly outlines fees and expenses that will be charged to the client. If a client fails to pay, proper procedures should be followed to withdraw from the case, if necessary and appropriate. Suing a client for unpaid legal fees should be a last resort, an option taken only after careful consideration.

4. **Client Relations** – Both good marketing and good ethics. The ethical rules address the importance of good client communications. (See ABA Model Rule 1.4) Good client communications are also an excellent deterrent to all malpractice suits and a great way to increase repeat business. Good client relations practices, including prompt response to client inquiries, timely delivery of important case information, a thorough understanding and clarification of client expectations, and effective coordination with support staff in scheduling appointments, are important parts of good client relations.

5. **Client Intake Procedures** – may be the best opportunity to avoid multiple risks. You may want to ensure that there are comprehensive procedures in place to evaluate such issues as conflicts of interest, client expectations (are they feasible) or if the client has had a history of problems with other attorneys. It's also important to ask yourself if you have the expertise to handle the case which you are being presented. Developing a form or checklist that reminds you of the areas that you need to evaluate during client intake can be very helpful in this process.

## When Thinking About Your Risks

6. **Engagement letters** – a valuable documentation tool for both the attorney and the client. Engagement letters are valuable to specifically outline the services to be provided, who the client is (and is not), the fee structure that will be implemented, important dates that will affect the case, and the roles and responsibilities of all parties involved.

7. **Non-engagement letters** – an important piece of documentation to be used by your firm. The non-engagement letter or email makes clear that no attorney-client relationship ever existed in the event you reject representation of a client, or refuse to take on a particular case. These letters are invaluable in situations where non-clients claim client status merely because an attorney replied to an email or answered a simple question by phone or at a party. When things go awry, the non-engagement letter, proclaims, "I am not your lawyer," and can also be used to notify third parties involved in transactions with your client that you represent only the client and not the third parties.

8. **Disengagement letters** – an effective documentation tool to establish that you are no longer representing a client when the matter is over. Without it, some former clients may attempt to claim that you are still their lawyer. Whether the case has closed, or you have withdrawn, a detailed disengagement letter is useful to document the end of your responsibilities to the client. It can also be used to document the release of files, the status of the matter, the end of a particular case (and the close of billing on that case), even if you continue to represent the client on other matters.

9. **Documentation of work** – a good habit for every attorney to practice to show what work has been performed. Establishing a firm practice to document the work performed for a client and making that documentation easy for you to access can help safeguard against any accusation that responsibilities were unmet, and may prevent a disagreement about what work was done. In addition, procedures may include a formal process for the retention of records to assure that the documentation is not lost. Our suggestions include the use of one of a number of software programs that provide electronic means of documentation, with a back up storage of files in off-site servers as an extra safe-guard. When electronic systems are unavailable to you, a well-organized paper system needs to be established with duplicate copies stored off-site in case of fire. When storing documents off-site, it's a good practice to put careful procedures in place to assure the security of the client information is not compromised.

10. **Conflicts of Interest** - a frequent cause of malpractice claims. A thorough client intake evaluation and a well-established and consistent firm policy can go a long way in avoiding this risk. It's important to remember when evaluating a potential client to look not only at current and former clients but also to examine personal relationships, business relationships and the prior case involvement of non-lawyer staff. Some conflicts of interests are waiveable; however, it is highly recommended that you complete a thorough review of your state laws and ethics rules and follow all required procedures. Be careful to document each step in writing. If a conflict is discovered after an attorney-client relationship has been established, it's a good idea to seek legal counsel immediately.



## A Few Tips From Your Colleagues

*"Keep in mind that conflicts not only arise by a lawyer's representation of other clients or third parties but also by 'a personal interest of the lawyer.' Model Rule 1.7(a)(2). These situations arise when a lawyer's own conduct or interests make it difficult for him or her to give a client detached advice. These conflicts can take many forms, are often difficult to spot, and can arise in many different contexts." - Cal Watson, Sowell Gray, SC*

*"The very worst thing you can do when you become aware of a missed deadline is to ignore it or put off addressing it until tomorrow. Your chances of remedying the error decrease with each passing day. Address it immediately and enlist the help of a fresh set of eyes." - George Jonson, Montgomery, Rennie & Jonson, OH*

*"Very few problems serious enough to motivate withdrawal crop up overnight, and in most cases can be seen coming from a distance. When a serious problem is first recognized, it should be both discussed with the client and memorialized in writing." - John Drath, Bishop Barry Drath, P.C., CA*

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