

LAW PRACTICE

Malpractice Risk Factors and How to Avoid Them Part II

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In my previous article in the October 2018 issue of *inBrief*, I discussed the importance of implementing law office systems to help reduce your risk of legal malpractice. I specifically focused on calendaring systems, client and case screening, and file management. This article will focus on client relations, conflict checking systems, and billing as risk management tools.

CLIENT RELATIONS

Risk management does not end when you screen and select the “right” client or case. It’s an ongoing process requiring continuous evaluation of your client relationship and a diligent effort to remain on good terms with clients. Clients hire lawyers because of their skills, experience, and reputation, but those qualities alone do not result in a good attorney-client relationship. It’s easy to think that as long as you’re able to get the result clients want, they will have nothing to complain about.

Providing quality legal services is simply not enough to protect against malpractice risk. Of course, getting the desired outcome is important to clients. Just as important, however, is how they are treated during the course of representation. If your communication and interaction with clients leave them feeling dissatisfied, unhappy, or disrespected, the good outcome you obtained may still not be satisfactory to them. These feelings will affect how forgiving they are toward you. Clients who feel they are treated poorly are less likely to refer prospective clients to you and may be more likely to bad mouth you, file a malpractice claim against you, or complain about you to the Bar.

Let’s look at some relationship errors that make clients unhappy or dissatisfied:

- Not returning clients’ phone calls or emails;
- Not responding to their requests for information;

- Not actively listening to their concerns;
- Allowing phone calls or staff to interrupt client meetings;
- Being late for appointments;
- Rescheduling their appointments too many times.

You can avoid these errors by setting expectations and treating clients with common business courtesies.

Set expectations and boundaries for communicating with you

In addition to explaining the scope of your legal services and your fees at the beginning of your attorney-client relationship, it's also important to discuss with clients what they can expect of you in terms of communication. In order to do this, you have to determine what works best for you. This includes intentionally deciding whether you want to take client calls during business hours only, what period of time is workable for you to return calls, and whether you want to regularly block time for calls. Once you have made a plan, discuss it with your clients. A conversation about the best method and date/time for them to reach you and vice versa will save a lot of potential frustration and anger. For example, if you set aside one or two hours during the day for phone calls, communicate that schedule to clients. Absent an emergency, make yourself available at those times. Include your regular schedule in your engagement letter or fee agreement and make sure you stick with it. If the schedule needs to change, communicate that with the client and follow up with a letter or email.

Once you establish and communicate your policies, stick with them. For example, if you tell clients you don't take after-hours calls, but you answer and talk with them, you're undermining the expectations you've set.

Treat clients with common business courtesies

Clients are also customers. They want good customer service and respect. Treating them with common business courtesies helps foster a respectful relationship that will have a lasting impact.

- **Promptly return clients' telephone calls** – You can also ask staff to call clients to explain your delay in returning their calls. If their calls or emails are not urgent or important, then respond on the days

you've set aside to communicate with clients.

- **Be on time for their appointments** – Don't make clients wait more than 5 minutes to meet with you. Give them the courtesy of meeting them on time. Reschedule their appointment only if it is absolutely necessary. A client whose appointment is frequently rescheduled may feel like you don't respect their time.
- **Give clients your undivided attention** – When you meet with them, tell staff not to interrupt you. Put your office phone on "Do Not Disturb" and silence your cell phone. Refrain from constantly looking at the clock.
- **Be responsive** – If clients ask you for something related to their matter, provide the requested information to them in a reasonable amount of time. Your failure to fulfill your commitment may affect your relationship with the client and lead to more serious issues.
- **Be a good listener** – Actively listen to what the client has to say, and communicate back to the client what you hear the client say. This verbal assurance lets the client know that you understand what the client is saying and makes him or her feel heard. Delay asking questions or offering advice or comments until the client has had the opportunity to talk about her or his problem without interruption.
- **Be available** – Staff play an important role as a conduit between the lawyer and client. But don't let staff be a barrier between you and the client. Be personally available to communicate important issues or developments in the matter to the client.

Other aspects of managing client relations include documentation, using a written fee agreement, and more. Those practices are discussed in my previous article available at www.osbplf.org > *Practice Management > Publications > InBrief > October 2018*. Additional tips on how to improve your client relations are available at <https://www.osbplf.org/assets/forms/pdfs//Client%20Relations%20Best%20Practices.pdf>.

CONFLICT CHECKING SYSTEMS

Another malpractice risk factor for lawyers is not using a conflict checking system. The failure to

properly screen can result in representing clients with conflicting interests. This creates legal malpractice problems as well as ethical issues with serious consequences.

Many situations may give rise to a conflict of interest. These include representing opposing parties in the same matter, or not providing full disclosure and obtaining a waiver in a matter with multiple clients. Whatever it may be, lawyers need a system to identify and resolve the situation that may give rise to an actual or potential conflict.

It's important to establish a reliable system that allows you to do a thorough and complete search of the entire database to find and match the queried name. Input all parties in your conflict database, including the clients, adverse parties, related parties, declined prospective clients, pro bono clients, etc. Set up procedures for conflict checking to properly search, analyze, and document potential conflicts as well as to obtain informed consent or decline representation due to a conflict. The PLF has a helpful practice aid called "Conflict of Interest Systems and Procedures" that discusses setting up a conflict database and how to systemize procedures. It is available at www.osbplf.org > *Practice Management* > *Forms* > *Conflicts of Interest*. It's also available at this link: <https://www.osbplf.org/assets/forms/pdfs//Conflict%20of%20Interest%20Systems%20-%20Procedures.pdf>.

BILLING ISSUES

The final legal malpractice risk factor to be mindful of is your billing and fee collection practices. Your efforts to get paid may result in a response you least expect: the client disputes your fees, accuses you of providing negligent service, and threatens to file a malpractice claim against you. The response may be triggered by an underlying issue that finally surfaces on receipt of the final bill. You can prevent this by taking a few precautionary measures.

- **Only take clients who can afford your legal services** – This advice harkens back to my previous article on client screening. Clients who express an inability or unwillingness to pay for your services may find fault in your work and avoid paying their bills.
- **Use a written fee agreement** – Clearly explain how your legal fees are determined and your

billing procedures, such as when clients will be billed and the procedures for withdrawing funds. Document the billing process and withdrawal procedures in a written fee agreement. Follow the terms of the fee agreement. If you and the client agree that you will bill monthly, make sure you send the monthly statement out on time.

- **Review statements before sending** – Make sure you review all billing statements before sending them to clients. In addition to looking for errors, also review billing practices that may cause confusion to the client, such as block billing or vague entries (e.g., "legal research"). It's also an opportunity to reassess whether the charges reflect the value that clients receive from your work. If not, consider writing off some time. If you're discounting your hourly rate as a promotion or a favor to the client, include your normal rate so the client can see the actual value of your service.
- **Enter time contemporaneously or at least daily** – To avoid under- or over-billing clients, it's best to track and enter time contemporaneously with the task. If that is not possible, then enter your time at the end of every day. You can do this with a notepad or using time-tracking software. Recording time daily prevents the frantic search for emails you sent or documents you drafted to recreate a list of billable tasks. Lawyers who do not record time on a daily basis end up losing many billable hours, resulting in undercharging for their legal services or padding their bills.

You can find more information on good billing practices at our website, www.osbplf.org > *Practice Management* > *Forms* > *Financial Management*.

Of particular relevance are two practice aids titled, "Daily Time Sheet," available at <https://www.osbplf.org/assets/forms/pdfs//Daily%20Time%20Sheets.pdf>, and "Billing and Time Slips," available at <https://www.osbplf.org/assets/forms/pdfs//Billing%20and%20Time%20slips.pdf>.

If you have any questions on how to improve your office systems, please call a PLF practice management advisor at 503.639.6911.