HOW TO AVOID THE MOST COMMON ETHICS COMPLAINTS AND MALPRACTICE CLAIMS

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Every lawyer’s worst nightmare is a client filing an ethics complaint or malpractice claim. Fortunately, you can prevent this if you take the time to set up and organize your practice wisely.

Many of the most common claims have nothing to do with a lawyer’s technical ability. Instead, they result from poor practice management. Taking simple steps to ensure that your firm’s day-to-day operations run smoothly will prevent such issues from surfacing. One of the easiest steps is to install practice management software built specifically to address these issues. Let’s explore some of the most common ethics complaints and malpractice claims.

Communications Failures

A key responsibility of every lawyer — and one of the biggest sources of malpractice claims — is to keep clients up to date on their cases. Lawyers must not only keep clients informed, but also carefully and thoroughly document communications with clients throughout the engagement. This paper trail can significantly reduce malpractice risk.

Communicating with clients generally occurs as a matter of course if a client’s file is active, but it’s easy to forget about updating a client when nothing occurs. A good practice management system will integrate client matters with your calendar so that you can set automatic alerts reminding you to update the client periodically regardless of the level of activity on the file. If a file begins to fall through the cracks, practice management software can help get it back on track by reminding you not only to update your client, but also to take the next step in moving the client’s matter forward.

If a matter takes a turn for the worse, the earlier you communicate the bad news to the client the better. Be up front with your client about what happened, and discuss how you should proceed in light of this new information. Delaying bad news to avoid an uncomfortable conversation or attempting to fix a mistake before the client finds out about it makes malpractice claims more likely.

In addition to updating clients about what has already happened, lawyers should always confer with clients before taking significant steps on a matter. Also, document client consent to prevent clients from claiming that they were unaware of or did not agree to the actions taken by your firm.

Practice management software with document management capabilities keeps all communications (engagement letter, email, work product, etc.) in one centralized location in an easily retrievable format searchable by client, matter, date, or document type, thus creating that all-important paper trail. You can view all communications and documents related to a single matter or see what work has been performed for a particular client across multiple files. You can also see tasks and upcoming dates for that client without having to search several different applications separately.

Practice management software can also circumvent communications errors related to changes in a client’s information. Instead of manually documenting the change in each individual file, the change can be made once in the client’s information screen after which it will automatically be applied to each of that client’s matters.

Deadlines and Time-Related Errors

Risk managers and malpractice insurers will tell you that missed deadlines are a common source of legal malpractice claims regardless of an attorney’s area of practice. Many insurers specifically recommend that lawyers implement computerized calendar and docketing systems with automatic reminders.

The cause of a missed deadline can range from miscalculation of statutes of limitations to failure to appropriately assign work. Practice management software can require you to enter information into certain fields such as the attorney assigned or the matter type. It can also
automatically calculate deadlines and statutory limitations periods, track appointments, display deadlines and due dates, list tasks, and associate events with the appropriate client files to help manage workflow. Some programs can assign priority levels to certain tasks, increasing the level of priority of a task as it approaches a deadline or based on the length of time the task has remained on your to-do list.

Practice management software also enables you to create a master calendar visible to everyone within the firm, while enabling individual attorneys to view their own appointments separately, or view all appointments for a particular client or matter regardless of the attorney assigned. Features like deadline alerts, a customizable dashboard, and a daily report further ensure that you never miss a deadline or important task.

Conflicts of Interest

Malpractice claims arise from conflicts of interest when one firm represents multiple parties in a matter or when the firm does not recognize or properly identify a conflict from a previous representation. Conflicts of interest should be checked immediately upon receiving the first contact from a potential client. When a conflict of interest exists before you undertake representation or develops after representation commences, you must decline or withdraw from the representation respectively.

Don’t rely on memory to identify conflicts. While it may be easy to determine whether you’ve ever represented a particular party before, it is not as easy to determine whether you represented another party (such as a co-defendant, subsidiary, or parent company) with adverse interests unless you have a robust database of information and global search capabilities.

Malpractice insurers recommend that lawyers

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maintain a computerized conflicts database searchable by name of prospective client and its principals and subsidiaries, as well as adversaries (including corporate officers and directors), opposing counsel, and even trade names when known. Modern practice management systems provide this functionality, storing detailed information not only about your clients, but also affiliated companies and other parties, enabling you to generate easy-to-read reports.

Billing Errors and Misuse of Client Funds

Good financial management can ward off all sorts of potential claims. Some “best practices” for financial management include:

- Obtain payment up front when possible.
- Ensure that trust accounts are handled properly.
- Always document transactions involving client funds.
- Keep records of work billed and payment details (e.g., whether clients pay directly or money is transferred from a trust account).
- Bill clients regularly and frequently (to prevent sticker shock).
- Communicate payment deadlines clearly to reduce accounts in arrears and establish a healthy cash flow.
- Establish and enforce effective time-keeping and recording procedures.
- Manage collections, including prompt follow-up on overdue bills.

Practice management software can even

remind you when it’s time to move money from the trust account to the operating account, and ensure funds are taken from the correct account for specific transactions (such as paying an expert witness fee) to avoid commingling problems. Your software should also alert you when a retainer falls below a specified level so you can request additional retainer funds from your client.

Since the Technology Exists, Why Not Use it?

With proper systems in place, including practice management software with the above capabilities, your firm can significantly reduce its malpractice risk and provide excellent service to clients. While some technology is just nice to have and even of questionable value, practice management software by contrast is right up there with email and word processing in terms of its importance in today’s law firm environment.

ABOUT THE AUTHOR

A former practicing lawyer and law firm partner, Allison C. Shields, Esq. started Legal Ease Consulting, Inc. (www lawyermeltdown.com) in 2005 to help lawyers and law firms develop their practices to their fullest potential. Allison understands the law firm environment and the daily pressures faced by lawyers trying to manage and build their business while practicing law and successfully serving their clients. Accordingly, she provides productivity, practice management, marketing, and business development coaching and consulting services for lawyers and law firms. She writes about these issues on her blog (www.legalleaseconsulting.com).