

# PERSPECTIVES

An attorney's guide to insurance and risk management

MSP L 01/03 "3 Reasons Why Lawyers Get Sued"

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## 3 Reasons Why Lawyers Get Sued

### The Curious and Scary Evolution of Lawyers Professional Liability Claims

Some long-term practitioners still can remember a time, thirty years or so ago, when professional liability claims against lawyers were unheard of. The first successful claims against lawyers involved situations in which a lawyer, through some simple oversight, had neglected to file a client's case in the time period allotted by the statute of limitations, thereby causing the client to effectively forfeit his or her case.

In certain cases, it was totally clear and easy to document what had occurred, and the courts, probably somewhat grudgingly at first, began to hold lawyers negligent in these types of relatively clear cut and straightforward cases. Eventually, new types of claims were also successful, such as problems arising from a conflict of interest.

As the lawyers malpractice product line evolved, insurers, understanding the small core of root causes of these claims, began to encourage their law firms to do things like set up a formal docket control system and a formal conflict of interest system. This message was slow to take hold for a number of reasons. The biggest of these was that, for the most part, it could be said that the legal profession was in a sort of collective denial system, thinking that such a claim would never happen to them. Remnants of that type of thinking exist to this day.

As the years went by, more and more different types of claims and allegations were successfully brought against lawyers. Today, even experienced Lawyers E&O insurance underwriters would be hard

pressed to list all of the different types of professional liability claims that have successfully been brought against law firms. As every sector of the economy and everything else continues to evolve and change, new types of exposures and potential claims against law firms are constantly arising. So why do law firms get sued?

### Reason 1 – Appeals

**Document whether an appeal will be made.**

For any matter that is or may be appealable to a higher court, be sure to document in writing, vis-à-vis

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your client, whether or not an appeal will be filed. Such documentation shuts off the possibility of claims based on a client's allegations that the client thought the lawyer was filing an appeal, or the client would have wanted to appeal if the attorney had let the client know an appeal was possible, and similar such arguments. The best place to document that an appeal will not be made is in your disengagement letter to your client.

**Avoid the common mistake areas relative to appeals** – The bulk of professional liability claims in the appellate area arise from a failure to timely file an appeal, or alternatively, from a failure to timely and properly perfect an appeal by filing any required lower court transcripts, records, or appellate briefs.

## Reason 2 – Billing

**Billing issues are a direct or indirect cause of many professional liability claims.** Client dissatisfaction is the precursor of nearly every professional liability claim. Client dissatisfaction almost always will emanate from either the legal results that have occurred or from unhappiness about a billing or fee-related issue. Actual over-billing or a client's perception of over-billing can lead to a situation in which your client becomes dissatisfied and eventually files a professional liability claim. It is important to understand that the amounts you bill and the manner in which you bill have a direct and significant bearing on your chances of incurring a professional liability claim.

**Use a computer based time and billing system** – Although this statement might seem to be a “blinding flash of the obvious” (BFO), you would be surprised how often a manual system is relied on for billing. A computerized billing system enables you to systematically correlate and store your time records, which can be critical for documentation purposes in the event of a dispute with a client, directly with your client bills. The benefits of getting bills out regularly and on time, easy retrieval, and authoritative documentation are well worth the investment.

**Bill on a monthly basis** – An itemized and detailed statement should be sent out to each client on a

monthly basis, even if no money is owed that month. The statements collectively will show your client how much work is being performed on your client's behalf. This helps to remedy the common situation in which a client, who has not heard anything from the lawyer, assumes that nothing is being done on your client's behalf. It also enables your client to budget for and pay bills in a way that works for your client.

**Have the lawyer review and approve bills before they are mailed to the client** – This procedure acts as a safety net to make sure incorrect bills do not go out the door. An additional benefit is that the process may act as a reminder to the lawyer that action is needed to be taken on behalf of a particular client.

**Avoid billing surprises** – No client likes to get surprises of any kind, especially if the surprise is in the form of an unexpected bill in a large amount. Strive to avoid the situation where a single large bill is presented to your client, particularly at the end of a matter, and especially if your client has not previously been advised of, and has not agreed to, the amount of the bill. Not only is it unlikely that you will ever get paid the full amount of the bill, it is almost certain that you have alienated your client, perhaps irretrievably.

## Reason 3 – Branch Offices

**Branch offices significantly increase your firm's professional liability exposure.** The existence of branch offices creates a challenge from a professional liability risk management standpoint. The reason for this is that many of the factors which might mitigate against the possibility of incurring a professional liability claim may either not be present or may break down once one or more branch offices are introduced. These can include such all-important factors as client screening, and peer review.

If you do have branch offices, the most critical things to accomplish are to have firm-wide centralized systems and procedures which include all of the branch offices, and to maintain effective supervision and oversight of the branch by staying in close communication and by making regular internal audits of the branch's operations and client files.✂