

PERSPECTIVES

Strategies to Manage Your Law Firm's Professional Liability Exposures

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Practice Management Strategies Part 2

Client Relations

Keep your clients happy. The type of client who will file a professional liability claim is a client who is unhappy or dissatisfied with some aspect of the representation. If you can manage to keep your clients happy or at least satisfied, you have a good chance of avoiding a malpractice claim. The way to determine if your clients are satisfied or not is to ask them if they are satisfied at regular intervals, and to encourage them to give you an honest answer. Take action immediately to address or remedy any situation that your client is unhappy about.

Keep your clients informed and be accessible. When clients don't hear anything from you, they assume that nothing is being done to further their interests. It is advisable to keep clients informed and updated as to the status of their matter at regular intervals.

Surveys of law firm clients consistently have shown that the number one complaint by clients is that their lawyers were not accessible to them. Most professionals who are not accessible to their clients seem to be oblivious to the massive negative impact that lack of accessibility has on the success, revenue, and profitability stream of their practice.

Build up a sound and loyal client base. Who your clients are and where you get them from is a major determinant as to your likelihood of incurring a professional liability claim. Long-term clients, repeat clients, and clients who are referred to you from your existing good clients are, on the whole, much less likely to file a professional liability

claim against you than other classes of clients are.

First-time new clients to your firm who are walk-in clients, especially if they are involved in a new and unknown start-up business or other venture, are considered to be an extra hazardous class of clients from a professional liability standpoint. It is advisable to be extra cautious with any new or unknown clients and clients who, due to the nature of the situation, will most likely be "one-time" clients. These classes of clients often represent unknowable exposures, and usually will have little compunction in filing a professional liability claim against you.

Cultivate a high level of business rapport with your clients. The higher the level of rapport you have with your clients, the less of a professional liability exposure you will have. The main strategy is to try and create a paradigm in which you are closely aligned with your client, rather than being polarized.

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A way to create a close alignment is to try and create a “team” type of culture, in which you and your client perceive yourselves to be members of a team, working closely together with a “we’re all in this together” mentality to achieve a common goal and purpose.

Become adept at managing client expectations. Generally, clients will only consider filing a professional liability claim in those situations in which their expectations have not been met. To the extent you are adept at creating, influencing, managing and helping to engender realistic expectations in your clients, and then meeting or exceeding those expectations, you will have reduced your overall professional liability exposure.

A situation to be avoided is when you have promised more than you are able to deliver. The main expectation of most business clients is that they want to receive good value for their money. If you constantly strive to go the extra mile for your clients and provide superior value, you almost always will be meeting or exceeding your client’s expectations.

Get rid of problem clients. In almost every professional practice, a form of the “Pareto Rule” pervades in that 90% of our client-related problems will come from 10% of your clients. Usually the same “problem clients” will establish a pattern of having ongoing problems. Another observation is that, in general, a client who has problems in one area will tend to eventually have problems in all areas, whereas the better clients never seem to cause any type of problem.

Due to economic pressures facing all businesses, most law firms are reluctant to fire a client. However, a close analysis of a troubled client situation often indicates that, all things considered, continuing the relationship is simply not worth it.

Client Solvency

Qualify and monitor your clients from a financial solvency standpoint. For any law firm, the most important client attribute to be aware of is the financial solvency and financial viability of your

clients. Many firms ignore this factor, or proceed with “blinders on” or “rose-colored glasses.” The reason this factor is so crucial is that the financial reverses or demise of a client, especially if it is a large one, can and often does have a variety of dire consequences for the law firm. These consequences can include a propensity to file a professional liability claim against the law firm in an attempt to recoup business losses.

Even more perilous is when a large client fails to pay its bills to the law firm. If the revenues from that client constitute a significant portion of the law firm’s annual revenues, the demise of your client can lead to the financial demise or breakup of the law firm.

If the lawyer gets involved in sitting on the Board of Directors of an insolvent client, which is highly inadvisable from a risk management standpoint even for financially sound clients, the lawyer is often faced with several serious and usually indefensible claims from a professional liability standpoint and also from a directors liability standpoint. It is advisable to secure a credit report in advance on a prospective commercial client, and to set up automatic ordering of an updated credit report every quarter.

Committees

Use committees to address key components of your operation. It is recommended that committees be formed to address key areas of your operation. Important functions for which many leading law firms use committees include client acceptance, conflicts of interest, ethical compliance, fee collection, internal audit, quality control, insurance, and risk management.

Participation on prominent committees engenders in the lawyers and support staff who serve on them a sense of self-esteem and importance. The use of committees also can be conducive to creating and supporting a culture of teamwork within the law firm, which may be the most critical element of law firm culture from a risk management standpoint. While the committee approach may not always be perfect, it is preferential to having an important item go unaddressed.✂

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