



Strategies to Manage Your Law Firm's Professional Liability Exposures

MSP L 09/2009 "Suing for Fees? Think Twice!"

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Suing for Fees? Think Twice!

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Many of the legal malpractice claims we see are counterclaims to an attorney's suit against the client for fees. The counterclaims often lack merit, but they cost time, money, and tooth enamel to defend and resolve. Sometimes the deductible payments for defending the counterclaim wind up costing more than the fees at issue.

With planning and foresight, you can minimize the risk of notifying your carrier of a "malpractice" claim that is nothing more than attempted leverage for the client who is unwilling to pay a bill.

Know Your Clientele

If your client base is mainly individuals rather than businesses, you are more likely to see malpractice alleged in response to a demand for fees. Business clients tend to have more experience with attorneys, and their expectations are more realistic. They are less likely to allege malpractice as an emotional reaction. Their repeat business gives them leverage other than alleging malpractice when fee issues arise. And they are often better able to absorbing high costs.

Individual clients may be more emotionally invested in the legal representation and have less realistic expectations as to outcomes and costs. When pressed to pay bills, their only perceived leverage may be an unfounded claim of malpractice.

Good Client Screening

Many attorneys faced with a fee-dispute malpractice claim have commented they knew the client was "going to be trouble. My gut just told me to stay away, and I should have listened." True. Screen your clients carefully. If you sense that a potential client may be

difficult, unreasonable, unrealistic, or not a good bet on paying fees, pay attention to your instincts.

Communicate Risks and Manage Expectations

At your initial meeting with a potential client, take the time to go over the possible outcomes, good and bad, and your realistic estimate as to the likelihood of each. Make sure the client understands the possibility of adverse results, and the likelihood of such results. Make sure the potential client understands that you are giving an estimate, not a guarantee, and that you are doing so with limited facts and information.

Tell the potential client that your opinion is likely to change as the case move forward. Clearly and carefully outline the potential costs involved in proceeding with the representation, and again let the client know that you are providing an estimate, not a guarantee, as to what your fee will be. Put it all in writing.

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Obtain a Retainer from Individual Clients

Specify in writing that the retainer will need to be replenished with a specific amount and at specific intervals. If the client balks, that may be a red flag. Follow

up with letters as expectations and the landscape of the representation changes.

Bill Regularly and Timely

Your retainer agreement should set forth how often bills will be sent out, and how soon the client is expected to make payment and/or replenish a retainer. Most attorneys choose to send out bills strictly based on the passage of time – monthly, quarterly, when I get around it – but the better practice is for the agreement/ understating with the client to be that bills will go out based on the passage of a certain time period or the accumulation of a certain amount of fees, whichever comes first.

Most clients actually prefer this method, because then they know they will not get an unpleasant surprise upon opening up a bill (or, at least, they will not get a more unpleasant surprise than they should be prepared for by the retention and billing arrangement).

If a client doesn't come current on replenishing a retainer or paying a balance due in full, take note and take action. Follow up with the client and get an understanding as to why the client has not fulfilled his obligation and responsibility to the representation. If the client has an issue with the bill and/or the representation, you need to know that and the sooner you know it the better chance you have of dealing with it effectively.

Withdrawal from Representation

Consider appropriate withdrawal from representation if delinquent payments appear incurable. If you make a follow-up contact, and payment is still not made, you must then make a business decision. Generally you are not required to represent anyone (at least almost never, especially with paying clients) and it may be prudent to withdraw. But it is important to do so appropriately.



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It is not a good idea to tell the client that you are simply going to stop doing any work on the file until the bill/retainer is made current. Doing so may result in a malpractice claim and/or an ethics complaint. Even informing the client that you are going to simply perform "the minimum necessary to meet my professional and ethical obligations to you" until the bill is paid is dangerous. Instead, inform the client that you will have to withdraw unless the bill is brought current.

Make sure you consult with and follow your local rules of professional responsibility in this context. Many jurisdictions require that you notify the client, in writing, of this possibility, and allow at least some time (most rules use the very helpful "reasonable amount of time") for the client to make efforts to get the legal fees paid so that the representation can continue.

Depending on the jurisdiction and the type of representation, you might also need court approval

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before you can withdraw. Follow applicable rules when you withdraw. You have the right to do so in most instances, and you should not be timid about doing so.

Pursuing a Fee Claim

If you must pursue a fee claim, explore alternatives to formal litigation. Some jurisdictions offer free or low-cost binding fee arbitration through local or state bar associations.

Mediation is also an option. If you provide the client with some options, the client is less likely to feel his hand has been forced. ✨

Disclaimer:

Perspectives is published as a service to lawyers. While the information contained herein is believed to be reliable, readers are advised to consult their own legal and insurance counsel for assistance in applying it to their unique situations.

LIVE WELL, WORK WELL.

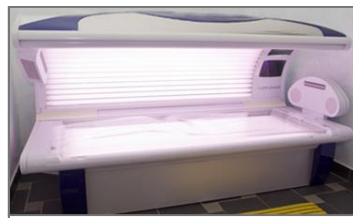


Tan at Your Own Risk!

As summer comes to an end and a chill tinges the air, you might be tempted to head to the tanning salon. It's much safer than the sun anyway, right? WRONG!

The World Health Organization's International Agency for Research on Cancer recently found that the ultraviolet light in tanning beds *is just as carcinogenic* as cigarettes, asbestos, radium and arsenic! The committee also reported that the risk of skin cancer goes up 75% when one uses a tanning bed before age 30. This includes *both* UVA and UVB radiation (some tanning salons claim that UVA is less dangerous).

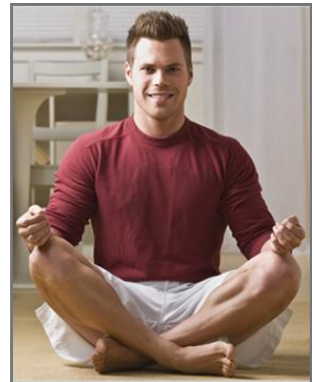
Melanoma cases have also risen dramatically in recent years. Regular users of tanning beds are **eight times more likely** to get skin cancer than those who do not.



The American Cancer Society strongly recommends using bronzing creams or spray tans instead of soaking up the artificial light of a tanning bed. Your health could depend on it! ✨

Yearn to Learn Yoga!

Did you know September is National Yoga Month? Have you thought about trying yoga lately? It's a fun alternative to high-impact exercise and offers just as many health benefits, such as:



- Decreased stress
- Improved hand-eye coordination
- Enhanced concentration
- Pain management
- Better sleep
- Improved flexibility
- Lower blood pressure
- Strengthened bones and joints
- Weight loss

Yoga encompasses the tools needed to realign and rebalance your body on a regular basis. When your body is finely tuned, your chances for injuries and illnesses decrease.

The practice of yoga involves performing a variety of poses, called *asanas*, along with breathing exercises or meditation to cleanse and detoxify your body. These combined actions increase blood circulation. Regular practice of the stretches, twists, bends and inversions – the basic movements of yoga poses – also restore strength and stamina to the body.

Out of shape or new to yoga? Don't let that stop you! Many of the poses involved in yoga can be altered slightly for beginners. Start out slowly and you will likely be surprised at how far you can come in just a few weeks.

If you are trying to lose weight, incorporate yoga with aerobic exercise and weight training. Along with a diet filled with whole grains, protein, fruits and vegetables, you should be able to see (and feel) the difference in about a month.

Yoga can be practiced by anyone, at any fitness level, at any age, pretty much anywhere! For more information, including how to get a week of free yoga, visit www.yogamonth.org. ✨