

PERSPECTIVES

Strategies to Manage Your Law Firm's Professional Liability Exposures

MSP L 09/07 "Practice Management Strategies Part 19 — Settlement Advice and Termination of Representation"

September, 2007

Practice Management Strategies

Part 19

Settlement Advice and Termination of Representation



Settlement Advice

Make sure you discover all pertinent or attachable assets - "Second guessing" or client regrets about settlement decisions

that were made can provide fertile ground for professional liability claims. A predominant consideration in making settlement decisions is an evaluation of the nature and amount of assets or funds that the opposing party has, or that otherwise may be legally available to your client.

Prior to settlement discussions with your client, it is critical that you have identified all tangible and intangible assets and funds of opposing parties that could come into play. Besides money or property, these could include insurance policies, even if at first glance the policies may not seem to apply. Any and all possible rights against other parties also should be fully researched and evaluated.

Let your client make the final decision as to whether to accept a particular settlement - If a lawyer effectively makes the decision on the client's behalf to accept a particular settlement, that lawyer has left herself wide open to a possible subsequent professional liability claim by the client. The reason for this is that the client, after squandering the

settlement proceeds, can simply claim that he never would have accepted an inadequate settlement had his lawyer not pressured him into it.

Regardless of how clear cut or compelling the legal or other merits appear to be, let your client make the final decision, and then confirm that decision and the client's rationale in writing to the client.

Document all client settlement decisions on a standard settlement acceptance form - It

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that your client may have vis-à-vis third parties, or that third parties may have against your client.

Terminating the Representation

Send your client a disengagement letter at the end of every representation – At the end of each representation, it is prudent to mail each client a registered letter that thanks them for the representation, and also documents that there are no further duties or responsibilities for the lawyer. Depending on the practice area, a boiler plate disengagement letter, which includes all possible items to be addressed, can be drafted and used.

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.

Taking New Medications

Points to Remember

Article courtesy of
Cavignac & Associates' Employee Benefits Department



Medication Instructions

Studies show that more than half of all prescription medications are taken incorrectly. Mistakes include:

- Taking the drug more frequently than directed
- Taking medications past their expiration dates
- Getting too many refills from more than one doctor
- Taking medications with other drugs not approved by your doctor
- Using someone else's prescription

To help avoid complications from mistakes or drug interactions, remember the following:

- Always give your doctor complete information about your symptoms
- Always tell your doctor about any other medications you are taking, including over-the-counter (OTC)
- Pay close attention to your doctor's instructions when a new drug is prescribed, and ask for instructions to be repeated if you are unsure of something
- Always read the package insert before using any drug
- Report any unexpected side effects of a medication to your physician ✂

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is highly advisable to create and use a comprehensive, standard, pre-printed client settlement decision form which is signed by your client for all settlements. Use of this type of form creates a consistency in your procedures which alone can be valuable in your defense of a dispute.

The wording should be very clear that your client has carefully considered all other alternatives, and is knowingly and voluntarily deciding to accept a settlement which your client views as fair, equitable, and the best choice at the time given all of the facts and circumstances as they appear at that time.

Advise your client on all attendant issues prior to accepting any settlement – Creation and use of a standard checklist to discuss pertinent settlement issues with your client in advance of any settlement decision helps to eliminate any unpleasant “surprises” to your client. Important items to discuss include the possible tax implications of any settlement, and any possible subrogation or other rights or obligations

Did you know ... ?

Studies show that more than one-half of all prescription medications are taken incorrectly!