

30 TIPS FOR AVOIDING LEGAL MALPRACTICE CLAIMS

By Dan L. Stanford

During over three decades of prosecuting legal malpractice claims, I have been asked over and over again for concrete ideas to help lawyers eliminate or at least reduce the risk of being sued by an unhappy client. So, over the years I have compiled a list of practical tips for avoiding legal malpractice claims. The list below contains original thoughts and tips stolen from other experts in the field. And, these are not listed in any order of importance.

1. Set a goal of returning telephone calls, emails and texts within 24 hours. Reserve time at the beginning and end of each workday to return calls. Failing to communicate with clients is the number one complaint made to the State Bar.
2. Read every document before it leaves your office. Don't expect your support staff to catch your errors. Take active and full responsibility for your work product.
3. Personally sign your letters. You will stay on top of correspondence and instill client confidence. And, once in a while consider sending a handwritten note.
4. Develop and write a policy for identifying conflicts of interest. Make sure everyone in the firm is using the same policy. To a jury, egregious conflicts of interest are almost "per se" malpractice.
5. Schedule a monthly meeting of support staff to discuss office procedures, confidentiality client relations, ethics, and similar topics. Ask your staff for their input.
6. Schedule enough time to do work wrong – and correct it – before the statute of limitations or other deadlines run. Which is to say, don't wait until the last minute.
7. Before you accept a position on a client's board of directors, consider the potential conflict of interest.
8. Discuss fee arrangements in your initial meeting. Follow up with a written fee agreement. Always have a written fee agreement clearly identifying both who your client is (and who is not) and the scope of your representation.
9. If you are offered an interest in a client's business in lieu of fees, say no.
10. Check for conflicts of interest before you have heard the client's life story.

11. Never answer questions from telephone callers before you have their full name, telephone number, and contact information.
12. Send new letters of engagement to current clients who come to you with new matters.
13. Don't rely on stale engagement letters or "the great relationship you have with a client". New matter = new letter.
14. Stay loyal to the client you agreed to represent. Don't begin prospecting with the opposing party, no matter how tempting. Jurors punish disloyalty.
15. Learn how to say no and write a script for saying "no" on a note card that you can pull out of your top desk drawer when needed. For example, "I appreciate your confidence in my work; however, I don't have the time/resources/experience to give your legal matter the consideration it needs. Thank you for thinking of my firm." Follow up with a non-engagement letter. Send a non-engagement letter after every significant contact.
16. If the client's problem would be better solved outside the legal system, say so up front. Don't wait for the client to discover it on his or her own, after you have racked up time and fees.
17. Have back up: Identify another attorney who could protect your clients' interests in your unforeseen absence. If you're a sole practitioner, work out a reciprocal arrangement with another attorney for unplanned absences.
18. Examine your bill from the client's perspective. Does your bill clearly state what services your firm provided including those offered at no charge? Give and show on the bill all discounts and time for which you have "no charge".
19. Check your accounts receivable. Call clients who are more than 45 days past due and ask if they have concerns about your firm's representation. Have in your engagement letters the clear statement that "if you stop paying me, I stop all work".
20. Send "for your information" copies of all important correspondence and documents to your clients. Copy your clients on everything.
21. Write a letter when clients choose not to follow your recommendations in order to document your advice. Lawyers will lose a credibility battle over "oral advice", so document and communicate in writing important matters. My Rule: If it's not in the file, it didn't happen.
22. Obtain written client consent before accepting any settlement offers. Here again, don't rely on oral conversations. Document.
23. Keep detailed time records. Your time records and detailed bills should be an accurate history of what happened and as important, what didn't happen.

24. Review trust account and calendaring procedures with everyone in your firm. Make sure you know and comply with the State Bar rules and have a calendaring procedure and back up procedure.
25. Participate in continuing legal education and ethics education that is relevant to your area of practice. Stay current.
26. Exercise caution in making referrals. Give clients at least three names or the telephone number of your local Bar Association's Lawyer Referral & Information Service.
27. Meet with your clients on their turf. Get out from behind your big mahogany desk and see where your clients work.
28. Practice active listening. Look clients in the eyes. Paraphrase and repeat their statements back to them. Ask if you have correctly interpreted their concerns.
29. Never promise more than you can deliver. As tough as it may be, always "under promise and over deliver".
30. Send closing/disengagement letters once representation ends. Always send final, disengagement letters at the end of each matter. Among other things, such letters start the statute of limitations date and eliminate harmful confusion later on about your "continuous representation".

Although there is no guarantee that you won't face a legal malpractice lawsuit brought by an unhappy client, following these tips should reduce that likelihood and greatly enhance your success at defending against such claims.

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