

## **TIPS FOR AVOIDANCE OF LEGAL MALPRACTICE**

### **CLIENT COMMUNICATIONS/RELATIONS:**

Disgruntled clients can harm your business in several ways – not only can they report any perceived or actual negligence, misfeasance and/or malfeasance to the State Bar Association, they may choose to initiate a legal malpractice lawsuit. The time, money, emotional energy and untold harm to your reputation and economic status cannot be readily quantified. Indeed, many small/medium size firms rely heavily on word – of – mouth referrals and a negative reputation based on claims (regardless of merit) within the community can be devastating.

- Always utilize engagement (scope), non-engagement and disengagement letters – all engagement letters should include estimate and nature of expected fees/expenses;
- Do not overstate the possibility of success and always include a statement to the effect that the outcome is not guaranteed and that any result of legal representation (particularly in context of litigation) is uncertain, at best;
- Report status of case/matter on a periodic basis to your client (immediately advise of unexpected occurrences or change in estimate of fees due to unforeseen expenses) – there are several software programs on market which are inexpensive and simple to use as a tickler for reporting;
- Involve your client in decisions after fully explaining various courses of action available – this is suggested even if client gives you authorization for strategic and tactical determinations. Conveying any and all offers to settle/resolve matter is critical;
- Honesty is best policy – keep in mind that a client has 2-6 years to detect any deviation from the standard of care with respect to your representation (depending on the statute of limitations for legal malpractice in the State you practice in.)
- Return phone calls from client promptly and with answers to questions (written follow-up and notation in your file is also suggested);
- Provide client with copies of pleadings and work product

### **OFFICE ORGANIZATION (TIMELINESS/WORKLOAD):**

Would you hire someone who maintained an office like Paul Newman in *The Verdict* – I think not. Recognizing the myriad burdens of practice in any size law firm, it is evident that an organized practitioner has a greater degree of success (in substantive results and business) than those who do not pay attention to the details. A large percentage of legal malpractice arises from failures to timely file documents or missed appearances and these can and should be easily avoided.

- Docket control for deadlines and appearances (two forms preferable) – again, many software programs which are effective, inexpensive and easy to utilize are available;
- Hire administrative assistance on a full time/temporary basis as the needs of your practice dictate;
- Backup counsel (especially if solo practitioner);
- Maintain organized and updated files;
- Do not take on more than you can reasonably handle and hire additional attorneys before the burdens of practice become unmanageable and damage may have already become irreparable;
- Defenses of “scrivener” and “law office failure” are often unsuccessful/disfavored in many jurisdictions

## **KNOWLEDGE OF THE LAW/SPECIALIZATION:**

As the saying goes “Jack of all trades – master of none.” If you are a matrimonial lawyer, don’t try to file for a foreign patent; if you are a securities attorney, avoid real estate closings, etc, etc. Many times a small/medium firm attempts to do this for their clientele with disastrous results. Being all things to all people is not as simple as buying a textbook although it is tempting to believe this is possible. A large portion of legal malpractice emanates from lack of expertise in an area of law and the concept of a “general practitioner” is becoming more and more undesirable and dangerous.

- If you stray from your practice wheelhouse, engage an expert or of (co) – counsel specialist to ensure that you are providing appropriate representation;
- Refer your client to an attorney who has sufficient knowledge/expertise in the area of law (this will satisfy your client and protect you);
- If you have hired a “bad lawyer” (ranging from skill level in practice to substance abuse problems), you must take appropriate steps to protect yourself and your clients immediately upon detection of the problem;
- Continuing legal education for current/envisioned areas of practice are highly valuable (now mandatory in most States);
- Always proof read, cite check, and fully shepardize any documents even if they are routine to your usual area of practice

## **CONFLICTS AND POSSIBLE CONFLICTS**

### **SELF INTEREST:**

Clients come to you for undivided loyalty and guidance – breaching this trust by virtue of an undisclosed conflict, potential conflict or any form of self interest (positive or negative to you) is dangerous. While it may be tempting to stretch this concept, a situation of conflict or self – interest is arguably the worst case scenario in the eyes of a jury in a legal malpractice case. Keep in mind that despite our committed attempt to uphold the highest standards, the public is completely jaded by the media coverage of the “bad lawyers” and this, unfortunately, is their starting point for judging our profession.

- Always ensure that all entities and affiliates (client and adversary) in all undertakings were never represented by you or any other member of your firm at any time;
- Waiver of conflict of interest is not recommended and can/have been successfully challenged after the fact;
- Full disclosure of any self-interest is imperative.

IF AND WHEN A CLAIM IS MADE OR YOU REASONABLY BELIEVE THAT A CLAIM WILL BE MADE AGAINST YOU OR ANY MEMBER OF YOUR FIRM, YOU SHOULD IMMEDIATELY REPORT IT TO YOUR LEGAL MALPRACTICE CARRIER. FAILURE TO COMPLY WITH THE REPORTING PROVISIONS IN A LEGAL MALPRACTICE POLICY CAN RESULT IN A DENIAL OF COVERAGE FOR CLAIMS. IT IS HIGHLY RECOMMENDED THAT ALL EMPLOYEES OF THE FIRM ARE FAMILIAR WITH THE FORM AND CONTENT OF THE LEGAL MALPRACTICE POLICY YOU MAINTAIN ESPECIALLY THOSE SECTIONS WHICH RELATE TO TIMELY REPORTING OF CLAIMS.