



RISK MANAGEMENT RESOURCES

ARTICLES

5 Tips for Avoiding a Malpractice Claim



**LAWYERS
MUTUAL**

LIABILITY INSURANCE
COMPANY OF
NORTH CAROLINA

5020 Weston Parkway, Suite 200, Cary, North Carolina 27513
Post Office Box 1929, Cary, North Carolina 27512-1929
919.677.8900 800.662.8843 919.677.9641 FAX

www.lawyersmutualinc.com

5 TIPS FOR AVOIDING A MALPRACTICE CLAIM

Be always at war with your vices, at peace with your neighbors, and let each new year find you a better man.

Benjamin Franklin

Peace on earth and joy to those we like.

Cocktail napkin.

Year's end is the perfect time to reflect on what is working in your office and what needs tweaking. Here is a top 5 list of ways to avoid a malpractice claim.

The top causes of malpractice claims include communication issues, missed deadlines and law office management issues. While there is no substitute for knowing the substantive law, from a risk management perspective your efforts to improve client communications and careful attention to documentation and calendaring can result in a safer law practice. With this in mind, here are 5 tips for avoiding a malpractice claim:

1. **Document your engagement carefully:** The retainer letter should define your terms of engagement, clearly identify who the client is, as well as confirm who you are NOT representing and define the parameters of your engagement. Are you doing a full title search or a limited search? Are you handling both the property damage and the personal injury?
2. **Manage client expectations:** Early in the process (in your engagement letter and “new client package”) communicate to your clients the available courses of action and possible outcomes; the implications of any decisions; how long the legal process takes; and the expected fees and disbursements. Provide checklists and points of contact for your clients. Discuss your firm communication policy – who returns phone calls, how often your client can expect to hear from the firm, as well as clarify the client’s role is in the process.
3. **Document everything:** While it may not be practical to document everything in every case, you should document as much as possible and certainly those big decisions that have a great impact on your case. Letters and e-mails should go to clients and in some instances; you may want to have your client sign showing receipt. For your file, you’ll want to retain copies of letters, e-mails, detailed time entries, and conference or telephone notes, as well as notations made on documents. You want to record advice or instructions that involve significant issues or outcomes, and major client instructions or decisions. Documenting things is especially important when you are dealing with difficult or emotional clients. Communications in writing help confirm what was said or done for the client in the event you ever need to explain why or what work was done, to clarify a discrepancy between you and your client, or to defend yourself in a malpractice claim.

4. **Meet all deadlines:** Set realistic deadlines when it comes to completing tasks and delivering things to clients. Learn to under-promise and over-deliver. Avoid procrastination as unexpected events (bad weather, car wreck on way to file documents) will prevent things from happening as required. Give yourself an extra day or two by setting your deadline before the real deadline.
5. **Don't dabble:** Don't take on new matters without getting appropriate training, mentoring or even hiring someone to handle the case with you. This often happens in the case of family or friend or demanding client making requests that lawyers aren't fully capable of handling, but hate to hand off to someone else.

Following these tips will help you avoid the most common malpractice errors and ensure you have happy clients. And happy clients are less likely to bring malpractice claims.