# 30-Minute Malpractice Checkup

Risk Management Practice Guide of Lawyers Mutual

LAWYERS MUTUAL | LIABILITY INSURANCE COMPANY OF NORTH CAROLINA

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**LAWYERS MUTUAL LIABILITY INSURANCE COMPANY OF NORTH CAROLINA**

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# 30 MINUTE MALPRACTICE CHECKUP

RISK MANAGEMENT PRACTICE GUIDE OF LAWYERS MUTUAL

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## INTRODUCTION

1. This test is for your private use. It is designed to help you assess your firm’s potential exposure to malpractice.
2. The test should take no more than 30 minutes. Don’t labor over the questions. Answer them honestly and objectively.
3. There are 100 questions. Each “yes” answer scores one point. At the end of the test you can total your score and see how you rate. What are the strong and weak points of your practice?
4. Simply by taking the test you will obtain helpful information on malpractice exposure and prevention. Of course, the test does not cover all risk management considerations.
5. A good time for taking the test is just before your annual planning and budget session; or perhaps when your Lawyers Mutual policy comes up for renewal.
6. Feel free to photocopy the test and circulate it through the office. Ask each member of your staff to take the test. Compare results.
7. After the test, prepare a list of actions you should take to prevent malpractice claims and improve your firm’s risk management efforts.

This test was prepared by the Client Services Department of Lawyers Mutual. Please direct questions, comments, or requests for more information to:

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## ETHICS

| | YES | NO |
|---|---|---|
| 1. Do you have a copy of the rules of Professional Conduct at your desk? | ☐ | ☐ |
| 2. Have you visited the State Bar website at www.ncbar.gov? | ☐ | ☐ |
| 3. Do you read ethics opinions handed down by the State Bar? | ☐ | ☐ |
| 4. Have you read the State Bar's "Guidelines for Use of Paralegals in Rendering Legal Services" and reviewed them with your staff? (www.nccertifiedparalegal.gov/guidelines.asp) | ☐ | ☐ |
| 5. Do you require your support staff to sign confidentiality forms acknowledging that they understand the necessity of safeguarding client confidences? | ☐ | ☐ |
| 6. Do you know where to call with a question on ethics and what to do when an ethics problem arises? | ☐ | ☐ |
| 7. Do you know who Tom Lunsford is? | ☐ | ☐ |
| 8. Are you familiar with the programs and services available through your State Bar, such as:<br>• Fee dispute mediation<br>• PALS/Positive Action for Lawyers (substance abuse)<br>• Of Counsel<br>• Law Practice Management<br>• Grievance committee<br>• IOLTA/Interest on Lawyer Trust Accounts<br>• Lawyer advertising<br>• Professionalism<br>• Paralegals<br>• Disaster response | ☐ | ☐ |
| 9. Are you familiar with rules on lawyer specialization? | ☐ | ☐ |
| 10. Do you know the name of your State Bar councilor? | ☐ | ☐ |

**TIP**

Don't fall prey to the mentality "It's my law license that's on the line, so I only need to be versed in ethics." Educate your support staff. Circulate ethics opinions. Conduct orientation sessions for all new employees. Hold office luncheons to discuss developments in ethics and professionalism.

**No. of Yes Answers**

## OFFICE MANAGEMENT

| Question | YES | NO |
|---|---|---|
| 1. Do you have an office personnel manual setting policy on topics ranging from absenteeism to working hours? | ☐ | ☐ |
| 2. If you share office space with other lawyers is there any aspect (shared signage, letterhead) that might reasonably lead a client to believe that a partnership exists? | ☐ | ☐ |
| 3. Do you have a business owner's policy or adequate property and casualty coverage to protect your office? | ☐ | ☐ |
| 4. Do you support your staff by:<br>• Training and education<br>• Encouraging their professional development<br>• Communicating<br>• Feedback<br>• Promoting teamwork<br>• Practicing courtesy and respect | ☐ | ☐ |
| 5. Do you take time with your staff to explain why things must be done a certain way as opposed to issuing "Do this, do that" orders? | ☐ | ☐ |
| 6. Do you sometimes bring staff and new associates with you to court hearings, depositions, title searches, and real property closings? | ☐ | ☐ |
| 7. Are you up on the law office technology and aware of software possibilities for docket control, time and billing, and other systems? | ☐ | ☐ |
| 8. Is your office safe, comfortable, and healthy?<br>• Handicapped access<br>• Adequate security<br>• Client-friendly | ☐ | ☐ |
| 9. Do you teach and practice telephone etiquette? | ☐ | ☐ |
| 10. Do you have regular staff meetings? | ☐ | ☐ |

TIP

Join the N. C. Bar Association's Law Practice Management section. You'll have access to important information on office administration and automation. You'll be able to compare notes with other practitioners. Each year the section publishes its Economic Survey, which highlights management trends.

No. of
Yes Answers

## CASE MANAGEMENT

| | YES | NO |
|---|---|---|
| 1. Do you follow a standard procedure for opening files that includes indexing, checking for conflicts, and calendaring deadlines? | ☐ | ☐ |
| 2. When you accept a new case from an existing client, do you open a separate file with a new file number? | ☐ | ☐ |
| 3. Are your case files stored at a central location in safe, secure cabinets, or securely online? | ☐ | ☐ |
| 4. Do you use a check-out card system for removal and return of files so that their movement can be monitored? | ☐ | ☐ |
| 5. If one of your files was pulled out at random for review, would it be well organized?<br>• Labeled/indexed by date, subject matter, or client name<br>• Well documented<br>• Neat<br>• In chronological order<br>• Subfiles for letters, pleadings, discovery, research, etc.<br>• Attorney activity log<br>• Trust account information<br>• Fee and billing information<br>• Telephone records documented<br>• No loose documents | ☐ | ☐ |
| 6. Do you have a standard file closing procedure that includes sending written notices to clients, returning all client property, remitting a final bill, and closing out the trust account? | ☐ | ☐ |
| 7. Do you have a written policy on file retention, destruction, and storage? | ☐ | ☐ |
| 8. Have you read the State Bar ethics opinion RPC 178, which makes it clear that the original file belongs to the client? | ☐ | ☐ |
| 9. Do you use a case management software program? | ☐ | ☐ |
| 10. Do you decline cases outside your areas of practice? | ☐ | ☐ |

**TIP**

Stay on top of all open files. Schedule regular conferences with attorneys and staff to discuss the status of active cases and brainstorm strategies. Tickle all active files for automatic 30- or 60- day reviews so they don't grow stale.

**No. of Yes Answers**

## CALENDAR CONTROL

| | YES | NO |
|---|---|---|
| 1. Do you have a reliable system for tracking dates and deadlines? | ☐ | ☐ |
| 2. Does your system include at least two of these features?<br>• Computerized calendar system<br>• Manual system (tickler cards/file box)<br>• Attorney's calendar<br>• Matching secretary's calendar | ☐ | ☐ |
| 3. Do you have a backup system? | ☐ | ☐ |
| 4. Do you calendar advance warnings prior to ultimate deadlines? | ☐ | ☐ |
| 5. Do you follow up to see that work was actually completed? | ☐ | ☐ |
| 6. Do you routinely enter important dates, such as:<br>• Statutes of limitations<br>• Court appearances and litigation deadlines<br>• Procedural deadlines<br>• Client-imposed deadlines<br>• Discovery dates<br>• Billing dates<br>• Office appointments<br>• Administrative hearings and deadlines<br>• Real estate deadlines<br>• Deadlines set by you and your staff<br>• Dates you will be out of the office | ☐ | ☐ |
| 7. Do you have a designated Docket Czar to run the system? | ☐ | ☐ |
| 8. Is everyone from senior partner to receptionist trained to use the system? | ☐ | ☐ |
| 9. Do you keep a long-range calendar for one-year, five-, 10- and 20-year ticklers (for example, future work in estate or corporate files)? | ☐ | ☐ |
| 10. Does your system produce daily or weekly activity calendars that are distributed to the responsible attorney and staff member? | ☐ | ☐ |

**TIP**

Keep a pad of tickler cards on every desk and beside every telephone in the office. Also, have some in your briefcase, car, and home. That way, you'll be able to quickly and easily record pending deadlines when they arise. When you return to the office, give your cards to the Docket Czar for entry in the system.

**No. of Yes Answers**

## CONFLICTS OF INTEREST

| | YES | NO |
|---|---|---|
| 1. Do you have a reliable system for screening new clients and cases for potential conflicts of interest? | ☐ | ☐ |
| 2. Do you check for subject matter conflicts as well as client conflicts? | ☐ | ☐ |
| 3. Do you screen for conflicts before receiving confidential information and fees from new clients? | ☐ | ☐ |
| 4. Do you maintain a master index of present and past clients? | ☐ | ☐ |
| 5. Do you maintain a master index of adverse parties? | ☐ | ☐ |
| 6. Do you decline cases where there is actual conflict regarding the client, the subject matter, or some other aspect of the case? | ☐ | ☐ |
| 7. Do you routinely circulate new case summaries to all attorneys and support staff, and do the summaries contain a space for indicating any potential conflict? | ☐ | ☐ |
| 8. Are you aware of the State Bar ethics opinion RPC 188, which says a lawyer is disqualified from representing a client in a transaction where the lawyer or a close relative will receive a valuable commission from the transaction? | ☐ | ☐ |
| 9. Do you screen new associates and staff when they come into the firm for potential conflicts arising from their prior employment? | ☐ | ☐ |
| 10. Do red flags go up when you are asked to:<br>• Serve as an officer or director of a client corporation<br>• Engage in business with a client or acquire a financial interest in a client matter<br>• Acquire a financial interest in your client's business<br>• Represent adverse parties in "friendly" suits<br>• Represent multiple parities with different interests<br>• Represent more than one party seeking recovery from a fixed pool of money | ☐ | ☐ |

TIP

An ideal conflicts database might include: clients, persons declined as clients, adverse parties, maiden names, parent and subsidiary corporations, individual directors and officers of corporations, trade names, alter egos, co-plaintiffs and co-defendants, known allies of clients or adverse parties, firm attorneys and staff, business interests of attorneys and staff, subject matter of representation.

No. of
Yes Answers

## TIME AND BILLING

| | YES | NO |
|---|---|---|
| 1. Have you read 2008 FEO 10? | ☐ | ☐ |
| 2. Do you use written engagement fee agreements in all cases? | ☐ | ☐ |
| 3. Are you diligent about sticking to the billing schedule – monthly, quarterly, etc. – set out in your fee agreement? | ☐ | ☐ |
| 4. Do your billing statements contain an itemized record of what you've done for the client and how long it took? | ☐ | ☐ |
| 5. Do you have a collection procedure that tracks delinquent accounts and sends payment reminders? | ☐ | ☐ |
| 6. Did you know that a good way to invite a malpractice claim is to sue a client over a delinquent fee? | ☐ | ☐ |
| 7. Do you and your staff keep accurate time records in all matters, including fixed fee, contingent, pro bono, and other cases that are not necessarily billed by the hour? | ☐ | ☐ |
| 8. Are you familiar with Value Billing and other alternatives to the "tyranny of the billable hour?" | ☐ | ☐ |
| 9. Are you wary of clients who first ask, "What do you charge?" and then ask, "Is that negotiable?" | ☐ | ☐ |
| 10. Do you manage your time wisely by:<br>• Using forms and checklists<br>• Making to do lists<br>• Delegating and prioritizing work<br>• Finishing one task before moving on to another<br>• Getting help when needed<br>• Blocking out time each day for returning phone calls<br>• Establishing goals and objectives<br>• Reviewing time logs to see where your energy is expended<br>• Planning your day in advance | ☐ | ☐ |
| 11. Are you aware of fee dispute resolution programs promoted by the State Bar and local bar associations? | ☐ | ☐ |

**TIP**

Develop a client-centered approach to your fee and billing practices. Explain your procedure to clients in advance, using plain English. Ask whether they understand the procedure and are satisfied with it. Explain the difference between fees and costs. Most importantly, be fair - to yourself and your client.

**No. of Yes Answers**

## TRUST ACCOUNTS

| | YES | NO |
|---|---|---|
| 1. Do you have a copy of the State Bar's Trust Account Handbook? | ☐ | ☐ |
| 2. Did you know that the number one reason for lawyer disbarment in North Carolina is mishandling trust accounts? | ☐ | ☐ |
| 3. Have you taken time to educate your staff on handling and accounting of trust accounts? | ☐ | ☐ |
| 4. Are employees handling the trust account carefully supervised? | ☐ | ☐ |
| 5. Do you prepare written disbursement statements when money is removed from the trust account, and are clients given copies of these statements? | ☐ | ☐ |
| 6. Does the name Anne Parker ring a bell? | ☐ | ☐ |
| 7. If Anne Parker shows up in your office to examine your trust account, would you pass inspection?<br>• Trust account reconciled at least monthly<br>• Clear trail of whose funds are disbursed and when<br>• No commingled funds<br>• No "borrowing" from trust<br>• No checks made out to cash<br>• Good relationship with bank<br>• It's not your money<br>• Independent auditor monitors and reconciles account<br>• Fiduciary duty upheld at all times | ☐ | ☐ |
| 8. Do you have a standard procedure for receiving and safeguarding client property that includes written receipts for all client funds? | ☐ | ☐ |
| 9. Do you decline to disburse uncollected funds as required by State Bar ethics opinion RPC 191? | ☐ | ☐ |
| 10. Do you have adequate insurance coverage for your valuable papers, accounts, and client files? | ☐ | ☐ |

**TIP**

NC RPC Rule 1.15-2(K) requires attorneys to direct the bank where the trust account is located to notify the State Bar of any checks returned for insufficient funds. No trust account may be maintained in a bank that does not agree to make such reports. You may request the bank to notify you directly of returned checks, so you can take quick action to safeguard client funds. The bank must still notify the State Bar as well.

**No. of Yes Answers**

## CLIENT RELATIONS

| | YES | NO |
|---|---|---|
| 1. Do you use an intake form for interviewing new clients? | ☐ | ☐ |
| 2. Do you screen potential clients and reject ones that look like trouble? | ☐ | ☐ |
| 3. Do you return client telephone calls promptly? | ☐ | ☐ |
| 4. Do you treat your clients as you wish to be treated by:<br>• Behaving professionally, with courtesy and respect<br>• Thanking them for their business<br>• Thanking the person who referred them to you<br>• Exercising creative listening techniques such as parroting<br>• Being honest<br>• Communicating<br>• Being accessible<br>• Informing them of possible delays in the case<br>• Making them feel like a partner in the case<br>• Training your staff in client relations | ☐ | ☐ |
| 5. Do you obtain written consent from clients before settling their cases? | ☐ | ☐ |
| 6. When you accept a new case, do you send the client a letter of engagement that confirms the scope and terms of representation, including fees? | ☐ | ☐ |
| 7. When you are consulted by a potential client but don't take the case, do you send a letter of nonengagement warning of possible statute of limitation deadlines and advising the client to see another attorney without delay? | ☐ | ☐ |
| 8. Do you make sure your clients are kept current on the progress of their cases through communication and status reports? | ☐ | ☐ |
| 9. Do you adjust your clients' expectations when they are unrealistic? | ☐ | ☐ |
| 10. Do you shower your clients with paperwork, including pleadings, correspondence, and other important documents? | ☐ | ☐ |

**TIP**

Use client surveys or case closing conferences to find out what your clients think of the job you did. Be attentive to any concerns or complaints about the quality of your services. Make adjustments where needed. The goal is to provide excellent client care.

**No. of Yes Answers**

## CONTINUING EDUCATION

| | YES | NO |
|---|---|---|
| 1. Are you current in your CLE requirements? | ☐ | ☐ |
| 2. Do you encourage your staff to attend seminars and to join professional organizations? | ☐ | ☐ |
| 3. Do you subscribe to North Carolina Lawyers Weekly? | ☐ | ☐ |
| 4. Do you belong to the N.C. Bar Association and one of its practice sections? | ☐ | ☐ |
| 5. Do you have an orientation program for new lawyers and staff? | ☐ | ☐ |
| 6. Do you present in-house training programs for attorneys and support staff on topics ranging from office policies to important case law developments? | ☐ | ☐ |
| 7. Does your idea of continuing education include:<br>• Personal and professional growth<br>• Staff training and development<br>• Peer review<br>• Proofreading<br>• Legal research<br>• Local bar involvement<br>• Pro bono and community service<br>• Seminars and conventions<br>• Computer and technology trends<br>• Brainstorming problems<br>• Asking for second opinions | ☐ | ☐ |
| 8. Do you know your way around a law library? | ☐ | ☐ |
| 9. Do you use online legal research services? | ☐ | ☐ |
| 10. Do the lawyers in your firm double-check each other's work? | ☐ | ☐ |

TIP

Develop an in-house forms manual and brief bank. Set aside time regularly to read professional journals, periodicals, case law and advance sheets. Try to learn at least one new thing from every case you handle. Remember, information reduces risk.

No. of Yes Answers

## SELF

| | YES | NO |
|---|---|---|
| 1. Do you enjoy your work? | ☐ | ☐ |
| 2. Are you interested in improving risk management in your office? | ☐ | ☐ |
| 3. Do you periodically remind yourself why you wanted to become a lawyer in the first place? | ☐ | ☐ |
| 4. Do you have adequate insurance coverage?<br>• Professional liability<br>• Life<br>• Health<br>• Disability<br>• Cyber/Data Breach | ☐ | ☐ |
| 5. Do you manage stress by:<br>• Balancing your personal and professional lives<br>• Maintaining a healthy mind and body<br>• Tending to the basics of rest, exercise, and nutrition<br>• Taking vacations<br>• Leaving your work problems at the office<br>• Not losing sight of the Big Picture<br>• Developing outside interests and hobbies<br>• Scheduling leisure time<br>• Nurturing friendships | ☐ | ☐ |
| 6. Are you sensitive to stress caused by the death of a spouse or close relative, personal injury, separation or divorce, and/or financial woes? | ☐ | ☐ |
| 7. Are you aware that drug and alcohol abuse is at the root of many malpractice claims? | ☐ | ☐ |
| 8. Do you know where to get help for substance abuse problems, such as the State Bar's PALS program? | ☐ | ☐ |
| 9. Do you enjoy being around other lawyers? | ☐ | ☐ |
| 10. Are you good at prioritizing your work and staying on task? | ☐ | ☐ |

**TIP**

Set goals for yourself and your firm. Think long-term. Where do you want to be in one year, five years, or ten years? Develop a road map for getting there. Involve your staff in the journey.

**No. of Yes Answers**

## THE RESULTS

| | |
|---|---|
| ETHICS | |
| OFFICE MANAGEMENT | |
| CASE MANAGEMENT | |
| CALENDAR CONTROL | |
| CONFLICTS OF INTEREST | |
| TIME AND BILLING | |
| TRUST ACCOUNTS | |
| CLIENT RELATIONS | |
| CONTINUING EDUCATION | |
| SELF | |
| **TOTAL SCORE** | |

| SCORE | VERDICT |
|---|---|
| 90-100 | The jury finds you not guilty. |
| 80-90 | Time off for good behavior. |
| 70-80 | Prayer for judgment continued. |
| 60-70 | Probation. |
| 50-60 | Active jail sentence. |
| Below 50 | Life without parole. |

**ACTIONS TO BE TAKEN**

1. ______________________________
2. ______________________________
3. ______________________________
4. ______________________________
5. ______________________________
6. ______________________________
7. ______________________________
8. ______________________________
9. ______________________________
10. ______________________________