



30-Minute Malpractice Checkup

RISK MANAGEMENT PRACTICE GUIDE OF LAWYERS MUTUAL

LAWYERS MUTUAL LIABILITY INSURANCE COMPANY OF NORTH CAROLINA

919.677.8900 | 800.662.8843 | www.lawyersmutualInc.com

DISCLAIMER: This document is written for general information only. It presents some considerations that might be helpful in your practice. It is not intended as legal advice or opinion. It is not intended to establish a standard of care for the practice of law. There is no guarantee that following these guidelines will eliminate mistakes. Law offices have different needs and requirements. Individual cases demand individual treatment. Due diligence, reasonableness and discretion are always necessary. Sound risk management is encouraged in all aspects of practice.

AUGUST 2016

30 MINUTE MALPRACTICE CHECKUP

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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:

LAWYERS MUTUAL CLIENT SERVICES
P O BOX 1929 | CARY, NC 27512-1929
1-800-662-8843 OR 919-677-8900 | FAX: 919-677-9641
EMAIL: riskmgt@lawyersmutualinc.com

ETHICS

	YES	NO
1. Do you have a copy of the rules of Professional Conduct at your desk?	<input type="checkbox"/>	<input type="checkbox"/>
2. Have you visited the State Bar website at www.ncbar.gov ?	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you read ethics opinions handed down by the State Bar?	<input type="checkbox"/>	<input type="checkbox"/>
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)	<input type="checkbox"/>	<input type="checkbox"/>
5. Do you require your support staff to sign confidentiality forms acknowledging that they understand the necessity of safeguarding client confidences?	<input type="checkbox"/>	<input type="checkbox"/>
6. Do you know where to call with a question on ethics and what to do when an ethics problem arises?	<input type="checkbox"/>	<input type="checkbox"/>
7. Do you know who serves as the Executive Director of the NC State Bar?	<input type="checkbox"/>	<input type="checkbox"/>
8. Are you familiar with the programs and services available through your State Bar, such as: <ul style="list-style-type: none"> • Fee dispute mediation • PALS/Positive Action for Lawyers (substance abuse) • Of Counsel • Law Practice Management • Grievance committee • IOLTA/Interest on Lawyer Trust Accounts • Lawyer advertising • Professionalism • Paralegals • Disaster response 	<input type="checkbox"/>	<input type="checkbox"/>
9. Are you familiar with rules on lawyer specialization?	<input type="checkbox"/>	<input type="checkbox"/>
10. Do you know the name of your State Bar councilor?	<input type="checkbox"/>	<input type="checkbox"/>



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

	YES	NO
1. Do you have an office personnel manual setting policy on topics ranging from absenteeism to working hours?	<input type="checkbox"/>	<input type="checkbox"/>
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?	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you have a business owner's policy or adequate property and casualty coverage to protect your office?	<input type="checkbox"/>	<input type="checkbox"/>
4. Do you support your staff by: <ul style="list-style-type: none"> • Training and education • Encouraging their professional development • Communicating • Feedback • Promoting teamwork • Practicing courtesy and respect 	<input type="checkbox"/>	<input type="checkbox"/>
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?	<input type="checkbox"/>	<input type="checkbox"/>
6. Do you sometimes bring staff and new associates with you to court hearings, depositions, title searches, and real property closings?	<input type="checkbox"/>	<input type="checkbox"/>
7. Are you up on the law office technology and aware of software possibilities for docket control, time and billing, and other systems?	<input type="checkbox"/>	<input type="checkbox"/>
8. Is your office safe, comfortable, and healthy? <ul style="list-style-type: none"> • Handicapped access • Adequate security • Client-friendly 	<input type="checkbox"/>	<input type="checkbox"/>
9. Do you teach and practice telephone etiquette?	<input type="checkbox"/>	<input type="checkbox"/>
10. Do you have regular staff meetings?	<input type="checkbox"/>	<input type="checkbox"/>



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?	<input type="checkbox"/>	<input type="checkbox"/>
2. When you accept a new case from an existing client, do you open a separate file with a new file number?	<input type="checkbox"/>	<input type="checkbox"/>
3. Are your case files stored at a central location in safe, secure cabinets, or securely online?	<input type="checkbox"/>	<input type="checkbox"/>
4. Do you use a check-out card system for removal and return of files so that their movement can be monitored?	<input type="checkbox"/>	<input type="checkbox"/>
5. If one of your files was pulled out at random for review, would it be well organized? <ul style="list-style-type: none"> • Labeled/indexed by date, subject matter, or client name • Well documented • Neat • In chronological order • Subfiles for letters, pleadings, discovery, research, etc. • Attorney activity log • Trust account information • Fee and billing information • Telephone records documented • No loose documents 	<input type="checkbox"/>	<input type="checkbox"/>
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?	<input type="checkbox"/>	<input type="checkbox"/>
7. Do you have a written policy on file retention, destruction, and storage?	<input type="checkbox"/>	<input type="checkbox"/>
8. Have you read the State Bar ethics opinion RPC 178, which makes it clear that the original file belongs to the client?	<input type="checkbox"/>	<input type="checkbox"/>
9. Do you use a case management software program?	<input type="checkbox"/>	<input type="checkbox"/>
10. Do you decline cases outside your areas of practice?	<input type="checkbox"/>	<input type="checkbox"/>



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?	<input type="checkbox"/>	<input type="checkbox"/>
2. Does your system include at least two of these features? <ul style="list-style-type: none"> • Computerized calendar system • Manual system (tickler cards/file box) • Attorney's calendar • Matching secretary's calendar 	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you have a backup system?	<input type="checkbox"/>	<input type="checkbox"/>
4. Do you calendar advance warnings prior to ultimate deadlines?	<input type="checkbox"/>	<input type="checkbox"/>
5. Do you follow up to see that work was actually completed?	<input type="checkbox"/>	<input type="checkbox"/>
6. Do you routinely enter important dates, such as: <ul style="list-style-type: none"> • Statutes of limitations • Court appearances and litigation deadlines • Procedural deadlines • Client-imposed deadlines • Discovery dates • Billing dates • Office appointments • Administrative hearings and deadlines • Real estate deadlines • Deadlines set by you and your staff • Dates you will be out of the office 	<input type="checkbox"/>	<input type="checkbox"/>
7. Do you have a designated Docket Czar to run the system?	<input type="checkbox"/>	<input type="checkbox"/>
8. Is everyone from senior partner to receptionist trained to use the system?	<input type="checkbox"/>	<input type="checkbox"/>
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)?	<input type="checkbox"/>	<input type="checkbox"/>
10. Does your system produce daily or weekly activity calendars that are distributed to the responsible attorney and staff member?	<input type="checkbox"/>	<input type="checkbox"/>



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?	<input type="checkbox"/>	<input type="checkbox"/>
2. Do you check for subject matter conflicts as well as client conflicts?	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you screen for conflicts before receiving confidential information and fees from new clients?	<input type="checkbox"/>	<input type="checkbox"/>
4. Do you maintain a master index of present and past clients?	<input type="checkbox"/>	<input type="checkbox"/>
5. Do you maintain a master index of adverse parties?	<input type="checkbox"/>	<input type="checkbox"/>
6. Do you decline cases where there is actual conflict regarding the client, the subject matter, or some other aspect of the case?	<input type="checkbox"/>	<input type="checkbox"/>
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?	<input type="checkbox"/>	<input type="checkbox"/>
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?	<input type="checkbox"/>	<input type="checkbox"/>
9. Do you screen new associates and staff when they come into the firm for potential conflicts arising from their prior employment?	<input type="checkbox"/>	<input type="checkbox"/>
10. Do red flags go up when you are asked to: <ul style="list-style-type: none"> • Serve as an officer or director of a client corporation • Engage in business with a client or acquire a financial interest in a client matter • Acquire a financial interest in your client's business • Represent adverse parties in "friendly" suits • Represent multiple parties with different interests • Represent more than one party seeking recovery from a fixed pool of money 	<input type="checkbox"/>	<input type="checkbox"/>



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?	<input type="checkbox"/>	<input type="checkbox"/>
2. Do you use written engagement fee agreements in all cases?	<input type="checkbox"/>	<input type="checkbox"/>
3. Are you diligent about sticking to the billing schedule – monthly, quarterly, etc. – set out in your fee agreement?	<input type="checkbox"/>	<input type="checkbox"/>
4. Do your billing statements contain an itemized record of what you’ve done for the client and how long it took?	<input type="checkbox"/>	<input type="checkbox"/>
5. Do you have a collection procedure that tracks delinquent accounts and sends payment reminders?	<input type="checkbox"/>	<input type="checkbox"/>
6. Did you know that a good way to invite a malpractice claim is to sue a client over a delinquent fee?	<input type="checkbox"/>	<input type="checkbox"/>
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?	<input type="checkbox"/>	<input type="checkbox"/>
8. Are you familiar with Value Billing and other alternatives to the “tyranny of the billable hour?”	<input type="checkbox"/>	<input type="checkbox"/>
9. Are you wary of clients who first ask, “What do you charge?” and then ask, “Is that negotiable?”	<input type="checkbox"/>	<input type="checkbox"/>
10. Do you manage your time wisely by: <ul style="list-style-type: none"> • Using forms and checklists • Making to do lists • Delegating and prioritizing work • Finishing one task before moving on to another • Getting help when needed • Blocking out time each day for returning phone calls • Establishing goals and objectives • Reviewing time logs to see where your energy is expended • Planning your day in advance 	<input type="checkbox"/>	<input type="checkbox"/>
11. Are you aware of fee dispute resolution programs promoted by the State Bar and local bar associations?	<input type="checkbox"/>	<input type="checkbox"/>



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?	<input type="checkbox"/>	<input type="checkbox"/>
2. Did you know that the number one reason for lawyer disbarment in North Carolina is mishandling trust accounts?	<input type="checkbox"/>	<input type="checkbox"/>
3. Have you taken time to educate your staff on handling and accounting of trust accounts?	<input type="checkbox"/>	<input type="checkbox"/>
4. Are employees handling the trust account carefully supervised?	<input type="checkbox"/>	<input type="checkbox"/>
5. Do you prepare written disbursement statements when money is removed from the trust account, and are clients given copies of these statements?	<input type="checkbox"/>	<input type="checkbox"/>
6. Does the name Anne Parker ring a bell?	<input type="checkbox"/>	<input type="checkbox"/>
7. If Anne Parker shows up in your office to examine your trust account, would you pass inspection?	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • Trust account reconciled at least monthly • Clear trail of whose funds are disbursed and when • No commingled funds • No "borrowing" from trust • No checks made out to cash • Good relationship with bank • It's not your money • Independent auditor monitors and reconciles account • 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?	<input type="checkbox"/>	<input type="checkbox"/>
9. Do you decline to disburse uncollected funds as required by State Bar ethics opinion RPC 191?	<input type="checkbox"/>	<input type="checkbox"/>
10. Do you have adequate insurance coverage for your valuable papers, accounts, and client files?	<input type="checkbox"/>	<input type="checkbox"/>



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?	<input type="checkbox"/>	<input type="checkbox"/>
2. Do you screen potential clients and reject ones that look like trouble?	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you return client telephone calls promptly?	<input type="checkbox"/>	<input type="checkbox"/>
4. Do you treat your clients as you wish to be treated by: <ul style="list-style-type: none"> • Behaving professionally, with courtesy and respect • Thanking them for their business • Thanking the person who referred them to you • Exercising creative listening techniques such as parroting • Being honest • Communicating • Being accessible • Informing them of possible delays in the case • Making them feel like a partner in the case • Training your staff in client relations 	<input type="checkbox"/>	<input type="checkbox"/>
5. Do you obtain written consent from clients before settling their cases?	<input type="checkbox"/>	<input type="checkbox"/>
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?	<input type="checkbox"/>	<input type="checkbox"/>
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?	<input type="checkbox"/>	<input type="checkbox"/>
8. Do you make sure your clients are kept current on the progress of their cases through communication and status reports?	<input type="checkbox"/>	<input type="checkbox"/>
9. Do you adjust your clients' expectations when they are unrealistic?	<input type="checkbox"/>	<input type="checkbox"/>
10. Do you shower your clients with paperwork, including pleadings, correspondence, and other important documents?	<input type="checkbox"/>	<input type="checkbox"/>



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?	<input type="checkbox"/>	<input type="checkbox"/>
2. Do you encourage your staff to attend seminars and to join professional organizations?	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you subscribe to North Carolina Lawyers Weekly?	<input type="checkbox"/>	<input type="checkbox"/>
4. Do you belong to the N.C. Bar Association and one of its practice sections?	<input type="checkbox"/>	<input type="checkbox"/>
5. Do you have an orientation program for new lawyers and staff?	<input type="checkbox"/>	<input type="checkbox"/>
6. Do you present in-house training programs for attorneys and support staff on topics ranging from office policies to important case law developments?	<input type="checkbox"/>	<input type="checkbox"/>
7. Does your idea of continuing education include: <ul style="list-style-type: none"> • Personal and professional growth • Staff training and development • Peer review • Proofreading • Legal research • Local bar involvement • Pro bono and community service • Seminars and conventions • Computer and technology trends • Brainstorming problems • Asking for second opinions 	<input type="checkbox"/>	<input type="checkbox"/>
8. Do you know your way around a law library?	<input type="checkbox"/>	<input type="checkbox"/>
9. Do you use online legal research services?	<input type="checkbox"/>	<input type="checkbox"/>
10. Do the lawyers in your firm double-check each other's work?	<input type="checkbox"/>	<input type="checkbox"/>



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?	<input type="checkbox"/>	<input type="checkbox"/>
2. Are you interested in improving risk management in your office?	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you periodically remind yourself why you wanted to become a lawyer in the first place?	<input type="checkbox"/>	<input type="checkbox"/>
4. Do you have adequate insurance coverage?	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • Professional liability • Life • Health • Disability • Cyber/Data Breach 		
5. Do you manage stress by:	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • Balancing your personal and professional lives • Maintaining a healthy mind and body • Tending to the basics of rest, exercise, and nutrition • Taking vacations • Leaving your work problems at the office • Not losing sight of the Big Picture • Developing outside interests and hobbies • Scheduling leisure time • 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?	<input type="checkbox"/>	<input type="checkbox"/>
7. Are you aware that drug and alcohol abuse is at the root of many malpractice claims?	<input type="checkbox"/>	<input type="checkbox"/>
8. Do you know where to get help for substance abuse problems, such as the State Bar's PALS program?	<input type="checkbox"/>	<input type="checkbox"/>
9. Do you enjoy being around other lawyers?	<input type="checkbox"/>	<input type="checkbox"/>
10. Are you good at prioritizing your work and staying on task?	<input type="checkbox"/>	<input type="checkbox"/>



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. _____