



How to Avoid the Legal Malpractice Case

Seminar Topic: This material provides an in-depth examination of the process and procedure of avoiding the legal malpractice case and practical risk management advice.

This material is intended to be a guide in general and is not legal advice. If you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.



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Disclaimer: The views expressed herein are not a legal opinion. Every fact situation is different and the reader is encouraged to seek legal advice for their particular situation.

The Apex Jurist, www.ApexJurst.com is
Published by ApexCLE, Inc.
www.ApexCLE.com

119 South Emerson St.,
Suite 248
Mount Prospect, Illinois 60056

Ordering Information:

Copies of this monograph may be ordered direct from the publisher for \$64.95 plus \$4.25 shipping and handling. Please enclose your check or money order and shipping information. For educational, government or multiple copy pricing, please contact the publisher.

Library of Congress Cataloging-in-Publication Data

ApexCLE, Inc.

1. ApexCLE, Inc. 2. Law-United States – Guide-books.
3. Legal Guide 4. Legal Education.



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Timed Agenda:

Time	Description
00:00:00	Program Start
00:00:22	Intro for How to Avoid the Legal Malpractice Case
00:02:26	Practice Areas Generating the Most Claims
00:03:24	Hot Practice Areas Generating Claims
00:04:31	Common Mistakes
00:12:58	Other Common Issues
00:13:15	Improper Investigation of a Case
00:15:59	Diary/Calendar All Issues
00:21:03	What If I Need to Sue This Client?
00:23:13	Do Not Practice Outside Your Jurisdiction
00:31:48	Do Not Oversell - Advertising
00:34:33	Do Not Oversell
00:39:13	Supervision
00:40:45	Create an Open-Door Policy
00:45:39	Create a Firm Culture that Encourages that Mistakes be Discussed, Not Hidden
00:46:43	Practice Tips to Implement
00:55:47	Create Clear Engagement Letters. Be Specific. Be Limited.
01:00:40	Clearly outline Your Fee Structure with Clients
01:07:02	Have One Staff Member Assigned to All Filings
01:07:25	Don't Permit Multiple Staff Members to Touch the File
01:09:42	Make Technology a Priority

How to Avoid the Legal Malpractice Case

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About Myself

Experience

15 years practicing exclusively in the area of legal malpractice and professional liability

Have handled hundreds of plaintiff and defense legal malpractice cases across the country

Represent clients before the Illinois Attorney Disciplinary Committee

Have advised law firms and attorneys on ethics issues to prevent potential future liability

Today's Topic – Precautions and Considerations

- Preventing a Legal Malpractice Claim
 - Practical risk management advice
 - Overview of where claims originate
 - Common Mistakes
-

Practice Areas Generating the Most Claims

Plaintiff's Personal Injury
Real Estate
Estate, Trusts and Probate
Bankruptcy and Collections
Divorce

Hot Practice Areas Generating Claims

Intellectual Property
Closely Held Corporations
Representation of Medical Professionals
Family Disputes

Common Mistakes (Part I)

- **Communicate! Communicate! Communicate!**

Approximately 25% of complaints filed with the IL ARDC involve a failure to communicate.

- **ABA Model Rules require that a lawyer keep their client reasonably informed and promptly comply with reasonable requests for information.**

“What does this mean? I get e-mails buzzing from my smartphone every 10 minutes from clients...”

Common Mistakes (Part I cont.)

•Communicating with Clients:

- Set guidelines and inform clients of them.
- Establish a form of communication.
- Have multiple points of contact for your clients.
- Get the client involved. Give them homework.
- Communicate after a negative outcome.

•Other Common Issues:

- Understand and properly apply the law.
- Improper choice of procedure.
- Improper investigation of a case.
- Diary/Calendar all issues.

Common Mistakes (Part 2)

- Repeat after me – “Thou shall not sue the client for fees.”
In Cook County, Illinois, 85% of the time a lawyer sues his/her client for fees, the result is a counterclaim for malpractice.

•Don't let it reach that point.

- Pre-suit investigation of a client.
- Trust your gut.
- Speak to client face-to-face.
- Establish payment plans/multiple forms of payment.

Common Mistakes (Part 2 Cont.)

What if I need to sue this client?

- Caveat emptor
Some professional liability insurance policies exclude coverage in this circumstance.
- Consider whether the client has the money to pay you if you win.
- Consider whether you want to pay someone to handle the fee suit.
- Get ready to respond to an ARDC inquiry.

Common Mistakes (Part 3)

- Do not practice outside your jurisdiction.

Instead, build an effective referral network.

Keep a close eye on your referrals.

Pursuant to ABA Model Rule 1.5, you are financially and legally responsible.

See *Estate of Sprill v. Chamberlain*

Common Mistakes (Part 4)

- Do not oversell – Advertising

We all engage in self-promotion.

SuperLawyers, Leading Lawyers, Martindale, etc.

Stay away from the “specialist” tag.

Instead, state that you “focus” your practice on a specific area.

Do not advertise practice areas in which you don’t actually practice.

Ramirez v. Higdon, Hardy & Zuflacht

Common Mistakes (Part 5)

Don’t practice outside your practice area.

Rule 1.1 (Competency): “A lawyer shall provide competent representation to a client. Competent representation requires...”

Understandingly, the current economy makes attorneys reach for new matters.

- If you don’t practice divorce, don’t start at age 50.

You wouldn’t want a doctor to one day decide he should pick up cardiology because his practice area was slow – extend the same courtesy to your clients.

- Howarth v. O’Connor & Karnes

Common Mistakes (Part 6)

Supervision

Don't delegate and assume that all will be okay.

As a supervising attorney, it is your responsibility to oversee the work.

ABA Model Rule 5.1

Practice Tips to Implement

Create a firm ethics individual or committee.

Create structured mentoring relationships for young attorneys.

Create an open-door policy.

Create a firm culture that encourages that mistakes be discussed, not hidden.

Create a firm that does not take every case that comes in the door; instead, create uniform client-selection policies.

Create clear engagement letters. Be specific. Be limited.

Clearly outline your fee structure with clients.

Additional Tips to Implement

Ensure all attorneys at your firm have a double diary system.

Have one staff member assigned to all filings. Don't permit multiple staff members to touch the file.

• Make technology a priority.

The Model Rules require us to keep with the times.

ABA Model Rule 1.1, Comment 8.

More and more attorneys are being sanctioned under the FRCP for e-discovery violations.

Other issues– spoliation of evidence and improper contact through social media.