Ten Tips for Avoiding Legal Malpractice

Statistics show that in any given year, a minimum of five to six insured lawyers out of every 100 in private practice experience a malpractice claim, according to the Colorado Bar Association. In other words, a firm with 20 lawyers could be the recipient of a claim every year. As exposure to legal malpractice claims continues to rise, it is an important function of law office management to establish effective loss prevention practices:

· Develop a standard calendaring system - This should contain all items to be calendared, deadlines for the various cases being handled, as well as deadlines for critical events. It should also include frequent reminder dates. The most effective calendaring system will have tracking procedures that identify the author of a particular entry.

· Know the signs of substance abuse and depression - Heavy workloads can often result in an attorney becoming depressed or compensating through substance abuse. Knowing the warning signs associated with each scenario can prevent the firm from being hit with a malpractice suit because of a dysfunctional attorney. Symptoms of substance abuse include Monday morning tiredness, missing deadlines and appointments and neglecting mail and phone calls. Behavioral changes associated with depression include misplaced anger, frequent bouts of crying, self-criticism, becoming easily distracted, and lack of interest in every day activities.

· Maintain good client relations - When accepting a new client, an attorney should discuss the purpose for which the firm was hired, reporting schedules, fees and billing arrangements, and client obligations. All of this information needs to be documented in writing and given to the client. Also, be sure the lines of communication remain open throughout the attorney-client relationship.

· Screen clients carefully - Establish a policy of screening clients using a pre-determined set of criteria. Hold each attorney accountable for using those criteria.

· Conduct thorough research and investigation - Some of the most common errors include failure to correctly apply the law, failure to determine a deadline, inadequate discovery and investigation, poor planning, and errors in the choice of procedure. The attorney of record should review staff work to ensure the accuracy of their work.

· Avoid conflicts of interest and matter - Avoiding conflicts of interest involves establishing and updating a database of all clients and matters handled. To avoid conflicts of matter, create the practice of circulating a "new matter memo" to all attorneys and support staff whenever the firm accepts a new case.

· Never become inappropriately involved in a client's interests - Accepting a director role in a client's company, investing in a client's securities, transacting business deals with a client, agreeing to contingent cash fees, and soliciting investors for a client's business can result in a host of problems. For example, the firm could be held liable for the attorney's activities as the director in a client's company or face conflict of interest charges because of an attorney's personal involvement or investment in a client's business.

· Document all work - Establish a system for verifying the accuracy and content of all documents such as letters, briefs, contracts and motions. Also create separate files to store all documents prepared or received for each client matter.

· Avoid fee disputes - Document fees and the scope of work in all matters. Bill on a monthly basis unless the client has asked for a different arrangement. Provide the client with detailed billing statements that include who performed the work and how much time was required.
Never delude yourself into believing you are immune from a malpractice suit - Your best defense is to remain acutely aware of how prevalent malpractice suits have become. It is this awareness that will motivate you to establish and maintain effective loss control procedures.