



# 2024 LMICK Annual Claims Report

*Each year, Lawyers Mutual of Kentucky compiles data from reported claims. This report is helpful in analyzing the risks associated with a lawyer’s practice and areas where risk mitigation policies would be best implemented.*

**Practice area:** Certain areas of practice carry a higher risk of liability than others. Understanding how risky your practice areas are can assist you in evaluating and mitigating liability risk.

Areas of law most likely to generate a malpractice claim:

AREA OF PRACTICE	2023 <sup>1</sup>	2022	2021	ABA <sup>2</sup>
Personal injury (for Plaintiff)	35%	30%	24%	16.30%
Real Estate	21%	20%	27%	12.37%
Collection and Bankruptcy	5%	11%	11%	8.21%
Workers’ Comp	1%	5%	5%	1.82%
Estate, Trust, and Probate	13%	6%	6%	11.98%
Family Law	8%	7%	7%	12.81%
Criminal Law	2%	6%	6%	5.95%
Corporate and Business Organization	4%	1%	2%	5.22%
Labor Law	2%	0%	0%	2.33%
Personal Injury (for Defendant)	3%	5%	2%	3.01%

<sup>1</sup> LMICK Claims Data for years 2023, 2022, and 2021.

<sup>2</sup> American Bar Association data, 2019.

**Nature of your task:** Much like practice areas, certain tasks pose more risk than others.

*Activities at issue in malpractice claims presented to LMICK during 2021, 2022 and 2023:*

<b>ACTIVITY</b>	<b>2023</b>	<b>2022</b>	<b>2021</b>
Commencement of action or proceeding	26.36%	20.00%	26.19%
Pre-trial or pre-hearing	12.73%	10.83%	13.10%
Consultation or advice	3.64%	5.00%	2.38%
Settlement and negotiation	8.18%	5.83%	5.95%
Title opinion	5.45%	11.67%	15.48%
Prepare, transmit or file document (other than pleading)	19.09%	17.50%	10.71%
Trial or hearing	3.64%	6.67%	7.14%
Written opinion (other than title)	0.00%	0.00%	0.00%
Tax reporting or payment	3.64%	1.67%	1.19%
Post trial or hearing	3.64%	6.67%	4.76%

**Stage of the case:** Certain stages of the case pose more liability risk than others. Looking at the data above and below, it is clear one the beginning of a case poses the highest risk.

*When an error is likely to occur during various stages of case development (ABA Studies)*

<b>STAGE OF THE CASE</b>	<b>2019</b>	<b>2015</b>	<b>2011</b>	<b>2007</b>
Preparation, filing of documents	35.24%	32.66%	24.86%	25.51%
Pre-trial, pre-hearing advice	6.95%	6.40%	8.55%	11.29%
Commencement of action	16.16%	16.76%	17.31%	17.32%
Advice	13.59%	14.59%	20.19%	12.68%
Settlement/Negotiation	8.78%	5.77%	6.79%	7.67%
Trial or Hearing	5.52%	7.34%	5.33%	5.56%
Title Opinion	1.31%	1.93%	4.46%	5.21%
Investigation/Other than Litigation	5.36%	4.89%	3.25%	6.04%
Appeal Activities	1.64%	1.66%	1.60%	2.36%

**Types of error:** Failure to know or properly apply the law is consistently a top error alleged in malpractice claims. Many times, this alleged error is related to a lawyer stretching their practice into a new practice area that is beyond their area of expertise. For additional tips, see the LMICK Article [Failure to Know or Properly Apply the Law Still Top Error](#).

**A. LMICK Claims Experience in FY 2021, FY 2022 and FY 2023**

Errors alleged in malpractice claims presented to LMICK during 2021, 2022 and 2023:

<b>ALLEGED ERROR</b>	<b>2023</b>	<b>2022</b>	<b>2021</b>
Failure to know or properly apply the law	13.64%	12.50%	29.76%
Failure to obtain the client’s consent	0.91%	0.00%	0.00%
Error in public record search	8.18%	12.50%	14.29%
Failure to know or ascertain deadline correctly	6.36%	5.00%	2.38%
Procrastination in performance of services/lack of follow-up	10.91%	10.83%	2.38%
Failure to calendar properly	14.55%	2.50%	5.95%
Inadequate discovery of facts/inadequate investigation	12.73%	9.17%	8.33%
Failure to react to calendar	3.64%	1.67%	1.19%
Planning error in choice of procedure	3.64%	21.67%	16.67%
Conflict of interest	5.45%	3.33%	1.19%
Fraud	2.73%	7.50%	7.14%
Failure to file a document, where no deadline involved	0.00%	0.00%	1.19%
Failure to understand or anticipate tax	0.00%	0.00%	0.00%
Clerical error	0.00%	0.00%	0.00%
Failure to follow client’s instructions	7.27%	5.83%	3.57%
Improper withdrawal from representation	2.73%	3.33%	2.38%
Libel or slander	0.91%	0.83%	1.19%
Lost file, document, or evidence	2.73%	0.00%	0.00%
Malicious prosecution or abuse of process	1.82%	3.33%	2.38%

**B. Additional data from LMICK claims shows the types of alleged error by category and sub-category compared with the most recent national ABA data:**

<b>ADMINISTRATIVE ERROR</b>	<b>2023</b>	<b>2022</b>	<b>2021</b>	<b>ABA<sup>3</sup></b>
Procrastination	10.91%	10.83%	2.38%	3.54%
Failure to calendar properly	14.55%	2.50%	5.95%	7.40%
Failure to react to calendar	3.64%	1.67%	1.19%	2.54%
Failure to file document – no deadline	0.00%	0.00%	1.19%	1.50%
Clerical error	0.00%	0.00%	0.00%	4.08%
Lost file – document evidence	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.55%</u>
<b>TOTAL</b>	<b>29.10%</b>	<b>15.00%</b>	<b>12.93%</b>	<b>19.59%</b>

<b>SUBSTANTIVE ERROR</b>	<b>2023</b>	<b>2022</b>	<b>2021</b>	<b>ABA</b>
Failure to know law	13.64%	12.50%	29.76%	15.90%
Planning error – procedure choice	3.64%	21.67%	16.67%	7.35%
Inadequate discovery/investigation	12.73%	9.17%	8.33%	8.22%
Failure to know or ascertain deadline	6.36%	5.00%	2.38%	6.57%
Conflict of interest	5.45%	3.33%	1.19%	4.90%
Failure to understand or anticipate tax	0.00%	0.00%	0.00%	0.93%
Public record error search	8.18%	12.50%	14.29%	1.90%
Drafting error	0.00%	0.00%	0.00%	5.26%
Error in math calculation	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.90%</u>
<b>TOTAL</b>	<b>50.00%</b>	<b>64.17%</b>	<b>72.62%</b>	<b>51.93%</b>

<b>CLIENT RELATIONS ERROR</b>	<b>2023</b>	<b>2022</b>	<b>2021</b>	<b>ABA</b>
Failure to obtain client consent	0.91%	0.00%	0.00%	5.61%
Failure to follow client instruction	7.27%	5.83%	3.57%	9.09%
Improper withdrawal of representation	<u>2.79%</u>	<u>3.33%</u>	<u>2.38%</u>	<u>2.00%</u>
<b>TOTAL</b>	<b>10.91%</b>	<b>9.16%</b>	<b>5.95%</b>	<b>16.70%</b>

<sup>3</sup>ABA Study, 2019.

<b>INTENTIONAL WRONGS</b>	<b>2023</b>	<b>2022</b>	<b>2021</b>	<b>ABA</b>
Malicious prosecution	1.82%	3.33%	2.38%	4.81%
Fraud	2.73%	7.50%	7.14%	4.65%
Violations of Civil Acts	0.00%	0.00%	0.00%	1.15%
Libel or slander	<u>0.91%</u>	<u>0.83%</u>	<u>1.19%</u>	<u>1.17%</u>
<b>TOTAL</b>	<b>5.46%</b>	<b>11.66%</b>	<b>10.71%</b>	<b>11.78%</b>

<b>DEADLINE ERROR</b>	<b>2023</b>	<b>2022</b>	<b>2021</b>	<b>ABA</b>
Failure to know deadline	6.36%	5.00%	2.38%	6.57%
Failure to calendar	14.55%	2.50%	5.95%	7.40%
Failure to react to calendar	<u>3.64%</u>	<u>1.67%</u>	<u>1.19%</u>	<u>2.54%</u>
<b>TOTAL</b>	<b>24.55%</b>	<b>9.17%</b>	<b>9.52%</b>	<b>16.51%</b>

## ADDITIONAL DATA

### Claims Frequency for Kentucky Attorneys by Practice Area since 1986 (through 2023)

Pers Injury/Prop Damage - Plaintiff	25%
Real Estate	21%
Other See File	11%
Collection & Bankruptcy	11%
Estate, Trust and Probate	8%
Family Law	8%
Workers Compensation	6%
Corporate and Business Organization	3%
Criminal	3%
Labor Law	2%
Pers Injury/Prop Damage - Defendant	2%

### Total Matters Reported to Lawyers Mutual of Kentucky

	Incidents	Claims	Total
<b>2016</b>	53	66	119
<b>2017</b>	46	53	99
<b>2018</b>	53	62	115
<b>2019</b>	58	108	166
<b>2020</b>	43	45	88
<b>2021</b>	50	84	134
<b>2022</b>	69	51	120
<b>2023</b>	56	54	110

### Frequency of Kentucky Claims

	per 100 Insureds
<b>2012</b>	3.36
<b>2014</b>	2.28
<b>2016</b>	2.67
<b>2018</b>	2.66
<b>2019</b>	4.71
<b>2020</b>	1.96
<b>2021</b>	1.94
<b>2022</b>	2.21
<b>2023</b>	2.32