



2022 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:

| STAGE OF THE CASE | 2022 ¹ | 2021 | 2020 | ABA ² |
|-------------------------------------|-------------------|------|------|------------------|
| Personal injury (for Plaintiff) | 30% | 24% | 33% | 16.30% |
| Real Estate | 20% | 27% | 16% | 12.37% |
| Collection and Bankruptcy | 11% | 11% | 15% | 8.21% |
| Workers’ Comp | 5% | 5% | 6% | 1.82% |
| Estate, Trust, and Probate | 6% | 6% | 9% | 11.98% |
| Family Law | 7% | 7% | 5% | 12.81% |
| Criminal Law | 6% | 6% | 2% | 5.95% |
| Corporate and Business Organization | 1% | 2% | 3% | 5.22% |
| Labor Law | 0% | 0% | 1% | 2.33% |
| Personal Injury (for Defendant) | 5% | 2% | 1% | 3.01% |

¹ LMICK Claims Data for years 2022, 2021, and 2020.

² 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 2020, 2021 and 2022:

| ACTIVITY | 2022 | 2021 | 2020 |
|--|-------------|-------------|-------------|
| Commencement of action or proceeding | 20.00% | 26.19% | 23.86% |
| Pre-trial or pre-hearing | 10.83% | 13.10% | 18.18% |
| Consultation or advice | 5.00% | 2.38% | 2.27% |
| Settlement and negotiation | 5.83% | 5.95% | 5.68% |
| Title opinion | 11.67% | 15.48% | 4.55% |
| Prepare, transmit or file document (other than pleading) | 17.50% | 10.71% | 22.73% |
| Trial or hearing | 6.67% | 7.14% | 3.41% |
| Written opinion (other than title) | 0.83% | 0.00% | 0.00% |
| Tax reporting or payment | 1.67% | 1.19% | 3.41% |
| Post trial or hearing | 6.67% | 4.76% | 3.41% |

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)

| STAGE OF THE CASE | 2019 | 2015 | 2011 | 2007 |
|-------------------------------------|-------------|-------------|-------------|-------------|
| 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 2020, FY 2021 and FY 2022

Errors alleged in malpractice claims presented to LMICK during 2020, 2021 and 2022:

| ALLEGED ERROR | 2022 | 2021 | 2020 |
|--|-------------|-------------|-------------|
| Failure to know or properly apply the law | 12.50% | 29.76% | 25.00% |
| Failure to obtain the client's consent | 0.00% | 0.00% | 0.00% |
| Error in public record search | 12.50% | 14.29% | 4.55% |
| Failure to know or ascertain deadline correctly | 5.00% | 2.38% | 6.82% |
| Procrastination in performance of services/lack of follow-up | 10.83% | 2.38% | 2.27% |
| Failure to calendar properly | 2.50% | 5.95% | 10.23% |
| Inadequate discovery of facts/inadequate investigation | 9.17% | 8.33% | 6.82% |
| Failure to react to calendar | 1.67% | 1.19% | 4.55% |
| Planning error in choice of procedure | 21.67% | 16.67% | 11.36% |
| Conflict of interest | 3.33% | 1.19% | 4.55% |
| Fraud | 7.50% | 7.14% | 7.50% |
| Failure to file a document, where no deadline involved | 0.00% | 1.19% | 0.00% |
| Failure to understand or anticipate tax | 0.00% | 0.00% | 1.14% |
| Clerical error | 0.00% | 0.00% | 3.41% |
| Failure to follow client's instructions | 5.83% | 3.57% | 6.82% |
| Improper withdrawal from representation | 3.33% | 2.38% | 0.00% |
| Libel or slander | 0.83% | 1.19% | 1.14% |
| Lost file, document, or evidence | 0.00% | 0.00% | 0.00% |
| Malicious prosecution or abuse of process | 3.33% | 2.38% | 2.27% |

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:

| ADMINISTRATIVE ERROR | 2022 | 2021 | 2020 | ABA³ |
|--|---------------|---------------|---------------|------------------------|
| Procrastination | 10.83% | 2.38% | 2.27% | 3.54% |
| Failure to calendar properly | 2.50% | 5.95% | 10.23% | 7.40% |
| Failure to react to calendar | 1.67% | 1.19% | 4.55% | 2.54% |
| Failure to file document – no deadline | 0.00% | 1.19% | 0.00% | 1.50% |
| Clerical error | 0.00% | 0.00% | 3.41% | 4.08% |
| Lost file – document evidence | <u>0.00%</u> | <u>0.00%</u> | <u>0.00%</u> | <u>0.55%</u> |
| TOTAL | 15.00% | 12.93% | 20.46% | 19.59% |

| SUBSTANTIVE ERROR | 2022 | 2021 | 2020 | ABA |
|---|---------------|---------------|---------------|---------------|
| Failure to know law | 12.50% | 29.76% | 25.00% | 15.90% |
| Planning error – procedure choice | 21.67% | 16.67% | 11.36% | 7.35% |
| Inadequate discovery/investigation | 9.17% | 8.33% | 6.82% | 8.22% |
| Failure to know or ascertain deadline | 5.00% | 2.38% | 6.82% | 6.57% |
| Conflict of interest | 3.33% | 1.19% | 4.55% | 4.90% |
| Failure to understand or anticipate tax | 0.00% | 0.00% | 1.14% | 0.93% |
| Public record error search | 12.50% | 14.29% | 4.55% | 1.90% |
| Drafting error | 0.00% | 0.00% | 0.00% | 5.26% |
| Error in math calculation | 0.00% | 0.00% | 2.27% | 0.90% |
| TOTAL | 64.17% | 72.62% | 62.51% | 51.93% |

| CLIENT RELATIONS ERROR | 2022 | 2021 | 2020 | ABA |
|---------------------------------------|--------------|--------------|--------------|---------------|
| Failure to obtain client consent | 0.00% | 0.00% | 0.00% | 5.61% |
| Failure to follow client instruction | 5.83% | 3.57% | 6.82% | 9.09% |
| Improper withdrawal of representation | <u>3.33%</u> | <u>2.38%</u> | <u>0.00%</u> | <u>2.00%</u> |
| TOTAL | 9.16% | 5.95% | 6.82% | 16.70% |

³ABA Study, 2019.

| INTENTIONAL WRONGS | 2022 | 2021 | 2020 | ABA |
|---------------------------|---------------|---------------|---------------|---------------|
| Malicious prosecution | 3.33% | 2.38% | 2.27% | 4.81% |
| Fraud | 7.50% | 7.14% | 6.82% | 4.65% |
| Violations of Civil Acts | 0.00% | 0.00% | 0.00% | 1.15% |
| Libel or slander | 0.83% | 1.19% | 1.14% | 1.17% |
| TOTAL | 11.66% | 10.71% | 10.23% | 11.78% |

| DEADLINE ERROR | 2022 | 2021 | 2020 | ABA |
|------------------------------|--------------|--------------|---------------|---------------|
| Failure to know deadline | 5.00% | 2.38% | 6.82% | 6.57% |
| Failure to calendar | 2.50% | 5.95% | 10.23% | 7.40% |
| Failure to react to calendar | 1.67% | 1.19% | 4.55% | 2.54% |
| TOTAL | 9.17% | 9.52% | 21.60% | 16.51% |

ADDITIONAL DATA

Claims Frequency for Kentucky Attorneys by Practice Area since 1986 (through 2022)

| | |
|-------------------------------------|-----|
| Pers Injury/Prop Damage - Plaintiff | 25% |
| Real Estate | 21% |
| Other See File | 11% |
| Collection & Bankruptcy | 12% |
| Estate, Trust and Probate | 8% |
| Family Law | 7% |
| 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 |
|-------------|-----------|--------|-------|
| 2016 | 53 | 66 | 119 |
| 2017 | 46 | 53 | 99 |
| 2018 | 53 | 62 | 115 |
| 2019 | 58 | 108 | 166 |
| 2020 | 43 | 45 | 88 |
| 2021 | 50 | 84 | 134 |
| 2022 | 69 | 51 | 120 |

Frequency of Kentucky Claims

| | per 100 Insureds |
|-------------|---------------------|
| 2012 | 3.36 |
| 2014 | 2.28 |
| 2016 | 2.67 |
| 2018 | 2.66 |
| 2019 | 4.71 |
| 2020 | 1.96 |
| 2021 | 1.94 |
| 2022 | 2.21 |