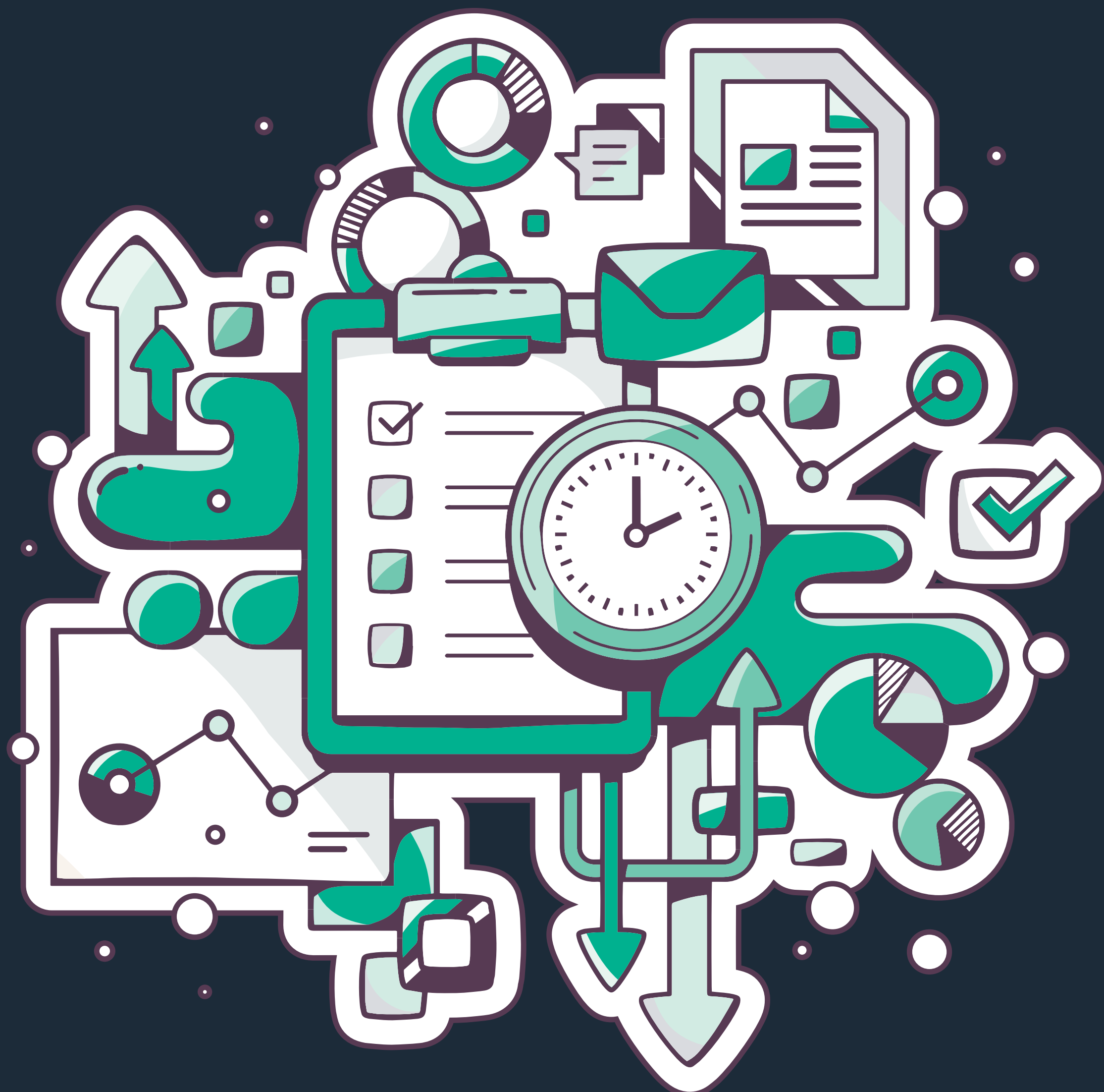
30-Minute Malpractice Checkup

Risk Management Practice Guide of Lawyers Mutual



Lawyers Mutual of Kentucky

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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 share the test throughout 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 originally prepared by Lawyers Mutual of North Carolina. Test was updated by Lawyers Mutual of Kentucky and reprinted with permission for use by LMICK policyholders. Questions? Contact us at risk@lmick.com.

Ethics

YES NO

1. Have you recently refreshed yourself on the rules most commonly violated?
    - Communication (SCR 3.130(1.4))
    - Diligence (SCR 3.130(1.3))
    - Duties on Termination of Representation (SCR 3.130(1.16))
    - Fees (SCR 3.130(1.5))

    (A fun way to refresh is with LMICK's On-Demand "...And Here's the Top Ten!")
2. Do you read ethics opinions issued by the KBA Ethics Committee?
3. Have you read Kentucky SCR 3.700, Provisions related to paralegals, and SCR 3.130(5.1) et seq. regarding supervision and reviewed them with your staff?
4. Do you require your support staff to sign confidentiality forms acknowledging that they understand the necessity of safeguarding client confidences?
5. Have you read KBA Formal Ethics Opinion E-437 addressing your duty of competence and technology? Or KBA E-446 regarding your duty to implement cyber security measures?
6. Have you adopted policies to ensure the firm meets its ethical duties, including supervision procedures that assist your team in meeting their ethical duties?
7. Do you actively utilize these policies and regularly review them with staff?
8. Do you know who to call with a question on ethics and what to do when an ethics problem arises?
9. Does your staff know who to call with a question on ethics and what to do when an ethics problem arises?
10. Are you familiar with the services available through the KBA?
    - KYLAP (Kentucky Lawyers Assistance Program)
    - Lawyer Advertising Committee
    - IOLTA/Interest on Lawyer Trust Accounts

TIP

Don't fall prey to the mentality "It's ***my*** law license that's on the line, so ***only I*** 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.

0.00

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?		
2. Do your policies support employee well-being, through specific wellness initiatives and policies that support a culture of mutual respect and support?		
3. 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?		
4. Do you have a business owner's policy or adequate property and casualty coverage to protect your office?		
5. Do you also have adequate cyber insurance to support a response to potential data breaches and interruptions?		
6. Do you support your staff through: • Training and education • Encouragement of their professional development • Communication • Regular team meetings • Feedback • Promotion of teamwork • Practicing courtesy and respect		
7. Do you take time with your staff to coach or explain why things must be done a certain way as opposed to issuing "Do this, do that" orders?		
8. Do you sometimes bring staff and new associates with you to court hearings, depositions, title searches, and real property closings?		
9. Are you up on the law office technology and aware of software possibilities for docket control, time and billing, and other systems?		
10. Is your office safe, comfortable, and healthy? • Accessible to those with disabilities • Adequate security • Client-friendly		
11. Do you teach and practice communication etiquette (i.e., phone, email, etc.)?		

TIP

LMICK is always adding to our practice management resources. You can find them at www.lmick.com/practice-management. Don't see what you are looking for? Reach out to risk@lmick.com and we can help!

No. of Yes Answers

Conflicts of Interest

	YES	NO
1. Have you recently reviewed the rules related to conflicts (SCR 3.130 (1.7-1.11 & 1.13))?	○	○
2. Do you have a reliable system for screening new clients and cases for potential conflicts of interest?	○	○
3. Do you check for subject matter conflicts as well as client conflicts?	○	○
4. Do you screen for conflicts before receiving confidential information and fees from new clients?	○	○
5. Do you maintain a master index of present and past clients?	○	○
6. Do you maintain a master index of adverse parties?	○	○
7. Do you decline cases--and utilize a non-engagement letter to do so—where there is actual conflict regarding the client, the subject matter, or some other aspect of the case?	○	○
8. 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?	○	○
9. Do you screen new associates and staff when they come into the firm for potential conflicts arising from their prior employment?	○	○
10. Do red flags pop up when you are asked to:	○	○

- 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 parities with different interests
- Represent more than one party seeking recovery from a fixed pool of money

TIP

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

Case Management

YES NO

1. Do you trust your gut and decline cases – using a non-engagement letter – when you and the client are not a good fit? (outside of your practice area, lack of capacity for case, client red flags, etc.)
2. Do you follow a standard procedure for opening files that includes conflicts check, an engagement letter, and immediately calendaring deadlines?
3. When you accept a new case from an existing client, do you open a separate file with a new file number and execute a new engagement letter?
4. Are your case files stored in a safe, secure location, either in lockable cabinets for paper files, or on a secure server?
5. Do you use a check-out card system for removal and return of physical files so that their movement can be monitored?
6. Do you have at least two back-ups of electronic case files and client data that are stored in different physical locations?
7. If one of your files was pulled out at random for review, would it be well organized?
    - Labeled/indexed by date, subject matter, or client name
    - Well-documented, neat, and in chronological order
    - Notation in the physical file of any electronic only files or records that may be boxed separately (i.e., 3 boxes of medical records from X hospital)
    - Subfiles for letters, pleadings, discovery, research, etc.
    - Attorney activity log
    - Trust account information
    - Fee and billing information
    - Telephone records documented
    - No loose documents
8. Do you send termination letters at the end of every case or matter?
9. Do you have a standard file closing procedure to return all client property, remit a final bill, and close out the trust account?
10. Do you have a written policy on file retention, destruction, and storage?

BONUS: Do you use a case management software program?

TIP

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?
2. Does your system include at least two of these features?
   - Computerized calendar system
   - Manual system (tickler cards/file box)
   - Attorney's calendar
   - Matching secretary's calendar
3. Do you have a backup system, including syncing electronic calendars with an office calendar so that someone else can help you manage deadlines?
4. Do you calendar advance warnings prior to ultimate deadlines?
5. Do you follow up to see that work was actually completed?
6. Do you routinely enter important dates, such as:
   - 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
7. Do you have a designated person to manage your docket system?
8. Is everyone from senior partner to receptionist trained to use the system?
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)?
10. Does your system produce daily or weekly activity calendars that are distributed to the responsible attorney and staff member?

TIP

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 designated person for entry in the system.

No. of
Yes Answers

Time and Billing

YES NO

1. Have you recently reviewed SCR 3.130 (1.5) & (1.15)?
2. Do you use written engagement fee agreements in all cases?
3. Do you have all clients sign fee agreements to ensure their acknowledgment and understanding?
4. Are you diligent about sticking to the billing schedule – monthly, quarterly, et. – set out in your fee agreement?
5. Do your billing statements contain an itemized record of what you've done for the client and how long it took?
6. Do you have a collection procedure that tracks delinquent accounts and sends payment reminders?
7. Did you know that a good way to invite a malpractice claim is to sue a client over a delinquent fee?
8. 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?
9. Are you wary of clients who first ask, "What do you charge?" and then ask, "Is that negotiable?"
10. Do you manage your time wisely by:
    - 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

TIP

Develop a client-centered approach to your fee and billing practices. Explain your procedure to clients in advance, using plain language. 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 Client Trust Account Reference Guide?
2. Did you know that a top reason for discipline is mishandling of client funds?
3. Do you know the difference between general client trust accounts and IOLTA accounts? (Compare SCR 3.130 (1.15) and SCR 3.830)
4. Have you taken time to educate your staff on handling and accounting of trust accounts?
5. Are employees handling the trust account carefully supervised?
6. Do you prepare written disbursement statements when money is removed from the trust account, and are clients given copies of these statements?
7. Are you implementing best practices, including:
    - 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
    - Remembering: 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?
9. Do you have adequate insurance coverage for your valuable papers, accounts, and client files?

TIP

KY SCR 3.130 (1.15(a)) requires banks to agree to notify the Kentucky Bar Association of any overdrafts in trust accounts. 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 a client contact form to document conversations with potential clients?
2. Do you screen potential clients and reject ones that look like trouble?
3. Do you return client inquiries promptly?
4. Do you treat your clients as you wish to be treated by:
    - 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
5. Do you obtain written consent from clients before settling their cases?
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?
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?
8. Do you make sure your clients are kept current on the progress of their cases through regular communication and status reports?
9. Do you adjust your clients' expectations when they are unrealistic?
10. Do you shower your clients with paperwork, including pleadings, correspondence, and other important documents?

TIP

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?
2. Do you encourage your staff to attend seminars and to join professional organizations?
3. Do you take advantage of the [LMICK CLE programs] available to insureds for free?
4. Do you belong to a KBA or local bar association practice sections?
5. Do you have an orientation program for new lawyers and staff?
6. Do you present in-house training programs for attorneys and support staff on topics ranging from office policies to important case law developments?
7. Does your idea of continuing education include:
    - Personal and professional growth
    - Staff training and development
    - Peer review
    - Proofreading
    - Legal research
    - Local bar involvement
    - Seminars and conventions
    - Computer and technology trends
    - Brainstorming problems
    - Asking for second opinions
8. Do you feel comfortable with the research database options available to you?
9. If not, are you taking advantage of tutorials from your vendors to improve your research skills?
10. Do the lawyers in your firm double-check each other's work?

TIP

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?
2. Are you interested in improving risk management in your office?
3. Do you periodically remind yourself why you wanted to become a lawyer in the first place?
4. Do you have adequate insurance coverage?
   - Professional Liability
   - Property and other business coverage
   - Life
   - Health
   - Disability
   - Cyber/Data Breach
5. Do you manage stress by:
   - 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 able to acknowledge when you are experiencing higher than normal stress, either personally or professionally, and have people in your life you can reach out to for help (therapist, close friends, family, trusted colleagues)?
7. Are you aware that drug and alcohol abuse is at the root of many malpractice claims?
8. Do you know where to get help for substance abuse problems, such as KYLAP?
9. Do you enjoy being around other lawyers?
10. Are you good at prioritizing your work and staying on task?

TIP

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	0.00
Office Management	
Case Management	
Calendar Control	
Conflicts of Interest	
Time and Billing	
Trust Accounts	
Client Relations	
Continuing Education	
Self	
Total Score	0.00

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. ______________________________

10503 Timberwood Circle, Suite 213
Louisville, KY 40223

502-568-6100
502-568-6103 fax

lmick.com