

RISK MANAGEMENT ANALYSIS

I. CLIENT INTAKE

1. **Incomplete information on firm's client intake form**
2. **No independent review of client intake decisions**
3. **Inadequate independent review of client intake decisions**
4. **No engagement letter sent**
5. **Inadequate engagement letter sent**
 - a. Failure to use form engagement letter
 - b. Inadequate definition of clients/non-clients
 - c. Inadequate description of scope of service
 - d. Inadequate limitation of scope of service
 - e. Failure to include conflicts disclosure language
 - f. Inadequate conflict disclosure language
 - g. Failure to obtain any/adequate waiver or consent
 - h. Failure to obtain client's timely countersignature
6. **Failure to send any/adequate non-engagement letter**
7. **Failure to identify after-arising conflict of interest**
8. **Failure to send closing letter**

II. TIME RECORDING, FEES, BILLING AND COLLECTIONS

1. **Fee dispute with client**
 - a. Firm threatened suit for fees
 - b. Firm initiated suit for fees
 - c. Firm counterclaimed for fees

- 2. **Improper timekeeping/time recording**
- a. Timekeepers entered time seven or more days after date work performed
- b. Substantive (more than editorial) changes in description of work made subsequent to original time entry
- c. Substantive (other than to conform matching entries of multiple timekeepers) changes made in amount of time spent on task after date of original entry
- d. Impossible (e.g., 25 hour day) time entries recorded
- e. Identity of person performing task changed after original time entry
- f. Inadequate or inaccurate description of work performed
- 3. **Improper withdrawal of representation for failure to pay**

III. SUBSTANTIVE ERRORS – INADEQUATE OVERSIGHT OF PARTNERS, PROFESSIONALS AND MATTERS IN PROGRESS

A. Substantive Errors

1. Categories of Substantive Error

- a. Failure to know/properly apply law
- b. Improper Advice
- c. Inadequate discovery/investigation/due diligence
- d. Improper strategic/procedural choice
- e. Unethical Conduct
- f. Failure to Advise
- g. Improper Drafting
- h. Defective Research
- i. Misrepresentation
- j. Inadequate Preparation

- k. Ineffective Negotiation
- l. Failure to understand/anticipate tax
- m. Error in formal opinion (including audit response) letter
- n. Error in public record search
- o. Error in mathematical calculation

2. Causes of Substantive Error

- a. Attorney suffering from impairment (alcohol, drugs, other addiction or psychiatric problem)
- b. Attorney practicing out of normal area of expertise
- c. Attorney handling file/matter alone
 - (i) No other attorney in firm with knowledge of practice area
 - (ii) Inadequate or no review or oversight of file by second attorney
- d. Paralegal handling matter alone – inadequate or no review or oversight of file by an attorney
- e. Inadequate or no practice group management

B. Client Relations

1. Categories of Failure

- a. Failure to follow client’s instruction
- b. Failure to obtain client consent
- c. Failure to inform client
- d. Improper withdrawal other than for failure to pay

2. Causes of Failure

- a. Attorney practicing out of normal area of expertise
- b. Attorney handling file/matter alone

- (i) No other attorney in firm with knowledge of practice area
- (ii) No review or oversight of file by second attorney
- c. Inadequate practice group management

C. Intentional Wrongs

1. Categories of Failure

- a. Malicious prosecution/abuse of process
- b. Fraud
- c. Defamation
- d. Violation of civil rights

2. Causes of Failure

- a. Attorney handling file/matter alone
 - (i) Failed to make adequate investigation
 - (ii) Ignored information making client's claims suspect
- b. No review or oversight of file by second attorney prior to commencement of litigation
- c. Inadequate review or oversight of file by second attorney prior to commencement of litigation
 - (i) Failed to make adequate investigation
 - (ii) Ignored information making client's claims suspect
- d. Inadequate practice group management

IV. CASE MANAGEMENT AND THE PROTECTION OF CLIENT CONFIDENCES

A. Failure to Protect Client Confidences

1. Client confidences inadequately protected

- (i) Disclosure during discovery process

- (ii) Disclosure resulting from inadequate protection of electronic communication (e.g., instant messaging, e-mail, fax, telephone or voicemail)
 - 2. **Nonexistent or inadequate firm policies and procedures for protection of client confidences**
 - 3. **Nonexistent or inadequate training of law firm personnel regarding protection of client confidences**
- B. Missed Deadlines**
- 1. **Categories of Failure**
 - a. Failure to know/ascertain correct deadline
 - b. Failure to calendar properly
 - c. Failure to react to calendar
 - 2. **Causes of Failure**
 - a. Attorney maintaining personal calendar (no central or practice group software available for deadline calculation and/or entry)
 - b. Paralegal/staff maintaining attorney's personal calendar (no central or practice group software available for deadline calculation and/or entry)
 - c. Deadline missed by attorney maintaining personal calendar (attorney not using available central or practice group software for deadline calculation and/or entry)
 - d. Deadline missed by paralegal/staff maintaining attorney's personal calendar (attorney not using available central or practice group software for deadline calculation and/or entry)
 - e. No independent checking of deadline calculation and/or entry and/or timely completion of task by an attorney responsible for calendar/docket control

C. Other Administrative Errors

1. Categories of Failure

- a. Failure to file document (no deadline)
- b. Lost file, document or other item of evidence or client asset
- c. Loss or Destruction of Valuable Client Property (e.g., Wills, Bonds Original Documents, Necessary Evidence)

2. Causes of Failure

- a. Attorney suffering from impairment (alcohol, drugs, other addiction or psychiatric problem)
- b. Attorney practicing out of normal area of expertise
- c. Attorney handling file/matter alone
 - (i) No other attorney in firm with knowledge of practice area
 - (ii) Inadequate or no review or oversight of file by second attorney
- d. Paralegal handling matter alone – inadequate or no review or oversight of file by an attorney
- e. Inadequate or no practice group management
- f. Inadequate or inappropriate document or file retention/destruction policy
- g. Failure to follow document retention/destruction policy

V. HANDLING PROBLEMS, POTENTIAL AND ACTUAL CLAIMS

- 1. Failure to give notice to insurer
 - a. Inadequate or no defined internal reporting policy
- 2. No designated general counsel, risk management or claims partner
- 3. Failure to manage impaired lawyer

- a. Inadequate or no human resource or employment manual or policies
- 4. Failure to manage dealings with the media
- a. Inadequate or no policy for responding to media inquiries

VI. DISASTER RESPONSE/BUSINESS RECOVERY PLANNING

- 1. Inadequate or no disaster recovery plan
- a. Failure to secure adequate data backup
- b. Failure to secure adequate backup premises
- c. Failure to secure adequate backup equipment
- d. Inadequate or no off-site data backup
- e. Inadequate training of personnel
- 2. Failure to follow disaster recovery plan
- 3. Loss of key personnel

VII. FINANCIAL CONTROLS AND MANAGING ESCROW ACCOUNTS/CLIENT FUNDS

- 1. **Categories of Failure**
- a. Theft, embezzlement or diversion of firm funds
- b. Theft of client funds
- 2. **Causes of Failure**
- a. Inadequate human resource management procedures
- b. Inadequate audit or review of finances
- c. Inadequate review of purchasing procedures
- d. Inadequate oversight of client accounts

VIII. LAW FIRM MANAGEMENT

1. Inadequate or no partnership/shareholder agreement
 - a. Compensation structure encourages solo practice mentality – discourages centralized management
2. Inadequate resources allocated to firm management
3. Inadequate time spent on firm management
4. Inadequate supervision of satellite office
5. Inadequate oversight of firm finances