

What do we know about it?

Background

The first thing we know about legal malpractice in Kentucky is that historically there is not much of a track record available to examine. This is true in part because it was not until about 1970 that legal malpractice claims became a significant daily consideration in the practice of law in the United States. Beginning in the early '70s, malpractice claims against lawyers exploded changing the practice environment forever. Malpractice insurance became a necessary and often expensive cost of doing business. Risk management became an essential part of managing a law firm to minimize this growing hazard of practicing law. Legal malpractice was suddenly the elephant in the room that could ruin professional relationships and destroy firms.

Adding to the fog of what was going on with legal malpractice in the nation and in Kentucky in those days is the policy of most commercial insurers to treat claims experience as proprietary information. This is a legitimate practice, but made it virtually impossible to tell what the magnitude of legal malpractice was in a given state. The anomaly in analyzing legal malpractice for the purpose of preventing claims is that the great majority of claims are resolved by insurance companies – not the courts. The best information on what is going on in legal malpractice and how to prevent it is generally not available to the public. In Kentucky we could not tell in the '70s and '80s whether the ever increasing insurance premiums for Kentucky lawyers were because of bad experience in Kentucky or whether, as suspected, Kentucky lawyers were subsidizing the payment of malpractice claims against lawyers in other states – and the companies then insuring Kentucky lawyers would not help answering this question when asked by the KBA.

In response to this dilemma in the 1980s lawyers in a number of state bars sponsored the formation of bar-related insurance companies to provide malpractice insurance and risk management education exclusively for their state. The KBA joined in this movement in the mid-'80s resulting in the formation of Lawyers Mutual Insurance Company of Kentucky which opened for business in November 1987. Its purpose is to provide a competitive insurance market for Kentucky lawyers based on Kentucky malpractice experience and use this experience to foster claims prevention by assisting Kentucky lawyers in developing risk management programs.

At the national level the ABA in an effort to come to grips with the problem of increasing legal malpractice claims published its first study of national legal malpractice claims statistics in 1985. It published further studies in 1995, 1999, and in April 2005 issued "Profile of Legal Malpractice Claims 2000-2003" that recapitulates the results of all studies through 2003. The more recent studies are based primarily on input from bar-related insurance companies with a few commercial insurers participat-

Legal Malpractice in Kentucky

ing. Lawyers Mutual was an active participant in these studies.

This article compares selected statistics from the ABA's "Profile of Legal Malpractice Claims 2000-2003" (hereinafter ABA 2003) with Lawyers Mutual's claims statistics to enable Kentucky lawyers to see where the major malpractice risks are both nationally and locally. The limitations on these statistics are that the ABA study methodology has evolved over the years as has Lawyers Mutual's statistics collection procedures making comparisons among the studies imperfect. It is also significant that the information in recent ABA studies is based heavily on bar-related insurance company experience. These insurers primarily insure small firms (2-5) and solo practitioners.

While these and other factors diminish the overall usefulness of the ABA studies, they remain valuable in developing a national profile of malpractice trends that is a valid benchmark from which to compare Kentucky's claims experience.¹ The idea is to use the available statistics as indications of where the risks are and allow lawyers to focus risk management programs on those risks most applicable to their practice.

The studies and claims statistics cited in this article do not identify good and bad lawyers or areas of practice. They show only where the claims are occurring. These studies do not include demographic data such as the number of lawyers practicing in an area of law or the amount of overall lawyer time spent in an area of law or practice activity. Most important to remember is that overall Kentucky lawyers provide a high quality service to the clients they represent. This article necessarily centers on alleged errors by the small percentage of Kentucky lawyers who through neglect or bad luck are exposed to a claim of malpractice in a given year.

Included in the article along with the statistics are observations on trends from the limited, but growing, amount of knowledge we have on legal malpractice in Kentucky. Finally, the article offers a recently developed *Risk Management Analysis* checklist that is recommended for use in evaluating errors occurring in your practice for the purpose of identifying the causes of errors and the corrective actions required to prevent recurrence.

What the Statistics Show

The statistics displayed in this article are a helpful guide in identifying hazards relevant to the practice of law in Kentucky. We have selected the following framework for analyzing malpractice claims for this purpose:

Table 1: Percentage of Claims by Area of Law

	1990-95	1990-95	1996-99	1996-99	2000-03	2000-2006	All Years
	ABA %	KY %	ABA %	KY %	ABA %	KY %	KY %
Collection & Bankruptcy	7.91	7.89	8	12.17	7.92	11.5	11.21
Corp./Business Org. & Transactions	19.53	5.78	12.19	2.22	9.55	3.35	3.69
Criminal Law	3.82	4.56	4.15	4.63	4.19	2.26	3.56
Estate, Trust & Probate	7.59	6.49	8.67	9.26	8.63	8.42	8.13
Family Law	9.13	8.59	10.13	5.66	9.58	6.06	6.65
Labor Law	1.41	1.22	2.22	3.6	1.55	2.53	2.65
Personal Injury-Plaintiff	21.65	18.42	24.6	20.41	19.96	25.81	22.95
Personal Injury-Defense	3.27	2.28	4.1	3.43	9.96	1.99	2.43
Real estate	14.35	14.38	16.97	15.78	16.46	24	20.21
Workers' Compensation	3.3	7.54	1.86	8.74	2.27	5.34	6.73

- Area of Law
- Type of Activity
- Type of Alleged Error
 - Administrative Errors
 - Substantive Errors
 - Client Relations
 - Intentional Wrongs

These categories organize claims statistics from differing perspectives, but have a vectoring effect that pinpoints where the serious problems are. What follows are tables for each category comparing ABA 2003 statistics with those of Lawyers Mutual's. Significant trends and observations are noted in the accompanying commentary for each table.

Area of Law Claims

Table 1: Percentage of Claims by Area of Law lists the ten leading areas of law warranting malpractice analysis from a Kentucky perspective. The key considerations from Table 1 include:

- ABA 2003 noted that Personal Injury-Plaintiff in the 2000-03 study (hereinafter 2003 study) remained the area of practice with the highest claims rate responsible for approximately 20% of all claims. Kentucky had an even

higher claims rate in the period 2000-06 of almost 26%. The nature of Personal Injury-Plaintiff practice with numerous deadlines to meet and the high risk of clients with unrealistic expectations accounts for many of the claims. The inescapable facts are that if your practice includes Personal Injury-Plaintiff matters, an aggressive risk management program is absolutely necessary for self-preservation.

- ABA 2003 showed that in the 2003 study Real Estate was again the second highest in percentage of claims. Kentucky experience in the period 2000-06 also shows Real Estate as the second highest. The primary cause for real estate claims is prosaic and remains the same as it has been for many years – error in public records search. This seemingly routine work requires careful attention to detail and close supervision because errors are expensive and for the most part indefensible.
- Collection and Bankruptcy is an area of law where Kentucky malpractice claims in the last several years are trending significantly higher than national experience. With a new and complex bankruptcy law governing an already technical area of practice it is essential that bankruptcy representations be undertaken only if you know what you are doing. Practicing “a little bankruptcy law” is a form of malpractice Russian roulette.
- ABA 2003 showed Personal Injury-Defense with an increase in claims to nearly 10% in the 2003 study. It moved to third highest in claims for an area of law. Kentucky statistics show a much better picture for Kentucky defense counsel with a percentage of claims consistently lower than the national average over all studies. For the latest period it was a remarkable 8% lower than the national average. Defense practice has historically been low risk, but it is clear that the dynamics of defense representation is changing. Clients of defense counsel are no longer quietly acquiescing in adverse results and are much quicker to claim. We are on notice in Kentucky that the risks of Personal Injury-Defense practice are much greater than in the past and that risk management is as essential to the defense lawyer as it is to the plaintiff lawyer.

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Type of Activity

Table 2: Percentage of Claims by Type of Activity focuses on the legal process in which a lawyer was engaged when the error occurred. The key considerations from Table 2 include:

- Preparation, Filing, Transmittal of Documents is a broad category that applies to documents that are not part of a pleading or related to a contested matter. It includes contracts, leases, deeds, formal applications, wills, and trust. It does not include tax returns or title opinions. ABA 2003 shows this category as the highest ranked for type of activity claims in the 2003 study. Kentucky statistics have been consistently better over all studies than the ABA statistics. We flag it here nonetheless because it is clearly a troublesome area for many lawyers and we can do better. Risk management that includes tight control over document flow, detailed mail procedures, and docketing of all time sensitive and important documents is essential to avoid claims.
- Commencement of Action/Proceeding is a category that focuses on the formal activities in starting a contested proceeding including filing a government claim. It is an area where Kentucky has been consistently higher in claims that the ABA studies show. A combination of failing to know or ascertain a deadline, to calendar a deadline, to calendar a deadline accurately, and to react to a calendar alert accounts for most of the claims. Every practice should have an automated docketing system that alerts the responsible lawyer, her secretary, and a central control person in the firm to deadlines (solo practitioners use your computer as the central calendar control).
- It is not surprising that the percentage of claims in the activity Title Opinion is high in Kentucky given our high rate of real estate claims. What is alarming is that our Title Opinion percentage is more than twice the percentage ABA 2003 shows in the 2003 study. This is a risk that is screaming for attention. The percentages tell it all.
- Appeal Activities is another category where Kentucky's percentage of claims have been consistently higher than the ABA percentages. We attribute this primarily to missed deadlines and again encourage emphasis on using state of the art docketing systems.

Alleged Error Claims

Administrative Errors: Table 3: Percentage of Claims by

	1990-95 ABA %	1991-95 KY %	1996-99 ABA %	1996-99 KY %	2000-03 ABA %	2000-2006 KY %	All Years KY %
Preparation, Filing, Transmittal of Documents	16.21	12.27	25.24	13.37	23.08	13.13	13
Pre-Trial, Pre-Hearing	12.62	10.69	8.18	10.29	19.47	14.67	12.59
Commencement of Action/Proceeding	28.62	29.1	15.66	29.33	15.59	24.54	26.87
Advice	12.41	12.27	6.79	9.26	15.07	7.69	9.16
Settlement/Negotiation	11.44	18.21	6.38	13.37	8.2	7.15	11.35
Trial or Hearing	7.1	6.73	5.1	6.51	5.07	3.8	5.2
Title Opinion	0.95	13.06	13.01	9.09	4.03	10.5	10.72
Investigation other than Litigation	1.86	1.38	16.26	2.57	2.19	0.63	1.32
Appeal Activities	2.75	8.11	1.11	6.34	2.15	4.71	5.93
Ex Parte Proceeding	1.43	1.38	0.39	0	1.72	2.08	1.36
Post Trial or Hearing	2.62	3.96	1.08	3.08	1.72	5.52	4.51
Written Opinion other than Title	0.65	1.18	0.22	0.34	0.77	0.72	0.72
Tax Reporting	0.77	1.78	0.2	1.2	0.58	1.35	1.41
Referral/Recommendation	0.57	0.39	0.38	0.17	0.36	0.09	0.18

Type of Error – Administrative Errors concerns getting the work done on time. Of significance is:

- Getting the work done on time administrative errors account for 24.98% of all Kentucky claims in 2000-06. This contrast marginally favorably with the 28.36% ABA 2003 shows in the 2003 study, but leaves a lot of room for improvement
- The Kentucky percentages for the categories Failure to Calendar Properly and Failure to React to Calendar show again that this is a major weakness in office administration and risk management for too many Kentucky lawyers.

Substantive Errors: Table 4: Percentage of Claims by Type of Error – Substantive Errors concerns lawyer competence. The key considerations from Table 4 include:

- Failure to Know/Apply Law is a category that Kentucky has improved in over the years, but a claims percentage of 17.84% for 2000-06 is a significantly higher percentage

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Table 3: Percentage of Claims by Type of Error — Administrative Errors

	1990-95	1991-95	1996-99	1996-99	2000-03	2000-2006	All Years
	ABA %	KY %	ABA %	KY %	ABA %	KY %	KY %
Procrastination	8.68	5.94	4.95	5.31	9.43	6.79	6.2
Failure to Calendar Properly	6.75	8.71	7.03	7.71	5.19	9.69	8.94
Failure to React to Calendar	6.35	2.77	1.27	3.25	4.35	4.8	3.92
Clerical Error	2.14	4.35	1.25	4.45	4.74	2.08	3.23
Failure file Document No Deadline	2.69	0.39	1.54	0	4.28	1.08	0.63
Lost File, Evidence, Document	0.57	0.59	0.4	0.68	0.37	0.54	0.59

than the ABA statistics show in the 2003 study. This can be the result of taking on more work than can be competently managed, relying too much on inexperienced assistance, or accepting matters outside a firm's practice area. If there is not time to gain the competence to practice a matter, representation should be declined.

- The higher 2000-06 percentage of Kentucky claims in the category Error in Public Record Search reinforces what is already evident from the statistics for the Area of Law category Real Estate and Type of Activity category Title Opinion. Far too many errors are made in title searches virtually all of which could be avoided with careful attention to detail and close supervision and review by the responsible lawyer.
- The category Planning Error – Procedure Choice concerns cases when the lawyer knows the law and facts but allegedly makes an error in judgment. The Kentucky 2000 – 06 percentages show a serious increase in claims for this category. Judgmental immunity for such claims as a defense in Kentucky was reviewed in *Equitania Ins. Co. v. Slone and Garrett PSC*, (Ky., No.2003-SC-1003-DG, 2/2/06) and is recommended reading. Kentucky lawyers

Table 4: Percentage of Claims by Type of Error — Substantive Errors

	1990-95	1991-95	1996-99	1996-99	2000-03	2000-2006	All Years
	ABA %	KY %	ABA %	KY %	ABA %	KY %	KY %
Failure to Know/Apply Law	11.05	29.3	21.9	27.1	10.98	17.84	23.03
Inadequate Discovery Investigation	10.24	9.5	6.13	7.89	10.37	7.33	7.98
Planning Error Procedure Choice	10.87	4.75	3.21	3.43	7.72	11.14	7.61
Failure to Know/Ascertain Deadline	6.97	7.32	15.24	6.17	7.09	6.25	6.47
Conflict of Interest	3.79	4.55	5.12	3.43	6.28	2.8	3.37
Error in Public Record Search	1.24	10.69	2.65	5.83	2.54	8.96	8.53
Failure Understand/Anticipate Tax	1.96	0.99	1.57	0.85	1.26	1.26	1.09
Error Math Calc.	0.44	0.59	0.48	0.34	1.04	0.18	0.31

can expect more claims for simply getting a bad result even when fully competent and informed on a case.

•The category Conflict of Interest shows Kentucky trending below the ABA studies' percentages of conflict claims. What is significant is that the ABA studies show a national upward trend in claims alleging a conflict of interest. We too are seeing more claims that, in addition to alleging negligence, add allegations of a conflict of interest or fiduciary breach. In ABA 2003 the comment is made:

“We continue to see an increase in claims alleging a conflict of interest by a lawyer or firm.

Claims involving conflicts of interest increased slightly to 6.2% of all claims during the survey. Few of these claims appear to have involved intake problems. Instead, some industry observations are that the vast majority of significant malpractice claims include a claim of conflict of interest. The conflict may not have given rise to the claim, but colors it and makes it more difficult to defend.”

Everyone knows to screen for conflicts before accepting a matter, but many lawyers fail to periodically check for conflicts that may have arisen during a representation. Make sure your risk management program calls for periodic review of all matters for new circumstances that could create a conflict of interest.

Client Relations and Intentional Wrongs: Table 5: Percentage of Claims by Type of Error – Client Relations; and Table 6: Percentage of Claims by Type of Error – Intentional Wrongs show Kentucky claims percentages for 2000-06 overall in line with the ABA percentages in the 2003 study.

Risk Management Analysis

Accompanying this article is a *Risk Management Analysis* checklist that is printed in a way to facilitate copying. It is from materials developed for the Hinshaw & Culbertson 2006 Legal Malpractice & Risk Management Conference, and is reprinted with permission. We consider it one of the best checklists of its kind. It is a valuable instrument for evaluating and correcting errors that occur in a firm. It should be used to analyze all questions of malpractice that arise in a practice – not just the situations that rise to the level of an actual allega-

Table 5: Percentage of Claims Reports by Type of Error — Client Relations

	1990-95	1991-95	1996-99	1996-99	2000-03	2000-2006	All Years
	ABA %	KY %	ABA %	KY %	ABA %	KY %	KY %
Failure to Follow Client's Instructions	5.06	3.36	3.93	4.45	6.72	7.15	5.56
Failure to Obtain Client Consent/ Inform Client	9.77	8.11	11.89	5.14	5.75	3.07	4.79
Improper Withdraw of Representation	2.14	4.55	2.93	3.08	2.1	1.9	2.82

Table 6: Percentage of Claims by Type of Error — Intentional Wrongs

	1990-95	1991-95	1996-99	1996-99	2000-03	2000-2006	All Years
	ABA %	KY %	ABA %	KY %	ABA %	KY %	KY %
Malicious Prosecution							
Abuse of Process	3.7	11.48	4.09	7.03	3.59	2.62	5.83
Fraud	3.19	3.16	2.11	2.57	3.35	3.8	3.33
Libel or Slander	1.11	2.17	1.18	1.37	1.59	1.08	1.41
Violation of Civil Rights	1.29	0.39	1.15	0.17	1.26	0.09	0.18

tion of malpractice. This analysis should permit immediate correction of a malpractice risk within a firm. By using the *Risk Management Analysis* checklist for all incidents of potential malpractice and retaining them in a permanent file, systemic weaknesses in firm operations can be identified over time, recurring errors come to light, and risk management programs can be developed responsive to a firm's unique situation. Risk management

is not a "one size fits all" process. Every firm is different and requires a tailored risk management plan. The *Risk Management Analysis* checklist is the instrument that gives a firm the means to identify its special risk management needs.

Conclusion

Space precludes going into detail on other important malpractice information. For example, ABA 2003 finds in the 2003

study that most claims concern firms with less than five lawyers (65.45%), but that claims concerning firms of 40 or more lawyers were up 10.79% to 14.89%. This is an important indicator of the continuing trend of increasing and more expensive malpractice claims because larger firms typically have sophisticated risk management programs and tight internal controls. It is also an unfortunate fact that the trend is for claims to take longer to resolve. This means a dark cloud can hang over a lawyer and his firm for a protracted period of time – an unhappy way to practice law. We hope this article serves to help you avoid this stress by providing you some of the information needed to effectively risk manage your practice.

We urge you to use the *Risk Management Analysis* checklist to facilitate this effort and achieve a claims-free practice. ■

ENDNOTES

1. Kentucky statistics are based on all reports received by Lawyers Mutual of potential claims (incidents), claims, and suits.

RISK MANAGEMENT ANALYSIS

I. CLIENT INTAKE

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| <ol style="list-style-type: none"> 1. Incomplete information on firm's client intake form <input type="checkbox"/> 2. No independent review of client intake decisions <input type="checkbox"/> 3. Inadequate independent review of client intake decisions <input type="checkbox"/> 4. No engagement letter sent <input type="checkbox"/> 5. Inadequate engagement letter sent <input type="checkbox"/> <ol style="list-style-type: none"> a. Failure to use form engagement letter <input type="checkbox"/> b. Inadequate definition of clients/non-clients <input type="checkbox"/> c. Inadequate description of scope of service <input type="checkbox"/> d. Inadequate limitation of scope of service <input type="checkbox"/> e. Failure to include conflicts disclosure language <input type="checkbox"/> f. Inadequate conflict disclosure language <input type="checkbox"/> g. Failure to obtain any/adequate waiver or consent <input type="checkbox"/> h. Failure to obtain client's timely countersignature <input type="checkbox"/> 6. Failure to send any/adequate non-engagement letter <input type="checkbox"/> 7. Failure to identify after-arising conflict of interest <input type="checkbox"/> 8. Failure to send closing letter <input type="checkbox"/> | <ol style="list-style-type: none"> i. Misrepresentation <input type="checkbox"/> j. Inadequate Preparation <input type="checkbox"/> k. Ineffective Negotiation <input type="checkbox"/> l. Failure to understand/anticipate tax <input type="checkbox"/> m. Error in formal opinion (including audit response) letter <input type="checkbox"/> n. Error in public record search <input type="checkbox"/> o. Error in mathematical calculation <input type="checkbox"/> <ol style="list-style-type: none"> 2. Causes of Substantive Error <ol style="list-style-type: none"> a. Attorney suffering from impairment (alcohol, drugs, other addiction or psychiatric problem) <input type="checkbox"/> b. Attorney practicing out of normal area of expertise <input type="checkbox"/> c. Attorney handling file/matter alone <input type="checkbox"/> <ol style="list-style-type: none"> (i) No other attorney in firm with knowledge of practice area <input type="checkbox"/> (ii) Inadequate or no review or oversight of file by second attorney <input type="checkbox"/> d. Paralegal handling matter alone – inadequate or no review or oversight of file by an attorney <input type="checkbox"/> e. Inadequate or no practice group management <input type="checkbox"/> |
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II. TIME RECORDING, FEES, BILLING AND COLLECTIONS

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Fee dispute with client <input type="checkbox"/> <ol style="list-style-type: none"> a. Firm threatened suit for fees <input type="checkbox"/> b. Firm initiated suit for fees <input type="checkbox"/> c. Firm counterclaimed for fees <input type="checkbox"/> 2. Improper timekeeping/time recording <input type="checkbox"/> <ol style="list-style-type: none"> a. Timekeepers entered time seven or more days after date work performed <input type="checkbox"/> b. Substantive (more than editorial) changes in description of work made subsequent to original time entry <input type="checkbox"/> 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 <input type="checkbox"/> d. Impossible (e.g., 25 hour day) time entries recorded <input type="checkbox"/> e. Identity of person performing task changed after original time entry <input type="checkbox"/> f. Inadequate or inaccurate description of work performed <input type="checkbox"/> 3. Improper withdrawal of representation for failure to pay <input type="checkbox"/> | <ol style="list-style-type: none"> B. Client Relations <ol style="list-style-type: none"> 1. Categories of Failure <ol style="list-style-type: none"> a. Failure to follow client's instruction <input type="checkbox"/> b. Failure to obtain client consent <input type="checkbox"/> c. Failure to inform client <input type="checkbox"/> d. Improper withdrawal other than for failure to pay <input type="checkbox"/> 2. Causes of Failure <ol style="list-style-type: none"> a. Attorney practicing out of normal area of expertise <input type="checkbox"/> b. Attorney handling file/matter alone <input type="checkbox"/> <ol style="list-style-type: none"> (i) No other attorney in firm with knowledge of practice area <input type="checkbox"/> (ii) No review or oversight of file by second attorney <input type="checkbox"/> c. Inadequate practice group management <input type="checkbox"/> C. Intentional Wrongs <ol style="list-style-type: none"> 1. Categories of Failure <ol style="list-style-type: none"> a. Malicious prosecution/abuse of process <input type="checkbox"/> b. Fraud <input type="checkbox"/> c. Defamation <input type="checkbox"/> d. Violation of civil rights <input type="checkbox"/> 2. Causes of Failure <ol style="list-style-type: none"> a. Attorney handling file/matter alone <input type="checkbox"/> <ol style="list-style-type: none"> (i) Failed to make adequate investigation <input type="checkbox"/> (ii) Ignored information making client's claims suspect <input type="checkbox"/> b. No review or oversight of file by second attorney prior to commencement of litigation <input type="checkbox"/> c. Inadequate review or oversight of file by second attorney prior to commencement of litigation <ol style="list-style-type: none"> (i) Failed to make adequate investigation <input type="checkbox"/> (ii) Ignored information making client's claims suspect <input type="checkbox"/> |
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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

d. Inadequate practice group management

(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

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

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