



The Fundamentals of Loss Prevention for Lawyers

EXCERPT

► **CHAPTER 11: Reducing
Risk of Substantive Errors**

Serving Illinois Lawyers

Chapter 11: Reducing Risk of Substantive Errors

Most of the preceding chapters have focused on office management issues. The focus of this chapter is improving your legal work product. Many legal malpractice claims boil down to a lawyer's failure to know the law or a misinterpretation of the law. These are called "substantive errors." There are several steps that lawyers can take to increase the quality of their legal services and reduce the likelihood of a substantive error:

Know your areas of expertise

A surprising number of malpractice claims arise each year because lawyers accept work that is outside the areas of their expertise. If you are unsure of the law in a particular area, decline the representation or co-counsel with an expert in the field. (Remember to always obtain the written permission of the client when splitting fees.)

If you are a member of a larger firm, don't forget to tap into the knowledge and expertise of other lawyers in the firm. Solo practitioners can develop relationships with colleagues in other practice areas through bar associations. The [Illinois State Bar Association Section Council](#) chairs should be able to recommend practitioners in your area who specialize in particular fields.

Supervise and train younger lawyers

Establish a program for training and supervising younger lawyers. Assign a senior lawyer to monitor the work of each younger lawyer on a regular basis.

Peer review

An effective peer review program can identify weaknesses in your firm's risk management practices before a claim arises. Under a peer review program, a random sampling of each lawyer's files is reviewed by another lawyer in the firm at least once a year. The designated lawyer then reviews the file for the following:

- conflicts check;
- engagement letter;
- organization and documentation;
- communication with the client;
- timeliness;
- client consent;
- client satisfaction with performance and fees;
- closure letter; and of course,
- work product.

Statistically, most malpractice claims are made against lawyers who have been practicing for at least ten years. Thus, every member of the firm should benefit from peer review, not just junior lawyers. Solo practitioners can also use peer review by asking a respected colleague to review their files. ***You must, of course, obtain written permission from the client first and the process should be properly documented***

to ensure that confidentiality is maintained relative to the reviewed materials. Most clients will look favorably upon a lawyer's request to improve the quality of their work through the peer review process.

Require the approval of two partners for opinion letters

Many transactional firms require at least two partners to review and approve all opinion letters that are issued by the firm. This practice may prevent one partner from providing an opinion that is overly broad or promises too much. Solo practitioners can seek the advice of a respected colleague without revealing the client's name.

Continuing legal education

Lawyers must continually keep abreast of new developments in the law. This can be achieved in many ways, such as attending seminars and reviewing legal periodicals or advance sheets. Joining a specialty bar or a practice section of a state or local bar association is also an excellent way to stay informed and current. ISBA Mutual sponsors [free online CLE](#), the [Illinois State Bar Association Solo & Small Firm Institute](#) both of which can be found at www.isba.org. We also encourage all insureds to take advantage of the Risk Management resources on our website at www.isbamutual.com, including subscribing to the [Liability Minute](#) for updates about emerging risk issues and attending the Jerry Mirza Risk Management Conference, which is a live seminar available exclusively to our insureds.

Use checklists and forms

Even seasoned lawyers make mistakes. Checklists are a vital safeguard against errors and omissions. There are literally thousands of checklists and forms available to assist lawyers in every practice area. Begin with a checklist from the library or a colleague and then add your own enhancements over time.

Transactional lawyers should use closing lists that clearly set forth the items that must be accomplished and which party is responsible for each item (e.g., the lawyer, opposing counsel, the client, or an outside expert such as an accountant). Before the file is closed, require the responsible lawyer to initial the closing list, evidencing that all items were completed, including post-closing items such as filing security interests.

Many useful forms are available through the Illinois State Bar Association website at www.isba.org/forms. When using a form to draft a document that is submitted to a client, court, or third party, be sure that your final product is complete and appropriately tailored to the case, and that it does not contain leftover references to unrelated parties or matters.

Check the credentials of new lawyers and lateral hires

Before hiring new associates or bringing new partners into the firm, check their credentials. Verify their law school affiliations and previous employment history. Also check the [ARDC Lawyer Search](#) to ensure that the lawyer is registered to practice law in Illinois and is in good standing. In addition, ***determine whether the new partner or associate is willing to learn and follow your firm's office procedures*** with respect to such matters as client selection, calendaring, conflict checks, and documentation. (For more information, see the sections on [Client Screening](#), [Calendaring and Time Management](#), [Conflicts of Interest](#), and [Documentation and Case Management](#).)

One rogue lawyer who refuses to follow the [Illinois Rules of Professional Conduct](#) can wreak havoc on a firm. You should of course also check for potential conflicts between the incoming lawyer's past and

present clients and your firm's client base. (For resources, see [Types of Names to Be Added to Conflict of Interest Database](#) and [Conflict of Interest Search Forms](#) in the section [Sample Letters and Forms](#).)

Reducing Risk of Substantive Errors Do's and Don'ts

Do...

- ✓ Engage in peer review.
- ✓ Supervise and train younger lawyers.
- ✓ Use checklists and forms.

Don't...

- ⊖ Don't take on matters outside of your expertise without help from a seasoned practitioner.
 - ⊖ Don't hire new lawyers' or laterals' without checking their credentials.
 - ⊖ Don't miss CLE programs that can help you keep abreast of changes in the law.
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Addenda: Sample Letters and Forms

Types of Names to Be Added to Conflict of Interest Database

This is not a complete list.

Litigation

Insured
Plaintiffs
Defendants
Insurer
Guardian Ad Litem
Spouse
Expert Witnesses
Other Witnesses/Deponents
Lienholders

Probate

Deceased
Executor/Administrator
Spouse/Children/Heirs/Beneficiaries
Guardian/Conservator

Divorce

Client
Spouse
Children
Expert Witnesses

Worker's Compensation

Injured Worker
Employer
Insurer
Lienholders
Expert Witnesses

Real Estate

Buyer
Seller
Lending Institution

Corporation/Partnership Entities

Principal Owners/ Shareholders
Partners
Directors
Key Officers
Subsidiaries/Affiliates/Parent Corporation

Estate Planning

Grantors
Spouse/Children/Heirs/Beneficiaries
Trustee

Criminal

Client
Witnesses
Victim(s)
Expert Witnesses

Bankruptcy

Client
Spouse
Creditors
Debtors
Trustee of Bankruptcy Estate

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⁴ Lawyers should take care to include not only current names but, under some circumstances, former and alternative names, as well. For instance, this may require identifying maiden names, nicknames, corporate DBAs or trade names.

Conflict of Interest Search Form

- Search Only (do not add to system)
- Declined Client (add to system only if confidential information was obtained from non-client)
- New Client/Matter (add to system)
- Additional Information (add to system)

Client/Potential Client Name: _____

Other Name, Maiden, AKA, DBA.: _____

Matter (describe nature of representation): _____

File Name (if any): _____ File No. (if any): _____

Adverse Parties _____ Relationship Code _____

_____	_____
_____	_____
_____	_____
_____	_____

Other Parties Involved in Matter _____ Relationship Code _____

_____	_____
_____	_____
_____	_____

Requested By: _____ Date: _____ No Conflict Found

- Names Found as Follows: _____
- Searched and Entered By: _____ Date: _____



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