

Build good practice habits and avoid malpractice claims: The new lawyer

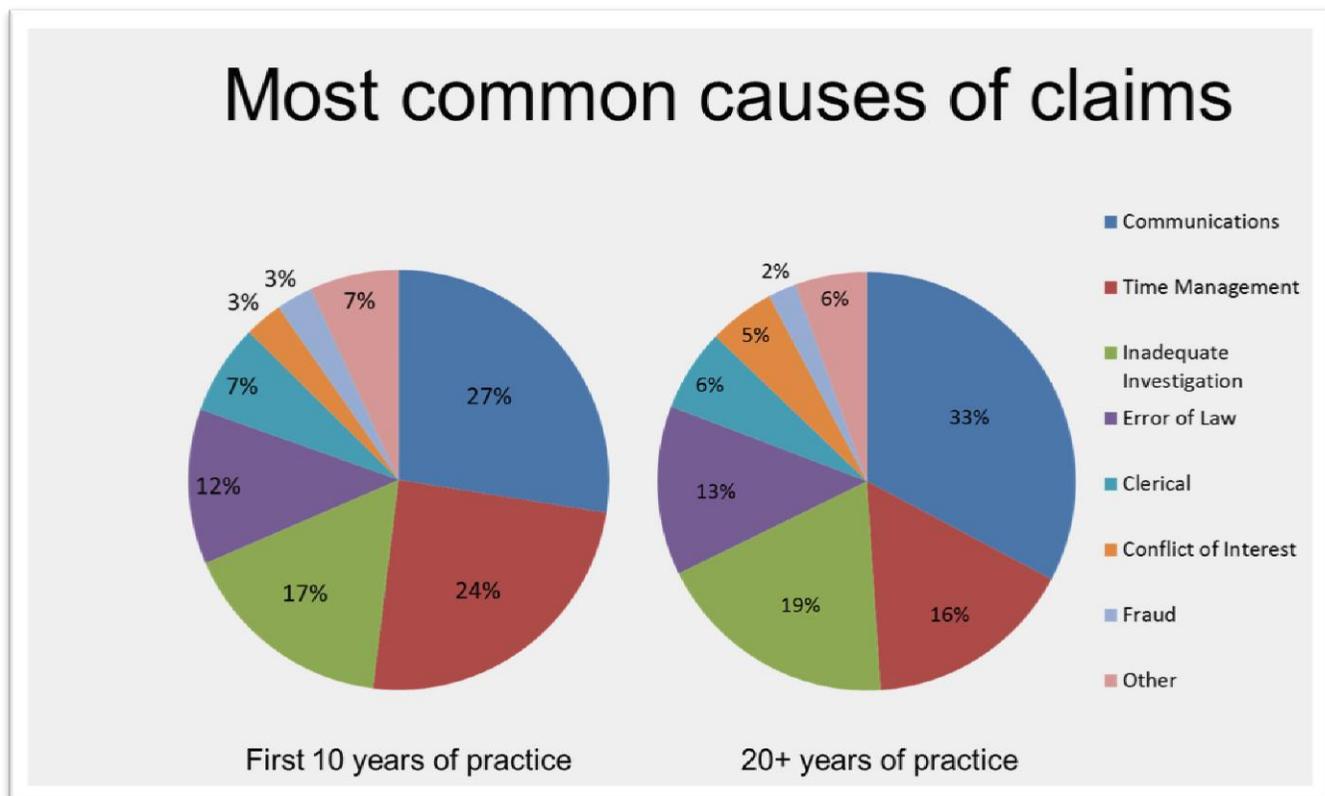
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You are just beginning to build the habits that can help or hinder your practice in the long term. Consistency in how you deliver service – from the questions you ask at intake to the steps you take when the client leaves the office – is one of the foundations to protect yourself against malpractice claims. Simple procedures like asking the right questions by following an intake form and calendaring and tickling deadlines and court dates as soon as you know them are hallmarks of good practice habits. On the other hand, haphazardly going through every client interview or thinking anew about the steps you should take on similar legal issues is a recipe for disaster. The experienced lawyer is not necessarily, by virtue of experience itself, a better lawyer. But the experienced lawyer, built on good practice habits, is likely better prepared to weather the ups and downs of practice. Best lay the groundwork now. Identify and adopt good practice habits.

Our malpractice claims statistics reveal several areas where you may face challenges that differ from seasoned lawyers. Let's take an in-depth look at where these challenges lie and what you can do to meet them.

Maintaining timelines and deadlines

In contrast to experienced lawyers, new lawyers may face a disproportionately large number of claims related to time management (see pie chart). Such claims arise when lawyers procrastinate on files, and when deadlines, filing dates, court dates and limitation periods are missed.



Time management errors can be prevented by building good habits like calendaring deadlines, limitation periods, and court dates as soon as they are discovered, such as at intake. Your calendaring system should warn you far in advance of deadlines several times, such as; within a year, six months, and thirty days. Practice management software can do this easily, but it is only as useful as the data you put into it.

Another good practice habit is to calendar when you expect major legal steps to be completed, not just deadlines. This can help you take control of the life of a file at every step. Instead of reacting to a deadline when you happen to be reminded, you can be pro-active and focus on the next task in front of you. As a starting point, litigators may wish to diarize deadlines for filing a complaint, serving the parties, conducting depositions, and setting a trial date. Transactional lawyers can diarize the steps involved with the particular deal, such as reviewing contracts, revisions, conducting searches and due diligence, and closing dates. You are ahead of the game if you can complete such steps well before a tickler kicks in to remind you of an impending deadline.

Know your file

Files can wind their way into the black hole of never-touched-until-it’s-too-late because the lawyer has failed to assess the file properly. Files that are worth a minimal amount or have complex issues that are not dealt with can be put into the “do-this-later” pile, never to be found again. The duty to the client doesn’t stop just because a case is not worth much or the difficulties are hard to overcome.

Manage Your Workload

Overwhelmed by work? This is an opportunity to either manage your time more efficiently and/or discuss with senior lawyers how you can be most effective. If you are losing sleep you are less effective; if you are stressed to the point of exhaustion you are less effective; if you are further isolated you are less effective. One tip on how you can manage your tasks on a daily basis is to take out a piece of paper and split it into four quadrants, as below (also Google Steven Covey). Organize your tasks into each box and begin work under the following guidelines.

	URGENT	NOT URGENT
IMPORTANT	<p>Do these now.</p> <p>Examples: Working on brief, call back client for decision that must be made today</p>	<p>Diarize a time and day to do this.</p> <p>Examples: Marketing, setting policies and procedures, non-urgent legal work.</p>
NOT IMPORTANT	<p>Consider delegating these tasks.</p> <p>Examples: Calling back a client for non-urgent matters, Refilling pen and paper orders</p>	<p>Save this stuff for later!</p> <p>Examples: Catching a basketball game.</p>

No matter how well organized you are, sometimes the workload is just too much. However much it may hurt your ego or your perceived reputation, it may be better to lessen your workload (and in fact it will probably help your reputation to deliver excellent work consistently than to deliver sub-par work consistently) and to say “no” to incoming work.

Communicate!

While communication errors are the primary source of claims for just about any lawyer of any vintage, new lawyers do seem to fare better on this score. Be careful when discussing the prospects of a case with your client. Throw out a number valuing a case at intake, and that sets an anchor in the client's mind for the life of the file. If you settle outside of the number, you risk upsetting your client which can in turn trigger a malpractice claim. Discuss the strengths and weakness of the case with confidence, but think twice before you give an estimate.

Transactional lawyers should clearly document the client's intentions and your recommendations. Does a real estate client want to add another floor to a building? What are the chances the permits can be obtained? Does a client buying out a company want to break certain business relationships and create new ones? Are the existing contracts amenable to such a change? When a client says one thing and you do another, this can result in a malpractice claim. If you have documented your client's intentions and your recommendations, you can better protect yourself in the event of a claim.

Good communication is about being honest with your client and keeping your client apprised of the steps in a file. Give recommendations and take instructions, and document when you do both.

Investigating a file

Inadequate investigation is the third most common cause of malpractice claims for lawyers at all experience levels. A typical example is not asking the right questions at a client interview. Before drafting a will, the lawyer should at a minimum probe into what assets the clients own and where they are, and determine whether there are children or other beneficiaries from other relationships that may claim a right to property in the estate. Similarly, a corporate lawyer helping a client buy a business should at least ensure all obligations are determined as part of the due diligence process. And real estate lawyers should investigate any liens, easements, encroachments, and other restrictions. Determining these issues can be easily done by asking the client or the other parties involved, but omitting to ask can lead to nasty surprises.

Inadequate investigation also includes not hiring the right experts to assess what's at stake. Personal injury lawyers may not be able to properly assess damages without a medical expert report to determine long-term prognosis, and family lawyers may be better off relying on an accountant to value a cash business, instead of doing it themselves with potentially faulty assumptions. In most practice areas there are times when an expert can do a better job than the lawyer, and the extra expense may be worth the while.

Conclusion

In these economic times it is prudent to minimize costs where possible. This includes minimizing the cost in time and money of dealing with malpractice claims. Practices, policies, and procedures yield big dividends as practice management tools. They can help you manage similar files consistently, keep you on top of your tasks, and ensure that others in your office are able to step in should you need help. Avoid malpractice claims and build the good habits that will form the foundation for your future experienced self.