From the minute you start taking on clients, the clock on malpractice potential begins ticking. It’s as much of a certainty as anything in the legal profession. In fact, the American Bar Association (ABA) calculates the likelihood of a private practice attorney being sued for malpractice in any given year runs between 4 and 17 percent. While that may seem low, we know that attorneys who are establishing their firms today can expect, on average, at least three malpractice claims over the course of their careers.

It’s a risky profession, but you probably knew that when you entered law school – risk comes with the territory. And each year you stay in practice, and the number of cases and matters you manage grows, your risk increases, especially when clients perceive a particular outcome to be unfair or that it could have been avoided.

While odds of a malpractice claim are not in your favor, it’s not inevitable. The right processes and technology can help you safeguard yourself from the potential of a malpractice claim. In fact, we have laid out eight preventative tactics here that you can take to help safeguard your firm and minimize your malpractice risk.
Avoid trouble with trust accounting

Mismanagement of trust funds is one of the leading reasons lawyers get disbarred. Many attorneys get into trouble quickly by using generic business-accounting software to track trust funds. It’s important to implement a formal accounting software program that is geared to the specific needs of a law practice. While generic software might be inexpensive and easy to use, it is not designed to accommodate legal requirements or deal with local regulations that you need to comply with in order to protect your firm.

When selecting your firm’s accounting software, look for features that show you where the money went, matter by matter, and will keep you apprised of funding levels. It’s best to find an end-to-end integrated system designed to handle banking functions, general ledger entries, billing, reconciliation, case and matter management and reporting, all in one system.

As an extra safeguard, create tight internal controls. It’s good business, and it will help prevent fraud. Law firms are just as vulnerable to financial crimes as any other business. Good controls will help reduce your malpractice liability exposure and make time-consuming trust audits less likely. Internal controls help to clearly define job responsibilities and lines of authority. Don’t lose sight of the fact that in addition to being a legal practitioner, you are a business owner and must retain control over business responsibilities.

Further, you can build accountability into your client communications. If you bill on a regular basis and a client has a trust account with you, consider including a statement of trust with your invoice. This statement can just be a simple transaction list of all trust activity since the last bill to ensure everyone has the same view.
Conflicts of interest continue to be among the top five reasons for malpractice claims, according to the ABA Profile of Legal Malpractice Claims (2008-2011). Getting this part of your practice right is fundamental to mitigating your malpractice risk. One of the contributing factors is many firms get by using a manual client intake process. Such manual elements further increase the risk of errors and jeopardize the firm’s compliance with regulatory requirements.

To minimize the potential for trouble and create the right expectations in a new relationship, the client engagement and intake process should be handled with diplomacy, discipline, and forethought. You can take some of the risk out of your client intake processes by deploying a practice management system to automate some of the process and ensure you are doing comprehensive conflict checking.

For client onboarding, automated is far better than manual. You should use a software system that can help you check all available conflicts and automate the process.
law firm records, searching for any possibility of conflicts in time and expense entries, related parties, vendors and employees, previous conflict searches, and client matter demographics. And, for additional protections from potential malpractice claims in the future, you’ll also want to track your firm’s entire activity history and keep it in the case file, so there’s always an audit trail if questions arise down the road.

Accuracy is critical in client onboarding, accuracy counts, especially when it comes to names, numbers and spellings; the errors you make now will come back to give you trouble later. The right software tools can help to reduce the risk of entering incorrect data commonly associated with using multiple information repositories, firm systems and applications to manage the client intake process.

Finally, close out the client intake phase by crafting a written engagement agreement or non-engagement letter. The engagement agreement defines the scope of the client relationship and sets expectations. While, the non-engagement letter should be brief and formally close out the relationship with a potential client.

Top 5 Most Common Alleged Errors:

1. Failure to know/properly apply law
2. Procrastination in performance/ followup
3. Inadequate discovery/ investigation
4. Planning error/ Procedure choice
5. Lost file, document or evidence
Eliminate the risk of missed deadlines

Among the most embarrassing mistakes that lead to malpractice, is missing a deadline. But according to the ABA malpractice report, calendaring errors still account for significant portion of malpractice claims. In fact, missed deadlines often create a situation that affords no opportunities for recovery, and a liability scenario that tracks directly back to a no-excuse blunder on the part of a lawyer or practice. Usually, all that remains to be done is to calculate the dollar value associated with the claim.

The importance of meeting deadlines is another good example of why lawyers need professional software solutions designed for the legal industry. The right kind of software will give you options for multiple reminders and alerts – as deadlines approach – so that you, assistants, partners and others in the firm will be aware of the situation, take action and minimize procrastination.

Data entry is a high priority starting point for routine case handlings. Take advantage of tools that keep your deadlines straight. Today’s marketplace gives you a choice of systems and software – for docket control, case management and calendaring – designed to eliminate these kinds of errors. Once you put details into the system and get the case file established, you set in motion a process that looks at statutes, calculates timelines, and establishes deadlines.
For the first time since 1985, when the ABA Standing Committee on Lawyers’ Professional Liability began publishing their four-year studies, personal injury is no longer the leading practice area for the highest risk of malpractice. Real estate firms are now the target of more malpractice claims.
TACTIC 4

Close the communication gap

There is usually a flurry of activity and a lot of dialog at the beginning of client / attorney relationships. Constant communication is reassurance to clients that action is being taken, their interests are being served and everything is in control. After the initial courting, activity normally slows down, which is when communication concerns and misunderstandings can surface.

A surprising number of malpractice claims are simply the result of poor communication, and you as the attorney must take responsibility for that. In the absence of news or updates about their situation, clients might start to feel anxious and neglected. Common issues include client relations, failure to obtain the clients consent, and failure to follow a client’s instructions. Leave nothing to chance and don’t assume anything. Have clear communication and get it in writing, if necessary.

Make a commitment to keep the client dialog going regardless of how each case is progressing. When you touch base with clients regularly (every 30 days, at least), a little bit of basic communication skill goes a long way. The contact is an important relationship builder that offers opportunities to answer client questions and explain the status of each case as it moves through the legal system.

It’s easy to add timely communication reminders and alerts to most practice management software applications. That simple step will help you maintain contact with clients, which is a good dose of preventive medicine against misunderstandings, procrastination and potential malpractice problems of a more serious nature.

Reminder

Contact Client
Today at 10:30 am
touch base at least every 30 days
There is a up to a 17% likelihood of a private practice attorney being sued for malpractice in any given year.
Follow real and virtual paper trails

In terms of administrative errors, lost files or misplaced documents grabbed the number two spot on the latest ABA malpractice report. It is critically important to keep track of paperwork; and, that’s true regardless of whether your documents exist as digital files or in traditional hard-copy formats. Although new software and systems may have made it easier to create, save and search for electronic files, those capabilities have not eliminated the requirement to be smart about handling your client information.

Establishing a uniform file organization system helps reduce your risk of losing files. When implementing an effective file management system, focus on two areas:

1. **Discipline** – Be diligent about keeping track of everything. When in doubt, document it, scan it, copy it and save it. It’s often hard to know in advance which items will serve as proof-points in matters you’re pursuing, or be equally useful in refuting a malpractice claim filed by a disgruntled client.
2. **Planning** – Proactively tag, catalogue and index or store your files. In doing so, address these areas:

- Items you’ll retain or return to clients after cases are closed. Be aware of the legal requirements and retention timelines associated with some types of documents.

- Items in both physical and electronic formats require special handling to safeguard and secure confidential or sensitive information.

- Items that must be retained in original form – based on content, signatures, seals or other considerations – such that scanned or copied versions are insufficient.

- Backups and recovery provisions to protect the interests of clients and the firm in the event of accidents, natural disasters or technical problems.

Digitizing files and cutting back on paper documents can help operational efficiency and reduce the need for file cabinets. However, you’ll do a better job following paper trails with a back-to-basics approach that adds discipline and planning to the process.
A Matter of Size
It might surprise you that the 2-5 attorney firms run the greatest risk of malpractice claims, running double the expected rate.

Solo Attorneys

Represent 48% in private practice 34% malpractice claims

6-10 Attorneys

Represent 7% in private practice 10% malpractice claims

2-5 Attorneys

Represent 15% in private practice 32% malpractice claims

For some reason, firms with 2 to 5 lawyers defy the odds. When malpractice claims run double the expected rate, the insurance industry looks for potential causative factors and the likely rationale behind the numbers.
Establish a routine, and adapt to new technology

How you practice law has evolved in the last 10 or 15 years. There are new ways of communicating with clients and we are able to practice law no matter where we are.

Routine is not a bad word. Routines are familiar, comfortable, and when written as a standard protocol for all members of your law firm to follow, it provides comfort that tasks are being completed accurately and consistently. Routines ensure the tasks, activities and processes you use that keep you on track and allow you to practice law effectively. Be cautious of anything that upsets the “back to basics” approach of your own routines. These disruptors upset the norms you’ve already established and are a potential source of malpractice trouble.

Establishing a routine doesn’t mean you shouldn’t adopt new technology or new processes to make you more efficient. Technology is a disruptor only if you allow it to be. With mobility apps, for example, establish new routines allow you to practice law on the go. Establish rules to make sure you safeguard your files whether you are working at our desk, in the office or working from your home office or in your car.

The point here is to not overlook the basics; they matter and help curtail the fundamental kinds of errors that account for thousands of malpractice claims.
As your firm grows, you may find you need new tools that grow and evolve your firm over time. The tools you used as a small firm may not be the right fit now you are a larger firm.

When lawyers are first starting out, or joining together to form a new practice, there’s a not-to-be-missed opportunity to move forward in the right way by making smart decisions. Technology choices are part of that process; here are a few factors to consider:

**Don’t aim too low.** Simple and basic are good parameters, and often associated with low cost. However, your target is a solution you can grow into and use for the long run. Initial costs are an important element that should be balanced by the costs associated with learning new software, inputting critical client data into systems, and the eventual need to upgrade or change as your practice matures.

**Find the sweet spot between leading-edge and bleeding edge technology.** Advanced capabilities are attractive features – but they are surrounded by a number of “ifs” that should temper decisions. If the capability supports your business goals, if the payoff timeline is favorable, if you’re comfortable contributing to early market activities, if you trust the supplier … you could be in good shape.

**Look at track records carefully.** Whatever technology choices you make will hopefully last you a long time. Pick a supplier with proven solutions that will outlast your technology decisions, and be around as long as your practice will. Doing so will ensure you’ll have a ready source for upgrades and enhancements and support going forward.

Whatever systems and software decisions you make now should be revisited periodically to make certain they’re still the optimal choice for your firm, or if you’re due for an upgrade. Nothing stays the same … except, perhaps, the ever-present risk of malpractice claims.
Older firms are bigger malpractice targets

You might assume new lawyers are the most likely individuals to face a claim. Based on insurance industry statistics, that’s not the case. Seasoned attorneys with 11-to-20 years of experience are the group with the highest percentage of claims ... almost 35 percent from one company’s perspective.

The biggest reason for this surprising fact can be found in the extensive case history these lawyers compile over the years. In other words, they’re being “haunted by the ghosts of matters past” as malpractice issues surface from previous engagements they’ve handled. It is a frustrating numbers game that reaches its peak in the middle years of a professional career.

Rather than be discouraged about what may happen in later years, younger lawyers should consider the facts as a guiding piece of advice. Now is the time to set yourself up for success and prepare for the future.

New lawyers just starting out have a tremendous opportunity to establish a practice the way they want. It’s a blank slate. What kinds of clients are you going after; how do you want to track client information and manage cases; how will you handle finances; what processes and procedures will you be willing to follow without fail? The answers to those questions can help them create their own vision and version of what the future will be; and, it can be one where malpractice issues are wisely avoided.

Firms with 11-20 years experience

35% more malpractice claims
Good listening and good information are the foundation for good documents—in other words, documents that won’t get you sued. Inadequate discovery of facts and other investigation errors usually stem from a failure to dig a bit deeper and recognize issues or requests that are relevant to the matter you are working on. As a best practice, use document creation tools to systematically guide you through the process. With these tools, one question leads to another to automatically ensure all critical areas are covered and you get the right information.

Some attorneys are tempted to repurpose an existing will or deed by simply swapping out names and other pertinent details for the new client’s case. This is not a good idea. Some of the finest details, such as not changing “he” to “she” can turn out to be important down the road and potentially costly.

The best way to steer your firm clear of treacherous waters is to insist on legal-specific software to help you track and maintain critical information. With the right tools to automate your processes, you’ll be able to work faster without cutting corners.
With malpractice claims escalating an astounding 30 percent from 2008 to 2011, there’s more reason than ever to address the preventable errors that are driving the disturbing increase in claims. The practice management and legal-specific accounting tools available to law firms today means there is simply no good excuse for the most common errors that lead to malpractice claims: lost files, misplaced documents and evidence and procrastination errors.

Many of the errors we see across the board can be minimized by taking some basic precautions and implementing the right practice management tools and processes into your firm. To recap, the basic malpractice-avoidance measures include:

1. Avoiding trouble with trust accounting
2. Simplifying and automating client onboarding
3. Eliminating the risk of missed deadlines
4. Closing the communication gap
5. Following real and virtual paper trails
6. Establishing a routine, and adapting to new technology
7. Finding the tools that best fit your firm’s growth
8. Generating airtight documents

Taking the necessary steps to avoid malpractice claims in the first place is not only easier, but also considerably less costly and time-consuming than dealing with the consequences later.
Loretta Ruppert is a Sr. Director with LexisNexis Law Firm Practice Management, contributing her experience as a previous business owner and legal technology consultant, manager of professional services for a CPA firm, subject matter expert for developing back office software, an accountant and probably most relevant, as a former law firm employee and user of law firm practice management and financial systems.

Loretta has been with LexisNexis for ten years in various positions from product development, solution line management, community management and bar relations to product marketing. She earned a Bachelor of Science degree in Accounting.

Todd C. Scott, J.D., has served as Vice President of Risk Management and Member Services for Minnesota Lawyers Mutual Insurance Company since 2002. He was previously head of MLM’s technology subsidiary, Mutual Software, and also worked as an Attorney/Claims Representative since joining the company in 1994.

As a consultant and educator, much of Todd’s duties include helping MLM policyholders select and implement software systems appropriate to their law practice. He is also the lead attorney supporting MLM’s series of CLE webcast programs covering practice management activities. Todd, and his spouse and children, live in the Minneapolis area.
About LexisNexis® Juris®
Gain deeper insight, make sound decisions and drive stronger financial performance for your firm. With Juris®, your firm gains greater control over receivables, payables, trust accounting and budgeting. And with Juris analytical tools and on-demand performance intelligence, you’ll gain deeper insight into your firm’s financial outlook.

To learn more visit www.lexisnexis.com/juris.

About LexisNexis® PCLaw®
Take control of your firm’s matters, calendaring, billing, financial and trust management, all from one program. PCLaw® keeps clients and case matters organized; while giving you the right tools that keep finances on track – from billing to accounts payable and receivable to trust accounting.

To learn more, visit www.lexisnexis.com/pclaw.

About LexisNexis® Time Matters®
Optimize your firm’s efficiencies, client service levels and competitive position - anytime, anywhere- with Time Matters. Thousands of law firms and legal departments trust the award-winning Time Matters® practice management software to help streamline operations and improve efficiency-no matter where their practices take them. Time Matters features highly customizable functionality to help you foster collaboration on matters, streamline internal processes and fuel growth through increased billable hours and profitability.

To learn more, visit www.lexisnexis.com/timematters.
About LexisNexis Legal & Professional

LexisNexis Legal & Professional (www.lexisnexis.com) is a leading global provider of content and technology solutions that enable professionals in legal, corporate, tax, government, academic and non-profit organizations to make informed decisions and achieve better business outcomes. As a digital pioneer, the company was the first to bring legal and business information online with its Lexis® and Nexis® services. Today, LexisNexis harnesses leading-edge technology and world-class content, to help professionals work in faster, easier and more effective ways. Through close collaboration with its customers, the company ensures organizations can leverage its solutions to reduce risk, improve productivity, increase profitability and grow their business. Part of Reed Elsevier, LexisNexis Legal & Professional serves customers in more than 100 countries with 10,000 employees worldwide.

LexisNexis helps professionals at law firms and legal departments of all sizes manage the business element of their practice with innovative software and mobile solutions for customer relationship management, competitive intelligence gathering and assessment, time and billing management, matter management, client analysis, legal holds and more.

LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. © 2013 LexisNexis. All rights reserved.