When it comes to legal malpractice, an ounce of prevention is worth a lot more than a pound of cure.

Effective case management tools are the best way to avoid the cost and stress of lawsuits by clients.

Who gets sued?

Unfortunately, no one is immune from claims by angry or dissatisfied clients. Whether justified or not, claims have steadily climbed in number. Clients have demonstrated an increased willingness to sue their attorneys. According to statistics cited by Todd Scott, VP for Risk Management at Minnesota Lawyers Mutual Insurance Co., lawyers establishing firms today can expect at least three malpractice claims over the course of their careers. And although attorneys in the practice areas of personal injury and real estate will be the defendants in almost 42 percent of malpractice actions according to a 2007 study by the ABA Standing Committee on Professional Liability, no area of law is exempt. Practice specialties like intellectual property may account for a small percentage of the total, but the percentage figure belies the complexity of the claims and the potential amount of damages.

Another important point is that experience is no protection. Contrary to most people’s expectations, younger lawyers are not involved in an outsized number of cases. The same ABA study provides additional data showing that lawyers who have been practicing between 11 and 20 years have the biggest share of actions. This is a result of their involvement in more difficult cases, the number of matters they have been involved in, and their often larger workloads. Another surprise in the ABA study is the lower rate of actions against sole practitioners. Firms with 2 – 5 attorneys account for the most disproportionate percentage of lawsuits. Fully one-third of all claims are against lawyers in this size firm despite their 15 percent share of the legal sector. Obviously, any out-of-the-box tool that can reduce an attorney’s exposure to the risk of a lawsuit should be a welcome addition to a firm’s resources.
Why are attorneys sued?

It’s mostly about negligence, and much of the litigation could easily be avoided. More than 40 percent of cases are caused by administrative errors and breakdowns in client relationships. Indeed, poor attorney-client communication can be the cause of many claims based purely on misunderstandings or unrealistic expectations rooted in a failure to frequently and effectively communicate. An effective case management system could easily prevent most of these problems as evidenced by the discount on malpractice insurance premiums that are available in many states to attorneys who use these systems.

It’s about more than calendaring

Deadlines, deadlines. There is perhaps no more embarrassing moment for an attorney than the realization that an important deadline has been blown. The docket control feature of a case management system with multiple deadline warnings, group participation warnings, control reporting to senior attorneys, and dual calendaring systems synchronized with handheld wireless devices, smartphones, etc., can avoid such embarrassments. The chain schedule function that case management systems can establish for you automates the setting of deadlines and apportionments for common matters and takes much of the risk of missed deadlines out of a practice.

In addition to this, workflow can be standardized, and specialized workflows can be created for complex cases. Document creation can be simplified by accurately merging data throughout an information system which also decreases the risk of mistyping information. Data can reside in more than just a case management system, for example, if a firm merges in a new area of practice with an existing law firm, there will likely be other data sources with important information about parties involved with cases and matters. A case management system that checks multiple data sources can identify potential conflicts of interest, which is vital in meeting ethics responsibilities.

Client relationships

As noted above, failures or breakdowns in attorney-client relationships account for a large percentage of preventable conflicts. The right case management tools can prevent these messy legal actions. For example, reminders to contact clients regularly even if there have been no significant changes in the status of cases reduces the risk of clients’ feeling neglected or ignored. Consolidating all the client information from different databases makes it easier for practitioners to manage client relationships. Email management after cases close can also be an important tool. Some case management systems even generate thank-you letters to referral sources.

Existing systems aren’t sufficient

What’s wrong with a manual system? Plenty if you think about the problems that result from floods, fires, and other acts of God. The loss of paper files or electronic files that have not been properly secured can be a real nightmare and leave an attorney open to allegations of negligence. Even if no legal action results from the loss, the cost in time and money will be substantial. Although there are many calendaring systems and e-mail organizers on the market, most of them are not designed specifically for lawyers. Consequently, they cannot assist attorneys in maintaining an appropriate database of initial client intake information, checking for conflicts, all of the related case activities and archiving closed cases.

Choosing the right system

So, how do you go about selecting a new system? There can be a lot of confusion because of the blurry distinctions between software products. An important preliminary consideration is determining what kind of computer users the firm employs. Additionally, there must be a clear understanding of how the new software will interact with existing third-party applications. If the attorneys in question are less than current with the latest software tools, it makes sense to let an outside expert evaluate the situation and make software recommendations. And even if the senior members of the firm are computer savvy, it makes sense to involve all staff members in choosing the firm’s system. Correct budgeting of money and time for purchasing, installation, configuration, and training is also important. Staff members should be involved in these decisions as well. And it does not pay in the long run to skimp on training. Getting everyone up to speed as quickly as possible should be a priority.
It is always tempting to consider getting the latest, hottest product from that cool, funky start-up company that everyone is talking about. However, there are a few red-flag issues to be mulled over. Will that company still be there next year when you need upgrades and updates? What kind of ongoing technical support will be available? Isn’t it safer and more cost-effective to stick with established companies with proven track records that are going to be available down the road?

**Plan for some bumps**

Even with the help from product consultants and training, transitioning to a new system can be challenging. Unless you are installing a new system and starting from scratch, it is advisable to run sample bills and reports to ensure the information from the new system is what you expect. Adopting a new case management system doesn’t mean that you have to use 100 percent of the features on day one. Gradual adoption is helpful for employee buy-in and is also advised to allow time to tweak the system along the way. Often a firm that hasn’t had a case management system before now has to take a deep dive into how the firm does things, reviewing processes and formalizing and standardizing them in order to make the most out of their case management system. Gradual adoption can prevent loss in staff productivity and keep the entire process transparent from the client perspective. Using a certified consultant to guide you throughout the entire process is valuable, but can prove most important during the initial period of use.

**Know who you can trust**

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