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Gatekeepers and Guardrails: Communication That Protects Clients and Their Interests

The support staff of a law firm – such as office managers, paralegals, research assistants, IT professionals, and docketing clerks – play an important role in the running of the law firm. Members of support staff may be the first line of defense in mitigating or avoiding legal malpractice and disciplinary actions as they are often in client-facing roles and client servicing roles. Attorneys work with and rely on the assistance of support staff in order to carry out the legal services they provide to their clients. Support staff may be the ones responsible for obtaining the necessary signatures for an agreement to be finalized, and without their efforts, the parties would not be bound by its terms. The most impressive motion ever drafted fails if it is not properly filed with the correct court. Paralegals or docketing clerks may be responsible for confirming that such motions are filed properly. A “simple” real estate transaction may quickly fail if the proper financial records, releases and financial transactions are not completed. Every single day, just as lawyers do, members of support staff face situations that challenge the practice and require them to take steps to avoid and mitigate legal malpractice exposures that arise in the day-to-day practice of law.

What Does the Legal Malpractice Claims Data Reveal?

The American Bar Association (“ABA”) Profile of Legal Malpractice Claims provides a national snapshot of legal malpractice actions across the United States and Canada (see chart). The most recent version, published in 2024, covers claims data from 2020 to 2023. Solo practitioners face the largest percentage of claims at 28%, followed closely by law firms with 2-5 attorneys with 25% of legal malpractice claims. Members of law firm support staff play an important role in the rendering of legal services for law firms of varying sizes.

In reviewing the top alleged errors that led to claims categorized by Substantive Errors, Administrative Errors and Client Relations, it is critical to note that many of these errors are directly related to administrative tasks, these tend to be touchpoints of legal support staff. That is not to say they are responsible for the errors themselves. Rather, there may have been a breakdown in communication within the law firm that led to these errors.

Substantive Errors 40.96%	Administrative Errors 38.07%	Client Relations 13.86%
Failure to Know/ Properly Apply Law	Failure to Calendar Property	Failure to Follow Client Instructions
Drafting Errors	Clerical Error	Failure to Obtain Client Consent/ Inform Client
Inadequate Discovery/ Investigation	Failure to React to Calendar	Improper Withdrawal
Planning Error-Procedure Choice	Failure to File Document	
Failure to Know or Ascertain Deadlines	Failure to Follow Up	
	Lost File, Document, Evidence	

Communication Concerns

Pathways of communication vary by law firm. For small firms, the pathways of communication may be short, typically due to the close proximity of the attorney/s and members of support staff. In larger firms, pathways of communication may be more complex beginning with a partner to associate to paralegal to research assistant to docketing with various diversions along the way.

In a law firm environment, the “downstream” pathway of communication may be problematic. This is when those at the top, typically attorneys, delegate an assignment or task to a member of support staff and do not engage with support staff to address any questions that they may have. By not communicating with support staff, errors may be made due to a lack of understanding of the task at hand. This concept of communication, or rather lack thereof, is rife for creating legal malpractice and disciplinary complaint exposures. It is helpful if the attorney assigning the task is available to support staff to provide clarification regarding the assignment from the assignor. The attorney should be available to the member of support staff when questions, inevitably, arise over the course of completing an assigned task. Attorneys that are not available to answer questions of support staff are missing opportunities to avoid legal malpractice exposures. It should not be assumed that the individual receiving the assignment will not have additional questions or need to seek clarification on specific tasks. By working together, attorneys and support staff are avoiding legal malpractice exposures.

Great communication is beneficial to all and may help avoid legal malpractice and disciplinary complaint exposures, because greater communication between attorneys and all members of support staff helps the law firm in the provision of services to its clients. Law firms will benefit by working with the members of support staff and creating an atmosphere that encourages them to ask questions and seek help while completing assigned tasks. It is especially helpful to focus on good communication as the firm hires new lawyers and support staff who are navigating a new employer, the culture, practices and procedures and possibly a new area of practice.

Crisis Communication

One of the most difficult things to communicate is when something has gone wrong. As the familiar saying goes, “It wasn’t the crime but the cover-up” is an all-too-applicable lesson in the law firm setting when an error occurs and the pathways of communication completely breakdown. It seems to be human nature to notice a mistake and try to either hide it or fix it without involving others. In a law firm, when an error occurs and no one seeks assistance in correcting it, an opportunity to resolve the error is often completely lost.

Errors are an inherent risk in both personal life and professional practice, including the delivery of legal services. From a risk management perspective, attorneys should periodically engage in reflective analysis of errors or near-misses in their careers, with particular attention to how those issues were identified, disclosed, and remediated. Effective mitigation efforts often reveal that prompt corrective action, coupled with candor and transparency, is essential to minimizing harm and preserving client interests. Equally critical is the establishment and maintenance of a workplace culture that promotes psychological safety. Psychological safety is promoted when support staff and junior professionals feel empowered to raise concerns, identify potential errors, and communicate issues without fear of reprisal or dismissal. Such an environment encourages early detection and timely intervention, both of which are central to sound risk management practices. In the absence of psychological safety, errors may remain undisclosed or unaddressed, increasing the likelihood of escalation into more significant issues, including breaches of professional duty or exposure to legal malpractice claims. Accordingly, fostering open communication, reinforcing non-retaliatory reporting structures, and modeling responsive leadership are a strong component of an effective legal risk management framework.

Advising all employees, not just support staff, to seek help from others if a substantial or material error has occurred in the rendering of legal services, provides an opportunity to address the issue in a timely manner. Employees should know that by delaying the disclosure of an error, the chance to correct it may be lost. Employees should be made to feel that attempting to resolve what they think is an error on their own without input from others, prevents the chance to get help and an opportunity to find a resolution as a team.

Should a material error occur, the error disclosure to the client should be managed by the attorney assigned to the matter.¹ This difficult conversation will allow the attorney to provide factual information related to the material error and what that means to the interests of the client and next steps.

¹ CNA [To Err Is Human: A Guide for Attorneys on How to Manage Errors](#)

Client Communications

For those in practice long enough, there are memories of when clients did not expect their attorneys to be available to them at all times. Prior to the advent of email and cell phones, clients expected to call the law firm office and speak to “the gatekeeper” receptionist or paralegal. Although client expectations have changed, reality does not allow for an attorney to be constantly available to their clients. What has not changed is “the gatekeeper” role of support staff. Clients learn that members of support staff are usually much easier to reach when seeking information. Another consideration is that the client may not be charged for speaking with a member of support staff, unlike conversations with attorneys.

Because members of support staff play a key role in client communication it is important that there are protocols in place related to client inquiries, instructions and complaints.² Members of support staff should understand that although they want to be helpful, there are client inquiries that must be responded to by the attorney assigned to the matter. For example, clients wanting to know the likelihood of success, how long the representation is expected to continue, how much they will recover, or how much it will cost are all inquiries that should be escalated to the attorney. Client communications that involve making key decisions or providing tactical instructions to the attorney should be conveyed as soon as possible to the assigned attorney. Finally, any complaints made to members of support staff by clients should be escalated for assessment and response by the attorney assigned to the matter. Because clients may be more candid in their conversations with support staff, making them at times more casual and open, the first signs of dissatisfaction may arise here. Members of support staff should recognize that attorneys should be notified so that client complaints do not escalate.

Rely on the Rule

As a reminder, attorneys should review ABA Model Rule 1.4: Communications, or their jurisdictions equivalent, to understand their direct responsibilities related to client communications. Pathways of communication must remain open between attorneys and their clients. Attorneys should be prompt in their communication to clients and must work to make sure that clients understand the status of their matter, what tactical decisions mean to their interests and that they should feel free to seek clarification from their attorney before consenting to a plan or decision. Failure to do so may not only result in a disgruntled client, but a disciplinary action or legal malpractice complaint.

Members of support staff will play a key role in client communications. Whether it is drafting letters, responding to emails, providing updates or invoices, they are in constant communication with law firm clients. Proper protocols for escalation of client inquiries, instructions and complaints will be beneficial to clients and law firms.

Conclusion

Clear pathways of communication are critical in mitigating and avoiding legal malpractice and disciplinary complaint exposures in a law firm. Attorneys should recognize that clear instructions and availability for clarification in working with members of support staff are a simple way to avoid confusion and errors. By implementing proper protocols for members of support staff, law firms take a strong move in prioritizing providing competent legal services to clients by establishing clear communication between attorneys, support staff and clients, benefiting all.

Great communication is beneficial to all and may help avoid legal malpractice and disciplinary complaint exposures, because greater communication between attorneys and all members of support staff helps the law firm in the provision of services to its clients.

² American Bar Association Opinion 506

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