

Why malpractice claims are up . . . and how a law firm can keep them down

Malpractice claims increase or decrease “with the ebbs and flows of the economy.”

With the economy down, they are on the rise, and making matters worse, the claim amounts “are up dramatically,” says **JIM RHYNER**, worldwide lawyers professional liability manager for The Chubb Group of Insurance Companies in Warren, NJ.

There are two reasons clients stop paying – either they are dissatisfied with the service or they don’t have the money, he says. And either situation spawns malpractice claims.

Rhyner’s company has researched the economy-driven mistakes firms make that bring about the claims. Here are some of the most common ones.

HOARDING THE CLIENTS

The problem starts with the client selection process, Rhyner says.

When the money gets slow, the individual attorneys are concerned about keeping their billable hours up and so hoard the business they bring in. They aren’t willing to pass anything on to others in the firm for fear of losing their own jobs, so they take on work that’s outside their areas of expertise.

That means work doesn’t always go to the attorneys best suited to handle it, and the originating attorney’s inexperience is an invitation to a malpractice claim.

To eliminate that risk, he says, treat all clients as clients of the firm, not as clients of any one lawyer.

No attorney should be able to take on a matter without firm approval, and approval “needs to rest with someone who doesn’t benefit” from bringing in that client.

Beyond that, the intake process should require the partners to review incoming matters to determine whether the attorney has the expertise to do the work and if not, which attorney does.

COVERING UP THE COMPLAINTS

The fear of admitting to mistakes and problems also creates malpractice risk.

The associates – particularly the newer associates – are concerned that if they don’t keep their clients content, the firm will assign them to other attorneys. As a result, when a client complains about the work or wants the attorney to take some inappropriate strategy,

the attorney keeps it quiet and tries to handle the matter privately “and make it go away.”

Take the fear factor out of mistakes, he says. Tell the attorneys that when a client isn’t happy, the matter needs to be taken immediately to the practice leader or senior partner. Often “a simple conversation” between a senior attorney and the client can solve the issue quickly and save the relationship. But keep it quiet, and the issue is going to grow – possibly to the point of a malpractice claim.

CARELESS LAYOFFS

Further risk is created again when a firm lays off attorneys carelessly, Rhyner says.

One approach many firms are taking is to get rid of their newer associates to preserve the senior attorneys’ salaries, and while that does save money, the loss of their expertise “can set the firm up for costly risk exposure tomorrow.”

The danger comes from laying off younger associates who have specialty experience reasoning that the more senior associates can transition into their practice areas.

That might work – or it might not. Until the senior associates get up to speed in the area, the firm is wide open to malpractice claims for their lack of experience.

Another careless approach firms are taking is to get rid of attorneys in the practice areas that are drying up. Again, that isn’t necessarily the best solution. It could be more profitable to get rid of the not-so-good performers in the profitable areas and replace them with the top performers from the drying-up areas.

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