

AHERN Update



Daniel W. Hager is Corporate Counsel to AHERN Insurance Brokerage and has spent his career practicing in the fields of lawyers' professional liability, risk management, and legal ethics.

AHERN Insurance Brokerage is one of the largest full-service insurance brokerage firms specializing in the insurance needs of law firms, with over 4,000 law firm clients.

For more information on how AHERN can assist your firm, please call (800) 282-9786 to speak with a professional.

Top Tools For Avoiding Malpractice Claims

By Daniel W. Hager, Corporate Counsel, AHERN Insurance Brokerage

Malpractice claims are disruptive and hurt the bottom line. By strengthening these key areas of practice management, the risk of claims can be substantially reduced.

Carefully Evaluate New Clients

A common lament from lawyers facing a malpractice claim is, "I knew I shouldn't have taken on that client." Your client intake system needs to identify prospective clients who raise red flags. Watch out for clients who claim not to care about expense or are acting "as a matter of principle." Beware of clients who have had multiple prior firms, have sued professionals, are serial litigants, are reluctant to pay an appropriate retainer, or significantly edit your engagement agreement. Be cautious about taking matters outside your areas of expertise. At least for new clients, require approval by another firm lawyer or committee before work commences.

Use Effective Engagement Agreements

A well drafted engagement agreement reduces the risk of malpractice claims and fee disputes (which often trigger claims). Engagement agreements should generally be required and your form agreements should be reviewed annually. They should: identify the client; carefully describe the scope of representation as well as areas that are outside its scope; set forth the expectations of the client; explain the billing process and disputing bills; and clearly state that no guarantees are made about the outcome of the matter.

Manage Conflicts Of Interest

Conflict of interest is a complex area that even experienced lawyers can get wrong, so regular continuing education on the subject is crucial. Most conflicts can be waived if the specific factual issues and potential adverse consequences that could arise from the representation are explained in writing to the client, who consents in writing. In light of the complexity and high stakes, responsibility for managing conflicts must remain with the lawyer and cannot be delegated entirely to staff. Your system should effectively identify and address conflicts in every matter, both before work is commenced and when new parties become involved.

Maintain A Strong Calendar System

The risk of claims based on missed deadlines can be reduced by using an effective calendar system. Calendar software is available that not only tracks dates you input, but related dates as well, and provides frequent reminders of deadlines. Your system should be redundant, meaning the central calendar is backed up by individually maintained calendars. It needs to clearly assign responsibility for calendaring and require that all significant dates be input.

Communicate

Many malpractice claims are, essentially, based on poor communication. The key is to keep clients regularly apprised about their matter and not to surprise them. Require regular communication at least monthly and automatic forwarding of significant documents. The bill should not be your main form of communication with clients.

End Representations Properly

Ending representations (when a matter concludes or when early withdrawal is necessary) presents a significant risk. A bad situation can be aggravated. Failure to document the end date of a representation can impact conflict of interest analyses or weaken a statute of limitations defense to a malpractice claim. Clients can be prejudiced if confidential information is disclosed while moving to withdraw. Require standard disengagement letters in all matters.

Strengthen these aspects of practice management to reduce your risk of not only malpractice claims, but of disciplinary complaints and fee disputes as well.