

# Your Partner's Keeper

## Peer review can avoid malpractice disasters in the making

BY HARRY H. SCHNEIDER JR.

Partner peer review is a fairly recent but somewhat controversial method of detecting work habits that may create malpractice problems for the entire firm.

Somehow, the idea of evaluating partners is much less palatable than the rather commonplace practice of reviewing associates. There are several compelling reasons, however, to initiate peer review processes in your firm.

First, most malpractice claims are created by the conduct of partners, not associates. Failing to evaluate the lawyers who cause most of the claims is a mistake.

Second, if you avoid only one malpractice claim through the process, the effort is worthwhile and outweighs any awkwardness associated with it.

Third, the techniques used in partner peer review will improve the quality of your firm's legal services and enhance client relations.

The goal of peer review is to obtain critical, candid and informed assessments of the legal work performed by partners. Three sources of information are available:

► **Ask the client.** A simple method of obtaining a candid assessment of any partner's performance is to ask the client. Some firms have implemented "client audits" in which clients are interviewed regularly to provide an honest evaluation of services rendered. It's essential, however, to have the client interviewed outside the presence of the lawyers who perform the day-to-day work. Topics of inquiry should include timeliness of responses to client needs, adequacy of communication, sufficiency of billing information, and possible areas for improvement.

You will be amazed at how much you can learn from the client, if you only ask. While no one wants to hear bad news, it's infinitely better to learn about it this way than when the client hires new counsel or allows a client-relations problem to degenerate

*Harry H. Schneider Jr. is a partner of Perkins Coie, Seattle, and chair of the ABA Standing Committee on Lawyers' Professional Liability.*

ate into a malpractice problem.

Another benefit of client audits is that they tend to reinforce firm loyalty. They remind partners that all clients are firm clients, and not the personal property of a single rainmaker.

► **Ask the associates and staff.** The persons in the firm most knowledgeable about any given partner's behavior probably are those who

not be limited to substantive law practice issues. Given the frequency and severity of malpractice claims arising out of conflicts of interest, any firm considering a partner peer review program should include a mechanism to monitor and approve (or disapprove) partners' activities that involve "business" with clients, particularly director and officer positions or other entrepreneurial activ-



work for the partner. Seldom do fellow partners have the same level of information. Topics to cover should include: demeanor; adequacy of supervision and guidance; ability to make assignments in a timely and understandable manner; adequacy of communications with clients; and whether the lawyer promptly returns phone calls and otherwise responds to client inquiries.

► **Ask the partners.** Some firms review each partner according to a checklist of essential practice standards. Selected client files are examined to ensure compliance with those standards. Here are some questions to ask: Was a proper conflicts-of-interest check performed and any conflicts resolved? Was a standard engagement letter issued? Is there cognizance of deadlines and docketing of any time-sensitive tasks?

Check also for adequacy of client communications, appropriateness of billing information and other record keeping.

Remember that peer review need

ity with clients.

A substantial amount of malpractice liability also arises from the activities of lawyers who practice outside their areas of expertise. Partner peer review should include an assessment of whether a partner has veered outside his or her areas of expertise without sufficient support or training. Of particular concern here is the lawyer who handles the "occasional" divorce for valued firm clients.

Finally, partner peer review should include an evaluation of new client screening. As a general rule, if a partner never declines a new client, he or she is doing something wrong. Often the only real opportunity to avoid a malpractice problem is at the client intake stage. Structure your partner peer review program to include how diligently the receiving lawyer has attempted to assess the quality and reliability of the new client, and whether or not the lawyer has applied a "smell test" to the prospective representation. ■