The Top Ten Malpractice Traps and How to Avoid Them

Trap #1: Missing Deadlines. Calculating errors remain a leading cause of malpractice claims. Common mistakes include data entry errors, failing to use file review dates, absence of a back-up calendar and procrastinating until the last minute to file documents. To avoid this trap, an office should have at its organizational core an office-wide calendar and practices in place regarding its use. The system should contain the following characteristics:

- Be easy to use, maintain and teach to new personnel
- Include some redundancy, either through multiple paper calendars or the computer
- Contain an off-site calendar backup in the event of a fire or other disaster
- Have the capacity to cross-check between the master calendar and the back up calendar to catch calendaring errors
- Have at least one docket date for every open file to ensure that all files are reviewed regularly
- Include tracking procedures that enable the firm to identify who made any given entry
- Make all attorney and non-attorney staff accountable

A standard calendaring system sets forth all items to be calendared, the frequency of reminder dates, the applicable deadlines for the various types of cases the firm handles and the firm's own deadlines for events it considers critical. For example, a firm might require all lawsuits to be filed no later than three months prior to the running of the statute of limitations. When the office accepts a tort claim, for example, support staff knows that a 3-month date (which indicates the imminent running of the statute of limitations) must be calendared. Critical firm deadline dates of this type will dictate the calendar entries made by the staff. Of course, it is the attorney's responsibility to calculate those important dates, and it is recommended that the attorney place his or her initials on the file intake sheet to identify who is responsible for the calculating of a particular date.

Trap #2: Stress and Substance Abuse. It takes just one dysfunctional attorney to ruin a firm's reputation and add significantly to its malpractice claims history. All too often the problem is compounded by inaction on the part of the law firm. Certain practices can reduce the chances of encountering such a problem.

*Improved Communications Among Firm Members* Does your firm have an open door policy? Can problems be discussed confidentially within the confines of the firm? Too many attorneys today view partnership as a purely economic relationship and feel no sense of loyalty to one another. In this setting dysfunctional or troubled attorneys have no one in whom they can confide. Monthly meetings, sharing advice or insights on a matter and getting together in non-work settings can help build effective and satisfying working relationships.

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You may also consider appointing a fair-minded and well-respected partner as an ombudsman for intra-firm problems and conflicts. Sole practitioners can find this support by seeking out other lawyers similarly situated, though confidentiality concerns and other business and ethical constraints require caution in this type of a situation.

**Workloads.** Stress can push predisposed attorneys into clinical depression or cause other mental health problems, including anxiety disorders. Although it may be impossible to remove stress completely from the workplace, it is possible to manage and reduce the level of stress.

Does the firm measure attorney worth solely on billable hours or the number of open files being handled? While such a system may be necessary to some degree, it can not and should not be the sole measure of one's value. Caseloads should be reviewed periodically to ensure a fair division of labor. Reasonable limits should be placed on the number of files or cases that may be handled at one time.

Are firm members able to take personal time off without feeling guilty or without being penalized? Firm members should feel some flexibility insofar as being able to take the occasional hour or so for a child's school activity or to run a personal errand that cannot be handled after hours. Instituting a policy requiring attorneys to take vacations away from town and away from files and clients can contribute significantly to maintaining morale and ensuring enthusiasm in the workplace.

Sensitivity and accommodation for the attorney who is dealing with the added stress of personal crises is mandatory. During this period, reduced workload or other adjustments should be made. Stress should not be ignored. Everyone has a breaking point.

**Know the Signs of Substance Abuse and Depression.** Symptoms of substance abuse include frequent Monday morning tardiness, missing deadlines, neglecting mail and phone calls and missing appointments. There is a slow but steady deterioration in work product and productivity and an increase in frequency of excuses in personal relationships. Apparent behavioral changes could include drinking, defiance, impatience, intolerance, unpredictability or impulsiveness.

Other apparent behavioral changes associated with depression include inappropriate anger (often in men), tearfulness, self-criticism, distractibility and lack of interest in pursuing activities that once brought pleasure, difficulty concentrating and forgetfulness.

**Seek Help from Professionals in Cases of Mental Health Problems or Substance Abuse.** Most attorneys acknowledge that substance abuse and mental health issues can increase tremendously the risk of a malpractice claim and can devastate families, professionals and entire social circles. Unfortunately, far fewer will take the risk to intervene and help a colleague find help unless or until the problem has reached crisis proportions. By the time that point is reached, the neglect, misconduct or mistake has occurred and the cost to the firm could be substantial. In the presence of indicia of mental health issues or substance abuse, one should be encouraged to seek professional help. These problems are treatable, particularly if recognized and dealt with at an early stage. For substance abuse issues, state bar
committees are a good place to begin. Typically, they are a committed group of people who have faced similar challenges successfully.

**Trap #3: Poor Client Relations.** Every malpractice claim begins with a dissatisfied client. Poor client relations and conflicted working relationships can transpire into malpractice claims with amazing haste. Inadequate attorney-client communication usually is at the heart of the problem. Typical mistakes include failure to obtain client consent, failure to inform a client of a case development or failure to follow the client's instructions. Many client relationship errors can be avoided by adopting a simple, commonsense approach to working with clients.

- Explain clearly to each new client orally and in writing the purpose for which the firm was hired, the fee arrangements, the reporting and billing procedures and the client's obligations.
- Listen to the client. Clients may want to pursue non-litigation avenues. Time should be taken at the beginning of the attorney-client relationship to identify clearly the client's goals or objectives.
- Realistic client expectations should be encouraged. Clear and documented explanations about the services to be performed or not to be performed are crucial. Legal procedures should be explained in simple, clear language so the client understands what to expect from the representation and has a clear timetable in mind.
- Maintenance of good client communications requires the prompt return of all telephone calls, keeping appointment times with clients and not keeping them waiting, sending regular case status reports and reporting negative information promptly. If the client is copied with correspondence or pleadings, the client must be informed as to their meaning and purpose. Assignments should be completed on a timely basis. If an unforeseen delay arises, it should be explained and a revised expected completion date should be given. Clients should be billed regularly and all charges should be explained fully. Clients should be encouraged to provide ongoing feedback on the quality of the representation they are receiving.
- All discussions, recommendations and actions taken, including a decision not to accept a client, should be documented.
- Letters of closure should be used at the end of the representation to document what was accomplished.
- Support staff should be taught the importance of courtesy, timeliness, professionalism and confidentiality when dealing with clients. Staff provides the interface between attorneys and clients. If staff is depressed, overworked, feel taken for granted or dissatisfied generally, it is important to understand that negative messages, however unintended, are being sent to clients.

**Trap #4: Ineffective Client Screening**

After being served with a malpractice action, attorneys will often mutter “I knew I shouldn’t have taken on that client.” These “problem” clients are often the result of ineffective client screening. Successful practitioners augment their “gut feelings” with standardized office-wide screening procedures. A firm-wide policy of screening each prospective client according to a predetermined set of standards is critical. Each member of the firm is responsible for the clients the other members bring to the firm. With a standardized and effective screening process, potential disaster clients may be identified and avoided.
A set of screening questions subject to review and modification goes a long way toward weaning out undesirable clients. A periodic review of problem cases to decipher warning signs of potential danger also makes sense. Since screening needs vary greatly by practice area, it is wise to check with experienced and respected practitioners in the geographical area in which one practices to see what aids are being used and for what other practitioners are screening. It is also a good practice to analyze the office screening procedures periodically, perhaps annually, to see that they are netting matters and clients desired, match firm expertise and style and will be profitable for the firm.

- **Do you have the time to take on the new case and give it the proper attention that the case deserves?** If not, say no.

- **Do you have the expertise necessary to handle the case?** Don’t dabble! There is no such thing as a simple will or a cut-and-dried personal injury case. If you are not prepared to handle the difficult cases in a given area of practice, do not accept the seemingly simple things. Often you fail to see where the problems are. Yes, you can develop the expertise given sufficient time, but keep in mind that sufficient time will be far more than meets the eye at first glance and the client will not be willing to pay for your education.

- **If this is a contingency fee case, do you have adequate funds to take the case?** You want to avoid being placed in the situation where case management decisions are being dictated by economics instead of by legal judgment.

- **Can the client afford your services?** If not, say no. A fee dispute is in the making if you accept a client who is on a different financial footing. Minimally, collection is likely to become an issue, and if you are compelled to collect the fee, the odds of facing a malpractice claim increase significantly.

- **Is the prospective client a family member or friend?** Don’t be fooled. First, if the work is not satisfactory, favor or not, even the family member or friend will sue. Accepting work under this situation is foolhardy. Second, if you are unqualified to represent a stranger in a particular matter, likewise you are unqualified to represent a friend or family member. Don’t be pushed into something you are uncomfortable handling.

- **Has the prospective client brought you the matter at the eleventh hour?** If so, say no. If you do not have adequate time to perform a thorough investigation, you run the risk of missing a possible claim, failing to identify a defendant or letting the statute of limitations run. You don’t want to end up paying for your client’s procrastination.

- **Has the prospective client had several different attorneys?** Heed the warning light! The client may wish to avoid paying fees, may be impossible to satisfy, may be bringing a case all others before you believed lacked merit or will be impossible to resolve satisfactorily.

- **Does the prospective client behave irrationally or appear confrontational?** If you are unable to work effectively with someone during the initial interview, it is unlikely to get better over time. The difficult client all too readily becomes the angry client who will not hesitate to bring a suit.
• **Does the client have unrealistic expectations?** You cannot guarantee results nor obtain a million-dollar judgment on a simple slip and fall. Do not take on clients whose expectations are simply unobtainable.

**Trap #5: Inadequate Research and Investigation**

The ABA has reported that substantive errors account for over 46% of malpractice claims. Common errors include failure to know or properly apply the law, failure to know or ascertain a deadline, inadequate discovery or investigation and planning or procedural choice errors.

Many of these errors can be prevented through careful, methodical research and procedures. It is important to review carefully the work of all staff, including contract attorneys and other professionals. The attorney of record is responsible ultimately for the work of these individuals. Experts should be consulted if uncertainty about a point of law exists. Lawyers should take the time to study and keep abreast of new developments in the law and should check closed files in the face of new statutory and case law that might affect clients’ positions and rights. Association with expert co-counsel on significant matters outside one’s practice area is crucial.

As the law changes, the standard of care does not decrease. Lawyers must continue to study the law by reading, attending seminars, seeking expert consultation and by researching particular issues that need to be addressed by clients.

**Trap #6: Conflicts of Interest and Conflicts of Matter**

Conflicts of interest and conflicts of matter can arise from a variety of situations. Each firm must establish stringent procedures for identifying and resolving situations in which these unexpected conflicts may arise. Practitioners should be wary of these situations.

• Representation of two parties, such as a divorcing couple, an estate and its beneficiaries or a buyer and a seller who announce "we agreed to the property settlement and we just want you to write the agreement."

• Representation of opposing theories of law for different, but similarly situated clients, i.e. a "conflict of matter" situation.

• Representation of opposing sides of an issue, even though the clients are not involved with one another, such as Exxon and Greenpeace.

• Personal involvement in a client's business interests.

• Service as a director or officer of a client company.

• An unclear statement of non-representation in situations where a clear conflict of interest exists.

• Conflicts arising from law firm acquisitions and lateral hires.
Lawyers must be vigilant about the possibility of conflicts of interest and conflicts of matter in undertaking representation. The following guidelines offer some helpful hints.

- Establish a conflict system to disclose conflicts as early as possible.
- Avoid suing former clients.
- Take only one side of any case or transaction. Confirm this in writing.
- Avoid becoming a director, officer or shareholder of a corporation concurrent with acting as its lawyer. Reject offers of remuneration in the form of stock.
- Avoid joint representation in potential conflict situations if there is any risk of an actual conflict materializing.
- If any possibility of conflict exists, seek permission from each client to disclose your representation and its effect on all clients before accepting representation. Absent permission, withdrawal is the only option.
- If you intend to engage in a joint or multiple client representation, give full disclosure to all clients regarding potential and reasonably foreseeable conflicts of interest and their ramifications. Discuss the effect of both potential and actual conflicts upon your representation of all clients. Advise the multiple clients that there is no confidentiality between them on matters concerning the joint representation. Advise multiple clients to seek the advice of independent counsel on the issue of whether joint representation is appropriate. Obtain the written consent of each of the multiple clients after full disclosure and before continuing the representation.
- Strongly urge consultation with independent counsel in cases of actual conflict. Seriously consider not proceeding with representation if the clients refuse to consult with independent counsel regarding the issue of joint representation. Have independent counsel acknowledge in writing the fact of having been consulted with regard to a multiple representation situation.
- Do not work for a real estate commission, which is based on percentage, while being asked for your legal opinion regarding a transaction or project.
- Do not represent clients with potentially inconsistent defenses or differing liability in civil or criminal cases without written disclosures, as described above, and the clients' written consent. If their potential conflicts become actual conflicts, you cannot represent them jointly, even with their informed, written consent.

Memories alone are insufficient to record and check potential conflicts of interest and conflicts of matter. Law practices need systematized procedures for documenting and analyzing potential conflicts for every new client and new matter accepted by the firm. A two-part system is recommended.

The first part should provide for a method of matching names, which can be accomplished either manually or by computer. Large firms should have a computerized system. Additionally, firms with more than one office need a database with matters and names from all offices, as well as communications capability to access the entire database from any office. The database, whether consisting of index cards at the receptionist's desk or a computer program, should include many parties. The list found at the end of this chapter, developed by the Professional Liability Fund that insurers all Oregon attorneys, is the best quick reference discovered.
MALPRACTICE PREVENTION

The second part should include a practice of circulating a “new matter memo” to all professionals and support staff whenever the firm accepts a new case. This serves as a good conflict of opposing theories check. The memo should include the following information: identification of all parties, identification of the intake attorney, all relevant administrative details, a statement of the case and a description of the work to be performed. In addition to serving as a further updated conflicts check, circulation of this information allows everyone in the office to pool resources and thus contribute to the efficient handling of the matter. It also serves as a warning against accepting a subsequent matter that would require advancing a theory or position that would be contrary to the new client’s interests.

A current and complete database enables the firm to identify and advise clients of relevant changes in the law affecting their cases. Such a system also permits the firm to analyze the strengths and weaknesses of certain practice areas and to address them through education, improved planning and revised procedures.

It is important to remember that a conflicts-checking system is only as good as the people who use it. It must be used rigorously and consistently to be effective. The database must be checked and updated every time a new case is accepted. New matter memos must be circulated and returned to the intake attorney in a prompt fashion and must have affirmative documentation confirming their review by all attorneys and staff.

**Trap #7: Inappropriate Involvement in Client Interests**

A lawyer’s inappropriate involvement in a client’s entrepreneurial interests raises conflict of interest issues and is increasingly a significant basis for legal malpractice. This involvement can take several forms.

- Acting as director or officer of a client company.
- Investing in client securities.
- Becoming involved in one-to-one business deals with a client.
- Accepting stock from a client in lieu of a cash fee.
- Agreeing to contingent cash fees.
- Soliciting other investors on behalf of a client’s enterprise.

Problems caused by these activities are many, including: (1) inadequate or nonexistent directors' and officers' insurance for the lawyer acting both as outside counsel and director of a company; (2) vicarious liability of the law firm for the acts of a firm member serving as a director or officer of a client company; (3) higher standard of care and due diligence imposed under federal securities laws on a director who is also the company’s lawyer, as compared to a director who is not the company’s lawyer; (4) weakened defense to a malpractice claim by third parties in cases where a lawyer is also a director of the company and (5) serious conflict-of-interest issues arising out of a lawyer or law firm’s personal involvement or investment in a client’s business interests.

Robert E. O’Malley, vice chairman of the Board and Loss Prevention Counsel for Attorneys’ Liability Assurance Society, suggests six commandments for lawyer involvement in client interests.
- Do not permit any partner or employee of the law firm to serve as chair, president, chief executive officer, chief operating officer, chief financial officer or general partner of any publicly held client.

- Do not permit any partner or employee of the law firm to be a director or officer of a start-up company that is financing itself with an initial public offering where the law firm is securities counsel to the company or the underwriter.

- If the law firm is acting as securities counsel to the issuer or the underwriter in an initial public offering under the Security Act of 1933, neither the firm itself nor any partner or employee of the firm should invest in the underwriter's original allotment (as distinguished from the aftermarket).

- If the law firm is acting as securities counsel to the issuer in any public offering under the Security Act of 1933, the firm should not agree to accept any part of the stock in lieu of a cash fee.

- If the law firm, partner or employee of the firm owns securities of a company that is about to make an initial public offering, the law firm should not act as securities counsel to either the issuer or the underwriter, unless such securities are redeemed prior to the offering or are "locked up," so that there is no possibility of a quick windfall profit for the firm or any of its partners or employees as a result of the public offering.

- If the law firm is acting as securities counsel to the issuer or the underwriter in any public offering under the Security Act of 1933, the firm should avoid any advance agreement whereby a substantial portion of its fee is explicitly contingent on the marketing of the offering.

**Trap #8: Lack of Adequate Documentation of Work**

Insufficient documentation of work accounts for many of the client relations and missed-deadline errors associated with legal malpractice claims. Simple office procedures can prevent many of these errors from occurring. Each firm or practice should have in place a system for checking the accuracy and content of all outgoing documents, such as letters, briefs, contracts and motions. The system should include provisions for cross-checking of these matters by more than one person.

Good file management should include maintaining a file on all documents prepared or received by the lawyer for each client matter. Telephone messages and memoranda should also be logged for future reference. Daily filing procedures help to ensure that information is not lost and is available when needed. Office files should be reviewed regularly to avoid missing deadlines and to ensure that the system is performing as intended.

As the practice of law keeps pace with our evolving paperless world, the importance of administrative details - the seemingly menial side of a law practice - becomes more important, not less. Consideration of how electronic files will be stored, backed up, kept secure and retrieved is essential to an efficient office operation. Consciously designing a uniform computer filing system, reviewing it regularly and updating it often to assure that files are maintained confidentially and retrieved easily, is critical. Making certain there is a relatively current back up copy of all data and programs, which is
kept at all times in a secure place outside the office, is mandatory to this evolving paperless computer

driven world. Adhering to these measures will permit prompt resumption of work should a
catastrophe occur, and will assure attorneys’ compliance with their obligations to safeguard client

information.

**Trap #9: Zealous Efforts to Collect a Fee**

Fee disputes are at the heart of a significant percentage of all legal malpractice claims brought against
attorneys each year. Typically, the attorney sues the client for unpaid fees and then is countersued for
legal malpractice. In some cases, merely mailing a final bill triggers a threat of legal malpractice. In
order to avoid fee disputes, use of the following rules in billing and collecting fees for legal services is
important.

**Don’t accept clients who cannot afford your legal services:** It is a lose/lose situation to take on a client
who is overly concerned about fees and who ultimately will not be able to pay his or her legal bill. If
you represent such clients, you will be torn between putting in the required number of hours and
minimizing the final costs. Learn to say “no” to these clients.

**Written fee arrangements:** Consider documenting fees and the scope of work to be done in all
matters. Doing work without a written agreement should be extremely rare. Each engagement letter
or contingent fee agreement should contain a clear explanation of the legal fees that will be charged
for the work to be performed. Any restriction on the scope of work must be detailed in this
agreement. In addition, be specific and itemize the types of out-of-pocket expenses for which the
client will be responsible, such as filing fees, court costs, expert witness fees, photocopying charges
and computer research. Clients are often astonished by the amount of out-of-pocket expenses
incurred on their behalf. Finally, it is inadvisable to adopt a new fee structure or draft a subsequent
fee agreement while the client’s matter is pending.

**Bill on a monthly basis:** Attorneys who charge an hourly fee should always bill the client on at least a
monthly basis, unless the client has specifically requested another arrangement. Avoid billing the
client at the project’s completion, unless the total cost of the representation has been agreed upon in
advance. The key to hourly billing is to send bills and collect your fees on a frequent basis in order to
avoid large, unexpected bills. For improved client communication and satisfaction, it is good practice
to send a zero balance bill on occasion, along with a note indicating why no charges were made in a
particular month, and advising that you are proceeding on the case.

**Detailed billing statements:** Provide detailed billing statements that describe the work performed by
each attorney or paralegal on a daily basis and how long it took. Entries such as 20 hours for
“research” are unacceptable. Rather, the entry should read “research state case law on piercing the
 corporate veil.”

**Daily time entries:** Every attorney and paralegal that bills on an hourly basis must record his or her
time on a daily basis. Keep a time sheet or pad of paper next to your desk on which you record your
work or make regular entries in the computerized timekeeping system. It has been proven that
attorneys fail to record all of their time more often when regular timekeeping is not required. Require
each attorney to submit his or her time sheets for the preceding week every Monday morning.
**Review all bills:** The attorney responsible for the case or matter should review each bill for errors before it is mailed to the client. In addition to looking for errors, an ongoing assessment of the charges and the value received for the work should be made. If the time expended was greater than what would have been spent by an attorney with experience in the area, consider writing off some of the time.

**Copy the client on all meaningful correspondence and other materials relating to the client’s matter:** Ask yourself who is more likely to pay his or her bill? Choice A: the client who has not received a single sheet of paper from the attorney in three months. Choice B: the client who receives informational copies from the attorney on a regular basis. It is equally important, however, to avoid forwarding a mass of paper to the client that confuses rather than communicates. Be sure the office and the client understand from the outset what communication is necessary and desirable. Follow the agreed upon plan, straying only to send more not less, and never allowing a copy to go to the client that is not explained by prior developments or an attached note.

**Take prompt action on accounts in arrears:** This is the single biggest mistake that attorneys make with respect to fee disputes. Most attorneys joined the legal profession in order to practice law, not to collect delinquent fees. Unfortunately, the client who cannot pay a fee today is not likely to pay it tomorrow. The key to being paid is no secret. The key is doing the unpleasant, that is, working on past due bills early and with conviction.

First, the firm’s partners should review all past due accounts on a monthly basis. Be sure that engagement letters and contracts of employment state the consequences to the client for failing to stay current with the legal fees, such as withdrawal conditions. Next, the partner responsible for a matter in arrears should contact the client and inform him or her that the firm will withdraw from the matter or enforce the other stated conditions if the past due fees are not paid within a stated grace period. Although courts place many restrictions on withdrawal, the vast majority of clients with fee payment problems who start off paying slowly become even slower at time goes on. Exercising the firm’s withdrawal or other options early in the matter is far more likely to produce the desired results.

Beware of clients who promise you money “next month.” It usually does not materialize. The moral of the story is that it is better to withdraw and cut your losses when you are owed $1,000 than wait in hopes of payment only to find yourself suing later to collect a $10,000 arrearage.

Some firms have begun to accept credit cards for fees. This may be a good option but should be examined carefully. Among other concerns, there is the need to account for the issuing bank's fees. For example, if an advance for fees is charged to a credit card and the credit is given to the client by depositing it into the client trust fund, the trust fund must equal the gross amount of the card charge, not the net you will receive. In some cases this will necessitate a deposit in addition to what is received on the account from the bank.

**Never sue for fees:** Establish a strict policy against suing for fees. If you cannot work out a realistic payment plan with the client, consider other alternatives such as arbitration or mediation. If you are tempted to sue for fees, consider this: the counterclaim for legal malpractice usually seeks an amount far in excess of the legal fees in dispute. In a recent case, a sole practitioner sued his client for $9,000 in legal fees and received a counterclaim for an amount in excess of $250,000. In the vast majority of these cases, the attorney ends up dropping his fee suit to get rid of the malpractice claim.
Collect retainers: If you are having difficulty collecting fees on a regular basis, require a retainer fee up front. If the client takes his or her business elsewhere because you were realistic in setting the fee and in asking for a significant percentage of the fee as a retainer, this may be a client you are better off not having. The area with the largest accounts receivables is family law. The family law attorneys who are most successful in being paid promptly have well-crafted retainer agreements which require the client to maintain a certain amount on deposit and allow the attorney to withdraw if fees are in arrears.

Have another attorney do a thorough, objective file review: There are times when, regardless of having obtained a retainer up front, an increasing number of unforeseen hours is spent on a case that outstrips the initial retainer funds. If this occurs, and even if the client has no intention of paying, it is a good idea to have an independent attorney (preferably a senior member of the firm or a member of the local bar skilled in the practice area and in duties owed clients) review the case to assess whether due diligence was performed. Once a client is in your pocket for a significant sum, it is nearly impossible to be objective about the file and the work that you have done for that client.

Call the client: Far more success results from personal telephone calls from the attorney to the client than from letters from the accounting department or collection agency. Even if the client steadfastly refuses to pay the bill, at least you have made a good faith effort to collect and if there is any client dissatisfaction, most likely your conversation has yielded that information. Keeping in mind that the precipitating factor for a professional liability claim is the perception of the client more than the reality of the facts, information from the call may provide a good indication as to whether further collection efforts are warranted.

If you decide to pursue collection activity, never do this work yourself: One of the most important services provided a client in an attorney-client relationship is the objectivity of a knowledgeable third party whose goal it is to protect his or her client’s interests. Avail yourself of the benefits of an attorney-client fee dispute specialist who can be objective and mediate concerns that may arise.

Trap #10: Unwillingness to Believe You May be Sued for Malpractice

In spite of all the publicity that legal malpractice claims have received in the past few years, many attorneys believe erroneously that either because they perform adequately for their clients, or they know their clients so well, they will never be the targets of a malpractice claim. Trends in the frequency and dollar value of claims suggest otherwise. At present attorneys in private practice have between a 4 percent and 17 percent chance of being sued for malpractice each year depending on the jurisdiction and the nature of their practices.

As the law becomes more complex, the standard of care does not decrease. Lawyers must continue to study the law through reading, attending CLE seminars, consulting with experts on difficult legal issues and researching issues that need to be addressed by their clients.

While you may be one of the lucky ones who are not targeted for malpractice during your career, you cannot count on it. The key to minimizing your risk is to be acutely aware of the malpractice exposure of each and every case you take on. Only by recognizing your malpractice risk and by implementing effective prevention procedures will you lessen the chances of becoming a malpractice statistic.