



Your Role in Reducing Your Firm's Professional Liability Claim Risk

Speaker: Sally Field, Legal Professional Liability Leader

Attorney Protective

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Speaker Bios:

Sally Field



Sally is an attorney of 30 years and Legal Professional Liability Leader for Attorney Protective, a Berkshire Hathaway Program. Sally began her career as a litigation attorney in Dallas where she handled a diverse docket of cases, making her no stranger to the challenges that law firms face every day.

Sally earned her Doctor of Jurisprudence from the University of Houston, and her Bachelors degree from Oklahoma State University, where she graduated with honors.

As a professional who has worked in legal liability insurance for more than 18 years, Sally has vast knowledge of the risks that lawyers encounter. Sally has shared that knowledge many times over the years by speaking at a number of conferences and by publishing numerous articles.

Reality check on top malpractice risks –

❖ 48% of claims come from Substantive Errors

1. Failure to know/properly apply law
2. Planning Error – Procedure Choice
3. Inadequate Discovery/Investigation
4. Conflict of Interest
5. Error in Public Record search
6. Failure to Understand/anticipate tax
7. Error Mathematical Calculation

❖ 29% of claims come from Administrative Errors

1. Failure to file document – No deadline
2. Failure to calendar properly
3. Procrastination in performance/followup
4. Failure to react to calendar
5. Clerical Error
6. Lost file, document evidence



Top malpractice issues (continued)

❖ 14% of claims come from Intentional Wrongs

1. Fraud
2. Malicious Prosecution, Abuse of process
3. Libel or slander
4. Violation of Civil Rights

❖ 11% of claims come from Client Relations issues

1. Failure to obtain consent/ Inform client
2. Failure to follow clients instruction
3. Improper withdrawl of representation



What you can influence on avoiding substantive errors



- ❖ Top driver of malpractice claims is substantive errors – can you influence that?
- ❖ Includes a wide range of issues including failure to know and properly apply the law, conflicts & things like math errors
- ❖ Can you make your lawyers know & apply the law better? No, but . . .
 - Can help them identify better CLE for their AOP
 - Can seriously address conflicts avoidance
 - Can train staff be the safety net for all math calculations like time to appeal, etc.

The substantive error WIFM

- ❖ The math double check can save them time & they can charge for it
- ❖ The CLE is cost-effective & gives them new ideas to pitch to their existing clients
- ❖ Conflicts caught mid-term will lose you a client mid-term & that is important because
- **80% OF ALL FUTURE BUSINESS COMES FROM EXISTING CLIENTS**

What you can influence on avoiding administrative errors



- ❖ This is failure to document, failure to calendar, failure to react to calendar, failure to file document, clerical error, etc.
 - > Your systems and your staff are definitely a safety net here.
 - > This is the most obvious place you can have a positive influence
 - > Docketing, intake, file management & more

Put It In Writing



❖ Establishing an Attorney-Client Relationship

- > Be aware of the developing opinions nation-wide and be cautious in your communications such as: giving casual opinions on cases, engaging in emails with non-clients, giving advice to non-clients, etc.

❖ Engagement, Non-engagement and Disengagement letters are valuable documentation tools for both the attorney and the client.

- > **Templates, templates, templates ----**
- > Training
- > Then accountability

WIFM for client letters



- ❖ Engagement letters set the engagement off on the right foot, insure clients understand the fee structure so you might get paid
- ❖ Disengagement letters turn an existing client into a former client for conflicts checking
- ❖ Non-engagement letters make it clear they were never a client for conflicts purposes
- ❖ All letters foster better client relations

Establish Consistent Intake Procedures

- ❖ Intake procedures should include a comprehensive review of at least these areas:
 - ❖ The lawyer's competence regarding the subject matter of the case (see Model Rule 1.1)
 - ❖ Conflicts of Interest (see Model Rules 1.7 & 1.8)
 - ❖ Financial due diligence – can the client afford your services?
 - ❖ What are client expectations – are they too high?
 - ❖ The client's history with other attorneys
 - ❖ How & what will it take to make this client happy?
- ❖ Can use staff to do much of this, taking it off the attorney's to do list, another WIFM



What you can influence on intentional errors --

- ❖ You probably know better than I do the value of background checks, double signatures, financial audits etc to avoid theft & embezzlement
- ❖ No one can be above the rules & safeguards – that’s the bottom line
- ❖ But what about malicious prosecution, libel & slander risks by attorneys?
 - > Really going to about the power you wield – can you raise your hand to call foul when you see an attorney overinvested in a case? Can staff?
 - > Recognize some of this can be substance abuse driven



Easy WIFM on this one?

- ❖ Stealing the client's/attorney's money gets their attention
- ❖
- ❖ On raising your hand, good luck but there are some areas like substance abuse you get more of a free rein
- ❖ Many areas where allegation is an intentional wrong there is no insurance coverage



Can you reduce the risk of claims from client relations ? Yes!

- ❖ Absolutely the most power for good here!!
- ❖ Whole range of options for you here starting with intake, on boarding, staff training, billing, anger management & more
- ❖ **WIFM – I will train the staff to help you serve clients better & you don't have to do a thing but agree!**



Happy clients don't sue their lawyers



- ❖ Been proven over & over again – like the missed appeal case
- ❖ And the opposite is also true – unhappy clients sue all the time --
- ❖ Good communication begins the with the first interaction with the client
 - A good on boarding process can start the relationship on the right foot
 - An intake interview by staff can gain insight into things the how, what, why & who of client communications allowing you to then surpass the client's expectations
 - After intake your staff will be the front line for many of the phone and email communications – use out of office features, quick pick up and return of calls, etc.

Protocols, procedures, processes & rules to insure systematic excellence

- ❖ **Staff needs to know they play a vital role in client relations:**
 - All about consistent excellence
 - How are clients greeted? Are all communications professional?
 - What is prompt?
 - Is the staff's attitude and tone enthusiastic – even when speaking to each other in front of the clients?
- ❖ **Policies relating to file inaction – can be a red flag for problems including substance abuse – the KC firm**
- ❖ **The “David” rule – everyone has to show up happy; the “Anna” example – the phone has to always be answered like this; & the “Lane” example – I return your call within same half day even if I am in trial**



Clients will judge your firm on the things they can ---

- ❖ Can they always judge the quality of the legal work? NO
- ❖ What can they judge?
 - > How they were treated, did things happen on time, is the office neat, are there typos in their documents & letters, were promises kept, was staff professional



Take an Open Book Approach to Billing

- ❖ Consider taking a more open book approach
 - > Outline the fee arrangement in the engagement letter and confirm your client's acceptance
 - > Be proactive about status reporting
 - > Engage staff in the process, have a billing contact
 - > Keep open communication – “the sticker shock call”

- ❖ Don't sue for fees, instead deal with the reason why they are not paying



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Four more best practices – training staff

1. Be Careful What You Write
2. Loose Lips Sink Ships
3. Almost Every Mistake is Fixable
4. Staff Should Be Your Safety Net

#1 BE CAREFUL WHAT YOU WRITE

- ❖ Anything you write (memos, emails, notes) is discoverable in a legal malpractice suit brought by a former client.
- ❖ Emails almost never, ever, ever get deleted for good and remain available and discoverable.
- ❖ Even if there is no suit (yet), the ENTIRE client file is the property of the client and must be returned upon the client's request.

#2 LOOSE LIPS SINK SHIPS

- ❖ Duty of confidentiality applies to current and former clients.
- ❖ The elevators (and stalls) have ears.
- ❖ Confidential information is ANY information about a client obtained in the course of representation—whether or not it is relevant to the lawsuit.
- ❖ Not just information protected by privilege.

#3 ALMOST EVERY MISTAKE IS FIXABLE

We all make mistakes . . .

**BUT almost all mistakes can be fixed
if caught early enough**

- ❖ Snapback rule for disclosure of privileged documents
- ❖ Almost all deadlines can be extended
- ❖ Agreements can be reached with opposing counsel—they might make their own mistakes, too.

The Key to Fixing Mistakes . . .

**Deal with the Mistake
As Soon As Possible!!!**

- ❖ Mistakes never get better with time
- ❖ Many times mistakes are not as significant as they seem
- ❖ Mistakes cannot be cured unless there is appropriate communication
- ❖ More time = more opportunities to fix

#4 TRAIN STAFF TO BE YOUR SAFETY NET

**Shocking Disclosure:
Attorneys make mistakes, too**

Train Staff to:

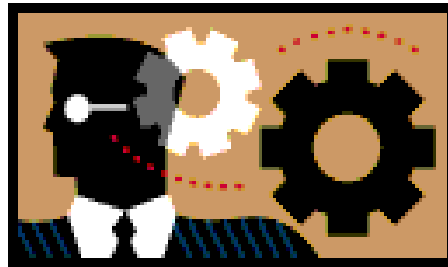
- ❖ **Keep an eye on deadlines**
- ❖ **Make sure nothing falls through the cracks**
- ❖ **If they sense a disgruntled or frustrated client give the attorney a gentle reminder**
- ❖ **Keep an eye out for communication problems**

Conclusion

- ❖ Establish consistent policies and procedures for attorneys and staff, even the little stuff matters
- ❖ Don't underestimate the importance of good client relations and its effectiveness as a risk management tool
- ❖ Happy Clients + Happy Staff = No Malpractice



Question and Answer



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