



Serving Illinois Lawyers

A photograph of a historic, multi-story brick building with a prominent clock tower. The building has a red-tiled roof and several windows. The clock tower has a large clock face and is topped with a spire. The sky is clear and blue. The photograph is partially obscured by a red diagonal graphic element on the right side.

**THE FUNDAMENTALS
OF LOSS PREVENTION
FOR LAWYERS**

Client Relations

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Every Malpractice Claim Begins with a Dissatisfied Client

This dissatisfaction often stems not from the legal services provided by the lawyer, but from the way the client was treated by the lawyer.

Let's compare the lawyer-client relationship to that of the doctor-patient. Suppose you visit a doctor and are kept waiting for half an hour. A nurse then does the preliminary work, rather than a doctor. Finally, the doctor flies into the examination room, spends five minutes with you, answers no questions and leaves you with a bill of \$100. This dissatisfied patient is more likely to sue the offending doctor than a patient who is treated with care and respect by their doctor.

Similarly, clients don't want to be left waiting in your reception area when they have an appointment. They don't want you to take calls in the middle of meetings with them; and they don't want to wait a week to receive a response from you about the status of their case.

It is up to you to make sure your clients understand everything that is happening in their case because:

- Lawyers have an ethical duty to keep their clients fully informed with respect to their matters.
- Clients who have been kept informed of the weaknesses inherent in their cases will not be as shocked or upset when the outcome is less than perfect.
- Clients will grow to respect your honesty and integrity if you make it a practice to provide them with the whole picture.

Procedures to Improve Communications with Clients and Enhance Client Satisfaction

Keep the Lines of Communication Open

Communicate regularly with your client

Establish a procedure for automatically sending the client a copy of all significant documents, drafts, pleadings and correspondence relating to their matter. It takes only a few extra minutes to complete this task.

Never permit several months to pass without communicating with your client ***in writing***. If your calendaring system includes automatic file review dates, you can use these review dates as reminders to correspond with the client. On the review date, you should then send the client a quick letter, for example, informing them that you are waiting for a judge to rule on a dispositive motion. If you don't provide the client with an explanation for the inactivity on their file, the client may assume that you are neglecting their matter.

Communicating with the client solely by telephone is not sufficient. As will be discussed in the next chapter, an important part of loss prevention is documenting your representation.

Return telephone calls

The unreturned telephone call is the most common complaint lodged against lawyers by their clients. Make it a policy to return all client calls as soon as possible, but at a minimum within 24 hours. If you cannot return the call personally, have an assistant return the call, inform the client how long you will be out, and ask whether immediate action is necessary. Have procedures in place for handling any emergency that may arise in your absence. For example, leave a list of people your assistant should contact, depending upon the nature of the emergency.

Understand your client's preferences for communications

Speak with your client about how they would prefer to receive communications from you; whether they want to review everything you file or just the most important filings that will affect the disposition of the case. Advise clients when you will be away from the office for an extended period; and who they should reach out to in an emergency. Some clients may prefer email communication, but they still want to receive a hard copy in the mail. When communicating via email, keep in mind that your client may have detailed requirements for the formatting of subject lines and attachments, and those nonconforming emails may not reach their intended recipient. Finally, make sure to preserve these communications in a hard copy or electronic file.

Manage Expectations

Don't create unrealistic expectations

The practice of law is an adversarial system with winners and losers. Be careful not to convey unrealistic expectations to the client regarding the cost, outcome, or time needed to resolve the matter. If you must give the client an estimate, make sure it is a conservative, thoughtful estimate and not an off-the-cuff guess.

Give the client bad news early and often

Once you have eliminated the practice of providing clients with false hopes, you should focus on the practice of providing clients with the downside early and often.

Take time to explain legal procedures to your client and invite questions

If using legal jargon is unavoidable, take the time to explain it to your clients. Clients who understand the legal process will be in a better position to assist their lawyers and will generally be more pleased with their experience.

Some lawyers provide handouts to their clients that describe the legal process involved in the client's case or matter. For example, a divorce lawyer can distribute a brief outline of the steps necessary to obtain a divorce and the client's role in the proceedings. Take the time to discuss the handouts you provide so that your clients are more likely to ask questions.

Obtain the client's consent to all major decisions

Failure to obtain the client's consent is a major cause of malpractice claims today. To ensure that there is a meeting of the minds between you and your client, document the client's informed consent to all major decisions. For a more detailed discussion, see *Documentation and Case Management* in the ISBA Mutual Insurance guide ***The Fundamentals of Loss Prevention for Lawyers*** on our website www.isbamutual.com.

Be Timely

Don't keep clients waiting

A client who is kept waiting or whose office visits are continually interrupted by other telephone calls often becomes frustrated and believes that their lawyer does not value their business as much as others. This sometimes leads to the conclusion that the lawyer is neglecting the client's matter.

Establish regular billing practices

A major source of client dissatisfaction is the fee charged for the legal services rendered. Regardless of whether you work on an hourly fee or a contingency fee basis, it is critical to document the terms of your fee agreement in a clear manner. For a more detailed discussion, see *Billing, Collection of Fees, and Handling Client Funds* in the ISBA Mutual Insurance guide ***The Fundamentals of Loss Prevention for Lawyers*** on our website www.isbamutual.com.

Complete assignments on time

Another frequent complaint by clients is that their case or matter is taking longer to resolve than anticipated. As stated herein, if you must give an estimate of the time needed to complete the matter, make sure it is a conservative estimate, taking into consideration unexpected problems and delays. If you give the client a date that you cannot meet, the client will be annoyed regardless of the quality of the final product. Finally, lawyers who are chronically tardy in completing projects should either reduce their workloads or improve their time management skills.

Manage Your Team

While you model effective communication, manage expectations and timeliness, you make your expectations clear to your team. Lawyers and non-lawyer employees should maintain high standards of courtesy, timeliness and professionalism when dealing with clients. Every employee in your firm has a critical role in loss prevention. Discretion and confidentiality are of special importance when employees work in more public areas like a lobby or reception desk.

For a more detailed discussion see *Employee Training* in the ISBA Mutual Insurance guide ***The Fundamentals of Loss Prevention for Lawyers*** at www.isbamutual.com.

Client Relations Do's and Don'ts

Do...

- ✓ Correspond regularly with your client.
- ✓ Understand your client's preferences for communications.
- ✓ Listen to your client.
- ✓ Take time to explain legal procedures to your client and invite questions.
- ✓ Train your employees.
- ✓ Obtain the client's consent to all major decisions ***in writing***.

Don't...

- ⊗ Fail to return telephone calls within 24 hours.
- ⊗ Create unrealistic expectations about the client's case.
- ⊗ Keep clients waiting to meet with you.
- ⊗ Put off delivering bad news.
- ⊗ Fail to send out invoices regularly.
- ⊗ Underestimate how long it takes to complete assignments.

To download our entire guide, ***The Fundamentals of Loss Prevention for Lawyers*** or to access Sample Letters & Forms, visit our website www.isbamutual.com.

Disclaimer

This booklet includes loss prevention techniques designed to reduce the likelihood of being sued for legal malpractice. It is not the intent of these materials to suggest or establish practice standards or standards of care applicable to a lawyer's performance in any given situation. Rather, the sole purpose of these materials is to assist lawyers insured by ISBA Mutual in avoiding legal malpractice claims, including meritless and frivolous claims. To that end, the intention is to advise lawyers insured by ISBA Mutual to conduct their practice in a manner that is well above the accepted norm and standards of care established by substantive legal malpractice law. The recommendations contained in these materials are not necessarily appropriate for every lawyer or law firm and do not represent a complete analysis of each topic.