



Serving Illinois Lawyers



THE FUNDAMENTALS  
OF LOSS PREVENTION  
FOR LAWYERS

The background of the top half of the page is a photograph of the Illinois State Capitol building, showing its iconic dome and classical architectural details. The image is partially overlaid by a red diagonal graphic element that extends from the top right corner towards the bottom left.

# Director or Officer and Other Risky Business Relationships

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Adopt a policy forbidding any lawyer from serving as a director or officer of a corporate client or entering a business relationship with a client without the express written consent of each partner. Several troubling issues are raised when lawyers engage in such activities:

## ***Conflicts of Interest***

Lawyers who serve on the boards of directors of clients or engage in other business activities with clients run a substantial risk of exposing themselves to conflict-of-interest charges. For example, assume that the board of directors is voting on two different courses of action: one will generate legal work and revenue for the lawyer/director's firm, while the other will not. If the lawyer/director votes for the former course of action, they may later have trouble convincing a shareholder that their decision was unbiased.

## ***The Deep Pocket***

Many corporations today do not carry Directors and Officers liability insurance. Even if the corporation carries a D & O policy, the coverage is often too low to cover a major claim or is severely limited by numerous exclusions. A lawyer's malpractice insurance policy provides the third-party claimant with an attractive alternative deep pocket. To bring your legal malpractice policy into play, the claimant merely needs to allege that you were acting as both director/officer/owner and legal counselor.

## ***Ethical Concerns***

In addition to the potential conflict of interest issues, the client and the lawyer should each be aware that the lawyer-client privilege may be lost in certain circumstances where the lawyer is also a member of the client's board of directors. For example, the opposing party may argue that a lawyer-director's comments at a board meeting were made in their capacity as a director, not as a lawyer, and are therefore not protected by the lawyer-client privilege.

## ***Disqualification of the Firm***

In cases where both the firm and the client are sued as co-defendants, the firm may be disqualified from defending the client because the lawyer is also serving as an officer or director or was a business partner. Thus, the client could lose the services of the lawyer who possesses the most experience and knowledge regarding the client and its business.

## ***Insurance Coverage Issues***

Lawyers also risk their legal malpractice coverage when they venture outside their traditional role as legal advisors. Most legal malpractice policies do not cover wrongful acts committed in a lawyer's capacity as a director, officer, owner, or manager of a corporation or partnership. The best advice is to stick to the practice of law.

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***Serving as a Director or Officer and other Risky Business Relationships Do's and Don'ts***

***Do...***

- ✓ Be rigorous in the prevention of conflicts of interest.
  
- ✓ Review your insurance policy to make sure you understand your coverage.

***Don't...***

- ⊗ Serve as a director of a corporate client.
  
- ⊗ Venture outside the role of legal advisor without reviewing your insurance policy.

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To download our entire guide, ***The Fundamentals of Loss Prevention for Lawyers*** or to access Sample Letters & Forms, visit our website [www.isbamutual.com](http://www.isbamutual.com).

# Disclaimer

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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.

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