



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**

Reducing the Risk of Substantive Errors

Reducing Risk of Substantive Errors

Most of the preceding chapters have focused on office management issues. The focus of this chapter is improving your legal work product. Many legal malpractice claims boil down to a lawyer's failure to know the law or a misinterpretation of the law. These are called "substantive errors." There are several steps that lawyers can take to increase the quality of their legal services and reduce the likelihood of a substantive error:

Know your areas of expertise

A surprising number of malpractice claims arise each year because lawyers accept work that is outside the areas of their expertise. If you are unsure of the law in a particular area, decline the representation or co-counsel with an expert in the field. (Remember to always obtain the written permission of the client when splitting fees.)

If you are a member of a larger firm, don't forget to tap into the knowledge and expertise of other lawyers in the firm. Solo practitioners can develop relationships with colleagues in other practice areas through bar associations. The [Illinois State Bar Association Section Council](#) chairs should be able to recommend practitioners in your area who specialize in particular fields.

Supervise and train younger lawyers

Establish a program for training and supervising younger lawyers. Assign a senior lawyer to monitor the work of each younger lawyer on a regular basis.

Peer review

An effective peer review program can identify weaknesses in your firm's risk management practices before a claim arises. Under a peer review program, a random sampling of each lawyer's files is reviewed by another lawyer in the firm at least once a year. The designated lawyer then reviews the file for the following:

- conflicts check;
- engagement letter;
- organization and documentation;
- communication with the client;
- timeliness;
- client consent;
- client satisfaction with performance and fees;
- closure letter; and of course,
- work product.

Statistically, most malpractice claims are made against lawyers who have been practicing for at least ten years. Thus, every member of the firm should benefit from peer review, not just junior lawyers. Solo practitioners can also use peer review by asking a respected colleague to review their files. ***You must, of course, obtain written permission from the client first and the process should be properly documented to ensure that confidentiality is maintained relative to the reviewed materials.*** Most clients will look favorably upon a lawyer's request to improve the quality of their work through the peer review process.

Require the approval of two partners for opinion letters

Many transactional firms require at least two partners to review and approve all opinion letters that are issued by the firm. This practice may prevent one partner from providing an opinion that is overly broad or promises too much. Solo practitioners can seek the advice of a respected colleague without revealing the client's name.

Continuing legal education

Lawyers must continually keep abreast of new developments in the law. This can be achieved in many ways, such as attending seminars and reviewing legal periodicals or advance sheets. Joining a specialty bar or a practice section of a state or local bar association is also an excellent way to stay informed and current. ISBA Mutual sponsors [free online CLE](#), the [ISBA's Solo & Small Firm Practice Institute Series](#), both of which can be found at www.isba.org. We also encourage all insureds to take advantage of the Risk Management resources on our website at www.isbamutual.com, including subscribing to the [Liability Minute](#) for updates about emerging risk issues and attending the Jerry Mirza Memorial Risk Management Conference, which is a live seminar available exclusively to our insureds.

Use checklists and forms

Even seasoned lawyers make mistakes. Checklists are a vital safeguard against errors and omissions. There are literally thousands of checklists and forms available to assist lawyers in every practice area. Begin with a checklist from the library or a colleague and then add your own enhancements over time.

Transactional lawyers should use closing lists that clearly set forth the items that must be accomplished and which party is responsible for each item (e.g., the lawyer, opposing counsel, the client, or an outside expert such as an accountant). Before the file is closed, require the responsible lawyer to initial the closing list, evidencing that all items were completed, including post-closing items such as filing security interests.

Many useful forms are available through the Illinois State Bar Association website at www.isba.org/forms. When using a form to draft a document that is submitted to a client, court, or third party, be sure that your final product is complete and appropriately tailored to the case, and that it does not contain leftover references to unrelated parties or matters.

Check the credentials of new lawyers and lateral hires

Before hiring new associates or bringing new partners into the firm, check their credentials. Verify their law school affiliations and previous employment history. Also check the [ARDC Lawyer Search](#) to ensure that the lawyer is registered to practice law in Illinois and is in good standing. In addition, ***determine whether the new partner or associate is willing to learn and follow your firm's office procedures*** with respect to such matters as client selection, calendaring, conflict checks, and documentation. (For more information, see the Chapters Client Screening, Calendaring and Time Management, Avoiding and Mitigating Conflicts of Interest, and Documentation and Case Management in the full version of ***The Fundamentals of Loss Prevention for Lawyers*** found on our website www.isbamutual.com.)

One rogue lawyer who refuses to follow the [Illinois Rules of Professional Conduct](#) can wreak havoc on a firm. You should of course also check for potential conflicts between the incoming lawyer's past and present clients and your firm's client base. (For resources, see [Common Party Search Checklist](#) and [Conflict of Interest Search Form](#) in the at the end of this guide. And for

more information on Avoiding and Mitigating Conflicts of Interest, visit our website www.isbamutual.com.)

Reducing Risk of Substantive Errors Do's and Don'ts

Do...

- ✓ Engage in peer review.
- ✓ Supervise and train younger lawyers.
- ✓ Use checklists and forms.

Don't...

- ⊗ Take on matters outside of your expertise without help from a seasoned practitioner.
 - ⊗ Hire new lawyers' or laterals' without checking their credentials.
 - ⊗ Miss CLE programs that can help you keep abreast of changes in the law.
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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.

NOTE: This material is intended as only an example, which you may use in developing your own form. It is not considered legal advice and as always, you will need to do your own research to make your own conclusions with regard to the laws and ethical opinions of your jurisdiction. In no event will ISBA Mutual Insurance Company be liable for any direct, indirect, or consequential damages resulting from the use of this material.

Conflicts: Common Party Search Checklist – Internal Document

When checking the names of a new client for potential conflict of interest, it is necessary to take your search beyond the names of your current and former clients. The list below suggests other parties that should be included in your search.

ANCILLARY BUSINESSES

- Name of any business in which a firm member has an equity interest or director/officer role

BANKRUPTCY

- Client
- Spouse
- Client's partners
- Client's other businesses
- Client's family members
- Creditors

COMMERCIAL REAL ESTATE BUSINESS/CORPORATE

- Client
- Owner/Spouse
- Key employees
- Buyer
- Seller
- Partners/Shareholders
- Directors/Officers
- Brokers
- Lenders
- Any opposing party in a transaction
- Parcel number/location/address
- Title insurer

CRIMINAL

- Client
- Victim
- Witnesses
- Expert witnesses
- Co-Defendants
- Potential Co-Defendants

DECLINED CLIENTS

- Person declined
- Adverse parties, if known
- Spouse, if known

ESTATE PLANNING

- Testator/Testatrix
- Spouse
- Children/Heirs
- Devisees/Beneficiaries
- Personal representative(s)
- Trustees

FAMILY LAW — DISSOLUTION

- Client
- Spouse (former & current)
- Children
- Expert witnesses
- Witnesses (if any)
- Adverse family members
- Guardian ad litem
- Related parties
- Witnesses
- Experts

LITIGATION

- Client
- Insured
- Plaintiffs
- Defendants

IMMIGRATION LAW

- Insurance carriers
- Client
- Guardian ad litem
- Spouse (former & current)
- Children
- Witnesses (if any)
- Expert witnesses
- Co-Counsel
- Adverse family members
- Co-Plaintiffs/Co-Defendants
- Opposing counsel
- Employers
- Persons residing with client

PATENT

- Client (by name and type of products)

Patent Prosecution:

- Subject matter of patent/trademark
- Inventors
- Research & Development personnel (within reason)
- Assignees of patent/trademark
- Affiliates, subsidiaries, parent & holding companies
- Graduate student assistants
- Foreign patent agents

Patent Litigation:

- Client affiliates, subsidiaries, parent & holding companies
- Opposing parties & affiliates (to the extent identifiable)
- Opposing counsel

RESIDENTIAL REAL ESTATE

- Client
- Owner/Spouse
- Buyer
- Seller
- Brokers
- Lender/Mortgage company
- Any opposing party in a transaction
- Parcel number/locations/address
- Title insurer

WORKERS COMPENSATION

- Client
- Employer
- Insurer

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Conflicts: Conflict of Interest Search Form – Internal Document

To: File Room

Requesting Attorney: _____
Date: _____

Prospective Client Information

Name: _____

Address: _____

Phone: (Work) _____
(Home) _____

Principals: _____

Related Entities: _____

Prior Representation of Client,
Principals or Related Entities: _____

File Name: _____

Adverse Party Information

Name: _____

Address: _____

Principals: _____

Related Entities: _____

Check Completed By: _____

Date: _____

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.

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