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**“Law Firm Hygiene:”
Small Steps Can Have Big Returns**

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Earlier in my career when I worked as an in-house ethics counsel at a large firm, one of our managing partners referred to the routine tasks of risk management as “law firm hygiene.” By that colorful phrase, he meant that systematically following simple steps could help avoid expensive bar complaints and civil claims. My old managing partner didn’t cite statistics to prove his point, but reports from both the American Bar Association and the Oregon State Bar bear him out. In this column, we’ll first look at those statistics and then survey some simple steps lawyers and their firms can take to avoid becoming a “statistic.”

The Numbers

Every few years, the ABA publishes a “Profile” of legal malpractice claims in cooperation with several large national malpractice insurance carriers. The ABA Profile contains a wealth of data, including claims by type of error alleged. The ABA began publishing its Profile series in 1985 so a relatively good historical comparison is now available. In the latest Profile reflecting data from 2008 through 2011, administrative errors such as “procrastination” and “failure to calendar properly” made up 30 percent of all claims nationally. The

administrative error category was actually up from 26 percent in the corresponding 1985 study.

Similarly revealing data is available from the Oregon State Bar on regulatory complaints. Each year the OSB publishes a detailed report from the Disciplinary Counsel's Office that includes a statistical breakdown of the kinds of conduct that led to regulatory discipline. The 2014 report reflects that 39 percent involved "neglect of a legal matter" and another 58 percent included "inadequate client communication." The first year that the OSB began tracking "inadequate client communication" as a separate category was in its 2010 report because prior to Oregon's transition from the old "DRs" to the RPCs in 2005 there was no separate "communication" rule here. The current numbers are up from 2010, when that year's report reflected 36 percent of cases imposing discipline included "neglect" and 49 percent involved "inadequate client communication."

The ABA statistics are divided so that they total 100 percent. The OSB statistics, by contrast, simply note if a particular kind of conduct was included and, therefore, total more than 100 percent. Methodology aside, they are eye-opening both for the high percentages occupied by failures at mundane tasks and the stubborn persistence of those failures over time.

Simple Steps

Although there are many steps that can be taken to reduce common risks, calendaring and communication are two of the simplest that can pay the largest dividends.

Put broadly, “calendaring” comes in two principal flavors.

The first is the mundane but critical risk management protocol of docketing key dates on an internal “reminder” system. Dates such when a notice of appeal is due or when a limitation period will run can be harshly unforgiving. They need to be calculated and entered into an internal system with care. Particular systems vary with the size of the firm involved and the sophistication of the practice area. Importantly, however, simply entering the data into an internal system is not the end. To be truly effective, the system used must be actively monitored—preferably by more than one person—so that the “reminders” will actually be heeded in time to be meaningful.

The second is more subtle but addresses an equally nagging issue: procrastination. Comment 3 to ABA Model Rule 1.3 on diligence puts it this way: “Perhaps no professional shortcoming is more widely resented than procrastination.” The sources are many and varied. In some instances, lawyers have simply taken on too much work to give individual files the attention they deserve. In others, the client who sounded great during an initial conference turned out to be so “difficult” that the lawyer simply ignores the matter concerned.

Whatever the reason, firms need to use systems to ensure that work is done in a timely manner. Although particular systems will again vary by firm size and practice sophistication, these are more often human rather than software—such as a practice group leader in a larger firm or peers in smaller firms. The solutions are also more often human rather than software—with some variant of “do you need help with that?” often opening a welcome door.

With communication, the shortcoming that most often leads to problems is not the content but speed and frequency of the return. A wonderfully written ten-page letter that arrives—in the client’s view—three months too late will do little to salve the all-to-human feeling of being ignored. Lawyers also need to acknowledge that in an age of “instant communication” client expectations of responsiveness have changed accordingly. That doesn’t necessarily mean that every client question needs to be answered instantaneously. But, if it will take some time to get back to the client (because, for example, you are heading off to court or it will require some research), a quick reply back to the client acknowledging their email and giving them a timeline for a substantive response will often head off a “communication failure.”

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