

BAR BULLETIN

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ABA’s Profile of Legal Malpractice Claims 2016-2019: A Publication as Exciting as a New Phone Book

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In the tenth month of the annus horribilis (also known as October 2020), the American Bar Association’s Standing Committee on Lawyers’ Professional Liability published Profile of Legal Malpractice Claims 2016-2019, its eighth study of legal malpractice claims data.¹

The study analyzed 38,570 claims reported during the three-year period of the study from data provided by 16 insurers — eight companies from the National Association of Bar-Related Insurance Companies and eight commercial insurers.² While the information contained in the study is important for insurers, it also provides practicing attorneys with valuable risk management information.

The study presents the data in 10 broad categories. The three most germane to practicing lawyers are claims by area of law, claims by type of activity and claims by type of alleged error.³

For the seventh time, claims against plaintiffs’ personal injury lawyers were the most frequent, accounting for 16.3 percent of all claims. Family law followed, with 12.81 percent of the total claims. Real estate, estates/trusts and probate, and bankruptcy rounded out the top five at 12.37, 11.98 and 8.21 percent, respectively.⁴

Although the study does not correlate the severity of claims by practice area, the study’s “anecdotal observations” section suggests that business and commercial law have traditionally been higher-risk areas than the numbers reflect. In addition, the authors acknowledge that a frailty of the study is that: “The data presented in this study captures claim frequency in various categories, but we lack the information necessary to adjust those numbers to reflect how much of the practice of law is devoted to particular subject matters.”⁵

For risk management purposes, the category of claims by type of alleged error is the most revealing. The study breaks down the very general category into four broad sub-categories and, thereafter, into multiple more precisely defined errors. The four sub-categories are: administrative errors, substantive errors, client relations and intentional wrongs.⁶

As might be expected, substantive errors resulted in the highest percentage of claims, at 51.93 percent. The nine errors listed as being “substantive” are:

Failure to know/properly apply the law (15.9%); inadequate discovery/investigation (8.22%); planning error/procedure choice (7.35%); failure to know/ascertain deadline (6.57%); drafting error (5.26%); conflict of interest (4.9%); error in a public record search (1.9%); failure to understand/anticipate tax (0.93%), and; errors in mathematical calculation (0.9%).⁷

Intentional wrongs (malicious prosecution, abuse of process, fraud, libel/slander, and violation of civil rights) account for nearly 12% of the claims.⁸

Client relation errors (failure to follow a client’s instructions (9.09%), failure to obtain a client’s consent or inform the client (5.15%) and improper withdrawal from representation (2%) total 16.7%.⁹

Administrative errors accounted for nearly 20 percent of the claims (19.59%). The four largest categories of administrative errors are the failure to calendar properly (7.4%), clerical error (4.08%), procrastination in performance/follow up (3.45%), and failure to react to the calendar (2.54%).¹⁰

Risk Management Takeaways

- **The Law Ain’t All** — Almost 50 percent of all legal malpractice claims have little or nothing to do with legal knowledge or the law.
- **Dabbling Is Dangerous** — Approximately 38 percent of substantive errors (failure to know/properly apply the law, inadequate discovery/investigation, planning error/procedure choice and failure to know/ascertain deadline) speak loudly to a lack of experience in the area of law in question.
- **Deadlines Are Deadly** — Administrative errors, especially those related to timeliness, account for about 17.55 percent of all claims. So, calendar, calendar correctly, pay attention to your calendar and get your work done on time. When calendaring an item adhere to the principle of independent redundancy and have two people confirm correctness of the calendared dates.
- **Your Mother Wanted You To Go To Medical School, So Pretend That You Did** — Client relation errors (16.7%) represent a significant malpractice claim exposure. Practice good bedside manner. Keep your clients informed. Obtain written informed consent to all important decisions including the beginning and end of the relationship, and the scope of representation. Keep your tone professional — no late night, angry emails.

The *ABA’s Profile of Legal Malpractice Claims 2016-2019* is available for purchase from the ABA through this link: <https://www.americanbar.org/products/inv/book/405555870/>. The cost to ABA members is \$95.95. Non-members will pay \$119.95.

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¹ For our readers with five-digit bar numbers, a phone book, as defined in the Merriam-Webster Dictionary, is: “A book that lists the names, addresses, and phone numbers of the people and businesses in a certain area.” <https://www.merriam-webster.com/dictionary/phone%20book>.

² Profile of Legal Malpractice Claims 2016-2019, © 2020 American Bar Association, pp. 8 and 12.

³ *Id.*, pp. 12-13, 18-19, pp. 22-23.

⁴ *Id.*, p. 12.

⁵ *Id.*, p. 11.

⁶ *Id.*, p. 22.

⁷ *Id.* Each specific error listed in the four broad categories is further defined in Appendix B to the study at pages 47-48.

⁸ *Id.*, p. 22.

⁹ *Id.*

¹⁰ *Id.*

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