



Top Ten Ways to Have a Professional Liability Claim Made Against You or Your Firm

Much of what follows is common sense. These ten items cover what most insurance defense attorneys, claims professionals and loss prevention specialists consider the common threads running through the various reasons a Professional Liability Claim might be made against a Professional or a Professional Services Firm:

10. Personal Problems including Substance Abuse – All it takes is one individual with personal stress, psychological issues or a substance abuse problem to create the environment for a claim to occur. It is important to have all principals, partners and employees be aware of what others in the firm are doing and to be mindful of co-workers' behavior. Managers and colleagues alike should be empowered to intercede and help the troubled employee seek assistance.

9. Acting Against Your Better Judgment – Giving in to temptation is not the way to run your business. Every professional knows that there are rules of professional conduct – formal or informal – which need to be observed. If your conscience tells you that you shouldn't do something, you probably should listen to your inner voice. It is always safer not to bend the rules, even for "good" clients, and even if a client has asked you to do something with which you are uncomfortable.

#8. Actual or Perceived Conflicts of Interest – It is extremely basic to any business enterprise that, before accepting a new client or an engagement from an existing client, you make sure your work will not conflict with professional services already being performed for another client. If a conflict does exist and, for whatever reason, you can't resist taking on the work, protect yourself by providing full disclosure to and getting a written waiver from the original client allowing you to take on the new work.

#7. Poorly Documented Files – It is critical both to running a business and defending yourself against potentially damaging allegations of negligence that the client file be very well-documented. All key events and conversations should be memorialized either by keeping your contemporaneous notes from phone calls and meetings in the file or by confirming decisions with an e-mail or letter and adding a copy to the client file. Most important is that if or when a client decides not to follow your professional advice, you confirm in writing to the client the advice you offered, their decision to not follow your advice and, where possible, express your concerns in detail about the potential consequences of their decision.

#6. Missing Important Deadlines – All clients have deadlines as to when they want their work completed, whether they have shared this with you or not. It is an excellent client-management tool to make sure all deadlines and expectations of the client are known to you. In some engagements, the client also has deadlines that must be met – delivering source data to you - in order for you to meet your deadlines. In addition to having and using a diary system (e.g., a Microsoft Outlook Calendar using the "Reminder" feature), if a deadline involves action that needs to be taken by the client, you should inform the client well in advance of that deadline as to what action he must take and remind him/her of the deadline on multiple occasions. Ideally, this should all be enumerated in the contract between the professional service provider and the client.

#5. Inadequate Definition of the Scope and Terms of the Engagement – Whether it is a more formalized contract or merely an "Engagement Letter", the scope and terms of the work to be performed should be memorialized. This provides important documentation and potentially avoids misunderstandings later on about what responsibilities belonged to you and your client.



#4. Inadequate Knowledge, Training or Preparation – You have an area of expertise. That is why the client hired you. You should *never* handle matters involving issues about which you have little or no experience, training or skills. If you are not qualified to handle part or all of an engagement, either decline the engagement, bring in a colleague or business associate with the necessary expertise or refer the matter entirely to another professional. The client will respect your professionalism in your self-assessment and ultimate recognition as to where your strengths are in producing the best quality work possible for the client.

#3. Working With The “Difficult” Client – Clients are demanding. Clients want their moneys-worth. Clients can be unreasonable and annoying. Clients aren’t always right. That’s why they are called your “client” and not necessarily your “friend”. That’s why you get paid and charge a fee. Not all of this adds up to a “difficult” or “problem” client. When looking at new opportunities, it is extremely important to be able to recognize and then avoid the client who is truly a troublemaker. These clients are, simply, not worth the effort and aggravation that will come along with having them as your client. One mechanism is to use a “new client questionnaire” so that you can do some pre-engagement client screening. If possible, you should always find out who did your type of work for them before they came to you. Avoid taking on new clients who have a history of firing professionals. Finally, if a client slipped through your screening procedure and turns out to be the dreaded “difficult” client, you should strongly consider ending the engagement as gracefully and as soon as possible.

#2. Relationship Problems With The Client – Believe it or not, this is one of the top reasons professionals get sued by clients – something is lacking in the personal relationship and/or chemistry between professional and client. Think about it....you are sitting in a waiting room (for any professional) and they are running late. By the time you get to see them, you are already annoyed. This isn’t the best way to start a relationship. As a professional services provider, it is important to manage your calendar so that the relationship with a new client starts off on a good note. It takes work to make the client like you, but it is an important risk management tool. Provide good service; that’s what you were hired to do. Be responsive to client inquiries and return phone calls and e-mails promptly. Try not to talk down to the client; remember, they hired you for your expertise, but they have some level of expertise in their field as well. As an overall goal, you should try to keep your client informed of any significant developments as the engagement goes forward.

AND THE # 1 TOP TEN WAY TO GET SUED FOR PROFESSIONAL MALPRACTICE IS..... SUING YOUR CLIENT TO PAY YOUR FEE! It is virtually guaranteed that 100% of the time, if you sue your client to collect your fee, the client will counter-claim and make allegations of malpractice or negligence against you. An important part of the Contract or Engagement Letter is to spell out what your fees will be and when they are expected to be paid. Make sure your fee arrangement is in writing! Managing the client in terms of your receivables is crucial. You should avoid suing the client for fees, especially if the amounts owed are relatively minor. Billing clients regularly is a means to keeping the outstanding receivables at a minimum. Always make sure bills are reviewed for accuracy and reasonableness before they are sent out. Do not overbill.