

## Law Firm Support Staff: Recognizing Their Role in Avoiding Legal Malpractice Claims

They hold various titles for their daily roles in the practice of law: paralegal, legal secretary, paraprofessional, law clerk, project assistant, docketing clerk, research assistant, and the list is ever expanding. Regardless of their title, members of law firm support staff serve a critical role in the daily practice of law. Their work, when performed with proper guidance and supervision, not only keeps a legal practice running but also helps to mitigate and avoid legal malpractice claims. Over the entire span of a client representation, law firm support staff is critical to supporting the development and maintenance of professional attorney-client relationships.

Notably, support staff has a serious impact on professional liability exposure. Data from the American Bar Association's *Profile of Legal Malpractice Claims* shows that administrative errors (procrastination in performance; lost file, document or evidence; failure to calendar properly; clerical error; failure to file document – no deadline; failure to react to calendar) leading to legal malpractice claims peaked in the 2011 study at 30.13% of total errors claimed. In the 2015 study, however, the administrative errors had decreased to a more typical 23.15%.

Although no known specific cause was identified for the uptick in legal malpractice claims related to alleged administrative errors, it may have been related to the economic downturn. As attorneys adapted their law practices to survive the economic downturn, many ventured into new areas of practice bringing their law firm support staff with them. Without proper guidance and supervision, and lacking a mentor to address uncertainties about the new area of practice, errors were made related to proper filing of documents, clerical errors, failure to file documents among other issues, which involved steps completed by support staff. As the legal community recovered from the economic downturn, legal malpractice claims based on administrative errors returned to customary historical numbers, but still remained in the double digits. Thus, opportunities exist throughout all stages of the client representation for support staff to more effectively support law firm operations and thus reduce the risk of a professional liability claim.

### Initial Communication with Prospective Client

When a prospective client initially contacts a law firm for potential representation, the initial encounter will be with a member of the law firm support staff — either via a telephone call or email directed to the law firm. The prospective client probably will relay to support staff the reason for seeking legal representation. Legal support staff compiles the necessary information from the prospective client and then explains that there is no formation of an attorney-client relationship based upon the initial conversation. Law firm support staff will also explain that a conflicts check must be performed, and that an attorney will be in contact in due course related to the potential representation.

Initial communication with a prospective client represents an important juncture. The prospective client must understand that the law firm has not accepted the engagement and that multiple steps remain before the establishment of an attorney-client relationship. The communication should also clarify that any duties or responsibilities that will be imposed upon the law firm will first be communicated by an attorney and documented in an engagement agreement.

Law firm support staff are responsible for compiling the essential information and conveying that information to the proper attorney. In addition, the support staff member may also convey additional important information to the designated attorney such as an impending statute of limitations deadline, multiple attempts by the prospective client to obtain representation at multiple law firms and their overall impression of the prospective client.

After reviewing the initial information and speaking with the prospective client, the attorney will decide whether or not it is appropriate to proceed to the next step of running a conflicts check. If it is determined that the prospective client is not a good fit for the firm or the representation is outside of the firm's areas of practice, a declination letter should be sent to the prospective

client. Again, this is a task that will be assigned to the staff member to send to the prospective client and maintain a copy for law firm records. This step helps to mitigate and avoid exposure to legal malpractice claims by advising the prospective client that the law firm has declined the representation and the quest to find legal representation should continue.

Additional information on declination letters and sample language may be located in [CNA Professional Counsel, Lawyers' Toolkit 4.0: A Guide to Managing the Attorney-Client Relationship](#).

## Conflicts of Interest Checks

Conflicts of interest should always be on the radar screen of attorneys and the law firm support staff that assists them in client representations. Prior to the commencement of the attorney-client relationship, conflicts of interest checks should be completed. Over the course of a client representation, conflicts checks should be updated as parties are added to litigation or named as potential witnesses in a matter. Clients may not appreciate the detrimental effect that may ensue from a conflict of interest in a representation. Therefore, attorneys should convey the importance of complete disclosure of known parties and potential witnesses at the beginning of the representation.

Law firm support staff are often tasked with compiling the necessary information to complete a conflicts check and providing the results to the attorney. The attorney is ultimately responsible for identifying the potential conflicts and drafting waivers, if applicable.

Legal support staff also serves to manage malpractice vulnerability by appreciating the ongoing process of conflicts checks over the course of the client representation and ensuring that the well-drafted conflict waivers are signed by all parties.

Additional information on Conflicts of Interest may be located in [CNA Professional Counsel, The Conflicts Conundrum: Avoiding and Managing Conflicts of Interest](#).

## Client Intake

At the outset of a client representation, a law firm should have established and implemented a sound client intake system. Law firm support staff often is responsible for compiling the necessary information from a new client to complete the client intake process.

If law firm support staff is not aware of the information critical to the client intake process, mistakes may occur, leading to a legal malpractice claim. One of the most important parts of the client intake process is the running of a conflicts of interest check, as discussed previously.

Following the initial meeting with a prospective client and deciding to assume the representation, the attorney probably ran a conflicts check before beginning the client intake process. Once the prospective client has transitioned to a client of the law practice, another conflicts of interest check should be completed to ensure that no additional parties have been added that may lead to a conflict of interest. Again, experienced law firm support staff will recognize the importance of the client intake process to avoid being conflicted out of a client representation. Such conflict may lead to an allegation of legal malpractice and ultimate disgorgement of attorney fees.

Legal support staff will engage in numerous communications with the new client as part of the client intake process. Their professionalism reinforces the establishment of the attorney-client relationship and provides another contact for the client to access during the course of the representation. Law firm support staff thus represents the professionalism of the law firm by providing timely responses to client communications and offering availability to the new client.

Additional information on creating a client intake process may be located in [CNA Professional Counsel, Client Intake: A Guide to the Risks of Potential Representations](#).

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## Client Communications

Managing client communications comprises one of the most critical responsibilities for law firm support staff. Attorneys draft correspondence to clients to provide them with necessary updates related to the status of their matter, next steps and expectations. In fact, legal support staff serve as the law firm representatives through their ongoing communication with clients.

Clients' first interactions with a law firm begin with law firm support staff, and clients may develop a close relationship with legal support staff based on their many interactions. In fact, clients often find law firm support staff more approachable and available than their attorney. Based upon this relationship, clients may look to support staff for additional information or an opportunity to convey their displeasure with the legal representation. Law firm support staff therefore must maintain the same level of expectations to clients that have been conveyed by their attorney. Communications between the client and support staff should always stay on message. For example, if a client has been given a likely outcome regarding the representation, a monetary value or timeframe expectation by their attorney, the communications should not be modified by discussions with law firm support staff. Legal malpractice claims may be avoided by maintaining clear lines of communication between attorneys, law firm support staff and clients. Experienced support staff will recognize which information from a client is critical and the communications which demand an attorney reply. Law firm support staff should do their best to avoid discussing financial expectations with clients and instead refer them to the attorney for response.

As a result of their more informal interactions, clients may feel comfortable expressing frustrations about their legal representation to legal support staff. If a client complains to support staff, the client's grievance should be brought to the immediate attention of the attorney for response.

## Protecting Client Information and Data

An important component of client communication involves protecting client information and data. Members of law firm support staff and IT professionals also are designated to establish the protocols to protect this important information. They are responsible for recognizing client information that may require additional protections, such as encryption, when communicating with clients.

Law firm support staff can help to mitigate and avoid legal malpractice claims by following law firm IT procedures to protect client data and, in the event of a breach, notifying the appropriate staff members and supervising attorney in order to address the issue.

Additional information on cyber risk exposures may be located in [CNA Professional Counsel, \*Safe and Secure: Cyber Security Practices for Law Firms and Law Firm Data Breaches: A Legal Snapshot.\*](#)

## Closing Matter Letter

Once a client representation terminates, law firm support staff typically organizes the file for storage and prepares the closing matter letter for signature. This step may help to mitigate legal malpractice claims by notifying the client that the representation has terminated, which may potentially start the clock on filing a legal malpractice claim. An attorney who may retrieve a stored file and locate the closing matter letter sent to the client is in a better position to mount a defense based upon a statute of limitations. Support staff reinforce this effort by making sure the letter is signed by the responsible attorney and provided to the client.

Additional information on closing matter letters and sample language may be located in [CNA Professional Counsel, \*Lawyers' Toolkit 4.0: A Guide to Managing the Attorney-Client Relationship.\*](#)

Additional information on document retention and destruction may be located in [CNA Professional Counsel, \*Creating a File Retention and Destruction Policy.\*](#)

## Completed Signed Documents

The most impressive contract ever drafted means little if it has not been executed. Again, law firm support staff must follow up and obtain necessary signatures related to a client representation.

Engagement agreements should always be given a priority status for client and attorney signature. Some law firms do not allow any billing to a new file until it is confirmed that all conflict waivers and engagement letters have been executed by the client. If a legal malpractice claim arises asserting that counsel failed to perform part of the representation, the engagement letter may be relied upon as a defense to such a claim.

In addition, the engagement agreement may set forth the responsibilities of the client, such as providing necessary documents, promptly responding to law firm communications and paying legal fees. Law firm support staff helps to maintain clear communication and progress by working with clients to meet their responsibilities related to the representation.

Additional information on engagement agreements and sample language for various areas of practice may be located in [CNA Professional Counsel, Lawyers' Toolkit 4.0: A Guide to Managing the Attorney-Client Relationship](#).



## Conclusion

Law firm support staff are often the first line of defense in mitigating or avoiding a legal malpractice claim. Their responsibilities in a law firm are integral to establishing, maintaining and concluding a client representation in a professional manner. Their attention to detail and role in ensuring that tasks are completed permit attorneys to concentrate on providing the best possible legal representation to clients. The work of support staff should thus be recognized as a critical component to a successful law firm.

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