

Ten Ways to Avoid Committing Legal Malpractice During a Pandemic

PLUS Blog

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P racticing law in these times brings unique challenges and increased risks for attorneys, many of whom must adapt to working from home and all of whom must find new ways to provide exceptional client service. These ten tips can help attorneys avoid malpractice concerns and provide the best representation possible, even during a pandemic.

1. **Calendar.** Using a diary system is a recommendation we routinely make in presentations covering attorney best practices. Missed deadlines are a primary allegation in many malpractice claims, and for good reason. Courts do not hesitate to dismiss claims or disregard arguments which are not timely brought. Now more than ever, it is imperative to keep track of deadlines. If you are used to relying on the paper calendar that hangs in your office, consider recreating one at home. If you rely on your assistant to keep track of your schedule, work out a way that can continue outside of the office. Setting frequent reminders on a phone or computer may assist with avoiding missed deadlines.
2. **Plan Ahead and Leave Extra Time.** CDC guidelines, state recommendations, and local mandates are constantly changing in these unprecedented times. One simply cannot rely on the ability to operate in the way you are accustomed. It is important to plan ahead for the possibility that the office

may close, you may be tied up with homeschooling children, or you may have to quarantine with your beloved (but perhaps distracting) family for two weeks. It's best to endeavor to have work in a position where things will not fall to pieces if you have to step away for a day or otherwise adapt. Similarly, to the extent possible, do not leave time-sensitive matters until the last minute. Plan as if you may not be able to work all night to finish that brief the day before it is due, because that may very well be the case. Likewise, technical difficulties or delays in mail delivery may cause filing to take longer than you expect.

3. **Practice Civility.** Keep in mind that there are bound to be times when you or your opponent truly do need extra time or other accommodations. Be civil and even kind to your colleagues. Grant extensions when reasonably requested and when they will not prejudice your client, not only because it is the right thing to do, but also because you may need the accommodation next time.
4. **Remain in Contact.** Constant communication with clients is another "must-do" in normal times, and it is even more important now. If your client is away from the computer and less responsive to email now, pick up the phone and then document the conversation in writing. Courts may be closed or operating on extended deadlines, but your client will be

- wondering what is happening with his or her case. Keep clients informed, even if the update is simply that there is no update but you are working the case to the best of your ability.
5. **Protect Attorney-Client Privilege.** Communications with your client are only privileged if they are between you and your client. If you are working from home, find a quiet and private place where you can have confidential conversations, outside of the earshot of family members or roommates. It would be wise to instruct your clients to do the same.
6. **Put It in Writing.** This is good advice at all times, but even more important now. Clients may be distracted when you call them, with small children running around or health concerns weighing on their minds. Follow up on conversations in writing to ensure complete understanding on both sides, and to avoid confusion down the road.
7. **Refuse to Dabble.** With courts closed and deadlines extended, some attorneys may be light on work. This is not an invitation to practice in an area where you lack the necessary expertise. Resist the urge to take on matters you are not equipped to handle, without doing the necessary background work to learn how to provide competent representation in that area.
8. **Act Professionally.** Clients, courts and your opponents expect you to act and dress like a lawyer, even from home. Maintain a level of professional decorum, particularly on video calls, and certainly in court appearances. Dressing too casually may not be malpractice itself, but it is to your client's benefit to put your best face forward, even from the living room.
9. **Get Creative.** Find new ways of working. If you cannot sit down with a client, consider scheduling a zoom meeting or screen sharing while on the phone. Become familiar with ways of sending and reviewing documents electronically. Take care to provide clients with the same level of representation you have always provided, albeit from afar.
10. **Maintain Your Own Well-Being.** Recent trends have suggested a lawyer's duty to provide competent representation includes maintaining the lawyer's own mental and physical health in order to work most effectively on behalf of his or her clients. In a time where many worry about financial strain, social isolation, and physical health, it is critical that lawyers reflect upon their own mental and physical health, address concerns early, and seek help when needed.



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