

*LEGAL
MALPRACTICE
UPDATE*



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Study shows increase in frequency and severity of legal malpractice claims

- Plaintiffs personal injury lawyers ↑ 22%
- Real estate lawyers ↑ 14%
- Commercial lawyers ↑ 11%
- Family lawyers ↑ 9%

*Increase in legal malpractice
claims attributed to:*

- Downturn in the economy
- Increased use of younger lawyers
- Seeking “deep pocket” defendants
- Decline in civility among lawyers
- Lawyers too close to client

Fee Forfeiture - Burrow v. Arce;
997 S.W.3d 229 (Tex. 1999)

- Lawyer who commits “clear and serious” violation of duty to client may be required to forfeit all or part of fee earned by client
- “Clear” if reasonable lawyer would have known conduct was wrongful
- “Serious” is undefined and slowly being decided
- Left to the discretion of trial court
- Court focused on loyalty owed to client

Avoiding Conflicts

- Set up a system to check for potential conflicts of interest
- Do not engage in substantive discussions until conflicts have been cleared
- Clear potential conflicts with affected parties - avoid later debate about “substantially related”

Receiving Confidential Information From Clients and Prospective Clients

- All such information must be treated as confidential, even if you are not hired.
- Receipt of such information may disqualify you/your firm from adverse representation
 - Other side
 - Substantially related matters

Receiving Confidential Information From Clients and Prospective Clients

(Continued)

- Potential Restrictions
 - Letter of non-confidentiality - not hired and no confidential information disclosed
 - Agreement that only the attorney, *not the firm*, will be disqualified

Potential Pitfalls

- Acting as both an attorney for *and* officer or director of corporation
- Having a financial interest in a client matter
- Participating in business transactions along with client - Rule 1.08
- Accepting stock in lieu of fees

