

Top 10 Legal Malpractice Claims

Each law firm is unique, with different clients and case matters. While all firms face some risk of a malpractice claim, some areas of law are more risky than others. The best way to manage the specific risks you face is to understand them. Here's what you should know about a new study ranking the top 10 legal malpractice claims.

Top 10 Legal Malpractice Practice Claims

Every four years, the ABA Standing Committee on Lawyers' Professional Liability surveys U.S. professional liability carriers, to compile the Profile of Legal Malpractice Claims, reviewing legal malpractice claims in terms of:

- Area of law
- Type of legal activity giving rise to a claim
- Size of firm
- Amount of expense/indemnity payment

The recently released 2015–2019 study details the top 10 areas of practice for claims frequency:

1. Personal Injury Plaintiff (16.30%)
2. Family Law (12.81%)
3. Real Estate (12.37%)
4. Estate, Trust and Probate (11.98%)
5. Collection and Bankruptcy (8.21%)
6. Business Transaction/Commercial Law (7.03%)
7. Criminal (5.95%)
8. Corporate/Business Organization (5.22%)
9. Patent, Trademark and Copyright (3.05%)
10. Personal Injury Defense (3.01%)

New Areas of Increasing Risk

The new list is largely consistent with previous results. However, the new study shows risk is increasing in some areas.

Family Law and Real Estate—The number of family law claims has continued to rise, reaching second place in the latest rankings, while real estate claims have declined slightly, falling from second to third. Professional liability carriers anticipate claims in both areas will rise in 2020 and beyond given the current economic environment.

Insurance Defense—Outside the top 10, other areas of law remain a concern due to a rising frequency of claims. The study reports that the number of insurance defense claims more than tripled since 2015, from 0.73% of claims to 2.76% in 2019. The uptick appears to reflect a trend of insurance carriers suing defense counsel for an unanticipated result in states that now allow insurers to sue their attorneys directly. Practitioners in this area face increased exposure as a result.

Immigration—Immigration claims also rose to almost double the frequency in 2015, from 0.91% to 1.78% of claims in 2019. This increased exposure for attorneys may be due to changes in U.S. immigration policies over the last several years.

Other Risk Factors for Claims

The type of law you practice isn't the only risk factor for a malpractice claim. The study reveals that other factors also may increase your risk for a claim.

Size—The study reveals that smaller firms may face heightened risks. Most claims (62.51%) involved firms with 5 or fewer attorneys, and solo practitioners had the largest share of claims at 32.33%. However, claims against larger-sized firms also increased since 2015, while the overall share of smaller firms declined.

Activities—Statistics about the top 5 types of legal activities giving rise to claims has remained consistent since 2003:

1. Preparation, Filing and Transmittal of Documents (35.24%)
2. Commencement Action/Proceeding (16.16%)
3. Advice (13.59%)
4. Settlement/Negotiation (8.78%)
5. Pre-Trial/Pre-Hearing (6.95%)

Preparation, filing and transmittal of documents activities are the cause of more than one-third of claims and continue to rise with no foreseeable end.

Settlement/negotiation claims have risen as fewer cases make it to the trial phase. A good paper trail reflecting the client was fully informed about all aspects of a negotiated settlement are a must to minimize claims.

Errors—Substantive errors, including failure to know or properly apply the law and inadequate discovery or investigation, represent over half of all alleged errors. Almost 20% of reported claims allege administrative errors, including failure to calendar properly, clerical errors and procrastination. Intentional torts and malicious prosecution and fraud claims also increased from prior studies. The Committee attributed some of these increases to business deal failures, improper conduct, aggressive pleadings or inflaming a jury.

Increasing Costs of Malpractice Claims

Finally, the study reports a growth in large claims with indemnity payouts. 105 claims had combined indemnity and expense payouts of over \$2,000,000. Further, the number of \$0 claims has decreased, reflecting that more claimants are tenaciously pursuing claims.

Past experience shows an economic downturn can lead to an increase in legal malpractice claims. Give the results of the 2019 study, risk management must be an integral part of the practice of law.

Proper file documentation, including memorialization of settlement discussions and accepted/rejected advice, is crucial. Further, use of engagement, disengagement and closing letters, along with conflict screening, is necessary.



While you can never fully prevent a disgruntled party from making malpractice allegations, proper risk management techniques can assist in defending and mitigating the claim.

Discover more benefits of professional liability and cyber liability insurance today [here](#) or give us a call for a free, no obligation consultation at (844) 398-0465

Copyright Swiss Re Corporate Solutions 2021. This article is intended to be used for general informational purposes only and is not to be relied upon or used for any particular purpose. Swiss Re shall not be held responsible in any way for, and specifically disclaims any liability arising out of or in any way connected to, reliance on or use of any of the information contained or referenced in this article. The information contained or referenced in this article is not intended to constitute and should not be considered legal, accounting or professional advice, nor shall it serve as a substitute for the recipient obtaining such advice.