

# Table of Contents

---

---

## **PART I LEGAL MALPRACTICE LAW AND DEFENSES.....1**

<b>Chapter 1: Legal Elements of a Claim .....</b>	<b>3</b>
1-1 INTRODUCTION.....	3
1-2 DUTY .....	4
1-2:1 Generally .....	4
1-2:2 Duty to Client.....	5
1-2:2.1 Who is the Client?.....	5
1-2:2.2 Express Attorney-Client Relationship.....	6
1-2:2.3 Implied Attorney-Client Relationship.....	6
1-2:2.4 Public Defenders and Sovereign Immunity .....	12
1-2:2.5 Providing Legal Opinions to Clients for Use by Others .....	14
1-2:3 Duty to Non-Clients.....	16
1-2:3.1 Generally .....	16
1-2:3.2 Third-Party Beneficiaries .....	17
1-2:3.3 Foreseeable Reliance .....	19
1-2:3.4 Voluntary Agency .....	21
1-2:3.5 Use of Disclaimers.....	24
1-3 BREACH .....	26
1-3:1 Breach of Duty Required.....	26
1-3:2 Standard of Care .....	26
1-3:3 Factors Establishing Breach.....	27
1-3:3.1 Generally .....	27
1-3:3.2 Failing to Properly Advise Clients.....	27
1-3:3.3 Adverse Results.....	28
1-3:3.4 Undertaking to Accomplish a Specific Result .....	30
1-3:3.5 Failing to Obtain Client Authority.....	31
1-3:3.6 Ethical Rules.....	33
1-3:3.7 Use of Expert Testimony .....	34

## Table of Contents

1-4	PROXIMATE CAUSE.....	34
1-4:1	Generally .....	34
1-4:2	Client Would Have Prevailed, Absent the Alleged Malpractice .....	35
1-4:3	Collectability of Underlying Judgment .....	41
1-4:4	Viability of Underlying Action .....	42
1-4:5	Negligence in Appeals.....	50
1-4:6	Criminal Representations .....	53
1-5	DAMAGES .....	54
1-5:1	Damages Required for Cause of Action .....	54
1-5:2	Damages Cannot be Speculative .....	55
1-5:3	Expenses of Litigation .....	56
1-5:4	Loss of Settlement Position .....	57
1-5:5	Punitive Damages .....	58
1-5:5.1	Grounds for Punitive Damages in Malpractice Actions.....	58
1-5:5.2	Punitive Damages from the Underlying Action.....	63
<b>Chapter 2: Additional Requirements for a Malpractice Claim.....</b>		<b>65</b>
2-1	REQUIREMENTS OUTSIDE NEGLIGENCE ELEMENTS .....	65
2-2	AFFIDAVIT REQUIREMENT UNDER O.C.G.A. § 9-11-9.1.....	65
2-2:1	Scope and Applicability of O.C.G.A. § 9-11-9.1 .....	65
2-2:2	When Is an Affidavit Necessary?.....	67
2-2:2.1	Generally .....	67
2-2:2.2	Professional Negligence .....	67
2-2:2.3	Other Claims Against Attorneys and Law Firms.....	73
2-2:2.3a	Not All Claims Require Affidavit.....	73
2-2:2.3b	Intentional Conduct .....	74
2-2:2.3c	Fraud.....	74
2-2:2.3d	Contract Actions .....	75
2-2:2.3e	Multiple Claims .....	75
2-2:2.4	Type of Plaintiff .....	76
2-2:2.4a	Different Types of Plaintiffs....	76
2-2:2.4b	Professional as Plaintiff .....	76
2-2:2.4c	Pro Se Plaintiff .....	76
2-2:2.5	Counterclaims and Third Party Claims.....	77
2-2:2.6	Clear and Palpable Negligence.....	77

## Table of Contents

2-2:3	What Should the Affidavit Say? .....	78
2-2:4	What Makes a Qualified Expert? .....	80
2-2:5	Timing and Authenticity of Affidavit.....	83
2-2:5.1	Timing of the Affidavit and the Statute of Limitations.....	83
2-2:5.2	Curing Deficiency or Amending Complaint.....	84
2-2:5.3	Oath and Authenticity .....	86
2-2:6	Effect of a Motion to Dismiss.....	88
2-2:7	Waiver .....	89
2-2:8	9.1 Affidavits as a Basis for an Independent Malpractice Action .....	91
2-3	OTHER USES OF EXPERT EVIDENCE IN MALPRACTICE CASES.....	92
2-3:1	Expert Evidence at Summary Judgment .....	92
2-3:2	Other Requirements for Expert Testimony.....	94
2-4	STATUTES OF LIMITATION .....	95
2-4:1	Introduction .....	95
2-4:2	Statute of Limitation for Actions Sounding in Contract .....	96
2-4:2.1	Type of Contract .....	96
2-4:2.2	What Constitutes a Written or Oral Contract Between an Attorney and Client?.....	97
2-4:2.3	The Impact of <i>Newell Recycling</i> .....	99
2-4:3	Statute of Limitation for Actions Sounding in Tort.....	104
2-4:3.1	Categories of Tort Actions.....	104
2-4:3.2	Malpractice Actions That Allege Tortious Injury.....	104
2-4:3.3	Pure Tort Actions Against Attorneys.....	107
2-4:4	When Does a Malpractice Action Accrue? .....	108
2-4:4.1	Date of Breach .....	108
2-4:4.2	Damages Required.....	109
2-4:4.3	Failure to Correct an Act of Malpractice .....	112
2-4:4.4	The “Springing” Statute of Limitation.....	112
2-4:5	Tolling the Statute of Limitation .....	114
2-4:5.1	Introduction .....	114
2-4:5.2	Fraud.....	114

## Table of Contents

	2-4:5.2a	Intentional.....	114
	2-4:5.2b	Acts of Fraud Must be Distinct from Acts of Malpractice.....	114
	2-4:5.2c	Significance of the Attorney-Client Relationship.....	116
	2-4:5.2d	Discovery of Fraud.....	118
	2-4:5.3	Client's Mental Incapacity .....	121
	2-4:5.4	Tolling Agreements .....	122
	2-4:6	Statutes of Limitation vs. Statutes of Repose .....	122
2-5		WAIVER OF PRIVILEGE .....	124
2-6		ATTACKING THE UNDERLYING CLAIM NOT NECESSARY AS PREREQUISITE TO MALPRACTICE ACTION .....	129
2-7		MALPRACTICE CASES BASED ON ATTORNEY'S SETTLEMENT AUTHORITY .....	130
2-8		FIDUCIARY DUTY .....	132
2-9		PERSONAL JURISDICTION .....	134

### Chapter 3: Liability for or in Conjunction With the

		<b>Conduct of Others.....</b>	<b>137</b>
3-1		INTRODUCTION.....	137
3-2		AGENCY LAW GENERALLY.....	137
3-3		VICARIOUS LIABILITY IN LAW FIRM PARTNERSHIPS .....	138
	3-3:1	Partners Can Contractually Modify Statutory Liability .....	138
	3-3:2	Liability of Individual Partners for Their Own Acts.....	139
	3-3:3	Liability of Partnership for Acts of Individual Partners .....	139
	3-3:4	Liability of Individual Partners (and Exposure of Their Personal Assets) for Acts of the Partnership or Other Individual Partners.....	140
	3-3:4.1	Different Liability for General Partners and Limited Liability Partners.....	140
	3-3:4.2	Liability of General Partners .....	140
	3-3:4.3	Liability of Limited Partners and Limited Liability Partners.....	141
3-4		VICARIOUS LIABILITY IN ATTORNEY-CLIENT RELATIONSHIP.....	143

	3-4:1 Client Liability for Actions of Attorney .....	143
	3-4:2 Attorney Liability for the Actions of a Client .....	145
3-5	<b>ATTORNEY LIABILITY FOR ASSISTING CLIENTS WITH WRONGFUL CONDUCT</b> .....	146
	3-5:1 Introduction .....	146
	3-5:2 Liability for Abusive Litigation .....	147
	3-5:3 Tortious Interference .....	150
	3-5:4 Conspiracy .....	151
	3-5:5 Negligence .....	152
3-6	<b>VICARIOUS LIABILITY IN RELATIONSHIPS BETWEEN INSURANCE REPRESENTATIVES AND THE ATTORNEYS THAT THEY HIRE</b> .....	154
	3-6:1 Liability of Attorney for Actions of Insurance Representative/Adjuster .....	154
	3-6:2 Liability of Insurance Company for Actions of Attorney Representative .....	155
	 <b>Chapter 4: Defenses to Legal Malpractice Claims</b> .....	 <b>159</b>
4-1	<b>INTRODUCTION</b> .....	159
4-2	<b>GENERAL DEFENSES</b> .....	159
	4-2:1 Elements of Claim Lacking .....	159
	4-2:2 Duty .....	160
	4-2:3 Breach of Standard of Care .....	165
	4-2:3.1 Generally .....	165
	4-2:3.2 Failure to Prove Breach .....	166
	4-2:3.3 Judgmental Immunity .....	167
	4-2:3.4 Settled Law .....	173
	4-2:3.5 O.C.G.A. § 9-11-9.1 Affidavit .....	175
	4-2:4 Causation .....	175
	4-2:4.1 Generally .....	175
	4-2:4.2 Events That Break the Causal Chain Between Breach and Damages .....	176
	4-2:4.2a Generally .....	176
	4-2:4.2b The Client’s Duty to Read ....	177
	4-2:4.2c Withdrawal or Substitution of Counsel as a Basis for a Malpractice Claim .....	182
	4-2:4.3 Contributory Negligence .....	185
	4-2:4.4 Lack of Standing to Pursue Underlying Claim .....	187
	4-2:5 Damages .....	188

## Table of Contents

4-3	AFFIRMATIVE DEFENSES .....	189
4-3:1	Introduction .....	189
4-3:2	Collateral Estoppel, Res Judicata, and Judicial Estoppel.....	189
4-3:2.1	Distinctions .....	189
4-3:2.2	Collateral Estoppel .....	191
4-3:2.3	Res Judicata .....	193
4-3:2.4	Judicial Estoppel.....	195
4-3:3	Release.....	195
4-3:4	Waiver .....	197
4-3:5	Statute of Limitation .....	199

## **PART II LEGAL MALPRACTICE PREVENTION ... 201**

### **Chapter 5: Structuring a Law Firm Under Georgia Law..... 203**

5-1	INTRODUCTION.....	203
5-2	GENERAL PARTNERSHIPS.....	204
5-3	PROFESSIONAL ASSOCIATIONS .....	205
5-4	LIMITED LIABILITY PARTNERSHIPS .....	206
5-4:1	Introduction .....	206
5-4:2	Executing a Written Partnership Agreement That Complies With Georgia Statute.....	207
5-4:3	Defining a Partnership as a Limited Liability Partnership.....	207
5-4:4	Ensuring That the Individual Assets Belonging to Each Partner are Protected .....	208
5-5	ADDITIONAL ISSUES COMMON TO ALL STRUCTURES .....	209
5-5:1	Introduction .....	209
5-5:2	Identify What Happens When a Partner or Equity Holder Leaves the Firm .....	209
5-5:3	Periodically Re-Review the Partnership Agreement or Articles of Incorporation .....	210
5-5:4	Consider Accountability by Contract .....	211
5-5:5	Sharing Office Space .....	211
5-5:6	Suicide Prevention and Substance Abuse.....	213
5-5:6.1	Talk About Suicide and Substance Abuse as a Risk .....	214
5-5:6.2	Identify and Communicate Solutions.....	215
5-5:6.3	Watch for Warning Signs .....	216
5-5:6.4	Act When You See Warning Signs .....	216

**Chapter 6: Internal Audit..... 219**

6-1 PROCEDURAL CATEGORIES..... 219

6-2 PRE-FILE OPENING..... 219

    6-2:1 General Considerations ..... 219

    6-2:2 Identify the Client..... 220

    6-2:3 Conflicts of Interest..... 221

    6-2:4 The Attorney’s Expertise ..... 221

    6-2:5 Fee Arrangement ..... 222

    6-2:6 Reasonableness of the Fee Agreement ..... 227

    6-2:7 Arbitration Provisions in Fee Agreements ..... 232

    6-2:8 Anticipating Withdrawal..... 235

    6-2:9 Creating an Attorney-Client Relationship ..... 237

6-3 FILE OPENING..... 238

    6-3:1 Documentation..... 238

    6-3:2 Engagement Letters and Fee..... 239

        6-3:2.1 Format..... 239

        6-3:2.2 What Should be Included in the  
                Engagement Letter or Fee Contract? ..... 239

    6-3:3 File Opening Memos ..... 240

6-4 REPRESENTATION OF THE CLIENT ..... 241

    6-4:1 The Obligations of a Georgia Attorney ..... 241

    6-4:2 Calendar Control Systems ..... 241

    6-4:3 Communication ..... 242

    6-4:4 Financial Controls ..... 245

    6-4:5 Billing Procedures ..... 246

6-5 WITHDRAWING FROM AN ATTORNEY-CLIENT  
RELATIONSHIP..... 246

    6-5:1 When to Withdraw..... 246

    6-5:2 How to Withdraw ..... 247

6-6 FILE CLOSING ..... 248

**Chapter 7: Identifying and Resolving Conflicts of Interest ..... 249**

7-1 OVERVIEW OF CONFLICTS OF INTEREST..... 249

7-2 THE INTERSECTION OF ETHICS  
AND MALPRACTICE ..... 249

7-3 MULTIPLE REPRESENTATION..... 250

    7-3:1 Conflict Creates Breach of Duty of Loyalty ..... 250

    7-3:2 Multiple Representation in General..... 251

    7-3:3 Application of Rule 1.7 in Georgia ..... 252

        7-3:3.1 Introduction ..... 252

        7-3:3.2 Will the Representation Adversely  
                Affect Another Client?..... 252

## Table of Contents

	7-3:3.3	Is the Conflict Waivable?.....	253
	7-3:3.4	Has the Attorney Fully Advised the Clients of the Risks Related to the Conflict? .....	254
	7-3:3.5	Has the Client Adequately Consented to the Representation? .....	255
	7-3:4	Disqualification Due to Multiple Representation.....	255
7-4		SUCCESSIVE REPRESENTATION: THE FORMER CLIENT RULE.....	257
7-5		IMPUTED DISQUALIFICATION AND USE OF SCREENS.....	267
	7-5:1	Imputed Disqualification .....	267
	7-5:2	Screening of Non-Attorney Staff .....	272
7-6		INTERMEDIARY REPRESENTATION.....	273
7-7		PROHIBITED TRANSACTIONS .....	276
7-8		CONFLICTS ISSUES UNIQUE TO SPECIFIC REPRESENTATIONS .....	278
	7-8:1	Issues Unique to Corporate Representation.....	278
	7-8:2	Issues Unique to Criminal Representations .....	281
	7-8:3	Issues Unique to Internal Investigations .....	281
	7-8:4	Issues Unique to In-House Counsel.....	283
	7-8:5	Issues Unique to Appearances of Impropriety by Prosecutors .....	285

## Chapter 8: Emerging Issues of Technology and Practice

		<b>Management .....</b>	<b>287</b>
8-1		INTRODUCTION.....	287
8-2		EMAIL AND MALPRACTICE .....	287
	8-2:1	Email Communication's Impact on Practice of Law Generally .....	287
	8-2:2	Using Email as a Calendar Reminder System .....	288
	8-2:3	Lack of a Systematic Approach to Handling Emails.....	290
	8-2:3.1	Introduction .....	290
	8-2:3.2	How Attorneys Can Determine if an Email Problem Exists .....	290
	8-2:3.3	Types of Email Problems .....	291
	8-2:3.3a	“Subject Surfing” .....	291
	8-2:3.3b	“Attachment Deferral” .....	291
	8-2:3.3c	“Email Skimming” .....	291
	8-2:3.3d	“Email Billing” .....	292

## Table of Contents

	8-2:3.4	Addressing an “Email Problem” .....	292
	8-2:3.4a	Introduction .....	292
	8-2:3.4b	Electronic Cut-Off for Old Emails.....	292
	8-2:3.4c	Electronic Cut-Off for Too Many Emails.....	293
	8-2:4	Managing Risk of Malpractice Claims from Third-Party Email Recipients.....	293
	8-2:4.1	Risk of Third-Party Claims Generally .....	293
	8-2:4.2	The Risk That Emails Will be Forwarded .....	294
	8-2:4.3	The Risk of an Unintended Recipient .....	295
	8-2:4.4	One Solution: Email Disclaimers .....	296
8-3		<b>SOCIAL NETWORKING AND MALPRACTICE.....</b>	<b>298</b>
	8-3:1	Risks of Social Media Generally .....	298
	8-3:2	Risk of Implied Attorney-Client Relationship.....	299
	8-3:3	Risk of Unauthorized Practice of Law .....	301
	8-3:4	Solution .....	301
8-4		<b>ADDRESSING THE MEDIA .....</b>	<b>303</b>
	8-4:1	The Client’s Instructions .....	303
	8-4:2	Materially Prejudicing an Adjudicative Proceeding.....	304
	8-4:3	Defensive Responses .....	304
	8-4:4	Reviewing the Rules .....	305
8-5		<b>CO-WORKING SPACES .....</b>	<b>306</b>
	8-5:1	Signage and Advertising .....	306
	8-5:2	Firm Materials and Operations .....	307
	8-5:3	Separate Systems .....	308
8-6		<b>REMOTE WORK BY NON-GEORGIA LAWYERS LIVING IN GEORGIA.....</b>	<b>308</b>
8-7		<b>RISKS OF BAR GRIEVANCES .....</b>	<b>309</b>
	8-7:1	Criminal Misconduct .....	310

### **Chapter 9: Jury Selection and Persuasion: Ethics for**

		<b>the Trial Practitioner.....</b>	<b>313</b>
9-1		<b>THE RULES .....</b>	<b>313</b>
	9-1:1	Introduction .....	313
	9-1:2	Trial Conduct .....	313
	9-1:3	Disclosing Adverse Authority and the Duty of Candor.....	314
	9-1:4	Degrading the Court.....	315
	9-1:5	Perjury by the Client.....	317

## Table of Contents

9-1:6	Attorney as a Witness .....	318
9-1:6.1	Potential Issues .....	319
9-1:6.1a	Confidentiality .....	319
9-1:6.1b	Attorney-Client Privilege .....	320
9-1:6.1c	Work Product .....	322
9-1:6.1d	Conflict of Interest .....	323
9-1:6.2	Serving as an Advocate and a Witness .....	324
9-1:6.3	Steps to Take if Called as a Witness.....	325
9-1:7	Contact with Witnesses.....	327
9-1:8	Communications with Jurors and Officials .....	331
9-1:8.1	Ex Parte Communication.....	331
9-1:8.2	Communication with Jurors.....	332
9-1:8.3	Communication with Officials .....	333
9-1:9	Trial Publicity .....	334
9-2	JUDICIAL DECISIONS GOVERNING ATTORNEY TRIAL CONDUCT .....	338
9-2:1	Introduction .....	338
9-2:2	Opening Statement .....	338
9-2:3	Questions From the Jury.....	340
9-2:4	Closing Statement.....	342
9-2:5	Conflicts Between the Court and Trial Counsel .....	343
	<b>Chapter 10: Sanctions.....</b>	<b>347</b>
10-1	BASES FOR SANCTIONS GENERALLY .....	347
10-2	DISCOVERY SANCTIONS .....	347
10-3	ATTORNEYS' FEES AND EXPENSES.....	349
10-3:1	Bases for Imposing Fees and Expenses Generally .....	349
10-3:2	Mandatory Liability .....	350
10-3:3	Discretionary Liability.....	351
10-3:4	Actions Under O.C.G.A. § 13-6-11 .....	353
10-3:5	Defenses .....	354
10-4	ABUSIVE LITIGATION.....	354
10-5	CONTEMPT.....	354
10-5:1	Courts' Inherent Power .....	354
10-5:2	Contempt.....	356
	<b>PART III INSURANCE AND LOSS AVOIDANCE ...</b>	<b>359</b>
	<b>Chapter 11: Purchasing Legal Malpractice Insurance.....</b>	<b>361</b>
11-1	INSURANCE POLICY IS A CONTRACT .....	361
11-2	FACTORS TO CONSIDER WHEN CHOOSING AN INSURANCE PROVIDER .....	362

## Table of Contents

11-2:1	Consider Scope and Type of Coverage .....	362
11-2:2	Factors to Analyze in Choosing a Carrier.....	362
11-2:3	Look at the Insurance Industry Rating of the Carrier .....	363
11-3	COVERAGE PROVISIONS .....	364
11-3:1	The Insuring Agreement .....	364
11-3:2	Scope of Coverage, Generally .....	364
11-3:3	Prior Acts Coverage.....	365
11-3:4	Prior Law Firm Distinguished from Predecessor Firm.....	366
11-3:5	Personal Injury Liability .....	366
11-3:6	Innocent Insured Coverage .....	367
11-3:7	Retroactive Date .....	367
11-3:8	Inception Date.....	368
11-3:9	Expiration Date .....	368
11-3:10	Benefitting from Coverage .....	368
11-4	WHO IS INSURED? .....	369
11-4:1	Generally .....	369
11-4:2	Definition of “Insured” and “Predecessor Firms”.....	369
11-4:3	Changes or Additions to Named Insured.....	369
11-5	LIMITS AND DEDUCTIBLES.....	370
11-5:1	Impact on Coverage and Settlement .....	370
11-5:2	Limits .....	370
11-5:3	Deductible and Self-Insured Retentions.....	371
11-5:4	Defense of Disciplinary Proceedings .....	372
11-5:5	Defendant’s Reimbursement .....	372
11-5:6	Defense Costs and Claim Expenses Within Policy Limits .....	372
11-5:7	What are “Endorsements”?.....	373
11-6	EXCLUSIONS .....	374
11-6:1	Exclusions Generally .....	374
11-6:2	Bodily Injury/Property Damage Exclusion .....	374
11-6:3	Securities Exclusion .....	374
11-6:4	Institution Exclusion .....	375
11-6:5	Workers’ Compensation Claims Exclusion.....	375
11-6:6	Contractual Exclusion .....	375
11-6:7	Dishonest, Fraudulent, Malicious or Criminal Acts Exclusion.....	375
11-6:8	Personal Profit Exclusion.....	376
11-6:9	Insured vs. Insured Exclusion .....	376
11-6:10	Business Enterprise Other Than Named Insured Exclusion .....	376

## Table of Contents

11-6:11	Business Enterprise Owned by Attorney or Spouse Exclusion.....	377
11-7	EXTENDED REPORTING PERIODS .....	377
11-7:1	Claims-Made Policies .....	377
11-7:2	Extended Reporting Periods (ERP) Options.....	377
11-7:3	Mini-Tail Availability.....	378
11-8	DEFENSE AND SETTLEMENT.....	378
11-8:1	Duty to Defend.....	378
11-8:2	Insured’s Consent to Settlement.....	378
11-8:3	Insurer’s Consent to Settlement .....	379
11-8:4	Arbitration of Claims .....	379
11-8:5	Subrogation .....	379
11-9	TERMS AND CONDITIONS .....	379
11-9:1	Effect of Terms and Conditions.....	379
11-9:2	Notice.....	380
11-9:3	Territory .....	380
11-9:4	Other Insurance.....	381
11-9:5	Assignment of the Policy to a Third Party.....	381
11-9:6	Cancellation.....	381
11-9:7	Legal Action Limitation .....	382
11-10	EXPOSURE OR NON-COVERAGE AS A RESULT OF THE INSURANCE APPLICATION PROCESS .....	382
11-10:1	Introduction .....	382
11-10:2	Rescission of Policy for Misrepresentation in Application .....	383
11-10:3	Policy Exclusions for Acts “Arising Out Of” Excluded Claims.....	385
<b>Chapter 12: The Tripartite Relationship.....</b>		<b>387</b>
12-1	RELATIONSHIP BETWEEN INSURER, INSURED AND INSURED’S ATTORNEY .....	387
12-2	RULES OF PROFESSIONAL CONDUCT .....	388
12-3	WHO IS THE CLIENT?.....	390
12-4	COMPLICATIONS ARISING FROM THE RETENTION OF PANEL OR CUMIS COUNSEL.....	390
12-5	DOES A RESERVATION OF RIGHTS LETTER CREATE A CONFLICT?.....	392
12-6	CONFLICTS ARISING FROM THE ATTORNEY-CLIENT PRIVILEGE.....	392
12-7	WHO OWNS THE CLAIM AGAINST THE ATTORNEY IN THE TRIPARTITE RELATIONSHIP: THE INSURED OR THE INSURER? .....	394

**Table of Contents**

12-7:1 Insurer’s Standing to Sue Defense Counsel  
for Legal Malpractice ..... 394

12-7:2 If an Insurer Does Have Standing to Sue Defense  
Counsel Directly for Malpractice, Can Both the  
Insured and the Insurer Bring a Claim? ..... 395

**Chapter 13: Handling a Claim: Four Steps for Attorneys Who  
Discover an Error or Receive a Legal Malpractice  
Claim ..... 397**

13-1 INTRODUCTION..... 397

13-2 NOTIFY THE CLIENT OF THE ERROR, WITHOUT  
ADMITTING LIABILITY ..... 397

13-2:1 Giving General Notice of Error..... 397

13-2:2 Admitting Liability May Give Support  
to an Otherwise Weak Malpractice Claim..... 398

13-2:3 Admitting Liability May Lead to a Lack  
of Insurance Coverage..... 400

13-2:4 Denying Responsibility When Claims  
are Asserted May Lead to Liability..... 400

13-3 IDENTIFY LEGAL MALPRACTICE  
CARRIER TO THE CLIENT ..... 401

13-4 ADVISE THE CLIENT TO OBTAIN INDEPENDENT  
COUNSEL..... 401

13-4:1 Attorney’s Options Concerning Representation  
of Client After Error..... 401

13-4:2 Continuing the Representation of the  
Original Matter..... 402

13-4:3 Advising the Client to Obtain Separate Counsel  
While Remaining Involved as Co-Counsel..... 402

13-4:4 Withdrawing From the Matter Entirely ..... 403

13-5 NOTIFY MALPRACTICE INSURANCE CARRIER  
WITHOUT DELAY ..... 403

**Appendix ..... 405**

**Table of Cases..... 411**

**Index ..... 431**