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Law Office Risk Management Checkup

By Michael Downey

How well are you managing risks at your law office?

By “risk,” I do not mean simply legal ethics risk. I am also referencing the various legal and business risks that could harm the firm’s ability to provide, not just for clients, but for you, your clients, and your colleagues and employees.

This column intends to provide a quick checklist of major points you can hit during a self- review. It should help you assess how well you are managing your office and the risks it faces.

Employee compensation. The most valuable assets for most law firms are the employees, the lawyers and staff who serve clients and make the office run.

A certain number of employees will inevitably leave, perhaps due to a life change or desire to try something new. But you can help minimize unnecessary departures by making sure your employees are compensated appropriately. This includes assessing whether their compensation is fair both within the firm – are employees doing similar work being compensated similarly – and also outside the firm.

The Robert Half *2015 Legal Salary Guide* is a great free resource for assessing external fairness of compensation. It is available at <http://www.roberthalf.com/legal/lawyer-salary-center>.

Employee satisfaction. While reviewing compensation, you may also want to consider sitting down with employees and assess their job satisfaction. Do they like their role and work? Are they ready for additional challenges? Are they growing in their profession?

You cannot make everyone happy all the time. But you may be able to address matters that, if left unresolved, may cause you to lose employees you would like to keep.

Employment agreements. You should also consider whether you have appropriate employment agreements with your employees. Many law firms do not use employment agreements. This seems foolish.

Ideally, an employment agreement would cover job responsibilities and compensation. It would provide a process for orderly departure from the firm. Also, it would ensure that the employee adequately protects the interests of the firm and the client, including protecting client confidences and notifying firm management should the employee observe any serious problems.

When preparing employment agreements, be mindful that – as discussed in last month’s column – Missouri Supreme Court Rule 4-5.6 severely restricts the ability of lawyers to offer or enter non- compete agreements.

Partnership agreement review. You should also take a look at your firm's partnership agreement. Do the provisions relating to operations and governance of the firm and compensation of partners still reflect actual practices? Also, does the agreement provide clear, effective guidance for resolution of disputes, and for circumstances such as how a partner's departure is handled?

Too often, firms neglect such matters, creating unnecessary headaches when a dispute finally does arrive.

Client communications. Do your standard client communications – engagement agreements, non-engagement letters, matter closure letters, and the like – properly state how your firm operates? Are those communications appropriate in light of changes in the ethics rules, particularly the prohibition against non-refundable retainers and the changes to trust accounting requirements contained in Missouri Formal Opinion 128 (2010) and Rules 4-1.145 through 4-1.55 and 4-1.22?

In addition, have you taken appropriate steps to protect client information, whether in paper or electronic form? In particular, have you updated anti-virus and other software, as well as passwords, to provide reasonable protections against unauthorized access?

Client funds and property. Trust accounts continue to be major sources of headaches – and significant discipline – for lawyers. Having already reviewed Rules 4-1.145 through 4-1.155 and 4-1.22 as well as Formal Opinion 128 (2010) – see above – you should also confirm that you have dealt appropriately with client and third-party property and funds.

In particular, you should assess whether you are holding any property or funds that should be distributed or returned to a client or third-party. Failure to promptly pay out

third-party funds is a common source for lawyer discipline.

Client engagement review. Review the client engagements you have to make sure they are properly calendared and staffed. Make sure clients are receiving competent, diligent representation, and that the lawyers and staff serving those clients are receiving proper supervision.

Practice area review. How has your practice shifted in the past few years? Should it shift more in one direction or another during the next year?

Consider whether you can narrow, or should change, the legal services you are providing or the recipients of those legal services. Like most risk management lawyers, I strongly encourage lawyers to focus their practice on providing a particular type of service or serving a particular group of people. Such focus makes it easier for lawyers to provide competent services and also improve their practice profitability.

Marketing review. Do your firm's marketing efforts and expenditures correspond to your practice? Review your marketing efforts to make sure that you are spending money only where it makes sense. If your telephone directory listing no longer generates clients, for example, it may be time to reduce or end those payments.

Also, make sure that your advertisements provide accurate, updated content, and that you have satisfied all disclaimer and other requirements.

Client review. Are you representing the right people? Have any clients experienced changes in culture, finances, or behavior, so that you now wish you no longer represented them? If so, you may be able to end the representation. Such action is particularly appropriate where a client is engaging in, and trying to involve you in, dishonest or illegal activities.

Business process review. Law firms waste a lot of money due to inefficiencies in how they bill and collect, or by failing to properly control expenditures. Also, law firms are frequent victims of fraud and embezzlement, often by the people they consider their best and most trusted employees.

Review how you are generating and spending money. Also, consider asking your accountant – or checking online resources – to learn how you can protect your firm from embezzlement or other financial crimes.

Dormant client files. Assess whether dormant client files should remain open – and perhaps receive attention – or be closed. If a file should be closed, make sure the client receives a closure letter and that any

funds, property, or documents are returned to the client as appropriate.

Closed client files. If you have closed client files, perhaps in off-site storage, determine whether the ethics rules and your terms of representation permit you to dispose of or return any unneeded records. Rule 4-1.22 generally allows lawyers to dispose of the majority of items in a client's file 10 years after the representation ends.

Insurance coverage. Finally, news that the law firm Green Jacobson P.C. closed after being hit with a \$10.5M malpractice judgment should serve as a good reminder to review insurance coverage. In particular, does your firm have appropriate lawyers professional liability and other insurance coverage? [Δ](#)

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