



Lack of documentation makes legal malpractice claims either impossible or more difficult to defend. Whether an attorney practices securities or family law, real estate or workers' compensation law, too often when a claim is reported our policy-holders tell us that they had explained certain consequences and risks to a client. However, when things go awry, that same client has no recollection of the conversation. Without some sort of objective evidence to show that a discussion actually took place, lawyers face an uphill battle trying to defend themselves against allegations of failure to advise.

Ideally, any critical client decisions should be memorialized in a written correspondence to the client not only as a way to confirm the decisions made but also as a mechanism to uncover any confusion. However, sometimes these letters are not sent either because the attorney does not recognize the decision as critical or because the attorney forgets or because the attorney does not have the time. In such situations, an invoice entry can provide the detail and support needed to show that certain discussions took place, that risks were evaluated and that the standard of care was met.

In order for this often overlooked tool to be effective, invoices should contain enough detail to show that issues and options were thoroughly explained. In addition, if invoices are going to be used as part of the defense in a legal malpractice suit, you want to make sure that the overall narrative is one of fairness and professionalism. Make sure that invoices do not contain errors such as discrepancies between the engagement letter's hourly rates and the rates of the individuals assigned to the file. Make sure the entries are clear so that a judge or jury can understand what each entry means and understand why you took the steps you took during the life of the case.

If these tips are followed, an invoice can be an excellent tool to defend an attorney against a legal malpractice allegation. Furthermore, if a client paid an invoice without questioning it, this gives this piece of evidence even more power.

### We'd like to hear from you

If you would like to get more details regarding any of the above topics, join the mailing list, access any of our risk management resources, or tell us your suggestions, please contact our broker or Swiss Re Corporate Solutions' LPL Risk Manager at: [corporate\\_solutions@swissre.com](mailto:corporate_solutions@swissre.com)

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