

Is Your Firm Culture Exposing You to Malpractice or Ethics Complaints?

BY SUZANNE ROSE

Editor's Note: Sections of this article originally appeared in the ABA – Law Practice Today, April 2005. We have modified it to fit the accounting profession.

A firm that is poorly managed exposes itself to the risk of malpractice and ethics complaints just as do the absence of good procedures and systems. This is an aspect of risk management you may not have considered. Ineffective firm management, incompatible practice areas, a culture that promotes individualism over institutionalism, failure to train staff and properly supervise them and even your compensation system may expose your firm to malpractice. Following are five cultural factors that may be creating malpractice exposure for your firm.

1. SHORT-TERM VIEW

Cultural Indicators. No partnership agreement; compensation system rewards only what you've done for the firm lately; you spend little time in your or others' professional development; you take clients you shouldn't take, putting other members of the firm at financial risk without their knowledge; you don't know how profitable your partners, clients or practice areas have been over time; you have no transition plan for retiring partners; you don't know where the firm is headed or if you want to be on board at all.

Malpractice Exposure. Leads to:

- Poor client-acceptance habits
- An unpleasant client base with unprofitable engagements
- Procrastination, resulting in client neglect
- Poor communication
- Underdevelopment of partners, possibly leading to retention issues

- Inefficiencies in office operations
- Little, if any, management
- Poor profitability

Risk Avoidance:

- Agree upon terms of partnership or shareholders agreement and put the terms in writing.
- Develop firm goals and share them with everyone.
- Define policies and procedures to support the achievement of the firm's goals, i.e., client acceptance policy, work allocation policy, client communication policy.
- Effectively manage your firm, i.e., through a managing partner, managing committee or dictator – whatever works for your firm.
- Invest in your professional and administrative staff: train and supervise them, delegate work to them and create a professional working environment for them.
- Invest in technology and automation that will support your practice management systems.

2. OFFICE-SPACE SHARERS

Cultural Indicators. There are no shared goals for the firm; no leader has emerged; or worse, you are a group of partners that refuses to be managed. Your compensation system rewards personal production only and you have no plan for how the firm will survive your retirement. Your practice management systems are stand-alone systems; i.e., you don't share calendars, engagement management, staffing, etc. Partners have no accountability to others in the firm.

Malpractice Consideration. Office sharers typically:

- Refuse to be managed, i.e., establish

policies for the operation of the firm, conform to firm expectations and comply with firm policies that protect the firm from risk.

- Have an unwillingness to refer work to the professional in the firm who can best handle it, leading to inadequate or negligent client representation and an unmanageable workload for the unwilling accountant.
- Do not have or do not comply with a firm client acceptance policy, resulting in unpleasant clients with unprofitable cases.
- Do not invest time in staff training and supervision.

Risk Avoidance:

- Develop individual and professional goals that are shared by and compatible with the goals of your other partners.
- Refer new clients to other partners in the firm who are experts within the area needed. Avoid hoarding work; delegate work to the most appropriate level and leverage for improved profitability.
- Your compensation system should not reward personal production to the exclusion of behavior needed to have a successful firm, i.e., firm management, staff development or client development.
- Establish a schedule of regular meetings at the beginning of the year, enforce attendance, develop an agenda and make decisions.
- Elect a firm leader and agree to be managed.

3. PERSONAL FISCAL RESPONSIBILITY

Cultural Indicators. You are living well above your means, you are deeply in debt, you have no idea where your income goes and are living hand-to-mouth.

Your practice is riddled with unpleasant and unprofitable clients who require too much time. You are unable to get the good clients due to the “dog clients” you serve.

Malpractice Consideration. A strain on an owner’s personal finances can expose the firm to malpractice because professionals living hand-to-mouth typically:

- Will not comply with a client acceptance policy resulting in a practice with unprofitable engagements.
- Procrastinate and fail to communicate because the client and/or engagement are unpleasant and/or unprofitable.
- Hoard work. Partners may be dabbling in practice areas in which they have little experience in order to get the fee; or, they may refuse to delegate work in order to get the fee.

Risk Avoidance:

- Live within a personal budget.
- Have a personal “rainy-day fund” to help you weather slow times.
- Hold back a certain percentage (10%-15%) of firm monthly revenue until it has accumulated sufficient cash to fund one month of firm expenses.
- Pay partners a set draw monthly and distribute excess profits quarterly.
- Review clients based on merit, value and resource requirements.
- Establish good client billing and collections procedures.

4. ENVIRONMENT OF TRUST AND INTEGRITY

Cultural Indicators. Personal agendas take priority over firm interests; history of individual violations of trust among the partners and associate staff; “eat-what-you-kill” reward system; poor “in-firm” relationships, misunderstandings and deceit. Closed doors and secret lunches.

Malpractice Consideration. Absence of trust leads to:

- A stressful working environment that when coupled with a heavy

workload may result in burnout, depression and/or substance abuse.

- A focus on what is in your best interest rather than the client’s.

Risk Avoidance:

A proper risk management program for any firm must take into account the totality of the practice. Proper client relations and office systems are essential. The personal and psychological side of practice, however, cannot be ignored. Failure to attend to either is running a substantial risk of facing a malpractice lawsuit.

- Be a person of integrity.
 - Be personally fiscally responsible
 - Always tell the truth
 - Be consistent
 - Pick your battles
 - Regularly communicate with your partners and staff.
- Be a firm of integrity.
 - Communicate the firm’s mission, purpose and the way in which it wants to conduct its practice and treat its employees.
 - Open doors of communication and trust to anyone who needs to discuss firm matters, regardless of how the information may affect others or themselves.
 - Develop a firm culture that reduces the high level of stress that the partners experience daily.
 - Establish adequate practice management systems to support the workload.
 - Establish adequate risk management systems.

5. EAT-WHAT-YOU-KILL PHILOSOPHY

Cultural Indicators. Short-term view; compensation system rewards personal performance only; lacking practice management systems to support the integrity of the compensation system; firm is poorly managed, indecisive and losing ground. Work is hoarded, partners are underutilized and the firm overstaffed.

Malpractice Exposure. Supports a short-term view of the practice, which leads to:

- Poor utilization of staff, which negatively impacts the development of young professionals.
- An unwillingness to transition clients to junior partners or managers, which leaves no time for developing work from new and current clients and which threatens the continuing firm-client relationship.
- Flat or declining profitability which is the basis for concern about the future of the firm.
- Defections exposing the firm to neglect of client matters resulting in malpractice claims and ethics violations.

Risk Avoidance:

- Effectively communicate the firm’s mission, purpose and the way in which it wants to conduct its practice and treat its employees.
- Owners should be rewarded for their marketing and client development activities, mentoring of young partners, participation in management, practice area profitability – in addition to personal performance.
- Review firm expenses as a whole, rather than as individual practices, and reduce where possible. Implement technology and automation systems that will expedite the work flow and internal communication.
- Develop a professional but pleasant work environment; give staff as much substantive work as they can handle to further develop their skills; set goals for their development and mentor and train them.
- Communicate to staff what it means to be a partner or shareholder in your firm, the characteristics the firm looks for and the performance factors needed to be a successful firm owner.

Suzanne Rose is a practice management specialist focusing exclusively on the legal industry; and, more specifically, on the critical areas of law firm leadership, strategic management, practice administration and profitability. Contact: swrose@comcast.net.