

OSB Professional Liability Fund presents

Avoiding Malpractice in Today's Changing World

Thursday, March 30th, 2023
10:00 am – 11:30 am

MCLE ID 97580
1.5 Practical Skills Credits

Speakers: **Holli Houston**
Claims Attorney
OSB Professional Liability Fund

Rachel Edwards
Practice Management Attorney
OSB Professional Liability Fund



Professional
Liability Fund

CLE Materials

- Speakers' Bios
- PowerPoint Slides
- Additional Resources

Speaker Biographies

Holli K. Houston

Holli Houston received her undergraduate degree from Austin Peay State University in Clarksville, TN, in 2002. From there, she attended the University of Michigan Law School. Following graduation, she moved back to her hometown of Eugene and began her career in private practice, focusing in large part on defending lawyers in malpractice litigation. In 2008, she moved to Portland and continued her practice at Kilmer, Voorhees & Laurick, PC, again focusing on the defense of lawyers. Over the years, she became a member, and worked her way up to chairperson, of both the Oregon State Bar's Ethics and Uniform Civil Jury Instructions Committees. In 2012, she began working as a Claims Attorney for the PLF. She is often called upon to assist attorneys before mistakes happen and is known for her outside-the-box thinking in coming up with creative solutions to complex problems.

Rachel Edwards

Rachel Edwards received her BA from the University of Washington in Seattle and her JD from Willamette University College of Law. She is a member of the Oregon State Bar, Oregon Women Lawyers, Multnomah Bar Association, and Washington County Bar Association. Prior to joining the Professional Liability Fund in 2016, Ms. Edwards was in private practice for four years. Her areas of practice included Social Security disability, family law, adoption, and estate planning. In her role as a Practice Management Attorney for the PLF, Ms. Edwards provides practice management assistance to Oregon attorneys to reduce their risk of malpractice claims and enhance their enjoyment of practicing law. Her assistance is free and confidential.

Avoiding Malpractice in Today's Changing World



Professional Liability Fund

Presented by:
Holli K. Houston, *Claims Attorney*
Rachel Edwards, *Practice Management Attorney*
OSB Professional Liability Fund

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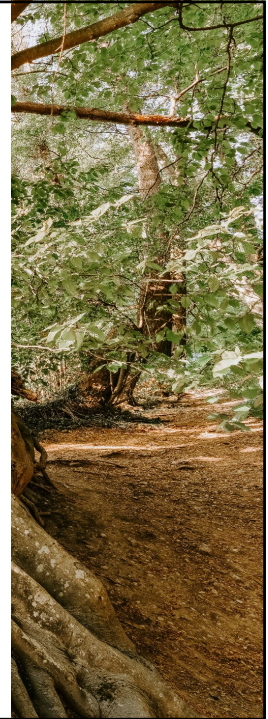


Changing Landscape

2

Effects of pandemic

- Navigating remote work
- Toll on mental and physical health
- Attorneys retiring sooner than anticipated
- Great Resignation

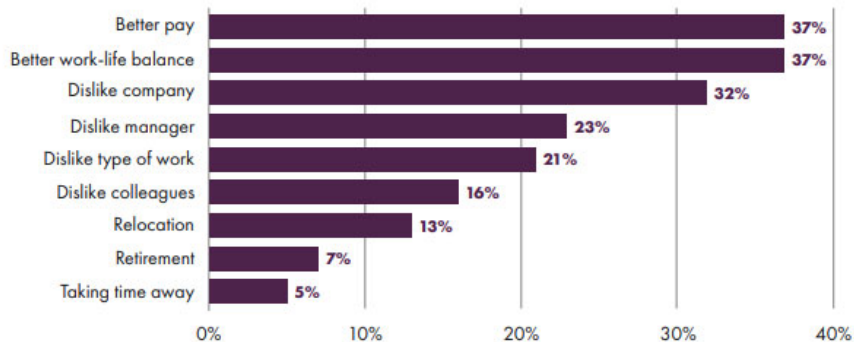


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Great Resignation

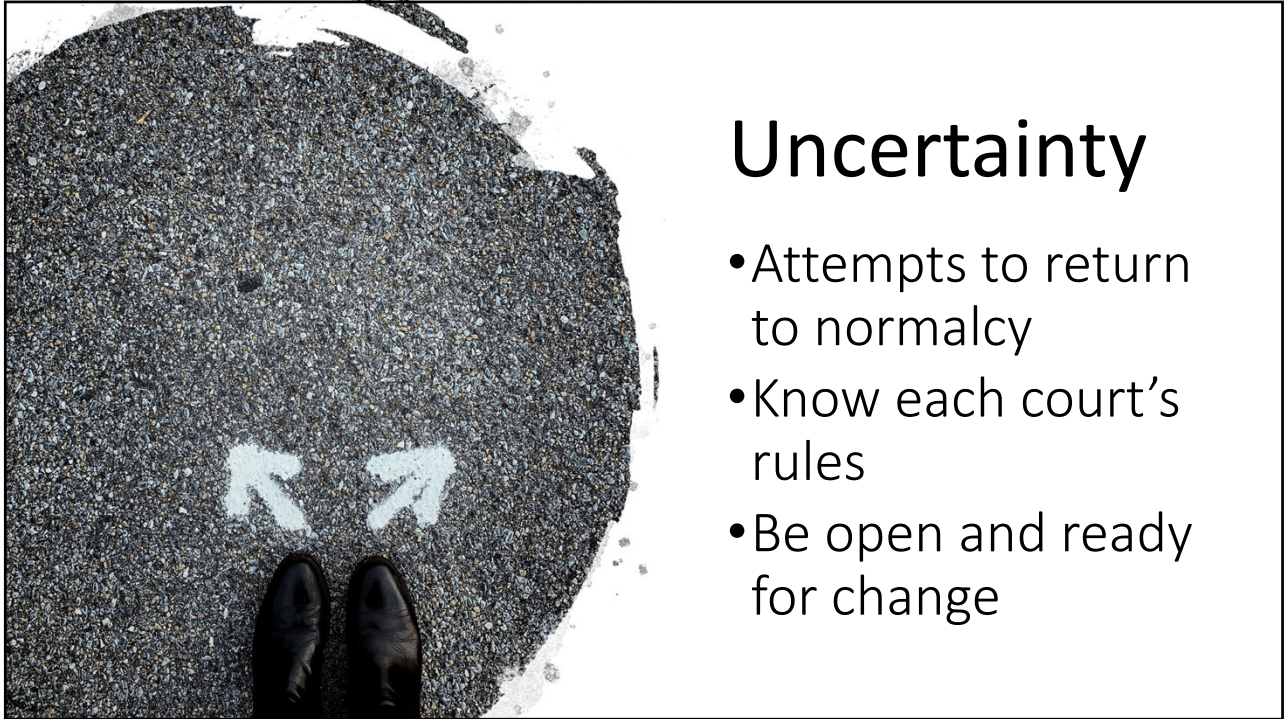
Better pay, work-life balance, and job dissatisfaction are why lawyers move jobs

Of those who have left or plan to leave, why?



Source: 2022 Clio Legal Trends Report

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Uncertainty

- Attempts to return to normalcy
- Know each court's rules
- Be open and ready for change

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Malpractice Claims Data

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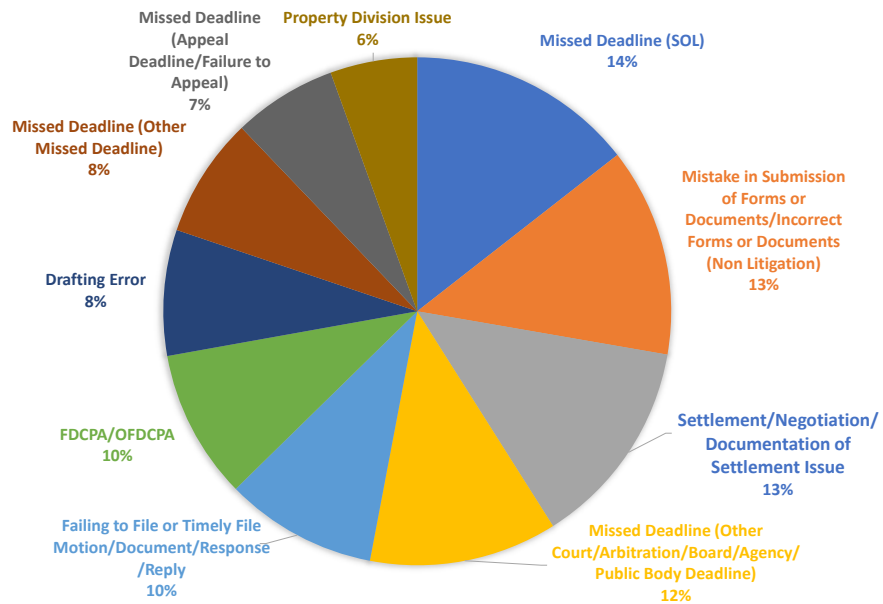
HB 4212

- COVID-19 State of Emergency declaration
- Multiple extensions since 3/8/20
- Unknown effects on malpractice

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Errors (Top 10)

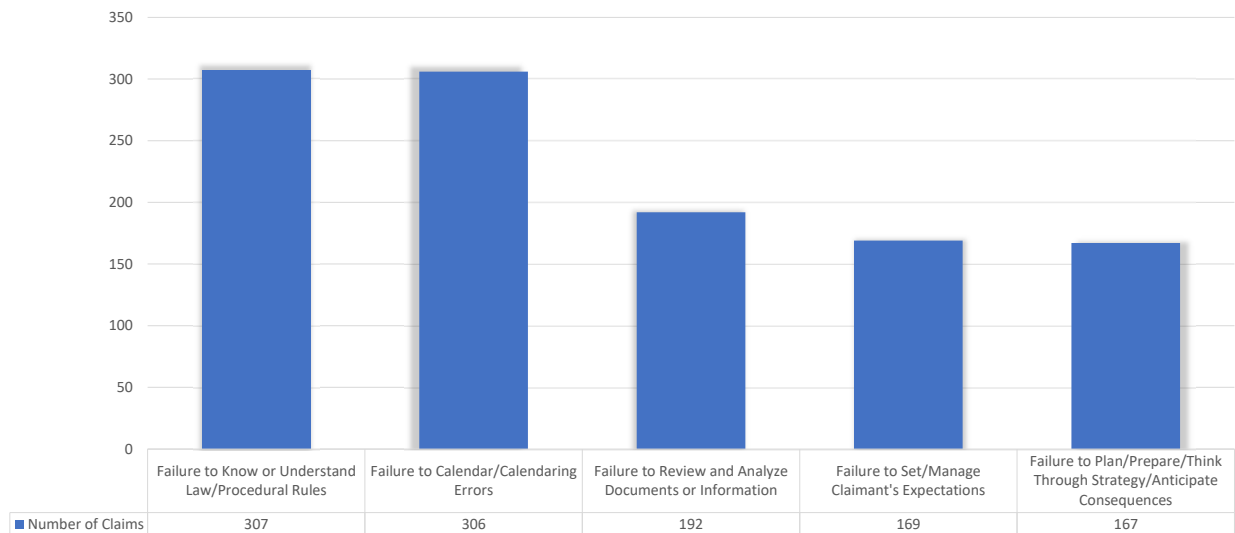
PLF Claims Closed 2019-2022



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Factors Causing Malpractice Claims

PLF Claims Closed 2019-2022



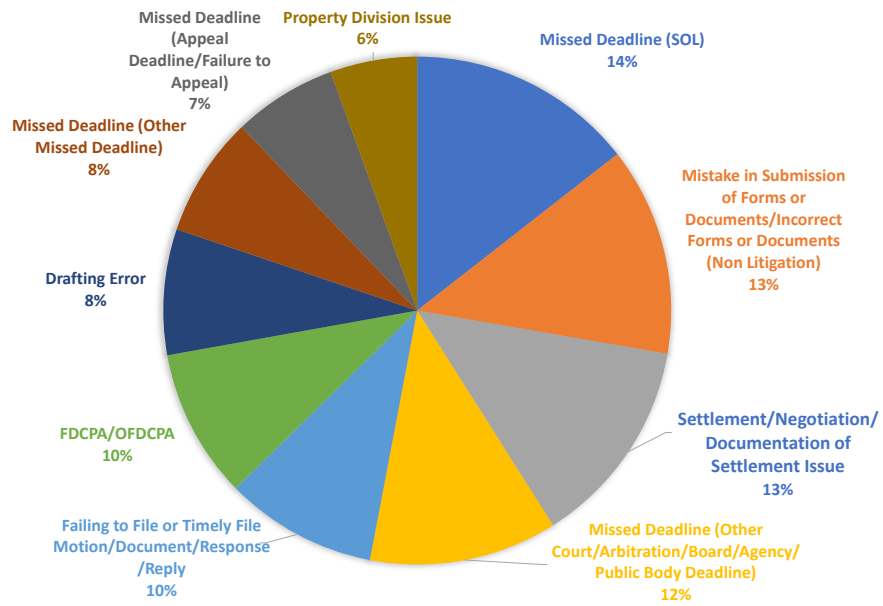
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Errors (Top 10)

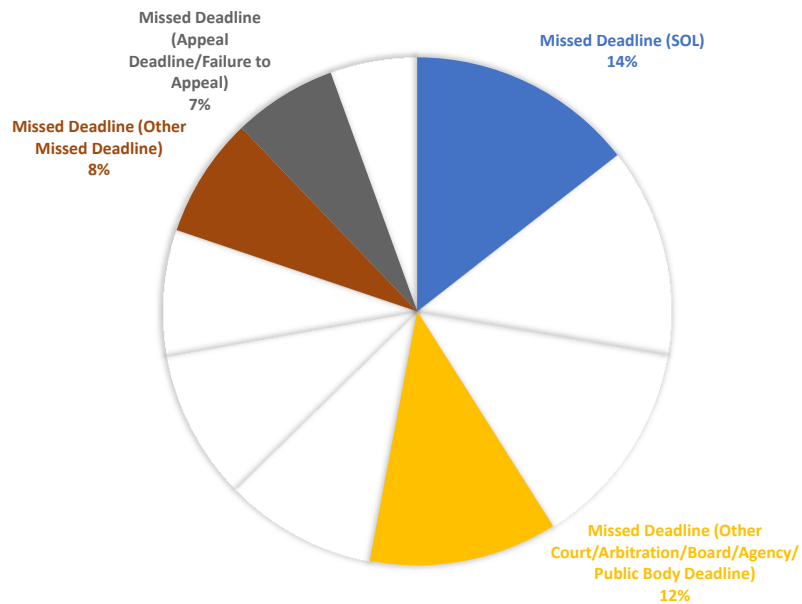
PLF Claims Closed 2019-2022



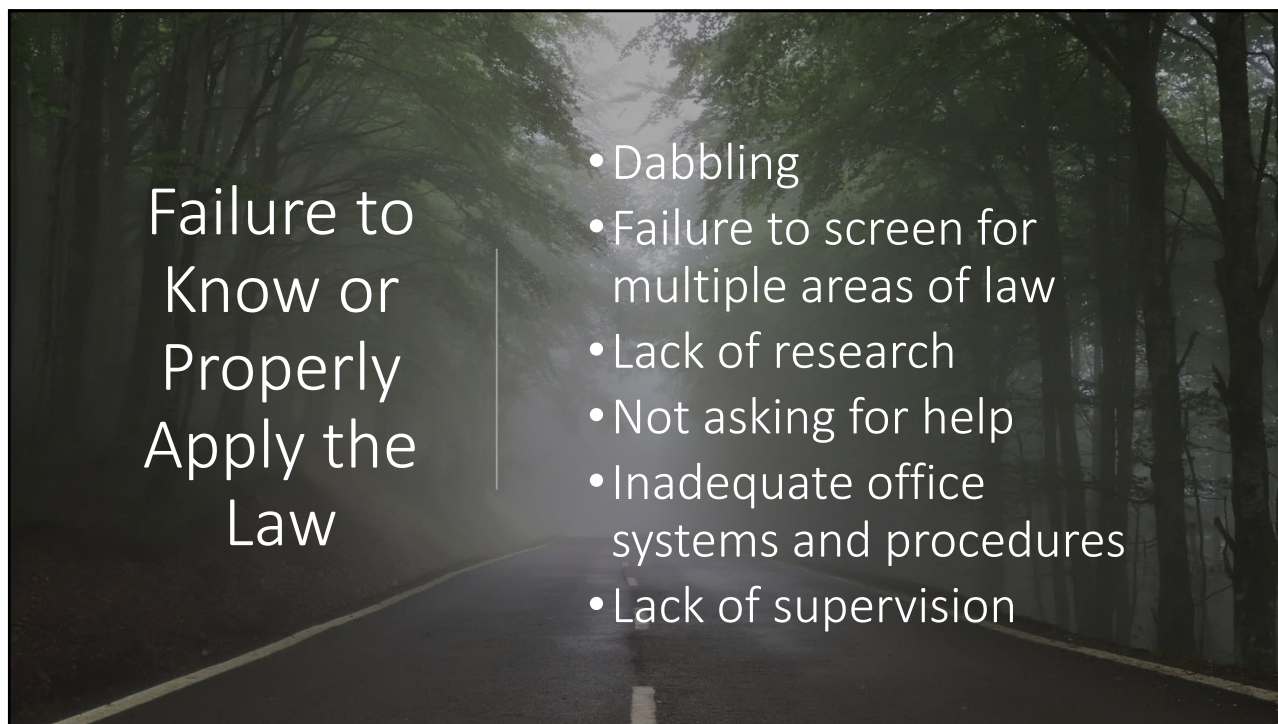
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Errors (Missed Deadlines)

PLF Claims Closed 2019-2022



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Failure to Know or Properly Apply the Law

- Dabbling
- Failure to screen for multiple areas of law
- Lack of research
- Not asking for help
- Inadequate office systems and procedures
- Lack of supervision

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Tips to Avoid

- No dabbling
 - Otherwise dedicate time to research or associate with experienced counsel
- Screen for multiple areas of law
- Keep procedural rules book at desk
- PLF repair options

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Proactive Education

- Tracking research sources
- Networking
- Strategize fulfilling CLE credits
- External resources
 - News sources
 - Court hearings and filings
- Use checklists and templates



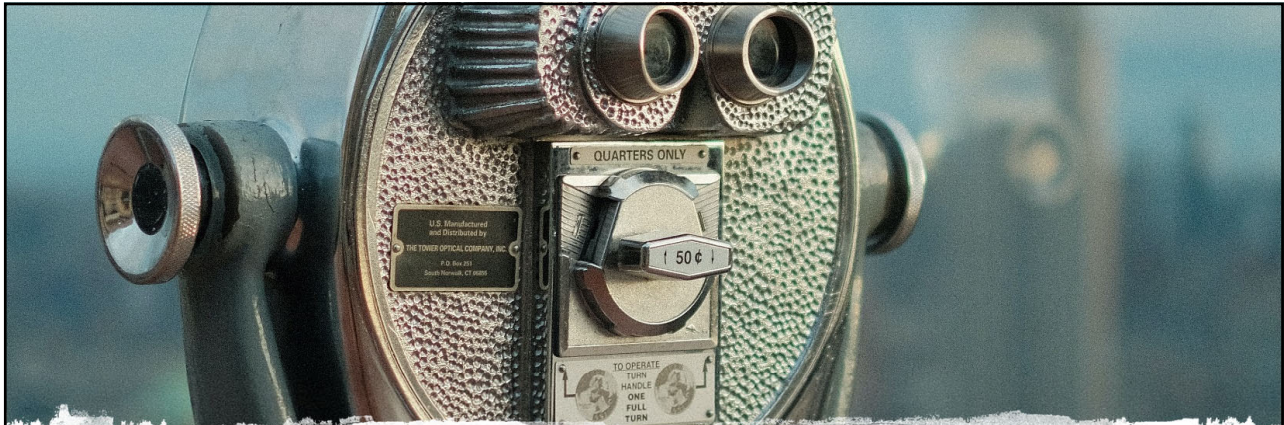
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Office Systems and Procedures

- Write down all firm procedures and store them in a shared location
- Streamline



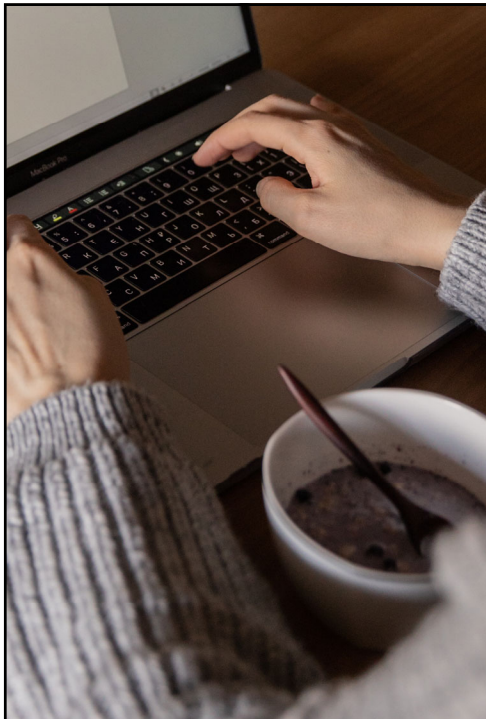
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How To Create Procedures

- Document workflow and who is responsible for which task
- Consider practice management and/or task management software
- Create reasonable redundancies
- Streamline systems









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Streamline Office Systems

- Examine what you have and determine how you can fully utilize all features
- Duplicative programs?
- Determine bottlenecks and issues

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Cloud-Based Practice Management Software		Conflict Checking	Contact Mgmt.	Matter Mgmt.	Document Storage	Document Automation	Forms Library	Calendaring	Tasks/Workflow	Email Mgmt.	Timekeeping	Billing	E-Signature	Trust Acctg.
 Clio	\$69/user/mo	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	
 mycase	\$69/user/mo	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
 CosmoLex	\$89/user/mo	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓
 PRACTICE PANTHER	\$89/user/mo	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
 rocket matter	\$69/user/mo	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
 SMOKEBALL	\$149/user/mo	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
 CARET	\$89/user/mo	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
 actiontap	\$89/user/mo	✓	✓	✓	✓	✓		✓	✓	✓	✓			✓

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Calendaring

- Need written and consistent calendaring procedures
- Deadline calculation
- Blocks, ticklers, deadlines

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Rules-Based Calendaring Software

Stand-alone rules-based calendaring software	Practice management software integrates w/ stand-alone tools	Practice management software w/ built-in rules-based calendaring
 	     	  

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Attorney Supervision

- Regular check-ins
- Review work product
- Provide support and guidance
- Encourage a culture of support



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Staff Supervision

- Understand what staff can and cannot do in terms of legal work
- Clear delegation
- Require documentation
- Review work product





<https://www.osbar.org/publications/bulletin/15jul/managing.html>

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Avoid Distractions

- Set a regular workday
- Create an office space
- Use separate personal/work equipment
- Use headphones
- Use task lists

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Task Management Software		Collaboration	Recurring Tasks	Create Subtasks	Reminders	File Sharing	Task Dependencies	Workflow Builder	Workflow Templates	Progress View
 asana	\$10.99/mo	✓	✓	✓	✓	✓	✓	✓	✓	✓
 Microsoft To-Do	Free	✓	✓	✓	✓	✓				
 todoist	\$0-8/mo	✓	✓	✓	✓	✓			✓	
 remember the milk	Free or \$39.99/yr pro	✓	✓	✓	✓	✓				
 Trello	\$0-17.50/mo	✓	✓	✓	✓	✓	✓	✓		✓
 monday.com	\$0-16/mo	✓	✓	✓	✓	✓	✓	✓	✓	✓
 Basecamp	\$99/mo	✓	✓	✓	✓	✓	✓	✓	✓	✓
 wrike	\$0-24.80/user/mo	✓	✓	✓	✓	✓	✓	✓	✓	✓
 smartsheet	\$0-25/user/mo	✓	✓	✓	✓	✓	✓	✓	✓	✓

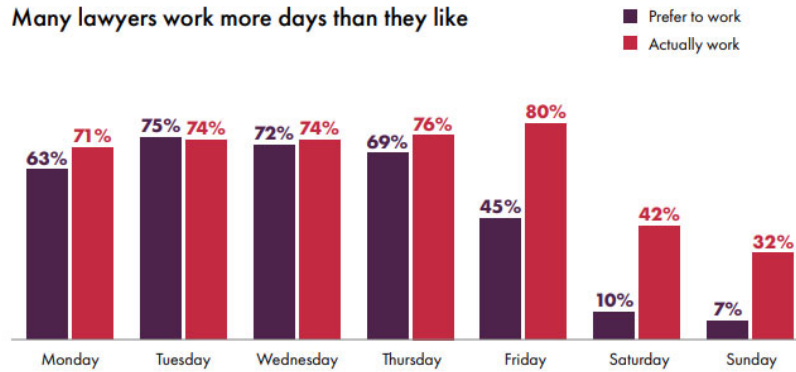
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Remote Work and Overload

Many lawyers work more days than they like



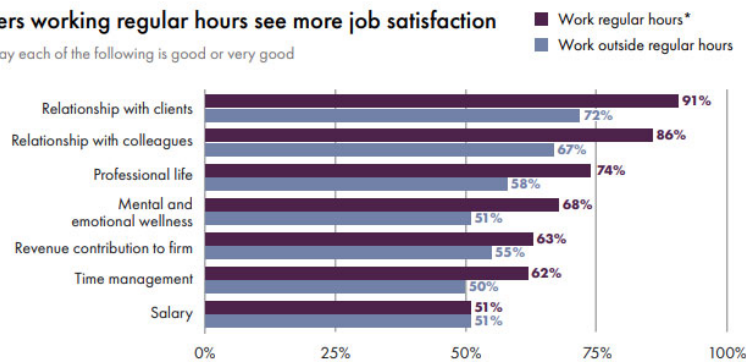
Source: 2022 Clio Legal Trends Report

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Regular vs. Outside Hours

Lawyers working regular hours see more job satisfaction

% who say each of the following is good or very good



*Regular work hours = between 8-9am and 5-6pm

Source: 2022 Clio Legal Trends Report

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What is Burnout?

“Burnout is a syndrome conceptualized as resulting from chronic workplace stress that has not been successfully managed.”

- World Health Organization



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Avoid Burnout

- Advance planning to avoid overload
- Set boundaries for yourself and clients
- Use technology
- Focus on business development for managing caseload

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Self-Care

- Keep your physical and mental health at the forefront
- Take vacations
- Find support in your community
- Talk to a therapist

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oaap
Oregon Attorney Assistance Program

Lawyers & Judges

Law Students

- Well-being and stress
- Anxiety or depression
- Problem substance use
- Compulsive behaviors
- Career & lifestyle
- Relationships
- Challenging times
- Burnout
- Vicarious trauma
- Planning for retirement

Individual Counseling

Support Groups

Workshops /CLEs

OAAP Attorney Counselors



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Confidential Assistance

All communications with the OAAP are completely confidential and will not affect your standing with the Professional Liability Fund (PLF) or the Oregon State Bar. The OAAP is a confidential service of the PLF for all members of the Oregon legal community. Call us at **503.226.1057** or visit us at **oaap.org**.

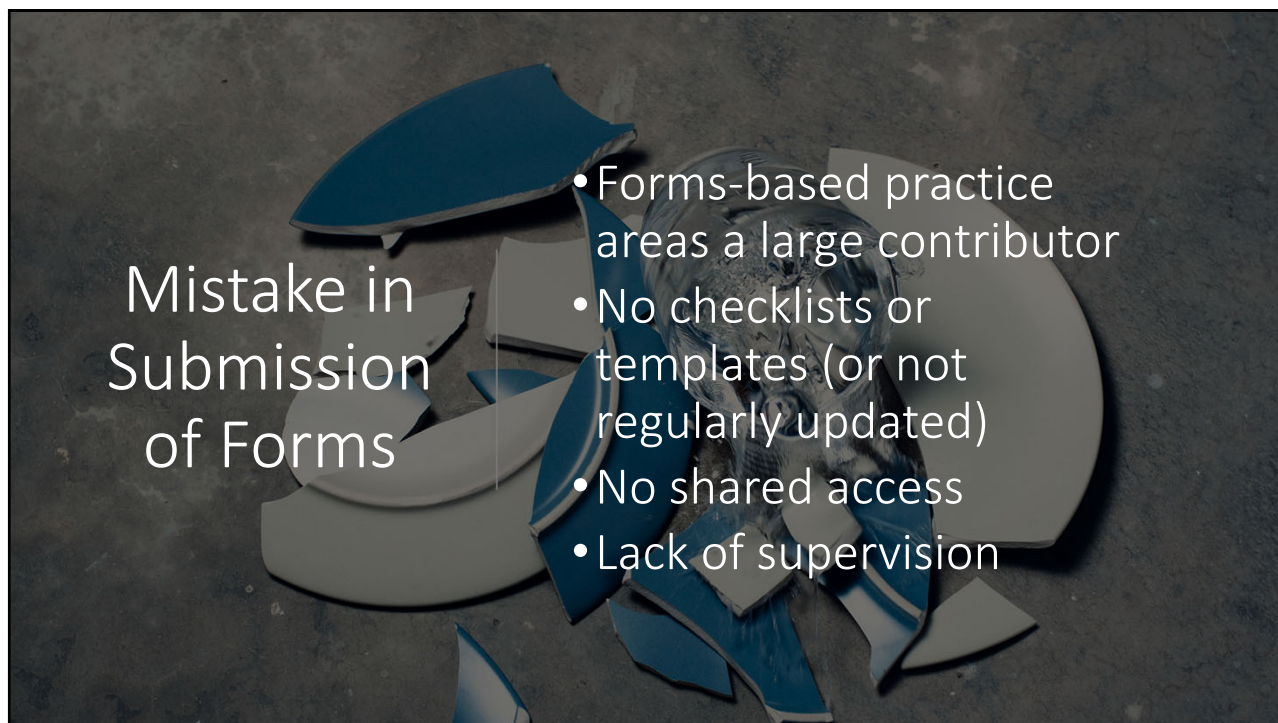
Thrive in law, thrive in life.

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Mistake in Submission of Forms

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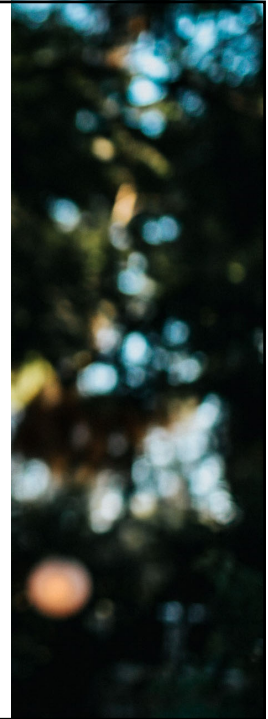
Mistake in Submission of Forms

- Forms-based practice areas a large contributor
- No checklists or templates (or not regularly updated)
- No shared access
- Lack of supervision

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Forms-Based Practice Areas

- Debt collection, probate/estate planning, immigration, domestic relations
- Claims examples



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Tips for Avoiding Mistakes in Forms

- Regularly update checklists and templates
- Shared access
- Attorney/staff supervision
- Document automation



<https://www.osbplf.org/services/resources/>

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Document Automation



TheFormTool
Software company

HOTdocs™
by CARET



Knackly



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Case Assessment Issues

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Case Assessment Issues

- Clients overestimate their case value
- Clients provide false information

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Avoid the Problems Early

- Research the case early
- Be sure clients are open and transparent about the matter
- Trust but verify
- Provide written assessments to the client, discussing strengths and weaknesses
- Set appropriate client expectations

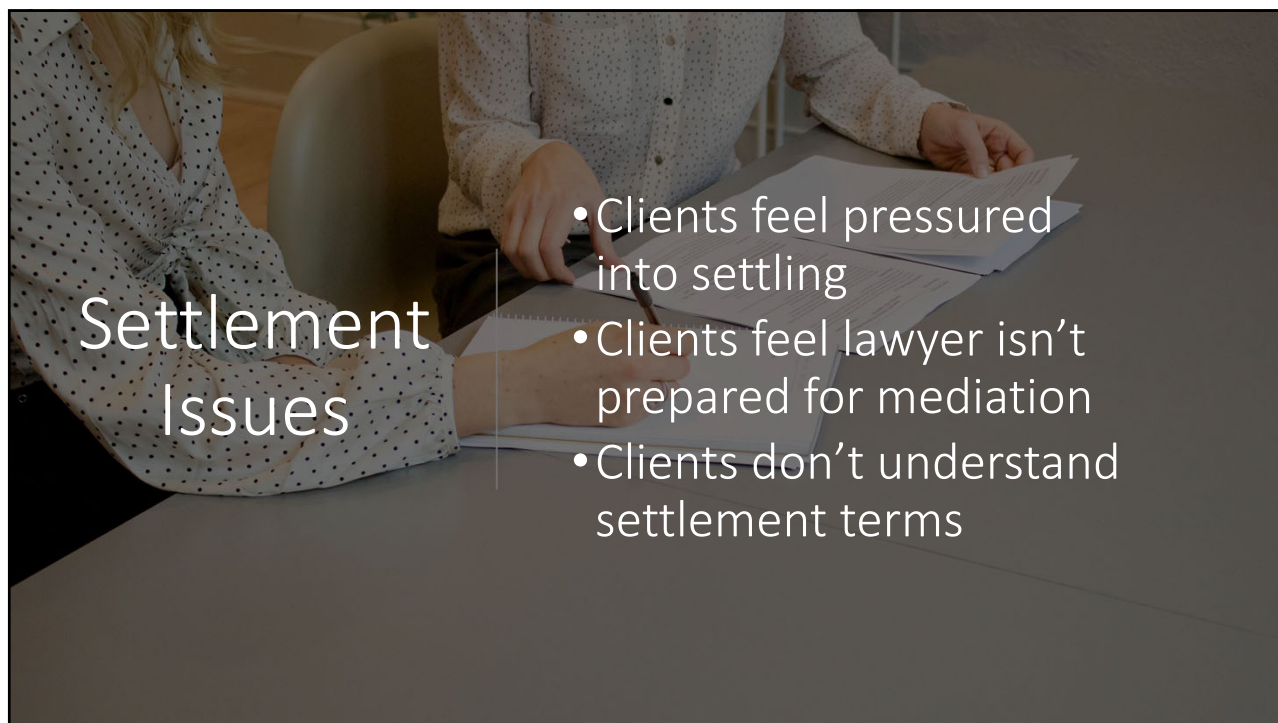


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Settlement Issues

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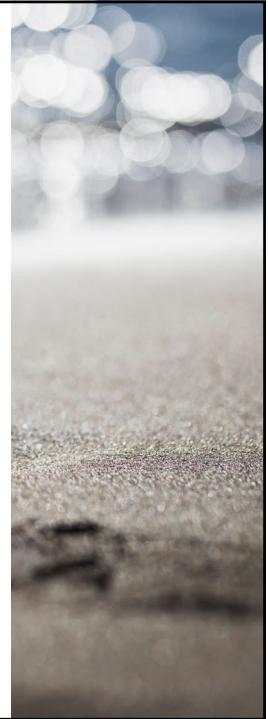
Settlement Issues

- Clients feel pressured into settling
- Clients feel lawyer isn't prepared for mediation
- Clients don't understand settlement terms

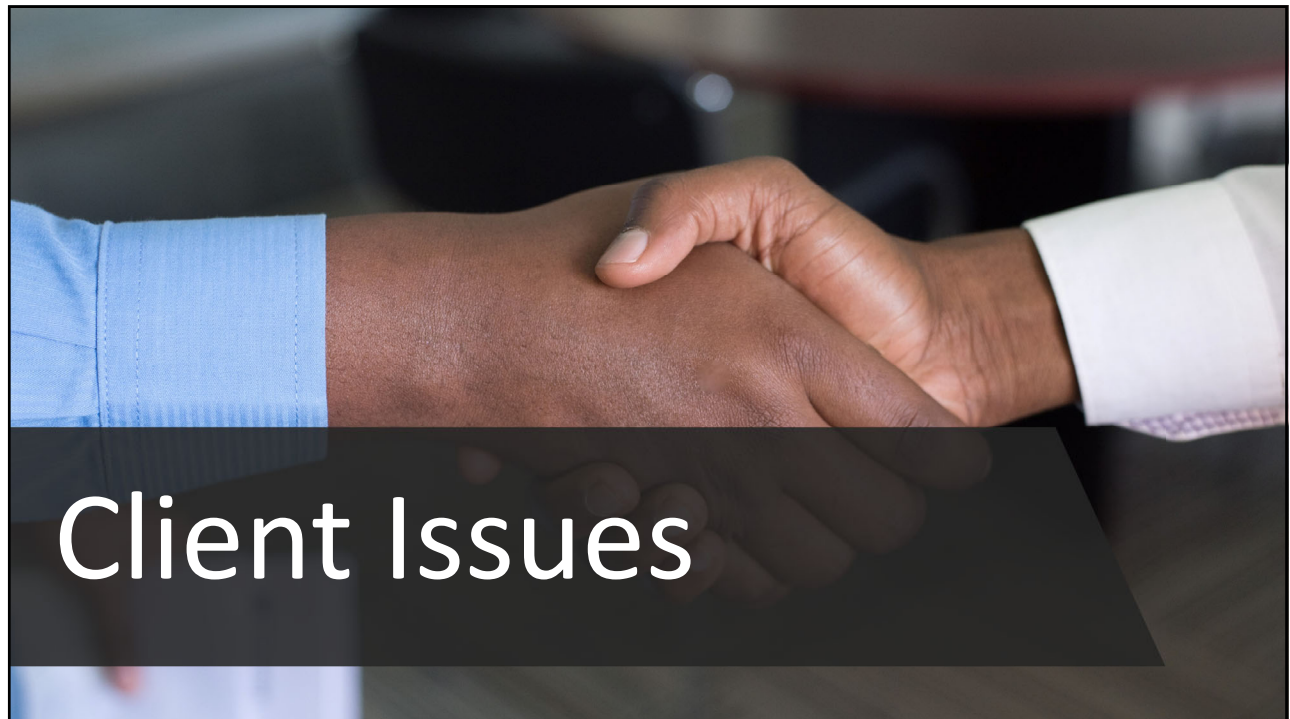
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Settlement Tips

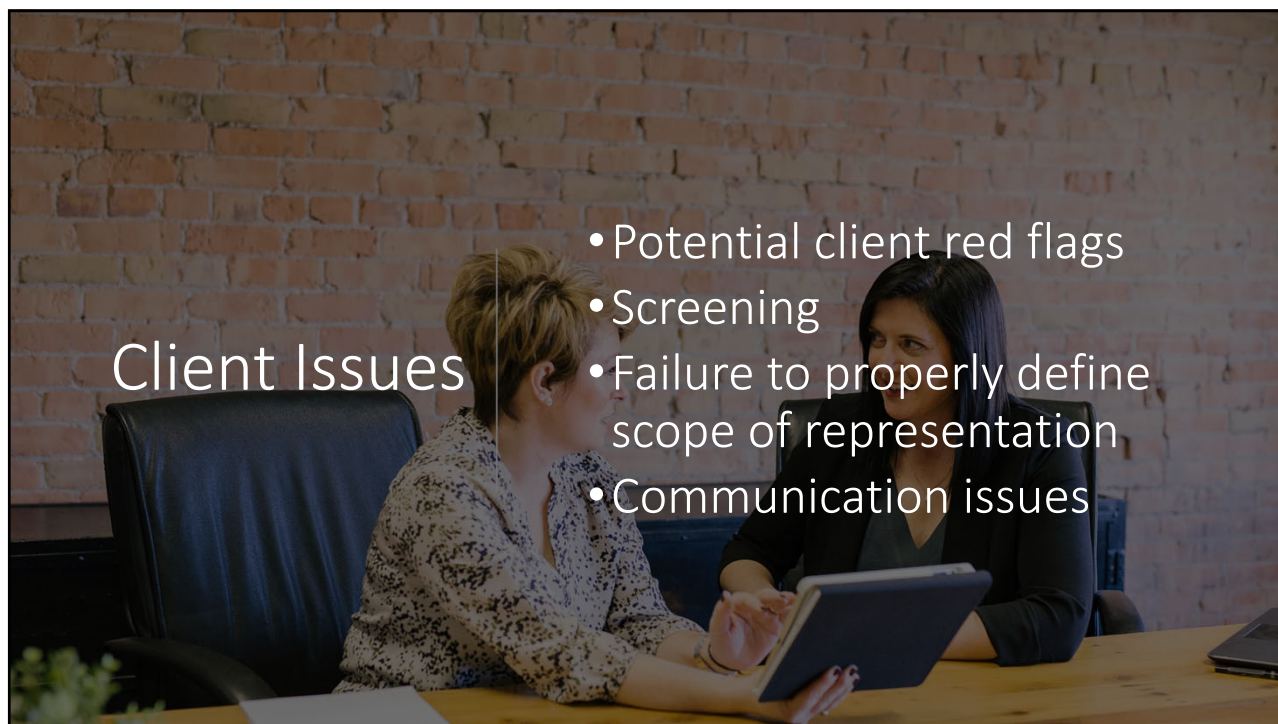
- Establish settlement goals early
- Communication is key
- Give client time and space
- Explain terms and ramifications in writing
- Be available during and after settlement process



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Client Issues

- Potential client red flags
- Screening
- Failure to properly define scope of representation
- Communication issues

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Red Flags

- Negative relationship with previous lawyers
- Short case timeline
- No-fault mindset
- Unrealistic expectations towards the case
- Self-declared experts

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Screening

- Consistent screening process
- Screen for multiple areas of law
- Send non-engagement letters



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Improve Communication









1. Set realistic expectations
2. Do not guarantee outcomes
3. Set boundaries for communication
4. Get consent before taking action

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Additional Communication Tips

1. Determine appropriate contact methods depending on goals and clients' needs
2. Be responsive (within set boundaries) and set up regular check-ins with clients
3. Consider a client portal to exchange information and documents

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Cloud-Based Practice Management Software	Pricing	Client Relationship Management	Client Mobile App	Text Messaging	Client Portal	Online Payments	Event Reminders
 Clio	\$69/user/mo	Clio Grow (+\$49/user/mo)	✓	✓	✓	✓	✓
 mycase	\$69/user/mo	✓	✓	✓	✓	✓	✓
 smoLex	\$89/user/mo	✓		✓	✓	✓	✓
 PRACTICEPANTHER	\$89/user/mo	✓	✓	✓	✓	✓	✓
 rocket matter	\$69/user/mo	✓	✓	✓	✓	✓	✓
 SMOKEBALL	\$149/user/mo	✓	✓	✓	✓	✓	
 CARET	\$89/user/mo	✓	✓	✓	✓	✓	✓
 actionstep	\$99/user/mo	✓		✓	✓	✓	

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Paper the File

- OSB Formal Ethics Op. 2017-192 (definition of “client file”)
- Detailed scope engagement letters/fee agreements
- Document all conversations
- Save text messages, emails to file
- Save client file for at least 10 years from date of closure of file



https://assets.osbplf.org/forms/practice_forms/File%20Retention%20and%20Destruction%20Guidelines.pdf

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Resources



Professional
Liability Fund

<https://www.osbplf.org> > Services
503-639-6911 | 800-452-1639

- Practice Management Assistance Program (PMAP)
- Claims Attorneys
- Practice Aids
- Books
- CLEs
- *InPractice* Blog
- *InBrief* Newsletter



<https://oaap.org/>

503-226-1057 | 800-321-6227

- Short-term individual counseling
- Support groups and workshops
- Referrals to community resources
- *ThrivingToday* Blog
- *InSight* Newsletter

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Materials

Program materials are available at

www.osbplf.org >

Services > CLEs &

Resources > CLEs

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Questions?

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Additional Resources

1. Practice Aids- Go to our website at <https://www.osbplf.org/services/resources/> and you can find the practice aids listed below in the following categories, among others:
 - a. Client Relations
 - i. Client Relations Best Practices
(https://assets.osbplf.org/forms/practice_forms/Client%20Relations%20Best%20Practices.pdf)
 - b. Disengagement and Nonengagement
 - c. Engagement Letters and Fee Agreements
 - i. Checklist for Drafting Engagement Letters
(https://assets.osbplf.org/forms/practice_forms/Checklist%20for%20Drafting%20Engagement%20Letters.pdf)
 - d. Office Systems and Procedures
 - i. File Retention and Destruction Guidelines
(https://assets.osbplf.org/forms/practice_forms/File%20Retention%20and%20Destruction%20Guidelines.pdf)
 - ii. Creating an Office Procedures Manual
(https://assets.osbplf.org/forms/practice_forms/Creating%20an%20Office%20Procedures%20Manual.pdf)
 - iii. Docket Control Follow-Up
(https://assets.osbplf.org/forms/practice_forms/Docket%20Control%20Follow-Up.pdf)
 - iv. Docketing and Calendaring Checklist
(https://assets.osbplf.org/forms/practice_forms/Docketing%20and%20Calendaring%20Checklist.pdf)
 - v. File Closing Checklist
(https://assets.osbplf.org/forms/practice_forms/File%20Closing%20Checklist.pdf)
 - vi. Office Systems Review Checklist
(https://assets.osbplf.org/forms/practice_forms/Office%20Systems%20Review%20Checklist.pdf)
 - vii. Reminder and Tickler Systems
(https://assets.osbplf.org/forms/practice_forms/Reminder%20and%20Tickler%20Systems.pdf)
 - e. Paperless Office and Cloud Computing
 - i. Checklist for Going Paperless
(https://assets.osbplf.org/forms/practice_forms/Checklist%20for%20Going%20Paperless.pdf)
 - ii. Documenting Email as Part of the Client File
(https://assets.osbplf.org/forms/practice_forms/Documenting%20Email%20as%20Part%20of%20the%20Client%20File%20-%20April%20May%202013%20Bulletin.pdf)

iii. Saving Text Messages as Part of the Client File
(https://assets.osbplf.org/forms/practice_forms/Saving%20Text%20Messages%20as%20Part%20of%20the%20Client%20File.pdf)

f. Substantive practice aids in the following categories:

- i. Adoption
- ii. Bankruptcy
- iii. Business
- iv. Conservatorship or Guardianship
- v. Construction Liens
- vi. Criminal
- vii. Estate Planning
- viii. Family Law
- ix. Immigration
- x. Litigation
- xi. Probate
- xii. Real Property
- xiii. Workers Compensation

2. InPractice

- a. Welcome, New Lawyers: A Conversation with PLF Claims Attorney Bradley Tompkins About Avoiding Malpractice (<https://www.osbplf.org/blog/inpractice/welcome-new-lawYERS--a-conversation-with-plf-claims-attorney-bradley-tompkins-about-avoiding-malpractice/>)
- b. Drawing the Line for Nonengagement (<https://www.osbplf.org/blog/inpractice/drawing-the-line-for-nonengagement/>)
- c. Don't Underestimate the "Obvious": Document, Document, Document (<https://www.osbplf.org/blog/inpractice/dont-underestimate-the-obvious--document-document-document/>)
- d. No Regrets: Tips to Help Clients Avoid Settler's Remorse (<https://www.osbplf.org/blog/inpractice/no-regrets--tips-to-help-clients-avoid-settlers-remorse/>)
- e. Supervising Associate Lawyers to Reduce Malpractice Exposure (<https://www.osbplf.org/blog/inpractice/supervising-associate-lawyers-to-reduce-malpractice-exposure/>)
- f. Hoarding and Dabbling, Oh My! (<https://www.osbplf.org/blog/inpractice/hoarding-and-dabbling-oh-my-/>)
- g. Manage Your Law Office with Documented Systems and Procedures (<https://www.osbplf.org/blog/inpractice/manage-your-law-office-with-documented-systems-and-procedures-/>)
- h. 3-Part Video Series
 - i. Introduction to the Oregon Statutory Time Limitations Handbook (<https://www.osbplf.org/blog/inpractice/video-1--introduction-to-the-oregon-statutory-time-limitations-handbook/>)

- ii. Why Are Deadlines Being Missed?
(<https://www.osbplf.org/blog/inpractice/video-2--why-are-deadlines-being-missed--and-tips-from-a-claims-attorney-for-avoiding-missed-deadlines/>)
 - iii. Tips to Avoid Missing Deadlines (<https://www.osbplf.org/blog/inpractice/video-3--practice-management-tips-for-avoiding-missed-deadlines/>)
 - i. Avoiding Malpractice (<https://www.osbplf.org/blog/inpractice/avoiding-malpractice/>)
 - j. Managing Client Expectations (<https://www.osbplf.org/blog/inpractice/managing-client-expectations/>)
 - k. Reduce Malpractice Risk by Properly Managing Files
(<https://www.osbplf.org/blog/inpractice/reduce-malpractice-risk-by-properly-managing-files-/>)
 - l. Avoid Mistakes with This Simple Tool (<https://www.osbplf.org/blog/inpractice/avoid-mistakes-with-this-simple-tool/>)
- 3. InBrief
 - a. Malpractice Risk Factors and How to Avoid Them
(https://www.osbplf.org/assets/in_briefs_issues/Malpractice%20Risk%20Factors%20and%20How%20to%20Avoid%20Them.pdf)
 - b. Malpractice Risk Factors and How to Avoid Them (Part II)
(https://www.osbplf.org/assets/in_briefs_issues/Malpractice%20Risk%20Factors%20and%20How%20to%20Avoid%20Them%20Part%20II.pdf)
- 4. CLEs
 - a. Examining Potential Malpractice Risks of Practicing in the COVID-19 Era
(<https://www.osbplf.org/cle-classes/examining-potential-malpractice-risks-of-practicing-in-/>)
 - b. Revisiting Potential Malpractice Risks of Practicing in the COVID-19 Era- One Year Later
(<https://www.osbplf.org/cle-classes/revisiting-potential-malpractice-risks-of-practicing-in/>)
- 5. PLF Publications
 - a. Oregon Statutory Time Limitations
(https://assets.osbplf.org/2022%20OSTL_Revised.pdf)

PRACTICE MANAGEMENT ASSISTANCE PROGRAM

How We Help

A successful and satisfying practice requires more than being a good lawyer. We can help you understand and manage your malpractice risks, improve your client relationships through clear communication and efficient delivery of legal services, and enhance your enjoyment of practicing law.

- *Opening or closing a law practice*
- *Departing or joining a firm*
- *Implementing and streamlining office systems and procedures*
- *Improving client relations*
- *Trust accounting*

PLF Practice Management Attorneys



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For practice management tips, subscribe to the PLF's *inPractice* blog or follow @OregonPLF on Twitter

Confidential Assistance

The PLF practice management attorneys provide free and confidential practice management assistance to Oregon lawyers and law office staff throughout the state.



Call us at 503.639.6911 or visit us at www.osbplf.org.



We are lawyers and counselors.

About the OAAP

We help lawyers, judges, and law students develop the skills they need to meet the demands of their professional and personal lives in a healthy way. Our services are confidential and free. Call or email us—we offer hope and help.

- Well-being and stress
- Anxiety or depression
- Problem substance use
- Compulsive behaviors
- Career & lifestyle
- Relationships
- Challenging times
- Burnout
- Vicarious trauma
- Planning for retirement

OAAP Attorney Counselors



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Thrive in law, thrive in life.