



Exploring ChatGPT's Capabilities, Limits, and Risks for Lawyers

By Hong Dao

EDITOR'S NOTE: THIS ARTICLE IS PART I OF A TWO-PART SERIES.

Since the debut of ChatGPT-3.5 in November 2022, this generative AI technology has lawyers both excited and worried. Some are eager for its potential to transform how lawyers work. Others are anxious it could render lawyers obsolete. We've all heard of artificial intelligence powering our smartphones and smart devices like vacuum cleaners, TVs, and speakers, but generative AI is a newer concept for many of us. It is a kind of artificial intelligence that creates new and original content in the form of text, image, video, audio, and more. While many generative AI companies¹ are introducing different products, ChatGPT is making the biggest splash right now.

CONTINUED ON PAGE 7



Professional
Liability Fund

inBRIEF IS PUBLISHED BY

The Professional Liability Fund

Megan I. Livermore
Chief Executive Officer

EDITORS

Tanya Hanson
Communications Manager
tanyah@osbplf.org

Hong Dao
*Director of the Practice
Management Assistance Program*

phone: 503.639.6911
toll-free: 1.800.452.1639
osbplf.org

**PROFESSIONAL LIABILITY FUND
BOARD OF DIRECTORS
AND OFFICERS**

Steve Hill
Pendleton
Chair

Oren B. Haker
Portland
Vice Chair

Chris Karlin
Portland
Secretary-Treasurer, Public Member

Gina Anne Johnnie
Salem

Valerie D. Saiki
Salem, *Public Member*

Michelle Johansson
Portland

Ali Hilsher
Eugene

Harshi M. Waters
Portland

TABLE of CONTENTS

FEATURE

Exploring ChatGPT’s Capabilities, Limits,
and Risks for Lawyers1

PLF UPDATES

Message from the CEO3

Excess Coverage: The Contract Attorney Conundrum4

Claims Corner.....5

PLF Announcements: Upcoming CLE6

LAW UPDATES

Increased Liability Limits for Public Bodies 11

Rules Update: Approved Changes to the UTCR 12

LAW PRACTICE

*in*Brief Roundup:
Top Three Practice Management Articles..... 13

Tips, Traps, and Resources 15

DISCLAIMER

This material is provided for informational purposes only and does not establish, report, or create the standard of care for attorneys in Oregon, nor does it represent a complete analysis of the topics presented. Readers should conduct their own appropriate legal research. The information presented does not represent legal advice. This information may not be republished, sold, or used in any other form without the written consent of the Oregon State Bar Professional Liability Fund except that permission is granted for Oregon lawyers to use and modify these materials in their own practices. © 2023 OSB Professional Liability Fund.



Message from the CEO

By Megan Livermore

After a brief pandemic-related hiatus, we are pleased to bring back our nationally recognized *inBrief* newsletter. We hope you enjoyed the May 2023 issue and share our excitement that the publication has returned in full swing. We look forward to continuing to bring Oregon Bar members the latest in malpractice prevention education.

Speaking of Oregon Bar members, you may have heard about Oregon's new Licensed Paralegal program. The Oregon Legislature recently passed a bill allowing the Oregon State Bar to license certain non-lawyers who meet specific criteria to practice law with a limited scope of practice in landlord/tenant and family law. The bill was signed by Governor Kotek on May 8, 2023, and the OSB anticipates the first licenses for the new Licensed Paralegals will be issued in early 2024. To ensure that the new licensees and the clients they serve are protected, the new law requires them to carry PLF malpractice coverage. We are pleased to be providing coverage to the Licensed Paralegals on the same terms as the coverage provided to attorneys—same liability limits, expense allowance, and assessment. Our experienced and dedicated staff will also offer the new licensees the same great wraparound services related to claims handling, practice management, and well-being support that the Oregon legal community has enjoyed for nearly 50 years. Those benefits include access to this publication, along with the many resources created by our practice management and attorney assistance teams.

We look forward to serving our new colleagues and welcoming them into our program. ■



Megan Livermore is the PLF Chief Executive Officer.

Excess Coverage: The Contract Attorney Conundrum

By Melanie Hughes

Consider this: Your firm hires an “independent contractor” (also known as a Form 1099 worker). The lawyer is doing more than just project work or legal research—they are acting in the capacity of a firm attorney (e.g., performing legal duties such as signing pleadings, attending hearings, and otherwise holding themselves out to be a representative of the firm). If a malpractice claim exceeding the coverage limit for PLF Primary Coverage arises from the work the contract attorney performs on behalf of the firm, could the firm be liable?

The answer—which may surprise some—is yes.

As job openings for lawyers continue to surpass the number of qualified professionals available to fill those spots, hiring partners are increasingly turning to contract attorneys to assist with overflow work. Although a seemingly viable solution, it can also generate liability for your firm if they perform tasks that require a law license. This risk is precisely why it is critical to determine who is a firm lawyer through the lens of work performed rather than their tax, compensation, or employment status.

If a contract attorney works under the direct supervision of one or more firm lawyers and refrains from performing legal work, they may claim exemption from PLF coverage. In that scenario, the malpractice risk shifts to the supervising lawyer (as is the case with a law clerk or a paralegal). If the contract attorney engages in legal work, however, they must carry PLF Primary Coverage. It is also prudent to add them to the firm’s excess coverage as they are a de facto member of the firm. For more information about the “Law Clerk/Supervised Attorney (not engaged in the private practice of law)” exemption, visit the PLF website under [Do I Need Coverage? > Exemptions from Coverage](#).

Omitting a contract attorney from the excess application simply because they are not an employee does not mean they are not a member of the firm for liability purposes. Employment status alone does not relieve the firm of potential liability arising from a contract attorney’s work. Instead, the liability litmus test is based on the scope and type of work the attorney performs for the firm and not their employment relationship or tax status. Failing to add a contract attorney engaged in legal work to a firm’s excess plan could result in malpractice claims that fall outside of the excess coverage, regardless of whether the firm considers them a contract attorney, independent contractor, or “Of Counsel.”

The PLF Excess underwriters can help you determine whether you should list a contract attorney on your firm’s PLF Excess Coverage application. You can reach us at 503.924.4177, or excess@osbplf.org.

Additional information about PLF Excess Coverage is available on the PLF website. ■



Melanie Hughes is a PLF Professional Liability Underwriter.

Claims Corner

I Had an “Accident!” Is My Premium Going to Go Up?

By Sarah Troutt

Regardless of merit or damages sought, receiving a legal malpractice claim can be extremely upsetting. Making a mistake in representing a client is one of the most stressful experiences in a lawyer’s career. Compounding this distress, lawyers are often anxious and uncertain about the consequences of the claim—financial and otherwise. This article address a few of the questions you likely have about the impact of a malpractice claim.

WILL THE PLF CANCEL MY COVERAGE IF I HAVE A CLAIM?

No. The PLF cannot terminate your primary malpractice coverage for having a claim.

IS THERE A DEDUCTIBLE? WILL I NEED TO PAY ANYTHING OUT OF POCKET?

There is no deductible under your PLF Primary Coverage Plan. Excess insurance sold on the commercial market may include deductibles. For in-state lawyers, there is no deductible under the PLF Excess Plan.

Provided the claim is covered under the PLF Primary Coverage Plan and sufficient limits are available under either the primary plan and/or any excess coverage you may have, you shouldn’t incur any direct financial consequences. If the claim exceeds the available limits, however, you may be responsible to cover damages and/or defense costs in excess of your limit.

WILL A CLAIM AGAINST ME INCREASE THE AMOUNT OF MY PLF ASSESSMENT?

Not necessarily. Because the PLF is a mandatory provider of professional liability coverage for lawyers in private practice in Oregon, all covered parties pay the same assessment for primary coverage in a given year (excluding midyear prorations and “new lawyer” credits), regardless of the number of claims they have.

Claims made against you will not affect your individual assessment under the PLF Primary Coverage Plan. Possibly, a claim against you may affect your assessment or premium for excess coverage, whether through the PLF or through a commercial carrier.

IS THE CLAIM AGAINST ME PUBLIC RECORD?

The PLF considers our communications with you about a claim to be confidential. We do not disclose information about a specific claim to the public. We also do not disclose information about a specific claim or report allegations made about you to the Oregon State Bar. To preserve the confidentiality of your communications with us, you should not disclose those communications to others—particularly the claimant and claimant’s counsel—without first conferring with your claims attorney. If a claimant brings a lawsuit against you, the lawsuit itself is public information.

We hope this article answers some of the questions or concerns you may have about the impact of a professional liability claim against you. If you have further questions, you are always welcome to call any of the individual claims attorneys at the PLF. We are happy to discuss these issues with you. ■



Sarah Troutt is a PLF Claims Attorney.

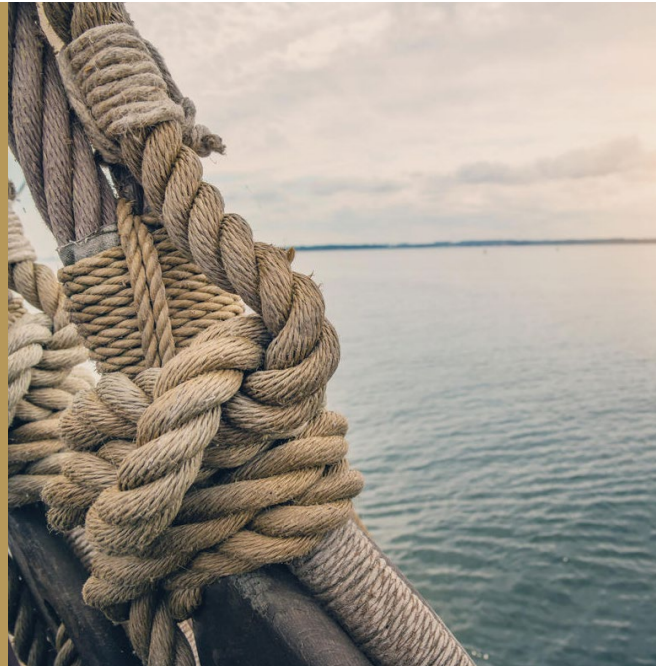
PLF Announcements: Upcoming CLE

“LEARNING THE ROPES” 2023 SEMINAR



Mark your calendars for the PLF’s 2023 Learning the Ropes seminar! “Learning The Ropes” is a practical skills CLE for new admittees to the Oregon State Bar and lawyers entering private practice in Oregon.

This in-person event will be held on November 7–9, 2023, at the DoubleTree by Hilton Hotel in Portland. Registration will be open mid-September at <https://osbplf.org>.



**YOU PROTECT YOUR CLIENTS’
ASSETS. WE’RE HERE TO
PROTECT YOURS.**

GET EXCESS COVERAGE FROM THE PLF.



**Apply: osbplf.org/excess
Info: 503.639.6911**

Part I of this article will provide a basic introduction to ChatGPT by exploring its capabilities, limits, and concerns. Part II will shed light on the possible malpractice risks for lawyers when incorporating it into their practice. By examining these issues, readers can better understand the potential impact of this revolutionary technology on the legal profession—and the precautions to consider.

What is ChatGPT?

An AI-powered chatbot developed by OpenAI, ChatGPT generates human-like responses to user questions by analyzing and synthesizing information from a large dataset. According to the developer, this technology is trained on three sets of data: (1) publicly available information from the Internet (e.g., websites, online databases, social media, online publications and journals); (2) licensed information from third parties (e.g., commercial databases, academic and research sources, copyrighted creative works); and (3) information that its users and human trainers



provide. The combination of these three data sources allows ChatGPT to access a vast array of knowledge and provide responses on a wide range of topics.

OpenAI explains how the process works:

“ChatGPT has been developed in a way that allows it to understand and respond to user questions and instructions. It does this by ‘reading’ a large amount of existing text and learning how words tend to appear in context with other words. It then uses what it has learned to predict the next most likely word that might appear in response to a user request, and each subsequent word after that. This is similar to auto-complete capabilities on search engines, smartphones, and email programs.”²

ChatGPT is accessed via the Internet and is also available as an app for IOS devices. To use the program, go to the OpenAI website, <https://openai.com>, and create an account. Once done, you enter a prompt in the “send a message” field and ChatGPT will generate a response. The prompt can be a question or query, but it can also be a command, statement, or instruction, such as, “Write a riddle involving eggs for

“Given its professed prodigious talents and rapid-fire responses, it is understandable that lawyers would want to leverage ChatGPT for legal research and writing, case analysis, contract and document review, defining difficult legal concepts, and answering legal questions.”

CONTINUED ON PAGE 8

kindergartners,” or “List the 10 most popular places for summer vacation in the Pacific Northwest.”

The current free version—ChatGPT-3.5—is the topic of this series. Anyone using ChatGPT-3.5 (the publicly available version) must comply with OpenAI’s terms and policies on sharing and publication, usage, and terms of use and privacy policies. These terms and policies are available at: <https://openai.com/policies>.

OpenAI released a more advanced version in March 2023 called ChatGPT-4, which offers more enhanced capabilities as it can handle images as inputs, not just text. It is trained on a wider dataset and has more computing power. As of this writing, however, ChatGPT-4 is only accessible through a paid subscription to ChatGPT Plus or to developers with API access.

ChatGPT’s capabilities

In researching what ChatGPT can do, I asked ChatGPT itself this question. It listed the following things: answer questions on a wide range of topics; assist with research; translate different languages; engage in creative writing; assist with programming or coding; provide general advice and suggestions; help define and break down complex concepts; summarize information; proofread and edit; brainstorm ideas; converse as a companion; play word games and riddles; tell jokes and share interesting facts; and more.

These diverse capabilities show how versatile and useful this technology could be. Given its professed prodigious talents and rapid-fire responses, it is understandable that lawyers would want to leverage ChatGPT for legal research and writing, case analysis, contract and document review, defining difficult legal concepts, and answering legal questions. These tasks align closely with ChatGPT’s capabilities. In light of the concerns about its current limitations, however, lawyers should carefully assess whether OpenAI’s brainchild is truly capable of performing those legal tasks reliably at this stage of development.

Concerns about ChatGPT

While ChatGPT’s capabilities are seemingly remarkable, a few key concerns have emerged that are particularly relevant to lawyers and affect the program’s reliability and limit its effectiveness.

1. LIMITED WORLD KNOWLEDGE

Despite being trained on a vast dataset, ChatGPT’s training on historical data ends in 2021.³ Its knowledge of the world, events, trends, and developments is based on information up until September 2021. Any new information it now learns is from conversations with its human users. Consequently, when users provide ChatGPT with wrong information, it may “learn” the inaccuracies and incorporate them in its responses. This limited training data and exposure to incorrect information affect its ability to understand nuanced questions, comprehend references to current events, or grasp regional and local context. As a result, it can generate biased, inaccurate, or outdated responses.

2. HALLUCINATION

Another major concern is the issue of “hallucination.” ChatGPT has been known to “hallucinate” responses—that is, fabricate information.⁴ It creates responses by essentially predicting the next words based on an analysis of the provided data. It does this through learning statistical patterns and relationships between words and phrases and then using these patterns to



predict and generate responses. However, there may be gaps in its pattern recognition capabilities that can affect its response. Unfortunately, the technology has no inherent mechanism to verify the accuracy or truthfulness of information it generates—it can't fact-check or validate its own responses. A confounding factor is that ChatGPT does not provide references, sources, or citations for the information it generates. In sum, the chatbot can produce false or incorrect information that may be hard to verify and, ergo, can't be relied upon. You also cannot use ChatGPT to verify its own work product because it has proven unreliable in self-verification.

3. COLLECTION OF USER'S DATA & PRIVACY CONCERNS

OpenAI collects your personal information such as IP address, browser details, and data from your interactions with ChatGPT. It may use your personal information for many purposes. OpenAI states that its employees review user conversations to train ChatGPT, improve their system, and to “ensure the content complies with our policies and safety requirements.”⁵ Your personal information may also be disclosed to third parties without your knowledge.⁶ We can assume that OpenAI retains the confidential and personal information that users provide to ChatGPT. Although OpenAI provides the option to delete user data from their system, it's unclear whether the data has already been used for training.

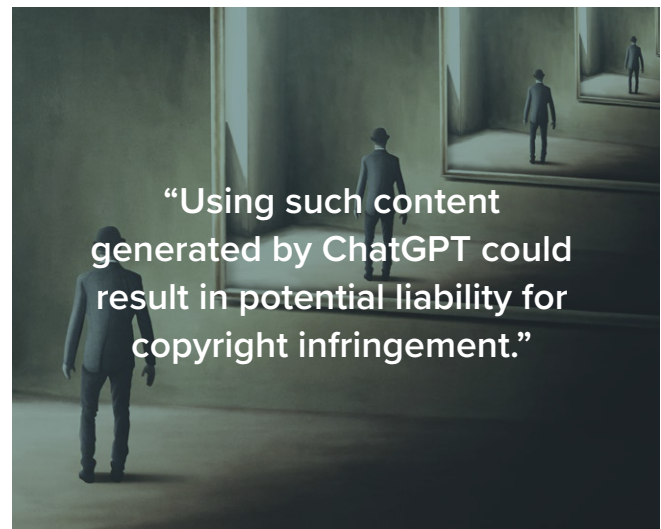
4. DIFFICULTY HANDLING AMBIGUOUS QUERIES

When you use imprecise or vague language, omit context, or provide incomplete information in your query, ChatGPT tends to offer incomplete or irrelevant information in its responses. ChatGPT relies on patterns and examples from its training data. When it receives an ambiguous query, it doesn't have the contextual understanding and background knowledge to fully comprehend the intended meaning. Functionally, it is unable to ask for clarification or follow-up questions and will proceed to reply based on its own interpretation of the query. It is incumbent on the users, then, to provide clear, specific, and complete information

to ensure an accurate and relevant response from ChatGPT. In the case of lawyers, though, confidentiality concerns or complexities in the legal matter present constraints on sharing a lot of details or providing explicit context.

5. PLAGIARISM, INTELLECTUAL PROPERTY, AND LIABILITY

A major concern sweeping across college campuses following the release of ChatGPT-3.5 was plagiarism. In the legal context, the potential for plagiarism is really an issue of copyright infringement.



Although ChatGPT is supposed to generate original content, there is still a risk that its content may be substantially similar to an existing copyrighted work. Using such content generated by ChatGPT could result in potential liability for copyright infringement. The question of who (the user or OpenAI) is liable for the infringement is unresolved at the moment.

According to OpenAI's Terms of Use,⁷ users own the “input”—the prompts, questions, or queries you enter when you use ChatGPT. ChatGPT delivers the “output” based on your input. Together, these are called the “content” in the Terms of Use. OpenAI assigns to the users all of its rights, title, and interest in and to the output. The Terms make clear that OpenAI considers the user responsible for the generated content. It remains to be seen whether

CONTINUED ON PAGE 10

the Terms of Use would actually shift the burden of responsibility for infringement entirely to the user, or whether the user and OpenAI would share liability for any such violation. This and many other IP and liability issues will undoubtedly be raised at some point in future litigation and likely make their way to the courts for resolution.

These are just some of the major concerns relevant to the legal profession. Part II of this article will discuss the risks for lawyers of using ChatGPT and offer some guidance on how they can safely leverage this tool in their practice. Please look out for Part II in the next issue of *inBrief*. ■



Hong Dao is the PLF Director of the Practice Management Assistance Program.

OTHER WORKS BY HONG DAO

- Plugging the “Knowledge Drain:” How to Retain Knowledge to Ensure Your Firm’s Continued Success (*inPractice* blog post, September 13, 2022)
- Don’t Wait Until the Last Minute to File and Serve Your Complaint (*inPractice* blog post, June 15, 2021)
- Tommy and the Secure Tunnel: Virtual Private Networks (*inPractice* blog post, April 23, 2021)

1 A comparison chart of generative AI companies and their products is available here: <https://eweek.com/artificial-intelligence/generative-ai-companies/>.

2 OpenAI FAQ on “How ChatGPT and Our Language Models are Developed,” <https://help.openai.com/en/articles/7842364-how-chatgpt-and-our-language-models-are-developed>.

3 OpenAI, “What is ChatGPT?”, <https://help.openai.com/en/articles/6783457-what-is-chatgpt>.

4 OpenAI, “What is ChatGPT?”, <https://help.openai.com/en/articles/6783457-what-is-chatgpt>.

5 OpenAI, “What is ChatGPT?”, <https://help.openai.com/en/articles/6783457-what-is-chatgpt>.

6 OpenAI Privacy Policy, <https://openai.com/policies/privacy-policy>.

7 OpenAI Terms of Use, <https://openai.com/policies/terms-of-use>.

CALL FOR *inBRIEF* AUTHORS

Are you aware of a common malpractice trap in your area of law? Do you have practice insights you’d like to share with other lawyers? Would you like to grow your expertise and build your portfolio of work? Become a writer for *inBrief*! We welcome submissions for articles on how to avoid legal malpractice, technology updates, practice tips, and resources of interest to Oregon practitioners. Feature-length articles eligible for a small stipend. For more information, please contact *inBrief* editors Tanya Hanson, tanyah@osbplf.org, or Hong Dao, hongd@osbplf.org.

Increased Liability Limits for Public Bodies

By Aja Holland

Oregon Tort Claims Act Liability Limits

Oregon's Office of the State Court Administrator (OSCA) has increased the limits of liability for state and local public bodies in cases involving personal injury or death and property damage or destruction.

OSCA adjusts the limits annually, as required by statute. The new amounts took effect on July 1; they apply to all causes of action arising on or after July 1, 2023, and before July 1, 2024.

Based on OSCA's calculations, the new limits are:

- \$2,490,600 for injury or death claims against a state body that involve a single claimant (previously \$2,418,100);
- \$4,981,300 for injury or death claims against a state body that involve multiple claimants (previously \$4,836,200);
- \$830,300 for injury or death claims against a local body that involve a single claimant (previously \$806,100);
- \$1,660,400 for injury or death claims against a local body that involve multiple claimants (previously \$1,612,000);
- \$136,200 for property damage or destruction claims against a state or local body that involve a single claimant (previously \$132,200);
- \$680,900 for property damage or destruction claims against a state or local body that involve multiple claimants (previously \$661,000).

Wrongful Conviction Compensation

In 2022, the Oregon Legislative Assembly passed Senate Bill (SB) 1584. The measure allows a wrongfully convicted person to file a petition seeking compensation in the Marion County Circuit Court or in the circuit court for the county of conviction. OSCA adjusts the limits annually, as required by statute.

OSCA has increased the following wrongful conviction compensation amounts for petitions filed on or after July 1, 2023, and before July 1, 2024:

- \$67,000 for each year of imprisonment (previously \$65,000);
- \$25,800 for each additional year served on parole or post-prison supervision or was required to register as a sex offender, whichever is greater (previously \$25,000).

A list of past and current limitations on liability of public bodies and a current list of wrongful conviction compensation amounts can be found on the Oregon Judicial Department website at <http://courts.oregon.gov/Pages/tort.aspx>. ■

Aja Holland is the Senior Assistant General Counsel / UTCR Reporter for the Office of General Counsel, Oregon Judicial Department.

Rules Update: Approved Changes to the Uniform Trial Court Rules

Chief Justice Flynn has signed CJO 23-020, which approved changes to the Uniform Trial Court Rules (UTCRR), effective August 1, 2023 (and one change effective February 1, 2024).

Changes of Special Note:

Require a person remotely observing or participating in a proceeding to obtain permission before transmitting an electronic writing directly and specifically to a witness, until the witness is excused; in criminal cases, allow a party to request that a pretrial motion hearing be held prior to the date of trial, if so requested, the hearing must be held at least 7 days before trial, absent good cause; allow parties to agree to appear remotely to resolve

cases outside of the court with jurisdiction over the county where the defendant is in custody; remove plea agreements and negotiations from the type of activity that must be completed pursuant to certain deadlines; allow persons to request accommodation for expression of milk; allow joint petitions in certain domestic relations actions; and allow courts to accept oral Informal Domestic Relations Trial (IDRT) related waivers and to allow a party to opt in or out of the IDRT process at any time prior to trial.

The approved changes are available online at <http://courts.oregon.gov/programs/utcr/Pages/currentrules.aspx>. The Preface to the 2023 UTCRR includes detailed explanations of the changes. ■

**We can help
you get it together.**

Call the Practice Management
Attorneys Team for guidance.

503.639.6911
osbplf.org

OSB Professional
Liability Fund

Make appt
with PMAS

inBrief Roundup: Top Three Practice Management Articles

By *Monica Logan*

Lawyers face myriad practice management challenges that we as PMAs try to address through our written content. Our chosen selections cover diverse issues ranging from unpaid fees to common malpractice risks as well as encrypting data. These articles focus on key topics as relevant today as when first written.

Read on for ideas to refresh your practice!

#1 Avoiding Unpaid Fee Traps

By *Rachel Edwards, December 2016*

Rachel Edwards' article provides a detailed discussion of ways to prevent and handle a client's nonpayment. Her advice is a good reminder to implement clear and efficient billing practices to avoid the issue of unpaid fees entirely. Generally, it's riskier to try to collect on an invoice than to work to prevent the situation.

Attempting to collect unpaid fees through legal action—a civil suit or collections matter—can damage your relationship with your client. Even though the client may be at fault, they could retaliate with a malpractice claim or ethics complaint. Proactive methods or an alternative solution can help you manage this issue. Ms. Edwards suggests being upfront with your clients and screening their ability to pay before engaging them as a client. At the onset of the representation, clearly explain your firm's billing procedures. She shares that one helpful tip is to require the client to replenish the retainer to keep a certain amount in trust. Also, if a client will receive an unusually large invoice, notify them in advance and explain the reason for the variance.

If a client doesn't pay your bill, Ms. Edwards outlines these steps before suing or sending delinquent fees to collections. First, call the client. Your personal contact might encourage them to explain their reason for not paying. Second, offer alternative payment options or a discount as an incentive.

Third, determine whether you can ethically withdraw from the matter. Finally, consider whether the Oregon State Bar's fee dispute resolution program is appropriate. Find additional information here: <https://osbar.org/feedisputeresolution>.

#2 Malpractice Risks I and II

By *Hong Dao, October 2018 and January 2019*

In Hong Dao's two-part series, she describes how improving one major factor—inadequate office systems—can help firms with many of the other risk areas like poor client relations, failure to meet deadlines, and failure to follow through. By establishing reliable office systems, a firm can reduce its overall malpractice exposure.

In Part I, Ms. Dao discusses six necessary components to build reliable office procedures: client screening and case assessment, calendaring, file management, client management, conflict checking, and time tracking and billing. She emphasizes mitigating the risk of poor client selection by creating a screening checklist to identify red flags in potential clients. She also touches on how to avoid missing deadlines, neglecting a matter, or miscalculating dates, all of which contribute significantly to malpractice claims. To prevent these mistakes, enter all relevant dates and deadlines into one master calendar that allows all firm members to easily double-check entries and perform the necessary backups.

In Part II, Ms. Dao focuses on good client relations, conflict systems, and billing. Maintaining a positive relationship with your clients helps you avoid problems that may cause clients to file a claim against you. Setting clear communication expectations and treating clients with common business courtesies are simple preventive acts that can yield a positive result.

CONTINUED ON PAGE 14

Another area of impact is billing. Ms. Dao suggests using a written fee agreement and reviewing every bill before sending it to the client. To ensure accuracy, enter your time promptly, or, at minimum, daily. Under- or overbilling clients can lead to unreasonable expectations and damage your client's trust.

#3 Protect Data by Encryption

By Hong Dao, September 2019

To shore up your office's cybersecurity, review Hong Dao's brief introduction on encryption options to safeguard your data. Ms. Dao begins by explaining why encryption is important. To secure your entire hard drive, use full disk encryption software, and she lists multiple options. You can also encrypt individual files and folders, but if choosing between one or the other, the entire hard drive should be your priority. You should also protect the firm's mobile devices. Newer devices or operating systems might already have encryption software.

Another type of encryption to consider is cloud file storage. Determine whether your vendor generates their own encryption key, which means they can decrypt your files and control backdoor access. For additional protection, either encrypt your files before uploading or use a provider who allows you to create

your own decryption code, called a zero-knowledge provider. Ideally, your cloud storage provider should not be able to access your client files.

Because emails are not automatically encrypted, think about securing your messages. Before emailing sensitive or confidential documents, encrypt them with email encryption software or encrypted webmail. ■



Monica Logan is a PLF Practice Management Attorney.

OTHER WORKS BY MONICA LOGAN

- The Three P's of Profitability (*inPractice* blog post, May 31, 2023)
- Can We Talk? Audioconferencing Options and Tips (*inPractice* blog post, March 10, 2023)
- Manage Meetings Like a Conductor (*inPractice* blog post, January 13, 2023)

Even in uncertain times,
we can help you find your **JOY.**

503.226.1057
oap.org



Tips, Traps, and Resources



AVOID MALPRACTICE WITH THE RED BOOK

It's impossible to overstate the importance of knowing the time limitations applicable to your practice area. Every year, missed deadlines are a major cause of malpractice. An analysis of 2022 PLF claims data revealed that 28% percent of malpractice claims last year were related to missed deadlines. Of those errors, nearly one in four was attributable to a statute of limitation.

You can avoid this common malpractice trap with the *Oregon Statutory Time Limitations* handbook and a reliable calendaring system. The “Red Book” is a reference guide—published jointly by the PLF and the Oregon State Bar—to many of the statutes, cases, and procedural rules containing time limitations relevant to the practice of law in Oregon. Updated in 2022, it is available on OSB BarBooks™, <https://osbar.org>, and on the PLF website, <https://osbplf.org>. Oregon lawyers may also request a print copy from the PLF.

The key to meeting statutes of limitation and other important time limitations starts with being exceedingly well “Red.” Use the Red Book as a starting point to calculate and calendar applicable time limitations—and always verify your calculation with the primary source of legal authority.



THE PERILS OF TAX FORMS: VERIFY ADDRESS

The Oregon Department of Revenue (ODR) instructs Oregon lawyers who are applying for an extension of time to file their client's Oregon Estate Transfer Tax Form OR-706 to use federal Form 4768 (<https://irs.gov/pub/irs-pdf/f4768.pdf>). ODR's instructions (available at https://oregon.gov/dor/forms/FormsPubs/form-or-706-inst_104-001-1_2021.pdf) specifically state in part: “Mail your completed form to the correspondence address at the end of these instructions.”

The “correspondence address” at the end of ODR'S instructions is the *Oregon Department of Revenue*. Federal Form 4768, however, contains an instruction at the bottom to mail it to the *Internal Revenue Service*. This confusion over instructions leads some attorneys or their staff to inadvertently send the extension request to the wrong organization.

This can be a malpractice trap: The IRS will not forward Federal Form 4768 and any accompanying check to ODR and may not even notify the sender of receipt. As a result, the client may not know right away that their request for an extension was not sent to ODR, and they may be assessed penalties and interest for the late filing of their tax return.

If you rely on staff—or instruct clients—to mail Form 4768, make sure to include precise instructions to mail it to ODR and not the IRS, and consider including an envelope with the correct address. It's also a good idea to put an electronic sticky note on the federal form as a reminder to those in your firm who will use or mail the form.



Tips, Traps, and Resources Continued



OSB 2022 ECONOMIC SURVEY

Every five years, the Oregon State Bar conducts an economic survey intended to reflect the current fiscal state of the legal industry: It reports on Oregon lawyers' employment, compensation, and billing practices, among other things, and compares attorney responses based on location, experience, and gender. This resource is an immensely useful market analysis for practitioners in Oregon—use it to set reasonable fees and determine competitive compensation.

One major update to this edition is an assessment of COVID-19's impact on the legal community. Lawyers in Portland, the Tri-County area, and the Upper Willamette Valley are now working less in the office compared with before the pandemic. Interestingly, attorneys who identified as female significantly decreased their time in the office everywhere except the coast and southern areas.

Another update to the 2022 edition addresses wellness policies. Overall, 69.6% of Oregon attorneys indicated that they are encouraged to take breaks and time off, and only 13.5% said well-being policies were missing in their firm.

Find the 2022 survey on the OSB website, <https://osbar.org>. Under the tab “For Lawyers,” click on Surveys and Research Reports > Economic Surveys > 2022 Economic Survey. ■