

PMBR Working Group #6

Managing the Law Firm/Legal Entity and Staff Appropriately

15 Minute Risk Management Assessment Tool

SMALL FIRM (2-5 ATTORNEYS)

1. *Structure.*

- ☐ Is the structure of the firm memorialized in a written agreement which forms and governs the law firm, *e.g.*, partnership agreement, corporate bylaws, articles of organization?
- ☐ Are these governing documents reviewed at least annually by the partners, shareholders, or members?
- ☐ Have they been revised to reflect recent changes in ownership?

2. *Compensation.*

- ☐ Are partners, shareholders or members compensated in a manner conducive to cooperation with and participation in management of risks to the firm?
- ☐ Is the form of compensation likely to promote resistance from individual lawyers (*e.g.*, who prioritize billable hours) when it comes to managing risk?

3. *General Counsel.*

- ☐ Has the firm appointed one of its lawyers to represent the firm in litigation, obtain malpractice insurance, promote professional responsibility and guide and monitor the implementation of risk management policies (hereinafter referred to as "General Counsel")?
- ☐ How much of that lawyer's time is available to devote to these functions? Is that a reasonable amount of time in which to complete all risk management tasks?

- ☐ addressing alcohol, drug or other employee problems,
- ☐ Internet and e-mail usage,
- ☐ engaging in business with a client,
- ☐ opinion letters,
- ☐ communications with the media, and
- ☐ disaster recovery and succession plan (in case of death or disability)?
- ☐ Is the manual given to all lawyers and staff?
- ☐ Are workshops held at least annually to educate and remind all lawyers and staff of the policies in the manual?

5. *Reporting.*

Are the lawyers and staff aware of the requirement to timely report to the General Counsel:

- ☐ ethics violations,
- ☐ court-ordered sanctions for litigation misconduct,
- ☐ regulatory investigations,
- ☐ client allegations of malpractice or wrongdoing by firm lawyers or staff,
- ☐ billing disputes,
alcohol, drug or other employee problems,
charging expenses to clients
- ☐ competence,
UPL,
Harassment,
- ☐ diligence and communication problems, and

- ☐ When hiring legal staff, does the firm check the list of persons and businesses ordered to stop engaging in the unauthorized practice of law on the Supreme Court website?

8. *Termination.*

- ☐ When a lawyer, paralegal or staff member is terminated or leaves the firm, does the firm take steps to:
- ☐ obtain possession of keys to the premises and file cabinets,
- ☐ ensure return of electronic devices and other firm property,
- ☐ change passwords,
- ☐ instruct the former employee about maintaining on-going confidentiality, *etc.*,
- ☐ Inform the client of the lawyer's departure,
- ☐ transfer client matters from the lawyer leaving the firm to another lawyer in the firm?

9. *Accepting New Engagements.*

- ☐ Does the firm undertake due diligence before agreeing to represent new clients, or to take on an additional matter for an existing client?
- ☐ Does the firm attempt to detect and reject high-risk clients?

If the client is existing, does the firm check whether:

- ☐ the client is current on payment;
- ☐ the client has the means to pay additional fees?
- ☐ Is the new matter one that the firm can handle with competence and a reasonable likelihood of success?

SOLE PRACTITIONER

1. *Structure.*

- ☐ Do you practice as a sole proprietor or through an entity (*e.g.*, a professional corporation or single member professional limited liability company)?
- ☐ Have you considered the advantages that practicing through an entity can provide, particularly with regard to liability?

2. *Compensation.*

- ☐ How are you compensated?
- ☐ Is your compensation sufficient to give you time apart from practicing law to handle management of risks to the practice?

3. *Insurance.*

- ☐ Do you have malpractice insurance?
- ☐ Have you put in place the risk management policies required or recommended by the insurer?

4. *Manual.*

- ☐ Do you have a manual of risk management policies?

If so, does the manual cover:

- ☐ client intake,
- ☐ engagement letters,
- ☐ conflict checks,
- ☐ time recording and billing,
- ☐ calendaring deadlines,

- ☐ Are the staff supported in making such reports, including if appropriate by making the reports confidential (if this is feasible)?

6. *Supervision.*

- ☐ Do you conduct regular performance reviews of staff?
- ☐ Do you have procedures in place to insure that the conduct of your staff conforms to your professional obligations?

Do you regularly review each client matter to check that you and staff have timely performed tasks, *e.g.*,

- ☐ that pleadings have been filed,
- ☐ that client inquiries have been answered,
- ☐ that funds have been deposited in trust,
- ☐ deadlines have been calendared?
- ☐ Do you regularly meet with each staff member regarding on-going matters assigned to that person?
- ☐ Are meetings held at least once a year to reinforce the importance of professionalism, *e.g.*, maintaining client confidences, communicating in a civil and courteous manner, *etc.*?

7. *Hiring.*

- ☐ Do you perform due diligence before hiring new staff?

If so, do you conduct:

- ☐ background checks,
- ☐ contact former employers, and
- ☐ verify academic degrees?

- ☐ milestones for payment or the hourly rate of fees,
- ☐ payment and renewal of a retainer,
- ☐ the requirement of client cooperation and disclosure,
- ☐ termination by counsel and client,
- ☐ payment upon termination,
- ☐ return of files?

10. *Closing.*

- ☐ Do you have plans for winding down your practice?
- ☐ Are the plans in writing?

Do the plans include:

- ☐ giving notice to clients, opposing counsel and the courts,
- ☐ returning unearned client funds,
- ☐ returning client files (or transfer of those files to successor counsel),
- ☐ obtaining tail malpractice insurance,
- ☐ taking down your website?