

# Advisor

An update on issues regarding liability protection for the legal profession.



## New Risk Management Service

Risk Management procedures are often viewed as defensive measures taken by lawyers to protect themselves from their clients. Yet often overlooked is the protection and benefits that accrue to clients when attorneys implement and follow sound risk management procedures. And service to clients is at the heart of why many attorneys practice.

According to the American Bar Association's latest *Profile of Legal Malpractice Claims* (2005), 50% of legal malpractice claims against attorneys are attributable to administrative and deadline errors or omissions and to client relations issues. These are problems that may be eliminated, or at least mitigated, by following good risk management procedures. That is why Florida Lawyers Mutual Insurance Company (Florida Lawyers) has developed a Risk Management program.

The following is a brief summary of Florida Lawyers' background and service standards; the article concludes with an overview of the Risk Management benefits available.

### Background/Service Standards

In the early 1980s, professional liability insurance for attorneys in Florida was not readily available; and when available, it was very costly. As a result, in 1987, The Florida Bar (TFB) created Florida Lawyers to provide an available source of lawyers professional liability insurance.

The company's mission is to provide qualified Florida lawyers with a financially stable and perpetual source of lawyers professional liability insurance. To ensure its long-term viability, Florida Lawyers applies underwriting standards, premium rates and claims administration consistent with sound insurance practices.

Florida Lawyers participates in and supports

a variety of Florida Bar programs and is a risk management resource for voluntary bar associations and other legal organizations.

The Florida Lawyers staff provides excellent, individualized service from the new or renewal application process to claims management. Lawyers may talk directly with the Underwriter reviewing their application, and when insured lawyers have questions during the policy period, an answer is an email, fax, or phone call away.

Should a lawyer have a claim, Florida Lawyers' experienced Claims Specialists respond quickly. They meet personally with the insured lawyer at his or her firm in order to gain a comprehensive understanding of the claim and develop a way to help limit any loss to the client, the insured lawyer, and to his or her reputation.

### Florida Lawyers Risk Management Program

The Risk Management program will offer a variety of services to benefit the legal profession. However some initiatives will be exclusive to policyholders. The program is designed to complement, and not to replace, the excellent resources provided by Sections of The Florida Bar, the Law Office Management Assistance Service and the Ethics Hotline.

**Advisor Newsletter.** Published quarterly, the *Advisor* will feature accessible, quickly-read articles and advisories on current legal malpractice issues, along with practical steps

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Excellent speakers are available on risk management, legal malpractice and professional liability insurance issues. Most topics qualify for ethics CLE credit.  
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**Risk Management Program** *continued from page 1*

to help lawyers provide the best possible service to clients and thereby to avoid legal malpractice. Current issues will be available at [www.flmic.com](http://www.flmic.com); archived issues, along with a subject index, will be available online only to policyholders.

**www.flmic.com.** In the coming months, look for a more interactive [www.flmic.com](http://www.flmic.com). Our goal is that the website become a valuable resource for legal professionals. Refer to the calendar of meetings of interest to the legal community, including ethics CLE credit seminars sponsored or presented by Florida Lawyers. The weekly Risk Management Tip will offer very practical techniques that can readily be put into action. As always, the application and policy information are available online.

**Risk Management Answers Are an Email Away.** Florida Lawyers policyholders will have access by password to more detailed risk management information and will be able to use the Contact Risk Management email to privately submit risk management questions to the company.

**Legal Malpractice Prevention Series.** Exclusive to Florida Lawyers policyholders and only accessible

by password, the Legal Malpractice Prevention Series will provide sample letters, forms and guidelines on practice management topics such as identifying risky clients, records retention, sample declination and closing letters, etc.

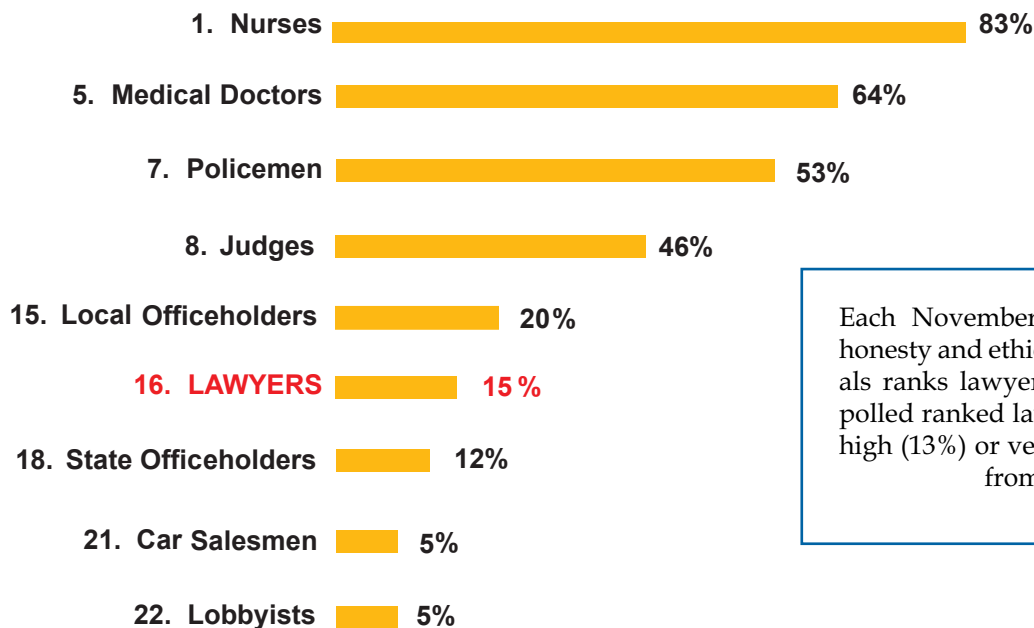
The public tends to have a negative perception of lawyers, even when they may like their own lawyer. In a poll on the ethical standards of professions, only 15% ranked lawyers' ethical

*Tell us which services are most useful.*

standards as high/very high (see *Lawyers Rank* below). You may not be able to change the profession's image, but you can strive to ensure your clients a positive experience by following good client relations and sound risk management procedures.

You're invited to take advantage of the resources available at Florida Lawyers to help you in this endeavor. We look forward to your opinions about which Risk Management services you find most useful or other initiatives you would like to see. 🌴

## Lawyers Rank **16** Out of 22



Each November, the Gallup Poll on the honesty and ethical standards of professionals ranks lawyers. This year 15% of those polled ranked lawyers' ethical standards as high (13%) or very high (2%). That's down from 18% last year.

*Gallup Poll on Honesty and Ethics - Nov. 2007*

# The Accidental Attorney

It happens all the time. You're at a social event and an acquaintance describes a situation and says: "You're a lawyer. What do you think?" Surprisingly, there are people who may construe any response other than, "call my office and arrange an appointment," as legal advice. Far-fetched perhaps, but it does happen.

More commonly, what happens is that you meet with a potential client, decide you cannot take the case and verbally decline. Months pass and you receive a notice of claim from the attorney your *non-client* hired to sue you because the statute of limitations expired on the matter on which they claim you were representing them.

## Documentation

Documenting the lack of an attorney-client relationship may seem excessive or unnecessary, yet it may be as important as documenting the terms of engagement. Properly documented

*A declination letter need not be complex.*

declination protects the non-client and it helps to protect you as well. A well-written notification of non-representation is not easily misconstrued and it provides the declined client with the opportunity to seek other counsel in a timely manner.

First let's clarify what is meant by non-engagement. It is not the same as withdrawal or termination, which occur after representation is undertaken. Non-engagement confirms that representation was never undertaken.

Should there later be a misunderstanding, a non-engagement letter will serve you well. At least it moves the discussion out of the realm of your word against the claimant, a precarious position for attorneys as the public may be prone to believe the worst of lawyers (see *Lawyers Rank* on page 2). As a lawyer, people expect you to follow a higher standard, especially with those seeking help.

A non-engagement letter need not be complex; in fact, it need not always be in letter form. It can be any simple written notice of declination that you

give to the potential client before they leave your firm.

The DOs and DON'Ts of non-engagement:

## DO

- Do put the letter/notice in writing.
- Do specify that the decision not to take the case is final and to expect no further communication nor action from the firm.
- Do indicate a sense of urgency, indicating that most matters are time sensitive and must be filed within a timeframe.
- Do advise to seek other counsel immediately.
- Do have the letter/notice translated into the prospect's native language.

## DON'T

- Don't tell them the case is without merit.
- Don't give reasons for non-engagement that disparage the declined client or are critical of the circumstances of the matter.

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**What Causes Claims** *continued from page 3*

- With one important exception, don't give specific advice about the applicable statutes of limitation or other time constraints. If the

*Express urgency about an imminent deadline.*

statute or deadline is about to expire, do inform them that the time limit for filing an action will

shortly expire, impressing on them the urgent need to meet with another attorney or the right to file an action may be forever barred.

A diplomatic and helpful non-engagement letter helps protect the person seeking counsel, helps to protect you and can leave the door open to further representation. The declined client may return at another time with a matter you will take or may refer a friend or associate to you. 🌴

FLORIDA LAWYERS MUTUAL INSURANCE COMPANY provides Risk Management services as a benefit to the legal profession.

For further information, contact: Lucia Duggins, Risk Manager, [luciad@flmic.com](mailto:luciad@flmic.com).

This publication is intended to provide general information presented in order to assist lawyers and their staff to develop and enhance firm risk management procedures. For advice on specific legal questions, consult experienced legal counsel; specific questions on ethical conduct may be posed to The Florida Bar's Ethics Hotline, 800-235-8619. Implementation of any suggestions in this publication is not warranted, expressly or impliedly, to prevent or successfully defend claims. Further, the information is not intended to establish a standard of due care; information may describe conduct that is well above the standard of due care. While all materials presented herein are carefully researched, no warranty, expressed or implied, is offered to the accuracy of this information. Reproduction, in any manner, of the material herein requires written permission.

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