

# **Westport Insurance Corporation**

## **Attorney-Client Relations**

**Lawyers Risk Management Note:** *Absent the elements of malpractice (Duty – Breach of that Duty – Causally Related Damages), claims are still made against lawyers. In fact, over half of the claims reported to Westport are closed without any payment made on behalf of the insured lawyer. Further, there are claims that are settled with the insured lawyer's consent to avoid costly litigation and time away from the actual practice of law. Thus, to reduce claims, we must focus on more than just reducing errors. This begs the question: how many claims could be avoided through improved attorney-client relations?*

*A recent study of Westport Lawyers claims reported within the last year revealed that approximately 50% of the reported matters arose out of dealings with individual clients. The most common areas of practice involved were personal injury plaintiff work and residential real estate transactions. Thus, it is reasonable to conclude that any deteriorations in or failure to establish a healthy relationship with one's client could increase the risk of a claim being made for legal malpractice.*

### **Client Perceptions**

Without regard to the merits of any matter, it is not uncommon for the uninitiated to assess an attorney's performance based on criteria not directly related the attorney's performance as a legal professional. Some examples are:

The client's perception that the attorney does not give the case the attention it deserves.

Less than exemplary communication between the attorney and the client leading to an impression that the case was not handled with due care even if that is not the case from technical and procedural perspectives.

The attorney's failure to return phone calls as promptly as the client's expects can lead the client to conclude that the attorney simply does not care about the case, is disorganized or outright dilatory.

### **Areas for Self-Examination**

Here are some items to consider in focusing on improved attorney-client relations:

Have I focused solely on technical expertise at the expense of developing sound interpersonal skills?  
Have I concentrated on public speaking and negotiation acumen in an adversarial setting at the expense of one-to-one client communication?

Do I do a good job of picking up on danger signals from prospective clients? Do they have unrealistic expectations or a proclivity for not trusting professionals? Are they plagued by constant indecision or are they out "for their day in court as a matter of principle"? Do I tend to ignore advice from colleagues or staff that a particular individual is "bad news"? Has the prospective client already gone through one or more attorneys?

Are your clients "crystal clear" about the fee arrangement, be it hourly rate or contingency? Does the client understand what out-of-pocket expenses will be passed on for payment by the client?

Do you strive for a healthy balance of professional objectivity and empathy in dealings with your clients?

Focusing on the non-technical aspects of the practice of law, while certainly not eliminating the risk of a legal malpractice claim, can serve to reduce the risk or perhaps mitigate damages.