

The Annual List
of Top Attorneys

ZAHRA KARINSHAK speaks Arabic
with a strong Southern accent

MARVIN SOLOMIANY: a family law attorney
with a fascinating family history

GEORGIA 2017

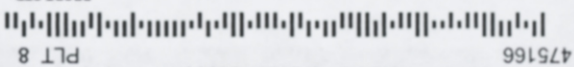
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'Somebody Opened Doors'

AN ORAL HISTORY OF THE ATTORNEYS
WHO CAME ALONG FIVE YEARS
AFTER JOHN LEWIS AND DIANE NASH

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'A Failure to Communicate'

How to avoid claims for legal malpractice BY DAVID LEFKOWITZ



David N. Lefkowitz

THE LEFKOWITZ FIRM

PROFESSIONAL
LIABILITY: PLAINTIFF

ATLANTA

After 26 years of handling legal malpractice claims against attorneys, I have seen almost every imaginable type of error: bad title searches, botched divorce agreements, invalid patents, failure to object at trial, etc. I've seen behavior that technically might not qualify as malpractice but obviously isn't appropriate: lawyers stealing clients' money for drugs or gambling; lawyers sleeping with clients; lawyers sleeping with opposing clients; and one situation where a lawyer actually slept with the judge presiding over the case.

I am frequently asked by attorneys how they can avoid bar complaints and claims for legal malpractice. The fact of the matter is that most legal malpractice claims (and awards) are not related to an attorney's knowledge of the law or to their bad behavior. In reality, bar complaints and malpractice claims often arise out of administrative errors, including a failure to screen clients properly, monitor deadlines, analyze conflict issues, communicate effectively with clients, etc. Diligence and attention to detail—the same things that lead to success in law school—are critical to avoiding malpractice.

Equally important in the process of avoiding claims for malpractice or bar complaints is the actual relationship you have with your client—not the formal attorney-client relationship, but the *interpersonal* relationship.

There is no functional equivalent of a "good bedside manner" for lawyers, but there should be. I am certain that if more lawyers had that characteristic, there would be far fewer bar complaints and legal malpractice suits.

Just think about the things that would aggravate you if your physician did them. In other words, don't keep your client waiting for an hour in the waiting room. Don't let three days go by before returning a phone call. Don't be dismissive of a client's concerns. Always avoid the impression that you are being neglectful. Be courteous to, and respectful of, a client; it can go a long way. Very few legal malpractice claims—and virtually no bar complaints—are filed by clients who think their lawyer was responsive, polite, diligent and likable.

An important way for an attorney to avoid having a disappointed client, and thus one who might pursue a legal malpractice claim, is to set realistic expectations. Avoid the temptation to set unreasonably high expectations during the initial interview process, when you know that the prospective client may be choosing between several attorneys. If you allow the client's expectations to be unreasonably high, you should not be surprised when your client is disappointed with an entirely reasonable result.

As you communicate with your client, remember this: If the client thinks you don't care about their case or feelings, they're going to be more likely to conclude that you did not work hard or obtain the best result possible. Why should quality communication be prioritized? Because the client is going to have a decision to make if the results are worse than expected. Malpractice actions are not filed for every error or negligent act. Developing a rapport with your client may not prevent malpractice, but it can assist in preventing malpractice claims.

David Lefkowitz is an attorney with offices in Atlanta and Athens. He also teaches legal malpractice law as an adjunct professor at UGA Law School.

Top 5 Problem Areas Leading to Legal-Mal Claims:

1. Preparation, Filing, Transmittal of Documents (23% of claims)
2. Pretrial/Prehearing (19.5%)
3. Commencement of Action/Proceeding (15.6%)
4. Advice (15.1%)
5. Settlement/Negotiation (8.2%)

— from the ABA's survey "Profile of Legal Malpractice Claims"