

WORKSHEET O
INTRODUCTION TO MALPRACTICE AND GRIEVANCE TRAPS

Worksheet O is intended to facilitate a discussion about common malpractice and grievance traps and how to recognize and avoid common pitfalls.

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- Discuss common malpractice mistakes, particularly in your mentee’s practice area(s), and share ways to avoid them.
- Discuss a lawyer’s obligation to act competently, work diligently, and communicate effectively with every client. See Prof. Cond. Rules 1.1, 1.3 and 1.4.
- Discuss common grievance problems that arise, particularly in your mentee’s practice area(s), and ways to avoid them.
- Give your mentee practical pointers on practices that minimize client dissatisfaction and complaints, including the best ways to communicate with and involve your client in their representation.
- Share with your mentee your firm’s procedures to ensure that the law firm staff does not inadvertently disclose client confidences. Discuss the tips in the attached article, Kirk R. Hall, *Not So Well-Kept Secrets*.
https://www.americanbar.org/content/dam/aba/administrative/lawyers_professional_liability/downloads/secrets.pdf
- Suggest resources that your mentee can consult for making important ethical decisions, including the following:
 - I. Identify the procedure for obtaining in-house ethics advice (if you are in an in-house mentoring relationship).
 - II. Provide suggestions for finding outside ethics counsel and when such action is recommended.
 - III. Identify other helpful ethics materials, where they can be found, and the importance of supplementing general ethics resources with independent research on Ohio disciplinary case law when the ethics resources reviewed are not based on the Ohio Rules of Professional Conduct.
 - IV. Identify ethics inquiry services of bar associations.
 - V. Discuss procedures for requesting or researching ethics advisory opinions of bar associations or the Ohio Supreme Court Board of Commissioners on Grievances and Discipline.
- Discuss the reasons for maintaining malpractice insurance and considerations for

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choosing the right policy. Discuss the attached *Checklist for Purchasers of Professional Liability Insurance* of the ABA Standing Committee on Lawyers' Professional Liability.

https://www.americanbar.org/groups/lawyers_professional_liability/resources/checklist_for_purchasers/

- Discuss the best time to bring a malpractice carrier into a claim against you for malpractice liability or ethical misconduct.

- Discuss the impropriety of asking your client to sign a fee agreement which provides for arbitration in the event of a fee dispute, malpractice claim, or ethical misconduct allegation. Discuss the propriety of settling claims for malpractice with your client. See Prof. Cond. Rule 1.8.

RESOURCES

Ohio Supreme Court Board of Commissioners on Grievances and Discipline Ethics Advisory Opinions <https://ohioadvop.org/advisory-opinion-index/>

American Legal Ethics Library <http://www.law.cornell.edu/ethics/>

Legal Ethics, DukeLaw <https://law.duke.edu/lib/research-guides/legal-ethics/>

NeoEthics: Law and Insurance Resources for the ABA's Tort Trial and Insurance Practice Section <http://www.edicta.org/NeoethicsBucklin/Neoethics.htm>

practicePRO by the Lawyers' Professional Indemnity Company <http://www.practicepro.ca/>

sunEthics <http://www.sunethics.com/>

The Top Ten Causes of Malpractice – and How You Can Avoid Them, ABA Techshow, 2006. <https://studylib.net/doc/18587944/the-top-ten-causes-of-malpractice-and-how-you-can-avoid-them>

American Bar Association Standing Committee on Lawyers' Professional Liability: https://www.americanbar.org/groups/lawyers_professional_liability/