



## MALPRACTICE AVOIDANCE TIPS FOR TRANSACTIONAL LAWYERS

1. Avoid becoming involved as an attorney in any transaction in which you have any interest. (*See* DR 5-104 and Exclusion 3.h. of the PLF Coverage Plan.)
2. Beware of the client who never seems to get all the information to you or fails to do the necessary footwork because he or she wants to save money. Double check – and even threaten not to handle the matter – unless you have all the information you need.
3. Be extremely careful about letting the client handle filings and recordings. If you do, follow up with a letter to the client indicating that he or she has accepted that responsibility. The best rule, however, is never allow the client to accept the responsibilities.
4. If the client acts against your advice, follow up with a letter indicating that his or her actions are against the advice of counsel. Consider terminating the relationship.
5. After telephone calls and conferences, follow up with a letter confirming the discussion or with a memorandum to the file.
6. Do not give legal advice or information to parties who are not your clients. Encourage people to get independent counsel. If there is potential for confusion about your role, clarify who you represent in a letter sent to all the people who are involved.
7. When forwarding documents to an unrepresented party, send a letter indicating that you are representing the other side and advising the other party of the right to have the documents reviewed by his or her own attorney. If a proposed contract is being tendered to escrow and the other party is not represented, include an acknowledgment provision in the contract that states who you are representing and that the other party was notified to seek independent legal advice.
8. Keep a file – even if you are only asked to review documents. Send an engagement letter documenting the limited scope of your employment.
9. If other professionals, such as an accountant, are involved, make sure that the client understands which services you and the other professionals are providing. Document the agreement in writing and send it to the client and the other professionals. Particularly, watch out for sub-chapter S elections. When you are forming a corporation, send the accountant a letter that confirms who is to file the election and provide a copy to the client.
10. Check all documents for consistency, signatures, and dates.

Frank H. Hilton  
*Dunn Carney Allen Higgins & Tongue LLP*

### DISCLAIMER

This newsletter includes claim prevention techniques that are designed to minimize the likelihood of being sued for legal malpractice. The material presented does not establish, report, or create the standard of care for attorneys. The articles do not represent a complete analysis of the topics presented and readers should conduct their own appropriate legal research.