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## **Risk Management by the Numbers: New ABA Study on Malpractice Claims**

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Approximately every four years since 1985, the ABA has published a “profile” of legal malpractice claims. The series, which compiles claims statistics from carriers nationwide, offers a unique window into law firm risk management. The latest installment, which covers 2016-19, was released last month. It is available on the ABA web site.

Like its predecessors, the latest Profile includes statistics by practice area, firm size and alleged error. Each offers its own insights.

Plaintiffs’ personal injury and family law are the most frequent source of claims. Although the Profile does not corollate the severity of claims by practice area, the Profile’s “anecdotal observations” section suggests that business and commercial law have traditionally been higher risk areas on this score.

Regionally, both findings are reflected statistically in the annual reports of the Oregon State Bar Professional Liability Fund—which has the unusual feature of being the required first layer of coverage for all Oregon-based lawyers in private practice.

Likely reflecting the statistics by practice area, solos and small firm comprise over half the claims by frequency in the most recent Profile. The authors caution, however, that in many states solos and small firms comprise the

bulk of law firms numerically and that firms of almost all sizes saw an increased number of claims in the most recent reporting period.

As in past years, substantive legal errors made up roughly half of the claims reported. Also as in past years, over a third of claims stemmed from either administrative errors (such as the failure to properly calendar key deadlines) or client relations (such as the failure to follow client instructions).

Although many lessons can be drawn from the Profile, one seems particularly compelling. Administrative and client relations issues are uniquely within the control of law firms. Close and consistent attention to developing and using systems appropriate to firm size and practice for calendaring and file management to lessen these risks can pay real financial dividends.

## **ABOUT THE AUTHOR**

Mark J. Fucile of Fucile & Reising LLP advises lawyers, law firms and legal departments throughout the Northwest on professional responsibility and risk management. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark is a member of the Oregon State Bar Legal Ethics Committee and the Idaho State Bar Section on Professionalism & Ethics. Mark writes the Ethics Focus column for the Multnomah (Portland) Bar's *Multnomah Lawyer*, the Ethics & the Law column for the WSBA *Bar News* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is a contributing author/editor for the current editions of the OSB *Ethical Oregon Lawyer*, the WSBA *Legal Ethics Deskbook* and the WSBA *Law of Lawyering in Washington*. Before co-founding Fucile & Reising LLP in 2005, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. He also teaches legal ethics as an

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