"An Ounce of Prevention..." Continued!

by Janean S. Johnston

We began our "Firm Fitness Check-up" series with my last column, which addressed docketing and calendaring procedures. For those who may have missed the June/July issue, I will review the process: The firm fitness review consists of examining several basic issues through the use of questions that are designed to be answered with a "yes" if you are practicing carefully. A "no" answer should encourage you to look at that area and determine what changes are necessary to turn the answer into an affirmative response. (Some questions will not apply, depending on your practice or size of firm.)

Please remember, the Virginia State Bar has provided some excellent resources to help you practice efficiently and ethically. Among them are the ethics hotline at (804) 775-0564 and the risk management hotline at (800) 215-7854. In addition, don't forget the low-cost ($150 per attorney) opportunity to participate in a confidential half-day review of your office and its practice management procedures in order to lessen your exposure to malpractice claims and ethics complaints.

This month's column addresses the issue of conflicts of interest. While conflicts do not occur with great frequency in malpractice claims, when they do occur they generally add greatly to the severity of the claim. Therefore, it is important to have some kind of indexing system that includes a listing of current clients, former clients and any parties that could create conflict problems, such as individuals who came for consultations but did not retain your firm. (A computerized conflicts checking program is usually contained in your case management software package and is the easiest way to check for conflicts.)

This index should be used to check for potential conflicts before a case is accepted and to continue to check for conflicts as new information is learned during the course of the representation. It is wise to check for possible conflicts when hiring new lawyers, paralegals and staff members. If you have partners or associates, please distribute a new case/new matter memo and ask for any information that could trigger a conflict. Regular office meetings can be the ideal setting to discuss new clients and whether there are any conflicts or issues that might affect the representation.

Now, on to the questions!

Conflicts of Interest Procedures

- Does the firm have an alphabetical index of current and former clients?
- Is the list computerized?
- If indexed manually, is the index kept in a central location and easily expanded?
- Does the firm have a written policy that requires the conflict system to be checked before a case is accepted? (These procedures should be in writing for firms of two or more attorneys.)
- Does your system include the following: client names, opposing party, parties who were declined, name changes/maiden names, and a procedure to add new parties as representation proceeds?
- Is the conflicts system updated each time a new client or matter is accepted?
- Are the names of all entities in which attorneys have economic or fiduciary interests—including board positions—listed on the system?

- Does the firm prohibit its attorneys from entering into business deals with clients?
- Are potential conflicts checked before hiring new attorneys, law clerks or paralegals and before using the services of an independent contract attorney?
- Does the firm circulate a New Matter/New Case report at least weekly?
- Is a partner of the firm assigned to review all conflicts discovered by the search?
- Does the firm disclose to all potential clients in writing all actual conflicts of interest or conflicts you reasonably believe may exist, and the implications on their matter?
- After disclosure of actual or potential conflicts, do you or does your firm always obtain written consent to perform ongoing legal services, where appropriate?
- If representation is declined because of conflicts, does the firm always send a written declination/nonengagement letter?
- Do you continually examine your practice for potential positional conflicts?

If you have questions or concerns with handling your conflicts avoidance procedures, please contact me at (703) 567-0088.

Look for upcoming articles in the "Firm Fitness Check-Up" series. Stay tuned and stay healthy!