

LAW WEEK

COLORADO

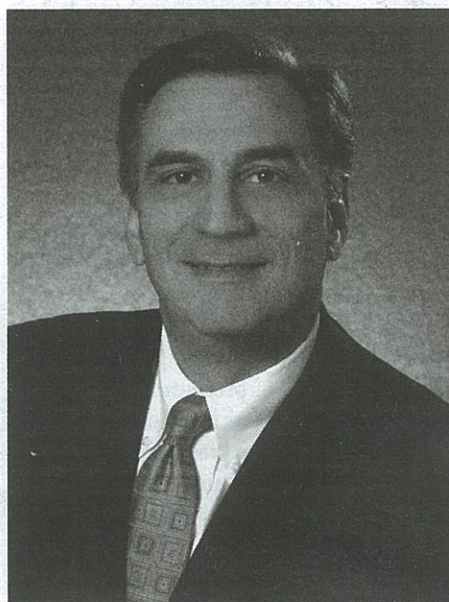
Bad Economy Trickles Down To Law Practice

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The economic pressures of the past few years have affected the business world, including the legal community. Legal work has slowed, particularly in the transactional areas, but also in other areas of practice, with the result that attorneys may accept work outside their usual areas of practice, creating legal malpractice exposure. Attorneys have also faced difficulty in getting paid, triggering claims for fees and counterclaims for malpractice. By staying in practice areas in which they are experienced and avoiding fee disputes, attorneys can limit their exposure for legal malpractice in these difficult economic times.

The Colorado Rules of Professional Conduct require attorneys to provide competent representation to a client. C.R.P.C. 1.1. "Competent representation requires that the legal knowledge, skill, thoroughness and preparation are reasonably necessary for the representation." *Id.* Given this broad definition, attorneys can provide competent representation in an array of matters. The days of the general practitioner, however, may be gone. In this day and age, the law in most areas is complicated and requires an experienced practitioner. Attorneys place themselves at risk by taking on legal matters outside their usual area of practice. Unlike some states, Colorado does not allow referral fees. C.R.P.C. 1.5(e). Nevertheless, referring a legal matter to another attorney may be the best approach for the client and the attorney. By developing a strong circle of referral sources, work may come back to the attorney who refers matters to others. It may be possible to co-counsel a matter and still provide cost efficient services to the client. Given the time and money involved in a legal malpractice claim, it may be better to refer a matter and lose an engagement rather than run the risk of a legal malpractice claim arising in an unfamiliar area of law.

Fees can be a sensitive issue for attorneys and clients. If it is difficult to communicate with a client regarding fees at the outset of the relationship, it will probably be more difficult to communicate regarding fees at the end of the relationship. In these economic times, it is more important than ever to secure a retainer



or advanced deposit of fees. Non-refundable fees and non-refundable retainers are prohibited. C.R.P.C. 1.5(g). There is nothing improper, however, with a request for retainers or advances. If a client has difficulty providing a retainer or advance at the outset of the relationship, it is unlikely that the client will be able to pay the fees during the course of the representation. Colorado law allows for attorneys' liens but there are a number of issues in their enforcement. *Assertion of Attorneys Charging Liens/Security Interest in Property*, Ethic Opinion 110 (May 19, 2002). If an attorney sues for fees, statistics show that a counterclaim for malpractice is almost assured. Prior to filing suit, the attorney should factor the amount of the insurance policy deductible and the amount of time spent in defense of a counterclaim.

The world is in the midst of turbulent economic times, and the legal profession is, by no means, immune from this situation. By limiting their practice to areas in which they are experienced and by avoiding fee disputes with clients, attorneys can limit their exposure for legal malpractice claims and remain financially successful, even during challenging periods such as now. •

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