

Practice Monitor Guidelines and Self-Audit Checklist

ISSUED BY:

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The practice monitor guidelines were provided to the Board of Professional Responsibility by the Colorado Supreme Court Office of Attorney Regulation Counsel.

The self-audit checklist was provided to the Board of Professional Responsibility by the Washington State Bar Association Practice Management Assistance Program. The Washington State Bar has compiled such a checklist from a much more extensive and very useful book entitled, Easy Self-Audits for The Busy Law Office, written by Nancy Byerly Jones who is an attorney and certified mediator (superior court and family in North Carolina); a national consultant and coach for lawyers and legal staff, and the author of a monthly column for Lawyers Weekly USA. The book is published by the ABA Law Management Section. For more information about the author, please visit www.nbjconsulting.com.

Practice Monitor Guidelines

Pursuant to Tennessee Supreme Court Rule 9 Section 12.9, duties and responsibilities of a practice monitor may include:

1. Respondent shall complete the attached "Self-Audit Checklist." Respondent and the practice monitor shall review the checklist together to identify problems and work on solutions.

2. The practice monitor shall review Respondent's reminder, or "tickler" systems, and all calendaring and case monitoring systems used in Respondent's office. The practice monitor shall verify that Respondent has a workable and effective tickler system and a dual calendar and case monitoring system in place.

3. The practice monitor shall review Respondent's billing system, including respondent's time keeping and time reporting systems, and systems for tracking and recording costs and expenses incurred on behalf of clients. The practice monitor shall verify that Respondent has a workable and effective billing system which accurately, completely and timely communicates to clients the time, fees and costs incurred in their matter on a regular basis.

4. Respondent and the practice monitor shall review Respondent's records management systems, both as they relate to Respondent's open and closed files and law office records that must be maintained in the course and scope of the Respondent's practice (such as, but not limited to, conflicts records, billing records, financial and banking records).

5. Respondent and the practice monitor shall discuss Respondent's caseload generally, and any concerns Respondent has with respect to any of his client matters. To the extent Respondent and the practice monitor discuss specific clients or client matters, as required by these Conditions, Respondent and the practice monitor understand and agree that such matters remain confidential pursuant to Rule 1.6, and that the attorney client privilege remains intact as to those clients.

6. Respondent shall provide any additional information the practice monitor may request concerning the files selected. The practice monitor shall discuss with Respondent any concerns he or she may have concerning the files or the legal matter contained therein. This audit of Respondent's files is intended to increase the effectiveness of the practice monitor in assisting Respondent to represent his clients competently and diligently, and to communicate with his clients on a prompt and appropriate basis.

7. The practice monitor may make specific suggestions necessary to assure that Respondent's caseload is being properly and professionally handled and that Respondent is diligently pursuing all client matters.

8. Respondent and the practice monitor will discuss Respondent's systems and practices for training and supervising nonlawyer staff and subordinate lawyers over whom Respondent has responsibility.

9. To the extent the practice monitor has concerns based upon any aspect of the law office audit conducted pursuant to the above-described procedures, the practice monitor shall make suggestions or recommendations to Respondent to alleviate such concerns and to help ensure prudent law office management procedures.

10. The practice monitor may prepare a report detailing the steps taken in the law office audit and verifying that he/she has completed all of the auditing tasks described above.

Following the completion of the audit, the practice monitor shall monitor the Respondent's practice, as set forth below. The monitor shall pay particular attention to any areas of concern that came apparent during the course of the practice audit.

Respondent shall comply with, and bear any costs related with, a practice

monitoring program. The practice monitoring program will consist of the following:

I. A case-load-review meeting shall take place between the monitoring attorney and Respondent on the schedule outlined in the order. If no schedule is specified, the following schedule is suggested:

- (1) First six months: meeting once per month beginning no later than 40 days after the agreement is fully executed;
- (2) Second six months: meeting every other month;
- (3) Second year: meet quarterly

II. At each meeting the following will take place:

(1) Respondent will prepare a list of current and active files, which will be reviewed by the monitoring attorney, together with Respondent. The monitoring attorney will take steps to verify that the list is complete.

(2) The monitoring attorney will make, and the respondent will write down specific suggestions necessary to assure that the caseload is being properly and professionally handled and that Respondent is progressing in a satisfactory manner for the duration of this monitoring period set forth in the agreement.

(3) The monitoring attorney and Respondent will review the list of suggestions from the previous meeting to be sure that all suggestions for improvement have been implemented and that Respondent has complied with them.

(4) The monitoring attorney shall have access to and monitor, to the extent he or she deems necessary, all financial accounts of Respondent, including personal accounts, in order to assure that no commingling of funds occurs.

(5) The monitoring attorney shall have access to and monitor, to the extent he or she deems necessary, all fee agreements that Respondent has entered into with clients, and all monthly billing statements to clients, to ensure that

Respondent's fees comply with the Tennessee Rules of Professional Conduct.

III. In addition, on a monthly basis the monitoring attorney may randomly review Respondent's open files by selecting no fewer than five (5) files and reviewing the contents thereof. Respondent shall provide any additional information the monitoring attorney may request concerning the files selected randomly. The monitoring attorney shall discuss with Respondent any concerns he or she may have concerning the files or the legal matter contained therein at the next monthly meeting between the monitor and Respondent. This random audit of the respondent's legal files is intended to increase the effectiveness of the monitoring attorney in assisting Respondent to represent his clients competently and diligently, and to communicate with his clients on a prompt and appropriate basis.

IV. On a monthly basis, respondent shall submit to the Board of Professional Responsibility a written report of the meeting, which report shall be signed by the monitoring attorney.

V. The monitoring attorney shall immediately disclose to the Board of Professional Responsibility any matters which are uncorrected, or which represent significant problems requiring corrective attention. Copies of such correspondence shall be sent to Respondent.

SELF-AUDIT CHECKLIST

This checklist is a tool for the small law office to help identify strengths and weaknesses of office management practices. It is designed for both lawyers and non-lawyer staff to complete, although non-lawyer staff may only be able to complete portions of the audit. Those completing any portion of the audit should be candid, so responses may vary between lawyers and the non-lawyers. Use the results to foster a better mutual understanding of what goes on within the office. This knowledge will enable you to take the requisite action to ensure that the office is managed properly.

Name of firm:

Members of firm:

Areas of practice:

The areas addressed are: Client Relations, Confidentiality, Conflicts of Interest, Docket/Calendar, Records Management, Staff Management, Financial Management (Timekeeping-Billing-Budgeting-Financial Recordkeeping and Reporting), and Professional Practice and Technology.

Please take a few moments to review all of the questions and make note of any areas that you would like to discuss more thoroughly. The last page allows space for your notes and clarifications. "YES" means all or most of the time; "NO" means never or rarely. We recommend that all employees in the office also complete this checklist.

I. CLIENT RELATIONS

The relationship with the client is a critical consideration for law office management. Everything that happens in a law firm has a direct or indirect effect on the client. The way a law firm conducts its business will also influence its relationship with its clients.

Law firms are often set up so that the critical element of administrative support is service to the attorney. The attorney, in turn, serves the client. Today, a client-centered law firm involves all personnel directly serving the client. The attorney is a team member involved in providing overall service to the client.

Examine your client relation efforts by asking the following questions:

	Yes	No	N/A
Do we return clients' phone calls and email within 24-48 hours?			
Do we perform all the work we told the client we would?			
Do we send follow-up letters after a meeting or telephone conversation in which new decisions have been reached?			
Do we complete the work in a timely fashion?			
Do we follow up with clients at least every six weeks even when their cases are inactive?			
Do we acknowledge staff members for good client relations?			
Do we ask the client for feedback as the matter moves along?			
Do we use engagement letters to describe our office practices?			
Do we use fee agreements and fee statements to clearly explain what clients will be charged and when fees will be earned?			
Do we use email with client permission?			
Is our email marked "Confidential Privileged Communication?"			

II. CONFIDENTIALITY

Clients depend on their lawyer to safeguard the information they provide. The Rules of Professional Conduct provide for only limited situations where this trust may be broken. Since trust is very difficult to reestablish once it has been broken, it is important that you take steps to ensure that every member of the firm does all they can to safeguard client information.

	Yes	No	N/A
Do all new employees sign a confidentiality form acknowledging they have discussed confidentiality with you, read the relevant Rules of Professional Conduct, and will not breach the confidentiality of any client during and after their association with the firm?			
Do we make sure no client files or other confidential materials are ever left in the reception area or other public access areas?			
While conferring in person with clients, do we avoid taking calls or otherwise talking with other clients so as to protect client identities?			
Are the fax machines and copiers located away from where non-firm persons may be able to see confidential materials?			
If we are in an office-sharing arrangement, have we discussed confidentiality with the landlord, other tenants and any employees who may be privy to confidential information (e.g. receptionist, word processor, etc.)?			
Is the office locked every night to discourage theft?			
Do we need a password to access data?			
Do we have confidentiality agreements for cleaning services, contract staff and computer maintenance vendors who have access to our computer systems?			

III. CONFLICTS OF INTEREST

Many law firms rely on the staffs' collective memories to do their conflict of interest checks. This method rarely works accurately over any period of time. Every case handled cannot be so memorable that you will never forget every person involved. You should maintain a written electronic conflict of interest system and keep it up to date. All staff members should be trained to use the system and conflict checks should be done prior to the discussion of any new matter with a client or potential client

Examine the effectiveness of your conflict of interest system by answering the following questions:

	Yes	No	N/A
Do we maintain and continuously update a master client list of current clients, former clients, parties, employees and other individuals with cross references to files to facilitate researching apparent conflicts of interest?			
Do we get a signed waiver from the client if representation is requested after a potential conflict has been discussed?			
Do we request information regarding other names (i.e., maiden, marital, etc.) that potential clients and adverse parties may have used in the past?			
Do we properly identify and record information regarding the adverse party?			
Do we check our master list for conflicts of interest before accepting a new client or matter?			
If we do not accept a potential client's case, do we notify the client in writing?			

IV. DOCKETING and CALENDARING

Missing a filing deadline or court appearance can be extremely damaging to a client as well as causing embarrassment and a potential malpractice claim for you. Each firm member should maintain an individual calendar in addition to a master calendar for the entire firm. Answer the following questions to determine how well you are doing in this area:

	Yes	No	N/A
Do we keep individual calendars, i.e. attorney and secretary/paralegal?			
Does your calendar include (as applicable):			
a) statutes of limitations?			
b) all court appearances?			
c) client and other appointments?			
e) real estate closing dates?			

f) all self-imposed, discretionary deadlines (i.e., promises made to others, promises made to you and work deadlines you have set for yourself?			
Do we maintain a master calendar?			
Do we have a good system for updating and maintaining each calendar in case of scheduling?			
Do we use reminder slips (tickler slips) to prompt attorney?			
If the calendar is maintained on the computer, do we frequently print out a copy to use in case of power failures or other computer problems?			
Do we use a networked (if applicable) calendar program?			

V. RECORDS MANAGEMENT

The client file represents a record of the work you have performed for the client. It also represents one of the most frequently overlooked tasks in the office. Maintaining the files in an orderly manner that allows for efficient access to client information will save time and money in the long run. In addition, the ability to promptly respond to inquiries by having the information at your fingertips will enhance your professional image. "Clerical" does not mean "unimportant"--especially in a law office.

The following questions should help you determine the current status of your records management program:

	Yes	No	N/A
Do we have a standardized filing system for all client files?			
Are all materials filed timely and regularly?			
Do we follow a file retention schedule after a case is completed, i.e. when to close, when to review for destruction, what to return to client, what to keep and for how long?			
Do we keep back-up media of electronic records off-site?			
Does each file have a log or diary of all the events of the matter including commitments to you and your commitments to others?			
Do we back up our data at least weekly?			
Do we attempt periodic "restores" of data (to check if it works)?			
Do we use computer virus filters and a firewall?			

Is there an office policy regarding email retention? Are emails saved to the relevant client file? Is there a policy dictating who is responsible for saving emails?			
Does the firm utilize a cloud system for file storage? Is the security of this system monitored periodically?			
In case of a breach of electronically stored information, does the firm have a procedure for informing clients?			

VI. STAFF MANAGEMENT

A large part of a client's impression of your law firm will come from the actions of your staff. It is critical to your success that your staff is well trained and motivated to provide excellent service to the firm's clients. Working in a law office is much more than just a job. A client's welfare is placed directly at stake by your choices.

Check your policies and procedures against the following list of questions:

	Yes	No	N/A
Do we have a current office policy and procedures manual and do we follow it?			
Do we sufficiently train our employees when first hired as well as when major procedural changes occur, e.g. automation?			
Do we train employees in the ethical requirements of working in a law office?			
Do we ask all employees to read the Rules of Professional Conduct?			
Do we offer our staff any continuing education opportunities?			
Do we keep staff members informed and give them an opportunity to offer input regarding matters affecting them?			
Do we properly supervise employees by reviewing their work?			
Do we set a good example of our staff by creating, implementing, and monitoring dependable office policies and systems, (i.e., docket/work control, conflicts of interests, good documentation, etc.)?			
Do we express appreciation to employees for work well done and make sure any necessary criticism is shared privately, and in a timely and constructive manner?			

Do we clearly communicate expectations of performance to all firm employees?			
Do we encourage and motivate employees to take pride and ownership in their work?			
Do we provide support and assistance for staff members in the handling of disrespectful, rude and otherwise out of line clients and others?			
Do we keep our staff informed as to our whereabouts and schedule?			
Do we provide a “safe” office environment? This question refers to both the physical space as well as the office culture that allows for the questioning of the work by anyone before it leaves the office.			
Are attorneys and staff aware of consequences of hitting “reply all” in responding to emails?			
Is there a firm policy as to whether clients can be copied on communications with opposing counsel? Is there a firm policy asking opposing counsel not to copy his or her clients on email to the firm?			

VII. FINANCIAL MANAGEMENT

Timekeeping, billing, budgeting and financial record keeping, and reporting are included under the financial management umbrella. All of these activities should be coordinated to produce an efficient accounting and record-keeping system. Mastering the elements of financial management should give you a sense of control over the direction of your firm.

Timekeeping:

	Yes	No	N/A
Do we have documented timekeeping procedures?			
Do we train all timekeepers in proper timekeeping?			
Is time recorded at the time the work is performed?			

Billing:

	Yes	No	N/A
Are all expense disbursements posted to clients' files on a regular basis?			
Are all internally incurred expenses (postage, long distance, etc.) posted to clients' files regularly?			
Are all payments and credits posted to clients' files?			
Are all entries reviewed for accuracy?			
Are all bills reviewed and approved?			
Are bills sent out on a regularly scheduled basis?			
Are the accounts receivable evaluated and followed upon regularly?			
Are client trust funds kept in a IOLTA or other bank trust account, separate from operating funds in the operating account?			

Budgeting:

	Yes	No	N/A
Do we need a budget?			
Do we compare actual results to the budget on a regular basis?			

Financial Recordkeeping and Reporting:

	Yes	No	N/A
Do we prepare tax returns timely?			
Do we have cash handling, and accounting checks and balances in place, i.e., division of responsibilities?			
Do we generate monthly or other regularly-scheduled financial reports?			
Do we share the firm's state of well being with everyone in the firm?			

VIII. PROFESSIONAL PRACTICE (STAFF RESPONSES NOT NECESSARY)

These questions relate to several of the details of how the lawyers handle daily events on client matters. Your standards of care should be consistent and timely--that can be difficult with many interruptions.

	Yes	No	N/A
Do I give legal advice over the phone if I am not familiar with the client?			
Do I have a designated back-up attorney for my files?			
Do I regularly go to CLEs in my specialty?			
Do I discuss the recommended course of action with clients at a time and place conducive to a good exchange of information and questions?			
Do I document the client's choice of action and so inform the client in writing?			
Do I have a system to follow up on assignments given to others in the office?			
Do I have a system for notifying clients of the results of motions on their cases and so document the file?			
Is the firm website checked periodically for accuracy? (Have attorneys or staff left the firm? Are current attorney profiles and contact information accurate?)			
Are emails regarding the representation sent through the firm website responded to in a timely fashion?			

IX. TECHNOLOGY

Office technology is nothing more than the tools to best serve your clients. The challenge is to have the knowledge to use these tools fully. Indeed, it may soon be that a lawyer's professional competence will include the use of technology to benefit clients.

	Yes	No	N/A
Do all our lawyers and staff use computers?			
Is everyone trained to usefully use our software?			
Do we use case management software?			
Do we train new employees about our computer system?			