Strafford

Presenting a live 90-minute webinar with interactive Q&A

The Challenges Facing a Law Firm's In-House Counsel: How to Follow the Ethics Rules While Protecting the Interests of the Firm

THURSDAY, DECEMBER 6, 2018

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

William T. Burke, Partner, **Williams & Connolly**, Washington, D.C.

Charles Davant, IV, Partner, **Williams & Connolly**, Washington, D.C.

Geri S. Krauss, Attorney, **Krauss**, New York

The audio portion of the conference may be accessed via the telephone or by using your computer's speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact **Customer Service at 1-800-926-7926 ext. 1**.

Tips for Optimal Quality

FOR LIVE EVENT ONLY

Sound Quality

If you are listening via your computer speakers, please note that the quality of your sound will vary depending on the speed and quality of your internet connection.

If the sound quality is not satisfactory, you may listen via the phone: dial **1-866-961-8499** and enter your PIN when prompted. Otherwise, please **send us a chat** or e-mail **sound@straffordpub.com** immediately so we can address the problem.

If you dialed in and have any difficulties during the call, press *0 for assistance.

Viewing Quality

To maximize your screen, press the F11 key on your keyboard. To exit full screen, press the F11 key again.

Continuing Education Credits

FOR LIVE EVENT ONLY

In order for us to process your continuing education credit, you must confirm your participation in this webinar by completing and submitting the Attendance Affirmation/Evaluation after the webinar.

A link to the Attendance Affirmation/Evaluation will be in the thank you email that you will receive immediately following the program.

For additional information about continuing education, call us at 1-800-926-7926 ext. 2.

Program Materials

FOR LIVE EVENT ONLY

If you have not printed the conference materials for this program, please complete the following steps:

- Click on the ^ symbol next to “Conference Materials” in the middle of the left-hand column on your screen.
- Click on the tab labeled “Handouts” that appears, and there you will see a PDF of the slides for today's program.
- Double click on the PDF and a separate page will open.
- Print the slides by clicking on the printer icon.

The Challenges Facing a Law Firm's In-house Counsel:
How to Follow the Ethics Rules While Protecting the Firm's Interests

Geri S. Krauss
Krauss PLLC
41 Madison Avenue
Suite 4102
New York, NY 10010
gsk@kraussny.com

William T. Burke
Williams & Connolly LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
wburke@wc.com

Charles Davant
Williams & Connolly LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
cdavant@wc.com

Summary Outline

- Introduction
- Advantages of Designating In-House Counsel For the Law Firm
- Ethical Challenges Facing In-House Counsel
  - Problems with Clients
  - Problems with Opposing Clients
  - Problems with Lawyers in Your Firm
- Preparing for a Potential Malpractice Claim

Introduction

A law firm has been searching to hire a lateral attorney and finds one who meets all the firm's criteria – except one.

The lateral attorney's firm is opposing counsel in a case the law firm has been litigating for a major client.

Can it hire the lawyer?

The law firm partners have a robust internal debate—including the exchange of many detailed emails—about whether the firm will be disqualified, whether it will face exposure to its client, whether screening the lateral attorney would be sufficient to solve the problem, and whether they should consult someone familiar with the ethics rules.

Advantages of Designating In-House Counsel For the Law Firm

- Preserving the Attorney-Client Privilege
  - In some jurisdictions, a firm ***must*** designate in-house counsel to assert the attorney-client privilege against a current client. *See, e.g, RFF Family P'ship v. Burns & Levinson,* 991 N.E.2d 1066, 1080 (Mass. 2013).
  - Designate in-house counsel in writing
  - Consider designating more than one
  - Consult in-house counsel in a confidential manner
  - Do not bill the client for in-house consultations
  - In-house counsel typically represents the law firm, not an individual lawyer in the firm, so the firm controls the privilege (and can waive it).

Advantages of Designating In-House Counsel For the Law Firm

- Developing Internal Expertise
  - Recurring questions
  - Protecting the firm's legal interests while complying with the ethical rules requires specialized expertise
- Disinterested Judgment
  - The lawyer representing a particular client should not be charged with protecting the firm's interests.
  - Lawyers involved in a potential problem should not decide how the firm should resolve it.

Problems with Clients

- **Hypo 1**: In defending Community Bank in a slip-and-fall lawsuit, a firm lawyer is told that the CEO plans to cause Community Bank to extend loans to politicians at below-market rates as part of a *quid pro quo* for official action. A credible whistleblower informs the lawyer and provides convincing back-up documentation.

- **Question**: Under the Rules of Professional Conduct, what must the lawyer do with this information?
  - A. Nothing, because the information is unrelated to the representation.
  - B. Inform the board of directors.
  - C. Inform law enforcement.
  - D. Withdraw from the representation.

Problems with Clients

- **Answer**:

A. Nothing, because the information is unrelated to the representation.

- Rule 1.13(b): "If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization . . . ."

(N.B. A lawyer's duties of care and loyalty also may be implicated.)

Problems with Clients

- **Hypo 2**: New client Pyramid Investments LLC asks the firm to prepare paperwork for a $20 million capital raise. Pyramid claims to have a secret investment strategy. It reports five straight years of market-beating returns. Its founders did not attend top colleges, and none of them earned a graduate degree, yet they own enormous houses and drive Ferraris. For these reasons, lawyer suspects Pyramid may be a Ponzi scheme.

- **Question**: Under the Rules of Professional Conduct, may the lawyer tell the potential investors about his suspicion?
  - A. No, because a lawyer can never reveal a client's secret.
  - B. No, because he does not have sufficient basis to believe Pyramid will defraud investors.
  - C. Yes, because he would not be revealing any attorney-client communications.
  - D. Yes, because his duty to clearly innocent investors trumps his duty to a possible fraudster.

Problems with Clients

- **Answer**:

B. No, because he does not have sufficient basis to believe Pyramid will defraud investors.

- Rule 1.6(b)(3): "A lawyer may reveal information relating to the representation of a client to the extent the lawyer **reasonably believes** necessary … to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is **reasonably certain to result** or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services."

(N.B. The Sarbanes-Oxley Act, its implementing regulations, and state securities laws also may be implicated. 17 C.F.R. § 205.3(d)(2)(iii).)

Problems with Clients

- **Hypo 3**: A former client files for bankruptcy, and its court-appointed bankruptcy trustee demands a copy of all internal and external law firm emails concerning the former client. The trustee offers to pay for copying.

- **Question**: Under the Rules of Professional Conduct, what must the law firm do?
  - A. Nothing, because of attorney-client privilege and the fact the bankruptcy trustee was never the firm's client.
  - B. Nothing, because the representation of the client had ended before its bankruptcy.
  - C. Give the bankruptcy trustee only emails that represent the "end product" of the law firm's work.
  - D. Give the bankruptcy trustee all emails, unless a specific exception applies.

Problems with Clients

- **Answer**:

  C. Give the bankruptcy trustee only emails that represent the "end product" of the law firm's work. **OR**

  D. Give the bankruptcy trustee all emails, unless a specific exception applies.

- Rule 1.16(d): "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as … surrendering papers and property to which the client is entitled."

- Minority interpretation: Client entitled only to "end product" of lawyers' work: outside correspondence, investigative reports, court filings, contracts, wills, corporate records, etc. ABA Formal Opinion 471 (July 1, 2015).
- Majority interpretation: The "entire file"; "the client has an expansive general right to materials related to the representation and retains that right when the representation ends." *Id.*

Problems with Clients

- **Hypo 4**: An accidental fire at the law firm's off-site storage facility results in the destruction of some files from a just-concluded litigation matter. The firm has electronic copies of the materials that were destroyed, except for one box of handwritten attorney notes, drafts, and casual emails of no apparent continuing value to the client.

- **Question**: Under the Rules of Professional Conduct, must the law firm inform the former client?
  - A. Yes, because all documents concerning a representation must be preserved for a reasonable time after a matter ends.
  - B. Yes, because a lawyer must keep its client reasonably informed of all developments.
  - C. No, because the box's loss should not be important to the former client.
  - D. No, because the lost box concerned a former client.

Problems with Clients

- **Answer**:

C. No, because the box's loss should not be important to the former client.

- ABA Formal Opinion 471 (July 1, 2015): "In general, a lawyer's ethical obligation to retain and safeguard material relating to a representation arises pursuant to a lawyer's duties of competence and diligence…."
- North Carolina Opinion 15 (2013): "A lawyer must exercise his or her legal judgment when deciding what documents or information to retain in a client's file."
- New York City Opinion 2008-1:
  - The ethics rules "do not require a lawyer to retain every … document that bears any relationship, no matter how attenuated, to a representation."
  - Usually ok to delete "casual emails" that are not "necessary or useful in the assertion or defense of the client's position" or that the client does not "need [or] reasonably expect that the lawyer will preserve"; "drafts of correspondence, of pleadings, and of legal memoranda"; and "handwritten note[s]"

Problems with Clients

- **Hypo 5**: Potential new client Cape Code Soda asks if the firm can advise it on a potentially embarrassing environmental issue. A firm lawyer reveals that a current client, Hyannis Tonics, several months ago sent the law firm "client guidelines" that require the firm to inform Hyannis of any such inquiries from certain competitors, including Cape Cod Soda. The guidelines provide that the law firm, by continuing to advise Hyannis, agrees to be bound.

- **Question**: Under the Rules of Professional Conduct, what must the law firm do?
  - A. Tell Hyannis about Cape Cod's inquiry, because of contractual obligation
  - B. Tell Hyannis about Cape Cod's inquiry, because "zealous" representation requires giving a client this business advantage.
  - C. Tell Hyannis about Cape Cod's inquiry, because Hyannis is entitled to all relevant information in its lawyers' possession.
  - D. Keep Cape Cod's inquiry a secret, because the law firm owes a prospective client a duty of confidentiality.

Problems with Clients

- **Answer**:

D. Keep Cape Cod's inquiry a secret, because the law firm owes a prospective client a duty of confidentiality.

- Rule 1.18(b): "Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client."

Problems with Clients

- **Hypo 6**: A firm lawyer is defending Dr. McGillicuddy against a malpractice claim. The lawyer learns that General Hospital, a current firm client in an unrelated real estate deal, is one of several health care providers that possess medical records that may refute the plaintiff's malpractice claim. The records go back decades, they are stored in multiple locations, and they may be difficult to compile.

- **Question**: Under the Rules of Professional Conduct, may the law firm subpoena the records?
  - A. Yes, because subpoenaing records is not "adverse" action.
  - B. Yes, because the firm's real estate work is unrelated.
  - C. Yes, but only if both General Hospital and Dr. McGillicuddy provide informed consent, confirmed in writing.
  - D. No, because this situation presents an unwaivable conflict.

Problems with Clients

- **Answer**:

C. Yes, but only if both General Hospital and Dr. McGillicuddy provide informed consent, confirmed in writing.

- Rule 1.7(a)(1): "Except as provided in paragraph (b), a lawyer shall not represent a client if … (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation … will be materially limited by the lawyer's responsibilities to another client…."

- Rule 1.7(b)(4): "Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if … each affected client gives informed consent, confirmed in writing."

Problems with Opposing Parties

- **Hypo 7:** A firm attorney representing a plaintiff in a product liability case receives an electronic file from opposing counsel in response to a document request. In reviewing the file, the firm attorney finds an email labeled "attorney-client privilege" from a member of the company's board of directors to opposing counsel containing an attachment entitled "Undisclosed Safety Tests."

- **Question:** Under the Rules of Professional Conduct, what must the lawyer do?
  - A: Read the attachment, say nothing to opposing counsel and advise his client that they have received the "smoking gun because a lawyer must zealously represent the client.
  - B: Promptly notify opposing counsel of receipt of the email.
  - C: Promptly notify opposing counsel of receipt of the email without reading the attachment.
  - D: Promptly notify opposing counsel of receipt of the email after reading the attachment to determine whether it does contain privileged information.

Problems with Opposing Parties

- **Answer:**

  B. Promptly notify opposing counsel of receipt of the email.

- New York Rule of Professional Conduct 4.4(b): "A lawyer who receives a document, electronically stored information, or other writing relating to the representation of the lawyer's client and knows or reasonably should know that it was inadvertently sent shall promptly notify the sender."
- Comment [2]… if a lawyer or law firm knows or reasonably should know that such a document or other writing was sent inadvertently, this Rule requires only that the receiving lawyer promptly notify the sender in order to permit that person to take protective measures. Although this Rule does not require that the receiving lawyer refrain from reading or continuing to read the document, a lawyer who reads or continues to read a document that contains privileged or confidential information may be subject to court-imposed sanctions, including disqualification and evidence-preclusion.

Problems with Opposing Parties

- **Hypo 8:** A matrimonial client provides a firm lawyer with emails between his spouse and her lawyer obtained through his unauthorized access to his spouse's email account.

- **Question:** Under the Rules of Professional Conduct, what must the lawyer do?

  - A: Promptly advise opposing counsel.
  - B: Return the emails to the client without reading them.
  - C: Keep the emails and say nothing to opposing counsel.
  - D: The Rules do not address this situation.

Problems with Opposing Parties

- **Answer:**

  D: The Rules do not address this situation.

- New York Rule of Professional Responsibility 4.4(b), Comment 2:
  - Rule 4.4(b) only applies to documents and information "inadvertently sent."
- The issue is left to other applicable law.

BUT THE AUTHORITIES ARE SPLIT:

- D.C. Ethics Op. 318: "When counsel . . . receives a privileged document from a client or other person that may have been stolen or taken without authorization from an opposing party, Rule 1.15(b) requires the receiving counsel to refrain from reviewing and using the document . . . .".
- Fla. Ethics Op. 07-1: "A lawyer whose client has provided the lawyer with documents that were wrongfully obtained . . . must advise the client that the materials cannot be retained, reviewed or used without informing the opposing party . . . ."

Problems with Opposing Parties

- **Hypo 9**: A firm lawyer is representing a plaintiff in an employment discrimination lawsuit and wants to contact and conduct *ex parte* interviews of the employer's former employees.

- **Question**: Under the Rules of Professional Conduct, may the lawyer do so?
  - A. Yes, but only if the firm lawyer first obtains the consent of opposing counsel.
  - B. Yes, but only if the firm lawyer confirms that the former employee is not represented by counsel.
  - C. Yes, but only if the firm lawyer takes measures to steer clear of privileged or confidential information.
  - D. No, because all ex parte contact with current and former employees is barred.

Problems with Opposing Parties

- **Answer**:

  B. Yes, but only if the firm lawyer confirms that the former employee is not represented by counsel. **AND**

  C. Yes, but only if the firm lawyer takes measures to steer clear of privileged or confidential information.

- New York Rule of Professional Conduct 4.2 Comment 7:
  - Consent of the organization's lawyer is not required for communication with a former unrepresented constituent.
  - If an individual constituent of the organization is represented in the matter by the person's own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule.
  - In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization.
  - *Muriel Siebert & Co., Inc. v. Intuit Inc.,* 8 N.Y.3d 506, 836 N.Y.S.2d 527, 868 N.E.2d 208 (2007)

Problems with Opposing Parties

- **Hypo 10**: A firm lawyer representing a defendant in a personal injury case in which the plaintiff claims limited mobility. He wants to access the plaintiff's social media pages that are only available to "friends" to see what type of physical activities the plaintiff is engaged in. To do so, he wants to make a "friend" request.

- **Question**: Under the Rules of Professional Conduct, may the lawyer do so?
  - A. No, because the lawyer does not genuinely want to be a friend and is looking for evidence to use against the plaintiff.
  - B. Yes, and the lawyer can do so claiming to be a friend of a friend.
  - C. Yes, but only if the lawyer uses his real name and profile to send the request.
  - D. Yes, but only if the plaintiff is unrepresented.

Problems with Opposing Parties

- **Answer**:

  C. Yes, but only if the lawyer uses his real name and profile to send the request. **AND**

  D. Yes, but only if the plaintiff is unrepresented.

- New York Rule of Professional Conduct 4.1: In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law to a third person.
- New York Rule of Professional Conduct 8.4(c): A lawyer or law firm shall not…engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
- New York City Bar Formal Opinion 2010-02:
  - "[A]n attorney or her agent may use her real name and profile to send a "friend request" to obtain information from an unrepresented person's social networking website without also disclosing the reasons for making the request."
  - "We believe these Rules [4.1 and 8.4(c)] are violated whenever an attorney "friends" an individual under false pretenses to obtain evidence from a social networking website."

Problems with Lawyers in Your Firm

- **Hypo 11**: An associate reports that another associate with whom she is working is pressuring her to have dinner even though she has made clear repeatedly that she is not interested. The complaining associate asks you not to do anything; she just wanted to confide in someone.

- **Question**: What should the law firm to do?
  - A: Nothing; you should respect the wishes of the complainant.
  - B: Investigate, but take no action unless the claims are verified.
  - C: Investigate and take immediate remedial measures to prevent any inappropriate behavior while the investigation is underway.
  - D: Hire outside employment counsel.

Problems with Lawyers in Your Firm

- **Answer**:
  - C: Investigate and take immediate remedial measures to prevent any inappropriate behavior while the investigation is underway.
    - OR
  - D: Hire outside employment counsel.

  - Either answer is correct.
  - Take all allegations seriously and investigate thoroughly, even if the complainant asks the firm not to do anything.
  - Take remedial measures to stop alleged harassing behavior immediately, and take into account the effect on clients.
  - Not every incident will require outside counsel, but in sensitive cases it might be prudent.

Problems with Lawyers in Your Firm

- **Hypo 12**: A law firm attorney leaves a briefcase in the front seat of his car while having dinner with a client. When he returns, the car window is smashed and the briefcase is gone. His law firm laptop computer was in the briefcase.

- **Question**: What should the law firm do?
  - A: Nothing; the laptop was password protected.
  - B: Call the police and hope they find it.
  - C: Have your IT Department remotely erase the hard drive.
  - D: In addition to the steps in B and C, if confidential client information was on the laptop, notify the clients.

Problems with Lawyers in Your Firm

- **Answer**:
  - D: In addition to the steps in B and C, if confidential client information was on the laptop, notify the clients.

- Rule 1.4(a) Communication with clients: "A lawyer shall . . . (3) keep the client reasonably informed about the status of the matter;"
- Rule 1.6(c) Confidentiality: "A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client."
- Engagement agreements and/or outside counsel guidelines often contain notice requirements in the event of a data breach.
- ABA Formal Ethics Op. 483, *Lawyers' Obligations After an Electronic Data Breach or Cyberattack* (October 17, 2018).

Problems with Lawyers in Your Firm

- **Hypo 13**: A firm lawyer wants to negotiate a resolution to a small monetary judgment against his mother-in-law in Minnesota, where the lawyer is not licensed.

- **Question**: What should the firm tell the lawyer?
  - A: OK to represent her because she's family.
  - B: Ok to represent her if you don't go to Minnesota or hold out as a Minnesota lawyer.
  - C: Ok to represent her, but you need to associate with Minnesota counsel if litigation ensues.
  - D: You can't advise her because you are not a Minnesota lawyer.

Problems with Lawyers in Your Firm

- **Answer**:
  - D. You can't advise her because you are not a Minnesota lawyer.

- Rule 5.5(c): "A lawyer admitted in another United States jurisdiction, . . . may provide legal services on a temporary basis in this jurisdiction that: . . .
  - (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized; . . .
- *In re Charges of Unprofessional Conduct in Panel File No. 39302*, 884 N.W.2d 661 (Minn. Aug. 31, 2016)
  - Lawyer practiced in Minnesota despite no physical presence.
  - 5.5(c)(2) exception did not apply b/c a proceeding was unlikely and lawyer did not get local counsel or seek admission pro hac vice

Problems with Lawyers in Your Firm

- **Hypo 14**: A firm lawyer begins to behave erratically, perhaps due to mental illness or substance abuse, raising concerns about whether the lawyer is providing competent legal services.

- **Question**: What should the law firm do?
  - A: Arrange for the lawyer to get professional help.
  - B: Assign another lawyer to oversee the work.
  - C: Report the issue to the lawyer's clients.
  - D: Report the lawyer to the bar.

Problems with Lawyers in Your Firm

- **Best Answer** (because it applies in most cases):
  - A. Arrange for the lawyer to get professional help.

- Rule 5.5: Responsibilities of Partners, Managers, and Supervisory Lawyers: "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct."
- Rule 1.16(a)(2): Declining or Terminating Representation: ". . . a lawyer shall not represent a client or . . . shall withdraw . . . if: (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;"
- Other relevant Rules: 1.1 Competence; 1.3 Diligence; 1.4 Communication; 1.8 Reporting Professional Misconduct;
- ABA Formal Ethics Ops. 03-429 and 03-431

Preparing for a Potential Malpractice Claim

1. **Establish a privileged reporting chain.**

Preparing for a Potential Malpractice Claim

1. Establish a privileged reporting chain.
2. **Consider informing the client of the mistake.**

Preparing for a Potential Malpractice Claim

- Rule 1.4(a)(3): "A lawyer shall … keep the client reasonably informed about the status of the matter."
- Rule 1.4(b): "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."
- N.Y. St. B. Ass'n Comm. On Profl' Ethics Op. No. 789 (2005): "The law firm … may need to disclose … that it has made a significant error or omission."

Preparing for a Potential Malpractice Claim

1. Establish a privileged reporting chain.
2. Consider informing the client of the mistake.
3. **Consider resigning from the representation.**

Preparing for a Potential Malpractice Claim

- Rule 1.7(a)(2): "Except as provided in paragraph (b), a lawyer shall not represent a client if … there is a significant risk that the representation … will be materially limited … by a personal interest of the lawyer."
- Rule 1.16(b)(1): "[A] lawyer may withdraw from representing a client if … withdrawal can be accomplished without material adverse effect on the interests of the client."
- If withdrawal not possible, obtain client's informed consent, confirmed in writing, to continue representation.
- "[T]he malpractice cause of action does not accrue until the attorney's representation concerning the particular matter in issue is terminated." *R.D.H. Communications, Ltd. v. Winston*, 700 A.2d 766, 768 (D.C. 1997).

Preparing for a Potential Malpractice Claim

1. Establish a privileged reporting chain.
2. Consider informing the client of the mistake.
3. Consider resigning from the representation.
4. **Keep your insurer informed.**

Preparing for a Potential Malpractice Claim

1. Establish a privileged reporting chain.
2. Consider informing the client of the mistake.
3. Consider resigning from the representation.
4. Keep your insurer informed.
5. **Secure the documents.**

Preparing for a Potential Malpractice Claim

1. Establish a privileged reporting chain.
2. Consider informing the client of the mistake.
3. Consider resigning from the representation.
4. Keep your insurer informed.
5. Secure the documents.
6. **Consider hiring outside counsel.**

Preparing for a Potential Malpractice Claim

1. Establish a privileged reporting chain.
2. Consider informing the client of the mistake.
3. Consider resigning from the representation.
4. Keep your insurer informed.
5. Secure the documents.
6. Consider hiring outside counsel.
7. **Start a new billing code.**

Preparing for a Potential Malpractice Claim

- Using a separate billing code "is perhaps the clearest way to demarcate firm counsel's role."

  —*Hunter, Maclean, Exley & Dunn, P.C. v. St. Simons Waterfront, LLC*, 730 S.E.2d 608, 621 (Ga. Ct. App. 2012).

Preparing for a Potential Malpractice Claim

1. Establish a privileged reporting chain.
2. Consider informing the client of the mistake.
3. Consider resigning from the representation.
4. Keep your insurer informed.
5. Secure the documents.
6. Consider hiring outside counsel.
7. Start a new billing code.
8. **Scrutinize bills before sending to the client.**

Preparing for a Potential Malpractice Claim

1. Establish a privileged reporting chain.
2. Consider informing the client of the mistake.
3. Consider resigning from the representation.
4. Keep your insurer informed.
5. Secure the documents.
6. Consider hiring outside counsel.
7. Start a new billing code.
8. Scrutinize bills before sending to the client.
9. **Investigate the facts and applicable law.**

Preparing for a Potential Malpractice Claim

1. Establish a privileged reporting chain.
2. Consider informing the client of the mistake.
3. Consider resigning from the representation.
4. Keep your insurer informed.
5. Secure the documents.
6. Consider hiring outside counsel.
7. Start a new billing code.
8. Scrutinize bills before sending to the client.
9. Investigate the facts and applicable law.
10. **Consider hiring expert witnesses early.**