UT LAW CLE THE UNIVERSITY OF TEXAS SCHOOL OF LAW

Presented:

The University of Texas School of Law / Texas Chapter of NAELA
20th Annual Estate Planning, Guardianship and Elder Law Conference
August 9-10, 2018, Moody Gardens, Galveston, Texas

Malpractice Claims
A Review of the American Bar Association's Profile of Legal Malpractice Claims 2012-2015

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This presentation will focus primarily on a review of information provided in the Profile of Legal Malpractice Claims 2012-2015,[1] which is the latest survey of participating carriers of professional liability insurance in the United States published by the American Bar Association. The survey also separately covers Canada, but this paper will focus on the U.S. data. The surveys have been prepared since 1985. Except for the earliest study, which was not repeated until 1995, the surveys cover periods of four years. The next survey should be available in 2019.

I. INTRODUCTION

If a practitioner wants information on malpractice claims, where might an attorney find it? Claim compilation data such as is included in the ABA booklet may be the best way to see information about the majority of claims made. Individual insurance carriers are unlikely to provide information to an individual that would be helpful because of the confidential nature of the data. But these carriers will provide information to the ABA for its surveys. Another method is to research cases, but this would only yield the results of decided cases. The majority of claims are settled without litigation. So, once again, the ABA Profile is likely the most insightful source of information for comprehensive malpractice claim information.

This periodic survey is available to alert practitioners to trends and statistical evidence of claims in regard to relevant areas of law that should be of interest to all attorneys. However, this presentation is targeted to those attorneys who practice in the areas of Real Estate law and Estate, and Probate and Trust law. This paper is therefore not a comprehensive report. The comprehensive study may be obtained in booklet form from the American Bar Association.

The ABA Standing Committee on Lawyers' Professional Liability compiles the data, which may be useful for general guidance, but the information provided comes with several caveats. The pool of carriers does not represent all insurance carriers, and the pool changes each period the publication is prepared. Clearly, if the pool of carriers changes, then not all claims are reported. Additionally, interpretation may be hindered by the inconsistency across survey periods. Also, the state of the economy is not static. For example, the period of 2012 to 2015 was a time of economic recovery, which may have affected the number of claims. The ABA makes it clear that its publication is to provide information so that practitioners may be able to gain some guidance in preventing malpractice claims.

[1] *Profile of Legal Malpractice Claims: 2012-2015*. American Bar Association Standing Committee on Lawyers' Professional Responsibility (September 2016).

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The data collected was based on a survey of carriers that focused on the following ten ways of capturing and depicting the data. This paper will focus on numbers 1-3 and 5.

1. **Claims by Area of Law**
2. **Claims by Number of Attorneys in Firm**
3. **Claims by Type of Activity**
4. Claims by Disposition of Claim
5. **Claims by Type of Alleged Error**
6. Number of Claims by Expense Paid
7. Number of Claims by Indemnity Dollars
8. Total Dollars Paid (Defense and Indemnity/Settlements)
9. Time Interval for Date of Error to Closing of File
10. Time Interval From Opening of Claim File to Closing of File

Although the profile includes information from studies published from 1985 to 2015, this paper will focus predominantly on the 2015 study and be limited to Real Estate and Estate, Trust and Probate Law.

II. OVERVIEW OF STUDY DATA

A. Claims by Area of Law

The Real Estate and Estate, Trust and Probate areas of law continue to draw a high percentage of malpractice claims. Claims in the Real Estate practice area during 2012-2015 represented the second-highest percentage of all claims.

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First appeared as part of the conference materials for the
20th Annual Estate Planning, Guardianship and Elder Law Conference session
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