

***I think I've made a
mistake -- what do I do
now?***

Oregon State Bar
Professional Liability Fund

What's the natural reaction?

- Panic: this is the end of the world!
- Torture yourself: you're a bad person.
- Question your competence: you shouldn't be practicing law.
- Tell no one: people will know you're an idiot.
- Blame someone else: deny, point fingers.

The Professional Reaction

- Call the PLF for potential help
- Disclose any potential problem to your client

Temptations to Avoid

- Trying to solve problem yourself
- Acting without your client's knowledge
- Burying the problem in your files

Sources of Lawyer's Duty

- *ORPC 1.1* Competence
- *ORPC 1.3* Diligence
- *ORPC 1.7* Conflicts of Interest
- *ORPC 1.8* Conflicts of Interest
- *ORPC 1.16* Declining/Terminating Representation

Conflict of Interest; Lawyer's Self-Interest

- No representation where professional judgment may reasonably be affected by the lawyer's own interest
- *This includes a potential malpractice claim*

Terminating Representation

- Separates "Mandatory" from "Permissive"
- Over-arching theme: take steps to avoid prejudice to your client

ORPC 1.0(g) and 1.7(a)(2)(b)(4)

"Full Disclosure" Defined

- Explanation sufficient to apprise the client of the potential adverse impact
- When a conflict exists, a recommendation that the client seek independent counsel
- Consent must be "contemporaneously confirmed in writing"

**Open Question:
What explanation is
sufficient?**

In re: Brandt and Griffin

The *minimum* disclosure

- Describe the error/omission
- Acknowledge that client may have a potential malpractice claim
- Recognize that you may have self-interest in the potential malpractice claim
- Seek the client's written consent to continue
- Advise client to get independent counsel

Other Disclosures to Consider

- How your client can obtain counsel, i.e., the OSB's referral service, etc.
- The contact information for the PLF and any claims attorney already involved

Sample Disclosure Letter

- Go to the PLF's web site:
www.osbplf.org

Once Consent is Requested

- Do nothing more until consent is signed
- BUT...protect your client's interest and be diligent

**And when the dust
settles?**

Learn From the Experience

- Evaluate what caused the problem
- If it was substantive, learn more
- If it was organizational, look for resources
- If it was personal, get help

Addressing Organizational Issues

- Office systems, administrative staff?
- Office equipment/computers?
- Software/docketing?
- Billing/accounting/Trust Accounts?

Other PLF Resources

- Practice Management Advisors
- Oregon Attorney Assistance Program

Personal Issues

- Depression
- Burn-out
- Substance abuse