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# 2022 DRI RISK MANAGEMENT SURVEY RESULTS

In early 2022, DRI released its first member risk management survey, created in partnership with [LawyerGuard](#) (the first DRI Premier Corporate Partner) and [Barron & Newburger PC's Attorneys Risk Management](#). The survey responses revealed consistent concerns on the part of firms large and small regarding areas of risk and desired protections. This white paper summarizes the results of the survey and offers some first steps in protecting against identified risks.

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# SURVEY RESPONDENTS

Responding firms fell into the following size categories:

- Solo 3%
- 2-10 20%
- 11-20 18%
- 21-50 20%
- 51-100 15%
- 100+ 24%

Areas of practice varied dramatically, as you'd expect, running the gamut from general civil litigation (85%) to Labor/Employment (54%) to Criminal (5%) and Family (12%).

Despite the dramatic variation in size and AOP, risk management and loss prevention concerns were – perhaps surprisingly – consistent.

# SURVEY RESPONSES

Question 4: In the last two years have you had any concerns and/or claims resulting from one of more of the following areas? (percent of total responses)

- Calendaring/Administrative: 33%
  - o Available information:
    - <https://www.attorneyatwork.com/automated-calendaring-can-limit-malpractice-risk/>
    - <https://practice.findlaw.com/how-to-start-a-law-firm/growing-a-law-firm--legal-calendaring-and-malpractice.html>
    - <https://mcgowanpro.com/essentials-effective-docket-calendar-system/>
    - <https://www.nationaldocketing.org/Resources/Documents/2014%20NDA%20Conference/You%20Get%20What%20You%20Pay%20For-Best%20Practices%20for%20Choosing%20a%20Calendaring%20Solution.pdf>
  - o Calendaring errors perennially rank in the top causes of claims against lawyers. Many courts conclude that a calendaring error is negligent, without requiring expert testimony. Accordingly, these sorts of claims lack the scope of defenses that other claims might enjoy.
- Social Engineering/Hacking/Ransomware: 30%
  - o Available Information:
    - <https://abovethelaw.com/2022/06/the-godfathers-of-cybercrime-the-2022-verizon-report/>
    - <https://usa.kaspersky.com/resource-center/threats/how-to-avoid-social-engineering-attacks>
    - <https://www.cisa.gov/cybersecurity>
    - <https://www.cisa.gov/national-risk-management>
  - o According to the Verizon 2022 Data Breach Investigation Report, about 4 out of 5 breaches are committed by an organized criminal enterprise. The people trying to get in your pockets and your files are professionals, just like you. Verizon's study shows that 82% of breaches involve a human element, like social engineering; but our mistakes are almost endless, exploited by the commitment and creativity of our adversaries.

- Communication: 24%
  - o Available information:
    - [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/aba-formal-opinion-500.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba-formal-opinion-500.pdf)
    - <https://www.2civility.org/ethical-considerations-for-lawyers-when-texting-clients/>
    - <https://www.sdcba.org/?pg=Ethics-in-Brief-2017-07-24>
  - o Lack of Communication is consistently the single most alleged basis of disciplinary complaints filed against lawyers. It's also the most easily corrected of the alleged errors. Be consistent, forthright, and clear. See, ABA Model Rule 1.4 and its comments.
- Conflicts: 20%
  - o Available information:
    - <https://www.in.gov/courts/discipline/files/dc-opn-2-22.pdf>
    - <https://calawyers.org/california-lawyers-association/spotlight-on-ethics-un-waivable-conflicts-of-interest/>
    - <https://www.ncbar.org/2019/06/04/best-practices-for-conflicts-checking-systems/>
    - <http://www.freivogelonconflicts.com/>
  - o Perhaps more than anything else, conflicts motivate clients to file both civil claims and complaints against lawyers. When a client learns or believes that a lawyer has (arguably) split loyalties, every piece of advice and every discussion is re-examined under the lens of the conflict. While not a cause of action in itself, conflicts of interest make a great storyline for plaintiff's counsel in legal malpractice actions. A solid conflicts check system, followed assiduously by all lawyers, will avoid the worst of these outcomes.

**Question 5: What are the top three Risk Management/Liability concerns and challenges you would identify over the next 12 months?**

- Cyber/Hacking/Social Engineering/Ransomware (far and away the leader)
  - o Available information above
  - o Free Webinar for DRI Members: Stormy Seas: Navigating Around Hacking, Fraud, and Social Engineering Exploits Against Lawyers
    - <https://education.dri.org/item/stormy-seas-navigating-hacking-fraud-social-engineering-exploits-lawyer-sponsored-lawyerguard-486367>
  - o Interestingly, responses to Question 6 show that 80% of responding firms have Cyber insurance; 12% don't have any, and 8% are considering it. Going without some form of cyber insurance is extraordinarily dangerous.
- Conflicts
  - o Available information above
- Calendaring/Docketing
  - o Available information above
- Staffing/Mgt of New Work Environment
  - o Available information:
    - <https://www.americanbar.org/groups/litigation/committees/corporate-counsel/articles/2021/fall2021-young-attorneys-takeaways-remote-in-person-work-post-covid-19/>
    - <https://www.wshblaw.com/publication-getting-back-to-normal-the-practice-of-law-post>
    - <https://www.nytimes.com/2021/10/22/business/economy/law-firm-return-to-office.html>
  - o We're still learning how the new officing standards will affect lawyers and staff alike. However, we know that ABA Model Rules 5.1, 5.2, and 5.3 still apply to all of us.

For managing lawyers, our challenge in the next few years is to find new ways to mentor, train, and develop new lawyers given the changing reality of office management. For new lawyers in the same environment, the challenge is to learn to practice law effectively and successfully while facing new hurdles that more experienced lawyers have not previously navigated.

### Question 7: What Risk Management education and training topics would be of the greatest value to your firm?

Responses almost identically tracked the responses to Question 5, which identified the top three liability concerns of respondents in the next 12 months.

### Question 8: What Risk Management tools are of the greatest value to your firm?

- CLE (78%)
- Policies (46%)
- Consultant (26%)
- Forms (22%)
- All of these tools are available through [LawyerGuard's](#) policies for DRI Members. As part of the LawyerGuard program, [Attorneys Risk Management](#) provides 5 hours of ethics CLE for every LawyerGuard insured attorney, as well as on-demand, custom-built CLEs for the entire firm.
- You can find a carefully curated and growing library of forms, checklists, links, articles, and other resources that will help protect you and your firm from ever-present and ever-increasing risk at <https://www.attorneysriskmanagement.com/>
- Finally, LawyerGuard has arranged for you to consult in real time with senior risk management attorneys to address difficult ethics and liability issues, including withdrawal, error communication, conflicts, fee disputes, and more. Visit the [Attorneys Risk Management website](#) for more information.

#### About LawyerGuard®

*Established in 1988, LawyerGuard is a Tampa-based insurance program manager which provides high quality professional liability insurance for multiple classes of attorneys. The program has evolved through decades of experience insuring lawyers across the country, offering enhancements including, but not limited to, mutual choice of counsel, coverage for punitive damages on "most favorable law" basis, crisis event coverage and pre-claim assistance. LawyerGuard provides additional benefits for preferred accounts specializing in defense work, including enhanced policy language, premium credits, and deductible reduction. Additional information about the program can be found at [www.LawyerGuard.com](http://www.LawyerGuard.com). LawyerGuard continues to be the only DRI sponsored lawyers professional liability insurance program, and is the first DRI Premium Corporate Partner.*