



**Protecting Your Practice –
The Practice of Land Surveying and Engineering:
How to Take Care of Your Business**

RLI Design Professionals Learning Event
October 17, 2014

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Learning Objectives

Participants will:

- Consider common areas for claims against surveyors and site/civil engineers
- Establish business policies and procedures that are important to follow.
- Understand risk management issues of significance to surveyors.
- Review the core elements of a professional liability risk management program.

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Claims—Weather Concerns

- Flooding, pond overflow, water run off becoming more frequent
- Erosion and sediment control not always as effective as may be expected when a big storm hits
- Talk to your clients about the possibilities before construction starts



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Claims—Wetlands Delineation



- Be clear everywhere, not just in your contract, if you are not involved in the delineation
 - Notes on the drawings
 - Reminders in correspondence
- Memories and correspondence can be used to manipulate facts; anyone can allege anything and they probably will

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Claims—Underground Storm Water Management

- If construction tolerances are important let the owner know up front. Make sure the burden of proper installation is on the contractor.
- Be upfront if you know of projects where the systems have failed because of poor construction. Let the owner know of potential risks and follow up in writing.



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Claims—Other Common Issues

- Basements flooding
- Curb and gutter stakeout
- Bridge stakeout
- Utility and easement location
- Elevations and quantities
- Retaining Wall Failures



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The Importance of Risk Management

Why are Risk Management Practices critical to the success of every business?

A good Risk Management Program facilitates

- increased productivity and
- reduced errors,

both of which increase **Profits.**

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The Importance of Risk Management

Successful firms do not necessarily strive to be completely risk averse; however, they carefully contemplate the risk vs. reward balance for the projects they take on and the clients for whom they work.

Every firm should develop a company-wide proactive risk management program.

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Effective Risk Management

An Effective Risk Management Program has three main components:

- A corporate culture that consistently emphasizes risk management
- Careful client and project selection
- Robust project-specific risk management practices which include contract negotiation and project management

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Evaluate all of the following Risk Management tools:

- Employee Handbook
- Risk Management Policy
- Education/Training for Employees
- Project/Risk Management/Assessment Worksheet
- Invoicing and Collection of Fees
- Project Closeout
- Contracts
- Insurance
- Quality Assurance Procedures
- Communication and Documentation Protocols

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Quality Control Program Requirements

Contents of a Quality Control Manual must include the following:

- Your company's policy that describes the company's commitment to quality
- An explanation of your company's documentation structure
- Policy statements demonstrating management's intention to comply with the industry standard and/or contractual requirements

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Quality Control Program Requirements

These policies should include:

- How management expects company operations to function
- Who is responsible to implement these expectations (by function or job title)
- Where and when the policies are applicable within the organization
- What interdependencies exist between functions and processes

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Key Program Elements

- **Quality Control Budget-** factored into every division and every project
- **Staffing-** both in terms specific project needs and quality control monitoring
- **Incorporation of Basic Checking and Review Procedures-** from proposal to contract, schematic design, construction documents and completion of service/construction
- **Peer Review Procedures-** internal and/or external
- **Client Quality Assurance Procedures-** contractual requirements and expectations

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Quality Control Throughout Project Phases

Potential Clients:

- What is your experience with this client?
- Have you taken steps to confirm its financial solvency?
- Is the client involved in excessive litigation?
- Is the client fair in its approach to contract negotiations?
- Does the client have reasonable expectations of your scope of services and performance?

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Quality Control Throughout Project Phases

Proposals:

- Who prepares and who reviews proposals prior to distribution?
- What standard terms and conditions are used?
- What information is known about the client (background and credit information, standard contracts, procedures)?
- Consider budgetary issues, timing, scope, etc.

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Quality Control Throughout Project Phases

Contracts:

- What are your firm's policies for reviewing and signing contracts?
- Is everyone following the same guidelines?
- Who is in charge of negotiation?
- Who has the authority to execute?

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Quality Control Throughout Project Phases

Project Initiation:

- Who is responsible for setting up the new project?
- Obtaining a new project number
- Billing number
- Files
- Budget
- staffing

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Quality Control Throughout Project Phases

QA/QC Project Performance:

During performance of services, the design phase and/or construction phase of the project, the project manager must perform quality control activities (checks and balances) as to the responsibilities of the project team and the firm, pursuant to the firm's contract with its client and industry standards.

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Checking & Review Procedures

Project Checklist:

Have a set protocol regarding project review at each stage of the project. The review should include:

- Evaluation of project completeness
- Technical accuracy
- Conformance with project and code requirements

For larger projects, more complex projects, or where certain issues may be problematic, consider a 3rd party review.

Insist on obtaining the client's comments and written approval at each stage of the design/milestone of the project prior to moving forward with the next phase.

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Documentation and Records

- Ask any cynical lawyer and he /she will tell you that the only events that really transpired during a project are those that are documented in writing.
- A case based on “he said” versus “she said” is not likely a winnable one.
- It is vital that a firm keep impeccable records of their progress during the project: from contract negotiations, design, jobsite services and through construction contract administration services

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Documentation and Records

- Conduct regular project team meetings with written notes
- Document all correspondence with client and project team
- Follow up with client and project team on decisions made during project development
- Notify client if project decisions are objectionable to the project team

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Invoicing and Collection of Fees

- Establish protocols for billing, follow-up, and collections
- Communicate your invoicing and payment procedures at the beginning of the project with your client
- Ensure all employees are familiar with these procedures and they are followed
- What to do when payments exceed 60 days (or other reasonable period)?

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Documentation and Records

These records play a crucial role in litigation for many reasons including:

- Providing evidence that the terms of the contract were met;
- Documenting client and governing agency changes;
- Confirming the customs and practices of your firm
- Evaluating the performance of your firm in issues involving project delays, changes, or general negligence

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Documentation and Records

A Project File should include:

- Contracts, invoices and confirmation of payment
- Correspondence (including emails, letters, and phone messages)
- Meeting minutes
- Design drawing, plans, calculations
- Directives, change orders, requests for information, etc.

Finally, all communications with attorneys, insurance carriers/brokers should be kept separate from the project file

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Document Retention and Disposition

Uniform Document Retention Policy:

- The cornerstone of quality control management is the control of documents
- Document control is an essential preventative measure ensuring that only approved, current documents, specifications and standards are used throughout your organization
- Proper documentation of project events, conversations, decisions and conditions are maintained
- Disposal of non-essential, outdated documents is systematic and orderly

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Document Retention and Disposition

It is important to designate an officer, director or employee as the “document retention administrator.” Their role should be to:

- Endeavor to ensure the uniform application of these policies and procedures
- Resolve all specific issues not addressed by these policies
- Make recommendations to your firm’s management regarding these policies and procedures

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Document Retention and Disposition

The standard policy for the destruction/disposition of documents, project files after substantial completion of professional services may vary. The time periods for these policies should be based upon:

- The statute of repose/limitations in the state in which you (or the project) are located
- Specific contract requirements
- Certain regulatory, legal, or administrative requirements

Word of Warning – Do Not Destroy any documents if the documents are known to be under subpoena or the subject of an actual, pending or anticipated legal dispute

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Electronic Documents Policy

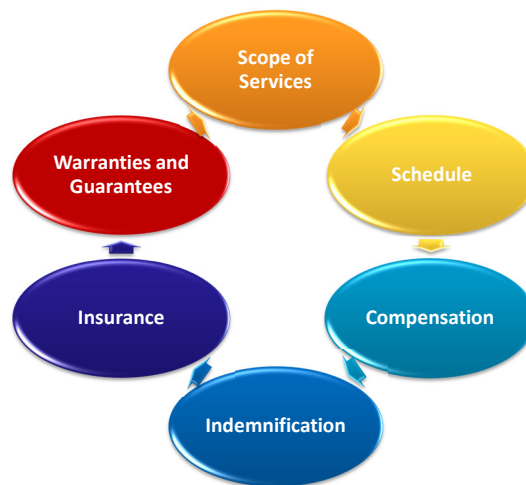
A good email retention policy should include the following:

- Effective date
- Last change date and changes made
- Person or department responsible for the policy
- Scope/coverage
- Definitions
- Responsibilities
- Procedures
- Duplicate copies/convenience copies
- Consequences if the policy is not followed
- Litigation hold/stop destruction policy including a backup procedure

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Risk Management and Insurance Basic Training

Critical Contract Issues Include:



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Consequential Damages Waiver–Sample

Neither the Client nor the **CONSULTANT** shall be liable to the other or shall make any **claim for any incidental, indirect or consequential damages** arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to **loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value** and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

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Billing and Payment–Sample

Client shall **pay** **CONSULTANT** pursuant to the **rates and charges set forth in the Proposal**. **CONSULTANT** will submit monthly invoices to Client for services rendered and expenses incurred. If Client does not pay invoices within thirty (30) days of submission of invoice, **CONSULTANT** may, upon written notice to the Client, **withhold deliverables and/or suspend further work** until **payments are brought current**. The Client agrees to **indemnify** and **hold CONSULTANT harmless** from any claim or liability resulting from such suspension.

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Bad Language



#%&!

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INDEMNITY CLAUSE - BAD LANGUAGE

To the fullest extent permitted by law, Consultant shall defend, indemnify and hold harmless Developer...against any and all claims... including the reasonable fees of attorneys, arising out of or in any way connected with any act or omission of Consultant...whether such claims, liens, demands, damages, losses or expenses are based upon...any other legal...theory whatsoever, and regardless of whether or not such claim...is caused in part by a party indemnified hereunder, including the partial negligence of any such party.

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Risk Management and Insurance Basic Training

Four Common Causes of Professional Liability Claims



Fee disputes

Delays

Cost overruns

Unmet client expectations

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Risk Management Tools

What tools are available to you and your employees that will:

- provide an education on emerging topics?
- address contract issues/concerns?
- claims trends & data?
- increase your profits?

So glad you asked!

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Thank you for your time!

QUESTIONS??

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