FOREWORD

In solo law practices on Main Street and transnational firms on Wall Street, lawyers’ roles are changing. Rather than waiting for difficulties to arise, lawyers provide valuable assistance by helping clients avoid problems and comply with legal requirements. Over the past decade, the compliance field has grown, and law schools have expanded their programs to prepare graduates for new career opportunities.

Law schools and legal employers have devoted far less attention to preparing lawyers to comply with professional regulations related to law practice. Even less attention is devoted to training lawyers to recognize and manage risk. Although some bar associations and professional liability insurers have developed educational materials and tools, the scope and reach of these resources is limited. Thankfully, the third edition of Risk Management: Survival Tools for Law Firms, by Anthony E. Davis and Katie M. Lachter, does a remarkable job in filling the gap. The book can be a game changer for lawyers who want to improve their risk management efforts. It provides important context and perspective, as well as practical guidance for firm leaders and practicing lawyers.

In the first edition of the book, Anthony E. Davis gave practitioners a very useful resource to use in developing and evaluating firm policies and procedures related to risk management. The second edition refined the approach. Now, the third edition expands the coverage, homing in on many areas of concern for lawyers practicing in a heavily regulated and complex legal environment. As the authors of the third edition note, the structure and delivery of legal services has radically changed since publication of the second edition, exponentially broadening the risks that lawyers and their firms encounter. As a result, they suggest that risk management is no longer limited to avoiding malpractice claims and professional discipline, but requires an understanding of how the new universe of risk can undermine a law firm’s reputation and ability to exist. With the failure of major law firms, these words should ring true with readers.

Unlike some other guides and books that provide only self-assessment checklists, Risk Management: Survival Tools for Law Firms first offers insights on an effective risk management program. Part 1 of the book helps readers understand the importance of risk management and the steps for implementing an effective risk management system. Chapter 1 opens with an inclusive definition of risk as “anything that interferes with the ability of the firm and its lawyers to provide legal services and generate a profit from doing so.” If lawyers recognize that risk management goes beyond addressing malpractice and professional discipline threats, they will be more inclined to support risk management efforts.

Part 2 of the book includes self-assessment questionnaires for nine main categories for evaluating risk management, starting with a questionnaire for assessing risk issues related to the firm’s management structure and continuing through to the last questionnaire dealing with non-technology-related disaster recovery planning. The separate questionnaire approach is very helpful in giving readers a road map to use
in completing what otherwise would be an overwhelming process. With this approach, readers can tackle risk management as a continuous process, completing a comprehensive review a spoonful at a time.

To provide guidance on the significance of questionnaire responses, part 3 includes crib sheets for analyzing the answers and determining steps to be taken to address deficiencies revealed by the self-assessment form. In reading and following the guidance provided in the three parts of the book, readers learn about risk management on the macro level of institutional concerns and the micro level of specific systems. With respect to both levels, the authors pose a fundamental question, asking readers to seriously examine where their firms stand on issues of ethics and risk management.

In discussing the successful implementation of risk management, a number of themes emerge. From the beginning, the authors emphasize that meaningful risk management starts at the top. It is crucial for the leadership to embrace risk management, rewarding compliance efforts and dealing with noncompliance. With management support and an institutional commitment, it is more likely that firm lawyers will participate in meaningful periodic reviews.

A related theme is that effective risk management requires candor and willingness on the part of lawyers to engage in serious examination, beyond going through the motions and checking off boxes. This type of candid self-assessment can help firm leaders determine if there is a disconnect between what controls they believe are in place and what lawyers actually do in the trenches of everyday practice. As suggested, the reviews should not be mechanistic, but be part of a fluid and organized process of carefully evaluating current controls and possibilities for improvement.

Another noteworthy premise is that “one size does not fit all.” Although the authors provide tools, explanations, and suggestions for adopting and implementing practice controls, they emphasize that it is incumbent on lawyers to design measures and systems that are appropriate to the risks faced by the particular lawyers, their firms, and their firm culture.

Regardless of the circumstances and culture within a particular firm or practice, the authors underscore the importance of individual responsibility and accountability. As they suggest, no one can be above risk management controls because the firm only succeeds if each lawyer is accountable for his or her own conduct.

Finally, the theme that resonated with me the most is the one that relates to the merger of good ethics and good business. By avoiding problems and improving legal services provided, law firms can be more profitable. This was a lesson that I drew from empirical studies of a new regulatory regime for incorporated firms in Australia. Chapter 2 of the book discusses the approach in the Australian state of New South Wales, which requires that incorporated law firms adopt appropriate management systems to assure compliance with standards for legal practitioners. To assist lawyers in evaluating their management systems, the regulator
in New South Wales first implemented a self-assessment process, requiring that a designated person for the firm rate the firm’s compliance with ten objectives of sound practice. An early empirical study revealed that the average number of complaints against firms that completed the self-assessment process went down by two-thirds after the firm completed the assessment. Another noteworthy finding was that the average complaints against the incorporated firms that completed the self-assessment process were one-third of those against firms that had not completed the assessment. Following this study of complaint rates, I completed my own empirical study on the impact of the requirement that firms implement appropriate management systems and complete a self-assessment process. Findings from my study indicated that the Australian system of requiring self-assessments successfully provides firm leaders the incentives, tools, and authority to take steps to develop management systems. Evidently, a significant percentage of directors learned from the process, taking steps to avoid problems and complaints, as evidenced by the significant reduction in the number of complaints against firms that completed the assessment. The quantitative complaints data, coupled with the findings from my study, make a compelling case for devoting time and effort to ethics audits within the firm.

Interestingly, the firms most motivated to undertake the self-assessment were those that recognized the connection between management systems, profitability and client retention. Some firm leaders have actually sought International Organization of Standardization certifications for their firms’ systems in an effort to distinguish their firms in the marketplace.

In studying the self-assessment process in New South Wales, I also learned that many firm lawyers were eager to learn and obtain guidance on adoption of risk management systems. In particular, lawyers from smaller firms were interested in learning how to develop practice controls. But regardless of firm size, *Risk Management: Survival Tools for Law Firms* is an outstanding resource for lawyers seeking to develop an effective risk management system. The book not only poses important questions but gives lawyers user-friendly tools to help them evaluate and implement practice controls to improve the delivery of high-quality legal services while increasing firm profitability and lawyer satisfaction. This approach helps law firms not only to survive but to thrive.

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