For a design professional, a lawsuit or a grievance is a professional hazard. Yet a few simple precautions can minimize that hazard. Or, when the suit or grievance cannot be avoided, those same precautions can eliminate or minimize professional liability.

10. Maintain Good Communications
Let your clients know they are your top priority by keeping them informed of all significant developments on the project, and responding promptly—that is, within 24 hours—to clients’ messages. Of equal importance, keep well organized records, whether copies of letters and emails, or dated notes of telephone calls, of all substantive communications with clients. A client who knows he or she can get in contact with you, and that you are committed to his or her project, is less likely to pursue a lawsuit or grievance even in the event a problem with the project arises. On the other hand, if a lawsuit or grievance does occur, complete and accurate records of your communications with the complaining client are crucial to any defense. Consider, for example, Fence Rail Dev. Corp. v. Nelson & Assoc., Ltd, 528 N.E.2d 344 (Ill. App. 1988), where a client claimed negligence against its architect after the architect, first, delayed in providing a foundation plan, and, second, did not consult with the client before the client poured the foundation incorrectly.

8. Make the Client Make the Hard Decisions
Again, clients rely on design professionals to provide a complete and accurate assessment of a project’s risks and benefits, but the client must decide how to proceed in light of your assessment. Do not allow a client to say, simply, “it’s up to you,” because if your decision does not yield the result your client wants or expects, the client may hold you responsible. A client who is empowered to direct the project (with your advice) is less likely to cast blame if things do not go as planned.

7. Document Your Advice and the Client’s Decisions
Whatever decision a client makes, be certain there is a written record of the advice you provided the client to inform his or her decision. Should a client take a course you advise against, follow his or her instructions (when possible), but say in writing that you
would recommend against that approach. If you simply cannot follow the course of action requested (for example, because it would be illegal, unethical or dishonest), advise the client immediately and explain why. If the client insists in that instance, you may need to withdraw. In the event you are sued or grieved, your insistence that the client make the hard decisions—with documentation that you communicated with the client (see no. 10) about all the information informing his or her decision (see no. 9)—is a powerful defense.

6. Don’t Initiate Hostilities Against the Client
Countless lawsuits and grievances are filed in retaliation to proceedings professionals initiate against current or former clients, for example, collections actions on unpaid bills. Even if your client has wronged you, and even if you are, indisputably, entitled to relief, take a moment to evaluate whether that relief, once obtained, would outweigh the cost of defending against the lawsuit or grievance that is likely to ensue. Do not consider only the financial cost, e.g., your deductible and insurance premium, but the time you would have to invest in your defense and the risk to your reputation, whatever the result. In all but the most egregious circumstances, writing off an invoice or walking away from a dispute is often the more cost-effective path.

5. Avoid, or Handle With Care, the Borderline Personality Client
You probably have encountered that prospective, or actual, client with an ego and demands to match his or her bank account. Consider carefully whether to sign on, or stay on, with clients who make unreasonable demands; who constantly question your analysis or advice; who refuse to communicate effectively; or who have fired or speak badly of your peers. Remember, a client prone to angry or irrational behavior may, eventually, direct his or her ire at you, regardless how careful you have been to provide the utmost service. If you do stay on with such a client, it is more important than ever to adhere to items 6 through 10 on this list. Communicating effectively, documenting your advice, and leaving the hard decisions to the client can go a long way toward diffusing client complaints, whether or not those complaints are warranted.

4. Run, Don’t Walk, Away from Unsavory Clients.
Even worse than the angry or irrational client is the client who asks, or who you fear will ask, that you engage in conduct beneath your professional standards. Design professionals must adhere to certain standards regardless of a client’s instructions. For example, Ins. Co. of North Amer. v. GMR, Ltd., 499 A.2d 878 (D.C. 1985) held it was negligent for an architect to follow the general contractor’s instructions not to include shoring or bracing in a demolition plan, because the architect was expected to follow local building codes requiring shoring or bracing.

Further, unsavory clients could expose you to more than a professional negligence action or grievance proceedings; any fraudulent or criminal activity the client performs with your knowledge could be held against you. It is tempting to turn down the “alarm bells” in your head when the potential financial rewards are great. When this happens, remind yourself that, whatever the potential rewards, the risks are probably even greater, and can include defense of a grievance, a lengthy and expensive malpractice case, or even possible loss of your license. If a client insists you take some unethical, dishonest or inappropriate course of action, even after you counsel against it, terminate that relationship immediately.

3. Do Not Favor Your Interests Over Your Clients, or One Client’s Interests Over Another’s
Always be mindful of, and avoid at all costs, actual or potential conflicts of interest. There is no quicker way to embroil yourself in a lawsuit or grievance than acting in your own best interest to the detriment of your client
(or in one client’s best interest to the detriment of another's). Sometimes, even the appearance of a conflict is enough to instigate an adverse action. So be vigilant about any potential conflicts which may arise, inform your client immediately in the event one does, and withdraw promptly from the project in the manner least detrimental to your client.

2. Be Proactive in Addressing Client Complaints

Even the best of relationships can quickly turn sour if the client perceives that you are not responsive to concerns he or she voices to you. In Bates & Rogers Const. Corp. v. North Shore Sanitary Dist., 471 N.E. 2d 915 (III. App. 1984), the architect was charged with negligence not only for providing plans with design defects, but failure to timely correct those design defects. Thus, it isn’t enough to promptly acknowledge any complaint; you should respond with information pertaining to the client’s concerns; and with a plan to address them. Whether or not you believe you are at fault, take responsibility for remedying the situation, including presenting the client with options and your recommendations for how to proceed, and proposals for how to avoid the issue going forward.

1. Carry Good Liability Insurance

Although having a good insurance policy will not keep you out of a lawsuit, it can certainly give you comfort and protection from personal liability. All liability policies are not alike. Some key considerations are:

(1) Whether the dollars the insurance carrier spends in defense of the lawsuit reduce the amount of your liability coverage in the event of a judgment. Insurance companies often offer policies in which the defense dollars either erode or do not erode the amount of coverage. Keep in mind that lawsuits can be expensive, sometimes costing well in excess of $100,000 to defend. There is nothing worse than having all of your coverage eroded by your defense costs.

(2) To what extent your insurance policy pays for a defense in a grievance action. Defense of a grievance action can be expensive too. You do not want to be in a position where you have to agree to a proposed stipulation of discipline from the licensing agency simply because you cannot afford to defend yourself in the action.

Although many of these precautions are simply good business sense, circumstances can, and do, arise which tempt design professionals to cast caution aside in pursuit of an interesting or lucrative project; or simply as a matter of personal pride. Remember to let cooler heads prevail, and look at the big picture—including your other projects and your professional reputation—when approaching any one client or matter. Adhering to these guidelines by communicating effectively; documenting your actions; and protecting yourself and your reputation can pay off hugely either by preventing a lawsuit or grievance, or dramatically strengthening your defense.

Daniel McCune and Kimberly Perdue have, collectively, over forty years’ litigation experience, focused on defending licensed professionals against negligence claims and board actions. They practice in Denver, Colorado at Childs McCune LLC, and also maintain an office on Colorado’s western slope.