

# My Bad: Building an Ethical Error Culture

**Good lawyers make mistakes. Ethical lawyers deal with them. Hiding errors doesn't fix them, and when lawyers are afraid to speak up, small problems can get much bigger. What if you could build a practice culture in which people feel comfortable owning up to mistakes, addressing them early, honestly, and in ways that prevent the next one?**

BY STACIE H. ROSENZWEIG

I'd like to tell you all about that time that I messed up in grand fashion, but I can't. It involved a client, and there is no "I'm writing a column and it's a really, really good story" exception to SCR 20:1.6. But suffice to say, it was the kind of error that required a flurry of paperwork, a gut check with the insurance carrier, and several apologies to fix (to the extent it even could be fixed).

The day I discovered the error was one of the worst days of my practice, and the next few days weren't great either. I felt horrible for the client. It was humbling, and frankly, embarrassing. It made me question whether I should keep at it or whether I should quietly disappear to a small town and open a bespoke pie shop and never speak of the law again.

So why am I telling you all of this? Because we've all been there, and if we haven't been, we will be. Yes, even you.

Mistakes are part of the human condition. Lawyers are human; ergo, we make mistakes. That's a hard concept for lawyers to internalize – we're taught to think of ourselves as the people who are paid to prevent and fix errors for other people. When your professional identity is built around being correct, confronting your own mistakes can feel existential.

What you do about the mistakes you make – and the mistakes your colleagues, associates, and staff will make – is important.

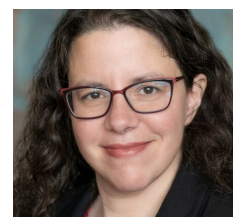
## Cultivating a Positive Error Culture

The way an attorney or the attorney's firm or organization perceives and reacts to mistakes can be considered the "error culture."<sup>1</sup> Every organization, and every solo practitioner, has an error culture, which is defined by whether

mistakes are stigmatized as personal failures or treated as opportunities for improvement.

A "positive error culture" is one in which it is acknowledged that mistakes happen and should be talked about openly, so people can learn from them and avoid repeating them. You aren't encouraging neglect but admitting your humanity. Instead of pointing fingers, you can identify the problem and update your procedures and systems. You might be able to avoid, or at least mitigate, the damage from the mistake. You can notify your carrier quickly, if necessary.

A "negative error culture," on the other hand, teaches that all mistakes are bad and should be punished. While some errors may



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be unforgivable (or, at least, warrant firing or referral to the Office of Lawyer Regulation<sup>2</sup>), most aren't that serious. But a negative error culture leads people to try to hide mistakes. We bury misunderstood case holdings and emails sent to "Jane Smith" instead of "Janet Smythe," hoping no one notices, then blame others if they do.

A negative error culture can be particularly precarious when a junior lawyer or staff member makes a mistake and panics. They might not know how to fix it and fear they will be fired by the client, the law firm, or both, just for bringing the mistake to someone's attention. So, they don't tell anyone and hope that the mistake just goes away. But the mistake that might have been fixable early on through a motion, an apology, or a refund snowballs into something much bigger. Suddenly (from management's perspective), the law firm is facing a malpractice claim or a motion for sanctions.<sup>3</sup>

Partners, managers, and supervisory lawyers have a responsibility to "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of

Professional Conduct."<sup>4</sup> Creating a positive error culture can help meet that responsibility. If an associate or staff member promptly brings a mistake to a supervisor's attention, the firm can ensure that steps are taken to communicate with clients in an appropriate manner,<sup>5</sup> inform the court when necessary,<sup>6</sup> and figure out whether there was a systemic problem that caused or contributed to the error. Maybe the calendaring system wasn't syncing properly, and a deadline was missed. Maybe an AI tool was adopted too quickly.

Of course, slipups are not solely the purview of associates and staff. Partners, general counsel, and other managers aren't immune. Attorneys in leadership or managerial positions can model a positive error culture for our own firms or for other lawyers we mentor – we can be open about our mistakes, what we did once they came to light, and what we're doing to prevent them from happening again. Admitting that we're fallible humans, while showing that the world has not ended, will encourage others to come forward when they have problems.

Solos, too, can do this – even if you're accountable only to your clients and

yourself, acknowledging that you are an imperfect human who will occasionally screw up is helpful. Your practice and your mental health will benefit if you don't beat yourself up (too much) after every hiccup but instead acknowledge the errors and determine how to prevent them from recurring.

### The Aftermath of the Mistake

For the record, I did remain in Milwaukee and did not open the bespoke pie shop (though I do take requests; people seem to really like the key lime).

Instead, I did what I didn't want to do but what I had to do after a bad mistake: I dealt with it. I spent some quality time in my managing partner's office and then made a bunch of uncomfortable phone calls. I figured out what went wrong and what needed to happen to avoid a repeat. I also spoke with my associates about that error and encouraged them to talk to me or someone else in the firm if they had a similar issue. I took a long walk and played songs of self-loathing from my phone.<sup>7</sup>

And then I dusted myself off and got back to it. **WL**

### ENDNOTES

<sup>1</sup>The phrase "error culture" shows up in various places, but I first encountered it in Gerd Gigerenzer, *Risk Savvy* (2014).

<sup>2</sup>The Wisconsin Supreme Court Rules of Professional Conduct are "rules of reason" (SCR chapter 20 Preamble [14]); not every mistake is a violation of the rules or a violation worthy of discipline. Whether an act was willful, negligent, or inadvertent may mean the difference between a suspension and a reprimand, or between any discipline and no discipline at all. See *ABA Standards for Imposing Lawyer Sanctions*, <https://www.americanbar.org/products/invbook/364918410/>.

<sup>3</sup>This scenario is particularly evident in cases involving hallucinated or misquoted decisions and citations resulting from generative artificial intelligence. But that's a topic for another column.

<sup>4</sup>SCR 20:5.1(a) and SCR 20:5.3 impose a similar responsibility on lawyers to supervise nonlawyer assistants.

<sup>5</sup>SCR 20:1.4.

<sup>6</sup>SCR 20:3.3(a)(1), (3).

<sup>7</sup>My "everyone hates me" playlist is not suitable for a family publication, sorry. **WL**

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