



# PROFESSIONAL COUNSEL<sup>®</sup>

Advice and Insight into the Practice of Law<sup>®</sup>

## CNA Lawyers' Professional Liability Risk Control Hotline: Insured Benefit

Practicing law presents unanticipated challenges and novel issues, no matter the number of years a lawyer has been practicing. CNA offers its insureds numerous resources that provide guidance navigating challenging situations. One resource available to insureds is the CNA Lawyers' Professional Liability Risk Control Hotline.

Insureds can reach one of the lawyers on the Lawyers Risk Control team by calling the CNA Lawyers' Professional Liability Risk Control hotline at 866-262-0034. When an insured calls the hotline, the lawyer will be asked to leave a message for the team.

A Risk Control team member typically will return the call within one business day, having reviewed the information the insured provided. During this one-to-one call, the insured will be provided with CNA risk control information specific to the caller's situation including helpful resources available to CNA insureds. Please note that the members of the Lawyers Risk Control team cannot provide coverage opinions, review documents or offer legal advice, and discussions do not create an attorney-client relationship. Additionally, calls to the hotline are not considered in renewal or binding of coverage. Calls to the hotline do not serve as written notice of a potential or claim as required under the LPL policy.

In some cases, the insured will be referred to the CNA Claims team for subpoena assistance, assistance with responding to a disciplinary complaint, or to make a request for pre-claims assistance. If an insured needs to report notice of a potential claim or an actual claim, lawyers staffing the Risk Control hotline will direct the insured to provide notice in writing to CNA and to email notice to [lplnewclaims@cna.com](mailto:lplnewclaims@cna.com) or [specialtypronewloss@cna.com](mailto:specialtypronewloss@cna.com).

Some of the questions most frequently raised by insureds, and representing the types of calls most often handled by the hotline, have led the Lawyers Risk Control team to develop relevant and practical written resources. Common hotline inquiries have included the following subjects:

### Fee Collection

Callers to the hotline present questions related to collecting past-due fees. To help lawyers manage this issue, CNA issued the publication *Billing Blues*. This publication presents suggestions on how to mitigate fee collection disputes such as by setting fee expectations at the beginning of the relationship, using a written fee agreement for all new matters, and engaging in on-going communications regarding fees throughout the representation. *Billing Blues* also lays out what a lawyer should consider before filing a collection action against a former or current client.

### Conflicts of Interest

Identifying and managing conflicts of interest requires careful analysis. It asks lawyers to both subjectively and objectively review the facts presented. Callers to the hotline have questions about conflicts. Talking over conflicts with a Lawyers Risk Control team member can provide the insured with ideas and issues to consider – from a risk control perspective. CNA's publication, *Conflicts of Interest*, also helps insureds to identify when a conflict exists and how to address it.

### Engagement Letters

When speaking with callers, Lawyers Risk Control team members routinely inquire about the engagement letter. Engagement letters can be a useful tool in an attorney's operation of their law firm. Engagement agreements can help clients understand the scope of the representation, who is responsible for what actions, and what happens when the representation ends. CNA's Lawyers' Professional Liability Risk Control team developed the [Lawyers Toolkit 5.0](#). This resource includes multiple sample engagement agreement provisions – from file retention and management to bill receipt and payment.

### Withdrawing from Current Clients and Using Declination Letters for Prospective Clients

Managing the withdrawal from a current client with a matter in litigation can be difficult. While the insured must reveal enough information for a tribunal to rule on the motion to withdraw, the lawyer also may not use information to the disadvantage of the client – including the client's ability to secure successor counsel.

When a Lawyers Professional Liability team member receives a call about withdrawals, the team member provides CNA publication [What Can Lawyers Say in a Motion to Withdraw](#). In addition, [Plan Your Route Before Getting Out](#) specifically addresses when withdrawal becomes challenging. CNA's [Lawyers Toolkit 5.0](#) also provides sample language for withdrawal letters that can be used as a reference.

Additionally, declination letters can be used to explain to the prospective client that the lawyer is declining the matter, that the lawyer is not analyzing or investigating the matter, that the lawyer is not offering any legal advice regarding the merits of the matter, and that the prospective client should seek the advice of another lawyer promptly because time limits may apply to the claim. The CNA resource [It's Not Goodbye, Just Until We Meet Again: Declining Representation with Prospective Clients](#) may prove helpful. In addition, the [Lawyers Toolkit 5.0](#) includes sample declination letter language that insureds can personalize and use.

### Informing a Current Client about a Material Error and Reporting that Error to CNA

Mistakes happen. When they do, CNA Lawyers' Risk Control team offers callers risk control information including the CNA publication [To Err is Human](#) as an educational reference on the requirements of when and how to inform a client of a mistake and what steps to take to notify CNA of an actual or potential claim.

American Bar Association [Formal Ethics Opinion 481](#) explained that lawyers must promptly inform current clients of material errors. An error is material if a disinterested lawyer determines that the error is reasonably likely to harm or prejudice a client or cause a client to consider terminating the representation. CNA's [To Err is Human](#) publication goes further by raising important conflicts of interest questions that must be addressed if the lawyer believes it is possible to remain in the matter and provides a roadmap for informing the client of the mistake.

Being a CNA insured means having access to information from the Lawyers' Professional Liability Risk Control team including a number to call when an issue arises and practical publications on typical issues presented in the practice. The Lawyers' Risk Control Hotline is not just for moments of crisis, it is a resource when red flags arise in a representation and risk control guidance may be useful in mitigating a legal malpractice exposure.

The Lawyers' Risk Control Hotline is not just for moments of crisis, it is a resource when red flags arise...

This article was authored for the benefit of CNA by:

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Mary McDermott is a Risk Control Consultant for CNA's Lawyers Professional Liability Program. In this role, she is part of the CNA team helping insureds practice better by providing risk control services. Mary helps craft risk control publications, and she provides direct assistance to insureds when insureds reach out with a concern about their practice. She also presents educational programming on risk control and best practices for addressing the latest troubling issue. Prior to joining CNA, Mary practiced law with national and state bar associations including at the American Bar Association's Center for Professional Responsibility where she staffed the ABA's Standing Committee on Ethics and Professional Responsibility helping those lawyers craft advisory ethics opinions and model rules of professional conduct. Mary is a graduate of the University of Illinois-Urbana (Go Illini!) and received her law degree from DePaul University College of Law.

**Don't Miss Out on Future CNA LPL Publications**

If you wish to receive the CNA Lawyers' Professional Liability Risk Control monthly publications, you may register [here](#).

**About CNA Professional Counsel**

This publication offers advice and insights to help lawyers identify risk exposures associated with their practice. Written exclusively by the members of CNA's Lawyers Professional Liability Risk Control team, it offers details, tips and recommendations on important topics from client misconduct to wire transfer fraud.

For more information, please call us at 866-262-0540 or email us at [lawyersrisk@cna.com](mailto:lawyersrisk@cna.com)

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