



PROFESSIONAL COUNSEL[®]

Advice and Insight into the Practice of Law[®]

Contemplating Coverage

Introduction

How often do you think about insurance? In your personal life, perhaps you only think about insurance after the near miss of a fender bender in a parking lot or when watching your newly licensed teenager pulling out of the driveway. In your professional life, legal malpractice insurance may only pass through your thoughts as the annual bill crosses your desk. Insurance may not be the most thrilling topic to contemplate, but there are milestone moments in your career when you should reassess your professional liability insurance coverage in order to protect yourself and your assets, both professional and personal.

In the Beginning

For the newly licensed attorney, there are many pressures that consume attention and energy. For many, the top priority is landing a good job to pay for essentials, like student loans. There is likely anxiety about taking those first professional steps as an attorney. One essential that may be easily overlooked is the need for professional liability insurance. No one wants to start their career thinking of being sued for legal malpractice or facing a disciplinary complaint, but that is the reality of today's legal profession.

Few states require that attorneys carry legal malpractice insurance. Other jurisdictions may not require legal malpractice insurance but will require a disclosure to clients of the lack of coverage. Attorneys must understand their mandatory malpractice insurance disclosures in order to comply. If you are uncertain, the best place to start is with your state bar authority. The American Bar Association also offers a resource on insurance disclosure.*

* Take appropriate steps to ensure that you understand, and are compliant with, the [current rules in your jurisdiction](#).

When starting at a law firm, one of the first things to investigate after completing onboarding paperwork is to confirm that you have been added to the firm's lawyers' professional liability ("LPL") insurance policy. This should be confirmed in writing by a managing partner, office manager or insurance agent/broker. No matter the size of the law firms involved in the lateral transition, oversights occur and the lateral attorney should confirm coverage is in place. Mistakes in the practice of law are inevitable and attorneys need to make sure they are covered by an LPL insurance policy from day one.

LPL Risk Control Resource: [Lawyers' Toolkit 5.0: A Guide to Managing the Attorney-Client Relationship](#)

Building Better Business

As an associate works to climb the law firm ladder, they are given more responsibility and with that larger legal malpractice exposures. For example, an associate may begin their legal career reviewing leases or small home purchases. As they gain more experience, they may take on residential real estate transactions. Then, perhaps a large commercial real estate development. In the beginning, if the associate made an error in reviewing a residential lease the exposure was likely only in the thousands of dollars. With the attorney's advancement to the large commercial real estate development, an error made in that representation may be in the millions. As their career advanced and the deals got bigger, so too has their legal malpractice exposure. Has the law firm's limits of liability coverage advanced as well?

When bringing in a new matter, part of the intake process is determining if the law firm and attorneys have the proper experience and time to take on the new matter. That process should also include evaluating whether the firm has the proper malpractice coverage, if an error is made over the course of the representation.

One of the challenges that many attorneys face in trying to predict the amount of a legal malpractice exposure is the client's expectations versus reality. That is why it is recommended that attorneys pay attention to what the client is saying when it comes to what they hope to achieve by hiring the attorney. If a prospective client is exaggerating what their case is worth or what they will achieve via the representation, the attorney may want to consider giving them a reality check at the beginning. As an advocate for the client, the attorney needs to educate their client on what a realistic expectation looks like. Should something go wrong, the client file should reflect that the attorney had a reality check conversation with the client at the beginning of the representation. Law firms are not expected to increase their LPL coverage in response to unrealistic client expectations. However, recognizing the discrepancy and addressing it in the beginning is good risk mitigation.

LPL Risk Control Resource: [*Are You Ready to Commit? Client Intake and Proper Client Selection*](#)

Logistics of a Lateral Move

The legal profession is much more mobile than it once was when attorneys began and ended their careers at the same law firm. When making a lateral move to a new law firm, attorneys should make sure that they have insurance coverage that will cover their past acts at the departing firm and their start at the new law firm. There should be no gaps in coverage. It is a dangerous assumption to think the new law firm will manage the insurance aspect of a lateral move. The lateral attorney should work with their departing and new law firm to make sure there is continuous coverage for the lateral move. This protects the lateral attorney, and more importantly, the clients of the law firms.

Attorneys should never think that a lateral move is a simple process. There is a great deal of preparation that goes into notifying clients of the intended move, giving the clients the necessary time to decide if they are staying with the soon to be former law firm, going with the lateral attorney to the new law firm or finding new counsel all together. If the necessary time for preparation is not given, the lateral attorney might be creating legal malpractice and disciplinary exposures.

The lateral attorney will need to work closely with their soon-to-be former law firm to provide timely notice to current clients and work together to make the transition. Again, this is an important time to confirm and assess coverage for the lateral attorney while transitioning between law firms. If the lateral has any concerns related to their need for coverage, they should reach out directly to their agent or broker.

LPL Risk Control Resource: [*From Here to There: Elements of an Effective Screen When Onboarding a Lateral Hire*](#)

Evolving Your Areas of Practice

A law license allows attorneys to cover multiple areas of practice, should they choose to do so. Some attorneys will stick with one specific area of practice, while others will attempt to act as a "general practice" covering multiple areas of practice for their clients. If you are looking to change your area of practice or expand the areas you cover, that is an ideal time to assess the coverage you have and make sure that you have the necessary coverage to protect your interests and those of your clients. Attorneys want to avoid creating a situation in which they are underinsured. Rather than considering just the revenue aspect of expansion, law firms should consider if legal malpractice exposures are expanded, as well. Similar to the newly licensed attorney, an assessment should be done to confirm that the attorney and law firm have proper LPL coverage in place before taking on client representations in a new area of practice.

When contemplating a new area of practice, a valuable resource is the [*American Bar Associations Profile of Legal Malpractice*](#). This publication provides a broad view of legal malpractice exposures by area of practice and specific alleged errors made by law firms, errors committed by both attorneys and support staff.

Attorneys seeking to expand into a new area of practice should also consider the impact on nonlegal support staff. As the attorney learns a new area of practice, so too are support staff. Attorneys are ultimately responsible for supervising subordinate attorneys, members of support staff and outside parties that contribute to the rendering of legal services. It is important that support staff are given appropriate training and resources or mentors to ask questions of as they learn a new area of practice next to their supervising attorneys.

LPL Risk Control Resource: [*Dibble Dabble Double Trouble: Mitigating the Risks of Dabbling in Your Practice*](#)

Confirming Coverage

Over the course of a representation, there may be situations in which an attorney will need to work with co-counsel outside of their firm. In other instances, the challenge of geography may require seeking local counsel to carry out specific duties on behalf of a client. When working with outside attorneys, there should be an inquiry as to whether or not they carry legal malpractice insurance. Should something go wrong over the course of the representation, no single firm wants to accept the burden of paying damages. Avoid discovering that no coverage is in place for co-counsel or local counsel after the client or your law firm entered into an attorney-client relationship with the law firm. No matter who committed the error, it is likely that all law firms would be named as defendants in the legal malpractice action.

Confirming coverage is in place by co-counsel or local counsel serves to protect the client and your firm, should an allegation of legal malpractice arise.

LPL Risk Control Resource: [Legal Duties of Local Counsel](#)

Acting as Outside Counsel

It is common practice that when a law firm acts as outside counsel for a corporate client, they are provided with "outside counsel guidelines" for review and signature. Historically, the guidelines cover people and money, who will be working for the client, their hourly rate and amount of a retainer. Outside counsel guidelines have expanded over the years and now may also include specific requirements for insurance coverage. With the onslaught of cyber-crimes and data breaches, the client may specify the amount of cyber or legal malpractice coverage. Law firm protocol should require that all submissions of outside counsel guidelines are reviewed before signature to avoid non-compliance and potential rejections of the outside counsel guidelines requiring or specifying specific insurance coverage by the law firm.

LPL Risk Control Resource: [Fighting the Trojan Horse: Managing Outside Counsel Guidelines](#)

Retirement Done Right

The last contemplation of legal malpractice insurance coverage is at the end of one's career. It is imperative that retiring attorneys plan ahead for their retirement and understand what their extended reporting period or "tail coverage" allows them to do and what is not permissible to maintain their coverage. The unfortunate reality is that just because an attorney has entered retirement, legal malpractice exposures may still exist. Having proper tail coverage allows the attorney to remain protected should a claim arise after their retirement date.

If at all possible, attorneys should plan at least six months out from a retirement date. Like the lateral attorney, a great deal of planning is required and variables, such as client decisions, are outside the control of the attorney. By allowing as much time as possible, all legal services and client communication may be completed by the target retirement date. This is important because providing legal services after the retirement date may invalidate coverage.

LPL Risk Control Resources: [Retiring from Practice: Understanding Your Options](#)

[Making Time to Retire: Best Practices for Succession Planning and a Smooth Transition](#)

Supplemental Coverage Considerations

Most attorneys understand the obvious claim situation that when served with a legal malpractice complaint it needs to be reported to their insurance carrier. What about those in between moments such as a threat of legal malpractice or disgruntled client? What does one do if they are served with a subpoena for their client file or to appear for a deposition? How are disciplinary complaints covered under an LPL policy?

Attorneys should familiarize themselves with their reporting requirements and renewal obligations each year. By familiarizing oneself with how the policy works, an attorney may take advantage of supplemental coverage such as subpoena assistance or counsel for responding to a disciplinary complaint.

Scenarios to Avoid

A version of “cover your assets” is often invoked by attorneys drafting a letter or memorandum to document a file or notify a party of critical information. Assessing coverage concerns is also a way to literally protect your assets, both professional and personal. Though not rampant, there are instances in which an attorney’s personal assets are exposed when facing a legal malpractice complaint or judgement.

A scenario to avoid is being served with a legal malpractice complaint, learning of the alleged damages and wishing there was more coverage in place. With the increase in legal malpractice claims and high/low settlements, more attorneys are discovering they are underinsured. Attorneys must remain vigilant in monitoring their legal malpractice exposures and work to implement risk control protocols to avoid or mitigate exposures.

Renewal Revelations

Annual renewal of the lawyers professional liability policy is an excellent time to address two coverage concerns. The first is to properly report any potential or actual claims. It is imperative that the person responsible for renewal is aware of any potential or actual claims that would need to be reported at renewal. Second, it is an ideal time to evaluate whether there has been significant change in the areas of practice. Has the firm added a lateral that is concentrating in a new area of practice? Does that area of practice increase the legal malpractice exposures for the law firm? Is proper coverage in place? Annual renewal is the time to modify coverage, if necessary.

Teamwork

An often-overlooked asset for a law firm is their insurance broker or agent. These extended members of the team are there to help a law firm practice adjust to change. However, they are not able to help until they are brought in on the plans for change. If your firm is adding new attorneys, dealing with lateral moves, preparing for retirement or expanding the scope of the practice, be sure to touch base with your insurance professional to make sure that proper coverage is in place.

LPL Risk Control Resource: [LPL Directory](#)

Conclusion

There are many milestone moments in an attorney’s career in which they should assess their LPL coverage to make sure that changes that may impact their exposure will be covered. From the beginning of a career until retirement, attorneys should remain vigilant in maintaining proper LPL coverage.

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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.

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