



Strategies to Manage Your Law Firm's Professional Liability Exposures

MSP L 07/2009 "Breach of Fiduciary Duty and Conflict of Interest"

July, 2009

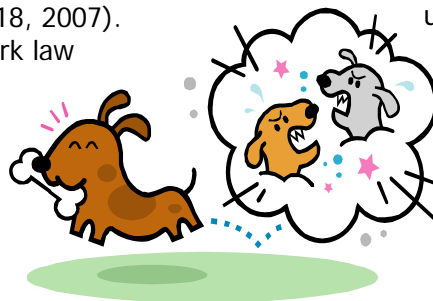
Breach of Fiduciary Duty and Conflict of Interest

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The actions of a partner lead to a \$7 million judgment against a New York law firm due to breach of its fiduciary duties. "\$5 Million Punitive, \$2 Million Compensatory Damages Against New York Law Firm for Breach of Fiduciary Duties by a Partner," www.biz.yahoo.com (June 18, 2007).

A former partner in a large New York law firm represented three businessmen when they formed their investment banking partnership in 1992. The lawyer then secretly represented one of the partners in a business deal that should have been available to the partnership.

A New York City jury found the law firm guilty of a "wanton and reckless or malicious act" in connection with their partner's breach of his fiduciary duty to his client, the partnership. The firm has been ordered to pay \$5 million in punitive and \$2 million in compensatory damages to the former client.



purpose was to locate and take advantage of business opportunities.

When one of the partners entered into a new business opportunity, he opened himself to the claim that he was violating his own fiduciary duty by usurping an opportunity that he had not offered to the partnership. The argument is that before committing to the new venture, the partner had a duty to fully disclose the opportunity to the partnership and only act on the opportunity if the partnership declined to act.

One can then argue that the failure to disclose attaches to the attorney, especially if the attorney has notice of the non-disclosure.

By representing the partner in the new venture, the attorney allowed for the argument that his actions aided

Breach (continued on page 2)

Commentary and Checklist

When the business partners formed their partnership, they entered into a fiduciary relationship with one another. The fiduciary relationship meant that each partner was expected to act in the best interest of the partnership at all times.

When the attorney agreed to represent the partnership, he entered into a fiduciary relationship with the partnership. The attorney's client was the partnership, and his actions were to be on behalf of the partnership, not on behalf of the individual partners. In this case, the partnership's stated

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the partner in usurping the partnership's opportunities, and that the attorney himself was breaching his own fiduciary duty to the partnership. Because the partnership was an ongoing entity with interests directly adverse to those of the partner, the attorney's representation of the partner is a potential conflict of interest.

How can you avoid similar problems in your practice?

- For any new matter, do a conflict check with all the attorneys of your firm.
- Avoid even the appearance of impropriety. If there is ever a question of conflict of interest, the attorney should decline representation.
- If a potential conflict exists, evaluate whether the interests of the two clients in question are directly and concurrently adverse. If the interests are directly and concurrently adverse, then representation of both clients is not possible.

- If the interests are only potentially adverse, contact the existing client to see if there is an objection to the representation. Only if the existing client consents is the representation of the new client permissible.
- If the chances of a conflict are remote, concurrent representation is possible if both clients sign a written consent informing them of the potential conflict and the risks involved with representation.

This article was written exclusively for Management PLUS+ Online®, A Service of Travelers Bond & Financial Products.

For additional information, please contact Dorothy Amundson at damundson@cavnac.com.

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Perspectives is published as a service to lawyers. While the information contained herein is believed to be reliable, readers are advised to consult their own legal and insurance counsel for assistance in applying it to their unique situations.

Prevent Malpractice As Your Law Firm Grows

*Article provided by
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A new survey shows that law firms and legal departments will be adding to their personnel in this year. Robert Half Legal, a staffing service specializing in attorney and legal professional employment, conducted the survey. "Nearly Half of Law Offices Plan Staff Additions in Next 12 Months: Litigation, Corporate Governance Experiencing Most Growth," *PRNewswire* (Apr. 26, 2007).

47% of attorneys polled expect the number of lawyers employed in their firm to increase, and 30%

expect the majority of their firm's growth to come from litigation.

Commentary and Checklist

As your firm grows, so does your risk of malpractice claims... more attorneys equal more risk. Therefore, as you grow, your protocols for preventing malpractice lawsuits should grow as well.

Continued legal education provides some ethics information, but it cannot replace your own protocols for making certain that phone calls are returned, deadlines met, and client funds properly accounted for.

To help reduce your risk of malpractice claims, your staff should:

- Orientate new attorneys to your internal professional and ethical practices guidelines.
- Stress the importance of attorneys returning client phone calls in a timely fashion.

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Prevent Malpractice (continued on page 3)

- Train all attorneys and legal staff on the importance of documenting your client files with notes regarding client contact.
- Contact your billing and legal scheduling software provider for periodic training.
- Make certain that new attorneys keep their deadlines.
- Counsel new attorneys to present a reasonable expectation of a case's outcome to the client.
- Make new attorneys aware of your trust fund practices. ✂

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Risk Management Seminars 2009 Series

450 B Tower, 450 B Street, Suite 1800, San Diego, CA 92101-8005

- **Creating an Employee Handbook**
(to publish in January)
Friday, August 28, 2009 — 8:00 - 10:30 a.m.
- **Sexual Harassment Prevention Training**
Meets AB1825 requirements
Friday, September 11, 2009 — 8:00 -10:30 a.m.
- **Disaster Planning for Businesses**
Thursday, September 17, 2009 — 8:00—10:30 a.m.
- **Strategic Human Resources**
Friday, September 25, 2009—8:00—10:30 a.m.

All training sessions available to our clients
Reserve early / seating is limited! *

For more information about upcoming seminars

Contact **Darcee Nichols** at dnichols@cavnac.com
or 619-744-0596

* NOTE: Due to the popularity of our seminars and limited seating, we regret we cannot provide refunds or credits with less than 72 hours advance notice of cancellation.

LIVE WELL, WORK WELL.



It's Not Too Late to Plan for 2009!

Have you received a raise? Did your child graduate from college? Did you graduate? Congratulations! Consider decreasing your taxable income and increasing your retirement savings.

- Many retirement plans have quarterly or semi-annual entry dates. If you are not already participating in your plan, consider joining on the next entry date.
- If you are already participating, consider increasing your deferrals. You may also want to consider contributing to a traditional or Roth IRA. For 2009, you can generally contribute up to:
 - ◆ IRA: \$5,000
 - ◆ SIMPLE plan: \$11,500
 - ◆ 401(k) or 403(b) plan: \$16,500
- If you turn 50 at any time during 2009, you may be eligible to make catch-up contributions. For 2009, the maximum catch-up contribution is:
 - ◆ IRA: \$1,000
 - ◆ SIMPLE plan: \$2,500
 - ◆ 401(k) or 403(b) plan: \$5,500 ✂

Article Courtesy of Employee Benefits Department

