

PERSPECTIVES

Strategies to Manage Your Law Firm's Professional Liability Exposures

MSP L 09/06 "Practice Management Strategies Part 15 — Resources, Scope and Expertise"

September, 2006

Practice Management Strategies

Part 15

Resources, Scope and Expertise

Resources

Understand that professional liability is largely a “resources game” – In most people's minds, the term “negligence” connotes human mistakes, oversights, or mishaps. In reality, more often than not the root causes of professional liability claims have little to do with common human errors or oversights. With the widespread use of computers in law firms, oversight-type errors have been “computerized away” to some degree.

Your level of professional liability exposure will almost always correlate to the relative level of resources you have in your law firm. The most important resources to have from a professional liability standpoint include:

1. Adequate working capital
2. Widespread integrated computer systems
3. Sufficient legal talent
4. Expertise and experience
5. A superior support staff

Recognize that high quality legal talent is the most valuable resource you can have — It is important to understand that the most valuable competitive edge your firm has is the quality and talent of your partners and associates. From a professional liability standpoint, the more talented and experienced your lawyers are, the lower your professional liability exposure will be.



The competition for talent will only increase, so a critical strategy is to attract, and then make sure you retain, the most talented lawyers you can find.

Avoid “overbooking” of clients and under-resourcing of cases — The presence of these factors inevitably will result in unreasonable delays and performance deficiencies and problems. This will lead to a bevy of unsatisfied clients, which eventually will translate into professional liability claims.

A “revolving door” of lawyer associates and clients will almost always happen in these types of environments, which heightens professional liability risks even further.

Scope of Resources and Expertise

Stay within your scope of resources — It is inadvisable to take on cases or clients if you do not have the necessary resources to adequately and

(continued on page 2)

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(continued from page 1)

sufficiently handle them. The key resources in this regard can be capital, systems, available lawyers, and available support staff.

Practice only within a pre-defined geographic territory — Taking a case in a jurisdiction, venue, or court with which you are not familiar is perceived as an ultra-hazardous activity from a professional liability standpoint. The reason for this is that each jurisdiction is unique in that it will have its own laws, rules, procedures, customs, personalities, and conflicts, and to the degree you are not familiar with all of those, you are prone to making an error.

Additionally, if you make an error that is jurisdiction-related, such as overlooking a filing deadline that is endemic only to that jurisdiction, the professional liability claim that can result often will be indefensible.

Stay within your scope of expertise — It is estimated that approximately 35% of all professional liability claims involve lawyers attempting to handle a matter that is outside their core of legal expertise. As the law continues to become more and more complex and specialized, courts and juries will look particularly askance at lawyers purporting to handle a matter on which they have little or no previous demonstrable experience or expertise. Lawyers who stray out of their core practice areas run the risk of incurring serious client-related problems.

Strive to become an expert in the field of law — Experienced lawyers professional liability insurance underwriters like to insure focused specialists almost as much as they are hesitant to insure “generalists,” who purport to handle a wide range of unrelated practice

areas, or dabblers, who have a defined core practice area, but who occasionally take on a case from totally unrelated practice areas. The most hazardous “dabblers” are those who take only an occasional personal injury case, or get involved in a one-off commercial real estate transaction.

There are many significant reasons why focused specialists are perceived to be superior professional liability risks. These include:

- Specialists know what they are doing and usually have a high degree of skill. They tend to make less mistakes than a generalist.
- A specialist law firm, practice area group, or individual lawyer will tend to have finely honed, and highly effective and functional, systems and procedures.
- Focused specialists tend to have a more stable base of high-quality repeat clients.
- Experts are much easier to defend in a professional liability setting. It would be hard to argue that Alan Dershowitz did not know what he was doing when he prepared a particular appeal, or that Roy Black mishandled a particular criminal defense. ✨

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