

PERSPECTIVES

Strategies to Manage Your Law Firm's Professional Liability Exposures

MSP L 03/07 "Practice Management Strategies Part 16 — Office Sharing and Risk Management"

March, 2007

Practice Management Strategies

Part 16

Office Sharing and Risk Management

Office Sharing

Understand that when you are sharing space with other lawyers, you are most likely also sharing potential professional liability – When you share office space with other lawyers who are not members of your law firm, there is a very real potential that you can successfully be sued for professional errors of the office-sharing colleague.

The reason for this is that many clients assume the office-sharing arrangement is one big partnership, and if they believe this, they often can successfully drag you (and your professional liability insurance policy) into the fray based on theories of vicarious liability, implied partnership, or partnership by estoppel.

The test most often used by the courts will be what the relationship of the lawyers could (or did) appear to be from the client's viewpoint. The reasonable expectations of any "clean hands" client will invariably be upheld by the court. No matter what the arrangement is or how "separate" things are, the simple fact of all the lawyers being in the same office creates a risk of legally being considered a partnership, with each "partner" being vicariously liable for the acts of the other.

The only way to avoid this situation is to avoid sharing space in any manner with lawyers who are not members of your firm. If you sublet space to independent lawyers, make it a requirement of the lease that they carry lawyers professional liability insurance with an adequate limit of liability, and that they provide



you with evidence in the form of an in-force certificate of insurance.

Risk Management

Establish a formal risk management program – A formal risk management program should exist and should address all elements of risk to your firm's assets, including professional liability risks. A risk management committee including three or more senior partners should

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Another way to shift the burden is through proactive communication. For example, it is advisable to send your clients written progress reports as well as copies of appropriate correspondence and documentation.

One benefit of doing this is the fact that a client who receives a copy of a certain correspondence may then arguably have a duty upon receipt to question something in the correspondence that looks amiss or that is not clear to the client.

Also be aware that some clients have a strategy of trying to shift the burden onto the lawyer so that the client can then “turn” on the lawyer if

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be formed and given the responsibility of overall risk management oversight for your firm.

On an operational level, an individual in your firm who is not practicing law on a full-time basis should be given the responsibility for the implementation and monitoring of the program. Usually, this person will be the law firm administrator.

Institute a formal objective process for assessing and assuming risk to the law firm – Decisions which can result in a meaningful amount of risk to the law firm should be handled in a formal manner, with the decision being made by two or more objective partners in your firm. Significant risk decisions should not be made by individual lawyers.

For example, a final decision as to whether to take on a particular new client who presents a higher than average professional liability exposure should be made not by the lawyer who will get billing credit for the client, but rather by the New Client Committee.

Shift the burden of liability whenever possible – When possible, it is always worthwhile as a preventative measure to try to “shift” the burden of liability away from yourself.

There are many ways to accomplish this, depending on the particular circumstances. Be alert for ways to transfer liability by contract in certain settings. In other cases, you may be able to obtain written waivers or consent forms from your clients or third parties.

something goes wrong. An example of this would be a client who pressures his/her lawyer to assure the client that the client is in compliance regulatory wise, with the idea of laying any subsequent loss or compliance expense onto the lawyer if it later turns out that the client is deemed to not be in compliance. ✨

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