

PERSPECTIVES

Strategies to Manage Your Law Firm's Professional Liability Exposures

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Practice Management Strategies Part 6

Financial Management

Manage your law firm like a business – In order to survive, thrive and be able to continue to practice your profession, you must manage your firm as you would a successful, profitable, long-term business. This includes having professional business management skills at hand in the form of one or more partners who actually devote all or most of their time to the business management and administration of the firm, or preferably, having a full time professional business manager. The firm's legal administrator ideally will also have a solid business and financial background.

Make sure you are adequately capitalized – Law firms that are under-capitalized become under-resourced, and under-resourced firms are far and away the types of firm on the whole that are most at risk from a professional liability standpoint. Make sure you always have adequate working capital on hand.

Make every aspect of your firm profitable – Every aspect of your operations should regularly and continuously be reviewed and measured for profitability. This includes individual practice groups, lawyers, and clients. Strong consideration should be given to jettisoning any situation that is unprofitable and cannot be turned around.

Practice rigorous financial controls – Stringent standards should be instituted and enforced relative to case and client intake selection (from the standpoint of the financial viability of the client or matter), time keeping, billing, collections, and expense

control. Adherence to these standards will ensure a healthy cash flow and revenue stream for your law firm.

It is also important to have tight controls and safeguards in effect to prevent the possibility of the theft or embezzlement by any of your staff members of any client funds or property that you have on hand. Unfortunately, this type of situation is far from uncommon, and the perpetrator often is a long-term employee whom no one would have suspected. Losses as a result of this type of crime are not covered under professional liability policies.

Use a Certified Public Accountant on an annual basis – Every firm should have a CPA prepare a compiled or audited financial statement on an annual basis, including a balance sheet and operating statement. A highly qualified CPA who specializes in professional practices also has the ability to provide invaluable recommendations for beneficial management and operational procedures.

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INSURANCE BROKERS

License No. OA99520

1230 Columbia Street, Suite 850, San Diego, CA 92101-3547

Phone: 619-234-6848

Facsimile: 619-234-8601

Web Site: www.cavnac.com

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Internal Audits

Perform regular internal audits on all aspects of your operation – Under the auspices of either the Legal Administrator or an Internal Audit Committee, formal internal audits of all aspects of your operations should be conducted annually. If possible, it is preferable to use an outside auditor who can be totally objective. However, qualified internal lawyers and staff can also be used.

Key areas to audit and review include client files, time keeping, billing, account receivables, and outside involvements of lawyers. When auditing client files, a formal audit worksheet should be completed for each file. The worksheet should address whether the following items, among others, have been successfully addressed and completed:

- Was a conflict of interest check completed before the file was opened?
- Were all critical dates identified at the time the file was opened and properly entered into the docket control system?
- Was a client intake form completed and circulated to all lawyers?
- Was an engagement letter sent out to the client? If so, were key elements outlined?
- Were bills sent out in a proper and timely manner?
- Was there evidence of procrastination, delay or neglect in the handling of the file?
- If the file is closed, was a disengagement letter mailed out?

Other appropriate questions should be added to the audit worksheet to reflect your particular internal procedures and practice areas. At the end of an audit, a formal audit report should be produced, reflecting the findings of the audit, and recommendations for any necessary remedial action.

Neglected Files

Make sure that active case files do not get neglected – Perhaps the worst malpractice villain of all is the “neglected file.” This is a file that is opened for a client, and at an early stage finds its way into the file drawer, never again to be taken

out of the drawer. These files should be considered “ticking time bombs,” and nearly every law firm has them to a greater or lesser degree.

The classic malpractice claim in legal collection work involves a single file that is set up for one client who has turned over a dozen or more collection matters to the law firm. Somehow the file gets buried and none of the collection matters are pursued. By the time your client follows up with the law firm to see what the status is, it is often too late to collect any money on behalf of the client.

There are two procedures that can be used to help avoid having “neglected files.” The first is to set up a central suspense system for the entire office. The lawyers, after handling a matter on the file, can then set up a suspense in the system to call the file back up for review in the near future. This is the most practical and effective remedy. A second preventative procedure is to institute a system whereby each lawyer reviews every active file on a monthly basis, just to make sure nothing has been overlooked.✧

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