

# Professional Liability Coverage for Attorneys



Professional liability coverage for attorneys and law firms in today's business climate is a necessity, and in some cases is legally required. Although the overall number of legal malpractice claims is leveling off, the number of large legal malpractice claims is sharply rising. Every malpractice insurer anticipates paying claims in excess of \$50 million every year.

These dramatic increases are due in part to a weakened economy in which attorneys are forced to change jobs more frequently or practice in new areas of the law. Additionally, newer methods of communicating (e.g., email, social networking sites) and using digital information (e.g., electronic filing of court records, electronic document storage) regularly expose attorneys and law firms to the potential for malpractice claims. It is imperative that attorneys and law firms recognize emerging legal malpractice risks and purchase coverage to protect against those risks.

### Risks Facing Attorneys and Law Firms

Attorneys and law firms must face these risks relating to professional liability:

- Attorneys and law firms face exposures when performing any professional legal services, including giving advice to clients and assisting with legal matters, performing notary public or title agent services and giving investment advice.
- New technologies such as digital document storage, electronic filing of documents and mobile technology may pose serious cyber liability risks.
- Prior acts of a law firm or individual member, including employees, may trigger risks when attorneys and/or their employees move into new positions with different law firms or go into solo practice.
- Practicing in areas of law which may be new or unfamiliar to an attorney or law firm may be necessary in today's economy, but it produces risk.
- Attorneys are at risk when performing moonlighting services or pro-bono work, or even when giving "cocktail party" advice.
- Attorneys may face exposure when pursuing other business opportunities with clients, or when acting in a dual capacity, such as an officer or director for a client's business.
- Attorneys and law firms may face risk in a number of general areas, including workers' compensation, advertisers' liability, reputation management, discrimination, claims brought by regulatory agencies and real estate claims.
- Even changing insurance policies can carry risk, since policies can be worded slightly differently, or may contain a "prior knowledge" exclusion affirming that the attorney or law firm is not aware of any potential claims.

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## Disclosure of Liability Insurance

The American Bar Association (ABA) Model Rules of Professional Conduct serve as the model for state ethics rules; states often adopt these rules as their own. The ABA Model Court Rule on Insurance Disclosure requires that a lawyer disclose whether he or she is currently covered by professional liability insurance to the highest court of the jurisdiction, and that such information be made available to the public. The purpose of this Model Rule is to offer prospective clients the ability to make an informed decision when hiring a lawyer. More states, such as California, New Mexico and Pennsylvania, are requiring the same or similar disclosures of liability insurance status to prospective clients in their states. One state, Oregon, actually requires lawyers to carry professional liability insurance.

## Insurance Protection

To protect against the many risks facing attorneys and/or law firms, as well as to satisfy any liability insurance disclosure requirements, it is wise to purchase lawyers' professional liability insurance coverage. While there are many coverage options available, typical policies feature the following:

- Protection from demands, suits or proceedings for damages or injunctive relief
- A "claims made" or "claims made and reported" policy and a "duty to defend" or "non-duty to defend" basis
- Defense against claims alleging wrongful acts (wrongful acts and claim definitions are expanded and broad)
- Extensions to pro-bono or moonlighting work, or "cocktail party" advice by lawyers

- Advance of defense costs, even if allegations are found to be groundless
- Coverage for non-client claims
- Arbitration of a coverage dispute between the insurer and the insured
- Punitive damages coverage, or coverage of fines, statutory penalties and sanctions
- Limits on deductibles, or deductibles treated on an aggregate basis

## Limiting Liability

There are more ways to limit your liability apart from Professional Liability Insurance, such as the following:

- Disclosing requested information in the insurance application and submitting the application well before the coverage date
- Documenting the processes used to carry out professional responsibilities
- Committing to loss prevention and using risk management services
- Adopting and implementing malpractice prevention measures such as office management policies
- Using effective calendaring and docket control systems
- Using well-defined fee agreements with your clients including written documents to confirm the attorney/client relationship
- Using an electronic conflict of interest search system

## Professional Liability Coverage for Attorneys

- Practicing in the area of law in which you have experience, and appropriately supervising junior attorneys and support staff
- Using peer review as part of your quality control procedures

Some of the benefits of attempting to limit your liability include lower professional liability insurance premium increases and avoidance of nonrenewal notices.

### We're Here to Help

All attorneys and law firms should make sure they are protecting themselves from the ever-increasing and emerging areas of malpractice risk. Since there is no standard policy, especially in today's business climate, a knowledgeable agent is invaluable when purchasing professional liability coverage or when changing policies. We understand your business and can help design policy language to meet your unique needs. We can also help you obtain the most cost-effective policy available while providing the protection you need. Contact Atlas Insurance Agency, Inc. today to learn all about our customized insurance solutions.