According to the Ames & Gough LPLI 2019 Claims Survey, lawyer professional liability claim frequency and severity are increasing. The ABA Journal of March 2018 reported that four out of five attorneys will be sued for malpractice at some point in their career. It is also noted that 70% of claims filed are against small firms of one to five attorneys. Lexis Nexis in a 2013 article entitled ‘Safeguarding Your Law Firm from Liability: Eight Tactics to Minimize Risk,’ says that attorneys can expect to have at least three malpractice claims in their careers. Professional liability insurance can help minimize the damage associated with these seemingly inevitable claims.

Why do I need professional liability coverage?

Professional liability is a specialty coverage that is not included in most business owner policies, but it should be at the foundation of every professional’s insurance portfolio in order to adequately protect your business and your personal assets.

Anyone who provides a service to a client for a fee can potentially be sued and therefore needs professional liability coverage. It is also not unheard of to be sued for providing pro bono services. As society grows increasingly more litigious, claimants are looking for a deep pocket as a source of relief.

Even if it were proven that you were not at fault, you could pay tens of thousands of dollars to defend yourself, your company and your reputation, and it could potentially be financially devastating. Generally, professional liability policies provide for defense costs, even if you were ultimately found not at fault.

Professional liability insurance may also help cover defense costs in the case that a countersuit is filed as a result of suing to collect unpaid fees from a client. Note: Some states require that a practicing attorney have professional liability insurance with specified limits. Check with state(s) in which you are licensed for coverage requirements.

What are the common causes of legal malpractice claims?

The most common cause of a claim is failure to know or apply substantive law. This can include such things as failure-to-know deadlines. Attorneys who are not specialists in certain areas of practice are also prone to not having enough substantial knowledge to properly execute their duties. Inadequate investigation or discovery of facts is another substantive error that is fairly common. Other causes:

- Administrative errors include tickler system errors, clerical errors, inadequate delegation and follow-up, lost files or documents, failure to properly calendar, and procrastination.
- Intentional wrongs include fraudulent acts, malicious prosecution, abuse of power, libel, slander, and civil rights violations.
- Failure to follow client instructions, failure to get a client con-

sent, and failure to advise the client of implications or possible outcomes are examples of client relations errors, as well as conflicts of interest personally or with current or past clients. A general failure to communicate with clients is another example.

How can I reduce my claim exposure?

Risk Management techniques to help minimize exposure include:

- Use engagement, disengagement, and non-engagement letters as formal documentation to confirm the exact service is being provided and the scope of that service.
- Screen your clients to be aware of possible conflicts of interest, unrealistic expectations, engagements that don’t fit the expertise of the firm, or clients who appear to be dishonest or have poor payment history.
- Avoid suing clients for non-payment, as it frequently results in counterclaims. The best option is to define client intake processes, discuss billing practices at the time of engagement and effectively manage the entire engagement, including ongoing billing reconciliation practice.
- Don’t dabble in unfamiliar areas of practice; instead stick to what you know. It is better to refer to someone else who is more experienced in that particular type of law than to assume the risk of practicing in unfamiliar areas of practice.
- Communicate with your client. Communicate regularly with your client to keep them up to date. This means providing regular updates, providing copies of documents, and obtaining client approval on strategy, which leaves less room for dissatisfaction and confusion.
- Document, Document, Document. The file should be complete. This creates a clear trail that makes defense of a professional liability claim easier.
- Report potential claims promptly. When in doubt, report it! The rule of thumb for paying claims: the earlier a situation is addressed, the less damage from the resulting payout. Many times, the matter can be resolved early.

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ABOUT THE AUTHOR:

Joshua Cipri is the AVP of Lawyers Professional Liability at Pearl Insurance. Josh has over 11 years of professional liability experience and has been recognized as a Certified Programs Leader (CPL) by the IMPPA. Pearl Insurance has been serving the professional liability needs of the legal community since 1957 and insures over 6,000 individual law firms annually throughout the country and regularly practices with Cornerstone.