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Reminders and Resources for Law Firms During the COVID-19 Pandemic

As a follow-up to CNA's ["Best Practices for Law Firms During a Pandemic,"](#) this article further addresses issues that law firms should consider in order to limit their exposure to professional liability and other claims.

Increase in Claims

While the full extent of the economic fallout from the COVID-19 pandemic is not yet known, its devastating effects upon the economy have raised the specter of a looming recession. Malpractice claims against lawyers tend to increase during an economic slowdown. In the 2008-09 recession, and for a couple of years thereafter, virtually all areas of practice experienced an increase in claims. As a result of this pandemic, the business transactions, real estate, and wills, trusts, and estates areas of practice probably will be subject to some of the highest percentages of claims. Fortunately, CNA has practice-specific guidance to offer to lawyers in these areas of practice including the following: [Business Transactions Professional Liability Fact Sheet](#), [Real Estate Professional Liability Fact Sheet](#) and [Wills, Trusts and Estates Professional Liability Fact Sheet](#).

Engagement Agreements

Engagement letters represent an effective method for minimizing exposure to legal malpractice claims. Every engagement letter should include a well-written "Scope of Representation" section that clarifies precisely the legal services that the law firm will provide. For example, if the law firm has agreed to represent a client in a workers' compensation claim, the engagement letter should reflect that scope of the relationship and also state whether it will advise the client on any potential third-party claims, or whether the client should consult with another law firm regarding that issue. Any changes to the original scope of representation during the pendency of the case or matter must be memorialized and sent to the client as well. If a law firm provides legal services outside the scope of representation and fails to document such a change in writing to the client, it renders the scope of representation null and void and also expands the risk of a claim for the law firm. Please see the CNA ["Lawyers' Toolkit 4.0: A Guide to Managing the Attorney-Client Relationship"](#) for sample language in engagement letters and other correspondence and please also see the CNA ["Better with a Letter: Why Attorneys Should Use Engagement Letters."](#)

Document Client Files

While the engagement letter records the expectations of both parties at the outset of the representation, other decisions and circumstances should be documented as the representation continues. A well-documented client file protects the lawyer by preserving a complete and accurate record of the representation. Contemporaneous written documentation may provide critical support to a lawyer's defense. The lawyer should document any advice provided to a client, especially when the client fails to heed the advice. The facts and events surrounding key decisions in the representation, such as whether or not to include a specific allegation, assert one type of defense over another, call a witness to testify, or include certain language in a contract, must be memorialized in writing. Judges and juries expect lawyers to maintain well-documented client files. Factual disputes between a lawyer and a client where the lawyer has no supporting documentation often leads to findings and verdicts adverse to the lawyer. Please see CNA's ["Ten Tips to Assist in Avoiding a Malpractice Claim."](#)

Conclusion

The COVID-19 pandemic will almost certainly lead to an increase in professional liability and other claims against law firms. By staying aware of high-risk practice areas, using engagement letters on a consistent basis, and documenting client files, your firm can implement key risk control measures during these uncertain and unsettling times.

This article was authored for the benefit of CNA by: Sean Ginty

Sean Ginty is a Risk Control Director for CNA's Lawyers Professional Liability Program. In this role, he manages a team of highly qualified attorneys who are responsible for the design, content and distribution of risk control content relevant to the practice of law. He also collaborates with executive leadership from CNA's underwriting and claims teams to develop and execute strategies for profitable growth of the program. Sean lectures frequently at CNA-sponsored events and at state and local bar associations and national seminars hosted by industry-leading organizations. He also writes articles focusing on law firm risk control and professional responsibility issues. Prior to joining CNA, he served as Chief of Staff and General Counsel for an Illinois state agency and practiced law with a Chicago-based law firm, as well as serving as conflicts counsel for an international law firm.

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