The Road Ahead: Navigating Professional Liability in Today's Evolving Legal Landscape

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Agenda

1 What is Legal Malpractice

2 Policy Form

3 Coverages & Supplementary Benefits

4 Risk Management

BAD THINGS CAN HAPPEN
TO GOOD LAWYERS . . .

Claims Made vs. Occurrence Policy

Claims Made Policy

A Lawyers Professional Liability (LPL) policy generally provides coverage for claims or demands for damages first made against the insured during the policy period, arising from an actual or alleged error, omission, or negligent act that occurred on or after the policy's retroactive (prior acts) date.

Occurrence Policy

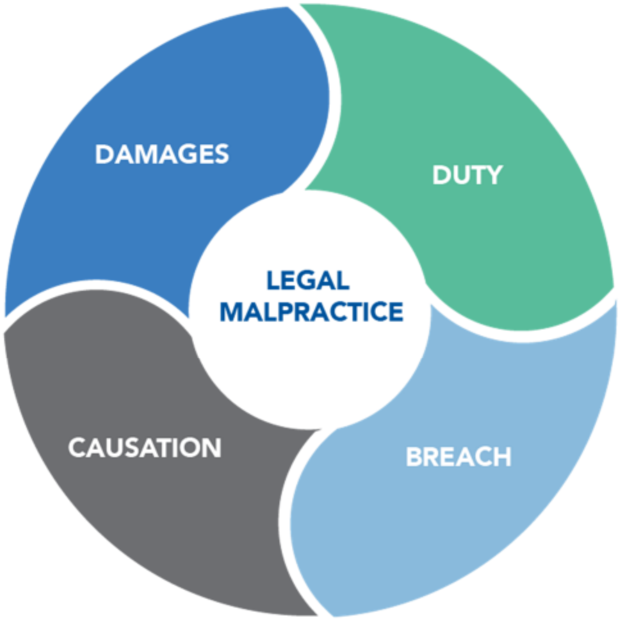
An occurrence-based policy, such as a homeowner's policy, typically provides coverage for bodily injury or property damage resulting from an occurrence that takes place during the policy period, regardless of when the claim is ultimately reported or filed.

What is Legal Malpractice?

- **Legal malpractice occurs when a lawyers fails to provide the level of skill, care, and diligence expected of a reasonably competent lawyer, resulting in financial harm.**

  To establish legal malpractice, a client (plaintiff) must prove four elements.

  1. **Duty of Care** – attorney-client relationship existed, and professional services were being rendered (creating a standard of care)
  2. **Breach of Duty** – attorney failed to meet the applicable standard of care and the attorney acted negligently
  3. **Causation** – attorney's actions or omissions directly caused harm to the client
  4. **Damages** – client suffered actual financial loss as a result



All four elements must generally be present for a legal malpractice claim to succeed.

Prior Acts Coverage

- Retroactive Date
- The date continuous coverage was first obtained
- Claims triggered before this date are not covered

- **Things to consider when:**
  - Changing Carriers
  - Changing limits and deductible
  - Moving firms
  - Starting your own firm

Extended Reporting Periods

- "ECRP or Tail Coverage"
- Available for attorneys who retire from the practice of law
- Provides coverage for claims arising from conduct within the policy period which would otherwise be covered by the policy, but the claim is first made during the extended reporting period.
- Claim must have occurred while policy was in force.

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Why Are Premiums So High?

- Step Rating
- Area of Practice
- Lack of specialization
- Geographic Location
- Lack of proper Engagement Letter usage
- Lack of Risk Management controls
- Excessive fee suits

Common Myths About LPL Coverage

"No lawsuit = no need to report.“

– Myth. Most LPL policies require reporting of claims and, in many cases, circumstances that could reasonably be expected to give rise to a claim. Waiting for a lawsuit can jeopardize coverage.

"There is no prejudice in self-defending. I'll notify the carrier only if I can't make it go away."

– Myth. Most policies require prompt notice and prohibit the insured from assuming obligations, incurring defense costs, or settling matters without the insurer's consent.

"Disciplinary actions are always covered."

– Myth. Coverage varies by policy. Some LPL policies provide limited coverage for disciplinary proceedings, while others exclude them entirely.

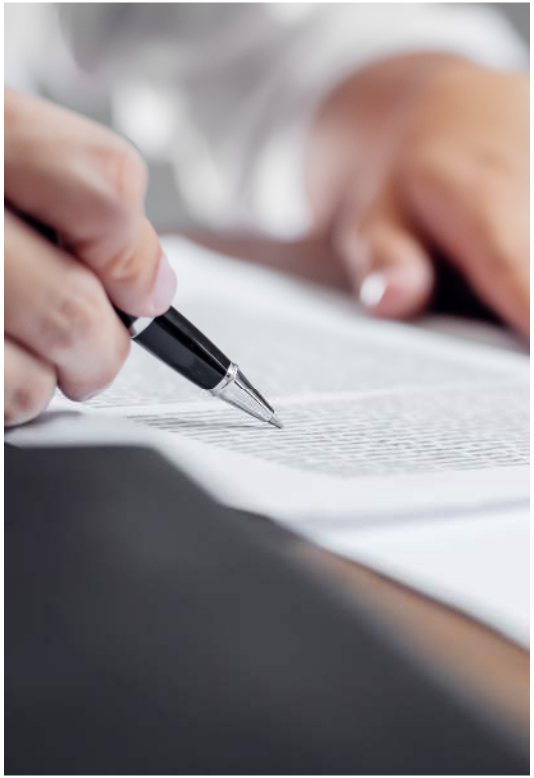
"Disciplinary actions are never covered."

– Myth. Many modern LPL policies provide at least some defense cost coverage for bar disciplinary or regulatory proceedings, subject to policy terms and limits.

Key Features to Look for in a Liability Policy?

- **Policy Features**
  - Consent to Settle Provision
  - Choice of Counsel
  - Extending Reporting Period Options
  - Broad definition of legal services
  - Deductible Reductions

- **Supplementary Coverages**
  - Disciplinary Proceedings
  - Subpoena
  - Loss of Earnings
  - Limited Cyber Coverage



What is Appropriate Coverage?

- The size and value of matters handled by the firm
- The potential cost of defending a malpractice claim, even if no damages are ultimately awarded
- The firm's assets and future earnings that could be exposed in an uninsured loss
- The potential loss of billable time and productivity resulting from a claim
- Client requirements, engagement agreements, and contractual obligations
- The firm's practice areas and corresponding risk profile

Risk Management

- Implement procedures to identify, evaluate, and resolve conflicts of interest, including cross-checking current, former, and prospective clients.
- Use a standardized client intake process to ensure consistent risk assessment and matter acceptance.
- Document the attorney-client relationship in writing through engagement letters, disengagement letters, and non-engagement letters, as appropriate.
- Maintain at least two independent calendaring/docket control systems to help prevent missed deadlines.
- Train attorneys and staff regularly on effective client communication and risk management best practices.
- Confirm significant verbal communications and advice in writing whenever possible.
- Be cautious of red-flag clients and matters, particularly those involving unrealistic expectations, fee disputes, poor communication, prior attorney turnover, or pressure to take shortcuts.

AI

- **Confidentiality & Privacy**
  - Loss of Attorney-Client Privilege
- **Hallucinations & Legal Malpractice**
  - Fabricated Case Law
- **Financial**
  - Compressed billable hours
  - Resistance to traditional fee structures
- **Ethical**
  - Failure to supervise

Risk Management for AI

Enact a Strict AI Policy

- Clear definition

Secure Vendor Contracts

- Make cure data is not being used or shared with 3rd parties

Mandate a “Real Person Rule”

- Human oversight

Update Client Engagement Agreements

- Proper disclosure

Thank you!

Have questions?

Please reach out to me directly!

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