



September Practice Management Tip Professional Liability Coverage for "Of Counsel" Attorneys

Over the past ten years, the number of lawyers who are called "of counsel" to law firms has grown exponentially. This article will address the three most common types of "of counsel" arrangements; the impact of each type of arrangement on professional liability coverage; and how to best structure professional liability insurance so that everyone is fully covered.

The Three Main Kinds of "Of Counsel" Relationships

Almost all "of counsel" relationships fall into one of these three categories:

1. Retired or semi-retired partners: a partner who is no longer active for the firm on a full-time basis may become "of counsel" rather than retire from the firm entirely.
2. Senior associates: a firm that wants to recognize an attorney's status with the firm as something more than an associate, but not yet at the partner level may classify the attorney as "of counsel."
3. Independent Outsiders: a lawyer who does legal work for the firm and (unlike lawyers in the other two categories) also performs legal work for his or her own clients and/or clients of other firms.

Implications for Professional Liability Insurance Coverage

Under almost all professional liability policies, claims arising from legal work performed by any lawyer will

" [I]ndependent outsiders will be covered only for the work they perform on behalf of the firm. The legal work that they perform for their own clients or clients of another firm will not be covered . . . "

be covered as long as the legal work is performed on behalf of the firm. This means that the work must be performed and billed in the name of the firm.

For risk management purposes, lawyers in categories (1) and (2) above are identical and are fully covered by the firm's professional liability policy since all of their legal work is performed for the firm's clients. However, independent outsiders will be covered only for the work they perform on behalf of the firm. The legal work that they perform for their own clients or clients of another firm will not be covered by the firm's professional liability policy.

Practical Tips

1. Independent Outsiders should obtain their own professional liability policies. While there may be some duplicate coverage with the firm's policy for work done for the firm's clients, the firm's policy will not cover claims arising from legal services independent outsiders perform for their own clients or for clients of other firms.

2. The firm should insist that all Independent Outsiders have their own coverage and should ask those lawyers to provide a certificate of insurance showing their current coverage on an annual basis.
3. The firm should make sure that its insurance broker knows which of its "of counsels" are in which category. Brokers can frequently negotiate for premium discounts in underwriting if the "of counsels" are working less than full-time for the firm. ♦

This month's practice management tip was provided by Uri Gutfreund, an insurance broker at Singer Nelson Charlmers. Gutfreund helps law firms navigate the complexities of professional liability and health insurance. He created The Total Protection Program® for Law Firms, a unique process designed to aggressively assist law firms in obtaining the best possible terms at each insurance renewal. Gutfreund is a also highly sought-after presenter of continuing legal education in New York. He can be reached at 212-826-9744 and uri.gutfreund@singernelson.com.