

Understanding Professional Liability Insurance

IMAGINE THE WORST, AND PREPARE FOR IT

Advice from Author of “Solo by Choice” Carolyn Elefant, Esq.

One absolute rule I have for new solos is that they must purchase malpractice insurance. In the interest of full disclosure, though, I do admit to not following my own advice during my first three years of practice! Back then, I was young and cocky, and I calculated that my potential exposure was low given my regulatory practice, my “long shot” litigation matters and criminal defense work.

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I assumed legal malpractice insurance was as costly as health insurance and probably couldn’t afford it. I had a nothing-to-lose attitude back then, figuring that if anyone sued me, I’d simply pack up my firm and walk away. I have so much invested in my practice that I am unwilling to sacrifice my firm if a client sues me.

Also, after a couple of close calls, I realize that – despite my diligence – I am only human, and capable

of mistakes that could morph into a grievance or a malpractice action. Once I understood this, the purchase of malpractice insurance to protect myself from future claims was better than berating myself for my mistakes, or worse, waking in a cold sweat in the middle of the night.

When I finally shopped around for malpractice insurance and spoke with other solo and small firm lawyers, I discovered that it was not as expensive as I had thought.


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FACTORS TO CONSIDER

BUSINESS OPPORTUNITIES A factor to consider is whether you need malpractice coverage for business opportunities. Some referral services will not refer cases to lawyers who do not carry sufficient malpractice coverage. Many times, an RFP (request for proposal) for legal services also require coverage. Even law firms and attorneys who retain lawyers for *per diem* or contract work often require some amount of malpractice coverage. **In short, malpractice insurance is a worthwhile investment economically if it allows you to take advantage of lucrative opportunities that would not otherwise be available in the absence of coverage.**

DEGREE OF EXPOSURE Quite frankly, your own assessment of your degree of malpractice exposure should not serve as the deciding factor in your decision regarding coverage. Because even though the chances of a client actually winning a malpractice action against you and collecting a judgment are probably low, it doesn’t take much for a client to initiate such an action in hopes of pressuring a quick settlement – or worse, to file a bar complaint which, if unfavorably resolved, can cause damage to your reputation and lead to a suspension. These days, many legal malpractice plans cover the cost of defense both in malpractice actions in court and, equally importantly, in grievance procedures where lawyers who are represented almost always fare better than those who participate *pro se*. **Thus, malpractice insurance buys you the peace of mind, and gives you one less thing to worry about when that client who initially seemed so reasonable starts threatening a grievance. Moreover, if your risk of exposure is low anyway, you’ll probably be able to find a relatively inexpensive coverage plan.**

PRACTICE AREAS & AFFORDABILITY Even though malpractice insurance is a good investment, cost matters when you’re just starting out. There are some practice areas where malpractice insurance can be prohibitively expensive. You might consider dropping that practice area or figuring out other ways to do it – maybe on contract basis for another firm – that will limit your exposure and the concomitant costs of coverage.

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