



MINNESOTA LAWYERS MUTUAL

INSURANCE COMPANY

PROTECTING YOUR PRACTICE IS OUR POLICY.™

New Lawyers Guide to Professional Liability Insurance

Guide for New Attorneys
Practicing in a Solo Setting

Even though malpractice insurance is a good investment, cost matters when you're just starting out. MLM's New Lawyers Program provides the protection you need at a price "new lawyers" can afford.

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New Lawyers Guide to Professional Liability Insurance

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Introduction

There are many types of insurance coverage to consider for your new law firm. The most important of which is malpractice insurance. You should have malpractice insurance in place before you begin the practice of law. The best advice we can provide is this... *do not practice law without malpractice insurance!*

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MLM's New Lawyers Program offers a policy with affordable coverage that provides new attorneys starting a solo practice with an affordable alternative to "going bare."

Go to MyLawyersMutual.com to download an application.



Understanding Professional Liability Insurance

MESSAGE FROM THE CEO ON LAWYERS CHOOSING TO BE UNINSURED

There are many reasons why a lawyer might choose to practice uninsured. Some of the more common (and most overlooked) reasons include the following: the belief that they are immune from claims because of their legal expertise; the nature of their practice (i.e., areas prone to claims activities); and the relationship with their client (they wouldn't sue me, we're friends). Then too, some lawyers believe that the threat of malpractice claims is overrated and does not justify the cost of coverage. There are those who believe that the risks are real, but feel that their practice cannot bear the cost of insurance and, amazingly, others who feel that the best defense in the event of a claim is lack of insurance, thereby making them less appealing as a "target" for contribution. Obviously, there are those who for one reason or another, are unacceptable to the insurance market and must perforce remain uninsured. Finally, there are those who probably just forget or don't take time to secure coverage.



It may be impossible to change the attitudes of lawyers who practice without insurance, but there should be no illusions about the consequences. No private practice lawyer is immune from a malpractice claim unless they represent only themselves. Superior knowledge and good work habits do not guarantee immunity. Since malpractice begins as an opinion and must later be proven as fact, demonstrating innocence can be just as expensive as indemnifying a legitimate injury. These claims really do happen and are happening more frequently.

The false thrift of going bare becomes painfully clear if a lengthy court action takes the lawyer away from their practice (thereby cutting into earnings), or if defense counsel must be paid out of pocket. A malpractice claim is never expected and virtually impossible to predict. The sharing of significant financial risk through common pooling of resources, that is, an insurance program, is still the most economical way to protect a law practice. If the premium is unaffordable, how much more so the cost of even an average malpractice claim.

In addition to protecting the practice, there is the important question of protecting the client. I'm not aware of any evidence suggesting that aggrieved parties refrain from suing their lawyer if they believe him to be uninsured. On the contrary, many disasters have befallen lawyers in just such a position. In any case, the image of a lawyer practicing in an asset-free firm with a client-be-damned attitude is hardly one to be admired or sought after and sets up negative perceptions in the public mind. Having professional liability coverage demonstrates the proper level of ethical responsibility to the client.

While we cannot completely evaluate the phenomenon of the uninsured lawyer, we sincerely hope that those currently without coverage will seriously rethink the wisdom of their position, for the sake of both lawyers and their clients.

Sincerely,

Steve Brady

Chief Executive Officer, Minnesota Lawyers Mutual

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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.

One absolute rule I have for new solos is that they must purchase malpractice insurance.

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.


myShingle.com
go solo, grow solo.

Learn more about Carolyn Elefant by visiting MyShingle.com. To date, MyShingle.com remains the most comprehensive online resource for solo and small firm lawyers with thousands of blog posts and an impressive stock of free e-books, checklists, and forms on starting and running a law firm.

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.

Reprinted with permission of Author Carolyn Elefant

Understanding Professional Liability Insurance

MALPRACTICE TRENDS

In recent years, legal malpractice insurers nationwide have seen increases in the frequency of claims. At MLM, over half of all reported claims are closed without any payment, which usually means the claims lack merit. While this is good news, the threat of a malpractice claim should be of grave concern to every practicing attorney because even claims that lack merit can be expensive to defend, and even one viable claim can have devastating financial effects on an uninsured lawyer.

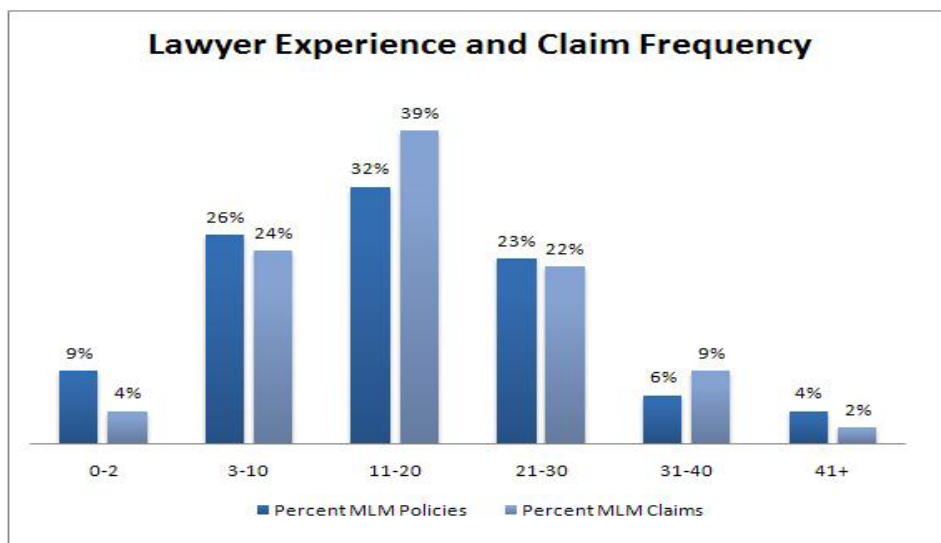
There are three reasons why a lawyer should not practice without insurance:

- To avoid the financial drain of defending claims.** Today some attorneys are ‘going bare’ (i.e., practicing without any professional liability insurance) despite an overall increase in claim frequency. The cost of defending a single claim, whether meritorious or not, can have a devastating financial impact upon a non-insured lawyer. A lawyer who is not insured can lose his non-exempt personal assets as the result of just a single claim. For example, so can an under insured lawyer.
- For the protection of the public.** As a matter of public policy – and personal professionalism – lawyers should not leave their clients unprotected in situations where an attorney’s negligence may have damaged the client.
- To protect the lawyer’s personal assets in the event of settlement or judgment.** Malpractice claims can be difficult to foresee, and can be costly whether malpractice can be proven or not. One claim can wipe out years of work in building a successful practice, as well as the personal assets of the attorney. You may never have to use a professional liability policy, but it is extremely risky not to have one.

CLAIM STATISTICS

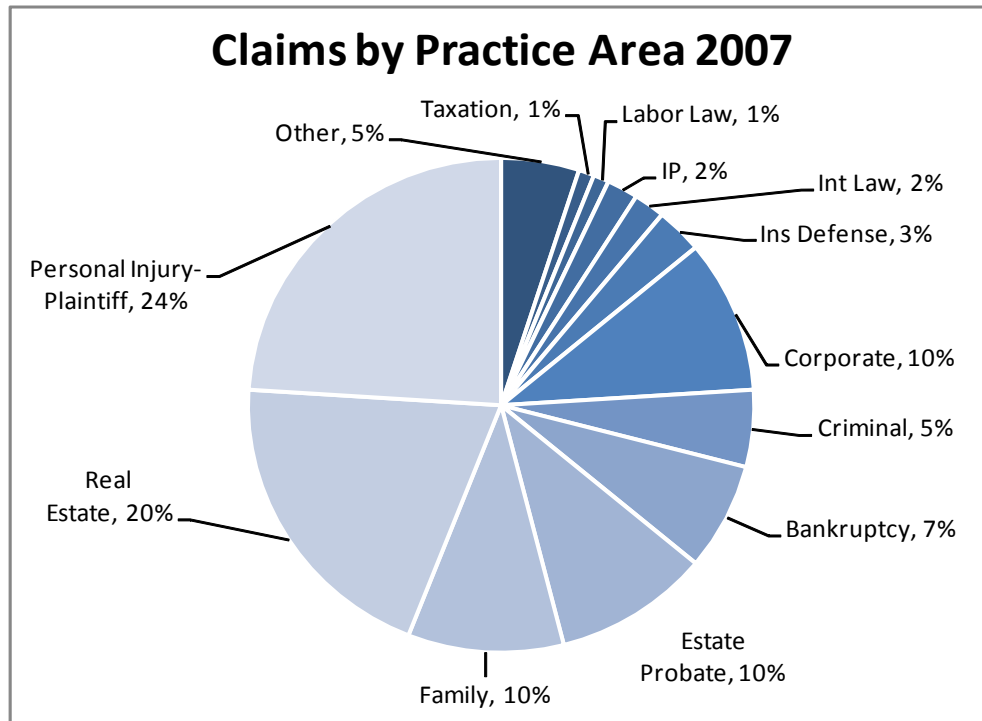
The American Bar Association’s Standing Committee on Lawyers Professional Liability publishes a quadrennial study highlighting the claims data it gathers every four years from professional liability insurers. The most recent claims trend data released as part of the ABA’s malpractice study for 2004 to 2007 was released for publication in 2008. The ABA survey includes data from approximately 40,000 claims provided by eighteen commercial malpractice carriers in the United States and Canada. The following are a few key findings from the 2008 ABA Malpractice Study:

- Projections from the ABA indicate that new lawyers can expect to face three malpractice claims over the course of their practices. At MLM, nearly 40% of all reported claims involve administrative or procedural errors, which could be all but eliminated with proper use of calendaring and file management systems.
- Statistics show that it is not brand new lawyers who bear the brunt of malpractice claims, but rather seasoned attorneys with 11-20 years of experience. This is a function of various factors, including the usual lag time (sometimes several years) between when professional services are provided and a claim is reported, and the fact that seasoned lawyers tend to take on more complex cases, which can be accompanied by greater professional risks.



(continued)

ABA statistics also show that some practice areas tend to have more reported claims than others. From a malpractice standpoint, the traditionally “riskier” practice areas include plaintiffs personal injury, real estate, and family law.



An obvious – but often overlooked – contributing factor to malpractice risk is chemical and mental health. In recent years, the bar has taken steps to address the prevalence of depression, alcoholism, and job dissatisfaction in the legal profession. Most states have organizations where attorneys can find confidential support for a variety of mental and chemical health issues. For new lawyers (as well as seasoned lawyers), being cognizant of their own needs and addressing any concerning issues are paramount to managing malpractice risk.

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Understanding Professional Liability Insurance

TIPS TO AVOID MALPRACTICE CLAIMS

According to the American Bar Association, one of the top ten legal malpractice traps is the unwillingness to believe it could happen to you. The truth is, a lot of bad lawyers get sued for legal malpractice. But so do really good lawyers, new lawyers, old lawyers, big firm lawyers, and solo practitioners. So be careful, buy insurance, and take steps to avoid claims.

1. Don't be afraid to turn down a client. The pressure to land new clients is a fact of life. However, the most important client to your practice may be the one you turn away. Frequently, lawyers sued for legal malpractice will say they knew at the outset they should not have taken on the client who sued them. Beware of clients who fired their previous counsel or who have been turned down by other lawyers. Think twice about a client who has more litigation experience than you do, or the one who has nothing good to say about lawyers or the legal system. But most importantly, run from the clients who just don't feel right. Chances are you have good instincts. Learn to trust them.

2. Don't forget the small cases. There is a case that has been sitting on the corner of your desk, the end of your credenza, or the bottom of your pile, and you just cannot bring yourself to pick it up. You tell yourself you will work on it tomorrow, or the next day, or next week, because today you must devote attention to your big cases and your big clients. This is the attitude that will get you sued. Only rarely are lawyers sued by their most important clients or on the cases where they spend a great deal of time. Almost always it is the small case or the difficult client lawyers will neglect. The truth is, there are no small, insignificant cases or transactions on your docket.

3. Use effective retention agreements. A central but often overlooked issue in legal malpractice cases is the existence and scope of the attorney-client relationship. Lawyers frequently get sued by people they never thought they represented, or by clients they know they represent but on matters they did not think they were engaged to handle. Preparing specific engagement letters can help prevent these suits, or at least they can provide strong defenses if you are sued. The engagement letter need say nothing more than this: "Thank you for retaining me to represent you in the lawsuit entitled Smith v. Jones, now pending in the Third Judicial District Court, case no. 01-00345. Although I would be happy to represent you in other matters should the need arise, this current representation will be limited to the Smith v. Jones case." Moreover, many lawyers represent clients on multiple matters. Although it may seem like a hassle at the time, preparing separate engagement letters for each new matter, and avoiding general representations such as "corporate advice" or "general business matters," could be your salvation in a legal malpractice case.

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Real Experiences

When the vehicle involved in the death of a young girl was crushed by the tow yard before it could be secured as evidence, the family sued their attorney for damages due to loss of action, claiming the lawyer's failure to act swiftly resulted in the loss of crucial evidence.

A firm was retained to represent defendants in a civil suit. The jury returned a judgment of almost \$500,000. After exhausting all appeals, the defendants sued their lawyers for failure to represent them with "reasonable care, skill and diligence."

The law firm retained to represent the wife in a divorce action a decade ago negotiated an agreement for spousal support. Five years later, the husband retired and petitioned for modification of support. The wife "discovered" that prior representation was "negligent" and sued her attorney.

4. Manage your clients' expectations. Many clients' exposure to the legal system is limited to what they see on television, which usually gives them unrealistic expectations about what you and the legal system can do for them, how long it will take to do it, and how much it will cost. Clients almost always believe their position is the correct one, and they expect to be vindicated in the courtroom or across the transaction table. Rarely do they view their legal predicament with objectivity, so they need their lawyer to explain concepts like the adversarial system, the neutral fact finder, varying interpretations of the law, competing policy concerns, inherent delays of litigation, controllable and uncontrollable expenses, and unpredictable outcomes.

5. Return your phone calls. Lawyers who get sued for legal malpractice almost invariably violate this rule. There is nothing clients resent more than being ignored by the lawyer they are paying to look out for their interests. Combined with unfulfilled expectations, unreturned phone calls make clients angry with their lawyer. A lawsuit is a predictable result.

6. Don't sit on your mistakes. Most lawyers pride themselves on fixing the mistakes of their clients, not making mistakes themselves. So when they do make mistakes – and all of us do – they naturally are embarrassed and instinctively want to prevent anyone else from knowing. But the biggest mistake of all usually is trying to hide your mistakes. Lawyer mistakes do not go away, they fester and grow. There is no need to make a public announcement, but talk to a partner or a trusted colleague for some objective advice. And most importantly, tell your client. Frequently, there is a solution to the problem, and if there is not, the last thing you want is a failure to disclose to add to a negligence claim.

7. Think twice before suing to collect unpaid fees. Being a lawyer carries an implied threat of suing anyone who crosses you. So you might get some mileage out of mentioning your occupation to an insurance representative trying to deny your coverage request, or to an auto mechanic trying to overcharge you. But throwing your legal weight around by suing clients when they fail to pay will land you in a legal malpractice suit ten out of ten times. There are times when suing your clients might be justified, just be aware of the certainty of a counterclaim and be confident you can prevail.

8. Be diligent in billing and collecting fees. The corollary to the rule against suing clients for fees is to keep your billings and collections under control so you are not tempted to sue. If you do not bill for three or four months at a time, your receivables may grow to the point where you cannot afford to walk away. The same may be true if you bill regularly, but do not collect. You do not have to work for free, and even your deadbeat clients will not expect you to. But they will take advantage of you for not billing and collecting regularly, leaving you in the awkward position of having to continue working pro bono or seeking to withdraw for non-payment, which almost assures you will not get paid without suing.

9. Write it in your calendar, and then write it in another calendar. The number one cause of legal malpractice, by an overwhelming margin, is missed deadlines. Most lawyers have a false sense that something so easy as meeting a deadline is not so hard. But the reality is that deadlines change, compete with other deadlines, and are just plain forgotten. So make a habit of writing all of your deadlines in your calendar, and then have a secretary or docket clerk make a backup calendar. And most importantly, remember to review your calendars daily.

10. Look for conflicts, not away from them. Few things look worse in a legal malpractice case than conflicts of interest. Conflicts frequently arise in non-litigation contexts, such as when the estate planning lawyer represents a trustor, trustee, and beneficiaries at the same time; when the real estate lawyer represents multiple members of a development joint venture; or when the corporate lawyer represents the buyer and the seller in a small transaction. For litigators, common conflicts traps include taking different positions on the same legal issue or representing the adversary of a former client in a factually related matter. Most potential or actual conflicts can be foreseen and resolved at the outset of a matter with an inquiry or a conflict waiver letter, which in the long run is a lot less trouble than taking a chance and getting sued.

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New Lawyers Program

FOR IMMEDIATE RELEASE

PRESS RELEASE

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Minnesota Lawyers Mutual Insurance Company Launches New Lawyers Professional Liability Program

Designed to Provide Extremely Affordable Coverage for Sole Practitioners Who Have Been Licensed for 3 Years or Less

Minneapolis MN, February 8, 2011 – Minnesota Lawyers Mutual Insurance Co. (MLM) has launched a new insurance program designed to address the professional liability coverage needs of attorneys who have been admitted three years or less in Minnesota and practice in a solo setting. The New Lawyers Program is designed to assist new-to-practice attorneys in establishing their private practice in Minnesota by providing professional liability insurance at an affordable price.

“Although malpractice insurance is a good investment, cost matters when you’re just starting out,” said Steve Brady, President and CEO of MLM. “It is the MLM’s belief that lawyers wish to carry malpractice insurance if they can find a reasonably priced policy.” The New Lawyers Program provides for two years of low preset premiums for new attorneys with no prior acts, who meet the program requirements for both years. The policy is for a sole practitioner in Minnesota and offers a limit of liability of \$200,000 per claim and \$600,000 in the aggregate with a \$1,000 deductible, an affordable option to avoid the risks associated with “going bare.”

The New Lawyers Program was born out of MLM’s tenacious desire to uphold its founding mission of providing affordable and assessable insurance to Minnesota attorneys, as well as risk management and practice management guidance and education. To that end, MLM continues to work closely with the MSBA as the endorsed lawyers’ professional liability carrier.

As the only lawyer-owned insurance company based in Minnesota, MLM has long understood the needs of the sole practitioner. MLM has partnered with thousands of new sole practitioners who have gone on to become successful seasoned lawyers. Much of the success is attributed to MLM’s services that are seen as essential for a successful practice and to reduce practice risks.

Visit MLM’s website at www.mylawyersmutual.com for additional information.

About Minnesota Lawyers Mutual Insurance Company

Founded in 1982 by members of the Minnesota State Bar, Minnesota Lawyers Mutual Insurance Company provides legal professional liability insurance and risk management services for its policyholders. MLM is committed to being an efficient, accountable and permanent practice management resource to the legal profession, exemplified by an AM Best rating of “A-” (excellent), and a consistent dividend return since 1988.

New Lawyers Program

PROGRAM AT A GLANCE

In this tough economic climate, more and more new lawyers are starting their own practice. MLM's New Lawyers Program provides a policy with a relatively low limit to give new attorneys an affordable option while avoiding the risk associated with "going bare." Visit www.mylawyersmutual.com to download an application.

POLICY:

COVERAGE

- Limits of \$200,000/\$600,000
- \$1,000 Per Claim Deductible
- No Prior Acts Coverage
- Securities Exclusion and Patent Law Exclusion Endorsements

ANNUAL PREMIUM SCHEDULE

- Low set premiums for first two years of \$250 and \$500 - after second year, you move into the regular premium rating program.

ELIGIBILITY

- Licensed three years or less from the date of first admission in Minnesota.
- You are currently a solo practitioner.
- You are discipline free.
- You have or intend to have acceptable Docket Control and Conflicts of Interest systems.
- No malpractice claims have been made against you.
- You are not aware of any facts which could reasonably result in a claim being made against you.
- Meet nominal underwriting requirements.

NEW LAWYERS PROGRAM GUARANTEES

- After the first year in the New Lawyers Program, your policy is guaranteed to be renewed for one additional year, if you still qualify. This renewal guarantee is subject to your annual compliance with the original Eligibility Requirements set forth above and any applicable underwriting guidelines. Failure to meet any one of these qualifications and guidelines may void the guarantee.

VALUE-ADDED RISK & PRACTICE MANAGEMENT SERVICES:

- **Starting a Law Practice Online Platform**
Modules guide new attorneys through the basic to successfully start their own law firm.
(LAUNCHING SPRING 2011)
- **Online Practice Tools**
Risk Management Library with hundreds of checklists, forms, and sample documents.
- **Risk Management Education**
Seminars and Webcasts related to malpractice avoidance, legal technology, and law office management.
- **Risk Management Hotline**
Personalized claim avoidance, practice management, and ethics advice provided at any time.

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New Lawyers Program

WHY MINNESOTA LAWYERS MUTUAL?

MLM got its start during troubled times. In the 1970s, professional liability insurance prices skyrocketed as a result of increasing numbers of claims and a troubled economy. At the recommendation of its Insurance for Members Committee, the Minnesota State Bar Association (MSBA) established a task force to consider the problem. The task force recommended that Minnesota follow the lead of a half-dozen other state bar groups and form a mutual insurance company.



In 1981, the MSBA authorized a drive to raise \$1.5 million of initial capital. By March 1, 1982, the capitalization goal was reached, and MLM was open for business on April 19, 1982. Many of the lawyers who led the drive still serve on MLM's board, and the task force chair, Bert Greener, was named board chair for the new company – a position he still holds to this day.

Over the last three decades, MLM has grown. The company, with an excellent staff, continues to stress high-quality service, loss prevention, and loyalty to the lawyers who are the reason for the company's existence.

We are looking ahead...

Today, our Board of Directors continues the storied tradition of those who founded this company – ensuring the legal community that MLM understands the issues lawyers face, and are going to face.

We are here to help...

Much as been accomplished in support of lawyers, but there is much more to be done. The strength of our company positions us to continue as a leader in our industry due largely to our response to the unique needs of our constituents and competitive pricing.

We welcome you...

Other legal malpractice insurance companies see you as a policyholder. Because we were founded by attorneys, we are closely aligned with your interests. At Minnesota Lawyers Mutual, you are not just a policyholder, but an owner with a stake in the company.

Learn more about Minnesota Lawyers Mutual
and its New Lawyers Program by visiting
www.mylawyersmutual.com or calling (800) 422-1370.

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New Lawyers Program

FREQUENTLY ASKED QUESTIONS

Q Why did MLM create the New Lawyers Plan?

A It is MLM's belief that lawyers wish to carry malpractice insurance if they can find a reasonably priced policy. The New Lawyers Program is designed to assist new-to-practice attorneys in establishing their private practice by providing professional liability insurance at an affordable price.

Q What additional benefits come with being a member of Minnesota Lawyers Mutual?

A As a lawyer-founded, lawyer-owned, and lawyer-led organization, we consider you to be a member of Minnesota Lawyers Mutual, not merely a policyholder. As a member, you enjoy tangible benefits, including the potential for dividend distributions and a wide array of tools and support, designed to strengthen your practice and manage risk.

Q Who is eligible to receive an award in the New Lawyers Plan?

A The following are the eligibility requirements:

- Licensed three years or less from the date of first admission in Minnesota.
- You are currently a solo practitioner.
- You are actively licensed with the Minnesota State Bar.
- You are discipline free.
- No malpractice claims have been made against you.
- You are not aware of any facts which could reasonably result in a claim being made against you.

Q How do I know when I have enough business at my new law firm to justify purchasing a lawyers' professional liability policy?

A The analysis is not really how many clients you have, but rather what is your potential exposure given your practice area, as well as your assets. You should be thinking about what a malpractice lawsuit will potentially cost you in terms of damages and, equally importantly, defense costs, and whether you want to buy protection against that risk.

Q Does this policy cover part-time work?

A This policy makes no distinction between part-time and full-time work. The premium most likely compares favorably with part-time rates offered by other carriers. It's worth mentioning, the policy makes no distinction between paid work or *pro bono* work.

Q What if I accept a position at a firm or leave private practice?

A There's no penalty for cancelling the policy midterm. We will return any unused premium to you. If there is any change in status midterm, please call us to discuss your options.

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