

# PRACTICE TIPS

## EFFECTIVE COMMUNICATIONS WITH A CLAIMS DEPARTMENT

by W. Brian Ahern, RPLU

**G**ood communication with your insurance provider's claims department can make a considerable difference in a legal malpractice defense.

Most lawyers know they need to promptly report lawsuits or demand letters (ie, actual claims) to their malpractice carrier. What about incidents or circumstances that might lead to a claim (ie, potential claims)? When should those be communicated to your insurance provider?

All legal malpractice policies allow for the reporting of potential claims. If an actual claim is subsequently made, coverage has already attached to the policy in existence at the time the potential claim was reported. But lawyers sometimes hesitate to take advantage of this aspect of their claims-made policy for fear of creating a negative claim history and higher premiums. This reluctance exists even though there is a risk of losing coverage if it is subsequently determined that a potential claim should have been reported and wasn't. So what is a conscientious lawyer to do?

Jeff Goode, J.D. is vice president of claims for XL Insurance Company's Legal Malpractice Division. According to Goode, attorneys should look at their current policy's "prior knowledge" exclusion, which typically precludes coverage for claims an insured reasonably anticipated might be made before the policy inception.

"That same language will be in next year's policy," says Goode. "When debating whether to report a potential claim, ask yourself what would happen if it turned into an actual claim during next year's policy term. Could the insurer invoke the prior knowledge exclusion to deny coverage for the claim? If you believe there is a reasonable possibility of that occurring, it is best to report the details of the potential claim, in writing, to both your insurer and your insurance broker before your existing policy expires."

Most if not all policies require a claim or potential claim to be reported in writing to the insurance company. To whom and where the claims should be reported may not be noted so make sure you have the proper contact information prior to any notice. Your correspondence should include:

- ◆ the act, error, omission or injury;
- ◆ the injury or damage which has or may result;
- ◆ the circumstances by which your firm became aware of such act, error, omission or injury.

Notification of a potential claim via a renewal application is not considered proper notice. If you ask your agent to forward the notice on your behalf, make sure you are copied on the correspondence.

Some insurance companies offer telephone help lines for reporting. You may also want to contact your insurance broker and/or your defense attorney to discuss the specific information you should include in your correspondence.

Goode notes that another benefit to communicating with your insurance company early - in addition to securing coverage for the potential claim - is that you might receive mitigation advice and counsel from your insurer's claims department. "And most insurers don't raise premiums for potential claims; only for those claims that cost them money," added Goode.



W. Brian Ahern, RPLU, is President / CEO of Ahern Insurance Brokerage, one of the largest independently owned insurance brokerage firms specializing in the insurance needs of law firms. Ahern Insurance Brokerage is the Designated Professional Liability Broker for the OCBA.

**AHERN** | INSURANCE  
BROKERAGE