

Tip of the Month

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Originally published in AttPro Ally, Fall 2016,
Issue 20



AHERN Insurance Brokerage (AHERN) is the Endorsed Professional Liability Insurance Broker for the Bar Association of San Francisco. With AHERN, BASF members have the benefit of a valued consultant and insurance advocate.

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The Scary World of Reporting a Claim

No attorney wants to have a malpractice claim made against them or have their work criticized by a client. When it happens to you, you will likely feel like your competence and worth as an attorney is being challenged. You may also feel betrayed by your client, embarrassed by the allegations, and even angry. Often because of those emotions, you may be tempted to delay or try to pretend it did not happen. On top of that, you may be unsure as to the steps you should be taking.

Taking the right steps immediately following the assertion of a claim or potential claim, can go a long way to reducing its impact, to correct the problem or even prevent a formal claim from being made. So what should you do when you believe you client might be making a claim against you?

Step One

Know what a claim or potential claim looks like. A formal claim or suit is easier to identify (and therefore harder to ignore) than a potential claim. Other expressions of dissatisfaction, or setbacks in the case, can be signs of a potential claim. Some less obvious potential claims or malpractice threats include: giving you the silent treatment by not communicating or not paying your bills; the filing of a bar complaint against you; angry calls, letters or emails; being fired; an act, error or omission by you that has prejudiced the client's position in the matter; a request to toll the statute of limitations on claims against you; or the client hiring another attorney to give a second opinion.

Step Two

Tell the appropriate individuals in the firm. Once you know there is the possibility of a claim or potential claim, it is important to tell the appropriate individuals in the firm immediately. They have a right to know about the issue and will be more objective than you regarding the situation. Also, it is likely that a claim against you will also result in a claim against the firm, so it may also be necessary for the firm to take action.

Step Three

Avoid discussing the situation with anyone who does not have a need to know. Do not send texts or emails discussing the situation. Such statements may constitute admissions against interest or discoverable evidence.

Step Four

Read your policy. Few attorneys read their insurance policy before a claim is made. It is important to understand the policy's reporting obligations, as well as what the applicable exclusions and conditions might say. Be sure you and the firm comply with all reporting requirements and make no admissions or statements to the client before involving the carrier.

Step Five

Report the claim to the firm's malpractice carrier in compliance with the policy's reporting requirements. Do not attempt self-help! The carrier's support and assistance can be invaluable in determining the appropriate next steps because they are much more experienced in malpractice claims than you are. Additionally, the failure to properly report a claim or potential claim can result in losing valuable coverage under your policy.

Step Six

If appropriate, notify the client. If the situation involves an act, error or omission by you that has prejudiced the client's position, you have an ethical obligation to inform the client. While this should be done after consultation with the carrier, don't delay this step too long. While you may be required to fully explain the situation to the client, you should not admit liability. That is not required.

Step Seven

Work with your carrier to effect claims repair. Many, many potential claims can be avoided by taking quick action to repair the damage when a problem surfaces. Some carriers are expert at claims repairs that can save you

from an embarrassing claim and your client from suffering damages. If you delay reporting the claim to your carrier, the opportunity to repair the claim can be lost.

Step Eight

Determine if there is a conflict in continuing to represent the client. If so, it is important to withdraw immediately without further prejudicing the client's position.

Step Nine

Take steps to preserve the file. If the client requests the file, be sure to keep a complete copy.

Step Ten

Cooperate with your carrier and with defense counsel hired to defend the claim. No matter how talented you are, you do not have the objectivity to defend yourself.

Having a claim or potential claim made against you can be scary. However, facing your fears by acting quickly, utilizing your carrier's expertise, and knowing the appropriate steps to take, can make your situation much less scary.