



E&O Edge

Lawyers Professional Liability Negotiating the recession

The news is replete with tips on how to successfully navigate the recession. We believe that lawyers should also be aware of the specific pitfalls this economy presents for their practice. These tips always apply, but are even more important now.

Firms are laying off associates, demoting partners and even letting partners go. If a firm has to make this difficult decision, the managing partner should take the appropriate steps to protect the firm. We are not addressing the employment law issues, such as termination documentation and procedures, change of employment status, or reduction in pay or work hours.

Keep the client informed

If an attorney leaves the firm and the firm retains his/her clients, the firm should alert the client and re-issue the engagement letter if necessary. The original engagement letter may have specified the lawyer who would do the work. If necessity dictates that a partner now has to take on work previously handled by an associate, the firm should review their billing arrangement with the client. If the decision is made to honor an agreed-upon hourly rate, the billing file should be clearly documented so no over-billing errors occur. If the change in the handling attorney dictates an increase in the rate, this should be clearly communicated to the client and a new engagement letter signed.

The firm should handle the transfer of files quickly and cleanly. The remaining attorneys may have increased workloads but they should review the files of the departed attorney promptly so that any errors or oversights can be rectified. If there are any concerns about the work product of the departed attorney, especially if he or she anticipated being

laid off, the firm should consider a full audit of the files, both for work product and file inventory.

Any lawyer who leaves the firm and takes clients should re-issue the engagement letter.

Tread carefully when taking on new clients

Larger clients who hire mega firms in the past are now more willing to hire mid-sized firms for the cost savings. While this work may be attractive, the law firm should be confident that they have the expertise and capacity to handle the work. These clients may also parcel out engagements to several firms, making coordination more problematic. It is then even more important to ask questions of the client to ascertain their other legal issues and ensure coordination. Alternatively, the firm should clearly state the parameters of the engagement and any advice given.

Law firm culture is important

It is in a firm's best interest to actively promote and maintain a culture that supports the premise that what is good for the firm is good for each member of the firm. If one attorney sees a member of the firm exercising questionable judgment or risking an error, the attorney may not want to report these observations to senior management. This is even more difficult if an associate has questions surrounding the actions of a partner. But, if one attorney is failing to follow procedures or is otherwise putting the firm at risk, a resulting claim will impact all attorneys in the firm. Net income reduces as the deductible is paid and time is spent defending the claim. The attorney who failed to report a potential issue may be called upon to testify in any claim made against the firm. Talking to internal management will be less stressful than testifying in a deposition.

Dabbling may be more trouble than it's worth

Firms that dabble in any particular area of practice (AOP) accrue 10% or less of their income from that AOP. While historically only 15% of our premium comes from dabblers, this exposure accounts for 18% of our claims by count and 21% of our losses. Conversely, specialists produce 39% of our premium income but only 25% of our claims by count and 26% of our losses. Rather than dabbling in new areas to keep income flowing, the law firm should consider an alternate client base for their proven skills. For example, expertise in real estate closings may qualify a firm to act as a closing agent on behalf of HUD. A background in employment law may prompt a firm to market to businesses trying to manage their own layoffs. If a firm wants to move into a new area of law, the attorneys should take the appropriate training and join relevant associations before taking on a caseload.

Review processes and procedures

The firm should also review their office procedures on an on-going basis, to ensure that they are adequate for the firm's AOP and client base. The firm may have set their engagement letter practice or docketing plan to a transactional AOP and if the firm takes on new, more deadline-intensive work, the procedures may not be appropriate. As an example, a firm that primarily handles real estate or wills takes on a plaintiff case with statute of limitation issues and misses an SOL date to docketing errors.

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