



# ALPS

## Practice Management Pointers

## Malpractice Insurance Applications Tips

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Underwriters tell me that many lawyers simply do not appreciate the importance of a malpractice insurance application. They share that answers to questions on some applications appear to have been hurriedly written and thus provide little to no useful information. At other times they come across applications that are sloppy and incomplete. This makes me wonder whether the person or persons who filled out these apparently rushed applications fully appreciated that an indirect message was being sent, perhaps a message that they would rather have not sent. More importantly, my suspicion is that these folks also gave little to no thought about providing additional information that might not have been asked for but which could be significant to the underwriting process and ultimately beneficial to the firm. It truly is a lost opportunity when it happens.

Yes, an insurance underwriter will review everything that a law firm provides in its application and obviously a great deal can be learned about a firm from the specific information provided. However, the way a firm treats the application process can tell an underwriter even more. When a firm has had its renewal application for 90 days but ends up not returning it until just before the reapplication deadline, is the firm telling the underwriter something about how the firm's lawyers treat critical deadlines with client files? When the underwriter calls to obtain additional information from the firm and the phone call is not promptly returned, and sometimes even multiple calls are never returned, what does that say about the firm's practice when it comes to returning phone calls to clients? What might a sloppy or incomplete application say about a firm's attention to detail in and quality control of client files? Taken together, what might all of the above examples say to an underwriter about attorney workloads at the firm? The issues raised in these questions are significant issues to a malpractice insurance underwriter as they speak to the overall risk exposure of a firm. The actions or inactions of lawyers during the underwriting process will leave an impression and impressions count with insurance carriers, just as they do with clients.

In order to set the best impression, it is imperative that you thoroughly answer all the questions in an insurance application. Explain the firm's unique situations and/or relationships. Make sure

the application and any accompanying documentation is consistent or take the time to explain any inconsistencies. For example, if your application indicates that you have three partners and two associates, but your letterhead indicates that you have five attorneys and two of-counsel attorneys, explain the discrepancy. If an answer to a question requires further explanation, that's okay. Provide a thorough response so that any concerns the underwriter might have can be alleviated upfront. Try to submit the application 45 days prior to the requested coverage date. And yes, neatness counts. Most insurers prefer typed applications simply because handwritten forms are often difficult, if not impossible, to read. Trust me. I've looked at a few that you wouldn't believe an attorney actually sent in.

One of the benefits of providing thorough answers in the insurance application comes from taking advantage of the opportunity to explain all the loss prevention measures a firm has taken. Far too often this information is missing from the application and, of particular importance, from any claims supplements. Malpractice carriers want to know the frequency with which a firm uses letters and/or other writings to confirm the existence, non-existence, and even the end of an attorney-client relationship. Effective calendaring and docket control systems are equally critical. In fact, firms that handle a significant amount of litigation should maintain three independent calendar/docket control systems. If one of these systems happens to be a computerized rules-based calendaring system, that's even better. Underwriters find comfort with such practices. If these kinds of systems are in place at your firm, take the time to report this in some detail.

If past claims are being reported on the application, detail the steps your firm has taken to prevent the reoccurrence of a claim similar to the one(s) reported on the claims supplement. Note that glib responses such as "that attorney is no longer working here" or responses which indicate that the firm has not accepted any responsibility for the claim are going to be a real concern. Be straightforward and tell the underwriter what you learned as a result of the claim as well as why something similar shouldn't ever happen again.

Most attorneys are well aware that many malpractice insurance carriers respond negatively to firms that routinely sue for fees. Fee suits do increase a firm's exposure to malpractice counterclaims. If your firm files fee suits several times a year, redesign your billing and collection practices and tell us how the new procedures will minimize the need to sue for fees in future. If you do occasionally sue for fees, detail the decision making process so that the underwriter knows how these decisions are made. There is a huge difference between suing a client every time there is a serious delinquency and having in place a committee charged with reviewing the quality of work in files where the fee has become past due as well as trying to determine whether the client has the ability to pay the past due amount. Suing for fees when the client has no ability to pay only invites trouble and underwriters know that.

Conflict systems are another concern. Underwriters are less receptive to firms that rely on memory-based conflict systems. They prefer to insure firms that use the likes of a conflict module in a software-based case management program and who couple that with a process of

conducting the conflicts check at first contact. If your firm uses a case management software system that includes a conflict-checking module, be sure to say so on the insurance application.

Finally, insurers prefer underwriting firms that take efforts to ensure that their attorneys do not dabble in cases that are outside of their individually defined practice profiles. From an insurer's perspective, there is no such thing as a simple will or a simple contract. To a carrier, such situations represent a malpractice claim waiting to happen.

Late applications, sloppy applications, and hastily completed applications are all examples of situations where relevant information has been provided, albeit unintentionally, to malpractice insurance carriers. This information can and will have an impact on the underwriter's decision-making process. Not only could it affect the decision of whether or not to underwrite a firm, but it may also affect the determination of premium amount. When it comes to insuring a risk, the more information an underwriter has the better the underwriter is going to be able to understand and correctly rate the risk. In short, the time taken to thoroughly and diligently complete your malpractice insurance application is going to be time well spent.



## Risk Management Questions?

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