The COVID-19 crisis has changed the way law is practiced. Small and mid-sized law firms need to prepare and transform in these uncertain times. There are four key areas that small firms and practitioners should focus on from a risk management perspective. The benefits of effective risk management procedures include: the avoidance of surprises, improved planning, improved information for decision making, and the enhanced reputational/personal well-being for lawyers.

Legal Malpractice

Bad things can happen to good lawyers. With that said, a legal malpractice policy protects your assets and your billable hours and provides a safety net if you make a mistake. Since a legal malpractice policy is written on a claims made and reported basis, meaning that you have to have coverage in place when the alleged act occurred and the act is reported. It’s very important to not cancel or make changes to your policy limits during this time. It may be tempting to cancel your policy in order to save money, but this decision is fraught with issues related to risking the exposure of past acts that will go uncovered.

Also, it is even more important to be insured with a strong carrier and have a robust policy form.

Legal malpractice claims have a direct correlation to the economy. When the economy is good, claims frequencies are down. When the economy is bad, claims frequencies go up. While we don’t know what lies ahead, we do know that that the current situation is unstable at best and could increase claims.

RISK MANAGEMENT TIP:
While moving coverage to secure a policy with a stronger carrier would be fine, simply going “bare” or lowering your limits would be a mistake.

Virtual Notary Work

The way we practice law is evolving almost daily during this current crisis. One new is the acceptance of virtual notary work. Essentially, notary work has moved away from needing to be done in-person, allowing the work to be done electronically on platforms such as Facetime, Zoom, Skype, etc. Typically, virtual notary work is excluded from your professional liability policy to prevent coverage for a notary that made no effort to confirm the identity of the signor. Since this is new and is in somewhat unchartered waters, some carriers are taking the position that, if the notary is in compliance with state requirements for remote notarization, the policy would respond.

RISK MANAGEMENT TIP:
Contact your Insurance Broker to see what position your carrier is taking. Get this opinion in writing!

Suing for Fees

With the current economic climate providing some unexpected challenges, attorneys may find themselves faced with clients who may not be willing and/or able to pay
their outstanding bills. This is where you need to decide what to do with regards to suing your client for unpaid legal bills.

Here are some things to think about as you evaluate this option:

1. 40%-50% of the time, a fee suit results in a counter claim for malpractice.

2. It is important to re-evaluate the reasonableness of the fees you are seeking to recover. You cannot recover excess fees and therefore you may need to reduce the amount of your fees accordingly.

RISK MANAGEMENT TIP:
Contact your Insurance Broker to see if a counterclaim for malpractice is excluded on your policy. Also, check with your broker regarding your deductible. If you are seeking to recover $5k, but your deductible is $5k, is it worth it if you are sued for malpractice?

Cyber Liability
Cyber Criminals will try to turn this crisis to their advantage. We have already seen some sophisticated malware and phishing scams come through recently.

Below are some tips for both employers and employees to prevent such scams from being successful:

EMPLOYERS
1. Require 2-factor authentication
2. Engage in regular security updates
3. Back up systems and data regularly
4. Advise employees to be wary of everything they click on
5. Use call back verification for vendor or client account changes and fund transfers for any amount above a predetermined threshold (i.e. $25K)

EMPLOYEES
1. Keep computers and other devices in a secure place
2. Log out when you are not using your computer or system
3. Have strong passwords
4. Back up/save data and change passwords regularly
5. Access corporate information with a VPN especially if you are accessing on a public network.

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For more information about USI Affinity's insurance product offerings, please contact us at 1.855.USI.0100

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