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Minimizing the Impact of COVID-19: A Menu of Ideas for Lawyers

This resource serves as a reference for law firms seeking to evaluate risk exposures associated with COVID-19. The content is not intended to represent a comprehensive listing of all actions needed to address the subject matter, but rather is a means of initiating internal discussion and self-examination. Your law practice may be different from those addressed herein, and you may wish to modify the activities and techniques noted herein to suit your individual practice and client needs. The information contained herein is not intended to establish any standard of care, or address the circumstances of any specific law firm. It is not intended to serve as legal advice appropriate for any particular factual situations, or to provide an acknowledgement that any given factual situation is covered under any CNA insurance policy. These statements do not constitute a risk management directive from CNA, nor do they constitute a binding contract. No organization or individual should act upon this information without appropriate professional advice, including advice of legal counsel, given after a thorough examination of the individual situation, encompassing a review of relevant facts, laws and regulations. CNA assumes no responsibility for the consequences of the use or nonuse of this information.

Introduction

Lawyers must be adaptable. In standard practice, lawyers will adapt to changing laws, regulations, technology, economies, clients and offices. Few attorneys were prepared to adapt to a pandemic. In today's legal environment, lawyers have been required to chart a changing course in order to provide competent legal services to their clients. The information provided here is intended to identify some of the potential effects of the pandemic on the legal profession, as well as some strategies to consider in addressing those impacts. Individual law firms should, of course, consider and evaluate the strategies noted herein and determine whether they are appropriate to their practice, including consultation with retained professionals on various topics. The highlighted circumstances created by the public health crisis are set forth below, as well as some steps that may be pursued to address these circumstances:

Law firms have transitioned to a network of home offices overnight creating susceptibility to gaps in communications.

To address this situation, law firms may consider the following steps:

- Updating clients with any changes regarding availability or contact information.
- Ensuring that physical mail is collected and answered in a timely manner notwithstanding a reduced office presence.
- Verifying that firm employees have reliable access to calendaring and communication systems.
- In the absence of a personal shredder, saving sensitive documents for later shredding at the office, rather than destroying them or recycling them at home.
- Using phone or video calls in lieu of in-person meetings to communicate with prospective clients and screen others seeking to defraud the firm.

The increased use of remote technology has placed client data at risk and produced an uptick in hacking incidents.

The following activities may help to mitigate the possible consequences of remote technology on client data:

- Adjusting data security protocols in view of the greater reliance on personal devices or home WiFi networks.
- Requiring employees to use a VPN when accessing firm servers remotely.
- In the absence of face-to-face meetings, conveying highly sensitive communications in a telephone call, rather than an email.
- Scrutinizing the security of video-conferencing tools before using them to transmit confidential client information.
- Educating firm employees on the latest phishing attacks and the importance of maintaining vigilance in a more relaxed home environment.
- If the firm is forced to downsize, considering measures to wipe client data from employee devices remotely, including instructions to return or destroy physical materials.

Some courts have extended deadlines, while others have not, and scheduling depositions and client meetings has become more difficult.

In order to alleviate scheduling complexities, law firms may wish to consider the following:

- Checking court websites routinely to monitor changes in court rules and procedures.
- Ensuring that support staff is keeping up with quickly changing deadlines through interactive engagement with staff, especially since many firms have been forced to reduce headcount.
- Notifying clients of scheduling and deadline changes in a timely manner.
- Despite increased flexibility by some judges, not assuming the extension of any deadline.

The pandemic has produced a surge of statutory and regulatory changes related to employment, tax, and landlord tenant laws, among other areas.

The strategies below may help to navigate this new legal terrain:

- Remaining abreast of changes to the law and ensuring that colleagues understand these changes.
- Maintaining regular communication with clients to provide updates and help to prevent client uncertainty from turning into fear.
- Consulting with experienced employment law counsel as integral to their plan to reopen, if the firm previously closed a physical office.

The demand for services in certain areas of practice may wane as businesses delay or abandon prior plans, and consumers become more cost-conscious.

In response to these shifts in client demand, law firms may consider the following:

- Watching for red flags indicating that a client has unrealistic expectations regarding costs or the likelihood of success.
- Resisting the temptation to dabble in unfamiliar practice areas.
- Adhering to established conflict of interest procedures and declining new business or additional work, where necessary.
- Recognizing where ethical obligations may require withdrawal, even in a lucrative engagement.

More business transactions will fail to be executed or produce adverse financial results, leaving some clients looking for someone to blame.

In order to avoid this possible exposure, firms may consider these safeguards:

- Defining the scope of the engagement letter to exclude business advice.
- Preserving contemporaneous written documentation of major client decisions in the file.
- Tempering client expectations at the outset of the representation.

Both individual and corporate clients have suffered financial harm to varying degrees due to pandemic-related shutdowns.

The ramifications of the economic environment may warrant some of the following:

- Implementing billing procedures that will address unpaid fees before they become too substantial.
- Explaining the firm's duties and expectations with respect to fees to the client in writing and within the engagement letter.
- Considering renegotiation, payment plans or partial write-offs before filing a fee suit.

Attorneys face an increased risk of becoming sick or incapacitated with little warning for weeks or longer.

To address the issues that arise due to an extended absence from the ability to perform professional services, law firms may consider the actions below:

- Designating an attorney who can provide short-term assistance to your active clients in the event of an emergency and seeking client authorizations at the outset of the representation.
- Having a plan to notify clients quickly in the event that you become unavailable.
- Keeping files organized and accessible in the event that another attorney must become involved.

Attorneys and support staff are under greater stress, increasing the risk of behavioral health or substance use issues.

Law firms should consider whether their practice would benefit from the following measures:

- Scheduling occasional one-on-one meetings with employees, especially junior employees, to verify they have what they need and are not falling behind.
- Fostering a firm culture that permits employees to address wellbeing with firm leadership without fear of stigma or termination.
- Informing firm employees of recognized external resources and organizations to help them, if needed.
- Facilitating flexible work hours, where possible, to avoid distracted, overstressed, and more error-prone employees.

Professional liability insurers anticipate a possible rise in pandemic-related legal malpractice claims.

To better understand the firm's responsibilities under its insurance policy and explore additional coverage needs, the firm may consider:

- Reviewing the firm's professional liability policy to identify potential gaps in coverage.
- Examining the firm's claim-reporting duties under the policy.
- Exploring resources and guidance provided by your insurer to help prevent claims before they arise.

Risk Control Resources

- [Lawyers Toolkit 4.0: A Guide to Managing the Attorney-Client Relationship](#)
- [Best Practices for Law Firms During a Pandemic](#)
- [Reminders and Resources for Law Firms During the COVID-19 Pandemic](#)
- [For Your Eyes Only: Securing Lawyer-Client Communications](#)
- [The Remote-Ready Law Firm: Managing the Long-Distance Relationships](#)
- [Inside the Lines: Scope Limitations and Legal Ghostwriting](#)
- [Reopening the Workplace: Employment Law Considerations](#)

For more information, please call us at 866-262-0540 or email us at lawyersrisk@cna.com