

Hiring Without a Net

Firms need to check coverage on new attorneys with old lawsuits

BY KIRK R. HALL

In a profession in which change and growth often go hand in hand, consider the possible fallout from what ought to be an auspicious beginning:

It was a real coup for the Grey law firm to bring in Janet Smith when her old firm was disbanded. But it was a real shock when a client of the old firm filed a \$10 million malpractice claim against her. She learned that neither firm's policy covered her. "How can this be possible?" Smith wondered. "Both firms always carried malpractice coverage."

Or:

The Black & White firm decided to build its real estate practice quickly, and hired three experienced practitioners from other firms. The firm made sure the three were added to its malpractice policy. No one anticipated that one of the new partners would be sued for malpractice in a matter he handled at his old firm. Even more disconcerting was the discovery that Black & White had to pay a \$50,000 deductible on the claim, and that anticipated defense costs would exhaust its policy's limits. Worse still, Black & White's malpractice carrier refused to renew for another year.

While lateral hires bring a firm portable business, they also bring the potential of portable headaches in the form of malpractice suits by clients of a prior firm.

Too often, lawyers neglect to read the fine print in their malpractice policies. Consider yourself fortunate if you can answer these questions:

- What coverage does your firm's policy provide to lateral hires?
- Does it cover prior acts at the old firm?

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- What about vicarious liability for claims against the old firm?

- Should your firm offer this type of coverage to lateral hires?

If you don't know the answers, don't assume you have sufficient coverage. Most policies provide coverage only for claims against attorneys arising out of their work for

This can be quite costly, however, if the need arises for coverage. For one thing, it means the new firm is sharing its insurance coverage and limits with the lateral hire's old firm, and is paying the entire coverage premium.

While the new firm is not assuming any of the old firm's liabilities, it may find that claims from the old firm seriously erode available insurance limits, and spoil the new firm's underwriting record with its insurer.

In some cases, the claims from the old firm could even render the hiring firm ineligible for future malpractice coverage, or could push up the renewal premium.

Deductible Dilemma

Buying an endorsement to cover a lateral hire's liabilities at an old firm poses another risk.

The insurer who extends coverage to the lateral hire will expect the new firm to take responsibility for any deductibles under the policy. Multiple claims may require multiple deductibles.

The new firm cannot simply tell the insurer to collect the deductible from the lateral hire. The deductible is an obligation of the firm itself, and the insurer will take a dim view at renewal time if the new firm has not met its financial obligations under the policy.

While a lateral hire may be eager to obtain prior-acts coverage from a new firm, the firm should think long and hard before agreeing. Why expose the new firm to the old firm's risk? The lateral hire and the old firm should purchase an extended reporting endorsement to take care of legal liabilities for past work.

While it is tempting to offer malpractice insurance coverage to lateral hires, nothing spoils the honeymoon like a malpractice claim that could jeopardize the new firm's coverage and cost it money. ■

