

No Retreat in Retirement

Liability claims may shadow lawyers who change practice status

BY KIRSTEN L. CHRISTOPHE

Every year, thousands of lawyers retire from their law firms.

Many retire in the traditional sense. For others, however, "retirement" simply means leaving a current practice setting for other work.

Whatever the nature of their retirements, lawyers changing their status should consider the professional liability ramifications of the change. In particular, lawyers should take steps to assure they will continue to be covered for claims that may arise from the practice they are leaving.

A crucial step in accomplishing this is for the departing lawyer to review the partnership agreement, professional liability insurance policy and recent claims at the firm.

Partnership agreements and insurance provisions can vary greatly from firm to firm. Often, for instance, the partnership agreement is silent about the firm's ongoing indemnity or insurance obligations to former members.

While reviewing a law firm's professional liability insurance policy, a departing lawyer should note that professional liability insurance typically is written on a "claims made" basis.

A claims-made policy covers any claims filed during the policy period, even if the events giving rise to claims occurred before a policy went into effect. This coverage encourages firms to keep liability insur-

ance in force in the future to pay for claims related to today's work.

At the same time, however, gaps may develop even in claims-made coverage, which could profoundly affect the

for instance, the lawyer may be an employee or an independent contractor. Under some policies, coverage of employees or contractors is limited or unavailable.

Retiring lawyers should carefully review policy conditions that outline key responsibilities of the firm regarding policy renewal and claims. To assure that coverage is available for a claim against a retiring lawyer, the lawyer should clarify his or her individual responsibilities to report claims.

Risky Assumptions About Firm Survival

It has become risky for a departing lawyer to assume that the firm will continue to exist and buy appropriate insurance on an ongoing basis.

In smaller firms and among solo practitioners, dissolution is a common byproduct of the retirement of a key partner. In recent years, however, dissolutions have become common among large firms, as well.

In any dissolution, it is vital that the firm and former partners maintain insurance coverage. All too frequently, however, money to pay insurance premiums or costs of an "extended reporting period" is scarce during the dissolution, and it often is unclear who in the firm has authority to make spending decisions.

While a retiring lawyer may wish to protect his or her own interest by purchasing an individual extended reporting period, this option is largely unavailable under law firm policies.

Since the time period for acting on various insurance coverage options often is limited, it is important that lawyers leaving firms meet promptly with their insurance representatives to evaluate coverage status and options.

In ideal circumstances, a "retiring" lawyer and the firm will consider indemnification and insurance issues well in advance of the status change. Doing so in consultation with appropriate insurance professionals to address unresolved issues and specific insurance needs before they arise will help the transition unfold as smoothly—and risk-free—as possible. ■

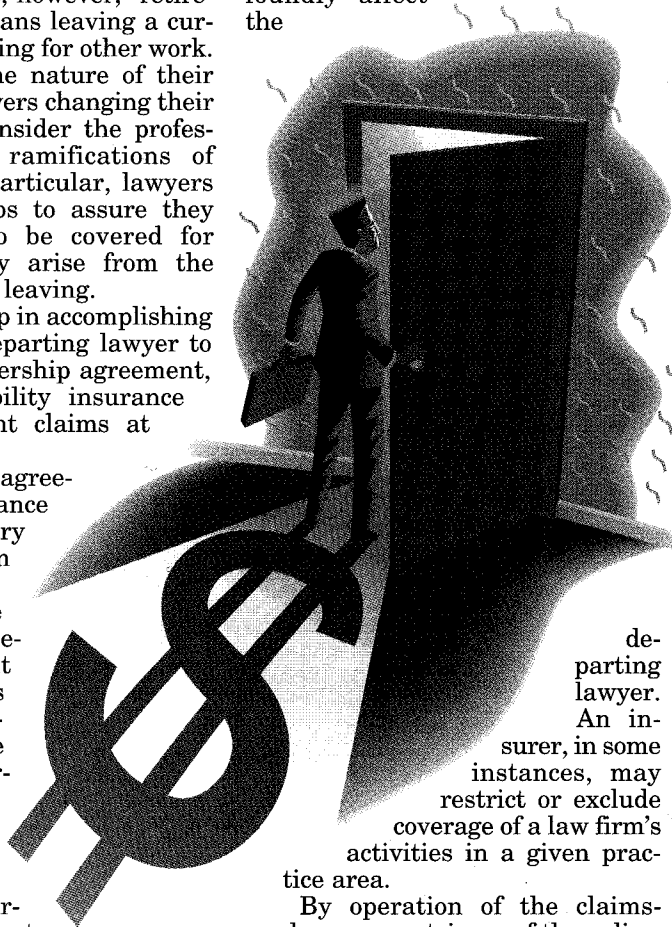
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tice area.

By operation of the claims-made coverage trigger of the policy, any exclusion added in a later year would be applied to all the work ever performed in the area, therefore eliminating coverage against claims filed in the future.

Departing lawyers also should note the coverage limits under the firm's insurance policy. Because those limits cover all claims made and reported within that policy period, there may be few or no insurance funds remaining to cover claims against retiring lawyers if the firm already has submitted many claims—or even one serious one—during that period.

Careful attention also should be paid to how the insurance policy defines "insured."

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