

Chapter Ten

Legal Malpractice Insurance

Colorado, like many states, does not require that attorneys carry professional liability insurance. However, the Colorado Supreme Court has created an incentive for attorneys to obtain liability insurance through Rule 265 of the Colorado Rules of Civil Procedure. C.R.C.P. 265 contains important protections for lawyer/owners of professional service companies as long as prescribed minimums of liability insurance are in place.

Obtaining legal malpractice insurance for any type of law practice is highly recommended. Not only does such insurance help protect the client should malpractice occur, it also diminishes exposure of your personal assets and defrays the large expense costs of defending a malpractice suit even if it is determined that no malpractice occurred. Many legal malpractice carriers have special scaled pricing programs based upon your income and years of practice. Insurance may cost much less than you anticipate and can be of critical importance should the need arise.

There are many things to consider when choosing the right insurance company and type of coverage. For a comprehensive overview, see Chapter 15 of *Lawyers' Professional Liability in Colorado*, available through Colorado Bar Association CLE (www.cle.cobar.org).

Notably, cyber liability is a growing risk that will continue to evolve and cyber insurance is becoming increasingly available as the market for it matures. Lawyers and firms are a target for hackers and cyber criminals because they have valuable, confidential client information (think trade secrets, employee data, personal information of clients such as social security numbers), trust account funds, and credit card information. Attorneys have a legal and ethical obligation to safeguard their clients' confidential and personal information. As such, it is strongly advisable that you consider asking about cyber liability coverage when investigating malpractice coverage.

APPENDIX

Resources for CBA Members

Law Practice Management

- As a service to its members, the CBA Department of Law Practice Management provides information and resources on a variety of law practice management issues, including templates on Forms2Share, a collection of materials in the Lending Library, Tech Tuesday Webinars, and monthly newsletters.
- Lawyers Professional Liability Committee: Educational programs and resources aimed at improving the quality of legal practice and avoiding malpractice claims.
- The CBA's endorsed professional liability insurance direct carrier is ALPS (www.alpsnet.com). The CBA's endorsed broker is HUB International (www.hubinternational.com/colorado/colorado-bar-association).

The Colorado Lawyer

- *Whoops – Legal Malpractice Prevention* (periodic feature)

Websites

ABA Resources

- Standing Committee on Lawyers' Professional Liability
- Colorado Directory – Professional Liability Insurance
- Risk Management Resources
- Professional Liability Insurance Information

Chapter 10

TIPS

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| 1. Do you have malpractice insurance? C.R.C.P. 265(3). | 3. Have you put in to place the risk management policies required or recommended by the insurer? |
| 2. Do you regularly review insurance coverage to ensure you have a large enough limit? | 4. Have you considered cyber liability insurance? |

Confidential Assistance

- Colorado Lawyers Assistance Program (COLAP) (<http://coloradolap.org>)
- Colorado Lawyers Helping Lawyers (CLHL) (www.clhl.org)

Authorities

Colorado Rules of Professional Conduct

- Colo. RPC 1.0(e), Informed Consent
- Colo. RPC 1.2, Scope of Representation and Allocation of Authority Between Client and Lawyer
- Colo. RPC 7.1(d), Communication re: Fees/Costs
- Colo. RPC 8.3, Reporting Professional Misconduct
- Colo. RPC 8.4, Misconduct
- Colo. RPC 8.5, Disciplinary Authority; Choice of Law

Colorado Ethics Opinions

- CBA Ethics Committee Formal Opinion 56, Settlement of Lawyer Malpractice, Withdrawal of Grievance Complaint
- CBA Ethics Committee Formal Opinion 85, Release and Settlement of Legal Malpractice Claims
- CBA Ethics Committee Formal Opinion 101, Unbundled Legal Services

American Bar Association Ethics Opinions

- Formal Ethics Opinion 07-446, Undisclosed Legal Assistance to Pro Se Litigants
- Formal Ethics Opinion 11-49, Email Communication

