



Do your firm's marketing practices expose you to vicarious liability?

While “law firm” once conjured an image either of a sole practitioner with a small storefront office or a multi-generational law firm with clearly defined partners and associates, many other firm structures now exist as lawyers opt to work from their homes, from virtual offices, and from shared accommodations. The work lawyers choose to do varies as well: instead of traditional practice, many choose to work on temporary contracts, as *locums*, or as *ad hoc* in-house or project-based counsel. With these new arrangements come new decisions about how to advertise one's services to the public. Some of those decisions can lead to unexpected liability.

Consider a group of lawyers who share space, a receptionist, and office equipment, but who consider themselves to be individual legal practices. A sign out front advertising “Main Street Law Offices” may mean one thing to the space-sharing lawyers and another entirely to the public, who may interpret the arrangement as a law firm. An honest misunderstanding about a lawyer's connection to other lawyers has the potential to lead to vicarious liability.

The risk of liability increases if lawyers' marketing materials (for example, letterhead, business cards, or a website) acknowledge a connection – even if that connection is qualified in some way. For example, a general practice might list a criminal lawyer on its website as “practising in association with the firm.” While to lawyers this might be a clear indication that the partnership will not be jointly liable for claims against the associated lawyer, the public may not understand the implications. What if the associated lawyer engaged in dishonest behaviour that caused a client to suffer a loss? Could a court find that the law firm created the opportunity – and therefore took the risk – that the associated lawyer could commit a dishonest act in its name?

Your first line of defence in avoiding these situations is the elimination of ambiguity in your connections with others. If your firm is not in a position to oversee and detect problems in another lawyer's practice, then you should not be allowing your firm name to be associated with that lawyer.

For protection from vicarious liability involving the malfeasance of a lawyer, you should also take the important step of obtaining innocent party insurance coverage.

Innocent party coverage protects against vicarious liability

LAWPRO innocent party coverage protects lawyers and their clients against the dishonest, fraudulent, criminal, or malicious acts or omissions of present or former partners, associates, and employed lawyers.¹ In other words, this coverage extends, in certain circumstances, to acts and omissions that would otherwise be excluded² from coverage because of elements of criminality, malice, or fraud.

Innocent party coverage is required for all lawyers practising in association, partnership

(including general, multi-discipline and/or combined licensee partnerships and LLP partnerships) or a law corporation with more than one lawyer. The basic Innocent Party coverage (with a premium of \$125 per lawyer) is subject to a sublimit of \$250,000 per claim/in the aggregate applicable to claim expenses, indemnity payments and/or costs of repairs. This coverage can be increased to either \$500,000 per claim/in the aggregate or \$1 million per claim/in the aggregate.

Consider whether your excess insurer covers this liability

Lawyers who increase their Innocent Party coverage to the \$1 million/\$1 million level can be confident in knowing that they have done what they can to minimize the potential coverage gap between their primary and excess coverage if faced with significant vicarious liability for a lawyer malfeasance claim. Law firms should consider making excess coverage part of their vicarious liability risk management strategy, particularly when the firm handles high-dollar-value matters. LAWPRO offers excess coverage limits from \$1 million per claim and in the aggregate all the way up to \$9 million per claim/in the aggregate.³ ■

¹ For the specific terms of Innocent Party coverage under the Policy, see Endorsement No. 5 “Innocent Party Coverage & Levy Surcharge.”

² The exclusion for dishonest, fraudulent, criminal or malicious acts or omissions is described in Part III, Exclusion (a) of the Policy.

³ Excess coverage and limit levels are individually underwritten and subject to approval.