

# Are Your Current Clients Your Biggest Exposure?

## Professional Service Provider Basics are Critical to Reducing Claim Exposure

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As professional service provider firms embark on a new year during challenging financial times and increased regulatory oversight from new rulemaking to investigation and enforcement proceedings, it is important to be reminded of fundamental, but sometimes overlooked, risk mitigation efforts which are critical to a successful business and reducing litigation exposure.

Each year most firms reflect upon their past years' financial performance and start to develop their goals for the upcoming year, beginning with how to generate more business. The focus typically revolves around considerations about how to retain the firm's current clients and methods to secure new ones. While such planning makes sense, it falls short unless the firm simultaneously undertakes a meaningful evaluation of its existing clients and develops a well thought-through process and criteria, to evaluate the acceptance of new clients to avoid the risks and costly exposure that bad clients present.

**Some questions that a professional service firm should consider when performing such an evaluation include the following:**

- Does the client timely pay or require constant chasing, discounting, etc. which takes up valuable time and resources?
- Does the client compromise the firm's valuable talent pool because the client is difficult to deal with, abusive to the service team, lacks effective communication, fails to timely provide needed information/documents, or otherwise wastes the valuable time of the firm's team which would be better spent on another client engagement?
- Do the resources dedicated to this client make sense?
- Does the client or client's industry require expertise that the firm does not have (or no longer has)?
- Does this client present unique risks based upon its practices, financial performance, management/ownership, personnel, industry, etc.?
- Has this client been the subject of regulatory inquiries and/or investigations?

- Has this client had a history of professional service provider turnover or otherwise regularly complain about services?

**“Evaluating client relationships, signed engagement agreements, and ongoing communications with the clients are professional service provider best practices, basics for running a successful business, and mitigating risk.”**

Asking such questions, amongst others, each year when evaluating existing clients and considering new ones is a fundamental first step to ensure the firm engages high-quality clients that the firm’s team takes pride in servicing while avoiding high-risk existing or new clients that may bring with them costly consequences, including fee disputes, professional liability claims, and other third-party exposure.

After a firm completes its client evaluation and decides to move forward with a professional services engagement, the firm must have a written agreement signed by the client. This agreement should include language that clearly states the terms and scope of services the firm agrees to provide, the client’s understanding of its responsibilities under that agreement, and any basis for disengagement. A separate agreement should be prepared for each client and distinct engagement – meaning it should reflect the individual or entity that is the client with a specific description of the work that will be performed (and possibly what work will not be performed as part of that service), and, if relevant, the specific year, or time period covered by the engagement. This agreement should not be overly broad or cover an undefined and/or unlimited time period.

Suppose there is a future dispute regarding the professional services provided by the firm. In that case, a signed engagement agreement will be a critical piece of evidence to defend such a claim. Absent a signed, written agreement, clients commonly allege that there was a much broader scope of services that was supposed to be performed than was agreed to by the firm and deny their responsibilities agreed to under the agreement. A signed, written agreement also provides an opportunity for the firm to incorporate terms that limit the firm’s liability. For this reason, firms should consider hiring an attorney to annually review and develop templates for their engagement and/or master service agreements, as well as to advise them on updated disclosures, e.g. data security and privacy protection policies, which may be required in the jurisdiction(s) in which they perform professional services. In some cases, firms have coverage for the costs related to proactive risk management efforts included under certain insurance policies, and so they should consult with their trusted insurance broker.

Throughout the professional service engagement, the firm needs to have ongoing, well-documented communications with its client to effectively manage that client relationship. One of the common themes of claims brought by a client against the client’s professional service provider is the alleged failure of that professional or firm to timely and clearly communicate such things as; the status of the work being performed, challenges the professional service team is encountering in performing the services resulting in unexpected delays and unanticipated costs to the client, and perceived disagreements regarding the scope of the work.

The firm has a record of its communications with the client regarding the information and records needed to timely and accurately perform the agreed upon professional services within the anticipated budget. Through ongoing communications with the client, the client knows the work being performed at any given time and develops confidence that the firm is attentive to the engagement, the firm is better able to assess client concerns early so they can be addressed before they escalate. Suppose there are any anticipated changes in the scope, timing and/or cost of the engagement, the firm and

client should discuss and document any modifications of the agreement to manage everyone's expectations, document the revised agreement, and avoid unnecessary litigation of such disputes.

Evaluation of client relationships, signed engagement agreements, and ongoing communications with the clients are professional service provider best practices basics for running a successful business, and mitigating risk.

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