

■ BUILDING THE 21st-CENTURY LAW FIRM



PLAYING SAFER

START PROTECTING YOUR FIRM FINANCIALLY BEFORE YOU OPEN IT BY JESSICA YOUNGBLOOD

One thing is certain in life and in business: No new journey or pursuit is devoid of risk. Risk, difficulty and unanticipated circumstance are almost a certainty in great personal and professional endeavors.

If you are thinking of starting your own law firm or have begun the process, you likely already have engaged in some form of risk-reward analysis and for unique reasons determined it might be the path for you. Maybe you have discovered you are an entrepreneur at heart; maybe you value being the master of your own calendar and time; or perhaps you

have dreamed up an innovative and inclusive law firm culture and are daring greatly to set out and create it. Whether your purpose is practical, time-centered or more altruistic, it is a worthwhile personal and professional pursuit and one that, by design or not, simultaneously expands the reach of legal services to our communities.

But at the end of the day, a law firm is a business, and young businesses often fail when business owners fail to engage in risk management at the outset. Many businesses and business owners do not adequately consider or plan for unanticipated financial loss (or overspending). Despite doing all the right things otherwise, they quite simply run out of cash or capital to keep the firm or business going.

Risk management involves protection from certain unanticipated expenses while also having a source of funds available in the event of some type of financial loss. The latter might be addressed by a first step in risk management, self-insuring, which essentially means saving three months to one year of personal and business expenses before you start your practice. In reality, this is a difficult-to-impossible task for most.

Insurance, though, is an invaluable risk-management tool and one you should explore as you begin your practice. If you are starting out, it's also a more cost-effective and realistic way to engage in risk management from the beginning.

Here are a handful of insurance tools you should consider heavily when starting your firm. Some are necessary at your firm's inception, while others should simply remain on your mind and be explored further as your firm evolves.

TOOL 1: PROFESSIONAL LIABILITY

Obtaining professional liability insurance, aka malpractice insurance, is not a thrilling task to think about while you are getting excited about the design of your firm website or the amazing new client software you just tested. It is, however, a basic risk-management tool a law firm should have in place before you begin practicing.

Professional liability insurance covers

legal liability that arises from your delivery of legal services. It might not seem necessary at first, and some practitioners might think they are not at risk of a claim either because of the type of clients they serve or their practice area. But professional liability insurance, like most insurance, is a risk-management tool you might not think you need—until you do. It is the layer of liability protection most intimately tied to the practice you are working hard to build and the clients you are serving. As such, it should be considered an essential.

How do you obtain professional liability insurance? If you are like me, you will ask a colleague or that friend of a friend who went solo. That process can bear fruit, but keep in mind that you will have many tasks in starting your practice. In general, it can be wise to outsource as many of those tasks as is practicable.

Using an insurance brokerage company is invaluable. It can compare rates for you and, perhaps most importantly if you are starting out, the company will be in the know on specialty rates given for new attorneys in their first year or two of practice. Most state bar associations can provide a recommendation on a brokerage company.

A final note on malpractice insurance: Some types of insurance are required by law—automobile insurance, for example. Professional

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liability insurance might or might not be required by your state bar. But in most states, such as California, attorneys are at least required to inform a client in writing at the time of engagement whether the attorney carries a policy.

TOOL 2: HEALTH

You cannot be your best self and the best advocate for your clients if you are not healthy. Healthy means taking care of yourself mentally and physically. But it also means having peace of mind that you have access to quality, affordable health care should you become sick.

Health insurance is a sizable expense for almost anyone, and when you first start your practice, cash flow might be your principal hurdle. Speaking from recent experience, I can tell you it is worth prioritizing.

Having quality health insurance in place can set your mind at ease, and knowing you will be cared for if you become sick will free your professional brain space.

As a risk-management tool, a health insurance policy removes some uncertainty for potential expenses in that you will likely have some idea of the maximum you will pay out of pocket. Whether it's a catastrophic plan or a PPO plan, a health insurance policy turns a potentially unexpected or unknown personal and business cost into an expense you can plan for based on the particulars of your policy.

TOOL 3: DISABILITY

If you're starting a law firm, chances are you are the entire firm. So what happens to your business if you become sick, disabled or otherwise unable to work? Even if you engage in the self-insuring discussed earlier, there is a chance you'll have nothing to come back to if a surgery or illness puts you on the sidelines beyond the time frame for which you've saved. Disability insurance is a cost-effective way to transfer risk when you don't have the capital or time to self-insure via a personal savings plan. It's then a risk-management tool that replaces lost income if you're sidelined.

There are various kinds of disability policies you might consider depending on your situation. One specific type is disability overhead insurance, which pays your business overhead if you are unable to work as a key employee. You should consult an insurance professional to address your individual circumstance and find what is fitting for you.

When choosing a company or provider for a disability policy, keep in mind that not all companies, contracts and rates are created equal. Do your research, and enlist some help.

There's good news for attorneys—even new ones or those finishing law school: Although most companies require proof of income to establish particular amounts of coverage, some will waive this requirement or provide lower rates for specialty-degreed professionals such as lawyers.

TOOL 4: LIFE

Life insurance is a critical personal planning tool. In the familial context, it is often the primary and largest source of funds used to care for our families when we die. Typically, it's also most accessible and efficiently distributed upon the death of the policyholder and provides liquidity to pay expenses and debts and care for our families. When starting your own firm, life insurance might similarly be a critical tool for the continued care of your business, business partners and family should something happen to you.

If you have any form of shared debt heading into starting your firm, you will want to consider life insurance as a tool for paying that debt upon your death. Shared debt might include your law school loans if a parent or spouse co-signed on your agreement. In that case, life insurance can be used so that your co-signer is not left with the loan balance.

Shared debt also might mean a business partnership if you are starting a law firm with others. This is a topic to be explored in-depth elsewhere. But in sum, if you have a partner or partners, you want to consider a buy-sell agreement. There are many ways to structure these agreements. But the important thing to note briefly in

this context is that life insurance can be used to fund buy-sell agreements and can generally be leveraged as your firm develops.

There are various types of life insurance. You might be most familiar with term life insurance, whole or permanent insurance, and universal. Opinions vary about the best type of insurance to buy. You should consult an insurance professional on what is best for you, but it likely comes down to your goals and budget.

Permanent insurance advocates argue it can be used to protect your family while you build equity in your firm, among other benefits. Northwestern Mutual, New York Life and MassMutual have a strong track record relative to the industry as it relates to permanent insurance.

But for most attorneys starting out, a term policy is an inexpensive way to protect yourself, your partners and family. Again, you should consult an insurance professional to discuss these differences and make the best choice.

FLEXIBILITY FOR THE UNEXPECTED

Additional risk-management tools include business structures that reduce or eliminate personal liability,

umbrella insurance policies to cover office property in the event of damage or theft, and various insurance types for potential future employees.

If you talk to anyone who has recently set out to start a law practice, I suspect you will hear stories of trial and error and receive advice on remaining flexible as times change and your practice evolves. Changes in the delivery of legal services come to mind, such as billing strategies that are easier for clients and the use of technology. But I think flexibility also applies to our thinking about managing the unexpected or unanticipated.

Unanticipated expenses can be crippling to your new practice. Insurance such as the types discussed here are tools you can use to ensure that while you are doing all the right things—pursuing the highest-level competence in your practice, networking, using legal tech tools, marketing on social media—your hard work, dedication to your practice and commitment to your clients remain at the forefront in the presence of the unexpected. ■

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