WHAT EVERY LAWYER IS TERRIBLE AT, EXCEPT YOU. RIGHT?

UNDERSTANDING THE FILE DOCUMENTATION PROBLEM

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Table of Contents

If You Failed to Document It, It Never Happened

Please, can we just acknowledge that lawyers as a group are terrible when it comes to properly and thoroughly documenting their files! Of course, not you, but all the other lawyers out there sure are. You wouldn't believe how bad it can get. I say this because with almost every claim we handle, we have to deal with the lack of documentation of something. And I can assure you that at times a poorly documented file can become a very serious problem. Think about it. The fallout is we may now be forced to live with the reality that a word against word dispute between a lawyer and his or her client is in play and that rarely ends well for the lawyer. Here's just one story that highlights the problem.

Lawyer was retained by a client for the purpose of defending him in a contract dispute. No fee agreement or engagement letter was ever drafted. Lawyer prepared and filed an answer to the complaint that simply denied the allegations. There were no paragraphs specifically identified as affirmative defenses or a counterclaim, in part due to the fact there was no copy of the subject contract in the lawyer's possession. The matter eventually ended up in early mediation. Lawyer failed to draft and submit a mediation statement based upon a belief that the issues were simple and doing so would not have been cost effective. The matter was settled at mediation. The agreement provided client would sign a promissory note secured with a confession of judgment. Lawyer recalls telling client that this was not a favorable settlement for him but client decided to agree to it anyway due to the potential costs of going to trial coupled with the risk of an adverse verdict. In other words, client just wanted to put it all behind him. Lawyer drafted and sent to the client the final documents for signature. There was no cover letter explaining the documents or setting forth the client's obligations under them. Client never signed the documents. Instead client hired another lawyer who renegotiated the settlement for slightly better terms. Client refused to pay the bill and lawyer turned the bill over to a collection agency. Client sued for malpractice.

There are all kinds of documentation missteps in the above example but there's an even bigger problem. In this situation there were no notes of any kind in the lawyer's file. There was nothing documenting the lawyers thinking, no record of what was communicated, no record of the decision-making process. Apparently, the staff person responsible for scanning closed files and shredding the original file once scanning was complete was never instructed to scan and preserve all attorney notes. Now that's the real problem.

Here at ALPS, we hear all the excuses when it comes to the reason why a firm's documentation policies are not as thorough as they perhaps should be. "That step isn't necessary," "It takes too much time away from important work," "We didn't think keeping that was necessary", "There are too many others things we have to do," "The client would be offended if we did that," and "We were trying to keep the costs down" are commonly

shared. That's all well and good until someone questions what you did or why you did it. Memories are short, yours included. Never forget the following. If you didn't document it, it wasn't said or it didn't happen. That's how it often plays out in our world.

Yes, while the basics such as documenting scope of representation, who and who isn't a client, and that representation has ended are vitally important, proper file documentation needs to go much further. The ultimate goal is to have every lawyer commit to creating a thorough written record of the advice given and the decision-making process in every firm file coupled with a firm wide policy that mandates these records be preserved for the life of each file. With this in mind, here are a few examples of documentation traps that if not recognized and properly managed could place you in a situation not unlike the one set forth above.

The first trap involves the client who wants to save a little green. It's a trap because there may be unintended consequences that the client hasn't thought through. If a client is cost conscious to such a degree that limitations are being placed on your scope of representation (e.g. taking shortcuts such as having you rely on documents prepared by others, severely limiting the amount of authorized research or discovery, not wanting to pay to have assets valued, not wanting to hire an expert, etc.), you must document that this client has been informed of the legal ramifications of the limitations being placed on your representation as well as the reasons why this client is making such a decision. Here's why. If this client is eventually harmed by his desire to save a little money, he will turn to you and say "Why didn't you tell me that could happen? If I had only known I would have ponied up."

In a similar vein, if your client refuses to follow your legal advice, it is **essential** that you document the client has been informed of why you made your recommendation, the benefits of proceeding according to your advice, and the potential legal ramifications that might occur by not following your advice. Of course, don't forget to also document the client's stated reasons for making the decision to ignore your advice.

The next trap underscores one of the learnings from the story above. When closing a file, make certain that items like attorney notes, drafts of documents, memos, billing statements, and all substantive email exchanged are preserved because they serve as documentation of the work done, advice given, and the decision-making process. Again, these documents should be maintained for the life of the closed file. Pay particular attention to email. All substantive email should be captured and preserved with the relevant file. I have visited too many firms where this isn't the case, and frankly, that's asking for trouble.

Finally, don't get caught in the comfort trap. Many attorneys thoroughly document the files of "problem clients" yet remain slack in the documentation of files with their longstanding "good clients." More often than not, this is due to a level of comfort that has developed with longstanding clients. Be careful because too much comfort can cloud one's perception of what needs to be documented. Understand that problem clients are not the only clients who sue. Take whatever time is necessary to thoroughly document all files throughout the course of representation. The peace of mind that follows will be much better than the feeling of regret for not having done so should a claim ever arise, particularly one brought by a long-term good client.

This comfort trap also arises in another situation you should keep in mind. In short, never forget that you don't get a pass when doing a legal favor for a friend or family member. Treat this matter the same as you would if you were going to charge a paying client for the same work. Deadlines need to be calendared, conflict checks need to occur, phone calls need to be documented, etc. Friends and family due sue when things don't turn out the way they expected; and when they do, if you happen to have no documentation of the advice given and the decision-making process, you're about to learn a hard lesson just like the lawyer in our story above did.

Back to the Basics – Documenting Scope

I know lawyers get tired of hearing it and risk folk like me get tired of always having to say it; but there is real value in documenting scope of representation on every new matter. Please note that I did not say with every new client, I said with every new matter. By saying this, I don't mean to suggest that every time a call comes in from some longstanding client that you, as their lawyer, should shoot off a new eight-page contract or formal engagement letter. By no means. I am simply suggesting that anytime a new file is opened for a client, new or longstanding, it's worth taking a few moments to document the scope of representation on that new matter.

Many lawyers respond to this advice by letting me know they have no intention of sending engagement letters to their longstanding and/or well-known clients. They argue that doing so would be too formal and would detract from the attorney-client relationship. I could buy into this rationale if these folks never sued their lawyers. Unfortunately, longstanding clients, life-long friends, and even family members do sue. In fact, some of our largest losses have come from malpractice claims brought by such clients.

Here's the spin I counter with. There is no rule that requires every engagement letter be some lengthy contract full of legalese. A simple thank-you note or confirming

email indicating the usual fees will be charged along with a reference to the nature and scope of the work you're agreeing to be responsible for can suffice.

Upon finding I didn't buy into the first excuse; this next argument is often made. With flat fee in and out work, for example a simple transaction, more time would be spent drafting and sending an engagement letter than is warranted. After all, the work itself is usually completed within a month and often sooner. In response, it is uncanny to note the number of times that a planned one-month transaction ended up taking far longer. Unforeseen complications abound, particularly in repetitive transactions such as real estate closings in an area where many transfers are taking place.

Of course, we also need to recognize that memories can be short, including our own. Who wants to be in a dispute with a client over what you were or weren't asked to do? When this type of dispute arises, few clients remember saying they only wanted to pay you to do certain tasks and not every possible action that might have been indicated. Again, a short letter or confirming email can do wonders. This documentation not only confirms your understanding of what the client's needs are, thus avoiding the running with assumptions misstep, but can even be an opportunity to ask if there is anything else you might be able to assist the client with. After all, what harm is there in asking for additional work?

Given what we see in claims coupled with more and more lawyers routinely agreeing to limited scope representation, I would also encourage you to consider documenting what you are not going to do. For example, if there happens to be a workmans compensation component to a personal injury claim and you have no intention of handling that piece, put it in writing! The same could be said for those of you who handle divorces or obtain large settlements of any type but also have no intention of advising those clients as to any tax ramifications that might arise. If you are only being retained to provide a second opinion, document that you have no obligation to file suit on the client's behalf. It's all about documenting that the client was made aware of what you will and will not be doing. Further, where called for, you might also consider documenting that you advised these clients to seek the services of someone who can assist them on any issues you won't be addressing.

While documenting scope of representation up front is critically important, it is equally import to document the conclusion of representation. Just as with engagement letters, I continue to find the use of a letter of closure varies greatly firm to firm as well as between lawyers within the same firm. The excuses I often hear include statements along the lines of "in our firm we do a lot of flat fee in and out kinds of things and the effort

simply isn't worth it," "I'm not about to say good-bye get out of here, particularly to my repeat clients," or "these matters never really close." Honestly, I don't buy into any of them.

Let's start with the basics. The purpose of a closure letter is to confirm your representation has ended. From this perspective, I can understand why some might view these letters as more of a good-bye, get out of here statement and thus don't wish to use them; but consider this. Closure letters can be a powerful marketing tool when placed in a different light. Regardless of whether the client is an in and out flat fee client or a long-term repeat client, the client has honored you by entrusting their current legal matter with you. Why not acknowledge that and say thanks? A simple thank you note along the lines of the following can do wonders in terms of repeat work and referrals.

> *This concludes our representation of you in this matter. We hope that you found the quality of our work to be exemplary and we look forward to working with you in the future if and when the need ever arises. Thank you for allowing us to be of service. It has been our pleasure.*

If other matters remain open for the client, the letter can be modified accordingly. Instead of saying "we look forward to working with you in the future," you might say "we'll be in touch next week in regard to the Johnson matter." Write to your audience, and yes, it's fine to have a few standard letters developed for various practice areas as long as lawyers take a minute or two to personalize the final letter whenever a standard template is used.

Why not also use a closure letter to document you have cut off unintended reliances? As lawyers, we often view flat fee in and out work as just that. Clients, however, may see it differently. They may feel they have finally found their family attorney or their business lawyer. If you don't wish to have these folks mistakenly believe you will look out for their interests on a going forward basis, send a thank you letter. Consider the simple will. If you don't wish to take on the responsibility of informing everyone you've done a will for that the law has changed, cut off the possibility of that kind of unintended reliance. A statement inserted into your thank you letter along the lines of "Here are your wills, they should be reviewed every 3 to 5 years because laws do change" can help solve that problem in a non-dismissive way. The same would hold true for small business formations, particularly when you make the decision to hold the corporate books for these clients in the hopes this will bring about additional work in the future. You don't get something for nothing when it comes to holding on to the corporate books of your clients because some will interpret your doing so as implying they can rely on you to continue to look out for their interests when that's not what you intended.

A closure letter is also the perfect place to document final instructions to your clients. Even after you've completed your work, there may be times where a task or two remains for a client to complete. What might happen if a client fails to do that task or does it incorrectly? I believe lawyers usually do a pretty decent job of informing their clients about any remaining tasks that a client must take care of. Unfortunately, lawyers don't always document those instructions. This is why tax attorneys regularly write final instructions as to where to sign, where to send, what amount to pay, and by what date these steps must be taken in some type of closure letter. After all, they don't want to pay the interest and penalties after a client, who has just missed a tax deadline, says "Why didn't you tell me there'd be consequences if I missed that deadline?"

Two of the more significant benefits of a letter of closure concern conflicts of interest and the doctrine of continuous representation. In terms of conflicts, an interesting question that arises from time to time is when does a current client become a past client for conflict resolution purposes? The temptation is to rationalize that the passage of time coupled with a bright line gets you there. After all, doesn't the fact that the deed was delivered four months ago, the settlement proceeds were disbursed last year, the judge signed the final order three years ago, or the contract was signed over five years ago mean that these various matters were concluded and all of these clients are now past clients? Our conflict rules don't speak of bright lines or the passage of time as being determinative. Keep it simple. For conflict resolution purposes, once someone becomes a current client, they are always a current client unless and until you clearly document otherwise. This is typically done in a closure letter that clearly states something along the lines of "this concludes our representation of you in this matter." In fact, this is the reason why conflict savvy firms keep all letters of closure even after destroying the related file years after closing it. The closure letter is part of the conflict database because it documents who is a current client and who is a past client.

The doctrine of continuous representation and its tolling of the statute of limitations in malpractice cases can also be a problem. Losses have been paid on claims where the work was done 20, 30, and even 40 years ago. Here is an example of how this can happen. A firm has represented a long-term client for years. The work has always focused on oil and gas leases and at this point the number of leases the firm has been involved with numbers well over 40. Unfortunately closure letters were never sent because they were viewed as offensive. The lawyers feared that they would be received as good-bye, get out of here letters. Eventually a serious problem arose on one of the older matters and the client sued. The lawyers wanted to argue the subject file was closed years ago; but of course, there was no documentation of that. Due to the ongoing representation coupled with the failure to formally close any of this long-term client's past files, an argument was made that the running of the statute of limitations date was tolled and a loss was eventually paid. If this

firm had simply taken the time to send a thank you letter documenting the work on each specific lease had been completed and the file was being closed, the outcome could have been very different based upon an argument that the closure letter started the SOL clock running and the window of opportunity to file suit had long since passed.

Finally, sometimes I'll hear the time it takes to write closure letters simply isn't justified from a business perspective. Yes, there may be times were a more formal letter is called for but, again, remember to write to your audience. For some clients a simple "thanks for stopping by" email may suffice. And again, the task can also be made much more efficient by developing a few templates for various practice areas. It's going to be much easier to customize a basic standard letter than create something new each and every time.

All of this speaks to the need to play it safe when it comes to documenting scope of representation. Clients are far less able to allege that their understanding of scope of representation was far different than what yours was. For this reason alone, the time spent documenting scope at the beginning and at the end of representation is well worth it. Try to get into a regular and consistent practice of doing so because claims attorneys will look for these types of documents in every claim file that comes in. They are that important.

Effective Communication – It's All About Details and Documentation

Some might be surprised to find a client communication discussion inserted into a program about file documentation; but if you stop to think about it, it makes perfect sense. Properly documented files not only contain a record of the advice given and the decision-making process, they also document why the advice was given and what information each and every decision was based upon. Thus, turning our focus toward what an attorney's communication obligations are under the Rules of Professional Conduct helps to further clarify what lawyers should be documenting.

ABA MRPC Rule 1.4 Communication seems clear on its face. Attorneys are to keep clients reasonably informed about the status of their matters as well as to promptly comply with reasonable requests for information. Attorneys are to also explain a matter to the extent reasonably necessary to permit all clients to make informed decisions regarding the representation. Maybe I'm just not seeing it, but all this seems rather straight forward to me. If it were that simple, however, why do attorneys continue to face disciplinary complaints and malpractice claims in the numbers that they do for simply failing to communicate?

I have found it helpful to analyze Rule 1.4 from a slightly different perspective than what's commonly done, which is to take it at face value and focus on what needs to be

communicated and when. We're often told of the importance of returning phone calls in a timely fashion, forwarding copies of all relevant documents, providing regular and detailed billing, and personally visiting with the client to explain the status of a matter sufficient to allow the client to make informed decisions when deemed necessary. While important, I would like to come at the rule from the perspective of who gets to decide what.

Beyond what is set forth above, Rule 1.4 also states that an attorney shall inform the client of any decision or circumstance that requires the client's informed consent under the Rules. This brings Rule 1.2 Scope of Representation and the conflict rules into play. In addition, the Rule 1.4 tells us that an attorney is to reasonably consult with the client about the means by which *the client's objectives* are to be accomplished. For me, this language shifts the emphasis of the rule. Rule 1.4 isn't just about what an attorney thinks a client needs to know. It's also stating that an attorney is to communicate all that a client reasonably expects to be told throughout the course of representation. There is real value in shifting the focus from what an attorney thinks should be shared and moving it toward what a client would reasonably expect his attorney to share.

With this in mind, what are the ramifications of Rule 1.4 day to day? Certainly, promptly returning phones calls, timely responding to client requests for information, forwarding copies of documents, and the regular sending of detailed bills are a given. But there is more. An attorney should keep clients informed of <u>all</u> court dates, <u>all</u> filings, and <u>all</u> offers to settle or mediate. Also, don't overlook telling clients about any changes to your contact information such as a change in your address, phone number, or email. Yes, perhaps a shift in perspective wasn't necessary to develop this list thus far; but I will share that many attorneys regularly struggle with following through on just these basics. Typical rationalizations or excuses include the client doesn't really need to be bothered with this, I know what my client will say or decide anyway, I don't have the time to tell them, the client doesn't want to be billed for the time it will take, etc. In short, attorneys start to run with assumptions and rationalizations when it comes to the basics of effective communication and this can be a dangerous play.

And how might this list of suggested communication best practices be expanded? Consider scope of representation. As an attorney being hired to handle litigation for a financial institution, it is easy to understand how one might focus solely on the litigation. On the other hand, the client who has hired the attorney may be expecting their attorney to see the "big picture" and keep them informed about everything in play to include issue spotting. What if there is a regulatory reporting and/or compliance issue peripheral to the litigation? If the attorney is not up to handling the related issue, she must say so because the client will often reasonably expect their attorney to not only issue spot but to take care of the related matter or at least inform them of anything that the attorney is not competent

to or perhaps prepared to handle so that appropriate attention can be given to that peripheral issue. This is one reason why documenting scope of representation is critically important with all clients. Again, it is all about considering what clients would reasonably expect to be told.

So now we can expand our list of ramifications to include the following. Clients should be told what the scope of representation is and also what it isn't; they should be informed of their rights, especially in criminal matters; the ramifications of any actual or potential conflict issues should be fully explained to clients prior to their agreeing to representation; and client permission should be obtained for granting extensions of time to adverse parties, stipulating to evidence or testimony, agreeing to continuances, and for making and/or rejecting settlement offers. Clients expect to be told when their matter has concluded and what, if anything, they must yet do. Whether through inability or oversight, clients must also be informed of a failure to act on the client's matter or that their case has been dismissed. Clients do reasonably expect to be informed about any and all of the above whether it's good news or bad.

When thinking about communication, this shift in perspective helps to keep the emphasis on your clients' expectations. Remember it is you who is in their employ and they are the ones who get to make many of the important decisions. This reality does not in any way, shape or form minimize your role as the attorney. In fact, I believe this perspective helps to elevate your role. Consider the word "counselor" in light of Rule 1.4 and ask yourself what might that word mean in daily practice? For me it means that an attorney is to advise the client about the legal and practical aspects of any given matter. She is to identify and evaluate alternative solutions pointing out the positive and negatives of each. The goal is to enable the client "…to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued." (*See Comment 5 to Rule 1.4 of the ABA Model Rules.)*

This intended outcome does require that you approach communication from the client's perspective. With all clients, ask yourself what does the client need to know to be able to make intelligent decisions? As the attorney, if this question is never asked and answered with every client, you are taking an unnecessary risk that can and will at times lead to disastrous outcomes in the malpractice and disciplinary arenas.

How far should one run with this? The answer might surprise you. For example, assume you have taken on a regular run-of-the- mill divorce. Should you discuss the option of conducting electronic data discovery with your new client? A number of attorneys simply never raise the issue. Some don't see the need. Some see it as cost prohibitive, and

some simply have no idea how to do it and/or no intention of ever going there in their own practice.

Now focus on the client, haven't these attorneys actually made a decision that properly belongs to the client? I would argue that indeed they have. In fact, we have reached a time where a follow-up attorney, hired to review a file of one of these attorneys after their client experienced an eventual unintended consequence from that attorney's failure to discuss the option of electronic data discovery, may tell the client not only does she view the situation as a failure to communicate but there may also be a viable malpractice claim here. Consider yourself forewarned.

I can't create a list of everything that an attorney should tell a client. I can only give examples of things to think about and a perspective from which to begin to address the issue. What clients expect to be told will vary with every client and every matter. Talk with your clients and try to determine their expectations from the outset. The bottom line is clients do expect to be fully informed and attorneys have an ethical obligation to meet that expectation. Here's the kicker, however. Your communication efforts must be handled in a way that seeks to assure that the client understands and comprehends all that is being communicated about all that must be decided. Forwarding copies just doesn't cut it.

Of course, your communication efforts can be all for naught if there is no contemporaneously made documentation of what was communicated by both you and your clients. This is why I need to continue to underscore the importance of documenting any and all advice given coupled with creating a record of the decision-making process. Always note what information was shared with you that you based your advice upon and explain why you gave the advice you gave. Also make sure you document what a client's reasons were for making any decision made, especially if the decision was not entirely in line with your own advice.

A Few File Documentation Tips

Hopefully it is becoming clear that insufficient documentation makes defending a malpractice claim far more difficult than it would otherwise be. And while creating and enforcing a mandatory file documentation policy can be a great risk management tool, truth be told, the implementation of a few simple office procedures can make a world of difference. Here are a few practice tips to help get you started:

- ✓ Maintain a separate file for all documents prepared and received by each lawyer for every client matter and keep those files current. Daily filing procedures help to

ensure that current information is in hand when advice is being given or decisions are being made.

- ✓ Always have a written fee agreement. Always.

- ✓ Prepare and send detailed billing statements on a monthly basis unless the client has specifically requested otherwise. This can be a great way to document the work you have done for the client as well as why. Note, however, that a billing entry such as "Research - Ten hours" is unacceptable. An entry along the lines of "Ten hours researching state case law on piercing the corporate veil" is going to be the better approach.

- ✓ Maintain a phone log of incoming and outgoing calls. Substantive conversations should be documented in the file, including important voicemail messages. Send a letter or email to the client confirming your understanding of significant decisions made over the phone or by voicemail.

- ✓ Document in writing all co-counsel and local counsel agreements to include setting forth the responsibilities of each attorney. This will be particularly important if your role is to be limited to any degree. Consider copying in the client to make certain that the client is aware of each attorney's role and responsibilities.

- ✓ When representing multiple parties, obtain written waivers from all parties documenting that everyone has been informed of the legal ramifications to them by their agreeing to move forward with the conflict in play. In addition, document that all parties have been advised to seek outside counsel as to the advisability of proceeding with the conflict in play.

- ✓ Establish a system for checking the accuracy and content of all outgoing documents, such as letters, substantive email, briefs, contracts, motions, and most importantly, opinion letters. The system should include provisions for crosschecking by more than one person.

- ✓ Archive all substantive email electronically or in hard copy. It is too easy to alter email and you must be able to provide copies of your version of the exchange should altered email be submitted in support of an allegation of malpractice.

- ✓ If the client is cost conscious to such a degree that you have concerns about the ramifications of the limitations the client is placing on your scope of representation (e.g. taking shortcuts such as having you rely on documents prepared by others,

severely limiting the amount of authorized research or discovery, not wanting to pay to have assets valued, not wanting to hire an expert, etc.), document that the client has been informed of the legal ramifications of the limitations being placed on your representation as well as the reasons why the client is making such a decision.

- ✓ In a similar vein, if the client refuses to follow your advice it is essential that you document that the client has been informed of why you made your recommendation, the benefits of proceeding according to your advice, and the potential legal ramifications that might occur by not following your advice. Of course, don't forget to also document the client's stated reasons for making the decision to ignore your advice.

- ✓ Determine who your client is on all new matters and specifically identify the client by name in your engagement letter. If you will be interacting with non-clients during the course of representation, document that these individuals have been informed they are not your client.

- ✓ When closing a file, make certain that items like attorney notes, draft documents, memos, billing statements, and all substantive email exchanged are not destroyed as part of the file closing process. These documents should be maintained for the life of the closed file.

- ✓ When declining work, document the declination in a manner appropriate for the circumstance, particularly if there has been a substantive discussion with the prospective client. As an aside, never insert any legal advice in declination letters unless you are fully prepared to be held accountable for the advice given.

- ✓ Don't get caught in the failure to document trap. Many attorneys thoroughly document the files of "problem clients" yet remain slack in the documentation of files with their longstanding "good clients." More often than not, this is due to a level of comfort that has developed with longstanding clients. Be careful, this kind of comfort can cloud one's perception of what needs to be documented and understand that problem clients are not the only clients who sue. Take the time that is necessary to thoroughly document a file throughout the course of representation. The peace of mind that follows is much better than the feeling of regret for not having done so once a claim arises.

- ✓ Finally, never forget that you don't get a pass when doing a legal favor for a friend or family member. You are well advised to treat this matter the same as you would if you were going to charge a paying client for the same work. Deadlines need to be

calendared, conflict checks need to occur, phone calls need to be documented, etc. Friends and family due sue when things don't turn out the way they expected; and when they do, if you happen to have no documentation of the advice given and the decision making process, you're about to learn a hard lesson.

*Specific policy language does apply. Please review to ensure actual coverage is understood.

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All Claims Handled by Licensed Attorneys	✓	✓	✓
Supplementary Payments for Disciplinary Proceedings	$5000	$25,000 per attorney $75,000 in the aggregate	$50,000 per attorney $150,000 in the aggregate
Scope of Professional Services Covered	Includes Mediators, Court-Appointed Family Investigators & Notary Public	Expanded to include Title Insurance Agents, Author/Presenter of Legal Materials, & Lobbyist	Expanded further to include Expert Witness
Professional Services to Related Organization Covered	Must own 5% or less	Must own 10% or less	Must own 15% or less
Claims Expense Allowance Outside the Limit of Liability	✗	50% of the per claim limit (Up to $500,000)	50% of the per claim limit (Up to $1,000,000)
Insured's Consent to Settle Required	✗	✓	✓
Reduced Deductible for Voluntary Formal Mediation	✗	✓	✓
Annual Deductible Cap of Twice the Per Claim Amount	✗	✓	✓
Reduced Deductible if Engagement Letter used	✗	✗	✓
Supplementary Payments for Loss of Earnings	✗	✗	✓
Supplementary Payments for Subpoena Assistance	✗	✗	✓
Supplementary Payments for Public Relations Event	✗	✗	✓

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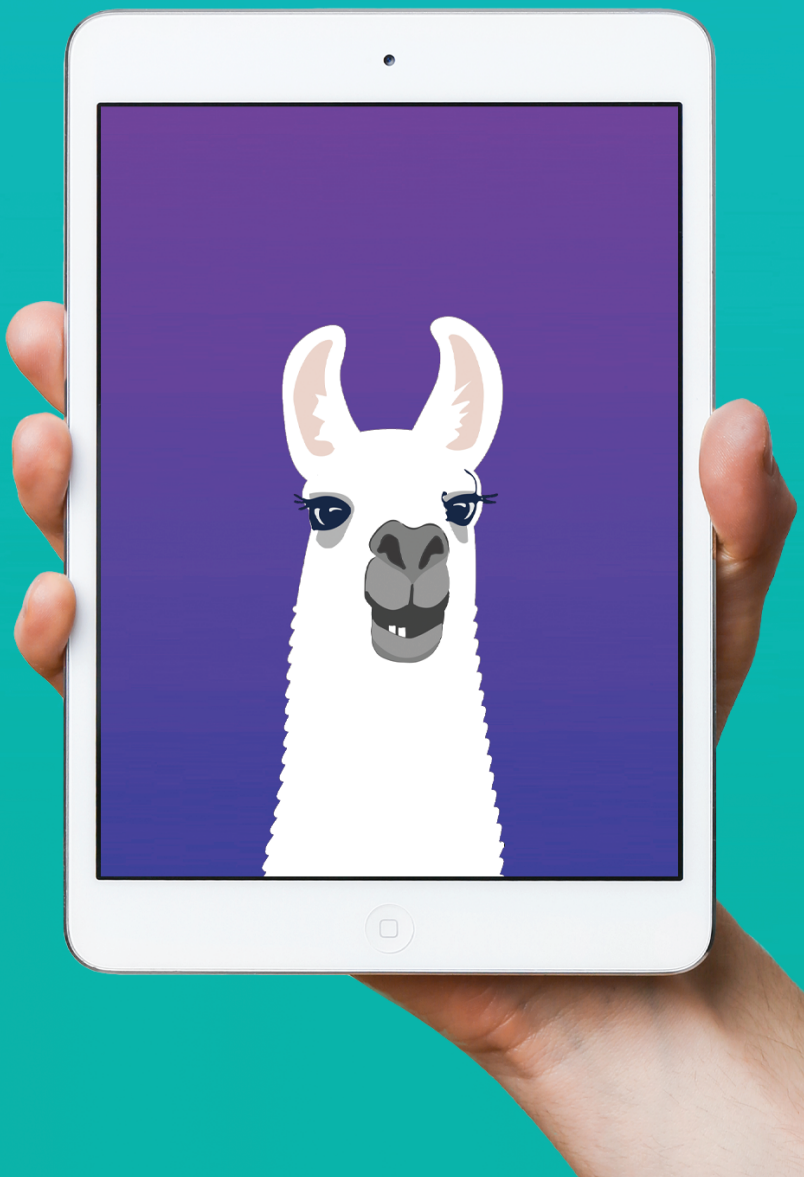

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