

## Claims Corner – Calling a Claims Attorney

By Heather Bowman, PLF Claims Attorney

PLF claims attorneys are available to help covered parties deal with claims situations. Every business day, claims attorneys answer calls from lawyers across the state in all practice areas to help address and avoid claims. Read on for tips for how to maximize this valuable resource.

### A. Reasons to call a claims attorney

1. Contact the PLF if someone has made a claim against you.

The most obvious reasons to call the PLF are because you were served with a legal malpractice lawsuit alleging claims against you, you have learned that such a lawsuit has been filed against you, or someone has notified you that he or she is making a claim against you. If you were sued for an alleged error in representing a client or you learn that a lawsuit has been filed alleging claims against you, call the PLF right away. Have a copy of the lawsuit handy so that you can identify the parties and the case number. If the claim is a covered claim, the PLF will hire counsel to defend you in the action.

You should also contact the PLF immediately if you are contacted by someone alleging a claim against you based on an alleged error in representing a client. Sometimes such claims are presented to the covered attorney by a current or former client or by an attorney representing the current or former client. These claims sometimes are accompanied by a demand for compensation or a demand for curative or repair action. If you receive notice of a claim such as this in writing,

it is helpful if you have the written demand available when you call the PLF so that you can forward it to the claims attorney who is addressing your call.

You can also now report a claim through the PLF website at <https://www.osbplf.org/claims/reporting-claims.html>. After you report a claim, you will be contacted by a claims attorney.

2. Contact the PLF if you were served with a subpoena for your file or testimony.

If you were served with a subpoena, or you are contacted by a third party for information about representation of a client or former client, contact the PLF. Contact the PLF before providing any materials or agreeing to testify. Similarly, if you receive a request for information in a post-conviction relief matter, even if the request is made by your former client, we recommend that you contact the PLF. The PLF has the discretionary authority to retain counsel to represent covered parties in discovery matters, including requests for a lawyer's deposition, trial testimony, or file materials. The PLF may retain counsel to help you in navigating issues such as client confidentiality and privilege, and may help avoid causing larger problems.

3. Contact the PLF if you made an error representing a client.

If you made an error in representing a client, contact the PLF. Under the PLF Primary Coverage Plan, you have a duty to report if you become aware of facts or circumstances that reasonably could be expected to be the basis of a claim. The Plan requires that you provide written notice to the PLF as soon as practicable of the specific act, error, or omission; any damages or injury that have resulted or may result; and the circumstances under which you first became

aware of the act, error, or omission. See 2020 PLF Primary Coverage Plan VIII.B (available on the PLF website at <https://www.osbplf.org/coverage/primary-coverage-plan.html>).

Aside from your duty to report potential claims to the PLF, doing so as soon as possible can be helpful in terms of avoiding a claim. Sometimes the PLF is able to engage in a repair in an effort to get the case back on track. Other times, a PLF claims attorney may be able to advise you about steps you can take to either avoid a basis for a claim or to mitigate the client's loss. Repairs are discretionary and depend on a variety of factors, but no repair is possible if you fail to report the issue.

If you made an error that you are thinking about fixing on your own, call the PLF first. Self-repair may be the best approach if your client provides informed consent, but you must still report the claim. Additionally, the PLF claims attorney will likely assist you in addressing any obligations to disclose certain information to a client about the situation.

If you think you might have made an error, but you are not sure, or if your client or opposing counsel accused you of making an error, contact the PLF. Even if no claim has been made, you have a duty to report the potential claim to the PLF.

#### 4. You can contact the PLF with questions.

PLF claims attorneys receive many calls from lawyers who have questions about substantive or procedural legal issues. We are always willing to discuss a situation with you or brainstorm ideas, but the opinion of a claims attorney holds no sway with the courts and we cannot perform legal research for covered parties. If you find yourself in unfamiliar legal territory, you may wish to associate co-counsel experienced in that area of law to help.

Claims attorneys also receive many calls from lawyers who are dealing with challenging clients. We cannot intervene in your attorney-client relationship, but we can discuss ideas and strategies for working through your issues, or, if necessary, strategies for terminating your attorney-client relationship to minimize exposure for a malpractice claim.

PLF claims attorneys receive many calls seeking ethics advice. Your call to a PLF claims attorney should be related to a claim of malpractice or an attempt to avoid malpractice. If you are seeking free ethics advice, you should call the OSB Ethics

Helpline at 503.431.6475. If you require confidential ethics advice, you should retain private counsel.

## B. Preparing for your call

If you have previously worked with or otherwise know a claims attorney and want to work with that attorney, you are welcome to call that person directly. Alternatively, you can call the PLF's receptionist, who will direct your call to one of the claims attorneys who is handling informational calls that day.

Your communications with the PLF about claims or potential claims are privileged as long as you protect that privilege, so be sure to call from a private location. You may wish to have other involved attorneys on the call as well, but do not include your client in the call. Make sure you are somewhere you will be able to provide details about the issue and answer questions.

Be sure to have all relevant information available, including the names of the parties and counsel, the case number for a matter in litigation, and all relevant dates.

PLF claims attorneys are here to help covered parties respond to and avoid malpractice claims. Give us a call at 503.639.6911! ■

*Stay tuned for the next edition of Claims Corner, where we will cover the claims process.*