

Robust Policies and Procedures = Top E&O Prevention

By Aaron Simon¹

For more than a decade I've had the privilege of serving my clients faced with professional liability, insurance coverage, and complex general liability matters. Much of my litigation experience involves representing professionals, often insurance agents and agencies, when they have been sued for professional negligence or malpractice. Often in handling the defense of an agent it is discovered that there was a breakdown in following the agent's own policies and procedures. While the breakdown in following policies and procedures does not automatically mean the agent is liable for professional negligence or malpractice, had the agent followed proper policies and procedures the claim against the agent would not have arose or the claim against the agent would have been much easier to defend.



For example, documentation is key in any case. Often when I defend an agent it is found that proper full file documentation is lacking. Typically what I see is a lack of full documentation in regard to phone calls and texts. Any communication, including verbal in person or over the phone communications, and text messages, between an agent and a customer should always be documented in the file. In addition, the best practice is to follow up with the customer with written (email or letter) documentation confirming what was addressed in the verbal or text communication.

Another problem area I see is the failure to consistently use customer checklists. A best practice would be that proper detailed (and in some cases individualized) customer checklists are used with each customer on an annual basis. Certainly checklists should be used with all new customers and when a customer experiences any significant changes. It is also important that customers sign off and date the checklists, confirming that the customer has reviewed the checklist and accepted the offered coverages wanted and declined the offered coverages not wanted. I also like to see, when possible, the insurance declaration pages attached to the checklists.

When it comes to policies and procedures questions that should be asked are:

1. Are proper policies and procedures in place?

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2. Are you strictly following and adhering to your policies and procedures?
3. Have your policies and procedures been reviewed recently, and by whom?

Some other top E&O recommendations for insurance agents are:

1. Develop and implement new contactless ways to interact with your insurance customers. This includes: using e-signature methods; Zoom meetings as opposed to in-person meetings; and electronic delivery of insurance documents.
2. Be extremely careful in making comments to your customers about claims or potential claims.
3. Review policy declaration pages and have insurance customers sign off and date declaration pages.
4. Perform regular thorough reviews with your insurance customers.
5. Implement and consistently use a good computerized agency management system.
6. Use confirmation emails.
7. Specifically advise insurance customers in writing to review their insurance documents and let the agent know if any changes are needed.
8. Identify potentially problematic insurance customers and take extra measures to protect against potential claims from these customers.

In addition to representing professionals in litigation matters, I also represent agents and agencies (and other business owners) in transactional matters such as policies and procedures review, contract review, business structure, business sale and/or transfer, and related matters. This time of year is a great time to take a look at these things and make sure you are set up for success in the new year. Thus, if you have a legal question or need some legal transactional consulting advice please feel free to reach out to me at 612-386-4617 or asimon@meagher.com. Initial consultations are always no charge.

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