

Something For Your Lawyer to Have and to Hold: Professional Liability Insurance

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Attorney Robert Trainor is licensed in Ohio and Kentucky. In 2011, the Supreme Court of Ohio suspended him from practicing for 24 months for failing to notify a client he did not carry professional liability insurance and mishandling client funds. (The court indicated it would allow Trainor to serve the last 18 months on probation, subject to certain conditions.)

Though Ohio does not require lawyers to carry professional liability insurance, the state requires them to tell clients if they are not covered. Trainor had sent a letter to his client indicating he lacked insurance, and asked the client to sign an acknowledgement. The client never did. Shame on Trainor, held the court. Making things worse, Trainor didn't return the client's \$225 filing fee refunded by a court clerk, and didn't return his client's call about that refund.

Trainor was no newbie to the disciplinary system. For the third time in seven years he was back, having had prior run-ins with Ohio's disciplinary body for—wait for it—failing to tell clients about a lack of insurance.

Because Trainor was also licensed in Kentucky, the high court there took a look at the situation. (Many states' ethical rules for lawyers say that if a lawyer receives discipline in another state, he or she may be subject to discipline under their rules as well.) Though Kentucky does not require attorneys to carry professional liability insurance or inform clients of insurance status, the court issued nearly identical discipline to Trainor.

Trainor's repeated violations may surprise some. It's common for people to assume lawyers carry insurance, just like most doctors and other professionals do. Actually, clients should verify an attorney or law firm under consideration has coverage. As the Trainor case illustrates, not all states require lawyers to hold insurance or even to disclose whether they have it. Regardless of a particular state's requirements, ask the question if you don't know the answer. Just as you'd want a contractor to have liability and worker's compensation insurance before working on your home, you need your lawyer or law firm to have professional liability coverage. It's for your own protection.

By David Hoffman

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