



## Newsletters

### The Lawyers' Lawyer Newsletter - Recent Developments in Risk Management - May 2010

May 24, 2010

- Lawyers' Professional Liability (Malpractice) Insurance — Nondisclosures on the Application — Loss of Coverage for Misrepresentations
- Flat Fee or Advance Retainer — Lawyer's Treatment of Flat Fee Voluntarily Refunded to Client Results in Discipline
- Responsibility for Representations Made Without Client Authority — Responsibility to Co-Counsel
- Disclosing Information While Performing a Conflict Check — Conflict Checks Relating to Lateral Attorney Moves
- Responsibility for Websites Lawyers Claim or Endorse — Soliciting Endorsements Including for Websites

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#### Lawyers' Professional Liability (Malpractice) Insurance — Nondisclosures on the Application — Loss of Coverage for Misrepresentations

*Continental Casualty Co. v. Law Offices of Melbourne Mills, Jr., PLLC*, 2010 WL 996472 (E.D. Ky. 2010)

Risk Management Issues: What is the scope of the duty of disclosure in a lawyer's application for malpractice insurance? What are the consequences for failing to make adequate disclosure?

#### Flat Fee or Advance Retainer — Lawyer's Treatment of Flat Fee Voluntarily Refunded to Client Results in Discipline

*In re Mance*, 980 A.2d 1196 (D.C. 2009)

Risk Management Issue: May lawyers use "flat fee" arrangements to sidestep rules relating to non-refundable retainers? Are flat fees "earned on receipt," or must they be treated as advances against future fees?

#### Responsibility for Representations Made Without Client Authority — Responsibility to Co-Counsel

*DePetris & Bachrach, LLP v. Srour*, 71 A.D. 3d 460, 898 N.Y.S.2d 4 (N.Y.App. Div. 1st Dept. 2010)

Risk Management Issue: Can a law firm be held liable to a second law firm when, without client authority, it promises that the client will pay the second law

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firm's fees?

### **Disclosing Information While Performing a Conflict Check — Conflict Checks Relating to Lateral Attorney Moves**

ABA Formal Ethics Opinion 09-455 (October 8, 2009)

Risk Management Issue: What client-related information may a lawyer disclose for conflict-checking purposes to a firm considering the lawyer as a lateral candidate?

### **Responsibility for Websites Lawyers Claim or Endorse — Soliciting Endorsements Including for Websites**

South Carolina Ethics Advisory Opinion 09-10

Risk Management Issues: If a third party creates a website, when does a lawyer become responsible under the ethics rules for the content of that site? If a third party posts a comment about a lawyer on a website that a lawyer has adopted or endorsed, is the lawyer responsible for the contents of such a posting?

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