



Do You Know Your Legal Duties?

An agency's ability to balance its legal duties to its customers while maintaining or exceeding their expectations is critical to surviving an errors & omissions claim. In a customer-driven profession, an independent agency's success is tied to the relationship it fosters with customer. These relationships must be tempered with a respect and understanding of the fundamental legal duties—broken into the concepts of reasonability, promptness and consistency—imposed on an agency's business.

Reasonability. Agents' livelihoods are determined by their ability to develop and maintain strong working relationships with customers. An agent's primary duty is to conduct his or her business with the reasonable skill and diligence that can be fairly expected from a person in that profession or situation. Although nebulous, this duty—defined by its core concept of reasonability—instills an obligation to treat customers with the same attention and thoroughness as their peers. The courts generally characterize reasonability as decisions that are suitable under the circumstances and which can be generally expected by a person of like profession or situation. As a result, this duty sets a level playing field for all agents to conduct their business.

Promptness. After deciding to provide their services, agents must act on clients' applications with a reasonable promptness either by obtaining the desired coverage or by issuing a rejection of the risk so that clients will not be lulled into a false sense of security or be prejudiced by the delay from seeking coverage elsewhere. This duty does not impose any extraordinary burdens on agents, but serves as a great starting point to set the tone of customer relationships. Much of clients' impressions of customer service comes from the perceived attention agents pays to their particular needs. By quickly and effectively placing clients' policies, agents can capitalize on that perceived attention and lay the groundwork for the relationships' future.

Consistency. Although not codified or tangibly laid out by case law, courts expect agents to treat their clients in a consistent manner. In treating clients consistently, accommodations made for one client will likely need to be made for all future clients as well. In addition, providing preferential treatment to a client will likely necessitate that the treatment be maintained throughout the tenure of the agent/client relationship. For example, if an agent pays a client's premium for one month because the client cannot make the payment, it is likely to create a reliance interest by the client. That client will be able to credibly argue that any subsequent cancellation of the policy for non-payment was improper because it reasonably relied on the agent to pay the premium to the carrier. Additionally, if an agent provides one client with preferential treatment regarding notice of an impending renewal, it will likely result in the expectation that the agent inform all clients of their policy renewals. Therefore, agents who strive to provide exceptional customer service must be conscious of their decisions to provide individual concessions to their clients as those actions may have unintended and burdensome results.

Guided by these three fundamental concepts, agents can establish a solid foundation to meet their clients' reasonable service expectations in a consistent manner. ☐

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Be Prompt, Not Rushed

While it is in the interest of the agent to place coverage promptly, the primary duty of an agent to act with reasonable skill and diligence runs quietly through this endeavor. All too often, an agent rushes to place the coverage and hurriedly takes an application over the phone or signs an application for a client to expedite the handling of the coverage request. While seemingly benign in its intentions, these actions potentially open an agency and its producers to serious liability. Instead of taking these applications over the phone and signing them on behalf of the client, agents should use these situations as opportunities to meet with clients and provide that one-on-one customer service that solidifies relationships.

—M.R.