

Case Study 2: What Every Sole Proprietor Should Know About Their Practice

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For lawyers, it is trite law that a deceased can be sued via the administrators of the estate. For a lawyer practising as a sole proprietor ("SP"), this has even greater implications. The case study below demonstrates how family members of lawyers practising as SPs may be affected by liabilities arising from the practice following the death of the SP.

Mr R practised as a SP under Messrs. Rhubarb & Co. Mr R represented X in a suit and X paid Mr R a sum of RM445,000 as a settlement sum, to be paid to Company C. Sometime later, X received a Notice of Bankruptcy from Company C's solicitors. It transpired that Mr R had not paid Company C the settlement sum. X then brought an action against Mr R via the administrators of his estate, Mr R's widow and son.

Unaware of the implications of having a writ served on them, Mrs R and her son, failed to enter appearance and subsequently a judgment in default was entered against them.

Only when the judgment was executed against them did they seek legal advice and was told of the implications and that she could try to have the judgment set aside. Mrs R was also unaware of the existence of the Professional Indemnity Insurance ("PII") Coverage.

The kind lawyer who assisted Mrs R to file the setting aside also did not know that the widow could notify the Insurers of this suit. It was only until a kind Samaritan informed them to notify the Scheme's Insurer that they proceeded to do so.

The above case study shows the woeful predicament and ordeal the family of a deceased sole proprietor faces after his passing. Their predicament was also partially caused by the family's lack of awareness of PII coverage under the Master Policy for deceased lawyers. Awareness of the PII scheme would have helped Mrs R to avoid facing a judgment in default against her.

AVOID THE SITUATION!

1. Plan an exit strategy!

The lack of succession planning may expose your family members to liabilities arising from your practice. Regardless of age, you should have in place a solid succession plan if you have decided to practice as a SP. This helps to ensure that matters pertaining to the operation of your Firm are well handled in light of any unexpected events. A good succession plan should involve considerations such as who should be responsible for the closing of the Firm, who should take-over active files of the Firm, what should be done with money in the Firm's client account etc.

2. Educate, educate, and educate!

Even if your firm has good practices, it is still important for family members to be informed about the existence of the PII. It is ironic how lawyers constantly advice clients on how to protect their interests but neglect to do the same for their family members on matters such as this to protect their interests.

Inform your family members that your Firm is covered by PII and that a claim should be notified to Jardine Lloyd Thompson or even seek help from the Bar Council. In most cases, a panel solicitor will be appointed to assist in the matter.

3. Top it up!

While this is not necessarily a prevention measure, it is a safety measure that can make a difference and may avoid your family facing financial stress. For SPs, the mandatory coverage under the scheme is set at RM250,000. In Mr. R's case, the claim made against him exceeded the mandatory coverage. In the absence of top up coverage, the additional cost would have to be borne by Mr. R's family. Having sufficient insurance coverage helps protect your family from having to bear the burden of any additional costs beyond the mandatory coverage.

NB. PII coverage for deceased and retired lawyers is subject to terms and conditions of the policy; and does not cover Misconduct type claims.