Practice Success 101: Malpractice Insurance

by Pete Roberts

s malpractice insurance required for practicing law in Washington? The short answer is no. But such coverage is highly recommended. Each year, the Washington State Bar Association asks you whether you have malpractice coverage.i The answer is public information that appears in your WSBA Lawyer Directory listing, as shown here:

Has Insurance? YES - Click for more info 01/26/2009 Last Date Reported

Mandatory disclosure this information is a service to the public. The "Click for more info" link takes potential clients to a WSBA webpage that describes in more detail what the member is reporting and not reporting. You are not required to report the following to the Bar:

- Who your insurer is, if you have malpractice insurance coverage;
- The limits of your policy;
- The amount of any deductible you must pay before the insurance company is obligated to pay a claim; or
- Any limitations on or exemptions from coverage. For example, most legalmalpractice insurance policies do not cover claims against a lawyer that arise out of the lawyer's illegal conduct.

However, a potential client may ask an attorney about any of the above. The "Click for more info" webpage" provides potential clients with sample questions to ask an attorney before deciding to retain him. These include:

- Do you presently maintain professional liability insurance coverage?
- What is the name of your insurer?
- What are the limits of your coverage? Have any of those limits been used in the payment of other claims?
- What is the deductible under your policy?
- Does your policy cover the type of work you are doing for me?
- What is the term of your current coverage?
- Will you advise me if you discontinue your coverage or change your limits?

- Could you provide me with a Certificate of Insurance (evidence from an insurance company that the lawyer is
- If you do not maintain professional liability insurance, why have you made that

Not all lawyers maintain professional

liability insurance. Some lawyers may make a responsible insurance because lawyer may choose responsible" self-insured).

The WSBA offers a sponsored program that provides malpractice insurance through Kibble & Prentice.iii Call John Chandler at 206-695-3144 to learn more. Other sources for this type of coverage are available from the WSBA Law Office Management Assistance Program (LOMAP).

If you contact an insurer about obtaining coverage, the underwriter will ask you to complete an application, which usually becomes a part of the policy. Typically, you are expected to name a backup lawyer and disclose that you have a dual calendaring system. Describe only your actual practice areas - not what you plan to practice or wish to practice. Be sure the practice areas described on your website are the same as those you disclose on the application. The underwriter may check for any discrepancies.

Aspects of a policy include:

- Who is covered: Other lawyers, staff, contract lawyers, etc.
- What is covered: A description of the lawyer's work.
- Exclusions: Who and what is not covered. (Read this section carefully, as policies usually exclude fraudulent and criminal acts and may exclude suits related to the return of legal fees.)

- Reporting requirements: You may have to report a claim as well as when circumstances give rise to the possibility of a claim.
- Policy limit: The maximum amount that can be paid for a claim, usually expressed as per claim or aggregate (the sum of claims during the one-year policy period). Amounts range from \$100,000 to

\$300,000 and up. Choose limits that realistically represent the risk to your clients, based on the nature of their matters.

· Claim: Can be defined as a demand for money or services, the service of a suit, or merely a threat (oral or written) to hold you responsible. (Read the policy definitions carefully.)

· "Claimsmade"v."occurrence": Most malpractice policies are "claims made," meaning that coverage is triggered when the claim is made during the policy period. "Occurrence" polices are triggered based on the date of the event or events in the past that give rise to the present claim.

- Defense: Costs associated with defending you. Ask for this coverage "outside of the limit," meaning that defense costs are not charged against the policy limits. There is usually no deductible for defense costs.
- **Deductible:** If a claim is settled, you are asked to pay an amount toward that agreed sum. Choices start at \$5,000.
- Premium or "quote": What you pay for the coverage. The premium may take into account that you are part-time, working on only one matter, or a that the policy is for shorter period of coverage. The premium is usually due as a lump sum but may be pro-rated over the year depending on the carrier (if so, a surcharge may be added). Ask for several quotes based on differing limits and deductibles. Ask also if payment by credit card is available.
- "Tail" coverage: When you retire or otherwise exit the practice of law, you can purchase an extended reporting period for a premium that is two or three times the usual annual premium.



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Policy language will vary, so be sure to review each proposed policy to ensure that you are receiving the coverage you desire.

As the policy anniversary approaches, you will be contacted and asked to complete a new application. If you wish to change carriers, plan to research other alternatives at least 90 days before the anniversary date.

In your practice, you may also need a "business package policy" that covers premises liability, important papers, lost income, and auto coverage while using your vehicle on business. A home office may need at least a "rider" (added coverage) to your home insurance policy. Ask your broker or agent about these types of coverage.

Note that insurance companies often offer free "loss control" services. This means that they send a person to meet with you about your office and your practice. The person can provide helpful forms and tips for helping to prevent a loss.

At LOMAP, we can assist you with questions that may arise as you consider these insurance issues. We look forward to hearing from you! \Diamond

Pete Roberts is the practice management advisor in the WSBALaw Office Management Assistance Program (LOMAP). He has 18 years of experience as a legal administrator for law firms. Pete has an MBA from The College of William & Mary and a certificate as small business webmaster from the University of Washington. He is a frequent speaker and writer and has consulted with more than 400 WSBA members in Washington, Idaho, Oregon, Illinois, and Alaska. Reach him at 206-727-8237, peter@wsba.org, or www. lomap.org. He enjoys tennis, travel, cooking, and classical music.

i. APR 26 INSURANCE DISCLOSURE

- (a) Each active member of the Bar Association shall certify annually in a form approved by the Board of Governors by the date specified by the form
- (1) whether the lawyer is engaged in the private practice of law;
- (2) if engaged in the private practice of law, whether the lawyer is currently covered by professional liability insurance;
- (3) whether the lawyer intends to maintain insurance during the period of time the lawyer is engaged in the private practice of law; and
- (4) whether the lawyer is engaged in the practice of

law as a full-time government lawyer or is counsel employed by an organizational client and does not represent clients outside that capacity.

Each lawyer admitted to the active practice of law who reports being covered by professional liability insurance shall notify the Bar Association in writing within 30 days if the insurance policy providing coverage lapses, is no longer in effect or terminates for any reason.

- (b) The information submitted pursuant to this rule will be made available to the public by such means as may be designated by the Board of Governors, which may include publication on the website maintained by the Bar Association.
- (c) Any lawyer admitted to the active practice of law who fails to comply with this rule by the date specified in section (a) may be ordered suspended from the practice of law by the Supreme Court until such time as the lawyer complies. Supplying false information in response to this rule shall subject the lawyer to appropriate disciplinary action.

Adopted effective July 1, 2007.

ii. See http://tinyurl.com/nal7c4.

iii. The WSBA offers other sponsored insurance products. These include medical insurance (contact Marcus Forbes at 206-676-3303 or marcus.forbes@kpcom.com) and long-term care insurance, long-term disability insurance, and life insurance (contact Clark Daffern at 800-767-0650 or clark.daffern@kpcom.com).