

Comments Submitted to the Task Force

Inbox

Let us hear from you! We welcome letters to the editor on issues presented in the magazine. Email letters to nwlawyer@wsba.org. NWLawyer reserves the right to edit letters. NWLawyer does not print anonymous letters, or more than one submission per month from the same contributor.

MANDATORY MALPRACTICE INSURANCE

I just read the article in the September issue of *NWLawyer* about mandatory insurance [“WSBA Board of Governors Explores Mandatory Malpractice Insurance”] and, as a result, I am sending in my first comment in 25 years of practicing law in Washington. Our small office has always maintained insurance for our speeding ticket/DUI practice. We pay \$750 for each attorney for \$250,000 per claim/\$500,000 aggregate of coverage. I hope that you consider small firms such as ours as you continue your investigation. Oregon’s apparent one-size-fits-all \$3,500 per lawyer assessment is ridiculous and bears no relation to the true cost of insuring a small firm like ours. Should you adopt a similar requirement, you would be creating an unnecessary financial burden for many small firms.

\$3,500 for each lawyer? \$7,000 for what currently costs us \$1,500? What an outrage that would be.

Valerie Shuman, Tacoma

I searched diligently and filled out numerous applications, but I reached the conclusion that there is no market for malpractice coverage for transactional securities lawyers in solo practice. It appears that from the insurer’s perspective, the underwriting costs exceed the expected profits at anything other than prohibitive rates. The last time I looked into this (and that was a number of years ago), every insurer I contacted refused to give me an offer at any price.

I’d like to note that I was trained in my practice area at Sullivan & Crom-

well in New York, am 61 years old, and have never had a claim made against me. I also have impeccable academic credentials, which include an MBA equivalent from MIT.

If Washington decides on mandatory insurance, I would favor a professional liability fund. I fear that otherwise my license to practice in Washington would be worthless.

John A. Myer, Seattle

I am writing in response to the article “WSBA Board of Governors Explores Mandatory Malpractice Insurance” in the September 2017 issue of *NW Lawyer*.

As an attorney licensed to practice in both Oregon and Washington, I have had the opportunity to compare the professional liability insurance requirements of both states— disclosure in Washington and mandatory coverage in Oregon. I do not support mandatory coverage as it provides a questionable value at substantial cost while reducing the availability of legal services, particularly for moderate income citizens.

The first question to ask is “How much benefit does mandatory coverage actually provide to the average client?” I do not have the statistics but I encourage the Board to obtain this information before passing an expensive “feel good” measure. Although there are certainly horror stories out there about bad lawyers and the damage they cause, I question the value that mandatory coverage would provide to those clients when considered in the context of the aggregate cost and the thousands of clients who receive professional legal representation from lawyers with and lawyers without professional liability coverage.

The second question is “How would mandatory coverage affect low and moderate income citizens who need legal representation?” The difficulty finding pro bono coverage for low-income clients is well known, although there are programs that pro-

vide professional liability coverage to enable this important work to be done. From my experience, the great bulk of under-represented citizens are moderate income people who cannot afford an attorney yet do not qualify for pro bono representation.

In addition to my income-producing work, I have represented Washington citizens needing assistance with no-contact orders, a homeowner whose property was eroding due to the failure of a city to properly maintain a storm run-off system, individuals who were presented with scam damage reports by rental car companies, and others who had damaged credit reports due to fraudulent use of their identity. I may soon retire from my “day job” but hope to keep providing this type of unpaid service to moderate-income individuals. I am saving for retirement and certainly am not in the position to divert funds to pay for professional liability coverage. If coverage becomes mandatory, I fear I will be required to become an inactive member of the bar and will no longer be able to serve this under-represented group. I am sure there are many other attorneys in the same situation.

Bill Murphy, Vancouver, WA

PROFILING

Some WSBA members have fallen into the quagmire of lecturing about “white privilege” (“Inbox,” SEP *NWLawyer*). However, it is unclear from their statements what white persons are supposed to do to atone for the total happenstance of being born white . . . pay reparations, take sensitivity classes, forfeit their law degree to a person of a different race?

No one should be denigrated for the color of their skin, including whites. White privilege is just another imaginary problem being conjured up by some leaders of the WSBA.

Certainly we all owe a duty of politeness and decency to every

Column1	Name of Member	Date Received	Theme	Position
1	Martin Lovinger	5/30/2017	Retired/Semi-retired/Planning to retire	Not indicated/unclear
2	Richard L. Peterson	9/11/2017	Retired/Semi-retired/Planning to retire	Not indicated/unclear
3	Valerie Shuman	9/12/2017	Cost	Not indicated/unclear
4	John A. Myer	9/12/2017	Uninsurable	Not indicated/unclear
5	Suzanne K. Pierce	9/14/2017	Other	In favor
6	Leland L. Bull Jr.	9/20/2017	Cost; retired/semi-retired/planning to retire	In opposition
7	Terry Rhodes	9/25/2017	Cost; retired/semi-retired/planning to retire; pro bono	In opposition
8	Bill Murphy	10/4/2017	Cost; retired/semi-retired/planning to retire; pro bono	In opposition
9	Tom Pacher	10/12/2017	Cost; Idea for exemption	In opposition
10	Dale A. Magnuson	10/14/2017	Retired/Semi-retired/Planning to retire	In opposition
11	Jerry B. Edmonds	10/17/2017	Reputation of profession	In favor
12	Roger Greene	10/25/2017	Idea for exemption	Not indicated/unclear
13	Esther Larsen	11/2/2017	Cost	In opposition
14	Craig Walker	11/8/2017	Public protection	In favor
15	Tom Youngjohn	11/8/2017	Cost	In opposition
16	Shawn Alexander	11/9/2017	Cost	In opposition
17	Bill Robinson	11/9/2017	Cost	In opposition
18	Mary V. White	11/9/2017	Cost; other	Not indicated/unclear
19	Barnaby Zall	11/9/2017	Cost; retired/semi-retired/planning to retire; pro bono	In opposition
20	Gerald Steel	11/14/2017	Other	Not indicated/unclear
21	Cris Anderson	11/14/2017	Reputation of profession	In favor
22	Mike DeWitt	11/14/2017	Cost	Not indicated/unclear
23	Richelle Little	11/15/2017	Other	Not indicated/unclear
24	Morgan Gabse	11/15/2017	Not engaged in private practice of law	Not indicated/unclear
25	John Groseclose	11/16/2017	Other	Not indicated/unclear
26	Joni M. Derifield	11/16/2017	Cost	In opposition
27	David D. Cullen	11/17/2017	Needs more information	In opposition
28	Merry A. Kogut	11/17/2017	Not engaged in private practice of law	In opposition
29	Craig Larsen	11/18/2017	Cost	In opposition
30	Ken Masters	11/19/2017	Public protection	In favor
31	Paul Kelly	11/21/2017	Cost; Idea for exemption	Not indicated/unclear
32	Paul Edmonson	11/22/2017	Other	Not indicated/unclear
33	J. Eric Gustafson	11/22/2017	Public protection	In favor
34	John and Marjorie Gray	11/26/2017	Retired/Semi-retired/Planning to retire	In opposition
35	Randy Brook	11/28/2017	Retired/Semi-retired/Planning to retire; pro bono	Not indicated/unclear
36	Tom Dreiling	11/28/2017	Other	In opposition
37	Anonymous	11/28/2017	Cost	In opposition
38	Janette Keiser	11/29/2017	Idea for exemption	In opposition
39	John Panesko	11/28/2017	Other	In opposition
40	Bill Murphy	11/29/2017	Duplicate comment (not counted twice in stats)	duplicate (not counted twice)
41	Edward Dunkerly	11/29/2017	Cost	In opposition
42	Patric S. Smith	11/29/2017	Not engaged in private practice of law	In opposition
43	Gregory J. Wall	11/30/2017	Other	In opposition
44	Anita D. Raddatz	12/3/2017	Other	Not indicated/unclear
45	Paul Makjut	12/3/2017	Retired/Semi-retired/Planning to retire; pro bono	Not indicated/unclear
46	Deborah St. Sing	11/4/2017	Cost; retired/semi-retired/planning to retire	Not indicated/unclear
47	Rani K. Sampson	12/7/2017	pro bono	In opposition
48	Kary Krismer	12/7/2017	Not engaged in private practice of law	Not indicated/unclear
49	Denise Ciebien	12/11/2017	Retired/semi-retired/planning to retire	Not indicated/unclear
50	Darcia C. Tudor	12/11/2017	Other	Not indicated/unclear
51	Vicki Lee Ann Parker	12/14/2017	Needs more information	Not indicated/unclear
52	Leonard Weiner	12/13/2017	Idea for exemption	Not indicated/unclear
53	Nadel Barrett	1/3/2018	Cost; not engaged in private practice of law	In opposition
54	Emily Martin	1/9/2018	Not engaged in private practice of law	In opposition
55	Laura E. King	1/9/2018	Duplicate (not counted twice in stats)	duplicate (not counted twice)
56	Laura E. King	1/18/2018	Uninsurable	In opposition
57	Jackie Cyphers	1/21/2018	Retired/semi-retired/planning to retire	In opposition
58	Philip Friberg	2/14/2018	Retired/semi-retired/planning to retire	In opposition
59	Merry A. Kogut	4/26/2018	Not engaged in private practice of law	In opposition
60	Alexis Merritt	5/9/2018	Not engaged in private practice of law	Not indicated/unclear
61	Paul Makjut	5/9/2018	Retired/Semi-retired/Planning to retire; pro bono	Not indicated/unclear
62	Stan Sastry	5/9/2018	Cost	In opposition
63	Steve Cook	5/10/2018	pro bono	In opposition
64	Kate M. Hawe	5/10/2018	Cost	Not indicated/unclear
65	Paul Treyz	5/11/2018	pro bono	In opposition
66	Tyler B. Wilson	5/16/2018	Other	Not indicated/unclear
67	Inez Petersen	5/17/2018	Other	In opposition
68	Philip Friberg	5/20/2018	Retired/Semi-retired/Planning to retire; idea for exemption	Not indicated/unclear
69	Inez Petersen	6/25/2018	Other	In opposition
70	Angus Lee	7/30/2018	Cost; other	Not indicated/unclear
71	Traci M. Goodwin	8/2/2018	Idea for exemption	In favor
72	Ronnie Rae	8/2/2018	Idea for exemption	Not indicated/unclear
73	D. Neil Olson	8/2/2018	Cost	In opposition
74	Steven Pand	8/2/2018	pro bono	In opposition
75	Mary Jane Swenson	8/2/2018	Not engaged in private practice of law	Not indicated/unclear

76	Paul McIlrath	8/2/2018	pro bono;other	In opposition
77	Ed Huneke	8/2/2018	pro bono; idea for exemption	Not indicated/unclear
78	Tyson Soptich	8/2/2018	Cost; pro bono	In opposition
79	Jeffery Oster	8/2/2018	Uninsurable	In opposition
80	Jeff Bean	8/2/2018	Idea for exemption	In opposition
81	A. Stevens Quigley	8/2/2018	Idea for exemption	Not indicated/unclear
82	Bob Baird-Levine	8/2/2018	Cost	In opposition
83	Beth H.	8/2/2018	Not engaged in private practice of law; cost; idea for exemption	Not indicated/unclear
84	Michael R. Jones	8/2/2018	Uninsurable; cost	Not indicated/unclear
85	Larry R. Schreiter	8/2/2018	Cost	In opposition
86	Tom Pacher	8/2/2018	Not engaged in private practice of law; other	In opposition
87	Ronald Kessler	8/2/2018	Retired/Semi-retired/Planning to retire; idea for exemption	Not indicated/unclear
88	Lisa DeFors	8/2/2018	Not engaged in private practice of law	Not indicated/unclear
89	Heidi Kay Walter	8/2/2018	Other	In opposition
90	Ralph Stemp	8/2/2018	Other	Not indicated/unclear
91	Roger Hawkes	8/2/2018	Other	In opposition
92	Robert Cromwell	8/2/2018	Not engaged in private practice of law; idea for exemption	Not indicated/unclear
93	Marke Schnackenberg	8/2/2018	Other	In opposition
94	JD Bristol	8/2/2018	Cost	In opposition
95	JC Lundberg	8/2/2018	Idea for exemption; other	Not indicated/unclear
96	Clifford Allo	8/2/2018	Cost; not engaged in private practice of law; idea for exemption	Not indicated/unclear
97	Janna Lewis	8/2/2018	Idea for exemption	Not indicated/unclear
98	Ron Santi	8/2/2018	Not engaged in private practice of law	Not indicated/unclear
99	Rodney Waldbaum	8/2/2018	Retired/semi-retired/planning to retire	Not indicated/unclear
100	Patrick Burns	8/2/2018	Not engaged in private practice of law	Not indicated/unclear
101	David Liscow	8/2/2018	Retired/semi-retired/planning to retire	Not indicated/unclear
102	Donald Graham	8/2/2018	Other	In opposition
103	Mark Hannibal	8/2/2018	Idea for exemption; public protection	In favor
104	Dennis Smith	8/2/2018	Idea for exemption; not engaged in private practice of law	Not indicated/unclear
105	Tawnya Tangel	8/2/2018	Not engaged in private practice of law	Not indicated/unclear
106	Robyn	8/2/2018	Other	Not indicated/unclear
107	Richard J. Glein Sr.	8/2/2018	Idea for exemption	Not indicated/unclear
108	No name given	8/2/2018	Other	Not indicated/unclear
109	Ross Farr	8/2/2018	Not engaged in private practice of law	Not indicated/unclear
110	Richard Peyser	8/2/2018	Not engaged in private practice of law; idea for exemption	Not indicated/unclear
111	Bloor Redding	8/2/2018	Other	Not indicated/unclear
112	Jeff H. Capell	8/3/2018	Idea for exemption	Not indicated/unclear
113	JA Bledsoe	8/3/2018	Idea for exemption	Not indicated/unclear
114	Michael D. Calligan	8/3/2018	Idea for exemption	Not indicated/unclear
115	Dave Freeburg	8/3/2018	Idea for exemption	In favor
116	Richard J. Davis	8/3/2018	Idea for exemption	Not indicated/unclear
117	Kyle Johnson	8/3/2018	Other	In opposition
118	Oliver Spencer	8/3/2018	Cost	Not indicated/unclear
119	David Burke	8/3/2018	Idea for exemption; retired/semi-retired/planning to retire	Not indicated/unclear
120	Glenn Slate	8/3/2018	Other	In opposition
121	Kate M. Hawe	8/3/2018	Other	Not indicated/unclear
122	Ken Dehn	8/3/2018	Other	Not indicated/unclear
123	Bob Pia	8/4/2018	Other	Not indicated/unclear
124	Paul Makjut	8/4/2018	pro bono; idea for exemption	In favor
125	R. Alan Burnett	8/6/2018	Other	In opposition
126	John Panesko	8/6/2018	Idea for exemption	Not indicated/unclear
127	Erik G. Marks	8/6/2018	Other; idea for exemption	In opposition
128	Summer Stahl	8/6/2018	Idea for exemption	Not indicated/unclear
129	Matthew J. Bean	8/7/2018	Other	Not indicated/unclear
130	Stephen F. Cook	8/7/2018	Idea for exemption; pro bono	In favor
131	Bill Zook	8/8/2018	Idea for exemption; not engaged in private practice of law	Not indicated/unclear
132	Merry A. Kogut	8/8/2018	Retired/semi-retired/planning to retire	In opposition
133	Adam Dockstader	8/9/2018	Other	Not indicated/unclear
134	Craig Larsen	8/11/2018	Cost	In opposition
135	Susan Barley	8/13/2018	Idea for exemption	Not indicated/unclear
136	Sherliee M. Luedtke	8/15/2018	Not engaged in private practice of law; idea for exemption	Not indicated/unclear
137	Raymond Takashi Swenson	8/16/2018	Idea for exemption	Not indicated/unclear
138	Brian Dano	8/17/2018	Other	In favor
139	John M. Gray	8/17/2018	Idea for exemption	In favor
140	Leslie Ann Budewitz	8/17/2018	Idea for exemption	Not indicated/unclear
141	Charles Bates	8/26/2018	Idea for exemption; retired/semi-retired/planning to retire	Not indicated/unclear
142	Thomas Hoffman	8/27/2018	Idea for exemption	Not indicated/unclear
143	Douglas B. Klunder	8/27/2018	pro bono	Not indicated/unclear
144	Adam Yanasak	8/27/2018	Other	In opposition
145	Kathleen T. Petrich	8/29/2018	Idea for exemption; retired/semi-retired/planning to retire	In favor
146	Ryan K. Brown	8/30/2018	Idea for exemption	Not indicated/unclear
147	Daniel M. Schafer	9/3/2018	Idea for exemption	Not indicated/unclear
148	Eric S. Chavez	9/5/2018	Other	In opposition
149	Joe Quaintance	9/7/2018	Idea for exemption	Not indicated/unclear

150	Joe Quaintance	9/7/2018	Duplicate comment (not counted twice in stats)	duplicate (not counted twice)
151	Cindy Smith	9/7/2018	Idea for exemption	Not indicated/unclear
152	Katrina Glogowski	9/10/2018	Uninsurable	In favor
153	Carrie Benson	9/11/2018	Cost;other	Not indicated/unclear
154	Jerry W. Hall	9/15/2018	Retired/Semi-retired/Planning to retire; idea for exemption	Not indicated/unclear
155	Kate White Tudor	9/15/2018	Not engaged in private practice of law; idea for exemption	Not indicated/unclear
156	Carleton B. Waldrop	9/16/2018	Other	In opposition
157	Britt L. Tinglum	9/17/2018	Retired/semi-retired/planning to retire	In opposition
158	Adella Wright	9/17/2018	Not engaged in private practice of law	Not indicated/unclear
159	Richard H. Holmquist	9/17/2018	Retired/semi-retired/planning to retire	In opposition
160	Robert S. Phed	9/17/2018	Other	In opposition
161	Nancy Beth Combs	9/17/2018	Other	In opposition
162	Evan E. Inslie	9/17/2018	pro bono; idea for exemption	Not indicated/unclear
163	Robert C. Scanlon	9/17/2018	Cost	Not indicated/unclear
164	Judith Maier	9/17/2018	Cost	In opposition
165	Katherine Krueger	9/18/2018	Idea for exemption; retired/semi-retired/Planning to retire; cost	Not indicated/unclear
166	Joe Breed	9/18/2018	Idea for exemption; other	Not indicated/unclear
167	Hilary Madsen	9/18/2018	Public protection	Not indicated/unclear
168	Gail Toraason McGaffick	9/19/2018	Not engaged in private practice of law	In opposition
169	Jennifer Wright Tucker	9/19/2018	Not engaged in private practice of law; cost; idea for exemption	In opposition
170	Gregory Lyle	9/19/2018	Idea for exemption	Not indicated/unclear
171	Stan Sastry	9/19/2018	Duplicate comment (not counted twice in stats)	duplicate (not counted twice)
172	Lisa Scott	9/20/2018	Other	In opposition
173	Angel Laterell	9/20/2018	Cost	Not indicated/unclear
174	Thomas A. Lerner	9/20/2018	Other	Not indicated/unclear
175	Jorgen Bader	9/20/2018	Pro bono; cost	In opposition
176	Mark de Regt	9/21/2018	Cost; public protection	In favor
177	Joseph F. Valente	9/23/2018	Cost; Idea for exemption; pro bono	Not indicated/unclear
178	Ron Heley	9/24/2018	Idea for exemption; not engaged in private practice of law	Not indicated/unclear
179	Patrick S. Brady	9/24/2018	Retired/semi-retired/planning to retire; not engaged in private practice of law; idea for exemption	Not indicated/unclear
180	Laura Umetsu	9/24/2018	pro bono; idea for exemption	Not indicated/unclear
181	Mike Warren	9/25/2018	Retired/Semi-retired/Planning to retire; idea for exemption	Not indicated/unclear
182	Katherine Krueger	9/26/2018	Cost	not indicated/unclear
183	Mark R. Beatty	9/27/2018	Other	In opposition
184	John A. Myer	9/27/2018	Uninsurable	Not indicated/unclear
185	Brian E. Lewis	9/27/2018	Idea for exemption	not indicated/unclear
186	Bruce T. Clark	10/1/2018	Public protection	In favor
187	Laurance L. Mancuso	10/1/2018	Idea for exemption	Not indicated/unclear
188	Richard L. Peterson	10/3/2018	Idea for exemption;retired/semi-retired/planning to retire	Not indicated/unclear
189	Sharon Powell	10/3/2018	Other	Not indicated/unclear
190	Stephen Kirby	10/3/2018	Other	Not indicated/unclear
191	Roy M. Martin	10/3/2018	Other	In favor
192	Stan Kanarowski	10/3/2018	Idea for exemption	Not indicated/unclear
193	Patricia Char	10/3/2018	Cost; pro bono; idea for exemption	Not indicated/unclear
194	Tyson Soptich	10/3/2018	Duplicate comment (not counted twice in stats)	duplicate (not counted twice)
195	Michael C. Miller	10/3/2018	Other	Not indicated/unclear
196	Helen Nowlin	10/3/2018	Cost	Not indicated/unclear
197	Kevin Carlisle	10/3/2018	Not engaged in private practice of law	Not indicated/unclear
198	Regina Paulose	10/4/2018	Pro bono; other	Not indicated/unclear
199	Kyler Danielson	10/4/2018	Idea for exemption	In favor
200	Margaret Felts	10/4/2018	Pro bono	Not indicated/unclear
201	Dennis Potter	10/4/2018	Other	Not indicated/unclear
202	Don M. Gulliford	10/4/2018	Needs more information	In opposition
203	Gregory J. Wall	10/4/2018	Other	Not indicated/unclear
204	Anthony W. Carter	10/4/2018	Not engaged in private practice of law	Not indicated/unclear
205	James Schroeder	10/4/2018	Uninsurable	Not indicated/unclear
206	Rebecca L. Hillyer	10/4/2018	Not engaged in private practice of law; idea for exemption; public protection	In favor
207	Robert Stein	10/4/2018	Idea for exemption	Not indicated/unclear
208	Killian King	10/4/2018	Not engaged in private practice of law	Not indicated/unclear
209	Nathan Brown	10/4/2018	Cost; idea for exemption	Not indicated/unclear
210	John Edison	10/4/2018	Not engaged in private practice of law	Not indicated/unclear
211	Rosemary Irvin	10/4/2018	Other	Not indicated/unclear
212	Tomis Dimopoulos	10/4/2018	Cost; idea for exemption	In opposition
213	Pamela H. Rohr	10/4/2018	Other	Not indicated/unclear
214	Mark Didrickson	10/4/2018	Needs more information	Not indicated/unclear
215	Robert L. Israel	10/4/2018	Cost; Retired/Semi-retired/Planning to retire	Not indicated/unclear
216	David J. Soma	10/4/2018	pro bono; idea for exemption; retired/semi-retired/planning to retire	Not indicated/unclear
217	Joe Quinn	10/4/2018	Idea for exemption	Not indicated/unclear
218	Ata Arjomand	10/4/2018	Cost	Not indicated/unclear
219	Farjam Majd	10/4/2018	Cost	Not indicated/unclear
220	Faith Ireland	10/4/2018	Idea for exemption	Not indicated/unclear

221	Laura Connor	10/4/2018	Cost	Not indicated/unclear
222	Daniel Haverty	10/4/2018	Not engaged in private practice of law; idea for exemption	not indicated/unclear
223	Pamela K. Rodriguez	10/4/2018	Cost	In opposition
224	Jonathan Everett	10/4/2018	Retired/semi-retired/planning to retire; pro bono	In opposition
225	James B. Kirk	10/4/2018	Not engaged in private practice of law; cost; other	Not indicated/unclear
226	James B. Kirk	10/4/2018	Other	Not indicated/unclear
227	Madeline Dabney	10/4/2018	Retired/semi-retired/planning to retire; pro bono	Not indicated/unclear
228	Andrew Phillips	10/4/2018	Other	Not indicated/unclear
229	Gregory E. Gladnick	10/4/2018	Other	Not indicated/unclear
230	Charles Alailima	10/4/2018	Pro bono	Not indicated/unclear
231	Joel S. Wight	10/4/2018	Idea for exemption	Not indicated/unclear
232	Robert Stevenson	10/4/2018	Other	In opposition
233	Joe Quaintance	10/4/2018	Retired/semi-retired/planning to retire	Not indicated/unclear
234	Toni E. Moore	10/4/2018	pro bono; idea for exemption	Not indicated/unclear
235	Robert A. Lipson	10/4/2018	Cost; retired/Semi-retired/Planning to retire	Not indicated/unclear
236	Dianna Timm Dryden	10/4/2018	Other	In opposition
237	Toby Thaler	10/4/2018	Idea for exemption	Not indicated/unclear
238	Douglas K. Smith	10/4/2018	Not engaged in private practice of law; idea for exemption	In favor
239	Wendy Ferrell	10/4/2018	Other; cost	In opposition
240	Paul H. Keister	10/4/2018	Other	Not indicated/unclear
241	Marke Schnackenberg	10/4/2018	Cost	Not indicated/unclear
242	Rodney J. Waldbaum	10/4/2018	Not engaged in private practice of law; Retired/Semi-retired/Planning to Retire	Not indicated/unclear
243	Diego J. Vargas	10/4/2018	Other; idea for exemption	Not indicated/unclear
244	Jason Hatch	10/4/2018	Other	In opposition
245	Beth Wehrkamp	10/4/2018	Other	Not indicated/unclear
246	Yukiko Stave	10/4/2018	Idea for exemption; other	In opposition
247	Inez Petersen	10/4/2018	Other	In opposition
248	Mark Edwin Johnson	10/5/2018	Retired/semi-retired/planning to retire	Not indicated/unclear
249	Jessica McKeegan Jensen	10/5/2018	Idea for exemption; cost	In opposition
250	John Goodall	10/5/2018	Needs more information	Not indicated/unclear
251	Vicki Lee Anne Parker	10/5/2018	Cost; other	Not indicated/unclear
252	Victoria Redlin	10/5/2018	Not engaged in private practice of law; idea for exemption	Not indicated/unclear
253	Ivan L. Gorne	10/5/2018	Idea for exemption; other	In opposition
254	Ron Santi	10/5/2018	Retired/Semi-retired/Planning to retire; idea for exemption; not engaged in private practice of law	Not indicated/unclear
255	James Leggett	10/5/2018	Other	Not indicated/unclear
256	John Jacobson	10/5/2018	Idea for exemption	In favor
257	Richard Greiner	10/5/2018	Other	Not indicated/unclear
258	D. Michael Hatch	10/5/2018	Cost; pro bono	Not indicated/unclear
259	Bruce S. Echigoshima	10/5/2018	Idea for exemption	Not indicated/unclear
260	Gerald W. Grimes	10/5/2018	Cost	Not indicated/unclear
261	Richard J. Davis	10/5/2018	Other	In opposition
262	Hollybeth Hakes	10/5/2018	Not engaged in private practice of law; cost	Not indicated/unclear
263	Robert Russell	10/5/2018	Pro bono	In opposition
264	Bambi Lin Litchman	10/5/2018	Cost	Not indicated/unclear
265	Gregory W. Hogan	10/5/2018	Idea for exemption	Not indicated/unclear
266	Brad Mellotte	10/5/2018	Public protection	In favor
267	Kevin Halverson	10/5/2018	Not engaged in private practice of law; cost	In opposition
268	Douglas S. Tingvall	10/5/2018	Cost	In opposition
269	Jay Nuxoll	10/5/2018	Cost	Not indicated/unclear
270	Heather Kelly	10/5/2018	Idea for exemption	Not indicated/unclear
271	John F. Bury	10/5/2018	Cost	Not indicated/unclear
272	Lara Lavi	10/5/2018	Cost	Not indicated/unclear
273	Bruce Ian Feldman	10/5/2018	Retired/Semi-retired/Planning to retire; idea for exemption	In opposition
274	Ed Sterner	10/5/2018	Other	Not indicated/unclear
275	Lori J. Guevara	10/5/2018	Retired/semi-retired/planning to retire; cost	In opposition
276	Caroline Edmiston	10/5/2018	Retired/semi-retired/planning to retire; pro bono	In opposition
277	Dawn Monroe	10/5/2018	Retired/semi-retired/planning to retire	Not indicated/unclear
278	Kate M. Hawe	10/5/2018	Other	Not indicated/unclear
279	Barbara Harnsich	10/5/2018	Retired/semi-retired/planning to retire	Not indicated/unclear
280	Michael Little	10/5/2018	Not engaged in private practice of law	In opposition
281	Robert Hayes	10/7/2018	Not engaged in private practice of law; Other	Not indicated/unclear
282	Douglas B. Greenswag	10/7/2018	Retired/Semi-retired/Planning on to retire	Not indicated/unclear
283	Brad Gibson	10/7/2018	Retired/Semi-retired/Planning to retire; idea for exemption	Not indicated/unclear
284	Inez Petersen	10/7/2018	Pro bono; needs more information; other	In opposition
285	Laura Macey Voss	10/7/2018	Cost	Not indicated/unclear
286	Christine W. Keating	10/7/2018	Not engaged in private practice of law; idea for exemption	In favor
287	John Goodall	10/8/2018	Other	Not indicated/unclear
288	Paul Kelly	10/8/2018	Idea for exemption	Not indicated/unclear
289	Carol L. La Verne	10/8/2018	Retired/semi-retired/planning to retire	In opposition
290	Gary Hersey	10/8/2018	Not engaged in private practice of law; idea for exemption	In opposition
291	Thomas More Kelleher	10/8/2018	Retired/Semi-retired/Planning to retire; cost	Not indicated/unclear
292	Autumn Linder-Sanders	10/8/2018	Uninsurable	Not indicated/unclear
293	Rockie Hansen	10/8/2018	Other; idea for exemption	Not indicated/unclear
294	Jeffrey J. Duggan	10/8/2018	Idea for exemption	Not indicated/unclear

295	Patrick Tornsey	10/9/2018	Cost	Not indicated/unclear
296	Ronald W. Atwood	10/9/2018	Other	In favor
297	Brian Suzuki	10/9/2018	Not engaged in private practice of law; cost	Not indicated/unclear
298	Shawn Alexander	10/9/2018	Cost	In opposition
299	Lisa E. Brewer	10/9/2018	Cost; other	In opposition
300	Lisa F. Moore	10/10/2018	Cost; other	In opposition
301	Donna Beatty	10/10/2018	Other	not indicated/unclear
302	Lisa Allison	10/10/2018	Idea for exemption; not engaged in private practice of law	Not indicated/unclear
303	Matthew G. Simunds	10/10/2018	Other; Cost	In opposition
304	Meliha Babic	10/10/2018	Cost	In opposition
305	Katherine Krueger	10/10/2018	Other	Not indicated/unclear
306	Saphronia Young	10/10/2018	Public protection	In favor
307	Patricia Michl	10/10/2018	Other	In opposition
308	Chapin E. "Shea" Wilson	10/10/2018	Other	Not indicated/unclear
309	Alexandra Molina	10/10/2018	Cost	In opposition
310	Matthew D. Hardin	10/10/2018	Other	In opposition
311	Michael C. Miller	10/10/2018	Idea for exemption; cost	In opposition
312	Gail M. Ragen	10/11/2018	Other	In opposition
313	Kenneth J. Pedersen	10/11/2018	Other	Not indicated/unclear
314	Thomas B. Nast	10/11/2018	Idea for exemption; cost; pro bono	In opposition
315	Barnaby Zall	10/11/2018	Pro bono; other	Not indicated/unclear
316	Cheryl C. Mitchell	10/12/2018	Cost; pro bono	Not indicated/unclear
317	Jay Harris	10/12/2018	Other	Not indicated/unclear
318	Inez Petersen	10/12/2018	Cost; pro bono; other	In opposition
319	Walton L. Dabney	10/12/2018	Idea for exemption	Not indicated/unclear
320	Tonya Gisselberg	10/14/2018	Cost	In opposition
321	Thomas M.A. Castagna	10/15/2018	Cost; other	In opposition
322	Carol Nottenburg	10/15/2018	Cost; retired/semi-retired/planning to retire	not indicated/unclear
323	Michael Cherry	10/16/2018	Other	Not indicated/unclear
324	J. Dylan Doty	10/15/2018	Idea for exemption	Not indicated/unclear
325	Kate M. Hawe	10/15/2018	Needs more information	Not indicated/unclear
326	William Derker Elhert	10/16/2018	Cost	Not indicated/unclear
327	Jason Scott	10/16/2018	Not engaged in private practice of law; idea for exemption; pro bono Retired/semi-retired/planning to retire; pro bono; idea for	Not indicated/unclear
328	Ted H. Gathe	10/16/2018	exemption	Not indicated/unclear
329	Laura Umetsu	10/16/2018	Pro bono; idea for exemption	Not indicated/unclear
330	Carolyn Fritz	10/16/2018	Cost; pro bono	In opposition
331	Rachel Levine	10/16/2018	Idea for exemption	Not indicated/unclear
332	Thomas More Kelleher	10/16/2018	Retired/semi-retired/planning to retire	Not indicated/unclear
333	Julie A. Sevenich	10/16/2018	Not engaged in private practice of law	Not indicated/unclear
334	Steven J. Miller	10/16/2018	Idea for exemption	Not indicated/unclear
335	Matt Woods	10/16/2018	Cost	In favor
336	C. Olivia Irwin	10/16/2018	Cost	Not indicated/unclear
337	Patricia Michl	10/17/2018	Other	In opposition
338	Paul Treyz	10/17/2018	Retired/semi-retired/planning to retire; pro bono	Not indicated/unclear
339	Jane Swenson	10/17/2018	Idea for exemption; not engaged in private practice of law	Not indicated/unclear
340	Roger Hawkes	10/17/2018	Other	In opposition
341	John Earling	10/17/2018	Other	In opposition
342	Julie Smith	10/17/2018	Not engaged in private practice of law; idea for exemption	In favor
343	Patricia Bosmans	10/18/2018	Retired/semi-retired/planning to retire	Not indicated/unclear
344	Patricia Michl	10/18/2018	Other	In opposition
345	James Imperiale	10/18/2018	Pro bono	Not indicated/unclear
346	James H. Davenport	10/19/2018	Other	In opposition
347	Howard Joseph Scalone	10/19/2018	Not engaged in private practice of law	In opposition
348	Kimberly Robinson	10/19/2018	Cost; idea for exemption	Not indicated/unclear
349	Amanda Stephen	10/23/2018	Cost	In opposition
350	Glade Kim Risenmay	10/23/2018	Idea for exemption	Not indicated/unclear
351	Patrick Dwyer	10/23/2018	Cost	In opposition
352	Inez Petersen	10/24/2018	Other	Not indicated/unclear
353	Timothy Kosnoff	10/26/2018	Uninsurable	Not indicated/unclear
354	Gregory R. Kasten	10/26/2018	Retired/semi-retired/planning to retire; idea for exemption	Not indicated/unclear
355	Harold Federow	10/26/2018	Other	Not indicated/unclear
356	Tom Stahl	10/26/2018	Other	Not indicated/unclear
357	John M. Gray	10/27/2018	Not engaged in private practice of law	Not indicated/unclear
358	Stephen W. Hayne	10/28/2018	Other	In opposition
359	Fred Kull	10/31/2018	Cost; other	Not indicated/unclear
360	Michael Martinez	11/4/2018	Idea for exemption	Not indicated/unclear
361	Margaret Marshall Davis	11/6/2018	Other	Not indicated/unclear
362	Inez Petersen	11/7/2018	Other	In opposition
363	Leland L. Bull Jr.	11/8/2018	Idea for exemption; other	Not indicated/unclear
364	Bruce R. Busch	11/12/2018	Other	In opposition
365	Hanna Coate	11/13/2018	Cost	In opposition
366	Inez Petersen	11/13/2018	Other	In opposition
367	Meredith Quinn-Loerts	11/15/2018	Idea for exemption	Not indicated/unclear
368	Joshua D. McKarcher	11/15/2018	Other	In opposition

369	David Menz	11/15/2018	Cost	In opposition
370	Inez Petersen	11/16/2018	Other	In opposition
371	Linda Patterson	11/16/2018	Idea for exemption	In opposition
372	Inez Petersen	11/17/2018	Other	In opposition
373	Drew Harrison Foerster	11/18/2018	Idea for exemption; cost	Not indicated/unclear
374	Daniel H. Brunner	11/19/2018	Idea for exemption	Not indicated/unclear
375	Richard Gordon	11/19/2018	Retired/semi-retired/planning to retire	Not indicated/unclear
376	Linda Gouge	11/20/2018	Uninsurable; cost	Not indicated/unclear
377	Robert L. Bergstrom	11/20/2018	Other	In opposition
378	Andrew Kottkamp	11/21/2018	Other	In favor
379	John Goodall	11/21/2018	Other	Not indicated/unclear
380	John Goodall	11/21/2018	Other (originally received 10/18)	Not indicated/unclear
381	Claudia La Rose	11/21/2018	Other	Not indicated/unclear
382	Michael Russo	11/21/2018	Idea for exemption	Not indicated/unclear
383	Robert W. Strohmeier	11/21/2018	Retired/semi-retired/planning to retire; cost	In opposition
384	Nick Verwolf	11/21/2018	Retired/semi-retired/planning to retire	Not indicated/unclear
385	Bob Baird-Levine	11/21/2018	Cost	In opposition
386	Rodney J. Waldbaum	11/21/2018	Retired/semi-retired/planning to retire	In opposition
387	Pamela Kohlmeier	11/21/2018	Cost; idea for exemption	Not indicated/unclear
388	Gene DeFelice	11/21/2018	Cost; retired/semi-retired/planning to retire	In opposition
389	Ron Leavell	11/21/2018	Idea for exemption	Not indicated/unclear
390	Patrick Brannon	11/21/2018	Not engaged in private practice of law	In opposition
391	Peggy Wolf	11/21/2018	Cost; other	Not indicated/unclear
392	Stacey L. Romberg	11/21/2018	Public protection	In favor
393	Sandi H. Shelton	11/21/2018	Not engaged in private practice of law; cost; idea for exemption	Not indicated/unclear
394	Caroline Edmiston	11/21/2018	Idea for exemption	Not indicated/unclear
395	Aaron Charles Johnson	11/21/2018	Other	In opposition
396	Frank Washko	11/21/2018	Other	In opposition
397	Tawnya Tangel	11/21/2018	Not engaged in private practice of law; idea for exemption	Not indicated/unclear
398	Dan Grausz	11/21/2018	Not engaged in private practice of law; idea for exemption	Not indicated/unclear
399	Frank Bartoletta	11/21/2018	Other	Not indicated/unclear
400	Ken Valz	11/21/2018	Other	Not indicated/unclear
401	Joseph Dawson	11/21/2018	Not engaged in private practice of law	Not indicated/unclear
402	Ronald R. Carpenter	11/21/2018	Retired/semi-retired/planning to retire	In opposition
403	Carole Grayson	11/21/2018	Not engaged in private practice of law; pro bono	In opposition
404	Jason Appelgate	11/21/2018	Cost; not engaged in private practice of law	Not indicated/unclear
405	Jeff Bean	11/21/2018	Idea for exemption	In favor
406	Timothy M. Higgins	11/21/2018	Other	Not indicated/unclear
407	Gerald Steel	11/21/2018	Cost; idea for exemption	Not indicated/unclear
408	Robert L. Israel	11/21/2018	Retired/semi-retired/planning to retire; idea for exemption	Not indicated/unclear
409	Vera Ellich	11/21/2018	Not engaged in private practice of law; idea for exemption	Not indicated/unclear
410	Donna J. Detamore	11/21/2018	Cost; pro bono	Not indicated/unclear
411	Michael S. McNeely	11/21/2018	Not engaged in private practice of law	Not indicated/unclear
412	David Reed	11/21/2018	Other	Not indicated/unclear
413	Patrick Burns	11/21/2018	Not engaged in private practice of law	Not indicated/unclear
414	Alix Foster	11/21/2018	Idea for exemption	In favor
415	Noelle Jackson	11/22/2018	Not engaged in private practice of law	Not indicated/unclear
416	Fred D. Kull	11/22/2018	Other	Not indicated/unclear
417	Deborah L. Pirner	11/22/2018	Cost	In opposition
418	Ashley DeMoss	11/22/2018	Idea for exemption	Not indicated/unclear
419	Charles M. Cruikshank III	11/22/2018	Idea for exemption	Not indicated/unclear
420	Elizabeth M. Rosenman	11/22/2018	Pro bono	Not indicated/unclear
421	Craig Robertson	11/22/2018	Not engaged in private practice of law	Not indicated/unclear
422	John Goodall	11/23/2018	Other	In opposition
423	Jason L. Harkins	11/23/2018	Cost	In opposition
424	Anita Redline	11/23/2018	Other	In opposition
425	Neil Sussman	11/23/2018	Uninsurable	In opposition
426	Jason Hatch	11/23/2018	Other	In opposition
427	Patricia Halsell	11/23/2018	Not engaged in private practice of law; idea for exemption	Not indicated/unclear
428	Beverly Brown Losey	11/23/2018	Cost; pro bono	Not indicated/unclear
429	Sandy Hayes	11/23/2018	Cost	Not indicated/unclear
430	Meredith Wright Hutchins	11/24/2018	Cost	In opposition
431	Alexandra Cock	11/24/2018	Pro bono; cost	Not indicated/unclear
432	Yvonne K. Chapman	11/24/2018	Other; cost	In opposition
433	Richard Flamm	11/24/2018	Idea for exemption	Not indicated/unclear
434	Paul Okner	11/24/2018	Other	In opposition
435	Dawn Thorsness	11/25/2018	Idea for exemption	Not indicated/unclear
436	Irina Anta	11/25/2018	Cost	In opposition
437	Cheryl Kringle	11/25/2018	Needs more information	Not indicated/unclear
438	Mike Pierson	11/25/2018	Not engaged in private practice of law; idea for exemption	Not indicated/unclear
439	Janet Foster Goodwill	11/25/2018	Not engaged in private practice of law	Not indicated/unclear
440	Arnold Jin	11/26/2018	Other	In opposition
441	Carrie Selby	11/26/2018	Idea for exemption	Not indicated/unclear
442	Inez Petersen	11/26/2018	Other	In opposition
443	Eric Christianson	11/26/2018	Retired/semi-retired/planning to retire; cost	In opposition
444	Mark C. McClure	11/26/2018	Other	Not indicated/unclear

445	Brian P. Russell	11/26/2018	Other	In opposition
446	Cherry Davis	11/26/2018	Not engaged in private practice of law	Not indicated/unclear
447	N. Michael Hansen	11/26/2018	Idea for exemption	Not indicated/unclear
448	Orion Inskip	11/26/2018	Other	Not indicated/unclear
449	Larry Berg	11/26/2018	Idea for exemption	Not indicated/unclear
450	Emily Carlin	11/26/2018	Idea for exemption	Not indicated/unclear
451	Mike Warren	11/26/2018	Retired/semi-retired/planning to retire; idea for exemption	Not indicated/unclear
452	James Laukkonen	11/26/2018	Other	In opposition
453	Rush Riese	11/26/2018	Retired/semi-retired/planning to retire; idea for exemption	Not indicated/unclear
454	Charles S. Smith	11/26/2018	Other	In opposition
455	Anne M. Van Leynseele	11/26/2018	Other	In favor
456	Grant Learned	11/26/2018	Needs more information	Not indicated/unclear
457	Todd R. Thoroughman	11/26/2018	Cost; not engaged in private practice of law	Not indicated/unclear
458	Myles Van Leuven	11/26/2018	Not engaged in private practice of law	In opposition
459	Michael Jordan	11/26/2018	Other	Not indicated/unclear
460	Robert L. Sewell	11/26/2018	Idea for exemption; not engaged in private practice of law	Not indicated/unclear
461	Jason Hatch	11/26/2018	Other	In opposition
462	Paul B. Apple	11/26/2018	Needs more information	Not indicated/unclear
463	Fred Segó Jr.	11/26/2018	Not engaged in private practice of law	Not indicated/unclear
464	Scott A. Smith	11/26/2018	Retired/semi-retired/planning to retire; idea for exemption	Not indicated/unclear
465	Jeff E. Jared	11/26/2018	Other	In opposition
466	Amy J. Stephson	11/26/2018	Retired/semi-retired/planning to retire; cost	Not indicated/unclear
467	Inez Petersen	11/26/2018	Other	In opposition
468	Diana T. Jimenez	11/26/2018	Idea for exemption	Not indicated/unclear
469	James Catalinich	11/26/2018	Not engaged in private practice of law	Not indicated/unclear
470	Jeff Oster	11/26/2018	Uninsurable; Other	Not indicated/unclear
471	Martin Rollins	11/26/2018	Retired/semi-retired/planning to retire; cost	In opposition
472	Gary Abolofia	11/26/2018	Retired/semi-retired/planning to retire	Not indicated/unclear
473	John R. Allison	11/26/2018	Not engaged in private practice of law; idea for exemption	Not indicated/unclear
474	Laura A. Dowty	11/26/2018	Cost	In opposition
475	Kary Krismer	11/26/2018	Not engaged in private practice of law	Not indicated/unclear
476	Jon Bial	11/26/2018	Other	Not indicated/unclear
477	Noel Nightingale	11/26/2018	Other	Not indicated/unclear
478	Jeff Letts	11/26/2018	Uninsurable	In opposition
479	Thomas S. Wampold	11/26/2018	Retired/semi-retired/planning to retire	Not indicated/unclear
480	Karen J. Vanderlaan	11/26/2018	Not engaged in the private practice of law	Not indicated/unclear
481	Brian Schuster	11/26/2018	Not engaged in private practice of law; idea for exemption	Not indicated/unclear
482	Robert Gudmundson	11/26/2018	Other	In opposition
483	Daniel Haverty	11/26/2018	Not engaged in private practice of law; idea for exemption	Not indicated/unclear
484	Killian King	11/26/2018	Other	In opposition
485	Susan Stewart	11/26/2018	Cost	In opposition
486	Charles J. Rupnick	11/26/2018	Cost; retired/semi-retired/planning to retire	Not indicated/unclear
487	Chris Evans	11/26/2018	Uninsurable	Not indicated/unclear
488	Robert W. Ferguson	11/26/2018	Cost	Not indicated/unclear
489	Leonard Rolfes	11/26/2018	Cost	In opposition
490	No name given	11/27/2018	Other	In opposition
491	Douglas W. Scott	11/27/2018	Other	Not indicated/unclear
492	James R. Halstead II	11/27/2018	Other; retired/semi-retired/planning to retire	In opposition
493	Chad S. Hansen	11/27/2018	Idea for exemption; cost	Not indicated/unclear
494	Donald H. Graham	11/27/2018	Other	In opposition
495	John Steinnes	11/27/2018	Idea for exemption; cost	Not indicated/unclear
496	Matt Arpin	11/27/2018	Cost; idea for exemption	Not indicated/unclear
497	Carole Grayson	11/27/2018	Not engaged in private practice of law	In opposition
498	Mike Fisher	11/27/2018	Other	In opposition
499	Susan Cohen Goldstein	11/27/2018	Not engaged in private practice of law; Retired/Semi-retired/Planning to Retire	In opposition
500	Laurence R. Weatherly	11/27/2018	Idea for exemption; cost	Not indicated/unclear
501	Brian L. Comstock	11/27/2018	Other	Not indicated/unclear
502	John Goodall	11/28/2018	Needs more information	In opposition
503	James R. Halstead II	11/28/2018	Needs more information	Not indicated/unclear
504	Rachel Kosmat McCart	11/28/2018	Other	Not indicated/unclear
505	Alan Torres	11/28/2018	Other	In opposition
506	Terry Rhodes	11/28/2018	Cost; other	In opposition
507	Chris Neal	11/28/2018	Needs more information; cost; idea for exemption	In opposition
508	Lisa Neal	11/28/2018	Cost; needs more information	In opposition
509	Thomas L. Hayden	11/28/2018	Idea for exemption; not engaged in private practice of law	Not indicated/unclear
510	William D. Richard	11/28/2018	Idea for exemption	Not indicated/unclear
511	Inez Petersen	11/28/2018	Other	In opposition
512	John W. Chessell on behalf of the San Juan County Bar Association	11/28/2018	Other	In opposition
513	Nancy Bradbrun-Johnson	11/28/2018	Not engaged in private practice of law; cost; idea for exemption	Not indicated/unclear
514	Lori Preuss	11/28/2018	Other	In opposition
515	Meredith Lehr	11/29/2018	Not engaged in private practice of law	In opposition
516	Richard Llewelyn Jones	11/29/2018	Cost	In opposition
517	Stacy D. Lavin	11/29/2018	Other	In opposition

518	Karin Quirk	11/29/2018	Cost	In opposition
	Kristen K. Mitchell on behalf of the Washington State Attorney General's Office			
519		11/29/2018	Idea for exemption	Not indicated/unclear
520	Camreon J. Fleury	11/29/2018	Other; pro bono; cost	In opposition
521	H. Wynnia Kerr	11/29/2018	Retired/semi-retired/planning to retire; cost; pro bono	Not indicated/unclear
522	Mark Alexander	11/29/2018	Cost	In opposition
523	Paul F. Blauert	11/29/2018	Retired/semi-retired/planning to retire; cost	In opposition
524	Thomas F. McDonough	11/29/2018	Other	In opposition
525	John McCrady	11/29/2018	Cost	In opposition
526	Brian Wilkner	11/29/2018	Uninsurable; cost	In opposition
527	Matthew Dresden	11/29/2018	Other	In opposition
528	James E. Macpherson	11/29/2018	Other	In opposition
529	Kyle Trethewey	11/29/2018	Needs more information	In opposition
530	Alan Bornstein	11/29/2018	Cost; other	In opposition
531	William M. Wood	11/29/2018	Needs more information; cost	In opposition
532	Inez Petersen	11/29/2018	Needs more information	In opposition
533	Richard L. Johnson	11/29/2018	Cost; other	In opposition
534	Kathleen M. Weber	11/29/2018	Retired/semi-retired/planning to retire; pro bono; cost	In opposition
535	William Weissinger	11/29/2018	Retired/semi-retired/planning to retire	Not indicated/unclear
536	Hartley Paul	11/29/2018	Other	In opposition
537	Rea L. Culwell	11/29/2018	Cost; pro bono	In opposition
538	Tom McCully	11/29/2018	Not engaged in private practice of law; cost	In opposition
539	Penelope B. Rundle	11/29/2018	Not engaged in private practice of law	Not indicated/unclear
540	Patricia Paul	11/29/2018	Other	In opposition
541	W. David Mellen	11/29/2018	idea for exemption; other	In opposition
542	Dawn Vyvyan	11/29/2018	Idea for exemption	Not indicated/unclear
543	Judge Andrea Darvas	11/29/2018	Idea for exemption; retired/semi-retired/planning to retire	Not indicated/unclear
544	Camille Adair-Hatch	11/29/2018	Not engaged in private practice of law	In opposition
545	Conrad Reynoldson	11/29/2018	Other; cost	In opposition
546	Jackie Brown	11/29/2018	Not engaged in private practice of law	In opposition
547	Patricia A. Simon	11/29/2018	Cost	In opposition
548	Steve Gross	11/29/2018	Needs more information	In opposition
549	Jenny Rydberg	11/30/2018	Cost; needs more information	In opposition
550	Thomas Brotherton	11/30/2018	Cost	Not indicated/unclear
551	Diane J. Kiepe	11/30/2018	Public protection	In favor
552	Douglas W. Scott	11/30/2018	Other	In opposition
553	Joseph W. Moore	11/30/2018	Public protection	In favor
554	James D. Maloney III	11/30/2018	Retired/semi-retired/planning to retire; cost	In opposition
555	David S. Heller	11/30/2018	Other; cost	In opposition
556	Lisa E. Schuchman	11/30/2018	Pro bono; retired/semi-retired/planning to retire	Not indicated/unclear
557	Austin Watkins	11/30/2018	Not engaged in private practice of law	In opposition
558	Cynthia Hodges	11/30/2018	Other	In opposition
559	Eileen Farley	11/30/2018	Idea for exemption; not engaged in private practice of law	Not indicated/unclear
560	Bob Boruchowitz	11/30/2018	Idea for exemption	Not indicated/unclear
			Idea for exemption; pro bono; retired/semi-retired/planning to	
561	Michael A. Winslow	11/30/2018	retire	In opposition
562	Anne I. Seidel	11/30/2018	Other	Not indicated/unclear
563	P. Douglas House	11/30/2018	Other	In opposition
564	Paul McIlrath	11/30/2018	Other	In opposition
565	Kenneth W. Gates	11/30/2018	Retired/semi-retired/planning to retire; cost	In opposition
566	Jean A. Cotton	11/30/2018	Other	In opposition
567	David John Burke	11/30/2018	Cost; pro bono	In opposition
568	Juie K. Fowler	11/30/2018	Cost	In opposition
569	Pamela Bradley	11/30/2018	Idea for exemption; retired/semi-retired/planning to retire	Not indicated/unclear
570	June Campbell	11/30/2018	Retired/semi-retired/planning to retire; cost	Not indicated/unclear
571	Matt Newberg	11/30/2018	Needs more information; pro bono	In opposition
572	Michael Izak	11/30/2018	Cost; other	In opposition
573	Michael Rossotto	11/30/2018	Idea for exemption; other	Not indicated/unclear
574	Tom Owens	11/30/2018	Cost; other	In opposition
575	Scott Stafne	11/30/2018	Cost; other	Not indicated/unclear
576	James Putnam	11/30/2018	Cost; other	In opposition
577	L. Daniel Fessler	11/30/2018	Needs more information; other	Not indicated/unclear
578	Jennifer Kampsula	11/30/2018	Not engaged in private practice of law; cost	Not indicated/unclear
	Kari Petrsek on behalf of the Solo & Small Practice Section			
579		11/30/2018	Needs more information; cost; other	Not indicated/unclear
580	Courtney Lewis	12/1/2018	Idea for exemption; cost	Not indicated/unclear
581	Inez Petersen	12/1/2018	Needs more information	In opposition
582	Edgar I. Hall	12/1/2018	Pro bono; cost; idea for exemption	In opposition
583	Larry D. Stout	12/1/2018	Other; idea for exemption	In opposition
584	Peggy Whitmore	12/1/2018	Other	Not indicated/unclear
585	Peter H. Arkison	12/1/2018	Other	Not indicated/unclear
586	R. Reams Goodloe Jr.	12/1/2018	Other; needs more information	Not indicated/unclear

587	Ronald T. Schaps	12/1/2018	Other	Not indicated/unclear
588	Sandra Lynn Perkins	12/1/2018	Cost; pro bono; idea for exemption	In opposition
589	John D. Wickham	12/1/2018	Pro bono	In opposition

From: [Paula Littlewood](#)
To: [Doug Ende](#); [Kim Risenmay \(kim@risenmaylaw.com\)](#)
Cc: [Ann Holmes](#); [Doug Ende](#); [Frances Dujon-Reynolds](#); [Jean McElroy](#); [Terra Nevitt](#); [Robin Haynes](#); [Brad Furlong \(brad.wsba@furlongbutler.com\)](#); [Bill Hyslop](#); [Jill Karmy](#); [Ann Daniela](#) [REDACTED]
Subject: FW: Mandatory malpractice insurance
Date: Tuesday, May 30, 2017 10:29:23 PM
Attachments: [Untitled](#)
[Untitled](#)

FYI – in response to Chris’s district update.

Thanks,
Paula

From: Chris Meserve [mailto:meservebog@yahoo.com]
Sent: Tuesday, May 30, 2017 8:20 PM
To: Paula Littlewood
Subject: Fw: Mandatory malpractice insurance

Sent from Yahoo Mail. [Get the app](#)

On Tuesday, May 30, 2017 6:26 PM, "lovinger@juno.com" <lovinger@juno.com> wrote:

Dear Christine,

Thank you for your warning about the proposal to make the purchase of malpractice insurance mandatory.

I am one of the people you mentioned in your summary that are in active status but have no private clients. That status allows me to occasionally pick up a contract from the Legislature of the state for brief employment, usually on an emergency basis. While I am mostly retired, I enjoy being able to help out in an emergency and put my skills and many years of experience to good public purpose. If I am forced to purchase malpractice insurance, I will have to switch to inactive and the state and its taxpayers will lose a valuable, and inexpensive resource.

I know that I am not the only attorney in this situation and hope that we, as full WSBA dues paying members, will be considered when this issue arises again.

Thank you for your time and service,

Martin Lovingger

From: [Paula Littlewood](#)
To: [Doug Ende](#)
Subject: FW: [Possible Spam] WSBA Contact Submission
Date: Monday, September 11, 2017 11:14:30 PM
Importance: Low

Can you please be the repository for now of this feedback?

Thanks,
Paula

From: Questions
Sent: Monday, September 11, 2017 9:25 AM
To: Paula Littlewood
Cc: Jean McElroy
Subject: FW: [Possible Spam] WSBA Contact Submission
Importance: Low

Feedback.

Kris McCord | Service Center Representative
Washington State Bar Association | 800.945.9722 | krism@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

From: [REDACTED] [[mailto:\[REDACTED\]](mailto:[REDACTED])]
Sent: Monday, September 11, 2017 7:26 AM
To: Questions
Subject: [Possible Spam] WSBA Contact Submission
Importance: Low

email: [REDACTED] Topic: 1. Licensing Message: I am writing about the Sept. 2017 article regarding mandatory malpractice insurance. I am retired. I am still an active member of the bar. When I practiced I always had insurance. Since I am not practicing I don't have insurance, but I am associated with an attorney who is insured on four personal injury cases. I hope to have future associations, and do not want to pay for insurance because I no longer practice. If you require insurance, I request that you provide an exception for retired attorneys who associate with insured attorneys on injury cases. Thank you. Richard L. Peterson, Bar # 5311

From: [Jennifer Olegario](#)
To: [Doug Ende](#)
Subject: FW: September Malpractice Insurance Article
Date: Tuesday, September 12, 2017 10:52:27 AM
Attachments: [image001.png](#)

FYI

Jennifer Olegario | Communication Strategies Manager

Washington State Bar Association | 206.727.8212 | jennifero@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

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From: NWLawyer
Sent: Tuesday, September 12, 2017 10:40 AM
To: Margaret Morgan; Jennifer Olegario
Cc: Terri Sharp
Subject: FW: September Malpractice Insurance Article

FYI, feedback on the mandatory malpractice insurance article. I will save in the "Letters to the Editor" folder in the NWL inbox. I'll also start a file for the November inbox.

Jodie Warren | Copy Editor/Communications Specialist (temp)

Washington State Bar Association | 206.727.5932 | carolynw@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101 | www.wsba.org

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From: Valerie Shuman [<mailto:vshuman@harbornet.com>]
Sent: Tuesday, September 12, 2017 10:27 AM
To: NWLawyer
Subject: Re: September Malpractice Insurance Article

I just read the September article about mandatory insurance and, as a result, I am sending in my first comment in 25 years of practicing law in Washington. Our small office has always maintained insurance for our speeding ticket/DUI practice. We pay \$750 for each attorney for \$250,000 per claim/\$500,000 aggregate of coverage. I hope that you consider small firms such as ours as you continue your investigation. Oregon's apparent one-size-fits-all \$3500 per lawyer assessment is ridiculous and bears no relation to the true cost of insuring a small firm like ours. Should you adopt a similar requirement, you would be creating an unnecessary financial burden for many small firms.

\$3500 for each lawyer? \$7000 for what currently costs us \$1500? What an outrage that would be.

Valerie Shuman, Tacoma

Valerie Shuman

Attorney at Law

(253) 227-7855

vshuman@harbornet.com

www.shumanlawoffice.net

From: [Jennifer Olegario](#)
To: [Doug Ende](#)
Subject: FW: Mandatory Malpractice Insurance
Date: Tuesday, September 12, 2017 12:32:06 PM
Attachments: [image001.png](#)

[More feedback.](#)

Jennifer Olegario | Communication Strategies Manager

Washington State Bar Association | 206.727.8212 | jennifero@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

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From: NWLawyer
Sent: Tuesday, September 12, 2017 12:27 PM
To: Jennifer Olegario; Margaret Morgan
Subject: FW: Mandatory Malpractice Insurance

[More feedback on the malpractice insurance article.](#)

From: John Myer [<mailto:john@myercorplaw.com>]
Sent: Tuesday, September 12, 2017 12:17 PM
To: NWLawyer
Subject: Mandatory Malpractice Insurance

Ladies and Gentlemen,

I searched diligently and filled out numerous applications, but I reached the conclusion that there is no market for malpractice coverage for transactional securities lawyers in solo practice. It appears that from the insurer's perspective, the underwriting costs exceed the expected profits at anything other than prohibitive rates. The last time I looked into this (and that was a number of years ago), every insurer I contacted refused to give make an offer at any price.

I'd like to note that I was trained in my practice area at Sullivan & Cromwell in New York, am 61 years old, and have never had a claim made against me. I also have impeccable academic credentials, which include an MBA equivalent from MIT.

If Washington decides on mandatory insurance, I would favor a professional liability fund. I fear that otherwise my license to practice in Washington would be worthless.

Regards,

John A. Myer



**2101 Fourth Avenue, Suite 1900
Seattle, WA 98121-2315**

www.MyerCorpLaw.com

206.651.5563

This email and any attached files are confidential and may be the subject of attorney-client privilege. If you have received this email in error, please delete it and notify me immediately.

From: [Paula Littlewood](#)
To: [Doug Ende](#)
Subject: FW: Feedback regarding proposed mandatory malpractice system for Washington attorneys - for Sept 28-29 Board of Governors meeting
Date: Thursday, September 14, 2017 10:58:01 PM
Attachments: [image001.png](#)

Another to keep in the repository....

Thanks,
Paula

From: JAMES K DOANE [mailto:jamesdoane@me.com]
Sent: Thursday, September 14, 2017 3:06 PM
To: Paula Littlewood; Brad Furlong; Margaret Shane; William Hyslop; William Pickett (bill@wdpickett-law.com)
Subject: Fwd: Feedback regarding proposed mandatory malpractice system for Washington attorneys - for Sept 28-29 Board of Governors meeting

James Doane

Begin forwarded message:

From: JAMES K DOANE <jamesdoane@me.com>
Date: September 14, 2017 3:04:54 PM
To: "Pierce, Suzanne K." <spierce@davisrothwell.com>
Subject: Re: Feedback regarding proposed mandatory malpractice system for Washington attorneys - for Sept 28-29 Board of Governors meeting

Suzanne,

Thank you for your thorough and well considered comments on this important matter. I am also heartened that you are willing to volunteer. I will pass your comments and willingness to serve to Paula Littlewood so that she can direct it to the appropriate person when they recruit for a task force.

The BOG will take action on creation (or not) of the charter at the next BOG meeting, week after next, as you know. Please visit the WSBA website late next week for agenda updates. If you are able to come in person or call in to share your views with the BOG then, that would be great too--especially if it is before we vote!

I will certainly vote, informed by your views.

Cheers,
James Doane

On Sep 14, 2017, at 01:44 PM, "Pierce, Suzanne K." <spierce@davisrothwell.com> wrote:

Jim,

I was not yet in practice when the Board and Bar last considered creating a mandatory malpractice system. But in my current role I have a variety of experiences relevant to the discussion:

1. I am licensed in Washington and have practiced for over 20 years as a solo, in a small firm, in medium and large firms, and as municipal counsel. I understand the concern about cost of insurance relative to business size.
2. My firm has offices in both Oregon and Washington, with lawyers licensed in both states. I see the comparative result of the two bars' insurance systems on the number of ethics and malpractice complaints, member satisfaction and public perception of the bar.
3. My practice includes professional malpractice defense as well as litigation defense. I have observed with concern the inequities resulting from underinsured parties.
4. My firm performs a significant amount of repair, defense and coverage work for the Oregon State Bar's Professional Liability Fund. I defend lawyers who are dually licensed in Oregon and Washington, whose malpractice coverage is provided via the PLF, and who are the subject of malpractice claims by former clients. I also defend claims by persons suing both my attorney client *and* the attorney's former client.

Based on this experience, **I strongly support WSBA's adoption of a Professional Liability Fund** and administration like Oregon's. A "single-payor system" of liability insurance encourages proactivity, early intervention and loss prevention in reducing the number and cost of claims – as well as in aiding payment of those claims. The article in the September WSBA magazine mentions (page 26, left-hand column) the loss-prevention services offered by the PLF including legal education, practice management programs (*e.g.*, establishing a business or winding down one; mentoring), and free personal counseling for the life of a crisis by in-house, lawyer-savvy counselors (akin to but much broader than WSBA's EAP-like Lawyers Assistance Program). In my experience, these are amazingly effective at helping lawyers avoid malpractice in the first place, aiding in early intervention solutions (because of the ease of obtaining defense counsel and other services) and reducing both bar complaints and claim costs.

I do question whether a member referendum can be successful at instituting such a program. While our mission is, in part, to protect the public, perhaps the Washington legislature can do so with more focus (*i.e.*, without becoming distracted by insurance

premium expense).

I would welcome the opportunity to discuss these issues further, including assisting a Mandatory Malpractice Insurance Task Force if I am invited to do so.

No communication from a lawyer would be complete without some fine print, and here is mine: the opinions expressed in this message are mine, and do not necessary represent those of my firm, its shareholders or employees.

Suzanne K. Pierce

ATTORNEY IN WASHINGTON

Direct (206) 900-9331

Assistant Kris Patten: (206) 900-9328, kpatten@davisrothwell.com

Main (206) 622-2295 **Fax** (206) 340-0724

520 Pike St, Suite 2500, Seattle, WA 98101



From: [Brad Furlong](#)
To: [Lee Bull](#)
Cc: [Andea Jarmon \(andrea@jarmonlawgroup.com\)](#); [Anepla Hayes](#); [Ann Danieli](#); [Athan Papailiou](#); [Christina Meserve \(MeserveBOG@yahoo.com\)](#); [Dan Bridges \(danBOG@mcbdlaw.com\)](#); [Dan Clark \(DanClarkBOG@yahoo.com\)](#); [G. Kim Risenmay](#); [James Doane](#); [Jill Karmy \(jillkarmy@karmylaw.com\)](#); [Keith Black](#); [Mario Cava](#); [Rajeev Majumdar \(rajeev@northwhatcomlaw.com\)](#); [Ann Holmes](#); [Doug Ende](#); [Frances Dujon-Reynolds](#); [Jean McElroy](#); [Margaret Shane](#); [Paula Littlewood](#); [Sean Davis](#); [Terra Nevitt](#)
Subject: RE: Statement in opposition to the Board's intention to required malpractice insurance as a condition of active membership in WSBA
Date: Wednesday, September 20, 2017 5:15:25 PM

Thank you, Mr. Bull for your statement. The Board of Governors is not ready to consider reach a decision concerning mandatory malpractice. Next week the Board of Governors will consider a charter for a committee to look into mandatory malpractice. You might want to check the WSBA web site early next week to see the charter, and, if you wish offer any further comments..

I am sharing your statement with the entire BOG and WSBA executive staff. Should the BOG chose to look into mandatory malpractice insurance, I hope you engage with the Board and share your thoughts.

Again, many thanks for your message.

Bradford E. Furlong, President
Washington State Bar Association



825 Cleveland Avenue | Mount Vernon, Washington 98273 | 360.336.6508 voice | 360.336.3318 facsimile

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From: Lee Bull [mailto:leeguns@hotmail.com]
Sent: Wednesday, September 20, 2017 4:18 PM
To: Brad Furlong
Subject: Statement in opposition to the Board's intention to required malpractice insurance as a condition of active mmembersh in WSBA

To the officers and board members of WSBA -

My name is Leland L. Bull, Jr., WSBA #9821, admitted to practice in, and a WSBA member since, 1967. I spent 29 years in active practice in the bankruptcy courts of this state from the time of my return to Seattle in 1985, after 18 years of teaching at Law Faculties in North Dakota, Georgia and Michigan, and active practice as a member of the Bar Associations of both Georgia and Michigan, in the latter state, as a senior associate specializing in bankruptcy

law with the Dykema firm in Detroit, at the time the largest in Michigan. From 1985 to 1991, I was a partner in a two man bankruptcy boutique in Seattle, and from 1992, I was a sole practitioner specializing in bankruptcy, until closing my office in January 2015. I have remained since that time an active member of WSBA and hope to renew my active membership in 2018; today that is in doubt, as the Board appears poised to require malpractice insurance as a condition of active membership. I have retained my membership in order to have a voice in the affairs of WSBA and also because, as a lawyer and legal educator for 50 years, bar membership is a part of my personality and my psyche, just as it is for many of the members of the bar who have reached the 50 year mark or more but no longer maintain an office. There are, I would guess, as a result of attending the Senior Lawyers annual seminars sponsored by WSBA's senior lawyers section, at least several hundred of us who maintain active membership but earn essentially nothing from practice. We do this at the cost of about \$400 per year. Membership is worth that to us. But give consideration to the cost of malpractice insurance to those of us in that position. Between 2009 and 2014, all years in which I was conducting a limited, part time practice, my malpractice policies cost me between \$2100 and \$2400 annually (my insurer did give me a small break due to age and reduced practice volume). Even obtaining malpractice insurance at a reasonable rate after giving it up and taking the free tail most insurers offer is questionable.

If you now mandate malpractice insurance as a condition of active membership, the cost of membership will rise to over \$2500 per year for us senior citizens. That is not feasible for the retired or essentially retired attorney; the WSBA will therefore lose many older members and hence, it will lose experience, expertise, and wise counsel, as well as thousands of dollars of membership revenue.

I ask each of you to give some consideration to the predicament you will cause for the people in my position before you pass a blanket rule which in effect will end our relationship with the WSBA.

Leland L. Bull, Jr., WSBA #9821

PS: I would appreciate that you would share this e-mail with your colleagues on the Board, Messrs. Clark and Cava, who do not list an e-mail address for their constituents to reach them.

From: [Paula Littlewood](#)
To: [Doug Ende](#)
Cc: [Margaret Shane](#)
Subject: FW: WSBA proposed insurance
Date: Tuesday, September 26, 2017 12:00:51 AM
Attachments: [image001.png](#)

FYI

Thanks,
Paula

From: Brad Furlong [mailto:brad.wsba@furlongbutler.com]
Sent: Monday, September 25, 2017 10:02 PM
To: Margaret Shane; Paula Littlewood
Cc: G. Kim Risenmay
Subject: FW: WSBA proposed insurance

Thanks, Kim. Paula/Margaret are collecting input for the committee's consideration.

Bradford E. Furlong, President
Washington State Bar Association

FURLONG ♦ BUTLER
ATTORNEYS

825 Cleveland Avenue | Mount Vernon, Washington 98273 | 360.336.6508 voice | 360.336.3318 facsimile

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From: G. Kim Risenmay [mailto:kim@risenmaylaw.com]
Sent: Monday, September 25, 2017 9:44 PM
To: 'T Rhodes'
Cc: Brad Furlong
Subject: RE: WSBA proposed insurance

Dear Mr. Rhodes,

Thank you for your thoughtful message. I will share it with the other Governors and the members of the task force who will be assigned to consider this issue, so they can have the benefit of your perspective.

Kim Risenmay

WSBA Governor, District 1

G. Kim Risenmay | Attorney at Law

The **Risenmay Law Firm** PLLC | 10103 167th Place NE | Redmond, WA 98052-3125

Direct: (425) 285-9305 | Mobile: (206) 306-3918

kim@risenmaylaw.com | www.risenmaylaw.com

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From: T Rhodes [<mailto:>]
Sent: Monday, September 25, 2017 1:42 PM
To: kim@risenmaylaw.com
Subject: WSBA proposed insurance

Dear Governor Risenmay,

My name is Terry Rhodes and I have been member of the bar for 36 years. The purpose of this email is to detail the reasons why I oppose the WSBA's interest in making insurance mandatory for attorneys.

1. We are already forced to pay each year into the bar's fund that pays claims made against attorneys. I recognize it does not compensate all who have claims but I am not my brother's keeper and it was a bad idea.
2. Many of the most experienced attorneys who do pro bono work will resign. There are many attorneys such as myself who are now semi retired and do not practice full time but instead use our active status to help people at little or no charge on cases that have very limited liability. We can also well afford to pay any claims that could result. If we are forced to buy insurance, probably the majority, including myself will immediately resign from the bar and stop practicing law for all the people who come to us. Once these attorneys resign they will not even be able to answer anyone's legal question, simple or not, even on a pro bono basis for those who can't pay as it would be the unauthorized practice of law.
3. Forcing attorneys to buy insurance is not what it seems. Attorney's' policies are on a claims made basis and if the bar wants to have insurance for cases then they want insurance to run until the statute of limitations period runs out too. You will note that this means an attorney who practices for one year will be forced to buy insurance for at least 3 years and probably 6 years after that year. Many older attorneys who are trying to decide when to stop practicing may decide to just quit when this comes into effect rather than agree to pay for insurance for 6 extra years as the price to continue practicing for a while longer. It can be the straw that

breaks the camel's back. Without this further overstepping by the bar those attorneys might continue for many years serving the public at very affordable prices or for free with their wealth of knowledge.

It does sound nice that all attorneys would have insurance. That's probably why the bar is considering it. It would be nice if everything was always funded by the attorneys. Just come up with whatever sounds good and have the attorneys pay for it or have to do it. That seems the basis upon which the bar has been operating. But all the needless burdens that the bar continues to place on attorneys (with no consideration on how they affect the attorneys) have more of an effect on more senior attorneys who do not have to practice law anymore but who like using their knowledge and experience to help people. And that will have costs for the public, instantly.

It would be an embarrassment to the WSBA if I have to tell these needy people that the WSBA has decided that for me to answer your very simple legal question for free I would have to pay for insurance for this year and 6 more years.

Respectfully,

Terry Rhodes
11945

From: [NWLawyer](#)
To: [Margaret Morgan](#)
Cc: [Doug Ende](#)
Subject: FW: Mandatory Malpractice Insurance
Date: Wednesday, October 04, 2017 3:32:03 PM

Hello,

We received a letter to the editor regarding mandatory malpractice insurance.

Best,
Camille



Camille Still | Temporary Project Coordinator

Washington State Bar Association | 206.733.5996 | camilles@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

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From: wjm wmurphylaw.com [mailto:wjm@wmurphylaw.com]
Sent: Wednesday, October 4, 2017 3:12 PM
To: NWLawyer <NWLawyer@wsba.org>
Subject: Mandatory Malpractice Insurance

I am writing in response to the article *WSBA Board of Governors Explores Mandatory Malpractice Insurance* article in the September 2017 issue of *NW Lawyer*.

As an attorney licensed to practice in both Oregon and Washington, I have had the opportunity to compare the professional liability insurance requirements of both states - disclosure in Washington and mandatory coverage in Oregon. I do not support mandatory coverage as it provides a questionable value at substantial cost while reducing the availability of legal services, particularly for moderate income citizens.

The first question to ask is "How much benefit does mandatory coverage actually provide to the average client?" I do not have the statistics but I encourage the Board to obtain this information before passing an expensive "feel good" measure. Although there are certainly horror stories out there about bad lawyers and the damage they cause, I question the value that mandatory coverage would provide to those clients when considered in the context of the aggregate cost and the thousands of clients who receive professional legal representation from lawyers with and lawyers without professional liability coverage.

The second question is "How would mandatory coverage affect low and moderate income citizens who need legal representation?" The difficulty finding *pro bono* coverage for low income clients is well known although there are programs that provide professional liability coverage to enable this important work to be done. From my experience, the great bulk of

under-represented citizens are moderate income people who cannot afford an attorney yet do not qualify for *pro bono* representation.

In addition to my income producing work, I have represented Washington citizens needing assistance with no-contact orders, a homeowner whose property was eroding due to the failure of a city to properly maintain a storm run-off system, individuals who were presented with scam damage reports by rental car companies, and others who had damaged credit reports due to fraudulent use of their identity. I may soon retire from my "day job" but hope to keep providing this type of unpaid service to moderate income individuals. I am saving for retirement and certainly not in the position to divert funds to pay for professional liability coverage. If coverage becomes mandatory, I fear I will be required to become an inactive member of the bar and will no longer be able to serve this under-represented group. I am sure there are many other attorneys in the same situation.

Bill Murphy
WSBA No. 19002
Vancouver, WA

Rachel Konkler

From: Mandatory Malpractice Insurance Task Force
Subject: RE: An Update From WSBA Board Governor Rajeev D. Majumdar

From: Tom [<mailto:>]
Sent: Thursday, October 12, 2017 11:27 PM
To: email
Subject: Re: An Update From WSBA Board Governor Rajeev D. Majumdar

I want to thank and congratulate you on continuing such informative news reports as a member of the BOG. It really is nice to have someone giving us a look under the hood rather than just telling us the car needs repairs and how much it will cost.

The mandatory insurance thing is weighing on me for a few reasons. One is, the WSBA has hinted about possibly making insurance mandatory for active practitioners. I've mentioned this before, but don't expect you to recall, so I'll say that I'm physically disabled but maintain my active status because I'm hopeful doctors can one day cure enough of what ails me to allow me to return to practice. That, plus the hassle, time and cost of getting re-activated, and the cost of going inactive being a whopping \$200 (for what, I can only imagine), I'm still hanging in there. I am requesting that if insurance becomes mandatory it is made clear that attorneys who are at "active" status but not actually practicing not be required to maintain insurance. I don't know what I'd insure if I had to obtain it, but I'm sure some insurance company would soon price me flat-out into "inactive" status, even though my client pool is zero.

As for whether insurance becomes mandatory, having had the experience of being broke and needing to set up my own office, I have to say (I want to shout) that mandatory insurance is a business killer. Mandatory insurance will likely force attorneys who are trying to set up a new practice into either a lot more debt or bankruptcy. It's an idea that is filled with good intentions, yet fraught with problems that will counter those good intentions. When the attorney goes bankrupt, hasn't been able to pay the last 1-2 installments on insurance, etc., won't the WSBA still be getting compensation requests from aggrieved clients and former clients, like it does now? Then I suspect we'll also see a startling increase of attorneys, probably with a disproportionate amount having freshly minted bar cards, being brought in for disciplinary hearings for letting their insurance (which they couldn't afford) lapse. Is the WSBA going to increase disciplinary staff and resources for this? I don't see what other teeth the rules could have but to sanction attorneys who commit the horrendous sin of being poor. That's a terrible idea. Plus, I would imagine that a bank might be more hesitant to give us older attorneys a loan for a new solo practice as it would someone younger, which raises another set of issues.

And what of someone, say an older attorney or a single parent trying to juggle time and money, carrying a light caseload and yet still saddled with insurance requirements? Last time I paid for malpractice insurance, and every time before that, they asked what areas of law I practiced, not how many clients, and the areas of practice largely determine your cost. Also, the WSBA can't really govern someone who isn't licensed. Let's say someone commits all sorts of malpractice or even crimes against clients, gets disbarred or resigns...I don't see how the WSBA can require that former attorneys maintain post-practice coverage. Last I checked, insurance companies stopped coverage for the last year you practice and paid, not the three years (statute of limitations, with some narrow exceptions), and the funds that I've seen paid out from the protection fund seem to be most often paid for former clients of disbarred/resigned attorneys. Plus, attorneys who

simply cannot or just don't pay for continuing coverage will also leave potential victims exposed, and they will also likely be making applications for restitution to the WSBA. So requiring mandatory insurance won't really help those victims at all, will it? Mandatory insurance will protect very few and cost a lot.

Finally, as the interest from IOLTA accounts dropped to a point where it became useless long ago, the WSBA has been imposing an extra fee on attorneys each year to keep the fund going in order to compensate the victims of a few attorneys' misfeasance and malfeasance. I don't have a problem with paying a reasonable amount for that each year; I'm sure the people and entities the WSBA compensates each year deserve it, and frankly, all attorneys in the state enjoy the absence of some horrifying story by the "Seattle Times" or someone else about how attorneys as a group have left victims of their former colleagues in the lurch. However, if insurance is made mandatory, I'd expect the WSBA would no longer need to assess attorneys that yearly fee. I doubt my expectations will be met in this regards, but I don't think it would be fair to require insurance and continue to require attorneys to pay into a fund for uninsured losses. Just my \$.02.

Thanks again for your good work.

Tom Pacher
Attorney at Law (still)
WSBA #18273

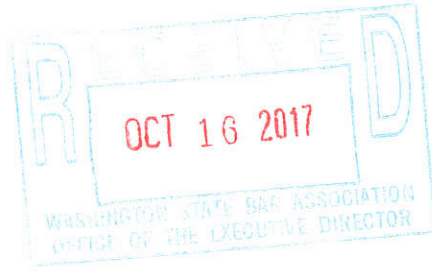
P.S. If you're still reading, I commend you. One thing that has long bugged me about status on the bar directory, last I checked, when an attorney retires, the WSBA shows that person as having resigned. That could look like the attorney was in trouble and had to bail. I'd like to see a "retired" status option, if it isn't already available. Perhaps I'm just more sensitive to this as I keep seeing doctors, and they can't fix my back, digestive system and about seven other problems.

DALE A. MAGNESON
-ATTORNEY AT LAW-

P.O. BOX 659 SILVERDALE, WASHINGTON 98383 (360) 649-1237

October 14, 2017

WSBA Board of Governors
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539



Re: Mandatory Malpractice Insurance

Dear Board:

In November of last year, after twenty-eight years of practice and having carried malpractice insurance for the entire time without a single cent expended by my insurers, and having obtained an expensive “tail” to cover my entire time in practice, I closed my office. Seven days later, my son died unexpectedly in Germany. He died intestate and without issue. Other than probating an estate that will go entirely to my son’s mother and me, I am not practicing law. My wife and I have been married for over 44 years. I share this information for obvious reasons: 1) the privilege of practicing law should not be placed in a “one size fits all” blanket requirement; 2) there are occasions where practicing law will not endanger the public; 3) there should be few restrictions for licensed attorneys in helping family members or close friends; 4) an active licensee who is not actively practicing should not lose the license simply because of lack of insurance.

I view my active license to practice as a very valuable property and it should not be lost for simply not currently carrying insurance. While I may be in denial that I am “retired,” I prefer to keep my options open and retain the benefit of having this valuable privilege for potential future employers to consider.

Finally, I have some questions and concerns of my own: 1) Is this a solution seeking a problem? I mean really, of all the law practiced annually, how much damage is actually done to the public? And isn’t that damage also paid in part by members of the Bar by way of an annual assessment? Isn’t the Bar really seeking to indemnify every single consumer from injury? What other profession does that or even considers it? 2) If the Bar is concerned about attorneys who do not carry insurance, shouldn’t the Bar do a better job of informing the public?

Finally, it looks more to me like the Bar wishes to take a paternalistic view of the public. We live in the 21st century. While there may be some few individuals who are less educated, the state pays to educate every citizen. While protecting the public should be a concern for the Bar, the public at large is very much aware of the need for caution in choosing any professional.

Very truly yours

A handwritten signature in black ink, appearing to read 'D. Magneson'. The signature is fluid and cursive, with a large initial 'D' and a long, sweeping tail that extends to the right.

Dale A. Magneson
Attorney at Law and Counselor at Law

From: [Paula Littlewood](#)
To: [Margaret Shane](#)
Cc: [Doug Ende](#)
Subject: RE: Mandatory E&O ins for lawyers.
Date: Tuesday, October 17, 2017 5:05:02 PM
Attachments: [image002.png](#)

Thanks,
Paula

From: Margaret Shane
Sent: Tuesday, October 17, 2017 4:56 PM
To: Paula Littlewood
Subject: FW: Mandatory E&O ins for lawyers.

Margaret Shane | Executive Assistant

Washington State Bar Association | 206.727.8244 | cell 206-727.8316 | margarets@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
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From: Brad Furlong [<mailto:brad.wsba@furlongbutler.com>]
Sent: Tuesday, October 17, 2017 4:32 PM
To: Margaret Shane
Subject: FW: Mandatory E&O ins for lawyers.

[More for the committee/BOG top ponder.](#)

Bradford E. Furlong, President
Washington State Bar Association



825 Cleveland Avenue | Mount Vernon, Washington 98273 | 360.336.6508 voice | 360.336.3318 facsimile

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From: Edmonds, Jerry [<mailto:jedmonds@williamskastner.com>]

Sent: Tuesday, October 17, 2017 4:12 PM
To: Brad Furlong
Subject: Mandatory E&O ins for lawyers.

WSBA President Furlong: I speak for myself, not my firm. I strongly support required insurance financial responsibility for practicing lawyers. I was part of the committee which undertook consideration of this subject in the 1980s. It was not rejected by the bar – nor was it adopted. Financial responsibility is required for driving automobiles. Practicing law has very significant potential financial consequences for clients. Licensed securities practitioners must have insurance. The reputation of the profession is undermined by financially irresponsible practitioners. I have not listed all the reasons but these are some of them. I hope this will be considered very carefully by the bar. I will work if asked w others who support this idea.

Jerry B. Edmonds

Williams Kastner | Attorney at Law
601 Union Street, Suite 4100
Seattle, WA 98101-2380
P: 206-628-6639 | M: 206-715-4165
www.williamskastner.com | [Bio](#) | [V-Card](#)

WASHINGTON OREGON ALASKA

From: [Brad Furlong](#)
To: [Roger Greene](#)
Cc: [Doug Ende](#); [Margaret Shane](#)
Subject: RE: Mandatory malpractice
Date: Wednesday, October 25, 2017 1:05:08 PM
Attachments: [image001.png](#)

Thank you, Roger. Your concern is certainly valid and will be considered. I am adding your email to other comments to be considered by the work group and, eventually, the BOG.

Best wishes.

Bradford E. Furlong, President
Washington State Bar Association

FURLONG ♦ BUTLER
ATTORNEYS

825 Cleveland Avenue | Mount Vernon, Washington 98273 | 360.336.6508 voice | 360.336.3318 facsimile

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From: Roger Greene [mailto:]
Sent: Wednesday, October 25, 2017 10:43 AM
To: Brad Furlong
Subject: Mandatory malpractice

Brad

I just wanted to respond for your request for comments on mandatory malpractice insurance in Washington.

I maintain my license as an attorney. The only work I do is for a corporation that I own 100%. I may make a mistake. But my corporation is unlikely to sue me. And if it does, I suspect the insurance carrier will not come to my defense. So if you require all attorneys to carry insurance, I will have to throw \$3000 down the drain for nothing, or give up my license.

I understand your concerns for typical situations, but I would encourage you to permit waivers where common sense would demonstrate that the insurance is a waste of money.

Roger Greene

Rachel Konkler

From: Mandatory Malpractice Insurance Task Force
Subject: RE: Mandatory Malpractice Insurance

From: Larsen, Esther [<mailto:ELARSEN@spokanecounty.org>]
Sent: Thursday, November 02, 2017 10:25 AM
To: Angela Hayes <ahayes@AIIN.COM>
Subject: Mandatory Malpractice Insurance

Hello, Angela.

I read your email with the update on mandatory malpractice insurance and have the following comments.

I understand that currently as a member of the Washington State Bar Association and an employee of Spokane County I am not required to have malpractice insurance because I do not have a private practice that involves private clients and client funds. I have been informed by the Spokane County Prosecuting Attorney's Office that I am covered via the Washington Association of Counties Risk Pool for all work I perform on behalf of Spokane County.

For more than fifteen years: I have not performed legal services for any entity or person for payment; I have not received or handled any client funds; I have performed pro bono work through organizations that provide insurance and/or some other form of liability protection for its pro bono attorneys; and I have also been appointed to perform fiduciary duties for my family's estate and trust in jurisdictions other than the state of Washington and have complied with the appointments in regard to whether or not I must maintain a bond.

Several years ago I researched obtaining my own insurance; however, the cost with a "tail" was prohibitive.

Requiring me to pay for and maintain mandatory malpractice insurance as a condition to continue to be a licensed attorney in Washington state would create a financial burden, would eliminate my ability to provide pro bono services, and would be inconsistent with reality in that I have no private clients.

Thank you for your consideration of my comments, Esther.

Esther Larsen
Spokane County Sheriff's Office
Administration: Grants and Contracts

Public Safety Building, 1st Floor
1100 West Mallon Avenue
Spokane, Washington 99260-0300
Phone: (509) 477-5709; FAX: (509) 477-5731
elarsen@spokanecounty.org

Work days: Monday – Thursday

I

From: [Karol Melde](#) on behalf of [Craig Walker](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Craig Walker](#); [Karol Melde](#)
Subject: Malpractice Insurance
Date: Wednesday, November 08, 2017 10:39:12 AM

Dear Task Force:

I am in favor of mandatory malpractice insurance. The public is often unaware that negligence of their employed professionals is not covered by insurance. More importantly, most practitioners who do not have insurance are likely to be the sole practitioner who could not fund the price of a mistake. It does place a burden upon practitioners and certainly there ought to be some base level products which can be developed and are available at a price that can be afforded. Even high deductible plans would be a better option than no coverage at all.

Thank you for requesting input on this matter.

Craig Walker

Walker Heye Meehan & Eisinger, PLLC - Attorneys
1333 Columbia Park Trail, Suite 220
Richland, WA 99352
P 509.735.4444 / F 509.735.7140

Rachel Konkler

From: Mandatory Malpractice Insurance Task Force
Subject: RE: A letter to the editor

From: Tom Youngjohn [mailto:VISA_IMMIGRATION_LAW@msn.com]
Sent: Wednesday, November 8, 2017 4:44 PM
To: NWLawyer <NWLawyer@wsba.org>
Subject: A letter to the editor

Mandatory malpractice insurance is arguably an unconstitutional infringement on my liberty. We'll see. I've limited my practice to immigration law, which is a federal domain with its own ethics rules, and I'm tempted to take this up, extra tempted if y'all matriarchal do-gooders bring on a one-size-fits-all model, like Spandex, driving me out of business. Y'all would call most of my practice "low bono." My income and costs are certainly both low. Perhaps I could afford to pay for private insurance, though what business of that is yours I have no idea. I haven't had malpractice insurance in 20 years. Haven't had a claim. "Mandatory" reminds me of Obama Care. Well, like Obama Care y'all do-gooders could have a "buy out" penalty to go with any one-size-fits-all model, say \$1,500. That would reduce my desire to fight in federal court, and allow me to continue with my mainly low bono practice. In other words I could probably afford that penalty. Crazy. I thought providing low bono representation was an actual goal. But that's right, I live on the Left Coast, and the Left Coast believes in more regulation. Scary. This is an existential issue for a low budget Indiana boy like myself. What the heck did I do to y'all? Reduce your Bar license fees? Well, y'all stole them right back, so you can't complain.

Tom Youngjohn, Attorney at Law
All American Immigration
1648 South 310th St., Ste. 2
Federal Way, WA 98003
www.AllAmericanImmigration.com
Phone: 253-880-9268
Fax: 253-946-0665

AN INTERVIEW (unsolicited): <http://businessinnovatorsmagazine.com/tom-youngjohn-immigration-attorney-seattle-washington/>

**CERTIFIED QUALIFIED TO BE A
UNITED STATES IMMIGRATION JUDGE
IN 2012, 2013, 2014 & 2016 BY THE EXECUTIVE
OFFICE FOR IMMIGRATION REVIEW**

Better Business Bureau Accredited Business since 2003
Rating: A+

Member of the **American Immigration Lawyers Association** since 1998

Celebrated **Ninth Circuit Court of Appeals** Published Decision [link](#)

(Oral Argument)

Intro video to All American Immigration: <https://youtu.be/UdYsRugBwsQ>

Tom Youngjohn is the only immigration attorney he knows of who has won nine US Immigration Court cases in a row.

From: [Shawn Alexander](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Re mandatory insurance
Date: Thursday, November 09, 2017 12:49:31 PM

As a rural lawyer on Orcas Island, any added costs will come at a cost to my clients. Most of my clients cannot afford what little I charge now, and mandatory insurance will further reduce rural citizen's access to the legal system. I am opposed to a mandatory system and if the premiums are what they were last time I checked, I would have to restrict my practice to clients that are well funded and end representation of my reduced fee and pro bono clients.

I am sure the insurance industry will lobby for this measure. The Bar should not be swayed that this proposal will help the public, while the insurance companies collect premiums and deny and reduce claims, as they do in all other forms of insurance. Perhaps a bonding system would be better. With set costs and the Bar holding the bonds.

Thank you
Shawn Alexander

From: [Bill Robinson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Sanjay Walvekar](#); rajeev@northwhatcomlaw.com
Subject: Opposed to mandatory insurance
Date: Thursday, November 09, 2017 1:03:04 PM

I am writing to oppose mandatory malpractice insurance for generally the same reasons as advanced in the three letters to the editor in the November NWLawyer. As a sole practitioner with no specialized coverages, and no claims in 44 years, I pay \$3178 a year. As I think about winding down my practice, while continuing to provide professional services to a few long-time clients and the community, I want the opportunity to not have to choose between paying proportionately higher costs of insurance and serving clients.

Bill Robinson
Bar #5429

William T. Robinson PLLC | 685 Spring Street #133 | Friday Harbor WA 98250-8058 | Tel: +1(206) 399-6474 |
Fax: +1(206) 770-6530 | Email: | wtr@wtrobinson.com | www.wtrobinson.com

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From: [Mary White](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory malpractice insurance task force input
Date: Thursday, November 09, 2017 1:16:51 PM

Hello:

I have been admitted to the WSBA since 1994, under the names Mary V. White, Mary V. Ortega and Mary V. White-Ortega, WSBA 23900. I am also admitted in District Court, W. District of WA; U.S. Supreme Court; and Suquamish Tribal Court. I am presently an AAG in Wenatchee.

Most of my career I have been in public service/ government sector work (public defender with A.C.A., and now with the AGO) and I have not had to worry about insurance. However, for two separate periods, I had a solo practice; I maintained an IOLTA account, etc. I also spent about 5 years total working for other firms—one large (Helsell Fetterman), two very small (Tipp Mitchell LLC and Law Office of Gilbert H. Levy) . These private firms insured me, to the best of my recollection but I at that at the time, I did not even *think* about that question – I'd say that I "assumed" they were covering me. This may illustrate an existing problem that makes newly minted attorneys and their clients vulnerable, although I bet if an attorney with a small firm was sued and had no coverage, there would be a good chance of prevailing against their "employer/firm" unless there were disclaimers plastered everywhere... I've never really had the impression that it's "*lassiez faire*," for clients – doubts are resolved in their favor, not in the attorney's favor.

I guess if you had asked me back then whether my firm provided me with malpractice coverage I'd say, "well, I assume they must have an insurance policy of some kind and I must be on it...!" During my two periods of solo practice, I managed to buy myself a cheap, basic policy. There did not seem to be a ton of options, but I recall that one was WSBA associated, somehow? The first time around, I held a defense contract with a municipality which required me to prove I had insurance as a condition of the contract. That probably contributed to my awareness of the issue.

My opinion about whether malpractice insurance should be mandatory?

First off- I sort of thought it already was! Clearly not. However if it is made mandatory, it may be a harder for young / new attorneys to enter the market on a shoestring, and we have a need for those attorneys! Would the sliding scale/ low income program that developed in the last 5-10 years, for example, find a way to assist attorneys meet these costs as they serve clients who are paying like \$25.00/ hour?! And how do you keep the market from gouging us? I assume that the real costs of a policy must be related to practice area, years of experience, size of firm, geographic location of practice, etc. If you were new, but worked in an area with traditionally high premiums, or in a big city, it could be prohibitive. Would Bar complaints be reviewed to possibly bump up premiums, even if they did not result in determinations that appear to show malfeasance or actual losses to clients? What about Yelp reviews? What would legal technicians pay? Would the Bar (or we) have to spend money to advertise to the public that we are covered, and how they can check? I know some attorneys who have been hounded by baseless mean bar complaints for years- the emotional toll is so, SO unfair. Others I see regularly dis-serving their clients and the public and laying waste to our profession ethically, and socially, slip past unscathed. I wonder how this issue plays into the

"complaints" arena, generally.

I am also torn by this issue because I see it as ripe for exploitation; as pulling one more lynchpin out of our professional ability to practice law in a civilized, hopeful, intelligently trusting, respectful, careful manner. Bar complaints, disciplines and censures/ reprimands are very powerful – they really remind us to practice carefully. We don't need to increase our expenses needlessly, pumping up costs for all clients, unless there is a clearly demonstrated GAP – are there many people being demonstrably, fiscally harmed by the lack of such insurance? Are there many civil legal findings, awards and judgements laid against attorneys for malpractice, where there is no policy or other source of \$\$ to make the claimant/ petitioner whole? The existing fund that is sometimes used to make whole those people who were ripped off—is it drained or insufficient? Does that not come from our dues or IOLTA in part? I suppose we cannot become "self insured" because that would incentivize bad behavior by the worst actors, relying on the collective safety net to make good on their wrongs.

This is really a complex question. We are largely self regulated, but if i am not mistaken we have taken voluntary baby steps away from that situation. I recently participated in a case where a widow has likely lost her pension due to an error on an appeal filing deadline by a young attorney. It is excruciating to see—I am sure that the only way she is likely to recover is in fact, a malpractice claim. In the case I have in mind, I believe there is an adequate policy in place and she'll likely be made whole, or better.

I am happy to participate in these discussions further.

Best,

Mary V White
WSBA 23900
104 Cascade Place
Cashmere WA 98815

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mvw



From: [Barnaby Zall](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: How Mandatory Malpractice Insurance Would Affect Me and My Firm
Date: Thursday, November 09, 2017 5:32:23 PM

Effect: I would close my firm and end my 34 years as a lawyer. I'm already mostly-retired, and aside from a few paying clients, spend my time in pro bono, public education or volunteer projects. Adding the \$3,000 likely malpractice insurance premium (my actual malpractice insurance premiums in prior years were higher) would be the straw that breaks the camel's back.

In 34 years of practice, I have only once had to file a possible malpractice claim notice with my insurance company. No actual claim, since it was only a possible claim based on a claim filed against another lawyer whose appeal I took on. But that notice triggered a five-year additional filing requirement and premium increase, and ratcheted up the tension with my partner who handled the insurance premiums for the firm.

My former malpractice insurance carrier had us attend a malpractice prevention seminar every two years (for which we paid handsomely in addition to our premiums). I was educated in great detail on the causes of malpractice claims and the practice tips on how to avoid them. I generally follow the tips on how to avoid claims, and I do not practice in any of the areas which generate malpractice claims. I draft and file briefs in the U.S. Supreme Court (two in 2017, both pro bono in First Amendment cases for two tax-exempt organizations), as I have done on a paying basis for decades, and I provide pro bono and paid assistance to tax-exempt organizations and advocacy organizations, and am regarded as expert and current in that field.

Thus, any mandatory malpractice insurance requirement would not be a benefit to me at all. It would only reduce the costs to those lawyers who actually generate the claims, and raise my own expenses. It would do nothing for the public generally, except reduce the pro bono and public education efforts I provide for free.

If you want to do something effective to reduce malpractice, rather than generate fees for insurers and those who defend and file claims, you might consider adding malpractice prevention seminars to the WSBA's "box lunch" or similar CLE sessions. If you want to help those who have suffered malpractice (and the vast majority of lawyers do not commit malpractice), you should concentrate on those few practice areas where the claims are generated. These statistics are well-studied and easily discovered, and partnering with insurance companies can drive down the incidence of malpractice -- a win-win situation for all at virtually no cost.

Further, you might consider a "trigger" for mandatory coverage, such as two or three separate prior claims adjudicated and found to be valid and compensable (not just settled or carrier-paid costs). A successful ballot initiative I drafted in Florida had such a trigger for those few physicians who actually commit medical malpractice. <http://dos.elections.myflorida.com/initiatives/fulltext/pdf/35169-8.pdf>. The Florida Supreme Court did not like the concept, but it was a valid law for its purpose; it is now Art. X, Section 26 of the Florida Constitution. You might also consider a simple public disclosure law, which would give consumers information about lawyers who have been found to have committed malpractice. See Art. X, Section 25 of the Florida Constitution (which I

also drafted as a ballot initiative), but would have to be re-written in the context of legal services.

I strongly recommend against a simple mandate to have malpractice coverage. It would not fulfill any of the three parts of the WSBA mission: serving the public and bar; ensure the integrity of the profession; and champion justice.

Barnaby Zall
Law Office of Barnaby Zall
685 Spring St. #314
Friday Harbor, WA 98250
360-378-6600

From: [Gerald Steel](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Let the issue be decided by a vote of the members without insurance
Date: Tuesday, November 14, 2017 6:27:08 PM

It would be unfair for those with insurance to force those without insurance to buy insurance. So the only fair solution is a member referendum with only lawyers without insurance voting whether insurance should be mandatory.

Gerald Steel PE
Attorney at Law
7303 Young Rd. NW
Olympia WA 98502
360.867.1166

From: [Cris Anderson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice input...
Date: Tuesday, November 14, 2017 6:55:23 PM

Hello and thank you for the opportunity to provide input. While I am basically retired and not "practicing law", here's what weighs on my mind:

- 1) I believe it a mandatory requirement if lawyers are to make any headway in the battle to save our image. I don't understand - at all - why it's not mandatory. There will need to be some exceptions though for lawyers who are still "active" but not practicing, like myself. There should be no other exceptions, period.
- 2) the amount needs to be large - not a paltry 1 mil. It needs to be substantial.
- 3) More than "malpractice", mandatory fidelity insurance/bonding is needed. Again, not paltry, but 10 mil should cover trust account violations. Maybe require say 2 to 3 times the maximum trust account balance during a calendar year. Malpractice does nothing for "intentional" actions.

Give these some teeth and possibly we might earn back our reputations with the public.

Cris Anderson
WSBA 8228

From: [Mike DeWitt](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: My thoughts on mandatory malpractice
Date: Tuesday, November 14, 2017 7:48:02 PM

Something about the concept of making it mandatory bothers me. This may be ironic, given that I have always had malpractice insurance and always will - it is mandatory in my mind. But that does not mean it should be mandatory for everyone. There are a lot of new lawyers and solo practitioners with small (maybe even part time) practices that may not be able to afford it. Take my wife, for example - a licensed attorney in the state of Washington but one who has not practiced law in several years (since the birth of our first child). It is hard enough having to pay her bar dues and section membership fee every year, but to add malpractice insurance on top of that would be unreasonable, in my opinion. I think there are a lot of small firms and solo's who would be adversely affected by making it mandatory. I also wonder what that would do to rates - insurers may not have to be as competitively priced if they know we are required to purchase it.

These are the thoughts off the top of my head. Of course, I have not heard the evidence as to why this is a good or bad idea. I reserve the right to be persuaded either way.

Thank you for soliciting input - Mike DeWitt, WSBA No. 31687

--

DeWitt Law, PLLC
1226 State Avenue N.E.
Olympia, Washington 98506
(360) 701-0864

From: [Richelle Little](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Request for comments
Date: Wednesday, November 15, 2017 11:54:22 AM

Dear Task Force Members:

I do not know how mandatory malpractice insurance would affect me, my firm, or my clients. I am a solo practitioner, and I do carry insurance. I wonder if making insurance mandatory, thus adding more attorneys to the pool, would make the price of insurance more affordable? This is a question I think the task force should research, and provide an answer to the members. If making insurance mandatory will lower the cost of insurance, more attorneys who already carry insurance may support this idea.

Olympia Estate Law
Richelle Little Law and Mediation PLLC
phone: 360.358.3230
richelle@olympiaestatelaw.com
PLEASE NOTE NEW LOCATION!
2401 Bristol Court SW, Suite C-102
Olympia, WA 98502

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Rachel Konkler

From: Mandatory Malpractice Insurance Task Force
Subject: RE: Information regarding this week's BOG Meeting

From: Morgan Gabse [<mailto:Morgan@GabseLaw.com>]
Sent: Wednesday, November 15, 2017 2:14 PM
To: Paris Eriksen
Subject: RE: Information regarding this week's BOG Meeting

Hi Paris,

I'm not sure where I can send this comment as an individual member of the Bar. It's related to the Mandatory Malpractice Task Force. I'd like, at the very least, the roster to include a member of the Bar that is a non-practicing member (someone who maintains their license and membership but is in a non-practicing role within their employer). The potential of this mandate could preclude my membership in the Bar altogether, which is very concerning to me. I hope that potential is concerning to the BOG and Bar, as well. I'm aware of a small but significant number of members of the Bar that maintain their license but are employed in non-practicing roles (contract management, privacy, compliance, human resources, executive, etc). I do hope this is taken into consideration as this Task Force moves forward.

Thank you,
~Morgan

--
Morgan Gabse, Esq.
<http://www.linkedin.com/in/mmgabse>

From: [John Groseclose](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory insurance
Date: Thursday, November 16, 2017 12:39:02 PM

I have a small firm. We employ 5 attorneys and have 3 others that work with our firm as of counsel. In general, it would appear to me to be possible to practice as a lawyer and not really screw something up of significance that would trigger an insurance claim.

However, in my years of practice I have encountered attorneys that have messed up and have elected to not have any insurance.

It would appear that insurance is an added expense.

It would appear that the same group of people that do not buy insurance are the same sort of people that cannot pay a claim if they do something wrong.

As a small business owner I am tired of paying various expenses and bills that increase overhead for my business. I like having a choice.

But, as a practicing attorney, there is a lot to be said about making insurance mandatory.

My feelings about it being a customer service issue sorta override my preference to make everyone have insurance. The WSBA has a spot that tells consumers whether there is or is not insurance and I think of it as a consumer preference issue. I would not alter the current practice. However, I also will not have heartburn if it were to be mandatory.

JOHN GROSECLOSE
Attorney at Law

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From: [Derifield Law Office](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Feedback
Date: Thursday, November 16, 2017 3:00:19 PM

I would like to provide input in opposition to the mandatory malpractice insurance proposal.

I practice Social Security disability law, which is a practice that is meaningful but not lucrative. I am quite concerned about my ability to afford malpractice insurance. I cannot simply raise my rates to cover the additional overhead for my solo practice. My clients are poor people and my rates are set by the government. I am sure many other lawyers are in a similar situation. If insurance is required, this has a disproportionate affect on solo and small firms whose budgets are tight, on new lawyers, and on lawyers who have chosen their area of practice because of the good it does for the community rather than lining their own pockets.

If malpractice insurance is ultimately made a requirement, I strongly encourage the bar to provide exceptions.

Thank you.

Joni M. Derifield
Derifield Law Office, P.S.
Phone: (206) 226-6891
Toll-Free: (877) 400-0581
Fax: (206) 209-2100
PO Box 1459, Poulsbo, WA 98370

From: attorneycullen@comcast.net
To: [Mandatory Malpractice Insurance Task Force](#)
Date: Friday, November 17, 2017 1:16:10 PM

I recommend that the bar not adopt a mandatory malpractice insurance requirement.

First of all, the vast majority of responsible lawyers no doubt already make sure to have coverage at all times. The uninsured percentage of practicing lawyers who do not must be very small, and there may be differing reasons why, depending on individual circumstances. Without some studies or more detailed information, it is difficult to assess the sudden call for such a requirement.

Secondly, there is the real possibility that a captive membership will then allow insurance companies to reduce competition and raise rates across the board, and even constrict coverage based on the wording of an ethical rule we haven't yet seen. In fact, RPC 1.0A(e) which of course applies to individual lawyers, and should also apply to the governing leadership of the association where such a major policy change is being put forth, provides that, "informed consent denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."

Is there an open source the membership can be directed to where such adequate information and explanation is currently available? Perhaps then we would have a better and fairer process by which to make an assessment of the proposal.

David D. Cullen
Attorney & Counselor
West Hills Office Park, Building 11
1800 Cooper Point Road, S.W.
Olympia, Washington 98502

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From: [Merry A. Kogut](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Against mandatory malpractice insurance
Date: Friday, November 17, 2017 2:48:37 PM

I am a licensed attorney but have not practiced in several years. I keep up my payments and my CLE's. I have no need for malpractice insurance because I don't have any clients. If you make insurance malpractice I will be forced to go to Emeritus or Inactive status. I know other attorneys who are also licensed but not practicing.

I am **AGAINST** mandatory insurance. If someone is responsible enough to be an attorney, he or she is responsible enough to buy malpractice insurance and/or self-insure.

Respectfully,
Merry A. Kogut
16153

Merry A. Kogut, Attorney at Law
Trustee, Merry A. Kogut Revocable Living Trust
22415 So. Herron Blvd. KpN
Herron Island



Lakebay, WA 98349-8143
Landline: 253.265.0060
Cell/Text: 253.884.8484
Email: merryakogut@gmail.com

From: clarsen@nwi.net
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Opposition to Mandatory Liability Insurance
Date: Saturday, November 18, 2017 12:22:57 PM

I write today to register my opposition to requiring malpractice insurance coverage for Washington attorneys.

From 1991 through 2003, I practiced full-time as an attorney in Washington. I started as an associate and ultimately owned the firm when I closed it in 2003 to take a full-time non-law job. Since that time, I have maintained my license and continued to practice law at a much reduced pace.

I went to law school to help people. Retaining my license has allowed me to do that pro bono or on a reduced fee basis. My typical client is a family member, friend, or former client. I do occasionally represent clients with whom I have no pre-existing relationship. I have a low overhead business model for my very limited practice. I work from my home with no staff support and no malpractice insurance. Because of this model, I am able to offer flat fees for much of my work where my effective hourly rate typically is below \$100 an hour. For the handful of cases that I undertake on an hourly basis, my hourly rate is \$175.00, far below market rate in Chelan County.

I do not intend to return to the full-time practice of law. This proposed malpractice insurance requirement threatens my ability to assist people with legal matters, which is why I chose to go to law school, and provide needed legal services to low and moderate income people.

I appreciate your consideration of this issue and my opinion regarding mandatory malpractice insurance.

Craig Larsen
Attorney at Law
509-421-2116

From: [Ken Masters](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Please say yes to mandatory malpractice insurance
Date: Sunday, November 19, 2017 5:09:00 PM
Attachments: [image003.png](#)

Everyone makes mistakes.

That is why we have mandatory car insurance. Representing clients – having their lives, their families, their freedom, their livelihoods, their property, etc. in our hands – is certainly as subject to risk as getting behind the wheel of a car. Insurance should be mandatory.

It is our duty to protect our clients. Malpractice insurance is simply a part of that duty.

Thanks for your consideration.

Best,



Ken Masters 241 Madison Ave. No. Bainbridge Island, WA 98110 [206-780-5033](tel:206-780-5033) www.appeal-law.com



From: [Kelly, Paul \(DSHS/DCS\)](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Tuesday, November 21, 2017 10:16:08 AM

I am wondering if you expect there to be an exception for those who are government attorneys? As a Washington State Division of Child “Claims Officer”, I am required to hold an active WSBA license. Though my employer (DSHS) has provided annual CLE refresher training, they do not pay my bar dues. And at a fixed salary in the low \$70K range, requiring me to also carry mandatory malpractice insurance to be a WSBA active member would be a real financial burden.

From: [Paul Edmondson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory insurance
Date: Wednesday, November 22, 2017 11:26:16 AM

Has there been a study of uncollected judgments against attorneys?

Sent from [Mail](#) for Windows 10

From: [Eric Gustafson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice insurance
Date: Wednesday, November 22, 2017 12:07:03 PM

Yes! The only people I've ever run into who tell me that they don't carry it are those who should. They're the ones we find most likely committing malpractice or acting inappropriately.

My 2 cents.
Eric

J. Eric Gustafson (egustafson@lyon-law.com)
Lyon Weigand & Gustafson PS, Attorneys at Law
Certified Elder Law Attorney *
Adoption Attorney*
AV-Rated Attorney*
All Postal Mail: PO Box 1689 Yakima WA 98907
Offices: 222 N. 3rd St. Yakima WA 98901 &
154 Treasure Cove Ln. Manzanita OR 97130
Office: (509) 248-7220
Fax: (509) 575-1883

*Elder Law Certification occurs through the auspices of the National Elder Law Foundation (National Academy of Elder Law Attorneys) under approved criteria and examination procedures of the American Bar Association.

*Adoption Attorney reflects election as a Fellow of the American Academy of Adoption Attorneys, an invitation based organization of 300+ attorneys nationwide, under its criteria of experience, ethics and peer recommendation.

*AV-Rated Attorney (AV is the rating awarded by the national reference source, Martindale-Hubbell Law Directory, and identifies a lawyer by peer-review with the highest legal ability, expertise, experience, integrity and overall professional experience).

Washington's Supreme Court has not yet developed or recognized a credentialing process for specialties, and certification/fellowship/M-H rating is not required to practice law in this state.

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From: [John Gray](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: ["John Gray"; "Gray Marjorie"](#)
Subject: Comment on Proposed Mandatory Malpractice Insurance Proposal
Date: Sunday, November 26, 2017 3:19:18 PM

Hello:

The purpose of this email is to comment on the proposed mandatory malpractice insurance proposal.

My wife and I are retired lawyers. We want to continue in active status with the WSBA. Speaking for myself, one reason is that I volunteer with the Thurston County Volunteer Legal Services program and need to be on active status to do so. I realize I could switch to Emeritus, but I don't want to be restricted by its provisions. I am covered by the TCVLS's malpractice coverage when I serve as a volunteer lawyer. For a second reason, I may choose to resume active practice of law with an existing firm or organization and I want to be able to do so without waiting to switch from inactive to active status.

My wife, Marjorie, retired from her position as a Review Judge for DSHS at the end of January 2017. She decided then to convert from judicial status to active membership in the bar. She values her bar membership and she took the training (March 16 and 17, 2017) required to go active. She has not practiced, but continues to keep her CLEs in order to have this option available to her.

If the WSBA is proposing to make the payment of an amount for mandatory malpractice insurance as a condition to maintaining active status as a member, we oppose it, because it would require us to pay for coverage we do not need and would benefit no one else. The requirement for mandatory malpractice insurance has its positive arguments, but it does not take into account those who are not engaged in the private practice of law.

Perhaps the solution is to require coverage if a lawyer actually engages in the practice of law and is not otherwise covered by a malpractice insurance policy.

John M. Gray (WSBA # 7529)
5021 Laura St. S.E.
Olympia, WA 98501
(360) 754-0757 (landline)
(360) 789-3208 (cell)

Marjorie Gray (WSBA # 9607)
5021 Laura St. S.E.
Olympia, WA 98501
(360) 754-0757 (landline)
(360) 789-3190

From: [Randy Brook](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: comments from a retired attorney
Date: Tuesday, November 28, 2017 7:11:24 AM

Greetings,

I am currently out of the country. For that reason, rather than calling, I am emailing a few brief comments. Bottom line: I would retire from WSBA if I were forced to carry malpractice insurance for which I have no need.

I was admitted to the WA Bar in 1973. I spent my entire career in Seattle as a US government litigator, appearing in federal district and bankruptcy courts around the country. I retired in 2008. I live on my pension in Twisp, WA.

Since retirement, I have maintained my full membership in WSBA. I have not represented individual clients in any significant way. For this reason, I have not sought malpractice insurance. To the extent I have done any legal work, it has always been *pro bono*. In part, this has simply been to advise friends and neighbors about legal issues, always distinguishing situations where they should hire an attorney in active practice.

On occasion, I have helped someone with an "attorney letter." This has mostly been in cases where they were unfairly or unlawfully being pursued by debt collectors. Even at this minimal level, I have always disclosed that I do not carry malpractice insurance.

The other part of my *pro bono* work has been to prepare *amicus curiae* appellate briefs for various non-profit organizations. I generally have had an attorney in active practice review my briefs before filing.

If I were forced to retire from WSBA to avoid the burden of paying for insurance, I would have two choices. The simplest would be to refuse all further requests for *pro bono* assistance with *amicus* briefs. The second would be to ask some other attorney to put his or her name to a brief I authored, without my signature appearing. Neither choice would be desirable or beneficial, in my opinion.

I know of other, essentially retired attorneys who are in a similar situation to mine. I sincerely hope you will take our situation into account. I will be back in the US around December 17. I would be happy to discuss this further by phone if that appears useful.

Yours truly,
Randy Brook
Bar # 4869

From: tom@tdlaw.net
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory insurance
Date: Tuesday, November 28, 2017 9:43:28 AM

Just a few thoughts for the task force:

I actively practiced law in Seattle from 1972 through 2014. I was covered by malpractice insurance all of that time. I remain licensed but only to conclude paying clients from the Dow Settlement Fund which will hopefully conclude in late 2019. I have never been sued for malpractice. The likelihood I will commit malpractice disbursing the remaining payments to these clients is extremely low. I have discontinued my coverage and suggest your task force not recommend mandatory insurance for all private practitioners.

I was a member, and then the chair, of the WSBA fund for client protection board. Of course, that board did not reimburse people for malpractice. However, my strong feeling was that there are very few practitioners who defrauded clients and only a few more likely to have committed malpractice.

When the task force reviews “statistics” about the frequency of malpractice claims against already insured versus not insured practitioners, please consider the source of the information. I would expect that prospective insurers are likely the only source of information that would indicate mandatory coverage is needed.

In short, I doubt that mandatory coverage by all private practitioners is necessary and I would seriously question statistics indicating the contrary.

Thank you for considering my input.

Tom Dreiling
WSBA #4794

Sent from [Mail](#) for Windows 10

From: [Extra](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Negative Impact of Mandatory Malpractice Insurance
Date: Tuesday, November 28, 2017 5:45:31 PM

I am choosing to submit this comment anonymously for some reason.

I have been in practice about 27 years, the first 14 of those with a strong insurance defense firm involved in federal and state trials of all kinds around the state. Since then I have been in solo practice. Over time my solo practice became designed to allow me to do more non-legal community work with schools, quasi-legal agency work for artists, and also serve my clients. In other words, my law practice has been for several years part-time and non-lucrative to say the least.

I purchased malpractice insurance in the early years of my solo practice. I have never had anything close to a claim in my career. It has been many years since I have been able to afford a malpractice policy for my solo practice. In lieu of a policy, I have always considered some of my investment funds to be a "self-insurance" fund, in case of a claim.

Here's the point: my practice resembles that of many lawyers, part-time, paying a few bills around home, but allowing us to have an impact on our community as lawyers. In my case, I take on business, commercial, and injury work for immigrant families of many nationalities, and others who come to me because they cannot afford other attorneys. I get them results, and I don't get rich off them while doing it.

They cannot afford attorneys, and I cannot afford malpractice insurance.

You can see the cycle. It is important to me to be able to keep serving my clients and to be able to call myself a lawyer. Mandatory malpractice insurance would probably wipe out that dream.

Please let me know if you need more information.

From: [Janette Keiser](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: comments on mandatory insurance
Date: Tuesday, November 28, 2017 7:08:13 PM

Hello.

I am a member in good standing of the Washington Bar. I do not believe mandatory professional liability insurance is necessary. I would like to see some data about people who suffer damages from an incompetent attorney and are unable to recover because of the lack of insurance.

But, if you do decide to do this, I offer another perspective. In addition to being a lawyer, I am a licensed professional engineer. My practice consists primarily of engineering, not the traditional practice of law. I use my legal background to review contracts, understand legislation that affects my business, resolve construction disputes, etc. I do not, in the regular course of my business, represent traditional legal clients and I never go to court! However, I want to maintain my bar membership because I worked hard for it. Further, I do not want to be precluded from practicing law.

I pay about \$3000 a year for professional liability insurance as an engineer. I would hate to have to buy more professional liability insurance as an attorney. If you do require mandatory insurance for attorneys, please include some provision for non-traditional lawyers like me; that is, people who are members of the Bar, but who are not necessarily actively representing legal clients.

With best regards,

Janette Keiser
Bar Membership # 18387

Janette (“Jan”) Keiser, PE, JD
J. Keiser & Associates LLC
15715 Virginia Pt. Rd
Poulsbo, WA 98370

Cell – 206-714-8955
www.keisergroup.com

From: [REDACTED]
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: Kyle.s@bullivant.com
Subject: Malpractice Ins. - Keep Optional
Date: Wednesday, November 29, 2017 8:59:32 AM

Friends:

It takes two things for a malpractice suit: 1) A mistake, which we all will make, and 2) An angry client, which we all can prevent. For the few times I've made legal mistakes, I've admitted them, fixed them, and made the client better than whole again. In my 45 years, I've never had an angry client, thus I've never had a malpractice suit. I'm sympathetic with your concern about (usually younger) lawyers who are sloppy, inattentive, or even disrespectful of their clients. You want to force me into an insurance pool with those lousy lawyers? Have you lost your mind?

1. My first recommendation is that you leave us alone. There's a risk to go without malpractice insurance, but there's a risk to cross the street to get to our office. We are adults capable of accepting each risk we each deem acceptable, based on our type of law practice as it changes from time to time. You can't possibly make one rule to fit all of us, better than we each do for ourselves.

2. My second recommendation, if you insist on treating us all like incompetent children, is to set up different pools:

- Lawyers who have had a malpractice claim in the past 5 years.
- Lawyers who haven't had a malpractice claim in 5 years.
- Lawyers who haven't had a malpractice claim in 10 years.
- Lawyers who haven't had a malpractice claim in 20 years.
- Lawyers who haven't had a malpractice claim in 30 years.
- Lawyers who haven't had a malpractice claim in 40 years.
- Lawyers who haven't had a malpractice claim in 50 years.

Leave us with the incentive to make injured clients better than whole again, without a malpractice suit. Leave us with the incentive to stay "clean" as many decades as we can. Otherwise a great cause to keep clients happy will be lost, to the detriment of all lawyers.

- John Panesko, #5898
Chehalis, WA

From: wjmurphy.com
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments re Mandatory Insurance
Date: Wednesday, November 29, 2017 10:33:17 AM

As an attorney licensed to practice in both Oregon and Washington, I have had the opportunity to compare the professional liability insurance requirements of both states - disclosure in Washington and mandatory coverage in Oregon. I do not support mandatory coverage as it provides a questionable value at substantial cost while reducing the availability of legal services, particularly for moderate income citizens.

The first question to ask is "How much benefit does mandatory coverage actually provide to the average client?" I do not have the statistics but I encourage the Board to obtain this information before passing an expensive "feel good" measure. Although there are certainly horror stories out there about bad lawyers and the damage they cause, I question the value that mandatory coverage would provide to those clients when considered in the context of the aggregate cost and the thousands of clients who receive professional legal representation from lawyers with and lawyers without professional liability coverage.

The second question is "How would mandatory coverage affect low and moderate income citizens who need legal representation?" The difficulty finding *pro bono* coverage for low income clients is well known although there are programs that provide professional liability coverage to enable this important work to be done. From my experience, the great bulk of under-represented citizens are moderate income people who cannot afford an attorney yet do not qualify for *pro bono* representation.

In addition to my income producing work, I have represented Washington citizens needing assistance with no-contact orders, a homeowner whose property was eroding due to the failure of a city to properly maintain a storm run-off system, individuals who were presented with scam damage reports by rental car companies, and others who had damaged credit reports due to fraudulent use of their identity. I may soon retire from my "day job" but hope to keep providing this type of unpaid service to moderate income individuals. I am saving for retirement and certainly not in the position to divert funds to pay for professional liability coverage. If coverage becomes mandatory, I fear I will be required to become an inactive member of the bar and will no longer be able to serve this under-represented group. I am sure there are many other attorneys in the same situation.

Bill Murphy

WSBA No. 19002

Vancouver, WA

From: [Edward Dunkerly](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: No MANDATORY MALPRACTICE INSURANCE
Date: Wednesday, November 29, 2017 11:08:25 AM

This will certainly result in an increase of rates in Washington. I pay less than \$1,500 per year now (it should be less given that my practice is 100% criminal defense) and do not want to end up with higher rates.

--

Edward LeRoy Dunkerly
Attorney at Law
WSBA# 8727
OSB# 92287
500 W. 8th Street Suite 55
Vancouver WA 98660
360 607-9243

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From: [Patric Smith](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Daniel Clark](#)
Subject: Mandatory Malpractice Insurance
Date: Wednesday, November 29, 2017 12:45:39 PM

TO: WSBA

I oppose Mandatory Malpractice Insurance being required of government lawyers.

While I was in the private sector, my firm paid for insurance. As a government lawyer, I don't need it, and the government isn't going to pay for it. I do not want to be required to take money from my family and give it to insurance which has no value to me, and which may be able to charge inflated premiums because purchasing the insurance, regardless of unreasonable pricing, is made mandatory.

"NO" unless insurance remains optional for attorney who do not represent private citizens.

Patric S. Smith
WSBA #15036

From: [Gregory Wall](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance
Date: Thursday, November 30, 2017 4:41:10 PM

Dear Task Force Members:

I am such an old guy that I was around when this idea was first floated. This was about the same time as Oregon went to their system. I served on the Committee handling liability insurance.

I opposed the plan then, and I do now.

1. Its one size fits all. It bears no real resemblance to risk management. I realize you could add claim surcharges, etc, but its not really a substitute for a real policy based on types of practice, years of practice and claim history.
2. This plan is much more like the Client Trust Fund for reimbursing clients cheated out of money than a real insurance program. If we adopt this, then every member of the bar, and that includes lawyers in public employment, corporate attorneys and others who don't really need malpractice insurance, should be required to pay. We are creating a fund to pay clients who suffer from malpractice and all members of the bar should participate.
3. We will still have to buy insurance to supplement this. Oregon's policy provides something like \$250,000 in coverage. My clients, who are large insurance companies, require me to have at least a million dollars in coverage. I carry two million. That means I, and virtually everyone else with a successful practice, will have to buy supplemental insurance.
4. I have seen no proof that there is a demonstrated need for this. I saw something about 20% of Washington lawyers being uninsured. What is the source of that number? Does it include lawyers who don't need insurance, like those in public employment and large corporations. For example, the ever growing number of in-house insurance defense lawyers are indemnified by their companies and they are not permitted to do outside legal work. They don't need insurance, and most, if not all, don't carry it.
5. I know the BOG loves to get that warm and fuzzy feeling when they talk about protecting and serving the public, but maybe they should have a factual basis for acting and, for once, look to the good of the members who are paying dues.
6. This requires the WSBA to get into the insurance business. We don't know how to do that, and it is likely to be an expensive learning process. Its much more efficient and cost effective to allow members to buy on the private market.
7. It will be a significant and undue burden on young lawyers starting out. It also has the potential for economic disbarment of lawyers, which is grossly unfair.
8. If it can be demonstrated that there is a real need for this, using facts rather than assumptions, the problem can be solved by changing the RPC's to require insurance or some other method of paying claims, such as a hold harmless letter from an employer.

9. Unless you want the fund to go broke, certain practice areas will have to be excluded, particularly Securities, Intellectual Property and other areas where the size of the risk is enormous. If you leave those in, the cost of the defense of these claims will bankrupt the fund in short order.

9. Remember that the policy limit does not determine the amount of the expense to the Bar. Insurance provides indemnity and a defense. The defense can cost more than the policy limits in many cases. See point 8.

10. Will the policies have a consent clause? If members don't have a veto power over settlement, their reputation could be damaged.

This was a bad idea in 1980 and its still a bad idea. I would urge the Task Force to recommend rejection, or alt least defer it until we can get some facts justifying the need for this.

Gregory J. Wall
Law Office of Gregory J. Wall, PLLC
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From: [Raddatz, Anita D CIV USARMY ECC \(US\)](mailto:Raddatz.Anita.D.CIV.USARMY.ECC@US)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Sunday, December 03, 2017 12:16:44 AM

Sir/Ma'am,

I assume this would not apply to US Government attorneys, correct? I don't like the use of the term, "mandatory."

Thanks!

v/r,
Anita

Anita D. Raddatz
Legal Counsel
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Work week Sunday through Thursday -- Friday and Saturday off

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-----Original Message-----

From: Washington State Bar Association [<mailto:questions@wsba.org>]
Sent: Friday, December 1, 2017 12:50 PM
To: Raddatz, Anita D CIV USARMY ECC (US) <anita.d.raddatz.civ@mail.mil>
Subject: [Non-DoD Source] An Update from WSBA Governor Rajeev Majumdar

...

Mandatory Malpractice Insurance Task Force. The roster for the Mandatory Malpractice Insurance Task Force was approved. While it doesn't look like any of the District 2 nominations were placed on the task force, I can assure all of you that all of the governors have been hearing similar concerns about lawyers who want to keep their active status but not represent clients and the cost of insurance. This task force will examine every angle and be open to feedback from the members. Please submit your questions and feedback to insurancetaskforce@wsba.org [Caution-<mailto:insurancetaskforce@wsba.org>] .

...

Happy Holidays & Merry Christmas,

Rajeev D. Majumdar

rajeev@northwhatcomlaw.com [Caution-<mailto:rajeev@northwhatcomlaw.com>]

(360) 332-7000

FAX: (360) 332-6677

The agenda and materials from this Board of Governors meeting, as well as past meetings, are online [Caution-<http://www.wsba.org/About-WSBA/Governance/Meeting-Minutes-and-Agendas>] . Please do not hesitate to contact me or any of the other board members with any questions or concerns you may have.

CONTACT INFORMATION: Rajeev Majumdar, rajeev@northwhatcomlaw.com [Caution-<mailto:rajeev@northwhatcomlaw.com>]

WSBA seal

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Washington State Bar Association

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- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications

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From: [Paul Majkut](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: I hope you will not require insurance for pro bono attorneys. Paul Majkut
Date: Sunday, December 03, 2017 9:06:07 PM

I hope you will not require insurance for pro bono attorneys. I am retired. I advise the Coalition of Oregon Land Trusts which has a Washington state member, the Columbia Land Trust. COLT has bought an insurance policy that covers me but may not meet the requirements you may set for private attorneys. Thank you. Paul Majkut

From: [Sherry Lindner](#)
To: [Sanjay Walvekar](#); [Mandatory Malpractice Insurance Task Force](#)
Cc: [Sara Niegowski](#); [Jennifer Olegario](#)
Subject: RE: Mandatory malpractice insurance and referendum policy
Date: Monday, December 04, 2017 9:15:06 AM

Yes, thanks for forwarding the inquiry.

Sherry Lindner | Paralegal | Office of General Counsel
Washington State Bar Association |T 206.733.5941|F 206.727.8314| sheryl@wsba.org
1325 Fourth Avenue, Suite 600|Seattle, WA 98101-2539

From: Sanjay Walvekar
Sent: Monday, December 04, 2017 9:13 AM
To: Mandatory Malpractice Insurance Task Force; Sherry Lindner
Cc: Sara Niegowski; Jennifer Olegario
Subject: FW: Mandatory malpractice insurance and referendum policy

FYI. Sherry – are you able to respond to her questions on referendum policy?

Thanks!
Sanjay

From: Deborah St Sing [<mailto:stsinglaw@gmail.com>]
Sent: Monday, December 4, 2017 8:32 AM
To: Sanjay Walvekar <Sanjayw@wsba.org>
Subject: Mandatory malpractice insurance and referendum policy

WSBA,

Currently, I am not practicing but rather work part-time as a hearing officer for a local housing authority. Thus, I do not represent clients, have no need for insurance and do not carry insurance.

As I am semiretired, my gross income from my 1099 work is minimal. Last year the gross was 5,000.00 and this year it approximately \$9,000.00. I would not be able to afford insurance if that is the price for maintaining my license. Being a member of the Bar is a requisite for my part-time work. Of course I am still paying the full bar dues.

I assume that only practitioners and not all members would be required to carry insurance. If that is not the case then I oppose the imposition of mandatory insurance.

Referendum Policy

Why is the board considering changes? Will the change make it more difficult for members to change policy with a referendum? Are the changes aimed at members trying to reduce dues?

--
Deborah A. St. Sing
Attorney at Law
PO Box 7264

Olympia, WA 98507



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From: [Rani Sampson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance
Date: Thursday, December 07, 2017 7:13:03 AM

I am opposed to mandatory malpractice insurance.

Mandatory malpractice insurance would have caused me to resign from the WSBA and seek a different career when the 2008 recession hit. I'm now established in my career and give LOTS of pro-bono assistance. When I retire from active practice, I would like to provide pro-bono services for low-income people. I won't do that if I'm forced to carry mandatory insurance.

Mandatory insurance would harm the public because some lawyers would leave the profession.

Rani K. Sampson

Overcast Law Offices, PS | Attorney | 23 S. Wenatchee Ave. Suite 320 | Wenatchee, WA 98801 | 509.663.5588

From: [Kary Krismer](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments About Mandatory Malpractice Insurance
Date: Thursday, December 07, 2017 4:14:13 PM

Here is my input on the topic of mandatory malpractice insurance. I don't have a problem with the idea in general, but I do believe there should be a lot of thought put into forming exceptions.

I happen to be licensed as both an attorney and a real estate broker, as are a surprising number of other attorneys. I do not actively practice law other than filling in standardized documents and explaining their effect. If I did obtain malpractice insurance the company would exclude any of my activities that pertained to my actions as a real estate broker, so there would be little point to getting insurance—something I've looked into. (I would also note that is probably true of the attorney/brokers who are more actively practicing real estate law—there the existence of insurance could be illusory if the representation was primarily as a broker and not as a real estate attorney).

Based on my situation, and probably countless other similar type situations where actively licensed attorneys are not actively practicing, I would suggest an exception for people who are actively licensed but not actively practicing law. That itself might require some careful drafting as technically a lot of the work of a real estate broker is technically the practice of law.

I would also suggest an exception which would expressly apply to those who generally do practice law, but are in between jobs. It should be clear that those attorneys are not violating any new rule.

If you don't create such exceptions, or maybe even if you do, you could create a status that allows licensed attorneys to go to an inactive status with an ability to come back at any time to active as long as they maintained CLE requirements the entire time they are inactive. Attorneys not actively practicing should not be required to pay malpractice insurance just to maintain their ability to practice law at a later date.

Kary L. Krismer
Managing Broker
John L. Scott/KMS Renton
206 723-2148 (direct)
425 272-2734 (fax direct)
425 227-5224 (fax office)

Our Facebook Page: [Kary and China](#)

From: [Denise C](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Malpractice Requirement Possible?
Date: Monday, December 11, 2017 9:26:41 AM

To Whom it May Concern:

I currently have malpractice insurance because I prefer to have it and because I must have it for my LLC in Wisconsin. However, I am moving to Canada later in 2018 and winding down my LLC some time in the next 12 months and putting my Utah and Wisconsin bar licenses on "inactive" status in the next while and do not plan to have malpractice insurance other than any tail I need to buy.

I plan to keep my WSBA active because you have the best association, esp. with the Legal Lunchbox program which allows me to stay up on CLE for free and conveniently. Also, this is the association with the best customer service.

I do NOT plan to practice law, but want to know if WSBA will requires me to have malpractice insurance to remain an active member? If so, is there some plan that I can buy through the WSBA for my unique situation given that I won't be practicing law?

Sincerely,

Denise Ciebien
(435) 770-0485 mobile, for texts & calls, but if the calls do not go through, then...
(715) 795-3798 landline
WSBA #24372
Utah #13046
WI #1099706

Ciebien Law Office, LLC

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From: [Darcia Tudor](#)
To: [Sherry Lindner](#)
Subject: Referendum Process
Date: Monday, December 11, 2017 11:59:05 AM

I am more concerned about why— we cannot get health insurance as a group. What I need most is the buying power of a large organization to reduce my health insurance costs.

With Warmest Regards,

Darcia C. Tudor, JD, LMHC, CWM



www.darciatudor.com

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5400 Carillon Point

Kirkland, WA 98033

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Rachel Konkler

From: Mandatory Malpractice Insurance Task Force
Subject: RE: LLLT

From: [REDACTED] [REDACTED]
Sent: Thursday, December 14, 2017 11:04 AM
To: Bobby Henry
Subject: LLLT

Actually, the Supreme Court should re-evaluate their creation of this group. These individuals set up as equal to lawyers (witness listing them in the directory of lawyers) and, yet, it appears that this may not be a "profession" for them. Check the numbers of this limited practice individuals for % of those removed or resigning.

Also, the Court and the Bar need hard data regarding attorneys not carrying malpractice insurance. How many are solo practitioners? How many are females? How many years of practice do they have? How many malpractice and/or ethics complaints have been registered against these attorneys? What is the income after expenses of these attorneys? How many practice from their homes or low-rent locations? All of this information needs to be compared to those who carry malpractice insurance. Can any conclusions be reached regarding this?

Vicki Lee Anne Parker,
Attorney at Law

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Rachel Konkler

From: [REDACTED]
Sent: Thursday, December 14, 2017 11:12 AM
To: Bobby Henry
Subject: Mandatory Malpractice

Also, an analysis should also review those who are rural practitioners separating rural Eastern WA and Western WA

Vicki Lee Anne Parker,
Attorney at Law

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From: [REDACTED]
To: [Rachel Konkler](#)
Subject: Re: Your Comments re Mandatory Malpractice Insurance
Date: Friday, December 15, 2017 9:25:24 AM
Attachments: [image001.png](#)

I do hope they will be circumspect about this task and undertake careful examination of the factors mentioned previously.

Vicki Lee Anne Parker,
Attorney at Law

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Certified in Elder Law by the National Elder Law Foundation

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JEstrada@LWeinerLaw.com

December 13, 2017

Washington State Bar
1325 Fourth Avenue, Suite 600
Seattle, WA 98101

Re: Task Force regarding Mandatory Malpractice Insurance

Dear Sir or Madam:

I am an attorney licensed in the state of Washington and currently living and working in Texas.

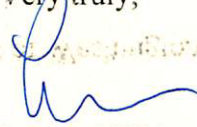
If a mandatory malpractice insurance requirement is implemented, I recommend and request that there be no malpractice insurance requirement for attorneys who do not have an office in Washington.

My understanding is that Oregon's State Bar has a Professional Liability Fund ("PLF") for its attorneys but PLF applies only if the individual attorney engages in the private practice of law in Oregon and maintains his or her principal office in Oregon. See ORS 9.080(2)(a) and (c) and PLF Policy 3.180. See the photocopy enclosed.

A requirement to maintain malpractice insurance in a state in which an attorney does not practice would be a burden to many attorneys who, like me, practice in another state.

I would be happy to speak with members of the Task Force if they wish to speak with me regarding this issue. My office phone number is 713-624-4294. Thank you.

Very truly,


Leonard Weiner

Exemptions from Coverage

-  Principal Office Outside of Oregon

The Professional Liability Fund prepares assessment notices for all attorneys who maintain “active” membership status with the Oregon State Bar. However, **PLF coverage is applicable only if the individual attorney maintains his or her principal office in Oregon and engages in the private practice of law. You are not required or eligible to participate in PLF coverage if you maintain your principal office outside of Oregon.** ORS 9.080(2)(a) and (c) and PLF Policy 3.180.

Oregon attorneys who passed the Oregon bar exam and whose principal office is outside Oregon are not required to carry malpractice coverage with the PLF or otherwise. However, to protect yourself and your clients, you should obtain commercial malpractice coverage from carriers in the state where you maintain your principal office. The PLF will not cover you for claims arising from your acts, errors, or omissions that occur when your principal office is outside of Oregon (even if you have erroneously paid for PLF coverage).

As long as you maintain your principal office outside the state of Oregon, you must request an exemption from the Professional Liability Fund assessment each year.

COVERAGE LIMIT:

FOR In-State Attorneys required to have PLF the Limit of Coverage for the Coverage Period of this Plan is \$300,000.

From: [Nadel Barrett](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Date: Wednesday, January 03, 2018 9:51:23 PM

Please don't make malpractice insurance mandatory.

I've had nothing but practical and financial barriers to overcome to practice law. This would be one more. I can't afford malpractice insurance so I can't volunteer for the moderate means program. I'm not employed as an attorney, so any use of my license is done part-time or less but there's no fee option for "part-time practice," just the nearly \$500 fee! I have student loans to manage, and a growing family. I couldn't handle the fees for my license if malpractice insurance was mandatory.

Nadel

From: [Emily Martin](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice
Date: Tuesday, January 09, 2018 12:36:49 PM

As a licensed attorney who works for the government in a job where I am not required to have a licenses, maintaining my bar status is already a huge optional expense I maintain because I believe is mutually beneficial for myself and the legal community. I'm very active at the local, state and national level. My work does not reimburse any of these many expenses. I have no use for the insurance, and so the extra expense would be unjust and unwise

Sent from my iPhone

From: [Laura King](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Request for more information
Date: Tuesday, January 09, 2018 2:49:03 PM

Hello,

I am interested in learning more about this task force and possibly contributing to the discourse.

I look forward to hearing from you.

Regards,

--

Laura E. King
Ad Hoc | Legal Group, PLLC

1037 NE 65th St. # 80315
Seattle, WA 98115
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From: [Laura King](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Re: Automatic reply: Request for more information
Date: Thursday, January 18, 2018 8:54:49 AM

To the Mandatory Malpractice Insurance Task Force:

As a newer lawyer and military spouse to an active duty serviceman, **I am opposed to this measure.**

Malpractice insurance is not always available to me. I have been in a two-year process of attempting to obtain malpractice insurance and have run into roadblock after roadblock. Because of the different states I'm licensed in (or have been), most insurers will not even write me a policy because they themselves are not licensed in that combination of states. In fact, I went inactive in a state just to overcome one roadblock to obtaining insurance even though I only recently obtained a license there. Please do not discount this problem merely because I'm a military spouse. People become licensed in multiple jurisdictions for many reasons.

Secondly, until insurance catches up to the current legal market, the insurance market is far too rigid to impose upon those of us with innovative practices. This is my second roadblock to obtaining insurance. Most insurers would not even take the time to write a policy because of my innovative practice type. This requirement would stifle innovation in the legal market in Washington.

If the problem is malpractice, address malpractice. Please do not impose another barrier on launching a law practice. Alternatively, provide more support for the ethical practice of law, and, if intervention is required, help the insurance market catch up to the needs of the legal community by updating their archaic and ill-adapted underwriting system.

Thank you,

Laura E. King

Sent from mobile device

On Jan 9, 2018, at 4:49 PM, Mandatory Malpractice Insurance Task Force
<insurancetaskforce@wsba.org> wrote:

Thank you for submitting your comments to the Mandatory Malpractice Insurance Task Force for its consideration. To learn more information about the work and progress of the Task Force, visit the Task Force webpage <<https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/mandatory-malpractice-insurance-task-force>>.

From: [REDACTED]
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Sunday, January 21, 2018 4:05:47 PM

I was admitted to the Washington Bar in 1977. I have maintained malpractice insurance for many many years. I do not have an objection in principal to mandatory malpractice insurance. But I have two concerns with imposition of mandatory malpractice insurance. The first is the cost and the coverage. If the mandatory coverage will increase the premiums that I currently pay or the coverage and deductible that I can now choose for myself, I have no interest in having coverage imposed on me.

My second concern and my major concern is any mandatory malpractice insurance that would require me to change my current insurance carrier. I expect to retire in the next 2 to 5 years. When I changed insurance carriers in 2013 because Zurich substantially increased their rates, I was very careful to check on tail policy of the new insurance carrier. The new carrier, Hanover, had a free unlimited retirement tail that would be applicable after 3 consecutive years of coverage.

There are many of us who will retire in the next few years. Planning for a malpractice tail is part of anyone's retirement package. One of the options that I have read about mandatory malpractice insurance would include forcing us to have malpractice insurance through a particular insurance company chosen by the bar.

I do not want to be forced to change my malpractice carrier. I do not want to be forced to retire before I am ready because the Bar has instituted a mandatory malpractice requirement and I have to retired in order to obtain the retirement tail from my current insurance carrier that I have already earned and planned on.

Any plan for mandatory malpractice insurance needs to resolve the issue of retirement tails for those of us planning to retire in the next few years.

Jackie Cyphers
Jeannette A. Cyphers, Attorney at Law WSBA #7252
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425-776-5887
fax 425-640-0814
[REDACTED]

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From: [Philip Friberg](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Philip Friberg](#)
Subject: Mandatory Malpractice Insurance for Attorneys who remain licensed, active, but who do not practice or have any clients.
Date: Wednesday, February 14, 2018 12:24:27 PM

Hi,

My name is Philip Friberg, WSBA 5987.

My request is there be No Mandatory Malpractice Insurance for an attorney who still has an active license, but who is not practicing law and had no clients.

My situation is that I began practicing law in 1975.

I retired several years ago and am not doing any legal work..

I am keeping my license active and wish to do so until I have been “licensed as active” until 50 years of “practice”.

I do not have any clients, nor do I ever given any advice, even if I know the answer. I do not want any way for someone to claim that I am acting as their attorney.

I always tell people to go to an active practicing attorney.

If circumstances would change financially, I may choose to go back into part-time practice.

I do not wish to have to pay for “mandatory malpractice insurance” unless I have clients and begin practicing again.

I do not wish to go inactive.

I enjoy taking CLE and keeping up in my areas of interest.

I would appreciate that my input could be given to the committee if there is one.

Thank You for your assistance.

Phil Friberg
WSBA 5987

From: [Merry A. Kogut](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments
Date: Thursday, April 26, 2018 1:46:17 PM

I am a licensed attorney but I have not practiced law in over five years. I am against mandatory malpractice insurance because I'd be forced to either purchase unneeded insurance or switch to inactive status. I do not wish to switch to inactive status because I want to retain the option to practice law again in the future without having to jump through unnecessary hoops. I am on Social Security Disability and cannot afford malpractice insurance, especially considering that I am not practicing law.

Thank you for listening.

Merry A. Kogut
16153

Merry A. Kogut, Attorney at Law
Trustee, Merry A. Kogut Revocable Living Trust
22415 So. Herron Blvd. NW
Herron Island



Lakebay, WA 98349-8143
Landline: 253.265.0060
Cell/Text: 253.884.8484
Email: merryakogut@gmail.com

From: [Alexis Merritt](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Opinion of a Stay at Home Mom WSBA Member
Date: Wednesday, May 09, 2018 3:18:14 PM

Hi,

I'm not sure if this is the best forum to provide an opinion. However, I do want to let someone know that I am very concerned about this mandatory malpractice idea. I am currently a stay at home mom to a toddler and a baby on the way. We have moved out of state to be near our families during these early childhood years. I have still kept my WSBA license active and pay my dues on time every year. It is a huge financial burden to do this, but I do it because the effort to attend and excel in Law School and then to pass the Bar Exam on the first try was a huge personal and family accomplishment. We incurred numerous financial, family, and mental stresses in order to do this. I have not gone inactive because the guidance by WSBA currently indicates that I will need to submit a whole new application for review when I am ready to come back, and based on the length of inactivity, may be required to retake the bar exam! This is all while still paying a very large yearly fee to be inactive.

After all the sacrifices my family and I made to help me achieve success, I do not want to take any steps backwards in my career potential. Plus, we may not always live out of state, or I may return to work for the federal government someday.

So please make sure the wording for this "mandatory malpractice insurance" is not hinged on whether a WSBA member is registered as "inactive." There are very valid and normal reasons, especially for women taking time out to raise kids, why we would choose to keep paying the high cost of staying active, but would be very burdened in having to pay even more money for malpractice insurance we would never need.

Best Regards,

Alexis Merritt

From: [Paul Majkut](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: retired pro bono attorney
Date: Wednesday, May 09, 2018 11:16:26 PM

I hope that your taskforce will not recommend mandatory malpractice insurance for retired attorneys who provide pro bono legal advice to environmental groups like the Columbia Land Trust in Vancouver Wa. The Coalition of Oregon Land Trusts, of which CLT is a member, provides me malpractice insurance it has obtained at a much reduced rate. I only have to pay my bar dues and get 45 hrs of CLE every 3 years to be able to advise them. Paul Majkut Wash Bar #6523

From: Stan Sastry [mailto:stan_sastry@frontier.com]
Sent: Wednesday, May 09, 2018 11:35 PM
To: Hugh D. Spitzer
Subject: Re: Mandatory Malpractice insurance

Mr. Hugh D. Spitzer,

As chair of the Mandatory Malpractice Insurance Task Force, I am writing this letter/e-mail regarding the WSBA potentially going in the direction of requiring mandatory malpractice insurance as a part of the licensing process for lawyers.

I am extremely concerned that WSBA will ultimately require all active lawyers to carry malpractice insurance. Although things are at an early stage of discussion, my hunch is that ultimately the WSBA will require malpractice insurance. Based on this premise, I am writing you this e-mail.

I am giving you my perspective based on my situation. I am a Patent Attorney in private solo practice for more than 10 years. I practice exclusively before the United States Patent and Trademark Office. I do not currently practice law in the Courts of the State of Washington. I have no clients that require me to use the laws in the State of Washington. I only deal with the United States Patent and Trademark Office. Thus my practice has no component that deals with State of Washington laws. My admission to practice before the United States Patent and Trademark Office DOES NOT require me to have malpractice insurance. I am not required to have malpractice insurance to do my legal work. Thus I do not carry malpractice insurance.

If the WSBA mandates that I carry malpractice insurance, it will be a devastating blow to my law practice. This is because the cost of carrying malpractice insurance for patent practice is prohibitively expensive (\$5000-\$10,000 per annum). Some insurance carriers will not even insure me, because I am a Patent lawyer. Thus to lump me with other higher-risk practitioners in areas such as criminal defense, personal injury etc., is unfair.

I do not believe there is a crisis of confidence among the public for patent lawyers committing malpractice in order for the WSBA to require me to buy insurance. It is not possible to pass on the costs of having insurance to clients, given the fact that there is already a public perception that lawyers are expensive and that the public at large has a negative view of lawyers in general.

The WSBA should conduct a referendum of its lawyer members on the issue of mandatory malpractice insurance before it mandates that we carry malpractice insurance.

In conclusion, I oppose mandatory malpractice insurance because I will probably be forced out of practice if the WSBA requires me to carry malpractice insurance. I consider myself as

promoting business and economic activity because I protect my clients' novel ideas and help them start businesses with their innovations. My business is directly helpful to the economy of the State of Washington. To force me out of business by requiring me to carry malpractice insurance for an imaginary risk is unfair action by WSBA.

Sincerely,

Stanley Sastry
Attorney at Law
The Law Office of Stan Sastry PLLC
<http://stansiplaw.com/>
16708 Bothell-Everett Highway, Suite 104
Mill Creek, WA 98012

Phone/FAX 425-357-6241

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From: [Steve Cook](#)
To: [Paul Majkut](#); [Mandatory Malpractice Insurance Task Force](#)
Subject: RE: retired pro bono attorney
Date: Thursday, May 10, 2018 11:27:22 AM

I am the General Counsel for Columbia Land Trust, and I'd like to second the comments from Paul Majkut, below.

We are a non-profit, private land conservation organization that works in both Washington and Oregon. We need a lot of legal work in Washington--much more than I am able to handle myself. We receive invaluable assistance from pro bono attorneys, including retired pro bono attorneys such as Mr. Majkut, who do not have their own malpractice insurance. Fortunately, we have access to malpractice insurance coverage for that work through the pro bono program of the Coalition of Oregon Land Trusts.

I would be happy to provide you with more information regarding the Coalition of Oregon Land Trusts pro bono program, and I can put you in contact with COLT so you can receive information directly. Here's the short version. Since we work in both Oregon and Washington, we belong to COLT as well as a similar organization in Washington State. COLT established an innovative program through which attorneys can volunteer to provide pro bono legal services to COLT member land trusts, and if they do, COLT has a malpractice insurance policy that covers that work. Since we and some other COLT members work in both states, the COLT program and malpractice coverage extends to work pro bono attorneys such as Mr. Majkut perform for COLT member land trusts in Washington as well as in Oregon.

If the Washington State Bar were to require malpractice insurance for retired attorneys who provide pro bono legal advice to nonprofits like Columbia Land Trust, those nonprofits would lose an extremely valuable source of pro bono legal work which allows those nonprofits to make their dollars go further, in terms of performing mission work, because they don't have to pay legal fees for some projects.

- Providing an exception where a pro bono attorney is able to access malpractice insurance through a program like COLT's would be one solution. But it would still deny those nonprofits who do not have access to a program like COLT's, including all Washington land trusts that do not also work in Oregon, access to pro bono services from attorneys without malpractice insurance, such as retired attorneys.
- So, another solution would be to exempt from mandatory coverage attorneys doing only pro bono work for nonprofits, possibly subject to some hour limit.
- The best solution would be to establish a special malpractice insurance program solely for retired attorneys providing pro bono work to nonprofits on a part-time basis. Ideally, such a program would be funded by the bar, or charitable donations. Alternatively, a mechanism that allowed for pro rated premiums for those working limited hours might make it possible for some retired attorneys to buy such malpractice coverage, or for the charities for whom they work to pay for such malpractice coverage.

Steve Cook WSBA #45687

[Stephen F. Cook](#) | Deputy Director and General Counsel

Columbia Land Trust

850 Officers' Row | Vancouver, WA 98661

{360} 213.1208 | | scook@columbialandtrust.org

Also in Astoria | Portland | Hood River

www.columbialandtrust.org

From: Paul Majkut [REDACTED]
Sent: Wednesday, May 09, 2018 11:16 PM
To: insurancetaskforce@wsba.org

Subject: retired pro bono attorney

I hope that your taskforce will not recommend mandatory malpractice insurance for retired attorneys who provide pro bono legal advice to environmental groups like the Columbia Land Trust in Vancouver Wa. The Coalition of Oregon Land Trusts, of which CLT is a member, provides me malpractice insurance it has obtained at a much reduced rate. I only have to pay my bar dues and get 45 hrs of CLE every 3 years to be able to advise them. Paul Majkut Wash Bar #6523

From: [Three Pines Law](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Staying Informed?
Date: Thursday, May 10, 2018 1:55:05 PM

Hello:

I just studied the malpractice insurance task force meeting minutes provided on a WSBA email announcement. This is a topic I am very interested in because I am now an Oregon resident, required to pay malpractice insurance. This has been a hardship since I am a solo practitioner with no client base yet (precluded from practicing in Oregon *or* Washington until a member of the Oregon Bar, which took the better part of a year to establish). Having to pay insurance in two states is concerning.

I am wondering what is the best way to ensure I see updates from the task force and am notified of all opportunities to comment? I have missed several articles or updates for some reason, and didn't realize there had been a comment period although I have been trying to keep an eye out for information.

Thank you,
Kate Hawe

Kate M. Hawe
Owner

Three Pines Law & Consulting Group, Inc.
206.909.4642

threepineslaw@gmail.com

*Providing legal and regulatory consulting services to the natural resources client
Licensed attorney in Washington State*

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From: [g.m](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: My opinion re mandatory insurance
Date: Friday, May 11, 2018 4:10:47 PM

Here is my opinion regarding mandatory insurance. I am against any draconian mandatory insurance requirement for all active members for the following reason: As a retired judge for the past fifteen years, I have opted to remain an active member of WSBA in order to give free legal consulting to my own family members, and to those who need legal help but who are unable to afford it . If the Bar decides to make insurance mandatory for all active members, including lawyers like myself who do not accept or handle client funds, it would have a chilling effect on pro bono services throughout the State of Washington. Respectfully submitted, Paul Treyz, WSBA #16642

From: tyler@wilsonlaw.pro [mailto:tyler@wilsonlaw.pro]
Sent: Wednesday, May 16, 2018 12:57 PM
To: Hugh D. Spitzer
Cc: tyler@wilsonlaw.pro
Subject: concerns about mandatory malpractice Insurance

Dear Professor Spitzer,

As a legal practitioner licensed in the State of Washington I have been monitoring the Washington State Bar Association's ("WSBA") inquiry into mandating professional malpractice insurance for Washington lawyers. I am also licensed in the State of Idaho, which recently implemented mandatory malpractice insurance for active attorneys. The purpose of my email is to highlight a number of issues with malpractice insurance from the perspective of someone (me) who has been sued for malpractice (albeit, maliciously) in the past while being covered by malpractice insurance provided by ALPS. Here are a number of issues that I dealt with or lessons I learned that I believe the Task Force should be aware of:

1. A claim of malpractice can be used by opposing litigation counsel (either as an initial claim or counter-claim) in an attorney dispute to draw an insurance carrier into a matter to force a settlement by making a policy limits demand, thus providing the claimant with a potential windfall whether or not merited.
2. Insurance carriers manage their risk of loss and that risk of loss is without regard to the merits of the attorney's position. If an attorney has a policy that is not conducive to the litigation process and a potential pay out (i.e. a small policy), the carrier will settle the matter upon receiving a policy limits demand from opposing counsel.
3. Malpractice insurance does not exist so that an attorney can have an opportunity to disprove claims of malpractice or defend his/her reputation.
4. A carrier will take the position that their role is limited to eliminating the malpractice claim; nothing more.
5. The amount of coverage an attorney carries directly correlates to the carrier's negotiating power in a settlement and the carrier's decision to settle a matter or continue with litigation.

I don't have the figures, but I would suspect very few malpractice claims are fully litigated.

6. Attorneys with malpractice insurance can be targets for malicious claims from disgruntled clients or those dealing with financial difficulties.
7. An attorney has little control over the malpractice settlement process. If an attorney refuses to settle a matter the carrier will require signed documentation to the effect that if litigation continues and it exceeds policy defense costs will be the personal obligation of the attorney, as will any settlement or judgment – this is prohibitive to continuing.
8. Insurance carriers will require a lawyer to sign a Reservation of Rights Agreement (“RRA”), which protects the carrier from the attorney in the event the attorney takes a course of action contrary to the carrier. These are essentially contracts of adhesion, but you waive that claim in the RRA.
9. Coverage limits less than \$1,000,000 per occurrence/claim are **worthless**. I've personally had an insurance carrier representative tell me that if I had a larger policy they would have fully litigated the malpractice claim that was brought against me. Instead, they settled and I was later dropped from coverage.
10. If a lawyer experiences a claim (valid or not) the annual cost of malpractice insurance goes up approximately 10X. Before ALPS dropped me my annual premiums were approximately \$3,500/year, my options after I had a “loss run” exceeded \$30,000 per year.

I'll leave you with my story of being sued for malpractice (all of this is in the public record) – it was from this experience that I learned the above stated lessons:

In 2011 I left the firm I was working for and started my own practice. I landed a client that operated a commercial real estate backed hard money lending business. The business was backed by passive limited partners who invested capital privately. Over the course of a couple years the client and I had a good working relationship. I prepared their private placement memorandum and drafted commercial loan documentation, but did not assist with due diligence or business operations. In early spring of 2014 the client's CPA informed me that funds were being transferred in an out of an entity that was dormant and it appeared new client investments were being used to pay returns to older investors and they were concerned about the legality of this. I investigated and uncovered what I believed to be an extensive ponzi-like scheme. I drafted a letter to the client detailing my findings and advised that I would no longer be representing the client. Upon terminating my engagement the client asked me if I was covered by malpractice insurance to which I answered affirmatively – boy was that a mistake! A month after I withdrew I received a demand letter for the client's losses – approximately \$5.6 million at that time. In the letter the client specifically made a demand to my malpractice carrier and put them on notice. Litigation commenced. At the time I had \$500,000 in coverage, of which \$250,000 could be used defense costs – I mistakenly thought this was enough coverage. During the course of litigation the client amended the complaint and increased its claim for loss twice with the total loss claim exceeding \$15 million dollars. After a year and half of litigation, despite clear facts in my favor and a strong testimony by an expert witness

that I had exceeded the standard of practice, my carrier informed me that their financial risk of loss and exposure was too high regardless of my position in the suit and they settled the matter upon receiving a policy limits demand from opposing counsel. I later learned that the former client had sued his last four lawyers for malpractice and used malpractice claims as a litigation and business technique. I was the sucker.

I leave you and the Task Force with a compound question: Why do you think insurance carriers are so supportive of mandatory malpractice insurance and does malpractice insurance primarily benefit a harmed client or the insurance carrier?

I would be happy to provide further insight if you would like. Thank you for your time.

Best Regards,

Tyler B. Wilson, Esq.



Wilson Law Group, PLLC

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Suite 423

Seattle, WA 98103

[\(509\) 953-3059](tel:5099533059)

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From: [NWLawyer](#)
To: [Doug Ende](#); [Thea Jennings](#)
Subject: FW: Letter to Editor - Mandatory Prof Liab Insurance
Date: Thursday, May 17, 2018 11:32:19 AM

From: Inez "Ine" Petersen [mailto:inezpetersenjd@gmail.com]
Sent: Wednesday, May 09, 2018 3:51 PM
To: NWLawyer <NWLawyer@wsba.org>
Subject: Letter to Editor - Mandatory Prof Liab Insurance

Regarding the [Mandatory Malpractice Insurance Task Force](#), how can the WSBA get accurate feedback when it is only considering "potential models for mandatory insurance" and none against? The "first and foremost" model, in my view, is status quo--not making insurance mandatory at all. Who is benefited by forced insurance anyway? Certainly not the 85% of the members who already carry professional liability insurance. Members--the ones the WSBA is supposed to be serving "first and foremost." Even if the WSBA arranges for a significant savings, that is still not a reason to make insurance mandatory. I recommend this task force be disbanded to help reduce mission creep at the WSBA. Mission creep--the only reasonable explanation for a 40% increase in dues this year--an increase which allowed no voice of dissent . . . or assent for that matter.

Inez Petersen
WSBA #46213
cell 425-255-5543

From: [Philip Friberg](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Philip Friberg](#)
Subject: Mandatory Malpractice Insurance
Date: Sunday, May 20, 2018 12:35:52 PM


Hi to Each Member of The Committee:

1. I have emailed once before regarding a class of attorneys who are “RETIRED, not practicing at all” attorneys who want to keep their license active, take CLE’s and keep up on the law. I am doing this as a “financial backup plan” for my retirement. If I had to, I would reenter the active practice of law and obtain Malpractice Insurance. I maintained Malpractice Insurance and obtained a Tail Policy upon leaving, retiring from active practice several years ago. I had practiced since 1975 and had been covered by Malpractice Insurance at all times except for about 1 year in 1977-78. From then on, I always carried Malpractice Insurance.
 2. I would like to have your committee recommend an Exemption of attorneys who are keeping an active license, but who are not practicing. An attorney’s oath to such should be sufficient to prove that.
 3. If you wanted to add some restrictions to that idea, perhaps only grant it to attorneys who had practiced more than 20 (30 or 40) years and would swear they are not actively practicing.
 4. It would be a undue and unfair burden to my retirement to have to pay for mandatory insurance.
 5. I turn down doing even simple wills or casual advice asked by friends or relatives.
 6. I would appreciate a reply from someone on the committee that this “exemption” for non-practicing attorneys, retired, but wish to maintain an active license is being considered.
 7. I looked into the option to put my license “on hold”, but choose keeping it ongoing to be much simpler and I enjoy taking CLE classes.
 8. I wish to attend “the 50 year celebration” for folks who have been attorneys for 50 years.
 9. So far, I have never had a malpractice claim, and maybe that could be another “exemption consideration”?
- Thank You very much for considering my “Exemption Request”.

I would appreciate hearing from someone that you are considering my request.

Sincerely,

Philip E. Friberg
WSBA 5987



From: [Hugh D. Spitzer](#)
To: [REDACTED]
Cc: [Doug Ende](#); [Thea Jennings](#)
Subject: Your Recent Comments
Date: Saturday, June 23, 2018 6:15:03 AM

Dear Mr. Friberg,

I chair the WSBA's Mandatory Malpractice Insurance Taskforce, and I just read your May 20 email with comments on the concept of requiring professional liability insurance. Toward the end of your note, you asked that someone at the Taskforce get back to you to let you know if we are considering your suggestion that there be an exemption for lawyers who choose to maintain their licenses but declare that they are not practicing law. That exemption idea is definitely on the list.

I'm assuming that the reason you choose to remain "active" is the hassle of being inactive but later returning to active status. I just reviewed the rules on that, and it does appear to be somewhat complicated. (https://www.wsba.org/docs/default-source/licensing/status-changes/facts-to-active-from-inactive.pdf?sfvrsn=a6ae3af1_2).

In any event, while I don't know where the Taskforce will land with respect to your suggestion, it's definitely on the list.

Hugh

Hugh Spitzer
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Seattle, WA 98195-3020
206-685-1635
206-790-1996 (cell)
Papers on SSRN: <http://ssrn.com/author=1514923>

From: Hugh D. Spitzer
Sent: Saturday, June 23, 2018 6:23 AM
To: 'inezpetersenjd@gmail.com' <inezpetersenjd@gmail.com>
Subject: WSBA Malpractice Insurance Taskforce

Dear Ms. Petersen,

I chair the WSBA's Mandatory Malpractice insurance Taskforce, and I just read your May 9 comment letter that you sent to NWLawyer. (I read every comment we receive.) I want to assure you that the Taskforce is definitely considering the "do-nothing" option, and has from the beginning. But based on the Taskforce's most recent meeting, I'm pretty sure that we won't make a "do-nothing" recommendation. At the same time, we have worked hard to base any recommendation on hard facts rather than concerns in the "feel-good" category.

There is one thought in your email that I would like to engage on: your suggestion that the WSBA exists "first and foremost" to serve the state's lawyers. When you look at the WSBA's mission statement (<https://www.wsba.org/about-wsba/who-we-are>) you'll see that "The mission of the Washington State Bar Association is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice." That directive, which our State Supreme Court has underscored, is driving our Taskforce work. The WSBA definitely serves lawyers. But you'll note that serving the public is placed ahead of serving lawyers in that sentence. ☺

Hugh

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Starfish Law PLLC

Inez PETERSEN, WSBA #46213

1166 Edel Ct., Enumclaw, WA 98022-2137
— Telno 425-255-5543 InezPetersenJD@gmail.com
<http://StarfishLaw.com>

June 25, 2018

Dear Prof. Spitzer:

Thank you for asking for my opinion. Most of my 30 years at Boeing were spent as a lead computer programmer. I am used to thinking creatively and speaking frankly--no reason to change now.

Mission statement of WSBA

I believe the mission statement for the WSBA is wrong.

"Serve the public" should come AFTER "the members of the Bar." We're the ones serving the public, we need the WSBA to serve and support us--to facilitate our serving the public.

The WSBA is a non profit organization registered under the laws of the State of Washington:

<https://www.sos.wa.gov/corps/business.aspx?ubi=604158177>

WSBA was probably formed under RCW 24.03 but possibly RCW 24.06. Both have loyalty provisions in them.

Mission statement of your taskforce

I also believe the mission statement for your taskforce is wrong. The 85% who DO have insurance (statistic from NW Lawyer) do not need your taskforce; and your mission regarding the 15% who do NOT have insurance is to figure out why and remove that obstacle. This has nothing to do with mandatory insurance! I would surprised if I do not speak for the majority of WSBA members regarding these two points.

First and foremost question

But we'll never know if I am right because WSBA leadership does not support a bar-wide LISTSERV (or equivalent) which would enable attorneys to freely communicate with one another. NW Sidebar does not meet this need, nor do the LISTSERVs which individual sections may have.

So did the taskforce find out why the 15% do not have insurance? This would be the first and foremost question.

What do the stats indicate?

As reported by this webpage, https://www.wsba.org/docs/default-source/licensing/membership-info-data/countdemo_20180601.pdf?sfvrsn=ae6c3ef1_30, there are:

Active lawyers = 25,930 and solos = 7,689
85% of 25,930 = 22,041 attorneys have legal malpractice insurance
15% of 25,930 = 3,889 est do not have insurance
15% of 7,689 = 1,153 est do not have insurance
Attorneys who did not bother to respond = 10,343
10,343/25,930 = apparently 40% have given up on the WSBA and didn't even respond
And another 40% have employers who pay their insurance (gov't/public sector, in house counsel, large law firms)

Do these stats support the need for mandatory malpractice insurance? I don't think so.

Nor do I believe that the State Supreme Court is driving your taskforce. State Supreme Court Justices are too busy to contribute to the mission creep at the WSBA. Ideas like mandatory malpractice insurance probably come from WSBA leadership and are funneled upward to the Supreme Court, just like what occurred with the 40% dues increase and snuffing the members' right to referendum contained in the Bylaws.

The LLLT program probably arose in the same way--not because there was a shortage of Family Law attorneys but because the WSBA leadership wanted to be first in the nation to adopt such a program. Could the real motivation behind mandatory malpractice insurance be that WSBA leadership wants Washington to be among the first group of states to make such insurance mandatory? "Leading edge" doesn't necessarily mean "best for WSBA members."

Thinking faulty from originator of the bad idea

This ABA article talks about mandatory malpractice insurance:
https://www.americanbar.org/groups/bar_services/publications/bar_leader/2003_04/2804/malpractice.html

Quoting from this article, " "We require liability insurance for everyone who has a license and drives a car, and a car can do a lot of damage," . . . "Why can't we see our way for attorneys to have liability insurance?"

The driver's license analogy is inappropriate because drivers don't have the equivalent of RPCs, ELCs, or the Attorney's Oath to govern their behavior.

If cost is the major issue for some of the 15% who do NOT have insurance, they may be forced to quit practicing law which could result in reduced *pro bono* hours.

If cost is a major issue for some of the 85% who DO have insurance, they also may be forced to cut back on *pro bono* hours to generate income to pay for the mandatory insurance.

Cost of mandatory malpractice insurance

Are we to believe that if insurance becomes mandatory, it will be cheaper? It sure didn't work that way for my Plan D prescription meds and my regular medical insurance coverage. See this article from Forbes entitled "Yes, It Was The Affordable Care Act That Increased Premiums" at this URL:

<https://www.forbes.com/sites/theapothecary/2017/03/22/yes-it-was-the-affordable-care-act-that-increased-premiums/#5ee6af6a11d2>

How is the taskforce going to protect attorneys from this very phenomenon? Attorneys subjected to mandatory insurance would be ripe for exploitation as a "captive audience."

How to "sweeten the pot"

I look at mandatory insurance as an unfunded mandate. And if the WSBA were truly supporting attorneys, it could provide relief in a variety of ways other than burdening attorneys with mandatory insurance.

How about a rebate on bar dues for those attorneys who voluntarily purchase insurance?

How about forming a pool for the 15% so that they can get insurance at a REASONABLE COST? I could find no carrier except Zurich which would cover a solo attorney. Even the carrier promoted by the WSBA website doesn't ensure solo practitioners.

Zurich also raises its rates automatically each year and having no claims does not matter. Car insurance doesn't work that way.

If the WSBA could form a pool which would provide reasonably priced insurance for solo attorneys, or any attorney for that matter, which does not increase each year based on years of practice, that would be value added to members.

I have had insurance since Day One, but it is getting so expensive, I am actually considering not buying it next year. I made \$357 being a lawyer on my last income tax return. Because I am retired and am a second-career attorney, I work *pro bono* for people who would otherwise fall through the crack for lack of money to pay for legal help. I could be one of the attorneys forced to give up my bar card because of mandatory insurance. My insurance cost \$1800 for 2018.

IOLTA slush fund

IOLTA makes buckets of money as shown here:

https://legalfoundation.org/wp-content/uploads/2017/05/GR2017.final_.pdf

This webpage indicates that staff and administrative costs run in the \$1.5 million range.

Some IOLTA funds could be directed toward helping lawyers pay for malpractice insurance, perhaps pro-rated by how many *pro bono* hours the attorney worked each year.

Some IOLTA funds could be directed toward paying uncollectable judgments resulting from legal malpractice. Apparently the Client Protection Fund is not adequately meeting this need. <https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/client-protection-fund>

Another referendum could be on horizon

I believe there is a possibility of another referendum to eliminate mandatory insurance. WSBA leadership would have to ignore the Bylaws again to quash it; and that would decrease their popularity even more.

That huge 40% dues increase is yet another reason why mandatory insurance may not be appreciated by a majority of WSBA members.

Political agenda

And just a thought upon closing, how much of our WSBA dues is being spent on political agendas of WSBA leadership as opposed to the wishes of the majority of WSBA members? In the coming days, court decisions may affect the relationship between WSBA leadership and WSBA members and their dues. It will be interesting to see how things shake out.

For example, if dues can't be used to support political agendas without an attorney "opting in," WSBA leadership may find themselves out of step with the desires of the majority.

Right now, WSBA leadership does not know what its members support. Governors distribute newsletters prepared by WSBA leadership, and there is no functional communication between members and "WSBA Central."

Two remaining questions

And a basic legal question--how political can a non profit get?

What other professions require mandatory malpractice insurance?

Summary

In summary, if the WSBA can form a pool which results in lower insurance rates, with no annual increases based simply on years of practice, I would support the formation of such a pool, but I would not support making insurance mandatory under any circumstances.

What is the real justification for this anyway? So what if approximately 3,800 out of 26,000 attorneys don't have insurance? Does that really justify making insurance mandatory?

Back in my Boeing days, besides "Better, Faster, Cheaper" as a guiding principle, in problem solving meetings, we would keep asking "So what?" until we exposed the root cause of a problem. It also exposed when there was no problem because it put the facts into perspective. That is why I asked "So what if 3,800 out of 26,000 attorneys don't have insurance?"

Respectfully yours,



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Website <http://StarfishLaw.com>

WSBA Malpractice Insurance Taskforce

1 message

Hugh D. Spitzer <spith@uw.edu>

Sat, Jun 23, 2018 at 6:22 AM

To: "inezpetersenjd@gmail.com" <inezpetersenjd@gmail.com>

Dear Ms. Petersen,

I chair the WSBA's Mandatory Malpractice insurance Taskforce, and I just read your May 9 comment letter that you sent to NWLawyer. (I read every comment we receive.) I want to assure you that the Taskforce is definitely considering the "do-nothing" option, and has from the beginning. But based on the Taskforce's most recent meeting, I'm pretty sure that we won't make a "do-nothing" recommendation. AT the same time, we have worked hard to base any recommendation on hard facts rather than concerns in the "feel-good" category.

There is one thought in your email that I would like to engage on: your suggestion that the WSBA exists "first and foremost" to serve the state's lawyers. When you look at the WSBA's mission statement (<https://www.wsba.org/about-wsba/who-we-are>) you'll see that "The mission of the Washington State Bar Association is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice." That directive, which our State Supreme Court has underscored, is driving our Taskforce work. The WSBA definitely serves lawyers. But you'll note that serving the public is placed ahead of serving lawyers in that sentence. ☺

Hugh

Hugh Spitzer

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Papers on SSRN: <http://ssrn.com/author=1514923>

From: Hugh D. Spitzer
Sent: Monday, June 25, 2018 6:59 AM
To: 'Inez "Ine" Petersen' <inezpetersenjd@gmail.com>
Subject: RE: WSBA Malpractice Insurance Taskforce

Ine,

Thanks for your additional thoughts. I'll pass them along to the Taskforce.

Although the WSBA was created as a nonprofit entity, the Bar Act declares it to be an agency of the State. Court rules make it clear that the WSBA is under the jurisdiction of the State Supreme Court.

As you may be aware from a recent letter from the WSBA president and from discussion in NWLawyer, there is some discussion of whether the organization should be split in two, with many of the lawyer-serving functions spun off to a voluntary nonprofit corporation, and the regulatory and public-focused functions kept with a state agency under the jurisdiction of the Court. This might not be a bad idea, but that's obviously a different topic than the Taskforce is entrusted with.

Hugh

From: Inez "Ine" Petersen <inezpetersenjd@gmail.com>
Sent: Monday, June 25, 2018 12:56 AM
To: Hugh D. Spitzer <spith@uw.edu>
Subject: Re: WSBA Malpractice Insurance Taskforce

Please see enclosed letter.

On Sat, Jun 23, 2018 at 6:22 AM, Hugh D. Spitzer <spith@uw.edu> wrote:

Dear Ms. Petersen,

I chair the WSBA's Mandatory Malpractice insurance Taskforce, and I just read your May 9 comment letter that you sent to NWLawyer. (I read every comment we receive.) I want to assure you that the Taskforce is definitely considering the "do-nothing" option, and has from the beginning. But based on the Taskforce's most recent meeting, I'm pretty sure that we won't make a "do-nothing" recommendation. AT the same time, we have worked hard to base any recommendation on hard facts rather than concerns in the "feel-good" category.

There is one thought in your email that I would like to engage on: your suggestion that the WSBA exists “first and foremost” to serve the state’s lawyers. When you look at the WSBA’s mission statement (<https://www.wsba.org/about-wsba/who-we-are>) you’ll see that “The mission of the Washington State Bar Association is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice.” That directive, which our State Supreme Court has underscored, is driving our Taskforce work. The WSBA definitely serves lawyers. But you’ll note that serving the public is placed ahead of serving lawyers in that sentence. ☺

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Papers on SSRN: <http://ssrn.com/author=1514923>

From: [Hugh D. Spitzer](#)
To: [Angus Lee](#)
Cc: [PJ Grabicki](#); [Dan Bridges \(DanBOG@mcbdlaw.com\)](#); [Rajeev Majumdar](#); [Thea Jennings](#); [Rachel Konkler](#); [Doug Ende](#)
Subject: RE: Malpractice Insurane
Date: Tuesday, July 31, 2018 7:28:34 AM

Dear Mr. Lee,

The idea you have suggested is the approach that South Dakota uses. It appears to have been pretty effective in reducing the number of uninsured lawyers in that state. It's hard to tell how well it would work here. The downside that our task force identified was that there are still consumers of legal services in South Dakota being represented by attorneys who don't cover professional liability insurance.

The approach we have tentatively thought would work best is the one that Idaho just adopted—required insurance, purchased on the open market. Idaho has pretty low mandatory levels: \$100K/\$300K. Apparently no lawyer in Idaho has been unable to find a plan, and the premiums for newly-insured solo and small firm lawyers are quite low.

We'll have more information on the task force's interim report in the August NW Lawyer.

I'll pass your comments on to the entire task force.

Hugh

Hugh Spitzer
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University of Washington School of Law
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206-685-1635
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Papers on SSRN: <http://ssrn.com/author=1514923>

From: Rajeev Majumdar <rajeev@northwhatcomlaw.com>
Sent: Monday, July 30, 2018 5:56 PM
To: Angus Lee <angus@angusleelaw.com>
Cc: Hugh D. Spitzer <spith@uw.edu>; PJ Grabicki <pjg@randalldanskin.com>; Dan Bridges (DanBOG@mcbdlaw.com) <danbog@mcbdlaw.com>
Subject: RE: Malpractice Insurane

Dear Angus,

Thank you! I think you describe something which some other states have used. I am forwarding on your suggestions to Hugh Spitzer the Chair of the task force, and P.J. Grabicki and Dan Bridges the governors (or soon to be governors) on the task force as well.

Warmly,

Rajeev D. Majumdar, President Elect
Washington State Bar Association
(360) 332-7000
FAX: (360) 332-6677

From: Angus Lee [<mailto:angus@angusleelaw.com>]
Sent: Monday, July 30, 2018 6:39 AM
To: Rajeev Majumdar
Subject: Malpractice Insurance

President-elect:

Just a thought on the malpractice insurance issue. As you know, many are against forced entry into a market they see as unnecessary and cost wasting. No doubt you have heard from semi-retired members who only do public interest charity work or help out friends, who would give up their license before paying for coverage.

Why not just make it an RPC that any lawyer practicing without insurance must give written notice to the client that they are not covered by malpractice insurance?

Those of us who practice in criminal defense often use a "fixed fee" agreements that the RPCs already require be in writing and provide certain notices to the client.

I don't think anyone could object to being required to provide a truthful notice to clients. This notice would let the client decide if the lack of insurance is an issue but they would never be surprised.

Many client's would balk at being represented after at such notice, meaning the market would incentivize the uninsured lawyer to seek out coverage when and if necessary.

This approach respects the freedom of individual lawyers not to insure if they so choose. It is an easy first step. If it does not work, the mandatory insurance rule could be readdressed.

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From: [Goodwin, Traci](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: proposed mandatory malpractice insurance
Date: Thursday, August 02, 2018 11:42:01 AM

Dear Sir or Madam – As a member of the bar since 1985, I believe that mandatory malpractice insurance is generally a good idea for many members. However, I think there should be specific exemptions for government attorneys, such as myself, and for other specific groups. Some of the other groups who should be exempt are in-house counsel, attorneys on disability leave, and honorary members. Thank you for considering my comments. Yours truly, Traci Goodwin

Traci M. Goodwin
Senior Port Counsel
(206) 787-3702

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From: [Ronnie Rae](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Question
Date: Thursday, August 02, 2018 11:43:29 AM

Good morning,

I have reviewed the latest WSBA Mandatory Insurance bulletin. Will this require individuals who maintain a license but do not practice to have insurance?

Ronnie Rae
34606

From: [Hugh D. Spitzer](#)
To: [REDACTED]
Cc: [Rachel Konkler](#); [Doug Ende](#); [Thea Jennings](#)
Subject: FW: Question
Date: Monday, August 13, 2018 2:28:07 PM

Hi,

I'm chairing the WSBA's Mandatory Malpractice Insurance Task Force. We recently made tentative interim recommendations to the WSBA Board of Governors, but we're working hard on the details of what we'll recommend. One of the specific topics we discussed at our last meeting is whether we should suggest an exemption for licensed lawyers who sign a declaration that they are not engaged in any practice of law. We have become aware of a number of attorneys who maintain their full licenses even though they don't practice. They do this either because they think they might go BACK into practice and don't want some of the burdens associated with moving from "inactive" to "active" status, or because they have retired but they expect to maintain their active status until they have hit the 50-year mark. I don't know what our final recommendation will be, but this issue is definitely on the agenda.

We have passed your question (and my answer) on to the entire Task Force.

Hugh Spitzer
Professor of Law
University of Washington School of Law
Box 353020
Seattle, WA 98195-3020
206-685-1635
206-790-1996 (cell)
Papers on SSRN: <http://ssrn.com/author=1514923>

-----Original Message-----

From: Ronnie Rae [REDACTED]
Sent: Thursday, August 02, 2018 11:43 AM
To: Mandatory Malpractice Insurance Task Force
Subject: Question

Good morning,

I have reviewed the latest WSBA Mandatory Insurance bulletin. Will this require individuals who maintain a license but do not practice to have insurance?

Ronnie Rae
34606

From: [O](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on proposed mandatory malpractice insurance
Date: Thursday, August 02, 2018 11:46:40 AM

Hello - I object to the new proposed mandatory insurance requirement.
I work for a corporation and already think the annual license fee is much too high.
Requiring lawyers to pay more is ridiculous. You should focus on LOWERING attorney fees and costs, not increasing them!
Sincerely,
D. Neil Olson
WSBA # 27759

From: [Pand, Steven](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Pro Bono
Date: Thursday, August 02, 2018 11:46:59 AM

As an in-house attorney, a requirement that I carry malpractice insurance makes little or no sense. Similarly, I would be unable to provide pro bono service if it was mandated that I obtain malpractice insurance simply to volunteer my services without charge.

I find it highly unlikely that if my employer were to carry malpractice insurance they would allow me to continue to do pro bono work.

If you want to kill pro bono, pass mandatory insurance.

Steven Pand

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From: [Jane Swenson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory insurance
Date: Thursday, August 02, 2018 11:50:58 AM

Please take into consideration my situation. I am licensed, but I do not take cases. I teach Criminal Justice full-time at Green River College. It would not make sense or be fair to require me to pay for insurance. There are others in my same position. Thank you,
Mary Jane Swenson, #23443

Sent from my iPhone

From: [Paul McIlrath](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Opposition to Mandatory Malpractice insurance
Date: Thursday, August 02, 2018 11:53:22 AM

I am opposed to requiring mandatory malpractice insurance. I believe that such a requirement will reduce the access to justice for under-served populations because it will discourage retired members of the bar from providing pro-bono services. I am soon to retire, and if not practicing other than providing pro-bono legal services, I will not want to have to pay for malpractice insurance.

I also believe that there are sufficient safeguards in place to protect the public. The current system utilized in most jurisdictions in this country, allows an injured claimant the right to sue for malpractice. The risk of losing ones savings, home and business is usually enough to encourage private practicaners to obtain malpractice insurance.

I also believe that there has to be an element of caveat emptor involved. The public must use

care in dealings with all professionals--
whether they be doctors, accountants, financial
advisers or attorneys. If services are not being
provided in a competent way the consumer
has an obligation to discontinue or report.
Indeed, isn't this one of the important duties of
our Bar Association, to investigate complaints
against members and to take appropriate
actions to address problems? I believe that
relying on mandatory private malpractice
insurance will do the opposite of what you
may think it will achieve--rather than benefit
the public, it will penalize them but limiting
their access to justice.

I urge you to NOT recommend mandatory
malpractice insurance.

Paul McIlrath
WSBA 16376

From: [REDACTED]
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Exemption for mandatory malpractice insurance
Date: Thursday, August 02, 2018 11:53:56 AM

WSBA Board,

On your considerations of a new rule to make Malpractice Insurance a mandatory term, from my 53 years of practice and the last 46 in Family Law, one of my aims in life is to deal with reality. For six years I have been retired and moved from my Seattle office and friends back to my childhood town, Spokane, and I have kept my license active, BUT I only have done and taken fee-free cases/clients, doing everything pro bono and this is mostly family-law work, so I don't need malpractice insurance, and I provide a lot of good, useful, and free advice to people, mostly employees of this retirement home in which I now live. So for active lawyers who do everything "pro bono" and no income, they/we should not be required to pay the cost of having that insurance. Require insurance and you will knock out pro bono service to society which will make lawyers have a new great reputation for being in this practice only for money, costs to clients, especially those who cannot afford it. So make pro bono practice an exclusion for the requirement.

Ed Huneke, WSBA #565

From: [Tyson Soptich](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Fw: July Board of Governors Meeting Digest
Date: Thursday, August 02, 2018 11:55:51 AM

Per the below, I understand WSBA is moving to require malpractice insurance of all bar members. I urge you to abandon this requirement, as it adds unnecessary costs and barriers to the practice of law, and may conflict with or be duplicative of other risk mitigation strategies attorneys have already adopted. Furthermore, this policy would have unintended consequences, such as dissuading in-house private company attorneys like myself from practicing in any additional part-time capacity, such as providing pro-bono or otherwise heavily discounted counsel to those without access to legal services.

Respectfully submitted,
Tyson Soptich

From: Washington State Bar Association <noreply@wsba.org>
Sent: Thursday, August 2, 2018 11:33 AM
To: [REDACTED]
Subject: July Board of Governors Meeting Digest

[Washington State Bar Association](#)



[WSBA Home](#)

wsba.informz.net

The Washington State Bar Association's home on the Internet. Our newly redesigned site offers information on becoming a licensed legal professional in Washington and member benefits.

A summary of the Board of Governors meeting July 27-28 in Vancouver, WA

Top Takeaways

1. Insurance? Members of the [Mandatory Malpractice Insurance Task Force](#) said in an [interim report](#) that they are likely to recommend malpractice insurance as a condition of licensing for all active lawyers, with to-be-determined exemptions. Before the final report is due in January, they want YOUR feedback, especially about specific details like exemptions and minimum coverage levels. More info below.
2. Insurance! WSBA has the green light to set up a private health-insurance exchange to provide another option for members across the state. More info below.
3. The board took a first look at [WSBA's draft 2019 budget](#), which will be on the agenda for action in

September. Subject to Washington Supreme Court review, all license types will have the same active member license fee—\$453—next year. More info below.

4. Rules, rules, rules: Various WSBA entities have recommended amendments and additions to the Rules of Professional Conduct, Superior Court Civil Rules, Criminal Rules for Courts of Limited Jurisdiction, and Superior Court Criminal Rules. More info below.

5. We're honoring a fantastic group of legal luminaries in September—get your tickets now for the Sept. 27 [annual APEX Awards dinner](#). You're sure to leave inspired.

Meeting Recap

- **Local Hero Awards:** WSBA President Bill Pickett presented Local Hero Awards to [Lisa Lowe](#) (nominated by the Clark County Bar Association) and [David Nelson](#) (nominated by the Cowlitz-Wahkiakum Bar Association) for their outstanding legal and community service.
- **Mandatory Malpractice Insurance.** The [Mandatory Malpractice Insurance Task Force](#) issued an interim report with a tentative conclusion that malpractice insurance should be mandated for Washington-licensed lawyers, with specified exemptions (in Oregon, for example, exempted groups include government attorneys, in-house private-company attorneys, and others). The task force's preference thus far is to mandate a minimum level of coverage, purchased through the open marketplace. Before its final report is due in January, the task force will focus on details (what exemptions? what minimums?) for rule drafting. Members are encouraged to read the [interim report](#) and provide comments to insurancetaskforce@wsba.org. Please note: Limited License Legal Technicians and Limited Practice Officers are already obligated to show proof of financial responsibility, which is typically established by certifying malpractice insurance coverage.
- **Member Health-Insurance Pool.** With rising health-care costs and uncertainty about the Affordable Care Act, members have been reaching out to WSBA over the past year asking what we can do to provide health insurance. In response, we've explored the insurance landscape and talked to members, other bars, insurance experts and officials, and various providers. Our research indicates the best potential to offer WSBA members another insurance option with competitive rates is through a private exchange. We will soon partner with [Member Benefits, Inc.](#), a company that creates private exchanges for associations such as the State Bar of Texas and the Florida Bar. We will let all members know when that benefit is available.
- **Budget and Audit Committee Recommendations.** The Budget and Audit Committee presented [WSBA's draft 2019 budget](#) for consideration to the board, which will take action on it in September. The draft budget maintains programs and services to fulfill our regulatory responsibilities, serve and protect the public, and support members to be successful in the practice of law. The budget is built on previously set lawyer-license fees of \$453. As part of the budget-building process, the board approved:
 - A new Continuing Legal Education (CLE) revenue-sharing model with sections. Section leaders widely expressed support for this new model.
 - License fees for Limited Practice Officers (LPOs) and Limited License Legal Technicians (LLOs): After debate, both active-member fees were set at \$453 for 2019 (the Budget and Audit Committee came with a recommendation of \$200). The board also recommends that LLLTs and LPOs pay a \$30 Client Protection Fund assessment, which would need to be specifically ordered by the Washington Supreme Court. The majority of governors decided that, as WSBA members with full access to benefits and services, LPOs and LLLTs should have the same license fees as lawyers. The Washington Supreme Court will review these fees for reasonableness.
 - The Law Clerk program annual fee: After remaining at \$1,500 for 20 years, the fee will increase to \$2,000 next year.

- **Free Legal Research Tool for Members.** WSBA currently contracts with Casemaker to provide members with a free legal-research platform. WSBA recently launched a request for proposal and has been exploring whether to remain with Casemaker, switch to Fastcase, or offer both. To evaluate members' preference, WSBA conducted a member-wide survey with demo links, in-person usability tests, and virtual focus groups. Governors discussed the pros and cons of choosing one platform over another or even offering both. WSBA will be maintaining Casemaker and continuing to explore whether to add Fastcase as an additional member benefit.
- **Rule Recommendations from the Civil Litigation Rules Drafting Task Force:** This task force was chartered in 2016 to suggest rules necessary to implement the board's previous task force that recommended various changes to address the escalating cost of civil litigation. The recommended amendments and additions to the [Superior Court Civil Rules \(CR\)](#)—including 1, 3.1, 11, 16, 26, 37, 53.5, and 77—focus on the principle of cooperation and require and/or encourage cost-efficient procedures. ([The full amendments are in the board materials starting on page 215.](#)) The board will take action in September to approve the recommended amendments for submission to the Washington Supreme Court.
- **Recommendations from the Court Rules and Procedures Committee.** As part of the Washington Supreme Court's review cycle to bring rules up to date with current law, the Court Rules and Procedures Committee has proposed amendments to Superior Court Criminal Rules (CrR) 1.3, 3.4, and 4.4; Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) 4.2, 4.4, and 7.3; and Civil Rule (CR) 30. ([The full amendments are in the board materials starting on page 323.](#)) The board will take action in September to approve the recommended amendments for submission to the Washington Supreme Court.
- **Amendments to RPCs Concerning Marijuana-Related Conduct.** As recommended by the Committee on Professional Ethics (CPE), the board approved for submission to the Washington Supreme Court amendments to comments to the Rules of Professional Conduct (RPC) to continue to allow Washington lawyers to assist those participating in the marijuana industry. These changes were in response to new federal enforcement priorities regarding marijuana; they remove contingency language in Comment [18] to RPC 1.2 regarding federal enforcement priorities and add Comment [8] to RPC 8.4 to clarify that a lawyer's conduct in counseling a client regarding marijuana law would not establish a basis for disciplinary action under the rule ([The full amendments are in the board materials starting on page 166.](#))
- **Proposed Bylaw Amendment Regarding Endorsing Candidates.** WSBA bylaws currently prohibit governors, WSBA officers, and the executive director from publicly supporting or opposing candidates in an election for public office in Washington state if being an attorney is a prerequisite for office. Governors considered a proposed amendment that would extend the endorsement prohibition to any position on the Board of Governors. This amendment will be on the September agenda for action.
- **Updates from other board entities:**
 - o **Addition of New Governors Work Group:** This group met for the first time in July with a second meeting scheduled for Aug. 14. All materials are online. The group will make a recommendation to the board in September about a proposal to eliminate three yet-to-be-seated governors (two public members, one LLLT or LPO) and to allow LLLTs and LPOs to run in open governor elections in congressional districts.
 - o **Member Engagement Work Group:** The board approved the charter and roster for a new work group to explore how to best engage members and facilitate two-way understanding.

- **Selection of 2018-2019 WSBA Treasurer.** Congratulations to Governor Dan Bridges, whom the board selected as its incoming Treasurer. Kudos and appreciation to outgoing Treasurer Governor Kim Risenmay.
- **Working Retreat:** The board held its annual retreat before the meeting on Thursday, July 26. Governors focused on communication and relationships.
- **Conversation with the Washington New and Young Lawyers Committee (WYLC).** WYLC Chair Mike Mocerri and Chair-Elect Kim Sandher asked for WSBA to partner on solutions such as access to an affordable health-care exchange and reducing debt load/promoting public-service loan forgiveness for those coming out of law school.

The agenda and materials from this Board of Governors meeting, as well as past meetings, are [online](#). The next regular meeting is September 27-28 in Seattle. The Board of Governors is WSBA's governing body charged with determining general policies of the Bar and approving its annual budget.

[WSBA seal](#)



Washington State Bar Association

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Seattle, WA 98101-2539 | [Map](#)
Toll-free: 800-945-9722
Local: 206-443-9722



Official WSBA communication

All members will receive the following email, which is considered official:

- Licensing and licensing-related materials
- Information about the non-CLE work and activities of the sections to which the member belongs
- Mandatory Continuing Legal Education (MCLE) reporting-related notifications
- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications



From: [Jeff Oster](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice
Date: Thursday, August 02, 2018 12:08:25 PM

Dear Task Force Members:

I read that you are recommending mandatory malpractice insurance for all WA attorneys with limited exceptions. While I understand the public policy reasons for this decision, it unfortunately demonstrates a lack of knowledge of how some (likely a small minority) of WA attorneys practice and how legal malpractice insurance from private insurance providers is available or is not available.

My situation (I do not carry malpractice insurance and never had a claim) is an example. I'm an IP attorney, also licensed at the US Patent and Trademark Office. Therefore, the insurance carriers (and I've investigated this and tried to obtain reasonable coverage) put me into a category of providing patent prosecution services. But that is a tiny fraction of my practice. And to obtain coverage, I would need to build up a massive infrastructure and overhead to comply with insurance mandatory requirements. While that infrastructure would be needed if my practice were 90%+ patent prosecution, it isn't. Instead, my LLC works in-house for selected company clients for payment (50% time) in California and starting up new companies where I am not paid but have founders equity for international life science development companies. I also take on many projects to practice in front of the European Patent Office Opposition Division (the part addressing challenges to the validity of issued or granted patents) as I have dual (US and German) citizenship and the PTAB (Patent Trial and Appeal Board) in the US where I challenge patent validity or defend third party patent validity challenges. One example is the Zebala patent where I defended a third party validity challenge (at the predecessor Board at the USPTO) as part of a contingent team representing Syntrix, a WA company. That resulted in a patent infringement lawsuit where we won a \$115Mil patent infringement judgment, believed to be the largest in WA State history. I also just successfully defended an IPR (inter parties review) challenge filed at the PTAB to challenge the validity of a patent owned by The Scripps Research Institute in La Jolla, CA where the inventor later won a Nobel Prize. I could not obtain any malpractice insurance for this activity because there are no policies that address this kind of practice because it is sort of litigation and sort of patent prosecution. I am one of very few attorneys in the US who do this kind of practice who are not part of large, national or international law firms. Therefore, no policies exist for me.

Accordingly, please consider that private insurance carriers do not have policies that address fairly non-traditional practices like mine. Square pegs do not fit into round holes.

Jeffrey Oster
WSBA# 17,709

Sent from [Mail](#) for Windows 10

From: jeff@beyondthecourthouse.com on behalf of [Jeff Bean](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Feedback re Mandatory Malpractice Insurance
Date: Thursday, August 02, 2018 12:09:04 PM

When considering whether to recommend that proof of malpractice insurance should be mandatory, please remember that not all active WSBA members are always practicing law.

I currently provide only mediation services. Per the RPCs, mediation is not the practice of law, but a "law related service." I carry insurance appropriate to my current mediation practice. It is much less expensive than legal malpractice insurance.

If I were required to carry legal malpractice insurance, not only would it be useless to me, but also the premiums would be a windfall to some insurer who would know they would never have a claim.

Jeff Bean
The Bean Law Firm PLLC
www.beanlawfirm.com
Seattle 206 794 5585

From: [A. Stevens Quigley](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Thursday, August 02, 2018 12:20:21 PM

Task Force Members ~

I am a sole practitioner and an older member of the bar. I have always carried malpractice insurance.

I am approaching the day when I will no longer be practicing law. Once I stop practicing, I would prefer to continue being a member of the bar. Being a member of the bar provides personal satisfaction. If I am not generating revenue, it would be very hard to justify paying sizeable insurance premiums. So, I would favor an exemption for those who are legitimately not practicing law or who are retired.

The interim report seems to be somewhat harsh on sole practitioners and small firms. Perhaps, it is well-deserved. I suspect, though, that a goodly percentage of attorneys are sole practitioners or in small firms. It would stand to reason that attorneys who are sole practitioners or in small firms have a goodly portion of claims against them. Possibly the task force has done so, but I think it would be helpful for the tax force to make sure it is dealing with statistically relevant numbers.

Thank you for your service. Best regards.

~ A. Stevens Quigley

From: [Bob Baird-Levine](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: input
Date: Thursday, August 02, 2018 12:29:48 PM

Please do not mandate malpractice insurance as a condition of licensing. I have insurance, but I can afford it as a solo, because I have practiced a long time. We need other solos and do not need cost barriers to this type of practice. The clients can always sue attorneys, and we are well advised to get malpractice insurance accordingly, but you do not need to drive costs up for new entrants to solo practice and thereby limit access to law services for moderate income civil litigants further. If you tax a thing, you get less of it. My two cents.

Bob

Bob Baird-Levine, Attorney at Law
103 E. Holly St. Ste. 415
Bellingham, WA 98225
360-920-7839 voice or text
bbairdlevinelaw@gmail.com

From: [REDACTED]
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory insurance
Date: Thursday, August 02, 2018 12:37:59 PM

Hello,

I wanted to provide some feedback on the proposal to make liability insurance mandatory for all active lawyers. I am an active member of the bar but do not currently practice at all and thus have no clients. I am a government employee but not in my capacity as a lawyer. I feel strongly that this would be an extreme financial burden for anyone like me or anyone in under-paid public sector work (which pays significantly less than private sector). I stand against this proposal.

Oregon has a very different set up with insurance which cannot or could not be easily duplicated in Washington. If the proposal goes through, I would highly recommend making exceptions for public employees and those who are not actively practicing but maintain active status.

If insurance becomes required for me I would be forced to become inactive which would limit future job opportunities and be less dues for the WSBA. Thank you for your time and consideration.

Beth H., member WSBA

Sent from my T-Mobile 4G LTE Device

From: [REDACTED]
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance
Date: Thursday, August 02, 2018 12:39:30 PM

This is a conundrum for dual licensed attorney and CPAs. CPA E & O insurers don't issue policies if you are both. E & O carries for law practices excludes any accounting work but provides coverage with that exclusion but it is an empty promise. The clients when I do both won't be covered although my defense costs could be. The costs of running two separate practices and having two insurance policies does not provide better client protection and only will increase costs of legal services which goes against access to justice for all.

There is one company through an association that offers dual coverage through Lloyds of London and it is not cheap.

If you are truly wanting to increase the costs to the practice and the clients then set up a self-insurance fund through the bar that covers all acts but limits the amount of a claim so that the fund can remain solvent. Attorneys can then elect separate coverage if they so decide to do so..

Michael R. Jones, PLLC
Michael R. Jones
Off. (208) 385-7400
Cell (208)863-7787

From: [Larry Schreiter](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment for Task Force
Date: Thursday, August 02, 2018 12:41:50 PM

Dear task force members:

I have been in private practice since 1981, and I have always been covered by professional liability insurance. While I support the idea that attorneys should bear professional responsibility and take it seriously, **I strongly oppose making it mandatory as a condition for licensing.**

I take this position because of a basic economic fact: once something is mandatory for every affected person in a given market, then one will see without doubt a significant increase in the already high cost of such insurance.

Insurers will have a large increase in the numbers of lawyers they will have to retain to handle defense of claims.

Insurers will need to increase their staff in order to provide and service a large increase in the number of policy holders.

The costs of all that will fall on the insureds, and even merely setting relatively low threshold limits of coverage to comply will not solve this problem:

I had the experience a few years ago of losing my excellent coverage (I had had the same carrier for a number of years) because the *broker* (not the carrier, and not I) simply decided *its* clients had to have a certain much higher level of coverage, or else they non-renewed you. The new level was out of reach for me as a sole practitioner, and was totally arbitrary and unnecessary – it just boosted earnings for the brokerage.

I was forced in just a few weeks to scramble and find a new carrier, or else suffer a gap in coverage. I was thus forced to begin all over again with a new carrier, a new retroactive date, and to undergo anew the unavoidable 30% to 40% increases in premiums each of the renewal years until reaching the fourth year of the new policy.

Mandating coverage will be easily absorbed by large firms, but the large percentage of lawyers in Washington who practice in solo settings or small firms will be disproportionately and adversely affected.

I oppose mandatory insurance as a condition to licensing.

Thank you.

Larry R. Schreiter
Attorney at Law

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Seattle, WA 98101
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From: [Tom](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: One last plea to stop mandatory insurance.
Date: Thursday, August 02, 2018 12:45:13 PM

I have not been able to practice law for the past handful of years because of a series of cascading health problems that followed in infection of the H1N1 flu (aka swine flu, and related to the deadly Spanish flu from a century ago). That flu bug hit me before a vaccine was available to the public. I am sure there is no shortage of other attorneys who have physical disabilities due to many other reasons, and some may be hoping to return to practice once healthy again. For those like me, who still hope at a relatively young age, to hopefully get enough relief from the medical community that I can still practice again one day, mandatory insurance will severely hamper that chance. I've kept my CLE credits current, pay my dues every year, I keep up on the new court rules and appellate cases, and as I approach my 30th anniversary as an actively-licensed attorney in this state, mandatory insurance will, absent an exemption, force me to inactive status or to resign.

I read in your report that "retired" attorneys would be exempt, but it is not clear whether an attorney who is actively licensed and not actively practicing would be considered "retired". The first time someone suggested to me that I was "retired", I admit I bristled a bit at the appellation. I am battling medical maladies which can be cured for some people, and there are new treatments and medications coming on to the market on a fairly regular basis. However, absent an exemption from mandatory insurance, the WSBA will only get \$200 from me each year unless I just resign, in which case it gets nothing. That includes no contribution to the fund the WSBA maintains to pay for victims of underinsured attorneys who harm clients. Furthermore, it will delay and discourage disabled attorneys from re-entering the workforce if their health improves. The process for reinstatement from inactive status can include taking the bar exam, meaning reinstatement could take a year or more.

Mandatory insurance would also prevent similarly-situated attorneys, attorneys who want to practice part-time either because they are nearing full retirement or are stay-at-home parents who want or need to maintain a small practice from performing part-time work. One may assert that insurance companies would adjust rates accordingly, but as someone who has worked as a solo as well as the head of a small firm, I can assure you that insurance companies do not always behave in ways that are entirely predictable. Furthermore, any attorney who wants to enter the workforce, including newly-graduated attorneys, will find it prohibitively expensive to "hang out their own shingle" as the saying goes.

So, while I appreciate that the idea behind mandatory insurance is well-intentioned, but the WSBA may well see people who are temporarily out of active practice in Washington going inactive or simply resigning. Those who might be able to occasionally help a client or small number of clients will be prohibited. And most problematically, in my opinion, the idea of

mandatory insurance will have the greatest impact on parents, younger attorneys, older attorneys, and attorneys with disabilities. I can just see the lawsuits coming now, with the WSBA bearing the costs, meaning it will have to penalize the attorneys it serves to make up the difference. It is a potentially dreadful cure for an illness that might not otherwise kill the patient. If the rule is passed and I have to maintain insurance just to keep my license active, I can tell you that at the very least, this is one attorney whose annual check to the WSBA each year will get much smaller.

Thank you for your time and attention to this matter.

--tom pacher
WSBA #18273

From: [Ronald Kessler](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Exemption
Date: Thursday, August 02, 2018 12:47:13 PM

I'm a retired judge. I have re-joined the WSBA but have no clients. I sit a few days a month as a judge *pro tempore* in various courts. I suggest that the definition of "retired attorney" include someone in my position.

If I do decide to represent a relative or friend it will be at no fee. Perhaps "*pro bono*" can be defined to include such.

Ronald Kessler
4958

From: [Lisa DeFors](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Insurance Taskforce Report Comments
Date: Thursday, August 02, 2018 12:47:46 PM
Attachments: [image003.png](#)

Dear members of the WSBA Insurance Taskforce,

Thank you for publishing your report in the July BOG Meeting email. One quick little typo to note:

9. According to an ABA study, 89.1% of national malpractice claims are resolved for less than \$100,000 (including claims payments and expenses). 95.2% of malpractice claims are resolved for less than \$250,000. ALPS reports that based on its experience, over the past 10 years in Washington State, about half of all its claims were resolved without payment, and 97% of its closed claims were resolved for less than \$250,000, including defense costs; where payments were made, its average loss payment was **\$60,0000**, and average loss expenses were about \$20,000.

Also, on the exceptions item: I am not in private practice. Rather, I work for an out of state bank (Montana) in their Compliance Department (and reside in Montana as well). I do not carry malpractice insurance for that reason. However, I pay my dues so as to continue having the privilege of being licensed. If I were forced to obtain malpractice insurance, I would definitely revisit my licensing decision. I would encourage your taskforce to review the many ways in which lawyers work before putting this type of requirement into effect. It looks like you've already done some great research into the small firm and solo practitioner area. If that is where the bulk of the issues reside, maybe that is where the focus should be? I look forward to following the progression of thought on this issue.

-LaRissa (Lisa) DeFors
WSBA # 39080

Lisa DeFors, JD
AVP Mortgage Compliance Officer



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From: [Heidi Kay Walter](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Charlie Brown](#)
Subject: mandatory malpractice insurance
Date: Thursday, August 02, 2018 12:51:27 PM

Good afternoon Task Force Committee.

Thank you for taking on the difficult task of considering mandatory Malpractice Insurance. We share an interest in protecting the public from unscrupulous and damaging conduct. I do not believe a blanket mandatory insurance requirement is appropriate. I will add my name to the list of existing comments provided in your [July 10th report](#). I especially agree with “Expressed Concerns” items 3,4, and 15.

I note that concerns about “retired/retiring” attorneys would apply to others with other reasons for not presently actively practicing full-time – family caregivers, attorneys using skills in related fields but not offering insurable legal advice (eg corporate/non-profit executives, attorneys working as legal assistants/clerks, document reviewers, government affairs). My personal experiences include not practicing while I cared for an aging parent, providing pro bono services with malpractice coverage by the agency, and now working in government affairs. I would no longer be able to provide the pro bono services nor incidental assistance, should these licensing rules change.

Attorneys have an interest in maintaining our legal knowledge and licensure, without needing to pay to cover claims that cannot be made against us. Requiring attorneys to procure insurance against an activity that would not be covered would impose an undue burden on our work. I do not believe we would ever be successful in enumerating the best exemptions. Our legal skills and knowledge transcend malpractice-claim services.

I appreciate your consideration.

Thank you,
Heidi

Heidi Kay Walter
WSBA 43678
206.412.8986

From: [Sara Niegowski](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Fwd: comment on Interim Report
Date: Thursday, August 02, 2018 12:59:07 PM

—Sara Niegowski

Begin forwarded message:

From: Questions <Question@wsba.org>
Date: August 2, 2018 at 12:28:37 PM PDT
To: Sara Niegowski <Saran@wsba.org>
Cc: Margaret Shane <Margarets@wsba.org>
Subject: FW: comment on Interim Report

A query-?

Kris McCord | Service Center Representative
Washington State Bar Association | 800.945.9722 | krism@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

From: Ralph Stemp [<mailto:> [REDACTED]]
Sent: Thursday, August 02, 2018 12:24 PM
To: Questions
Subject: comment on Interim Report

Please pass on to the Malpractice Task Force.

I read the Interim Report. It showed a lot of good research. But, it never really stated the size of the Washington problem. How many Washington clients are hurt by not having their claims remedied by the offending attorney? Perhaps it is hard to find that data but, to me, it is unacceptable to simply guess at that critical matter and move on to pose elaborate Solutions.

Without the above data I think the Malpractice idea is susceptible to the charge that it is a fine Solution in search of a Problem.

--

Ralph Stemp

From: [Roger Hawkes](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory insurance
Date: Thursday, August 02, 2018 1:26:48 PM

I disfavor any requirement that malpractice insurance be mandatory. There is no justification for the Bar actively promoting the well being of insurance companies and brokers. Any customers concerned about that issue can inquire; and any deceit by a Bar member about whether there is coverage would be punishable by the Bar and the customers. The folks who profit from insurance are usually the ones promoting it and providing the 'parade of horrors' evidence that persuades governors to require insurance. And there is literally no way of fairly pricing such insurance; the variety of scopes and volumes of practice and skill levels is huge.

**PLEASE NOTICE OUR NEW ADDRESS BELOW, ACROSS THE STREET
ALMOST FROM OUR PRIOR ADDRESS; OTHER CONTACT INFO REMAINS
THE SAME**

Roger Hawkes, WSBA 5173
19944 Ballinger Way NE
Suite 100
Shoreline, WA 98155
www.hawkeslawfirm.com
206 367 5000 voice
206 367 4005 fax

From: [REDACTED]
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mand Malp Ins. - comment
Date: Thursday, August 02, 2018 1:32:02 PM

As an attorney who was primarily in government service as an attorney, and have not actively practiced law for the last eleven years, I want to convey my strong support for an exemption for attorneys “licensed but not actively practicing”.

Your report articulates no rational basis for imposing an insurance condition on those who cannot, as a matter of law or fact, create such liabilities.

I encourage the Bar to appropriately tailor the regulation contemplated to the risk to the public, namely, those actively practicing law.

Failure to do so is likely to generate unproductive litigation without enhancing the protection the public deserves.

Yours,

Robert Cromwell

Sent from XFINITY Connect Mobile App

From: [Marke Schnackenberg](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [schnackenberg Marke](#)
Subject: mandatory malpractice insurance
Date: Thursday, August 02, 2018 1:35:24 PM

Dear Task Force,

As a solo practitioner of over twenty years without a single bar or insurance type claim or complaint made against me and as an attorney who endeavors to truly keep my representation costs affordable for my clients, I object to the proposed license requirement for attorney malpractice insurance.

Truly is there hard data that shows that there were several persons in our state who were left without legal recourse against their attorney because said attorney possessed no liability insurance?

And, if they're were only a few, is it just and fair to require an entire group of persons to be insured, especially when it is already public knowledge via the bar records whether an attorney possesses insurance?

Lastly, if the Force deems the information concerning whether an attorney does or does not possess insurance difficult for the average, potential client to discover, why not require a disclosure to be made to the client at the time of service engagement instead of using a broad brush approach to deal with the attorney malpractice insurance situation?

Sincerely,

Marke Schnackenberg
Admitted May 1995

From: jdb@wapractice.com
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory MPI?
Date: Thursday, August 02, 2018 1:49:33 PM

Folks,

I am happily insured, but mandating malpractice insurance is a bad idea.

Every single time insurance becomes mandatory, rates are increased.

Proponents of insurance always make the argument that requiring insurance will *lower* rates for everyone for a variety of reasons - and that's never the outcome.

Requiring insurance - like any other good or service - only increases prices overall, because consumers no longer have a choice of whether to buy or not. We will all pay the increased premiums or we will not be practicing law.

JD Bristol

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From: [J.C. Lundberg](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Proposed Mandatory Insurance
Date: Thursday, August 02, 2018 1:50:08 PM

To Whom It May Concern:

I write to express two comments on the recent report about mandatory malpractice insurance coverage.

- 1) Recommend the addition of "admitted but not practicing" to the list of exempted categories. As I consider the future of my career, I can see working outside of legal practice but would remain an active member of the bar. A requirement to carry unused insurance would represent a substantial economic burden for people in that situation, myself potentially included.

- 2) Recommend resources for small-scope plans for members interested in limited legal practice. When I first joined the bar and was working for a non-profit, and WSBA was actively seeking attorneys to provide assistance to clients as part of the moderate means program. I would've loved to take on a moderate means client or two to increase my knowledge base and make some extra money but the difficulty of securing affordable insurance for a practice of just a few clients was substantial (the thought of not maintaining insurance never occurred to me).

Respectfully,
J.C. Lundberg

From: [Clifford Allo](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Attorneys Without Paying Clients
Date: Thursday, August 02, 2018 1:55:36 PM

I applaud the effort to protect clients that are injured by malpractice in fee-based arrangements. If one expects to be paid for a service, one should not regard a duty to insure the service as onerous.

I am less sure — and obviously conflicted — whether unpaid services should carry the same burden. I have had neither a traditional client nor insurance for about a decade and have no plans to take on any traditional clients. I do my CLE and pay my dues “just in case” where the unexpected might include a matter too interesting to ignore or in case my wife was unable to continue her practice. In either of these instances, I would obtain adequate coverage whether required or not.

A few, non-exhaustive categories:

1. Unpaid advisor/participant in an organization.

I am part of a Legislative District Partisan Party Organization. At times it may be difficult to distinguish my contributions to internal discussions as legal advice versus tactical assessments. I would hope my license wouldn't require me to carry insurance.

2. Unpaid agent for a bi-county duplicate bridge organization that is also a nonprofit corporation in Washington. While no longer an officer or board member, when I was a board member, I wrote the current by-laws to bring the by-laws into compliance with Washington's statutes and have annually filed the 990N report to the IRS for the organization since I brought them into compliance with IRS reporting requirements. I am also listed with the State as their registered agent for service of process. I fear that if this bundle of services — historic and continuing — required insurance coverage, I would be compelled to step back and they would quickly fall out of compliance with both the IRS and the Washington Secretary of State.

3. Service to client under the roof of a non-profit organization. Current rules and practices appear to be adequate should I decide to offer assistance in this arena and the Task Force appears to be concerned not to disrupt what is currently satisfactory.

4. A friend or family member asks for help and I agree to take the matter on at no cost. Now, there is an attorney client relationship, but I am not being paid. Would the Task Force support an exception for situations like this in which there were a written agreement defining the representation and the client's waiver of any right to pursue any deficiency in the unpaid services?

5. I do nothing at all with my license other than check the monthly journal, my mail, and my email to be sure no new duties or responsibilities have been imposed.

6. A friend asks for advice or low-level assistance. This is the difficult case. Street-corner/cocktail party consultation is part of life. I have heard Prof. Strait caution us that the “client's” impression of the relationship may well have more weight than mine. I have not had this problem in fact — to my knowledge — and am unsure I can successfully avoid some risk and retain a friend. If I had coverage, the problem might well be resolved, but it doesn't seem like a sufficient reason to require coverage in case I am insufficiently artful in navigating the gap between off-putting distance and liability-supporting conversation.

I think you can see why I believe there are some situations in which unpaid services should be exempt from an insurance requirement and I acknowledge the Task Force has already addressed some of them. If the Task Force now and the Bar and Supreme Court eventually cannot exempt situations 1. and 2. a small segment of the public will be harmed. Neither organization has another, internal resource, and neither has the monetary resources to hire paid counsel. Situation 6. is more interesting as a policy question and I believe I could both live with either decision and also defend either decision so long as the rationale from the Bar were coherent. Number 4. may well be usefull

grist for CLE every three years for each of us. Really clear guidance on how far we can go in a conversation will always be helpful. I lean toward no liability with neither a written agreement for representation nor payment, but that's an opinion rather than an argument. #5 brings to mind an adage about sleeping dogs but reasonable minds could differ in its applicability.

The bottom line for me — in form a solo practitioner but willingly without clients — is that if insurance becomes a requirement to keep my license whether or not I am providing paid services, I'll yield my license and the WSBA will have that much less revenue but no savings on expenditures other than postage and printing for one member.

Thank you for your efforts to protect the public.

Clifford David Allo
WSBA #23595

From: [Janna Lewis](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance Comment
Date: Thursday, August 02, 2018 2:05:45 PM

Hi All:

I am an attorney who works in government. However, I don't represent any entity in particular. While I advocate that you exempt government attorneys for mandatory malpractice insurance requirements, I would ask that you consider clear language that to include lawyers who work for government who may not be engaged in the practice of law for that government or any other client.

At this time, I pay full bar dues so that if I decide to change the direction of my career, my license will be up to date. If I were to be required to purchase mandatory malpractice insurance, I would likely change my license status to inactive for a couple of reasons. First, because my job does not require me to be a licensed attorney, my employer does not cover my bar dues or any related fees related to my being an attorney. Second, it is unlikely that this is an expense attorneys in my position can afford to pay.

I hope you consider this comment in your decisions of what to recommend regarding this topic.

Sincerely,

Janna Lewis

WA #35393

From: [Ron Santi](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Hopefully exemptions for insurance will be copious and sensible.
Date: Thursday, August 02, 2018 2:21:49 PM

For me who is not engaged in active practice but who writes limited landlord-tenant correspondence in the management of family real estate holdings, and chooses to keep my license current, it is becoming increasingly onerous with the escalating dues and now insurance. So please be generous with exemptions for those of us who simply want to die with our licenses active, but who are not representing outside parties. Thanks.

--Ron Santi

From: [Rodney Waldbaum](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Thursday, August 02, 2018 2:27:34 PM

After more than 46 years at the same law firm and being 72, I retired. However I still pay active Bar dues so that I can be honored after 50 years of membership. I should not be required to pay for malpractice insurance and I should be allowed to go on inactive Bar status and still be honored after 50 years.

Sent from my iPhone

From: [Patrick Burns](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Date: Thursday, August 02, 2018 2:45:02 PM

Hello,

I am a retired judge. I do not practice law in any way, shape or form. I don't even advise relatives how to handle a traffic ticket. What I do though is I act as a judge pro tem in various courts. Under the rules I am required to be a member of the bar in good standing.

I do not carry malpractice insurance because all of my actions are covered by the concept of judicial immunity. I perused the report and it is not clear whether I would be required to carry malpractice insurance. I agree that the concept of universal malpractice insurance makes sense but it seems unfair to require someone to carry malpractice insurance who doesn't practice the law at all.

Thank you,
Patrick Burns
#8390

From: [David Liscow](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice insurance
Date: Thursday, August 02, 2018 2:49:52 PM

I am licensed but do not actively practice. I am in the Property Management business and the only legal work I do is the rare eviction, and I have not done one of those for 4+ years. Having to buy malpractice insurance would present a financial burden and would mean that in lieu getting insurance, I would need to no longer practice even though my practice of law is extremely limited as stated above. I am 62 years old and with the limited amount of legal work I do, I would consider myself semi-retired from the practice of law and I hope one of the exemptions would be for semi-retired attorneys.

David Liscow

Bar # 27543

From: [Donald H Graham](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance - oppose
Date: Thursday, August 02, 2018 3:04:10 PM

I am submitting comments after reading the report of the task force studying mandatory malpractice insurance:

First, the basic premise that lawyers make mistakes and therefore should pay clients for them is not true. The standard is that lawyers are liable for damages caused for acts that are "malpractice", that is falling below the standard set by those actions of attorneys with similar skill and learning in similar circumstances. By requiring insurance and informing the public that it is to cover lawyer mistakes will likely increase the erroneous expectation that lawyers must financially guarantee all their work.

Historically, insurance was a resource to protect the owner of the policy not the plaintiff suing the owner. The Bar's version seems to be that insurance is to protect the public (as if lawyers owe the public some kind of private charitable fund). Where is the history for that. The report cites the fact the hospitals require doctors to carry insurance. Surely, hospitals require it because they want doctors' insurance companies to protect the hospital, not the public!

Next, clients should be expected to use common sense and perform reasonable inquiry when selecting a lawyer. California and other states require lawyers to notify clients if they do not have insurance. That should be enough. There is no need to create a private compensation fund for clients (and, as noted in the report, their plaintiff lawyers!) to draw upon when they have not inquired and made an informed decision. The Bar presumes that people with limited means or in need of a lawyer are stupid and cannot take care of themselves.

Mandatory insurance will increase costs to clients, making law even less affordable and accessible.

Only 8% of the respondents supported the need for mandated insurance. How can the committee reach a conclusion that insurance is needed when the members are overwhelmingly unsupportive?

If insurance companies know such insurance is required, and a lawyer cannot say "no" to all the companies, then prices could actually increase.

Exemptions for corporate lawyers would be ridiculous. If required, the Bar should at least have companies buy malpractice insurance and certify for all their lawyers. Many companies do not carry malpractice insurance although they do carry general liability.

If less than 20% of the lawyers are uninsured, the Bar should just deal with them and talk them into it individually.

Incidentally, I have always carried malpractice insurance.

Donald Graham
22554

From: [Mark Hannibal](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Thursday, August 02, 2018 3:59:49 PM

I am a retired criminal defense attorney who is now a government attorney providing advice to the US Coast Guard Auxiliary. In that capacity, I am exempted from carrying malpractice insurance and believe it appropriate to create this special exemption as is done in Oregon. I feel the purpose of the malpractice insurance is to protect the public and I do not serve in that capacity. I do, however, believe it important for those engaged in private practice to carry malpractice insurance. Thank you.

From: [Dennis Smith](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Proposed Exemption
Date: Thursday, August 02, 2018 4:03:22 PM

Dear Task Force Members:

I write to propose an exemption of any rule adopted regarding mandatory malpractice insurance.

I practiced law in Seattle from 1974 through late 2010. Since that time I have been self-employed as an expert witness. In my tax returns my employment is listed as “legal consultant”. I am retained in civil cases and typically testify concerning insurance claims handling.

I have maintained my license in active status (bar no. 5822). Being admitted is helpful to me in both admissibility and credibility.

I do not practice and in cases where I am retained I expressly state that I am not acting in the capacity as an attorney and do not represent anyone involved in the dispute.

It would make no sense for me or any similarly situated witness to have malpractice insurance since that coverage is predicated on some type of “practice”. The public interest would not be served since I don’t represent anyone in the capacity of an attorney.

I would be pleased to discuss this further if and when the task force felt it helpful.

Regards,

Dennis Smith

From: [Tawnya Eller](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Malpractice insurance
Date: Thursday, August 02, 2018 4:04:57 PM

Hi,

My name is Tawnya Tangel and I would like you to consider attorneys in similar circumstances as me. I was a prosecuting attorneys for 6 years. For the past 15 years, I have been a school counselor. However, I stay active with my license because at some point(after my kids graduate from High School) I hope to return to law. Additionally, I stay active because WSBA has stipulations about being "inactive" that make it difficult to become active again (unlike Oregon, where I am also licensed). I do not practice law right now, but stay current in CLE's. I already pay out-of-pocket for bar dues and CLE's (I.e. my work doesn't pay for them). So, the thought of paying for malpractice insurance when I am not practicing law is overwhelming on my teacher salary. Please consider not penalizing attorneys who choose not to actively practice, but want to stay current.

Thank you. If you have any questions about this request, please let me know.

Tawnya Tangel
#27143

From: [Robyn S](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Feedback regarding insurance requirement
Date: Thursday, August 02, 2018 4:14:49 PM

Hello Taskforce:

I would like to give you my story/feedback regarding the proposed mandatory insurance.

I am a WA licensed attorney who lives in another state, however, I did the same type of work in WA for a short time as well.

I use my license for document review work, *when there is work to be had*, as a short-term contract worker. When I work as a document review attorney for firms or agencies they will cover the insurance for while I am working for them. Projects can be as short as a couple hours or days; I am currently on a three-month project.

When I am not working as a document review attorney, I am not using my license. In the past couple of years, I have done document review for a couple of months out of the year and worked in a non-legal capacity for the rest of the year.

Here are some questions I hope your taskforce will consider when deciding on whether to impose a requirement and if so, how to carve out exceptions:

1. As a contract attorney, will a person be considered an in-house private-counsel?
2. What happens during the interim when a contract attorney does not have work?
3. Will a licensed attorney be required to get insurance while they are not working in a non-legal capacity?
4. How do you show proof that although you have an active membership in the bar you are not working in a legal capacity requiring malpractice insurance?
5. When a member is active but is not practicing what level of insurance is required? 5.1. Would the rates be so high that a person would just put their membership in inactive status until they are able to find legal employment? Consider the individual who has to pay extra fees to change status and possibly lose an offer of employment because the employer is looking for someone with an active license or is unwilling to wait the time required to change status.
6. What would you require of the unemployed attorney, who is looking for work with no success, but must keep their membership active in order to get a job? Will they be penalized? Lose their license?
7. Creates a new hurdle/ cycle - must have an active license to get a job, active license requires insurance, insurance requires money, need a job to get money.

Thank you for serving on the task force and I hope you consider my story/ feedback and related questions.

Robyn

From: [Rick Glein](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Thursday, August 02, 2018 4:52:21 PM

Please exempt government attorneys.

Thank you,
Richard J. Glein, Jr

Sent from Rick's
iPhone

From: attypaul@qwestoffice.net
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Insurance
Date: Thursday, August 02, 2018 6:16:35 PM

The WSBA membership should vote on the proposal for mandatory insurance.

From: [Ross Farr](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory malpractice insurance
Date: Thursday, August 02, 2018 6:22:11 PM

Hello,

How would the recommended insurance requirement impact someone like me, who plans to maintain my law license but does not plan to actively practice law now or in the immediate future, while I pursue another professional career? I do not plan to relinquish my WSBA membership, in case I want to practice law again in some form in the future. However, for the time being, I do not plan to practice law. I will purchase insurance if that changes.

Ross Farr

From: [Richard Peyser](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: malpractice insurance
Date: Thursday, August 02, 2018 8:12:21 PM

I am a retired lawyer but maintain my active practice license so as to be able to return to the practice if I want to or need to in the future. I see that you are considering requiring malpractice insurance for all active lawyers. I would object to that requirement because I do not practice at all but keep the license to be able to practice in the future.

The bar association would be hurting itself also, because many attorneys who are in situations like myself would give up their active licenses and the bar would lose those active license dues.

Please consider exempting those retired attorneys who are not actively practicing but desiring to keep their licenses to use if need be in the future.

From: [Bloor Redding](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: The process of retirement
Date: Thursday, August 02, 2018 11:53:52 PM

Dear Task Force:

I have just finished reading your July 10th task force report.

I agree that your next task, creating definitions, is critical.

My Background

I am one of those folks who worked in-house for my career in the area of Intellectual Property. I retired from that job 10 years ago and taught Business Law at my local university campus which valued having a WA attorney lecturer, rather than a lay lecturer. In the distant past, I have done some consulting for corporations under the direction of other in-house counsel. I didn't take non-attorney clients. I am marked 'Active' and I do not carry malpractice insurance. I do not feel I present a particular malpractice risk, but I understand the task force feels otherwise. When I explored malpractice insurance for an occasional patent assignment, it was especially expensive.

Having never practiced family, immigration, or government entitlement law, I don't feel I would be very competent at typical ProBono tasks. Education has been my best alternative for community service; remaining an attorney offers considerable credibility in those efforts. In addition to my lecturing, I have worked with organizations like SCORE to provide legal education to small business, and taught high school and college students about patents.

However with no revenue to support a fairly large malpractice premium, I would likely be compelled to "retire" or drop my WSBA membership and cease the educational work.

My Questions

Interestingly, the WSBA and other bars don't seem to have a "retire" status. Rather, they have a "voluntary resignation" process and an "inactive" status that permits return to "active" status through some process. Some states, not WA, exempt "active" attorneys at a fairly old age (70+) from CLE. WA has an Honorary Status, which is not active, but only applies to very senior attorneys, over 50 yrs of practice.

So I would appreciate it if your task force was clear on what "retirement" looks like. Is that "active", to "inactive", to "voluntary resignation" or is it something else.

As the task force is well aware, the practice of law is quite broad these days, from in-house specialized attorneys to solo practitioners who do only limited representation transactions. From my retired in-house perspective, it would be helpful if:

1. Your definitions provide a clear path from full time practice through a partial retirement to a retirement status.
2. When you add other statuses, your definitions should address the CLE requirements for those statuses, too.
3. Are there multiple "retire" or "inactive" statuses; one if you always practiced in one of the exception areas and one requiring a tail policy?
4. What happens when you leave a "exempted practice" - must you go "inactive" to prevent

being forced into the malpractice regime until you find your next job. What happens if you only did outsourced work (always worked at the direction of another attorney) after you left the exempted practice? (See retirement work comments below)

5. What happens if you take a leave from an exempted practice to take care of a family member? Do you go "inactive" to avoid the malpractice insurance requirements until you return.
6. If you leave a law firm and go in-house, does the malpractice requirement end, or must you purchase a tail policy? Is it different if your firm was solo?
7. If most of the risks are to the public, should work for other attorneys be one of the exemptions? Many retired attorneys do work for their former employers on an occasional or overflow basis. Perhaps the "active" status could be defined as holding yourself out to the public in the practice of law.
8. How does the malpractice coverage overlap with other states which do not have malpractice coverage requirements? (I'm a member of another bar which does not have a malpractice insurance requirement.)

Thank you for your consideration.

Bloor Redding
bloor@reddingip.com

From: [Capell, Jeff](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance
Date: Friday, August 03, 2018 7:06:24 AM

Please do keep government lawyers and judges exempt. Requiring them to carry malpractice insurance would serve no purpose, which it seems you have already ascertained. Thank you.

Jeff H. Capell
Hearing Examiner
City of Tacoma
(253) 591-5195

From: [REDACTED]
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Malpractice Insurance
Date: Friday, August 03, 2018 7:20:00 AM

Exemptions

Lawyers with no clients.
Retired lawyers.
Lawyers who do not practice law.
Government lawyers.
Lawyers who Pro Tem only.

JABledsoe 28356

Sent from my iPad

From: [Michael Calligan](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments on Mandatory Insurance Interim Report
Date: Friday, August 03, 2018 7:25:26 AM

I have read the report and have the following question/comment based solely on my situation.

I "retired" and moved from Washington to Florida almost four years ago. I have two daughters who live in Sammamish with their husbands and children. I visit them every summer. I have in the past helped them with pro bono legal services, and would like to be able to do so if the occasion ever arises.

The report references various categories of lawyers who could be exempt from the proposal that all have insurance, including "retired". My hope is that, if "retired" is to be an exempt class, it is defined so as to include those in my position.

Thank you for your consideration.

Michael D. Calligan

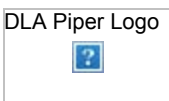
From: [Freeburg, David](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Friday, August 03, 2018 9:33:44 AM

In response to a request for member feedback, I am writing to share that I strongly support a mandatory malpractice requirement as a condition of attorney licensing for practicing attorneys representing clients for profit. Malpractice insurance exists to protect our clients (not just attorneys). In my opinion, those attorneys most likely to avoid paying for malpractice insurance are probably among those most likely to need it.

However, alternative arrangements should be available for unemployed attorneys (including new graduates still looking for work), those in nonprofit or public sectors, and others who are not actively representing clients.

Dave Freeburg

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From: [Rich Davis](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Effect of Mandatory Insurance on WSBA Revenues
Date: Friday, August 03, 2018 10:29:42 AM

Dear Task Force:

I am retired from a career in engineering, but have maintained my license to practice law in this state since 1982. My only legal practice currently and in recent years is as a part-time arbitrator, work for which I receive a very small stipend, \$100 per case. This is essentially volunteer work.

I propose the inclusion of additional provisions in your proposal:

1. Exempt attorneys whose sole practice includes part time arbitration, as well as full time.
2. Change the bar rules to allow return to active practice from inactive so that the attorney has the right to return to active practice without requiring consent of the WSBA. This change would allow members to eliminate insurance and CLE expenses during periods of extended travel, health recuperation or otherwise when we know we will not practice law. It also preserves the revenues of the WSBA during extended periods of non-practice, and maintains disciplinary authority over us in the event of an ethics violation.

With mandatory insurance that applies to me, I will resign from the WSBA. If many of us do likewise, the loss of revenue to the WSBA will be significant.

Richard J. Davis, P.E.
WSBA 12481

From: [Kyle Johnson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice comments
Date: Friday, August 03, 2018 11:26:47 AM

You might want to consider the following problems.

- 1). Not everyone who is licensed may be able to obtain such insurance. The insurance carrier may require full-time practice or an established office.
Part time or retired attorneys or those with a limited low or nonexistent liability practice may suffer the consequence. Or an attorney may have engaged in misconduct such that malpractice insurance is unavailable but the attorney still retains a license to practice.
- 2). As an Atty with 52 years in practice without a claim since I was admitted to the bar, are you really going to disbar me if I don't have malpractice insurance?
- 3). it might be a lot smarter to just get rid of the victims compensation fund. I have never understood why I have to be responsible in anyway for another attorney's screwup. It is pretty much of a joke.
- 4). This has all the earmarks of another big law firm big law move to force clients from attorneys without malpractice insurance into their clutches and justify higher fees in the process.
- 5). it would be a lot simpler and less regulatory to simply require Attorneys to disclose whether or not they have malpractice insurance. The client could then make the decision.
- 6). What about exemptions for mediators and arbitrators?
- 7). Worst of all is the prospect of delivering the bar into the hands of a few insurance carriers. Have you geniuses given that any real thought?

Please confirm receipt.

Sent from my iPad

Kyle Johnson
Mediation & Arbitration
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Seattle, WA 98101-4161
206-604-3810

www.kylejohnson4adr.com

From: [Oliver Spencer](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Forward Regarding Mandatory Malpractice Insurance
Date: Friday, August 03, 2018 1:25:47 PM

Hello WSBA Insurance Taskforce:

I am forwarding to you comments I e-mailed to my then WSBA Governor, Ann Danieli, regarding proposed mandatory malpractice insurance back on September 8, 2017 (see below). The margins for solo practitioners are very thin, and again requiring malpractice insurance at market rates will be cost prohibitive for some members of the Bar Association. This is a consideration that must be weighed against the need for client protection and the benefits to the insurance industry.

Sincerely,
Oliver Spencer
Counselor At Law

Re: Proposal Regarding Mandatory Malpractice Insurance
Sunday, September 10, 2017 8:27 PM

From:
"Ann Danieli" <DanieliLaw@aol.com>
To:
"Oliver Spencer" <[REDACTED]>
Raw Message Printable View
1 Files
13KB

PDF
PastedGraphic-1.pdf
13KB
Save

Thank you Oliver for jumping in early on this issue and providing very good comments. This is my last month on the Board. I will forward your email to my replacement Paul Swegel & to Kim Risenmay who has been studying this issue. We are in the early stages here and there is a long road ahead for those considering this massive issue. Please stay in touch.

Ann Danieli, Governor,
District Seventh North
WASHINGTON STATE BAR ASSOCIATION
3518 Fremont Avenue North, 299
Seattle, WA 98103
(206) 919-3667
DanieliLaw@aol.com

Sent from my iPhone

On Sep 8, 2017, at 12:21 PM, Oliver Spencer <[REDACTED]> wrote:

Hello Ms. Danieli:

I am a solo practitioner. I absolutely agree with the majority of the WSBA in terms of the need for providing client financial protections through malpractice insurance, but the obvious reason that many solos do not have malpractice insurance is cost. The only way I would ever support mandatory malpractice insurance is if the cost of the insurance was substantially below what private insurance carriers typically charge in the free market. Otherwise, mandatory malpractice insurance is simply another financial barrier for a significant percentage of the Bar to continue practicing. Many younger and poorer attorneys will not be able to afford it.

One of the advantages of solo practitioners and small firms is that we serve clients that many larger firms will not serve. For example, I represent tenants in landlord-tenant disputes (in addition to landlords), which is not a particularly financially lucrative area of my practice. Much tenant representation is pro bono. The limited license legal technicians may address some of the ongoing need for tenant representation, but there are not even close to enough of these folks to address the overall needs of unrepresented tenants.

Mandatory malpractice insurance will drive some people from the practice of law. Poorer attorneys should not be penalized for being poor and the clients they serve should not be penalized (in terms of not having much access to legal services without the services of poorer attorneys willing to serve them). Clearly those with more resources are driving most of the decisions of the WSBA. These will be the unfortunate results of requiring mandatory malpractice insurance that is not very inexpensive and substantially below the current prevailing rates for attorney insurance consumers.

Thank you for your time. It is greatly appreciated.

Sincerely,
Oliver Spencer
Counselor At Law

From: [REDACTED]
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory insurance
Date: Friday, August 03, 2018 1:39:28 PM

Dear Task Force:

If you proceed with the idea of mandatory insurance, you need an exemption for people such as myself. I am currently a member of the WSBA, but I am essentially retired. I handle a few pro bono matters now and again, but my practice is extremely limited. It would not be cost effective for me to have to purchase insurance. I currently do not have insurance, because I carefully choose the matters that I handle. If I were forced to purchase insurance, I would no longer be a practicing member of the bar.

Sincerely,

David Burke
WSBA 16163

From: [Glenn Slate](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on mandatory insurance
Date: Friday, August 03, 2018 4:24:56 PM

As a member of the Oregon bar who worked for close to a decade as in-house counsel for a Portland tech company, and who was subject to a similar rule, let me speak out against proposed mandatory malpractice insurance.

There were many times when I would have been able to help a friend or coworker handle a simple legal issue, but was prevented because as in-house counsel I did not maintain malpractice insurance. Often the amount at issue was less than my malpractice costs would have been. But the person still needed legal help.

We are so concerned with access to justice that we allow LLLTs to help people access the courts, without ever attending law school or passed the bar. It then seems counterproductive to required trained attorneys to refrain from any practice of law unless they are maintaining malpractice insurance.

A litigant of modest means should be free to choose between an LLLT with insurance or an uninsured attorney.

Glenn Slate

Attorney | Heritage Family law
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From: [Three Pines Law](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Process Request - Notice & Comment
Date: Friday, August 03, 2018 5:13:39 PM

Hello:

I have skimmed the task force interim report and plan to review it more closely before commenting, but it surprises me that you have only received 69 comments on the matter of mandatory insurance. I have asked a few colleagues if they were aware of this proposal, and all said they were not. Further inquiry indicated they do not read bar emails unless the subject line intrigues them, and most have little time to read the bar's magazine (similarly, I only opened the very generic email received today because I have been aware of this issue, and hunt for updates; the subject line of a "digest" would normally dissuade me from the time needed to read the email).

Additionally, the email I opened today, including the interim report itself, made no mention of a timeframe to submit comments prior to the January 2019 final report completion date.

I would like to suggest the task force send members an email dedicated only to this topic; not included with many other topic summaries, which often get put into the "I'll read this if I have time" category (i.e., "Board of Governor's Meeting Digest"). The issue of requiring more financial resources from solo practitioners - the key target group - is *significant*, and warrants a concerted effort to reach these specific bar members. *An email with a subject line asking for comments on proposed mandatory malpractice insurance will garner attention.*

I would also like to propose a deadline be established to provide comments. Deadlines get interested parties organized to respond and, ideally, to respond thoughtfully. Further, a deadline will provide the task force with an accountable date for comment consideration in time to collate and consider the comments for the final report. A specified request for comment with a specified comment period has a proven record of proper notification and process, which is the standard protocol for proposed federal actions and rulemaking, for example.

I strongly encourage the bar to follow this federal example, and reach out to bar members in a targeted manner on this very important membership change. An email takes little time to format and send to an established mailing list; the notification benefit will far outweigh this administrative effort. For some of us, this rule could mean the end of our practice.

Thank you for considering this request,
Kate M. Hawe

Kate M. Hawe

Owner

Three Pines Law & Consulting Group, Inc.

206.909.4642

threepineslaw@gmail.com

*Providing legal and regulatory consulting services to the natural resources client
Licensed attorney in Washington State and Oregon State*

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From: [Kenneth Dehn](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance Proposal
Date: Friday, August 03, 2018 5:44:06 PM

I am writing to express my concern about the proposal to require nearly all Washington attorneys to purchase coverage that is expensive and in some cases unnecessary. Just to be clear, I have malpractice insurance, but I think the ridged, “one size fits all” approach of the task force will unnecessarily force many solos out of the profession. I think the July 10th report reflects a bias toward large and medium-sized firms that can easily afford the coverage, and against solos who, like me, have never had a complaint or a claim against them. To me, the report smacks of elitism.

I think the recommendation that “policies should not be permitted that exclude attorney acts prior to the current year” is a real problem, and I’m surprised that there is no analysis in the report to support it. Whatever the cost of a new policy, prior acts coverage will double it for any lawyer who has been practicing for five or six years, so that the \$1,200 average premium figure is not very representative. Lawyers should be able to decide for themselves whether to forego prior acts coverage if they have had a period of doing little or no legal work for whatever reason. Maybe the underwriters at the insurance company will figure the period of relative inactivity into the premium quote, or maybe they won’t.

The statement in the report that “uninsured lawyers pose a distinct risk to their clients and themselves” reflects a paternalistic attitude that completely dismisses the ability of a lawyer to make a reasoned, sound decision that in some situations going without coverage (at least temporarily) may make sense, or that going without prior acts coverage may make sense. Does the task force really believe it can foresee all the possible situations and say that insurance is needed in all of them? Likewise, I think the task force is dismissing the ability of smart, sophisticated clients to make an informed decision to choose to use a lawyer who has no malpractice coverage. In some situations, that may be completely reasonable. Clients ought to be free to choose the lawyer they want.

Here are some examples of situations in which I think a lawyer could reasonably decide to forgo coverage, or to forego prior acts coverage:

1. The lawyer primarily works in-house or for the government, but does small legal projects on the side for family and friends;
2. The lawyer primarily works as a non-lawyer, but does small legal projects on the side for family and friends;
3. The lawyer takes a long sabbatical;

4. The lawyer has a period of little or no activity due to the need to care for a sick family member;
5. The lawyer has a period of needing to work drastically reduced hours due to his or her own temporary health condition;
6. The lawyer has a period of little or no activity due to transitioning from working in-house or for the government to working in private practice; and
7. The lawyer is semi-retired and only does occasional legal work for family, friends and a few long-time clients.

I hope the task force will reconsider this proposal. Unless the rule can be crafted so that no attorneys will be unjustly priced out of the practice of law, it should be rejected. The fact that large and medium-sized firms in other states have succeeded in shutting out a large portion of their state's solo attorneys does not mean it is the right thing to do here in Washington.

Respectfully,

Ken Dehn

Dehn Law Office, PLLC

(206) 484-9790

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From: [Robert Pia](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance - Comments
Date: Saturday, August 04, 2018 11:11:12 AM

I read the interim report. I am a sole practitioner in San Francisco, CA. I have been licensed in CA for approximately 34 years, in WA for approximately 8 years. I have always been well insured for the risks posed by my relatively small practice (\$1MM /\$1MM in years past and \$500K / \$1MM now).

I have maintained coverage with the same A-rated carrier for over 20 years. The carrier does not permit sole practitioners to have a deductible in excess of \$5K. The first \$50K of defense costs do not count against coverage limits. Also, my carrier provides lifetime tail coverage at no charge for attorneys who retire after three consecutive years of active coverage.

My carrier also provides CLE units at no charge with enough units annually to satisfy the CA 3-year requirement. The annual insurance premium is very affordable for me, but I have never had a claim.

My thoughts:

- I have had only one case in WA in 8 years. If that is all the WA work I ever have, I probably would still continue to pay dues for an active WA license and keep up with the 45-unit WA CLE requirement every three years. However, if WA were to adopt insurance requirements not met my current policy (such as a single mandatory or captive insurance provider without exception for non-WA based attorneys), I would change my WA license status to inactive.
- My sense is some of the greatest damage done to the public is by attorneys who get into trouble, whether ethical, emotional, substance abuse, or serious health conditions. In these cases I expect there are numerous scenarios in which the attorneys stop paying for insurance. The attorneys are therefore no longer covered in a "claims-made" insurance environment, and the claims do not surface until *after* coverage ceases. The public is largely unprotected in these scenarios anyway, even if the attorney who gets in trouble had insurance while his/her license was active. A mandatory insurance

requirement would not likely solve this problem, for the most part.

- The large low-income segment of the public is under-served by the legal profession as it is. A mandatory insurance requirement would likely exacerbate this problem. A WA family lawyer (sole practitioner) who is a very close friend has taken clients with marginal ability to pay for years. He is uninsured. His bills often go unpaid. He never sues to collect fees. He has zero malpractice claims. He is disabled, effectively limiting his practice to part-time. Mandatory insurance would terminate his practice of law. The people he helps, in many cases, would otherwise be *in pro per*, which does not help them or the courts.
- In a free market, would it not be better to require uninsured lawyers to obtain a separate written, disclosure and acknowledgment of that fact signed by the client at the outset of the attorney-client relationship? The WSBA could provide a mandatory form with mandatory disclosure language. The WSBA could also establish a website for uninsured lawyers to upload the executed disclosure forms in .pdf format according to state bar number on a periodic basis or otherwise certify no new clients represented in the period. Failure to comply would automatically result in administrative suspension.
- Are there not areas of practice that would be suitable for exemption, particularly where the risk of merit-less malpractice claims is high and the harm caused by malpractice would seldom be meaningfully compensated with money? Criminal defense practice comes to mind.
- Conversely, instead of a sweeping requirement of mandatory insurance for all, would it not make sense in terms of protecting the public to mandate insurance for those areas of practice with the highest incidents of malpractice claims - *i.e.*, personal injury, real estate, estate planning, certain corporate practices, and collection/bankruptcy? I would *exclude* family law as to child custody, adoption, domestic violence, dependency court, and low asset /property value divorce cases.
- If the WSBA were to require mandatory insurance, should it not also assume the obligation to provide a bar-sponsored alternative insurance plan option with the minimal required coverage limits? Should an attorney lose his / her livelihood because he or she is not insurable in the private marketplace?

Bob Pia

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Fax: 720-367-0521

<http://www.martindale.com/Robert-Joseph-Pia/241614-lawyer.htm>

From: [Paul Majkut](#)
To: [Mandatory Malpractice Insurance Task Force](#); [Steve Cook](#); [Nancy Duhnkrack](#); [Kelley Beamer](#); [Mike Running](#)
Subject: Mandatory Malpractice Insurance Task Force Interim Report
Date: Saturday, August 04, 2018 9:41:15 PM

Your taskforce recommends "Malpractice insurance should be mandated for Washington-licensed lawyers, with certain exemptions," including for "attorneys providing services through nonprofit entities, including pro bono services." I heartily endorse this exemption as I currently advise land trusts in Oregon and Washington through the Coalition of Oregon Land Trusts. The Coalition provides me malpractice insurance it has obtained at a much reduced rate.

I have an additional request. By mandating such insurance for "Washington-licensed lawyers," the task force may be requiring such insurance for active and inactive members of the Bar. In Oregon inactive members of the Bar may provide legal advice through Bar approved pro bono programs without providing their own malpractice insurance. Those programs provide malpractice insurance for participants. Please exempt from mandatory malpractice insurance inactive members of the Washington Bar providing services through nonprofit entities, including pro bono services. This will encourage more retired attorneys like me to provide such services because we will not have to pay full time bar dues and attend 45 hrs of CLE every 3 years to be able to advise them. Thank you. Paul Majkut OSBar #872900 Wash Bar #6523 OSBar #872900

From: [REDACTED]
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory or not?
Date: Monday, August 06, 2018 9:53:59 AM

Friends:

My father (a 50+ year lawyer) advised that it takes two things for a malpractice suit: 1) A serious mistake by a lawyer, and 1) An unhappy client. Careful practice may prevent the first, but any lawyer can prevent the second by making the client better than whole again once a mistake is discovered.

In 45 years I've never had (or needed) malpractice insurance because I'm very careful in my work and I have the resources to make my clients better than whole if I do make a mistake. In my opinion, I'm doing it the right way. Your task is to deal with the lawyers who do it the wrong way. It is totally backwards to punish those who do the right thing (by making them add malpractice insurance) in order to reward those who do the wrong thing (giving them pooled resources to pay for their sloppy work).

Recommendation: Reward those with no claims for 20+ years (or whatever) with an exemption from insurance. Maybe even have two tiers within the lower years to encourage no claims. Use the carrot rather than the stick.

- John Panesko
Chehalis, WA #5898

From: [Erik Marks](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice coverage
Date: Monday, August 06, 2018 12:24:48 PM

Hello,

I am writing to comment on the proposal to require malpractice coverage for lawyers. Thank you for your work on the issue, and for preparing and sharing the Report. I want to express my opposition to the proposed mandatory coverage.

About Me. I have been a business and transactional real estate attorney in Seattle since graduating from law school in 1993. I concurrently engage in other professional pursuits, including real estate investment, real estate brokerage and social enterprise entrepreneur. In the past 5 years my legal work has ranged from 10% of my professional time in some years, to 90% in others.

Personal Perspective. I do not carry malpractice insurance because the premium rate is too high compared to the risk-mitigation - for me. As indicated in your report, half of all malpractice claims are resolved without payment (and thus the median payment is \$0), 95% of malpractice claims are resolved for less than \$250,000, and the average loss payment is \$60,000. With these statistics in hand, I would prefer to bear the risk of my own error, rather than buying insurance coverage against that risk.

Why is this true for me in particular? My clients have generally been with me a long time, and are my friends. This reduces the risk of claims. I decline work for complete strangers, unless there is a reliable referral source. I practice only in areas I know well. My practice is not full time, so the number of legal tasks I perform in a year is lower than a typical lawyer (and thus lower than the number used in the pricing model employed by the insurance companies).

Professional Impacts. Lawyers are already the most dissatisfied profession. Requiring lawyers that do not wish to carry insurance (for whatever reason) to carry it, will create even more discontent among the ranks. It will reduce income, increase administrative burden, and increase resentment toward the WSBA as a nanny organization.

Is there really a problem? The report says that the mandatory insurance is necessary to protect the public. But the report is VERY light on proof that the public is actually harmed by making insurance discretionary. The strongest statement seems to be, "Malpractice plaintiffs' lawyers report numerous instances of worthy claims that they must reject for representation because the defendant lawyer is uninsured, making a recovery much less likely." "Numerous instances"????? That is not a persuasive statistic. How many instances? Were the instances independently determined to be "worthy"? Did the lawyers actually not take the case because the ease of settlement is not in the plaintiff-lawyers' favor when there is no insurance? Was consideration given to the fact that malpractice plaintiff's lawyers are incentivized to over-report statistics like this, so as to encourage mandatory insurance, and thus grow their business.

And what was the outcome of them not taking the case? Just because they don't take the case

means nothing. I would want to know whether the alleged victim was adversely affected in a manner that taken with other similarly situated persons resulted in a detriment to society. The mere presence of a negative outcome is not persuasive. All negative outcomes do not need to be regulated. For example, sunburns on children are known to cause cancer; but we don't have, and shouldn't have, regulations requiring parents to apply sunscreen.

What about Offsetting Considerations? The report does not make any inquiry at all into the question of whether the absence of insurance may create social good. For example, it seems patently obvious that one who is not insured will be more careful in their work. And that the absence of insurance will result in lower rates. And that requiring someone who does not want to carry insurance, to carry it, will increase conflict, discontent and strife within the practice. Finally, facilitating part-time practice by attorneys who are older, or who have other professional obligations (as do I), increases the supply of skilled practitioners in the arena, and thus increases the provision of quality legal services to the public.

Flawed Statistical Analyses.

- Findings #3 and 5. These findings report a correlation between absence of insurance among solo and small practitioners, and the prevalence of malpractice claims among such practitioners. But, what if the claims are being made much more frequently against the insured solo and small practitioners, rather than the uninsured ones????? That would yield the opposite conclusion! Thus Findings #3 and 5 are not persuasive.
- Finding 4 is that the majority of malpractice claims, and the majority of malpractice payments, are made with respect to lawyers in firms with 1-5 lawyers. The report fails to mention that 63% of the lawyers in the US private practice, work in firms with 1-5 lawyers. And so the report is inconclusive as to whether the prevalence and/or value of malpractice claims is greater or lower in small firms.

Holy Cow - Only 8% of the Members Indicated Support Mandatory Insurance! It's right there in the report at page 7. It's just reported as a fact. No analysis. No examination of whether this absence of support should raise questions about the proposal to require mandatory insurance.

The Task Force Composition? How was the composition of the Task Force determined? The Report does not say. I would think this to be an essential aspect of the report. Were these people who volunteered? How many members of the committee practiced law in a small firm environment without malpractice insurance?

CONCLUSION: It appears to me from reading the Report that a Task Force was gathered, comprised of persons who in the vast majority believed malpractice insurance should be required, and then they set out to find support and write a report supporting that Conclusion. Now I will be the first to admit that I may be entirely wrong in that conclusion. But right or wrong, I am disappointed that the Report is of a character that would leave me feeling that way.

SPECIFIC INPUT:

1. No action should be taken until statistically-valid work can be done to analyze the benefits and burdens of requiring malpractice insurance.
2. The mechanism by which the Task Force was populated should be in the Report.
3. The Report should dedicate space to discussion and analysis of the mere 8% support expressed by WSBA Members; and the 47% opposition. And inquiry should be made ensure that the 47% statistic is accurate; in particular, it must be ensured that classification (as neutral, pro or con) of the comments received is performed by a disinterested party (likely someone not on the Task Force).
4. Consideration should be given to part-time attorneys. For an attorney who works 500 hours a year, insurance is unreasonably burdensome. This will generally affect the partially-retired attorney, and the (generally female) attorney who practices part time while raising children, resulting in terribly detrimental effects on the quality of life for both. [I guess this also raises the specter of the proposal resulting in an undesirable, and possibly proscribed, adverse impact on the class of female attorneys.]
 - My specific proposal for consideration to address this issue is to allow an exemption for attorneys who reasonably anticipate generating less than X% of their income from the practice of law during the year in question. I would offer that 35% would be a good number to use in that regard.

I hope this email is helpful and will result in deeper analysis of the need for the proposed requirement, and its possibly detrimental effects.

--
Erik G Marks
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2255 Harbor Ave SW
Suite 203
Seattle, WA 98126

office: 206-264-4598
cell: 206-612-8653

erik@egmrealestate.com

From: [Alan Burnett](#)
To: bill@wdpickett-law.com; Dan@mcbdlaw.com; athan.papailiou@pacificallawgroup.com; jkang@smithfreed.com; rajeev@northwhatcomlaw.co; whyslop@lukins.com; [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Monday, August 06, 2018 9:37:51 AM

Hello Bill, Dan, Athon, Jean, Rajeev, and Bill,

I would like to add my input to your consideration of mandatory malpractice insurance. I have intentionally not carried insurance for my solo patent attorney practice. Why? In part because about 15 years ago some partner at Fish and Richardson failed to file a patent application in Europe, and the resulting malpractice award was \$30M. Overnight, that raised the malpractice insurance rates for patent attorneys by an order of magnitude or more. Although I haven't checked recently, the minimum coverage levels that are suggested in the interim report (e.g., \$100K/\$300K, \$250K/\$250K, \$250K/\$500K, or \$500K/\$500K) are likely not available to me. Although malpractice claims against patent attorneys are rare, the typical cost of defending a claim is significantly more than in other areas of practice, resulting in substantially higher premiums.

I have one primary client (Intel) and recently brought on some other work from a top-5 (in the world) company. Another portion of the work I do is not (technically) legal work. There is zero chance that any of my clients are going to sue me for malpractice, but that doesn't matter to the insurance underwriter. I do some pro-bono work, but not in a legal capacity (no attorney-client relationship is established – rather, I merely provide advice to people who might contact me, and to friends and family).

Forcing someone like myself to carry malpractice insurance purchased on the private market is going to add a substantial expense without providing any benefit to the legal profession within Washington state (at large).

Regards,

R. Alan Burnett
Law Office of R. Alan Burnett
4108 131st Ave SE
Bellevue, WA 98006
425 417-4729

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From: [Dan Bridges](#)
To: [Alan Burnett](#); bill@wdpickett-law.com; athan.papailiou@pacificallawgroup.com; jkang@smithfreed.com; rajeev@northwhatcomlaw.co; whyslop@lukins.com; [Mandatory Malpractice Insurance Task Force](#)
Cc: [Hugh Spitzer \(spith@uw.edu\)](mailto:Hugh.Spitzer@uw.edu)
Subject: RE: Mandatory Malpractice Insurance
Date: Monday, August 06, 2018 11:22:45 AM

Hello Alan:

I wanted to respond, not too substantively as I don't "speak" for WSBA or the task force on this issue, but to thank you for taking the time provide your input. It is greatly appreciated.

I think I can fairly report that the task force has been consulting with various insurance industry representatives (largely ALPS) and I will ask them how a liability carrier would address someone who only practices in as specialized of a field as yours. I understand your point that \$300k would not make a dent in a material patent malpractice case. But what I am curious about, reading your email, is whether a carrier would even write a \$300k policy for you.

I am copying in Hugh Spitzer, our taskforce chair, so he may have this on his radar as well.

Dan

Dan'L W. Bridges
3131 Western Avenue
Suite #410
Seattle WA. 98121
Phone: 425-462-4000
Fax: 425-637-9638

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From: Alan Burnett [mailto:alan@patentlylegal.com]
Sent: Monday, August 06, 2018 9:38 AM
To: bill@wdpickett-law.com; Dan Bridges; athan.papailiou@pacificallawgroup.com; jkang@smithfreed.com; rajeev@northwhatcomlaw.co; whyslop@lukins.com; insurancetaskforce@wsba.org
Subject: Mandatory Malpractice Insurance

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To: ["Dan Bridges"](#); bill@wdpickett-law.com; athan.papailiou@pacificallawgroup.com; jkang@smithfreed.com; rajeev@northwhatcomlaw.co; whyslop@lukins.com; [Mandatory Malpractice Insurance Task Force](#)
Cc: ["Hugh Spitzer"](#)
Subject: RE: Mandatory Malpractice Insurance
Date: Monday, August 06, 2018 1:26:24 PM

Hello Dan,

Thank you for responding. WRT to a \$300K policy being available, I do not believe it is likely I could get such a policy, and that is a problem with having mandatory insurance requirement for attorneys in specialty fields. Worse yet, for me, is I also am involved with a significant amount of patent prosecution in foreign jurisdictions, and there have been some malpractice cases where even if the screw-up was by the foreign associate, the US counsel was found liable. I think for Intel my exposure is less since there is a separate attorney-client relationship with the foreign associates (I am assigned to the matters, but I don't actually have a legal engagement with most of the foreign associates). However, this exposure raises a huge red flag with the insurance underwriters (unfortunately).

I haven't checked for what is available for many years, and things may have changed, so I plan on getting some quotes for malpractice coverage in the next few weeks. Is there a resource the WSBA has relating to insurance industry representatives?

I am fairly isolated with my type of practice, and I don't know how much this applies to other areas of law, but there is a general view in the patent attorney community that large clients fire you and small clients sue. To a significant degree, this is because large clients are usually sophisticated when it to patents, and they know how difficult (and random) patent prosecution can be.

Regards,

Alan

From: Dan Bridges [mailto:dan@mcbdlaw.com]
Sent: Monday, August 6, 2018 11:23 AM
To: Alan Burnett <alan@patentlylegal.com>; bill@wdpickett-law.com; athan.papailiou@pacificallawgroup.com; jkang@smithfreed.com; rajeev@northwhatcomlaw.co; whyslop@lukins.com; insurancetaskforce@wsba.org
Cc: Hugh Spitzer (spith@uw.edu) <spith@uw.edu>
Subject: RE: Mandatory Malpractice Insurance

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From: Alan Burnett [<mailto:alan@patentlylegal.com>]
Sent: Monday, August 06, 2018 9:38 AM
To: bill@wdpickett-law.com; Dan Bridges; athan.papailiou@pacificallawgroup.com; jkang@smithfreed.com; rajeev@northwhatcomlaw.co; whyslop@lukins.com; insurancetaskforce@wsba.org
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From: [Summer Stahl](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory insurance
Date: Monday, August 06, 2018 3:30:20 PM

I propose that an exemption to mandatory malpractice insurance include General Counsel for a business.

I serve as General Counsel for this company. I do not have private clients (other than my immediate family and that is pretty generic – yes, you need to follow the rules or no, I can't help you with an issue in another state but I'll help you find an attorney there)

If my boss decides that he doesn't want to have malpractice insurance on me then you are forcing him to do so, or possibly not having me on the payroll. It is not an operating cost of my practice, it is making the client pay directly for the insurance. It is also "babysitting" for a business and an owner who are presumably competent to make risk decisions. Mandatory insurance for a General Counsel would imply that the owner is not sufficiently capable of making that decision and needs the WSBA to take care of his/her business decisions.

Thanks for your time.

Summer Stahl
General Counsel
Stevens County Title Company
280 S. Oak Street / P O Box 349
Colville, WA 99114
509-684-4589 ext 114
Fax 509-684-5448
Proudly serving Stevens County
For 127 years - since 1891



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From: [Matt Bean](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory insurance issue
Date: Tuesday, August 07, 2018 1:51:09 PM

If WSBA is considering mandatory insurance to protect the public, then it must use its leverage to try to require "Occurrence" coverage rather than "Claims Made" insurance. As I'm sure you are all aware, the problem with attorney malpractice insurance is that if an attorney doesn't immediately report a "possible" claim, the insurance company can deny the claim because the insured attorney failed to report as the policy required. Attorneys have an incentive not to report a possible breach because if the client never makes a claim, the consequence to reporting might be that the attorney loses malpractice insurance or the attorney's rates go up.

Insurance companies claim that they can offer lower priced policies, but the reason that they are lower priced is because they can effectively deny coverage. This doesn't help either the attorney or the injured public.

Coverage should be for the actual period that the malpractice occurred, just like car insurance.

This happened to a client of mine:

Client hired an New York lawyer to bring a wage claim for work she did for a Washington company in NY. The client had an arbitration clause, but the attorney decided to challenge the clause in New York. After 4 years, the New York courts ordered arbitration. When the case was then submitted to arbitration in Washington, the Washington arbitrator ruled that the statute of limitations had passed, because arbitration wasn't demanded within the 3 year statute of limitations. The Arbitrator then awarded attorney's fees against my client in the amount of \$400,000 her former employer's attorney's fees for the NY appeal.

When my client made a claim to her NY attorney's malpractice carrier, the carrier denied coverage because when she applied for malpractice insurance--she didn't disclose that there was a possible claim when clearly there was a possible claim. Client couldn't make a claim to the NY attorney's insurance carrier when the malpractice occurred because the claim wasn't presented during the term of the policy. Thus, an attorney who undisputedly engaged in malpractice, and had \$1,000,000 in insurance coverage at all times, didn't have insurance coverage.

Any insurance policy that depends on an attorney presenting a claim during the policy period cannot ensure the protection of the public. You would also do a service to attorneys in WA to help them protect themselves from the temptation not to report a potential claim that may or may not amount to anything in the future.

I strongly urge the Bar to require Occurrence coverage if it is going to require coverage.

Matthew J. Bean

Bean Law Group
2200 Sixth Avenue, Suite 500
Seattle, WA 98121
206.522.0618
206.524.3751 fax



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From: [Steve Cook](#)
To: [Paul Majkut](#); [Mandatory Malpractice Insurance Task Force](#); [Nancy Duhnkrack](#); [Kelley Beamer](#); [Mike Running](#)
Subject: RE: Mandatory Malpractice Insurance Task Force Interim Report
Date: Tuesday, August 07, 2018 1:56:13 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

I wholeheartedly concur in Mr. Majkut's comments.

At Columbia Land Trust we benefit greatly from pro bono services provided by both retired (inactive) and active bar members in both Washington and Oregon. Rules that facilitate that pro bono work for non-profits like ours help us stretch scarce dollars to better accomplish our mission work.

Steve Cook, Wash Bar #45687

Stephen F. Cook | Deputy Director & General Counsel

Columbia Land Trust

850 Officers' Row | Vancouver, WA 98661
Direct: (360) 213-1208 | Main: (360) 696-0131
Also in Astoria | Portland | Hood River
www.columbialandtrust.org



From: Paul Majkut [mailto:paulsmajkut@gmail.com]
Sent: Saturday, August 4, 2018 9:41 PM
To: insurancetaskforce@wsba.org; Steve Cook <SCook@columbialandtrust.org>; Nancy Duhnkrack <nduhnkrack@gmail.com>; Kelley Beamer <kelly@oregonlandtrusts.org>; Mike Running <mike@oregonlandtrusts.org>
Subject: Mandatory Malpractice Insurance Task Force Interim Report

Your taskforce recommends "Malpractice insurance should be mandated for Washington-licensed lawyers, with certain exemptions," including for "attorneys providing services through nonprofit entities, including pro bono services." I heartily endorse this exemption as I currently advise land trusts in Oregon and Washington through the Coalition of Oregon Land Trusts. The Coalition provides me malpractice insurance it has obtained at a much reduced rate.

I have an additional request. By mandating such insurance for "Washington-licensed lawyers," the task force may be requiring such insurance for active and inactive members of the Bar. In Oregon inactive members of the Bar may provide legal advice through Bar approved pro bono programs without providing their own malpractice insurance. Those programs provide malpractice insurance for participants. Please exempt from mandatory malpractice insurance inactive members of the Washington Bar providing services through nonprofit entities, including pro bono services. This will encourage more retired attorneys like me to provide such services because we will not have to pay full time bar

dues and attend 45 hrs of CLE every 3 years to be able to advise them. Thank you. Paul
Majkut OSBar #872900 Wash Bar #6523 OSBar #872900

From: [Bill Zook](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments in Response to 7/10/2018 Interim Report to BOG
Date: Wednesday, August 08, 2018 11:01:04 AM

Ladies and Gentlemen:

Even though for many reasons I continue to be a member of the WSBA, I have not practiced law in over two decades. If a mandatory malpractice insurance program is implemented, I would hope that WSBA members in my situation would be exempt from being required to obtain coverage.

J. William (Bill) Zook, Jr.
Principal
Evergreen Planned Giving, LLC

4500 9th Avenue NE, Suite 300
Seattle, Washington 98105-4762
Phone: 206-632-3912
Fax: 206-829-2401
E-mail: bill@evergreenpg.com
Web: www.evergreenpg.com

From: [Merry Kogut](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Sheila Mengert](#)
Subject: Interim Report
Date: Wednesday, August 08, 2018 5:33:21 PM

I am a licensed attorney who is retired and has not practiced for over five years. I want to maintain my licensed status, but will not be able to do so if you require mandatory malpractice insurance. Obviously, I'm not in need of insurance if I'm not practicing. I am very angry and upset that you are planning to make insurance mandatory. Please reconsider, or provide the ability to opt out under circumstances such as mine.

I DO NOT want to go "inactive." There is always an off-chance that I will want to use my license to help out a friend in need.

Sincerely,
Merry A. Kogut 16153

From: Merry A. Kogut

From: [Questions](#)
To: [Rachel Konkler](#)
Subject: FW: Mandatory Malpractice Insurance Initiative
Date: Friday, August 10, 2018 8:17:00 AM

Thanks
Matt

Matt Muzio | Service Center Representative
Washington State Bar Association | 1-800-945-9722 | mattm@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please contact adamr@wsba.org.

-----Original Message-----

From: Adam Dockstader [<mailto:adam.dockstader@iafflocal1488.org>]
Sent: Thursday, August 09, 2018 11:51 PM
To: Questions
Cc: Adam Dockstader
Subject: Mandatory Malpractice Insurance Initiative

To the WSBA,

I recently heard from a friend that the bar is considering mandatory malpractice insurance. This is very disappointing, and I'm concerned many members are not aware of this initiative. I have not seen one email notification specific to this topic; you must be burying it in other news. Not good.

Proposed rules imposing fees on business owners should be noticed with considerable specification. Have you have received few comments compared to the number of bar members? If so, this is a good indication that sufficient notice has not been given.

When are comments due before a decision is made?

Please forward these questions/concerns to the appropriate person/department at the WSBA.

And I look forward to hearing back soon.

Adam Dockstader
WSBA No. 27872

From: [REDACTED]
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Saturday, August 11, 2018 6:38:12 PM

I am opposed to a mandatory malpractice insurance requirement for all active Washington State attorneys.

I have practiced law in Washington for 27 years, 11 full-time and 16 years on an occasional basis as I have had non-law full-time jobs during that time. I have never been found to have committed malpractice nor have I ever been subject to discipline by the WSBA.

I became a lawyer to help people. This rule could threaten my ability to do that. My clients now are friends, relatives, past clients and sometimes new clients.

The Bar likes to talk about providing access to legal services to low and middle income people. These are usually the people I serve. I charge for my services on a sliding scale. This rule will limit access to these folks even more as people like me take a hard look at whether it is worth continuing to have an active license.

Craig Larsen
Attorney at Law
509-421-2116

From: [Susan Barley](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: comment: Mandatory Malpractice Insurance
Date: Monday, August 13, 2018 2:12:57 PM

Task Force: As a 35 year veteran of legal practice in WA, I express my concern about a possible requirement for malpractice insurance.

I have spent the past 23 years providing special project legal services as a contractor to local companies. I augment inhouse capabilities: replacing an attorney on leave or providing extra manpower for a specific project or period of time where the existing inhouse capacity needs support. This function is as an inhouse lawyer, not an outside attorney (either solo or in a practice). These companies do not want to hire outside lawyers, are not bargaining for outside lawyer services and acknowledge that I do not have malpractice insurance. They are fully capable of understanding the risks and benefits and protecting their interests. Indeed, I would not accept work where these distinctions were not acknowledged and confirmed. Companies are eager to find experienced resources to augment inhouse capability when needed and appreciate the ability to flex up and down as appropriate.

A requirement that I have malpractice insurance would negatively affect this flexible work alternative. I started this practice after my second child, when I left my GC role to have more work/life balance. I believe an insurance requirement for lawyers in my position runs the risk of disproportionately negatively affecting women.

As important, insurance would not benefit the companies with whom I work: they do not want malpractice insurance protection and indeed, they would pay more for my services, if they were available at all.

Finally, malpractice insurance is not inexpensive in general, and certainly not for reasonable coverage. Most (at least older) lawyers are going to want more than minimal coverage (most of us are not risk takers); \$300,000 for example is ridiculous. As I believe coverage can incite lawsuits, I would need extensive coverage (millions) at this point in my life. It is difficult to get in sufficient amounts at a reasonable cost. Also, advice on financings and IP licensing trigger supplements and supplemental expense, although these activities are routinely handled by inhouse lawyers.

In conclusion, I recommend that if there is a requirement for licensed lawyers to have malpractice insurance, that the exceptions include inward (not outward)-facing contract lawyers as well as inhouse/government lawyers. A blanket requirement for all contract lawyers to have insurance would, in my opinion, eliminate many if not all opportunities for "inhouse" contract work.

Thank you.

Susan Barley
Susanbarley27@gmail.com

From: sheri luedtke <[REDACTED]>
Sent: Wednesday, August 15, 2018 8:56 AM
To: Mandatory Malpractice Insurance Task Force
Cc: LuedtkeLaw@outlook.com
Subject: Mandatory Malpractice Insurance

Dear WSBA Task Force,

I am writing to speak against requiring mandatory malpractice insurance for active members of WSBA who are not actively engaged in client-based practice of Law. I "retired" several years ago yet I continue to pay my full dues and maintain my CLE requirements. If I were able to return to actively representing clients, I certainly would obtain and maintain malpractice insurance as I did from 1981 - 2014.

Failure to permit an exemption for WSBA members similarly situated would force members to spend valuable resources if malpractice coverage is even available for an actively licensed attorney not practicing law. I pay my dues out of my commitment to our profession and desire to support the WSBA despite earning one cent in fees. I wonder if I could even obtain malpractice insurance. I have no office, no clients, no income from the practice of law. There is absolutely no reason for me to carry malpractice insurance in order to continue my membership in the WSBA, which has been my honor since 1981. Like doctors who retire from their profession, lawyers don't stop being lawyers just because they no longer represent clients.

Sincerely,
Sherilee M. Luedtke
WSBA #11891

Sent from my iPad

From: Swenson, Raymond T <Raymond_T_Swenson@rl.gov>
Sent: Thursday, August 16, 2018 5:37 PM
To: Mandatory Malpractice Insurance Task Force; danclarkboard@yahoo.com
Cc: Swenson, Raymond T
Subject: Mandatory Malpractice Insurance

I have practiced law for 40 years. For four years I belonged to national law firms, which took care of professional liability for us. During fifteen years of work in the Air Force JAG Corps, I was exempted by statute from professional liability. For the past 21 years I have served as corporate counsel, with a single client who is also my employer.

I am planning to retire from my current employment next year, but have been considering the possibility of working part time on a consulting basis for my current employer and for other companies in our particular industry, where I am known. These clients are people who know me and my professional abilities, and have their own in-house counsel who must weigh the advice I give before they implement it. They are free to consult other counsel about the same questions. Just as I have with my current client, I would not be guaranteeing outcomes, but identifying options and assessing risks. It seems very unlikely to me that any of these clients could ever make a malpractice claim against me, or would want to. For that reason, purchasing and maintaining malpractice insurance looks like an unnecessary expense, especially if it is not priced in relation to the actual risk for my practice (effectively zero) and the revenues I earn from this work. I don't want to be subsidizing the coverage for attorneys who have higher risk practices, when I get no benefit from their work. Forcing me to carry malpractice insurance could become a self-fulfilling prophecy, with a client who would not otherwise file a claim, simply doing so because he knows the fund is available, and the harassment value of a claim would force a payment.

In general, I believe the purchase of malpractice insurance should be based on the attorney's evaluation of risk, rather than being mandated. Even if a mandatory requirement of some kind were instituted, I believe that an exception should be made for attorneys who (1) intentionally work part time (e.g. less than 1,000 hours per year), or (2) serve only business and institutional clients who manage the liability from their own decisions and do not need to sue outside counsel to protect themselves from risk, or (3) have significant expertise and experience in their fields, such that only another expert practitioner would be qualified to assert that their advice was outside the scope of reasonableness.

A rule that exempts attorneys who intentionally limit their billable hours can support attorneys who have other income (such as retirement income or a working spouse) and need to devote much of their time to other matters, such as raising small children, caring for a disabled spouse, dealing with their own physical limitations, pursuing other opportunities (such as teaching, community volunteering, pro bono service, managing a [non-attorney] small business, writing professionally, attending graduate school, or transitioning into a new, non-attorney career). These activities are beneficial to society, and should not be impeded by a financial burden that the attorney does not judge to be necessary.

Raymond Takashi Swenson

Senior Counsel
WSBA # 27844

CH2M HILL Plateau Remediation Company

Richland, Washington
509-376-3511 Office
509-713-0966 Smartphone
509-376-0334 Fax
Raymond_T_Swenson@rl.gov

From: Brian Dano <bricyn@danolawfirm.com>
Sent: Friday, August 17, 2018 9:46 AM
To: Mandatory Malpractice Insurance Task Force
Cc: Danclarkboard@yahoo.com
Subject: Mandatory Malpractice Insurance

Importance: Low

To Whom It May Concern

I am strongly in favor of mandatory malpractice insurance as a condition of licensing, which I assume includes relicensing. Thanks,

Brian Dano



100 E. Broadway
P.O. Box 1159
Moses Lake, WA 98837
Ph: 509-765-9285
Fax: 509-766-0087
email: bricyn@danolawfirm.com

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From: John Gray <john.m.gray@comcast.net>
Sent: Friday, August 17, 2018 10:48 AM
To: Mandatory Malpractice Insurance Task Force
Cc: 'John Gray'; 'Margie Gray'
Subject: Comment on the Interim Report
Attachments: Comment on the interim report 081718.docx

Hello:

My comment is in the attached Word document. Thank you for considering it.

John M. Gray
5021 Laura St. S.E.
Olympia, WA 98501
(360) 754-0757 (landline)
(360) 789-3208 (cell)

The WSBA report of the July BOG meeting suggested that members contact this group to comment on the interim report. I have read that interim report.

Overall, I agree with the direction taken by the Task Force: attorneys engaged in the practice of law should carry malpractice insurance.

I call your attention to page 10 of the interim report where the Task Force says it has tentatively concluded it should report the following program to the BOG. The fifth item contains suggested exemptions from the general rule of mandatory coverage. My wife and I fall into two of those exemptions: (1) attorneys providing services through non-profit entities, including pro bono services, and (2) retired attorneys.

On behalf of my wife (WSBA # 9607) and myself (WSBA # 7529), we encourage you to recommend at least those two exemptions to the BOG to become part of the WSBA's adopted policy on mandatory malpractice insurance coverage. We both wish to continue our active status on our licenses. We are retired. We provide pro bono services through the Thurston County Volunteer Legal Services program, which provides malpractice insurance for our volunteer work there. If either of us decide to re-enter the active practice of law, we will obtain legal malpractice insurance.

Thank you for considering this comment.

John M. Gray

From: leslie@lesliebudewitz.com
Sent: Friday, August 17, 2018 11:16 AM
To: Mandatory Malpractice Insurance Task Force
Subject: recommendations re mandatory insurance -- out-of-state members

Dear Task Force Members:

Thank you for your hard work analyzing the issues related to malpractice insurance and creating recommendations.

Although I do believe that most lawyers in private practice should be insured, I'm writing to suggest a specific exemption for those of us who, while still licensed in Washington, do not maintain an active practice in Washington and either practice in a state without a mandatory insurance requirement or maintain a practice in another state that, while private, does not fit the usual categories and require insurance. As an example, I was admitted in 1984 and returned to my home state of Montana in 1993. Until late last year, I was employed by another lawyer maintaining a private practice and was fully insured. That lawyer retired. Now on my own, I handle appellate mediations and serve as local counsel for an out-of-state firm defending litigation in Montana; neither situation requires insurance, Montana does not mandate it, and I do not maintain it. Requiring someone like me to be insured in Washington would serve no purpose and do nothing to protect Washington residents; the expense would probably force me to give up my Washington license or move to inactive status.

I hope you'll consider the circumstances of out-of-state members in making your final recommendations.

My thanks –

Leslie

Leslie Ann Budewitz
P.O. Box 1001
Bigfork MT 59911
406-212-1813
leslie@lesliebudewitz.com

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From: Charley Bates <cbates.sers@mindspring.com>
Sent: Sunday, August 26, 2018 5:02 PM
To: Mandatory Malpractice Insurance Task Force
Subject: Comments on Interim Report

Dear Mandatory Malpractice Insurance Task Force:

Thank you for this opportunity to provide feedback to your Interim Report on mandatory malpractice insurance for Washington state lawyers, and kudos for all your hard work on this project.

I am an attorney (#19819) who recently retired from professional compensated work. My career courtroom practice was extremely limited. Instead, during my professional career I performed a combination of work in the human resources field [e.g. Director of Human Resources for Royal Seafoods, Inc.], corporate legal work [e.g. U.S. Corporate Secretary for TransAlta USA Inc.], and legal work at a state government judicial agency [e.g. Public Records Officer & Risk Management Coordinator for the Washington State Administrative Office of the Courts]. Because of this combination of professional work in which I did not function as an attorney, corporate legal work, and state government legal work, I have never had the need for legal malpractice insurance. Now that I am retired, I do not have the current need for malpractice insurance [I do not anticipate practicing before a court, at least other than perhaps in a pro bono situation working under the auspices of a non-profit].

I do, however, for a variety of reasons, wish to maintain my law license and maintain my membership in the WSBA. What I am advocating is that one of the exceptions to the mandatory malpractice requirement is for those in my situation: (1) Retired from actively practicing law, (2) No anticipation of performing any legal work in private practice, (3) Yet still wish to maintain their license and participate in WSBA membership, though (4) maintain the ability to return to practice in the future if desiring to do so.

Naturally, the WSBA should consider the potential (perhaps unanticipated) negative consequences of required attorneys who are retired or essentially retired to spend their limited funds in retirement for malpractice insurance: If that cost becomes too expensive to continue paying, then the retired person's choice may be to formally move to non-license status, depriving the WSBA of the membership fees of individuals in the same or substantially similar situations.

Thank you,

Charles Bates

#19819

400 Washington Avenue; #400

Bremerton, WA 98337

cbates.sers@mindspring.com

360-259-4799 (C)

From: Thomas Hoffmann <thoffmann@hoffmanns.com>
Sent: Monday, August 27, 2018 5:54 AM
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance - Hoffmann WSBA 31533

Mandatory Malpractice Insurance Task Force,

I am late to your discussion, which is my fault.

If I am required to carry malpractice insurance, it will sadly end my legal career.

I have read the proposed exemptions as follow:

The Task Force then drafted a tentative list of exemptions to consider for inclusion in its proposed mandatory malpractice insurance recommendation. The list, with prefacing language, is set forth below: If you carry an active license to practice law in Washington, you must carry the mandated insurance coverage unless one of the following exemptions apply, if done exclusively: 544 Page 3 • Employed as a government attorney, judge, administrative law judge, or hearing officer • Employed by a business entity or nonprofit • Employed by a public defender office • Employed as a mediator or arbitrator • Not providing any legal services, whether or not for compensation

I am 78 years old and have been practicing law for over 50 years. My practice has been and is limited to trademark law. I have never been a litigator. I have never had a malpractice claim.

I have taught trademark law at the University of Washington Law School, among other law schools, and practiced with the Seattle Office of DLA Piper, among other firms. I am a former employee of the United States Patent and Trademark Office.

I have been retired for over 10 years but continue to practice before the United States Patent and Trademark Office for family and friends. To represent parties before the Trademark Office I must be a licensed attorney and a member of a state bar association.

This is my way of staying mentally alert, rather than doing crossword and Sudoku puzzles.

As a member of the WSBA, I pay annual dues and pay to obtain CLE courses, none of which relate to trademark law, and credits. The additional costs of malpractice insurance will push beyond the expenses I am prepared to bear to maintain my limited trademark practice.

Please consider an exemption from mandatory malpractice insurance that would include me.

Thank you,

Tom

Thomas J Hoffmann
Member of the Bar of the State of Washington

thoffmann@hoffmanns.com

Office: 740-427-3740
Cell: 740-398-9108

From: Doug Klunder <[REDACTED]>
Sent: Monday, August 27, 2018 2:15 PM
To: Mandatory Malpractice Insurance Task Force
Subject: Exemption from mandatory malpractice insurance

Dear Members of the Mandatory Malpractice Insurance Task Force,

I am one of those 14% of Washington lawyers who consistently report being uninsured. I have consciously decided against malpractice insurance, simply because I do not believe it is meaningful for my limited form of practice. From the day I obtained my bar license roughly (and even before, as a Rule 9 intern), my entire "practice" has been in the form of volunteer pro bono work for the ACLU of Washington Foundation (ACLU), primarily writing appellate amicus briefs. I believe this has provided valuable resources not just to the ACLU, but to the broader public, by allowing our courts to more fully understand implications of major cases before them, resulting in better informed opinions. I don't doubt that there are other Washington lawyers in similar situations, limiting their practice to the pro bono representation of nonprofit organizations. I therefore strongly urge you to consider lawyers in such situations, and make sure we are exempt from an insurance requirement. Such a requirement would not serve to actually protect any members of the public, but could instead harm the public. I know that if I were required to carry malpractice insurance, with premiums of \$1000/year or more, I would have to seriously reconsider whether I wished to continue this public service, and suspect others in my situation would face similar difficult decisions.

I have not seriously considered the question of mandatory malpractice insurance for lawyers who actually have a practice and members of the public as clients, and therefore I have no position one way or the other on that.

Thank you for your consideration.

Douglas B. Klunder
WSBA #32987

From: AJ Yanasak <[REDACTED]>
Sent: Monday, August 27, 2018 2:45 PM
To: Mandatory Malpractice Insurance Task Force
Cc: rajeev@northwhatcomlaw.com; carla@higginsonbeyer.com
Subject: WSBA - mandatory malpractice insurance

Dear Task Force,

I just received and reviewed your interim report on Mandatory Malpractice Insurance and want to offer the following comments.

While I would generally agree that being insured is a good idea and a best practice, I would strongly oppose the WSBA implementing a rule making it mandatory. Such a rule would essentially make malpractice insurance an additional requirement to the practice of law in Washington and, I believe, it would decrease the number of legal providers available to the community and increase the public's cost of access to these providers.

I am a government lawyer and I have almost always either practiced as a government employee, or for a firm that paid insurance premiums for me. I have never had personal malpractice insurance. Nevertheless, over the years I have frequently assisted friends and family members with various legal issues. Frequently I have done this on my own, at no cost or charging only a very minimal fee to cover expenses. These are not necessarily individuals who are indigent or who would qualify for "moderate means" programs, but they still have legal needs and I am a willing provider. But...if I were required to have malpractice insurance in order to do this on the rare occasions that opportunities present then I would simply not do it, and these family and friends would either choose to go without legal representation or they would have to pay much more than they would have otherwise.

It would not be worth my time or money to pay malpractice premiums just so I could represent friends or family members once or twice a year when these matters arise. I would hate to live in a world where I would not be able to use my legal training, personal and professional judgment, and law license to choose to help people with their legal needs without having to go through some sort of "public interest" or "pro bono" agency.

If the public needs protection from bad lawyers, the better solution would be to better regulate the quality of people who are going to law school and getting law licenses.

If the public needs protection from their own inability to decide for themselves who they want to act as their lawyer then a better solution would be to impose stricter requirements for attorneys to disclose their uninsured status.

If the bar wants to make malpractice insurance a requirement to the practice of law then the WSBA should be the insurer and should recover premiums through license fees and other funding sources that have previously been used for compensating uncovered malpractice.

Requiring all small and solo practitioners to obtain insurance will drive some lawyers out of practice, thereby further decreasing access through a fewer number of practitioners and raising the costs/fees for those who do

remain. Going solo is hard enough, this would just be one more barrier that would make it tougher to impossible.

Mandatory malpractice insurance for WSBA members is a solution in search of a problem. Many lawyers already view the WSBA as a Seattle-centric organization that is out of touch with its members and that does not serve or care about the interests of its members. Mandatory insurance is an issue that proves this viewpoint to be true and that will further alienate many practicing attorneys who are already disaffected.

Please reconsider the impact on lawyers who are not retired and who practice less than half-time or only rarely but who still want to be able to occasionally use their legal knowledge and skills to help the people they know in times of trouble.

Thanks,

Adam Yanasak
WSBA #35506

From: Kathleen Petrich <kpetrichattorney@gmail.com>
Sent: Wednesday, August 29, 2018 10:09 AM
To: Mandatory Malpractice Insurance Task Force
Cc: carla@higginsonbeyer.com
Subject: Comments on mandatory malpractice insurance

Importance: Low

Dear WSBA Insurance Task Force Board and Gov. Carla Higginson:

I am commenting on the your interim report pertaining to mandatory malpractice insurance. I agree in theory that practicing lawyers, with specified exceptions, shall have malpractice insurance for the concerns that you identified in your interim report. For all times of my many years of private practice as a lawyer in Seattle, I did have malpractice insurance.

At the end of April 2017, I retired from private practice in Seattle and subsequently moved to Whidbey Island. I have not practiced as an attorney since my retirement. Yet I continue to maintain my license (and CLE requirements). Why? My answer is two fold: (1) I am currently on the pro tem judge roster in Island County District and Municipal Courts and (2) I leave open the possibility of practicing as an attorney again.

With regard to pro tem judge opportunities, I completed the in person pro tem judge training at the WSBA offices last week and hope that I may be considered for assisting in that capacity (I am open to rural counties —including east of the mountains). For that reason alone I would need to keep my bar membership active but would not need malpractice insurance as an advocate for a particular client.

With regard to keeping open the possibility of practice again, I'm sure you are all aware that there is a shortage of qualified lawyers in rural areas. I also leave open the opportunity to provide pro bono legal services. And it is much easier to keep a license active than to let it go inactive and reactive it in the future. If I were to practice again as a private attorney, I would either obtain malpractice insurance or be covered under an employer policy.

For these reasons, I would request that any specified exception to the mandatory malpractice insurance include my particular retired status where I am not currently practicing as an advocate but (currently) only in a pro tem (judiciary) role.

If you have any questions or would like follow-up commentary, please feel free to reach me at the contact information below. Thank you for your consideration.

Kathleen T. Petrich
Retired Attorney
PO Box 429
Langley, WA 98260
T: 206.579.0815 (cell/text)
kpetrichattorney@gmail.com

From: Ryan Brown <Ryan.Brown@co.benton.wa.us>
Sent: Thursday, August 30, 2018 4:03 PM
To: Mandatory Malpractice Insurance Task Force
Subject: Proposal to Require Malpractice Insurance

Hello,

I am only generally familiar with the idea being considered by the Bar Association to require members to carry malpractice insurance. While I do not have any comments on this time about the general concept, I do have strong feelings about the need for an exemption if such a proposal is passed.

As a government attorney, I believe malpractice insurance would be a waste of resources for me. I would hope that if this moves forward, our Bar would exempt attorneys in the public sector from any such requirement. I understand Oregon does that.

Ryan K. Brown

Chief Deputy Pros. Attorney, Civil
Benton Co. Pros. Attorney's Office
WSBA #18937
Phone: (509) 735-3591
Fax: (509) 222-3705

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From: Daniel Schafer <[REDACTED]>
Sent: Monday, September 3, 2018 12:40 PM
To: Mandatory Malpractice Insurance Task Force
Subject: Comments on Mandatory Malpractice Insurance

Dear Task Force Members,

I am an active attorney licensed in two states with membership in the WSBA. However I have never represented a client in Washington. Please consider a malpractice insurance exemption for attorneys who are not providing services to clients in Washington.

I primarily represent low to moderate income clients in debt claims defense. Even with reduced fees and payment plans I take losses of several thousands of dollars every year when clients stop paying me. I currently do not have malpractice insurance and have not needed it. When I move my practice to Washington, if I am forced to buy malpractice insurance it is likely I will not practice in the same area. Based on what I have read about opening up the consumer law area to LLLT's because of a lack of legal representation in this area I would think the WSBA would want to encourage attorneys to work in this area, not leave it.

Thank you for your consideration.

Daniel M. Schafer
Daniel M. Schafer Law Firm, PLLC
1140 Creek Knoll
San Antonio, TX 78253
210.474.6950
210.247.6144-fax

From: Eric Chavez <eric@mixsanders.com>
Sent: Wednesday, September 5, 2018 12:38 PM
To: Mandatory Malpractice Insurance Task Force
Subject: Opposition to Mandatory Malpractice Coverage

Dear Committee Members,

I write to express my objection to the proposal to mandate malpractice coverage in Washington. I reviewed your preliminary findings, and was abhorred to see no mention of the potential impact on minority members of the bar. Many of us, coming from economically disadvantaged families, exit law school with mountains of debt only to find that legal jobs are scarce. As automation will continue to eliminate many document review and entry-level attorney positions in the coming decade, this trend will accelerate. Opening a solo practice will increasingly become the only option for many of us. As any attorney should know, starting a solo practice is a difficult and expensive task. Requiring mandatory insurance, will only add to that difficulty and expense, especially once a captive market is created. This may even may even lead to otherwise qualified, good minority attorneys, leaving the profession.

The WSBA has a responsibility to protect the public. It also has a responsibility to protect its members, especially its minority members.

--

Eric S. Chavez
Mix Sanders Thompson, PLLC
1420 Fifth Avenue, Suite 2200
Seattle, WA 98101

tel: [206.521.5989](tel:206.521.5989) / 206.981.5648 (direct)
fax: 888.521.5980
web: mixsanders.com

From: [Joe Quaintance](#)
To: [Mandatory Malpractice Insurance Task Force](#); [Joe Quaintance](#)
Subject: Exemption for retired attorney serving as pro tem judicial officer
Date: Friday, September 07, 2018 3:04:47 PM

A specific exemption from mandatory insurance coverage should be allowed for retired attorneys who serve as commissioner pro tempore in Superior Court.

I am over the age of 65 and semi-retired. Occasionally I serve as a Commissioner Pro Tempore at the request of the Superior Court. I am not a full time employee of the Court and I am paid as an independent contractor. I understand I enjoy judicial immunity when I serve as Commissioner Pro Tem. I earn less than \$10,000 / year for my service.

An exemption from insurance coverage should be allowed for retired attorneys who serve as commissioner pro tempore in Superior Court.

From: [Joe Quaintance](#)
To: [Mandatory Malpractice Insurance Task Force](#); [Joe Quaintance](#)
Subject: Exemption for retired attorney serving as pro tem judicial officer
Date: Friday, September 07, 2018 3:13:02 PM

A specific exemption from mandatory insurance coverage should be allowed for retired attorneys who serve as commissioner pro tempore in Superior Court.

I am over the age of 65 and semi-retired. Occasionally I serve as a Commissioner Pro Tempore at the request of the Superior Court. I am not a full time employee of the Court and I am paid as an independent contractor. I understand I enjoy judicial immunity when I serve as Commissioner Pro Tem. I earn less than \$10,000 / year for my service.

An exemption from insurance coverage should be allowed for retired attorneys who serve as commissioner pro tempore in Superior Court.

Joe Quaintance
WSBN 8177
253.327.1825

From: [Cindy Smith](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Re: Comment from the Northwest Tribal Court Judges Association
Date: Friday, September 07, 2018 5:55:03 PM
Attachments: [Letter Regarding Mandatory Malpractice Insurance.pdf](#)

Dear Mandatory Malpractice Insurance Task Force Members,

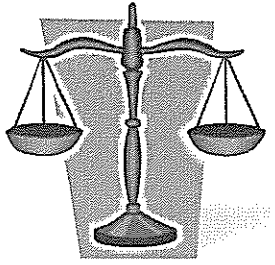
Attached please find a letter from the Northwest Tribal Court Judges Association regarding including tribal court judges as persons who would be exempt from the mandatory malpractice insurance requirements.

Should you have questions or wish further input, please do not hesitate to contact me.

Sincerely,

*Cindy K Smith, Chief Judge
Suquamish Tribal Court
Chambers (360)394-8524*

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Northwest Tribal Court Judges Association

PO Box 138, Lynden WA 98264 Email: esmith@suquamish.nsn.us

Hon. Cindy Smith Hon. Lisa Dickinson Hon. Juliana Repp Hon. Randy Doucet Hon. Jane Smith Hon. Lauren King
President Vice-President Secretary Treasurer Board Member Board Member

September 12, 2018

Mandatory Malpractice Insurance Task Force
Washington State Bar Association
insurancetaskforce@wsba.org

RE: Tribal Court Judge Exemption

Dear Mandatory Malpractice Insurance Task Force:

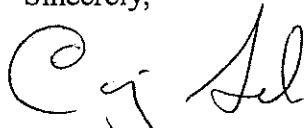
During the August 2018 board meeting of the Northwest Tribal Court Judges Association, the Board discussed the Mandatory Malpractice Insurance Task Force's interim report. One of the Task Force's tentative conclusions is that judges should be exempt from the mandatory requirement to obtain malpractice insurance.

The NWTCA Board, on behalf of its Washington members that are also members of the Washington State Bar Association, requests that the Task Force include tribal court judges in the definition of judges exempted from mandatory malpractice insurance. Tribal court judges serve in both full-time and part-time positions. Some tribal court judges may not serve full-time for one tribe, but serve as part-time judges for multiple tribal courts. Others may serve part-time for one tribe only. In any case, whether serving full-time for one tribe, part-time for multiple tribes, or simply part-time for one tribe, some of our members are serving exclusively as tribal judges, and are not engaged in private practice.

Our request is that if a person is serving as a tribal court judge whether full-time or part-time, and is not engaged in a private practice of any kind, that these judges be included in the definition of judges that are exempt from the mandatory requirement to obtain malpractice insurance.

If we can provide any additional information, please feel free to contact me.

Sincerely,


Cindy Smith
President NWTCA

From: [Hugh D. Spitzer](#)
To: [Katrina Glogowski](#); rajeev@northwhatcomlaw.com
Cc: [Thea Jennings](#); [Rachel Konkler](#); [Doug Ende](#)
Subject: Re: WSBA Mandatory Malpractice Insurance Task Force
Date: Monday, September 10, 2018 5:20:07 PM

Thanks so much for your thoughts on this. I will pass this on to everyone on the Task Force. We are working with Alps, the WSBA's collaborating provider, to be able to deliver insurance to everyone (hopefully!). So far, no one in Idaho has been unable to get coverage since it was mandated this year. We looked carefully at the Oregon model, which is excellent. But it IS expensive. We'll have a final report by next January.

Hugh

Hugh Spitzer
UW School of Law

From: Katrina Glogowski <Katrina@allegiantlawgroup.com>
Sent: Monday, September 10, 2018 1:37:06 PM
To: Hugh D. Spitzer; rajeev@northwhatcomlaw.com
Subject: WSBA Mandatory Malpractice Insurance Task Force

If WSBA mandates insurance coverage (advisable), then WSBA needs to guarantee that members can actually purchase the insurance. I represent financial institutions in several states with a home base in Washington—most insurers will not even process my application. This past year I had only one insurer even give me an offer of coverage.

I practice law in Oregon as well (Idaho and Alaska too!). I am not eligible for PLF coverage since my office is not located in Oregon. However, if WSBA mandates coverage, then the Oregon model is the way to go to guarantee that every member can actually obtain the insurance that we are going to be required to carry.

If cost is the issue (as apparent from the report), then have a sliding scale for the WSBA insurance: \$1200 first years, \$2400 for years 3-5, and \$3500 thereafter. Oregon has exemptions (right on the form for government employees, out of staters, etc.) as well as a payment plan (right on the form) if cost is an issue. The PLF offers excess coverage if that is desired as well.

I have also found that the PLF also provides consistency in that every single attorney knows the process, knows who to contact and knows what comes next. I have personal experience with carriers that go out of business or refuse to renew in Washington which creates its own set of issues.

However, if WSBA mandates coverage, the WSBA will also have to guarantee insurers will provide that coverage no matter the history, practice area (subject matter), practice area (geography) and volume of practice.

If you have questions, I will be more than happy to provide additional information as I am sure that I

am not alone in having difficulties obtaining coverage given my practice area, breadth of practice and volume of practice.

Katrina Glogowski, WSBA 27483



From: [Carrie Benson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Fwd: July Board of Governors Meeting Digest
Date: Tuesday, September 11, 2018 9:40:05 AM

Hi. I wanted to provide a comment to the Mandatory Malpractice Insurance Task Force. I haven't researched the work being done so perhaps you've already considered this point.

I am a very part time attorney. I was originally admitted to Minnesota in 1997 and relocated to Washington State in 2008. In between having children I have practiced law from my home office. I was an in-house attorney in Minnesota and my current legal work is split about 50/50 with half being paid work as essentially an extension of a large corporate law department, for whom I mostly do commercial contracts under the direction of one of their attorneys. I also have a non-profit practice with most of that work unpaid. I generally bill under \$30,000 of work a year.

In the past I've had significant challenges obtaining insurance. Many carriers simply refused to cover me, because year to year my paid work often comes through one client (either my current client or another client), and so under their requirements they felt I should fall under the client's policy. But of course my clients do not see it that way. One of my client's does require their attorneys to carry insurance, and that year in particular it took me months to find a carrier. It was quite stressful to think I might have to turn down the opportunity for paid work because no carrier would insure me.

The work I'm doing is EXTREMELY low risk from a malpractice perspective. I do not do any courtroom work and most of my paid work is under another attorney's direction. In recognition of this I did not choose to carry insurance when I first started out as a solo. Also, given what I bring home, the expense is quite high. It pains me to write a check for \$1,300 every year for my coverage, when that might be an entire month's income.

I do now carry a policy but every year I wonder if I'll be dropped again.

So, I think it's very important that you consider that a once-size-fits-all approach will alienate at least a portion of your constituents, and I would suspect disproportionately that will affect women attorneys who have stepped back from their careers due to family obligations. It's important to me personally that I've been able to continue working as a lawyer and contributing to the profession while living in a rural community and raising my children. My local nonprofit clients are so grateful for my services and they are getting a heck of a bargain with a 20+ year attorney who used to have a senior in-house corporate position. And I'm really not concerned that my insurance carrier will find themselves defending a claim in my work helping our local youth soccer nonprofit reinstate their corporation and apply for tax-exempt status (what I'm working on today).

Thank you,
Carrie Benson

Law Offices of
Carrie L. Benson, PLLC

(509) 493-2190 office
(612) 743-9118 mobile
carriebenson@mac.com
Licensed in WA; inactive in MN and OR

Begin forwarded message:

From: Washington State Bar Association <noreply@wsba.org>
Subject: July Board of Governors Meeting Digest
Date: August 2, 2018 at 11:33:56 AM PDT
To: [REDACTED]
Reply-To: noreply@wsba.org

Washington State Bar Association



A summary of the Board of Governors meeting July 27-28 in Vancouver, WA

Top Takeaways

1. Insurance? Members of the [Mandatory Malpractice Insurance Task Force](#) said in an [interim report](#) that they are likely to recommend malpractice insurance as a condition of licensing for all active lawyers, with to-be-determined exemptions. Before the final report is due in January, they want YOUR feedback, especially about specific details like exemptions and minimum coverage levels. More info below.
2. Insurance! WSBA has the green light to set up a private health-insurance exchange to provide another option for members across the state. More info below.
3. The board took a first look at [WSBA's draft 2019 budget](#), which will be on the agenda for action in September. Subject to Washington Supreme Court review, all license types will have the same active member license fee—\$453—next year. More info below.
4. Rules, rules, rules: Various WSBA entities have recommended amendments and additions to the Rules of Professional Conduct, Superior Court Civil Rules, Criminal Rules for Courts of Limited Jurisdiction, and Superior Court Criminal Rules. More info below.
5. We're honoring a fantastic group of legal luminaries in September—get your tickets now for the Sept. 27 [annual APEX Awards dinner](#). You're sure to leave inspired.

Meeting Recap

- **Local Hero Awards:** WSBA President Bill Pickett presented Local Hero Awards to [Lisa Lowe](#) (nominated by the Clark County Bar Association) and [David Nelson](#) (nominated by the Cowlitz-Wahkiakum Bar Association) for their outstanding legal and community service.
- **Mandatory Malpractice Insurance.** The [Mandatory Malpractice Insurance Task Force](#) issued an interim report with a tentative conclusion that malpractice insurance should be mandated for Washington-licensed lawyers, with specified exemptions (in Oregon, for example, exempted groups include government attorneys, in-house private-company attorneys, and others). The task force's preference thus far is to mandate a minimum level of coverage, purchased through the open marketplace. Before its final report is due in January, the task force will focus on details (what exemptions? what minimums?) for rule drafting. Members are encouraged to read the [interim](#)

[report](mailto:insurancetaskforce@wsba.org) and provide comments to insurancetaskforce@wsba.org. Please note: Limited License Legal Technicians and Limited Practice Officers are already obligated to show proof of financial responsibility, which is typically established by certifying malpractice insurance coverage.

- **Member Health-Insurance Pool.** With rising health-care costs and uncertainty about the Affordable Care Act, members have been reaching out to WSBA over the past year asking what we can do to provide health insurance. In response, we've explored the insurance landscape and talked to members, other bars, insurance experts and officials, and various providers. Our research indicates the best potential to offer WSBA members another insurance option with competitive rates is through a private exchange. We will soon partner with [Member Benefits, Inc.](#), a company that creates private exchanges for associations such as the State Bar of Texas and the Florida Bar. We will let all members know when that benefit is available.

- **Budget and Audit Committee Recommendations.** The Budget and Audit Committee presented [WSBA's draft 2019 budget](#) for consideration to the board, which will take action on it in September. The draft budget maintains programs and services to fulfill our regulatory responsibilities, serve and protect the public, and support members to be successful in the practice of law. The budget is built on previously set lawyer-license fees of \$453. As part of the budget-building process, the board approved:

- A new Continuing Legal Education (CLE) revenue-sharing model with sections. Section leaders widely expressed support for this new model.
- License fees for Limited Practice Officers (LPOs) and Limited License Legal Technicians (LLOs): After debate, both active-member fees were set at \$453 for 2019 (the Budget and Audit Committee came with a recommendation of \$200). The board also recommends that LLLTs and LPOs pay a \$30 Client Protection Fund assessment, which would need to be specifically ordered by the Washington Supreme Court. The majority of governors decided that, as WSBA members with full access to benefits and services, LPOs and LLLTs should have the same license fees as lawyers. The Washington Supreme Court will review these fees for reasonableness.
- The Law Clerk program annual fee: After remaining at \$1,500 for 20 years, the fee will increase to \$2,000 next year.

- **Free Legal Research Tool for Members.** WSBA currently contracts with Casemaker to provide members with a free legal-research platform. WSBA recently launched a request for proposal and has been exploring whether to remain with Casemaker, switch to Fastcase, or offer both. To evaluate members' preference, WSBA conducted a member-wide survey with demo links, in-person usability tests, and virtual focus groups. Governors discussed the pros and cons of choosing one platform over another or even offering both. WSBA will be maintaining Casemaker and continuing to explore whether to add Fastcase as an additional member benefit.

- **Rule Recommendations from the Civil Litigation Rules Drafting Task Force:** This task force was chartered in 2016 to suggest rules necessary to implement the board's previous task force that recommended various changes to address the escalating cost of civil litigation. The recommended amendments and additions to the [Superior Court Civil Rules](#) (CR)—including 1, 3.1, 11, 16, 26, 37, 53.5, and 77—focus on the principle of cooperation and require and/or encourage cost-efficient procedures. ([The full amendments are in the board materials starting on page 215.](#))The board will take action in September to approve the recommended amendments for submission to the Washington Supreme Court.

- **Recommendations from the Court Rules and Procedures Committee.** As part of the Washington Supreme Court’s review cycle to bring rules up to date with current law, the Court Rules and Procedures Committee has proposed amendments to Superior Court Criminal Rules (CrR) 1.3, 3.4, and 4.4; Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) 4.2, 4.4, and 7.3; and Civil Rule (CR) 30. ([The full amendments are in the board materials starting on page 323](#)). The board will take action in September to approve the recommended amendments for submission to the Washington Supreme Court.

- **Amendments to RPCs Concerning Marijuana-Related Conduct.** As recommended by the Committee on Professional Ethics (CPE), the board approved for submission to the Washington Supreme Court amendments to comments to the Rules of Professional Conduct (RPC) to continue to allow Washington lawyers to assist those participating in the marijuana industry. These changes were in response to new federal enforcement priorities regarding marijuana; they remove contingency language in Comment [18] to RPC 1.2 regarding federal enforcement priorities and add Comment [8] to RPC 8.4 to clarify that a lawyer’s conduct in counseling a client regarding marijuana law would not establish a basis for disciplinary action under the rule ([The full amendments are in the board materials starting on page 166.](#))

- **Proposed Bylaw Amendment Regarding Endorsing Candidates.** WSBA bylaws currently prohibit governors, WSBA officers, and the executive director from publicly supporting or opposing candidates in an election for public office in Washington state if being an attorney is a prerequisite for office. Governors considered a proposed amendment that would extend the endorsement prohibition to any position on the Board of Governors. This amendment will be on the September agenda for action.

- **Updates from other board entities:**

- o **Addition of New Governors Work Group:** This group met for the first time in July with a second meeting scheduled for Aug. 14. All materials are online. The group will make a recommendation to the board in September about a proposal to eliminate three yet-to-be-seated governors (two public members, one LLLT or LPO) and to allow LLLTs and LPOs to run in open governor elections in congressional districts.

- o **Member Engagement Work Group:** The board approved the charter and roster for a new work group to explore how to best engage members and facilitate two-way understanding.

- **Selection of 2018-2019 WSBA Treasurer.** Congratulations to Governor Dan Bridges, whom the board selected as its incoming Treasurer. Kudos and appreciation to outgoing Treasurer Governor Kim Risenmay.

- **Working Retreat:** The board held its annual retreat before the meeting on Thursday, July 26. Governors focused on communication and relationships.

- **Conversation with the Washington New and Young Lawyers Committee (WYLC).** WYLC Chair Mike Mocerri and Chair-Elect Kim Sandher asked for WSBA to partner on solutions such as access to an affordable health-care exchange and reducing debt load/promoting public-service loan forgiveness for those coming out of law school.

The agenda and materials from this Board of Governors meeting, as well as past meetings, are [online](#). The next regular meeting is September 27-28 in Seattle. The Board of Governors is

WSBA's governing body charged with determining general policies of the Bar and approving its annual budget.

WSBA seal



Washington State Bar Association

1325 Fourth Ave., Suite 600

Seattle, WA 98101-2539 | [Map](#)

Toll-free: 800-945-9722

Local: 206-443-9722



Official WSBA communication

All members will receive the following email, which is considered official:

- Licensing and licensing-related materials
- Information about the non-CLE work and activities of the sections to which the member belongs
- Mandatory Continuing Legal Education (MCLE) reporting-related notifications
- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications



From: [Jerry Hall](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Saturday, September 15, 2018 2:02:09 PM

Dear Task Force Members

I have been in private practice in the State of Washington since 1973. Approximately three years ago, I decided to become semi-retired and limit my practice to serving as a Settlement Guardian ad Litem on cases involving minors and incapacitated persons. I am recommended by both Plaintiff and Defense attorneys and appointed by the judge to review settlements, discuss with the parents or guardians as to the reasonableness of the settlement and write a report to the court. My liability exposure on this process is Zero as the final decision rests with the court. I currently work out of my home to keep the overhead down. If I were required to maintain malpractice insurance for such limited activity, I do not believe I would be able to maintain my practice, such as it is. I would ask that you consider an exemption for attorneys in my position. Thank you for considering my request. Jerry W. Hall Bar # 5903

From: [Kate White Tudor](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on malpractice insurance study
Date: Saturday, September 15, 2018 2:14:29 PM

Dear Insurance Task Force Members,

I read the recently published article in the NW Lawyer with interest and concern. I have an active bar license, but I do not practice law in Washington State. I own my own lobbying firm, and I advocate for my clients to the Washington State legislature and administrative agencies in their processes for making laws, rules, and policies. Over half (I don't actually know how many) of lobbyists do not hold law degrees. Lobbying is not a state-regulated profession (aside from required financial disclosures). I am careful in not practicing law for my clients—I have practiced in the past (in Texas), and I have built a network of attorneys I refer to through my membership with the Washington State Society of Health Law Attorneys as well as folks I've met while teaching as adjunct faculty at Seattle U law school.

I hope the bar ultimately provides an exception for mandatory malpractice that includes people who are not engaged in the practice of law.

If the bar were to require malpractice insurance and did not provide an exemption for lobbyists who do not practice law, I would drop my bar license. It only provides value to me as a marker of competence, and my business is solid enough at this point I do not need it. This might also take me out of the pool of eligible attorneys for pro bono work and teaching, but I don't do enough of either for it to be worth carrying malpractice insurance (which isn't required to do either of those things either).

I know lobbyists are an invisible tiny minority of bar members (I have never seen a CLE that was professionally relevant to me), and I have considered long and hard in paying my bar dues whether there is anything about being licensed that makes sense for me. I have continued to remain licensed for eleven years of my lobbying work, starting as risk mitigation in case I had to fall back to practicing law. But I love what I do, I don't plan to change, and a malpractice requirement might just make it a clearer choice to let my license go.

Thanks for the opportunity to comment.

Best wishes,

Kate

Kate White Tudor, J.D.
Advocacy—Strategy—Policy
360-402-1272
kate@whitetudor.com

From: [C.B. & \[REDACTED\] Waldrop](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Sunday, September 16, 2018 7:06:13 PM

In my opinion, mandatory malpractice insurance is unnecessary. Based on experience in the industry, the WSBA should only advise members of the bar what limits of exposure they should be prepared to cover, however they choose to do it. Also, I agree that non-practicing members of the bar need not insure.

Carleton B. Waldrop
Clarkston, WA
WSBA # 3961

From: [Britt Tinglum](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Britt Tinglum](#)
Subject: Mandatory Malpractice Insurance
Date: Monday, September 17, 2018 8:22:15 AM

Hello -

I've been an attorney in WA for 30 years. I was lucky to be able to retire from active practice when I turned 55 yrs. old. I am a proud member of the WSBA and keep my license active. I enjoy most of the continuing legal education seminars I attend and often attend those geared towards senior attorneys.

I was disheartened to read that the WSBA is considering mandatory malpractice insurance for all. I'm sure the insurance industry has been able to paint a horror story picture of the dangers of not mandating this program. Please remember that such numbers can be manipulated and without an opposing view from a neutral expert the WSBA could easily be swayed by padded statistics.

In addition, the WSBA should think hard about unintended consequences of such a paternalistic program. Is the WSBA prepared to regulate and administer an insurance program that, because it is required, could price-gouge small firms and solo practice attorneys? I expect the insurance industry is promising it will be fair, but history has shown that for-profit insurance companies will take advantage of any such mandatory program. And it's not just price - insurance companies could make low-cost insurance requirements so onerous to fulfill that almost no one is eligible. Such practices are rife in both the auto and home insurance industries. Is the WSBA really equipped and ready to monitor and regulate such practices? That will take extra employees (with the correct expertise) and will likely require an increase in WSBA dues to cover.

Baby boomer attorneys like myself are retiring, but remaining active WSBA members for a myriad of reasons - a potential return to practice, pride of profession, etc. I know that I will retire my license if this program is activated. I'm sure I am one of many.

Sincerely,
Britt L. Tinglum
#19090

From: [Adella Wright](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on Mandatory Insurance
Date: Monday, September 17, 2018 9:11:46 AM

I follow your meetings with some trepidation, as a (mostly) stay and home mom whose future may be very impacted by your decisions. When my daughter was born, I was able to work with her for some months before it became too challenging. At the time, I sadly converted my status to inactive, thinking that I would be unlikely to practice law at that time. It was very disappointing to do so, as it also interfered with the small volunteer work that I had been able to do.

When my daughter became old enough for preschool, I began to consider looking for work again. I was alerted to an ideal job. Unfortunately, the red tape involved in converting to active was sufficient for me to lose that opportunity.

I am now an "active" attorney, although I am not practicing. Given the costs of childcare, it remains very difficult to engage in a full or part time practice. Employment opportunities at this juncture are not plentiful. I do volunteer. When I do, it is through organizations who carry their own insurance under which I would be covered. I still keep myself available for job opportunities as they arise and it's largely for these reasons - volunteering and availability - that I prefer to retain my active status. I know I have provided valuable services to the community by using my law license. I also know that my time as an inactive attorney has impacted my employability and marketability more than I'd anticipated before having my daughter. Volunteering at least helps me keep some skills for a future where I return to work. I would never want to work without some malpractice insurance covering my work, but I do not at this point.

I do not think I could afford the extra insurance requirements in this place and it would break my heart to turn my back on the legal profession as a future career. I know there is discussion of potential exceptions, but I do not see my situation addressed.

Best wishes as you undertake this gargantuan task.

Adella Wright

From: [Dick Holmquist](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment: Mandatory Professional Insurance Proposal
Date: Monday, September 17, 2018 10:49:45 AM

To the WSBA Insurance Task Force:

I am an active status attorney member of the Washington State Bar Association to which I was admitted in September 1969. Having retired from active law practice in 2003, I have nonetheless maintained my active Bar membership for this past 49 years by continuing to attend CLE presentations (both live and via the internet), by conforming to all the various requirements imposed by the Bar Association upon its active members, and by paying the required fees for active status members. Even though I have not practiced actively since 2003, for a host of personal reasons I have wished to maintain my full licensure status.

Now I read about the proposal for the Washington bar to become one of the tiny number of states where mandatory insurance is imposed, a result doubtless to desired by the insurance industry in this state. Apart from the fact that I am opposed on principle to this absurd experimentation by our state's bar with a disruptive measure more than 45 states have yet to adopt, I simply want to point out that adoption of such a costly requirement and imposing it on persons such as me who wish to maintain their active status bar membership even though not engaged in the active practice of law would most certainly drive us out of the Washington State Bar Association altogether.

As a 49-year active status member of the WSBA, I strongly oppose adoption of any such experimental mandatory insurance requirement by the Washington State Bar Association.

Sincerely,

Richard H. Holmquist
1200 6th Avenue North #4
Seattle WA 98109
WSBA #2465

From: [Robert Phed](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Objection to mandatory insurance
Date: Monday, September 17, 2018 11:20:00 AM

Objections:

Unclear how the Oregon PLF would be applied to satisfy the WA mandatory requirement or is the WA mandatory requirement would be in addition to the coverage already offered by another State's bar mandatory insurance plan (OR PLF)?

Do not go with the Oregon model. It is patently unfair as the oft maligned solo and small firm practitioners subsidize the insurance coverages for the big guns. I don't think it is fair for me to pay the same amount of insurance as the guy whose cases are valued at 1M or more, while mine are \$50K at best.

The WSBA is creating a problem where there were none. Just another reason to overgovern.

My WSBA # 42399.

Robert S. Phed
Attorney at Law
1001 SW 5th Ave, Ste 1220
Portland OR 97204

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From: [Nancy Combs](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Opposition to mandatory malpractice insurance
Date: Monday, September 17, 2018 1:47:00 PM

Dear Insurance Task Force members:

I am a solo practitioner handling exclusively federal Social Security Disability law in California with a Washington State license. I have been practicing law for 27 years, 8 of those years handling SSDI claims. I have never had a malpractice claim against me. While I have no statistics to back it up, I suspect the insurance loss record for SSDI malpractice claims is low given the fact that Social Security benefits are limited.

Nevertheless, when I applied for malpractice insurance last year I was put in a "high risk" pool because I practice in a different state from where I am licensed. I was quoted a premium of \$6,000, an expense that would put me out of business should I be required to pay it, given the high cost of living in the San Francisco Bay Area. Attorney fees are limited by federal rule so I am unable to raise my rates to accommodate the high cost of malpractice insurance.

Should the task force institute mandatory malpractice insurance, I will be forced to surrender my Washington bar license. I urge the task force to reconsider its position.

Respectfully,

Nancy Beth Combs
WA bar #42181
Social Security Disability Attorney
149 W. Richmond Avenue #303
Richmond, CA 94801

206-931-5477 (cell)
510-730-3082 (office)
510-787-2762 (fax)

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From: [Evan Inslee](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Exceptions to mandatory insurance
Date: Monday, September 17, 2018 2:21:52 PM

Dear Sirs/Madam:

As probably the longest practicing attorney in the WSBA,(since 1956), I do continue a limited practice. It is limited to (1) representing members of the military pro bono pursuant to the American Bar Association Assistance to the Military program. 90% of the work is in domestic areas; (2) pro bono services to members of my church to whom I may be referred who have a variety of legal needs ranging from social security issues to boundary disputes (3) services for fee that do not require any court filings or court appearances. If an estimated \$3,000 annually is required for malpractice coverage I will have to stop all services.

I can see the need for a mandatory insurance program for practitioners, even though in 62 years of practice I have never been sued for malpractice. My request is that either an exemption be made for coverage for services of a charitable nature to low income and military personnel or that as a condition of providing coverage insurance carriers must make available low cost coverage with low limits to cover attorneys providing charitable or military pro bono assistance. Thank you.

Evan E Inslee
253 677 9989
3728 196th Ave Ct E
Lake Tapps, WA 98391-9029

From: [Pam -](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Monday, September 17, 2018 3:34:34 PM
Attachments: [Ltr to WSBA Insurance Task Force .pdf](#)

Gentlemen,

Attached please find correspondence from attorney Robert C. Scanlon in response to the invitation contained in the present edition of NW Lawyer regarding mandatory malpractice insurance.

Sincerely,
Pam Ryan, Legal Assistant to
Robert C. Scanlon

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Kathleen M. Scanlon
Administrative Assistant

ROBERT J. ROBERTS
(1952-1993)
ROBERT D. DELLWO
(1917-2015)
ROBERT C. SCANLON

September 17, 2018

SENT VIA E-MAIL TO: insurancetaskforce@wsba.org

Gentlemen:

This letter is in response to the invitation contained in the present edition of NW LAWYER on the subject of mandatory malpractice insurance.

To begin, I have been in practice for more than 41 years. I have always maintained malpractice insurance and it is my intention to do so in the future.

However, the statement:

At this point, the Task Force favors mandatory malpractice insurance through a free-market model (allowing lawyers to purchase insurance from any provider they wish) as a condition of licensing.

Basically, puts the bar association at the mercy of the insurance industry.

I recognize that this is probably not an issue for a larger firm but I am a solo practitioner. I practice in the area of collections.

At my last insurance renewal one carrier refused to quote a premium simply because of my area of practice. My insurance broker has also pointed out to me that a number of carriers are "leaving the market".

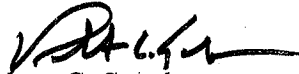
The bar cannot provide assurance that a remaining carrier or carriers may simply chose to increase their premiums by 20 to 25%.

If that were to occur and malpractice insurance simply became prohibitive what would be the result? Would I be suspended?

Washington State Bar Association
September 17, 2018
Page 2

If the bar association cannot control the cost of insurance premium, then I believe there should be a "out" for a practitioner who simply cannot afford malpractice insurance because the carriers simply chose to "jack up the rates" because attorneys "have no choice".

Very truly yours,



Robert C. Scanlon
Attorney at Law

RCS/pcr

From: [Judith A. Maier](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: No
Date: Monday, September 17, 2018 5:00:39 PM

In a word, mandatory malpractice insurance should **not** be required. Primarily, I teach. Occasionally, I assist small business owners with deciphering contracts or wording contracts, a task for which I have many years of experience. But the income I derive from this is nominal. To require that I spend \$3,000 or more for insurance when I do not receive anywhere near that amount for the services I render will force me to simply stop helping people – often those who can least afford it. This is an imprudent idea particularly when we are facing a severe access to legal representation situation throughout the state. All this would do is to compound it by forcing more attorneys to stop assisting.

Judith Maier

From: chicago1@centurytel.net
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: comments on Task Force re malpractice insurance
Date: Tuesday, September 18, 2018 8:34:08 AM

Thank you for the opportunity to comment and for the explanatory article in *NW Lawyer* of August, 2018. I see you are considering keeping a no-insurance-required status for retirees who do not practice law and I urge you to adopt this idea, and here are some reasons why.

Some prior practices don't even lend themselves to taking on the rare client. You seem to suggest that some retirees are going to sneak in a client! And so make them pay. (See my last paragraph on that.) Not all retirees ever practiced law for the public and not all have the resources or skill set to even consider it now, since mayhap, they were government attorneys beforehand doing highly specialized practices requiring a stable of technical support? For example, those who did environmental law (me) for industry or government? Like tax law, environmental law has a ginormous body of regulations and most who do it, work with engineers, chemists, biologist, etc. It is not a small shop type of law. Such attorneys are highly unlikely to start taking private clients. But they might want to lend their broad knowledge to salmon groups, or a local bar that does not generally need to know federal administrative law, in the form of a lecture to other attorneys who usually just do family or criminal law. As I do and have done. So by treating us all as fungible, you are not recognizing some attorneys would never go into private practice. Even after retirement.

What we can do, but it is not practicing law—but still nice to say we are a bar member: I am retired as of 4/28/2017 from being an in-house attorney embedded in the Natural Resources Department of the Quileute Tribe (La Push), for the prior 20 years. I still live in Forks and am active now as a volunteer on about 7 different Natural Resources Committees and they value my legal training. I may give a PPT talk soon to them (except for the federal marine sanctuary one) on the WA Open Meetings Act, because the issues keep coming up. I am also a member of the Clallam County Bar and about two months after retiring, gave a presentation on the *Hirst* decision to that group and to the North Pacific Coast Lead Entity and Coastal Salmon Partnership (salmon restoration groups). While still working at Quileute, I gave a talk on the culvert case (*U.S. v Washington*, subproceeding 2001-1) to these groups. They were gratefully received as these decisions touch on all who own property and pay taxes; but they don't read these cases, as they are not in their usual arena of experience. In the Coast Salmon Foundation, I review their contracts *in my capacity as a Board Member*. They have insurance for Board Members and I guess I could do this without a license just in my capacity as a Board Member—all the board members can review the foundation contracts--but it seems desirable for them, to know I have more background in doing this. FYI, this is an uncompensated position.

But I am not in private practice and never was. Even beforehand in Texas and Illinois, I was embedded in corporate legal departments and briefly (two years) in City of Houston's Public Works. The only time I ever served clients in the usual attorney way was when I was a student at Northwestern University's Law School—three years in their Legal Clinic. It is really not something I can do. *Don't have the expertise or training to open up a practice, however rare, and have no intention of doing it.* Example: Clallam -Jefferson Pro Bono Attorneys keep wanting me to help advise poverty clients at their periodic public gatherings and I keep refusing, since I don't know

these areas of law and really cannot be of help. I am not going to posture or assume some kind of knowledge I don't have.

Money issue: Please know, those who work inside small governments like remote tribes (me) don't have pensions, just what we can sock away in a 401k from a non-competitive salary, because we loved the work. But it does not exactly create a client base! And when we leave, a new person takes our places. In the article, you say everyone can find \$3000 to pay for the insurance. *Not so.* And even the dues and CLEs are a financial challenge now. I have to tell you after 20 lean years at Quileute and only small savings and only Social Security (no pensions, just that 401k; and I was the victim of "being over 50, layoffs" in Texas and ate the savings before finding work with the tribe), *it is a tough decision to even keep up dues and CLE costs.* Nevertheless, *I want to*, but for you to make me buy malpractice insurance would be the financial straw that breaks this broke camel's back! I think it would tip the financial scales. I will have lost my hard-earned honors and respect if I cannot say I am attorney, but I do need to watch every penny. Already I am dipping into savings for some matters. Scary. (Do you folks realize what Medicare and associated Supplemental and Dental insurance cost outside the workplace? Huge.)

Recommendations: I really still want to say that I am an attorney and contribute with that hat on, to various forums. It gives street cred. And by jingo, I have earned it! What if you rule that those who have retired and are not engaged in private practice do not have to pay malpractice insurance, but set some guidelines for what constitutes practice, and make it clear they will be brought before WSBA and either suspended, censored, or have license revoked if they violate this? And/or-- assuming it was without malice aforethought, have a provision for them to reinstate if by some miracle someone wants to give an ageing attorney a job, and if by some miracle that aged body is up to it still. (I retired because my health was deteriorating and the 60-hour weeks had become too difficult.)

Thank you for considering the foregoing.

Katherine Krueger, WSBA 25818
790 J Street, PO Box 1607, Forks, WA 98331
(360) 374-4311, cell (360) 640-0762

From: [Joseph R Breed](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on Mandatory Malpractice Insurance
Date: Tuesday, September 18, 2018 9:43:38 AM

I am a retired in-house lawyer who serves as legal advisor to the board of the family-owned parent company of my former employer. That board is my only client. Exempting only in-house counsel of private company lawyers from mandatory malpractice insurance would not cover me. I don't know what the cost would be for the insurance, but I suspect it would make it uneconomic for me to continue to serve as legal advisor to the board. I feel relatively certain that the family board would waive a requirement that I have malpractice insurance if that were an acceptable alternative.

Joe Breed

From: [Hugh D. Spitzer](#)
To: [Hillary Madsen](#)
Cc: [Thea Jennings](#); [Rachel Konkler](#); [Doug Ende](#)
Subject: RE: Malpractice insurance comment?
Date: Tuesday, September 18, 2018 4:12:22 PM

Hilary,

First, your comment is received! (And as you see, I'm cc'ing the relevant folks at the WSBA. Everyone on our Mandatory Malpractice Insurance Task Force will get a copy.)

Second, we have heard this comment before, and it's helpful to hear it from you. Your clients are in a different context.

Third, watch for an announcement within the next couple of weeks of an in-person+on-line forum that our Task Force will be holding next month, to get testimony from interested WSBA members.

Hugh

Hugh Spitzer
Professor of Law
University of Washington School of Law
Box 353020
Seattle, WA 98195-3020
206-685-1635
206-790-1996 (cell)
Papers on SSRN: <http://ssrn.com/author=1514923>

From: Hillary Madsen <Hillary.Madsen@ColumbiaLegal.org>
Sent: Tuesday, September 18, 2018 4:03 PM
To: Hugh D. Spitzer <spith@uw.edu>
Subject: Malpractice insurance comment?

Dear Dr. Spitzer,

How can I submit an official comment about malpractice insurance?

At the institutions project, we have received complaints from prisoners with credible claims of attorney malfeasance who (practically speaking) cannot sue their attorney because he is uninsured. These prisoners are often ineligible for the client-protection fund because of lack of documentation or because the fund would characterize the attorney's actions as malpractice. As a self-regulating body, we have a responsibility to try to put people harmed by attorneys back in their original

position. This responsibility is heightened in the context of prisoners who have lost their personal freedom.

I would be surprised if other civil legal services organizations have not heard similar complaints – has outreach been made into the nonprofit world?

Thank you,
Hillary

Hillary Madsen, Staff Attorney

Pronouns: she, her, hers

Columbia Legal Services

Institutions Project

101 Yesler Way, #300 | Seattle, WA 98104

Seattle office: (206) 464-1122 x147

hillary.madsen@columbialegal.org | www.columbialegal.org

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From: [Gail McGaffick](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: comments on mandatory insurance
Date: Wednesday, September 19, 2018 1:55:54 PM

Hello WSBA Task Force,

I found it informative to read the NW Lawyer article on the subject of mandatory malpractice. Thank you for writing it.

As someone who works in the legislative arena, I thought it was interesting that WSBA is looking to adopt a policy that other countries use. But, in the United States, only two states currently require mandatory insurance. Legislation based on a two state trend very rarely succeeds in the state Legislature. The fact that your Task Force appears to be headed in that direction is indicative of the fact that in Washington State bar membership is mandatory.

I am someone who is a non-practicing attorney, but who still wants—so far—to maintain my license. I will admit that I thought about it again this summer, as I paid \$750 for only ½ of CLE webinars that I will need in order to report in 2019-- on topics totally unrelated to the work I do. Although I will admit getting ethics credits is always a good idea, regardless of where you work, because all attorneys—in private practice or not—are held to the same ethical standards.


Bottom line, if you require me to obtain malpractice insurance as a non-practicing attorney, I will terminate my WSBA membership. I don't need a WSBA membership to do what I do—but I like having it. The reality is that the cost is already too high with bar dues, and CLEs—even on sale. In California, where I maintain an inactive membership—it's now free since I turned 70. I like their thinking!

So, please—do not create more disincentives for me to maintain my WSBA membership. I've been a member for 45 years, and I was hoping to make it to 50.

Thank you for listening.

Gail

Gail Toraason McGaffick


360-481-3818

From: [Jennifer Tucker](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: comments on malpractice insurance proposal
Date: Wednesday, September 19, 2018 2:52:26 PM

>

> Dear committee,

>

> I recently read you're article on the proposal for mandatory malpractice insurance and your request for comments. I am against this proposal. I am a stay at home parent. I do not currently practice law, but I keep my license active in case financial circumstances ever require me to return to work. I have avoided going on inactive status because the requirements to return to active status have become onerous. In particular the requirement that a special course be taken after six years and that the bar exam be retaken if you are on inactive status for more than 10 years. Instead, I complete my regular MCLE requirements in order to keep an active license. If you are going to require malpractice insurance, that would simply be too expensive for someone like myself to pay when I am not generating any income, let alone income from practicing law. It should be sufficient for folks such as myself to attest that we have an active license, but are not currently practicing, and to obtain a waiver from the malpractice requirement. I see this proposal for mandatory malpractice insurance as particularly detrimental to women attorneys who choose to take time off from their careers to be with their children.

>

> Thank you for asking for input,

>

> Jennifer Wright Tucker

>

From: [Gregory](#)
To: [Mandatory Malpractice Insurance Task Force](#); spith@uw.edu; john.bachofner@jordanramis.com; stan_bastian@waed.uscourts.gov; dan@mcbdlaw.com; christy@myllit.com; gretchen@halehana.com; pjg@randalldanskin.com; pl.isaki@comcast.net; mark@johnsonflora.com; [REDACTED] kara@appeal-law.com; evanm@jdsawlaw.com; spierce@davisrothwell.com; pinkhamb@seattleu.edu; tstartzel@ks-lawyers.com; anniey@atq.wa.gov; [Doug Ende](#); [Thea Jennings](#); [Rachel Konkler](#); [NWLawyer](#)
Subject: Mandatory malpractice insurance comments
Date: Wednesday, September 19, 2018 4:48:58 PM

Dear Mandatory Malpractice Insurance Task Force members,

Since the purpose of investigating mandatory malpractice is to protect the public, then all options that do so should be investigated, including mandatory financial responsibility, which does not appear on the list of Task Force "possibilities considered".

An attorney who certifies that he or she has a net worth excluding personal residence in excess of \$2 million (or higher) should not be forced to purchase malpractice insurance. This would avoid the forced contribution to insurance company overhead and profit that insurance premiums require. Mandatory financial responsibility through either insurance or net worth would also protect personal liberty by preventing forced engagement with the insurance industry, while fully protecting the public.

I am worried about the burden that mandatory malpractice insurance would place on semi-retired attorneys or attorneys with a very limited practice. Exempting attorneys with gross receipts of less than \$50,000 per year would remove an onerous burden on the attorney, but not necessarily protect the public. Mandatory financial responsibility would allow the cost of insurance burden to be lifted while protecting the public. If mandatory malpractice insurance is required without a financial responsibility alternative, there should however be a *de minimis* exception to avoid undue burden on some attorneys.

The idea that insurance is necessary because insurance companies will settle, when an attorney might not, could further assault the rights of attorneys. To avoid this, the Bar Association should require a "consent to settle" clause in all malpractice insurance so the insurance company cannot settle without the consent of the attorney. In addition, to protect the public the Bar Association should require that all malpractice policies not be wasting, that is defense costs should not reduce the limit of coverage.

Respectfully,

Gregory Lyle
WSBA #7692

From: Gregory <[REDACTED]>
Sent: Thursday, September 20, 2018 5:02 PM
To: Hugh D. Spitzer
Cc: john.bachofner@jordanramis.com; stan_bastian@waed.uscourts.gov;
dan@mcbdlaw.com; christy@myllt.com; gretchen@halehana.com;
piq@randalldanskin.com; pl.isaki@comcast.net; mark@johnsonflora.com;
[REDACTED] kara@appeal-law.com; evanm@jdsawlaw.com;
spierce@davisrothwell.com; pinkhamb@seattleu.edu; tstartzel@ks-lawyers.com;
anniey@atg.wa.gov; Doug Ende; Thea Jennings; Rachel Konkler
Subject: Re: Mandatory malpractice insurance comments

Hugh,

Thanks for your response. A letter of credit still requires use of an insurance company or a bank, but is preferable to mandatory insurance because it does not force insurance company involvement in an attorney's defense. In any event, an attorney should be able to attest to a net worth exclusive of personal residence well in excess of the base insurance requirement, and not be required to purchase insurance. The Bar Association should not presume improper behavior by its members; failure to produce assets that have been attested to would be grounds for disbarment. That should be enough.

Greg

On 9/19/18 5:12 PM, Hugh D. Spitzer wrote:

Dear Mr. Lyle,

Thanks for these thoughts. We have discussed some potential alternatives to insurance, such as posting a letter of credit. But the cost of that is roughly the same as insurance. The attorney malpractice attorneys we have spoken with have pointed out that there are definitely instances where lawyers appear to have assets, but either hide them or file for bankruptcy (or both). But this is definitely an issue we're continuing to wrestle with. We're also discussing the extent to which a mandatory malpractice rule should dictate policy terms.

Hugh

Hugh Spitzer
Professor of Law
University of Washington School of Law
Box 353020
Seattle, WA 98195-3020
206-685-1635
206-790-1996 (cell)
Papers on SSRN: <http://ssrn.com/author=1514923>

From: Gregory <[REDACTED]>
Sent: Wednesday, September 19, 2018 4:49 PM

To: insurancetaskforce@wsba.org; Hugh D. Spitzer <spith@uw.edu>; john.bachofner@jordanramis.com; stan_bastian@waed.uscourts.gov; dan@mcbdlaw.com; christy@myllt.com; gretchen@halehana.com; pig@randalldanskin.com; pl.isaki@comcast.net; mark@johnsonflora.com; [REDACTED]; kara@appeal-law.com; evanm@jdsawlaw.com; spierce@davisrothwell.com; pinkhamb@seattleu.edu; tstartzel@ks-lawyers.com; anniey@atg.wa.gov; douge@wsba.org; theaj@wsba.org; rachelk@wsba.org; nwlawyer@wsba.org

Subject: Mandatory malpractice insurance comments

Dear Mandatory Malpractice Insurance Task Force members,

Since the purpose of investigating mandatory malpractice is to protect the public, then all options that do so should be investigated, including mandatory financial responsibility, which does not appear on the list of Task Force "possibilities considered".

An attorney who certifies that he or she has a net worth excluding personal residence in excess of \$2 million (or higher) should not be forced to purchase malpractice insurance. This would avoid the forced contribution to insurance company overhead and profit that insurance premiums require. Mandatory financial responsibility through either insurance *or* net worth would also protect personal liberty by preventing forced engagement with the insurance industry, while fully protecting the public.

I am worried about the burden that mandatory malpractice insurance would place on semi-retired attorneys or attorneys with a very limited practice. Exempting attorneys with gross receipts of less than \$50,000 per year would remove an onerous burden on the attorney, but not necessarily protect the public. Mandatory financial responsibility would allow the cost of insurance burden to be lifted while protecting the public. If mandatory malpractice insurance is required without a financial responsibility alternative, there should however be a *de minimis* exception to avoid undue burden on some attorneys.

The idea that insurance is necessary because insurance companies will settle, when an attorney might not, could further assault the rights of attorneys. To avoid this, the Bar Association should require a "consent to settle" clause in all malpractice insurance so the insurance company cannot settle without the consent of the attorney. In addition, to protect the public the Bar Association should require that all malpractice policies not be wasting, that is defense costs should not reduce the limit of coverage.

Respectfully,

Gregory Lyle
WSBA #7692

From: [Stan Sastry](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: mikech@lexquiro.com
Subject: Re: Mandatory Malpractice in
Date: Wednesday, September 19, 2018 7:05:29 PM

To whom it may concern:

I oppose the imposition of Mandatory Malpractice insurance for reasons of excessive financial hardship.

I am a solo practitioner practicing exclusively patents, trademarks and copyright. I do not practice under Washington laws. My practice is exclusively before the United States Patent and Trademark Office and sometimes before the United States Copyright Office. As such, my clientele is very niche. My yearly revenues cannot support buying malpractice insurance, which would cost anywhere between \$1500-\$3000. It would be a great financial hardship for me to buy malpractice insurance for my low risk practice. Frankly, I do not see a need to have malpractice insurance because of my niche practice.

Over the years the WSBA has been touting the need to make legal services more affordable to the public at a low cost. The imposition of mandatory malpractice insurance flies in the face of that mission of the WSBA because solo practitioners have to raise their fees to cover the cost of buying malpractice insurance. Thus imposition of mandatory malpractice insurance is counter to that stated mission of the WSBA.

The WSBA's need for imposing mandatory malpractice insurance appears to be driven by extraneous factors. For instance, Mandatory Malpractice Insurance Task Force Interim Report to Board of Governors July 10, 2018 says on page 5: "16. Virtually all physicians carry malpractice insurance because it is widely required by hospitals as a condition of admitting privileges." implying that all lawyers should also carry malpractice insurance. This is flawed reasoning. Firstly, doctors carry high risk because they directly deal with human life and limb issues. Lawyer malpractice generally does not result in direct loss of human life or limb. Lawyer malpractice is related to loss of property or monetary damages to clients (or rarely imprisonment in the criminal context). Secondly, doctors make a lot more money than lawyers in general. Hence doctors can afford malpractice insurance. Frequently, doctor's malpractice insurance is covered by the hospital or healthcare agency they work for. The average lawyer in private practice (not counting the big firm lawyer) makes less money than a public school teacher or a construction worker. Moreover, it appears to me that only lawyers seem to want to compare themselves with doctors (so they can feel better and important). Ironically, I never heard a doctor comparing himself/herself to a lawyer. The public has a low opinion of lawyers (witness the brutal lawyer jokes) when compared to doctors because the public perceives the lawyer as less important than the doctor. Public perception of lawyers is not going to enhance just because lawyers are mandated to carry malpractice insurance.

All in all, I don't believe imposing mandatory malpractice insurance is going to make the legal professional services more accessible or affordable to the public. Actually, it may have the opposite effect because it will drive up the cost of doing business for many lawyers.

Imposing mandatory malpractice insurance is only a back door way of recovering money from bad lawyers. This does not mean that good lawyers have to pay the price for the actions of a few bad lawyers. I hope the WSBA sees the error of its ways and refrains from imposing mandatory malpractice insurance.

Stanley Sastry
WSBA # 36391

From: [Lisa Scott](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance - Opposed
Date: Thursday, September 20, 2018 3:49:25 PM

Dear Task Force:

I am opposed to a new rule requiring all WA lawyers to be insured for malpractice. Since 85 per cent of private practice attorneys are currently insured, where is the problem? This rule would add another layer of micro-management and bureaucracy to the practice of law in this state. I am currently insured and intend to maintain insurance, but it was several years into my practice before I got insurance, after my practice grew, and it was reasonably affordable. I suspect most of the attorneys without insurance are newer attorneys who will eventually get insurance.

I would also ask, who is driving this proposal? My guess is insurance companies who want more business, and plaintiffs' attorneys who practice in this area and would like insurance coverage available for more claims. This proposal seems to assume the worst about attorneys: that we will all eventually be sued and must have insurance to cover the potential claims.

There is not a strong enough justification to impose a mandatory requirement on all attorneys for something that should be left up to the individual to decide if and when it is right for them. The current notification on the bar website gives potential clients the information on which attorneys are or are not insured. The clients can continue to use this information to decide who they want to hire.

Thanks for your consideration.

Lisa Scott
Bellevue, WA
WSBA # 17304

From: [Angel Latterell](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: malpractice insurance discussion
Date: Thursday, September 20, 2018 5:32:51 PM

Hi there,

I just wanted to put my comment out there. As an individual who practices law low bono and as not my primary job I would find required malpractice insurance to be a burden. It is a good year when I pull in enough for the premium, I know because I've applied multiple times and every quote I've ever been given, even when the work I do is very low risk is \$3000 for the year. I may make more than that this year, but at the end of the day I would just stop practicing law. As it already costs me money to keep practicing and use my license so I can volunteer.

My paid legal practice helps regular people who just have one off questions, tenants, landlords, small business owners, small claims court consults. And it basically pays for the expenses I have to keep my license. Nothing I do is high risk, and if it is I use my discernment and say no. However, because my area of law involves real estate (primarily low bono landlord/tenant advice) I am told I practice in a high risk area.

Those of us who do low bono, who do not practice law 100% of the time, who are doing low risk things, should be taken into consideration with this type of a mandate. Perhaps there need to be different types of policies available. Or perhaps you keep the rules as is and don't mandate insurance.

--

"Poetry has the power to connect, illuminate and elevate humanity, society and even the cosmos." ~ Daisaku Ikeda

Check out my blog! *Travels with Paprika Angel*
www.paprikaangel.com

From: [Tom Lerner](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice
Date: Thursday, September 20, 2018 5:44:36 PM

I previously served on the WSBA Client Protection Fund Board, at a time when we urged the Board of Governors to increase the mandatory assessment to cover the higher dollar value of claims, even though the volume of claims being paid was not increasing. If mandatory malpractice coverage was in place, my expectation would be that many claims that were properly before the Fund could also be framed as claims that would be paid by a malpractice carrier. After all, stealing client funds is a departure from the standard of care required of attorneys. Thus, for those worried about the costs of insurance, consider whether their annual bar dues might actually go down. Claims against uninsured lawyers ultimately cost all of us in some form or fashion.

Thomas A. Lerner

Attorney

[Stokes Lawrence, P.S.](#)

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direct: 206.892.2147 | cell: 206.390.0470

Tom.Lerner@stokeslaw.com | stokeslaw.com

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Jorgen Bader
6536 – 29th Ave. N.E.
Seattle, WA 98115

September 17, 2018

Mandatory Insurance Task Force
c/o WSBA 1325 – 4th Ave. # 600
Seattle, WA 98101-2529

RE: Mandatory Malpractice Insurance
For members of the Bar

Dear Task Force members:

Mandatory Malpractice Insurance for all members of the Washington State Bar is a bad idea, even if it excepts government and in-house lawyers who work solely for their full-time employer as client.

It will drive volunteer lawyers, who are mostly retired, to cease their service. I retired over twenty years ago and still keep my license in order to serve on various non-corporations as a counselor. I have held offices and was a member of the board of directors of over a half-dozen non-profit organizations, and I still serve as such on three. I gave and give legal advice, review documents, draft letters, interpret ambiguous passages in regulations, circulars, handbooks and the like. I've never taken any money or even reimbursement of expenses. If I am required to buy malpractice insurance, I will resign my license and quit serving for free. There are others whose services are gratis (or almost so) for friends and family. The cost of insurance will prompt them to drop their pro bono activities too.

It will increase the costs of practicing law and thereby increase fees charged by many sole practitioners and small firms. Many of them will pass on the substantial added costs of insurance premiums (and the ancillary paper work) to the clients. Larger corporations usually go to the bigger full-serve firms that already have insurance coverage. The net result will be an increase in fees to individual, family and small business clients.

It introduces a third party into the lawyer-client relationship. Currently, a disgruntled client deals directly with his or her lawyer in resolving a dispute. The lawyer has a wide range of flexibility in resolving the dispute and to preserve his or her reputation, an incentive to settle the matter promptly to the satisfaction of both. Mandatory insurance makes the insurance carrier a party.. The presence of insurance may distort cases and increase the work involved. The self-interest of the carrier the insured often differ as can be seen in the volume of "bad faith" cases

By stripping single lawyers and small firms of the ability to just say "No". the requirement would shift the bargaining power between lawyers and insurance companies. The ability to withdraw gives the buyer leverage to keep premiums to reasonable levels. If lawyers lose that ability, the insurance companies can act like members of a cartel in sort of a "gentleman's competition" confident that the lawyer has to choose one or the other of the cartel. While now there may be seven companies, a few years ago there were only two or three. A true competitive market requires that buyers have the ability to walk away

There are less expensive methods to protect a client from loss from lawyer misconduct, e.g. if inadequate, increase the client indemnity fund.

The Bar needs to solicit the opinion of the membership by presenting both sides through advocacy by people who believe in their cause. The article in the NW Lawyer states the opposition in a pro forma manner. Its bias is shown by its final paragraph:

"Ultimately the question the WSBA faces comes down to who should bear the risk of loss when a lawyer makes a mistake the lawyer or the public? It's time for Washington lawyers to answer that question."

That rhetorical question in the article has no more objectivity than this one:

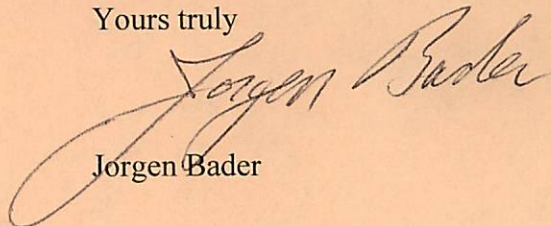
"Ultimately the question the WSBA faces down to should the Bar Association become a shill for malpractice insurance companies?"

The Bar Association answered that question when it set up the Client Indemnity Fund. . The courts also answered that question through its decision in cases by applying tort principles that make lawyers responsible for malpractice.

The focus ought to be on whether invoking insurance companies really overwhelming benefits to the public in light of its many drawbacks, such as reducing volunteer lawyer services, by raising costs to lawyers and their fees, by complicating dispute resolution, fees, etc.

The tone of the article and its final question broadcasts its bias and gives the impression that the Task Force is just going through the motion of soliciting comment for sake of appearance. To overcome that, open the NW Lawyer to genuine opponents and let the bar membership vote.

Yours truly

A handwritten signature in cursive script that reads "Jorgen Bader". The signature is written in dark ink and is positioned above the printed name.

Jorgen Bader

From: [Mark de Regt](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: My Input on Mandating Malpractice Insurance
Date: Friday, September 21, 2018 11:38:43 AM

Hi,

In the interest of full and fair disclosure, I want to say that I am not a fan of mandatory bar association membership; I don't feel that I receive fair value for the high dues (and I'm also admitted to practice law in NY and CT, which don't require that I join the state bar association, so I have had decades of comparison).

Included in that opinion is the fact that I generally find the WSBA's "NWLawyer" completely uninteresting, with a modest entertainment value, occasionally, from reading the absurd letters from curmudgeons who hate anything being done differently than it used to be (and I say that in full knowledge of my exalted status as a curmudgeon).

With that out of the way, I am now ready to comment on whether malpractice insurance should be mandatory.

Of course it should be!

There is no rational justification for allowing lawyers to practice without insurance. The cost of insurance is modest, and the benefits are huge, both to the lawyer (less worry about losing everything for one mistake) and the public (some sense that there's something backing up that lawyer).

As a mostly-retired lawyer, who sometimes goes weeks at a time without doing any legal work, I certainly understand the concerns that paying for malpractice can swamp what little a mostly-retired makes from his/her practice. But, in the context of \$3000 per year, we're not talking about real money (my wife is an obstetrician; they pay real money for malpractice insurance).

But the model does matter, in my opinion.

For my most recent renewal a few weeks ago, I paid \$3590. And for that, I have \$1 million/\$2 million, with a \$5000 deductible. I am extremely risk averse, so I like the high limits; I practice for the fun of it now, not for the money, and I don't want to lose my house if I make a mistake. The Oregon plan costs as much as I pay, and gives much less coverage; I would not be happy with that.

If one doesn't want to pay, or cannot afford to pay, \$3500 per year for good coverage, I question whether that person should be practicing law. Really.

The one concern I would have about mandating coverage is worry about whether the insurance industry would take advantage of that by jacking up rates. It would annoy me (to put it mildly) if my insurance went up significantly (or the coverage dropped significantly) because of mandating coverage.

But, fundamentally, we all should have insurance.

Mark de Regt

WSBA 26445

From: [Joseph Valente](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance
Date: Sunday, September 23, 2018 5:51:35 PM

Dear staff:

I understand that the public needs to be protected from deadbeat lawyers who say they can't afford insurance. However, there may be unintended results if the issue is not handled carefully. I retired after 27+ years as a Superior Court Commissioner in Spokane. I still work some each month as a pro tem. While the pay is insignificant, it is good for me and a service to the court. I have also provided legal counsel to residents at the Union Gospel Mission. From time to time I will help a low income family pro bono. For example, I processed a probate for the surviving family of a low income veteran who died of cancer. I was able to get medical providers to drop significant claims against the estate. I have also helped a victim of domestic violence obtain protection for herself and her child. It would be a shame to surrender my license to avoid having to pay insurance that is unnecessary. I have liquid assets more than ten times what appears to be the proposed policy minimum. I am not a deadbeat. A damaged client would be better off going against my investment portfolio than a skimpy policy. I wonder if a lawyer could be exempted if they were able to document sufficiently deep pockets such that a client would not be left without any recovery. Perhaps there could be a form of self-insurance. Some funds could be set aside for recovery purposes. I still have the ability to help people with the skills I have acquired. However, I don't know that I would pay \$3,000 for the privilege of helping people.

Joseph F. Valente
WSBA #6119

From: [Ron Heley](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Monday, September 24, 2018 9:26:46 AM

Hello,

I'm reaching out to emphasize how critical an exemption is for non-practicing attorneys who maintain our licenses. Please allow this exemption because otherwise it places a burden on my household which would be quite severe.

I worked very hard for my JD and to pass the bar. Currently however I have a job that I very much enjoy but it does not necessitate bar passage.

Therefore purchasing malpractice insurance would be a great expense where neither I nor the public would see a benefit. And giving up my ability to practice deprives me of a fallback position should my employment change or I decide on a new career.

Sacrificing my ability to pass the bar to avoid an oppressive insurance payment for a service I do not provide would be a very painful circumstance. I trust that the board can recognize this.

Please keep those of us in mind who do not practice law but may do so someday. Making us pay mandatory malpractice insurance would be onerous and burdensome. Thank you for your time.

Sincerely,

Ron Heley
WSBA #51296

From: [PATRICK/ MARY BRADY](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment re Mandatory Malpractice Insurance
Date: Monday, September 24, 2018 11:53:09 AM

TO: MANDATORY MALPRACTICE INSURANCE TASK FORCE

RE: COMMENT ON EXEMPTION FOR RETIRED/ACTIVE LICENSED BUT NOT ACTIVELY PRACTICING

In December 2017 I retired from private practice with Forsberg & Umlauf. I am not practicing law at all. I maintain my licensed status as active (full CLE load) as opposed to inactive because of some future possibility that I might return to practice on a temporary, part-time basis with Forsberg & Umlauf. This is a possibility only, with no specific plans to do so at any specific time. If I did return to such practice, I would expect to be covered under the firm's insurance. I am maintaining active status to avoid having to take the steps from inactive to active status in the possible future event of my return to such practice on a part-time, temporary basis.

I am a retiree who maintains an active license but does not practice law. I request and recommend an exemption for attorneys in this circumstance. I join in the comments in items 8 and 11 on page 6 of the Mandatory Malpractice Insurance Task Force Interim Report to Board of Governors July 10, 2018.

Sincerely,

Patrick S. Brady WSBA # 11691

11203 29th Ave SW

Seattle WA 98146

206 246 1603

From: [Laura Umetsu](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Concern about continuing pro-bono DVPO practice with mandatory insurance
Date: Monday, September 24, 2018 5:17:14 PM

To whom it may concern,

I am a solo practitioner in the state of Washington. Over the last two years, my practice has narrowed to focus almost entirely on assisting pro-bono and VERY low bono clients who were victims of domestic violence.

I am writing to you in response to the recent article in NW Lawyer regarding the proposition that all attorneys be required to carry malpractice insurance. If this requirement were to come to fruition, then I am highly concerned that my practice will no longer be able to provide the up to hundreds of hours of pro-bono assistance that I have been able to offer in the past. I would have to shift my organizational model to no longer offer free consultations to vulnerable individuals desperate for assistance.

As you are probably aware, domestic violence protection order petitioners are not entitled to state sponsored representation by an attorney. Such a requirement may push me out of practice. I therefore urge you to reconsider and if you do create such a requirement, to allow for an exception for individuals who devote a minimum number of hours per year to assisting vulnerable individuals free of charge.

I look forward to hearing back from you soon.

Laura Umetsu
Attorney at Law
Ph: 206-949-2453
Fax: 206-212-8602
4130 University Way NE
Seattle, WA 98105
www.lauraumetsu.com

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From: [Mike Warren](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on mandatory malpractice insurance
Date: Tuesday, September 25, 2018 2:40:06 PM

Task Force:

I practiced law for 34 years, before retiring on May 31, 2017. I was full insured for malpractice during the entire time I practiced, and have secured a tail to cover all acts prior to retirement. It is my preference not to go on inactive status with my bar membership, but at the same time I have no intent to resume the practice of law.

I would hope that if the bar association implements a mandatory malpractice rule, something I would generally support, that it exempts attorneys whom desire to retain an active license, but are not actively engaged in the practice of law.

Mike Warren
WSBA #14177

From: chicago1@centurytel.net
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: FW: MORE comments on Task Force re malpractice insurance
Date: Wednesday, September 26, 2018 11:23:52 AM

Folks, I had an additional thought today. I sure hope you resolve your position before I pay dues in December or January, or at least make the ruling applicable as of 2020, as bar costs are already quite a bite from my Social Security check. I am retired without a pension (worked for small tribe), just meager 401k, and would sure hate to pay those dues if you don't intend to waive non-practicing retirees from malpractice insurance requirements. Please be timely on this or agree to refund dues if we get caught in the middle! You may not realize Medicare costs can run some \$6000 a year if you add in medication costs beyond D, and SS goes only so far. If I keep paying dues and do CLE over three years, that extra \$3000/yr for insurance becomes insurmountable and I don't want to renew first and have you make me pay later, and then be stuck with the dues fees! Thanks for your attention to this concern.

Katherine Krueger
25818
Forks, WA

From: chicago1@centurytel.net <chicago1@centurytel.net>
Sent: Tuesday, September 18, 2018 8:34 AM
To: 'insurancetaskforce@wsba.org' <insurancetaskforce@wsba.org>
Subject: comments on Task Force re malpractice insurance

Thank you for the opportunity to comment and for the explanatory article in *NW Lawyer* of August, 2018. I see you are considering keeping a no-insurance-required status for retirees who do not practice law and I urge you to adopt this idea, and here are some reasons why.

Some prior practices don't even lend themselves to taking on the rare client. You seem to suggest that some retirees are going to sneak in a client! And so make them pay. (See my last paragraph on that.) Not all retirees ever practiced law for the public and not all have the resources or skill set to even consider it now, since mayhap, they were government attorneys beforehand doing highly specialized practices requiring a stable of technical support? For example, those who did environmental law (me) for industry or government? Like tax law, environmental law has a ginormous body of regulations and most who do it, work with engineers, chemists, biologist, etc. It is not a small shop type of law. Such attorneys are highly unlikely to start taking private clients. But they might want to lend their broad knowledge to salmon groups, or a local bar that does not generally need to know federal administrative law, in the form of a lecture to other attorneys who usually just do family or criminal law. As I do and have done. So by treating us all as fungible, you are not recognizing some attorneys would never go into private practice. Even after retirement.

What we can do, but it is not practicing law—but still nice to say we are a bar member: I am retired as of 4/28/2017 from being an in-house attorney embedded in the Natural Resources Department of the Quileute Tribe (La Push), for the prior 20 years. I still live in Forks and am active now as a volunteer on about 7 different Natural Resources Committees and they value my legal

training. I may give a PPT talk soon to them (except for the federal marine sanctuary one) on the WA Open Meetings Act, because the issues keep coming up. I am also a member of the Clallam County Bar and about two months after retiring, gave a presentation on the *Hirst* decision to that group and to the North Pacific Coast Lead Entity and Coastal Salmon Partnership (salmon restoration groups). While still working at Quileute, I gave a talk on the culvert case (*U.S. v Washington*, subproceeding 2001-1) to these groups. They were gratefully received as these decisions touch on all who own property and pay taxes; but they don't read these cases, as they are not in their usual arena of experience. In the Coast Salmon Foundation, I review their contracts *in my capacity as a Board Member*. They have insurance for Board Members and I guess I could do this without a license just in my capacity as a Board Member—all the board members can review the foundation contracts--but it seems desirable for them, to know I have more background in doing this. FYI, this is an uncompensated position.

But I am not in private practice and never was. Even beforehand in Texas and Illinois, I was embedded in corporate legal departments and briefly (two years) in City of Houston's Public Works . The only time I ever served clients in the usual attorney way was when I was a student at Northwestern University's Law School—three years in their Legal Clinic. It is really not something I can do. *Don't have the expertise or training to open up a practice, however rare, and have no intention of doing it.* Example: Clallam -Jefferson Pro Bono Attorneys keep wanting me to help advise poverty clients at their periodic public gatherings and I keep refusing, since I don't know these areas of law and really cannot be of help. I am not going to posture or assume some kind of knowledge I don't have.

Money issue: Please know, those who work inside small governments like remote tribes (me) don't have pensions, just what we can sock away in a 401k from a non-competitive salary, because we loved the work. But it does not exactly create a client base! And when we leave, a new person takes our places. In the article, you say everyone can find \$3000 to pay for the insurance. *Not so.* And even the dues and CLEs are a financial challenge now. I have to tell you after 20 lean years at Quileute and only small savings and only Social Security (no pensions, just that 401k; and I was the victim of "being over 50, layoffs" in Texas and ate the savings before finding work with the tribe), *it is a tough decision to even keep up dues and CLE costs.* Nevertheless, *I want to*, but for you to make me buy malpractice insurance would be the financial straw that breaks this broke camel's back! I think it would tip the financial scales. I will have lost my hard-earned honors and respect if I cannot say I am attorney, but I do need to watch every penny. Already I am dipping into savings for some matters. Scary. (Do you folks realize what Medicare and associated Supplemental and Dental insurance cost outside the workplace? Huge.)

Recommendations: I really still want to say that I am an attorney and contribute with that hat on, to various forums. It gives street cred. And by jingo, I have earned it! What if you rule that those who have retired and are not engaged in private practice do not have to pay malpractice insurance, but set some guidelines for what constitutes practice, and make it clear they will be brought before WSBA and either suspended, censored, or have license revoked if they violate this? And/or-- assuming it was without malice aforethought, have a provision for them to reinstate if by some miracle someone wants to give an ageing attorney a job, and if by some miracle that aged body is up to it still. (I retired because my health was deteriorating and the 60-hour weeks had become too

difficult.)

Thank you for considering the foregoing.

Katherine Krueger, WSBA 25818
790 J Street, PO Box 1607, Forks, WA 98331
(360) 374-4311, cell [REDACTED]

From: [Mark Beatty](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: ["John A. Myer \(john@myercorplaw.com\)"; JAMES K DOANE; "Paul Swegle"](#)
Subject: Comment Letter on Mandatory Insurance Proposal
Date: Thursday, September 27, 2018 9:34:16 AM
Attachments: [Letter re Mandatory Insurance - Final.pdf](#)

On behalf of John A. Myer and myself, I respectfully submit the attached materials.

Mark

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September 27, 2018

Via Email (to insurancetaskforce@wsba.org)

Mandatory Malpractice Insurance Task Force
Washington State Bar Association

Re: Proposed Mandatory Malpractice Insurance

Ladies and Gentlemen:

I am submitting this letter on behalf of myself and John A. Myer, Myer Law PLLC, Seattle. Accompanying this letter are additional materials provided by John that expand on the concerns expressed in this letter.

The article in the August 2018 NW Lawyer stated that the Task Force has indicated to the Board of Governors that they "are likely to recommend malpractice insurance as a condition of licensing..." (page 47).

We believe the Task Force is making certain assumptions that are flawed:

- Malpractice insurance is always available
- Malpractice insurance is always available at a fair and reasonable price

In addition, the Task Force's tentative conclusions fail to recognize important distinctions between law practices, while at the same time ignoring the significant and adverse financial impacts on clients caused by the proposed mandatory malpractice requirement, as discussed below.

Background Information

Each of John and I are solo practitioners who practice transactional (not litigation) securities law – i.e., we provide advice to clients on the requirements of securities laws, including federal laws such as the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Advisers Act of 1940, and the Investment Company Act of 1940, and the various amendments to those acts, such as Sarbanes Oxley, Dodd Frank and the JOBS Act. In addition, our practices encompass the requirements of the Securities Act of Washington and the applicable

regulations under federal and state law. On behalf of our clients, we file documents and notices with the U.S. Securities & Exchange Commission and the Washington state Securities Division, as required under those laws and regulations.

John and I both gained our knowledge and experience while working at large, sophisticated law firms, White & Case (Miami), Paul Weiss (London) and Sullivan & Cromwell (New York and Frankfurt) in the case of John, and Lane Powell (Seattle), Bronstein Zeidman and Schomer (Washington, D.C.) and Preston Gates & Ellis (Seattle) – now K&L/Gates (10 years as a partner) for me. For various reasons, we each chose to leave those law firms to practice as solo practitioners.

Unavailability of Insurance; Pricing

While I now have malpractice insurance, that was not always the case, especially when I began my solo practice: I was rejected by the insurance company to which I submitted my application (I do not recall the name), despite a “clean” record with no history of client complaints, lawsuits or complaints to the bar associations of which I was a member. Similarly, John initially had malpractice insurance after becoming a solo practitioner but after two years the policy was canceled and not renewed – no explanation was given but no claims had been made on the policy. The only ostensible reason for these denials of coverage was that we each practiced securities law as a solo practitioner. We believe insurers perceive a securities law practice as a high risk practice, no doubt due to statutory and implied private rights of action granted to investors under the securities laws and the potentially large sums involved in securities transactions.

The Interim Report acknowledges that Oregon’s current system arose because of the difficulty attorneys had in getting coverage. Given that history and our personal experience in getting coverage, we do not understand how the WSBA can mandate a requirement that attorneys purchase a product from an industry over which it has no authority. Further, how does the Task Force propose to assure lawyers that insurance is in fact available at affordable rates (and how is affordability determined)? We are concerned that the premiums may preclude an attorney from practicing law, despite being a competent attorney (as the Interim Report notes, no attorney is immune from mistakes). Finally, many of the Interim Report’s conclusions are qualified by “should” (e.g., coverage should be continuing, policies should not be permitted to exclude attorney acts....). While the insurance industry may be willing to offer policies with those provisions, there is little doubt that those provisions will come at the cost of higher premiums, which adds to our concerns.

Adverse Impact on Clients

Although many small law firms may carry malpractice insurance, in our experience, those policies exclude securities law claims or claims involving publicly-traded securities, primarily because of the additional costs associated with those policies. As a result, mandating malpractice insurance will likely have the effect of causing securities lawyers to practice law with a larger firm. In our experience, hourly

Letter to Insurance Task Force

WSBA

September 27, 2018

3 | Page

rates and total legal bills from larger law firms are often double or triple the fees that John and I charge for the same legal work – for what our clients regard as comparable quality.

The effect of mandating malpractice insurance is to increase substantially the fees paid by our clients – has the Task Force obtained any input from that segment of the public? Has the Task Force asked the public if the presence or absence of malpractice insurance is even a factor when a client selects a lawyer? We are happy to provide client contact information so that the Task Force can obtain that information.

Our clients select us because they have confidence in our knowledge and expertise, not because we carry malpractice insurance.

Effect and Legal Basis of the Mandate

If the WSBA were to adopt the mandated insurance requirement without providing any avenue for obtaining the insurance if it were not available, or not available at a reasonable cost, is the WSBA prepared to disbar the attorney? We think the effect of such actions would be anti-competitive or a restraint of trade. See North Carolina State Board of Dental Examiners v. Federal Trade Commission, 574 U.S. ____ (2015) (nonsovereign actor controlled by active market participants enjoy immunity only if “the challenged restraint... [is] clearly articulated and affirmatively expressed as state policy,” and ... “the policy ... [is] actively supervised by the State.”)

Further, while we have not attempted to research the issue, we note that the Task Force’s Interim Report states that the Task Force participants “stressed that the WSBA has a duty to protect the public and maintain the integrity of the profession.” We note that such a standard is absent from the State Bar Act, 2 RCW Ch. 48. That Act authorizes the board of governors to fix qualifications, requirements and procedures for admission to the practice of law, and to investigate, prosecute and hear all causes involving discipline, disbarment, suspension or reinstatement of members practicing law. Does the board of governors have authority to require mandatory malpractice insurance? The requirement, essentially, imposes a minimum financial standard that attorneys must satisfy prior to practicing law. Such a requirement would seem unrelated to an attorney’s qualifications under the ordinary meaning of that term and may raise issues under Board of Dental Examiners.

Questions on the Task Force Composition

The introduction to the Task Force’s Interim Report describes its 18 members as attorneys, a federal judge, an LLLT, industry professionals and members of the public.

We do not know the members of the Task Force, although they were listed in the Interim Report. Since, as the report notes, lawyers who practice in solo or small firms are most likely to be uninsured, were any of the members of the Task Force members of solo or small firms? Were any of the members of the Task Force uninsured? Were any of the attorneys on the Task Force attorneys whose practice includes

Letter to Insurance Task Force

WSBA

September 27, 2018

4 | Page

suing attorneys for malpractice? Does the industry professional listed have a conflict of interest if the Task Force concludes insurance should be mandated?

Conclusion

We are concerned that the Task Force will propose a mandatory insurance requirement that has far reaching (and over reaching) implications, where the implications and consequences are glossed over and not adequately addressed. The Task Force seems to paint with a very broad brush that is likely to adversely impact many highly qualified attorneys and their clients.

Respectfully submitted,



Mark R. Beatty

Attachments

Cc: John A. Myer, Myer Law PLLC
James Doane, Board of Governors
Paul Swegle, Board of Governors

Attachment A

I, John A. Myer, worked with Mark R. Beatty, the author of the letter dated September 27, 2018 to the Mandatory Malpractice Insurance Task Force of the Washington State Bar Association. Mark and I agreed that I would add additional materials to his letter in the form of these attachments.

On September 12, 2017, I sent an email to NW Lawyer Magazine regarding the proposal on mandatory professional liability insurance for Washington lawyers. The editors published my email in the November 2017 edition of the magazine. I've included a copy of the page of the magazine on which my email was reprinted as Attachment B to this letter.

I would like to take the opportunity to add some background information to my original email. I launched Myer Law PLLC on September 1, 2009. I contacted Mainstreet Legal Malpractice Insurance, a broker (<http://www.mainstreetlawyersinsurance.com/>) and they obtained coverage for me. I was covered by Professionals Direct Insurance Company for two years. As of September 1, 2011, Professionals Direct declined to renew my coverage. I had made no claims against the policy. Further, I have never had an action filed against me for professional malpractice or been the subject of a bar complaint. My practice and background are described at: <http://www.myercorplaw.com/home/>

In the months prior to September 2011, I filed applications with Zurich Insurance (<https://www.zurichna.com/en/prodsols/zpm/professional/lawyers>) and with Synergy Professional Associates (<http://www.synergy-ins.com/about.aspx>), a broker. I filed the application with Zurich because they had covered me in 2003 and 2004 when I was a partner at Friedbauer & Myer LLC in Miami, Florida. I filed the application with Synergy because the sales agent there assured me that they could find a carrier who would underwrite my practice.

Zurich declined to bid. Synergy was unable to find a carrier that would bid. In addition, Mainstreet Legal Malpractice Insurance was unable to find a carrier to replace Professionals Direct Insurance Company. Thereafter I spoke with numerous sales agents all of whom urged me to apply but none of whom were able to describe a realistic path forward. I have practiced without insurance to this day.

Submitted September 27, 2018



John A. Myer

Inbox

Let us hear from you! We welcome letters to the editor on issues presented in the magazine. Email letters to nwlawyer@wsba.org. *NWLawyer* reserves the right to edit letters. *NWLawyer* does not print anonymous letters, or more than one submission per month from the same contributor.

MANDATORY MALPRACTICE INSURANCE

I just read the article in the September issue of *NWLawyer* about mandatory insurance ["WSBA Board of Governors Explores Mandatory Malpractice Insurance"] and, as a result, I am sending in my first comment in 25 years of practicing law in Washington. Our small office has always maintained insurance for our speeding ticket/DUI practice. We pay \$750 for each attorney for \$250,000 per claim/\$500,000 aggregate of coverage. I hope that you consider small firms such as ours as you continue your investigation. Oregon's apparent one-size-fits-all \$3,500 per lawyer assessment is ridiculous and bears no relation to the true cost of insuring a small firm like ours. Should you adopt a similar requirement, you would be creating an unnecessary financial burden for many small firms.

\$3,500 for each lawyer? \$7,000 for what currently costs us \$1,500? What an outrage that would be.

Valerie Shuman, Tacoma

I searched diligently and filled out numerous applications, but I reached the conclusion that there is no market for malpractice coverage for transactional securities lawyers in solo practice. It appears that from the insurer's perspective, the underwriting costs exceed the expected profits at anything other than prohibitive rates. The last time I looked into this (and that was a number of years ago), every insurer I contacted refused to give me an offer at any price.

I'd like to note that I was trained in my practice area at Sullivan & Crom-

well in New York, am 61 years old, and have never had a claim made against me. I also have impeccable academic credentials, which include an MBA equivalent from MIT.

If Washington decides on mandatory insurance, I would favor a professional liability fund. I fear that otherwise my license to practice in Washington would be worthless.

John A. Myer, Seattle

I am writing in response to the article "WSBA Board of Governors Explores Mandatory Malpractice Insurance" in the September 2017 issue of *NWLawyer*.

As an attorney licensed to practice in both Oregon and Washington, I have had the opportunity to compare the professional liability insurance requirements of both states—disclosure in Washington and mandatory coverage in Oregon. I do not support mandatory coverage as it provides a questionable value at substantial cost while reducing the availability of legal services, particularly for moderate income citizens.

The first question to ask is "How much benefit does mandatory coverage actually provide to the average client?" I do not have the statistics but I encourage the Board to obtain this information before passing an expensive "feel good" measure. Although there are certainly horror stories out there about bad lawyers and the damage they cause, I question the value that mandatory coverage would provide to those clients when considered in the context of the aggregate cost and the thousands of clients who receive professional legal representation from lawyers with and lawyers without professional liability coverage.

The second question is "How would mandatory coverage affect low and moderate income citizens who need legal representation?" The difficulty finding pro bono coverage for low-income clients is well known, although there are programs that pro-

vide professional liability coverage to enable this important work to be done. From my experience, the great bulk of under-represented citizens are moderate income people who cannot afford an attorney yet do not qualify for pro bono representation.

In addition to my income-producing work, I have represented Washington citizens needing assistance with no-contact orders, a homeowner whose property was eroding due to the failure of a city to properly maintain a storm run-off system, individuals who were presented with scam damage reports by rental car companies, and others who had damaged credit reports due to fraudulent use of their identity. I may soon retire from my "day job" but hope to keep providing this type of unpaid service to moderate-income individuals. I am saving for retirement and certainly am not in the position to divert funds to pay for professional liability coverage. If coverage becomes mandatory, I fear I will be required to become an inactive member of the bar and will no longer be able to serve this under-represented group. I am sure there are many other attorneys in the same situation.

Bill Murphy, Vancouver, WA

PROFILING

Some WSBA members have fallen into the quagmire of lecturing about "white privilege" ("Inbox," SEP *NWLawyer*). However, it is unclear from their statements what white persons are supposed to do to atone for the total happenstance of being born white . . . pay reparations, take sensitivity classes, forfeit their law degree to a person of a different race?

No one should be denigrated for the color of their skin, including whites. White privilege is just another imaginary problem being conjured up by some leaders of the WSBA.

Certainly we all owe a duty of politeness and decency to every

From: [Brian Lewis](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Mark Beatty](#); [John Myer](#); [Paul S](#); [Mr. James K. Doane](#)
Subject: WSBA Mandatory Malpractice Insurance Requirement
Date: Thursday, September 27, 2018 11:31:33 AM

Our firm would like to take this opportunity to support and expand on the positions expressed by Mark Beatty and John Myer regarding the challenge boutique firms face in securing malpractice insurance at a reasonable price, if at all.

Our firm emphasizes practice in transactional entertainment, which is an area that insurance carriers are loathe to cover at any price, much less a reasonable price. Furthermore, as one of Washington's oldest virtual firms, Rosen Lewis has had our insurance cancelled simply because we are a virtual firm. This is true despite that we have been a virtual firm for 14 years, that each of our partners has over 25 years of experience, and that neither of us have had a single insurance claim ever.

Washington is thin on highly qualified attorneys practicing in the entertainment area. The mandatory insurance requirement works to the enormous detriment of businesses and entertainers seeking counsel in this area. The costs of insurance are borne by clients, and attorneys with valuable experience are pushed out of practice by this requirement. This requirement creates a market with fewer qualified attorneys operating at higher cost to the consumer. As a seasoned lawyer with a sterling track record, it is clear that we have learned to avoid errors and conflicts that might necessitate coverage, and neither we nor our clients gain any functional benefit from the mandatory malpractice insurance requirement. For us and firms like us, the benefit of this requirement lies solely in the pocket of the insurance companies.

We therefore propose that small and solo firms with attorneys having an average of fifteen or more years of experience and no insurance claims be granted an exemption to the insurance requirements.

Thank you for considering our situation.

Kindly,

Brian E. Lewis
Managing Partner
Rosen Lewis, PLLC
120 Lakeside Avenue, Suite 100
Seattle, WA 98122
Ph./F. 206.204.9660
blewis@rosenlewis.com

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Please consider the environment before printing this email.

From: [Bruce Clark](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory insurance?
Date: Monday, October 01, 2018 3:42:53 PM

I vote yes. I appreciate the cost burden to solo practitioners, or small firms, like my own, but I don't think that counterbalances the wisdom of mandated insurance. We require drivers to have insurance as a cost of that activity because we recognize the inevitable harm that some will cause. I have worked on both the D and P sides. I know that, generally, for persons who suffer harm at the hands of another one of the great frustrations to justice is a simple lack of insurance. Lawyers can talk (and do) endlessly about professionalism, but it won't solve some lawyer caused problems, insurance can.

I like the OR model. Lawyers ought not practice on clients with the latter suffering the loss for the former's negligence. Let's build a real backstop into the professional for when things go awry. If there should be some opt out mechanism around lawyers who are mostly retired, do only pro bono or the like, consider that. But the notion that insurance presents a real bar to a legal practice, well, that's not a compelling argument.

Thanks for soliciting input.

Regards,
Bruce

Bruce T. Clark, Esq.

MARLER CLARK

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From: [larry mancuso](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory malpractice insurance comments
Date: Monday, October 01, 2018 6:59:34 PM

I don't mind the idea of mandatory malpractice insurance. But please hear me out. I have been a WSBA member since 1988. I moved to Florida in 1994 and have not had a Washington State client since 1994 and do not intend to as long as I remain in Florida. I do have Florida malpractice coverage with the firm I work for in Florida. But I do not and the firm does not represent Washington State clients and thus there is no need for Washington State coverage. I kept up my Washington membership for many years now hoping to return to Washington. Should I return and practice law using my Washington license or should I use my Washington license to represent any client I promise to take out Washington malpractice insurance. So please carve out an exception for out of state members who do not represent Washington State clients. Thanks for listening. Laurance L. Mancuso. 18103.

From: [Dicks Gmail](#)
To: [Thea Jennings](#)
Subject: Mandatory malpractice insurance
Date: Wednesday, October 03, 2018 11:10:11 AM

Dear Task Force:

I am commenting on the August, 2018 article, "Should Malpractice Insurance Be Mandatory For all Washington Lawyers?".

I am retired. I have been a member of the bar since 1973. I am current on my CLE's. When I practiced, I always had insurance. Since I am not practicing, I don't have insurance, but I associate with attorneys who are insured on personal injury cases. I want to continue to associate with active licensed attorneys.

If you require insurance, I request that you provide an exception for retired attorneys who associate with insured attorneys on injury cases.

Thank you. Richard L. Peterson, Bar #5311

PS. To Thea Jennings. I tried to send this email to the address in the article to "insurancetaskforce@wsba.org." and was told the address was no good. I then called the bar, and talked to Matt who gave me your address. Please let me know when the bar committee receives my comment.

Sent from my iPadhh

From: [Patrick Mead](#)
To: sharon@sharonpowell.com
Cc: [Eric McDonald](#); [Mandatory Malpractice Insurance Task Force](#)
Subject: RE: [section-leaders] Mandatory Malpractice Insurance
Date: Wednesday, October 03, 2018 11:24:15 AM
Attachments: [image001.png](#)

Sharon,

That is a great question, but it is a question for which I do not have the answer. By copy of this email, I am forwarding your question to the task force, which will hopefully reply to you with a definitive answer that can be shared with the full membership of the Legal Assistance to Military Personnel Section.

Best wishes,

Pat



Patrick Mead | Sections Program Specialist

Washington State Bar Association | 📞 206.733.5921 | F 206.727.8324 | patrickm@wsba.org | sections@wsba.org

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From: sharon@sharonpowell.com <sharon@sharonpowell.com>

Sent: Wednesday, October 3, 2018 11:14 AM

To: Patrick Mead <Patrickm@wsba.org>

Cc: Eric McDonald <eric.mcdonald@q.com>

Subject: RE: [section-leaders] Mandatory Malpractice Insurance

Hi Patrick,

I am wondering how the new mandatory malpractice requirements will impact military attorneys in the state. Most work at military installations only helping individuals through one of the legal assistance offices, but sometimes family members and not service members are being helped. An additional factor is that many military attorneys do not hold Washington State bar licenses.

Would you be able to provide us with insights that we can pass along to military

attorneys?

Thank you,
Sharon

From: Pat Mead <Patrickm@wsba.orgsection-leaders@list.wsba.org>
Sent: Wednesday, October 3, 2018 10:37 AM
To: WSBA Section Leaders <section-leaders@list.wsba.org>
Cc: Sara Niegowski <Saran@wsba.org>; Eleen Trang <Eleent@wsba.org>; Terra Nevitt <terran@wsba.org>
Subject: [section-leaders] Mandatory Malpractice Insurance

Dear Section Leaders,

Hopefully you have been receiving all of WSBA's updates about the Mandatory Malpractice Insurance Task Force. The task force issued an interim report in July with a tentative conclusion that malpractice insurance should be mandated for Washington-licensed lawyers, with specified exemptions and minimum coverage levels. Because you no doubt have members who will be impacted by such a recommendation, I want to ask you to pass along some information and resources to anyone who might be interested.

The task force wants to gather as much feedback as possible before its final report is due in January. There will be an **open forum** for members to speak directly to task force members from 2-3 p.m. Tuesday, Oct. 16, at the WSBA Conference Center (telephone participation will be available). Comments and questions for the task force can also be directed to insurancetaskforce@wsba.org and will be provided to the entire task force.

Here are some good resources to learn more about the process and recommendation:

- [Mandatory Malpractice Task Force informational brochure](#)
- [Task force website](#)
- [Interim report](#)

Please let me know if you would like printed copies of the informational brochure, and I will get those to you right away. Thank you!

Pat Mead



Patrick Mead | Sections Program Specialist

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1325 Fourth Avenue #600 | Seattle, WA 98101-2539 | www.wsba.org

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You are currently subscribed to section-leaders as: sharon@sharonpowell.com. If you wish to unsubscribe, please contact the [WSBA List Administrator](#).

From: Hugh D. Spitzer <spith@uw.edu>
Sent: Wednesday, October 10, 2018 8:25 PM
To: sharon@sharonpowell.com; Patrick Mead; eric.mcdonald@q.com
Cc: Rachel Konkler; Thea Jennings; Doug Ende; Todd R. Startzel
Subject: Malpractice Insurance and Military Attorneys

Follow Up Flag: Follow up
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Dear Sharon, Eric & Patrick,

This question from Sharon has found its way to me because I am chairing the WSBA's Task Force on Mandatory Malpractice Insurance. We haven't had this issue posed to us, but we'll definitely take a very close look. I *think* I know what the answer is, but perhaps Sharon can help us out.

The Task Force has tentatively worked up a group of potential exemptions from the requirement—which would be malpractice insurance required for *lawyers in private practice*. One exemption would cover government lawyers—essentially because they are not in the private practice of law. So...Sharon...even though JAGs are providing civil legal services to military personnel, aren't those lawyers on federal government salaries? (By the way, I expect that the Task Force will propose an exemption for lawyers employed by private non-profit legal services organizations that carry insurance for those lawyers. But that's different, because they are private legal services providers. In the instance of military attorneys providing civil legal services, if the client has a malpractice complaint, wouldn't that be handled by the Federal Tort Claims Act? Or perhaps the system is different in the military, and the service members don't have any claim at all. In any event, my hunch is that it is handled internally within the federal government and the particular military service—so mandatory insurance would be inapposite (and wouldn't apply because we're talking about government lawyers). But please correct me if I'm wrong in any of these assumptions.

Next, my recollection is that there's a special RPC to the effect that military lawyers serving military clients in Washington don't have to be licensed in Washington State. So for the non-Washington licensed military lawyers, the malpractice insurance requirement (which would be a licensing requirement) wouldn't apply at all.

Any and all recipients of this email are welcome to chime in to help out the analysis!

Thanks.

Hugh

Hugh Spitzer
Professor of Law
University of Washington
spith@uw.edu
206-685-1635

From: sharon@sharonpowell.com <sharon@sharonpowell.com>
Sent: Wednesday, October 3, 2018 11:14 AM
To: Patrick Mead <Patrickm@wsba.org>
Cc: Eric McDonald <eric.mcdonald@q.com>
Subject: RE: [section-leaders] Mandatory Malpractice Insurance

Hi Patrick,

I am wondering how the new mandatory malpractice requirements will impact military attorneys in the state. Most work at military installations only helping individuals through one of the legal assistance offices, but sometimes family members and not service members are being helped. An additional factor is that many military attorneys do not hold Washington State bar licenses.

Would you be able to provide us with insights that we can pass along to military attorneys?

Thank you,
Sharon

From: sharon@sharonpowell.com
To: [Doug Ende](#); "[Hugh D. Spitzer](#)"; [Patrick Mead](#); eric.mcdonald@q.com
Cc: [Rachel Konkler](#); [Thea Jennings](#); "[Todd R. Startzel](#)"
Subject: RE: Malpractice Insurance and Military Attorneys
Date: Friday, October 12, 2018 1:24:00 PM
Attachments: [image002.png](#)
[image003.png](#)

Thank you so much, Doug, for your great explanation! There are a lot of military attorneys who prepare divorce documents, wills, etc. for filing in Washington state so it is good to know if they perform those duties in their capacity as government attorneys they will not be required to have malpractice insurance. That is wonderful news.

Regards,
Sharon Powell

SHARON R. POWELL
WSBA LAMP, IMMEDIATE PAST CHAIR

Sharon Powell, PLLC
22525 SE 64th Place
Suite 2026
Issaquah, WA 98027
Phone: 425-736-4893
Fax: 425-557-3605

From: Doug Ende <douge@wsba.org>
Sent: Thursday, October 11, 2018 2:16 PM
To: 'Hugh D. Spitzer' <spith@uw.edu>; sharon@sharonpowell.com; [Patrick Mead](#) <Patrickm@wsba.org>; eric.mcdonald@q.com
Cc: [Rachel Konkler](#) <rachelk@wsba.org>; [Thea Jennings](#) <theaa@wsba.org>; [Todd R. Startzel](#) <tstartzel@ks-lawyers.com>
Subject: RE: Malpractice Insurance and Military Attorneys

I agree with your preliminary reaction, Hugh. It seems to me that in all cases military lawyers would not be subject to a malpractice insurance requirement under the approach being contemplated by the Task Force.

- Military lawyers in Washington but not licensed here (practicing here under the multijurisdictional practice provisions of RPC 5.5(d)(2)) would not have active Washington licenses and therefore would not be covered under such a requirement
- Military lawyers licensed in Washington would come within the expected exemption for government lawyers. I spoke to a lawyer at Oregon's Professional Liability Fund, which as you know has an exemption for lawyers employed as government attorneys, and the PLF treats

military lawyers licensed in Oregon as exempt under that provision.



Douglas J. Ende | Chief Disciplinary Counsel | Office of Disciplinary Counsel

Washington State Bar Association | ☎ 206.733.5917 | douge@wsba.org

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From: Hugh D. Spitzer [<mailto:spith@uw.edu>]

Sent: Wednesday, October 10, 2018 8:25 PM

To: sharon@sharonpowell.com; Patrick Mead <Patrickm@wsba.org>; eric.mcdonald@q.com

Cc: Rachel Konkler <rachelk@wsba.org>; Thea Jennings <theaa@wsba.org>; Doug Ende <douge@wsba.org>; Todd R. Startzel <tstartzel@ks-lawyers.com>

Subject: Malpractice Insurance and Military Attorneys

Dear Sharon, Eric & Patrick,

This question from Sharon has found its way to me because I am chairing the WSBA's Task Force on Mandatory Malpractice Insurance. We haven't had this issue posed to us, but we'll definitely take a very close look. I *think* I know what the answer is, but perhaps Sharon can help us out.

The Task Force has tentatively worked up a group of potential exemptions from the requirement—which would be malpractice insurance required for *lawyers in private practice*. One exemption would cover government lawyers—essentially because they are not in the private practice of law. So...Sharon...even though JAGs are providing civil legal services to military personnel, aren't those lawyers on federal government salaries? (By the way, I expect that the Task Force will propose an exemption for lawyers employed by private non-profit legal services organizations that carry insurance for those lawyers. But that's different, because they are private legal services providers. In the instance of military attorneys providing civil legal services, if the client has a malpractice complaint, wouldn't that be handled by the Federal Tort Claims Act? Or perhaps the system is different in the military, and the service members don't have any claim at all. In any event, my hunch is that it is handled internally within the federal government and the particular military service—so mandatory insurance would be inapposite (and wouldn't apply because we're talking about government lawyers). But please correct me if I'm wrong in any of these assumptions.

Next, my recollection is that there's a special RPC to the effect that military lawyers serving military clients in Washington don't have to be licensed in Washington State. So for the non-

Washington licensed military lawyers, the malpractice insurance requirement (which would be a licensing requirement) wouldn't apply at all.

Any and all recipients of this email are welcome to chime in to help out the analysis!

Thanks.

Hugh

Hugh Spitzer
Professor of Law
University of Washington
spith@uw.edu
206-685-1635

From: sharon@sharonpowell.com <sharon@sharonpowell.com>
Sent: Wednesday, October 3, 2018 11:14 AM
To: Patrick Mead <Patrickm@wsba.org>
Cc: Eric McDonald <eric.mcdonald@q.com>
Subject: RE: [section-leaders] Mandatory Malpractice Insurance

Hi Patrick,

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Would you be able to provide us with insights that we can pass along to military attorneys?

Thank you,
Sharon

From: [Steve Kirby](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Feedback - Missing an option - Public Mandatory with rates based on practice character - Best Option
Date: Wednesday, October 03, 2018 12:50:12 PM

Task Force,

I am a solo attorney working out of Spokane Washington and I wanted to suggest that the Task Force consider a solution that is not listed in the interim report:

Option 5.5 - Single payer model based on practice character.

I lean toward a single-payer because it removes the profit motive of insurers. The WSBA would have the same costs to operate an insurance company as a for-profit company and would not 'pad' the costs to reach 10-20% profitability. I also expect economies of scale if there is a single provider for the entire state. The cost to run such an agency, private or under the WSBA, is the same. As both an attorney, as well as a potential client, I do not see the downside. Single-payer also makes things simple since everyone knows where to go if there is a problem.

The argument that a single payer has to allocate risk across all attorney's equally, resulting in high rates for some low-risk attorneys, is based on the Oregon Model, but there is no need for us to follow that model. The same calculations that private, free-market, insurance companies make to calculate insurance premiums can be applied to a single payer model resulting in a similar premium, minus the profit overhead. Just like free-market insurance, high-dollar litigation attorneys and real estate attorneys would pay more than a newly minted solo attorney. If a single-payer insurance provider calculates rates based on the same risk profile as a private company what are the downside of going single-payer? I have not read any arguments in the report for not going with a single payer other than those that flow directly from premiums based on 'risk' as opposed to a 'flat' premium.

Another, intriguing, benefit of having the insurance "in-house" is that ability to monitor attorney discipline. Currently, if a claim is filed against an attorney the WSBA does not know. A malpracticing attorney could, in theory, just pay the claim and the WSBA would never know of the malpractice. If the insurance claims are managed by the WSBA all claims would be available for the WSBA to review. This would allow the WSBA to, proactively, coach attorneys that may be getting an excessive number of claims. Even more, if there is an area of the law resulting in a excessive number of claims, the WSBA can look to improve education or perform rule-making to resolve or improve those areas. These options are lost in a private/ free-market for insurance.

Summarized another way, a single payer model based on practice character, seem to take the best of both task forces options 5 (Free-market mandatory insurance) and 6 (professional liability fund).

I feel strongly that a single-payer, mandatory, insurance program, with rates calculated the same way private insurance calculates rates would be the best solution for both attorneys and clients. There would be start-up costs,

but I would expect those to be repaid rapidly through on-going operations and there are many funding options, such as bonds, that would cost less than the 10-20% premium private insurances providers charge. There is also an income stream, through investments, from the retained money held to pay future claims. I hope the Task Force will at least consider it as an option.

On a related note, based on my read of the interim report, the private model, option 5, is being set-up to be the winner. Someone is taking a lot of time to make that option look persuasive. That is my perception based on the bullet points.

I very much appreciate your work on this issue. It's not an easy issue and there are many competing interests spending money and time to persuade you to reach a solution that benefits them as opposed to the whole state. When looking at the competing interests I would ask that the Task Force look for the benefit of the greatest number of individuals in our state.

If you have any questions please do not hesitate to reach out.

Thank you,

/s/

Stephen Kirby
Kirby Law Office, PLLC
1312 N. Monroe St.
Spokane, WA 99202
(509) 795 4863
kirby@kirbylawoffice.com

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<https://www.avg.com>

From: [Roy Martin](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance
Date: Wednesday, October 03, 2018 5:14:36 PM

To Whom it May Concern,

I'm writing to express my opinion that mandatory insurance is a good idea so long as practitioners can continue to purchase policies on the open market. I would object to Oregon's system under which attorneys are required to purchase a standard policy offered by the Bar. I think it's reasonable to set mandatory policy limits so long as those numbers are reasonable. No solo should be operating without \$100,000 coverage so that's probably a good requirement.

Perhaps there could be an option for attorneys to establish a bond or account to cover client losses in the event of malpractice, but that sum should be the same threshold and should not be available to cover the attorney's costs of defense. It should be there just to make sure clients are indemnified.

I might have a different opinion on this issue if I believed mandatory insurance were likely to raise premiums for those of us who currently carry insurance. I see no reason why this should be the case (presuming of course that insurance companies have not found a way to collude with one another). Given the ineffectiveness of so much of government regulatory oversight these days, I suppose we shouldn't rule out that possibility.

Roy N. Martin, Attorney at Law
119 N. Commercial Street, Suite 910
Bellingham, Washington 98225
(360) 746-0400

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From: [Stan Kanarowski](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance
Date: Wednesday, October 03, 2018 5:23:26 PM

I ask to be exempt. I am a senior attorney who has served as a protem district court judge when needed. Otherwise I provide assistance to old clients, but don't take new clients. I would prefer to keep my license. Stan Kanarowski WSBA 21038. Thanks

Sent from my iPhone

From: [Pat Char](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Exceptions for mandatory malpractice insurance
Date: Wednesday, October 03, 2018 6:18:16 PM

To whom it may concern: I have no comments on whether malpractice insurance should be required in general. My comments relate to exceptions, in the event that malpractice insurance becomes mandatory. There should be a procedure to obtain an exception to mandatory insurance. In my case, I practiced actively for 39 years with private firms (Bogle & Gates, Garvey Schubert, and K&L Gates). Since retirement from private practice in 2016, I have kept an active bar license, although I have not earned a cent from the practice of law. I have been volunteering with organizations that have coverage for volunteers, e.g. KCBA. When private individuals have asked legal questions, I have referred them to other attorneys in my former firm or to other individuals (telling them that I am not in private practice because of a lack of insurance). I am aware of a status that permits attorneys to retain a license for pro bono work, but to date, I have not elected that status and, instead, have been paying full dues. A requirement that I obtain and pay for malpractice insurance -- on top of the cost of dues and the cost of maintaining CLE credits) would be financially prohibitive. I hope that I will not be forced to give up my bar license because of that possible extra cost. That result would limit options for the future, in the unlikely event that circumstances change and I must return to work. Also, that could hinder my ability to work on different pro bono organizations over time. I hope that whatever rule is adopted allows for some exceptions.

Best regards,
Patricia Char
WSBA #7598

From: [Tyson Soptich](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Re: July Board of Governors Meeting Digest
Date: Wednesday, October 03, 2018 7:30:20 PM

To whom it may concern:

I won't be able to attend the upcoming public comment meeting you've called. I do wish to reiterate my below comment, however, and ask that you kindly acknowledge receipt and consideration of the same.

To recap, I see this proposal as an unnecessary barrier to the practice of cost-effective legal services. While borne of seemingly good intentions, it will result in fewer attorneys being willing to serve historically underserved and disadvantaged communities. I urge you to consider abandoning this requirement altogether, or imposing a minimum private practice revenue threshold of \$100k or more.

Thank you,
Tyson Soptich

From: Tyson Soptich
Sent: Thursday, August 2, 2018 11:55 AM
To: insurancetaskforce@wsba.org
Subject: Fw: July Board of Governors Meeting Digest

Per the below, I understand WSBA is moving to require malpractice insurance of all bar members. I urge you to abandon this requirement, as it adds unnecessary costs and barriers to the practice of law, and may conflict with or be duplicative of other risk mitigation strategies attorneys have already adopted. Furthermore, this policy would have unintended consequences, such as dissuading in-house private company attorneys like myself from practicing in any additional part-time capacity, such as providing pro-bono or otherwise heavily discounted counsel to those without access to legal services.

Respectfully submitted,
Tyson Soptich

From: Washington State Bar Association <noreply@wsba.org>
Sent: Thursday, August 2, 2018 11:33 AM
To: soptich2@hotmail.com
Subject: July Board of Governors Meeting Digest

[Washington State Bar Association](#)



WSBA Home

wsba.informz.net

The Washington State Bar Association's home on the Internet. Our newly redesigned site offers information on becoming a licensed legal professional in Washington and member benefits.

A summary of the Board of Governors meeting July 27-28 in Vancouver, WA

Top Takeaways

1. Insurance? Members of the [Mandatory Malpractice Insurance Task Force](#) said in an [interim report](#) that they are likely to recommend malpractice insurance as a condition of licensing for all active lawyers, with to-be-determined exemptions. Before the final report is due in January, they want YOUR feedback, especially about specific details like exemptions and minimum coverage levels. More info below.
2. Insurance! WSBA has the green light to set up a private health-insurance exchange to provide another option for members across the state. More info below.
3. The board took a first look at [WSBA's draft 2019 budget](#), which will be on the agenda for action in September. Subject to Washington Supreme Court review, all license types will have the same active member license fee—\$453—next year. More info below.
4. Rules, rules, rules: Various WSBA entities have recommended amendments and additions to the Rules of Professional Conduct, Superior Court Civil Rules, Criminal Rules for Courts of Limited Jurisdiction, and Superior Court Criminal Rules. More info below.
5. We're honoring a fantastic group of legal luminaries in September—get your tickets now for the Sept. 27 [annual APEX Awards dinner](#). You're sure to leave inspired.

Meeting Recap

- **Local Hero Awards:** WSBA President Bill Pickett presented Local Hero Awards to [Lisa Lowe](#) (nominated by the Clark County Bar Association) and [David Nelson](#) (nominated by the Cowlitz-Wahkiakum Bar Association) for their outstanding legal and community service.
- **Mandatory Malpractice Insurance.** The [Mandatory Malpractice Insurance Task Force](#) issued an interim report with a tentative conclusion that malpractice insurance should be mandated for Washington-licensed lawyers, with specified exemptions (in Oregon, for example, exempted groups include government attorneys, in-house private-company attorneys, and others). The task force's preference thus far is to mandate a minimum level of coverage, purchased through the open marketplace. Before its final report is due in January, the task force will focus on details (what exemptions? what minimums?) for rule drafting. Members are encouraged to read the [interim report](#) and provide comments to insurancetaskforce@wsba.org. Please note: Limited License Legal Technicians and Limited Practice Officers are already obligated to show proof of financial responsibility, which is typically established by certifying malpractice insurance coverage.
- **Member Health-Insurance Pool.** With rising health-care costs and uncertainty about the Affordable Care Act, members have been reaching out to WSBA over the past year asking what we can do to provide health insurance. In response, we've explored the insurance landscape and talked to members, other bars, insurance experts and officials, and various providers. Our research indicates the best potential to offer WSBA members another insurance option with competitive

rates is through a private exchange. We will soon partner with [Member Benefits, Inc.](#), a company that creates private exchanges for associations such as the State Bar of Texas and the Florida Bar. We will let all members know when that benefit is available.

- **Budget and Audit Committee Recommendations.** The Budget and Audit Committee presented [WSBA's draft 2019 budget](#) for consideration to the board, which will take action on it in September. The draft budget maintains programs and services to fulfill our regulatory responsibilities, serve and protect the public, and support members to be successful in the practice of law. The budget is built on previously set lawyer-license fees of \$453. As part of the budget-building process, the board approved:

- A new Continuing Legal Education (CLE) revenue-sharing model with sections. Section leaders widely expressed support for this new model.

- License fees for Limited Practice Officers (LPOs) and Limited License Legal Technicians (LLOs): After debate, both active-member fees were set at \$453 for 2019 (the Budget and Audit Committee came with a recommendation of \$200). The board also recommends that LLLTs and LPOs pay a \$30 Client Protection Fund assessment, which would need to be specifically ordered by the Washington Supreme Court. The majority of governors decided that, as WSBA members with full access to benefits and services, LPOs and LLLTs should have the same license fees as lawyers. The Washington Supreme Court will review these fees for reasonableness.

- The Law Clerk program annual fee: After remaining at \$1,500 for 20 years, the fee will increase to \$2,000 next year.

- **Free Legal Research Tool for Members.** WSBA currently contracts with Casemaker to provide members with a free legal-research platform. WSBA recently launched a request for proposal and has been exploring whether to remain with Casemaker, switch to Fastcase, or offer both. To evaluate members' preference, WSBA conducted a member-wide survey with demo links, in-person usability tests, and virtual focus groups. Governors discussed the pros and cons of choosing one platform over another or even offering both. WSBA will be maintaining Casemaker and continuing to explore whether to add Fastcase as an additional member benefit.

- **Rule Recommendations from the Civil Litigation Rules Drafting Task Force:** This task force was chartered in 2016 to suggest rules necessary to implement the board's previous task force that recommended various changes to address the escalating cost of civil litigation. The recommended amendments and additions to the [Superior Court Civil Rules](#) (CR)—including 1, 3.1, 11, 16, 26, 37, 53.5, and 77—focus on the principle of cooperation and require and/or encourage cost-efficient procedures. ([The full amendments are in the board materials starting on page 215.](#)) The board will take action in September to approve the recommended amendments for submission to the Washington Supreme Court.

- **Recommendations from the Court Rules and Procedures Committee.** As part of the Washington Supreme Court's review cycle to bring rules up to date with current law, the Court Rules and Procedures Committee has proposed amendments to Superior Court Criminal Rules (CrR) 1.3, 3.4, and 4.4; Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) 4.2, 4.4, and 7.3; and Civil Rule (CR) 30. ([The full amendments are in the board materials starting on page 323.](#)) The board will take action in September to approve the recommended amendments for submission to the Washington Supreme Court.

- **Amendments to RPCs Concerning Marijuana-Related Conduct.** As recommended by the Committee on Professional Ethics (CPE), the board approved for submission to the Washington Supreme Court amendments to comments to the Rules of Professional Conduct (RPC) to continue to allow Washington lawyers to assist those participating in the marijuana industry. These changes

were in response to new federal enforcement priorities regarding marijuana; they remove contingency language in Comment [18] to RPC 1.2 regarding federal enforcement priorities and add Comment [8] to RPC 8.4 to clarify that a lawyer's conduct in counseling a client regarding marijuana law would not establish a basis for disciplinary action under the rule ([The full amendments are in the board materials starting on page 166.](#))

- **Proposed Bylaw Amendment Regarding Endorsing Candidates.** WSBA bylaws currently prohibit governors, WSBA officers, and the executive director from publicly supporting or opposing candidates in an election for public office in Washington state if being an attorney is a prerequisite for office. Governors considered a proposed amendment that would extend the endorsement prohibition to any position on the Board of Governors. This amendment will be on the September agenda for action.
- **Updates from other board entities:**
 - o **Addition of New Governors Work Group:** This group met for the first time in July with a second meeting scheduled for Aug. 14. All materials are online. The group will make a recommendation to the board in September about a proposal to eliminate three yet-to-be-seated governors (two public members, one LLLT or LPO) and to allow LLLTs and LPOs to run in open governor elections in congressional districts.
 - o **Member Engagement Work Group:** The board approved the charter and roster for a new work group to explore how to best engage members and facilitate two-way understanding.
- **Selection of 2018-2019 WSBA Treasurer.** Congratulations to Governor Dan Bridges, whom the board selected as its incoming Treasurer. Kudos and appreciation to outgoing Treasurer Governor Kim Risenmay.
- **Working Retreat:** The board held its annual retreat before the meeting on Thursday, July 26. Governors focused on communication and relationships.
- **Conversation with the Washington New and Young Lawyers Committee (WYLC).** WYLC Chair Mike Mocerri and Chair-Elect Kim Sandher asked for WSBA to partner on solutions such as access to an affordable health-care exchange and reducing debt load/promoting public-service loan forgiveness for those coming out of law school.

The agenda and materials from this Board of Governors meeting, as well as past meetings, are [online](#). The next regular meeting is September 27-28 in Seattle. The Board of Governors is WSBA's governing body charged with determining general policies of the Bar and approving its annual budget.

[WSBA seal](#)



Washington State Bar Association

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Official WSBA communication

All members will receive the following email, which is considered official:

- Licensing and licensing-related materials
- Information about the non-CLE work and activities of the sections to which the member belongs
- Mandatory Continuing Legal Education (MCLE) reporting-related notifications
- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications



From: [Michael Miller](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Exceptions to the Rule
Date: Wednesday, October 03, 2018 7:48:37 PM

Greetings,

I am a licensed Washington Attorney with my solo practice based in Colorado. I'd like to know what exceptions are being considered given my practice location and the limited scope of my practice (namely, trademark and copyright law).

This rule would no doubt have a significant impact on my business given the likelihood of having to pay for such fees in a low-risk environment. I'd like to comment more after proper due diligence but for now these concerns suffice.

Thanks in advance for getting back to me. Have a nice day.

Cheers,

Michael C Miller, esq.

Sent from my iPhone

From: [Helen N](#)
To: [Mandatory Malpractice Insurance Task Force](#); [Helen N](#)
Subject: Comment to be added to the record re: possible mandate about insurance for practicing attorneys
Date: Wednesday, October 03, 2018 8:09:27 PM

Greetings, I passed the bar exam or learned I had passed in May, 2008 at the time when the general economy was in full retraction and competing against too many attorneys. I attempted to find work in law firms and government agencies to no avail. It appeared quite hopeless. What is a budding or newly minted attorney who has very few strings in the legal profession to do? It is darn near impossible to afford both the bar dues and malpractice insurance, too with an uncertain income. I couldn't. I had to make a decision. Try to make some income or simply lapse all the hard work I have done to get the law license. The later wasn't an option with oodles of student loan debt.

Simply put, mandating insurance will have a negative impact in several important ways. It will favor the already well to do individuals who don't have to make a "what if" decision. Those types don't deserve the greater opportunities and in a capitalistic economic system, not a caste, we generally still agree upward possibilities up the socio-economic ladder is possible for all.

To mandate insurance will disfavor those who work very hard to get their educations but are not born with a silver spoon in their mouths and makes the decision about who will practice law a decision for the private insurance companies to make (charging whatever they like without any checks or balances). I would encourage the bar association in the state of Washington or any state to consider these things, since I still feel all people deserve the opportunity to move forward who make such substantial effort to acquire the means to gain those opportunities (debt, time and use of intellect). If insurance is required someday then it should be a pooled insurance fund that the amount to be paid for insurance coverage set, qualified guaranteed and standardized, not beyond the means of most who desire to work in the legal profession.

Helen Nowlin, Attorney & Educator
Mobile Notary & Document Service
<http://www.educationalfamilyestateapps.com>
360-635-6437 (Business and Fax #)

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From: [Helen N](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Re: Comment to be added to the record re: possible mandate about insurance for practicing attorneys
Date: Wednesday, October 03, 2018 8:15:12 PM

*ladder....

Helen Nowlin, Attorney and Educator

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<http://www.educationalfamilyestateapps.com>

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From: Helen N <[REDACTED]>

Sent: Wednesday, October 3, 2018 8:09 PM

To: insurancetaskforce@wsba.org; Helen N

Subject: Comment to be added to the record re: possible mandate about insurance for practicing attorneys

Greetings, I passed the bar exam or learned I had passed in May, 2008 at the time when the general economy was in full retraction and competing against too many attorneys. I attempted to find work in law firms and government agencies to no avail. It appeared quite hopeless. What is a budding or newly minted attorney who has very few strings in the legal profession to do? It is darn near impossible to afford both the bar dues and malpractice insurance, too with an uncertain income. I couldn't. I had to make a decision. Try to make some income or simply lapse all the hard work I have done to get the law license. The later wasn't an option with oodles of student loan debt.

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Helen Nowlin, Attorney & Educator

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From: [Kevin Carlisle](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Concern
Date: Wednesday, October 03, 2018 8:41:52 PM

I am licensed and I pay my dues and meet CLE obligations but I do not practice. Qty qqq

From: [Kevin Carlisle](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Concern
Date: Wednesday, October 03, 2018 9:08:16 PM

I do not practice law but I do pay my dues and I fulfill my CLE requirements. I value this connection and identity with the Bar. Please do not impose the obligation of malpractice insurance on those of us who do not practice law, but still want to maintain our Bar license. We worked hard for Bar membership and it is a very important part of who we are. Thank you.

Sincerely,

Kevin L. Carlisle
WSBA #17103

From: [Reg P](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Pro Bono
Date: Thursday, October 04, 2018 6:51:35 AM

Dear Task Force members,

I am a licensed attorney in Washington. I wanted to see if you all low income possibilities or significant reductions for those of us that are doing pro bono work mainly. I do e-discovery as my main job in order to meet my bills. I see no reason why I need malpractice for that as the carriers I work with have their own malpractice insurance.

I am also not sure that we should be encouraging the use of insurance so that clients can sue lawyers when they are not happy with the result. A lawyer, like a doctor can never guarantee a result. I fear that making this mandatory opens the floodgates to people just wanting to sue attorneys to collect on their malpractice insurance.

Also, I believe that you need to have a wide variety of people instead of supporting one company. That is not fair to choice in this entire matter.

Finally, I would highly recommend the WSBA consider this for those of us who do pro bono work but do not fit in the traditional conceptions of law firm attorneys. I would suggest that the WSBA have an optional malpractice insurance coverage that can be paid once a year that is collected as part of the dues. That way you can just have people pay the deductible into whatever you all are already using (if you have it) and just cover more people or whatever. Either way, I am not "fluent" in insurance matters, but I think you get the idea of what I am trying to suggest here. The WSBA should be able to offer it as part of a service, however, giving attorneys a choice in the level or type that they need.

Sincerely,
Regina Paulose
Chair-elect WPTL

--

A CONTRARIO
blog: <http://acontrarioicl.com>
On twitter: @acontrarioicl

From: [Kyler Danielson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance
Date: Thursday, October 04, 2018 9:35:25 AM

Task Force:

Thank you for your time and efforts in considering the important issue of whether attorneys should maintain malpractice insurance. I agree that attorneys in private practice should have malpractice insurance to protect themselves and their clients. However, this rule should provide exemptions.

Most importantly: Non-practicing attorneys should not be required to maintain such insurance. Malpractice insurance is an unnecessary expense for nonpracticing attorneys because they are not practicing law. Once they return to the practice of law, they should be required to obtain malpractice insurance. However, nonpracticing attorneys are not a risk to the public or to clients, because they do not have clients. I am currently a nonpracticing attorney. Someone in my position should not be required to pay this unnecessary expense.

Please take the following thoughts into consideration as well:

- Attorneys on leave from their practice should not be required to maintain malpractice insurance because, likewise, they are not engaged in the practice of law. This exemption should include any type of leave or break from the practice of law -- pregnancy/paternity leave, disability leave, or taking personal time for other reasons.
- The requirement should consider whether an attorney has a particular hardship or inability to pay. If a person has a limited practice or works a part-time schedule, then the bar should either provide grants to assist in paying for their malpractice insurance or should exempt them (subject to a demonstration that the person is unable to pay.)
- The requirement should provide a process for attorneys to seek an exemption based on personal circumstances, so that attorneys seek an exemption for reasons that are specific to that individual.
- Retirement should not be a specifically-included exemption because retired attorneys create even more risk to their clients. Once outside of practice, retired attorneys likely would not have the same motivation to stay up to date with changes in the law or to obtain new information about legal rules, relevant case law, and changes to technologies for accessing case law. This creates a greater risk to the public and clients if they do not maintain malpractice insurance.
- I agree with the task force's decision that for the government or nonprofit entities would not be required to maintain malpractice insurance. Please maintain this exemption.

Thank you again for your time and consideration,

Kyler Danielson

From: [Margaret felts](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: comment re mandatory malpractice insurance
Date: Thursday, October 04, 2018 10:20:23 AM

I am registered in Washington, but due to family decisions, find myself living in California. Here, my primary income comes from serving as an Expert Witness in utility regulatory cases (pipeline and power plant incidents). Meanwhile, I am certified with the VA to represent Veterans who need to file or appeal disability claims. While there is a long-shot opportunity to receive income from an appeal, generally most of my work with veterans is assisting with primary claims, pro-bono. As a result, carrying malpractice insurance for the legal work I perform would represent a significant, unrecoverable expense. I am in a position to provide pro-bono services because I am older (67) and have an alternative source of income. There probably are not many lawyers in Washington who find themselves in this situation, but as baby-boomers retire from law practices, they might find that they can contribute a bit of their expertise and time to pro-bono services. I hope you will give this situation some consideration during your deliberations.

Margaret Felts

From: [Sue Strachan](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: FW: Mandatory Malpractice Insurance info not available
Date: Thursday, October 04, 2018 12:50:14 PM
Attachments: [Mal Practice info not available.docx](#)
Importance: High

From: Dennis L. Potter [mailto:dennis@potter-sybor.com]
Sent: Thursday, October 4, 2018 12:43 PM
To: Sue Strachan <susanst@wsba.org>; Adam Ray <adamr@wsba.org>
Cc: Evelyn Sybor Law <evesyborlaw@zipcon.net>
Subject: Re: Mandatory Malpractice Insurance info not available
Importance: High

I attempted to find the info on the bar website and got the response that it could not be found as indicated in the attached screenshots. I received a pdf file (<http://files.constantcontact.com/28d16a55201/b645576c-4526-4fc4-a1af-122b2ac21cfd.pdf>) that has apparent links that are inoperative (also attached) none of the links are active including the email addresses.

The information I have seems to indicate the Task forces' recommendations are based on a less than 20% share of responses from the membership. WSBA cost are already excessive and support interests not germane to normal practice of law. I have practiced for 20 years without insurance in a small community oriented practice. The key to being successful is in vetting the cases and the client that one takes on.

Those that are more inclined to favor volume over substance and income over quality of claim are the ones that need insurance. They will find that out on their own in short order. Mal practice insurance does not screen a lawyer from liability it merely puts another law firm between the lawyer and the client that is a predator litigator.

Why don't you interview the clients that had to sue for mal practice and hire an attorney to bring the claim. Look at the attorneys that prosecute malpractice claims . . I know from experience that many such claims are rejected and the so called protected client is left at the mercy of the insurance law firm defending the claim.

Requiring malpractice insurance goes beyond the scope of limits on a required membership bar organization and protection of clients(s) losses is inadequate at best and often adds insult to injury.

Dennis Potter

POTTER-SYBOR PLLC

Attorneys at Law
Roosevelt Law Center
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Seattle, WA 98125
206 787-1400, fax: 787-1414

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From: [Don Gulliford](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory insurance??
Date: Thursday, October 04, 2018 12:52:08 PM

10/4/2018 Dear Task Force: My input concerns acting as Mandatory Arbitrator for State Admin Office

of Courts and the counties that have MAR.

Question: Since that is all I do, would mandatory insurance be required? I would think not. Thanks for any thoughts...Don M. Gulliford WSBA 1825

From: [Gregory J Wall](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Proposed Mandatory insurance
Date: Thursday, October 04, 2018 2:18:36 PM

Dear Committee Members

I oppose the creation of an Insurance company or fund to provide insurance. The private market is more than adequate. If the BOG wants to make insurance mandatory, members can buy int on the open market. You are required to have liability insurance on your vehicle in this state, but the State of Washington did not set up its own insurance company for this purpose. The private market works well.

If we are going to increase the financial burden on members in a significant way, it should be by a vote of the members of the Association, not by unilateral action by the BOG.

Gregory J. Wall
Law Office of Gregory J. Wall, PLLC
gregwall@gjwlaw.com
817 Sidney Avenue
Port Orchard, WA 98366
(360) 876-1214

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From: [Carter, Anthony \(DFI\)](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Government Employee Exemption
Date: Thursday, October 04, 2018 4:55:17 PM

Thank you for the follow-up contact.

I reviewed the preliminary report when it was published and noted the task force is considering an exemption for Government attorneys.

Not surprisingly, as a 33-year state employee I support the exemption.

Sincerely,

Anthony W. Carter, Esq.
Senior Legal Examiner
Department of Financial Institutions
P.O. Box 41200
Olympia, Washington 98504-1200
Office: 360-725-7842
Mobile: 360-890-2124
Fax: 360-596-3868

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Dictum Meum Pactum

From: [James Schroeder](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Feedback for consideration
Date: Thursday, October 04, 2018 5:02:27 PM

Dear Task Force commission,

Please note that the traditional providers of legal malpractice insurance refuse to provide insurance to solo patent attorney practitioners. Making malpractice insurance mandatory without providing legitimate insurance options for patent attorney practitioners will effectively destroy solo patent attorney practice in Washington State. Making malpractice insurance mandatory will as a result deprive the local community from lower cost/high value patent legal services solo practitioners are presently able to offer. It would be an injustice to solo patent practitioners to mandate malpractice insurance.

Regards,

James Schroeder

From: [Rebecca Hillyer](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Thursday, October 04, 2018 5:03:42 PM

Greetings: While I am licensed to practice law in the State of Washington, I have on only 3 occasions actually practiced law in your State. I have done nearly all my work in Oregon where I have also been licensed for many years. Oregon has had a Mandatory Malpractice Insurance State and I believe it has been the case since I became a lawyer in Oregon, 1985, and I always thought it was an excellent idea because of the protections it gives clients.

Currently, I am general counsel for a public college in Salem, Oregon and I am exempt from Oregon Mandatory Malpractice Insurance, since my only client is a public entity. It is my understanding that I would also be exempt from Washington Mandatory Malpractice Insurance under the rules you are currently contemplating. Exempting attorneys like me makes sense since I am not dealing with Washington citizens legal matters and putting them, their financial well being, at risk if I committed malpractice their case. If I am exempt, then I support Mandatory Malpractice Insurance, not because I will not have to pay, but because it makes sense to protect the public.

Rebecca L. Hillyer, JD
General Counsel
Chemeketa Community College
4000 Lancaster Dr. NE
Salem, Oregon 97309-7070
503.399.8677

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From: [Robert Stein](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance
Date: Thursday, October 04, 2018 5:05:45 PM

Task Force Members:

As a WSBA member who is retired except for acting as an arbitrator, I agree with the proposal to exempt full time arbitrators from the insurance requirement. Without such an exemption, it would not be worth it (from a revenue versus expenses standpoint) to continue this work. Thank you.

Robert Stein
WSBA 11193

Sent from [Mail](#) for Windows 10

From: [Killian King](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Coverage
Date: Thursday, October 04, 2018 5:06:27 PM

Please point me to the list of reasons why someone would be exempt from coverage under the new rules?

I have maintained my active bar status since 1996 when I passed the bar exam, even though I do not represent clients, nor live in the state of Washington. Are you trying to get us to become inactive?

This is really annoying.

Regards,
Killian King
wsba# 26347

From: [Nathan Brown](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Patent Insurance
Date: Thursday, October 04, 2018 5:07:51 PM

Currently Patent malpractice insurance is at least 4 times the cost of typical malpractice insurance. I would be unable to offer LOW BONO intellectual property legal work to clients if malpractice insurance was mandatory. No one would be able to do that.

Please consider an exception for LOW BONO work in these high rate malpractice insurance legal fields.

--

Nathan Brown
Attorney at Law

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Website- [Brown Patent Law](#)
Facebook- [Brown Patent Law](#)
Twitter- [@PatentlyCurious](#)
Instagram- [Brown Patent Law](#)
Avvo- [Nathan Brown](#)
Tumblr- [Brown Patent Law](#)

From: [John Edison](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Insurance
Date: Thursday, October 04, 2018 5:10:45 PM

WSBA: I am a member of the WSBA, but not actively practicing law. I do not feel I should be required to carry insurance.

John Edison Bar# 8889

From: [ROSEMARY IRVIN](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Thursday, October 04, 2018 5:14:06 PM

Dear Task Force,

I am a 67-year-old attorney who is maintaining my license but practice nominally.

I am keeping my CLE's up-to-date by attending the WSBA's legal lunch box series and occasional outside CLEs and paying fees. I am keeping my license in order to do minor legal work and in case I need to go back to practice for financial reasons.

Requiring me to have mandatory insurance would mean that I would have to surrender my license and give up the option of ever practicing law. I would no longer be eligible to attend the legal lunch box series or attend a CLE for credit. It would be very difficult to catch up with CLEs if I chose to be inactive and later decided to practice - the practice of law is evolving very quickly.

Please allow me and those who are similarly situated some latitude if you decide to make medical malpractice insurance mandatory.

Sincerely,

Rosemary Irvin, Esq.
WSBA #8137

Sent from my iPad

From: [Tolis Dimopoulos](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments regarding mandatory malpractice insurance
Date: Thursday, October 04, 2018 5:14:41 PM

Dear Members of the Mandatory Malpractice Task Force:

I am writing to express my concern with the current plan to move ahead with mandatory malpractice insurance in Washington. I am a solo practitioner serving technology startups and entrepreneurs. I have been working with technology clients for the last 10 years and absolutely love it. Unfortunately, there just isn't enough money to go around and one of the necessary concessions I have had to make in order to continue working with my clients is professional liability insurance.

I work with price conscience clients that opt to work with me knowing that my rates are more reasonable than those of my colleagues in larger firms. My clients typically do not have a lot of resources to spend on legal expenses to launch their businesses, so any increase in my costs means an increase in their costs. Mandating that I purchase professional liability insurance will mean that I have to increase my rates which will make it more difficult for my clients to continue to work with me.

Mandating that lawyers like me purchase professional liability insurance -- I have never had a single complaint filed against me, by the way -- will mean fewer options for my clients and/or increased legal costs. That doesn't help me or other lawyers which are already viewed very unfavorably in the technology ecosystem.

I would strongly urge the task force to not move ahead with mandating professional malpractice insurance or to create some sort of exemption for attorneys who, like me, have never had a complaint filed against them.

I very much appreciate your time and consideration and would welcome talking further with you should you believe I can assist in any way.

Warmest Regards,
Tolis Dimopoulos

--

Tolis Dimopoulos | Managing Attorney

Sophos Law Firm, PLLC
www.sophoslaw.com

206.356.3113
tolis@sophoslaw.com

From: [Pam Rohr](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Malpractice Insurance
Date: Thursday, October 04, 2018 5:15:03 PM

I have spent a great deal of time responding to the WSBA and the Board of Governors on a series of issues.

Each time my opinion was ignored and the WSBA or BOG did whatever they wanted to do, as I am sure will happen again. Only this time, I am not wasting my own time.

Pamela H. Rohr, Esq.

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From: [Mark Didrickson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Jurisdiction
Date: Thursday, October 04, 2018 5:15:44 PM

Hello.

99% of my practice is in two areas: Family Law and Social Security Disability. Family Law is totally state practice and Social Security disability is totally federal practice. Would the WSBA's mandatory liability insurance requirement apply to my entire practice, or only to the practice of law in the WSBA's jurisdiction (family law)?

Mark Didrickson

From: Risrael@verizon.net
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Thursday, October 04, 2018 5:19:50 PM

Always had it for 46 years of active practice with my law firm .

Now retired and not practicing but have been keeping license active and doing CLE "just in case" I should ever desire to return to active practice. I pay Bar Dues but if you require me to buy insurance as well though I am not representing clients and not earning money I will be forced to just let my license lapse. Unless there is an exception for my situation that hardly seems like a fair or just result given the years of study, passing the Bar and continuing CLE.

By the way, never had a malpractice claim so a lot of premiums only served to enrich the insurers or kept the premiums lower for those who did.

Just saying.....

Robert L Israel
Bar # 1497 (1969)

P.S. If you make it a requirement for me and others like me do so before I have to pay my Bar Dues next February.

From: [David Soma](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Thursday, October 04, 2018 5:21:32 PM

Dear task Force Members,

A portion of my concern has already been expressed. Retired, semi-retired and no-practicing members of the Bar. And although I am certain the Task Force has already considered the issue, I thought it reasonable to mention it.

My concern is for members, myself included, who do not practice but from time to time do pro bono work for agencies that provide malpractice insurance for the pro bono work. It would appear reasonable to include an exemption for non-practicing members who periodically do pro bono work for agencies that provide coverage.

Thank you,

V/r

Dave

David J. Soma, Ph.D., J.D.
COL, U.S. Army (Ret)
Bar # 11708

From: [Fire law](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Thursday, October 04, 2018 5:24:12 PM

WSBA: My practice with my son (Quinn & Quinn, P.S.) is 95% comprised of advising municipal corporations (fire districts). We feel indistinguishable from lawyers employed by cities or counties. Why not create a process for petitioning the WSBA for an exemption in such cases? Joe Quinn

PS: I have practiced 42 years without any claims.
Sent from my iPhone

From: [Ata Arjomand](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Fw: Mandatory Malpractice Insurance Task Force information and open forum Oct. 16
Date: Thursday, October 04, 2018 5:25:13 PM

Dear colleagues,

I make it very short. The insurance for patent practitioners is not affordable. In any other field or even if practicing in multiple fields, the insurance premium may be about \$2000, but if you write even one patent a year, the minimum premium will be \$12000. And the more patents we write the higher will the premium be. This is why in our office we have never been able to afford it. This is a serious matter for us and we hope you consider it in your decision making process.

Regards,

ATA ARJOMAND, PH.D., P.E.
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www.ArjomandLawGroup.com

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From: Washington State Bar Association <noreply@wsba.org>
To: ata@arjomandlawgroup.com
Sent: Thursday, October 4, 2018 4:49 PM
Subject: Mandatory Malpractice Insurance Task Force information and open forum Oct. 16

[Washington State Bar Association](#)



Have you heard? The Mandatory Malpractice Insurance Task Force issued an interim report in July with a tentative conclusion that malpractice insurance should be mandated for Washington-licensed lawyers, with specified exemptions and minimum coverage levels. We are reaching out directly to you because you are registered with WSBA as not currently having professional liability insurance,

and we want to make sure you are aware of the process and are able to provide feedback.

Background

The Washington State Bar Association Board of Governors formed the task force in September 2017 to collect input and examine current mandatory malpractice insurance systems in other jurisdictions. The task force will use this information to determine whether to recommend mandatory malpractice insurance as a requirement for licensing. Task force members expect to make a final recommendation to the Board of Governors in January 2019.

More information

- [Mandatory Malpractice Task Force informational brochure](#)
- [Task force website](#)
- [Interim report](#)

Provide feedback

- Open forum: All WSBA members are invited to provide feedback directly to task force members from 2-3 p.m. on Tuesday, Oct. 16, at the WSBA Conference Center (telephone participation will be available).
- Comments and questions can be directed to insurancetaskforce@wsba.org and will be provided to the entire task force.

Task-force members want to hear from you so their final report is responsive to members' concerns and expertise. Thank you.

WSBA seal



Washington State Bar Association

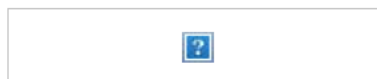
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- Licensing and licensing-related materials
- Information about the non-CLE work and activities of the sections to which the member belongs
- Mandatory Continuing Legal Education (MCLE) reporting-related notifications
- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications



From: farjam@ArjomandLawGroup.com
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: farjam@arjomandlawgroup.com
Subject: WSBA - Mandatory Malpractice Insurance - Comments
Date: Thursday, October 04, 2018 5:25:30 PM

Dear Insurance Task Force,

Thank you for contacting me regarding malpractice insurance. Malpractice insurance is a good protection to have and I have no quarrel with the concept. However, for some practice areas, like IP and especially patents, it is simply not affordable for small lawfirms like ours.

Our practice revolves around IP, in general, and patents, in particular. We have attempted several times to find suitable and affordable insurance but could not. In my search, I realized that the malpractice insurance for patent practitioners is based on the number of patents you have drafted in the past. This is because the more patents you have drafted the more likely you are to be sued for malpractice at some point in the future, and hence, the more expensive is your insurance premium. So, my insurance situation becomes worse with accumulation of patents in my practice.

If affordable insurance is subsidized or mandated to insurance providers, for example, based on firm size or income, then mandating insurance for licensing may become fairer and more practical, otherwise, many solo practitioners may have to exit the field due to insurance costs.

-Best regards,

FARJAM MAJD

Attorney at Law

Arjomand Law Group, PLLC

[335 Front Street S., Issaquah, WA 98027, USA](#)

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From: [Faith Ireland](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice
Date: Thursday, October 04, 2018 5:31:52 PM

I hope you will make an exception for lawyers who do not represent individuals or corporations. I only do mediation and arbitration and consult to lawyers who have cases on appeal. The only people for whom I may do work are represented by lawyers.

--

Faith Ireland

Justice Washington Supreme Court (Ret.)

"Just Results" Arbitration Mediation and Consulting

7340 Bowlyn Pl. S Seattle, WA 98118 206-383-2478

email: faith@faith-ireland.com

web: www.faith-ireland.com

From: [LAURA CONNOR](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Semi-retirement
Date: Thursday, October 04, 2018 5:38:51 PM

Dear Taskforce Members:

I am 72 years old and recently underwent chemotherapy for cancer. I appear to have recovered and feel well. I have never had a malpractice claim during my entire career. I had one bar complaint that was dismissed as specious. I did graduate work in tax after law school. My late husband, George Klawitter, was an attorney, and he and I practiced together. When he developed Alzheimer's in his mid sixties, I cut our practice back to almost nothing so that I could care for him. His disease lasted for at least 15 years. When my malpractice insurance premiums reached \$4,000 a year I decided not to renew my policy. My practice consisted mainly of estate planning and probate, although we both did some litigation. Now I just have a small practice doing limited estate planning and probate. I remember George saying that doing the probates for our large estate planning clientele would make for a nice retirement income. My income from my practice is limited and paying malpractice premiums would be prohibitively expensive. I believe I do a genuine service for my clients, having both extensive experience and good qualifications for my practice. I try to keep my fees at an affordable level. A number of my clients have been with me for decades. I believe that requiring me to buy malpractice insurance may well force me out of the practice of law.

George and I never viewed our legal practice as merely a business. I remember his signing over all of a \$100,000 check to a client who owed us \$20,000. He said the client's business would fail without that money. It failed anyway but George had done his best. His clients loved him but he never became rich. We did buy long term care insurance, never bought a second home, almost never bought new cars and lived relatively simply. Nevertheless, his care was expensive. That and the downturns in the stock market have left me with a home, a small pension and social security. I supplement that with income from Airbnb and my limited practice. Add malpractice insurance to high property taxes and my life may become very constricted indeed. Please pause and give a thought to us wrinklies.

Laura Connor

10616

From: [Daniel Haverty](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on the Mandatory Malpractice Insurance Task Force
Date: Thursday, October 04, 2018 5:40:55 PM

Hello,

Although my license is active, I am not presently practicing and live/work overseas. If I were to practice in the foreseeable future, it would be overseas either legal volunteering in southeast Asia, obtaining certification/license in Australia/Canada or working for an international organization like the UNHCR or Red Cross.

I think the mandatory malpractice should be limited to those specifically practicing in WA. I would like to see specific exceptions that exclude those not actively practicing and for those practicing overseas. I would hope the overseas exception be broad to include those that are licensed overseas, those working in that volunteer/NGO/nonprofit capacity as I will be doing that does not require certification in that country and for those working under international organizations (i.e. UN, Red Cross, etc).

For those working/living overseas, the added insurance cost on top of visas and other licensing would be detrimental, particularly given exchange rates. The \$3,500 quoted for Oregon annual is roughly \$5,000 NZD which is nearly 10th of my middle class income and as much as I pay in rent per year.

Lastly, I think it is very important the Task Force clearly articulate a purpose statement especially when advising one exceptions. I can hardly imagine a purpose for which my recommended exceptions would not be contrary to the purpose of this task force.

Kind Regards,

Daniel Haverty

From: [Pamela Rodriguez](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Pamela Rodriguez](#)
Subject: Mandatory malpractice insurance
Date: Thursday, October 04, 2018 5:41:10 PM

As a sole practitioner, I am just a small operation. I don't have insurance because it was so expensive that I could not afford it. I am afraid if the task force makes it mandatory, the cost may be prohibitive and may cause me to lose my license due to not being able to afford it. If I lose my license then I loose my house and car since my husband is disabled and on a fixed income. Without my income, I would not be able to continue to make my mortgage and car payments, college payments for my daughters nor provide food etc for my family. I request the taskforce not make malpractice insurance mandatory.

In the alternative, if the task force does make malpractice mandatory, I request the cost be controlled so that us little people aren't forced to pay hundreds nor thousands per month to maintain it. It should be equal to the size of the office. I am the only one who works at my office so I should have a small monthly payment.

If any further information is needed from me please do not hesitate to contact me. Thank you for your consideration.

*****please note my email address has changed*****

*****tenga en cuenta que mi direccion de correo electronico ha cambiado*****

Pamela K. Rodriguez
Attorney at Law
Solier Law Offices, P.S.
14705 Meridian E.
Puyallup, WA 98375
pamela@solierlaw.com
Office 253-864-3593
Fax 253-864-3594

From: [Jonathan Everett](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance
Date: Thursday, October 04, 2018 5:42:41 PM

Ladies and Gentlemen,

I am 68 years old and have largely retired from the practice of law, except for pro bono work through Thurston County Volunteer Legal Services, which carries malpractice insurance covering its volunteer attorneys

Other than that, I have only long-standing client in Washington for whom I do paid legal services and one more in Pennsylvania for whom I do occasional work. The work in both cases relates to contracts and financing, which has been my area of practice for 37 years in Washington as well as other jurisdictions. In my estimation, the chances of a malpractice claim relating to either client is very slim and if it were made, I could pay any valid claim from my personal resources. That is why I do not carry malpractice insurance now.

If I were forced to buy malpractice insurance, I would probably cease representing both of these clients, since the cost and trouble of getting the insurance would outweigh the fees I earn. I am sure this would displease both clients, since they rely on my long experience and knowledge of their affairs. Of course I would withdraw in a manner that complies with the Rules of Professional Conduct.

If the new requirement included a provision requiring me to carry malpractice insurance to do pro bono work through Thurston County Volunteer Legal Services, I would probably withdraw from that work also.

Obviously I am opposed to any new requirement that would require me to purchase malpractice insurance.

Sincerely yours,

Jonathan Everett
Bar No. 43792

From: [James Kirk](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandates & Exemptions
Date: Thursday, October 04, 2018 5:43:42 PM

What about licensed and not practicing, such as in search of work or working but not as an attorney? Some categories are not captured in the Oregon model. I agree that it seems insane to be representing clients without any coverage with by an insurance provider, hosting agency, or public sector work but there are a number of situations where it would be either unnecessary or pose a significant burden to carry malpractice insurance for the sole purpose of complying with the requirement. I can think of a number of situations where an attorney would be in a problem category - new and seeking employment, between firms, working in a non-attorney position for an indeterminate period such as being a reporter for a few years with plans to return. The obligation to maintain the CLE training and licensing is a significant one. Yet, the prospect of giving up hundreds of thousands of dollars in education because of a lapse motivates many non-practicing attorneys to maintain their license despite uncertainty around the prospect of beginning to, or returning to legal practice.

Does the task Force take this issue seriously? I know I fall into a category where I want to maintain my license even if I do not find work as an attorney for the foreseeable future.

JBK

--

James B. Kirk (Ben) Esq.
C - 206-774-8605
JD & MBA
<https://www.linkedin.com/in/JBenKirk>

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From: [James Kirk](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Added comment
Date: Thursday, October 04, 2018 5:51:09 PM

It's like having a driver's license -a privilege, yet not required to carry insurance to have the license - must carry insurance if one actually drives, but not to have or maintain the privilege to drive.--

James B. Kirk (Ben) Esq.

C - 206-774-8605

JD & MBA

<https://www.linkedin.com/in/JBenKirk>

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From: [Madeleine Dabney](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Thursday, October 04, 2018 5:50:14 PM

Dear Sirs:

I am retired, on fixed income, and only do pro bono work-although I do hundreds of hours of pro bono work every year. However, hundreds of hours, at \$0 per hour, is still \$0. If I was required to also get malpractice insurance, I could no longer afford to do the pro bono work.

Sent from my iPad

From: [Andrew Phillips](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Insurance requirement?
Date: Thursday, October 04, 2018 6:04:31 PM

Task force members,

What are the number of claims that require non-insured attorneys to pay? And for those without insurance that have claims, how much money damages are going unpaid. The cost benefit for having required insurance needs to be worth it.

Requiring anyone to carry insurance has the makings of lining the pockets of those who take the premiums. If the risk does not outweigh the cost, then it should not be required. Can someone provide the numbers? What is the actual damage being suffered by the public? There needs to be a demonstrative damage, not a fictitious “what if” scenario. I personally have not heard of an attorney being sued for malpractice, losing, and then not paying. If I run a firm that just does low income/pro bono work, why should I be required to go out of pocket to pay for insurance? My risk of suit is low to non-existent.

V/r,
Andrew Phillips
Bar #50848

--



Andrew Phillips

Attorney at Law

Master of Accountancy - LL.M. in Tax

APhillips Law, P.S.

p: (360) 602-1406 or (208) 991-9273

w: www.aphillipslaw.com **e:** andrew@aphillipslaw.com



From: [Gregory Gladnick](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: 33 years no insurance, no disputes with clients, no lawsuits or claims
Date: Thursday, October 04, 2018 6:05:52 PM

Ask me how I do it.

Gregory E. Gladnick
Attorney At Law

12055 15th Avenue NE
Seattle, WA 98125

Telephone: [\(206\) 789-3662](tel:(206)789-3662)

E-Mail Address: gladnicklaw@gmail.com



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From: [Charles Alailima](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Thursday, October 04, 2018 6:43:40 PM

I do not represent clients before the courts in Washington State as my practice is focused in American Samoa. I keep my Washington State license active to provide some pro-bono help to Samoans in Washington State but I refer to more active Washington lawyers if any case requires in-depth attention. That pro-bono help to the Samoan community in Washington often leads to paid representation of some Washington State residents or their families in American Samoa before the courts in American Samoa.

Even the minimal malpractice premiums quoted for Washington lawyers in my group is not affordable for me under the circumstances and I would immediately have to go inactive which would mean I cannot provide pro-bono assistance to people in Washington.

Sent from [Mail](#) for Windows 10

From: [Joel Wight](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments of Joel S. Wight
Date: Thursday, October 04, 2018 6:50:00 PM

I am 75 years old and an attorney licensed to practice with “active” status in Washington State and in California (I am also licensed to practice in the District of Columbia but am on “inactive” status). After a year clerking for a federal appellate judge on the Eighth Circuit (1972-1973), I spent 26 of the next 30 years working on the legal or contracts staffs of GE, Exxon and Boeing (from 1976-1979, I was an associate attorney with the law firm of Lowenstein, Newman, Reis and Axelrad in Washington, D.C.). At the end of 2003, I retired from Boeing and in March 2004 began representing The Red Hat Society, Inc. (a women’s social organization which is a Nevada for-profit company with its principal place of business in Fullerton, California) as an independent legal consultant on approximately a half-time basis. I moved back to Washington State from Los Angeles at the end of 2006, and have continued to represent the Red Hat Society from my home on Whidbey Island (currently 15 hours a month). I have never purchased malpractice insurance (but believe I was covered by the law firm’s insurance when I was in private practice in Washington D.C.). I do not hold myself out as an attorney in private practice, but did negotiate a successful settlement of a commercial dispute for a Washington resident some years ago when approached to do so. I have opined on legal matters to three non-profit boards when requested to do so.

As I read the draft committee report on mandatory malpractice insurance, I believe my legal representation activities in Washington State would be exempt from any required insurance based on one or more exemptions being considered. If mandatory insurance is adopted, I would hope the exemptions being considered would be also. I think it is very important for an attorney in Washington to be able to understand clearly whether any representation activity s/he may consider undertaking requires mandatory insurance.

Sincerely,

Joel S. Wight

Sent from my iPhone

From: [Robert Stevenson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: WASHINGTON LAWYERS MANDATORY MALPRACTICE INSURANCE
Date: Thursday, October 04, 2018 6:55:52 PM
Importance: Low

THIS IS BOB STEVENSON. I HAVE PRACTICED LAW IN SEATTLE FOR 68 YEARS AND AM STILL PRACTICING AT A SUBSTANTIALLY REDUCED RATE AT THIS TIME.

I HAVE, FOR THE BETTER PART OF MY PRACTICE CARRIED MALPRACTICE INSURANCE FOR MANY YEARS. I STILL DON'T BELIEVE THIS IS NECESSARY ON A MANDATORY BASIS. IT SHOULD BE ENTIRELY UP TO THE INDIVIDUAL LAWYER TO DECIDE WHETHER HE OR SHE NEEDS TO COVER THEIR PRACTICE WITH THE INSURANCE. THE COVERAGE IS VERY EXPENSIVE AND THERE ARE ALREADY ENOUGH LEGAL EXPENSES TO PLAQUE THE AVERAGE ATTORNEY NOW.

MANDATORY INSURANCE SHOULD NOT BE FORCED ON US BY THE BAR ASSOCIATION OR THE COURT.

BOB STEVENSON WSBA 519

From: [Joe Quaintance](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Opposition to mandatory insurance
Date: Thursday, October 04, 2018 6:58:48 PM

I am 67 years old and semi-retired. I occasionally sit as a pro tem commissioner in Pierce County Superior Court. A specific exemption should be stated that retired attorneys and judges who pro tem are not required to carry insurance.

Upon request I sometimes draft a will or perform a probate for a family member or friend. My retainer form discloses that I do not carry insurance (I disagree with the report's unsupported conclusion that members of the public are incapable of making their own determination whether insurance coverage for their attorney is necessary).

In 42 years of solo practice no malpractice or bar complaint was ever brought against me. In my opinion there are many sole practitioners similarly situated.

I earn less than \$10,000 / year for these services. If I am required to carry insurance, I see no reason to continue my bar membership.

Joe Quaintance
253.327.1825

From: [Toni E. Moore](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Thursday, October 04, 2018 7:19:11 PM

Dear Ladies and Gentlemen:

I received a notification of your proceedings from the Washington State Bar Association and am writing to comment thereon.

I hope that if the task force decides to recommend mandatory malpractice insurance it will create an exemption for attorneys who only represent clients on a pro bono basis. I do not live in Washington State and am only a member of its bar so that I can assist my nonagenarian mother and aunt in their occasional controversies with their respective condominium associations. While most of these matters are relatively minor in nature, neither my mother nor aunt would be able to afford to retain an attorney to assist them. Being able to offer them legal assistance is the sole reason I maintain a license in Washington.

Malpractice insurance, coupled with the WSBA membership fees would be prohibitive for me, but my not being licensed to practice in Washington would deprive them of an advocate. I don't imagine there are many but there must be other attorneys who are similarly situated. Please consider recommending an exemption for us.

Thank you for your consideration.

Very truly yours,
Toni E. Moore

From: [Bob Lipson and](#) [REDACTED]
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: response to the WSBA's request for input regarding required malpractice insurance
Date: Thursday, October 04, 2018 7:27:54 PM

Dear Insurance Task Force,

I am retired from the practice of law and have been for several years. I maintain my license to practice out of affection for the profession. Occasionally, I respond to a friend's request for legal information or do something for a charity. I never charge for this help. If mandatory malpractice insurance is required for me to keep my license, then I will no longer it.

I also predict, notwithstanding arguments to the contrary in the bar magazine this month, that mandatory malpractice insurance will result in fewer practitioners in poor and rural areas. It will be the inevitable result of increased costs and increased barriers to entry. The result will be less access to justice, not more.

In what I have read on the issue, I have yet to see hard data quantifying the number and kind of malpractice cases that would have been brought, but were not, because of the lack of insurance. How big is the problem you are attempting to rectify, and does it outweigh the detriment the supposed cure will cause?

Yours,

Robert A. Lipson
#11889

From: [Dianna Dryden](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory insurance
Date: Thursday, October 04, 2018 7:28:42 PM

I am against it. I am age 70 and only practice very part time. I will not continue if I all forced to get insurance.
Dianna Timm Dryden

From: [Toby Thaler](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Proposed mandatory insurance coverage
Date: Thursday, October 04, 2018 7:57:07 PM

I have been a member of the Washington Bar since 1978, WSBA #8318.

My entire legal career has been dedicated to the public interest and representation of those not able to obtain counsel from the private bar, generally in the arena of natural resource management. In the course of my 40 years as a lawyer, I have represented numerous Native American entities and individuals, was the first staff attorney at the Washington Environmental Council, and worked as a staff attorney at the Washington Forest Law Center. In between such pursuits, I have also served as pro bono (or nearly so, or very reduced rate) counsel for various environmental from around the state and neighborhood groups in Seattle.

Aside from my time as staff attorney with non profits, legal services entities as well as WEC and WFLC, representation of individual clients in matters involving significant risk of exposure due possible malpractice has been rare. For the past few years, it is unusual for me to make income from attorney fees that are more than the annual bar dues I pay to maintain active status. On top of the money I spend on CLE seminars. Most of my earned income is from related policy work for non-profits.

I am now 68 and even less inclined to take private clients than in prior years. However, I desire to maintain my active status as a member of the bar so that I may continue to be a representative in legal proceedings for public interest groups and the occasional individual with issues I am competent to handle (e.g., SEPA appeals, forest practices permit administrative appeals). An imposition of a mandatory insurance requirement would be an extraordinary burden.

I have reviewed your July 10, 2018 report to the Board of Governors, and wish to provide feedback on one paragraph, on page 10:

- Several categories of attorneys should be exempt. In Oregon, for example, exempt groups include, among others: government attorneys, in-house private company lawyers, attorneys providing services through nonprofit entities, including pro bono services, retired attorneys, full-time arbitrators, and judges and law clerks.

Should the Board wish to consider adoption of a mandatory coverage requirement, I strongly suggest the public interest need for specific provisions that implement exemptions for the underlined categories. As one of the (possibly) more prominent unaffiliated public interest environmental attorneys in the area, I am happy to make myself available to work with you and others to develop specific language to implement a public interest exemption should the Board decide to proceed.

Thank you for your consideration,

--

Toby Thaler
PO Box 1188

Seattle, WA 98111-1188
206 697-4043

From: [Doug Smith](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments regarding compulsory malpractice coverage
Date: Thursday, October 04, 2018 8:07:23 PM

Dear Members of the Compulsory Malpractice Committee:

I agree that actively practicing attorneys representing private clients should be required to carry malpractice coverage. However, I am concerned about those who, like me, could be caught up in that net even though I do not actively practice law.

I chose to leave law practice about 20 years ago but have maintained my license since then. I have a number of reasons for that decision, to include the possibility that, upon my eventual retirement from my second career, I might want to volunteer legal services to a charitable organization or perhaps work as an attorney part time for a local prosecutor's office or a law firm. It would be unreasonable to require me to carry malpractice insurance when I do not practice law at all, but hold and maintain my license for personal reasons.

Also, the Committee should keep in mind that it costs money to stop having malpractice insurance once it is started. Twenty years ago, it cost me \$7500 to purchase a "tail" to my last claims made policy, just to quit practicing. Had I not done so, I would have been uninsured for past negligence since it would not be covered in the absence of a current claims made policy. I point this out because, if insurance is mandatory, an "exit tax" is being imposed upon the lawyer's retirement. The cost may be significant – it wasn't cheap 20 years ago.

Thank you for considering this message.

Sincerely,

Douglas K. Smith, WSBA 6560

From: [Wendy Ferrell](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: NO mandatory malpractice insurance
Date: Thursday, October 04, 2018 8:25:55 PM

To Whom it May Concern:

I am an attorney licensed to practice law in Washington State. I pay hundreds of dollars to keep my license active every single year, but I am currently not able to use my license. I am a stay-at-home mother, and a caregiver to my own elderly mom. I keep my license current in the hopes that I will be able to practice law again one day.

I CANNOT afford to pay mandatory malpractice insurance. If you require this, you are negatively affecting all stay-at-home mothers or caregivers who are also lawyers. I am sure there are other groups affected as well, but I consider this to be onerous. You will drive women OUT OF THE PRACTICE OF LAW. The Washington State Bar Association is nothing but a "Good Ol' Boys Club".

Please DO NOT force this on us. This is ANTI-WOMAN. Do you want the WSBA to move in this direction in our current political #metoo climate? Get your hands out of my wallet, or give me and other women a viable option to take some time off to care for our families.

Sincerely,
Wendy Ferrell
#33441

From: paulkeister2@aol.com
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mal practice insurance
Date: Thursday, October 04, 2018 8:42:11 PM

Ive been without it for 27 years, knock on wood!

From: [Marke Schnackenberg](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: malpractice insurance
Date: Thursday, October 04, 2018 8:45:43 PM

Dear WSBA,

If your body mandates malpractice insurance for solo criminal defense attorneys, then would you please take steps to mitigate the costs to be borne by the solo practitioners?

Sincerely,

Marke Schnackenberg
Solo Criminal Defense Practitioner

From: [Rodney Waldbaum](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance
Date: Thursday, October 04, 2018 8:55:26 PM

After more than 46 years of law practice with the same firm, I retired last year at age 72. I have only kept my active membership alive because I was told that if I went inactive I would no longer be honored for 50 years of practice in 2021, and receive free membership thereafter. I cannot practice law or I would lose my malpractice insurance rail. As I do not practice as a lawyer, I do not feel I should have to pay for current malpractice insurance. I feel those who have actively practice for at least 40 years should be allowed free WSBA membership.

Rodney J. Waldbaum

Sent from my iPhone

From: [Diego J. Vargas](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments on Mandatory Malpractice Insurance
Date: Thursday, October 04, 2018 9:14:37 PM

Dear Esteemed Committee Members:

Thank you for allowing me the opportunity to address the proposed mandatory malpractice insurance rules. I am a solo practitioner who focuses his practice on criminal defense. For many years I carried malpractice insurance. The cost was approximately \$2,000.00 a year. Then I read the Washington State Supreme Court's decision in *Ang v. Martin*, 154 Wash.2d 477, 114 P. 3d 637 (2005), which states:

“We are asked to determine whether plaintiffs in a malpractice action against their former criminal defense attorneys were properly required to prove by a preponderance of the evidence that they were actually innocent of the underlying criminal charges. The Court of Appeals concluded that, as an element of their negligence claim, plaintiffs were required "to prove innocence in fact and not merely to present evidence of the government's inability to prove guilt." *Ang v. Martin*, 118 Wash.App. 553, 558, 76 P.3d 787 (2003). We affirm the Court of Appeals.”

Ang v. Martin, 154 Wash.2d 477, 114 P. 3d 637, at 638 (2005).

I humbly ask you, why would a person who limits his or her practice to criminal defense be required to maintain malpractice insurance? There is no public policy reason to mandate coverage for such practitioners.

I hope you take this comment under consideration. I also hope you take the time to actually respond to my concern and articulate a public policy rationale addressing why individuals who limit their practice to criminal defense should be required to maintain malpractice insurance.

I thank you in advance for your time and consideration.

Sincerely,

Diego J. Vargas
The Vargas Law Firm, PLLC

3326 160th Avenue SE, Suite 215
Bellevue, WA 98008
(425) 531-1676 (Phone)
(425) 310-8130 (Fax)
dvargas@djvlaw.com

From: [jason hatch](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Date: Thursday, October 04, 2018 10:20:41 PM

ZERO CHANCE!

You are not forcing me into paying for anything based upon the fact that as a solo practitioner you feel you can treat me to some form of group punishment that I am individually undeserving of. Looks to me like you are asking for 28% of solo practitioner's to sue the WSBA, which is a stupid, and naive idea.

All the best.

Jason Hatch 317989

From: [Beth Wehrkamp](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment
Date: Thursday, October 04, 2018 10:22:23 PM

It is a great move ... for insurance companies who do everything to avoid coverage when something happens to trigger coverage.

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From: yukiko.stave@stavelaw.com
To: [Dan BOG; Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance Member Comment (was:RE: [FWD: An update from WSBA President Brad Furlong])
Date: Thursday, October 04, 2018 10:35:42 PM
Importance: Low

Hello District Governor and Task Force,

In response to Sep 2018 NW Lawyer's solicitation of comments, I am writing to express my opposition to mandatory malpractice insurance. I support a plan "implement more extensive malpractice insurance disclosure requirements" as stated in page 35.

Most of legitimate referral programs such as King County Bar Association Lawyer Referral Program require lawyers have malpractice insurance as a condition to be listed on the panel. Prospective clients are encouraged to use those legitimate referral programs for insured lawyers.

Retired lawyers may have assets to afford it even if their income is low. But young lawyers who are fresh out of law school unlikely have. I've read in NW Lawyer that some new law graduates are struggling to find a job. They should be able to practice law as a self-employed lawyer right after graduating from law school. That helps the public. This mandatory malpractice plan is discouraging the poor to practice law, which is financial inequality. I personally had to give up to be listed on one of panels that requires very high amount of coverage.

If this mandatory insurance is implemented, I request income-based exemption. Some solo lawyers don't even have health insurance for their own health. It's too harsh for them having to pay for liability insurance for others when they are not even taking care of themselves.

Sincerely,

Yukiko Stave, Attorney at Law
Stave Law Office, PLLC
14900 Interurban Ave. S. Ste. 271
Tukwila, WA 98168
253.941.3484 **New!**
yukiko.stave@stavelaw.com
www.stavelaw.com

----- Original Message -----

Subject: RE: [FWD: An update from WSBA President Brad Furlong]
From: Dan BOG <danbog@mcbdlaw.com>
Date: Fri, October 13, 2017 12:05 pm
To: "yukiko.stave@stavelaw.com" <yukiko.stave@stavelaw.com>

Hello Mr. Stave.

Thank you for your email.

I will certainly pass your input onto the Board.

If you don't mind me asking, if you would help me understand why you oppose mandatory malpractice insurance that would perhaps carry more weight. Also, I have found that while initially a few members has told me they oppose the concept, once they explain their concern that is often something we are trying to address in order to make mandatory insurance something even they could get behind.

Any input you can provide would be greatly appreciated.

Thank you again for taking time to participate.

Dan

Dan'L W. Bridges
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Seattle WA. 98121
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Fax: 425-637-9638



McGAUGHEY BRIDGES DUNLAP PLLC
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From: yukiko.stave@stavelaw.com [<mailto:yukiko.stave@stavelaw.com>]
Sent: Thursday, October 12, 2017 11:16 PM
To: Dan Bridges
Subject: [FWD: An update from WSBA President Brad Furlong]

Mr. Dan Bridges, WSBA Governor District 9,

In response to WSBA's solicitation on the issue of mandatory malpractice insurance as shown in NW Lawyer September 2017, I express my position. I oppose to mandatory malpractice insurance. I support to strengthen the publication of members' liability insurance disclosure to the public.

Sincerely,

Yukiko Stave, Attorney at Law
Stave Law Office, PLLC
14900 Interurban Ave. S. Ste. 271
Tukwila, WA 98168
253.941.3484 **New!**
yukiko.stave@stavelaw.com
www.stavelaw.com

----- Original Message -----

Subject: An update from WSBA President Brad Furlong

From: "WSBA" <email@wsba.org>
Date: Thu, October 12, 2017 4:42 pm
To: Yukiko Stave <yukiko.stave@stavelaw.com>



An update from WSBA President Brad Furlong
The WSBA Board of Governors held its final meeting of the fiscal year on September 28-29 in Seattle. The two-day September meeting is punctuated with the APEX Awards Dinner, where numerous awards are presented to legal community luminaries. Videos of the award recipients can be found [here](#). Below is a recap of the meeting. A full agenda can be found [here](#).

Election of 2017-2018 At-Large (New and Young Lawyers) Governor

With former At-Large Governor Sean Davis moving to the General Counsel position at the WSBA, the board considered three candidates nominated by the Washington Young Lawyers Committee (WYLC) for the At-Large (New and Young Lawyers) Governor seat. After discussing the candidates' qualifications, the board elected Jean Y. Kang of Seattle to the seat for a term to start immediately. Jean will serve the remainder of Sean Davis' term (ending in September 2018). Jean is a litigation associate at Smith Freed & Eberhard in Seattle. She has focused the majority of her practice on civil litigation, specifically insurance defense/coverage and personal injury cases. Prior to civil work, Jean served as a criminal deputy prosecuting attorney in Cowlitz County and King County. She was sworn in at the meeting by Pierce County Superior Court Judge Susan Serko so she could take her seat at the table immediately following the vote. Congratulations to Governor Kang and welcome! (See [public materials](#) beginning at page 19.)

Appointment of Members to the Washington State Bar Foundation Board of Trustees

Each year, the Washington State Bar Foundation conducts its annual meeting as part of the last Board of Governors' meeting of the fiscal year. At this meeting, the Board of Governors, convened as the members of the Foundation, appoint trustees to the Foundation Board. The Board of Governors approved a slate of candidates that includes appointing James W. Armstrong, Jr. for an extra year, who is anticipated to serve as president; appointing Valerie Holder to complete the remainder of a vacating Trustee's term; appointing Kinnon Williams to a three-year term; and appointing Jabu Diagana as Student Trustee, for a term to conclude upon graduation from law school. Congratulations, new and returning Trustees! (See [public materials](#) beginning at page 55.)

Approval of Proposed Mandatory Malpractice Insurance Task Force Charter

In 2016, the board convened a Mandatory Malpractice Insurance Work Group to gather information about jurisdictions that require lawyers to have professional liability insurance and the systems used to implement such requirements. At the May 2017 board meeting, the board asked the Executive Committee to consider creation of a Task Force to evaluate whether to recommend adoption of a mandatory malpractice insurance requirement for lawyers in Washington. The Executive Committee recommended formation of such a Task Force under the WSBA Bylaws and submitted a proposed charter, which was approved by the board.

The charter directs the Task Force to: (1) solicit and collect input from WSBA members and others about whether to recommend a system of mandatory malpractice insurance for lawyers in Washington state; (2) review information gathered by the Work Group and gather any additional information needed; (3) consider materials regarding mandatory malpractice insurance systems used in the U.S. and elsewhere; (4) determine whether to recommend adoption of a mandatory malpractice insurance requirement in Washington; (5) if a regulatory requirement is recommended, determine the best model for such a system; and (6) submit a final report to the board including, as appropriate, draft rules to implement a system of

mandatory malpractice insurance for Washington lawyers, including any minority report(s). Per the charter, the Task Force membership shall consist of a WSBA member serving as chair; three current or former members or officers of the board; no fewer than 10 at-large members of the WSBA; a full-time judge; an individual with professional experience in the insurance/risk management industry; and two community representatives who are not licensed to practice law. The Task Force will begin meeting no more than six weeks after appointments are completed and submit a final report to the Board no later than the January 2019 board meeting, unless the timeline for completion is extended by the board. (See [public materials](#) beginning at page 69.)

Proposed WSBA Bylaw Amendment re Vacant Immediate Past-President Seat

The board heard from WSBA General Counsel Sean Davis regarding a proposed amendment to the WSBA Bylaws dealing with Immediate Past-President vacancies. Under the current WSBA Bylaws, if the Immediate Past-President is disqualified, removed, or resigns, the office remains vacant until the close of the term of the then-current President. The Bylaws do not address what happens if the office is vacant for another reason. Such an "other" vacancy may occur, for example, if the WSBA President resigns or is removed prior to the end of his or her term, leaving no one to become the Immediate Past-President in the next term. The proposed amendment addresses this type of situation by allowing the current Immediate Past-President to serve another year; in the event the Immediate Past-President does not want to serve another term, the President, with board approval, can appoint an individual to serve as Immediate Past-President for the term that would otherwise be vacant. The board voted on this proposed amendment at a special board meeting on October 3. (See [public materials](#) beginning at page 75.)

Annual Discussion with Deans of Washington State Law Schools

The board held its annual discussion with the deans of our state's three law schools. Participating in this discussion were Dean Annette Clark from Seattle University, Dean Jane Korn from Gonzaga University, and Interim Dean Anita Krug from the University of Washington. The three law school deans shared several common priorities, including mentorship, recruitment and scholarships, diversity, and education related to technology and business practices. The governors asked the deans whether the WSBA can or should be doing more to help law schools match graduates to marketplace employment. The deans responded that increased mentorship and connecting students with lawyers in different areas of the practice spectrum would be helpful. Other topics included the cost of legal education and law school tuition; the need for experiential learning in law schools; preparing students for the changing practice of law, including incorporating technology and innovation in coursework; and helping students transition from law school to practice. The board invited the deans to continue the discussion and the deans suggested a board site visit to the law schools. Thank you, Dean Clark, Dean Korn, and Interim Dean Krug, for your time and valuable input!

Orientation on WSBA Diversity and Inclusion Philosophy and Plan

The board participated in an orientation to the WSBA Diversity and Inclusion Philosophy and Plan facilitated by Joy Williams, WSBA Diversity and Public Service Programs Manager, and Robin Nussbaum, WSBA Inclusion and Equity Specialist. The Diversity and Inclusion Plan is intended to outline WSBA's next steps and long-term priorities. The Plan's objectives work toward the goals of creating conditions to promote the retention of attorneys from historically marginalized and underrepresented backgrounds, increasing their participation within the profession, and creating opportunities for leadership within WSBA.

The orientation focused on the "Inside-Out" philosophy of doing the work to make sure WSBA itself (staff and volunteers) is diverse, inclusive, and equitable in order to lead by example and provide tools and resources to the legal community. Key concepts were also covered such as inclusiveness (beyond diversity), the difference between equality and equity, the effect of unconscious bias on our decision-making, and the nature of oppression as institutional and

systemic. Finally, the presentation covered allyship, interrupting bias, and how to recover when you make a mistake. (See [public materials](#) beginning at page 80.)

Council on Public Defense (CPD) Proposed Performance Guidelines for Juvenile Offense Representation

The WSBA Council on Public Defense (CPD) presented on first reading a request for the Board of Governors to submit *Performance Guidelines for Juvenile Offense Representation* to the Washington Supreme Court with a recommendation that the court include them in the Standards for Indigent Defense, as was done previously, with the adult Performance Guidelines for Criminal Defense Representation. The board heard a presentation from Eileen Farley, CPD Chair; Daryl Rodrigues, CPD Vice-Chair; and Kimberly Ambrose, CPD Member, who answered questions from the board and members. The board will seek feedback from the membership on these proposed guidelines and take action at the next board meeting in November, so please share any thoughts you have on the proposed Guidelines. Comments on the CPD's proposed Guidelines on Juvenile Offense Representation can go to

Bonnie@wsba.org. (See [late materials](#) beginning at page 2.)

Council on Public Defense (CPD) re Rules for Appeal of Decisions of Court of Limited Jurisdiction (RALJ) 9.3

The board approved the Council on Public Defense communicating its support to the Washington Supreme Court of proposed amendments to Rule for Appeal of Decisions of Courts of Limited Jurisdiction ("RALJ") 9.3. The proposed amendments concern awarding appellate costs for appeals and would require consideration of the defendant's ability to pay and the presumption of indigence throughout the appeal. The board heard from Eileen Farley, CPD Chair; Daryl Rodrigues, CPD Vice-Chair; Kimberly Ambrose, CPD Member; and Nick Allen, CPD Member and Member of CPD's Legal Financial Obligation Subcommittee.

(See [public materials](#) beginning at page 369.)

Final WSBA FY2018 Budget

District 1 Governor and Treasurer-elect Kim Risenmay and WSBA Chief Operations Officer Ann Holmes presented the Final Draft FY2018 Budget, which reflects the cost of board-directed programs, services, and operations. The Final Draft Budget includes General Fund Revenue of \$18,913,199 and an anticipated drawdown of reserves with expenses of \$19,514,890. Based on efficiencies and savings seen at the end of FY16 and projected through FY17, and the budget presented, General Fund reserves will not fall below the \$2 million level at the end of FY18, consistent with board policy. The board approved this Final Draft Budget, which was unanimously recommended by the WSBA Budget and Audit Committee. (See [public materials](#) beginning at page 90.)

Treasurer Risenmay noted that WSBA received salary survey information showing that compensation levels fall well below midpoint for the market for several positions, which may require an adjustment to the budget in the coming year.

Proposed Formation of Cannabis Law Section

In June 2017, WSBA staff received a request from a group of WSBA members ("formation group") to form a Cannabis Law Section. The guidelines for forming a section are set forth in the WSBA Bylaws and require a petition to include the contemplated purpose of the section, the proposed bylaws of the section, the names of any proposed committees of the section, a proposed budget of the section for the first two years of its operation, a list of Bar members who have signed a petition supporting the creation of the section, and a statement of the need for the proposed section. All of these requirements were met in a timely manner and WSBA staff received no feedback from section leaders either in support of or in opposition to the formation of this section.

The board heard brief remarks regarding the formation of this section from Joshua Ashby and Sativa Rasmussen, formation group members, and WSBA Sections Program Manager Paris Eriksen, who answered questions from the governors. The board will vote on this proposed formation at the next board meeting in November. (See [public materials](#) beginning at page 164.)

WSBA Statement Denouncing Recent Acts of Violence and a Reaffirmation of Equity and Inclusion Principles

The WSBA received a request from 11 Washington Minority Bar Associations for the WSBA to join their statement addressing the recent events in Charlottesville. In light of the constraints of GR 12.2, the Board Executive Committee considered drafting and adopting the WSBA's own statement instead of signing on as requested. The board voted to adopt the draft statement as written. This statement will be posted on the WSBA website and circulated to the Minority Bar Associations and the legal community at large. (See [public materials](#) beginning at page 205.)

Follow-up from July Retreat re 2017-2018 BOG Priorities

The board held a discussion regarding 2017-2018 board priorities facilitated by information from the discussions at the July 2017 board retreat at Alderbrook. Topics included the court system, member engagement and ambassadorship, entity regulation, retention/diversity/inclusion and cultural competence, and member benefits. A generative discussion on entity regulation will occur at the November board meeting.

(See [public materials](#) beginning at page 208.)

Proposed Amendments to Article XI Sections re Legislative Activity

The board approved an amendment to XI(F) of the WSBA Bylaws regarding legislative activity to support sections taking action effectively and efficiently throughout the legislative process. The amendment adds language to Article XI allowing section executive committees more flexibility and timeliness in taking action on legislative matters, especially in responding to legislators' direct requests for feedback. (See [public materials](#) beginning at page 245.)

Mandatory Continuing Legal Education (MCLE) Board Recommendation to Coordinate Fees

Effective Sept. 1, 2017, the Washington Supreme Court amended its Admission and Practice Rules (APR) that relate to LPO and LLLT mandatory continuing legal education (MCLE). Continuing legal education for LPOs and LLLTs is now governed by APR 11; in addition, the MCLE rules for lawyers, LPOs, and LLLTs are now, with a few exceptions, the same. Pursuant to APR 11, the MCLE Board determined and adjusted fees to defray the reasonably necessary costs of administering the MCLE rules. The MCLE Board proposed a fee structure to the Board of Governors to provide for assessment of the same fees for all MCLE activities regardless of the license type or the intended audience. The board approved these new sponsor fees for MCLE courses for LPOs and LLLTs. (See [public materials](#) beginning at page 297.)

Legislative Work Group Recommendations

The board discussed the recommendations of the WSBA Legislative Work Group, which recommended reducing the size of the Legislative Committee and having it meet ad hoc when legislative proposals from WSBA sections need to be vetted. The board heard from District 3 Governor-elect Kyle Sciuchetti, current chair of the WSBA Legislative Committee, regarding committee member concerns and concerns that mandated deadlines would prevent the committee from taking action on relevant legislation. The board also heard from Phil Brady, Work Group Chair and former District 10 governor, regarding the history of these recommendations and the Work Group's process.

The board voted to adopt the Work Group recommendations with amendments keeping the Legislative Committee a standing committee of nine members and allowing the Committee chair the opportunity to accept a proposal outside of the mandated deadlines, provided that the chair is satisfied that there is sufficient time to vet the bills and that the chair's action will be in consultation with the WSBA Legislative Affairs Manager. (See [public materials](#) beginning at page 367.)

Discipline Advisory Round Table (DART) Annual Report and Suggested Amendments to Charter

The board voted to amend the DART Charter to make the DART an ongoing entity that includes positions for LLLT and LPO representatives, sets term limits for appointed members, and provides current members with a one-year extension. (See [public materials](#) beginning at page 367.)

page 372.)

If you have questions, concerns, or comments, don't hesitate to contact me at brad.wsba@furlongbutler.com.

Brad Furlong
WSBA President

To receive limited messages

Please send an email to email@wsba.org with "limited" in the subject line.

In the body of the email, please specify how you would like your email limited (see below).

To opt out of CLE information

Please indicate by option number your choice from the two options below:

- Option 1 — I would like to opt out of receiving ANY CLE information, including WSBA CLE and non-WSBA CLE providers.
- Option 2 — I would like to receive ONLY section-sponsored CLE information for sections to which I belong.

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Please indicate by adding "opt out of non-CLE information" in the body of your email.

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Official WSBA communication

All members will receive the following email, which is considered official:

- Licensing and licensing-related materials
- Information about the non-CLE work and activities of the sections to which the member belongs
- Mandatory Continuing Legal Education (MCLE) reporting-related notifications
- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications

From: Paula Littlewood
Sent: Thursday, October 4, 2018 3:22 PM
To: Doug Ende
Subject: FW: BOG Meeting Digest and common sense

FYI

Thanks,
Paula

From: Inez "Ine" Petersen [mailto:inezpetersenjd@gmail.com]
Sent: Thursday, October 04, 2018 1:23 PM
To: Bill Pickett
Cc: Paula Littlewood
Subject: Re: BOG Meeting Digest and common sense

Bill,

I appreciate your response, but I have made my views known multiple times. Those views should have been passed on to the task force, not thrown away. It is the "enormous amount of time" you mention that causes me to question their objectivity.

I do want to look at all the options the task force considered and what their findings pro and con were regarding each. I will be surprised if the documentation is in that format.

The fact that 85% of us already carry insurance means to me that they were working a non-problem from the get-go.

- Were they able to identify any victims of the 15% who didn't have insurance?
- And once having identified them, did they quantify the financial loss?
- And did they fall prey to the mind control of the Delphi Technique?

I saw the Delphi Technique at work just recently regarding PSE's outreach regarding the eastside corridor. It was pitiful to see the

sheep think they were actually influencing direction when, in fact, they were being carefully manipulated to arrive at the answer the leaders wanted. Renton used the same technique regarding its Highlands redevelopment.

Anyway, I must return to family matters right now. My mother just passed away.

Sincerely,
Inez

On Thu, Oct 4, 2018 at 12:57 PM Bill Pickett <Bill@wdpickett-law.com> wrote:

Hi Inez,

I encourage you to share your concerns with the entire task force. As you know they have volunteered an enormous amount of time on this project already. I know for certain that they are committed to listening to member questions and/or concerns. I have no doubt that the task force would be willing to speak with you regarding any concern(s) that you have. I think it would be wonderful if you would be willing to take some time from your busy schedule to address this at the open forum that Paula mentioned below.

As always, your willingness to contribute to this important discussion is appreciated.

Peace,

Bill

Bill Pickett

Trial Lawyer

The Pickett Law Firm

917 Triple Crown Way, Suite 100

Yakima, WA. 98908

Phone: 509-972-1825

Fax: 509-972-1826

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From: Inez "Ine" Petersen [mailto:inezpetersenjd@gmail.com]
Sent: Thursday, October 04, 2018 12:31 PM
To: Paula Littlewood <PaulaL@wsba.org>
Cc: Bill Pickett <Bill@wdpickett-law.com>
Subject: Re: BOG Meeting Digest and common sense

Paula,

With technology being what it is today, busy attorneys should have a better process than a short time window to respond. The entire membership should be able to vote electronically on this matter.

I also do not believe that the people on the task force are open minded on the subject. They have been going down the mandatory insurance road for a long time without deviating course; and that investment could make them inappropriately biased.

I have seen the Delphi Technique at work multiple times during my 30 plus years in the business world. Could that technique have been used to manipulate the progression of the task force's meetings?

Sincerely,

Inez

On Thu, Oct 4, 2018 at 12:10 PM Paula Littlewood <PaulaL@wsba.org> wrote:

Thanks, Inez.

I believe that is why the Mandatory Malpractice Insurance Task Force is holding an open forum for members on October 16th from 2:00 p.m. to 3:00 p.m. People can attend in person or via phone.

Please let me know if you need more information on how to attend and/or provide feedback to the Task Force.

Thanks,

Paula

From: Inez "Ine" Petersen [mailto:inezpetersenjd@gmail.com]

Sent: Thursday, October 04, 2018 12:02 PM

To: Paula Littlewood

Cc: Bill Pickett

Subject: Re: BOG Meeting Digest and common sense

Paula,

You don't see the disconnect between the WSBA "head office" and the "members" that I do--and who knows how many other attorneys in the State of Washington agree with me? I wish I knew--I wish you knew.

Forcing mandatory insurance on members without a buy-in of the majority is just plain wrong.

It is wrong because it is such a drastic change in the demands of our membership that it should require our buy-in.

Inez

On Thu, Oct 4, 2018 at 11:00 AM Paula Littlewood <PaulaL@wsba.org> wrote:

Thanks, Inez. Just to clarify – it is the Washington Supreme Court that put a stop to any changes to the bylaws, not WSBA. Also, mandatory insurance would not require a bylaw change – it would occur through a court rule change.

Let me know if you would like to update your letter to the editor based on these clarifications.

Thanks!

Paula

From: Inez "Ine" Petersen [mailto:inezpetersenjd@gmail.com]

Sent: Thursday, October 04, 2018 10:42 AM

To: Paula Littlewood; Bill Pickett

Subject: Fwd: BOG Meeting Digest and common sense

Would you please consider the email below as a LETTER TO THE EDITOR?

Thanks,

Inez Petersen, WSBA #46213

425-255-5543

----- Forwarded message -----

From: Inez "Ine" Petersen <inezpetersenjd@gmail.com>

Date: Thu, Oct 4, 2018 at 10:39 AM

Subject: BOG Meeting Digest and common sense

To: Paula Littlewood <paulal@wsba.org>, Bill Pickett <bill@wdpickett-law.com>

Dear Paula and Bill:

I can't be the only one who read the BOG Digest and wondered how the WSBA can put a stop to any changes to the Bylaws but forge ahead with requiring mandatory liability insurance.

Aside from the fact that the latter is an action to fix a problem that doesn't exist, doing the former without applying the same "stop work" logic to the latter defies common sense.

Sincerely,

Inez

From: [Mark Johnson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance
Date: Friday, October 05, 2018 12:13:35 AM

Task Force: I have been an active member of the WSBA since 1973. I had malpractice insurance through my firm, Lane Powell PC, up until I retired in 2015. I do not currently provide legal advice to any one, but I do complete my CLE requirements each year and I maintain my active license. If you mandate mandatory insurance for all licensed attorneys, you will force me to give up my active license to practice. Even though I do not currently practice and do not have insurance, I retain the right to again purchase insurance and resume practice as long as I maintain my current license. Forcing me to give up my license seems to me to be imposing a penalty on me with no real purpose. I have never been the subject of any disciplinary proceeding by the Bar and I do not appreciate the prospect of being forced to give up my license to practice which was difficult to obtain and which I do not wish to lose. Please retain the current exception from the need to purchase insurance for attorneys such as myself who are not currently practicing. Thank you for your consideration.

Mark Edwin Johnson WSBA # 5213

From: [Jessica McKeegan Jensen](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments on Mandatory Insurance
Date: Friday, October 05, 2018 1:06:13 AM

Hello,

These are my comments on the proposed mandatory insurance requirements.

NO mandatory insurance. Mandatory insurance is a barrier to entry for attorneys when starting a practice (a/k/a “hanging out a shingle”). Most attorneys in their first few years of solo practice have little risk because they typically 1) don’t start with a large client base, 2) don’t start taking complex cases immediately, and 3) have more control over their firm’s cases because they are generally doing everything themselves until they have sufficient workload and funds to hire staff and grow.

In my own firm, I had no insurance for my first five years of practice. I was careful about the cases I took and was able to oversee everything because I had fewer clients and staff. My risk was low. I didn’t need insurance. As my practice and staff grew, I took on more complex work and added a partner. It was time to obtain insurance.

Solo and small firms provide the majority of legal services to Washington citizens and small businesses. Starting a practice requires a significant investment of money. Another few hundred dollars a month for insurance IS a big deal in the early years of starting your own practice – especially for those saddled with staggering student loan debt.

If you decide to require mandatory insurance, solo attorneys for the first 5 years of practice and those firms grossing less than \$500,000 per year should be exempted. Many attorneys (parents with young children and those heading into retirement) maintain a part-time practice. Baby boomer lawyers are retiring and law schools have fewer graduates. Providing access to legal services is especially challenging in rural and less populated communities. “Main Street” lawyers provide a vital service to our communities. We need to

encourage lawyers to enter private practice and not make it more difficult for an attorney to strike out on his or her own.

Insurance rates are more likely to increase (than decrease with competition as suggested) because the free market is greedy. Once insurance is required, we are hosed – we WILL be gouged because we can be. An attorney or firm who has a claim is at a greater disadvantage. Whether valid or not, that attorney will likely pay higher premiums and could be in the position of being uninsurable and therefore unable to continue a practice. Attorneys are already personally liable for their professional negligence. Most of us will want to carry insurance when we perceive we have sufficient risk that we should be covered for our own protection and the protection of our clients. If you require insurance, there needs to be a mechanism where attorneys can be guaranteed coverage so they don't lose their business or their livelihood.

As with general liability insurance and personal injury claims, we can expect there will be an increase in claims against attorneys once it's known that attorneys are required to have insurance. Look at what has happened with doctors. Increased claims will cause insurance rates to increase and will also cause the cost of services to increase because we will need to practice even more defensively. I can't help but think that the insurance companies are the ones who make out here. If insurance will be required, keep the limits modest or commensurate with gross income or the actual risk involved. The risk of error in a multi-million dollar merger or acquisition is obviously higher than preparing an estate plan for someone with \$1,000,000 in assets.

My firm's insurance premium is \$7,000 this year for 4 attorneys – almost \$600/month! Mandatory health care almost doubled our health plan costs. Why should expect professional liability coverage to be any different?

Just because other states require mandatory insurance doesn't mean we should also. It's a bad idea. BTW, I'm a moderate liberal.

Thank you.

Jessica McKeegan Jensen

Attorney at Law

JESSICA JENSEN LAW PS

Attorneys for the Business of Life

2604 12th Court SW, Suite B

Olympia, WA 98502

Telephone 360-705-1335 Ext. 105

Fax 360-570-2038

www.jessicajensenlaw.com

From: [john goodall](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Re Mandatory insurance
Date: Friday, October 05, 2018 2:06:55 AM

Notably absent from all I have read on this subject is any evidence at all that it is necessary.

IE, do you have any statistics showing that there has been any significant problem with clients being unable to collect on attorney malpractice claims?

There are also no related statistics from any of the states that have imposed mandatory insurance.

Why not?

If it's not broke, why fix it?

There is plenty of of speculation in the article by Laura Levin, but no supporting facts.

And she only mentions ONE single case of an attorney malpractice case that a plaintiff was unable to collect.

I also note that this article is not from a practicing attorney, but from an ivory tower academic who perhaps has never practiced law?

Blithely saying that the cost of insurance is 'only an additional billing of \$10 a day' reveals a profound lack of business experience.

An additional '\$10 billing' does not equate to \$10 in profit in any business.

And \$3500 a year is a heavy burden on a young lawyer who is starting out ins solo practice with no clients to bill that extra "\$10 a day".

Throw in bar dues and the cost of CLE's and he's starting out at least \$5000 in the hole for the first year.

There are many lawyers in that same position.

For example, In the mid 80's I advertised at the U of W School of Law for a law student who could help me with some work I was doing and offered \$10 an hour.

I received over half a dozen replies from Attorneys who were willing to work for \$10 an hour. I'm sure the rate has changed by now , but there are still many attorneys who do not have all the work they need

Ms. Levin also speculates that we need mandatory insurance because

lawyers would be inclined to fight such claims?

We all know that the insurance industry is well known to fight and obstruct claims brought against it.

The proposal will be a windfall of hundreds of millions of dollars for the insurance industry.

Why cant our Bar Association come up with a cooperative self insurance program?

And why is it so costly?

Three thousand a year is far more than we pay to insure either our houses or to cover our personal injury liability for driving, which is a far more dangerous activity than the practice of law.

As for myself, I live in France and currently earn no money from the practice of law in the state of Washington.

I pay my bar dues and I take my CLE's , but I am not engaged in the active practice of law.

If I am obligated to buy malpractice insurance I must chose between maintaining the law license I struggled long and hard to earn or maintaining my limited standard of living.

I can certainly understand the Bar Association taking a look at this subject, but sholln't there be at least an attempt to determine that it is necessary in order to correct an ongoing problem?

Should that not be the first priority?

It appears to me that the Bar is making conclusions without any supporting facts.

John Goodall

#6152

From: Hugh D. Spitzer <spith@uw.edu>
Sent: Friday, October 5, 2018 3:36 PM
To: vlaparker@aol.com; pl.isaki@comcast.net
Cc: Thea Jennings; Rachel Konkler
Subject: Re: WSBA Mandatory Insurance

Thanks for taking the time to write this thoughtful letter. It is a difficult topic, and we' Pass this along to the entire task force.

I was also 11 when I decided to be a lawyer, and I worked my way through law school without outside help. It WAS less expensive back then!

From: vlaparker@aol.com <vlaparker@aol.com>
Sent: Friday, October 5, 2018 11:24:46 AM
To: pl.isaki@comcast.net; Hugh D. Spitzer
Subject: WSBA Mandatory Insurance

Dear Ms. Isaki and Professor Spitzer,

I see that Professor Spitzer was admitted in 1974 and Ms. Isaki was admitted to practice in 1977. I was admitted in 1976.

My decision to become an attorney was made at the age of 11. I did. I paid for my schooling. I had student loans and paid them off.

My purpose in becoming an attorney was to help people. I have done that.

My practice is tiny as it has been throughout 40 years of private practice. I earn very little. Most years, I am barely in the black and some in the red. I don't believe I have ever made more than \$10,000 in any year. Nonetheless, I have helped many, many people throughout the years and have worked nearly full-time much of the time.

Why was my practice so small? Why practice from a home office? There are many reasons. I raised my children. There was tremendous financial restrictions because of this decision made for my sons. I was barely able to pay bar dues and CLE costs. Any additional requirements would have required me to cease practice. Is this really the way it should be?

I don't know what Ms. Isaki's experience was. I do know that other women attorneys did not know what to make of me. We work so hard to become attorneys and then to greatly reduce practice for children was beyond their comprehension.

There is good reason solo practitioners have a problem with an additional required expense. This should not be dismissed as some kind of selfish view but recognized for what it is -- it is difficult but serves a tremendous need for the public particularly in rural areas.

It was so interesting to see that solo and attorneys in small firms were noted to have the most ethics complaints filed against them. There is a factor involved which is ignored. Those in large firms have help for attorneys in trouble and are able to intercede with the Bar and pay off clients before complaints are made to the Bar. It is the same reason attorneys in big firms do not bear the costs of CLE's. The firms are permitted to conduct in-house courses. No cost to the attorney and a tax deduction for the firm. Basically, money talks.

I was a government attorney prior to children. It was lovely. A regular paycheck, bar dues and CLEs paid for, etc. But I had a different calling. I had children and clients and needed to accommodate both. Incidentally, one of my sons is an aerodynamicist (honors grad B.S. and M.S. from U.W.) and my other son is an attorney in a large, international firm anticipating admission to the patent bar (B.A., M.S, and J.D from UW honors grad; Order of Coif). My clients are happy. My children are happy.

My service to WSBA includes serving years as a disciplinary hearing officer, years on the Rules of Professional Conduct Committee, years on the Judicial Recommendations committee. I currently serve on the ABA judicial ethics committee. I have never had a complaint against me.

These accomplishments would not have occurred if the costs had been increased.

It seems as though there should be a way to accommodate parents who put their children first rather than lose the ability to practice. Further, perhaps, mandatory insurance should not be required or at least should not be required until a person earns a minimum amount and students loans are paid.

Honestly, this is sad.

Vicki Lee Anne Parker,
Attorney at Law

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From: [Victoria Redlin](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Insurance Taskforce
Date: Friday, October 05, 2018 7:47:39 AM

RE: Mandatory Malpractice Insurance

Dear Sir or Madam,

I have been a member of the Washington state bar since 1987. I have had an active license. However, even though I have an active license, I have not practiced law for the past approximately 16 years. I worked in commercial property management those years. Now I own that property management business.

Do you anticipate an exception for an attorney in my position?

Thank you.

Victoria Redlin

WSBA 16971

From: [Ivan Gorne](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Friday, October 05, 2018 7:54:39 AM

I object, and trust that when I review the proposal I will see a total exemption for attorneys like myself who have spent most of their careers as either government lawyers, business or educational leaders who happened to select a law degree, rather than some other Ph.D they felt would not serve them as well. Yet, we chose law school and the law because we respect the rule of law and maintain our license for a whole variety of reasons, including helping others just by using our knowledge and thinking process to offer reasonable courses of action to solve problems; or to encourage others that there are options to help them protect themselves from all realm of interference with their lives. For me, my continuing license helps me feel and stay connected to the law and the profession, though I do not currently serve clients and therefore have no need for malpractice insurance.

Secondly, I believe the matter of insurance for errors and omissions should not be mandated. Unwise, of course, to engage in the full practice of law without protecting against risk, but still a matter of personal and professional choice. All levels of government require actions of citizens that are intended to do good, but are implemented for reasons other than that noble intent. And I have found the WSBA in recent years moving into causes well beyond what legal professionals require from a professional organization.

If the rule of law in our society is to protect our freedom and individual right to govern our own lives and professional practice, why take this right away from us? Who are you trying to protect? Don't say "you," because I am quite capable of protecting myself.

Sincerely and respectfully yours,

Ivan L. Gorne, J.D.
WSBA 18,045

From: [Ron Santi](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory insurance
Date: Friday, October 05, 2018 8:22:00 AM

Hello,

I wrote previously but am again wishing to explain what a hardship mandatory insurance will be for those of us who are semi retired with a rather modest income and who are not in the active practice of law with the public. As in house counsel for my family's real estate investment my only legal work is a rare letter to a tenant to pay or vacate. I've not had any complaints in 39 years and hope to die with my license active. Any new insurance cost would be a hardship and fundamentally unfair to those of us on the margins. Perhaps a bar pool of insurance for a nominal cost for minimum coverage would work while not forcing those like me to give up my license. Or exemptions for those who are not engaged in practice. Anything more than a token cost would be unfair, unnecessary and prohibitive. Mandatory enrichment of the insurance carriers is not in the best interest of membership or the public.

--Ron Santi

#8817

From: [James Leggett](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: insurance mandate
Date: Friday, October 05, 2018 8:29:32 AM

Great idea. Just think of the money the BAR will save by eliminating the disciplinary counsel department and out sourcing it to insurance companies.

From: [John Jacobson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Feedback
Date: Friday, October 05, 2018 8:35:44 AM

When I practiced as a solo-practitioner I maintained malpractice insurance because it was the right business decision to make. When I closed my practice and went in-house I no longer carried insurance.

I would now classify myself as an unemployed lawyer looking for my next opportunity. I maintain my license out of necessity for when the next opportunity becomes available.

I occasionally take on minor, low risk matters for friends and relatives. I also appear on behalf of other lawyers for motions when they are unavailable.

The principle of mandatory malpractice insurance is a good idea. My concern is for members that are in-between jobs, or new lawyers that pass the bar exam without a job offer, and their ability to maintain a license while finding a job.

I think the exceptions to the requirements should be broadly drafted to allow for such exemptions.

John Jacobson

From: [Rich Greiner](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Why I don't carry E & O
Date: Friday, October 05, 2018 8:40:57 AM

This issue sounds like it is already settled. However, please consider this perspective. I have solo-practiced for 35 years and intentionally do not carry malpractice insurance because I have been sued for malpractice two separate times, both by non-clients. I was scattergunned into an underlying case. In each case my defense counsel stated that I would not have been sued if I did not have insurance. Plaintiffs attorneys We're only trying to get to the insurance. My Liability in both cases was very thin and each case was settled for less than anticipated defense costs. However, my malpractice premiums went up three fold.

When I did not have insurance I was not sued. When I did have insurance I was sued twice. Causes one to ponder the Efficiency of the mandate. In my opinion, The mandate only serves to benefit Malpractice attorneys and insurance carriers.

You might consider requiring malpractice insurance mandatory for clients only an optional for non-clients.

Richard Greiner. WSBA 13230

Sent from my iPad

From: [Michael Hatch](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Unaffordability a bar to practice
Date: Friday, October 05, 2018 8:45:55 AM

I am a 72-year-old practicing lawyer. My primary income is social security; I provide a great deal of pro bono services within my community, including free legal services for our local volunteer hospice, and elders. I have priced malpractice insurance, I cannot afford it. If it is mandated, I will be forced to discontinue providing the services I presently offer. The local pro bono office offers very, very little legal representation to the community. By barring me from practicing law, you will further marginalize the population I serve.

D. Michael Hatch
WSB 40410

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From: [Echigoshima, Bruce](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Malpractice
Date: Friday, October 05, 2018 9:01:30 AM
Attachments: [{EXTERNAL} Mandatory Malpractice Insurance Task Force information and open forum Oct. 16.msg](#)

I would suggest that this requirement mirror the requirement for IOLTA accounts. That is to say for those not actively engaged in the practice of law or those who are working as in-house counsel should be exempt until their status changes.

Bruce S. Echigoshima

Vice President
Liberty Mutual Surety Claims
[\(206\) 473-3349](tel:(206)473-3349)

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From: [Gerald Grimes](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance
Date: Friday, October 05, 2018 9:10:42 AM

The requirement with the added administrative expense would cause my practice to shut down. My practice is limited to transactional matters such as Wills, Powers of attorney, Trusts, Probates and Guardianships. I believe that the extra time I put into insuring against any claims eliminates my need for malpractice insurance. After 54 years of practice with no claims made I am comfortable doing without insurance.

--

Gerald W. Grimes, Esq.

360.461.7194 FAX: 360.683.7542

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From: [Rich Davis](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance for WSBA Members
Date: Friday, October 05, 2018 9:20:08 AM

Task Force Members -

I am opposed to mandatory insurance. The recent article by Leslie Levin in the August issue of NW Lawyer removed all doubt. For example:

- Arguments in favor of insurance were justified and supported. All arguments against mandatory insurance were shown to be weak, inapplicable or both. It is clear that this was an advocacy article, not a balanced or neutral analysis and perspective. Publishing the article was an insult to us, a poor decision.
- The public is protected by the WSBA online directory that discloses whether we carry insurance or not. To argue otherwise, as the Ms. Levin did, supports the notion that the public is ignorant. I do not accept that proposition.

I have been a member of the WSBA since 1982. I only perform voluntary arbitrations and receive a small stipend for the work. Yes, I can afford to pay for insurance from my other resources, but not from the modest income I receive for my arbitration services. A mandatory insurance requirement will cause me to quit arbitrating and resign from the WSBA. I never worked as a lawyer full time, but practiced engineering. I did perform some legal work at times since 1982, but would not have done so had a mandatory insurance requirement been in place. Have you calculated the loss in dues to the WSBA by those of us who are nearing the end of our working careers or work in other fields but practice occasionally? I imagine there are enough of us to affect the revenues of the association significantly.

I agree you have a duty to the public, and you have done a great job of fulfilling those duties through discipline, IOLTA, etc. For example, the number of lawyers disciplined far exceeds the number of engineers disciplined by DOL. I would be surprised if any other profession is subject to stricter discipline than lawyers in Washington.

Nonetheless, it is warranted to have some consideration for the solo and small firm practitioners who are trying to collect hourly fees that are perhaps ten times higher than the wages of some of their clients. Consideration for members, contrary to Ms. Levins arguments, do not necessarily conflict with the notion of protecting the public. In short, mandatory insurance is at odds with your work on "access to justice." The ability for individual working people to find excellent defense and civil law practitioners will drop even further if liability insurance is required.

The best outcome for the WSBA membership would be for the licensing function to be removed from other association activities. Recent work by the WSBA confirms that the bar association is incapable of the moderation and political neutrality needed to justify a combined bar association.

Rich

Richard J. Davis, P.E.
Littlerock WA

From: [Hollybeth Hakes](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Feedback on insurance consideration
Date: Friday, October 05, 2018 9:20:52 AM

I am a licensed attorney in Washington without malpractice insurance. I have been staying home with my children and not taking on clients. The cost of keeping my license current and taking CLE's is high enough without the added expense of paying for malpractice insurance when I have no clients. Please take in to consideration those of us who choose to be stay-at-home parents without clients and the already high expenses we must pay to do so. I fully expect to obtain malpractice insurance when I return to work, but not everyone who is licensed is working.

Sincerely,

Hollybeth Hakes

From: [Bob Russell](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Friday, October 05, 2018 9:27:30 AM

I am a member of the WSBA (#34674), and have been an attorney since 1975 (active in California 1975-2004). I am retired, but continue to maintain my license, pay bar dues, and complete my CLE requirements because I want to be able to provide pro bono services within my community. I am currently involved in two ongoing pro bono legal guidance as part of a team, and I occasionally provide direct client services - both real estate/insurance advice and litigation advice - to friends and acquaintances, without charge.

There is no way that I could continue to provide such pro bono services if I am required to pay the cost of malpractice insurance. As noted, I am retired and living on social security and retirement savings. None of the people or groups for whom I have provided free legal services over the last several years have any desire or need for malpractice coverage for my services.

I am therefore strongly opposed to mandatory malpractice insurance for pro bono services.

Robert Russell
WSBA #34674

From: [REDACTED]
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory insurance, exemptions, when would program be mandatory
Date: Friday, October 05, 2018 9:36:10 AM

Hello,

Can you tell me definitively what the exemptions will be?

If mandatory insurance becomes required, will it take effect immediately for the year of 2019? Is there a ballpark number for the cost of the insurance?

I am 60 years old, and primarily simply handle business matters for my 93 year old father's complicated business matters, and provide counsel as needed.

The cost of mandatory insurance may propel me into having to make a decision to give up my license.

Thanks very much,

Bambi Lin Litchman
WSBA 28761
Tacoma, WA

From: Hugh D. Spitzer <spith@uw.edu>
Sent: Monday, October 15, 2018 12:19 PM
To: [REDACTED]
Cc: Rachel Konkler; Doug Ende; Thea Jennings
Subject: FW: Questions
Attachments: mandatory insurance, exemptions, when would program be mandatory

Dear Ms. Litchman,

I'm chairing the WSBA's Mandatory Malpractice Insurance Task Force. We are currently working on the issue of exemptions, and we won't have a final recommended list for a couple of months. Then we'll send a complete report to the Board of Governors (by January). I expect that the BOG will spend a fair amount of time considering our recommendations, and then, if they choose forward some, all, or none of our suggestions to the State Supreme Court.

I would be very surprised if *anything*, if adopted, went into effect prior to 2020.

(And, I will forward your comment to the entire Task Force.)

Hugh

Hugh Spitzer
Professor of Law
University of Washington School of Law
Box 353020
Seattle, WA 98195-3020
206-685-1635
206-790-1996 (cell)
Papers on SSRN: <http://ssrn.com/author=1514923>

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Thanks very much,

Bambi Lin Litchman
WSBA 28761
Tacoma, WA

From: [Gregory Hogan](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Exempt Out of State Attorneys
Date: Friday, October 05, 2018 9:38:36 AM

Another exemption from mandatory insurance should be for licensed Washington attorneys that do not practice law in the State of Washington. No Washington residents are helped or harmed by requiring out of state attorneys to carry mandatory insurance. Moreover, I wonder if this push for reform by the taskforce is legitimate in light of the Washington Supreme Court's recent order suspending all WSBA reforms.

Gregory W. Hogan (WSBA # 19426)
P.O. Box 14387
Scottsdale, AZ 85267-4387

From: [brad mellotte](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Brad Mellotte](#)
Date: Friday, October 05, 2018 9:50:02 AM

Malpractice insurance must be mandatory. I abhor paying for the client protection of irresponsible lawyers that do not carry malpractice insurance through my increased bar dues. I have always felt this way. I believe the Bar Association should be making sure we protect our clients as the proposed rule summary suggests; not making sure legal service consumers are protected. Leave consumer protection to the Attorney General, and allow us to keep our fees as low as possible. If we do not we will someday be faced with state governance, instead of self governance—it is the growing number of our members who feel this way that will ultimately decide this issue.

I do have a retirement tail policy. I am retired but remain on active status. Therefore, I continue to be insured as I have been since I became an attorney over 30 years ago. I will adjust my malpractice insurance information with the Bar Association if this is necessary. I do not know how that was left out, if it in fact is.

From: [Kevin Halverson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: No mandatory insurance please
Date: Friday, October 05, 2018 10:08:03 AM

Simple no vote here. I'm a solo practitioner that does very little attorney work, as my day job is now business/nonpracticing. The additional costs of insurance just wouldn't make sense for the type of legal work I continue to do on the side for startup businesses. Beyond the simple economics of my small practice, I think there is a lot gained by the association if lawyers that are primarily in non-attorney professional roles are able maintain their standing without carrying insurance.

If these additional costs are added, I think it would be reasonable to push for reductions in membership fees to offset. Members have been receptive in the past to proposals to decrease membership fees.

Thanks for providing the opportunity to be heard. I hope WSBA comes to the conclusion that this risk is best evaluated case by case by members, and not mandated by the association.

Very best regards,

Kevin Halverson

From: [Doug Tingvall](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory insurance
Date: Friday, October 05, 2018 10:11:10 AM

Dear Task Force:

Thank you for your work on this important issue.

I have been practicing since 1982. My practice emphasizes real estate brokerage law and a majority of my clients are residential real estate brokers. I am a sole practitioner working from home. Needless to say, I have a small practice with low overhead and modest income. I carried professional liability insurance for many years at a cost of about \$105 per month. Then, during the recession, the carrier raised my premium from \$105 to \$540 per month, even though I had had no claims. Carriers were panicking about real estate practice, even though I don't handle foreclosures, syndications or other high risk activities. I could not afford the higher premium, so I discontinued liability insurance. I have not sought a quote recently, but based on what I have heard, premiums are still high in the real estate field. Therefore, I speak against mandatory insurance, unless there is an exemption for sole practitioners or small firms. I have no objection to affirmative disclosure of "no insurance" to prospective clients.

Regards,

Douglas S. Tingvall

Attorney at Law

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From: jay.nuxoll
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance Taskforce Information and Open Forum Oct 16
Date: Friday, October 05, 2018 11:36:57 AM
Attachments: [Scan_20181005.pdf](#)

In 1961 and during the World's Fair I was an insurance adjuster for Farmers Insurance Group. In September 1962 I entered the University of Washington School of Law. I have now been practicing in this state for more than 53 years. For the last five I have been providing service mainly, in fact almost exclusively, for those who cannot afford to pay at all. But I have never practiced law solely as a business with intent to become rich, my desire has always been to serve others who for the most part in need and down and out. I hope to continue practice in that manner.

But I have a vivid recollection of the consequences of making insurance mandatory for car drivers. I was still an adjuster at that time. I personally observed and was able to tally the difference in both the amounts of awards on claims on which suits were brought as well as the cost of the insurance premiums. Both increased exponentially. Before the mandatory insurance requirement juries on motor accident suits remained cautious and realistic in their awards because they were unsure whether or not there would be coverage for a judgment. Because of that not only jury awards but also settlements remained somewhat reasonable. Once those awards and settlements went up premiums had to go up accordingly.

Before the mandatory requirement those without insurance, of course, had to pay for their own mistakes. But drivers who wanted to be insured could obtain it for themselves at reasonable cost. At the present time insurance is not astronomical for lawyers and it makes very good sense to have it. But if insurance becomes mandatory, claimants and juries will know there is at least some minimum coverage, and the claim costs will be higher for insurance companies. Consequently, all lawyers purchasing insurance can expect much (I mean much) higher premiums. Insurance must remain an option lawyers can choose at a reasonable price. Mandatory insurance will put premium costs beyond reason for me and no one would dare to continue practice without it.

JAY NUXOLL, LAWYER
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Bellevue, WA 98005-3717
Phone or FAX (425) 641-2600
jay@nuxoll.org

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From: [Heather Kelly](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Concerns about mandatory malpractice insurance
Date: Friday, October 05, 2018 12:23:00 PM

To the Members of the Task Force:

I wanted to share my concerns about mandated malpractice insurance. I am a solo criminal defense practitioner. I am licensed and enjoy active status in both Washington and California. I work remotely as a research and writing associate for attorneys in the Bay Area. I do not have any of my own clients.

Although my practice is exclusively California-based, I maintain active status in Washington to support the Bar and so that I can volunteer as an attorney. For example, I am newly appointed as an Issue Chair for the Washington State League of Women Voters, meaning that I will be tracking legislation and likely testifying in the upcoming legislative session. I have also added my name to ACLU volunteer attorney contact lists for those facing immigration issues, although I have not worked with them yet.

Requiring me to purchase malpractice would deter me from remaining actively licensed here since I am not using my license to make a living. Additionally, as the Task Force is aware, California is also exploring the possibility of requiring malpractice insurance. If that requirement is imposed and applies to me, I will need to purchase a policy. Perhaps that policy would cover my in Washington State as well, but to the extent I would need two separate policies that would be cost prohibitive for me and I would forego my active status in Washington.

I ask that the Task Force consider waiving this requirement for attorneys who practice primarily out of state. Alternatively, I ask that you waive the requirement for attorneys who are inactive. I also request that the Task Force explore ways of allowing attorneys with coverage in another state to expand that coverage to Washington at little to no net cost, perhaps by reducing their bar fees to offset any increase in policy rate.

Thank you for taking the time to listen.

Best,
Heather Kelly

From: [John Bury](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mostly retired
Date: Friday, October 05, 2018 12:35:31 PM

Board

I am almost 70 years old. do a smattering of real estate documents from home. Annual income less than \$5K. Given the costs of mandatory CLE insurance cost is prohibitive.

A complicated premium could be based on field of practice and hours per year. In real estate practice the malpractice damages are ameliorated by the fact that the real estate as an asset still remains in title. Assuming title insurance.

Of course, failure to require title insurance might be negligence.

respectfully

John F Bury
WSBA 4949

From: [Lara Lavi](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance
Date: Friday, October 05, 2018 1:13:54 PM

Dear Task Force

I am concerned that the Bar Association is going to require lawyers in WA to have mal practice insurance. A small amount of my practice is with third party clients. I am also in house counsel for several clients - contracted from my firm.

The cost of mal practice insurance is very high. I only do transactional work - no criminal or litigation work. At this time it would be very difficult for me to secure mal practice insurance unless it was highly affordable.

please advise

thanks

Lara

WSBA 17561

LARA LAVI, ESQ.

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From: [BruceIanFeldman](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Opposition to Mandatory Malpractice Insurance
Date: Friday, October 05, 2018 2:26:21 PM

Gentlepersons:

October 05, 2018

I am certainly opposed to Mandatory Malpractice Insurance here in the State of Washington. I am a 67 year old attorney, with active attorney status in California and Washington. I do not maintain a law office in either state, do not maintain an attorney trust account in either state, nor do I maintain an active client list anywhere. I am completely retired in practice, but enjoy maintaining the active status of being an attorney. It goes without saying that it took significant work, effort and expense to obtain and maintain active attorney status. In my opinion, I still perform a valuable public service when I am able to listen to the occasional person who might seek out my advice and opinion on potential legal concerns they might be experiencing. I regularly refer these individuals to other attorneys or the Clark County Bar Referral service. I am very careful with any discussion that suggests an expiring statute of limitations. I do not take funds from any client, nor do I enter a formal attorney/client relationship for the purpose of resolving a legal issue. I listen and try to help by directing them to the proper source for more extensive consideration of their matters. It would be sad to me to switch to informal status, where I could no longer be legally helpful. It would not be prudent for me to spend many thousands of dollars for malpractice insurance when I have zero dollars coming in from a legal practice and I am taking no steps to represent clients beyond a referral to another legal representative.

It seems like the handwriting is on the wall that mandatory malpractice insurance will come to Washington State. I would only hope that an exemption/exception might come along with it to allow retired attorneys not to wither away without continuing to guide others. Perhaps the bar could consider providing a very minimal and inexpensive malpractice coverage for individuals in the same circumstances as yours truly. I do not feel exposed to any malpractice in the few annual contacts I have with people involving legal matters. I do not believe attorneys like me pose risk of harm or damage to the public which in any way would require financial recompense.

Thank you in advance for considering my thoughts on this matter.

Very truly yours,

Bruce Ian Feldman
WSBA 22513
bifjd75@q.com
(360) 666-1381

From: [Edwin Sterner](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: One size does not fit all
Date: Friday, October 05, 2018 5:30:29 PM

My practice is restricted to serving as part time in-house counsel to three companies. Although I rent by the hour and am not an employee of any of them, they appreciate the rates I charge and as part of the arrangement they agree to treat me in effect as an employee and agree that they will not sue me or attempt to collect damages from me for mere negligence/mal-practice. In fact, absent intentional malfeasance, they indemnify me against claims related to my work for them.

They are quite aware that I do not carry additional mal-practice insurance and are happy for that since they know I'd just pass the cost on to them.

The "brochure" mentions that attorneys have reported "meritorious" cases dropped when it is learned that the attorney does not have insurance. I would note that the report does not provide any statistical data re this alleged dropping of meritorious cases due to lack of insurance and this reason for requiring insurance seems to be purely anecdotal.

How many people with truly meritorious claims (and did the task force actually check the facts of these "meritorious" cases to see just how meritorious?) against attorneys do not bother to sue? I doubt very many.

Frankly, insurance is a double edged sword. It is in some ways an litigation magnet since insurance companies are in the "do the math" business and will often settle cases with little merit just to get rid of them. So REQUIRING attorneys to carry insurance is requiring them to purchase this litigation magnet. **The fact that 89% of claims are settled for less than \$100k is likely an indicator of that. If those are really justified claims, there would be very few attorneys who could not find a way to fund payment of such a claim without insurance, so the "fact" that people choose not to sue when they learn that the attorney does not have insurance is likely largely driven by the merits of their claims not being that strong** and they know they do not have an easy target (i.e. the insurance company) with a deep pocket to negotiate settlement with but will, instead, likely have to actually subject the claim to a decision by an independent evaluator of the claim (judge, jury, arbitrators) rather than to settlement with the insurance company's representative.

So long as the client is aware that the attorney they are retaining does not carry such insurance and still chooses to use that attorney, that should be the privilege of both the client and the attorney.

In lieu of mandatory insurance, a provision saying that any attorney who does not have insurance must disclose that in writing to the client and have the client sign that disclosure might be appropriate.

One size (in this case mandatory insurance) does not fit all and for many clients would be a waste of money since they are not interested in such insurance and do not want to pay for it (as indicated by the pie chart re claims by areas of practice where none of the areas worth putting in color are in the practice of commercial/business law).

Ed Sterner
WSBA #9420

From: [Lori Guevara](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Open Forum Question
Date: Friday, October 05, 2018 4:57:06 PM
Attachments: [image001.png](#)

Hi, I am semi-retired from the private practice of law because I work full time for Tulalip Tribes.

I occasionally accept private cases based on compelling underlying facts. I do not have more than two active private cases at a time.

Forcing a part-time private practitioner like myself to carry legal malpractice insurance would make my private overhead expenses too high and I would have to stop taking private cases.

This would be a shame because I enjoy my private practice and my private cases involve clients in need. For example, I have a 92-year-old client who I visit in her home after hours to discuss her case.

I pride myself on going the extra mile for my clients and I feel my purpose is to help people in need. If I have to stop accepting private cases, I do not believe my clients will be able to find another as dedicated to their needs as I am. My clients are usually people of color who are disadvantaged in many ways.

I am asking that you not require WSBA members to maintain legal malpractice insurance. Thank you for your time. Lori Guevara WSBA 28732



Lori J. Guevara, J.D., L.L.M.

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From: [Caroline Edmiston](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory insurance
Date: Friday, October 05, 2018 7:14:19 PM

I hope this does not become mandatory. I am retired but like to keep my license so that I may do some pro bono work. If you make it mandatory I will cease my license.

Stop trying to control everything!

Caroline Edmiston

From: [Dawn Monroe](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Opinion
Date: Friday, October 05, 2018 7:38:37 PM

I am fully licensed but retired. I am not ready give up my active status just because I worked so hard to get it. But I am not practicing law-- so why would I have to have malpractice insurance???

From: [Three Pines Law](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Thank You!
Date: Saturday, October 06, 2018 12:41:09 PM

Hello Task Force:

I wanted to thank you for considering my comments (and possibly comments from others) to provide targeted communication and notice about the proposed liability insurance requirement. I was happy to see a directed email in my inbox with a clear subject matter, as well as the upcoming forum.

Good work!

Kate Hawe

Kate M. Hawe

Owner

Three Pines Law & Consulting Group, Inc.

206.909.4642

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Providing legal and regulatory consulting services to the natural resources client

Licensed attorney in Washington State and Oregon State

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From: [Barbara Harnisch](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Question about Mandatory Malpractice Insurance
Date: Saturday, October 06, 2018 9:46:17 PM

Would the "retired" exemption require a licensing status to be "inactive"? There are those of us whose practice is in hiatus but whose status is "active."

Thank you for your kind attention.

13775

From: [Michael Little](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance
Date: Sunday, October 07, 2018 12:02:38 AM

I maintain a current license but am not practicing law. I do not intend to pay for insurance unless I reopen a practice. I would assume that I will be excluded from this requirement, otherwise I will resign my license, save my money, and have a nice day.

Sent from my iPhone Mike Little

From: [Robert L Hayes](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: BAR MEMBER QUESTION
Date: Sunday, October 07, 2018 4:09:05 AM

I am currently licensed as an attorney in the State of Washington but I am not actively practicing law. What is the exemption and limits to this malpractice insurance requirement. Robert Hayes WSBA# 21239.

rlh2722206@aol.com

From: [Douglas Greenswag](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Douglas Greenswag](#)
Subject: Commentary on Malpractice Insurance Interim Report
Date: Sunday, October 07, 2018 8:17:14 AM

To the Committee:

Thank you for your email of October 4th. For your information, my WSBA bar number is 37506. I retired from practice at K&L Gates in December, 2017. In connection with my retirement I was given written confirmation that I would continue to be covered by the firm's malpractice insurance for any issues that arose while I was with the firm ("tail coverage").

I see from the Interim Report that you are proposing to exempt retired attorneys from the requirement of mandatory insurance coverage. I certainly agree with that approach. I do have a question about how the term "retired" is or will be defined. I am not in any way engaged in the practice of law and have no present intention of doing so. I have, however, completed enough CLE courses so that I can report compliance with that requirement when I am next obligated to do so by the end of 2019. I made sure I got my CLE requirements out of the way for my current reporting period so that if I decided to return to the practice of law I could do so without any impediments. I believe that the term "retired" should be defined in such a way that I would not be compelled to obtain malpractice coverage simply because I retain the option of returning to the practice of law; especially in view of the fact that I have tail coverage from my former firm (which is something you may want to think about if you have not done so). The term "retired" could, for example, be defined to focus on whether an individual is actually engaged in the practice of law, regardless of whether he or she has met the other licensing requirements. I would, of course, obtain insurance coverage if I did choose to practice law again, whether or not such insurance is required, because I think that is just good sense.

Thank you for your consideration.

Douglas B. Greenswag
douglas.greenswag@gmail.com

From: [Brad Gibson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Sunday, October 07, 2018 10:54:13 AM

Hello,

I am an active-licensed, although retired, WA attorney. While not actively practicing, I maintain my active license status in the event that I choose to return to work. I think that it is only fair that an exemption be provided for attorneys with active licenses who are not currently practicing. I retired in 2010, and have spend considerable funds maintaining my license, including CLE attendance. I pose zero risk to the public unless I return to practice. It is only reasonable to provide an exemption to attorneys in my practice category.

Thank you,

Brad Gibson, Seattle, WA
WSBA #28170



From: [Inez "Ine" Petersen](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Bill Pickett](#)
Subject: Inez Petersen's Response to Interim Report re Mandatory Insurance
Date: Sunday, October 07, 2018 2:32:42 PM

PREFACE

I believe that there is something seriously "broken" in the WSBA.

In the realm of "brokenness" is the State Supreme Court's letter telling members that WSBA leadership is to be treated with respect, that the WSBA must be a safe and healthy environment in which to work, and that there must be policies developed to deal with "harassment and retaliation to cover all possible interactions by persons involved in Bar activities and Bar governance."

My first thought was that this was prompted by WSBA leadership to silence the attorneys who wanted to present to the BOG initiatives that would limit the term of the executive director and immediately replace the current director who has been in that position for over a decade and earns almost a quarter of a million dollars annually.

It seems incongruous to stop discussion on member-generated initiatives and changes to Bylaws **BUT MOVE AHEAD WITH MANDATORY INSURANCE.**

If there were a need for policies to deal with "harassment and retaliation to cover all possible interactions by persons involved in Bar activities and Bar governance," that need should have been transmitted by the governors because governors are the ones who are in charge of managing the WSBA--or should be. Governors, in turn, should be marching to the tune of the majority of the members.

Requiring such policies does nothing to protect members from overreaching by its leadership and does everything to protect and perpetuate such overreaching.

And I say that as a member who is still stinging from the 40% increase in dues where WSBA leaders trampled right over the Bylaws. Members were led to believe that this trampling was mandated by the State Supreme Court.

WITH TECHNOLOGY BEING WHAT IT IS TODAY, lawyers should be

able to comment and vote on mandatory insurance in a way that least impacts their busy schedules. The BOG should want to know what the general consensus is among members regarding mandatory insurance.

Attorneys ought to have been able to **FREELY COMMUNICATE WITH EACH OTHER** regarding mandatory insurance. If a **GENERAL MEMBERSHIP BLOG** existed, then members could freely share their thoughts with each other without approval of WSBA staff as is the case with *NW Sidebar*.

Such transparency would make it easy for members to communicate with each other and would make it harder for WSBA leadership to independently forge ahead, for example, with dues increases and to stop member-initiated voting and member-initiated changes to Bylaws.

Perhaps there is hope in *Janus* to provide some relief.

IN THE REALM OF "BROKENNESS"

In the realm of "brokenness," I find the idea that it is necessary to make professional liability insurance mandatory.

The Interim Report states that the "Task Force is focusing on the risk of injury to the public that arises from uninsured lawyers." And later in the Interim Report the number of uninsured attorneys is stated as 14%. (And I question that 14% below.)

BUT WHERE ARE THE STATISTICS THAT INDICATE TO WHAT EXTENT WASHINGTON'S UNINSURED LAWYERS HAVE ACTUALLY INJURED THEIR CLIENTS?

Without this basic statistic, the Task Force cannot be sure that the 14% (see comments below) of attorneys who carry no insurance constitute **A PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY.**

I QUESTION THE USE OF 14% AS REPRESENTING THE NUMBER OF UNINSURED ATTORNEYS. Para 2 on Page 3 indicated that the 14% was computed AFTER 39% of licensed attorneys were **EXCLUDED**. These attorneys were excluded because they work for an employer who provides malpractice insurance. **BUT excluding these attorneys also increases the percentage which misleads the reader as to the true prevalence of**

uninsured practitioners.

It is more appropriate to compute a percent based upon the number of uninsured practitioners / total active practitioners. Did readers catch this? Did Task Force members? I believe this is an example of the **DELPHI TECHNIQUE** being used to "herd" Task Force members to consensus.

My 30 years at Boeing exposed me to the **DELPHI TECHNIQUE**, as well as working as a grass roots activist to fight a Declaration of Blight which was part of the city's planned redevelopment of the Renton Highlands.

I would need a complete and accurate accounting of the number of uninsured practitioners compared to the total number of active practitioners; this would be basic in determining whether there really is a **PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY**. "Significant enough" is the operative term.

The Task Force indicated this is "**a small percentage of Washington attorneys**" on one page and on another page indicated that "Malpractice plaintiffs' lawyers report **numerous instances** of worthy claims that they must reject for representation because the defendant lawyer is uninsured . . ."

Complete and accurate facts and data about these claimed "numerous instances" would be basic in determining whether there really is a **PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY**.

I do not see that the Task Force has compiled the basic statistics needed to judge **THE TRUE SCOPE OF THE PROBLEM**.

Without understanding the true scope of the problem, it is not possible to determine whether there really is a **PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY**.

The Task Force assumes that ALL attorneys who do not carry insurance do not have the financial resources to make their clients whole. **DID THE TASK FORCE GATHER ANY STATISTICS REGARDING WHAT PORTION OF THE 14% UNINSURED IS ABLE TO SELF INSURE?** Lack of funds may not be the only reason an attorney carries no malpractice insurance.

The Interim Report states "A license to practice law is a privilege." I do not agree. We earned the right to practice law in the same way doctors earn the right to practice medicine.

I resented and still resent the "boot on my neck" after I had passed the bar exam. My HIPPA rights were even violated by the WSBA during the process to obtain my bar card. There needs to be a total "reset" at the WSBA; possibly a voluntary bar association will help.

The Interim Report states that "The Task Force members expressed that malpractice insurance (or lack thereof) has a significant impact on clients . . ." **DOES THE TASK FORCE HAVE ANY STATISTICS TO QUANTIFY ACTUAL FINANCIAL IMPACTS TO CLIENTS OF THE 14% UNINSURED?**

The Interim Report mentioned the "useful technical assistance" received from ALPS which is the WSBA's endorsed professional liability insurance provider. ALPS won't cover solo attorneys. Based on this fact alone, the WSBA should not have made ALPS its preferred carrier. A carrier that also insures solos should have been selected.

WHAT IS THE NUMBER OF THE 14%-UNINSURED ATTORNEYS WHICH FALL IN THE SOLO CATEGORY?

The Interim Report states that 28% of solo practitioners do not carry insurance. But the Interim Report fails to indicate the total number of solos. **ISN'T THE 28% STATISTIC MISLEADING? JUST LIKE THE 14% is misleading . . .**

This skewed manner of presenting statistics is the way the **DELPHI TECHNIQUE** manipulates consensus. Without the total number of solos, 28% is without context and is, therefore, misleading.

The Interim Report states that "If the Board of Governors desires further information on the specifics of the Task Force's work, the Board is encouraged to review the Task Force's detailed meeting minutes . . ." **ISN'T THE TASK FORCE SUBSERVIENT TO THE BOG?**

The Task Force should be reporting to the BOG routinely--the Task Force works for the BOG, just like the executive director and her staff should be working for the BOG, not the other way around.

From the Interim Report, it appears that the Task Force gave considerable weight to the opinions of a law professor's article--not a local professor, no actual legal experience, and based on claims that have no relationship to claims

filed against Washington's uninsured lawyers (half of the claims which ALPS indicates are closed without payment). **HOW RELEVANT IS THE OPINION OF THIS OUT-OF-STATE LAW PROFESSOR?**

In fact, I would briefly consider information from out of state and then dismiss it because it does not directly relate to the percent of uninsured Washington lawyers who had malpractice claims. (I hearken back to my prior comments about the 14% being inaccurate to inform me of the number of uninsured attorneys OR the number of that number who lose a malpractice claim.)

The Interim Report stated that "Solo and small firm practitioners represent a **disproportionate share of the malpractice claims.**"

AS IT DID TO COMPUTE THE 14%, DID THE TASK FORCE USE SKEWED NUMBERS TO COMPUTE "A DISPROPORTIONATE SHARE OF MALPRACTICE CLAIMS"?

DID THE TASK FORCE CONSIDER THAT SOLO ATTORNEYS OFTEN TAKE THE HARD CASES WHICH LARGER FIRMS REFUSE TO HANDLE?

I ask this latter question because I am an insured solo attorney; and all my cases are those which other law firms would not "touch with a ten-foot pole." This phenomenon could account for the claimed disproportionate share of malpractice claims among the 14% uninsured attorneys.

The Interim Report stated "Most attorney misconduct grievances and disciplinary actions involve solo and small firm practitioners." **DID THE TASK FORCE JUXTAPOSE THIS AGAINST THE FACT THAT A HUGE MAJORITY OF MISCONDUCT GRIEVANCES ARE BASELESS AND RESULT IN NO DISCIPLINARY ACTION?**

Para 7 on Page 4 of the Interim Report stated "Malpractice plaintiffs' lawyers report **numerous instances of worthy claims** that they must reject because the defendant lawyer is uninsured, making a recovery much less likely."

DOESN'T THIS WRONGFULLY ASSUME THAT RECOVERY IS "A GIVEN" IF THE DEFENDANT ATTORNEY HAS MALPRACTICE INSURANCE? (Carriers may chose to pay off a plaintiff even if the defendant attorney is innocent; and this has the potential to skew statistics about the efficacy of mandatory insurance.)

DOESN'T THIS ALSO OVERLOOK THE FACT THAT REJECTED CLAIMS IF CARRIED FORTH WOULD BE SUBJECT TO THE 50% DISMISSAL RATE CLAIMED BY ALPS' STATISTICS?

HOW MANY "WORTHY" VERSES "UNWORTHY" CLAIMS WERE THERE?

COULD THE MANDATORY INSURANCE IDEA HAVE COME FROM MALPRACTICE ATTORNEYS WHO SEEK TO MAKE THEIR PRACTICES MORE LUCRATIVE? Most of our federal laws come from lobbyists in Washington, D. C., why can I not assume the same occurs locally?

The Interim Report stated "Over the last five years, WSBA Client Protection Fund application statistics indicate that 11% of the applications were denied because they described instances of malpractice rather than theft or dishonest conduct." **DID THE TASK FORCE CONSIDER RECOMMENDING THE EXPANSION OF THE WSBA CLIENT PROTECTION FUND TO INCLUDE MALPRACTICE BY NON-INSURED ATTORNEYS?**

If the Task Force had accurate statistics regarding the occurrence of uninsured defendant attorneys losing malpractice cases, then they could judge whether expanding the Client Protection Fund is a reasonable alternative to mandatory malpractice insurance.

Paragraph 9 on Page 4 of the Interim Report is another example of slanting statistics to give readers the impression that the problem is bigger than it really is. If 89.1% of national malpractice claims were resolved for less than \$100,000, then 10.9% of national malpractice claims were resolved for \$100,000 or more.

But it is this statement in this paragraph that deserves more attention: "**ALPS reports that based on its experience, over the past 10 years in Washington State, about half of all its claims were resolved without payment . . . the average loss payment was \$60,000, and average loss expenses were about \$20,000.**"

If 14% is accurate (**BUT IT ISN'T**) to quantify the number of uninsured attorneys and 32,000 is accurate to quantify the number of total active attorneys, then there are approximately 4,500(?) uninsured attorneys in the State of Washington. The 4,500 is overstated.

The 14% is overstated because, as I explained earlier, the Task Force excluded

39% of the active attorneys before computing this percent. If readers and Task Force members want to know an accurate percent of active attorneys who are uninsured, then the 39% the Task Force excluded needs to be put back into the equation. That is the only way to determine whether there really is a **PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY.**

**USING AN ACCURATE NUMBER OF UNINSURED ATTORNEYS,
HOW MANY ARE SOLO?**

**HOW MANY OF THE ACCURATE NUMBER OF UNINSURED
ATTORNEYS ARE ESTIMATED TO HAVE CLAIMS?**

**AND WHAT IS THE ESTIMATED NUMBER OF CLAIMS,
CONSIDERING THE ALPS's 50% OF NO CLAIM BEING
AWARDED?**

Regarding Para 15 on Page 5, rather than requiring attorneys to "demonstrate financial responsibility," remove that requirement from LLLT/LPOs. We suffer from the tyranny of too many rules already.

Regarding Para 16 on Page 5, the AMA and the ADA do not require their members to carry malpractice insurance, and neither should the WSBA.

Regarding Para 18 on Page 5, if the premium of forced malpractice insurance is \$3,500, **THAT IS TWICE WHAT I PAY NOW AS A SOLO PRACTITIONER.** I handle almost 100% *pro bono* cases. I would have to quit being a lawyer or abandon my *pro bono* clients who desperately need legal help. I'm sure that no public sector agency which provides malpractice insurance would hire a soon-to-be 74 year old women who has only been practicing law since Aug 2013.

**HAS THE TASK FORCE GIVEN ADEQUATE CONSIDERATION TO
HOW MANY *PRO BONO* ATTORNEYS WILL HAVE TO CUT BACK
PRO BONO HOURS IN ORDER TO EARN MONEY TO PAY FOR
THEIR MANDATORY MALPRACTICE INSURANCE?**

**ARE THOSE ATTORNEYS WORTH "THROWING TO THE CURB"
CONSIDERING THE TRUE EXTENT OF THE PROBLEM OF
UNINSURED DEFENDANT ATTORNEYS WHO LOSE
MALPRACTICE CLAIMS?**

DOES THE TASK FORCE BELIEVE THAT WE ATTORNEYS WILL NOT BECOME VICTIMS OF "FINANCIAL BLACK MAIL" BY THE EVER INCREASING COST OF INSURANCE WHEN PROVIDERS KNOW INSURANCE IS MANDATORY?

AND ABOUT THAT FREE MARKET MODEL mentioned on the first page of the Interim Report, I doubt there will be one. I searched and searched, and Zurich was the only company that would issue a policy to a new solo attorney. In my personal experience, the Task Force's free market is a myth.

Insurance companies are not known for being benevolent, **SO WHAT FACTS AND DATA LEAD THE TASK FORCE TO BELIEVE THAT MANDATORY INSURANCE WILL PAY IN THE VERY FEW CASES WHERE AN UNINSURED ATTORNEY LOSES A MALPRACTICE CASE?**

Task Force should have an accurate estimate of the number of "the very few cases," because that is the **PRIME STATISTIC** that could justify mandatory insurance. However, I believe such a statistic would prove there is **NOT A PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY.**

WE HAVE THE RULES OF PROFESSIONAL CONDUCT TO GOVERN US. The WSBA can use it *sua sponte* to discipline judgment-proof attorneys who do not prevail in malpractice cases. This will send a message quickly to the uninsured attorneys who engage in "sloppy practice."

The Task Force may be thinking that it is **NO BIG DEAL** to require mandatory insurance because 86% of attorneys already buy insurance. But it is **A BIG DEAL** to me.

I have purchased insurance from Day One. Having the cost go up because of the "social justice" mindset of the Task Force will hurt my *pro bono* practice which is 99% of everything I do. (I don't report my *pro bono* hours because I object to self-serving back slapping.)

CLOSING COMMENTS

Insurance companies fight "tooth and nail" not to pay claims. Why does the Task Force think this will change just because a small undetermined number of attorneys will be forced to buy insurance next year?

I believe that the WSBA is a business entity which owes its first loyalty to its members. Giving first priority to the public subjugates the loyalty which members should receive. Through loyalty to its members, the WSBA serves the public.

The goal of the Task Force from the first page of the Interim Report is **to eliminate "the risk of injury to the public that arises from uninsured lawyers."**

To state it another way, the goal of the Task Force is **to eliminate "the possibility that even one attorney is judgment proof."**

In my view, neither way of stating the goal of the Task Force is reasonable or practical.

AND ABOUT THAT DUTY TO PROTECT THE PUBLIC . . . Why is a prevailing client in a malpractice lawsuit against a judgment-proof attorney any more important "to protect" than a prevailing plaintiff in a non-malpractice lawsuit who cannot collect his judgment?

I believe that the Task Force will NOT be changing its mind based on my comments or anyone else's; BUT I hope I am wrong.

I believe social justice programs can be carried too far; and mandatory insurance to cover the percent of the uninsured that may lose a malpractice case is just such a social program.

Resources of members are finite, and the WSBA leadership should not call upon all its members everywhere to support every worthy cause. Priorities must be set.

As you can tell, I am vehemently opposed to mandatory insurance.

I also vehemently support a voluntary bar association to stop the mission creep and increasing dues currently plaguing WSBA members AND to stop the use of the State Supreme Court to keep WSBA employees in control of the BOG.

I have always been an independent thinker--I cannot stop now.

Sincerely,

Inez PETERSEN, WSBA #46213

Enumclaw, WA

From: [Laura Voss](#)
To: [Mandatory Malpractice Insurance Task Force; M VOSS](#)
Subject: Malpractice insurance
Date: Sunday, October 07, 2018 5:46:55 PM

Hello members of this task force,

I am licensed in Washington State, as well as Colorado and Wyoming. I currently reside in Wyoming. I maintain my licenses by paying dues annually and participating in continuing legal education. I am a member of 3 LLCs along with my husband, also a licensed attorney. We are the only members of these LLCs. I am not representing clients at this time so I have no reason to need malpractice insurance. I do deal with legal issues in regard to the LLCs as well as landlord/tenant matters in Wyoming. I was involved in a personal legal matter that lasted approximately 12 years and went up and down to the Wyoming Supreme Court several times in regard to a parcel of landlocked property. I am now an empty nester as my children are in college and one may end up in Washington State. I do wish to maintain active status in the event I return to full or part-time employment or even volunteering. I already pay significant sums annually to maintain my licenses. Adding more cost would most likely move me to become inactive or to surrender my license. That would be a very very sad day for me as I have maintained these licenses since the 1990's, this one since 1989, I believe. Thank you for your consideration, sincerely, Laura Macey Voss, Bar # 18983

From: [Christine Keating](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Malpractice Insurance Taskforce
Date: Sunday, October 07, 2018 11:42:36 PM

To Whom It May Concern:

I am writing to express concern over the recent recommendations by the taskforce assembled to address malpractice insurance. While I applaud the goal of the taskforce and believe that, in general, licensed attorneys should be insured, I would like to address one of the exceptions being considered to the rule.

I have been a licensed lawyer in Washington since 2000 and until May of this year I worked for the King County Prosecutor's Office. In that capacity as a government lawyer, malpractice insurance was not required and would not be (as I understand it) under the new rules. However, when I left the KCPAO in May, I opened my own business and purchased another, neither of which even remotely involve the practice of law (The Heartful Parent and Savvy Parents Safe Kids). Thus, although I still maintain a current license, I do not provide legal assistance or advice in any respect. I know I am not alone in this position. There are surely numerous licensed lawyers like me who are not actively practicing law in any way, but who do not want to let their license lapse.

For this reason, I would ask that the committee consider including an exception to the rule that allows for non-practicing lawyers to obtain a waiver or exemption to the rule.

Aside from that, I wholeheartedly support the goals and recommendations of the committee. Should you have any questions or would like to discuss this in more depth, please do not hesitate to contact me.

Many thanks,
Christine W. Keating, WSBA #30821

From: [john goodall](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment
Date: Monday, October 08, 2018 6:23:19 AM

Mandatory malpractice insurance penalizes all conscientious attorneys who do not commit malpractice.

And it penalizes them during a thirty year career to the tune of over \$100,000,

which would equate to a lot of malpractice damages.

I guess the upside is that there would be less need to be so conscientious? After all, we're insured.

j goodall

From: [Kelly, Paul \(DSHS/DCS\)](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Government Attorneys
Date: Monday, October 08, 2018 6:39:34 AM

I received your email that I have been flagged as not having malpractice insurance. From what I have seen, everything to date recognizes there should be an exception for government lawyers. I am working as a "Claims Officer" for DSHS. Though I am required to be licensed by the WSBA to be in my job, I am paid very little. In addition, I must pay my own bar dues each year. So not only am I a government lawyer (like Prosecutors, etc), I am paid only about 2/3 of what they are paid. So I implore you to make sure there is an exception for government lawyers in any final requirements.

From: [Carol La Verne](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Monday, October 08, 2018 8:32:55 AM

I am retired. I maintain an active license to practice in the event that I have the opportunity to volunteer my services or perhaps return to work part-time. If I am required to obtain malpractice insurance I will have to surrender my license. I notice the interim report mentions that Oregon exempts retired attorneys. If the WSBA does decide on mandatory malpractice insurance, I hope it will also exempt retirees.

I do not think the WSBA should require mandatory malpractice insurance. The organization claims to represent attorneys, but it also disciplines them. Now it wants to protect the public from them. In some arenas that might be referred to as a power grab. I suggest it is not the purpose of the WSBA to fix all of the problems related to the practice of law.

The task force has asked for member comments. It has been my observation that in other areas, such as bar dues, the opinion of WSBA members has been largely ignored. However, I offer the above in the hope it will be considered.

I tried to view the task force's informational brochure on the WSBA website, but the page is not there.

Carol L. La Verne
WSBA # 19229

From: [Gary Hersey](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: DanClarkBog@yahoo.com
Subject: Opposition to mandatory malpractice insurance
Date: Monday, October 08, 2018 10:35:54 AM

Good morning,

I work for the Yakima County Prosecuting Attorney's Office as a Deputy Prosecuting Attorney. I am proud to serve my community every day.

I am writing to you to express my opposition to the proposed rule requiring mandatory malpractice insurance for all WSBA attorneys. After careful consideration of this issue, I believe this rule should only extend to private practice attorneys. I do not see any benefit to the community to require malpractice insurance for those attorneys who do not provide direct representation to clients. Government attorneys, DPAs, law clerks and others similarly situated simply do not need this type of insurance. Imposing a requirement to obtain insurance would not only be unnecessary, but it would be an untenable financial burden on a group of attorneys who are generally underpaid and have significant student loan debt as well.

If the board votes in favor of the proposed rule, I would urge you to consider adopting a similar rule employed by South Dakota, requiring explicit notice to clients regarding malpractice insurance.

Thank you for your consideration,

Gary Hersey
Deputy Prosecuting Attorney
Yakima County Prosecuting Attorney's Office
128 N. Second Street
Yakima, WA 98901
Phone: 509-574-1286
Fax: 509-574-1245
gary.hersey@co.yakima.wa.us

From: [Thomas More Kelleher](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Monday, October 08, 2018 11:52:12 AM

To whom it may concern:

I will be 73 years old next month. I have been retired for around 6 or 7 years, and I have ceased carrying insurance. I supplement my income by being on the list as a Pro tem judge in the Spokane County District Court system, and have been so for many years. In order to do this Pro tem work, I am required to remain current as a member in good standing in the WSBA. Over the past number of years I have averaged about \$4,000.00 to \$5,000.00 a year as a Pro tem judge. That income basically pays my car payment and auto insurance.

I cannot imagine ever being sued working as a Pro tem judge, unless perhaps I were to hit someone. But that would not happen and certainly it would not be a professional liability claim.

I have never been sued for professional malpractice and I have never anticipated ever being sued. I do maintain an IOLTA account, but all I have in it are funds that I have not been able to trace the clients or to whom are entitled to the funds, from over 30 years of practicing in Washington. My honest opinion is that most, if not all, are funds that are owed to me, but I would not do anything to use those funds. The account has remained a few dollars under \$200.00 for many years. Some years ago I was able to trace where \$50.00 was owed to a client and I immediately sent the money to him. It surprised him and he immediately called me and told me that I should have just kept it. I informed him that would never happen.

If I were still accepting clients where trails or long complicated matters were anticipated, I would have kept up my insurance coverage. To the contrary, I have turned down many people requesting my help in personal injury cases and I tell them that I am no longer accepting cases and that I have no staff to handle such matters; and, usually give them some names they may consider contacting, if they wish.

I have had friends ask me to do a simple will, community property agreement or a statutory health care directive. I have done very few of them, and it is never on a day to day basis. Many times I charge nothing. Sometimes I accept very little money, because many times my friends feel more comfortable asking me do the work. I will not do any trust work. Also, I have accepted a few very simple probate estates after determining that they will involved mainly filing some court documents and quick closure. I have no current probate estates opened and it has probably been around two years or so since I have had an opened probate file. As far as my income this year from sources other than the District Court Pro tem income, it would probably be in the \$300.00 range.

If it means that I must stop accepting money doing anything, other than the Pro tem work, I would gladly do it. It would be a hardship for me to have to pay a professional liability premium.

Thank you for your consideration,

Sincerely,
Thomas More Kelleher WSBA # 12456

From: [autumn liner-sanders](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance
Date: Monday, October 08, 2018 4:30:10 PM

If you're going to make it mandatory for an attorney to have it then you must make it available and affordable as well.

I work for a tribe. My position does not answer to the tribe's law office but rather my client if you will is a non lawyer department director. For this reason the law office will not include my position or any other attorney position who does not report to them directly onto the law office insurance.

I have tried to find insurance on my own for myself but given my position have found that either 1) the insurance company does not understand the position of the law office or 2) the insurance company has unilaterally decided not to insure Any attorney who is working for a tribe due to the idea of sovereign immunity.

The tribe uses an annual renewable contract to secure attorney services, included in my contract is an agreement to provide the financial resources necessary to insure (if I am able to find adequate insurance) and/or defend me from any malpractice lawsuit.

Feel free to contact me should you have any more questions. But just like mandatory health insurance- there needs to be actually available and affordable insurance. It's also not too much to ask that it be adequate and effective if it is to be mandatory, is it?

From: rockieh@rockielaw.com
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory insurance
Date: Monday, October 08, 2018 4:59:02 PM

Please consider this email as my comment on this tentative recommendation to mandate malpractice insurance. As a solo practitioner, I have always been insured. It has not, however, been easy to find this insurance coverage or inexpensive. I work full-time, but many insurers do not provide coverage for solo practitioners who work part-time. I envision going part-time as retirement gets closer. I also think if this is going to be mandatory for our members, it would be up to the Association to make sure that reasonably priced coverage is available to all of its members through its support.

Another relevant question is whether in-house attorneys would need to be insured. If the employer accepts the risk that their in-house lawyers may err, and they are not working for others, would we insist that they be separately insured to be a member of the Bar? What if in-house lawyers want to provide pro bono services? What if an in-house lawyer helps a family member with one matter during the entire year? Would an insurance mandate be appropriate under these very limited circumstances?

I question whether we have sufficient data that reflects a need for this requirement. Do we have a large number of clients who loose out because their lawyer was uninsured? Is this another rule requiring everyone to pay out large sums, to cover for the bad acts of a few? How would we enforce the rule, or will the bad actors just misrepresent on the annual licensing paperwork?

Will your limited practice individuals be exempt from this very costly requirement for lawyers? Is that equitable?

I am not convinced that this would be a fair requirement or actually have the impact you are hoping for clients.

Thank you,
Rockie Hansen
WSBA 21804

Rockie Hansen PLLC
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From: [Jeff Duggan](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment- Malpractice Insurance
Date: Monday, October 08, 2018 10:22:04 PM

Dear Committee,

My name is Jeffrey J. Duggan. I have been a Washington licensed lawyer since 1988 (WSBA # 18382).

I am writing to advocate for malpractice exemption(s) for attorneys like me and/or similarly situated.

I practice personal injury law part time in Hawaii and Washington. My main focus, however, is teaching Civics, Government, Debate and History. After being in a large personal injury law firm in Seattle for many years, I moved to Hawaii in 2000. Since 2002, I have been a Social Studies at Konawaena High School in Kealekekua, Hawaii. (Big Island)

Over the years I have received numerous personal injury referrals from colleagues, friends and former clients. I have always associated a Washington attorney to work with me, so I can utilize his office and staff. This attorney carried malpractice insurance, I did not.

I believe a part-time non-resident attorney who associates Washington local counsel with insurance should be exempt from mandatory insurance requirements. In my situation, I am able to supplement my income substantially, enjoy part time lawyering, and my clients are protected by coverage via associated counsel.

If I were required to obtain coverage for the small amount of cases I handle, I believe that I would be forced to stop practicing law and thus forfeit income. My cases are too infrequent to justify costs of full time coverage.

Thank you for your consideration. If you should have any questions, please do not hesitate to contact me.

Sincerely,

Jeffrey J. Duggan

Sent from my iPhone

From: [Patrick Torsney](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on Mandatory Malpractice
Date: Tuesday, October 09, 2018 10:00:54 AM

Hello,

My practice did not have any cases in Washington this year. I have little to no work in Washington and getting malpractice insurance just for Washington would be impractical. I plan on more work in Washington but my firm is only 15 months old and requiring malpractice insurance before the book of business is developed will be cost prohibitive.

--

LAW OFFICES OF PATRICK TORSNEY
Patrick Torsney, Esq, CPCU, FCLS
310 486 7373

Please respond to:
403 Via Corta
Palos Verdes Estates, CA 90274

Des Moines, IA Palos Verdes Estates, CA Seattle WA

From: [Ron Atwood](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance
Date: Tuesday, October 09, 2018 10:59:37 AM

Dear Task Force Members:

I am in favor of mandatory malpractice insurance. I am not sure there is a good argument against it.

My office is in Oregon and I joined the Oregon State Bar in 1978. As you know, we have the Professional Liability Fund here in this state. Thus, for the entirety of my law practice, I have been covered. It feels natural and right. I do recall when I was a very young lawyer and part of a firm one of the senior partners made an investment mistake and a client was out \$500,000. Without malpractice insurance, the firm would have had to cover the loss. It was covered with a combination of benefits from the PLF and excess insurance.

I understand you are likely to recommend mandatory coverage and need to determine what exemptions should apply. As you go through that process, please allow those of us who have coverage through the PLF here in Oregon to qualify for our coverage in Washington.

Thank you.

Ron

Ronald W. Atwood
Ronald W. Atwood, PC
200 Oregon Trail Building tel: 503-525-0963
333 SW Fifth Ave. cel: 503-780-8219
Portland, OR 97204 fax: 503-525-0966

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Workers' Compensation counsel for employers in Oregon, Washington, Montana and on the waterfront, practicing since 1978.

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From: [Brian Suzuki](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Lawyer Malpractice Insurance: Comment
Date: Tuesday, October 09, 2018 11:48:30 AM

Hello WSBA:

I wanted to take a brief moment to offer my comments regarding the mandatory insurance proposal. I apologize if this finds you too late; only recently did I read the article in the NWLawyer magazine.

Currently, I have a Washington State Law License (#42786). I also have a Michigan State Law License (P72676). I do not currently practice law; instead I have part-time employment with a non-profit organization, and otherwise am a stay-at-home dad.

Though I understand the importance of carrying malpractice insurance while practicing, I would ask the task force to consider people like me: people currently not practicing law. Mandatory malpractice insurance would not only be costly (in addition to yearly dues and cle expenses), it would be unnecessary and unused. I do not currently have any malpractice exposure. I may return to the practice of law as my circumstances change; however, for now it would seem like an unnecessary cost/burden to maintain malpractice insurance.

Thank you for your time and consideration.

Brian Suzuki
WSBA #42786



Virus-free. www.avg.com

From: [Shawn Alexander](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory insurance
Date: Tuesday, October 09, 2018 1:40:05 PM

As a low-bono solo practitioner in a rural area, I strongly oppose mandatory insurance as I will have to raise my rates to pay for insurance and as a direct result fewer of my clients will have access to the court system.

Shawn Alexander
Attorney-at-Law
P.O.Box 359
Olga WA 98279

From: [Lisa Brewer](#)
To: [Mandatory Malpractice Insurance Task Force](#); [Paul S](#); [Lisa Brewer](#); [PJ Grabicki](#)
Subject: Opinion - Mandatory Malpractice Insurance
Date: Tuesday, October 09, 2018 1:43:16 PM

Taskforce Members and BOG Members:

Greetings. I received the Task Force's email re Mandatory Malpractice Insurance b/c I am someone who does not carry malpractice insurance.

My thoughts are as follows:

(1) If Malpractice Insurance becomes mandatory, the premiums will NOT drop as discussed. In a normal capitalist economy, yes, that might happen. However, once malpractice insurance becomes mandatory, the capitalist model is interrupted. There is no market force keeping premiums down because the attorney has no bargaining power. If the Ins companies don't have to keep premiums low...they wont. Don't kid yourselves.

Example - I had malpractice insurance in the past. No claims ever. Even so, the premiums were running \$7,500-\$10,000/year (\$625 - \$850 month) for a solo-practitioner family law policy w/ 5-yr rider. In comparison, the rent on my office suite w/ full-time maintenance is \$700/mo. My current overhead is about \$2,500/mo. Insurance would increase my overhead 30%+ overnight.

(2) My business model is to offer affordable representation in contested custody matters. My budget is very frugal. I do all my own work, which limits much of my exposure to malpractice claims. I only employ part-time help to answer phones and do filing. Mandatory Insurance would be a crippling expense. Family law has one of the highest premiums, if not the highest. I can't afford it.

(3) In all the discussion about affordable representation and access to justice, this will just increase cost because I will have to pass the cost on to my clients. I may also have to reduce the 3-5 direct representation pro bono cases I take each year. It'll make me sad, but I've got to pay my bills.

(4) The argument that attorney's who don't carry insurance are sloppy and will commit more malpractice is inaccurate. First, anyone who does PI work knows that the absence of coverage discourages frivolous litigation because the Plaintiff knows he's going to have to go after the Def's assets rather than just get a payout from the Surety. Second, I am actually MORE careful to avoid malpractice for the very reason that my personal assets *are* accessible/garnishible.

(5) I'm already paying a part of my dues to the Victim Fund (or whatever its called). I'd rather pay more to that fund than put money in the insurance industry's pocket.

Finally, I attended several of the recent BOG meetings and heard the commentary on Insurance and, while I couldn't disagree more, I sincerely doubt my comments will have any impact given the dicta voiced in the meetings. That said, I am vehemently opposed to mandatory malpractice insurance.

Cheers,

Lisa E. Brewer, Esq
The Brewer Firm
104 S. Freya St, Suite 226B
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Spokane, WA 99202
Ph (509) 325-3720; Fax (509) 534-0464
lbrewerlaw@msn.com

From: moorelawoffices@aol.com
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Against Mandatory Insurance
Date: Wednesday, October 10, 2018 3:54:45 AM

I have been a solo practitioner for over 20 years. Until I was sued for malpractice I always carried malpractice insurance. I believe that the reason I was sued for malpractice along with three other law firm's that were involved in the case, was because I had malpractice insurance and I happened to have the highest pay out. When I was presented with interrogatories they contained one question: do you have malpractice insurance? Followed by a request for production of my insurance policy.

Since then I have not had malpractice insurance for this reason. Recently I looked into obtaining malpractice insurance due to this task force and it's recommendations and there is no way I would be able to afford the premiums in light of the fact I have been sued before.

I am against mandatory malpractice insurance because I do feel it increases unnecessary litigation and because the cost as a solo practitioner is far too great.

Additionally, I believe that the Bar Associations primary goal should be to take care of its members. I also believe that the sanctions we have in place and programs the Bar offers for those genuinely who have been wronged by their attorney are sufficient.

I appreciate you taking the time to review my comments.

Warm regards,

Lisa F. Moore
Attorney At Law

Moore Law Offices
Advocates For Justice

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From: [Donna Beatty](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment regarding mandatory malpractice insurance
Date: Wednesday, October 10, 2018 10:13:48 AM

Provided that those who hire an attorney are fully informed of the attorney's insurance situation, the requirement for attorneys to be insured against malpractice claims would infringe on a client's freedom to contract for the attorney's services. But being fully informed is crucial to that freedom. Once I decided to curtail my practice to a select group of clients, I decided not to carry malpractice insurance. However, I ensured my clients were informed of that decision, and I regularly remind them of that fact. And they are informed of the fact that my rates are reduced because I do not have the expenses associated with a malpractice policy. Frankly, being a part-time attorney and not having been insured for several years, at this point I may not be able to purchase insurance coverage on the open market. Requiring that I do so may prevent me from being of service to my clients.

Prior to implementing this drastic measure - making Washington state one of the few that effectively eliminates the part time practice of law by doing so - I suggest that the WSBA implement a mandatory disclosure policy, complete with a standard form that all uninsured attorneys *must* send to their clients and prospective clients at least once per year. Annual execution of the form by the client, or the initial execution by the prospective client, as well as the attorney, in order for services to be continued or commenced.

Perhaps the disclosure form should also contain a waiver of the client's right to request relief should the client suffer financial losses that would have been covered by malpractice insurance. The relief should be saved for those who seek assistance from pro-bono, volunteer attorneys. Additionally, the lack of malpractice insurance should be considered when a judge or arbitrator needs to award reasonable attorneys fees. Such awards should be reduced for those who do not have the expense that such coverage poses.

I believe it would be a grave disservice to the people of Washington to require mandatory malpractice insurance for all attorneys, even if applied only to attorneys in private practice. But ensuring that the status of an attorney's malpractice coverage is known, and ensuring that the risk is properly placed on those who choose to continue receiving services from such attorneys, is prudent, protective of those who do not understand the consequences of the risks they are taking, and respectful of the right to contract.

Thank you for your time.

Donna Beatty
WSBA 29561

From: [Allison Law Group](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance Question
Date: Wednesday, October 10, 2018 10:56:33 AM

I saw the article in the WSBA Take Note email about this. What would the exceptions be?

For example, my husband is currently licensed but he does not practice law. He stopped carrying malpractice insurance years ago because he doesn't touch any case.

He wants to keep his license active in case he decides to go back one day.

Would he be an exception? I could not find any text on the proposal, just meeting minutes on a variety of items.

Thank you,

Lisa Allison
Allison Law Group
PO Box 2776
Gig Harbor, WA 98335
425-361-3027
FAX (253) 244-9204

From: [Simunds Law Group](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Feedback
Date: Wednesday, October 10, 2018 11:52:00 AM

I was disappointed to learn of the task forces recommendations. Frankly, I think it is a cure in search of a problem and will likely create more issues than it ostensibly attempts to resolve.

I understand the concerns that there many in small private practice that do not carry malpractice insurance and that should the client have a malpractice claim, there may be little or no recourse. However, a closer review of what services those firms provide is worthwhile. Many firms, like mine, are small for a reason. I have no hired help, no administration and this allows me to service clients at a rate that is affordable for most. I am probably unique in that I service only family and friends in Washington as my practice is located in Arizona and I do not advertise or actively seek clients in Washington. However, my point is the same, adding malpractice insurance costs to what is already a small margin endeavor, will effectively close my doors in Washington. That may not matter much as I don't serve a lot of clients anyway, but from my conversations with normal non-lawyers, the biggest deterrent to them pursuing a claim is not whether or not insurance is available, but the cost of legal services. Insurance costs are not significant to a large firm, it is part of their massive overhead which is then passed on to their clients in the form of either fees or "creative billing", which we can argue shouldn't exist, but undeniably does, especially with insurance firms. Small firms like mine will be forced to increase rates to cover the additional cost. It is easy for a administrator to say "just join a big firm then", this assumes that just because your record is clean, a big firm will want you and you are a good fit for the big firm environment. I have a small firm because I want control over the cases I take and the time I spend, I cannot do that in a big firm and I'm certain many other small operate this way for the same reason.

I understand the concern about clients being unable to recover should malpractice be an issue, frankly I understand that and I have had to deal with the repercussions of prior counsel's missteps in a few cases in Arizona. However, by and large, these clients would not have access to any legal assistance outside of a small firm and I for one would prefer not to feed into the general view of Joe Public that legal help is for the rich, or very poor.

Finally, the idea that the public cannot protect themselves from the rare case of malpractice is patently absurd. I have absolutely nobody come into my firm that has not 1) checked my website, and 2) looked at reviews online. With options like Google, Yelp and others, it is unlikely that substandard legal work will remain undiscovered for long. I'd rather the bar go after lawyers that fail to meet the standards of the profession than to see that duty partially delegated to private insurers because at least the client will be paid.

I am afraid that doing this will push us into the same situation as the medical and education

industries. I can find no area in which the availability of insurance did not inflate the costs, damages and payments in any circumstance. In medicine, you used to be able to go to your local doctor, who even made house calls and it didn't cost you a house mortgage on top of your insurance paying out, that is the case now. The inflation of medical services has far outpaced the inflation index. The same can be said for education. The availability of "free money", subsidized student loans for amazing amounts and regardless of likely ability to repay has pushed the inflation of education costs to far outpace overall inflation rates. The same will happen here. Insurers will pressure lawyers to settle claims that they do not see the point of litigating, regardless of merit, I know how insurers work. No fear though, the insurance companies will not lose, so those few bad apples will cause everyone's rates to rise. This will be passed on to clients. Those firms that cannot do so will close and you will have made Joe Public's view of the legal profession a reality, access to legal help for either the very rich or the very poor. I don't expect this to happen overnight, it will likely take the next decade or two, but it will happen.

Thank you for openness to other views, however, should this pass, I will no longer service Washington. I refuse to be impeded by some faceless insurance adjuster. Some may say this will never happen, they said the same to doctors and dentists and yet, here we are.

Respectfully,

Matthew G. Simunds, Esq.
For the Firm

THE SIMUNDS LAW GROUP, PLLC

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(602) 374-4522

From: [Meliha Babic, Attorney at Law](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Letter from a WSBA solo attorney
Date: Wednesday, October 10, 2018 11:59:10 AM
Attachments: [Letter to Mandatory Malpractice Insurance Task Force.docx](#)

Please see attachment and include it with your consideration

Meliha Babic, Attorney at Law
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Tel: (425) 503-9108
babiclaw@yahoo.com

Meliha Babic, Attorney at Law

October 9th, 2018.

To: Mandatory Malpractice Insurance Task Force

RE: Recent proposed changes to mandatory malpractice insurance requirements

I wanted to contact the Mandatory Malpractice Insurance Task Force and address some of the fears and considerations I have as a solo practitioner working with a tiny home office and no support staff. My practice focuses on providing a wide range of legal services to local immigrant community. I handle all of my own paralegal tasks and also all lawyering. I have mostly incredibly satisfied and grateful clients who have learned to trust me and know that the modest fees I am charging are approachable and not out of their range. I have carried malpractice insurance in the beginning of my solo journey but have found even the minimum insurance fees crippling and unsustainable for my practice. In order to keep my legal fees low and able to serve my clientele I have had to cut back on spending for malpractice insurance. To date, no client has ever complained that they had not received 100% satisfaction with my services. In the event that malpractice insurance fees were mandatory for my practice (exemptions could be made for solos who earn less than 25K a year) I would have to shutter my solo practice and quit being a saving grace for so many who otherwise could not afford or out of cultural reasons be able to contact another attorney (I speak several languages and this is a the primary reason why I am able to service those communities- Bosnian, Serbian and Croatian). As mentioned earlier if this rule takes effect I will be closing down my practice and looking for an alternate employment as insurance fees are unsustainable along with other living expenses of a solo practitioner. I will also be failing my extended community in not providing them with services essential to protecting their personal and property rights. Adding WSBA

registration fees, CLE attendance fees, postal and office expenses my business would simply go bankrupt with such regulations. In addition, as a Libertarian, I am appalled at the societal regulation of the most fundamental interaction; that of a lawyer and a client, a priest and a parishioner and doctor and a patient.

The decisions are now in your hands dear Task Force members. I urge you to consider the plight of a solo practitioner who is unable to afford such mandatory fees, and who makes under 25K a year helping the underprivileged in the local community. In order to support this practice I have had to have secure other odd jobs and non legal work. With these mandatory insurance fees I could simply be forced to abandon the practice of law altogether.

Thank you for your sincere consideration,

Meliha Babic, Attorney at Law

From: chicago1@centurytel.net
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: another thought from earlier commenter
Date: Wednesday, October 10, 2018 2:14:31 PM

Hi. I have commented before from my position as a retired attorney who is willing to keep up bar dues and CLE and wants to be called a legit attorney but finds \$3000/year for insurance when I don't practice as "steep". I worked for a small tribe and don't have a pension, just SS and a very small 401k.

This is a new point. I was reviewing the OR list of people who don't pay malpractice insurance and did not see the category for inactive attorneys who are active in other states. You might consider this as legit reason not to have WA State malpractice insurance. I have been inactive in IL and TX after moving here. The reverse can be true, so please consider those situations. Speaking on behalf of such folks. Don't have standing, there!

Thank you.

Katherine Krueger
Forks
25818

From: [Saphronia Young](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Saphronia Young](#)
Subject: Mandatory malpractice insurance for WA attorneys
Date: Wednesday, October 10, 2018 2:56:44 PM

Dear Task Force:

I favor this. We all make mistakes, and sometimes they are big, sometimes small. However, we ask all citizens to carry insurance before driving a car in recognition of the fact that doing so is simply the responsible thing to do. I believe that as attorneys, it is also the responsible thing to our clients for us to provide for them in the event we make a mistake that impacts them. I often refer clients to other attorneys, and I do not refer to any attorney whose WSBA profile indicates that they do not carry malpractice insurance. I would not want my clients, my friends, my family to be in the hands of counsel that did not care about them enough to provide this small safeguard for client well-being.

I also obtained malpractice insurance when I first set up my own practice, before I leased any equipment, rented an office, or hired an assistant. I believe that if one cannot afford this investment, one should reconsider the decision to have a law firm.

Very truly yours,

Saphronia Young
WSBA #31392

From: [patricia michl](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory malpractice insurance
Date: Wednesday, October 10, 2018 3:47:13 PM

The Mandatory Malpractice Insurance Task Force has asked for input from Washington lawyers regarding mandatory malpractice insurance for lawyers in Washington. My comments follow:

1) Where is the problem? Is there an avalanche of malpractice cases against solo and small firm practitioners? The task force alleges that 14% of Washington lawyers in private practice carry no malpractice insurance. But clients do not appear to be damaged, at least in no sizeable number. The public is not complaining. Yet a task force has been formed and countless hours devoted to what appears to be a non-existent problem. This appears to be another example of "mission creep" at the WSBA and an attempt to keep up with our neighbors - Oregon and Idaho.

2) Who is on this task force? Does it include solo and small firm practitioners? And does it include lawyers who do not carry malpractice insurance? These are the groups being targeted by the task force. The task force alleges that these groups generate the most malpractice grievances and are the most likely not to carry malpractice insurance. If the task force does not include lawyers from these groups, or if the number from these groups is very small, then the task force has effectively been "stacked" and should be disbanded.

3) The task force includes members from academia, the public and the public sector who are not in private practice and will be exempt from paying for malpractice insurance. It is hypocrisy for them to demand that others purchase this insurance when they themselves will not be required to carry this burden.

4) Mandatory malpractice insurance is unlikely to protect the public. The public will be forced into litigation against one of the most aggressive and difficult litigants in the legal profession - insurance companies. Insurance companies are in the business of collecting premiums, not in the business of paying out claims.

5) Insurance companies are the real winners in a mandatory malpractice insurance scheme. They will have a captive market, all lawyers in private practice in Washington. Thus they will be able to raise their rates at will and drop "problem" lawyers at will. There will be no threat to insurance companies of lawyers dropping their insurance because of higher rates. Insurance companies will have a lock on the legal profession. The 14% of practitioners who are uninsured actually keep rates low presently. The insurance companies know there is a way out for lawyers if they raise their rates too high. That downward pressure on insurance companies will disappear with mandatory malpractice insurance.

6) The public are the losers in a mandatory insurance scheme. Poorer clients often cannot pay the retainers of large firms and are turned away. These clients depend on solo and small practitioners whose fees are lower. Also, if their case is difficult, the large firm can afford to refuse their case. Smaller firms cannot afford to turn potential clients away. They serve the less affluent public and those with tough cases. Yet smaller firms are targeted by the task force.

7) Pro bono clients will suffer under a mandatory malpractice insurance scheme. Pro bono lawyers will disappear or will have to charge something. The only pro bono lawyers available will be in public interest and government funded pro bono firms. Pro bono clients do not pay the bills; thus private lawyers who accept pro bono clients may be forced to drop this type of client.

8) The cost of mandatory malpractice insurance is likely to be passed on to clients in the form of higher attorney fees. This is especially likely in smaller firms who previously did not have to carry this insurance. And it is especially likely to affect their lower income clients. As insurance companies raise their rates, even larger firms will find it necessary to pass this cost on to their clients.

9) The task force states that one option is to "implement mandatory malpractice insurance through a free market model" (Interim Report, page 9). This statement is an oxymoron. Free markets never exist within coerced systems. Lawyers who are forced to buy insurance are then forced to find a provider. This is not a free market. What we have now is a *free* market. What the task force is considering is a *coerced* market.

10) It is an error to assume that solo and small practitioners are judgment proof and, therefore, must be forced to carry malpractice insurance. Many solo and small practitioners have assets which can be seized should a judgment be entered against them. The task force mistakenly assumes that some of the private bar are immune from their mistakes (Interim Report, page 8). The only lawyers who are immune from their mistakes are government prosecutors and judges who have prosecutorial and judicial immunity. All other lawyers are liable for their mistakes.

11) The task force states that the Client Protection Fund cannot compensate clients who are the victims of lawyer malpractice. Perhaps this should change. Perhaps this fund should be allowed to pay out on meritorious malpractice claims. The recent massive 40% attorney dues increase could help fund the Client Protection Fund. Also, the WSBA could reduce some of the excessive salaries of certain WSBA employees and eliminate some of the unnecessary positions at the WSBA. Move this money to the fund. Then reimburse clients with meritorious malpractice claims out of the fund.

12) *NW Lawyer* failed to provide a balanced analysis of mandatory malpractice insurance. The feature article by Leslie Levin in the August 2018 issue was clearly biased in favor of mandatory malpractice insurance. There was no feature article in opposition. And Professor Levin is so biased in favor of mandatory malpractice insurance that she makes the following nonsensical statement on pages 36 and 37:

"Surveys of uninsured lawyers suggest that when they say they do not buy insurance because of the cost, many do not mean they cannot afford it. Some are retired or mostly retired lawyers who are making less from their occasional legal work than the cost of insurance, but they could afford to purchase insurance if required."

So these "retired or mostly retired lawyers" are supposed to dip into savings or their social security accounts to pay malpractice insurance premiums that their legal practices do not generate enough money to cover?

In her haste to promote coercion, Professor Levin has forgotten Economics 101. You cannot continue to pursue a business activity that costs you more to pursue than the revenue it brings in. That is the classic definition of "cannot afford."

The clients of these "retired or mostly retired lawyers" may lose their attorneys if mandatory

malpractice insurance is imposed. And when the clients go elsewhere they are likely to find that the cost of legal services has increased. The consumer always pays the increased cost of government mandated schemes.

For all of the above reasons, I am in favor of maintaining the status quo, no mandatory malpractice insurance for Washington lawyers. Alternatively, I would support a disclosure requirement which would mandate written notice to the client stating the lawyer does not carry malpractice insurance.

Washington lawyers and their clients may bemoan the fact that Washington went down the slippery slope of mandatory malpractice insurance. The loss of pro bono attorneys may lead to more persons appearing in court pro se. Will the WSBA then implement mandatory pro bono service from attorneys (a slavery system)? Will lawyers then leave the profession and a movement starts for the government to subsidize the legal profession? And finally a single payer totally government run legal system is put in place.

Welcome to the New World Order and the task force paved the way.

Patricia Michl
WSBA # 17058
115 West 9th Ave
Ellensburg WA 98926

From: [Shea Wilson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Task Force; Comment in Opposition to Mandatory Insurance
Date: Wednesday, October 10, 2018 4:17:13 PM

Ladies and Gentlemen:

I am an attorney who occasionally practices law, but has had the occasional year where I do not practice. Over the last five years my annual revenues have varied between \$0 and \$100,000. I have been a solo practitioner since 2007. I mainly do work in the merger and acquisition space for small deals, although occasionally have done securities work as well. I quit carrying malpractice insurance in the mid-2000s when the “best” insurance policy I could find wanted a \$50,000 premium for \$125,000 of coverage.

I fit your profile for a high-risk attorney.

I am 57 years old, have practiced in Washington state since 1991 and have never had a malpractice claim filed against me. I did work at large and medium-sized law firms in Seattle that had claims filed against them, though.

I have just a couple of thoughts for you.

In the data in the task force interim report, you observe that a disproportionate number of malpractice claims originate with small firm and solo practitioners. Could you examine your data more closely to see whether this phenomenon is a general systemic issue, or perhaps—as is frequently the case (80-20 rule)—a problem of a certain subset of small firm and solo practitioners? Repeat or habitual offenders, that is to say.

If your deeper research reveals what I suspect, I suggest you exempt attorneys from an insurance mandate until a credible claim of malpractice has been lodged against them. It need not be a claim fully prosecuted to judgment; you could simply include an APR that would require any attorney filing a malpractice claim on behalf of a client to file a copy of that claim with the WSBA. Judges receiving pro se filings could have a similar duty. And, of course, the WSBA could have an intake procedure for public complaints as well. If disciplinary counsel believe the claim well-founded, the target attorney could be ordered to show cause why they should not be required to purchase and maintain malpractice insurance, with a hearing to find facts.

If you are truly concerned about client protection, you should be looking to identify and weed out the bad actors. That is how to protect the public. A feel-good measure with serious detrimental impact on those of us who do not necessarily have the resources each year to afford insurance is an onerous burden to casually impose.

Thank you in advance for your thoughtful attention to my comment.

Very truly yours,

Chapin E. ("Shea") Wilson, WSBA #21205

From: [Alexandra Molina](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Against mandatory malpractice insurance
Date: Wednesday, October 10, 2018 5:21:52 PM

Dear Insurance Task Force,

My name is Alexandra Molina (WSBA #47930) and I currently practice law as a solo practitioner with a multi-jurisdictional practice. I currently do not carry malpractice insurance due to cost.

Practicing law is a tremendous honor and a privilege. However, that honor comes at a costly price when one practices as a solo practitioner.

The imposition of a mandatory malpractice insurance requirement would be a tremendous financial burden on solo practitioners like myself. This is why I am vehemently opposed to this mandatory requirement.

I implore you to consider the extreme financial burden this represents to solo practitioners and those of us who represent clients with modest means.

Please do not saddle us with this costly notion.

Sincerely,
Alexandra Molina, Esq.

Sent from my iPhone

From: [Matthew Hardin](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on Mandatory Malpractice Insurance
Date: Wednesday, October 10, 2018 9:00:47 PM

I write to oppose the Task Force's tentative proposal for mandatory malpractice insurance.

I begin by noting that I presently practice out of state (in Virginia). The Virginia State Bar examined a similar proposal years ago, and rejected it. I incorporate by reference a publication opposing the Virginia proposal: http://www.vsb.org/docs/vlawyermagazine/vl0708_debate-insurance.pdf

More specific to the proposal that's been put forth in Washington, my comments are as follows:

1) I am troubled by the under-representation of individuals on the WSBA Taskforce, who stand to be impacted by the proposed rule. There are very few solo practitioners (and do the solos on the task force carry insurance? We aren't told.). The task force is composed almost exclusively (if not exclusively) of lawyers who either have insurance through their firms, or those to whom the rule will not apply (academic and government lawyers, for example).

This under-representation brings to mind the debate in Idaho before their malpractice insurance rule was adopted. In a vote of members of the Idaho bar, only 51% favored making malpractice insurance mandatory, with 49% opposed. The Idaho proposal passed by only the narrowest of margins. Doubtless the vast majority of the 51% that voted to make malpractice insurance mandatory, already carried malpractice insurance. The estimated 14% of the bar that doesn't carry malpractice insurance had no effective representation in Idaho's debate, and it looks as if they have very little, if any, representation in Washington's debate.

As the WSBA has noted, those without malpractice insurance are a minority. They're lawyers on the fringe of the profession (some in semi-retirement, for example) and the fringe of the economy (a few thousand dollars a year in premiums is affordable for most practicing lawyers, but not all). Making malpractice insurance mandatory, with its costs, is going to push these lawyers out of the profession altogether. The small-town solo who's barely scraping by but charges rates working class folks can afford and does good work earning a modest living, will either jack up his fees to compensate for the new rule, or go out of business. The semi-retired practitioner who helps friends and family a few hours a week, will be forced into full retirement. Far from protecting vulnerable clients, this proposed rule is likely to cause clients to lose their lawyers. The only beneficiaries will be big firms with high rates that can more easily absorb an additional overhead cost.

2) While I oppose any change from the status quo in Washington (the malpractice proposal seems to be a solution in search of a problem), there are less restrictive means to address any supposed problems in Washington's current regulatory regime. For example, many states (e.g., Virginia) will suspend a lawyer's license to practice if the lawyer has any unpaid judgments against him. Such a system punishes only lawyers who have proven themselves to represent a risk to the public, rather than all lawyers everywhere. Other states (e.g., Ohio) require a lawyer to either have malpractice insurance, or get a written waiver from the client stating that the client is aware the lawyer has no such insurance. Making a statement regarding the availability of malpractice coverage a part of every representation agreement would put clients on notice, without driving lawyers out of the profession or increasing costs.

3) While I reiterate that I oppose any change from the status quo, and that, even making the assumption changes are necessary, mandatory malpractice insurance is not the right course of action, I nevertheless add that, if WSBA proceeds with a mandatory malpractice insurance scheme in some form, many exemptions will be necessary so that unforeseen issues do not arise. For example: There should be an exemption for lawyers who do not maintain an office in Washington (Oregon has such an exemption from its scheme for lawyers that do not practice in that state). There should be an exemption for lawyers with an Inactive Washington license to practice law (an unintended consequence that Idaho has seen, is that its rule affects those with Idaho licenses of any stripe, regardless of whether those attorneys practice

in Idaho or represent any risk to the Idaho public). There should be an exemption for those employed by, or exclusively representing, nonprofit entities (so that such entities aren't forced to bear, directly or indirectly, the additional financial burden imposed by the proposed rule). There should be an exemption for attorneys who practice less than a certain number of hours per year, or bill less than a certain amount per year in fees (to ensure that we do not drive part-time or semi-retired attorneys out of the profession).

In sum: there's no such thing as a free lunch. We all want to protect clients from unscrupulous or ill-informed lawyers. I'm sure the Task Force has that laudable goal at the forefront of its mind. But no regulation is without costs, and those who bear the costs will be at the lowest rungs of the economic ladder. Perkins Coie already carries insurance, and won't go bankrupt if malpractice insurance becomes mandatory. Its clients likely won't even notice if bills go up incrementally. But small-town, solo, and elderly practitioners often don't carry insurance, for a very simple reason: they can't afford it. These practitioners will cope with the regulation either by jacking up their rates (in which case economically vulnerable clients will struggle to pay or go entirely without representation), or by leaving the profession altogether. A farm hand seeking representation in Eastern Washington will notice when a small town lawyer increases his fee by 5%, even though a corporate client at a white-shoe firm in Seattle would not notice a similar increase. A senior on a fixed income will notice when the elderly lawyer she's used off an on for decades decides it isn't worth it financially to practice law in Washington anymore and retires, while a corporate client at a big firm wouldn't bat an eye at business being shifted to another lawyer in the same firm.

Consider the costs before you endorse this dangerous proposal.

Matthew D. Hardin



On Oct 4, 2018, at 7:49 PM, Washington State Bar Association <noreply@wsba.org> wrote:

Washington State Bar Association



Have you heard? The Mandatory Malpractice Insurance Task Force issued an interim report in July with a tentative conclusion that malpractice insurance should be mandated for Washington-licensed lawyers, with specified exemptions and minimum coverage levels. We are reaching out directly to you because you are registered with WSBA as not currently having professional liability insurance, and we want to make sure you are aware of the process and are able to provide feedback.

Background

The Washington State Bar Association Board of Governors formed the task force in September 2017 to collect input and examine current mandatory malpractice insurance systems in other jurisdictions. The task force will use this information to determine whether to recommend mandatory malpractice insurance as a requirement for licensing. Task force members expect to make a final recommendation to the Board of Governors in January 2019.

More information

- [Mandatory Malpractice Task Force informational brochure](#)
- [Task force website](#)
- [Interim report](#)

Provide feedback

- Open forum: All WSBA members are invited to provide feedback directly to task force members from 2-3 p.m. on Tuesday, Oct. 16, at the WSBA Conference Center (telephone participation will be available).
- Comments and questions can be directed to insurancetaskforce@wsba.org and will be provided to the entire task force.

Task-force members want to hear from you so their final report is responsive to members' concerns and expertise. Thank you.

[WSBA seal](#)



Washington State Bar Association

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Seattle, WA 98101-2539 | [Map](#)
Toll-free: 800-945-9722
Local: 206-443-9722



Official WSBA communication

All members will receive the following email, which is considered official:

- Licensing and licensing-related materials
- Information about the non-CLE work and activities of the sections to which the member belongs
- Mandatory Continuing Legal Education (MCLE) reporting-related notifications
- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications



From: [Michael Miller](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Inquiries
Date: Wednesday, October 10, 2018 10:14:08 PM

Greetings,

I sent in a message about a week ago regarding more information on Lawyers in my position: Solo practitioner, primary practice located in another state that does NOT require malpractice insurance. I'm curious as to the exceptions to this rule stated in previous discussions - this will be extraordinarily difficult for the many in my position to afford, especially with a limited monthly income (I already supplement my income performing non-lawyer tasks just to pay bills while I continue to promote my practice).

I am against this measure and don't foresee the same risks advertised pertaining to my meager soft Intellectual property law firm entirely based on transactional work. I'd love to discuss this as well as my options further with one of the Task Force members.

Thanks you in advance for your time.

Cheers,

Michael C. Miller esq.

From: [Gail Ragen](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Jim Ragen](#)
Subject: Response to Request for Feedback on Mandatory Insurance Proposal
Date: Thursday, October 11, 2018 10:10:01 AM
Attachments: [Response to WSBA re Mandatory Insurance Proposal.pdf](#)

To the Task Force:

Please see attached and confirm receipt.

Gail M. Ragen

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October 11, 2018

Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

Re: Response Regarding Mandatory Malpractice Insurance Proposal

Dear WSBA:

Thank you for reaching out to me for feedback in connection with your inquiry into whether the WSBA should implement a mandatory malpractice insurance program. Before providing my reasons for urging you to reconsider your tentative plan, I want you to know how disturbing it was to read your Interim Report. Not only do I believe the report is flawed, it falsely suggests that lawyers such as myself (and my husband and law partner) are more likely than insured lawyers to commit legal malpractice, unable to satisfy a judgment in the event that a judgment were entered against us and – indeed – are a danger to the public.

To provide context, I am an attorney admitted to practice in California (1980), Washington (1995) and Alaska (2007). I actively practice in all three states. Since my admission to each of these state bars, I have been in good standing and complied with the licensing and continuing education requirements of each jurisdiction. I enjoy (and have enjoyed for decades) outstanding relationships with my clients.

I went to the University of Texas School of Law and have been both an associate and partner in large California law firms. I have had my own firm in California and Washington. My husband Jim graduated from Harvard and went to NYU School of Law. After long and successful separate careers, Jim and I started our law firm together thirteen years ago. We have never lost a case. We have not raised our rates in ten years, in part because we made the considered decision that we do not need a brick and mortar office or malpractice insurance. We have passed out savings onto our clients. This year, we contributed \$25,000 to NYU for law school scholarship funds, again passing our savings through to others.

Jim and I do not need or want malpractice insurance. We believe we have virtually zero exposure to malpractice claims. This past year, Jim and I won a multi-million dollar recovery for our clients in a 25-year intra-family fraud. Our clients are prevailing parties, and the arbitrator has issued an interim ruling that our \$3 million-plus fee claim is reasonable in light of the amount and quality of our work. Last year, after ten

and a half years of contingency work on behalf of two blue-collar workers, and two trips to the Alaska Supreme Court, we resolved a legal malpractice case against two law firms (one a 500+ attorney firm and the other one of the oldest firms in Anchorage.) In addition, we provided years of free legal services to our clients to help them carry their nearly bankrupt company to a successful completion of its business and waited until all employees and other creditors had been paid before taking our contingency fee.

Jim and I stopped raising our rates in 2008 during the great recession as an accommodation to our clients (even though they had never requested any such accommodation). We have even been teased by clients because our rates are so low compared to our adversaries, particularly when litigating in New York, Southern California, Boston and other urban centers. We have not raised our rates because we believe that the billable rates and billable hour requirements at large firms are detrimental to the well-being of attorneys and a burden on clients. These billable rates and billable hour requirements contribute to the depression, unhappiness and substance abuse problems, and even an alarming suicide rate of attorneys, we read. Jim and I love practicing together. We are sober, well-to-do, successful lawyers.

Jim and I plan to retire soon – we tried to retire previously, but our clients have convinced us to continue to represent them. A few weeks ago, Jim met with a long-term client (a highly successful businessman) and told him, “I really mean it – we are *retiring*.” The client just smiled. He said, “I’ve heard this before, but I’ll believe it when I see it.” We have difficulty saying no to the clients we have worked with for so long. We tell our clients, orally and in writing, that we elect not to carry malpractice insurance and say “we will certainly understand” if they want to select insured counsel. No client has ever rejected our representation or indicated any concern about our election to drop malpractice insurance. If they did, that would be fine with us.

We were offended by the Task Force’s statement to the effect that uninsured attorneys are a danger to the public. In an email dated September 20, 2016, Daniel Hickey, who was acting as our local counsel in a large attorney malpractice case in Alaska and is one of the most respected attorneys in that state, wrote me after receiving a copy of a court filing. He wrote: “Gail, Outstanding memo. I’m increasingly persuaded that you’re the best lawyer I know.” Similarly, on December 23, 2016, an opposing counsel, Michael Lessmeier, also one of the most respected litigators in Alaska wrote to my husband and law partner, Jim Ragen:

Jim, I want to say that I much appreciate the professionalism you and Gail bring to the cases you are involved in. That level of professionalism – and trust – make things possible that otherwise are not. It is the way law should be practiced. My best wishes to you and your family for this holiday season. Mike.

Jim Ragen responded:

Thank you for your nice comments, but this is a two-way street. We can't settle without mutual professionalism and good faith. We were pleased at the beginning that you were involved. Please don't take that wrongly. We know that you are a tough and accomplished litigator – a strong opponent in any dispute – but we also have experienced your professionalism and integrity. As you say, that is how law should be practiced. As a result, all our clients benefitted. Let them all go forth and prosper, doing what they do best.

These communications are a source of pride and reflect the kinds of relationships with other counsel – even adversaries – that Jim and I prefer and value.

Nor are we, as the Task Force's statement suggest, unable to satisfy a judgment. After decades of hard work, careful investing, and working well with each other, Jim and I are on the brink of finishing the practice of law with plenty of assets to carry us through our retirement years. In the unlikely event that a client sued us, we would be able to satisfy a judgment – even a multi-million dollar judgment (which would likely be far more than any insurance we would carry).

Turning to the substance of the Task Force's report, I find it troubling on multiple grounds:

The Report Fails to Recognize the “Industry's” Conflict of Interest.

The Task Force does not identify the conflict of interest that the “Industry” has in concluding that malpractice insurance should be mandatory. The Industry has an enormous financial stake in the outcome of the WSBA's decision. If successful in forcing all Washington attorneys to pay annual premiums in the minimum amount of \$1,200 (and more for more experienced attorneys), the Industry stands to gain over \$2 million the first year; \$10 million in five years; \$20 million in ten years. This represents a huge windfall to the carriers and will come directly out of the pockets of members of the Bar and into the coffers of insurance companies. Such an approach will also increase fees charged clients. This troubles me deeply.

I am further concerned that other members of the Task Force may have an undisclosed conflict of interest. I would find it improper for any member of the Task Force to issue a report in support of mandatory malpractice insurance if they will receive referrals of malpractice cases from the carriers. Any such Task Force member would have a financial stake in the outcome, placing him or her in conflict with members of the Bar who would be forced to pay premiums going forward.

Mandatory Insurance Would Adversely Affect Women Lawyers

As noted above, I am on the brink of retiring, and I do not feel that my stake in this particular issue is large. Jim and I have not accepted any new cases for over a year.

But I feel I am well placed to speak on behalf of the attorneys I believe will be unduly burdened by mandatory malpractice insurance. This includes women lawyers. They will be disproportionately and adversely impacted by a mandatory malpractice insurance rule.

I strongly disagree with the Task Force's statement that "everyone knows" of instances in which uninsured attorneys have committed malpractice. This is simply untrue. But it is well-documented and irrefutable that women lawyers struggle to balance their careers and family obligations in ways that their male colleagues do not.

I have had an unusual career in many ways. I am 65 years old and have earned millions of dollars practicing law. I do not say this to boast, but rather to point out that I feel in many ways like the last soldier standing from the ranks of women lawyers with whom I have practiced over the years. So very many fine women lawyers I have known over the course of my career left the practice of law. Almost invariably, it was because it is so difficult to practice law and raise a family *when you are a woman*.

I know this to be true because, in addition to practicing law for 38 years, I gave birth to and raised three wonderful children who are now 33, 31 and 26 years old. I would not trade either experience – career or family – for the world. Neither would I criticize men who have combined their careers and family. But I will tell you this in no uncertain terms – in my case, like Ginger Rogers, it was like dancing in high heels and backwards.

In 1991, I resigned my partnership in a San Francisco law firm because my two small sons often were asleep after I drove across the Golden Gate Bridge every night. The Fortune 500 client I had brought to the firm chose to take its work with me when they became embroiled in mass tort litigation. I soon I had twelve lawyers and paralegals working for me in a rather unconventional setting. I was back to work two weeks after giving birth to my third child. Fortunately, I controlled my own practice and the client was flexible. But I traveled a lot, missed vacations, ran through O'Hare on the way from the East Coast to the West Coast frantic to be home in time for birthday parties, school events and the like. The male lawyers – so far as I observed – were not doing this crazy balancing act in quite the same way.

Speaking from experience, women lawyers need and deserve flexibility. They have gone to law school, done well, worked hard, and provided enormous value to their clients (and the public). As a profession, we cannot afford to keep losing these women and acting as though the playing field is level. Imposing a significant additional cost on lawyers to maintain their licenses will hurt women lawyers and the clients who need them. Many talented women lawyer/moms need to be able to take breaks from the law and keep their licenses without having to pay insurance companies for the privilege. They should get malpractice insurance if – in their own good judgment – they need or want it. But they should not be forced to pay for malpractice insurance in order to start their own practices or work part-time. More and more talented women will drop out of the practice of law, and we need to prevent this from happening.

Mandatory Insurance Would Adversely Affect New Lawyers

It now costs approximately \$250,000 for law students to get a law degree. I find this staggering and depressing. Why is the Bar studying ways to increase barriers to entry when many of our best and our brightest potential lawyers are being priced out of the law? Now, in addition to carrying a mind-boggling school debt, those students will have to pay insurance premiums that significantly increase their licensing costs. These costs will also discourage these attorneys from serving poor or middle-income clients – who are poorly served by the legal profession.

An unintended consequence of a mandatory insurance program will be to increasingly narrow the ranks of potential lawyers, favoring students from wealthy families and precluding many worthy students from pursuing the law.

Recently, one of my daughter's friends asked to speak with me about her plan to go to law school. Meeting with her was both heartening and disheartening. She is a young woman of color, a great student, an all-around wonderful young woman who will be a great lawyer if she reaches her goals. She told me she wants to give back to her community. She wants to make a difference on such important issues as immigration. I encouraged her to pursue her goals, but I know that she faces financial peril in doing so. Was I right to encourage her to go forward with her plan? Should I have told her to forget it – it isn't worth it? I honestly don't know. But I don't want to be a part of raising yet another barrier to young people trying to enter or profession. And so I speak out against this proposal.

My husband has had the identical experience advising a young lawyer who wanted to serve the poor, but who had a \$250,000 school debt. That young lawyer was likely to face an additional personal problem because his wife was deeply concerned about his large school debt and the detrimental impact it would have on their personal lives. (This was not a Washington couple.) Within the last two days, Jim and I have been asked to advise a recent law graduate in California. Her husband is driving Ubers to support them while she studies for the bar and they raise two small children. She wants to serve immigrants as an immigration lawyer. The last thing she needs is another licensing barrier, which will hurt her and the population she wants to serve.

Insurance Carriers FIGHT Malpractice Claims

I disagree with the premise that malpractice carriers protect the public. If a client sues an insured attorney, the malpractice carrier will put up a mighty fight *against the client*.

In my career, I have handled plenty of attorney malpractice cases – mostly on the defense side, but also on the plaintiff's side. The carriers have an obligation to defend the attorneys – not the public. The Task Force implies that there are many meritorious cases

against attorneys that don't get filed because the plaintiff attorneys fear any judgment would be uncollectible. I know from experience that there are meritorious cases against insured attorneys that do not get filed because the malpractice carrier, rather than honestly assessing the merits, will come in and conduct the land war of China – because that is how carriers make money, by charging and preserving those premiums.

Insurance Defense Lawyers Are Paid By and Loyal to the Carriers

By requiring all attorneys to get malpractice insurance, the WSBA is, in effect, depriving attorneys of the right to choose their own counsel in malpractice cases.

Insured lawyers are not able to choose their own counsel. Instead, the carriers choose defense attorneys from their “panels.” Malpractice carriers form long-term relationships with insurance defense attorneys whose streams of work and livelihoods depend on keeping the carriers happy. Invariably, the carriers pay panel attorneys less than the going billable rate in the local communities. The panel lawyers make up for their lower rates by the volume of work they receive from the carrier. (This, by the way, supports my argument above that Task Force members should not be panel attorneys because of the inherent conflict of interest.)

Insured attorneys could, of course, insist on hiring counsel of their choosing to defend their professional reputations. But then they would forfeit the coverage for which the WSBA had forced them to pay. So, on top of forcing all attorneys to pay premiums for coverage they don't want or need, the WSBA is, in effect, denying them the right to choose their own counsel.

At a minimum, if malpractice insurance is to be mandatory, I maintain that the insureds must be given their choice of counsel at that counsel's normal billing rate. If the Industry members on your Task Force oppose this reasonable stipulation – and the Bar yields to them – the Bar has a conflict of interest.

Insurance Defense Lawyers Have An Incentive to Prolong Cases

Unfortunately, insurance defense lawyers often have minimum billable hour rules in their firms. These rules undermine quick resolution of cases and prolong litigation.

Uninsured Attorneys Have an Incentive to Avoid and Correct Errors

Jim and I look long and hard at cases before we take them to make sure they are in our wheelhouse and that we have the time, skills, and determination to undertake them. We make sure we are on all-fours with our clients. We tell them all kinds of things before we take the case, including that we elect not to utilize malpractice insurance.

During our 38-plus years as litigators, we have never missed a briefing deadline or a hearing. We have lived through the days of calendars, PDAs, practice software and

the like. We can read rules and scheduling orders and get the deadlines on the right days. We do not need help or instruction putting dates on our calendars. And our election to forego insurance coverage that we neither need nor want has no bearing on our ability to manage our calendars.

The primary reason that Jim and I work so hard to avoid errors is because we are skillful, caring, competent attorneys. But we also are putting our hard-earned assets on the line every day.

The Public is Competent to Read the WSBA Website

The WSBA has a mechanism for attorneys to disclose whether or not they carry insurance. Potential clients who care about insurance can find out whether a member is insured or not. If the WSBA believes the public requires large font admonitions on an attorney's letterhead, I suggest the following additional ones:

- I HAVE A 2000 HOUR BILLABLE REQUIREMENT THIS YEAR
- I HAVE A \$250,000 SCHOOL DEBT
- I AM DEPRESSED
- I ABUSE SUBSTANCES

There is a Better Way

I believe the WSBA could have set up a task force to do something that would actually make a positive difference. Here are some suggestions:

- Tackle the financial barriers that prevent prospective lawyers from obtaining a law degree;
- Study the causes underlying attorney depression, substance abuse, unhappiness, despair and even suicide;
- Examine the treatment of women lawyers in terms of expectations, maternity leave, pay disparity and the like.
- Study how the profession could better serve the poor and middle-income public, who are less well served.

Conclusion

You reached out to me and I have responded. Jim and I are going to keep our Washington licenses for only a few more years, so others have more at stake than we do. But your statement that uninsured lawyers pose a danger to the public defamed us and other attorneys like us. If you decide to impose a mandatory insurance rule, you must not impugn our reputation as attorneys who have followed existing Bar rules and simply

WSBA
October 11, 22018
Page 8

exercised our right to decline coverage. Here is some sample language for your next report should you decide to require malpractice insurance.

The WSBA conducted an investigation as to whether malpractice insurance should be mandatory in Washington. There has been no such requirement to date. Although there are pros and cons, the WSBA decided on balance that it would be beneficial to impose such a requirement going forward. This decision in no way reflects on the many WSBA members who have in the past elected not to utilize malpractice insurance.

Very truly yours,

Gail M. Ragen

Gail M. Ragen

From: ken@pedersenadr.com
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments re: Mandatory Malpractice Insurance Task Force issued an interim report
Date: Thursday, October 11, 2018 10:43:07 AM
Attachments: [10-11-2018 Ltr to Spitzer.pdf](#)

Please see the attached letter addressed to Professor Spitzer.

Kenneth J. Pedersen
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October 11, 2018
—By Email Attachment Only—

Hugh D. Spitzer, Chair
Mandatory Malpractice Insurance Task Force
c/o Washington State Bar Association
insurancetaskforce@wsba.org

Dear Professor Spitzer,

This is in response to the October 4, 2018 email message from the Mandatory Malpractice Task Force seeking input on its proposed individual mandate requiring all Washington attorneys to purchase professional liability insurance in the private insurance market. I have procedural and substantive concerns about that conclusion.

1. Existing Client Notification System. The Task Force’s interim report neglects to mention that for many years the Supreme Court has required active lawyer members of the Bar to annually certify whether they are “engaged in the private practice of law” and, if so, to state whether they are “currently covered by professional liability insurance.” Admission and Practice Rule (APR) 26. The Rule authorizes the Bar to make this information available to the public by any means it deems appropriate, “which may include publication on the website maintained by the Bar.”

Each attorney’s entry in the WSBA’s online lawyer directory includes information as to whether the attorney is in private practice, and whether he or she maintains professional liability insurance. Clients seeking to retain an attorney can readily determine whether their lawyer is or is not covered by insurance and can thus make an informed decision as to whether to hire that lawyer. To go further than this and to make professional liability insurance mandatory reflects a paternalistic attitude toward clients and their lawyers. As lawyers will inevitably pass the cost of insurance on to the client, the measure will increase attorney fees to all clients, the great majority of whom will never need professional liability protection.

The decision whether to hire an uninsured lawyer is best left to the client. Rule 26 permits the Bar to advertise information about the lawyer directory to

the public. Better that the Bar work to inform the public about the information available in the lawyer directory rather than impose an individual insurance mandate on attorneys that will raise the cost of all attorney services in Washington while providing a windfall to the insurance industry.

2. Absence of statutory authorization or membership vote. The report repeatedly references the Bar in the states of Idaho and Oregon, evidently the only two states in the U.S. that impose an individual mandate for professional liability insurance on attorneys. The fact that only four percent (4%) of the state Bar associations impose an individual insurance mandate on their membership ought to give us pause. The Oregon Professional Liability Fund is an independently managed quasi-subdivision of the state bar that was created in 1977 in response to “skyrocketing malpractice insurance premiums” in the commercial insurance market¹ The Task Force rejects the 40 year old Oregon system in favor of what it terms the “Idaho model,” newly implemented in 2018. Idaho leaves the matter of obtaining malpractice insurance to what the Task Force optimistically terms the “highly competitive” “free market” system of commercial malpractice insurance.² There is no estimate of the per-attorney cost of the “Idaho model.”³

Nor does the report plainly identify what is broken in the currently system. If there has been a recent flood of uncompensated malpractice claims requiring an individual insurance mandate on all attorneys in this state, I am unaware of it. Certainly, there should be greater proof of need than the anecdotal testimony of an anonymous “legal malpractice plaintiff’s lawyer” and self-interested “insurance industry professionals.” (Interim Report, 3.)

As far as procedure, it is noteworthy that the Oregon state board of governors was authorized by statute to create the professional liability fund:

The board has the authority to require all active members of the state bar engaged in the private practice of law whose principal offices are in Oregon to carry professional liability insurance and is empowered, either by itself or in conjunction with other bar organizations, to do whatever is necessary and convenient to implement this provision, including the authority to own, organize and sponsor any insurance organization authorized under the laws

¹ “State by state, mandatory malpractice disclosure gathers steam,” (ABA, October 26, 2012) https://www.americanbar.org/groups/bar_services/publications/bar_leader/2003_04/2804/malpractice/

² A market is not free if the malpractice insurance sellers are armed with the threat of Bar discipline should the lawyer choose not to buy.

³ Any solo practitioner with recent experience in procuring health insurance in the individual marketplace will be justifiably suspicious of sanguine claims about affordability in the “free market” for insurance.

of the State of Oregon and to establish a lawyer's professional liability fund.

Or. Rev. Stat. § 9.080(2)(a)(A). I am aware of no similar statute in Washington authorizing the WSBA to impose an individual insurance mandate on Washington attorneys. The legislature should have the opportunity to consider whether other professionals might also be required by their professional associations to purchase insurance, including physicians (who, the report notes, are not required to carry malpractice insurance), chiropractors, dentists and accountants, as this is manifestly a legislative issue.

In addition to the statutory authorization, before imposing an insurance mandate on members of the Oregon Bar, the board of governors conducted a secret ballot vote of the membership. As stated on the Oregon PLF website:

The Oregon State Bar Board of Governors created the Professional Liability Fund in 1977 pursuant to state statute (ORS 9.080) **and with approval of the membership**. The PLF first began operation on July 1, 1978, and has been the mandatory provider of primary malpractice coverage for Oregon lawyers since that date.⁴

Similarly, an FAQ on the website for the Idaho Bar indicates that the membership was required to vote on the insurance mandate before it was implemented by the Idaho Supreme Court:

What prompted the rule change?

A resolution proposing to amend the Bar Commission Rules to require a minimum amount of legal malpractice coverage was submitted to the membership during the 2016 resolution process. The resolution passed by a 51% to 49% vote of bar members. The proposed rule change was submitted to the Idaho Supreme Court. The Court adopted the rule change in an order issued March 30, 2017.⁵

The Task Force's interim report doesn't discuss the mechanism for imposing its recommended individual insurance mandate. The WSBA should seek legislation authorizing it to put such a mandate in place and should additionally establish a procedure for a secret ballot vote of the membership after notice and the opportunity for the entire membership to be heard. Assuming the resolution passed, it might then be submitted to the Supreme Court.

⁴ <https://www.osbplf.org/about-plf/overview.html> (emphasis added)

⁵ <https://isb.idaho.gov/blog/category/licensing/>

3. The Unrepresentative Composition of the Task Force.

According to the Solo and Small Practice Section of the WSBA, “[s]olo and small practice firms comprise more than 60% of practicing lawyers in Washington.”⁶ The interim report claims that “Solo and small firm practitioners represent a disproportionate share of the malpractice claims.” Yet the Task Force doesn’t include a representative sampling of lawyers working as solo practitioners. In fact, the majority of the members of the Task Force are not affected in any way by its recommendations

The report identifies categories of attorneys exempt from the individual mandate in Oregon, including “government attorneys, in-house private company lawyers, attorneys providing services through nonprofit entities, including pro bono services, retired attorneys, full-time arbitrators, and judges and law clerks.” A significant number of the task force members fall within one or more of these exempt categories, i.e. government lawyers, non-profit attorneys, and judges.

According to the Bar’s online lawyer directory, at least two lawyer-members of the task force are not in private practice at present. One member, identified as working at the Attorney General’s office, is not listed in the lawyer directory. One member is a Vice President of an insurance brokerage, and another appears to be a banker. One task force member works as a limited license legal technician.

Of the eighteen members of the task force, at least nine fall into an exempt category, or are exempt from the individual mandate as not currently engaged in private practice, or are non-attorneys.

Of the remaining members, not counting the LLLT, four work in firms of more than twenty lawyers. One works in a six-to-ten attorney firm, and three others work in firms with between two-to-five lawyers. There doesn’t appear to be a single attorney actively engaged in solo private practice of law on the task force. The Task Force thus includes more non-lawyers than active solo practitioners.

This is significant since the interim report is critical of those engaged in solo practice who choose to self-insure rather than pay premiums to an insurance broker.⁷ The report includes the condescending statement that the Task Force reached “a consensus that uninsured lawyers pose a distinct risk to their clients and themselves.” The report includes a “key finding” that “[m]ost attorney

⁶ <https://www.wsba.org/legal-community/sections/solo-and-small-practice-section>

⁷ The task force appears to think that large firms are more responsible than small or solo firms because their lawyers are more likely to be insured through a commercial brokerage. But the fact is that most lawyers practicing in large firms carry liability insurance to protect themselves from the negligence of their partners, not to protect the public at large. Lawyers in solo practice don’t need protections from their partners because they have none. Yet the task force consistently refers to such solo attorneys as “uninsured” when it is equally likely that they choose to be self-insured.

misconduct grievances and disciplinary actions involve solo and small firm practitioners” without explaining the relevance of that observation, nor the relationship between bar disciplinary actions and professional liability insurance. In any event if, as earlier noted, more than 60% of Washington lawyers practice solo or in small firms, the “key finding” is unremarkable.

4. Conclusion. The Task Force failed to consider the utility of the existing system for notifying clients of lawyers’ insured status. It doesn’t discuss the fact that Idaho and Oregon, which it holds up as avatars, allowed the Bar membership to vote on the proposals and that an Oregon statute expressly allows creation of the Oregon Professional Liability Fund. There is no similar statute in Washington state. The legislature should have the opportunity to determine whether all professional associations in Washington should be authorized to require their members to obtain professional liability insurance as this is fundamentally a legislative decision.

Recommendations as significant as imposing an individual insurance mandate on 32,000 practicing lawyers in this state should be made with input as broad a sampling of the WSBA membership as possible. By not including a representative percentage of small firm and solo lawyers the Task Force has undermined its recommendations.

Sincerely.



Kenneth J. Pedersen
WSBA License #11150

cc: William D. Pickett, President, WSBA
Kari M Petrasek, Chair, WSBA Solo and Small Practice Section
Margaret Morgan, Senior Legal Editor, NWLawyer

From: [Thomas](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: pswegle@gmail.com
Subject: Mandatory Insurance
Date: Thursday, October 11, 2018 11:15:46 AM

I write to address WSBA's proposal to require mandatory malpractice insurance.

My very brief biography: 1977 UW graduate, passed bar the same year, actively practiced for twenty-something years before semi-retiring from law and pursuing other activities. I have remained "active status" all along. Zero discipline, zero claims. I have kept up with legal, ethical and practice changes.

From time to time, I do get involved in cases. Usually, these are unpaid or pro bono. These are matters of my selection, where something is going or has gone very wrong and needs fixing, but fixing is unaffordable to the aggrieved. These matters have ranged from criminal prosecution to probates going sideways to representing a rape victim. If it would be useful, I can have clients I've helped send you letters. I have not done any bar-sponsored pro bono activity, and a major reason why is that it requires malpractice coverage. It is hard to justify spending thousands of dollars a year to give one's time away -- this is more altruism than a retiree can afford!

Also from time to time, I am asked to handle matters by friends, family, or old clients. Often (as you can imagine at my age) these are probates. These are sometimes paid engagements, though usually the amounts involved just about cover the underlying costs. Again, the folks I have helped are quite grateful (and will happily pen letters to you). These sorts of clients would not be well-served by taking lawyers like me out of circulation, which your insurance requirement will surely do.

I am not the only one in this situation, though many may not bother writing to you. Some of my classmates, with whom I have consulted from time to time about "friends and family" matters after their retirement from full-time practice, have gone inactive rather than pay dues and put in CLE time just to work for free. Not a few of these lawyers are very experienced people with deep institutional knowledge of Washington practice -- resources not to be lightly tossed aside. Requiring insurance to remain "active" compounds the likelihood of semi-retired lawyers departing the bar.

To be clear, I don't think mandatory insurance is necessary. WSBA handled the situation quite elegantly some years ago, requiring disclosure of whether a licensee has insurance; the client, thus being fully informed, can make a decision as to whether this is material. Market-based solutions tend to be the most flexible and efficient. Further, it is likely that perhaps 1% of the

lawyers cause 90% of the claims. Mandatory insurance, which your interim report implies is effectively a substitute for enforcement of competency standards by WSBA, thus shifts that cost to clients of competent lawyers. Not particularly fair, when viewed this way. In addition, insurance will not cover intentional acts, such as converting trust account funds, so that should not be a consideration.

But your email and interim report (the link to the "[Mandatory Malpractice Task Force informational brochure](#)" was broken) indicate that the die is cast, so I make three suggestions:

1. Pro bono or free representation should be excluded from activities requiring insurance.
2. Activities below a certain annual dollar amount (be it \$25,000 or even \$10,000) should be exempt from insurance requirements.
3. Certification of the above by an attorney at the time of annual Bar Association license renewal should waive the insurance requirement. Should the attorney, during the course of the year, exceed the waiver limits, the insurance requirement could kick in.

This will keep wise old heads in the loop, a win for both the Bar Association and the very public which is the intended beneficiary.

Thomas B. Nast

Seattle

WSBA #7713

From: [Barnaby Zall](#)
To: spith@uw.edu; john.bachofner@jordanramis.com; stan_bastian@waed.uscourts.gov; dan@mcbdlaw.com; christy@mylllt.com; gretchen@halehana.com; pjg@randalldanskin.com; pl.isaki@comcast.net; mark@johnsonflora.com; [REDACTED]; kara@appeal-law.com; evanm@idsalaw.com; spierce@davisrothwell.com; pinkhamb@seattleu.edu; tstartzel@ks-lawyers.com; anniey@atg.wa.gov; [Doug Ende](#); [Thea Jennings](#); [Rachel Konkler](#)
Subject: Comments on Mandatory Malpractice Insurance Task Force Interim Report and Recommendations
Date: Thursday, October 11, 2018 9:19:17 PM
Attachments: [Oct 2018 note to MMITF.pdf](#)

Task Force Chair Spitzer and members of the Mandatory Malpractice Insurance Task Force:

Thank you for your hard work and leadership in this project. Unfortunately, I will not be able to participate in the Open Session you plan for October 16, so I offer a statement of what I would have said and a follow-up memo with more detail.

I apologize for not getting these comments to you before this, but all my WSBA time this summer was spent on the Addition of New Governors Work Group, which was recently blocked by the Supreme Court of Washington.

A brief summary of the attached statement and detailed memo:

The MMITF Interim Report is significantly incomplete and reads more like an advocacy piece than a neutral analysis. The MMITF's proposal can be accurately summarized as: "The Bar is forcing innocent lawyers to pay millions to insurers, hoping insurers will pay thousands to victims." The materials available on the MMITF web page provide sufficient information to reasonably project that the MMITF's proposal would provide insurance companies with a net windfall of between \$5.7 and \$7.5 million per year, but the Interim Report doesn't actually mention that. The Final Report should remedy these deficiencies and provide sufficient detail to satisfy the constitutional requirements of *Janus v. AFSCME*. The proposed exemptions from mandatory coverage seem to duplicate the private practice requirement; there should be a *pro bono* exemption based on malpractice risk.

Thank you again.

Barnaby Zall
Law Office of Barnaby Zall
685 Spring St. #314
Friday Harbor, WA 98250
360-378-6600

COMMENTS ON MANDATORY MALPRACTICE INSURANCE TASK FORCE

October 11, 2018

Barnaby Zall
Friday Harbor, Washington

██████████
360-378-6600

Task Force Chair Spitzer and members of the Task Force:

Thank you for your work on this topic. Unlike many such volunteer-driven efforts, the Mandatory Malpractice Insurance Task Force has developed background information from a wide variety of sources, documented its research and work, and communicated actively with members. I have reviewed all of the material the WSBA made available from the MMITF on its website, and found the material very useful.

Unfortunately, I must raise two significant concerns about the MMITF's Interim Report which should be remedied in the Final Report. I attach a more detailed memo explaining my concerns and offering remedies, but here is a summary:

1) The Bar is forcing innocent lawyers to pay millions to insurers, hoping insurers will pay thousands to victims, and the Interim Report doesn't even mention that:

The MMITF Interim Report is significantly incomplete, reads more like an advocacy piece than a neutral analysis, and obscures essential facts. For example, MMITF's sole expert consultant said that it is not possible to calculate the number of additional valid malpractice claims and public losses, but this is not true. To its credit, the MMITF gathered enough reliable material to allow a reasonable projection of both costs and benefits from the "Idaho" model. But the explanations in its Interim Report and its summary comparison table of options did not include either of those crucial data points, and few WSBA members or decisionmakers are going to sift the MMITF materials as I did to find out the necessary and missing information.

Using the MMITF material made available to WSBA members, I calculate that currently self-insured or uninsured lawyers in Washington would likely face an average of between 23 and 35 actual malpractice claims a year once they become insured, with their new mandatory insurers making potential loss payments and legal expenses of \$1.8 to \$2.8 million a year. Every instance of legal malpractice is one too many, but the cost to currently self-insured or uninsured lawyers who do not make those legal mistakes would be premiums totaling between \$7.5 and \$10.3 million per year. The insurers would reap a windfall benefit (windfall because it results solely from government compulsion of innocent lawyers who do not wish to make these payments) of between \$5.7 and \$7.5 million a year. This is an extraordinarily inefficient remedy.

To be sure, a projection of between 23 and 35 actual malpractice claims from newly-insured lawyers is significant and there are likely steps which can and should be taken to prevent those claims. But you will not find those steps explained in the Interim Report, other than in a nicely-formatted summary table. There is no discussion of significant alternatives, such as

amending the rules of the WSBA Client Protection Fund; if part of the problem is that the CPF only pays when lawyers steal instead of making mistakes, why not change those rules and allow victims of mistakes to access the CPF, whose reports show that its net assets have been increasing by about \$500,000 each year? That would utilize existing infrastructure and any additional costs are likely to be less expensive than projected insurance premiums. Why focus on forcing lawyers to pay insurance companies if there is an alternative to prevent the mistakes in the first place; rather than suggest that requiring lawyers to attend loss reduction CLE would increase the CLE burden, why not make loss prevention CLE as mandatory as ethics? None of these common sense alternatives appear in the Interim Report, which focuses solely on insurance coverage as a panacea.

Compensation, done poorly, shifts and multiplies the unfairness and costs of a failure of prevention. The Idaho model is potentially a legitimate policy choice, but, under recent constitutional restrictions on mandatory bar associations and the courts that oversee them, the MMITF must demonstrate, not just recite, both the bad and good, and seek the “clear and affirmative consent” of the innocent lawyers who will bear the bad. By not describing either the good or the bad in its communications to WSBA members and the Board of Governors, and by not seeking the “clear and affirmative consent” required by *Janus*, the MMITF Interim Report sets up the WSBA for failure. The MMITF must fill that gap in its Final Report.

2) The proposed narrow exemptions make it certain that *pro bono* services will be reduced.

The exemptions proposed for consideration appear to duplicate the limitation that mandatory coverage only applies to lawyers in private practice. More importantly, the MMITF exemption proposals ignore the likely significant *pro bono* services that are provided to nonprofit organizations by non-employee lawyers. There are a variety of tax and ethical reasons why lawyers provide services as independent legal counsel instead of as an employee.

For example, I provide hundreds of hours of high-level *pro bono* services each year to nonprofit and tax-exempt organizations, including representing them before the Supreme Court of the United States. The Supreme Court has cited my briefs in opinions and has granted the relief my briefs have sought in several cases. I am not employed or insured by these organizations. Yet my effective malpractice liability approaches zero.

Nevertheless, my *pro bono* services would not be recognized by the MMITF’s draft exemption categories. The failure to provide an exemption for *pro bono* services will inevitably reduce the amount of services offered *pro bono*, if only because lawyers generally cannot add significant costs to *pro bono* practices without some offsetting revenue. The MMITF should propose exemptions that encourage, not prevent, *pro bono* services of all types.

SUMMARY OF RECOMMENDATIONS:

Include in the MMITF Final Report:

- 1) A clear and complete explanation of any proposed mandatory malpractice insurance proposal, including specific statements sufficient to meet any constitutional requirement of demonstrating both compelling governmental interest and how the proposal was narrowly tailored to avoid abridging the rights of association any more than required to protect the governmental interest.
- 2) The information required to calculate both the costs and benefits of any proposed mandatory malpractice insurance proposal, rather than just information on claims and coverage.
- 3) A clear and complete explanation of the costs and benefits of any proposed mandatory malpractice insurance proposal, including performing the calculation made possible under recommendation 2, plus any additional information available to the MMITF.
- 4) A description of alternatives considered that do not focus on insurance coverage, such as prevention, education, lawyer “repair” as in Oregon, and utilization of existing mechanisms such as changes to the rules and funding of the WSBA’s Client Protection Fund.
- 5) A recommendation to satisfy the emerging *Janus* consent standard by seeking “clear and affirmative consent” from the membership for any proposal and demonstrate that consent through “clear and compelling evidence,” rather than presuming that silence or the lack of comments on a complicated proposal is affirmative consent.
- 6) Additional exemptions from mandatory coverage for *pro bono* activity which does not present a significant risk of malpractice events.

Thank you for this opportunity to offer brief comments, and for your efforts on this Task Force.

**MEMORANDUM IN SUPPORT OF COMMENTS TO THE MANDATORY
MALPRACTICE INSURANCE TASK FORCE**

Barnaby Zall
October 11, 2018

INTRODUCTION:

We are in a new era in which mandatory Bar associations are subject to increased constitutional scrutiny under Supreme Court of the United States decisions such as *Harris v. Quinn*, 573 U.S. ___, 134 S.Ct. 2618 (2014) and *Janus v. Amer. Fed. Of State, County and Mun. Employees*, 585 U.S. ____ (No. 16-1466), June 27, 2018 (rejecting the formula used by, *inter alia*, the WSBA to determine the amount of mandatory dues which may be spent on nonmandatory activities. Within a few days, the Supreme Court may decide whether to review *Fleck v. Wetch*, No. 17-886, <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17-886.html>, in which the second Question Presented is: “Should *Keller v. State Bar of Cal.*, 496 U.S. 1 (1990), and *Lathrop v. Donohue*, 367 U.S. 820 (1961), be overruled insofar as they permit the state to force Petitioner to join a trade association he opposes as a condition of earning a living in his chosen profession?” Although *Fleck* was filed before *Janus* came down, it, and other cases like it, are now challenging both the use of mandatory dues and the existence of mandatory (or integrated) bar associations under the new *Janus* “clear and affirmatively consent” standard, with evidence of consent that is “clear and compelling.” *Janus*, slip op. 53.

The MMITF has reported its interim conclusion that malpractice insurance should be mandatory for private legal practice in Washington, with a few exemptions still to be determined. Put another way, no lawyer will be able to practice law in Washington without purchasing malpractice insurance, except in a few narrowly-defined instances. Since the practice of law is dependent on compelled association through the WSBA, the MMITF mandatory malpractice insurance requirement is subject to constitutional scrutiny. Although the Supreme Court first indirectly upheld such compelled association in 1956, *Railway Employes v. Hanson*, 351 U.S. 225 (1956), the author of the *Hanson* decision, legendary Justice William O. Douglas, rejected his own opinion five years later in *Lathrop v. Donohue*, 367 U.S. 820, 878-80 (1961). More importantly, in *Harris v. Quinn*, just four years ago, the Supreme Court soundly criticized *Hanson*: “The First Amendment analysis in *Hanson* was thin, and the Court’s resulting First Amendment holding was narrow.” 134 S.Ct. at 2629. Compelled bar membership is on shaky ground at the moment, so the MMITF Final Report should provide a well-documented and clear explanation of the problem it seeks to resolve and how its proposed solution is narrowly-tailored.

The MMITF performs important work by developing and communicating actual evidence of how the absence of malpractice insurance is a problem of sufficient dimensions to justify limits on First Amendment rights of association: not just to provide some measure of protection to those who allege harm from attorney malpractice, but also to protect the integrity of the WSBA itself and the judiciary which may rely on the Task Force’s advice. “Courts, too, are bound by the First Amendment.” *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 326 (2010). Even exacting scrutiny requires specific evidence of both the identified state concern and

interest, and the narrowly-tailored proposed solution. A state may not limit the freedom of association based on generalizations or a “mere conjecture.” *Lair v. Motl*, 873 F.3d 1170, 1178 (9th Cir. 2017), *reh’g denied*, 889 F.3d 571 (9th Cir. 2018), *petition for cert. filed, sub nom. Lair v. Mangan*, Aug. 2, 2018, No. 18-149 (state must show specific evidence to justify burden on association), *quoting, McCutcheon v. Fed. Election Comm’n*, 572 U.S. ___, 134 S.Ct. 1434, 1452 (2014)(“we ‘have never accepted mere conjecture as adequate to carry a First Amendment burden’”).

The MMITF has come a long way in providing that level of constitutionally-required evidence, but a crucial and readily obvious gap still appears in its Interim Report. The MMITF fails to communicate the costs and benefits of preventing and remediating the actual harm from malpractice, and so fails to provide the constitutionally-required evidence to justify its policy choice. And by defining the problem as only a question of insurance coverage, the proposed exemptions are not narrowly tailored to minimize the burden on associational freedom guaranteed by the Washington and Federal Constitutions. The Final Report should do better.

1) THE MMITF HAS FAILED TO EXPLAIN THE ACTUAL COSTS AND BENEFITS OF MANDATORY MALPRACTICE INSURANCE:

The entire statement of “risk” to the public in the Interim Report is:

After accumulating a considerable amount of data and other information, and after hearing from other states, from bar regulators, from industry professionals, and from attorneys, the Task Force reached a consensus that uninsured lawyers pose a distinct risk to their clients and themselves.

While it may be appropriate for attorneys to evaluate and assume personal risks created by lack of professional liability insurance, we concluded that it is simply not fair for the clients. Clients of uninsured lawyers often have a difficult time obtaining compensation from those attorneys after a malpractice event, and an even more difficult time finding legal representation for quite legitimate claims against those uninsured lawyers – malpractice plaintiff lawyers simply cannot afford to handle those claims, and the WSBA’s Client Protection Fund is precluded from making payments based on malpractice.

Interim Report, 7-8.

Prevention is not mentioned, nor is utilizing existing structures such as the WSBA’s Client Protection Fund as a foundation from which to build a cheaper, more effective and efficient structure than the “Idaho” model. Having malpractice insurance does not seem to prevent malpractice. One study of U.S. and Canadian lawyers noted that, although many U.S. lawyers do not have malpractice insurance while all Canadian lawyers do, “on the whole the claims data makes it clear that the reasons for malpractice claims—and the steps that can be taken to avoid them—are more or less identical in both countries.” Daniel E. Pennington, *ARE YOU AT RISK? The Biggest Malpractice Claim Risks and How to Avoid Them*, 36 LAW PRACTICE 29, Oct. 12, 2011, *available at*:

https://www.americanbar.org/publications/law_practice_home/law_practice_archive/lpm_magazine_articles_v36_is4_pg29/.

The MMITF Interim Report Leaves the Impression that It Doesn't Know What the Actual Harm is From A Lack of Insurance, Nor Does It Know What the Costs and Benefits of Its Idaho Model Proposal Will Be:

The MMITF materials, and its recent communications in the August 2018 NWLAWYER suggest that the Task Force has no idea of the actual amount of harm from malpractice by uninsured lawyers. Nor does it seem to have a handle on the costs of its preferred option. The MMITF apparently consulted with one professional expert in the area of mandatory malpractice insurance coverage: Professor Leslie C. Levin of the University of Connecticut Law School. Prof. Levin has written a law review article on the scope of the problem of lack of insurance coverage. Leslie C. Levin, *Lawyers Going Bare and Clients Going Blind*, 68 FLA. L.REV. 1281 (2016), *reprinted* in materials for the March 2018 MMITF meeting.

Prof. Levin notes “[S]o much about the true incidence of legal malpractice is not known.” *Id.*, at 1283, *citing*, Manuel R. Ramos, *Legal Malpractice: No Lawyer or Client Is Safe*, 47 FLA. L.REV. 1, 5, 9 (1995) (stating that “scholars will never be able to present a complete and accurate picture of legal malpractice”). “It is exceedingly difficult to quantify the damage these uninsured lawyers cause as a result of malpractice. It is not even known how much LPL insurers pay annually in indemnity payments to resolve malpractice claims against insured solo and small firm lawyers.” Levin, *supra*, at 1311.

Prof. Levin does tell us what she thinks she doesn't know: “In truth, it is exceedingly difficult to determine how much legal malpractice occurs, even among insured lawyers. It is impossible to know how much harm uninsured lawyers actually cause. There is little evidence these lawyers are more likely to commit malpractice than insured lawyers, but there is also no evidence they are less likely to commit malpractice.” *Id.*, at 1309.

The MMITF Has Collected Sufficient Information to Answer Those Questions About Costs and Benefits:

Prof. Levin's concerns are, at best, exaggerated. As shown in the next section of this memo, the MMITF collection of materials does provide sufficient information to allow a reasonable projection of how much harm may be attributed to uninsured attorneys who become insured, and how much such insurance will cost them, as well as how much revenue mandatory insurance coverage will generate for carriers. The proposed Idaho model will generate millions for insurance companies while providing only thousands to victims of lawyers' mistakes. A windfall for insurers of \$5.7 to \$7.5 million a year. This is, on its face, an inefficient remedy.

Prof. Levin's article itself also gives us specific evidence that shows that uninsured lawyers are less likely to receive threats of malpractice claims. Levin, *supra*, at 1309. Professor Levin took a survey of members of the Arizona Bar, which found that 36% of insured Arizona lawyers “reported that they or a lawyer in their firm had been threatened with a malpractice action, but only 22% of the uninsured Arizona lawyers reported receiving threats.” *Id.*

Prof. Levin speculates that “It is not clear whether the uninsured Arizona lawyers actually received fewer threats of malpractice actions than the insured lawyers. Insured lawyers may be more sensitive to client communications that imply such threats, because they must report possible claims to their insurers in order to preserve coverage. Insured attorneys may also be more likely to remember such threats because they communicated with insurers about them.” *Id.*, at 1311. That speculation is well-founded, since the definition of “claims” is not the same as the definition of “the risk of injury to the public that arises from uninsured lawyers.” As Prof. Levin notes, the existence of “claims made” policies dramatically increases the number of “claims” made far above the number of actual injuries.

Under a “claims made” policy, the lawyer’s current insurer has the obligation to defend only claims filed during the current year, even if the act which generated the claim occurred long before. To trigger coverage, lawyers with “claims made” policy must notify their insurers if they have any information which might potentially give rise to a claim, even if a claim is never filed. So lawyers themselves self-protectively file “claims” with their insurers to trigger coverage, even if there was no actual injury or threat of a claim, and those “claims” affect the lawyers’ premium calculations for many years.

In four decades of legal practice, I have never had an actual “claim” made against me, but I have notified my malpractice carrier of potential claims twice:

- an opposing lawyer impleaded me for “malpractice” in a case handled by my associate because, as he testified in deposition, I “filed a paper in court that was different from” his. During the same deposition, this lawyer admitted that in the past he had also sued to have his pet monkey declared a human being “under the doctrine of *genus*” because African-Americans had been declared full human beings after the Civil War. The court dismissed that “malpractice” claim, but I had to report it to my “claims made” insurer for five years following the claim. Although my insurer claimed that my notice would not have caused my rates to rise, the very helpful table of underwriting factors provided by ALPS to the MMITF demonstrate that any “claim” will increase rates (or at least not decrease them for a “claims-free” record). MMITF Minutes, April 2018, at 352.
- The Chief Justice of a state’s highest court, who was an expert on civil procedure, designated himself down to my intermediate appellate panel in a case involving the appeal of a dog bite damages award that was far higher than the *ad damnum* clause; I was not trial counsel, but represented the winning trial counsels on appeal. After I introduced myself, the Chief Justice said, “I have a problem with the state of the law in this area.” He then proffered a legal standard that required trial lawyers to listen to the tape-recorded discussions of the state’s judicial conference to learn civil motion filings deadlines for post-verdict motions to amend *ad damnum* clauses (based on aiding expectations of insurers about whether to contest claims); ultimately the panel’s decision adopted that standard. The client, who understandably didn’t want to appeal further, many years later filed a malpractice claim against the trial lawyers, and I notified my “claims made” insurer of the possibility of a claim against me. No claim was ever filed against me, but I still had to report my “claim” to my insurer for five more years.

Other evidence provided by MMITF also supports Prof. Levin's speculation about "claims" vs. injury, including the Oregon Professional Liability Fund's 2017 Report, which noted that 68% of claims resulted in no payment or processing expenses (which are generally costs of representation), and what appears to be 19% of remaining claims involved "repairs" in an interesting Oregon program which simply provides a new lawyer to "repair" errors made by the original attorney, meaning that there was no actual injury following the repair. In other words, of the 840 "claims" filed under Oregon's very flexible program, approximately three-quarters were not actually injuries to the public. And as recorded in the MMITF Interim Report, ALPS, a malpractice insurer in Washington, found that half of all claims over the prior ten years were resolved without a loss payment or expense, presumably because they were unfounded.

The fact that most malpractice claims come from solo or small firm practitioners doesn't imply some additional risk to the public; the vast majority of lawyers practice solo or in small firms. The Interim Report says that the American Bar Association reported in 2015 that 65% of malpractice claims come from lawyers in firms of less than five lawyers. The ABA also reported that 76% of lawyers were in firms of less than five lawyers. Above the Law, *Small Law Is Huge*, Sept. 18, 2015, <https://abovethelaw.com/2015/09/stat-of-the-week-small-law-is-huge/>.

Prof. Levin also references another factor relevant to the MMITF's tentative conclusion that solo and small firm lawyers represent a higher risk of injury to the public: the widespread belief that larger law firms settle claims themselves before they rise to the level of a claim to their insurers. "While the clients of larger firm lawyers, who are repeat players in the legal system, can often negotiate effectively with those [plaintiffs'] firms for compensation if their lawyers make mistakes, the clients of solo and small firm lawyers—often individuals who are one-shot players in the legal system—lack this leverage." Levin, *supra*, at 1318.

What the MMITF Interim Report showed is that it does not have the data required to make the judgement that uninsured lawyers pose a risk to the public. As Prof. Levin wrote: "It is impossible to know how much harm uninsured lawyers actually cause." This makes any such assertion by the MMITF "mere conjecture," not sufficient constitutionally to justify government compulsion. *Lair v. Motl*, 873 F.3d 1170, 1178 (9th Cir. 2017), *reh'g denied*, 889 F.3d 571 (9th Cir. 2018), *petition for cert. filed, sub nom. Lair v. Mangan*, Aug. 2, 2018, No. 18-149 (state must show specific evidence to justify burden on association), *quoting, McCutcheon v. Fed. Election Comm'n*, 572 U.S. ___, 134 S.Ct. 1434, 1452 (2014) ("we 'have never accepted mere conjecture as adequate to carry a First Amendment burden'").

To the extent that there is a policy step to be taken, it should be justified solely on the ground of the actual risk, not a proxy. The MMITF material does not support the claim that there is a "risk" to the public solely from a lack of malpractice insurance. Any risk is from a "malpractice event," not from the lack of insurance. That is what the MMITF's Final Report should describe and analyze, not the secondary material discussed in the Interim Report.

The MMITF Failure to Explain the Likely Costs and Benefits of Mandatory Malpractice Insurance Will Trigger Complaints That The Vast Majority of Money Will Go to Insurance Companies:

Despite Prof. Levin's concern about the impossibility of calculating the level of risk of public injury from uninsured lawyers, the MMITF, to its credit, did obtain information which permits a quick calculation of risk from alleged malpractice by Washington lawyers insured by ALPS, which has provided legal malpractice insurance coverage in Washington for at least ten years. The data provides a real-world check on Prof. Levin's claim that "It is not clear how many lawyers receive a malpractice claim annually, but it appears to be less than 6% of insured lawyers." Levin, *supra*, at 1309. Using the ALPS 2017 data and depending on definitions which may vary, the actual claims rate for ALPS-insured lawyers appears to be about 1%.

While any loss is regrettable, it appears that mandatory malpractice insurance would result in an enormous windfall for insurers, available to them solely because of government compulsion of innocent lawyers who do not wish to make these payments. The MMITF proposal risks public opprobrium from appearing to disguise enormous kickbacks to preferred insurers as protection of the public. For example, a criticism might be "Plaintiffs lawyers and insurance companies said they were protecting the public, but 70% of the money went to insurance companies and the lawyers."

Using the MMITF material made available to WSBA members, I calculated that currently self-insured or uninsured lawyers in Washington would likely face an average of 23 to 35 actual malpractice claims a year, with their new mandatory insurers making potential loss payments and legal expenses of \$1.8 to \$2.8 million a year. Every instance of legal malpractice is one too many, but the cost to currently self-insured or uninsured lawyers who do not make those legal mistakes would be premiums totaling between \$7.5 and \$10.3 million per year. The insurers would reap windfall revenue of between \$5.7 and \$7.5 million a year.

The members of the MMITF have much more information than I do about these calculations, but here is how I calculated costs and benefits of mandatory malpractice insurance from the information made available from the WSBA's MMITF page (<https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/mandatory-malpractice-insurance-task-force>):

32,081 Washington lawyers:

According to information provided to the MMITF by Jean McElroy of the WSBA Office of General Counsel and others, as of February 2018, there were approximately 32,081 active lawyers in Washington.

21,095 in private practice:

The MMITF would limit the mandatory malpractice requirement to lawyers who are in "private practice," or not employed by government or in-house by business or non-profit organizations. Under the MMITF's definition, approximately 39% of Washington's lawyers are not in private practice, or about 12,500 lawyers who would not be subject to the mandatory

malpractice requirement. That leaves some 20,000 lawyers in private practice, although McElroy's Feb. 2018 figures seem to show that 21,095 are in private practice.

2,953 say they are self-insured or uninsured:

The MMITF reports that approximately 14% of those in private practice are uninsured or self-insured, or about 2,953.

ALPS insured 1,034 Washington lawyers in 2017:

In its October 2017 report, included in the minutes of the January 2018 MMITF meeting, ALPS said it insured 1,034 Washington lawyers in 2017, who collectively paid \$2,601,091 in premiums, or an average premium payment of about \$2,516 per attorney. Prof. Levin's NWLAWYER article says in a footnote that the current average premium for Washington lawyers is \$2,324, but doesn't cite a source on the MMITF materials webpage.

ALPS insured lawyers reported 24 claims in 2017:

Although the ALPS 2017 report was not for a full year, ALPS said that its insured attorneys reported 24 claims. That would be about a two percent claims rate, about a third of Prof. Levin's "less than six percent of insured lawyers" estimate.

Half of ALPS claims were probably unfounded:

The MMITF Interim Report noted that ALPS reported that half of its claims over the prior ten years were resolved without any payments at all, including for costs of representation. They were likely unfounded claims or as noted above, not actually "claims" at all, but preventative reports by insured lawyers who wanted to trigger "claims made" policies.

Two-thirds of claims in Oregon were probably unfounded:

Despite Prof. Levin's concerns that data was impossible to obtain, there are states which provide that information; Oregon is one which provides specific and detailed information. The Oregon Professional Liability Fund's 2017 Report, despite Oregon having much more expansive inclusion criteria, said that 68% of all claims resulted in no payment or processing expenses (which were generally costs of representation). Again, these were likely unfounded. All Oregon lawyers participate in the Oregon PLF, which has substantial asset reserves, so there were no questions about claims being dropped because the lawyers were "judgment proof."

Actual claims paid in the ALPS pool likely totaled between 8-12, for a projected claims rate of between 0.77% to 1.2%:

Applying the two different actual claim numbers from both ALPS and the Oregon PLF claims rates, as defined above, to the 1,034 lawyers insured by ALPS results in a likely 2017 claim total of between 8 and 12 lawyers against whom actual claims were likely. That is, out of 1,034 insured lawyers, somewhere between about 0.77% and 1.2% would see actual claims filed against them.

ALPS average loss payments were \$60,000, with expenses of \$20,000.

The MMITF Interim Report says that ALPS's experience over the prior ten years is that average loss payments were \$60,000, and expenses were \$20,000. 97% of all malpractice claims are resolved for less than \$250,000. Interim Report, *supra*, at 4.

Under mandatory malpractice insurance, uninsured lawyers in Washington would pay between \$7.5 and \$10.3 million a year in insurance premiums.

At the average \$2,516 annual premium rate in the ALPS October 2017 report, the 2,953 uninsured lawyers in Washington would pay a total of \$7,429,748 in premiums per year. At Prof. Levin's unsourced \$2,324 average premium, the uninsured lawyers would pay \$6,862,772 in premiums per year. At the higher Oregon PLF annual premium rate of \$3,500, the uninsured lawyers in Washington would pay a total of \$10,335,500 in premiums.

Projected using these ratios, mandatory malpractice insurers would expect to receive between 23 and 35 valid claims per year, and pay out between \$1.8 million to \$2.8 million in claims and expenses.

Using the 0.77% to 1.2% claims ratio and \$80,000 in average loss payments and expenses projected from the ALPS and Oregon PLF experience, the 2,953 uninsured lawyers in Washington would expect to have to deal with between 23 and 35 valid claims per year, and their insurers would expect to pay out between \$1.8 and \$2.8 million in claims and expenses.

Insurers would net between \$5.7 and \$7.5 million after paying losses and expenses.

Average premiums of \$7.5 to \$10.3 million, less claims and expenses payouts of \$1.8 to \$2.8 million leaves between \$5.7 to \$7.5 million net for the insurers. This ratio is similar to the actual payout vs. overhead ratio reported by the Oregon PLF for 2017: Total claims payouts: \$2,331,672 (32% of total operating costs); administration: \$2,176,790 (30%); systems expenses: \$743,576 (10%); Loss Prevention: \$2,119,000 (28%).

I am not a member of the MMITF, and am relying only on the materials made available on the WSBA website to WSBA members. There is likely to be an explanation for this windfall and my calculations are likely to be at least partially inaccurate. It is also possible that I overlooked some clear explanation in the Interim Report or the deliberations of the MMITF, so that the calculations themselves are wholly misleading. Nevertheless, the only obvious explanation in the Interim Report is a summary comparison table, which includes conclusions and generalizations, rather than facts from which readers can make up their own minds.

The table entry for the MMITF's "preferred" approach, described as the "Idaho" model, contains only these bullet points:

- Provides diverse coverage options to members
- Free market allocates risks and costs based on practice character, claims history, and other underwriting standards
- Highly competitive market provides reasonable cost and different coverage, exclusions, and deductibles (Idaho reports no lawyers unable to obtain insurance)
- Modest operating costs
- Guarantees available coverage for vast majority of client claims

- Adverse reaction by members who feel “forced” to purchase insurance that they don’t want.

The only description of costs and premiums is favorable, without the actual numbers to show what can be gleaned from the actual reports buried in the MMITF materials. It would likely affect readers’ evaluations of this model for them to know that the additional net benefit to insurance companies would be \$5.7 to \$7.5 million per year, while the average benefit to individual claimants will be \$60,000. Certainly, that information would generate an “Adverse reaction by members who feel ‘forced’ to purchase insurance that they don’t want.”

Properly stated, a legitimate policy choice is available to require malpractice insurance, but this choice was not justified sufficiently to satisfy constitutional requirements for government-compelled action:

The absence of such a calculation by the MMITF in its Interim Report makes it important, from a constitutional evidence standpoint, for the MMITF to address this question in its January Final Report to the Board of Governors. At a minimum, the MMITF should explain why it feels that the benefit to the public is worth the cost of this approach, and why it chose instead to focus its written explanation on the statement about “risk to the public from uninsured lawyers” instead of the costs and benefits from its chosen approach.

And as a constitutional matter, the MMITF should explain how and why its preferred approach is the narrowest and most effective way to address the risk to the public from lawyer mistakes. It should not rest on the mere fact that there are self-insured and uninsured lawyers in Washington without explaining the actual numbers that can be projected of both injury and remedial costs.

2) THE PROPOSED EXEMPTIONS FROM MANDATORY MALPRACTICE INSURANCE ARE TOO NARROW:

The MMITF continues to consider possible exemptions from the requirement to obtain malpractice insurance and has asked for comments on the proposed exemptions. The principal objection to the proposed exemptions is that the listed exemptions seem to duplicate the limitation of the insurance requirement to lawyers in private practice.

The list of proposed exemptions from the July 2018 MMITF meeting was:

- Employed as a government attorney, judge, administrative law judge, or hearing officer
- Employed by a business entity or nonprofit
- Employed by a public defender office
- Employed as a mediator or arbitrator
- Not providing any legal services, whether or not for compensation.

Certain categories, such as *pro bono* work, have been left off the most recent lists of proposed exemptions. I provide hundreds of hours of *pro bono* legal services, at a very high level, each year. I am self-insured, with sufficient personal resources to withstand any judgement

for malpractice liability. I am not judgement-proof. I disclose to my remaining clients that I do not have malpractice insurance; they choose to use my services even after that disclosure.

As a semi-retired lawyer, I limit my practice mostly to *pro bono* representation before the Supreme Court of the United States, almost all of which concerns the First Amendment and is performed for the Public Policy Legal Institute, a 501(c)(3) tax-exempt charitable corporation headquartered in Friday Harbor, Washington, of which I am the Chairman and President. www.publicpolicylegal.com. I am not employed by and receive no compensation from these clients. I am not insured by these organizations. Most of these organizations simply could not afford to employ or insure me.

My *pro bono* services are often of value to all Americans. I raise substantial questions of law to the Nation's highest court. Supreme Court opinions cite my briefs and have often provided the relief sought in the briefs. *See, e.g., McCutcheon*, 134 S.Ct. at 1460 (the Internet has aided citizens' access to government records). My effective exposure to malpractice liability in representing these organizations before the Supreme Court through *amicus* briefs is effectively close to zero.

But in the winter of my career, the administrative complexities and financial burdens of even a *pro bono* practice weigh more than before. As I noted in earlier comments to an MMITF survey of members, adding a \$3,500 annual premium for no reason related to my work and largely benefiting insurance companies would likely break the camel's back. I understand from reported comments from members that I am not alone in my assessment, and whether the MMITF agrees or not, its limited exemptions will not prevent a significant loss of *pro bono* services.

An inevitable loss of important *pro bono* services should not be an acceptable outcome of any proposal to serve the public. If it is an expected outcome of a proposal which serves, to a large degree, the financial interests of insurance companies, the MMITF should clearly state that expectation in its Final Report and explain why it is acceptable. Simply arguing that lawyers won't reduce their *pro bono* efforts is insufficient.

I would recommend that, if the MMITF adopts the proposed exemptions list outlined in the August and September meeting minutes, it also propose additional exemptions for lawyers who provide services to nonprofit organizations in areas which are unlikely to generate malpractice risk, including *pro bono* representation.

From: milawoff@aol.com
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance for Attorneys
Date: Friday, October 12, 2018 8:09:52 AM

To the attention of the Insurance Task Force of the WSBA:

I am writing to comment on the proposal by the Bar Association to require that all attorneys purchase mandatory E&O coverage (otherwise referred to as mandatory malpractice insurance). It is estimated that the cost for each attorney to purchase the insurance will be \$3,500 per year. The cost will be the same, regardless of the number of cases an attorney handles in a year. Attorneys who are semi-retired and handle only an occasional case will be required to pay the same amount as an attorney who practices full-time.

My husband and I are attorneys in Spokane. I graduated from law school in 1984 and passed the bar that same year. I established my practice on a shoestring, renting a small office and doing all of my own typing, filing, etc. As my practice grew I was able to move into larger office space and hire an assistant. If I had been required to purchase mandatory insurance I would not have been able to establish my own practice.

Recent law school graduates who have been admitted to the Bar will also be required to purchase E&O coverage. Young attorneys who are saddled with enormous amounts of student loan debt will also be placed at a serious disadvantage. These young attorneys will be unable to start their own practices; in many cases they will ultimately be forced to seek employment in other fields.

I handle only a few cases per year now, and most of the cases I do work on involve pro bono matters. Based on the Bar's anticipated passage of mandatory E&O coverage, my husband and I would be required to pay \$7,000 per year. In order to purchase mandatory coverage, we would have to earn \$14,000 because we would have to pay taxes and related expenses on the income we would earn before purchasing insurance.

If the Bar adopts the requirement for all attorneys to have E&O coverage, we will have no choice except to cease representing any clients, including those who need pro bono assistance. Requiring us to buy E&O insurance would mean that we would have to pay to provide pro bono services. While the Bar states that it is committed to helping low income individuals obtain pro bono assistance, it is clear that the adoption of mandatory E&O coverage will only further reduce pro bono assistance for those in need. Apparently, the decision has been made that it is better for low income persons to go without representation than to have an attorney who does not have E&O insurance.

Obviously, any costs incurred by attorneys must be passed on to their clients. Legal fees are increasing at an alarming rate, as evidenced by many published studies. Requiring attorneys to purchase E&O coverage will only drive hourly rates higher, further limiting access to legal services.

I further believe that no insurance requirements should be placed on attorneys who do not represent clients but spend their time as authors of books and articles and on other educational activities, or for attorneys who arrange for referral linkages and engage in cooperative activities to address legal issues.

Cheryl C. Mitchell
Mitchell Law Office
24 W. Augusta Ave.
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Phone (509) 327-5181
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From: [Jay Harris](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice
Date: Friday, October 12, 2018 8:11:09 AM

Thank you for reaching out to me on this subject. As your report indicates about 14% of attorneys are not insured. It also appears that you intend to emulate Oregon which exempts in house and government attorneys. I would estimate that government and in house attorneys are easily 14% of the profession. In other words, your mandatory insurance including exceptions will accomplish little more than to make the WSBA feel good about one more needless rule.

From: [Inez "Ine" Petersen](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Bill Pickett](#)
Subject: ADDENDUM: Inez Petersen's Response to Interim Report re Mandatory Insurance
Date: Friday, October 12, 2018 8:51:00 AM

Dear Task Force:

Recall that I stated that the 14% statistic representing how many attorneys were uninsured was overstated. It doesn't matter who pays for the professional liability insurance, so excluding all the employer-paid insured attorneys from the equation is incorrect in my view and skews the percentage.

Paramount to making any decision about mandatory insurance, I would like to know the number of all active attorneys who are uninsured.

I would also like to know how many of that number are able to self-insure.

Once the self-insured are excluded from the uninsured, then the Task Force can compute an accurate number of uninsured attorneys and an accurate percentage of active attorneys who are uninsured.

The next statistic would be to know how many uncollected judgments there were from uninsured attorneys in Washington.

If the Task Force doesn't have these few statistics, it has no real statistical basis for recommending mandatory insurance. Surveys and research would have been needed to gather these statistics. That would have taken time and effort. Did surveys and research take place?

Why am I so invested in the Task Force reconsidering its recommendation that insurance be mandatory? Because the anticipated increased cost of insurance will force me to quit being an attorney. I highly doubt that there will be a "free market" for solo attorneys.

I worked at Boeing for 30 years before my health forced me to retire in 1997. I was retired for 10 years; and during that time, I became involved in local city of Renton politics as secretary of the Highlands Community Association.

I filed against the EIS for The Landing, a big shopping center in Renton where the city officials were ignoring their own building code so the shopping center could open in time to influence the election. I led a fight against a planned Declaration of Blight in the Renton Highlands which resulted in the richest developers in town filing a defamation law suit against me (a favored way to silence a grass roots activist). I also filed campaign fraud complaint against the attorney friend of the developers, a candidate for municipal court judge, who lied in his campaign literature. Suffice it to say that I was not the darling of the local Chamber of Commerce crowd: the developers, the realtors, and the mortgage brokers--not to mention the mayor and her department heads.

The developers wanted to shut me up in the worst way but failed. Peter Buck (of Buck and Gordon at the time) and Michele Earle-Hubbard, along with the Institute for Justice, defended me in the defamation lawsuit. The developers appealed right up to the State Supreme Court before losing for the final time.

This introduced me to *pro bono* legal work but did not inspire me to become an attorney at that time. That happened the next year after I had some surgery which greatly improved my health enough so that I could attend law school. I owned my home, but I obtained a home equity loan against it to pay for law school. Mortgaging my home to attend law school was a huge sacrifice and threat to my financial security because of my age.

I was the oldest student in the class. My grades were not great, but I got the highest grade in the class for the last mock trial where I represented "Mrs. Pryde" in an adverse possession case where the young couple next door was trying to take her property.

My practice has evolved into a *pro bono* practice because there are so many elderly and disabled who come to me in need of legal help. I can absorb the cost of CLEs and insurance right now from my Boeing retirement. But I won't be able to do so if my insurance cost doubles.

Please take a fresh look at your statistics to see if the Task Force might arrive at a different answer regarding insurance.

Respectfully,
Inez Petersen, WSBA #46213

On Sun, Oct 7, 2018 at 2:31 PM Inez "Ine" Petersen <inezpetersenjd@gmail.com> wrote:

PREFACE

I believe that there is something seriously "broken" in the WSBA.

In the realm of "brokenness" is the State Supreme Court's letter telling members that WSBA leadership is to be treated with respect, that the WSBA must be a safe and healthy environment in which to work, and that there must be policies developed to deal with "harassment and retaliation to cover all possible interactions by persons involved in Bar activities and Bar governance."

My first thought was that this was prompted by WSBA leadership to silence the attorneys who wanted to present to the BOG initiatives that would limit the term of the executive director and immediately replace the current director who has been in that position for over a decade and earns almost a quarter of a million dollars annually.

It seems incongruous to stop discussion on member-generated initiatives and changes to Bylaws **BUT MOVE AHEAD WITH MANDATORY INSURANCE.**

If there were a need for policies to deal with "harassment and retaliation to cover all possible interactions by persons involved in Bar activities and Bar

governance," that need should have been transmitted by the governors because governors are the ones who are in charge of managing the WSBA-- or should be. Governors, in turn, should be marching to the tune of the majority of the members.

Requiring such policies does nothing to protect members from overreaching by its leadership and does everything to protect and perpetuate such overreaching.

And I say that as a member who is still stinging from the 40% increase in dues where WSBA leaders trampled right over the Bylaws. Members were led to believe that this trampling was mandated by the State Supreme Court.

WITH TECHNOLOGY BEING WHAT IT IS TODAY, lawyers should be able to comment and vote on mandatory insurance in a way that least impacts their busy schedules. The BOG should want to know what the general consensus is among members regarding mandatory insurance.

Attorneys ought to have been able to **FREELY COMMUNICATE WITH EACH OTHER** regarding mandatory insurance. If a **GENERAL MEMBERSHIP BLOG** existed, then members could freely share their thoughts with each other without approval of WSBA staff as is the case with *NW Sidebar*.

Such transparency would make it easy for members to communicate with each other and would make it harder for WSBA leadership to independently forge ahead, for example, with dues increases and to stop member-initiated voting and member-initiated changes to Bylaws.

Perhaps there is hope in *Janus* to provide some relief.

IN THE REALM OF "BROKENNESS"

In the realm of "brokenness," I find the idea that it is necessary to make professional liability insurance mandatory.

The Interim Report states that the "Task Force is focusing on the risk of injury to the public that arises from uninsured lawyers." And later in the Interim Report the number of uninsured attorneys is stated as 14%. (And I question that 14% below.)

BUT WHERE ARE THE STATISTICS THAT INDICATE TO WHAT

EXTENT WASHINGTON'S UNINSURED LAWYERS HAVE ACTUALLY INJURED THEIR CLIENTS?

Without this basic statistic, the Task Force cannot be sure that the 14% (see comments below) of attorneys who carry no insurance constitute **A PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY.**

I QUESTION THE USE OF 14% AS REPRESENTING THE NUMBER OF UNINSURED ATTORNEYS. Para 2 on Page 3 indicated that the 14% was computed AFTER 39% of licensed attorneys were **EXCLUDED.** These attorneys were excluded because they work for an employer who provides malpractice insurance. **BUT excluding these attorneys also increases the percentage which misleads the reader as to the true prevalence of uninsured practitioners.**

It is more appropriate to compute a percent based upon the number of uninsured practitioners / total active practitioners. Did readers catch this? Did Task Force members? I believe this is an example of the **DELPHI TECHNIQUE** being used to "herd" Task Force members to consensus.

My 30 years at Boeing exposed me to the **DELPHI TECHNIQUE**, as well as working as a grass roots activist to fight a Declaration of Blight which was part of the city's planned redevelopment of the Renton Highlands.

I would need a complete and accurate accounting of the number of uninsured practitioners compared to the total number of active practitioners; this would be basic in determining whether there really is a **PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY.** "Significant enough" is the operative term.

The Task Force indicated this is "**a small percentage of Washington attorneys**" on one page and on another page indicated that "Malpractice plaintiffs' lawyers report **numerous instances** of worthy claims that they must reject for representation because the defendant lawyer is uninsured . . ."

Complete and accurate facts and data about these claimed "numerous instances" would be basic in determining whether there really is a **PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY.**

I do not see that the Task Force has compiled the basic statistics needed to

judge **THE TRUE SCOPE OF THE PROBLEM.**

Without understanding the true scope of the problem, it is not possible to determine whether there really is a **PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY.**

The Task Force assumes that ALL attorneys who do not carry insurance do not have the financial resources to make their clients whole. **DID THE TASK FORCE GATHER ANY STATISTICS REGARDING WHAT PORTION OF THE 14% UNINSURED IS ABLE TO SELF INSURE?**

Lack of funds may not be the only reason an attorney carries no malpractice insurance.

The Interim Report states "A license to practice law is a privilege." I do not agree. We earned the right to practice law in the same way doctors earn the right to practice medicine.

I resented and still resent the "boot on my neck" after I had passed the bar exam. My HIPPA rights were even violated by the WSBA during the process to obtain my bar card. There needs to be a total "reset" at the WSBA; possibly a voluntary bar association will help.

The Interim Report states that "The Task Force members expressed that malpractice insurance (or lack thereof) has a significant impact on clients . . ." **DOES THE TASK FORCE HAVE ANY STATISTICS TO QUANTIFY ACTUAL FINANCIAL IMPACTS TO CLIENTS OF THE 14% UNINSURED?**

The Interim Report mentioned the "useful technical assistance" received from ALPS which is the WSBA's endorsed professional liability insurance provider. ALPS won't cover solo attorneys. Based on this fact alone, the WSBA should not have made ALPS its preferred carrier. A carrier that also insures solos should have been selected.

WHAT IS THE NUMBER OF THE 14%-UNINSURED ATTORNEYS WHICH FALL IN THE SOLO CATEGORY?

The Interim Report states that 28% of solo practitioners do not carry insurance. But the Interim Report fails to indicate the total number of solos. **ISN'T THE 28% STATISTIC MISLEADING? JUST LIKE THE 14% is misleading . . .**

This skewed manner of presenting statistics is the way the **DELPHI TECHNIQUE** manipulates consensus. Without the total number of solos, 28% is without context and is, therefore, misleading.

The Interim Report states that "If the Board of Governors desires further information on the specifics of the Task Force's work, the Board is encouraged to review the Task Force's detailed meeting minutes . . ." **ISN'T THE TASK FORCE SUBSERVIENT TO THE BOG?**

The Task Force should be reporting to the BOG routinely--the Task Force works for the BOG, just like the executive director and her staff should be working for the BOG, not the other way around.

From the Interim Report, it appears that the Task Force gave considerable weight to the opinions of a law professor's article--not a local professor, no actual legal experience, and based on claims that have no relationship to claims filed against Washington's uninsured lawyers (half of the claims which ALPS indicates are closed without payment). **HOW RELEVANT IS THE OPINION OF THIS OUT-OF-STATE LAW PROFESSOR?**

In fact, I would briefly consider information from out of state and then dismiss it because it does not directly relate to the percent of uninsured Washington lawyers who had malpractice claims. (I hearken back to my prior comments about the 14% being inaccurate to inform me of the number of uninsured attorneys OR the number of that number who lose a malpractice claim.)

The Interim Report stated that "Solo and small firm practitioners represent a **disproportionate share of the malpractice claims.**"

AS IT DID TO COMPUTE THE 14%, DID THE TASK FORCE USE SKEWED NUMBERS TO COMPUTE "A DISPROPORTIONATE SHARE OF MALPRACTICE CLAIMS"?

DID THE TASK FORCE CONSIDER THAT SOLO ATTORNEYS OFTEN TAKE THE HARD CASES WHICH LARGER FIRMS REFUSE TO HANDLE?

I ask this latter question because I am an insured solo attorney; and all my cases are those which other law firms would not "touch with a ten-foot pole."

This phenomenon could account for the claimed disproportionate share of malpractice claims among the 14% uninsured attorneys.

The Interim Report stated "Most attorney misconduct grievances and disciplinary actions involve solo and small firm practitioners." **DID THE TASK FORCE JUXTAPOSE THIS AGAINST THE FACT THAT A HUGE MAJORITY OF MISCONDUCT GRIEVANCES ARE BASELESS AND RESULT IN NO DISCIPLINARY ACTION?**

Para 7 on Page 4 of the Interim Report stated "Malpractice plaintiffs' lawyers report **numerous instances of worthy claims** that they must reject because the defendant lawyer is uninsured, making a recovery much less likely."

DOESN'T THIS WRONGFULLY ASSUME THAT RECOVERY IS "A GIVEN" IF THE DEFENDANT ATTORNEY HAS MALPRACTICE INSURANCE? (Carriers may chose to pay off a plaintiff even if the defendant attorney is innocent; and this has the potential to skew statistics about the efficacy of mandatory insurance.)

DOESN'T THIS ALSO OVERLOOK THE FACT THAT REJECTED CLAIMS IF CARRIED FORTH WOULD BE SUBJECT TO THE 50% DISMISSAL RATE CLAIMED BY ALPS' STATISTICS?

HOW MANY "WORTHY" VERSES "UNWORTHY" CLAIMS WERE THERE?

COULD THE MANDATORY INSURANCE IDEA HAVE COME FROM MALPRACTICE ATTORNEYS WHO SEEK TO MAKE THEIR PRACTICES MORE LUCRATIVE? Most of our federal laws come from lobbyists in Washington, D. C., why can I not assume the same occurs locally?

The Interim Report stated "Over the last five years, WSBA Client Protection Fund application statistics indicate that 11% of the applications were denied because they described instances of malpractice rather than theft or dishonest conduct." **DID THE TASK FORCE CONSIDER RECOMMENDING THE EXPANSION OF THE WSBA CLIENT PROTECTION FUND TO INCLUDE MALPRACTICE BY NON-INSURED ATTORNEYS?**

If the Task Force had accurate statistics regarding the occurrence of uninsured defendant attorneys losing malpractice cases, then they could judge whether expanding the Client Protection Fund is a reasonable alternative to mandatory malpractice insurance.

Paragraph 9 on Page 4 of the Interim Report is another example of slanting statistics to give readers the impression that the problem is bigger than it really is. If 89.1% of national malpractice claims were resolved for less than \$100,000, then 10.9% of national malpractice claims were resolved for \$100,000 or more.

But it is this statement in this paragraph that deserves more attention: "**ALPS reports that based on its experience, over the past 10 years in Washington State, about half of all its claims were resolved without payment . . . the average loss payment was \$60,000, and average loss expenses were about \$20,000.**"

If 14% is accurate (**BUT IT ISN'T**) to quantify the number of uninsured attorneys and 32,000 is accurate to quantify the number of total active attorneys, then there are approximately 4,500(?) uninsured attorneys in the State of Washington. The 4,500 is overstated.

The 14% is overstated because, as I explained earlier, the Task Force excluded 39% of the active attorneys before computing this percent. If readers and Task Force members want to know an accurate percent of active attorneys who are uninsured, then the 39% the Task Force excluded needs to be put back into the equation. That is the only way to determine whether there really is a **PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY**.

USING AN ACCURATE NUMBER OF UNINSURED ATTORNEYS, HOW MANY ARE SOLO?

HOW MANY OF THE ACCURATE NUMBER OF UNINSURED ATTORNEYS ARE ESTIMATED TO HAVE CLAIMS?

AND WHAT IS THE ESTIMATED NUMBER OF CLAIMS, CONSIDERING THE ALPS'S 50% OF NO CLAIM BEING AWARDED?

Regarding Para 15 on Page 5, rather than requiring attorneys to "demonstrate financial responsibility," remove that requirement from LLLT/LPOs. We suffer from the tyranny of too many rules already.

Regarding Para 16 on Page 5, the AMA and the ADA do not require their members to carry malpractice insurance, and neither should the WSBA.

Regarding Para 18 on Page 5, if the premium of forced malpractice insurance is \$3,500, **THAT IS TWICE WHAT I PAY NOW AS A SOLO PRACTITIONER.** I handle almost 100% *pro bono* cases. I would have to quit being a lawyer or abandon my *pro bono* clients who desperately need legal help. I'm sure that no public sector agency which provides malpractice insurance would hire a soon-to-be 74 year old women who has only been practicing law since Aug 2013.

HAS THE TASK FORCE GIVEN ADEQUATE CONSIDERATION TO HOW MANY *PRO BONO* ATTORNEYS WILL HAVE TO CUT BACK *PRO BONO* HOURS IN ORDER TO EARN MONEY TO PAY FOR THEIR MANDATORY MALPRACTICE INSURANCE?

ARE THOSE ATTORNEYS WORTH "THROWING TO THE CURB" CONSIDERING THE TRUE EXTENT OF THE PROBLEM OF UNINSURED DEFENDANT ATTORNEYS WHO LOSE MALPRACTICE CLAIMS?

DOES THE TASK FORCE BELIEVE THAT WE ATTORNEYS WILL NOT BECOME VICTIMS OF "FINANCIAL BLACK MAIL" BY THE EVER INCREASING COST OF INSURANCE WHEN PROVIDERS KNOW INSURANCE IS MANDATORY?

AND ABOUT THAT FREE MARKET MODEL mentioned on the first page of the Interim Report, I doubt there will be one. I searched and searched, and Zurich was the only company that would issue a policy to a new solo attorney. In my personal experience, the Task Force's free market is a myth.

Insurance companies are not known for being benevolent, **SO WHAT FACTS AND DATA LEAD THE TASK FORCE TO BELIEVE THAT MANDATORY INSURANCE WILL PAY IN THE VERY FEW CASES WHERE AN UNINSURED ATTORNEY LOSES A MALPRACTICE CASE?**

Task Force should have an accurate estimate of the number of "the very few cases," because that is the **PRIME STATISTIC** that could justify mandatory insurance. However, I believe such a statistic would prove there is **NOT A PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY.**

WE HAVE THE RULES OF PROFESSIONAL CONDUCT TO GOVERN US. The WSBA can use it *sua sponte* to discipline judgment-proof attorneys who do not prevail in malpractice cases. This will send a message quickly to the uninsured attorneys who engage in "sloppy practice."

The Task Force may be thinking that it is **NO BIG DEAL** to require mandatory insurance because 86% of attorneys already buy insurance. But it is **A BIG DEAL** to me.

I have purchased insurance from Day One. Having the cost go up because of the "social justice" mindset of the Task Force will hurt my *pro bono* practice which is 99% of everything I do. (I don't report my *pro bono* hours because I object to self-serving back slapping.)

CLOSING COMMENTS

Insurance companies fight "tooth and nail" not to pay claims. Why does the Task Force think this will change just because a small undetermined number of attorneys will be forced to buy insurance next year?

I believe that the WSBA is a business entity which owes its first loyalty to its members. Giving first priority to the public subjugates the loyalty which members should receive. Through loyalty to its members, the WSBA serves the public.

The goal of the Task Force from the first page of the Interim Report is **to eliminate "the risk of injury to the public that arises from uninsured lawyers."**

To state it another way, the goal of the Task Force is **to eliminate "the possibility that even one attorney is judgment proof."**

In my view, neither way of stating the goal of the Task Force is reasonable or practical.

AND ABOUT THAT DUTY TO PROTECT THE PUBLIC . . . Why is a prevailing client in a malpractice lawsuit against a judgment-proof attorney any more important "to protect" than a prevailing plaintiff in a non-malpractice lawsuit who cannot collect his judgment?

I believe that the Task Force will NOT be changing its mind based on my comments or anyone else's; BUT I hope I am wrong.

I believe social justice programs can be carried too far; and mandatory insurance to cover the percent of the uninsured that may lose a malpractice case is just such a social program.

Resources of members are finite, and the WSBA leadership should not call upon all its members everywhere to support every worthy cause. Priorities must be set.

As you can tell, I am vehemently opposed to mandatory insurance.

I also vehemently support a voluntary bar association to stop the mission creep and increasing dues currently plaguing WSBA members AND to stop the use of the State Supreme Court to keep WSBA employees in control of the BOG.

I have always been an independent thinker--I cannot stop now.

Sincerely,

Inez PETERSEN, WSBA #46213

Enumclaw, WA

From: [Walton Dabney](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: National Guard and Reservist considerations
Date: Friday, October 12, 2018 11:20:40 AM

All Concerned,

Thank you for reaching out for feedback. Please allow me to provide a perspective for you to consider: Military service can last for a few days, a few months, or years. In between active duty periods it would be overly burdensome to constantly retain and cancel insurance.

There are currently Washington Attorneys who are in the Reserves and the National Guard. These attorneys often are ordered to active duty for certain periods of time. To use myself as an example, I was activated for 60 days in the summer, then went back to civilian practice for 30 days, then went back to active service with a different unit for the next 30 days; after which I'll go back to civilian practice briefly, then be activated once again for 160 days.

For these brief periods where I am a solo attorney - not covered by the government or another firm's insurance - my client work is either low-complexity or pro bono so I can devote myself fully to service when the next inevitable time comes. There is no malpractice insurance on the market that could cater to my off-again-on-again liability at a reasonable price. Because those who serve in the JAG Corps are a very small subset of the general attorney population, I do not expect an ideal insurance model for us any time soon.

Therefore I request you consider a waiver for all attorneys in the Washington National Guard, the Reserves, and any state or federal organization that has the potential to order those attorneys into active uniformed service (the national oceanographic administration, the coast guard, etc). No doubt, many attorneys entitled to this waiver will chose to get insurance voluntarily. But for those who are called away often, it will make a big financial difference to those attorneys and their families.

Thank you for your consideration.

--

Walton L. Dabney

From: [Tonya Gisselberg](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments on Mandatory Malpractice Insurance
Date: Sunday, October 14, 2018 2:34:56 PM

Hello:

I am writing to express my opinion about mandatory malpractice insurance. I object to mandatory malpractice insurance, unless it is reasonably priced and does not operate to preclude attorneys from providing services in certain practice areas.

I operate a solo law practice. I currently do not have malpractice insurance. Copyright law is one of my major practice areas. When I opened by own law practice, I immediately got malpractice insurance. After I paid for malpractice insurance coverage for one year, the insurance company refused to renew my policy. The reason given was that my copyright practice created more risk than the insurance company was willing to insure. I discussed the insurance company's decision with the person who sent me the letter refusing to renew my policy. He told me that insurance companies do not understand copyright law, do not know how to evaluate the risks associated with copyright law and therefore the company would not continue to provide me with malpractice insurance. I thought it was disingenuous for the insurance company to collect premiums from me for one year, knowing that I practice copyright law, then to refuse to provide me with malpractice insurance coverage going forward.

I attempted to obtain coverage from a different company. The premium quoted was about the same amount of money I made from my practice in the previous year, so I did not obtain that coverage.

I provide needed legal services to artists, authors and small business owners with limited funds to spend on legal services. If malpractice insurance becomes mandatory, but I cannot get insurance due to my copyright practice, that means I'll have to stop practicing copyright law. The decision of whether I can continue to practice copyright law should not hinge on the unwillingness or inability of insurance companies to evaluate risks in the copyright law practice area.

Aside from depriving me of a practice area, if I am prevented from continuing to practice copyright law, the artists and authors I represent will have fewer, and probably more expensive, options for legal services.

Unless the issues I have identified can be adequately addressed by the proposed mandatory malpractice insurance program, I am not in favor of such a program.

Sincerely,
Tonya Gisselberg

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From: [Castagna, Thom](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Castagna, Thom](#)
Subject: Statement in Opposition
Date: Monday, October 15, 2018 9:36:25 AM
Attachments: [WSBA Opposition Statement 10-15-2018.pdf](#)

Attached to this email is my statement in opposition to mandatory malpractice insurance.

Thank you.

Thomas M.A. Castagna, WSBA #18231

Statement in Opposition to Mandatory Malpractice Insurance

I am opposed to requiring private insurance as a condition of practicing law in Washington. Stated simply, private insurance companies, who are driven by a profit motive, should have no say in whether an individual is permitted to practice law in Washington. That important decision should remain solely with the Washington State Supreme Court and the Washington State Bar Association.

I believe that there are two ways to do anything: the right way and the easy way. By deferring difficult issues like lawyer malpractice and lack of public notice to insurance companies, we are taking the easy way. This path may have dire consequences by creating another financial barrier to the practice of law and further limiting the access to justice of the underserved. Though more difficult, there are better ways to reach our goals.

If compensating victims of lawyer malpractice is our goal, the Client Protection Fund, which is funded by all licensed attorneys, can be expanded to include some form of compensation for victims of lawyer malpractice. If reducing lawyer malpractice is our goal, additional requirements can be placed on lawyers while in law school (through course requirements), when they take bar exam (through examination questions), and while they are members (through required continuing legal education credits). If public notice is our goal, then attorneys without malpractice insurance should be required to notify potential clients on their websites and in their advertisements, during their initial consultation, and in writing as part of their fee agreement. Similarly, attorneys with malpractice insurance should be allowed and encouraged to advertise that fact. In addition, WSBA can provide better notice through its website and other its communication with the public by highlighting attorneys who do not carry malpractice insurance and acknowledging those that do. Finally, clients play an important role and have their own set of responsibilities during their legal representation. Among others, those include selecting an attorney and understanding their role in the attorney-client relationship. We should avoid doing anything to diminish these roles and responsibilities.

If the decision is made to require some additional form of protection for victims of lawyer malpractice, I would urge WSBA to keep a few things in mind.

First, many new lawyers are graduating from law school deeply in debt and have a much lower earning capacity than more seasoned attorneys. WSBA recognizes this by lowering its licensing and CLE fees for new attorneys. Private insurance companies may not be so generous and will likely view newly licensed attorneys as a greater risk, charging them higher premiums for basic coverage.

Second, access to justice is a serious issue. Before private insurance is required, full consideration must be given to the impact it may have on our attorneys serving the underserved. This should include designated areas of law where the general population is underserved as well as attorneys who practice less than full time, and attorneys who work *pro bono*.

Finally, rather than requiring private insurance obtained through the open market, WSBA should provide basic coverage to all attorneys licensed to practice in Washington. If it does, all licensed attorneys should pay some amount, thereby spreading the cost. Rather than exempt anyone from coverage, reduced rates be provided to certain groups like newly licensed attorneys and part-time attorneys (due to their limited earning potential), government attorneys (due to their limited risk), and attorneys serving or providing *pro bono* legal services to the underserved (to encourage service in these areas). Many attorneys would want additional coverage through the open market and should be encouraged to get it. Those that do should be able to highlight that fact in their advertisements as well as on the WSBA website.

Thank you.

Thomas M.A. Castagna, WSBA #18231

From: Carol Nottenburg <carol.nottenburg@cougarlaw.com>
Sent: Monday, October 15, 2018 2:50 PM
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory insurance remarks

I am one of the 15% (?) who do not carry malpractice insurance. In the past, I considered obtaining coverage, investigated options, and elected to go without. At that time (about 8 yrs ago), my patent practice was about 50% of total and research the other 50%. Only one insurance company would cover a part-time patent practice, and the cost was prohibitive with low limits (less than \$1 million aggregate).

Since the interim report on mandatory insurance has come out, I have once again explored options. My current situation is one of semi-retirement. The best quote for \$1 million aggregate is over \$3000 / yr. It raises the cost of doing business for me to an unacceptable level. If insurance becomes mandatory, my best option is to fully retire, although it would hurt to give up the income.

Given mandatory insurance, will that mean that I can no longer provide legal advice to anyone? Including friends and family and people in need? There have been times that I've formed such attorney-client relationships to provide advice. I presume that attorneys in firms that have insurance will have the same issue and can't form any attorney-client relationship outside the firm, because the individual attorney doesn't have insurance.

In addition, because the Bar Association isn't offering insurance, we have to turn to the private market. In my case, because my practice is patent law, there is very little choice of providers as well. I find it objectionable that WSBA (or a government) forces individuals to buy from private, for-profit companies. If WSBA wants to force and enforce mandatory insurance, it should be available directly from WSBA.

Sincerely,

Carol Nottenburg

carol nottenburg phd jd
cougar patent law
renton wa 98057
206-860-2120

From: Michael Cherry, WSBA Governor, District One

To: Mr. Hugh Spitzer, Chair, Mandatory Malpractice Insurance Task Force

Date: October 16, 2018

Re: Questions Regarding the Mandatory Malpractice Insurance Task Force, Interim Report to Board of Governors, July 10, 2018

Having reviewed the interim report, I have a few questions I am sure the task force can answer. Many questions may not be new; however, I am struggling to find the answer in the report or previous materials as there are few citations or hyperlinks in the report to underlying data. Therefore, I apologize in advance if this is information I should have been able to locate.

In addition, I should begin by saying I have malpractice insurance and am uncomfortable that any attorney would not have such insurance. Despite having insurance, I still worry I do not have adequate coverage for the work I do or if I make a claim it might be denied. However, before I am comfortable forcing individuals to have insurance, I need to better understand the problem and the recommended solution.

Also let me apologize in advance for the length of this memo. The subject is complex, I find it hard to communicate my concerns with this matter, and I want to provide enough background with my questions and my attempt to interpret the report so you can understand where my confusion lies. I am a data driven person, and I am not finding sufficient data in the report to support its conclusions.

My questions fall into these areas: Cost of Coverage, Financial Impact, Exemptions, Malpractice Insurance Market in Washington, and Other Means to Accomplish the Goal.

I respectfully submit these questions for your consideration, and I thank you in advance for your attention to my concerns.

COST OF COVERAGE

I cannot find an estimate of what the average attorney might pay, in Washington state, for the mandated coverage, based on the attorney's practice area. The report recommends "Minimum coverage levels should be mandated, e.g. \$100K/\$300K, \$250K/\$250K, \$250K/\$500K, or \$500K/\$500K."¹ While the report does not define the format of these numbers, my understanding the first number is the coverage per claim, and the second number is the aggregate payable for all claims (maximum coverage). But I am not sure which of the four the task force recommends.

The report indicates in Idaho the average premium "was approximately \$1,200."² This appears to be for newly issued to solo practitioners, but it is not clear for what level of coverage (per claim and in the aggregate) or for which practice areas.³

¹ Page 10, bullet item 4.

² Page 4, Item 11.

³ Page 5, Item 19 suggests it might be for \$100K/\$300K.

Finally, the report quotes the ABA and ALPS without citation as suggesting the following practice areas have the highest incidence of claims, and therefore I assume, the highest rates for insurance: personal injury, real estate, family law, estate planning, certain (unnamed) corporate practices (patent?), and collection/bankruptcy.⁴ Therefore, the factors that determine the rate appear to be experience (years licensed), practice area, and amount of coverage desired.

Did the task force survey any insured Washington state practitioners to determine what they pay for coverage, by experience, practice area, and coverage amount to determine an average rate for Washington attorneys?

Did the task force survey insurance providers, writing policies in Washington state, for an estimated average cost for coverage, by experience, practice area, and coverage amount to determine an average rate for Washington attorneys?

If the task force assumed Idaho and Oregon provide adequate models for Washington costs, what factors about the legal profession in those states support the assumption?

My assumption from reading the report is that the task force based on data from Idaho and Oregon, feels the costs of mandatory malpractice insurance are insignificant. If the task force is making the recommendation based on that assumption, I am not comfortable with their recommendation.

FINANCIAL IMPACT

I cannot find an estimate of the financial impact on an attorney, of mandated malpractice insurance. I am concerned that the task force, concluding the cost was insignificant, assumed the financial impact was also insignificant.

The financial impact to a large extent will hinge on whether legal fees are elastic in Washington state market for legal services. Elasticity refers how much an individual or a consumer changes their demand for a product or service in response to price changes.

Again, the task force's conclusion appears to be that the cost to an attorney or firm is minimal. However, the committee appears to accept that rates would increase by 15% per year.⁵ It is not clear if this increase accounts for these factors: the attorney has a bigger pool of potential claimants, inflation and other general cost increases, offset by the lawyer's potentially improved skill. A 15% increase over six years⁶ takes the assumed \$1,200 per year to \$2,414 (a 50% increase).

Year	Rate	15%
1	\$ 1,200.00	\$ 180.00
2	\$ 1,380.00	\$ 207.00
3	\$ 1,587.00	\$ 238.05
4	\$ 1,825.05	\$ 273.76
5	\$ 2,098.81	\$ 314.82
6	\$ 2,413.63	50%

⁴ Page 4, Item 5.

⁵ Page 4, Item 11.

⁶ Id. Stating full maturing at six years.

Does the task force believe an attorney can increase fees over the six years to cover the 50% increase in insurance costs?

Does the task force believe that fees for legal services are going up in today's market, or does the task force believe market forces are pushing such fees down?

By not addressing this issue, is the task force suggesting that legal fees are elastic—an attorney can add the cost of insurance to their fees—and the market will accept the increase?

This assumption would not seem supported by either the survey of unmet legal needs in Washington or the access to justice issues low-income clients are facing. Is there a danger that the law of unintended consequences could come into play where helping the public by providing coverage for attorney mistakes, reduces the affordability of legal services to the public who can least afford hire an attorney? If so, does the task force have any data to determine which over time, is the better outcome?

I have found no data in the report to determine the impact on attorneys, especially solo and small practitioner's ability to spread the costs of malpractice insurance coverage to their clients, on the effect of mandatory malpractice insurance on the profitability of the attorney's practice, or the effect of mandatory malpractice insurance on potential client's ability to access affordable legal services.

EXEMPTIONS

In the recommendations, the task force concludes several categories of attorneys should be exempt but does not provide any rationale for the exemptions.⁷ The conclusion states: "Lawyers make mistakes. A license to practice law is a privilege, and no lawyer should be immune from those mistakes."⁸

Again, the task force appears to follow Oregon. It recommends exemptions for government attorneys, in-house private company lawyers, attorneys providing services through non-profit entities, including pro-bono services, retired attorneys, full-time arbitrators, and judges and law clerks.

Does the task force believe attorney's in these categories are somehow better attorney's or any harm they might do does not harm clients?

The report indicates that non-profit organizations providing pro-bono frequently provide malpractice insurance for participating attorneys.⁹ Frequently is not defined.

If malpractice claims are rare against these exempt lawyers, then actuarial experts can consider this in setting rates for their coverage. If malpractice insurance is mandatory then it is mandatory. Exceptions, which should be few, should require proof of no risk to clients or proof of insurance (or adequate funds available if self-insuring).

⁷ Page 10, bullet item 5.

⁸ Page 8, paragraph 2.

⁹ Page 5, item 14.

MALPRACTICE MARKET IN WASHINGTON

I find little analysis of the insurance market for malpractice insurance in Washington. I have been told by two people that ten companies may be admitted and there may be other non-admitted malpractice insurance providers. My gut feeling is that mandatory malpractice insurance is effectively handing this industry a defacto monopoly.

Admittedly, WSBA cannot force the industry to do anything, it is beyond our role. However, this does not mean the task force should not study the industry and its processes and policies, understand the impact of mandatory malpractice insurance on the market, and if necessary work with the insurance commissioner on any needed reforms or changes.

Did the task force consider the impact of mandatory insurance on the industry?

Does the task force anticipate rates will go down because the pool of insured attorneys will be greater?

Does the task force suggest claims will go up?¹⁰

Did the task force examine existing policies to ensure such policies are in line with the task force's goals to ensure the public is protected, or do the policies' exclusions and limitations undermine the goal?

Did the task force consider whether the malpractice insurance providers can do a better job in defining the risk categories or practice areas to accommodate changes in the legal services market? For example, should cybersecurity policies be an additional rider to a policy, or with so many attorneys storing documents on hosted servers (the cloud) and using the Internet to communicate, should this risk just be factored into regular coverage of all policies today?

Did the task force consider whether the malpractice insurance providers could do a better job of writing understandable policies, so an attorney need not become an insurance expert to know what coverage they have?

The task force notes that in Idaho, no attorney has yet reported an inability to obtain the required insurance.¹¹ Theoretically, a policy is always likely available—Lloyd's will insure almost any risk—the real issue is an affordable policy.

Did the task force consider whether an attorney, who is not incompetent, but rather, works in a particularly risky pool, could be constructively disbarred, because no malpractice insurance provider will write an affordable policy?

OTHER MEANS TO ACCOMPLISH THE GOALS

The most concrete data in the report address solos and small firms. The report concludes we are the problem. We are the most likely to be uninsured.¹²

¹⁰ This is hinted at on page 7, item 8 "...instances of worthy claims that they must reject for representation because the defendant lawyer is uninsured, making a recovery less likely."

¹¹ Page five, item 19.

¹² Page three, item three.

We create a disproportionate share of malpractice claims.¹³ We generate the most misconduct grievances and disciplinary actions.¹⁴

Malpractice insurance addresses a harm after it has occurred. It attempts to—but cannot make the injured party whole. This is like having a bad feature in software that no one understands how to use and solving the problem by writing a help file or manual. It’s better to fix the root cause of the problem rather than address the symptoms after the fact.

Solo’s and small firms are not going away. Analysis of the Washington State Bar Association (WSBA) Demographic Reports from 2011 to 2017 shows a 47% increase in the number of attorneys working in solo practices or as solo practitioners in a shared office.¹⁵

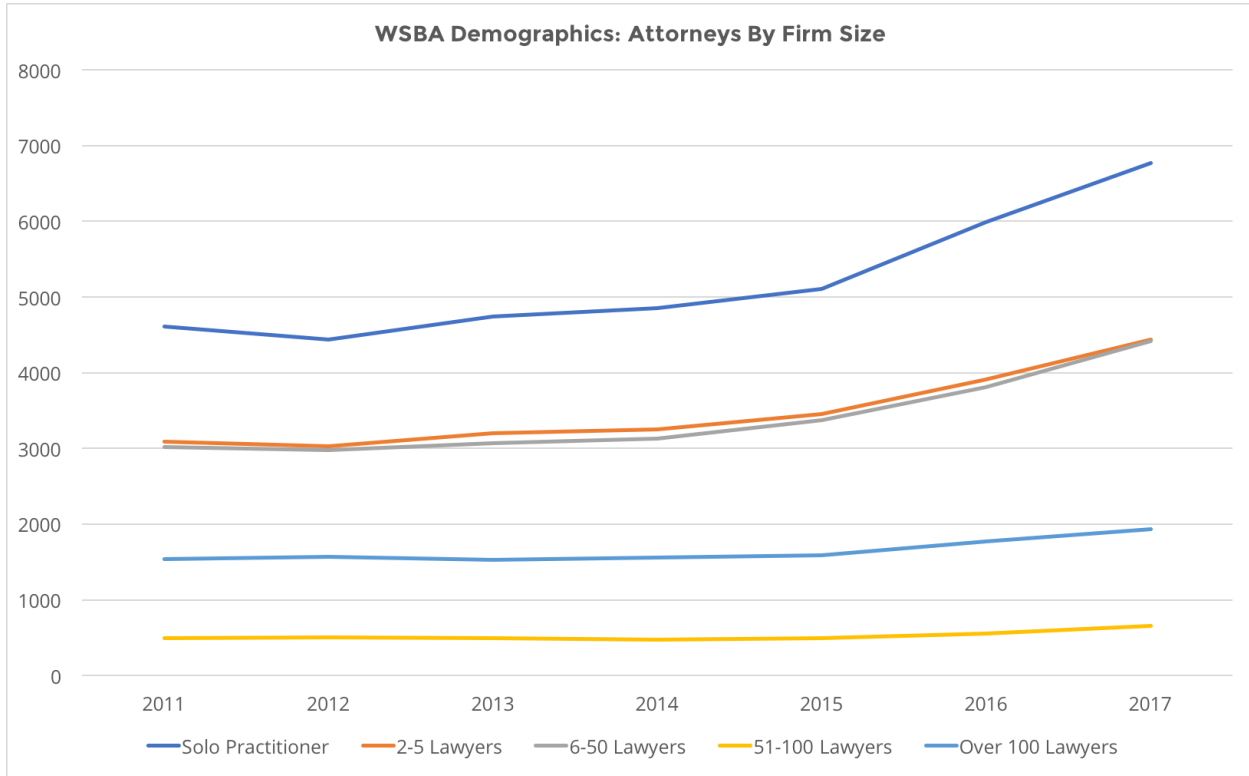
The WSBA demographic statistics also show a slight increase in the number of attorneys working in law firms with two to five lawyers. The number of lawyers working in mid-size (6 – 50 lawyers) and larger firms (51 – 100 lawyers) has remained relatively static. Based on the 2017 WSBA demographic statistics, there are 6,772 attorneys with Washington State Bar licenses working as solo practitioners and 4,443 attorneys working in firms of 2-5 lawyers.¹⁶

¹³ Page four, item four.

¹⁴ Page four, item six.

¹⁵ WSBA Demographic Report, 1/3/2017, available at http://www.wsba.org/~media/Files/Licensing_Lawyer%20Conduct/Membership_Info%20Data/CountDemo_20170103.ashx, (last visited Mar. 28, 2017) (Statistics were calculated from previous annual reports collected by author, and are on file with author.)

¹⁶ *Id.*



WSBA Demographics: Attorneys by Firm Size
Solo Practitioner (top), 2-5 (second), 6-50 (third), Over 100 (fourth) and 51-100 (bottom)

American Bar Association (ABA) U.S. law graduate employment data for law school graduates for the class of 2015 shows the addition of 688 new solo practitioners as of March 15, 2016. This report also shows 3,871 law school graduates were unemployed or still seeking employment.¹⁷ Some percentage of the unemployed graduates will likely practice as solo practitioners and others will likely seek employment outside the legal services market.

The increasing number of attorneys practicing as solo practitioners in Washington state may be an artifact of the economy in Washington state. The booming tech industry is seeing many technology firms opening engineering centers in Washington, and besides bringing technical employees, there is an influx of attorneys from other jurisdictions.¹⁸

Experienced attorneys coming into Washington State chasing technical jobs migrating from Silicon Valley and other states are joining larger firms. If this is happening, then it may

¹⁷ 2015 Law Graduate Employment Data, Apr. 26 2016 (from school reports of the class of 2105 as of Mar. 15, 2016), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2015_law_graduate_employment_data.authcheckdam.pdf, (last visited Mar. 28, 2017) (Again, statistics were calculated from previous annual reports collected by author, and are on file with author.)

¹⁸ Josh Lipton, Morgan Brasfield, *Silicon Valley Techies Are Fleeing to Seattle*, CNBC TECH, available at <http://www.cnbc.com/2017/03/17/silicon-valley-tech-talent-fleeing-to-seattle.html>, (last visited Apr. 19, 2017).

reduce the number of new attorneys these firms will hire, pushing more inexperienced attorneys into solo practice.

Another survey, conducted by Robert Half Legal, a lawyer placement firm, asked attorneys working for medium and large law firms, “If you had the necessary capital, would you start your own law firm?”¹⁹ In 2005, approximately 5% of the attorneys who responded answered ‘yes’. In 2016, the affirmative responses hit 23%. The increase in attorneys willing to strike out on their own reflects two trends. More attorneys are dissatisfied with job prospects and working conditions in large law firms, and technology, including hosted services such as Office 365 are reducing the costs of establishing a solo practice or small firm.

Admittedly, as with addressing insurance industry issues, addressing the root causes of solo and small practice problems is outside the scope of the task force.

However, did the task force consider any changes to rules that would allow solo’s and small firms to better collaborate and work together, to improve the quality of the legal services they provide, without running afoul of rules of professional conduct, such as Rule 1.5 Fees?

Removing barriers to solo’s and small firms collaborating may address the root causes better than mandatory malpractice insurance. Allowing attorneys to work collaboratively in a “virtual firm or relationship” in the same manner software architects, developers and UI designers come together as individuals to develop apps, might go a long way to improve the quality of legal services.²⁰

CONCLUSION

The task force outlined several alternatives in the report.²¹ It appears to have blended these alternatives for its final recommendation.

Despite my personal inclination to support the recommendation, I cannot support it without answers to some of my questions.

I could at this time, support alternative three: Implement more extensive malpractice insurance disclosure requirements. Educating the public on why they should select an attorney, or at least educating clients on why they should add insurance to their criteria in selecting an attorney, combined with disclosure, might close the gap in uninsured attorney’s without having to resort to mandatory insurance.

¹⁹ Aebra Coe, *More Lawyers Willing to Go Solo in 2016, Survey Finds*, LAW 360, available at <https://www.law360.com/articles/798679/more-lawyers-willing-to-go-solo-in-2016-survey-finds> (subscription required, last visited Apr. 19, 2017).

²⁰ I have a paper on this subject written for an ethics class for my LLM if the task force has any interest in exploring this concept.

²¹ Page 8 and 9, items 1 through 7.

From: [Dylan Doty](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Malpractice Requirement Questions
Date: Monday, October 15, 2018 4:35:11 PM

Good afternoon,

Under the new rules being contemplated, I am curious whether I would fit any potential exemption. I maintain my bar license, but do not currently have malpractice insurance. My business is that of governmental consulting (i.e., lobbying), and I do maintain a professional liability policy for that business.

Question 1: If I want to continue keeping an active license, but do not engage in the private practice of law, would I still be required to obtain legal malpractice insurance?

Question 2: If the answer to Question 1 is no, but I decide to engage in a limited private practice for family/friends, would I then be required to obtain legal malpractice insurance? (Ancillary question: would there be a cutoff for number of hours, or other such benchmark that would trigger the need for malpractice insurance?)

I am inclined to suggest an exemption for those who want to keep an active license but do not engage in the practice of law, or would only do so for a small set of family or friends.

Thank you for your consideration.

Dylan
WSBA #41799

--

[J. Dylan Doty, Esq.](#)
[Doty & Associates, Inc.](#)
[206-790-6492](#)
www.DotyAssociates.net

From: [Three Pines Law](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments for Forum
Date: Monday, October 15, 2018 10:59:49 PM

Hello:

It was unclear from the task force website whether comments submitted prior to the forum would be raised by the committee for discussion, or if only those registered to speak could raise comments. In the event that the former applies, I am submitting a comment posed for discussion/clarification during the forum; I do not plan to speak during the forum. This comment is related specifically to statistical support for Interim Report findings.

I will submit these comments again in a formal letter to the task force along with other comments, after the forum.

COMMENT

Please provide more information on statistics used to support the conclusion that malpractice insurance should be mandated primarily because of solo and small firm practitioner liability. As presented in the Key Findings, your statistics are highly misleading.

Key Findings #2 and #3 - You report that only 14% in private practice are uninsured. From Key Finding #3, you then state that 28% of solo practitioners are uninsured. How do these two statistics correlate? Do we interpret your findings as 28% of the 14% are uninsured? If so, this conclusion would be very statistically insignificant and cannot support any recommendation for mandatory insurance based on the public risk posed by uninsured solo practitioners. More information is needed here to link your findings.

Key Finding #3 - Similarly, the statistic that 28% of solo practitioners do not carry malpractice insurance is completely irrelevant. So what? This information has no meaning unless it is compared to a statistic describing what percentage of this 28% group has had claims requiring the expense of a defense.

In other words, if only 1% of the 28% of uninsured solo practitioners have had claims brought against them, then, again, the data are statistically insignificant and cannot possibly support the conclusion that solo practitioners pose the greatest risk to protecting the public. On the other hand, if 90% of the 28% of uninsured solo practitioners have had claims brought against them, then the data are more statistically important, but maybe not enough to warrant mandatory insurance since 28% overall is only 1/4 of all Bar members.

Key Finding #4 - You conclude that solo and small firm practitioners represent a disproportionate share of malpractice claims, *but you provide NO evidence that this statement is true for members of the Washington Bar*. Your conclusions are supported by national data only. This key finding provides dollar expenditures in Oregon suggesting that solo firms are the most costly in terms of claim defense. But, this dollar amount has no context because it is not related to the total percentage of all solo practitioners in Oregon. For example, was \$6.5 million expended on only 10% of all the solo practitioners in Oregon in 2015? If so, this is, again, an insignificant percentage. Further, how does Oregon Bar expenditures relate to Washington Bar expenditures for solo practitioners?

Key Finding #6 - Finally, you conclude that "most attorney misconduct grievances and disciplinary actions involve solo and small firm practitioners." Why? Likely it is because clients can easily target their solo attorney and are less likely to take on the "deep pocket" of a large firm. More importantly, this is another misleading conclusion because, even if true, it means nothing without supporting data indicating what percent of solo and small firm practitioners in the WSBA have had to defend claims of misconduct.

Summary Point - If you intend to penalize the majority of solo practitioners who are practicing responsibly with a substantial, mandatory fee, you must support your rationale for doing so with reliable and valid statistics applicable specifically to WSBA conditions. None of the key findings provide such data, rather they present data in a misleading manner because, on their face, they seem significant and inflammatory, but they are merely single data points with no relevance since they lack comparative data.

Thank you for considering this comment and for conducting the forum.

Kate Hawe

Kate M. Hawe

Owner

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Providing legal and regulatory consulting services to the natural resources client

Licensed attorney in Washington State and Oregon State

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From: dirk.ehlert
To: [Mandatory Malpractice Insurance Task Force](#)
Date: Tuesday, October 16, 2018 9:24:21 AM

Thank you for your advice on this potentially significant change. I understand the reason for this inquiry and the preliminary recommendation.

That said, it will impose a level of cost and detail that some of us prefer to avoid.

I have been licensed to practice since 1973. For nearly all of those years, I have enjoyed an AV rating by MH. In those 40+ years, the only instance of a claim against me was frivolously asserted by a non-client and it was voluntarily withdrawn after a couple of phone calls.

I always maintained malpractice coverage while I had a general, traditional private practice. I closed my downtown office effective 12/31/2016, and now continue to provide transactional advice and services for just 2 long-time clients. I do not advertise for, or seek, new clients. I am not, and will not be, involved in adversarial work or what are typically considered higher risk practice specialties.

If this does become a licensing mandate, I hope that the Bar will likewise provide a user-friendly clearinghouse for cost-effective coverage.

William Dirker (Dirk) Ehlert
WSBA # 4588.

Sent from my T-Mobile 4G LTE Device

From: [Jason Scott](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Fwd: Mandatory Malpractice Insurance Task Force information and open forum Oct. 16
Date: Tuesday, October 16, 2018 1:01:22 PM

Dear Task Force:

I'm writing in response to the below email regarding what appears to be the imminent implementation of a mandatory malpractice insurance requirement. I haven't researched the issue enough to know whether the pros outweigh the cons of requiring mandatory malpractice insurance, but I'll simply discuss my situation and what mandatory insurance will mean for me, and probably some others in my situation.

After a short stint at a law firm, then as a solo practitioner (who purchased malpractice insurance) following law school and passing the bar, I have been working for the past twelve years for a real estate investment company, largely in a non-legal capacity. On rare occasion, I'll serve as in-house counsel, but I don't need to do so. If the only benefit of maintaining my license to practice law was to perform legal work for my company, I would have saved the money from my bar dues and CLE classes and given up my active license years ago.

I keep my license to practice law for the ability to handle the rare case referred to me, usually pro bono, or matters with which friends or associates ask for help. Moreover, I stay active for the possibility that when I "retire" from my current job, I'll have more time to take on the occasional pro bono case, and perhaps even get back into practicing law. I have not purchased malpractice insurance since leaving my solo practice because of such a minimal caseload.

From reading the Task Force's Interim Report, it appears I can probably go without malpractice insurance due to my nature as, arguably, in-house counsel for my business, but I will probably not be able to take on the rare family/friend or pro bono case that I have in the past, unless I purchase malpractice insurance, which will not make any sense for me, given the minimal amount of client work I perform.

Perhaps I am in a tiny minority of lawyers, but I feel it would be a shame if those in my situation, who, for the most part, are non-practicing on a daily basis, must decide to "retire" because the cost of insurance outweighs the lack of income from helping so few clients or doing largely pro bono work. I would encourage the Task Force to, at minimum, come up with a system where attorney's can do pro bono work without malpractice insurance, and ideally one where attorneys can help a certain number of paying clients before triggering an insurance requirement.

Thank you,

Jason Scott
WSBA #35870

----- Forwarded message -----

From: **Washington State Bar Association** <noreply@wsba.org>
Date: Thu, Oct 4, 2018 at 4:49 PM
Subject: Mandatory Malpractice Insurance Task Force information and open forum Oct. 16
To: <jasondscott@gmail.com>

Washington State Bar Association



Have you heard? The Mandatory Malpractice Insurance Task Force issued an interim report in July with a tentative conclusion that malpractice insurance should be mandated for Washington-licensed lawyers, with specified exemptions and minimum coverage levels. We are reaching out directly to you because you are registered with WSBA as not currently having professional liability insurance, and we want to make sure you are aware of the process and are able to provide feedback.

Background

The Washington State Bar Association Board of Governors formed the task force in September 2017 to collect input and examine current mandatory malpractice insurance systems in other jurisdictions. The task force will use this information to determine whether to recommend mandatory malpractice insurance as a requirement for licensing. Task force members expect to make a final recommendation to the Board of Governors in January 2019.

More information

- [Mandatory Malpractice Task Force informational brochure](#)
- [Task force website](#)
- [Interim report](#)

Provide feedback

- Open forum: All WSBA members are invited to provide feedback directly to task force members from 2-3 p.m. on Tuesday, Oct. 16, at the WSBA Conference Center (telephone participation will be available).
- Comments and questions can be directed to insurancetaskforce@wsba.org and will be provided to the entire task force.

Task-force members want to hear from you so their final report is responsive to members' concerns and expertise. Thank you.

WSBA seal



Washington State Bar Association

1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539 | [Map](#)
Toll-free: 800-945-9722
Local: 206-443-9722



Official WSBA communication

All members will receive the following email, which is considered official:

- Licensing and licensing-related materials
- Information about the non-CLE work and activities of the sections to which the member belongs
- Mandatory Continuing Legal Education (MCLE) reporting-related notifications
- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications

From: [Ted Gathe](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance Proposal
Date: Tuesday, October 16, 2018 1:21:26 PM

TO: Washington State Bar Association Mandatory Malpractice Task Force

FROM: Ted H. Gathe, Bar No. 5632

RE: Comments on Task Force Interim Report

DATE: October 16, 2018

I have been a member of the Washington State Bar since 1974. I spent over 30 years working as an attorney for local government- 20 of those years as the Vancouver City Attorney. I retired from the City four years ago but continue to practice law on a part time basis. I provide low cost or no cost legal services to several charitable nonprofit entities in this region including the Columbia Land Trust, the Clark County Historical Society, the Jane Weber Arboretum and the Vancouver Housing Authority where I provide general counsel services in support of low income housing projects.

I am a sole proprietor with a home office. When I retired from the City, I explored the cost of legal malpractice insurance. Because of my status as a semi-retired sole proprietor, the cost of even modest malpractice insurance was outrageously expensive. If mandatory malpractice insurance is required in Washington and I am not exempt from that requirement, my only choice will be to close down my largely pro bono practice and resign from the Bar. Since the WSBA encourages its members to provide pro bono legal services and recognizes and provides awards for such services, it would be ironic indeed if the mandatory malpractice requirement results in attorneys such as myself ceasing to provide free or low cost legal help.

The Task Force Report refers to the possibility of adopting exemptions to mandatory insurance similar to those established by the Oregon State Bar but it is far from clear whether such exemptions will be provided to certain WSBA members. I ask you to please include exemptions for attorneys such as myself so we can continue to these much needed legal services.

From: [Laura Umetsu](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Questions for task force
Date: Tuesday, October 16, 2018 2:07:24 PM

I practice with low income women providing free and low cost representation to domestic violence survivors. Although I will have an insurance policy this upcoming year, the annual fee is far less than the proposed \$3000+ a year member pool fee. I was worried about a mandatory malpractice insurance of \$3000 would likely either put me out of practice or I would have to stop helping this vulnerable group of people. Exemptions for attorneys who report a percentage of total practice hours pro-bono? Attorneys who don't practice full time?

Laura Umetsu
Attorney at Law
Ph: 206-949-2453
Fax: 206-212-8602



www.lauraumetsu.com

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From: [cabu](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Questions and Concerns Re Mandatory Malpractice Insurance
Date: Tuesday, October 16, 2018 2:13:56 PM

There is no ethical reason to coerce attorneys to purchase malpractice insurance. Arizona does not have a mandatory malpractice insurance requirement.

Mandatory malpractice insurance would place an extra financial burden to currently unemployed attorneys. Would unemployed attorneys be exempt from the requirement? Would unemployed attorneys lose their license if they could not afford mandatory malpractice insurance? If financially strapped attorneys could not afford mandatory malpractice insurance and thus could not practice law, would that be in effect a taking of their license?

Would attorneys who volunteer be required to carry malpractice insurance when they are not reimbursed for their services? What affect would a mandatory malpractice insurance requirement have on pro bono?

Mandatory malpractice insurance could price attorneys out of the legal practice or force attorneys to leave Washington for states that do not have that requirement. Mandatory malpractice insurance is only a revenue booster for the insurance companies.

I strongly urge the Malpractice Insurance Task Force not to make malpractice insurance mandatory. The legal profession should not coerce its legal members to buy insurance.
I would appreciate a written response to my concerns. Thank you.

Sincerely,

Carolyn Fritz

From: [Rachel L](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments and questions
Date: Tuesday, October 16, 2018 2:25:03 PM

Hello:

Thank you for having an email address to receive comments and questions.

Would there be any exemptions for lawyers who provide contract work, who work with temp agencies, and who do not practice full-time, but rather practice from time to time, as work becomes available?

The expense of malpractice insurance could be overly burdensome in these circumstances.

Thank you,
Rachel Levine

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From: [Thomas More Kelleher](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Professional Insurance (second email)
Date: Tuesday, October 16, 2018 2:29:27 PM

To whom it may concern:

I will be 73 years old next month. I have been retired for around 6 or 7 years, and I have ceased carrying insurance. I supplement my income by being on the list as a Pro tem judge in the Spokane County District Court system, and have been so for many years. In order to do this Pro tem work, I am required to remain current as a member in good standing in the WSBA. Over the past number of years I have averaged about \$4,000.00 to \$5,000.00 a year as a Pro tem judge. That income basically pays my car payment and auto insurance.

I cannot imagine ever being sued working as a Pro tem judge, unless perhaps I were to hit someone. But that would not happen and certainly it would not be a professional liability claim.

I have never been sued for professional malpractice and I have never anticipated ever being sued. I do maintain an IOLTA account, but all I have in it are funds that I have not been able to trace the clients or to whom are entitled to the funds, from over 30 years of practicing in Washington. My honest opinion is that most, if not all, are funds that are owed to me, but I would not do anything to use those funds. The account has remained a few dollars under \$200.00 for many years. Some years ago I was able to trace where \$50.00 was owed to a client and I immediately sent the money to him. It surprised him and he immediately called me and told me that I should have just kept it. I informed him that would never happen.

If I were still accepting clients where trails or long complicated matters were anticipated, I would have kept up my insurance coverage. To the contrary, I have turned down many people requesting my help in personal injury cases and I tell them that I am no longer accepting cases and that I have no staff to handle such matters; and, usually give them some names they may consider contacting, if they wish.

I have had friends ask me to do a simple will, community property agreement or a statutory health care directive. I have done very few of them, and it is never on a day to day basis. Many times I charge nothing. Sometimes I accept very little money, because many times my friends feel more comfortable asking me do the work. I will not do any trust work. Also, I have accepted a few very simple probate estates after determining that they will involved mainly filing some court documents and quick closure. I have no current probate estates opened and it has probably been around two years or so since I have had an opened probate file. As far as my income this year from sources other than the District Court Pro tem income, it would probably be in the \$300.00 range.

If it means that I must stop accepting money doing anything, other than the Pro tem work, I would gladly do it. It would be a hardship for me to have to pay a professional liability premium.

Thank you for your consideration,

Sincerely,
Thomas More Kelleher WSBA # 12456

From: [Julie Sevenich](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments opposed to insurance requirement
Date: Tuesday, October 16, 2018 2:30:10 PM

I do not actively practice law at this time, however, I do not want to be forced to resign from the bar because of a requirement that I am required to purchase malpractice insurance. It is already reasonably expensive to maintain our licenses to practice law with the dues and continuing legal education expenses. Adding a malpractice insurance requirement could force attorneys with active licenses, but who are not really practicing, or are retired (or semi-retired), to resign from the Bar.

Property Services, Inc.

Julie

Julie A. Sevenich
President/Attorney/Broker
WSBA# 9583
10604 Riviera PI NE
Seattle, WA 98125
206 999-9315
sevenich@frontier.com

From: [Steve Miller](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Proposed mandatory insurance comments
Date: Tuesday, October 16, 2018 3:35:22 PM
Importance: High

Have you considered a situation where a small or solo-practitioner law firm located out of Washington State has a single corporate client in Washington State...would this situation essentially similar to an exemption for “in-house” counsel. The only difference is “in-house” counsel is an employee with an IRS W-2 at the end of the year, and an ‘outside’ small/solo practitioner law firm only practicing law in Washington State for a single corporate client gets an IRS 1099 at the end of the year.

Therefore, if there is a proposed “exemption” for “in-house” lawyers from obtaining malpractice insurance, should there also be an exemption for a small or solo practitioner law firm with a single corporate client in Washington State also have an ‘equivalent’ “exemption”?

Please include this scenario in you proposed exemptions?

Thank you.

Steven J Miller, Esq.
The Miller Law Offices PLC
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From: [Questions](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: FW: Attorney Matthew S. Woods re: recent malpractice insurance discussion
Date: Tuesday, October 16, 2018 3:45:12 PM

Feedback, tis team?

Kris McCord | Service Center Representative
Washington State Bar Association | 800.945.9722 | krism@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

From: Matthew Woods [<mailto:mattwoods@mwlawofficepllc.com>]
Sent: Tuesday, October 16, 2018 2:33 PM
To: Questions
Subject: Attorney Matthew S. Woods re: recent malpractice insurance discussion

Hello,

I am not sure where to direct this, but I want to reach out while I have a moment:
I read last month's diddy about the possibility of mandating malpractice insurance in Washington. I am in agreement with this, however, there are those attorneys out there, like me, who are trying to pay their overhead while also doing good work for our communities. I work full time as a mental health therapist and attend to my law practice part-time. Costs and expenses are huge in this situation. I do a lot of pro bono work and carefully pick other cases for fees. I like this balance--I don't have to take anything that walks through the door--but it is difficult with the expenses it takes to run a solo law practice part-time.

Peace,
matt

--

Matt Woods
MW Law Office, PLLC
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Spokane, WA 99201
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F: 1-509-357-1847
MWLawSpokane.com

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Thank you.

From: [patricia michl](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory malpractice insurance
Date: Wednesday, October 17, 2018 3:26:41 PM

I would like to submit the following comments to the Mandatory Malpractice Insurance Task Force as an addendum to my earlier comments dated 10/10/18:

1) **WHERE IS THE PROBLEM?**

Only 8% of actively practicing attorneys in Washington are uninsured. Using the Task Force's own figures there are 2,732 uninsured lawyers in Washington. 2,732 divided by 32,000 active licensed attorneys in Washington results in only **8%** of all active lawyers being uninsured. That is 8 out of 100 attorneys . . . so where is the problem? This number is a pittance and doesn't even justify the formation of a Task Force. Further, the Task Force's own Interim Report states on page 3, "The vast majority of Washington attorneys representing private clients carry malpractice insurance."

And where is the evidence that the tiny percentage of uninsured lawyers commit more malpractice than insured lawyers? There isn't any. As Professor Levin admits in the August 2018 *NW Lawyer* article entitled "Uninsured Lawyers . . . What Does the Research Tell Us?" - "We do not know whether uninsured lawyers are more likely to commit malpractice than other lawyers . . ."

And where is the empirical evidence that if uninsured lawyers do commit malpractice that the clients claiming harm are unable to collect damages? Again, there isn't any. Professor Levin in the August 2018 issue of *NW Lawyer* mischaracterizes the anecdotal case of *Schmidt v. Coogan* as one in which excessive lengthy litigation was caused by an uninsured defendant attorney. But in fact the lengthy litigation was actually caused by the exorbitant demands of the Plaintiff client and the misconduct of the Plaintiff client's attorney. And the client did collect some damages in the end. No problem has been identified that would justify imposing mandatory malpractice insurance.

2) **THE TASK FORCE IS RIFE WITH PREJUDICE AND CONFLICT OF INTEREST**

A significant number of the Task Force members came onto the Task Force with bias and prejudice towards voting "yes" on mandatory insurance. Others have a conflict of interest, for example, insurance company representatives. Still others are not in private practice and will not have to pay the malpractice insurance that they are recommending for others. They have no idea what it is like to pay rent for

office space, pay a legal staff, pay for office supplies, pay for heat and light to keep the office functioning or pay for the other multitude of expenses associated with running a law practice.

Specifically, the following Task Force members are ill-suited to be determining mandatory insurance for Washington lawyers:

- 1) Hugh Spitzer - academic, unlikely to ever have to pay mandatory malpractice insurance.
- 2) Stan Bastian - federal court personnel, unlikely to ever have to pay mandatory malpractice insurance.
- 3) **Dan Bridges - strong partisan in favor of mandatory malpractice insurance. See article in the September 2017 issue of *NWLawyer* entitled "A New Legal Standard for Attorney Malpractice." Also sits on the WSBA Board of Governors. Conflict of interest. Should not be allowed to vote on the insurance issue on the Board of Governors.**
- 4) Christy Carpenter - appears not to be a lawyer, unlikely to ever have to pay attorney mandatory malpractice insurance.
- 5) Mark A. Johnson - plaintiff's legal malpractice lawyer, may have vested interest in having insurance company's deep pocket to sue.
- 6) **Rob Karl - vice president of an insurance company, conflict of interest and unlikely to ever have to pay mandatory malpractice insurance.**
- 7) Kara Masters - practice includes working for insurance companies, business may increase with mandatory malpractice insurance.
- 8) Brad Ogura - public member, unlikely to ever have to pay mandatory malpractice insurance.
- 9) Suzanne Pierce - practice includes defense of lawyers, may benefit from mandatory malpractice insurance.
- 10) Brooke Pinkham - academic administrator, unlikely to ever have to pay mandatory malpractice insurance.
- 11) Todd Startzel - practice includes insurance defense, may benefit from mandatory malpractice insurance.

12) Stephanie Wilson - academic employee, unlikely to ever have to pay mandatory malpractice insurance.

13) Annie Yu - government attorney, unlikely to ever have to pay mandatory malpractice insurance.

NOTE: The members above in bold are especially concerning as they appear to have a significant bias or conflict of interest which likely caused them to enter the Task Force with the intention of voting "YES" for mandatory malpractice insurance.

At least **70%** of the Task Force either have prejudice or conflicts of interest. Therefore, the Task Force should be disbanded as not comporting with the statement on page 1 of the Interim Report that the Task Force "started with an open mind." Additionally, the Task Force appears to lack any uninsured private practitioners, the very group that is being targeted. Therefore, the composition of the Task Force lacks the "*appearance of fairness*" which is necessary in any state sponsored governing body. The WSBA and all of its committees and programs are state sponsored governing bodies.

3) INSURANCE COMPANY REPRESENTATIVES ON THE TASK FORCE?

I object to insurance company representatives sitting on the Task Force. The insurance company representative will have a vote and predictably that vote will be a "**YES**" vote in favor of mandatory malpractice insurance. While it is acceptable for the Task Force to seek information from insurance companies regarding insurance rates etc., it is entirely unacceptable for insurance company representatives to sit on the Task Force and definitely unacceptable for them to vote on the recommendation to the Board of Governors.

At this stage, when there is no mandatory malpractice insurance and insurance companies are eager for Washington to invoke mandatory insurance, it is reminiscent of the spider and the fly . . . "Come into my parlor," said the spider to the fly. Here, the spider = insurance companies and the fly = the small firms and solo practitioners that the Task Force is trying to force into the insurance company's web. However, once insurance is mandatory, all lawyers will be captive and all will eventually be drained by insurance companies. The public will suffer as well due to the increase in legal costs caused by the increase in the cost of malpractice insurance.

4) THE TASK FORCE ON PAGE ONE OF THE INTERIM REPORT WRONGLY CHARACTERIZES THE PRACTICE OF LAW AS A

"PRIVILEGE"

The practice of law is a **right** not a privilege. Lawyers have as much right to pursue their careers as accountants, doctors, dentists, nurses, truck drivers, waitpersons, football players, newspaper reporters etc., etc. It is the WSBA that is privileged - the WSBA is privileged to serve the 32,000 active lawyers in the state of Washington. A voluntary state bar association would definitely bring this point home to the Task Force. Pursuing your vocation is part of the guarantee in the Declaration of Independence to "life, liberty and property and the pursuit of happiness."

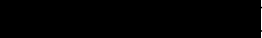
Considering the biases, prejudice and conflicts of interest plaguing this Task Force, mandatory malpractice insurance has been a **foregone conclusion** since the formation of the Task Force. Virtually no concern or consideration has been expressed for the deep pit into which the Task Force is thrusting lawyers. The only focus has been on a vague unproven sense of "risk of injury to the public."

There is no objective basis for requiring mandatory malpractice insurance. We should maintain the status quo, no mandatory malpractice insurance for Washington lawyers. Alternatively, I would support a disclosure requirement whereby lawyers would inform their clients that they do not carry malpractice insurance.

As I stated before in my original comments to the Task Force, "Welcome to the New World Order and the Task Force paved the way."

Patricia Michl
WSBA # 17058
115 West 9th Ave
Ellensburg WA 98926

From: [Amy Christensen](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: FW: madatory insurance
Date: Wednesday, October 17, 2018 7:55:28 AM

From: g m [mailto: 
Sent: Wednesday, October 17, 2018 7:49 AM
To: admissions <admissions@wsba.org>
Subject: madatory insurance

Upon receiving a recent email from WSBA regarding manditory insurance, I promptly replied with a comment (which was rejected by Microsoft's postmaster for improper address). I'm uncertain s to whether your department is the proper one to re-send said comment but, if not, please forward it to the proper department. The jist of my comment is as follows::

"RE: Should Mandatory Malpractice Insurance be required?

There are many active WSBA members, particularly older members who no longer need to maintain a full time law practice for monitary reasons, but who wish to remain active in order to provide occasional legal consultation and/or pro bono service to those unable to afford paid legal advice. It is this class of lawyers who would be most adversely affected by being required to maintain liability insurance. In my opinion, such a requirement would, not only greatly reduce pro bono assistance, but would serve to discourage older members from maintaining their memberships, thereby depriving the legal profession, and the public as a whole, of the wisdom and the legal knowledge that these older members are currently able to share.

Paul Treyz, retired district judge WSBA #16642 "

From: [Jane Swenson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Malpractice insurance
Date: Wednesday, October 17, 2018 3:04:45 PM

I am very concerned. One of the exemptions, which I don't see listed in your interim report, should be attorneys who teach college and don't practice. I teach criminal justice and business law classes at Green River College. It enhances my credibility for me to be licensed. I stay up to date in my field by getting CLEs. But I do not ever represent clients. Please make sure that that an exemption would apply. Thank you.

Sent from my iPhone

From: [Roger Hawkes](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: lawyers" malpractice
Date: Wednesday, October 17, 2018 4:02:51 PM

I am lodging my protest about requiring Malpractice insurance for lawyers. There is no need for that level of governance. It needlessly increases the cost of doing business for lawyers, which ultimately increases the cost of purchasing lawyer's services. And will probably force some solo and small practitioners out of business or into the waiting arms of bigger firms. The folks who profit from such requirements are the insurance companies, not lawyers or customers of lawyers. Let clients request that information if they are concerned; and the info is available on the Bar web site anyway. Buyers of services should be able to choose; the Bar has no business making the practice of law more expensive in this way.

**PLEASE NOTICE OUR NEW ADDRESS BELOW, ACROSS THE STREET
ALMOST FROM OUR PRIOR ADDRESS; OTHER CONTACT INFO REMAINS
THE SAME**

Roger Hawkes, WSBA 5173
19944 Ballinger Way NE
Suite 100
Shoreline, WA 98155
www.hawkeslawfirm.com
206 367 5000 voice
206 367 4005 fax

From: [John Earling](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Insurance inquiry
Date: Wednesday, October 17, 2018 4:14:00 PM

First of all, the first link in your email (https://www.wsba.org/404-error/?asperrorpath=/docs/default-source/legal-community/committees/mandatory-malpractice-insurance-task-force/malpractice-insurance_brochure_final.pdf) is broken. So you've already showed you're pretty incompetent.

Our bar dues include a significant amount for covering uninsured malpractice. How much would the dues be reduced if this proposal is put into effect? Did you even consider addressing that matter in your communication? Our unreasonably high bar dues have been an matter of concern for several reasons and efforts by a number of attorneys have been overruled. I know dozens of other attorneys and genuinely none of them is happy with the WSBA. The sheer level of incompetence and lack of self-awareness is mind-boggling. Please do better.

John Earling
WSBA 42294

From: [John Earling](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Re: Insurance inquiry
Date: Wednesday, October 17, 2018 4:16:20 PM

Clarification, the link in the email is <http://wsba.informz.net/z/cjUucD9taT0yNDQ0Mjc2JnA9MSZ1PTM3MjU1Mzg2NCZsaT0xNTk2MDM2OQ/index.html>

Still broken, but hopefully that can help your webteam fix the issue.

John

On Wed, Oct 17, 2018 at 4:13 PM John Earling <john.earling@gmail.com> wrote:

First of all, the first link in your email (https://www.wsba.org/404-error/?aspxerrorpath=/docs/default-source/legal-community/committees/mandatory-malpractice-insurance-task-force/malpractice-insurance_brochure_final.pdf) is broken. So you've already showed you're pretty incompetent.

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John Earling
WSBA 42294

From: [Julie Smith](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: A Comment on Mandatory Malpractice Insurance
Date: Wednesday, October 17, 2018 4:57:32 PM

Dear Task Force,

While I generally support the idea of mandatory insurance for private practicing attorneys, one exemption (along with generally-recognized exemptions for corporate, government, and retired attorneys) should be for those of us that do not have private clients and are not actively practicing law. Although I am not currently practicing law, I plan to keep my active license for the foreseeable future to maintain the option of returning to private practice. It would be a hardship for me to have to carry malpractice insurance in my current situation.

Thanks for your careful consideration of this comment and the larger issue,
Julie Smith (WSBA #29055)



Virus-free. www.avast.com

From: [Patricia Bosmans](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance - WSBA #9148
Date: Thursday, October 18, 2018 7:19:20 AM

Two comments:

1. I am sure you have heard this before from other members but I am semi-retired and practice from my home. I have about 6 matters pending at any one time, from personal injury claims to family matters – and by that I mean my own family – collections, traffic tickets, etc. Please do not price me out of practice. My fees for services will barely cover the cost of insurance – I don't have a firm footing the bill.
2. Have you considered holding meetings outside of downtown Seattle – there are a lot of members you need to hear from that don't practice in downtown Seattle and cannot take time to go to downtown Seattle.

Pat Bosmans
WSBA 9148

Sent from [Mail](#) for Windows 10

From: [patricia.michl](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory malpractice insurance (version #2 with corrected quote on pg 4)
Date: Thursday, October 18, 2018 11:39:12 AM

I would like to submit the following comments to the Mandatory Malpractice Insurance Task Force as an addendum to my earlier comments dated 10/10/18:

1) **WHERE IS THE PROBLEM?**

Only 8% of actively practicing attorneys in Washington are uninsured. Using the Task Force's own figures there are 2,732 uninsured lawyers in Washington. 2,732 divided by 32,000 active licensed attorneys in Washington results in only 8% of all active lawyers being uninsured. That is 8 out of 100 attorneys . . . so where is the problem? This number is a pittance and doesn't even justify the formation of a Task Force. Further, the Task Force's own Interim Report states on page 3, "The vast majority of Washington attorneys representing private clients carry malpractice insurance."

And where is the evidence that the tiny percentage of uninsured lawyers commit more malpractice than insured lawyers? There isn't any. As Professor Levin admits in the August 2018 *NW Lawyer* article entitled "Uninsured Lawyers . . . What Does the Research Tell Us?" - "We do not know whether uninsured lawyers are more likely to commit malpractice than other lawyers . . ."

And where is the empirical evidence that if uninsured lawyers do commit malpractice that the clients claiming harm are unable to collect damages? Again, there isn't any. Professor Levin in the August 2018 issue of *NW Lawyer* mischaracterizes the anecdotal case of *Schmidt v. Coogan* as one in which excessive lengthy litigation was caused by an uninsured defendant attorney. But in fact the lengthy litigation was actually caused by the exorbitant demands of the plaintiff client and the misconduct of the plaintiff client's attorney. And the client did collect some damages in the end. No problem has been identified that would justify imposing mandatory malpractice insurance.

2) **THE TASK FORCE IS RIFE WITH PREJUDICE AND CONFLICT OF INTEREST**

A significant number of the Task Force members came onto the Task Force with bias and prejudice towards voting "yes" on mandatory insurance. Others have a conflict of interest, for example, insurance company representatives. Still others are not in private practice and will not have to pay the malpractice insurance that they are recommending for others. They have no idea what it is like to pay rent for office space, pay a legal staff, pay for office supplies, pay for heat and light to keep

the office functioning or pay for the other multitude of expenses associated with running a law practice.

Specifically, the following Task Force members are ill-suited to be determining mandatory insurance for Washington lawyers:

- 1) Hugh Spitzer - academic, unlikely to ever have to pay mandatory malpractice insurance.
- 2) Stan Bastian - federal court personnel, unlikely to ever have to pay mandatory malpractice insurance.
- 3) **Dan Bridges - strong partisan in favor of mandatory malpractice insurance. See article in the September 2017 issue of *NWLawyer* entitled "A New Legal Standard for Attorney Malpractice." Also sits on the WSBA Board of Governors. Conflict of interest. Should not be allowed to vote on the insurance issue on the Board of Governors.**
- 4) Christy Carpenter - appears not to be a lawyer, unlikely to ever have to pay attorney mandatory malpractice insurance.
- 5) Mark A. Johnson - plaintiff's legal malpractice lawyer, may have vested interest in having insurance company's deep pocket to sue.
- 6) **Rob Karl - vice president of an insurance company, conflict of interest and unlikely to ever have to pay mandatory malpractice insurance.**
- 7) Kara Masters - practice includes working for insurance companies, business may increase with mandatory malpractice insurance.
- 8) Brad Ogura - public member, unlikely to ever have to pay mandatory malpractice insurance.
- 9) Suzanne Pierce - practice includes defense of lawyers, may benefit from mandatory malpractice insurance.
- 10) Brooke Pinkham - academic administrator, unlikely to ever have to pay mandatory malpractice insurance.
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I object to insurance company representatives sitting on the Task Force. The insurance company representative will have a vote and predictably that vote will be a "**YES**" vote in favor of mandatory malpractice insurance. While it is acceptable for the Task Force to seek information from insurance companies regarding insurance rates etc., it is entirely unacceptable for insurance company representatives to sit on the Task Force and definitely unacceptable for them to vote on the recommendation to the Board of Governors.

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There is no objective basis for requiring mandatory malpractice insurance. We should maintain the status quo, no mandatory malpractice insurance for Washington lawyers. Alternatively, I would support a disclosure requirement whereby lawyers would inform their clients that they do not carry malpractice insurance.

As I stated before in my original comments to the Task Force, "Welcome to the New World Order and the Task Force paved the way."

Patricia Michl
WSBA # 17058
115 West 9th Ave
Ellensburg WA 98926

From: [James Imperiale](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance Will Likely Cause Me To Turn in My WA License
Date: Thursday, October 18, 2018 7:05:25 PM
Attachments: [ILG Email Logo.pdf](#)

WA Bar:

Please take the time to consider my email. I read through the materials sent to me regarding mandatory insurance, and it appears inconsistent with the recently allowed limited law licenses. I help poor people, plain and simple. I often do so for free or at a level that keeps me near the poverty line. I thought the State created the limited law licenses in certain practice areas to help more citizens gain access to legal help at affordable rates. Mandatory insurance will create a new financial bar to assisting poor individuals. I've been a lawyer in WA for over ten years now and can count the money in thousands on one hand that I've charged. Requiring mandatory insurance will simply have me cease my pro bono efforts and likely turn in my license or become inactive for the state of WA. I don't mind doing pro bono work, but I'm not going to pay to do it.

James T. Imperiale, Esq.
CA & WA Licensed Attorney
CSB #262996 WSB #40268
131 West Fir Street
San Diego, CA 92101
PH (619)630-9615
FX (619)824-2229

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James H. Davenport

*Attorney at Law
JHDavenport, LLC*

P.O. Box 297
Buena, WA 98921
(509) 969-2141

Washington State Bar # 7879
jhdavenportllc@gmail.com

October 12, 2018

William D. Pickett
President, Washington State Bar Association
917 Triple Crown Way Ste 100
Yakima, WA 98908-2426

Re: WSBA Proposal for Mandatory Malpractice Insurance

Dear Mr. Pickett,

I write this letter in opposition to the proposal of requiring the purchase of malpractice insurance as a condition of membership in the WSBA. I have practiced law for over 40 years. I have been covered by malpractice insurance for at least 20 of those years. I have otherwise been in government practice or solo, essentially pro-bono, law practice. I have never had a claim, whether insured or uninsured. The insurance premiums have been disproportionately large. The only winners in all of it have been the insurance companies.

Has the WSBA collected any:

1. statistics on the total annual number of malpractice claims against WSBA members over any extended period of time?
2. statistics showing the number or nature of malpractice claims made against insured and uninsured WSBA members, respectively?
3. statistics on the dollar amount of collection on judgments against insured and uninsured WSBA members, respectively, found to have engaged in malpractice?
4. statistics on the number of malpractice claims related to particular forms or subject matters of practice?
5. statistics on the amount of profit (premiums paid minus claims paid) enjoyed by malpractice insurance companies doing business in Washington?

Has WSBA compared of any of the above statistics against states where malpractice insurance is mandatory”

William D. Picket

October 12

P. 2

Basing the requirement for mandatory malpractice insurance on the need to protect the public suggests that the Bar Association is not doing a good job of protecting the public through policing the quality of performance of law practitioners, so as screen out of the profession those practitioners who engage in unprofessional or low quality performance in their work. This, in my mind, is the primary function of the Bar Association.

Malpractice insurance doesn't protect the public, it protects the malfeasant practitioner. Find a different device if you want to protect the public.

Mandatory malpractice insurance will cause legal fees to increase for those who can least afford it and give incentive to the plaintiff malpractice bar.

I respectfully propose that the idea of mandatory malpractice for WSBA members be dropped. If the device must be utilized, use it as a disciplinary sanction or condition of reinstatement.

Sincerely,

A handwritten signature in cursive script that reads "James H. Davenport".

James H. Davenport
Attorney at Law

From: [Joe Scalone](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Friday, October 19, 2018 2:29:49 PM

Hello

I would like to express my opposition to mandatory malpractice insurance in cases like mine. I am licensed but do not practice. I keep my license up to date with CLEs each year but do not have clients. I work in the tech field as a manager. If I do not practice law or have clients I feel it should not be required of me to pay for and maintain malpractice insurance.

Regards

Joe Scalone
AKA Howard Joseph Scalone
Joescalone5000@live.com
(425) 213-9120

From: [Kimberly Robinson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance feedback
Date: Friday, October 19, 2018 9:33:44 PM

As many have already informed your committee, there are lawyers (like me) who are concerned about the proposed implementation of mandatory malpractice insurance because of the financial hardship for those of us who wish to retain our license but who practice sporadically, or who practice without substantial compensation. It's my hope you'll create an exception to address this kind of atypical legal practice.
Kimberly Robinson WSBA #21128

From: [Amanda Stephen](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Tuesday, October 23, 2018 2:04:40 PM

Good Afternoon –

I would like to express my opinion that there should not be mandatory malpractice insurance. While I believe that it is extremely unwise to practice law without malpractice insurance, I do not believe that it should be mandatory.

I was licensed in 2011. Since 2015, I have had my own solo practice in which I mostly do freelance legal research and writing for other attorneys. This work allows me to spend lots of time with my young children, keep my skills current, and use my very expensive law degree. But, it does not make me much money. I do have insurance but it is expensive. I do not believe that I should be required to keep this insurance.

If the task force does decide to recommend mandatory insurance, there should be a way for attorneys to purchase very low cost insurance – something less than \$500 a year. Or, have many exclusions so that people like me, who work part time and do not make much money, do not have to spend a giant chunk of their revenue on mandatory insurance. I was blown away by Oregon's \$3,500 assessment. That would literally put me out of business as I make about \$15,000 a year gross (before other expenses and taxes).

In order to keep part-time professionals engaged in the practice of law (especially women or other attorneys who choose to be part time in order to care for children), there should not be mandatory insurance.

Thank you –

Amanda Stephen
WSBA #43420

Stephen Legal Research & Writing PLLC

www.legalstephen.com
akmstephen@gmail.com
(425) 298-5509

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From: [Glade Kim Risenmay](#)
To: spith@uw.edu; john.bachofner@jordanramis.com; stan_bastian@waed.uscourts.gov; "Dan Bridges"; christy@myllit.com; gretchen@halehana.com; "Peter Grabicki"; pl.isaki@comcast.net; mark@johnsonflora.com; [REDACTED]; kara@appeal-law.com; evanm@jdsalaw.com; spierce@davisrothwell.com; pinkhamb@seattleu.edu; tstartzel@ks-lawyers.com; anniey@atg.wa.gov
Cc: [Doug Ende](#); [Thea Jennings](#); [Rachel Konkler](#)
Subject: Exemptions from Mandatory Malpractice Insurance
Date: Tuesday, October 23, 2018 3:54:35 PM

To the Chair and Members of the Mandatory Malpractice Insurance Task Force:

Thank you all for the fine work you are performing on the subject of mandatory malpractice insurance. I have reviewed the minutes from your September 12, 2018 meeting, and I agree with the logic behind each of the several exemptions you have proposed from the general malpractice insurance requirement.

I would like to suggest an amendment (or clarification) to two of your proposed exemptions. I do so, both as a matter of equity and also to avoid inadvertent non-compliance by lawyers who consider themselves retired and (generally) no longer practicing law. I suggest that you enlarge the proposed insurance exemptions for "Retired, Non-Practicing Lawyers" and for "Lawyers Not Providing Legal Services" to include the following proviso: "Lawyers will not lose their malpractice insurance exemption by providing legal services without charge for their spouses or for other close family members. For purposes of this exclusion, the term 'close family members' means those persons within the fourth degree of consanguinity of either the lawyer or the lawyer's spouse, and the spouses of such persons."

It is my experience that every licensed lawyer is asked legal questions from time to time. We all try to avoid providing "legal services" by giving legal advice in such circumstances; but it is extremely difficult to say 'No' to a close family member. Similarly, licensed lawyers are often asked to assist close family members with the preparation of wills, health directives, health powers of attorney and similar documents. A lawyer may believe that providing such assistance without charge to a family member would not constitute the "practice of law," but the courts would probably rule otherwise. The flip side of this coin is the fact that, if something were to go wrong, close family members are not likely to bring a malpractice claim against the attorney if she/he has no malpractice insurance; but they might be inclined to do so if they knew there was malpractice insurance to protect their "friendly aunt/uncle" from bearing the financial burden of such a claim. That is why I suggest that this proviso be limited to family members within the fourth degree of consanguinity. That would allow a licensed lawyer to respond to the requests of the lawyer's own children and grandchildren, the lawyer's parents and grandparents, siblings and their children and grandchildren, and aunts, uncles and cousins.

Please give some thought to this suggestion during your meetings.

Kim Risenmay

Former WSBA Treasurer and District 1 Governor

G. Kim Risenmay | 10103 167th Place NE | Redmond, WA 98052-3125

Home: [REDACTED] | Mobile: (206) 306-3918
[REDACTED]

From: [Patrick Dwyer](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Re: Mandatory Malpractice Insurance Task Force information and open forum Oct. 16
Date: Tuesday, October 23, 2018 7:51:20 PM

Colleagues

This is to provide some of the kind of feedback on this proposal which I assume you will be wanting from the Bar at large.

First permit me to state that I am categorically opposed to any such mandatory insurance program. Imposition of such a requirement upon my practice would put me out of business.

I offer two points for your consideration on this issue relative to my own practice. First, I have for years been the recipient of the highest performance and ethical ratings in the country. I have never had a claim made against me in over 30 years of practice. Second, I did for years voluntarily purchase annual coverage at ever greater rates and premium amounts, until several years ago, I literally could no longer afford them. The last quotation I received was for nearly \$20,000 (as I recall) for a solo patent law practitioner with zero claims history! I was not only outraged; I was simply unable to afford such a premium. I have no reason to imagine that premiums have declined, or will do so in the future.

Please do not make such insurance mandatory; I will be unable to practice if you do.

Best regards
Patrick M Dwyer
WSBA #17497

At 04:49 PM 10/4/2018, you wrote:

Have you heard? The Mandatory Malpractice Insurance Task Force issued an interim report in July with a tentative conclusion that malpractice insurance should be mandated for Washington-licensed lawyers, with specified exemptions and minimum coverage levels. We are reaching out directly to you because you are registered with WSBA as not currently having professional liability insurance, and we want to make sure you are aware of the process and are able to provide feedback.

Background

The Washington State Bar Association Board of Governors formed the task force in September 2017 to collect input and examine current mandatory malpractice insurance systems in other jurisdictions. The task force will use this information to determine whether to recommend mandatory malpractice insurance as a requirement for licensing. Task force members expect to make a final recommendation to the Board of Governors in January 2019.

More information

- [Mandatory Malpractice Task Force informational brochure](#)

- [Task force website](#)

- [Interim report](#)

Provide feedback

- Open forum: All WSBA members are invited to provide feedback directly to task force members from 2-3 p.m. on Tuesday, Oct. 16, at the WSBA Conference Center (telephone participation will be available).

- Comments and questions can be directed to insurancetaskforce@wsba.org and will be provided to the entire task force.

Task-force members want to hear from you so their final report is responsive to members'™ concerns and expertise. Thank you.

Washington State Bar Association

1325 Fourth Ave., Suite 600

Seattle, WA 98101-2539 | [Map](#)

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3525 SW Kenyon Street Seattle, WA 98126
Cell: 206 550-4049

US & International Patents, Licensing and Litigation



Starfish Law PLLC

Inez PETERSEN, J.D., WSBA #46213

1166 Edel Ct, Enumclaw, WA 98022-2137
Telno 425-255-5543 _ InezPetersenJD@gmail.com

October 24, 2018

BY EMAIL and USPS

Dear Governors,

I write to you today because I believe that the Interim Report from the Mandatory Insurance Task Force was not a fair, accurate, and complete treatment of the subject of mandatory malpractice insurance.

Statistics used in the Interim Report are being called into question, as well as the make up of the Mandatory Insurance Task Force itself. The suggestion has also been made that certain persons who are on the BOG and on the Task Force should recuse themselves from voting on the matter as a governor.

I have asked for a rebuttal to the Interim Report; and my entreaties have been passed around like a "hot potato."

When it comes to mandatory malpractice insurance, the emperor is wearing no clothes; and I and others of like mind would like an opportunity to "expose" this fact via a rebuttal to the Interim Report.

The fairness doctrine which is alive and well in news reporting should also apply to the subject of mandatory insurance. It is a controversial issue of importance to an estimated 30,000 active attorneys and requires discussion that is honest, equitable, and balanced. Even the attorneys who already voluntarily purchase insurance will be affected when their rates increase as demonstrated by insurance costs in Oregon.

Would you consider the BOG to be a quasi-administive board?

No matter how the BOG is classified, it should be a "neutral tribunal" when it comes to deciding whether insurance should be mandatory. Governors deserve accurate statistics and they deserve to see an honest, equitable, and balanced treatment of the subject before voting on the matter. The Interim Report is 100% in favor of mandatory insurance, using skewed statistics and offering no analysis of alternatives other than to state that *status quo* is an option.

Regarding alternatives, wouldn't it be great to eliminate altogether the alleged problem of "clients as victims" (defined as those with unpaid judgments for attorney malpractice)? Of course, we don't even know how prevalent the problem actually is that the Task Force seeks to fix by forcing insurance on 30,000 active attorneys. But there is a way to eliminate the problem by looking upstream to inform and empower the client which would eliminate the "client as victim" scenario. This would make mandatory malpractice insurance a moot issue and easily dispense with the "hot potato" objections which will grow to tsunami proportions as more and more attorneys take a breather from their demanding work schedules to realize what the Task Force has in store for them.

The easiest alternative is for uninsured attorneys to disclose this fact on their business cards, resumes, on-line persona, websites, etc. And most importantly, disclose this fact to prospective clients and include it in any written agreements for services. Through full disclosure, clients would have the choice to proceed or to find another attorney who carries malpractice insurance.

The BOG deserves to be given fair, accurate, and complete information on the pros and cons of mandatory insurance. The Interim Report does not provide this.

Please request that a Rebuttal to the Interim Report be commissioned by the BOG to ensure that when you vote on mandatory insurance, you are fairly, accurately, and completely informed. This Rebuttal should be given equal space in the *NW Lawyer*.

I also request that the approval process regarding mandatory insurance be made clear to members. With the recent State Supreme Court "governance by letter," members are not sure what the proper approval process will be . . . or should be according to the Bylaws.

Thank you for taking the time to read this letter and for considering the actions I have requested.

And won't you please share my letter with WSBA members in your geographical area? I have no way to communicate with them; but you do--and mandatory insurance will affect them all.

Respectfully,



WSBA #46213

Cell 425-255-5543

Website <https://StarfishLaw.com>

Email InezPetersenJD@gmail.com OR [REDACTED]

From: [Timothy Kosnoff](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Malpractice Insurance
Date: Friday, October 26, 2018 11:47:05 AM

Dear Committee Members,

I apologize for the delay in responding to your email request.

I am a 38 year lawyer; 32 years a member of the WSBA. In 2015, I relocated my practice to Puerto Rico. I am not a member of the Puerto Rico bar; I swerve clients on the mainland US from Puerto Rico. This is not a typical scenario for liability insurers. I found coverage for 2015. It was triple what I paid the year before when my office was located in Washington state.

In 2016, my insurance broker in Spokane informed me that the carrier was not willing to provide coverage going forward. She was unable, after considerable effort, to find a carrier willing to provide professional liability insurance. Consequently I was forced to either relocate my practice to Washington or go without it. It is the first time in my career that I have been without professional liability insurance. My solution to the issue is retirement from the practice of law should the WSBA make it mandatory. I cannot comply so I will retire.

I hope this feedback is of assistance to you.

Sincerely,

Timothy Kosnoff
WSBA #16586

KOSNOFF LAW PLLC

Mailing address:



Direct: 425-837-9690
Main: [REDACTED]
Fax: [REDACTED]
Toll free: 855-LAW4CSA

tim@kosnoff.com

www.kosnoff.com (sexual abuse in focus website)

If you'd like to connect with me on Twitter my feed is:

<http://twitter.com/SexAbuseAttys>

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From: [Randy Kasten](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments on mandatory malpractice insurance
Date: Friday, October 26, 2018 11:48:58 AM

As a Washington State bar member who is now mainly retired, any requirement for carrying malpractice insurance would be detrimental to my practice. I am currently able to do legal work for my own LLC and do occasional pro bono work. While I agree that in most situations mandatory insurance is a good idea for the practitioner and the public, in my situation the requirement would probably cause me to go inactive.

Since this would amount to taking a benefit from myself and from my future pro bono clients, I suggest creating an exception category (or categories) for persons similarly situated, or that very low cost insurance be made available for this limited type of law practice.

Thank you,

Gregory R. Kasten

From: [Harold Federow](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: interim report
Date: Friday, October 26, 2018 3:56:49 PM

I want to provide several comments:

1. Almost all your data is from the ABA. The question is whether this accurately represents the Washington experience.

2. All the data is in percentages. The important question is whether there is some estimate of the amount of malpractice in WA state? For example, if there are only 10 cases a year, this whole task force is much ado about nothing. If there are 1000 cases a year, that is a whole different story. I believe that if you don't have some sort of reasonable estimate of the actual numbers in WA, then it is hard to judge the validity of your proposal. Percentages are misleading without this underlying data.

3. I practice primarily in house. However I do have a small private practice. I have tried to obtain malpractice insurance, but cannot as my practice is too small. I have never had a complaint, either. Mine is a transactional practice and you should consider whether there is a difference in the kinds of practice that should affect any malpractice insurance requirement. In any case if you require malpractice insurance, then it seems to me you have an obligation to ensure it is available to everyone who has to get it. In my case, most of my clients tend to be starting out. I am able to charge them a lot less per hour, since I do have a full-time job, and they are thus able to afford good legal representation.

4. I do a fair bit of pro bono work, but the organizations that I work with have malpractice insurance so that it is not an issue.

So, in short, I hope whatever you decide will accommodate people in the same situation I am in.

Harold Federow

From: [TOM Stahl](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory malpractice insurance
Date: Friday, October 26, 2018 6:02:51 PM

The following are my comments to the Mandatory Malpractice Insurance Task Force:

Professor Leslie Levin's August 2018 *NW Lawyer* article entitled "Uninsured Lawyers and Professional Liability Insurance Requirements: What Does the Research Tell Us?" promotes mandatory malpractice insurance for Washington lawyers and uses the case of *Schmidt v Coogan*, 181 Wn 2d 661 (2014) as its poster child.

Professor Levin states - ". . . an uninsured lawyer [Timothy Coogan] sued the wrong party, resulting in dismissal of his client's claim. He then fought tooth and nail through two jury trials, three trips to the Court of Appeals, and two trips to the Washington Supreme Court to avoid paying a claim that an insurance company likely would have settled many years earlier."

But does this case really stand for the proposition that - if only defendant attorney Timothy Coogan had had malpractice insurance then the insurance company likely would have settled this case many years earlier?

Examining the first Washington Supreme Court ruling in this case, *Schmidt v Coogan*, 162 Wn 2d 488 (2007), we find that the plaintiff, Theresa Schmidt, slipped on some shampoo in a grocery store and that defendant attorney Timothy Coogan failed to file her case against the correct grocery store owner in time.

Theresa Schmidt then sued Timothy Coogan to try to get a recovery in damages from him that she might have gotten from the grocery store.

Theresa Schmidt demanded first \$25,533 and then later \$50,000 from defendant Timothy Coogan. Would an insurance company have acceded to these demands? Especially considering that plaintiff Schmidt had continued her shopping after she slipped and then waited in the checkout line for ten minutes before leaving the store. Later in the litigation Theresa Schmidt tried to assert a new claim for reckless infliction of emotional distress against Timothy Coogan. The Supreme Court denied the emotional distress claim as unwarranted.

At one point in the litigation the Court of Appeals dismissed the case entirely for lack of evidence of grocery store negligence. If the plaintiff had let the case go at that point, there would have been no further litigation. Yet she continued to press her claims through further appeals and another trial.

Why is Timothy Coogan characterized as stubbornly "[fighting] tooth and nail" when he defends himself, but Theresa Schmidt is not stubbornly prolonging the litigation when she continues to press her claims through further appeals and a second trial?

The trial judge set aside the jury award from the first trial and ordered a second trial due to an improper closing argument by plaintiff's counsel. This is not the uninsured defendant attorney prolonging the litigation.

Further, Timothy Coogan was represented by a law firm. If he had had malpractice insurance then he would have been represented by insurance company lawyers. Why would the insurance company lawyers view the case any differently than the Barcus Law Firm did?

In the end Theresa Schmidt collected an award from Timothy Coogan of about \$80,000. This may be more than what she would have gotten from an insurance company in this slip and fall case. But the case clearly does not stand for any proposition that damages are uncollectible from uninsured attorneys.

It should be noted that Theresa Schmidt's malpractice suit attorney, Dan Bridges, now sits on both the WSBA Board of Governors and on the Mandatory Malpractice Insurance Task Force. He will be voting as a Board member on the very recommendation that he makes as a Task Force member. Is this a conflict of interest? Especially considering that he wrote a strongly pro mandatory malpractice insurance article in the September 2017 *NW Lawyer* entitled "A New Legal Standard for Attorney Malpractice." Dan Bridge's presence on the Task Force contradicts the Task Force Interim Report statement on page one that "Members of the Task Force started with open minds . . . "

I urge that Dan Bridges be encouraged to recuse himself from the Board of Governors vote on the mandatory malpractice insurance issue.

Before the WSBA Board imposes mandatory malpractice insurance on Washington lawyers we should know what the benefits of such a coercive move would be and what the costs would be.

Specifically, we should know the following things:

What percentage of malpractice cases are filed against uninsured lawyers.

What percentage of those malpractice cases filed against uninsured lawyers are successful.

What percentage of successful malpractice suits filed against uninsured lawyers are uncollectible because of lack of malpractice insurance.

Since the vast majority of Washington attorneys already have malpractice insurance, we are only talking about a sliver of a sliver of a sliver of cases here. Likely a very small number. But the Task Force Interim Report does not have even that small number. So we have no measurable reason to impose mandatory malpractice insurance on Washington attorneys.

But even if we knew what the amount is of that small number of cases where clients might be benefited from imposing mandatory malpractice insurance on attorneys, we must still consider the costs of imposing mandatory malpractice insurance.

Mandatory malpractice insurance may become a coercive program that causes collateral damage. Insurance premium rates will likely rise when the mandatory malpractice insurance rule gives the insurance industry a captive market of attorneys. Solo practitioners and small firms would struggle and a certain amount of pro bono and low bono legal services could disappear. Poorer members of the public who make up a large part of the clientele of solo practitioners and small firms could experience a rise in the cost of legal services.

Further, the small percentage of uninsured lawyers may actually perform a service to the profession and to the public by keeping insurance rates down. The insurance companies know that if they squeeze too hard, then the presently insured attorneys can vote with their feet and move over to join the uninsured. If we lose freedom of choice then we will lose this important safety valve.

The idea of imposing mandatory malpractice insurance is quite premature at this point and should be tabled until further information is available.

Yours,

Tom Stahl
WSBA #17434
115 West 9th Avenue
Ellensburg WA 98926

From: [John Gray](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: "John Gray"; [REDACTED]
Subject: exemptions for mandatory malpractice insurance coverage for all active-licensed lawyers
Date: Saturday, October 27, 2018 11:27:25 AM

Hello:

I wrote two letters to this task force, once on November 26, 2017, and the second one on August 17, 2018. I will not repeat all of those comments again. I attended the October 16 open forum telephonically. I will state that mandatory malpractice insurance should not be required for active-licensed lawyers unless those lawyers are actually engaged in the practice of law with clients who could sue for malpractice. Those of us who are retired (my wife and me) and who participate in volunteer legal clinics should not be required to obtain and pay for malpractice insurance. Both of us keep our licenses "active." The organization that operates the clinics (Thurston County Volunteer Legal Services) carries malpractice insurance that covers all of us volunteers. If either or both of us go into an actual practice that carries the risk of being sued for malpractice, we will insist on obtaining malpractice insurance, partly for the benefit of a potentially damaged client, but also to protect us from the risks of practicing "bare." Thank you for considering my comments.

Best wishes,

John M. Gray (#7529)
5021 Laura St. S.E.
Olympia, WA 98501
(360) 754-0757 (landline)
[REDACTED] (cell)

From: [Stephen W. Hayne](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: "Mandatory" malpractice insurance
Date: Sunday, October 28, 2018 1:24:56 PM

Dear Committee,

Here's the short version of why I no longer flush money down the toilet for malpractice insurance. For context, I have practiced criminal law for 43 and faithfully paid the \$3 to \$4,000 malpractice premium until a few years ago. I stopped when it became clear that malpractice insurance for criminal lawyers is unnecessary and a boon to insurance companies who have likely never paid a dime in damages for criminal malpractice. Of course, like all lawyers, we who practice criminal do occasionally screw up and sometimes in a fashion that harms our clients. However, as the Washington Supreme Court made clear in several decisions, a plaintiff alleging malpractice in a criminal case must prove "actual innocence" in order to prevail.

The Washington Supreme Court recently reaffirmed the requirement that a plaintiff in a legal malpractice claim arising from a criminal case prove that the plaintiff was actually innocent of the crime involved. The "actual innocence" requirement presents a high bar for claimants because, as the Supreme Court explained in Ang v. Martin, 154 Wn.2d 477, 484-85, 114 P.3d 637 (2005), it means more than just "legal innocence" in the sense of having a conviction reversed or otherwise vacated. As the Supreme Court defined it in Ang, "actual innocence" means just that: a malpractice claimant must show that the claimant did not do the crime charged.

The Supreme Court reaffirmed the broad sweep the "actual innocence" requirement in Piris v. Kitching, ___ Wn.2d ___, 375 P.3d 627 (2016). In Piris, the plaintiff had plead guilty to a felony and was sentenced to a long prison term. On appeal in the underlying criminal case, Piris argued successfully that the trial court had miscalculated the sentence and the Court of Appeals remanded for resentencing. The resentencing, however, did not occur and by the time the trial court itself discovered that fact, 12 years later, Piris had already served all 159 months of his prison term. The trial court corrected its error by reducing Piris' sentence to 146 months. He then sued his trial and appellate counsel for malpractice, arguing that he had served 13 months longer than he should have.

Citing Ang's "actual innocence" requirement, the trial court in the subsequent malpractice case granted summary judgment for the defendants and the Court of Appeals affirmed. Reaffirming Ang, the Supreme Court agreed. In doing so, the Supreme Court distinguished Powell v. Associated Counsel for the Accused, 131 Wn. App. 810, 815, 129 P.3d 831 (2006). In Powell, the Court of Appeals concluded that the "actual innocence" requirement did not apply when a criminal defendant was sentenced to a longer period than the statute involved permitted — reasoning that "Powell's case is more akin to that of an innocent person wrongfully convicted than of a guilty person attempting to take advantage of his own wrongdoing." By contrast, the Supreme Court in Piris held that Powell's narrow exception did not apply when — as was the case with Piris — the court had the requisite authority to impose the sentence involved, even if an appellate court concluded later that the trial court had misapplied the pertinent standards.

Given the unusual circumstances in Powell, Piris effectively casts the sentencing exception very narrowly. As a result, the "actual innocence" requirement will continue to present a very high bar for most potential criminal malpractice claimants.

I concentrate on DUI, Vehicular Homicide, Vehicular Assault and other serious traffic offenses in my practice. Have I ever represented an 'actually innocent' client in my 43 years? Yes, a handful of times, but the vast, vast majority of my clients are not in fact or law innocent, period. If criminal lawyers are honest, they would undoubtedly agree. Assuming I commit actionable malpractice, my poor client would simply be SOL under the impossible and arguably unjust burden imposed by Ang and Piris. In reality, defending criminal cases centers on challenges to admissibility of evidence and the State's ability to prove guilt beyond a reasonable doubt, rarely are we able to prove the defendant is actually innocent or the charge. There is no difference in quality of representation between those exceedingly rare instances of actual innocence.

Indeed, in my 40 + years I have never even been threatened with a malpractice lawsuit. On those thankfully exceedingly rare occasions when a client is unhappy with my representation I have resolved it to the client's satisfaction in a single phone call (occasionally refunding the entire fee even when unfair and/or unreasonable). You might want to read an article I wrote on the topic of dealing with unhappy clients published in the Bar News many years ago.

To summarize, for forty + years I dutifully gifted yearly premiums totaling well over \$100,000 to insurance companies for no good reason. I am now nearing retirement, know my limitations, and continue to practice at the highest standard possible in representing my clients. When I can no longer fulfill my obligations to my clients I will gracefully leave the profession to others who can. Some day I may have an 'actually innocent' client walk through the door, but I highly doubt it.

The highly questionable legality of the Bar's attempt to impose 'mandatory' insurance aside, I do hope you find these comments helpful.

Sincerely,
Steve Hayne
WSBA #5995

The Hayne Law Firm

3326 160th Avenue SE, Suite 215
Bellevue, WA 98008
425 450 6800
Fax 425 633 2425

From: [Fred Kull](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: My story
Date: Wednesday, October 31, 2018 6:00:30 PM

There's a CLE coming up on November 1, 2018 about Probate in Washington. Could you advise me of whether I should attend?

You see I'm in kind of a bind. I don't know for sure whether I will be licensed to practice law in Washington after next year and I don't want to waste my money on something I won't need.

The question about my practicing next year is not about my age, health, desire to help people, or any of my own doing, it is whether I have malpractice insurance or not.

If this initiative proceeds and is passed without meaningful exemptions for people like me, then I will be forced out of a career that started in 1976 and continues to this day with no complaints to the Bar.

I decided at the beginning of my legal career to not get malpractice insurance. I could not afford it then and I cannot afford it now.

I like practicing law, I'm pretty good at it, and I scrape out a living at it while being self-employed as a solo practitioner.

Finally, I am not ready to retire.

I don't want to bore you with my details. Happy to share them with anyone interested though.

Please advise me at your earliest opportunity on your recommendation in regards to my CLE dilemma.

Respectfully

Fred D Kull

P.S. Will there be a pension provided?

Fred D Kull

From: [Michael](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Don't Require Insurance for Government Attorneys
Date: Sunday, November 4, 2018 9:02:47 PM

It doesn't make sense to require malpractice insurance for government employees. Doing so will duplicate costs, resulting in inefficiencies for the industry as a whole, and hardships for underpaid government attorneys. Government attorneys don't benefit from year-end bonuses and partnership equity. Don't burden government attorneys with unnecessary costs.

Thanks,

Michael Martinez
43852

From: [Maggie Davis](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Simplistic Question_WSBA#50778
Date: Tuesday, November 6, 2018 8:41:56 PM

Hi there,

Is malpractice insurance required for the 2019 calendar year for Washington Legal license holders or not?

Where can I find out more information.

Thank you.

--

[Margaret Marshall Davis](#)
Attorney Licensed to Practice in the State of Washington and Oregon
[REDACTED] | maggiedvs@gmail.com
(www.maggiedvs.com)

"We are caught in an inescapable network of mutuality, tied in a single garment of destiny. / *Estamos atrapados en una ineludible red de mutualidad, atados en una sola prenda de destino.*" - Martin Luther King Jr.

From: [Hugh D. Spitzer](#)
To: [Doug Ende](#); [Thea Jennings](#); [Rachel Konkler](#)
Subject: FW: The ALPS Update to the WSBA Oct 20, 2017
Date: Thursday, November 8, 2018 7:20:04 AM
Attachments: [110718 Hugh Spitzer meeting materials Jan 2018 ALPS report only.pdf](#)

From: Inez "Ine" Petersen <inezpetersenjd@gmail.com>
Sent: Wednesday, November 07, 2018 11:12 PM
To: Hugh D. Spitzer <spith@uw.edu>
Subject: The ALPS Update to the WSBA Oct 20, 2017

Dear Prof. Spitzer:

I have reviewed a PDF of the agenda and accompanying materials you prepared for the Jan 24, 2018, Task Force meeting and have questions re the ALPS Update to the WSBA.

I am amazed by the statistics contained at the bottom of the first page and the top of the second. Of course, the percentages without any idea of the numbers used to compute the percentage and without an idea of what was actually included in those numbers are without context and misleading.

Bottom of first page

For example, ALPS reported that 93% of the policies written in Washington were from law firms of less than 4 attorneys, and 76% of policies issued were to solo practitioners. To know whether this is something to brag about, we would need the numbers used to compute the percentages, and we would need to know what was included in the numbers.

When I contacted ALPS after I got my license, I was told ALPS did not insure solos. Now ALPS uses the term,

"long standing commitment," relative to serving small firms and solo practitioners.

Top of second page

Regarding claims frequency, again percentages without the numbers used and the information as what was included in those numbers can be misleading.

Here, frequency of claims is irrelevant if they are all baseless and dismissed, like the vast majority of bar complaints.

I'd like to know how many of the 24 claims resulted in payment. ALPS is in business to collect money for premiums written, not pay on their policies.

I'm enclosing the ALPS Update which would not have thrilled me had I been on the Task Force in Jan 2018.

Your assistance in helping me to understand the context of the data you distributed from ALPS would be appreciated.

Respectfully,
Inez Petersen, WSBA #46213

D.
2017 ALPS Update
Report to WSBA
(October 20, 2017)



ALPS Update to WSBA

October 20, 2017

Introduction

ALPS enjoys providing a periodic status report on how things are advancing in our partnership, the state of the ALPS book and other notable updates. Since the inception of the endorsement agreement on February 1, 2015, we've been pleased with our Washington market growth and our ability to adapt to market opportunities in the development of the nation's first LLLT insurance policy. Claims experience has been good of late (on the frequency side), and we've designed several ways in which ALPS can enhance WSBA ethics programming as panelist from the malpractice claims perspective. All in all, we're pleased with where things stand, and look forward to continued service to WSBA members in the Washington legal market.

ALPS Growth in Policyholders, Lawyers and Gross Written Premium

ALPS has grown considerably in Washington since becoming the endorsed carrier. On a three-year lookback, the growth trajectory is as follows:

- For the 12 month period between October 1, 2014 and September 30, 2015, ALPS:
 - Insured 309 Washington firms
 - Insured 619 Washington attorneys
 - Enjoyed an average attorney per policy of 2.0
 - Wrote \$1,645,914 in gross written premium.

- For the 12 month period between October 1, 2015 and September 30, 2016, ALPS:
 - Insured 468 Washington firms
 - Insured 877 Washington attorneys
 - Enjoyed an average attorney per policy of 1.9
 - Wrote \$2,247,527 in gross written premium

- In the trailing 12 months, between October 1, 2016 and September 30, 2017, ALPS:
 - Insured 581 Washington firms (88% growth over the three-year period)
 - Insured 1,034 Washington attorneys (67% growth over the three-year period)
 - Enjoyed an average attorney per policy of 1.8
 - Wrote \$2,601,091 in gross written premium (58% growth over the three-year period)

Additional data points include the fact 65% of ALPS policyholders in Washington secure cyber liability policies (which is great), and 29% purchased employment practices liability insurance. Also, in the most recent 12 months, 93% of ALPS policies written in Washington were from law firms of less than 4 attorneys, with 76% of policies issued to solo practitioners. This continues to underscore ALPS' long-standing commitment to serving a key demographic of the Washington legal community: small firms and solo practitioners. There are also 13 LLLT policies current in force.

Claims Activity

Insurance carriers use several metrics to track claims. Claims frequency, the number of claims per 100 insured attorneys, is one measure used to track claims. ALPS claims frequency nationwide over the last five years has been 3.65% with the last year being 3.45%. Washington's claim frequency has been in line with expectations. In 2015, we had 10 reported claims, in 2016 we had 22 reported claims and YTD in 2017, we've had 24 reported claims. We expect to see claims growth as market share increases.

Our 24 Washington claims reported in 2017 fell into the following areas of practice:

- Domestic Relations (3)
- Estate/Probate/Wills/Trusts
- Civil Litigation-Plaintiffs (6)
- Civil Litigation-Defendants (2)
- Real Estate (3)
- Corporation/Business (4)
- Public Utilities
- Copyright / Trademark
- Government
- Collection / Repossession
- Other

Law errors at the root of the claim included the following:

- Procrastination in Performance of Services or Lack of Follow-Up (3)
- Failure to Follow Client's Instructions (2)
- Failure to Know or Properly Apply Law (2)
- Failure to Obtain Client's Consent or to Inform Client (3)
- Failure to React to Calendar
- Inadequate Discovery of Facts or Inadequate Investigation (3)
- Fraud
- Conflict of Interest (4)
- Improper Withdrawal from Representation (2)
- Failure to Calendar Properly
- Violation of Civil Rights
- Malicious Prosecution or Abuse of Process

Please let me know if you have any additional questions.

Respectfully submitted,



Chris Newbold
Executive Vice President
ALPS Corporation

From: [Hugh D. Spitzer](#)
To: [Inez "Ine" Petersen](#)
Cc: [Doug Ende](#); [Thea Jennings](#); [Rachel Konkler](#)
Subject: RE: The ALPS Update to the WSBA Oct 20, 2017
Date: Thursday, November 8, 2018 7:20:21 AM

Dear Ine,

Thanks for your note. I'll pass your observations along to the entire Task Force. One thing I do know for sure is that I am a solo lawyer at this point and I *do* have an ALPS policy. So if once upon a time ALPS didn't cover solos, they definitely do today!

Hugh

Hugh Spitzer
Professor of Law
University of Washington School of Law
Box 353020
Seattle, WA 98195-3020
206-685-1635
206-790-1996 (cell)
Papers on SSRN: <http://ssrn.com/author=1514923>

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appreciated.

Respectfully,
Inez Petersen, WSBA #46213

MANDATORY MALPRACTICE INSURANCE TASK FORCE

AGENDA

January 24, 2018

1:00 p.m. – 4:00 p.m. WSBA Hearing Room, 1325 4th Ave. Suite 600, Seattle, WA 98101

[Conference Call: 1-866-577-9294](tel:1-866-577-9294); Code: 52824#

AGENDA

1. Call to Order (Hugh)
2. Introductions
3. Mandatory Malpractice Overview and Background (Doug)– 25 minutes
4. Information re WSBA reimbursement policy (Thea and Rachel)
5. Review of Task Force Charter, Mission and Timeline (Hugh)
6. Work Plan:
 - Identifying Key Issues, Questions, and Information Needs (Hugh)
 - Meeting Topics and Schedule (Hugh)
 - Communications Approach to Providing Public Information and Gathering Member and Public Feedback (Hugh)
7. Next Steps (Hugh)
8. Comments submitted to the Task Force

MEETING MATERIALS

- A. Task Force Charter (pp. 2-4)
- B. Task Force Roster (pp. 5-7)
- C. Introductory Memo with Appendices (pp. 8-77)
- D. 2017 ALPS Update Report to WSBA (October 20, 2017) (pp. 78-80)
- E. State Bar of Nevada Uninsured Attorney Survey (2017) (pp. 81-89)
- F. APR 15 Client Protection Fund (pp. 90-94)
- G. Comments Submitted to the Task Force (provided to Task Force separately)

From: [Lee Bull](#)
To: [Mandatory Malpractice Insurance Task Force](#); [Lee Bull](#)
Subject: Submission of written statement to members of the Mandatory Malpractice Insurance Task Force
Date: Thursday, November 8, 2018 4:23:05 PM
Attachments: [Written Remarks submitted to the WSBA Mandatory Malpractice.pdf](#)

To the members of the Mandatory Malpractice Insurance Task Force:

I attach written remarks, which I hope will be read by the members of the Insurance Task Force, in conjunction with the two questions which I raised at the Open Forum October 13. The two questions are, Are there activities which require a licence but do not threaten damage to third parties, thus not requiring malpractice insurance for any active WSBA member? I believe, as I stated at the Open Forum, I perform such activities which do not constitute active practice of law, or at least do not constitute a risk of harming third parties through negligence or recklessness (to be distinguished from criminal activity, which is not covered by legal malpractice insurance in any event). A subsidiary question to this question is to what entity will I be able to appeal for an answer to whether I require malpractice insurance?

The second question is, IF I am adjudged to be "actively practicing law," will there be an alternative to purchasing insurance, such as purchasing a bond in a reasonable amount, or depositing my own funds, payable to such entity as WSBA requires if an malpractice claim may be adjudicated against me?

If anyone is unable to open the pdf attachment, I would appreciate being contacted, so that I may communicate my remarks in alternate form.

Thank you for reading my remarks.

Leland L. Bull, Jr., WSBA #9821, admitted, December 29, 1967

Written Remarks submitted to the WSBA Mandatory Malpractice Insurance Task Force to Supplement Comments Made at the Open Forum Held October 16, 2018 at WSBA Conference Center by Leland L. Bull, Jr., WSBA#9821

At the Open Forum I raised the question of whether my current law-related duties, which I will describe in detail below, and which I began at a time when I was acting as receiver in mid 2012 and continue, after closing my active practice at the end of 2014, to perform presently, are sufficiently risky to third parties that they subject me to the requirement that I must maintain legal malpractice insurance. These duties require continuing membership in WSBA. After thorough consideration of the need for continuing malpractice insurance at the time of closing my office and continuing with my present activity, I concluded that the likelihood of a claim arising from this activity was essentially zero, and that the cost of insurance would be prohibitive in comparison to my expected income. (My Schedule C law-related income was \$5702 in 2016 and \$5756 in 2017; my 2013 malpractice policy premium was \$2632.) Thus I did not renew my malpractice insurance policy at the end of 2014, after more than 29 years of active, insured, practice in Seattle, advising my carrier, through my agent, that I had retired from the active practice of law and was granted the tail to which I was entitled by contract.

Before describing my current activities to the Task Force, I have several questions to pose:

(1) Since the chairman of the Task Force at the Forum stated that the members of the Task Force had already essentially decided to recommend to the Board of Governors that malpractice insurance should be mandated, and that the Task Force members had begun dealing with the question of what exemptions should be created, to whom will a person like myself be able to appeal for an exemption? In other words, will the Task Force recommend creation of a committee for appeals, or will exemptions be limited only to certain prescribed categories, such as government attorneys, corporate counsel, and retired attorneys working only with not for profit entities on a pro bono basis? If the latter tack is chosen, I might as well resign, since malpractice insurance premiums will consume nearly 50% of my annual law related income, unless a cheaper alternative is offered.

(2) Will there be established a method by which licensed lawyers will be able to file with the WSBA (or other designated entity) a bond in a reasonable amount in lieu of purchasing malpractice insurance, or alternatively, to make a deposit in cash a certain minimum amount in lieu of insurance? The chair responded to this question, which I raised at the forum, by stating that this topic had been discussed, but no resolution had been made. I note that I am 78 presently, have not been insured since 2014, am not seeking new clients, and currently have no private clients for whom I am pursuing any form of legal relief; it would be difficult for me even to advise an insurer in what area of law I am practicing. What sort of malpractice insurance quote can I obtain? A practical and reasonable cost alternative to malpractice insurance should be available to me, by posting a bond, if it is the WSBA's decision that I may be liable to make an actionable mistake in the course of my activity. Others in similar situations should also have recourse to posting bonds. I was bonded in numerous state court receivership cases while acting as a receiver during the years 2006-2014, so it is possible that, despite the lapse of time, I may be able to obtain an annual renewable bond. I was also bonded while serving as a chapter 7 trustee.

Having posed my questions of policy to the Task Force, I should like to explain what legal services I presently provide and why I believe that the risk of commission of malpractice in my activities is effectively zero. I apologize that the discussion is long, but I believe it is important to explain HOW I came to do what I currently do, and WHAT precisely are my duties.

For the past 7 and a half years, that is, since July 2012, I have collected monthly attorney's fees owing, pursuant to the terms of their fee agreements, by workers' compensation permanent disability pension beneficiaries who were represented before the Department of Labor and Industries by Peter A. Moote. Mr. Moote was for years a sole practitioner with an office in Langley, WA, who resigned from WSBA in November 2010 in lieu of disbarment.

Mr. Moote resigned after several clients filed bar complaints against him for failing to pay monies due them from settlements in tort cases he had handled on their behalf. The following January, a group of his attorney friends interviewed me, based on my knowledge of bankruptcy and receivership law, concerning whether a receivership over his assets would be a more suitable way to collect and administer Mr. Moote's assets for the benefit of his victims rather than either filing a bankruptcy case or merely allowing former clients' attorneys to stand in line to obtain judgments and dismember his assets. After discussion, I agreed that a receivership over the assets of an individual was workable and to accept an appointment as receiver, if Mr. Moote would sign a voluntary assignment in my favor, to which he agreed. I was appointed on February 3, 2011, in a case filed in Island County.

Aside from Mr. Moote's residence and an interest in a partnership which owned the building in which he maintained his office, the most significant, and most fragile, assets in the receivership case were the streams of monthly income from over 30 contracts for representation before the Department of Labor and Industries which Mr. Moote had entered into with individuals who had suffered disabling injuries in the work place and for whom he had obtained orders awarding them permanent disability pensions. Mr. Moote's fee agreement with each of these individuals entitled him to collect 15% (or 10% in some cases) of the monthly pension amount, which he did so by receiving from L&I the monthly gross pension for each pensioner into his trust account, deducting his fee, and then transferring the net each month to the client, which, I learned, was standard procedure for counsel who practice workers' compensation law before the administrative courts of the Washington Department of Labor and Industries

Following Mr. Moote's resignation, his brother-in-law, who also represented litigants before L&I, had contacted each of Mr. Moote's former clients and sought to induce them to appoint him as successor counsel, representing them before L&I, in order that he would thus be permitted by L&I to receive and disburse their monthly payments. The idea was that he would forward his collections to the receivership, following the expected appointment of the receiver. Fortunately this gentleman was successful in convincing about 25 of the pensioners to accept his offer, and from the time of my appointment forward, he transferred his receipts, less a 25% collection fee for his services, to me as receiver.

Seven pensioners took the position that, with Mr. Moote no longer in practice, they were absolved of their obligation to honor their contract to pay the monthly fee on their ongoing

pensions. By personal contact with two of these pensioners, I was able to convince them of their continuing liability to the receivership estate, and, while they refused to accept either me or Mr. Moote's brother-in-law as their counsel in respect of L&I, they each paid the defaulted monthly fees, and have continued paying their fees subsequently. Three continued to refuse to pay, denying further liability; my counsel sought relief in the receivership and obtained the court's orders in November 2011 for each of them to pay their monthly fees to the receivership, and these pensioners also continue to pay their fees according to their fee agreements. The other two of these persons had moved out of state and the decision was made to abandon collection efforts against them due to the costs of enforcement.

By early 2012 I concluded, based in part on the objection of one of Mr. Moote's largest creditors, as well as on my own review of what the gentleman actually was required to do to maintain the relationship with the pensioners, that the fee for his services of collecting the pension payments and otherwise supporting the pensioners was excessive in relation to the time and work required, and I attempted to negotiate his payment down. Upon his refusal, we agreed that I would assume the job of servicing the pensioners and collecting the monthly fees, which required me to appear as counsel before L&I for each of the pensioners who would their received fees through my trust account. The transition was accomplished in July 2012. In respect of the other 5 pensioners who were paying directly, I continued to receive fee payments monthly from the pensioners themselves following their receipt each month of their gross pension payments from L&I. This arrangement continued through the closing of the receivership in January 2015, under a final order entered in December 2014. By my assumption of the fee collection process, the monthly cost to the receivership was reduced by more than half, based upon a comparison of my average monthly time spent at my \$250 hourly rate with the percentage fee previously paid.

Mr. Moote was prosecuted for his defalcations in the federal court in Seattle, a circumstance which greatly reduced the administrative work required of myself, my counsel, Michael Gearin, and Richard Ginnis, the CPA who was appointed to assist me, because the Office of the Federal Defender undertook to analyze the transactions in Mr. Moote's trust account for a period of more than 10 years before his November 2010 resignation and was able to determine from what clients he had stolen funds, and how much from each. All of this information, on a client by client basis, was made available both to the State Bar and to the receivership. All in all, Mr. Moote's thefts approximated \$2 Million as calculated by the Defender's Office. WSBA reimbursed the victims for approximately 1/2 of the allowed claims filed; the receivership paid \$107,000 toward these claims, about 10% of the total amount of victims' claims allowed in the receivership, after reduction for the amounts paid by the Bar Association.

This \$107,000 fund was created from proceeds of settlements with entities which had asserted secured claims against the assets collected by the receivership. As a part of each settlement agreement, the secured party assigned to the receivership that portion of its security interest which covered the amount of proceeds from the sale of the collateral which was retained by the receivership. This step was necessary because, since Mr. Moote had failed to pay over \$450,000 in accrued income tax liabilities in years prior to 2010, the Internal Revenue Service held an allowed unsecured claim against the receivership with priority over the claims of the victims. After making this distribution to Mr. Moote's victims, my counsel and I requested entry a final

order closing the receivership, since any further net collections would inure only to the IRS, not the victims.

We proposed to Mr. Moote that he provide an irrevocable assignment for the benefit of his victim creditors, naming as assignee Mr. Kenton Dale of Oak Harbor, counsel for the victim with the largest losses. The Assistant US Attorneys who had prosecuted Mr. Moote concurred in this resolution. By this means, the assignee could distribute future income from the pensioners' attorneys fees to the victims, and to one other creditor, who held a partially unsatisfied judgment, without any claim to the proceeds of the assignment by the IRS. Approval of this step was sought in the motion to close the receivership, and included in the order approving that motion. The assignee requested that I remain as the contact person with the pensioners, to work with them to collect their fees, and to deal with L&I, since I had been successfully interacting with them for 2 ½ years when the receivership was closed. I agreed to do so, and I voluntarily reduced my hourly rate to \$200 in order to increase the monies available for the victims.

My Current Activities

In order to receive the pensioners' monthly pension payment, it was required by L&I regulations that I become their attorney of record before the Department, which meant soliciting their consent to represent them. That step was taken in 2012 in preparation to replace Mr. Moote's brother-in-law. Nothing changed when the receivership closed in my relationship with the pensioners or with L&I.

In my continuing role as their counsel to L&I, I do NOT have anything to do with the litigation conducted by Mr. Moote in obtaining the pensioner's awards. All of these awards became final and no longer appealable many years prior to Mr. Moote's resignation in lieu of disbarment. In originally contacting the pensioners, I made it clear that I could not and would not offer them advice with respect to the litigation which resulted in their pension awards, as I was acting solely in my capacity as receiver, and, in any event, that I had no knowledge of workers' compensation law, rather that I was a bankruptcy attorney, which was the reason I was chosen to be receiver. To this day, I have never been asked for, nor have I given, any advice on workers' compensation law to any of the pensioners from whom I collect payments, neither those for whom I collect payments from L&I into my trust account, nor those who pay their fees directly to my trust account. My activities are limited to receiving the monthly payments into my Chase trust account and distributing net pension payments to the 17 pensioners whose pensions are paid by L&I transfers to that account on the 14th of each month. Most of these pensioners opened Chase accounts into which I deposit their net payments on the morning of the 15th or next following business day; of the remaining pensioners, 3 receive their net checks from me by mail, one receives her check by hand delivery, and one receives her check by deposit at her request into a branch of Bank of America in the vicinity of the Chase branch which I use. The nine pensioners who pay their fees directly may make a deposit to my Chase trust account at a branch near them or mail me a check, usually monthly. Each month, after receipt of the monthly Chase account statement, I reconcile what I call my monthly Pensioners Grid, which contains the names, addresses, phone numbers, gross and net pensions each is expected to receive that month, and on which I write the check number for each payment, as well as details of any other check I issue

that month on the trust account, with the Chase statement, and then I e-mail these documents to the assignee AND to our CPA, Mr. Ginnis, who the assignee retained at my request to review the financial documents and to prepare letters semi-annually confirming his review of my financial documents, as well as those of the assignee, and stating his findings, and to distribute copies of the letters to each of the beneficiaries under the assignment. As an experienced bankruptcy counsel, I advised the assignee that I insisted that he retain a CPA in order that the beneficiaries have confidence in our work.

Despite the fact that I am counsel before L&I for those pensioners who receive their funds through my trust account (as well as for 2 who pay me directly), the only other responsibility I have is to forward correspondence from L&I to the individual pensioners to whom it is addressed. Thus, once a year, I receive a Declaration of Entitlement form, which each pensioner must prepare, sign and have notarized, and return to the Department. I forward these forms with a personal letter urging them to be sure that each question is answered and every box checked, because it might surprise people how often, in fact, someone forgets to check one of the several boxes on the form, since several forms are returned to me by the Department because something is amiss.

Also, once a year, in mid-July, I receive for most pensioners a letter advising what effect on their pensions the annual July 1 Cost of Living Adjustment will have. I prepare a cover letter stating what their August and September payments will be, which requires that I do some simple arithmetic to arrive at the August and September gross and net pension payments. Because of a provision of federal Social Security law, some pensioners receive COLA adjustments only every third year, in January, so for them, the letters arrive in that month, and I similarly write letters at that time to the affected pensioners.

Otherwise, the only correspondence I have ever received from L&I consists of announcements of adjustments in state disability pension payments mandated by federal law when the amount of a pensioner's social security status changes for some reason, or when a pensioner files to receive social security. In these cases, there are no legal decisions to be made, I simply prepare a cover letter and forward the L&I communications to the affected pensioner.

Finally, I have on one occasion forwarded a pensioner's request to, following a divorce, change his pension benefits to a single life from a joint life pension, and on three occasions, following a pensioner's death, I have advised L&I of the occurrence, obtained from the survivors a copy of the death certificate for L&I, and either assisted the surviving spouse to request the survivor's pension to which the spouse is entitled, or assisted the heirs in seeking that portion of the final month's pension to which the pensioner's estate is entitled, which is pro-rated by the number of days the pensioner lived in the last month of life.

The above is the extent of the duties which I perform.

/s/ Leland L. Bull, Jr., November 5, 2018

From: [Bruce Busch](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Malpractice Insurance Discussion
Date: Monday, November 12, 2018 4:25:55 PM
Attachments: [image003.png](#)
Importance: Low

I've read the Bar News article about Malpractice Insurance Task Force as well as the arguments for and supposedly against the insurance requirement. Unfortunately, the article that attempted to list, and then rebut, the reasons not to enforce mandatory insurance left out the most important reason: Additional Regulation. Typically, regulation is often needed when communications is not clear. But if the parties have the necessary information, there is absolutely no reason to require malpractice insurance and therefore it is an inefficiency. Those individuals that will want the added value will seek out those attorneys that advertise that they are covered. And those attorneys that do not carry malpractice insurance should have to disclose that fact – something that is not required at this time but I do think is reasonable to require at little to no cost to anyone.

Therefore, if our goal is to reduce the amount of needless regulation and restrictions and at the same time encouraging (as I think we should) a free market system, the only answer is NOT to require malpractice insurance but to require disclosure in order to provide the necessary information to clients as to malpractice coverage. Ultimately, mandatory insurance benefits the insurance companies and those very, very, very few individuals that are harmed by malpractice caused by an attorney that does not have malpractice insurance. And that small percentage is reduced even further if disclosure is required.

I do have one question that I will be eager to ask if the Bar decides to require malpractice insurance for all: Will the Bar be partnering (or does it already) to offer malpractice insurance and receive some form of marketing shareback for its efforts? And will the Bar's next step to be to grade the various insurance companies bc some are certainly more reputable than others? No person in their right mind should buy a new car. So should the government require that each car salesmen inform the car buyer about exactly what they are making and the instant depreciation when they drive the car off the lot? There's a thousand other examples. Let's stop coddling people. Let's make sure everyone has the required information and let them make the decision by big boys and girls. Less regulation, not more, unless it is truly needed.

Thanks,

Bruce



Bruce R. Busch
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From: [Hanna Coate](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Hanna Coate](#)
Subject: Mandatory Malpractice Insurance Comment
Date: Tuesday, November 13, 2018 1:47:38 AM

Dear Task Force Members,

The implementation of mandatory malpractice insurance strikes me as completely unnecessary, if the true goal of the requirement is to protect the public. Further, as an active attorney who does not presently carry malpractice insurance, I would ask you to consider the effect that such a requirement will have on attorneys like myself. In no uncertain terms, this unnecessary additional financial burden will force me out of the profession. I am a small town rural lawyer, who currently works on a very limited part-time basis so that I can also raise my family. When I do practice these days, I do estate planning for middle and low income families, primarily to help them ensure that provisions are made for the care of their minor children should they become deceased. This is a service that I have found necessary for this community as, in my experience, young (middle and low income) families with minor children are often not thinking about wills and other estate planning documents at this stage in their lives. I provide a low cost service to this community while shouldering the weight of student loan repayments, annual WSBA licensing dues, and CLE costs. The added expense of malpractice insurance will tip the scales so that I can no longer practice. This community will lose a vital service and my family will lose my modest income, and perhaps most tragically, I will be forced to give up the profession that I worked so hard to realize.

Your preliminary decision to make malpractice insurance mandatory fails to take into account that we do not all fit into the erroneous stereotype of being wealthy. Many of us simply are not, for a variety of reasons, and the costs of engaging in this profession are already onerous. This additional unnecessary financial burden will have a devastating impact on a number of attorneys in this state.

The fact that the overwhelming majority of states do not require malpractice insurance speaks volumes about the necessity of such a weighty requirement. This seems like more of a decision pushed by insurance companies, and overly litigious attorneys who want big payouts, than one based on an earnest desire to protect the public. Those of us who do not carry malpractice insurance tend to be extremely cautious about NOT committing malpractice, because for us, the personal stakes are much, much higher.

Furthermore, if you truly wanted to protect the public, a simple rule requiring those of us who do not carry malpractice insurance to provide written notice of this fact, with perhaps a disclosure regarding the client's right to seek insured counsel and information regarding accessing the information on which attorneys are insured on the WSBA website to all potential clients would provide whatever public education and protection is necessary. A rule requiring us to get a signed waiver from all new clients acknowledging that they have read the notice and understand that they are hiring an uninsured attorney would also be reasonable, if public protection is truly the goal. Finally, it seems to me that the WSBA is ALREADY protecting the public against incompetent attorneys through the licensure and disciplinary functions it serves. If that is the case, then there is truly no legitimate argument that this rule is necessary to protect the public. Thank you for your time and consideration of this very important matter.

Hanna Coate
Attorney at Law #38758
PO Box 65034
Port Ludlow, WA 98365
Phone: 360-774-0660

From: [Inez "Ine" Petersen](#)
To: [Bill Pickett](#); [Rajeev Majumdar](#); [Dan@mcdbdlaw.com](#); [Michael Cherry](#); [carla@higginsonbeyer.com](#); [kyle.s@bullivant.com](#); [danclarkbog@yahoo.com](#); [PJ Grabicki](#); [BHMTollefson@outlook.com](#); [Paul S](#); [jkang@smithfreed.com](#); [Kim Hunter](#); [meservebog@yahoo.com](#); [Athanas Papailiou](#); [rknight@smithalling.com](#); [Alec Stephens](#); [Mandatory Malpractice Insurance Task Force](#)
Cc: [Paula Littlewood](#)
Subject: For Governors and Insurance Task Force: Court Record re Nevada State Bar - the Petition, the Order, the Denial
Date: Tuesday, November 13, 2018 12:59:45 PM
Attachments: [Whole Enchilada - Nevada Bar Assoc failed attempt at mandatory insurance.pdf](#)
[111318 - For Task Force - copy of email I sent to Governors on 111218.pdf](#)

Dear Governors and Task Force members:

[More info from Nevada State Supreme Court records](#)

I copied the rest of the Nevada court record for you, and those are enclosed as the "whole enchilada." Today's information is far more interesting than the Petition and all its exhibits I sent yesterday.

The letters in the "whole enchilada" are highly relevant to the decision that will be made here in Washington. They encapsulate all the same arguments being made here in Washington; reading them is worth your time.

For the Task Force members, I've enclosed a copy of the EMAIL I sent the Governors yesterday which contained the State Supreme Court Order and accompanying Petition with Exhibits which is the prequel to the "whole enchilada."

Those supporting mandatory insurance do it on ethical and moral grounds, yet this assumes there is only one way to protect the Public--and that is through mandatory malpractice insurance (a "one size fits all" answer).

Supporters do not indicate any concern for how mandatory insurance will affect attorneys like me. As the one attorney on Page 058 indicated, it is simply a cost of doing business. It is more than that, believe me!

[Impact of lobbyist influence](#)

That same Page 058 has an interesting paragraph at the bottom of the page leading me to suspect indoctrination by the ALPS lobbyist: "It is our understanding that other states have already enacted mandatory legal malpractice insurance requirements. We believe Nevada should join this modern trend."

- There is no modern trend.
- Only 2 states have mandatory insurance requirements (Oregon and Idaho).
- Illinois lawyers can opt out of mandatory insurance by attending a CLE on risk management.

Scope of problem unknown as yet

As you have noticed, I have "arisen from the dead" to protest the lack of facts and data to answer the core issues re mandatory insurance:

- How many clients have been victimized by unpaid legal malpractice judgments in the past?
- How many clients are estimated to have had legal malpractice judgments "if only" they had insurance?

These estimates are not unknown, just ungathered.

The Interim Reports stated this:

"Malpractice plaintiffs' lawyers report **numerous instances of worthy claims** that they must reject for representation because the defendant lawyer is uninsured, making recovery less likely." Ref Para 7 under Key Findings.

- Well, as the little old lady in the Wendy's commercial asked, "Where's the beef?" Information on these "numerous instances" should have been gathered.
- And are uninsured attorneys really asset-less "making recovery less likely"?

"One size fits all" not the optimum solution

I believe that mandatory insurance, a "one size fits all" answer to preventing the client from becoming the victim of an uninsured attorney, harms more people than it helps.

Two-level approach is the answer

I recommend that the Governors (and the Task Force) take a wider, more flexible position which addresses how both the client and the attorney can be "adequately protected."

It is a two-level approach to eliminating clients as victims of uninsured lawyers while at the same time preserving the right of active attorneys in private practice to chose for themselves whether to purchase insurance.

- Those clients of private practice attorneys with insurance are already "adequately protected." This is the majority of clients.
- The clients of private practice attorneys without insurance can be "adequately protected" via full disclosure of the attorney's uninsured status. This is a minority of clients.
- The "free market" continues "as is" because there would be no "captive audience."

Clients can choose for themselves whether they want to hire an uninsured attorney.

- And it accommodates the valid business reasons why 15% of active attorneys in private practice choose not to buy insurance.
- It is moral/ethical because it reasonably eliminates the situation where a client can become a victim of an uninsured attorney.
- It is moral/ethical because it does not force any uninsured active private practice attorney into inactive status thereby taking away his/her right to practice law.

Again, thank you for reading the materials which have taken me considerable time to gather. I believe this information makes it easy for you see the situation for what it is.

My character was attacked yesterday for availing myself of my right to protest mandatory insurance. Please support my right to speak. I have more to say.

[Fair and balanced reporting in NWLawyer](#)

Please ask for fair and balanced reporting in the *NWLawyer* which has given pages and pages of articles in support of mandatory insurance and only a couple of Letters to the Editor representing an anti-insurance position.

Respectfully yours,
Inez Petersen, WSBA #46213 since Aug 2013
Age 73

Appellate Case Management System

C-Track, the browser based CMS for Appellate Courts

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Disclaimer: The information and documents available here should not be relied upon as an official record of action. Only filed documents can be viewed. Some documents received in a case may not be available for viewing. Some documents originating from a lower court, including records and appendices, may not be available for viewing. For official records, please contact the Clerk of the Supreme Court of Nevada at (775) 684-1600.

Combined Administrative Case: ADKT 0534

Short Caption:	IN RE: AMENDMENTS TO SCR 79 PROFESSIONAL LIABILITY INSURANCE	Court:	Supreme Court
Classification:	Administrative - ADKT - ADKT	Case Status:	Scheduled for Hearing
Filed Date:	06/29/2018	Public Hearing:	07/18/2018 at 3:00 PM (Nevada Supreme Court Courtroom, Carson City)
Closed Date:			

+ Party Information

Docket Entries

Date	Type	Description	Pending?	Document
06/29/2018	Administrative Case	Filed Petition.		18-24812
07/03/2018	Administrative Case	Filed Order Scheduling Public Hearing and Requesting Public Comment. Exhibit A attached. Hearing to be held Wednesday, July 18, 2018, at 3:00 p.m. in the Supreme Court Courtroom in Carson City. Videoconferenced to Nevada Supreme Court in Las Vegas. Comments may be submitted electronically or in hard-copy format due to Clerk by 5 p.m. on July 11, 2018. Persons interested in participating must notify the Clerk no later than July 11, 2018.		18-25259
07/06/2018	Administrative Case	Filed Comments from Robert P Spretnak of The Law Offices of Robert P Spretnak.		18-25577
07/10/2018	Administrative Case	Filed Comments from Geoff Giles.		18-26168
07/10/2018	Administrative Case	Filed Comments from Robert C LePome.		18-26170
07/10/2018	Administrative Case	Filed Notice from Michael J Warhola. (Written notice of wanting to participate.)		18-26171
07/10/2018	Administrative Case	Filed Comments from Nancyann Leeder.		18-26174
07/10/2018	Administrative Case	Filed Comments from Brian M Adams with Adams & Adams.		18-26176
07/10/2018	Administrative Case	Filed Comments from Andrew Craner.		18-26177
07/10/2018	Administrative Case	Filed Comments from Kelley K Blatnik with Blatnik Law, LLC.		18-26180
07/10/2018	Administrative Case	Filed Comments from Joel G Selik with Selik Law Offices.		18-26253
07/10/2018	Administrative Case	Filed Comments from Robert T Eglet with Eglet Prince.		18-26264
07/11/2018	Administrative Case	Filed Comments from Mark C Hafer with Mushkin Cica Coppedge.		18-26298
07/11/2018	Administrative Case	Filed Comments from Madelyn Shipman.		18-26480
07/11/2018	Administrative Case	Filed Comments from Eric L Abbott.		18-26482
07/11/2018	Administrative Case	Filed Comments from Jack T Bullock, II. with Bullock Law Offices.		18-26483

07/11/2018	Administrative Case	Filed Comments from Mauricio R Hernandez .	18-26484
07/12/2018	Administrative Case	Filed Comments from Brian D Nettles with Nevada Justice Association.	18-26531
07/16/2018	Administrative Case	Filed Comments from Roger Doyle.	18-27005
07/16/2018	Administrative Case	Filed Comments from Mark W Knobel with McDonald Carano.	18-27007
07/16/2018	Administrative Case	Filed Comments from Nancy Avanzino-Gilbert.	18-27008
07/16/2018	Administrative Case	Filed Comments from Brenda J Erdoes and Kevin C Powers with LCB.	18-27009
07/16/2018	Administrative Case	Filed Comments from Hillary Gaston Walsh.	18-27010
07/17/2018	Administrative Case	Filed Comments/Incoming from attorneys Robert L Eisenberg and David R Grundy of the law firm of Lemons, Grundy, & Eisenberg.	18-27275
07/18/2018	Administrative Case	Filed Comments from M Jerome Wright.	18-27441
07/18/2018	Administrative Case	Public Hearing Held. Public Hearing held on the Administrative Docket.	
08/06/2018	Administrative Case	Filed Letter from Brian Lech responding to information included in proposal, various feedback and the presentation of the focus group video.	18-30005
10/11/2018	Administrative Case	Filed Order Denying Petition for Amendment to Supreme Court Rule 79.	18-39905

 [Original Case View](#)

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FAX (702) 938-1055
WWW.SPRETNAKLAW.COM

EMAIL
BOB@SPRETNAK.COM

5 July 2018

BY FAX ONLY (No. 775-684-1601)
Elizabeth A. Brown
Clerk of the Supreme Court of the State of Nevada
201 South Carson Street
Carson City, Nevada 89701

FILED

JUL 06 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

**RE: Order Scheduling Public Hearing to Amend S.C.R. 79
(Professional Liability Insurance)
ADKT 534**

Dear Ms. Brown:

This is in regard to the recently-issued "Order Scheduling Public Hearing and Requesting Public Comment" regarding the Board of Governors of the State Bar of Nevada filing a petition to amend Supreme Court Rule 79 to require professional liability insurance for attorneys engaged in private practice as a condition of licensure.

I am opposed to this amendment to S.C.R. 79. I am a solo practitioner, representing employees in employment disputes. Many of my cases are on a contingent fee basis. I have had years where my income has been very small because that is the nature of my practice. If this rule change were to go into effect, it would severely limit my ability to reduce fees for my clients, as needed, and it would negatively affect my ability to take on representation for some matters where the potential payoff is small relative to the enormity of the injustice faced by that person. Although I am just one practitioner, there are not many lawyers practicing regularly in this area of law on behalf of the worker. This proposed rule change will have a substantial and negative affect on access to justice for vulnerable, low-income workers and those who have lost their jobs and no longer have income.

I would like the opportunity to speak at the public hearing on this matter set for July 18, 2018, at 3:00 p.m. I would like to participate in the hearing via electronic transmission from the Las Vegas hearing location, as I cannot travel to Carson City that day.

C:\Users\Robert Spretnak\Documents\MyFiles\State Bar\corr.brown.18.07.05.wpd

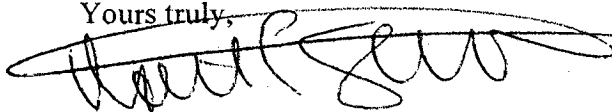


18-25577

16 June 2016
Page 2

I thank you for your attention to this matter.

Yours truly,

A handwritten signature in black ink, appearing to read "Robert P. Spretnak", written over a horizontal line.

Robert P. Spretnak

RPS:bs

Geoffrey Lynn Giles and Associates

Law Offices

527 California Avenue, Suite 1
Reno, Nevada 89509

775.329.4999

July 3, 2018

Supreme Court of Nevada
Office of the Court Clerk
201 S. Court Street, Suite 201
Carson City, Nevada 89701

FILED

JUL 10 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Re: Comments on ADKT 0534

Dear Supreme Court;

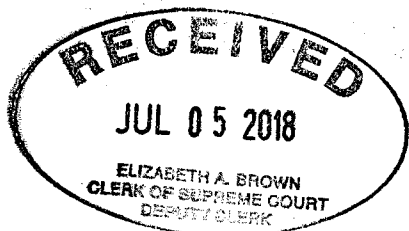
I write to express my opinion about the Petition filed by the State Bar of Nevada to require mandatory legal malpractice insurance. I discovered the existence of a hearing on this petition quite by accident, while the researching another matter. I would have thought that the State Bar would inform me of this since I wrote about the matter previously, though that letter was unacknowledged.

Please find a copy of it herewith, and I stand behind it now as I did then. While I would like to participate at the hearing July 18, @ 3:00 PM, a previously scheduled court matter makes that impossible. In the event that changes, would it be possible to attend and make comments? Thank you, I remain....

Yours truly,

[Handwritten Signature]
Geoff Giles

GG:glg
encl.



Geoffrey Lynn Giles and Associates

Law Offices

527 California Avenue, Suite 1
Reno, Nevada 89509

775.329.4999

Publications@nvbar.org

December 6, 2017

Re: Join the Discussion [mandatory legal malpractice insurance]

Your organization has asked for comments on the issue of mandatory malpractice insurance on page 28 of the December 2017 issue. Here are mine; I am against it.

It would be a great mistake to make legal malpractice insurance mandatory as a condition of holding a Nevada Law License. It would simply be a tax on lawyers and of no real benefit to the public. Indeed, it would draw a "bull's eye" on the backs of all of us without it, since malpractice lawyers are generally loath to file suit against those who are uninsured. I know this because I have been called upon over the years to render expert opinions about the legal malpractice of other lawyers.

As it stands now, members of the public are entitled to ask a lawyer for his or her *curriculum vitae* before engaging counsel, as the Supreme Court rules mandate. This would include whether or not the lawyer has coverage. While I have never personally been asked for my qualifications in nearly forty (40) years of practice, they remain available for anyone who wishes to see them. Indeed, I had malpractice coverage for all of those years, up until my coverage came up for renewal earlier this year.

I declined to renew it because it was a great waste of money. Since I am now semi-retired and see far fewer clients, I had supposed my carrier would take that into account in pricing my renewal. Unfortunately, I was refused any reduction, despite the reduced risk. So much for years of loyalty and timely payments. I have spent nearly \$100,000 over the years for this kind of insurance, though I never had a claim [nor a fee dispute, lawsuit or bar complaint for that matter]. Indeed, these funds would have been much better applied towards retirement, which I am now facing.

Finally, you should consider whether or not this kind of requirement is even lawful under the Antitrust Laws. Personally, I would think it much wiser to assess lawyers for a client recovery type fund when an attorney does something really awful. Perhaps 10% of what insurance would cost. Coupling such a fund with realistic Peer Review would be much preferable, such as they do in Illinois. This would be a much wiser approach than promoting a cottage industry by judicial fiat, for malpractice counsel and insurance companies. Thank you, I remain....

Yours truly,


Geoffrey Giles

7/3/18

PAGE 007 from NEZ PETERSEN
ROBERT C. LEPOME
ATTORNEY AT LAW
2040 MAY VALLEY WAY
HENDERSON, NEVADA 89052
TELEPHONE (702) 492-9971
FAX (702) 636-9971
rlpome@gmail.com

July 5, 2018

Elizabeth A. Brown
201 South Carson St.
Carson City, NV 89701

ADKT 0534

FILED

JUL 10 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Dear Ms. Brown,

This responds to the Supreme Court's invitation for written comment concerning the proposed amendments to rule 79 which would mandate malpractice insurance as a condition for continued active membership in the State Bar of Nevada.

It would appear that this rule would not be applicable to retired attorneys who by definition are not engaged in private practice of law and representing clients.

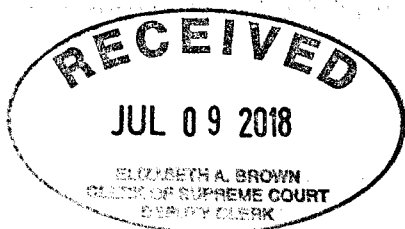
There presently exist a category of lawyers who are over age 70 who have limited their practice to matters which do not involve practice before the District Courts and have restricted their practice to qualify under exemption 003 of the requirement to obtain a Nevada State Business License. They tend to do minor work in the area of real estate law or similar areas of the law which do not require court appearances. Many of us are based on small communities whose Justices of the Peace are not lawyers. Our incomes are limited to not more than 66 2/3 percent of the Nevada average annual wage. See Attached Exemption which is held by me.

I wish to participate by telephone conference to number 702-492-9971 and anticipate just one question: "Have there been a significant number of claims of malpractice concerning attorneys over age 70 who have limited their practice to appearing only in Small Claims Court or Justice Court civil cases?" Hopefully, this letter will arrive in time to perform an inquiry to reach the answer to this question. If the number is small then I would propose that an exemption be added that malpractice insurance should be waived for attorneys over age 70 who limit their practice to a home-based practice and whose earnings are not more than 66 2/3 percent of the Nevada average annual wage.

Sincerely,

[Signature]

Robert C. LePome, Esq.



BARBARA K. CEGAVSKE

Secretary of State

KIMBERLEY PERONDI

*Deputy Secretary
for Commercial Recordings*

STATE OF NEVADA
PAGE 008 OF 012 BY ZADA ERSEN



**OFFICE OF THE
SECRETARY OF STATE**

Commercial Recording Division

*202 N. Carson Street
Carson City, NV 89701-4069
Telephone (775) 684-5708
Fax (775) 684-7138*

NOTICE OF EXEMPTION
NEVADA STATE BUSINESS LICENSE

Sole Proprietor

You have filed a notice citing a statutory exemption "003" pursuant to Nevada Revised Statutes and therefore are not required to maintain a Nevada State Business License.

If your exemption changes or your business is no longer exempt, you must file an amendment reflecting your current business status.

Nevada Business Identification: NV20151258446

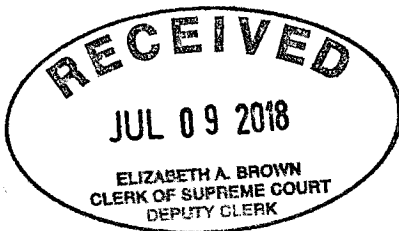
Name: ROBERT LePOME

Expiration Date: 4/30/2019

Exemption Code: 003 A home-based business whose net earnings are not more than 66 2/3 percent of the Nevada average annual wage

Issued this 31st day of March, 2018.

Please Post in a Conspicuous Location



Law Office of
MICHAEL J. WARHOLA, LLC
Thursday, July 05, 2018

Via U.S. Mail:

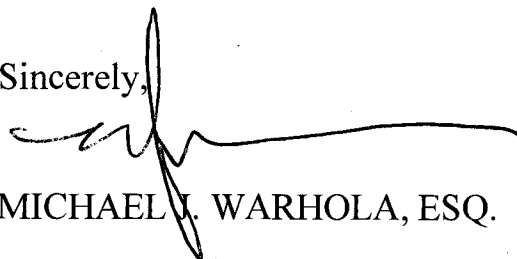
Elizabeth A. Brown, Clerk of the Supreme Court
201 South Carson St.
Carson City, NV 89701

Re: *ADKT 534*

Dear Court Clerk, Ms. Brown,

Please consider this as written notice that I wish to participate in the open hearing regarding ADKT 534. Thank you for your time and attention to this matter.

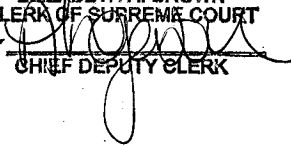
Sincerely,

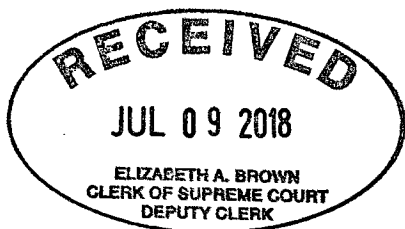


MICHAEL J. WARHOLA, ESQ.

FILED

JUL 10 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK



625 South 6th Street
Las Vegas, Nevada 89101
ph. 702.678.6699 / fax 702.678.6642

335 Lancaster Drive
Reno, Nevada 89506
9 July 2018

Nevada Supreme Court
201 South Carson Street
Carson City, Nevada 89701

FILED

JUL 10 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Re: ADKT 534

Dear Supreme Court Justices:

I write in opposition to the proposed change in Rule 79 as written. It appears to me to be overbroad and unduly restrictive, thus creating some negative consequences.

It is overbroad, in my opinion, because it refers to "representing clients" without any exception. Some attorneys may represent only family members, or persons unable to pay a fee, or cases which will produce no award of funds but have complicated or interesting issues which need to be decided. Such attorneys may be retired from full time practice, but nevertheless in active status, even reading law and continuing legal education.

It is unduly restrictive, in my opinion, because it specifies an amount of malpractice insurance which costs a substantial yearly premium for an attorney who may earn nothing, or a few hundred or a couple of thousand dollars a year. (My information is that a minimal policy costs \$2500 a year, and the effective period of coverage creates a separate problem.)

Thus some attorneys who seek to help family members or others with small cases, such as traffic tickets or governmental permit violations, or conflicts with small amounts in controversy, will have to refuse to represent. Thus the factfinder will not have the benefit of legally phrased argument supported by relevant facts offered in accordance with accepted procedure. And family members or some others will be left to fend on their own.

Therefore, I ask that if the proposed rule change is approved and mandatory malpractice insurance is required that there be some exceptions allowed by client and case type, and by amount of insurance coverage. If necessary, the attorney could be required to have a disclosure form signed by the client who thereby acknowledges that s/he knows that the attorney does not have malpractice insurance coverage.

Thank you for your consideration.

Sincerely,

[Signature: Nancyann Leeder]

Nancyann Leeder, Esq.
Nevada Bar No. 696

RECEIVED
JUL 09 2018
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

18-26174

BRIAN M. ADAMS
H.M. ADAMS (DECEASED)

ADAMS & ADAMS
ATTORNEYS AT LAW
712 SOUTH 8TH STREET
LAS VEGAS, NEVADA 89101

TELEPHONE
(702) 384-9275

July 5, 2018

Elizabeth A. Brown, Clerk of the Supreme Court
201 South Carson St.
Carson City, NV 89701

ADULT 0534

FILED

JUL 10 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Re: Proposed Amendment to Supreme Court Rule 79

To the Honorable Justices of the Nevada Supreme Court:

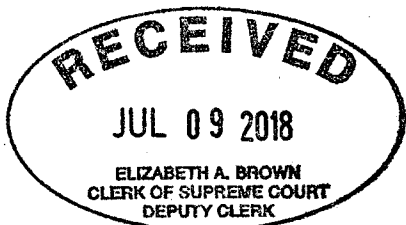
I was admitted to the Nevada State Bar on October 5, 1987, taking the examination once. I have a B.A. in Business Administration (Accounting major) from UNR, class of 1982. For various reasons I have never carried legal malpractice insurance. On the other hand, I have never personally been the subject of a malpractice action or claim, a Bar complaint, or even a fee dispute – never. I have never been suspended from the practice of law and have always timely submitted (and paid) my Bar dues and disclosures, CLE dues and CLE requirements. When I started practicing my father, Herman M. Adams, and I had an association of two legal offices in general practice. Now my father is deceased, and I am more part time and no longer practice in litigation matters (or at least have not taken a litigation matter in a while).

In my early years I took many judicial appointments representing indigents in criminal matters, which included a post conviction relief that I was appointed to by Judge Myron Leavitt. I even took an appointment defending a termination of parental rights matter that when resolved was quite possibly the first public adoption of its kind in the state of Nevada. I have practiced in the areas of domestic relations, real property, eminent domain, zoning, landlord tenant matters, contractual, transactional, business organization and maintenance, NERC, Public Carrier matters, administrative law, will and trust preparation, probate and trust administration, guardianships, personal injury, limited tax matters, and many others. In other words, I am no stranger to the law or the courts.

I am admitted to practice by the Nevada State Bar (1987), United State District Court – District of Nevada (1987), United States Court of Appeals for the Ninth Circuit (2001), and the Supreme Court of the United States of America (2008).

I have reviewed the matter of mandatory legal malpractice insurance and find that of all the states to have considered it, or some other alternative, only two have imposed it – Oregon and Idaho. And only one has established its own Fund from which attorneys can acquire (at the same cost) the mandated insurance - Oregon. All other states have rejected it, and this includes the American Bar Association.

Frankly, even if an attorney has malpractice insurance this does not mean the carrier will ultimately honor it. Effectively, to a client, or even the Nevada State Bar, this is a third party contract, and if the insured (allegedly) fails to perform adequately under the contract the carrier will honor nothing. I have seen this happen before, more than once. So to what extent is the Nevada State Bar going to enforce or supervise an attorney's performance under a third party contract of insurance before the suit is filed? It's not. In my opinion, only the Oregon model would be worth any consideration – if it can survive.



18-26176

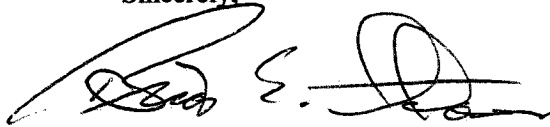
Elizabeth A. Brown, Clerk of the Supreme Court

July 5, 2018

Page 2

In conclusion, should Nevada make legal malpractice insurance mandatory, I don't see myself picking it up in the open market. And if you believe premiums will reduce as a result of more attorneys entering the market I believe the opposite will occur – just look at the ACA for example. I bet carriers will pile on the premiums just knowing the insurance is now mandatory. This is not to say I wouldn't acquire malpractice insurance, but that is the way I am tending. If that is the case, I would likely change my status to active but not representing clients, and my established clients I now help on an occasional and limited basis can go find a better attorney (better merely because they supposedly have legal malpractice insurance). However, if that status still requires me to pay any form of bar dues, I would probably move to inactive. I mean why pay any dues if you are precluded from making any money to at least pay for it – right, that's just ridiculous. And, of course, there always remains the ultimate choice, which I really don't want to do.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian M. Adams", written in a cursive style.

BRIAN M. ADAMS, ESQ.

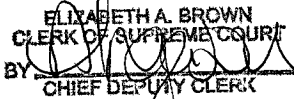
BMA:bma

ANDREW CRANER, ESQ.

11268 Playa Bonita Avenue
Las Vegas, Nevada 89138
Telephone: (702) 353-7874
E-Mail: nvesq@cox.net

FILED

JUL 10 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

July 6, 2018

Justices of the Supreme Court of Nevada
c/o Elizabeth A. Brown
Clerk of the Supreme Court
201 South Carson Street
Carson City, Nevada 89701

**Re: ADKT 0534: In the Matter of Amendments to Supreme Court Rule 79
Regarding Professional Liability Insurance for Attorneys Engaged in Private Practice.**

Dear Chief Justice Douglas and Honorable Justices of the Supreme Court of Nevada:

You have invited comments from bar members regarding the State Bar of Nevada Board of Governors' Petition to amend Supreme Court Rule ("SCR") 79 requiring professional liability insurance for attorneys engaged in private practice as a condition of licensure. I write in opposition to the State Bar's proposed amendment and urge this Honorable Court to deny the State Bar's Petition insofar as it seeks to require Nevada attorneys to purchase and maintain liability insurance.

I oppose the State Bar's Petition to amend SCR 79(2)(c) on three grounds:

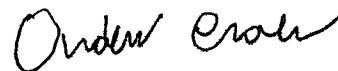
First, the Petition is devoid of evidence showing a dramatic rise in professional malpractice claims against Nevada lawyers or an increasing number of attorneys who failed to pay malpractice judgments rendered against them which would warrant the requested amendment to SCR 79(2)(c).

Second, the 413 "Additional Comments" published in Exhibit "D" ("Survey Report") confirm that most of the survey responders (including myself) strongly disagree with the State Bar's position that "[r]equiring a minimum level of professional liability insurance for all attorneys directly responds to the State Bar's mission to protect the public." *Petition* at 12:11-12.

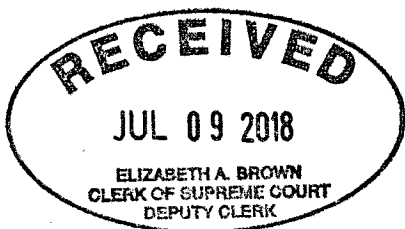
Finally, SCR 79(2)(c) already requires each Nevada attorney in private practice to annually disclose whether they maintain professional liability insurance. To accomplish its stated mission, the State Bar may wish to consider updating its online attorney directory by publishing under each Nevada attorney's name whether they maintain professional liability insurance, thus allowing members of the public to decide for themselves whether they wish to retain a specific attorney.

Thank you for your kind consideration of my comments regarding ADKT 0534.

Very truly yours,



Andrew Craner, Esq.



IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF
AMENDMENT TO SUPREME
COURT RULE 79 REGARDING
PROFESSIONAL LIABILITY
INSURANCE FOR ATTORNEYS
ENGAGED IN PRIVATE PRACTICE

Case No. ADKT 534

FILED

JUL 10 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

**RESPONSE TO ORDER REGARDING PUBLIC COMMENT TO
PROPOSED SCR 79 AMENDMENT**

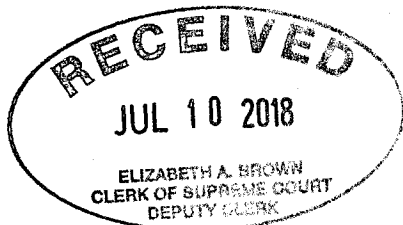
Amendment requiring all private practicing attorneys to carry malpractice liability
as condition of their license

DECLARATION OF ATTORNEY KELLEY K BLATNIK IN

OPPOSITION TO PROPOSED AMENDMENT OF SCR 79

BLATNIK LAW, LLC
Kelley K. Blatnik, Esq.
Nevada Bar No. 12768
8275 S. Eastern Ave., Ste. 200-425
Las Vegas, Nevada 89123

Attorney that will be adversely impacted by proposed amendment



18-26180

**DECLARATION OF ATTORNEY KELLEY K BLATNIK IN OPPOSITION
TO PROPOSED AMENDMENT OF SCR 79**

I, Kelley K Blatnik, Esq., do declare pursuant to the penalties of perjury the following to be true and correct to the best of my knowledge:

I have reached the age of majority and am competent to testify.

I am a duly licensed attorney in the State of Nevada.

Currently, I am licensed in the following jurisdictions:

1. Florida State Bar #67166 July 2009
2. Eleventh Circuit Court of Appeals Sept 2009
3. U.S. District Court Florida Northern District Oct 2009
4. U.S. District Court Florida Middle District Dec 2009
5. U.S. Tax Court Bar #hk0205 April 2011
6. U.S. District Court Florida Southern District April 2011
7. Nevada State Bar #12768 Oct 2012
8. Supreme Court of the United States of America Jan 2013
9. U.S. District Court of Utah, Central District Oct 2013
10. Utah State Bar # 14862 oct 2013
11. U.S. District Court Nevada District Jan 2015
12. Ninth Circuit Court of Appeals Jan 2015

My publications include, but are not limited to:

“Nevada: Embracing the Past, Looking to the Future,” Kelley Hasson (née), Nevada Lawyer Magazine, October 2014;

“On the Compliance to Regulatory Bodies for Import/Export Goods,” Carlo Giacomini, Guida Sassi, and Kelley Hasson (née), presented at 27th Annual Global Trade Control Conference, Nov. 2014;

“To Text, or Not to Text: That is the Question: Prompt Communication with Clients in the Electronic Age,” Kelley Hasson (née), Nevada Lawyer Magazine, Dec. 2014;

“Real Estate Lawyering on a Budget,” Kelley Blatnik, Communique, May 2016;

“*Shadow Wood* Affirmed Established Legal Standards Relating to HOA Foreclosures,” Kelley Blatnik and Paul Connaghan, Communique, May 2016;

“Taxation of Foreign Individual: Transactions in U.S.A.,” paper id: ii-lpsrome-25058-10892, Kelley Blatnik, presented at the 166th *International Conference on Law and Political Science by the International Institute of Engineers and Researchers*, May 25-26, 2018 paper id: ii-lpsrome-25058-10892.

I personally manage and handle all matters for my solo practitioner law firm Blatnik Law, LLC. This includes but is not limited to accounting, client retention, all legal, and administrative work.

I personally manage, operate, and handle all matters with my business Blatnik Realty, LLC and maintain an active Real Estate Broker Salesperson License (B.S. 145439) with the Nevada Real Estate Division with Jeff Sommers as my sponsoring broker.

I am a notary public for the State of Nevada, Appt. No. 15-1362-1.

I play viola with the Henderson Symphony Orchestra and am an active member of Shifting Sands Dance Troupe.

After approximately one (1) year as an Assistant Public Defender (“APD”) in Lake County, Florida, I ceased work as an APD in order to open my own private

practice and better balance work-life obligations, as my children were much younger at the time. Since May 2010 until now, I have engaged in private practice as a solo practitioner and have never had a client make a malpractice claim against me. To date, no court has sanctioned me for attorney malpractice. Since May 2010 until now, I have not had my own professional malpractice insurance.

Over the years, I attempted on multiple occasions to obtain professional malpractice insurance, to no avail. The impediments to professional malpractice include but are not limited to an absence of carriers willing to insurance someone with as many/diverse law licenses, cost, and inability to obtain a quote in a reasonable amount of time.

On July 9, 2018, the Notice of Hearing appeared on my Facebook feed and upon reading the notice, I attempted to obtain professional liability coverage. Daniels-Head Insurance Agency, Inc. ("DHIA") refused my application due to the diversity of jurisdictions to which I am admitted. On July 9, 2018, the following professional insurance providers were unable to provide quotes due to the diversity of jurisdictions: (1) www.professionalliabilitypro.com, (2) <http://attorneymalpractice.exlawquote.com> and (3) www.americanbar.org.

In the past (2016), I worked with an insurance agent for two (2) months in an attempt to get obtain a quote for professional liability insurance. My efforts ended

fruitless. The insurance agent informed me that my law firm did not match the industry standard for firm composition in either jurisdictions or caseloads. Essentially, I was informed that due to the constant evolving nature of my caseloads changing from criminal, civil, patent, tax, and family law, that the insurance industry was ill equipped to provide insurance to an attorney with the unique diversity and fluctuation in caseloads and case type.

In addition to lawyering, music, dance, and realtoring, I supervise and oversee the education of my daughter. Previously, she was homeschooled, but more recently, she began to attend Nevada Virtual Academy, which although technically is not homeschooling, requires the attention, time, and commitment of her learning coach/parent as if we engaged in pure homeschooling. The choice to homeschool my daughter facilitates the emotional, mental, physical, and educational needs to my offspring. It allows her to enroll in courses well advanced of her physical age while preserving her social engagements with youths of her age¹. My peculiar law firm, solo practitioner working from home, facilitates her education, health, and well-being. Full-time employment at another firm, which could afford malpractice

¹My oldest daughter graduated 2 years early due to homeschooling and now attends UNLV as a chemistry major, which is why I refer only to the one daughter.

insurance, would result in disastrous consequences for our family and is simply untenable.

In order to comply with the proposed SCR 79 amendment, I would need to either cease private practice in Nevada or work full-time at a standard law firm. Neither option is tenable, at this time. On a more personal note, I possess a congenital heart imperfection which impacts my ability to sit, stand, walk, or run from time to time. As a solo practitioner working from home, I enjoy the benefits of a custom work space tailored to my needs as well as the ability to rest, when necessary. Over the course of the years, I attempted the standard work day in a standard office environment, and each time my health deteriorated. Fortunately, I have found firms that allow me to perform of counsel work that allows me to work from home and balance the needs of my children and health with the needs of legal clients.

The July 2018 Nevada Lawyer Volume 26 Issue 7 devoted the entirety of the magazine to attorney well-being. The edition highlighted the stresses of the legal profession. Especially considering a well-known recent Las Vegas attorney suicide, the Nevada Supreme Court should carefully consider any additional restrictions or requirements upon solo practitioners. The practice of law is difficult enough without additional undue financial burdens.

If the Nevada State Supreme Court insists upon the amendment, which is greatly detrimental to solo practitioners, exemptions for undue financial burden and coverage by another firm's insurance should be included.

Since August 2015, I have worked of counsel with Boyack, Orme, & Taylor n/k/a Boyack, Orme, & Anthony ("Boyack") and continue to do so. It is my understanding that all Boyack cases, including my work upon them, are covered by Boyack insurance, as all legal work must be approved by one of the partners prior to filing. Therefore, Boyack clients need no additional coverage from a Blatnik Law, LLC professional malpractice policy.

Since June 5, 2017, I have worked as of counsel with O'Reilly Law Group, LLC ("OLG") and continue to do so. It is my understanding that all OLG cases, including my work upon them, are covered by OLG insurance, as all legal work must be approved by one of the partners prior to filing. Therefore, OLG clients need no additional coverage from a Blatnik Law, LLC professional malpractice policy.

For those cases covered by my of counsel relationship, no separate Blatnik Law, LLC policy should be required. For myself, any other solo practitioner, and especially part-time Nevada attorneys, an exemption due to undue financial burden must be added to the proposed amendment.

The proposed amendment to SCR 79 should not be adopted as it creates an undue burden upon solo practitioners.

I respectfully request the Nevada State Supreme Court reject the proposed amendment to SCR 79 in its current form.

Dated this 10th day of July 2018.

Blatnik law, LLC

Kelley Karye Blatnik

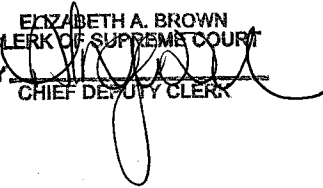
Kelley K. Blatnik, Esq.
Nevada Bar No. 12768
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Las Vegas, Nevada 89123

PAGE 022 from INEZ PETERSEN
SELIK LAW OFFICES

Joel G. Selik, JD, LLM
1050 Indigo Drive, Suite 112
Las Vegas, NV 89145
702-243-1930
Joel@SelikLaw.com
July 10, 2018

FILED

JUL 10 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
CHIEF DEPUTY CLERK

Elizabeth A. Brown
Clerk of the Supreme Court
201 Carson Street
Carson City, Nevada 89701
Via Fax: 775-684 1601

RE: ADKT 0534: In re Amendments to Supreme Court Rule 79

Dear Ms. Brown:

This letter is to comment on the proposed Amendments to Supreme Court Rule 79 regarding mandatory professional liability insurance. I am available for further questions or for public comment at the hearing in Las Vegas on July 18, 2018.

While I am an advocate for mandatory professional liability insurance for attorneys, I am concerned the current amendment is not in the interests of justice. My suggestion is that the rule be redrafted to take into account the issues and that a commission study obtaining one or more insurance companies that can provide affordable insurance.

The initial issue is that not all attorneys can obtain professional liability insurance, at any cost. In some instances, such as multiple claims (even if each of the claims were dismissed without any payment) an attorney may be unable to obtain insurance at any other price.

There are also issues with the time period to obtain other insurance if cancelled. It often takes more than 30 days for insurers to respond to applications.

I am in favor of having a differently worded rule that does require professional liability insurance to protect the public from harm, increase public confidence in the legal system, and reduce the costs to the public for those that are harmed by attorneys but receive no compensation.

A large portion of my practice is devoted to professional responsibility, ethics, and legal malpractice. I represent persons who were harmed by attorney malpractice, attorneys who are subject to claims of malpractice and consult with attorneys on issues of ethics, malpractice, and professional responsibility.

In my representing clients I have found there to be a very large number of attorneys who have no malpractice insurance. Clients are very often shocked to find out attorneys are not required to have malpractice insurance. I am often shocked at as to which lawyers have no insurance.

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ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

RE: ADKT 0534: In re Amendments to Supreme Court Rule 79

Page Two

Every driver is required to have automobile insurance to drive a car, but attorneys are not required to have malpractice insurance. Attorneys can cause serious and life changing damages to their clients by their malpractice.

Not having mandatory professional liability insurance creates a few problems. Without insurance for attorneys' malpractice, the confidence in the legal profession is reduced. When clients are harmed by attorneys with no compensation, the public perception of attorneys sinks.

Clients go to attorneys when they have been harmed and seek compensation. When those clients are harmed and uncompensated by attorneys with no assets and no insurance, it will cost the public by increasing unemployment and health care costs.

There are three areas that should be studied for potential future amendment to the Rule, deductibles, reduction in insurance amount by costs of defense (wasting policies) and the costs of insurance.

The main objection I have heard against mandatory professional liability insurance is the cost. The cost will particularly be difficult for solo practitioners, new attorneys, and attorneys with small practices. Professional liability insurance in an amount of \$250,000, may cost a solo-attorney between \$5,000 and \$8,000 annually. These are valid concerns but may be able to be addressed by a commission who can study and contract with insurance companies (or create an insured-owned mutual benefit insurer) for reasonable rate insurance.

The State Bar or other entity (e.g. a Supreme Court Commission) should seek to obtain basic professional liability insurance for Nevada Attorneys for a reasonable price. With the large number of attorneys needing insurance, an insurer being a State Sponsored Insurer may be able to provide reasonable priced insurance.

The current drafted Rule does not address deductibles. Insurance is commonly offered with from zero, \$2,500, \$5,000, \$25,000, and other amounts. Without specifying a deductible maximum, the Rule allows a loophole whereby insurers may provide low cost insurance policies, with deductibles so high there is, in effect, no real insurance.

Another issue is wasting insurance policies. An option offered by professional liability insurers is what is termed a wasting policy. A wasting policy reduces the amount of insurance by the costs of defense. For example, if a client makes a claim against an attorney for malpractice and the insurer pays the full policy limit at the time the claim is made, there are no defense costs so that the full \$250,000 is available for the harmed client. If the claim is litigated and the time of settlement the defense attorney fees and costs are \$150,000, the most the harmed client can be compensated by the insurer is \$100,000 which may be inadequate for the harm caused.

///

RE: ADKT 0534: In re Amendments to Supreme Court Rule 79
Page Three

It is time for mandatory professional liability. With some study, a rule can be drafted to take into account the concerns with the new rule. An alternative would be to implement the Rule as worded and prepare to amend the Rule to take into account the concerns.

I am willing to volunteer to assist the Supreme Court, the State Bar, any commission in implementing this or an amendment to the rule. I am available to answer questions or testify regarding this issue.

Sincerely,

/s/ Joel G. Selik

Joel G. Selik



July 10, 2018

(702) 450-5400
(702) 450-5451
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VIA U.S. MAIL AND FAX NO. (775) 684-1601

Chief Justice Michael Douglas
Nevada Supreme Court
201 South Carson Street, Ste. 201
Carson City, Nevada 89701

FILED

JUL 10 2018

RE: Mandatory professional liability insurance for attorneys engaged in the private practice of law in our State

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
CHIEF DEPUTY CLERK

Dear Chief Justice Douglas,

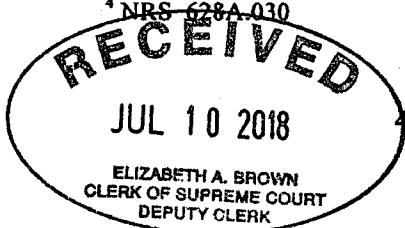
I write in support of ADKT No. 0534 which seeks to amend Supreme Court Rule 79 ("SCR 79") requiring mandatory professional liability insurance for attorneys engaged in the private practice of law in our State. If adopted, SCR 79 will require Nevada attorneys to maintain a policy of professional liability insurance at the minimum limit of \$250,000 per occurrence and \$250,000 annual aggregate.¹ Lawyers found not to be in compliance will be assessed a \$200 fine and suspended from practicing law pending compliance.²

I believe as attorneys we have not only an ethical, but a moral obligation to our clients and to the public to ensure that any harm caused to them by us, or any member of our state bar, does not go unmitigated. We expect our clients to put their trust in us to serve their best interests. How can we credibly expect them to do this while at the same time we are not doing everything possible to protect them from harm that can be caused by us or other members of our state bar? Lawyers, just like all professionals and all people, are not infallible. We make mistakes and will continue to do so. When those mistakes rise to the level of negligence or worse, and cause harm to the consumers of our legal services, it is incumbent upon us to mitigate that harm as much as possible.

Professional Liability Insurance Protects the Public

Under Nevada law, there are numerous professions that require professionals to carry liability insurance. Such laws were passed in order to protect the public from harm caused by these professionals. For example, with respect to fiduciary professions, asset management companies and asset managers are required to provide proof of liability insurance, or sufficient means to act as a self-insurer prior to receiving their license.³ In addition, financial planners and debt managers are required to carry liability coverage or provide a surety bond for negligence in their duties as a fiduciary.⁴ As for non-fiduciary professions, many nevertheless require some form of professional liability insurance as a condition for licensure in Nevada including, but not limited to, private investigators, private patrol officers, polygraph examiners, process servers, re-

¹ See, proposed SCR 79(3), ADKT No. 0534 at Exhibit A.
² See, proposed SCR 79(7)(a)-(b), ADKT No. 0534 at Ex. A.
³ NRS 645H.490
⁴ NRS 628A.030



400 South 7th Street, 4th Floor, Las Vegas, NV 89101
Tax I.D.# 46-2057340

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possessors and dog handlers. Each of these professions require proof of liability insurance prior to receiving a license in our State.

Lastly, the medical profession has an all-encompassing malpractice insurance statute that mandates malpractice insurance for any provider of voluntary healthcare services.⁵ Certain nurses must also maintain malpractice insurance if the medical board so requires.⁶ And, persons working in the medical marijuana industry must carry proof of liability insurance as part of the medical field.⁷

Stated another way, Nevada lawyers currently are not required to maintain malpractice insurance while state law mandates doctors, many nurses, asset managers, exchange facilitators, banks, financial planners, debt managers, contractors, inspectors, energy auditors, private investigators, private patrol officers, polygraph examiners, process servers, re-possessors, dog handlers, pest controllers, weed controllers, franchises, cable TV companies, video service providers, ambulance services, monorail transportation systems, common interests community managers and medical marijuana establishments, among many other professions in Nevada, to have liability insurance *to protect the public from harm caused by these professionals*. Our profession cannot, and should not, be exempted from this requirement.

Yet, opponents of ADKT No. 0534 argue that imposing mandatory malpractice insurance requirements will not further the public interest in protecting them from harm. A common argument forwarded is that exclusions in the insurance policy for intentional conduct or criminal malfeasance will foreclose relief to potential claimants. However, this argument is shortsighted as it ignores the fact that lawyers, much like any other professional, are not infallible or immune from negligent conduct that could harm their clients.

About a decade ago, I encountered a client that was severely injured as a result of an incident involving three different tortfeasors. The client explained how he was injured in Las Vegas by no fault of his own and provided me with documents, accident and incident reports, and photographs which unquestionably support his view. Unbeknownst to the client, his case was dismissed for failure to timely serve the complaint on any of the defendants. I later learned that this client's former attorney had no malpractice insurance, had no assets in his name, and everything else was tied up in a trust as tight as a vice. While I'm telling this nice young man who had been victimized by three negligent tortfeasors and then victimized again by his attorneys, I felt deeply ashamed of my profession.

This is only one out of a dozen or more potential clients over the past ten years alone, whom I have met with who were clearly the victims of legal malpractice in Las Vegas where their attorneys had no malpractice insurance, and either had no assets or had assets that were protected by trusts. All but one of these cases involved attorneys either failing to do the simple act of filing the complaint within the statute of limitations period, or failing to timely serve the complaint resulting in the injured victim's complaint being dismissed. If that is my own personal experience, then this begs the question - how many other victims of legal malpractice have there

⁵ NRS 629.470

⁶ NRS 632.238

⁷ NV Ordinance Code Sec.6.95.090

been in our state by attorneys who carry no professional liability insurance, and why do we as a profession who governs our own members allow this to happen? Amending SCR 79 will ensure situations like this will happen less frequently, and if it does occur, the client will have a potential remedy as a result of her attorney's negligence.

Conclusion

Professional liability insurance is important to professionals and clients alike. A professional having liability insurance can be the difference between a client receiving nothing for their loss, to being compensated for the injury they have suffered because of the professionals' negligence. Because many professions, prestigious or not, come with the risk of injuring the clients they serve, most states have numerous professional liability statutes. However, one profession that seems to be the exception is lawyers.

As this Court is well aware, law is a profession intertwined with nearly all of the other professions who serve clients and customers, and a lawyer's negligence can be particularly destructive to clients, many of whom are already vulnerable because that is the reason they have sought out legal counsel in the first place. Lawyers, like other professionals, should be required to carry malpractice insurance as a condition of licensure. Therefore, I strongly urge this Court to adopt the amendments proposed in ADKT No. 0534 requiring mandatory professional liability insurance for attorneys engaged in the private practice of law in our State.

Please accept this letter in support of ADKT No. 0534. Furthermore, I respectfully request to speak at the July 18, 2018 hearing regarding this important issue.

Sincerely,



Robert T. Eglét, Esq.

cc: Elizabeth A. Brown
The Honorable Michael A. Cherry
The Honorable Mark Gibbons
The Honorable James W. Hardesty
The Honorable Ron D. Parraguirre
The Honorable Kristina Pickering
The Honorable Lidia S. Stiglich

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L. Joe Coppedge, Esq.
Mark C. Hafer, Esq.**
****of counsel**

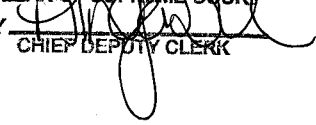
July 10, 2018

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JUL 11 2018

Elizabeth A. Brown
Clerk of the Supreme Court
201 S. Carson Street
Carson City, NV 89701

ADKT 0534

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

VIA FACSIMILE TO 775-684-1601

Re: Professional Liability Insurance

TO WHOM IT MAY CONCERN:

I have been a general civil practitioner since being admitted to the Nevada State Bar in 1983. Prior to that, I was licensed in Arizona. I resigned from the Arizona State Bar about three years ago since I no longer had any business there. I am writing to recommend that the Supreme Court not make any changes to require all private attorneys working in Nevada to maintain liability insurance.

Mandatory liability insurance will be a bonus to insurance companies who charge premiums and then deny coverage. Insurance companies like to send letters threatening to sue their customers for declaratory judgments that claims made are not covered claims. Insurance companies are very good at protecting themselves and are not very good at indemnifying claims. It is a rare occurrence when there is legal malpractice that falls outside the exclusions of malpractice insurance coverage.

I suspect this intended rule change is another response to the failure of the State Bar to protect the public from criminal actions by private attorneys such as Robert Graham. Now there is another attorney accused of stealing his clients' money, William Gamage. Malpractice insurance will not cover losses resulting from criminal acts. Insurance never covers crimes committed by insured. It sometimes covers mistakes due to negligence.

The modern trend in the private practice of law has been to flood the market with inexperienced young attorneys who can't get jobs in a law firm and have no mentors. There is another modern trend whereby inexperienced attorneys do not attack and litigate the issues. Instead, they attack the opposing counsel. If malpractice insurance is made mandatory, these attacks will become more frequent.

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JUL 11 2018
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

Recently the Supreme Court made it mandatory that every licensed lawyer pay money to listen to reformed alcoholics and drug addicts lecture about their problems. All Supreme Court Justices should be required to attend these seminars too. Maybe then the people authorized to make rules will better understand how useless such a requirement is. Some lawyers drink and some lawyers take drugs but wasting time listening to tales of woe and mandatory malpractice insurance won't solve these problems. It will just make somebody feel good about punishing those members of the bar who don't invite trouble, who work diligently and who respect the legal procedure so there can be a proclamation that these problems have been addressed, albeit inefficiently and at the expense of the membership.

The Supreme Court is not making the practice of law any more professional by imposing artificial and expensive requirements on the members of the Bar Association. Random audits when there are no complaints does not alleviate the failure of the State Bar to investigate legitimate complaints about missing money until it is too late. When there is smoke, there is likely a fire. That is the real issue. Robert Graham was given too much leeway and now, apparently it has happened again with William Gamage.

In closing, it would be more appropriate for the Supreme Court to focus on deciding the cases that come before it, not on making more rules on an already overburdened membership.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark C. Hafner". The signature is stylized with a large initial "M" and a long horizontal stroke at the end.

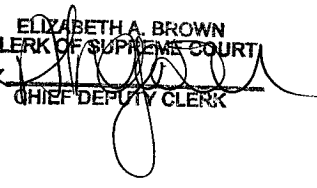
MARK C. HAFER, ESQ.

MADelyn SHIPMAN
5650 Mt. Rose Highway
Reno, Nevada 89511

Tel: 775-849-1763
Fax: 775-849-1794
E-Mail: shipmanheikka@gmail.com

FILED

JUL 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

TO: Elizabeth A. Brown, Clerk of Court

FAX: 775-684-1601

FROM: Madelyn Shipman

DATE: July 11, 2018

RE: Comment on ADKT No. 0534

This fax contains 2 pages, including this cover sheet. The information contained herein is considered either **PRIVATE** or **CONFIDENTIAL** and, therefore, intended only for the named recipient.

I enclose the attached Response Opposing Mandatory Professional Liability Insurance Rule – ADKT No. 0534 for consideration by the Court at the hearing tomorrow.

If there are any questions, please do not hesitate to contact me as indicated hereinabove.

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JUL 11 2018
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

Response Opposing Mandatory Professional Liability Insurance Rule – ADKT No. 0534

To: Nevada Supreme Court

Re: Opposition to Amendments to SCR 79 Regarding Professional Liability Insurance for Private Practice Attorneys

I am a licensed attorney in the State of Nevada. I am semi-retired and do not carry professional liability insurance. My practice is as follows:

1. My primary practice is as a mediator – as a Nevada Supreme Court Settlement Judge and/or as a Foreclosure Mediator (now) for the First, Second, Third, and Ninth Judicial District Courts. As a mediator, and as long as I stay in my role as a mediator, I am statutorily immune from liability. See, Nevada Mediation Rule 11(B), NRS 48.109, NRS 38.229 and NRS 38.253.

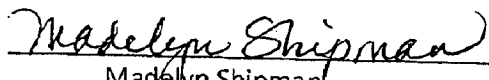
2. I have **one** organizational client – and that is a small public entity for whom I provide meeting coverage and minimal outside meeting legal assistance – all for a small monthly retainer of \$1,000. I do not handle any litigation. The entity has coverage, including claims handling and litigation coverage, through the Nevada Public Agency Insurance Pool (Pool/ Pact). Nonetheless, as I read the proposed rule, I would have to have insurance coverage as I provide these services as an independent contractor and not as an employee of the entity.

3. I accept **no** private clients.

4. I provide pro bono legal assistance to a non-profit (Tahoe Pyramid Trail) and, although rarely called upon, the Neighborhood Justice Center and the Nevada Dispute Resolution Coalition. I regularly act as a Lawyer in the Library providing advice to persons of limited means. As I read the rule, the Lawyer in the Library services would not require coverage; however, any assistance provided the Tahoe Pyramid Trail non-profit, the Neighborhood Justice Center and the Nevada Dispute Resolution Coalition – as they would be considered clients – would require coverage.

5. As a policy matter, insurance coverage should be a matter of business practice and not a requirement of licensure. I am wise enough to know what I do not know and would not venture into providing legal advice or assistance to anyone, even if provided on a pro bono basis, where I was not fully capable of providing said advice.

If ADKT No. 0534 is adopted as is I will have to either (1) terminate as legal counsel to the public entity or (2) raise my retainer fee to the public entity to cover the cost of insurance; and (3) stop providing pro bono legal assistance to what would be considered “clients” under the rule - the Tahoe Pyramid Trail non-profit and the two mediation entities previously noted herein.


 Madelyn Shipman
 Bar No. 408

Eric L. Abbott
2241 Florissant Drive
Las Vegas, NV 89128
eric_abbott@mail.com

FILED

JUL 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
CHIEF DEPUTY CLERK

July 7, 2018

ADKT 0534

Elizabeth A. Brown
Clerk of the Supreme Court
201 South Carson Street
Carson City, NV 89701

Re: Comments Regarding the Proposed Amendment to Supreme Court Rule 79 regarding Professional Liability Insurance for Attorneys Engaged in Private Practice

Dear Ms. Brown:

I have been practicing law in the State of Nevada for over twenty years. Presently, I work in house for an organizational client. However, in the past, I have worked in private practice. Without a crystal ball, I do not know whether down the road I will be in private practice again.

I have had the unique experience of working both in field of general litigation (construction defect, personal injury, insurance defense etc.) and in the specialized field of patent law (I am a licensed patent attorney). Obtaining professional liability insurance for specialized areas of law like patent law can be difficult. There are less options for other areas of the law- securities would be another example.

The proposed amendment does not provide any mechanism to request a waiver of the rule due to special or unique circumstances. It could be possible that an attorney in a highly specialized area may not be able to find insurance- then what happens, that attorney cannot work?

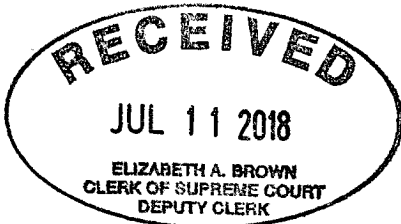
Also, the rule does not address attorneys admitted in Nevada Courts pro hac vice. Those attorneys from other states should be required to show proof of the same insurance in their pro hac vice application. Why should those attorneys be exempt from the rule?

The above comments are my own personal beliefs and should not be attributable to my employer.

Very truly yours,

[Signature of Eric L. Abbott]
Eric L. Abbott

Nevada Bar Number 5850



18-26482

BULLOCK LAW OFFICES

P.O. Box 1616
Lovelock, Nevada 89419

JACK T. BULLOCK II
Attorney at Law

TELEPHONE: (775) 623-8775
FAX: (775) 273-7058

July 11, 2018

Elizabeth A. Brown
Clerk of the Supreme Court
201 South Carson Street
Carson City, Nevada 89701
Via Fax: 775-684-1601

ADLT 0534

FILED
JUL 11 2018
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
CHIEF DEPUTY CLERK

Re: Comments on Proposed Amendment to SCR 79

Dear Ms Brown:

This letter will constitute my comments on the proposed amendment to SCR 79. Please forward these comments to the proper persons.

First, I am concerned that making malpractice insurance mandatory will open the flood gates to litigation in this area. I can see personal injury attorneys advertising to sue attorneys for malpractice like they advertise for auto accident cases. While it is appropriate for citizens to sue their former attorneys for harm done, the advertisements would have a chilling effect on how attorneys represent their clients. Attorneys with difficult clients would just turn them away and/or obtain waivers of liability and rights to sue in their engagement letters.

Second, the proposed amendment would appear to require a retired attorney doing pro bono work at the "Lawyer in the Library" program to carry malpractice insurance even though he/she is not collecting any fees for that work. Would he/she be "representing clients" within the context of the proposed amendment?

Third, would a government attorney, such as a deputy district attorney in a small community, be required to have malpractice insurance when he/she helps citizens fill out the forms for divorce, custody or guardianship cases. That attorney would not be charging any fees nor would that attorney appear as attorney of record in those cases. But because that attorney is assisting in the preparation of documents and in essence giving legal advice, then a requirement for mandatory malpractice insurance would prevent this type of representation.

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JUL 11 2018
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

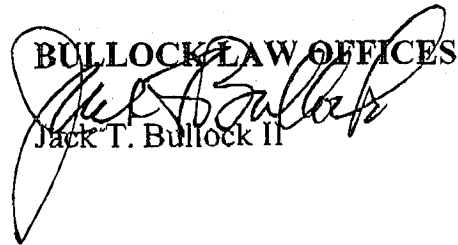
State Bar Comments Letter
July 11, 2018
page 2

Fourth, many semi-retired practitioners may not earn sufficient funds each year to afford a malpractice insurance policy. This is true where the only type of practice is representing corporations on the annual list of officers and meetings. No insurance should be required for this type of practice.

For these reasons, I suggest that the amendment not be approved and the current rule be maintained. For those attorneys with assets to protect, they will maintain insurance

Should anyone have any questions about these comments, please feel free to contact me.
Respectfully submitted.

JTB/jtb

BULLOCK LAW OFFICES

Jack T. Bullock II

Joint Comment Against Mandatory Professional Liability Insurance Rule Petition
ADKT No. 0534

FILED

To: Nevada Supreme Court
Re: Opposition to Amendments to SCR 79 regarding professional liability insurance for private practice attorneys.

JUL 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
CHIEF DEPUTY CLERK

For the following reasons, we the undersigned oppose petition ADKT No. 0534 submitted by the State Bar of Nevada Board of Governors ("the Board") to require mandatory professional liability insurance for private practice attorneys as a precondition to state licensure.

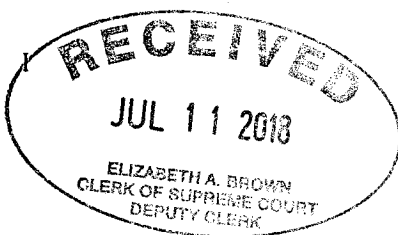
1. The petition lacks independent economic impact analyses.

A. Instead of securing independent, disinterested third-party research to fully assess the anticipated economic impact on lawyers engaged in private practice, the Board instead relies on data and input provided by an interested stakeholder and current market participant, "the State Bar's endorsed professional liability insurance carrier." Indeed, so great is the reliance that even the proposed policy coverage limits were selected based on that carrier's claim resolution history. Is that truly an appropriate level of insurance? We believe this issue is far too important to outsource policy expertise to a private business interest whose concerns are financial not public protection. But beyond its overarching reliance on an interested provider, the petition is also rife with sunny supposition, unfounded conjecture and old-fashioned wishful thinking. To cite one particularly outlandish supposition on how premiums would be paid, after estimating that \$250,000 claim/\$250,000 aggregate coverage premiums "for firms coming into market without prior acts exposure" would be "approximately \$1,350" and for Clark County, "closer to \$1,500," the Board then declares, "These rates are the equivalent of one hour of billable time per month."

By the Board's admission, bar associations have been examining mandatory professional liability models "since the 1970's." In the 40 years following the Oregon State Bar's imposition of mandated coverage in 1978, no other jurisdiction has adopted the Oregon model. And it was only in January of this year that Idaho began obligating its lawyers as a condition of licensure to purchase malpractice insurance on the open market. Sound policy reasons as well as economic factors have precluded other states from following suit. Two states in almost a half-century scarcely bespeak a beginning of a slow tide nationally toward mandating professional liability insurance as the Board claims.

B. The Board furthermore failed to address the impact a mandatory insurance environment will have on carriers and their rates when customers are trapped and must purchase their products to earn a living in their profession. How many carriers will be able to resist the temptation to increase the cost of insurance across the board?

C. Requiring all private practice lawyers to carry insurance as a condition of licensure means carriers must also be required to accept all applicants, including those previously deemed high risk. As a result there is the reasonable expectation this would cause an across-the-board increase in premiums, particularly when the pool of 6,713 Nevada lawyers in private practice means carriers must draw their funds from a much smaller



**Joint Comment Against Mandatory Professional Liability Insurance Rule Petition
ADKT No. 0534**

liability insurance pool. Higher premiums may even have the unintended consequence of some lawyers having to decrease their coverage limits.

D. While momentarily conceding "the economic pressures faced by attorneys in private practice and the impact of this requirement on the cost of doing business" and even though acknowledging "the impact of mandating a minimum professional liability insurance policy on private practice attorneys, especially those in a solo or small firm practice," the Board nonetheless looked past these very concerns ultimately disregarding them as "a matter of doing business." Just the same, how many lawyers, for example, practicing part-time by circumstance or by choice will be forced out of active practice over the expense of complying with such a rule? And how many newly-admitted lawyers already saddled with high student debt will be excluded because of this substantial new increase in practice costs? And what of lawyers working in economically marginal practices or promoting access to justice by offering so-called low-bono legal services?

2. There is no assurance the new Rule will protect the public.

A. Because of recent high profile lawyer-client trust defalcation reports, the announcement of newly-imposed mandatory professional liability insurance may lull the public into a false sense of security. But in truth, mandatory professional liability insurance is an unavailing remedy for the victims of intentional acts or omissions and criminal or fraudulent conduct as occurred in these widely-reported cases. These along with numerous other common policy exclusions too often foreclose relief to claimants.

B. Mandatory insurance is not designed to protect the public but to protect the insured. Consequently, an insurance company's interest is in direct opposition to a claimant's interest. Professional liability insurance is not intended to pay a claimant but to defend and protect the lawyer.

C. A claimant harmed by an insured lawyer's malpractice might be in no better position than a client harmed by the malpractice of an uninsured lawyer if the lawyer is either underinsured with insufficient limits to satisfy the claim or where the lawyer's failure to timely disclose the claim to the carrier results in a denial of coverage.

3. The new Rule injects insurance companies into the regulatory framework.

A. The new rule requires carriers electing to do business in Nevada to accept all applicants, including those lawyers with a poor claims history or in a high-risk practice area, i.e., "certain risks that would fall out of the standard market appetite." The cost of that insurance might be prohibitive thereby effectively placing insurance companies in the position of directing who can and cannot practice law in the state. The Board's petition gives short shrift to the problem concluding without any evidence that "insurance for all risks, including distressed firms, should be available on the open market." Moreover, what about lawyers denied coverage during the pendency of a bar complaint

Joint Comment Against Mandatory Professional Liability Insurance Rule Petition
ADKT No. 0534

even though they may be ultimately exonerated? Or what about a lawyer suspended from practice because of an inability to obtain insurance coverage as a result of a pending complaint?

B. The Board's dependence on new entrant "affordability" assurances from its endorsed insurance carrier is cold comfort to lawyers who in the subsequent years will see their premiums escalate "depending on underlying risk factors." Moreover, offering new entrants

without any prior claim history a low introductory rate is standard procedure for most carriers. It represents no boon to new entrants subsequently forced to pay ever escalating premiums to keep their licenses.

4. **There is no empirical evidence that unsatisfied malpractice claims against lawyers is a matter of general public attention. Nor has evidence been provided of a public outcry for mandatory professional liability insurance.**
5. **The Rule unfairly and disproportionately impacts sole practitioners, newly-admitted lawyers, and part-time and semi-retired lawyers.**
6. **The permissible scope of the Board's petition should be carefully reevaluated under *Janus v. AFSCME*, 585 U. S. ____ (2018).**

Mandatory bar associations are supposed to be limited to "regulating the legal profession and improving the quality of legal services," *Keller v. State Bar of Cal.*, 496 U.S. 1, 14 (1990), or, as the Court explained in *Harris v. Quinn*, "activities connected with proposing ethical codes and disciplining bar members." 134 S. Ct. 2618, 2643 (2014) (citing *Keller*, 496 U.S. at 14). In addition, further underpinning the rationale set forth by *Janus* is that only those activities that are "germane" to those purposes are allowable. Requiring professional liability insurance does not fall under lawyer regulation or improving the quality of legal services.

7. **The Rule represents one more unwarranted infringement on lawyer liberty interests.**

In addition to vaulting Nevada to the ranks of the highest cost to practice jurisdictions, this Rule gives no assurance of protecting the public from the intentional misconduct that apparently animated its creation. What it does do is impinge on lawyer liberty interests. It also raises the specter of a potential violation of due process rights. What happens when a lawyer is prevented from practicing law -- even though she has been deemed fit to practice and been given a license -- because she is required to obtain professional liability insurance and cannot? Is the State Bar abdicating responsibility as to who can or cannot practice law to an insurance company? Equally important is that the Board chose to ignore less proscriptive measures, including those like Illinois' "educational model" or those promoting informed consumer choice via an insurance disclosure requirement. Both were dismissed out of hand by a Board determined to exact its own supposed cure

Joint Comment Against Mandatory Professional Liability Insurance Rule Petition
ADKT No. 0534

for harm to clients from Nevada's uninsured lawyers, the extent of which it can neither prove nor disprove. Ironically, the Board made much of the members' strong opposition to required client disclosures in its less-than-objective State Bar December 2017 survey. It intimated this as a reason for not alternatively endorsing mandatory disclosure. At the same time, however, in the very same survey the overwhelming majority of member comments strongly opposed the imposition of mandatory malpractice insurance. But since those comments did not conveniently fit the Board's preordained agenda, they were ignored.

Name	SBN
1. Nallely Abad	14338
2. Malik W. Ahmad	10305
3. Tory Allen	12680
4. Boris Avramski	11350
5. Tahnya Ballard	3855
6. James F. Bishop	3680
7. Gina Bongiovi	10667
8. Nick Boylan	5878
9. Denise A. Bradshaw	10521
10. Steven P. Brazelton	5882
11. Ben Bunker	9773
12. Brandt Butko	13082
13. Arturo Sanchez Cano	12636
14. Patrick N. Chapin	4946
15. Peter Chasey	7650
16. Brian P. Clark	4236
17. Peter K. Cleary	11085
18. Justin Clouser	2678
19. Lynn Conant	8036
20. Charles T. Cook	1516
21. Thomas C. Cook	5266
22. Andrew Craner	6264
23. George E. Cromer	0183
24. Kerry St. Clair Doyle	10866
25. Roger Doyle	10876
26. Joseph A. Dragon	13682
27. Larry K. Dunn	1627
28. Karena K. Dunn	11659
29. William H. Eilberg	6963
30. Matthew D. Ence	5632
31. Alan Erb	1997
32. Holly Estes	11797
33. Steven E. Evenson	4596
34. James Farrar	3078
35. Illyssa I. Fogel	0213
36. David N. Frederick	1548

Joint Comment Against Mandatory Professional Liability Insurance Rule Petition
ADKT No. 0534

37. Alan R. Freedman	2048
38. Anthony T. Garasi	11134
39. Thomas J. Gibson	3995
40. Jessica Goodey	11973
41. Eddie Gomez	13340
42. Edmund J. Gorman Jr.	11581
43. Neil E. Grad	0183
44. Aubree L. Green	9527
45. Donald James Green	1869
46. George D. Greenberg	4278
47. Jeffrey Gronich	13136
48. Robert Rene Hager	1482
49. Leila Hale	7368
50. Ann Marie Hansen	10144
51. Kevin R. Hansen	6336
52. Tanner Harris	11590
53. Trevor Hatfield	7373
54. Saman Ryan Heidari	13347
55. Wyatt Herbst	14377
56. Robert C. Herman	0963
57. Mauricio R. Hernandez	7012
58. George B. Hibbeler	7746
59. Gayle Holderer	4731
60. David Hornbeck	0966
61. Nathalie Huynh	5997
62. Michael K. Johnson	6360
63. William Jones	6365
64. William R. Kendall	3453
65. James S. Kent	5034
66. Christal P. Keegan	12725
67. Stephanie B. Kice	10105
68. William R. Killip	3660
69. Grace Kim	9268
70. Steven Long	8163
71. Miguel Lopez	11410
72. Dawn M. Lozano	3475
73. Chirnese Liverpool	11186
74. Susan A. Maheu	8910
75. Paul Malikowski	0980
76. Noel Edwin Manoukian	1137
77. Mark Mausert	2398
78. Mark A. Marsh	3764
79. Vince Mayr	6737
80. Michael G. Millward	11212
81. Shawn L. Morris	6753
82. M. Gregg Mullanax	4704

Joint Comment Against Mandatory Professional Liability Insurance Rule Petition
ADKT No. 0534

83. Craig Murphy	4014
84. Gerald F. Neal	0353
85. Stewart J. Neuville	9638
86. Arlette Newvine	14613
87. Debra Nicholson	4079
88. Dave Olsen	3555
89. Christopher Owen	13211
90. Bryan J. Pack	8601
91. Roberto Puentes, Jr.	5095
92. Clara Padilla-Silver	7022
93. Angela Palmer	12464
94. Derrick S. Penney	8606
95. Elsbeth Peshel	6775
96. Jennifer Peterson	11242
97. Marc Randazza	12265
98. Edward Reed	1416
99. Brian Roberts	10204
100. Geoffrey Rouillard	0388
101. Larry Rouse	4369
102. John Russo	6477
103. Cory A. Santos	8247
104. Herbert J. Santos, Sr.	0391
105. Joel A. Santos	4740
106. Theresa M. Santos	9448
107. Morrisa Schechtman	4378
108. Thomas S. Shaddix	7905
109. A. J. Sharp	11457
110. Maddy Shipman	0408
111. Jesus Silva Jr.	6824
112. Charles W. Spann	1532
113. Frank W. Spees	4386
114. John P. Springgate	1350
115. Kyle Stucki	12646
116. David A. Tanner	8282
117. Stace Taylor	14770
118. Scott Tené	6845
119. Jacqueline Tirinanzi	13266
120. Robert Vannah	2503
121. Brian Vasek	13976
122. Wes U. Villanueva	8708
123. Charles Watkins	8714
124. McKay B. Whitney	12132
125. F. Woodside Wright	6181
126. Ida M. Ybarra	11327
127. Zenas Zelotes	7569

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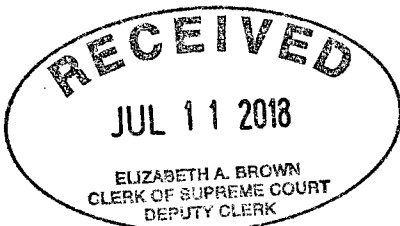
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Company NV Supreme Court
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Date 7/11/18
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623/363 2699
Fax number _____
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JUL 12 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ADKT 0534

July 12, 2018

Elizabeth A. Brown
Clerk of the Supreme Court
201 South Carson Street
Carson City, NV 89701

Dear Ms. Brown:

On behalf of the Nevada Justice Association and our Board of Governors, I would like to express NJA's support for the proposed rule regarding mandatory legal malpractice insurance.

We at NJA believe that we have a moral and ethical obligation to our clients and to the public, and that any harm caused by those in our profession should not go unmitigated. Clients place their trust in attorneys to serve their best interests. It is to the benefit of every member of the bar, as well as our clients, that we hold ourselves to the highest possible standards.

As an organization dedicated to holding others accountable for their wrongdoing, we feel it is especially important for NJA to support the bar in making this rule a reality. As you well know, a lawyer's negligence can be particularly destructive to clients, many of whom are already vulnerable from harm they have experienced from the actions of another.

It is long overdue that lawyers stand up as the guiding profession in regard to responsibility and accountability, and we at NJA applaud the State Bar of Nevada's effort to move us in this direction.

We would like an opportunity for a representative of the Nevada Justice Association to speak at the public hearing in support of ADKT 0534 on July 18, 2018 at 3:00 p.m..

Sincerely,

[Signature]

Brian D. Nettles, Esq.
President
Nevada Justice Association

PRESIDENT
Brian D. Nettles

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Patrick R. Leverty

VICE-PRESIDENT
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717 South Third Street
Las Vegas, NV 89101
Tel 702-732-8409
Fax 702-732-9310

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JUL 12 2018
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

Kathy Cowan

From: Victoria Coolbaugh
Sent: Thursday, July 12, 2018 9:37 AM
To: Kathy Cowan
Subject: Fwd: support for mandatory malpractice insurance
Attachments: image001.png; ATT00001.htm; image002.jpg; ATT00002.htm; image003.jpg; ATT00003.htm; mandatory malpractice letter scan.pdf; ATT00004.htm

This is where I sent it.

Victoria Coolbaugh
Executive Director
Nevada Justice Association
Cell: 775.544.6052
Sent from my iPhone

Begin forwarded message:

From: Victoria Coolbaugh <VCoolbaugh@nevadajustice.org>
Date: July 6, 2018 at 3:18:55 PM CDT
To: "nvscclerk@nvcourts.nv.gov" <nvscclerk@nvcourts.nv.gov>
Subject: support for mandatory malpractice insurance

I'm hoping this email hits the right desk! It is intended for Elizabeth Brown relating to the hearing for mandatory malpractice insurance taking place on July 18. I'm having major computer problems and can only submit this letter which we sent to the state bar in support of the concept.

Thank you,

Victoria Coolbaugh, Executive Director

*Copy of letter
originally sent.*

January 19, 2018

Kimberly Farmer
State Bar of Nevada
3100 West Charleston
Las Vegas, NV 89102

Dear Kim:

On behalf of the Nevada Justice Association and our Board of Governors, I would like to express NJA's support for the proposed rule regarding mandatory legal malpractice insurance.

We at NJA believe that we have a moral and ethical obligation to our clients and to the public, and that any harm caused by those in our profession should not go unmitigated. Clients place their trust in attorneys to serve their best interests. It is to the benefit of every member of the bar, as well as our clients, that we hold ourselves to the highest possible standards.

As an organization dedicated to holding others accountable for their wrongdoing, we feel it is especially important for NJA to support the bar in making this rule a reality.

As you well know, a lawyer's negligence can be particularly destructive to clients, many of whom are already vulnerable from harm they have experienced from the actions of another.

It is long overdue that lawyers stand up as the guiding profession in regard to responsibility and accountability, and we at NJA applaud the State Bar of Nevada's effort to move us in this direction.

Sincerely,



Brian D. Nettles, Esq.
President
Nevada Justice Association

PRESIDENT

Brian D. Nettles

PRESIDENT-ELECT

Patrick R. Leverty

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717 South Third Street
Las Vegas, NV 89101
Tel 702-732-8409
Fax 702-732-9310

ADKT 0534

Brown, Elizabeth

From: Roger Doyle <roger@rdoylelaw.com>
Sent: Tuesday, July 10, 2018 9:51 PM
To: Brown, Elizabeth
Subject: Opposition to amended Supreme Court Rule 79

Please find this email as my opposition to amendment to Supreme Court Rule 79 as offered for consideration.

Thank you.

Please contact me with any questions or concerns.

Regards,

Roger Doyle, Esq.

Doyle Law Office, PLLC

8755 Technology Way, Suite I

Reno, Nevada 89521

(775) 525-0889 (office)

(775) 229-4443 (fax)

roger@rdoylelaw.com



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BY: *[Signature]*
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12-2705

McDONALD  **CARANO**

Mark Knobel
mknobel@mcdonaldcarano.com

Reno Office

July 11, 2018

FILED

JUL 16 2018

Via Email: lbrown@nvcourts.nv.gov

Chief Justice Michael Douglas
Nevada Supreme Court
201 South Carson Street
Carson City, NV 89701-4702

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

RE: ADKT 0534: Professional Liability Insurance

Dear Chief Justice Douglas:

I would like to extend my thanks to the Court for considering ADKT 0534 which would require professional liability insurance for attorneys engaged in private practice as a condition of licensure. I support this petition for the following reason:

Lawyers have a professional responsibility to their clients to ensure compensation if a negligent act occurs. When considering billable hour requirements, heavy caseloads, court deadlines, changes in the law, and general professional responsibilities, we cannot assume that, despite our best efforts, an act of malpractice will never occur. We should be mindful that any mistakes by lawyers which would not be compensated due to lack of insurance results in more public distrust and general dislike of attorneys. Professional liability insurance protects the consumer in the event of an error or omission.

Again, I thank the Court for its consideration of this critical issue. I will make myself available should you have any questions of me or the positions I have outlined in this letter of support.

Respectfully,



Mark W. Knobel

cc: Elizabeth Brown

mcdonaldcarano.com

100 West Liberty Street • Tenth Floor • Reno, Nevada 89501 • P: 775.788.2000
2300 West Sahara Avenue • Suite 1200 • Las Vegas, Nevada 89102 • P: 702.873.4100

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FEDERAL AND STATE COURTS
Admitted in Oregon, Nevada, and Texas

*832 Willow Street
Reno, Nevada 89502
Telephone (775) 322-1119
ngilbertlaw@sbcglobal.net*

July 10, 2018

Chief Justice Michael Douglas
Nevada Supreme Court
201 South Carson Street
Carson City, NV 89701-4702
Submitted electronically: lbrown@nvcourts.nv.gov

RE: ADKT 0534: Professional Liability Insurance

Dear Chief Justice Douglas:

I would like to extend my thanks to the Court for considering ADKT 0534 which would require professional liability insurance for attorneys engaged in private practice in Nevada, as a condition of licensure. I support this petition for the following reason(s). As collective legal professionals, we are held to a high standard, needed to assure the public of our competence, and to retain the public's confidence and trust. As well, there are other reasons, including:

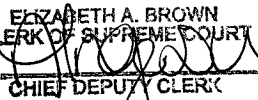
[1] Lawyers have a professional responsibility to their clients to ensure compensation if a negligent act occurs. When considering billable hour requirements, heavy caseloads, court deadlines, and general professional responsibilities, we cannot assume that, despite our best efforts, an act of malpractice will never occur. Professional liability insurance protects the consumer in the event of an error or omission.

[2] Professional liability insurance is required of other licensed professionals, including accountants, engineers and contractors; for these professions, the respective licensing board is responsible for enforcing the requirement. For doctors, insurance is required by a third party, such as the hospital in which they work. With lawyers, the state bar would be the entity responsible for overseeing that requirement.

[3] The economic impact on an attorney is not great enough to justify not having professional liability insurance. In fact, for the average practitioner, the cost to carry a minimum level of insurance (\$250,000

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CLERK OF SUPREME COURT
BY 
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Page Two

per claim/\$250,000 aggregate) is the equivalent of one billable hour each month. As a profession, how can we state that this amount is too onerous to protect our clients?

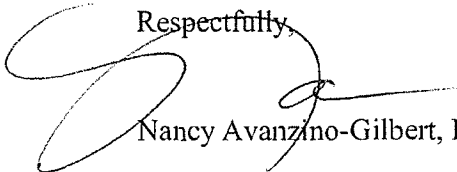
[4] It should not matter if the attorney practices in a large or small firm, or what type of work is performed. All clients are entitled to the same level of protection offered through professional liability insurance.

[5] In adopting this proposed amendment, Nevada will be, like in the State of Oregon, another leader in upholding the standards of our profession and on the front lines demonstrating our commitment to client protection.

Having practiced for approximately 32 years, in three (3) States (Texas, Oregon and Nevada), malpractice insurance has been a requirement throughout the life of our practice of law. For us, it has provided assurance and peace of mind that our clients are fully protected throughout our representation. We would not have it any other way.

Again, we thank the Court for its consideration of this critical issue. I will make myself available should you have any questions of me or the positions I have outlined in this letter of support.

Respectfully,



Nancy Avanzino-Gilbert, Esq.

cc: Elizabeth Brown

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF AMENDMENT
TO SUPREME COURT RULE 79
REGARDING PROFESSIONAL
LIABILITY INSURANCE FOR
ATTORNEYS ENGAGED IN PRIVATE
PRACTICE

Supreme Court ADKT 534

FILED

JUL 16 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

**LEGISLATIVE COUNSEL BUREAU'S WRITTEN COMMENTS
AND NOTICE TO PARTICIPATE IN PUBLIC HEARING**

BRENDA J. ERDOES, Legislative Counsel
Nevada Bar No. 3644
KEVIN C. POWERS, Chief Litigation Counsel
Nevada Bar No. 6781
LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION
401 S. Carson St.
Carson City, NV 89701
Tel: (775) 684-6830; Fax: (775) 684-6761
E-mail: kpowers@lcb.state.nv.us
Attorneys for Legislative Counsel Bureau

INTRODUCTION

The Legislative Counsel Bureau (LCB), by and through its counsel the LCB Legal Division, hereby submits written comments and notice to participate in the public hearing scheduled for July 18, 2018, in the matter of the amendment to the Supreme Court Rules which proposes to require professional liability insurance for attorneys engaged in private practice as a condition of licensure.

Please take notice that **Kevin C. Powers, Esq.**, Chief Litigation Counsel, LCB Legal Division, will appear and participate in the public hearing scheduled for July 18, 2018, on behalf of the LCB.

As explained in the following comments, the LCB respectfully asks the Court to adopt and incorporate the LCB's proposed revisions if the Court takes action to amend the Supreme Court Rules to require professional liability insurance for attorneys engaged in private practice as a condition of licensure (hereafter the proposed amendment).

COMMENTS

I. The proposed amendment should exempt attorneys engaged in private practice who do not represent members of the public in any matters at all, but who represent only state or local governmental entities, officers or employees in matters relating to their public functions, duties or employment.

In its petition filed on June 29, 2018, the State Bar of Nevada (State Bar) explains the purpose of the proposed amendment as follows:

Requiring a minimum level of professional liability insurance for all attorneys directly responds to the State Bar's mission to protect the public. If adopted by the Court, this Rule amendment would impact all attorneys engaged in private practice, regardless of the number of matters or clients or the amount charged for those services. It is the position of the State Bar that regardless of the attorney's practice size, the number of clients served, or fees charged, clients are entitled to the same level of protection afforded to them by professional liability insurance.

Pet. at 12 (emphasis added).

It is clear—and commendable—that the primary purpose of the proposed amendment is to protect members of the public who are generally more vulnerable to professional legal malpractice because most members of the public typically do not have the same market experience or bargaining power as more sophisticated clients, such as state or local governmental entities, officers or employees in matters relating to their public functions, duties or employment. Unfortunately, the proposed amendment is overly broad because there are some attorneys who are engaged in private practice—often as solo practitioners—who do not represent members of the public in any matters at all, but who represent only state or local governmental entities, officers or employees in matters relating to their public functions, duties or employment.

For these private-practice attorneys, requiring a minimum level of professional liability insurance does not protect members of the public at all. On the contrary, such a requirement only imposes an added burden on taxpayers

because state or local governmental entities, officers or employees will likely be required to pay more for the legal services of these private-practice attorneys to offset the attorneys' substantial costs to maintain the required level of professional liability insurance, even though such insurance does not provide any practical benefit to state or local governmental entities, officers or employees in matters relating to their public functions, duties or employment.

As a result, the only benefit would be the windfall enjoyed by the insurance carriers collecting premiums under mandated policies, even though the insurance carriers would not be exposed to any realistic probability of liability risks because these private-practice attorneys do not represent members of the public in any matters at all. Furthermore, given the types of legal services that these private-practice attorneys typically perform for state or local governmental entities, officers or employees in matters relating to their public functions, duties or employment—and given the limitations on liability and official immunities involved in performing such legal services—it is highly unlikely that such legal services could result in any liability for professional legal malpractice.

Therefore, an overly broad application of the proposed amendment to these private-practice attorneys would result in an overly expensive and unreasonable burden, which ultimately would be an added burden on taxpayers who would have to pay for higher-priced legal services provided to the government. Yet, this added

burden would not provide any corresponding benefit to the members of the public who are the intended beneficiaries of the proposed amendment. Nor would this added burden provide any corresponding benefit to state or local governmental entities, officers or employees in matters relating to their public functions, duties or employment.

For example, the legal services provided by these private-practice attorneys typically involve contracting with state or local governmental entities, officers or employees to perform legislative drafting services—such as drafting bills, regulations or ordinances—and the accompanying legal research services. It is highly unlikely that such legislative drafting or legal research services could result in any liability for professional legal malpractice, especially given the well-established protections from liability afforded by the doctrine of absolute legislative immunity. *See Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (explaining that absolute legislative immunity applies to each of the “integral steps in the legislative process.”); *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 510 (1975) (explaining that absolute legislative immunity protects the legislative body’s counsel).

Accordingly, the proposed amendment should be refined so that it exempts attorneys engaged in private practice who do not represent members of the public in any matters at all, but who represent only state or local governmental entities,

officers or employees in matters relating to their public functions, duties or employment. Alternatively, the proposed amendment should include a waiver process whereby these private-practice attorneys are entitled to a waiver from the proposed amendment upon declaring each year with their license renewal that they do not represent members of the public in any matters at all, but represent only state or local governmental entities, officers or employees in matters relating to their public functions, duties or employment.

II. In the absence of such an exemption, the proposed amendment raises serious separation-of-powers issues regarding the regulation of attorneys engaged in private practice who provide legal services exclusively in the state legislative branch.

The LCB contracts with private-practice attorneys who provide legal services exclusively in the state legislative branch. As a coequal and independent branch of state government, the legislative branch has both constitutional and inherent powers to regulate its own proceedings. Consequently, as applied to private-practice attorneys who provide legal services exclusively in the state legislative branch, the proposed amendment raises serious separation-of-powers issues. To avoid those constitutional issues, the proposed amendment should be refined so that it exempts attorneys engaged in private practice who provide legal services exclusively in the state legislative branch.

CONCLUSION

Based on the foregoing, the LCB respectfully asks the Court to adopt and incorporate the LCB's proposed revisions if the Court takes action to amend the Supreme Court Rules to require professional liability insurance for attorneys engaged in private practice as a condition of licensure.

DATED: This 11th day of July, 2018.

Respectfully submitted,

BRENDA J. ERDOES
Legislative Counsel

By: /s/ Kevin C. Powers

KEVIN C. POWERS

Chief Litigation Counsel

Nevada Bar No. 6781

LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION

401 S. Carson St.

Carson City, NV 89701

Tel: (775) 684-6830; Fax: (775) 684-6761

E-mail: kpowers@lcb.state.nv.us

Attorneys for Legislative Counsel Bureau

CERTIFICATE OF FILING

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the 11th day of July, 2018, pursuant to NRAP 25 and NEFCR 8, I filed a true and correct copy of the Legislative Counsel Bureau's Written Comments and Notice to Participate in Public Hearing, by means of the Nevada Supreme Court's electronic filing system, in ADKT 534.

/s/ Kevin C. Powers
An Employee of the Legislative Counsel Bureau

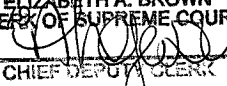
ADKT 0534

Brown, Elizabeth

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From: Hillary Gaston Walsh <hillarygwalsh@gmail.com>
Sent: Thursday, July 12, 2018 1:03 PM
To: Supreme Court Clerk
Subject: participation in hearing on proposed amendments to Supreme Court Rule 79

JUL 16 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

Dear Ms. Brown,

I write regarding ADKT 534, which requests input and/or notification of those who wish to participate in the hearing on the proposed amendments to Supreme Court Rule 79 on professional malpractice insurance. I would like to participate in this hearing. I am a military spouse who has lived overseas for the past 4.5 years due to my husband's job in the US Air Force; I am currently stationed in England. And although I have physically practiced from outside the U.S., all of the work I have done (and do) and all the clients I represent are in the US. Despite this, malpractice insurance providers insist because of my physical location, I must be covered by *international* policies; these are exorbitantly higher than normal policies and are cost prohibitive due to the nature of my practice--a pro bono practice representing indigent asylum seekers and prisoners. Thus, because I am a military spouse stationed overseas and because I am working for free, this rule would preclude me from practicing law and serving the public. For this reason, I ask that this amendment *not* be approved.

Although I am a day late in writing--and please note that I wrote immediately after learning of this ADKT via an electronic newsletter the State Bar distributed only 25 minutes ago--I hope you can allow me to either participate in the hearing or at least pass this note along to the Court. This rule may be well-intended, but it will cripple private practitioners, particularly those trying to do significant amounts of pro bono work.

Respectfully,

Hillary Gaston Walsh
Nev. Bar No. 12892
hillarygwalsh@gmail.com
702.605.0571

18-27011

LEMONS, GRUNDY & EISENBERG

experience • results

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Christian L. Moore

Alice Campos Mercado

Douglas R. Brown

Todd R. Alexander

Caryn S. Tijsseling

Dane A. Littlefield

Sarah M. Molleck

* OF COUNSEL

July 17, 2018

FILED

JUL 17 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

Chief Justice Michael Douglas
Nevada Supreme Court
201 South Carson Street
Carson City, Nevada 89701

Re: ADKT 0534: Professional Liability Insurance

Dear Chief Justice Douglas:

This is a letter of support for ADKT 0534, which would require attorneys in private practice to maintain professional liability insurance.

Despite the best efforts of lawyers to avoid malpractice, lawyers occasionally commit negligent acts that cause damage to their clients. When this occurs, professional liability insurance protects the clients. Based upon our experience, clients typically have an expectation that lawyers maintain malpractice insurance. A mandatory requirement for insurance would be consistent with this expectation by clients.

Professional liability insurance is a requirement for other licensed professionals, such as accountants, engineers and contractors. Additionally, many clients already require their attorneys to maintain malpractice insurance. For example, our firm represents government entities, insurance companies and other institutional clients, many of whom require our firm to maintain malpractice insurance as a condition for the client-attorney relationship.

Although malpractice insurance would have an economic impact on attorneys who do not already have insurance coverage, we believe the impact is not great enough to outweigh the benefit that mandatory insurance will provide to the public. If this ADKT is approved, the cost of malpractice insurance will simply be another cost of doing business, such as paying bar dues, satisfying mandatory CLE requirements, paying business license fees, and other expenses involved in the practice of law. The overall benefit to the public will far outweigh the economic burden on attorneys.

It is our understanding that other states have already enacted mandatory legal malpractice insurance requirements. We believe Nevada should join this modern trend. We therefore urge the court to approve the requirement for mandatory malpractice insurance for attorneys in private practice.




Chief Justice Michael Douglas
July 17, 2018
Page Two

Thank you for considering our comments.

Sincerely,


ROBERT L. EISENBERG


DAVID R. GRUNDY

RLE:vs

cc: Elizabeth Brown, Clerk of the Court

FILED

JUL 18 2018

**M. JEROME WRIGHT
ATTORNEY AT LAW**

326 W. Liberty Street
Reno, Nevada 89501
Telephone (775) 322-8678
Facsimile (775) 322-0973

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

July 18, 2018

ADKT 0534

Supreme Court of Nevada
Office of the Court Clerk
201 S. Court Street
Suite 201
Carson City, NV 89701

Re: Mandatory legal malpractice insurance

Dear Supreme Court:

I have been in practice for forty five (45) years. Most of the time I have not carried legal malpractice insurance unless I was doing work for the State which required malpractice insurance.

In my forty five (45) years of practice I have never had a claim.

The only claim that I know about was a lawyer friend of mine who missed a statute of limitations and the malpractice carried declined to cover.

Thus, I see this as a very expensive waste of money. Like most insurance companies they are going to look for a way to not cover when you need coverage.

Very truly yours,

[Signature]
M. JEROME WRIGHT, ESQ.
MJW/las

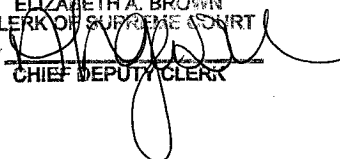
RECEIVED
JUL 18 2018
ELIZABETH A. BROWN
CLERK OF SUPREME COURT

Brown, Elizabeth

From: lechesq@gmail.com
Sent: Friday, July 27, 2018 3:26 PM
To: Brown, Elizabeth
Subject: Fwd: ADKT #0534

FILED

AUG 06 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
CHIEF DEPUTY CLERK

Sent from my iPhone

Begin forwarded message:

From: Brian Lech <lechesq@gmail.com>
Date: July 27, 2018 at 1:54:04 PM AKDT
To: "Brown, Elizabeth" <lbrown@nvcourts.nv.gov>
Subject: ADKT #0534

I am responding to the information included in the proposal, various previous feedback, and the presentation of the focus group video at the annual bar conference in Chicago.

As a part time practicing attorney, I personally find the increased costs to be burdensome. When I checked into insurance at a family law conference a few years ago, it was closer to \$4,000 a year, with no discount for part time practitioners as there is for my psychology insurance. I believe insurance premiums will also rise when coverage is mandatory.

My belief is that insurance gives the public a false sense of security, with some clients believing that insurance is a sign of lesser competence. And in situations like Mr. Graham's, insurance falls short of protecting clients because of insurance caps.

I am, however, in favor of an affirmative duty to inform potential clients of whether one carries insurance. I am surprised that the majority of attorneys oppose this. I recently incorporated this statement within my retainer agreement. If enough potential clients go elsewhere, market forces will drive attorneys to purchase insurance. I am all for EMPOWERING clients with information to assist them in the decision of whom to retain. I am much less enthusiastic about paternal efforts that suggest that the SC knows better on how to protect them. Respectfully,

Brian Lech, Esq.

18-30005

For Governors: Nevada State Bar - the Petition, the Order, the Denial

1 message

Inez "Ine" Petersen <inezpetersenj@gmail.com>

Mon, Nov 12, 2018 at 3:18 PM

To: Bill Pickett <bill@wdpickett-law.com>, Rajeev Majumdar <rajeev@northwhatcomlaw.com>, Dan@mcbdlaw.com, Michael Cherry <mkech@lexquiro.com>, carla@higginsonbeyer.com, kyle.s@bullivant.com, danclarkbog@yahoo.com, pjg@randalldanskin.com, BHM Tollefson@outlook.com, Paul S <psweagle@gmail.com>, jkang@smithfreed.com, Kim Hunter <kim@khunterlaw.com>, meservebog@yahoo.com, Athan Papailiou <athan.papailiou@pacificallawgroup.com>, rknight@smithalling.com, Alec Stephens <alecstephensjr@gmail.com>
Cc: Paula Littlewood <paulal@wsba.org>

Dear Board of Governors:

The *Irreverent Lawyer* article, a copy of which I have already given you, sparked my interest regarding the Nevada State Supreme Court's recent denial of the State Bar Association's Petition for mandatory malpractice insurance.

You may not be aware of the Order issued by Nevada's State Supreme Court last month turning down the state bar association's suggested rule revision to make insurance mandatory. Copies of both are enclosed.

The Order is 2 pages; the Petition is 16 pages with the remaining pages comprised of exhibits. I inserted my "takeaways" from the Petition between the Order and the Petition.

Footnote 3 in the Petition, in my view, is the cornerstone reason why the Task Force should not continue to support mandatory malpractice insurance and the Board of Governors should say NO if they do.

This footnote indicates that such insurance is NOT gaining ground as Chris Newbold (Executive VP of ALPS) and Douglas Ende would have readers believe in this interview (link found on Task Force homepage): <https://blog.alpsnet.com/alps-in-brief-podcast-episode-10-why-is-mandatory-malpractice-insurance-gaining-ground>

Thank you for listening to me and taking the time to read the materials I send.

All I have sacrificed to become an attorney at my age will be lost when and if insurance becomes mandatory. I have insurance now, but a doubling of the cost will make it impossible for me to continue my mostly *pro bono* law practice.

Respectfully,
Inez Petersen
WSBA #46213

 ADKT 534 Binder Info re Denial of Mandatory Insurance in Nevada.pdf
3749K

The Irreverent Lawyer

Ruminations on law and life

Feeds: [Posts](#) [Comments](#)

Archive for the 'Your friendly state bar.' Category

Nevada avoids moving up the highest cost to practice parade.

Posted in [Law](#), [Your friendly state bar.](#), tagged "[No lawyer love in Nevada](#)", [highest cost to practice bars](#), [Highest Cost to Practice Mandatory Bars by Annual Fees and MCLE](#), [Idaho legal malpractice mandate](#), [Idaho State Bar](#), [mandatory legal malpractice insurance](#), [Nevada State Bar](#), [Nevada State Bar Board of Governors](#), [Nevada Supreme Court](#), [Oregon State Bar](#), [professional liability insurance](#), [Washington State Bar](#), [WSBA Baord of Governors Explores Mandatory Malpractice Insurance](#), [WSBA Board of Governors](#), [WSBA Mandatory Malpractice Insurance Task Force](#) on October 19, 2018 | [1 Comment](#) »

Last week Nevada's Supreme Court spared the state's private practice lawyers from being forced to pay thousands of dollars in annual costs. The court **unanimously denied** (<https://lawmrh.files.wordpress.com/2018/10/adkt-0534-order-denying-mandatory-malpractice-insurance.pdf>) an ill-considered state bar-sponsored rule petition to impose as a condition of licensure a requirement that all lawyers engaged in private practice buy professional liability insurance. The court ruled, "*Having considered the petition and the comments from the State Bar and the public, we conclude that the Board of Governors has provided inadequate detail and support demonstrating that the proposed amendment to SCR 79 is appropriate.*"



The Court also took particular note of its existing rule that already provides for public disclosure of whether an attorney maintains professional liability insurance.

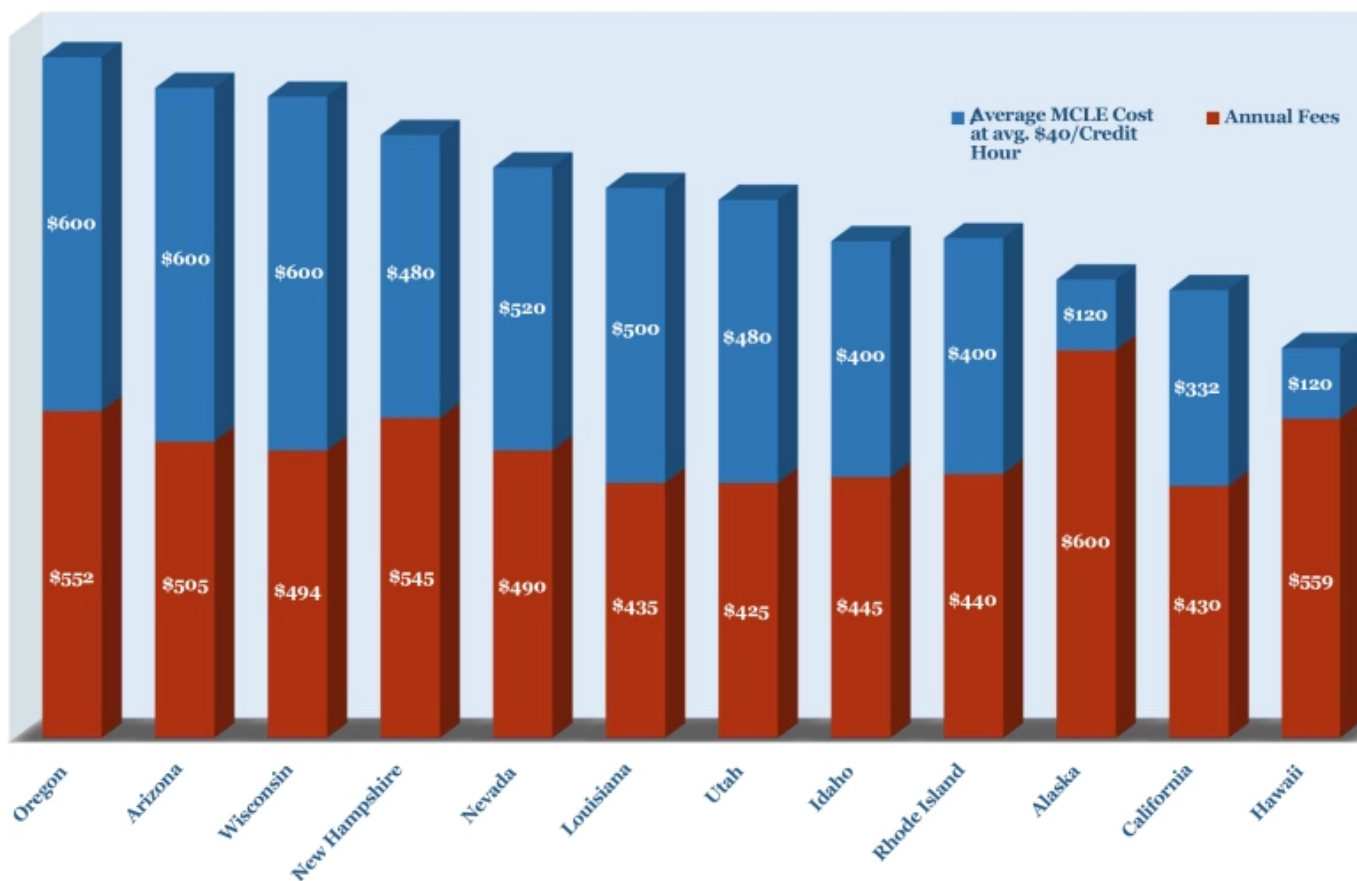
Interestingly, in preparing its misguided rule change petition Nevada’s Board of Governors relied on data and input provided by an interested stakeholder and current market participant, *“its (<https://www.nvbar.org/member-services-3895/member-benefits/alps-lawyers-professional-liability-insurance/>) endorsed lawyers’ malpractice insurance company (<https://www.nvbar.org/member-services-3895/member-benefits/alps-lawyers-professional-liability-insurance/>)”* (<https://www.nvbar.org/member-services-3895/member-benefits/alps-lawyers-professional-liability-insurance/>) and *“the nation’s largest direct writer of lawyers” malpractice insurance (<https://blog.alpsnet.com/about/>)”* (<https://blog.alpsnet.com/about/>).

The high cost to practice.

As it is, most lawyers voluntarily carry legal malpractice insurance. But it’s one thing to do so by choice and quite another to do so by coercion. Nevada’s high court is to be saluted for its prudence in rejecting the Bar’s proposal, which would have catapulted Nevada into the uppermost ranks of the highest cost to practice jurisdictions in the U.S.

At least, for now, Oregon has the dubious distinction of remaining king of the high cost mountain.

Highest Cost to Practice Mandatory Bars by Annual Fees and MCLE



* Oregon also requires every lawyer to carry professional liability insurance at base coverage of \$300,000 per claim/\$300,000 aggregate at an annual premium of \$3500 per lawyer.

** Arizona's final installment increase boosting annual dues to \$520 on January 1, 2019 has been put on indefinite hold.

*** Effective 1/1/2018, Idaho now requires private lawyer annual malpractice insurance coverage of \$100,000 per claim/\$300,000 aggregate. Est. annual cost \$1500 to \$2500, which effectively makes Idaho the second highest cost to practice in the U.S.

(REV. 07/2018)

(<https://lawmrh.wordpress.com/2018/10/19/nevada-avoids-moving-up-the-highest-cost-to-practice-parade/highest-cost-to-practice-by-annual-fees-mcle-2018/>).



But high cost contenders remain. Mandatory bar association leaders apparently love nothing more than finding new ways to scorch their members with new practice pains and greater financial burdens, especially for those in private practice. Indeed, as of the first of the this year, to keep their tickets to practice **Idaho private practice lawyers** (<https://isb.idaho.gov/blog/author/astrouser/>) are now required to submit “*proof of current professional liability insurance coverage at the minimum limit of \$100,000 per occurrence/\$300,000 annual aggregate.*”

(<https://lawmrh.wordpress.com/2014/02/10/topless-lawyer-wanna-bes-and-the-unauthorized-practice-of-law/cartoon-characters-310/>). That resolution passed in Idaho by a scant 51% to 49% vote of bar members. It’s

unclear how many Idaho private practice lawyers voted or were even aware of the proposal. I suspect not many. Moreover, had the word gotten out in time as it *barely* did in Nevada, the outcome might have been much different.

Anecdotally, for example, in July I exchanged emails with a Nevada lawyer also licensed in Idaho. While objecting to the proposed Nevada insurance mandate, he expressed concern should Idaho follow with a similar requirement. He was floored to learn that not only had it already been considered in Idaho — but that even now he was subject to the new rule as of January 1, 2018!



No remedy.

Besides significantly increasing the cost to practice, mandatory professional liability insurance is no remedy for the victims of a lawyer’s intentional acts or omissions and criminal or fraudulent conduct. Why? Because these acts along with numerous others fall under common policy exclusions that too often foreclose relief to claimants. Insurers don’t cover intentional, criminal or fraudulent acts. In addition, mandatory insurance is not designed to protect the public — but to protect the insured. I discussed some of this in my “*No lawyer love in Nevada*” July blog post.

Finally, Washington lawyers in private practice should remain vigilant lest they be caught unaware like their next door neighbors. Mandatory bars are notorious copy cats. And the folks running the Washington Bar are particularly **adept** (<https://lawmrh.wordpress.com/2017/02/07/wa-court-nullification-of-member-fee-petition-sets-up-constitutional-challenge/>) at **giving it to their members** (<https://lawmrh.wordpress.com/2017/01/16/payback-is-a-mutha-washington-bar-hikes-dues-141/>).

Source: <https://lawmrh.wordpress.com/category/your-friendly-state-bar/>
last viewed on 11/04/2018

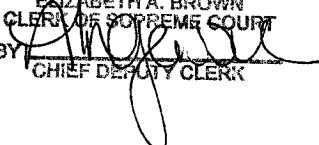
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF AMENDMENT TO
THE SUPREME COURT RULE 79
REGARDING PROFESSIONAL
LIABILITY INSURANCE FOR
ATTORNEYS ENGAGED IN PRIVATE
PRACTICE.

ADKT 534

FILED

OCT 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

*ORDER DENYING PETITION FOR
AMENDMENT TO SUPREME COURT RULE 79*

On June 29, 2018, the Board of Governors of the State Bar of Nevada filed a petition to amend Supreme Court Rule (SCR) 79 to require professional liability insurance for attorneys engaged in private practice as condition of licensure. On July 18, 2018, the court held a public hearing in this matter and considered comment from the public and State Bar.

Having considered the petition and the comments from the State Bar and the public, we conclude that the Board of Governors has provided inadequate detail and support demonstrating that the proposed amendment to SCR 79 is appropriate. We are persuaded, however, that disclosure of whether an attorney engaged in private practice maintains professional liability insurance is beneficial to the profession and the public

and note that SCR 79(1)(c) currently provides for such disclosure. See SCR 79(5) (providing that information submitted under the rule, including whether an attorney maintains professional liability insurance, is nonconfidential). Accordingly, we

ORDER the petition DENIED.

Douglas, C.J.
Douglas

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

cc: Richard J. Pocker, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
All District Court Judges
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Administrative Office of the Courts

Takeaways from Inez Petersen after reading Nevada's Petition re Mandatory Insurance - 1

Takeaway from Page 1 of 16*

*Page numbers from
bottom of Petition

Mandatory malpractice insurance is not the only "safeguard" available to protect the attorney and client. Full disclosure is a "least restrictive means" and accomplishes notice to the clients so they can make their own decision re malpractice insurance.

There are really two sides to the "free market" theory. FIRST, the attorney has the freedom to look at malpractice insurance and decide if insurance makes business sense for his practice.

SECOND, the client may have reasons of his own for opting out of the protection provided by malpractice insurance. His freedom to chose should not be restricted any more than the attorney's.

Takeaway from Page 2 of 16

Mandating malpractice insurance is not the only way to fulfill the mandate to protect the public. Since the 1970s other states have NOT followed Oregon.

Takeaway from Page 3 of 16

Instead states have approached the issue "typically through disclosure requirements. Footnote 3 covers the states which have disclosure to their state bar association like Washington has now. But Footnote 3 indicates that direct disclosure (my choice) has been adopted by AK, CA, NH, NM, OH, PA and SD.

Takeaway from Page 4 of 16

This page downplays the fact that only two states have adopted mandatory malpractice insurance (Oregon and Idaho). Illinois does not actually have a mandatory insurance requirement because an attorney can "opt out" by attending a CLE on risk management.

The big RED FLAG is that Oregon "employs nearly 50 staff" to administer its program.

Takeaway from page 5 of 16

The Nevada Insurance Commissioner expressed concern over a captive carrier and an environment "unlike in the 1970s."

An "open market model" is needed; but it must also include the option to not purchase insurance if that is the lawyer's business choice.

The Nevada State Bar did not pursue the "least restrictive means" because it decided that "disclosure requirements may not go far enough to protect the public." No details to substantiate this conclusion were included.

Takeaways from Inez Petersen after reading Nevada's Petition re Mandatory Insurance - 2

A survey with a 1 in 9 response rate is not representative of the 8,908 attorneys. One must question how the survey was worded/conducted for it to have been discarded by the very group most impacted by mandatory insurance. I would like to see an unbiased survey sent to all WSBA members on active status.

Takeaway from Page 6 of 16

This page assumes that there is a problem with "errors and omissions" so significant that mandatory insurance is the only way to put "in place safeguards for both the attorney and client." Facts and data missing, contains only subjective conclusions.

While Nevada State Bar concluded there would be no impact as to availability of insurance, can the WSBA make a similar promise?

Takeaway from Page 7 of 16

The first paragraph contains statistics from ALPS, the insurance carrier with the most to gain and which is apparently engaged in a current campaign to infiltrate state bar associations promoting mandatory insurance.

If ALPS gives stats for the last 5 years, then the numbers are higher--for effect. ALPS also uses "last 10 years" and "since 1998" to increase the dollar amounts shown. From the wording, we do not know if the dollars reported were Nevada specific.

The second paragraph shows how numbers can be portrayed to give the reader a negative impression. "More than 60 percent of surveyed attorneys" should have been "More than 60 percent of those who responded to the survey . . . "

In the third paragraph, tricky wording again misleads the reader. Claims filed includes the baseless, frivolous and "shake down" claims. Could we take those out please? And can we even put our whole trust in statistics from ALPS? After all, it is functioning as a lobbyist to advance its own business interests.

Takeaway from Page 8 of 16

The statistic regarding 22 denied claims in the first paragraph is misleading. How many were meritorious? Could the client have used Small Claims Court?

More misleading statistics regarding the 51 percent who indicated cost was the primary reason for not having insurance. This percent has to be put into context since so

Takeaways from Inez Petersen after reading Nevada's Petition re Mandatory Insurance - 3

many survey recipients did not respond. Why they didn't respond is more important than the results based on those who did respond.

Takeaway from Page 9 of 16

The paragraph beginning at Line 6 exhibits an exaggerated sense of purpose because it assumes that the ONLY way to "adequately protect" clients is through mandatory insurance. **But "adequately protect" is the operative term.**

If most attorneys buy insurance in the normal course, or their employers buy it for them, then their clients are "adequately protected." No problem there.

And the remaining clients are "adequately protected" by disclosure. That is the single most important reason why ONLY Oregon and Idaho have mandatory insurance. A CLE on risk mgmt is adequate for Illinois; and disclosure is adequate for the rest as Footnote 3 indicates.

Takeaway from Page 10 of 16

What would be ALPS annual rates for Washington State? Would ALPS have different rates for each county? Wouldn't it be great if your income rose 15% annually like ALPS predicts your malpractice insurance will rise?

Takeaway from Page 11 of 16

This page equates to ALPS advertising. And I still recall how ALPS would not insure me when I started my solo practice in 2013. I wondered at the time why it was the preferred carrier for the WSBA.

Takeaway from Page 12 of 16

Footnote 3 on Page 3 of the Petition is the single most important footnote in the Petition. It puts into perspective what other State Supreme Courts have accepted as appropriate to "adequately protect" the Public.

The Nevada State Bar's CONCLUSION assumes that mandatory insurance is THE only means by which the Public can be protected.

Nevada State Bar Association did not provide adequate proof to justify the need for mandatory insurance.

Takeaway from Page 13-14

Implementation details

Page 15-16

EXHIBIT A - Nevada's proposed Rule 79.

Page 18

EXHIBIT B - Dec 2017 issue of *Nevada Lawyer* article, Nevada's Board of Governors had its mind made up regarding mandatory insurance (like articles from the Task Force appearing in *NWLawyer*).

Page 22

EXHIBIT C - Results of Professional Liability Insurance Survey of attorneys with no insurance. Of the 976 contacted, 223 responded.

Page 31- 80

EXHIBIT D - Results of Professional Liability Insurance survey of active and active exempt attorneys. Of the 8,908 surveyed, 1,001 responded.

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 In the Matter of Amendments to)
4 Supreme Court Rule 79 regarding)
5 professional liability insurance for)
6 attorneys engaged in private practice.)

ADKT NO.: 0534

FILED

JUN 29 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
CHIEF DEPUTY CLERK

7 **PETITION**

8 The Board of Governors of the State Bar of Nevada ("State Bar") hereby
9 petitions this Court to amend Supreme Court Rule ("SCR") 79 requiring
10 professional liability insurance for attorneys engaged in private practice as a
11 condition of licensure.

12 The proposed rule, as amended, is set forth in **Exhibit A**.

13 **DISCUSSION**

14 The State Bar's mission is to govern the legal profession, to serve our
15 members, and to protect the public interest. This mission is fulfilled through
16 rigorous admissions standards, disciplinary proceedings and client protection
17 programs. Mandating a minimum level of professional liability insurance
18 responds to the mission as it puts in place safeguards for both the attorney and
19 client if a negligent act occurs.

20 The State Bar currently requires professional liability insurance for private
21 practice attorneys who accept cases through its Lawyer Referral Service and for
22 those who serve as Transitioning into Practice (TIP) mentors. The Court has also
23 mandated a \$500,000 minimum professional liability insurance policy for those
24 attorneys who seek specialty licensure, such as Family Law, Personal Injury and
25

RECEIVED

JUN 28 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

1 Worker's Compensation. However, that requirement does not extend to all
2 attorneys in private practice.

3 Robert Fellmeth, Price Professor of Public Interest Law at the University of
4 San Diego School of Law argues that it is the responsibility of bar associations to
5 ensure public protection through mandated malpractice insurance¹. Fellmuth noted
6 that beyond the administration of a bar examination and minimal continuing legal
7 education requirements, there is no assurance of competence for the entirety of
8 attorney's career. By requiring professional liability insurance, bar associations
9 fulfill their mandates to protect the public.

10 The concept of mandating liability insurance is not new. According to
11 James Towery, past chair of the ABA Standing Committee on Client Protection,
12 "The reason for these requirements is simple and common sense: To obtain a state
13 license, you must demonstrate that you have the ability to protect the public if
14 anyone is injured by your negligence in your use of that license."²

15 State bar associations in the United States have examined mandatory
16 professional liability models since the 1970s when there was a need for affordable
17 insurance policies and malpractice claims were on the rise. It was at that time that
18 the Oregon State Bar enacted the Professional Liability Fund which mandates
19 coverage through its own captive insurance company and assesses premiums on
20 the annual license renewal form. Since then, other states have taken various
21
22
23

24 ¹ Testimony of Robert C. Fellmeth, Price Professor of Public Interest Law, University of San Diego
School of Law before the Little Hoover Commission, February 4, 2016.

25 ² GPSolo Magazine, Vol. 20, No. 3, April/May 2003.

1 approaches to the issue, typically through disclosure requirements to the state bar
2 or directly to clients³.

3 Nationally, the tide has slowly begun to turn toward mandating professional
4 liability insurance for all attorneys engaged in private practice. Beginning in 2018,
5 attorneys who opt to practice in Illinois without insurance will be required to
6 complete an annual four-hour interactive online self-assessment regarding the
7 operation of their law firms. The State Bar of Idaho recently mandated its
8 attorneys to carry professional liability insurance obtained on the open market. As
9 of their first compliance period, Idaho reported that all attorneys were able to
10 obtain coverage. The concept is also actively being explored by the State Bar of
11 Washington and the State Bar of California.

12 Mandatory professional liability insurance has been adopted by lawyer
13 regulatory associations on a global scale as well. As a condition of licensure,
14 malpractice insurance is required by solicitors and attorneys practicing in the
15 United Kingdom, Hong Kong, Malaysia, Singapore and some Canadian
16 provinces. As described by the Law Society for England and Wales, professional
17 liability insurance not only increases a solicitor's financial security, it "serves an
18 important public interest function...[and] ensures that the public does not suffer
19 loss as a result of your civil liability, which might otherwise be uncompensated."⁴

20

21

22

23

24 ³ Disclosure to the state bar association: AZ, CO, DE, HI, ID, IL, KS, MA, MI, NE, NV, NC, ND, RI,
VA, WA and WV. Direct disclosure to clients: AK, CA, NH, NM, OH, PA and SD.

25 ⁴ *Professional liability insurance*, L. SOC'Y §3.2 (July 4, 2012).

1 *Professional Liability Insurance Models Considered*

2 State bar associations that have mandated professional liability insurance
3 have done so using one of three models:

4 (1) Captive Carrier (“Oregon Model”) which creates a legislatively enacted
5 fund operated by a component unit of the state bar that is exempt from insurance
6 regulations. This model creates a shared risk pool regardless of the attorney’s
7 practice area or geographic location. Annual premiums are assessed on the
8 attorney’s license renewal application. The State Bar also considered a version of
9 this model in which a third-party carrier would provide minimum liability
10 insurance to all Nevada attorneys.

11 (2) Management Based Regulation (“Illinois Model”) which requires those
12 attorneys who do not carry professional liability insurance to complete a four-hour
13 interactive online self-assessment annually. The assessment poses questions about
14 the operations of the law firm and educates attorneys about deficiencies identified
15 during the self-assessment process.

16 (3) Open Market (“Idaho Model”) which, as a condition of licensure,
17 requires every attorney engaged in private practice to obtain a minimum level of
18 insurance obtained on the open market.

19 Ultimately, the State Bar concluded that establishing a professional liability
20 fund similar to the Oregon model would require a significant ramp up of a new
21 organizational and financial structure. For example, the Oregon Professional
22 Liability Fund employs nearly 50 staff and obtained specific legislative authority
23 to operate outside the state’s requirements for insurance providers. Nevada
24 Insurance Commissioner Barbara Richardson expressed concern over premium
25

1 rates, should the State Bar establish a captive carrier, especially for those attorneys
2 without a claims history, and noted that insurance market providers offer
3 affordable policies, unlike in the 1970s when the Oregon model was enacted.
4 Today's insurance climate is much different; those Nevada attorneys self-
5 reporting as being insured stated they use one of more than ten available insurance
6 providers. Furthermore, the State Bar elected to not pursue an educational model,
7 similar to the Illinois model, as is not sufficient for public protection; and
8 disclosure requirements may not go far enough to protect the public.

9 An open market model provides the most flexibility for attorneys to obtain
10 competitive quotes and select a carrier with services and pricing that best meet
11 their needs.

12 The State Bar also considered mandating disclosures to clients prior to
13 representation regarding (a) whether the attorney carries professional liability
14 insurance and (b) the amount of coverage the attorney has. Questions regarding
15 both these proposals were included in the State Bar's December 2017 survey of all
16 actively licensed attorneys. (The survey received an 11 percent response rate, or
17 1,001 of 8,908 active and active exempt attorneys.) Both proposals were strongly
18 opposed, receiving 56 percent and 57 percent negative feedback respectively.
19 Furthermore, when the data was broken down by practice size and public
20 attorneys were removed from the survey results, the rate of opposition was higher.
21 For example, more than 64 percent of all solo practice attorneys were not in favor
22 mandatory disclosures to clients and 61 percent of all those in full-time private
23 practice (69 percent of those in part-time private practice) were opposed to
24 disclosing the amount of coverage.

25

1 In the December 2017 issue of *Nevada Lawyer*, the State Bar explained the
2 various approaches to requiring professional liability insurance. (Article attached
3 as **Exhibit B.**) The article drew additional comments, both in favor and opposed
4 to the concept. One concern that came through was the potential boon to insurance
5 companies if insurance was required on the open market. While the State Bar
6 cannot predict the market reaction with certainty, given the relatively low number
7 of attorneys without insurance who would seek insurance among various carriers,
8 there would be an unlikely negative impact on overall rates.

9 Another concern that was raised in response to the *Nevada Lawyer* article
10 was the ability to continue to provide affordable rates to clients if professional
11 liability insurance was mandated. The State Bar understands the economic
12 pressures faced by attorneys in private practice and the impact of this requirement
13 on the cost of doing business. However, as the regulatory authority, the State Bar
14 has a responsibility for public protection and this Rule amendment puts in place
15 safeguards for both the attorney and client if a negligent act occurs.

16 Securing insurance as a matter of doing business is commonplace for
17 professionals, including doctors, accountants and engineers. Oftentimes, insurance
18 is required by third parties, like hospitals in the case of doctors. For lawyers, that
19 responsibility, as a self-regulating profession, is the responsibility of the State Bar.
20 Furthermore, prudent businesses of all types, even entrepreneurial ventures, secure
21 insurance as a means of personal and public protection in the event of an error or
22 omission.

1 *Rates of Uninsured Lawyer Practice and the Effect on Clients*

2 No lawyer is immune from a malpractice claim, regardless of the size of his
3 or her practice. “In fact, even good lawyers who do great work can still get sued.”⁵
4 ALPS, the State Bar’s endorsed professional liability insurance carrier, reported
5 more than \$6.6 million in claims paid over the last five years; \$12.8 million over
6 the last 10 years and almost \$50 million in claims paid since 1998. This data is
7 representative of ALPS, which covers 58 percent of those insured Nevada
8 attorneys, and does not include claims paid by all competitors in the market.
9 However, it demonstrates the need for insurance to protect client interests.

10 More than 60 percent of surveyed attorneys either agreed or strongly agreed
11 that attorneys without insurance are no more likely to commit malpractice than
12 those with insurance. Yet, 1,067 of the 6,713 active attorneys in private practice
13 elect to not carry professional liability insurance⁶ and according to responses
14 received from a 2017 survey of all attorneys who do not carry professional
15 liability insurance, 73 percent of those uninsured practitioners are in solo practice.
16 Another 15 percent work in a small practice setting. (The April 2017 survey is
17 attached as **Exhibit C.**)

18 Based on information provided by ALPS, three to four malpractice claims
19 per 100 Nevada attorneys are filed each year, equaling a claims frequency of 3.5
20 percent. Considering the roughly 1,000 uninsured attorneys in this state without
21 insurance, and without knowing whether that community is more susceptible to
22 claims or not, we would estimate these uninsured attorneys being prone to 30 to
23 40 claims per year.

1 Opponents of mandated professional liability insurance consider programs
2 like the State Bar's Clients' Security Fund to be available to cover the losses
3 clients may suffer due to attorney negligence. However, the Clients' Security
4 Fund's jurisdiction does not extend to those who have been the victim of negligent
5 representation. In fact, of the 33 claims denied by the Clients' Security Fund in the
6 past five years, 22 (66 percent) were denied because the claim resulted from
7 attorney negligence or malpractice, rather than theft.

8 *Professional Liability Insurance and the Cost of Doing Business*

9 Given the rates of uninsured practice, the State Bar questioned why
10 attorneys would elect to engage in the practice of law without the safety net that
11 professional liability insurance affords both them and their clients. When asked
12 their reasons for electing to not carry insurance, Nevada attorneys cited several
13 reasons, with cost being the primary explanation⁷ (51 percent of survey
14 respondents). The State Bar considered this issue further in its survey of all
15 licensed attorneys in the state⁸. When asked to rate their level of concern about
16 several statements regarding professional liability insurance, three areas were
17 identified as having a high level of concern (or were given a "very concerned"
18 rating). They were:

- 19 - Impact on solo/small practices and the cost of doing business;

21 ⁵ *Saying 'No' to Malpractice Insurance – The True Cost of "Going Bare,"*

22 <http://solopracticeuniversity.com/2014/08/21/saying-no-to-malpractice-insurance-the-true-cost-of-going-bare/>

23 ⁶ Based on 2017 mandatory license disclosures, which are not verified, 84% of all private practice attorneys in Nevada carry professional liability insurance.

24 ⁷ April 2017 State Bar of Nevada survey of all attorneys who do not carry professional liability insurance.

25 ⁸ December 2017 State Bar of Nevada survey of all attorneys with an active and active exempt license status.

- 1 - Premiums for high-risk practices; and
- 2 - Ability to provide low cost or free legal services if not employed or actively
- 3 practicing.

4 The December 2017 survey of all actively licensed attorneys in the State is
5 attached as **Exhibit D**.

6 Recognizing the impact of mandating a minimum professional liability
7 insurance policy on private practice attorneys, especially those in a solo or small
8 firm practice, does not negate the State Bar's responsibility to ensure that all
9 clients are adequately protected, regardless of the size of the law firm providing
10 representation or the type of work performed. However, to assist with its
11 consideration of mandatory malpractice, the State Bar asked ALPS to project
12 pricing expectations for those without coverage.

13 The State Bar asked for rates for those seeking a \$250,000 per
14 claim/\$250,000 aggregate policy. This policy coverage was selected because 97
15 percent of all ALPS claims in Nevada resolve for less than \$250,000. Rates vary
16 depending on a multitude of factors including the area of practice, prior claims or
17 disciplinary action, desired limit of liability, years in business, etc. On a
18 generalized basis (without the benefit specific firm risk factors) for firms coming
19 into the market without prior acts exposure and seeking a \$250,000 per
20 claim/\$250,000 aggregate policy, estimated premiums would be approximately
21 \$1,350; for Clark County, given higher overall claims experience in that area,
22 annual premiums would be closer to \$1,500. These rates are the equivalent of one
23 hour of billable time per month.

1 The State Bar also asked ALPS to provide estimated premiums based on the
 2 top five practice areas identified in the April 2017 survey of those attorneys who
 3 do not carry professional liability insurance. These practice areas include:

- 4 (1) General civil litigation (plaintiff);
- 5 (2) Criminal defense;
- 6 (3) Corporate/business law;
- 7 (4) Personal injury (plaintiff); and
- 8 (5) Family law.

9 The average malpractice premiums for each of these areas of practice, and
 10 with a policy amount of \$250,000 per claim/\$250,000 annual aggregate, are
 11 demonstrated in the following chart.⁹ Rates are presented as a statewide average,
 12 excluding Clark County, and by Clark County. The annual rates reflect new
 13 entrants into the market (those with no prior acts coverage).

14 Area of Practice	15 Average Statewide Premium (Excluding Clark County)	16 Average Premium (Clark County)
17 General Civil (Plaintiff)	\$813	\$867
18 Criminal Defense	\$655	\$698
19 Corporate/Business Law	\$1,216	\$1,298
Personal Injury (Plaintiff)	\$1,560	\$1,665
Family Law	\$982	\$1,047

20 As a lawyer's risk exposure grows year-over-year, premiums will generally
 21 increase over a six-year time horizon. Risk pricing is a multi-variate exercise and
 22 how the factors interplay with one another will determine ultimate pricing.
 23 Generally, one should expect to see increases of about 15 percent annually. Thus,

24 ⁹ These rates may be attributed to ALPS only and may not be representative of the broader
 25 lawyers' profession liability (LPL) industry.

1 at the end of a six-year period, new uninsured attorneys to the market (with the
2 potential of wide discrepancies depending on other risk factors) could expect
3 averages around:

- 4 a. Clark County: \$3,489
- 5 b. Rest of Nevada: \$3,140.

6 There are certain risks that would fall out of the standard market appetite,
7 which could result in higher rates based on the need to go to surplus lines markets
8 (i.e. distressed firms or high-risk practice areas). However, insurance for all risks,
9 including distressed firms, should be available on the open market. As the State
10 Bar's endorsed carrier, ALPS has committed to work with current uninsureds to
11 aid them in finding an appropriate market, even if that falls outside their risk
12 appetite and will require more specialized markets depending on the risk.

13 To address affordability concerns for new entrants in the Nevada lawyer's
14 professional liability market, ALPS also offers a "Basic" policy option. This
15 policy was designed to offer solid firm protection, albeit with fewer coverage
16 enhancements, in exchange for a 20 percent reduction in price from their middle-
17 tiered Preferred policy. For those entering the market with no prior acts coverage
18 and electing "Basic" coverage, the premium charged should be significantly less
19 than most LPL policies in the market. Additionally, ALPS offers special tiered
20 rates to new lawyers going into solo practice, which starts at \$500 in their first
21 year of practice and increases on a fixed basis by \$500 a year with year three set at
22 \$1,500 as the liability exposure grows year over year. After year three, the
23 attorney enters the standard Nevada market, whereby rates will vary depending on
24 underlying risk factors.

25

1 To address attorneys who are semi-retired and may only represent a few
2 selected clients, most admitted professional liability carriers offer plans filed with
3 the Department of Insurance which allow a significant premium credit for limited
4 practice exposure. For instance, at ALPS, for firms averaging 25 hours or less in
5 monthly billings, Underwriting can apply a 50 percent premium credit, in effect
6 reducing premium by half. Berkley Insurance also offers coverage for part-time
7 practice based on the type of work performed. For example, the average premium
8 for a part-time attorney practicing criminal law would be around \$550 annually.
9 This is based on an average of 11-25 billable hours per week.

10 CONCLUSION

11 Requiring a minimum level of professional liability insurance for all
12 attorneys directly responds to the State Bar's mission to protect the public. If
13 adopted by the Court, this Rule amendment would impact all attorneys engaged in
14 private practice, regardless of the number of matters or clients or the amount
15 charged for those services. It is the position of the State Bar that regardless of the
16 attorney's practice size, the number of clients served, or fees charged, clients are
17 entitled to the same level of protection afforded to them by professional liability
18 insurance. Those attorneys who desire to provide pro bono legal services may do
19 so under the insurance policy offered by one of several pro bono legal service
20 organizations.

1 Additionally, because the proposed amendment only applies to those
2 attorneys who are engaged in private practice, there are attorneys for whom the
3 Rule would not apply, including, but not limited to those attorneys who:

4 - Maintain an active license, but have retired from the practice of law and
5 have attested that they do not represent clients;

6 - Are employed by an organizational client and do not represent clients
7 outside that capacity;

8 - Are unemployed or are not working in the legal field and attest to not
9 representing clients; and

10 - Are employed in the public sector, either as an attorney or member of the
11 judiciary.

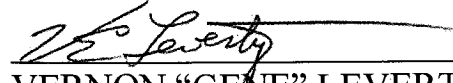
12 To facilitate compliance with the proposed Rule, the State Bar will provide
13 a list of insurance providers authorized to transact legal professional liability
14 insurance in Nevada on its website and in communications to our members. The
15 State Bar would also engage with professional liability insurers doing business in
16 Nevada to promote affordable coverage and ensure compliance with the Rule
17 changes. The State Bar will require reporting of professional liability insurance
18 carrier information and may verify compliance through random annual audits of
19 attorneys subject to this Rule and request proof of insurance, such as the
20 declaration page.

21 If adopted, the State Bar would anticipate implementation of the
22 professional liability insurance requirement six months after receipt of a Court
23 Order. This would allow time for notification to the attorneys affected by the
24 amendment and time for attorneys to quote and obtain insurance.

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RESPECTFULLY SUBMITTED this 25th day of June 2018.

STATE BAR OF NEVADA
BOARD OF GOVERNORS



VERNON "GENE" LEVERTY, President
Nevada Bar No. 1266
State Bar of Nevada
3100 W. Charleston Boulevard
Las Vegas, NV 89102
(702) 382-2200

EXHIBIT A

Rule 79. Disclosures by members of the bar.

1. Every member of the state bar, including active, nonresident active and inactive members, shall provide to the state bar, for the purposes of state bar communications, the following:

- (a) A permanent mailing address;
- (b) A permanent telephone number; and
- (c) A current e-mail address.

2. Every member of the state bar shall disclose to the state bar the following information:

- (a) Whether the lawyer is engaged in the private practice of law; and
- (b) Whether the lawyer is engaged as a full-time government lawyer or judge, or is employed by an organizational client and does not represent clients outside that capacity, or is not currently representing clients. ~~;~~ and

3. ~~[(e) If]~~ Every lawyer engaged in the private practice of law and representing clients ~~[, whether the lawyer maintains professional liability insurance, and if the lawyer maintains a policy, the name and address of the carrier.]~~ shall attest to having current professional liability insurance coverage at the minimum limit of \$250,000 per occurrence/\$250,000 annual aggregate; subject to proof of compliance upon random audit.

4. ~~[3.]~~ Every member of the state bar shall inform the state bar of any change in any of the information disclosed under this rule within 30 days after any such change. The member shall report a change of address, telephone number or e-mail address online.

5. ~~[4.]~~ Every member of the state bar shall certify annually on a form provided by the state bar the information required under this rule.

6. ~~[5.]~~ The information submitted under this rule shall be nonconfidential, but upon request of a member, the state bar will not publicly disclose a member's e-mail address.

7. ~~[6.]~~ The State Bar shall notify in writing [A]any member who fails to provide the state bar with the information required by this rule [shall be]. Upon expiration of 30 days from the date the State Bar sends the member notice of non-compliance, said non-compliant member shall be: [subject to a fine of \$150 and/or suspension upon order of the board of governors and/or the supreme court from membership in the state bar until compliance with the requirements of this rule and/or until reinstatement is ordered by the supreme court.]

- (a) Assessed \$200, payable within 30 days to the State Bar; and

1 (b) Suspended from membership in the State Bar, but may be reinstated upon
2 filing verification of compliance on a form to be provided by the State Bar.

3 A member may apply for a one-year hardship exemption from the e-mail
4 provision on a form provided by the state bar. Supplying false information in
5 response to the requirements of this rule shall subject the lawyer to appropriate
6 disciplinary action.

7 8. [7.] The state bar shall provide the board of continuing legal education
8 with an annual membership roster within 60 days of the due date for annual
9 membership fees and registration forms.
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EXHIBIT B

JOIN THE DISCUSSION: WHETHER MALPRACTICE INSURANCE SHOULD BE MANDATORY FOR NEVADA ATTORNEYS

Weigh in with your input to help shape these potential programs!

BY ROBERT HORNE, PROGRAMS AND SERVICES MANAGER, AND
JENNIFER SMITH, PUBLICATIONS MANAGER, STATE BAR OF NEVADA

On November 8, 2017, the State Bar of Nevada's Board of Governors approved moving forward with the next steps to require Nevada attorneys to maintain professional malpractice insurance as a condition of being licensed in the state of Nevada. The board invites responses from *Nevada Lawyer* readers on this topic; bar members can join the discussion by sending feedback to publications@nvbar.org.

Proposal

The initial concept of the proposal regards bar members in private practice, requiring them to maintain minimum coverage limits of \$250,000 per claim with a \$250,000 aggregate for all claims. Nevada attorneys will be permitted to purchase malpractice insurance from any provider they wish: a system known as the "open-market model."

Taskforce Evaluation

Part of the State Bar of Nevada's mission is to protect the public. In order to study issues regarding mandatory malpractice insurance, the Board of Governors established a Professional Liability Insurance Taskforce, which has been meeting regularly throughout 2017.

"The taskforce has learned that the public believes all lawyers have malpractice insurance," said State Bar of Nevada President Gene Leverty. "Our lawyers are not required to have malpractice insurance." The taskforce made its recommendation to the Board of Governors after exploring various concepts it has evaluated.

Some options they explored included:

- Requiring attorneys to disclose to clients whether or not they carry insurance;
- Requiring all Nevada attorneys to carry malpractice insurance, leaving the responsibility of retaining the insurance to each attorney or firm; or
- Adopting a single insurer through the state bar that would provide minimum limits to all Nevada lawyers, while still allowing lawyers to retain excess limits on the open market.

Approaches in Other States

Alaska, California, New Hampshire, New Mexico, Ohio, Pennsylvania and South Dakota currently require attorneys to disclose whether or not they have malpractice insurance to their clients.

Three states require malpractice insurance.

Idaho

Idaho operates on the open-market model, and that state will also soon require all its attorneys to purchase minimum coverage through a professional liability insurance carrier. Idaho's rules become effective in January 2018, and they require attorneys to maintain insurance coverage at a minimum limit of \$100,000 per occurrence, with a \$300,000 annual aggregate.

Oregon

Since the 1970s, Oregon has required the maintenance of a mandatory professional liability fund, operated by Oregon’s state bar. All attorneys licensed in Oregon receive minimum coverage through the fund; premiums attach to their annual license fees. Oregon’s Professional Liability Fund serves as the insurance provider for Oregon lawyers in private practice.

In 2016, the Oregon assessment was \$3,500, with a reduced rate for lawyers in their initial years of practice. The fund provides coverage of up to \$300,000 per claim with a \$300,000 aggregate, including defense costs, and a \$50,000 claims expense allowance.

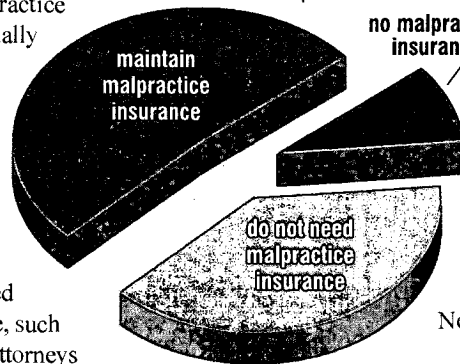
Illinois

Illinois has adopted a practice-management approach to liability insurance, requiring attorneys who choose not to carry insurance to undergo an online practice assessment that also provides four hours of CLE credit.

Most Bar Members Already Covered

Nevada’s Current Coverage Statistics:

- Attorneys engaged in the private practice of law who maintain malpractice insurance, either personally or through their firms: 5,301
- Attorneys engaged in the private practice of law who do not maintain malpractice insurance: 988
- Bar members not in need of malpractice insurance, such as judges, government attorneys and attorneys not representing clients: 4,012



Already, most state bar members practicing private law in Nevada report that they either maintain malpractice insurance themselves or receive coverage through their firms. A strong majority – 5,301 bar members – reported this information on their mandatory disclosures. (The state bar does not verify information reported by attorneys.) There are 988

members engaged in the private practice of law who report they do not maintain insurance.

Five Possibilities Considered

During its evaluation period, the taskforce considered five models of malpractice insurance, including:

- **Open Market:** Recently adopted in Idaho, this model requires all attorneys to purchase minimum coverage through a professional liability insurance carrier. This is the model the Board of Governors selected for Nevada.
- **Mandatory Professional Liability Fund:** Oregon is the only state with such a fund. Operated by the Oregon bar, this model provides all Oregon attorneys with minimum coverage; premiums are attached to annual license fees.
- **Captive Insurance Carrier:** This model also provides minimum coverage to all the state’s attorneys; however, in this model, a specific carrier is selected to provide policies to all bar members.
- **Risk Management Model:** This model was recently adopted in Illinois. It requires all Illinois attorneys to carry minimum liability insurance; however, if they elect not to do so, they must take a four-hour online course in risk management annually.
- **Association Group Captive Insurer Model:** In this model, an insurance company is owned by an association, its members or both. Nevada law allows captive insurers for associations, according to Nevada Revised Statute Chapter 694C.

Participate in the discussion! Share your thoughts on the topic of mandatory malpractice insurance by emailing the state bar at publications@nvbar.org.

Expert Opinions Gathered

On October 23, 2017, the taskforce held a round table discussion with some insurers currently providing malpractice insurance in Nevada and with Nevada Insurance Commissioner Barbara Richardson concerning various options under consideration by the taskforce. The insurers presented arguments to support certain options and recommended against others. For example, the commissioner expressed concern over premium rates, should the bar lock into one insurance carrier for minimum limits coverage.

continued on page 31

WHETHER MALPRACTICE INSURANCE SHOULD BE MANDATORY FOR NEVADA ATTORNEYS

Minimum limits of coverage were also discussed. Attendees recommended considering minimum limits of \$250,000/\$250,000 rather than \$100,000/\$300,000. The price differential between the coverage should be minimal, but the effective coverage is much better with \$250,000/\$250,000 limits. The taskforce thanked the insurers and commissioner for participating in the round table discussion.

Next Steps

The Board of Governors is looking at all avenues with respect to the open market model as they work out details and specifics prior to considering submitting this matter to the Nevada Supreme Court for a rule change. "The consideration process will ... allow everyone to vent their full pros and cons of the concept [through the process]," Leverty said.

Weigh In

The Board of Governors invites members to participate in the discussion. Share your thoughts on the topic of mandatory malpractice insurance by emailing the state bar at publications@nvbar.org.

The price differential between the coverage should be minimal, but the effective coverage is much better with \$250,000/\$250,000 limits.

RANDOM TRUST ACCOUNT AUDIT PROGRAM

The State Bar of Nevada's Board of Governors is studying the creation of a mandatory trust account audit program.

Program Overview

Under the initial concept for this program, each year, a set percentage of active attorneys would be selected at random to have their trust accounts audited by a professional auditor with experience specific to lawyer trust accounts. The audits would incur no fees or charges, involve minimal, if any disruption, and be conducted as desk audits at the state bar offices. In addition, bar dues would not increase as a result of this program; it is expected the audits will reduce costs for the Office of Bar Counsel.

At the onset, approximately 60 attorneys would be selected each year for random audits. Attorneys who do not handle client money are exempt from random audits. If a lawyer is randomly selected, the trust account records from that attorney's entire firm will be audited. At the conclusion of the audit, the attorney and/or firm will be provided with a written report of the auditor's findings.

Purpose and Benefits

This program, designed to improve the state bar's mission to protect the public, will provide three important benefits to both attorneys and their clients, including:

- **Education:** Attorneys subject to the random audit will receive a hands-on critique and evaluation of their trust account management. In addition, a similar program in North Carolina has been successful at encouraging members to engage in self-study and monitor their voluntary compliance.
- **Deterrence:** The use of external audits is a common practice in other fields, such as banking, security and taxation. This compliance protocol provides a deterrent aspect, leading to the prevention of possible violations.
- **Detection:** Many of the issues reported to the Office of Bar Counsel involve trust account violations. The ability to proactively detect deficiencies will help the state bar protect the public through self-regulation.

It is believed that the presence of a random trust account audit program will not only reduce the number of safekeeping complaints made to the state bar, but it will also encourage attorneys to be more proactive when managing their trust accounts, helping them self-detect minor infractions before they become substantial deficiencies that negatively impact clients and the public at large.

Your Feedback Matters

A survey was distributed via email to nearly 9,000 active and active exempt bar members to gather input related to the implementation of a random trust account audit program. Members' feedback is already helping shape the program, and survey responses have also identified the need to avoid misconceptions by more fully informing bar members about the program's concepts.

More input is invited! The Board of Governors is interested in members' feedback on the envisioned random trust account audit program. Email your thoughts to publications@nvbar.org. NL

EXHIBIT C

PROFESSIONAL LIABILITY INSURANCE SURVEY

APRIL 3, 2017

OVERVIEW

In preparation for the Professional Liability Insurance Taskforce meeting, we attempted to gather information from attorneys who do not carry professional liability insurance about their reasons for electing against it. This survey also captures information including geographical demographics, years in practice, areas of practice, etc.

An electronic survey was sent to 976 attorneys in Nevada with active and active exempt status licenses. These attorneys indicated that that did not carry professional liability insurance on their 2016 mandatory license disclosures. Of those surveyed, responses were received from 232 individuals (24% of those surveyed).

Those surveyed were provided an "opt out" if they believed the information reported was incorrect and were provided an opportunity to make corrections to their disclosure statements. Fewer than a dozen attorneys indicated the information on their disclosure statements was incorrect.

SURVEY RESULTS SYNOPSIS

DEMOGRAPHICS

- The areas in the state where survey participants practice is statistically consistent with those surveyed.
- More than 55% of those surveyed have been in practice 20 years or longer, with the next largest segment being in practice for 10-19 years (26%).
- 96% maintain an active license.
- Nearly 80% survey participants indicated that they are employed in a private practice/law firm setting.
- More than 73% of survey participants are in private practice, with the next largest segment (15%) in small practices of 2-4 attorneys.
- The highest concentrations of practice areas are in: personal injury (plaintiff), family law, general civil (plaintiff), criminal defense, and corporate/business organization & transaction.

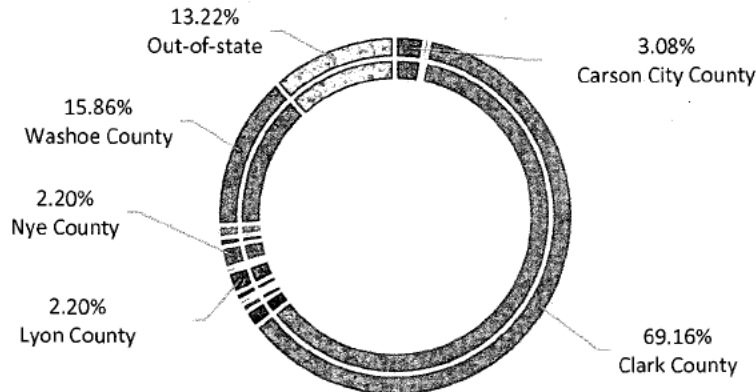
INSURANCE OPINIONS

- When asked why they elect to not carry professional liability insurance, the top reason was "cost prohibitive."
- More than a third of the attorneys who responded stated they would elect to carry liability insurance if it was affordable.
- 72% of the survey participants stated that attorneys should not inform their clients that they do not carry insurance. (Of the 28% who responded affirmatively, disclosure by fee agreement was ranked as the best mechanism to inform clients.)
- More than half (56%) of survey participants stated that there is no reasonable expectation from the public that a lawyer maintains some amount of professional liability insurance.

DEMOGRAPHICS/AREA OF PRACTICE

(1) **Practice Location:** Survey participants were asked to indicate which areas of the state they primarily practice. Participants were given the option of selecting more than one practice location. **The majority of those responding reside in either Clark (69%) or Washoe (16%) County or practice out of state (13%).**

Those counties not called out on the chart below made up fewer than 2% of the respondents.



- Carson City County
- Churchill County
- Clark County
- Douglas County
- Elko County
- Esmeralda County
- Eureka County
- Humboldt County
- Lander County
- Lincoln County
- Lyon County
- Mineral County
- Nye County
- Pershing County
- Storey County
- Washoe County
- White Pine County
- Out-of-state

(2) Of those who responded that their practice was out-of-state, 93% do not carry professional liability insurance in that state.

(3) **Years in Practice:** Survey participants were asked to indicate how many years they have been licensed to practice law. **More than 55% of those surveyed have been in practice 20 years or longer**, with the next largest segment being in practice for 10-19 years (26%).

Years in Practice	%	Total
Less than 4 years	5.83%	13
4-9 years	13.45%	30
10-19 years	25.56%	57
20-29 years	22.87%	51
30 years or longer	32.29%	72
Total	100%	223

(4) **License Status:** Of those who responded, the majority (96%), maintain an active license to practice law.

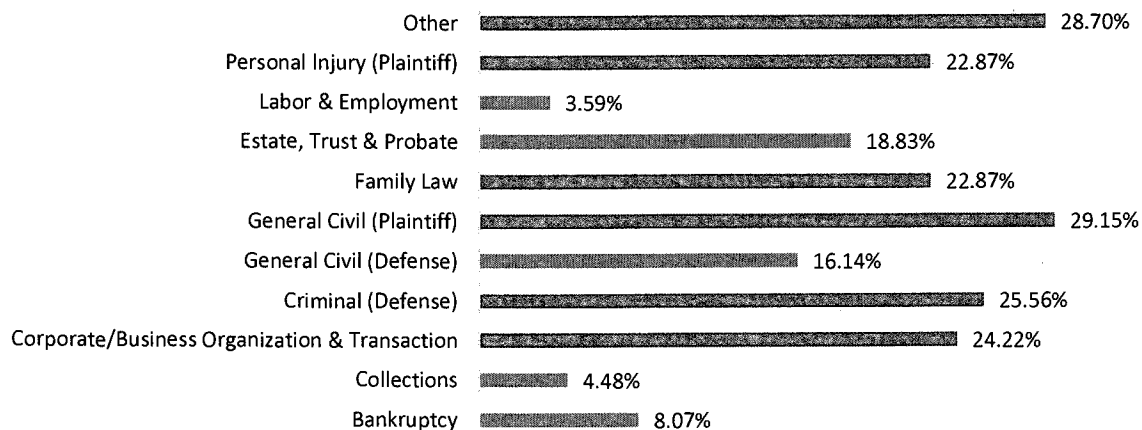
- (5) **Practice Setting:** The majority of survey participants indicated that they are employed in a private practice/law firm setting.

Practice Setting	%	Total
Private Practice (Law Firm)	79.82%	178
Corporate/In House	4.48%	10
Government/Government Agency	1.79%	4
Legal Services/Non-Profit	0.90%	2
Private Trials/Arbitration/Mediation	2.24%	5
Retired	5.38%	12
Not Employed as a Lawyer	3.59%	8
Unemployed	1.79%	4
Total	100%	223

- (6) Most survey participants (73%) indicated that they are in solo practice.

Firm Size	%	Total
Solo (1)	73.54%	164
2-4 attorneys	15.25%	34
5-14 attorneys	1.35%	3
15 attorneys or more	0.90%	2
N/A	8.97%	20
Total	100%	223

(7) **Areas of Law.** Survey participants were asked to indicate the area(s) of law that best describe their practice¹. **The highest concentrations of practice areas are in: personal injury (plaintiff), family law, general civil (plaintiff), criminal defense, and corporate/business organization & transaction.**



Those who indicated "other" were provided an opportunity to list their area of practice. A summary of the responses is below:

- Administrative (x 3)
- ADR (2)
- Appellate
- Automotive BI Defense
- Business litigation
- HOA Law
- Intellectual Property (x 4)
- Entertainment
- Freelance/Contract/Research and Writing (x3)
- Real Property/Real Estate (x 3)
- Insurance Coverage
- Immigration (x 8)
- Tax law (2)
- Not employed (x2)
- Labor Primarily
- State Bar Discipline and Admissions cases.
- No cases, but keep license (x2)
- Represent family members
- Pro Bono legal work (x2)
- Simple matters: sending out demand letters, pre-litigation, etc.
- Constitutional Law Impact Litigation
- Professional liability; professional privileges

¹ Suggested areas of practice were drawn from a 2013 study conducted by the Lawyers Mutual Insurance of Kentucky, which analyses the percentage of claims by areas of law.

LIABILITY INSURANCE OPINIONS

(8) **Reasons for Not Carrying:** Participants were asked to rank their top three reasons for not electing to carry professional liability insurance. Participants were provided the option of selecting one of the reasons below or adding a different/other reason.

The primary reason cited by 166 survey participants was “cost prohibitive.” Other top reasons include:

- Confidence in practice/not needed;
- Practice doesn't require it; and
- Other

	Primary Reason	Second Reason	Third Reason	Not a Reason	Total
Cost prohibitive	51% (85)	25% (41)	19% (31)	5% (9)	166
Other	47% (22)	17% (8)	26% (12)	11% (5)	47
Confidence in practice/Not needed	40% (55)	28% (38)	15% (21)	16% (22)	136
Practice doesn't require it	27% (30)	24% (27)	16% (18)	34% (38)	113
Prefer to defend myself against charges/pay claims directly	11% (11)	19% (19)	29% (29)	42% (42)	101
Confusion about what type of insurance to purchase	7% (5)	12% (9)	13% (10)	68% (52)	76
Other	6% (1)	25% (4)	38% (6)	31% (5)	16
Represent clients pro bono	3% (2)	12% (9)	14% (10)	71% (52)	73
Unable to obtain coverage	3% (2)	11% (8)	5% (4)	81% (60)	74

Reasons marked as “Other” are categorized and listed as follows:

Type of Practice

- Low-risk area and type of practice
- Private practice is limited in scope and type of work.
- Primarily engage in business not law practice
- Entertainment Law denied coverage
- Almost all clients are firms in which I own an interest, am an officer or a director. Typical policies exclude coverage under these circumstances.
- Type of practice
- Practice mostly in tribal courts
- Unable to obtain coverage due to representation of medical marijuana clients
- Employed in real estate where my law background is an asset but I do not practice per se - I do exercise risk management skills
- Stay within my knowledge of specific fields

Maintenance Not Justified

- Don't have enough clients for it to make sense
- Very small case load does not justify cost, risk is low
- I have limited clients and limited activities
- Judgment proof/No assets
- My one claim in my entire career, my malpractice insure. co. refused to accept, so I handled it myself successfully.
- Only do a small amount of law work over the course of the year, probably more expensive to buy insurance than the amount of money that work would even generate.
- I'm not representing anyone
- I work part time for only one client, which is my husband's company.
- Rarely practice as lawyer
- Confidence in clients
- Business' total worth is under \$2000.00
- Only active case is an appeal
- Insurance companies will not adjust rates for low volume practice.
- In the past when I inquired about malpractice insurance, they said I needed to be working mostly full-time.

Affordability:

- Don't make enough \$ to make it worth it.
- Can't afford it!
- Law school debt and housing crash renders me judgment proof
- Meager assets are judgment proof
- Can't afford!

History/Perception:

- 41 years without claim
- No client complaint about service given
- If you have a claim the insurance companies in my experience do[n't] want to provide coverage
- Will make me a target
- Insurance makes me a target.
- Insurance is an invitation to be sued
- Encourages claims
- Insurance Companies interests are not the same as the attorney's best interests

Employer:

- I'm just an associate/no authority
- Boss doesn't want it
- Boss prefers to pay claims himself

Obtained Elsewhere

- I have it through my employer
- Provided by other(s)
- Only do appearance work for attorneys who are insured
- Work for insurer, self-insured
- In House
- I have usually work for another law firm or lawyer which carry liability insurance.

Semi-Retired/Limited Practice:

- Semi-retired and limit what I will do to existing clients or referrals from one source where all parties have agreed in writing.
- Semi-retired/very few cases/clients
- Almost completely retired
- I don't practice very much and it would be cost prohibitive for me
- Too few clients
- Not in Active Practice
- Retired
- Part-time practice; semi-retired
- Practice limited to friends as clients
- I am 76; practice narrowly limited, mostly for friends without charge
- I have not been active recently however wish to keep my options open.
- Basically retired. No court work.
- Not full-time attorney (not even really a part-time attorney)
- Minimal practice
- Unemployed

Work Outside Nevada

- Not in NV
- Do not engage in substantial work in the State of Nevada

(9) **Affordability.** Survey participants were asked if they would elect to carry professional liability insurance if affordable insurance was made available to them. **More than a third of the attorneys who responded stated they would elect to carry liability insurance if it was affordable.**

	%	Total
Yes	38%	81
Maybe	40%	86
No	22%	47

Total **100%** **214**

(10) **Client Notification.** Survey participants were asked to state whether attorneys should inform their clients if they carry professional liability insurance. **The majority, 72%, stated that attorneys should not inform their clients.**

	%	Total
Yes	28.5%	59
No	71.5%	148
Total	100%	207

(10)(A) **How to best inform.** Those attorneys who responded “yes” to question 10 were asked to rank the top three best mechanisms for informing their clients. Survey participants were given the option of selecting from the list provided below or giving another response. **Disclosure by fee agreement was ranked as the best mechanism to inform clients.**

	Best Mechanism	Second Best Mechanism	Third Best Mechanism	Total
Disclosure in Fee Agreement	71% (40)	20% (9)	8% (3)	52
Verbal Disclosure Prior to Retention	12% (7)	32% (14)	23% (8)	29
Posted on SBN Website/Attorney Profile	11% (6)	21% (17)	17% (6)	21
Posted Notice on Website	4% (2)	9% (4)	26% (9)	15
Posted Notice in Office	2% (1)	11% (5)	26% (9)	15
Other	0% (0)	7% (3)	0% (0)	3
Other	0% (0)	0% (0)	0% (0)	0

“Other” responses include:

- RE California Disclosure
- Written disclosure to client
- Tattoo on secretary's forehead

(11) **Public Expectations.** Finally, survey participants were asked if, generally speaking, the general public seeking legal aid from an attorney have a reasonable expectation the lawyer maintains some amount of professional liability insurance. **More than half the respondents indicated that there was no reasonable expectation.**

	%	Total
Yes	8.02%	17
Maybe	35.85%	76
No	56.13%	119
Total	100%	212

EXHIBIT D

PROFESSIONAL LIABILITY INSURANCE

Survey Report
December 22, 2017

The State Bar of Nevada sent a survey to 8,908 active and active exempt attorneys regarding their perceptions about mandatory professional liability insurance. The survey was open for a two-week period; 1,001 responses were received (11% response rate).

DEMOGRAPHICS

1. **Practice Setting:** The majority of survey takers are in private practice either full time (52%) or on a part-time/semi-retired basis (18%).

	%
Private practice (full time)	51.74%
Private practice (part-time or semi-retired)	18.34%
Public lawyer	11.37%
In House Counsel	6.05%
Judiciary	2.56%
Not currently working/Retired	3.79%
Not currently working in the legal field	2.46%
Other	3.69%

Other:

- I have a very limited practice due to limited internet and other resources where I live. I also am contracted as a municipal court judge and juvenile court master;
- Mix of private practice and public sector practice
- Inactive, but practicing in another state.
- I currently have a half-time contract as an independent contractor with a public agency to provide, primarily labor relations and lobbying services. I also have independent contractor agreements to hear administrative cases involving the discipline of licensees of the State Board of Medical Examiners and to hear appeals by pupils, coaches, officials and school found to have violated the regulations governig those individuals participation in interscholastic activitis. I have a very limited private practice that does not accept new clients.
- Arbitration/mediation (x4)
- Professor (x2)
- Volunteer pro bono work on an occasional basis
- Semi-retired (Part time limited practice)
- I am a new attorney with intent to enter in private practice.
- occasional, contract for other attorneys only
- Judicial Law Clerk/Law School Fellow (x2)
- Work for federal government agency

2. Size of Office (NV Office only if multi-jurisdictional firm): More than 70% of all survey takers practice in a solo or small practice setting.

	%
Solo Practice	51.03%
2-4 attorneys	20.27%
5-14 attorneys	14.60%
15+ attorneys	14.11%

3. Office Location (or residence if not practicing)

- 58 % are in Clark County
- 19 % are in Washoe County
- 5% are in Carson City County
- 4% are in Rural Nevada counties; and
- 14% practice or reside out of state

Of those who practice out of state:

- 51% carry malpractice insurance in that state;
- 39% have clients in Nevada;
- 44% handle clients' legal cases in Nevada

4. Rate of PLI Coverage. Just over 50% of those attorneys who responded, carry professional liability insurance that affords coverage for their practice in Nevada (49.8% do not).

Breakdown of PLI Coverage: Of those who carry professional liability insurance, the following represents a breakdown by practice size:

- 48% are solo practice attorneys;
- 72% are in 2-4-person practices;
- 70% are in 5-14-person firms; and
- 53% are in 15+ member firms.

Of those who carry PLI, the most common policy limit is \$1M per claim/\$1M aggregate

	%
Less than \$100,000 per claim/\$300,000 aggregate	0.82%
\$100,000 per claim/\$300,000 aggregate	3.47%
\$250,000 per claim/\$250,000 aggregate	7.96%
\$500,000 per claim/\$500,000 aggregate	8.98%
\$750,000 per claim/\$750,000 aggregate	0.61%
\$1M per claim/\$1M aggregate	40.61%
\$3M per claim/\$3M aggregate	5.92%
\$5M per claim/\$5M aggregate	3.67%
More than \$5M per claim/\$5M aggregate	5.51%
Unsure	22.45%

This policy limit is consistent among all practice sizes.

Most of those who are unsure practice in 5-14-person or 15+ member firms.

PERCEPTIONS

As attorney practices can migrate between private and public-sector settings, we asked that survey participants complete this section of the survey regardless of whether they are in private practice or not.

5. **Duty to Protect.** 66% of the survey takers stated they believed an attorney has a responsibility to protect his or her client from financial loss that may be caused by his or her negligence.

	%
Yes	65.90%
Maybe	18.92%
No	9.88%
Unsure	5.30%

6. **Method of Financial Recovery.** Nearly 64% stated that professional liability insurance provides a method of financial recovery for clients injured by attorney negligence.

	%
Yes	63.76%
Maybe	22.95%
No	9.76%
Unsure	3.53%

7. **Public Protection.** Just over 35% of the survey respondents stated that mandating minimum malpractice insurance was a way to protect the public. 39% disagreed.

	%
Yes	35.31%
Maybe	25.44%
No	39.25%

8. **Public Assumption.** When asked if they agreed that most (non-corporate) clients assume lawyers carry professional liability insurance, the results were nearly equal.

	%
Yes	33.50%
Maybe	12.32%
No	35.96%
Unsure	18.23%

9. **Attorney Reputation.** Survey takers were asked if they think attorneys who do not carry professional liability insurance negatively affect the reputation of the legal community. **More than 59% responded that it did not.**

	%
Yes	21.08%
Somewhat	19.83%
No	59.09%

10. **Statements about professional liability insurance.** Those surveyed were asked to indicate how strongly they agreed with the following statements. The two statements that had the most consensus are highlighted below.

	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Attorneys without insurance are no more likely to commit malpractice than those with insurance.	37.47%	23.40%	19.36%	11.59%	8.18%
Having insurance encourages malpractice lawsuits.	25.23%	25.23%	21.82%	18.41%	9.31%
Not having insurance (or "going bare") is an effective strategy for avoiding malpractice lawsuits.	3.73%	6.95%	27.18%	36.93%	25.21%
Uninsured lawyers negatively affect the reputation of the legal community when injured clients are left without recovery.	13.90%	25.31%	22.72%	18.15%	19.92%

11. **Mandatory Disclosures.** Survey respondents were asked if they were in favor of mandating disclosure to the client whether they carry malpractice prior to engaging in representation. **More than half (56%) stated they were not in favor of mandatory disclosures.**

Of those 44% who were in favor of mandatory disclosures:

- The majority (57%) were not in favor of disclosing to clients the amount of insurance coverage they have.
- The **top three best mechanisms to disclose** whether they have insurance coverage are: (1) Written disclosure in the fee agreement; (2) Written disclosure, separate from fee agreement; and (3) Posted notice in the attorney's office. "Other" disclosure methods include:
 - o Disclosure when asked
 - o Verbal disclosure/discussion at the onset
 - o Publication of mandatory requirement
 - o In lawyer advertising
 - o Email to client
 - o All of the above

12. **Minimum Insurance Policy.** Those surveyed were asked if they think a minimum policy of \$250,000 per claim/\$250,000 annual aggregate is adequate to protect clients. **35% stated that the policy minimum was adequate and 46% were unsure.**

Of the 19% who stated that the minimum policy was not adequate, **31% stated there should be no minimum policy and 30% stated a higher policy of \$1M per claim/\$1M aggregate was appropriate.**

- **31% stated that \$0 (or none) was appropriate;**
- 5% stated that a minimum policy of less than \$100,000 per claim/\$300,000 aggregate was appropriate;
- 0.5% stated that a minimum policy of \$100,000 per claim/\$300,000 aggregate was appropriate.
- 18% stated that a minimum policy of \$500,000 per claim/\$500,000 aggregate was appropriate;
- 2% stated that a minimum policy of \$750,000 per claim/\$750,000 aggregate was appropriate;
- **30% stated that a minimum policy of \$1M per claim/\$1M aggregate was appropriate;**
- 1% stated that a minimum policy of \$3M per claim/\$3M aggregate was appropriate;
- 0.5% stated that a minimum policy of \$5M per claim/\$5M aggregate was appropriate; and
- 6% stated that an "Other" amount was appropriate.

Of those who responded "Other" to the appropriate minimum policy, responses included:

- Depends on the type of cases/practice/services the attorney provides or the amount of recovery sought
- \$1M per claim/\$3M aggregate

13. **Concerns if Implemented.** Survey takers were asked to indicate their level of concern with the following statements if professional liability insurance is required for all private practice attorneys. The three areas with which attorneys voiced the greatest concern were in regard to (1) the impact on solo/small practice and the cost of doing business; (2) premiums for high-risk practice areas; and (3) ability to provide low cost or free legal services.

	Not at all Concerned	Moderately Concerned	Very Concerned
Impact on solo/small practices and cost of doing business	11.33%	29.52%	59.15%
Potential increase in the number of malpractice lawsuits filed	28.15%	35.56%	36.29%
Premiums for high-risk practice areas	11.89%	33.47%	54.64%
Ability to provide low cost or free legal services if not employed/actively practicing	14.39%	26.80%	58.81%
Inability to obtain insurance for my practice	39.83%	26.13%	34.04%

15. **Additional Comments.** Of the 8,908 attorneys surveyed, responses were received from 11% (or 1,001 attorneys). Additional comments were received from 412 survey takers. They are displayed in full below.

1. The State Bar of Nevada is exploring a proposal to require all attorneys engaged in private practice to maintain a state-mandated minimum amount of professional liability insurance. It appears that the primary purpose of the proposal is to protect private individuals who are generally more vulnerable to professional legal malpractice because most private individuals typically do not have the same market experience or bargaining power as more sophisticated clients, such as state or local agencies. Given that the primary purpose of the proposal is to protect private individuals, application of the proposal to all attorneys engaged in private practice is overly broad because there are some attorneys who are engaged in private practice—often as solo practitioners—who do not represent private individuals in any matters because they represent only state or local agencies. For example, the private practice of some attorneys consists exclusively of contracting with state or local agencies to perform legislative drafting services, such as drafting bills, regulations or ordinances, and the accompanying legal research services. It is highly doubtful that such legislative drafting or legal research services could result in any liability for professional legal malpractice, especially given the well-established protections from liability afforded by the doctrine of absolute legislative immunity. See *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (explaining that absolute legislative immunity applies to each of the “integral steps in the legislative process.”); *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 510 (1975) (explaining that absolute legislative immunity protects the legislative body’s counsel). Therefore, application of the proposal to such attorneys would impose an overly expensive and unreasonable burden on them without providing any corresponding benefit to the private individuals who are the intended beneficiaries of the proposal. In fact, the only benefit would be the windfall enjoyed by the insurance carriers collecting premiums under the state-mandated policies without being exposed to any realistic probability of liability risks under the policies because such attorneys do not represent private individuals in any matters. Accordingly, the proposal should be refined so that it does not apply to any attorneys engaged in private practice who do not represent private individuals in any matters but represent only state or local agencies. Alternatively, the proposal should include a waiver process whereby such attorneys are entitled to a waiver from the proposal upon declaring each year with their license renewal that they do not represent private individuals in any matters but represent only state or local agencies. Thank you for your consideration of these matters.
2. More than 90% of my work is as in-house counsel for a group of businesses. I currently work on other cases occasionally, to help my friends. This proposal would effectively prevent me from doing that. I wouldn't even be able to represent my own family members. Stop trying to hurt everyone because of what a couple idiots have done. Focus on cleaning up the profession, not on making it harder for those of us who are already doing the right thing.
3. May be forced to give up my small practice.
4. I oppose any mandatory malpractice insurance for attorneys. I have been a sole practitioner for 31 years, never carried malpractice insurance, and never had so much as a letter of complaint to the state bar. Of course, that means I have also never had a dispute with a client concerning my representation. This proposal is a prime example of a few bad apples spoiling the bunch. The bar maintains a client security fund to assist any client left high and dry by their attorney. I do appreciate that such fund is sometimes inadequate to cover all losses in any given year. My practice is down to about 3 clients, as I am semi-retired, and would like to see some smaller minimum coverage requirement for part-time, reduced practice for sole practice attorneys, if mandatory coverage is adopted.
5. I definitely think malpractice insurance should be required. I only have concerns as to whether clients should be informed or in what manner. I have seen malpractice occur unfortunately and

- seen lower income clients/ non- corporate clients get raked by mistakes, lose money, and not be aware they had any financial recourse against the lawyer. (I don't know that mainstream public is even aware they can sue their attorney, as they seem to think "the buck stops there", with their attorney, so to speak.) Although there may be a slight chance of increase in malpractice suits with clients knowing there's malpractice insurance required, if the true interest is to protect clients and cause lawyers to think twice about practicing in areas in which they lack competence, and ultimately hurt clients often times, by all means, require insurance, let clients know they have recourse when pummeled by an attorney's mistakes.
6. The idea that insurance is the cure to all problems with the legal profession is nuts. It will only encourage sleazy malpractice lawyers to file more needless lawsuits in hope of making an easy buck with an insurance settlement.
 7. For solo attorneys that are trying to establish their own practice this may be too onerous a regulation, the cost of practice is already high with student loans, advanced costs for clients, bar and CLE fees, adding mandatory malpractice insurance will definitely make it harder for solo attorneys like myself to stay afloat.
 8. I think \$100k as the minimum is sufficient. Solo practitioners will be severely impacted if having malpractice becomes mandatory - many just barely make it as is and the cost of obtaining that insurance can be quite high, especially if it is 250/500. I know many solos that struggle financially already - this requirement may simply be another financial burden they don't need. Plus, no client decides to retain an atty based on whether they have malpractice because they don't intend to sue their own attorney when they retain him/her. This will simply be yet another reason for the Bar to sanction attorneys; plus, clients can sue their attorney individually regardless of whether that atty has mal insurance.
 9. The article in the recent Nevada Lawyer did not provide enough information for state bar members, particularly when faced with a potentially expensive MANDATE. It is significant that approximately FORTY states DO NOT MANDATE this type of coverage, so the attempt to make it seem as if there is some sort of crisis is unconvincing. In addition, what is the rush?? Why is this being presented with very short time frames for us to consider and comment, when the "task force" had months and months? This is a very busy time of year for certain members (counseling clients about year-end tax matters, pension plan considerations, etc.). Moreover, why was there no discussion about the potential range of premium costs? Where did the task force get its information that "the public" assumes all attorneys have malpractice coverage? Absent any evidence, it sounds like nothing more than anecdotal and self-serving drivel. The monthly columns about attorney discipline are primarily from the Southern Nevada panel (i.e., Las Vegas)...the task force presented neither any evidence nor any argument that attorneys in the rest of the state suffer from deficiencies that would warrant MANDATORY malpractice coverage. In short, the case has not been made for this unwarranted imposition.
 10. Most of the losses sustained by clients have not been due to malpractice but by intentional misconduct which insurance would never cover.
 11. This is simply ridiculous.
 12. I am retired and no longer have any active files, however I occasionally reopen a file to facilitate satisfaction of an outstanding judgment. Would I have to obtain coverage? I carried malpractice coverage for 40 years and in favor of it being mandatory. However the policies do not cover intentional acts such as Bob Graham's theft of client funds. And if it did the coverage would not be anywhere enough. From my experience the premiums for some practice areas may be exorbitant and beyond the reach of many solo or small firm practitioners. While malpractice coverage is important, I don't think it address the major problem of theft of client funds which is a bigger stain on the profession and receives greater notoriety in the press than the occasional mistake that would be covered by a malpractice policy. I believe that there are many more issues that should

- be considered before acting and burdening an entire industry for reasons that might not truly address the problems. I am also concerned that the Bar Association not be overly influenced by our President who has had a long standing relationship with ALPS a malpractice carrier. Thank you for considering my remarks A Happy New Year to all.
13. I am not sure you can mandate it. But, if you choose to do so, there must be some studies to see how the state bar can provide low-cost insurance to its solo members.
14. This is a bad idea.
15. I believe attorneys should carry professional liability insurance. It is the right thing to do. None of us want to commit malpractice but if it does occur it not only protects the client but provides financial protection to the attorneys and to their firm as well. This particular issue was not addressed in your questions. I do have concerns about premium cost but I do believe this is an inherent cost of doing business, like GL insurance for example.
16. I have 1 million / 2 million, which was not a selection, so I chose 1mil/1mil
17. I understand the practice of law is a privilege, not a right, but this proposal is a bad idea. An insurance company is not properly the enforcer of attorney discipline in the State of Nevada. This requirement could potentially place the privilege to practice law after passing the bar exam in the hands of insurance companies. An attorney should not be limited in his or her practice of law by an insurance company. An insurance company is not the Nevada Supreme Court or the Disciplinary Board of the State Bar of Nevada. The client can make the decision on their own. My view is this proposed requirement is overbearing and could be subject to selective abuse. Thank you.
18. Attorneys over age 70 should be exempt.
19. I'm an active bar member who currently does not practice law. With student loans, CLE's, Bar dues, cost of living and cost of healthcare I am barely able to eat let alone cover one more insurance premium. I am financially unable to take on one more debt at this point. Additionally, it is my opinion private attorneys who don't have insurance are less likely to commit malpractice as it comes out of their own pocket which can end them financially. An attorney who causes malpractice gives other attorneys a bad whether they are insured or not. I have known attorneys who work at large firm take a more lacidasical approach in practicing because they are covered and don't have to worry. To me that is much worse.
20. Need to somehow any requirement does not negatively impact providing services to low income persons.
21. For a semi-retired attorney handling very few cases of moderate value (and primarily for personal acquaintances) with little chance of malpractice occurring even inadvertently, there is no need for insurance and the cumulative yearly cost would be prohibitive.
22. Insurance should not be required. This is a "buyer beware" issue and would run many solos and small firms out of practice. If insurance is going to be required, the coverage needs to be minimal (like Nevada's auto limits).
23. What exemptions would there be, for example: inactive attorneys, PT, public service attorneys, those not engaged in the practice of law but who have a law license (like a trust officer, business manager, CPA), those who have an active license but aren't working (like stay at home parent)? What would you do to attract insurance providers, so rates don't sky rocket if/when a provider exits (like the "Affordable" Care Act)? What about attorneys that retire — are you going to require a tail policy? Will you provide or work with the Legislature to provide a mechanism to protect us from unwarranted/excessive suits, like what was created for med mal?
24. Mandatory coverage would put me out of business with no other means of income. I have been licensed since 1990 and have never had a malpractice threat, claim, or suit. I have had less than 4 fee disputes in 27 years; and, in each case resolved these claims in favor of the clients. I take

- great caution in following all ethical rules, recently losing a potential client when I referred him to another attorney who specializes in the area of law the client needed. He lost all confidence in my abilities, and while I could not afford to lose the income, my ethical duties required that I make the referral as there was too much potential risk in his matter. That is adherence to the ethics of our profession. I do not earn enough to maintain an office, and presently my practice has a single client. The Bar would literally put me on the streets if I had to carry malpractice insurance. Not all attorneys are as fortunate as a Robert Eglett for e.g., and while I hold Robert in very high regard, I also take my career and ethical requirements very seriously. It is unconscionable to mandate that every attorney carry such coverage. If malpractice coverage is to be mandated, it should only be for lawyers either practicing in matters with a good deal of malpractice risk or only for those attorneys earning a certain threshold of income each year. If a client or consumer considers malpractice coverage a primary consideration they can always ask if an attorney is covered; and, if not, find another attorney. Again, to mandate such coverage would literally put me out of business after 27 years. Where is the fairness in that? Who protects the lawyers? Yes, there are some bad apples out there, as there are attorneys who take on too much work, or work they have no business taking on - but these decisions should be left to the clients and not forced on attorneys with very small practices.
25. My sole client is a public agency and all potential litigation is farmed out to outside counsel. Otherwise, my only practice is as a mediator in court sponsored programs. I have no private clients. If my practice was otherwise, I would acquire insurance as a best practice.
 26. As insurance information is already being provided to the bar, there is no need to disclose it to clients.
 27. I do not see any reason why the limits should be 250/500. In the small town practice I engage in 100/300 is more than adequate. Making the requirement 250/500 would be cost prohibitive
 28. This seems like a solution in search of a problem. Nothing good ever happens when that approach is taken.
 29. Semi-retired or part-time attorneys should not be mandated to carry insurance if they do not routinely represent clients.
 30. I would strongly support the type of self-insured, mandatory coverage provided by the Oregon State Bar. I attended law school in Oregon and am licensed there. The fact that Oregon's PLF is actively involved with risk management, beginning with the earliest days of law school, creates a preventive way of thinking that provides unparalleled protection for clients and attorneys.
 31. Mandating professional liability insurance protects insurance companies, not clients.
 32. In Clark county solo practitioners and small firms have proportionally larger financial liabilities with increased business license fees and "professional" license fees, along with the other fees required to maintain an active license. Forcing malpractice insurance could make it cost prohibitive to practice law, especially when insurers could raise rates because they know that attorneys must buy insurance.
 33. Exceptions to mandatory malpractice insurance for government attorneys, those without an active Nevada practice, in house counsel.
 34. The Survey fails to consider attorneys who practice part time. \$250K is ridiculous considering an attorney may only handle a dozen legal matters a year, and said matters may be fully covered by a policy of say, \$50K per. This idea needs to be thought through a little better. I believe it will negatively impact many part time and semi retired attorneys. And, consequently, I believe it will impact the general public with fewer choices and higher fees. Mandating malpractice insurances is a good idea, but fixing the number at \$250K makes no sense whatsoever.
 35. Consider a tiered amount of insurance, based on annual billings by the attorney/firm. I am mostly retired and find serving low-cost and pro bono clients' needs very fulfilling. I dropped my

- liability insurance this past year because the annual premium for \$1 million coverage amounted to nearly 50% of my billings (currently less than \$10,000 per year).
36. 1. The survey seems written to obtain support for a pre-determined conclusion(s). Not really an objective inquiry, but rather intended to support decisions and conclusions already made. Has the bar done any research or gathered any statistics on how big of a problem / what level of risk exists for the public from uninsured attorneys in Clark county? Seems like the survey is seeking to validate a theory, I would like to see some real research done on this topic first. 2. Insurance companies are exploitative. They charge over-inflated premiums, and mandating insurance will open the door for them to raise premiums and charge even more predatory prices (due to the lack of competition and limited number of carriers). Has the bar done any research regarding the costs that this will mandate and the availability of reasonably priced insurance in Nevada? I don't understand why the survey does not address this issue as it is an important consideration. 3. Is the insurance industry active in any way in influencing this policy change? If so, this should be disclosed to the bar. If not, this should also be clearly stated. 4. I would like to see the bar do research regarding the availability of affordable, reasonably priced insurance through a not-for-profit mutual insurance fund supported by and on behalf of state bar members.
37. As in-house counsel malpractice insurance does not protect my main client. Yet in-house counsel often provide legal services or give legal advice to employees, officers and directors free of charge or for reduced fees. If such services place in-house counsel in the private arena they will be discontinued to avoid paying for malpractice insurance. In my opinion this will not be a benefit to Nevada citizens but rather stifle pro bono work currently being provided. Also in my instance, as a semi-retired attorney, I would have to resign from the bar due to the cost of such insurance if in-house counsel are covered by this rule change.
38. The issue of malpractice insurance is not one that can be resolved with a broad brush rule. For instance, a solo practitioner who does family law should not have to have the same insurance as a 150+ lawyer firm that handles complex civil litigation, or class action cases, that result in multi-million dollar judgments. It is an absurd notion to think that a single rule will work for a community as diverse and complex as the legal community, without the rule taking the particulars of the practice into consideration. Additionally, your questions reflect the myopic approach you are taking to this complicated situation. How can anyone give an accurate opinion with a three-bubble answer sheet?
39. I am very concerned that required malpractice insurance will encourage nuisance suits brought by dissatisfied clients who had unreasonable expectations and wouldn't accept the advice of competent attorneys. Also, based on quotes for malpractice insurance I received while in private practice, I am concerned that required insurance may make it cost prohibitive for young attorneys and solo practitioners/small firms to represent clients in domestic and family law, and other highly emotionally charged cases.
40. I believe that this requirement would substantially effect solo attorneys while not really effecting any other attorney when it comes to absorbing the cost. We already pay over \$500 for bar dues, \$50 for CLE board plus very expensive CLE courses, \$200 state business license, \$300 county business license not to mention all the other office overhead including mandatory workers' comp, unemployment taxes, state business taxes and county business property taxes. Only solos foot all these costs by themselves. Almost all other lawyers have these expenses paid by their employer. This is not fair and would drive a lot of solos out of business. I think solos provide a lot to the community that others do not: low cost fees to the less fortunate and a lot of pro bono work. When we do not have insurance I think we provide a higher level of service knowing that a recovery will come straight out of our very own pocket. Please provide data showing that solos are leaving clients with no recovery to justify this requirement. Or for that matter, what data can be presented showing that this requirement would actually solve an existing problem.

41. While I understand the importance of protecting Clients from instances of malpractice, I fear that the idea of mandating malpractice insurance at a particular rate may have the potential to adversely affect many attorneys such as myself and our ability to continue to practice law and offer pro bono services to and or serve indigent individuals as well as employ other attorneys
42. None.
43. High cost will discourage small practices and low volume practice, for example, a retired lawyer who might take a case, either pro bono or small recovery.
44. I feel there is movement towards greater regulation of attorneys (see also, trust account audits and increasing CLE). I think there should be less. Probably because I haven't seen the statistics to validate that any of this is necessary because of some increase or spike in problems these requirements are intended to cure (or that this is the way to cure the problem). So, it looks like well intentioned programs that complicate my life without purpose.
45. I support the idea of mandatory malpractice insurance, but I think the required rates should be based on what kind of practice an attorney has. Ham-and-egggers don't deal with the same kind of money as the big boys on the Strip. Ticket-fixing and DUIs are way less life-or-death than capital-qualified lawyers. I think there should be graduated rates of required coverage, perhaps based on a firm's total revenue. I also think the Bar should consider spinning off some kind of insurance co-op to provide the coverage, so that we don't all get gouged by private insurance premiums. I mean, I don't do insurance law, so I don't know if that's even a legal option. But I think "stupid high premiums" is the best argument against mandatory malpractice liability, and a co-op structure would solve it.
46. I am 73, have practiced law for nearly 50-years and serve as a court appointed arbitrator and short trial judge without any bar complaints or claims for legal malpractice. I limit my private practice to only a few small cases per year and then only on referral in limited areas of law which do not require a long-term commitment. I carried professional liability insurance for many years, but oppose any sweeping mandatory requirement for senior members of the bar. I am aware of disciplinary action against attorneys who have defrauded their clients (misappropriated funds, etc) but am deeply concerned that mandatory liability insurance, which will not cover criminal misconduct, will multiply malpractice claims and lawsuits and increase premiums, that will impose a hardship upon solo practitioners or small law firms. Sanctions are available to govern attorneys engaged in litigation.
47. Need to consider exclusions for public attorneys: District Attorney, Public Defender, Attorney General, etc.
48. I represent a few cases in the rural areas in order to meet my pro bono obligations. I refer cases to Nevada legal services but they have not taken any cases that I have referred to them. I answer numerous calls from individuals who have tribal court cases and cannot find an attorney to answer even general questions. The mandatory insurance requirements would prevent me from practicing even the small amount of cases that I now provide assistance. The rural attorneys typically do not get the big money cases because the real attorneys in Reno and Las Vegas are retained.
49. I currently have 1 case in Nevada. My client is a previous client from when I practiced full time. I keep my license current but I own another business in another state where I live. The other business is unrelated to law.
50. I would have liked to see some statistics from the Bar about client losses and lack of malpractice insurance.
51. Mandatory insurance is a terrible idea! Disclosure is all that is necessary, if anything.
52. I am retired but we always carried malpractice insurance

53. I disagree with a requirement for mandatory malpractice insurance or mandatory disclosures to clients because it will increase the burden on lawyers and law firms to do business, it will discourage attorneys from taking high risk types of cases because their insurance rates will increase, and it will encourage clients to pursue malpractice claims even when claims are not meritorious. In my experience, the general public and general clients do not even consider malpractice insurance when selecting an attorney because attorneys are already licensed and regulated by the State. Mandatory disclosures to clients will increase tension and burdens on the attorney client relationship, and will raise a potential conflict of interest from the inception of the attorney client relationship. The only malpractice case I have seen was initiated against a reputable attorney of another local firm by a developer as a business decision for the mere fact that insurance was available. Although the case was hotly disputed, the insurance was paid in settlement to avoid a trial because the insurance was available. The claim resulted in serious physical and mental distress of the attorney, and the firm. Mandatory insurance requirements will increase lawsuits against attorneys and result in economic loss and greater distrust and attacks on attorneys from the public, the press, and will motivate clients to bring more bar complaints (exaggerated to correspond with their insurance claims), insurance claims, and lawsuits against their attorneys. Mandatory insurance or insurance disclosures will increase the cost and risk of delivering legal services to the public. Any increase in security to the client, will be greatly outweighed by the increase in claims, lawsuits, bar complaints, and burden on the legal community.
54. Having Insurance does not in any way affect your ability to do your job any better or worse than not having it.
55. I am licensed in Nevada and California and have malpractice insurance for California but I do not believe it covers Nevada. I do not have any clients in Nevada and so not do any work in Nevada, so I do not think it is reasonable for me to have to pay for Malpractice insurance for Nevada.
56. Virtually all professional liability policies are "claims made", which provide no coverage for acts prior to first obtaining coverage, or after an attorney ends practice (or the policy ends). This proposal does little or nothing to protect the public (this is not like car insurance) and is an undue burden on maintaining a law license.
57. Limits of \$250,000/ \$250,000 should not be unaffordable for any attorney. Also legal aids provide malpractice so legal services legal aid can still be provided.
58. Greetings, Thanks for conducting this survey before taking action on this issue. If you require all practicing attorneys to carry MI then you will drive up the cost of doing business for attorneys who provide services to the poor, thereby further limiting the already limited access to justice for low income residents of the state. Small practitioners provide a valuable service to those in our State who can't afford to pay white-shoe attorneys to pursue smaller cases, and those small practitioners are already being squeezed in all directions by the ever increasing (and rarely decreasing) regulatory and procedural requirements of pursuing basic legal remedies. Further, because of technical requirements in the way malpractice insurance works coverage is often not available to clients as one would believe - the scope of what is typically covered is very narrow and filled with catch-22 provisions that void coverage. I ask that you consider the quality, availability, and cost of such coverage before requiring all attorneys to carry it. In my experience, what is on offer is low quality and high cost. If you were to strictly regulate the terms of how malpractice insurance is provided by carriers, then you may be able to achieve the result you are aiming at, e.g. like car insurance is strictly regulated, but this would require legislative action and could not be implemented by the State Bar, I believe. Mandatory insurance typically has the effect of distorting markets - just consider the mess that we have for a health care system, i.e. very high cost and low quality care - especially for poor people. I ask that you don't take the initial steps to turn the legal profession into a similar expensive and inefficient mess. Ours is one of the last existing professions that has not been completely co-opted by insurance companies into

- submission - I ask that you strongly consider the unseen long terms consequences before you go down this path. Cheers! Luke Busby
59. I am in favor of mandatory malpractice insurance
60. One issue that should be looked at is the price of insurance for small practices. If the Bar is going to require insurance, which I am not opposed to, the Bar should go to bat for us and find good and, most importantly, affordable insurance. The Bar cut a deal to assist us with legal research. I propose that the Bar try to get insurance that will cover us that does not cost a fortune. I am trying to get insurance for next year, and the price went up 3 times what I was paying last year. It is insane what it costs for smaller firms to obtain insurance.
61. I am a public lawyer, so the requirement as proposed would not directly affect me. But any such requirement that is imposed should not affect the availability of legal services or the ability of attorneys in high-risk practices to continue to work without high insurance costs.
62. This survey is way too vague, and requires answers that cannot accurately reflect a well-informed attorney set of responses. Many of the questions require conjecture or suppositions. I am in favor of malpractice insurance, though, I do believe it is a steep burden for some attorneys, especially those with low income clients, or pro bono advocates. In the end good malpractice coverage will do the most to limit an injured client's recovery, because a good team of malpractice defense attorneys are likely to overcome a complaint by a lay person client. basically, there needs to be some level of caveat emptor in a client's mind, and the threat of sanctions from the Nevada Bar should be sufficient motivation for most attorneys to do what is right.
63. I am a contract attorney. I ensure that the law firms that I work for carry malpractice insurance and that I am covered under their policies. I am concerned that this new rule will require me to either obtain my own insurance, causing an overlap of coverage and issues as to which policy is primary, or cause issues with reporting as I work for a variety of clients. I am also concerned as I only work occasionally and the cost of carrying my own insurance may lead me to abandoning my pro bono work.
64. As an attorney who has practiced for 43 years, while licensed in Nevada and California, and never had a malpractice claim, I am concerned about the cost of such coverage- especially in my speciality with a Masters in Tax. I agree with California procedure that lack of E & O insurance must be disclosed in writing. The mandatory coverage requirement would unfairly discriminate against solo and small firm practitioners in favor of medium to large firms who always have E& O coverage. Coverage only means the insured has a right to argue that coverage exists, to which the carrier will argue reservation of rights as to whether coverage does in fact exist or is the event/act/occurrence excluded. There should be consideration to opt out for attorneys with no claims and consideration of the practice period during which no claims were made or paid. I am opposed to the modification as I understand it presently.
65. As a sole practitioner who does a small volume of cases each year and gives personal attention to each client, it would be punitive to make it mandatory for me to have malpractice insurance with premiums of \$10,000 per year. Only large firms that do high volume or any attorney who advertises on tv should be required to have malpractice insurance. This would take care of the greedy irresponsible attorneys who advertise for volumes of clients and give little personal care to each client, like attorney Robert Graham. I actually believe that I am more responsible to each client because I do not want to commit malpractice, especially because I am not insured. Plus, my years of experience and low volume make me able to give my clients first class service.
66. Requiring insurance presumes sufficient diversity of Carriers and competitive pricing. If the State Bar is going to require malpractice insurance, then I submit the State Bar must be prepared to offer that insurance if private carriers will not insure, for whatever reason. A solo practioner could be effectively forced out of business if he or she has one or more claims as a carrier will always increase premiums substantially after claims are paid. Will lawyers be required to carry first dollar

- defense since this also affects the premium cost. What about deductibles? Eventually I can foresee the bar requiring depositing of insurance premium deductibles as a condition of licensure. I would recommend that if malpractice insurance becomes mandatory that Bar fees be reduced to \$100 per year, that CLE be free and that malpractice insurance be partially subsidized by IOLTA income.
67. The questions seem slanted toward requiring mandatory minimum insurance. I favor mandatory disclosure of whether a lawyer or law firm has malpractice insurance but not mandatory insurance, or minimum mandatory amount.
68. A client's potential financial loss from attorney malpractice varies depending on the type of case, the resources of the parties in the underlying matter, and a huge number of other factors. To require all attorneys, regardless of practice area or practice size, to carry the same minimum insurance amount ignores the diversity of the profession and the public served. In addition, it seems unlikely that many non-corporate clients would consider whether an attorney has malpractice insurance when choosing a lawyer. Likewise, an act of malpractice itself would likely have a greater effect on the reputation of the profession than a harmed client's inability to recover from the attorney.
69. Some solo practitioners and under-employed attorneys are facing financial difficulties and struggle to pay regular ongoing bills. Moreover, there are attorneys that do not practice full-time. The addition of an extra expense an attorney is required to pay may not be feasible in these situations. Unless such an attorney is brought before the State Bar for professional misconduct or is a repeat violator of the professional responsibility rules, the requirement that an attorney be forced to carry malpractice insurance should not be mandated.
70. It is a free market. I carry insurance that is substantial and more than what I put down because my practice covers up to as many people as are hurt with no cap
71. Question the wordage of several of the questions, which appear to be slanting the issues toward a desired result. Double negatives? Clients are better protected by a competent, prepared attorney and an unbiased judiciary, along with strict disciplinary standards enforced against over reaching and/or unethical prosecutors.
72. Mandatory insurance is a terrible idea for a number of reasons. First, it will raise the cost of doing business. Secondly, it will likely lead to a cottage industry of malpractice lawsuits. We've already seen the deplorable PI industry here in Las Vegas and I have no doubt attorney malpractice will follow. It's not the legitimate claims that I am concerned about, it is the client who heard what he/she wanted to hear instead of what was actually said or the client who just isn't happy even though the service was rendered and the result is typical. The insurance companies will be left paying \$5,000 here, \$10,000 there just to make the claimants go away. We already see this practice in PI, specifically automobile accidents, and it is embarrassing to the profession. We don't need to add to the insurance demand practice. If someone is truly harmed, bring it to the attention of the Bar who can deal with the Attorney and/or file a legitimate claim or lawsuit. However, this mandatory insurance is NOT the way to deal with legitimate claims. Finally, it will drive the reasonably priced good attorneys who wish to practice in a high-risk area out of the field. You are going to simply price good attorneys out of business. For all of these reasons, and more which I won't get into, I STRONGLY disagree with this proposal.
73. I do not have not enough information to really opine on this as a mandatory requirement for all private practice attorney's, whether active in Nevada or not.
74. Just thought I would mention that the design of your survey has a problem with it because it does not allow an attorney to identify him or herself as being employed by a firm which provides malpractice insurance.
75. The proposed regulation, while perhaps well-intentioned, is completely ill-conceived. All it will do is impose additional costs on solo attorneys, particularly those in low-margin fields like criminal defense as well as giving an incentive for clients to file claims in bad faith in the hope of a quick payday. Even the California State Bar, which regulates my practice far tighter than Nevada does,

- doesn't mandate insurance cover, but does mandate disclosure (which I fully support). This is the worst idea to come out of the State Bar of Nevada in the last three years.
76. A few bad apples should not burden and entire community
77. 1. Cost of having insurance coverage can be hard on the small private practitioners who have to keep their administrative costs low in order to provide inexpensive but still quality service to clients. 2. The Board of Governors should probably look into the practice of other State Bars, like California, as regards MANDATORY requirement to carry professional liability insurance on its bar members. 3. Mandatory requirement to carry professional liability insurance can force lawyers to abandon their solo/small practice notwithstanding that they provide quality service to clients. Where will indigent clients go to for help in the alternative? To paralegals maybe or they go pro se. Are paralegals required to carry professional liability insurance? Does the State Bar regulate Paralegals? If clients go pro se because of the prohibitive cost to hire lawyers who must now increase their rates due to additional cost of professional liability insurance, would not that be pushing such clients to more risks of incompetent and inadequate self-representation? 4. Why does the State Bar not look first into the statistical complaints received on lawyers carrying professional liability insurance side by side with statistics on those without professional liability insurance. From the data and results gathered, how many were clearly actionable negligence? 5. I think requiring lawyers to include in their retainer agreement a provision about not having professional liability insurance is an effective disclosure to the clients. Maybe, the bar can require the lawyers to insists upon the clients to initial such disclosure provision so the clients are made fully aware of the lawyers' not having professional liability insurance. (Something like making a defendant aware of the waivers he has to make before making a plea to guilty or nolo contendere). 6. If a lawyer is disciplined at all, but is deemed still able to provide assistance to clients, then at that time maybe part of the order of the disciplinary body would be to require the lawyer to carry a professional liability insurance, if s/he does not carry one.
78. requiring liability insurance will put my practice out of business ...
79. Jury verdicts are low, and clients will want to blame their attorneys and try to collect malpractice insurance where there is none.
80. Criminal defense lawyers, which I am, are almost impossible to successfully sue because of barriers of a showing of actual innocence and success in post-conviction as a prerequisite. I haven't been sued in over 20 years and went bare four years ago.
81. I think this requirement will negatively impact both the clients and the smaller practitioners currently operating. Malpractice insurance prices generally rise as an attorney becomes more experienced in the field. This requirement will force experienced solo practitioners to either charge more for their services or quit the practice entirely. This has the potential for leaving large swaths of the middle-class public without representation or with inexperienced representation because they can't afford the rates the larger firms currently charge and the solo attorneys will be left without the flexibility to discount rates because they simply can't afford to. I take on a lot of pro bono cases and low-cost cases because I want to help people who can't normally afford an attorney. This will force me to stop doing that in a few years.
82. We are still personally liable regardless of whether or not we carry insurance so it only results in an additional expenditure. I carried insurance when I was practicing, however I don't feel the need to mandate everyone should. That should be an individual choice as it's their risk. The bar appears to be increasingly attempting to micro manage attorneys but fail to apply that same micromanagement to yourselves.
83. If the bar is going to require malpractice insurance it should also recommend a two year statute of limitations for such claims to the Legislature. Otherwise malpractice insurance will eventually become too expensive.

84. The question that should be answered is whether mandatory professional liability insurance will effectively resolve the real or perceived ills the Board of Governors is trying to cure. The Board of Governors will not cure the evil of "bad" attorneys by mandating the purchase of professional liability insurance (they will help out the already flush insurers). It has been proven time and again that it is virtually impossible to legislate good behavior. The bad actors will continue to be bad actors whether or not professional liability insurance is required. If the desire is to strengthen the quality of the profession and in turn protect the consuming public, then make the entry or admission requirements more stringent so that the less competent are winnowed out before they have a chance to start, and follow that with imposing stronger requirements to maintain an active license.
85. Raising the idea of malpractice insurance to prospective clients is not ideal to me. It puts in their head the idea that they may want to sue me at some point.
86. I'm in government but I am surprised that malpractice insurance is not a requirement. I had it when I was in private practice and would not sleep well if I did not have it. I believe the general public assumes all private attys have it. If it's not mandatory, the client should be informed expressly that her lawyer does not have malpractice insurance.
87. I think insurance is a cost of doing business in the practice of law. Even the best lawyer can make a mistake that can seriously impact a client. Insurance at least provides some avenue of redress. I understand, however, the concern of solo practitioners, and admit that it does not really impact me as an employee of a lawfirm that pays for my insurance coverage.
88. This is a terrible idea for small law firms.
89. If you are required to have insurance to drive a vehicle, should you not be required to have insurance for practicing law? The bar may have to be involved to arrange for reasonable rates for new, or low income attorneys.
90. I have always carried E&O to protect myself. I do not want to loss what I have worked a life time to obtain because I was 98%rather 100% accurate. My concern is that once Carriers know they have a captive market that rates will significantly increase as happened with the cost of CLE when it became mandatory.
91. Retired attorneys who keep an active license may represent 1 or 2 clients within a 12 month span. Need to recognize this group when mandating insurance.
92. Have the bar impose additional fees on uninsured lawyers and increase the fund available for compensation to clients damaged by uninsured lawyers
93. The idea of mandating how an attorney or a firm protects themselves from business risk is reprehensible and the State Bar has no business delving into such decisions. Rather the BOG should be focused on working to better revise and enforce the existing rules of professional conduct. The reputation of the legal community isn't going to change one iota by mandating insurance (which the vast majority of attorney have anyway). But demonstrating to the public a willingness to truly police and discipline bad acting attorneys makes all the difference in the world.
94. If I am in private practice and representing a governmental agency or entity as my only client, this new rule would require me to obtain the insurance (the cost of which I would have to pass through to my only client the agency). That cost would, depending upon the case, be extremely high. There should be some sort of insurance waiver for attorneys like me who represent only governmental agencies, but are NOT governmental employees.
95. The issue for a small practice is cost. Most carriers want to charge higher rates for smaller practices apparently assuming that the small practice generate more risks. Also, as in all insurance, the carriers very often deny liability and force litigation. My experience had been that client will work things out with the attorney if a mistake has been made and the attorney is forthright about it.

96. I have a million dollar policy for \$3700 per year. I have noticed in mandatory malpractice insurance jurisdictions the price of malpractice insurance is about the same for half the coverage. I am strongly against mandatory malpractice insurance as it lessens competition among insurers and drives up cost. I strongly oppose this measure.
97. Mandating disclosure makes sense so that clients can be informed, but mandating insurance will cause the rates to go up for everyone.
98. A lawyer who does not carry liability insurance already exposes him/herself and his/her assets to a malpractice suit.
99. I would instead suggest a court or bar managed recovery fund similar to that already in place for other licensed categories (Real Estate Division, Manufactured Housing Division). Fund it by a small increase in bar dues.
100. I already pay state bar dues that afford remedies for attorneys who have engaged in malfeasance. I shouldn't be forced to incur more expenses due to the conduct of others.
101. Some information about the rate of malpractice claims over the past 10 years and the average settlement/judgment would be helpful to judge the need for insurance to protect the public, not just fatten already fat insurance companies.
102. \$100,000 should be enough if forced to have insurance. \$200,000 is excessive.
103. Malpractice insurance does not "protect" clients from attorneys' negligent or intentional malpractice. At best, it may provide for some remedial compensation when an attorney fails to fulfill her or his professional responsibilities. True and effective client "protection" is prospective, and is best achieved initially through appropriate ethical and moral screening.
104. Malpractice Insurance isn't going to help clients in Robert Graham's case. He had a large practice and for years was stealing money. For small firms, depending on the practice, the possibility of malpractice is very low. If a malpractice claim arises settlement is always an option, The best way to avoid malpractice is in determining whether or not to represent a client. And fortunately the relationship can be terminated if the lawyer determines the representation is fraught with problems that the attorney is uncomfortable in dealing with..
105. Concerned for pro bono attorneys and attorneys who elect not to work full-time, but will accept clients on a case-by-case bases which allows for access to justice.
106. As a government attorney for the majority of my career (12/16 years) I haven't really had to worry about this as much (and the firms at which I did work in private practice carried insurance for all attorneys), so it is not something I have given much thought. however, I believe that if a client is reduced to suing their attorney for malpractice, their opinion of the legal profession is already poor, and that attorney not having insurance will not be able to reduce that opinion much more.
107. I practice criminal defense/traffic on a part-time basis. This insurance is not only not necessary, but it is a complete waste of my funds.
108. There should be some differentiation for lawyers who practice in criminal defense versus civil litigation because the standards for a client's recovery are vastly different. It is not reasonable to require lawyers who focus on indigent criminal defense to maintain the same levels of insurance, since clients are limited in their avenues of recovery - an ineffective assistance of counsel claim is the primary method for a criminal defendant and by law does not involve money.
109. This survey amounts to blatant push-polling and is written like the decision has already been made. With that being said, I have noticed that some sketchy law firms (e.g., Law Office of Dan Winder, PC, that everyone knows employees several disbarred attorneys as "case managers" that are clearly engaged in the unauthorized practice of law) do not carry malpractice insurance. These are the type of firms that should be required to carry malpractice insurance due to their improper dealings.
110. Cost of insurance

111. Most younger or new attorneys fall under their firm's insurance umbrella. Will they also have to provide insurance for themselves? Where is the money for this coming from?
112. many lawsuits happen because it is cheaper to settle a case than it is to take it to trial. When looking into suing anyone, the first thing I look for is: Do we have deep pockets to go after? Usually insurance. EVEN ON QUESTIONABLE CLAIMS. I can always stop and not file if I cannot get a settlement.
113. I think too many new attorneys are already being nickel-and-dimed to death by Bar-imposed costs.
114. I think the better way to stop malpractice and protect clients is to continue focusing on why attorneys commit malpractice. It's typically substance abuse, mental health issues, or personal debt. The bar should focus more resources on these issues and I think malpractice will decrease
115. This is another example of small practices being forced out of business. Not everybody wants to be associated with a large firm.
116. Practices vary, and requiring a minimum may be far too much for some practices and far too little for other practice. Furthermore, it will increase the legal fees lawyers must charge, which clients already believe are too high. Finally, demanding that lawyers provide malpractice insurance is creating another form of government oversight that is unneeded and unwanted.
117. This is a horrible idea. I would stop doing pro bono work, stop offering reduced fees for people who can't afford my work, this would increase my costs and cause me to drastically reduce my legal business.
118. Any rule needs to have an exception for out of state lawyers who carry adequate insurance in their state of residence; for example I have a policy through a carrier of the State Bar of CA which covers my NV practice so any rule in NV should provide an exception for out of state carriers that are not contracted with the state bar of NV as it would be unfair to require out of state lawyers to carry two policies.
119. As a collections attorney FDCPA bogus lawsuits are something I have to contend with on a daily basis for the past 20 years. My field of practice has outrageous insurance rates because of this and suits can be settled for far less because I don't have insurance, Thank God.
120. Professional liability insurance for lawyers is extremely important and needs to be mandatory.
121. We are professionals. We do not need every facet of how we conduct business to be micromanaged. Mandating insurance will significantly increase the cost of doing business so that solos will be forced to join larger firms. This will also result in an increase in the cost of retaining attorneys - something that most people already cannot afford. I currently do family law in a mid-sized firm. I want to open my own firm so that I can have more control over how my cases are handled and to provide a greater level of service to my clients. This will be harder, if not impossible, to accomplish if I am forced to pay a business expense according to what the State Bar deems appropriate. Instead, I will remain at my firm and continue to grind out cases and clients according to what is most profitable rather than what is best for the client. Such an outcome works against the reputation of attorneys in our state rather than improves it.
122. Mandating insurance serves no purpose other than increasing costs of premiums, decrease competition both in the insurance industry and the legal profession, and unnecessarily increases the cost of providing legal services which will impact the availability of services for pro bono and other unprofitable areas.
123. If insurance is mandated, there can be a stark difference between the income stream of a solo practitioner and an attorney in a law firm (even a small firm). Will the employer be required to cover the premium? Having the attorney be solely responsible could artificially/negatively impact a firm's salary structure.
124. Forcing insurance and disclosures of the same is completely unnecessary and may cause confusion to the public

125. Whose idea is this? If it was generated by a plaintiff's attorney trying to reduce competition, that would be a negative.
126. This is a horrible idea. The only things it will accomplish is to create barriers for new attorneys, and increase premiums for those who have insurance.
127. Do not do this. Malpractice is too expensive and will close small attorneys out of practice. It will become like PI, where lawsuits are abundant to get at policy limits.
128. This is a HORRIBLE idea. Certain practices can surely be self-insured. I practice 95% criminal defense and simply have no need for coverage. Of far greater concern is the fact that the majority of situations where clients are financially harmed involve intentional conduct on the part of the attorney, something not covered under malpractice policies. At the very least there should be some provision that allows an attorney to explain why his/her practice can be self-insured exempting them from any such requirement. Please do not implement this horrible across the board rule.
129. I thought we were mandated to have insurance already.
130. My only concern is that State Bar of Nevada having an approved list of malpractice carriers. Working in a non-profit that is federally mandated, my agency purchases malpractice insurance through national association.
131. It's worked fine so far- why change it? Charge more for bar dues- put it in a fund for "injured" clients.
132. I have to have because if my contracts it but always have had it. I don't think it should be mandatory unless the state bar wants to find special rates. It's way too expensive right now.
133. While I agree with the overall premise, once mandatory, our rates are going to increase dramatically. That is a huge concern.
134. I am a patent attorney, and am not even sure insurance is available for my area as a solo.
135. It would be helpful to know the ballpark cost for the required coverage maybe with a couple of examples if possible. Obviously the practice area and firm size will affect price, but the variables could also be provided.
136. My limits are actually \$1,000,000/\$2,000,000 but that option was not allowed in the previous question. The costs of the premiums are an anticipated cost of doing business and practice in high risk practice areas would be reflected by the association of practitioners in those areas to spread the premiums and their rates for providing services in those areas.
137. This proposal will not improve the quality of legal services in Nevada. It will harm small practices, increase costs which must be passed on to clients, and reduce options for "risky" or "difficult" clients. It is hard enough dealing with such clients without them impressed with the idea that any result they do not like can be remedied by a claim against an insurance carrier who will pay them a few thousand dollars to go away. Nevada is a national joke with respect to excessive minor auto insurance claims already. Don't add another industry.
138. I definitely don't think we should need to disclose whether we have insurance to clients; that will certainly lead to more lawsuits, and perhaps frivolous ones. I plan to carry insurance as long as I practice, but mandating it, I think, is excessive regulation. There are plenty of other incentives to be a good attorney and to avoid malpractice (e.g. bar discipline) that I don't think requiring insurance will help much in that regard. If you do mandate it, please make the requirement as low as possible because as a solo I already have so many expenses due to bar compliance, business license fees, etc. that it's difficult to make a good profit. Thanks for asking us; I do appreciate that.
139. Although I do not provide services as an attorney to the public, I do carry insurance for my Arbitration/Mediation Practice. As there are few cases in which a malpractice case would survive an informed judge, I feel better carrying such insurance. However, I would not make insurance mandatory in such a practice.

140. The board should ask an insurance broker to suggest several carriers meeting minimum coverage levels so that lawyers have an expert to advise them on obtaining the coverage and the premiums.
141. I am retired but maintain my license. I represent no clients. I am happy to pay my dues and complete all CLE requirements. Imposing an insurance requirement on me serves no legitimate purpose and would be an unnecessary cost. I would likely go inactive.
142. What if an attorney gets a claim against him/her and they cannot obtain coverage. this could effectively result in the loss of ability to practice.
143. I would probably favor mandatory insurance for active, full time attorneys, but the statement in the survey email that insurance would be required "regardless of the number of cases or clients the attorney represents or whether cases are taken on a reduced fee or pro bono basis" indicates the contemplated rule goes too far. Semi-retired or occasional lawyers, and pro bono lawyers, will think twice about whether to provide services, as opposed to retiring, if they are required to maintain insurance.
144. I have carried professional insurance for some time. I do so for the sake of my clients and my own piece of mind. But, I have a successful practice so the financial burden is not a big deal. I fear that mandating professional insurance will impact that segment of the bar that is providing affordable services to those in the most need. It will probably reduce over reaching by attorneys that may be tempted to accept cases they shouldn't. That being said, any requirement will necessarily have a greater impact on those attorneys who represent regular people and their problems and not corporate or insurer's interests.
145. I carried liability insurance for many years - it is very expensive and not worth the price; lawyers are at the mercy of the insurance companies. It is a very bad idea to require lawyers to carry it, it would be a major financial gift to the insurance companies. If the Bar wants to make it mandatory, then the Bar should provide it on a sliding scale of cost. Part time practitioners should not be required to pay the same premium as full time practitioners or firms. The sole practitioner working part time should be not more than a third of the full time practice price. The Bar has a remedy in place already for those who purposefully do not follow the Rules of Professional Responsibility, we do not need to give the insurance companies a built in big payday. The number of lawyers who commit malpractice to the financial injury to a client is a small percentage of the total number of lawyers; to require malpractice insurance makes all the practitioners pay for the few that are at fault.
146. If required, the Bar should facilitate getting it offered it at a discounted rate
147. I find this survey to be worded in a very pro insurance manner. I think another survey should be sent out that would ask attorneys about professional liability insurance in a more neutral format. Such as "Do you believe professional liability insurance is necessary to protect the public from attorney malpractice?" "Do you believe professional liability insurance is necessary for a client of an attorney who has committed malpractice to adequately recover for said mal practice?" "Do you believe professional liability insurance is necessary to protect attorneys?" I am not sure how an attorney's insurance coverage affects the public's perception. If a client looks to my professional liability limits prior to hiring me as an attorney, I am not sure I want that client. That would indicate to me that the client may be looking for trouble, or a reason to bring suit against me. That is discouraging. I believe clients select attorneys for a number of reasons, namely an attorneys particular skill and expertise. I do not choose a doctor based upon the insurance he or she carries. I chose my doctor based upon their skill and expertise/recommendation etc. Choosing an attorney should be no different. Additionally, there are medical malpractice limits here in Nevada. If we force all attorneys to obtain professional liability insurance it would seem that there would be a very strong lobby to ensure a very low malpractice liability limit.
148. I do wonder whether a blanket \$250K policy for every single attorney in private practice is a good idea. It does not take into account type or size of practice, type of clients, amounts of typical client

- recovery, or any other factor that might affect what a client might need. This is not like car insurance, where the types of injuries have the potential to be very similar no matter the type of driver.
149. I am retired but for finishing up cases for clients that no one else would take on because they are native American claims that no one else is familiar with. I would not be able to do this if I am required to carry malpractice insurance.
150. I have had insurance and it became useless and completely unaffordable. It would put me out of business. This is a GROSS OVERREACH by the Bar and disparately affects solo practitioners. I treat my clients with the utmost care and respect and I deeply disapprove of this move on the part of the Bar. If the Bar is so concerned with the competency of its lawyers, it should do a better job selecting them.
151. If insurance is "required," there will definitely be an increase in cost. Some smaller firms or solo practitioners may be priced out of the market.
152. I have practiced for more than 60 years without one malpractice claim. My practice now is very limited, but necessary for my older friends and family which is quite large in this area. My income level is substantially lower and my practice is extremely limited. I practice out of my home. Most of my work is pro bono, but is needed. Requiring liability would make it almost impossible for me to continue helping my friends and family.
153. An across the board requirement that all practicing attorneys carry malpractice insurance is too broad of a measure. Requiring attorneys who do not represent private citizens to obtain malpractice insurance will impose a financial burden on the attorney but not protect the intended targeted group.
154. Affordability will be an issue. If an attorney has been part of a malpractice lawsuit, even if they personally found to have committed no fault, but their firm pays through a settlement, this can make it extremely difficult to obtain future insurance on an affordable basis. Also, need to evaluate whether this would be applicable to pro bono work.
155. Attorneys are (for the most part) intelligent people and should decide for themselves whether malpractice insurance is in their own and their clients' best interests and is financially feasible.
156. I wanted to get some of my retired colleagues to work together in a practice with me, but they cannot afford to pay malpractice in certain specialities (i.e. Intellectual Property, Securities). Due to my work on real estate transactions, my malpractice premiums are 2-3x of what a general practitioner would be so affordability is a big concern. I am concerned about the brain drain where there are many very experienced attorneys who have retired from law firms, want to stay engaged on a limited basis, but affordability of malpractice insurance is a barrier to doing so.
157. Back in 1986, there was a legal malpractice carrier void which required the Bar to bring in ALPS. Before that the carriers were increasing the malpractice premiums significantly or not writing small office policies. This could occur again if steps are not take to prevent this.
158. The proposal is the result of one prominent attorney's push for mandatory malpractice insurance. Mandating such insurance will drive many small practitioners out of the business. It will encourage claims. It will do nothing to protect the public. Mandating malpractice insurance will make it expensive. Mandating insurance is only required in a three states--a very small minority. The amount proposed is so small that it will do nothing. This is a knee jerk reaction to one bad lawyer-Rob Graham. This proposal would not protect his aggrieved clients.
159. Rather than making disclosure to clients mandatory, I would prefer mandatory disclosure to the Bar. Clients wanting to know an attorney's malpractice carrier information could simply access this information online, without creating yet another potential tripwire for the attorney consulting with potential clients. However, for the reasons I explain below, I would also create an exemption from the mandatory coverage for "non-practicing" active attorneys handling smaller matters. I am concerned for the "non-practicing" lawyers who elect to keep their bar membership active while not maintaining a practice. The first aspect of that concern is that retirees, new mothers

- and other "non-practicers" do occasionally practice in a very limited capacity. If called upon to quash a traffic warrant for a neighbor, seal a misdemeanor record for a friend or write a letter to an insurance company on behalf of a nephew, those attorneys should not run afoul of the new rule. The second aspect of my concern is in enforcement. Would the aforementioned "non-practicers" face penalties or harassment from the Bar based upon the perception that they need coverage? By way of example I will use my wife. My wife closed her small criminal defense practice more than 2 years ago but maintained her "active" status with the Bar. Since then she has sat as a judge pro tem, worked as a substitute teacher, pursued artistic endeavors and, yes, even handled one pro bono case. During this time, she kept a P.O. Box with the same Executive Office within the City of Las Vegas that she had used while in practice, for the purpose of not publicly disseminating our home address to her many former clients. To the outside world, it might have looked like she was still in practice—so much so that the City of Las Vegas Business Licensing began to harass her to renew her business license. Even after she explained how she was no longer in business, they persevered. She finally got rid of her P.O. Box and now just runs the risk that our home address will be made public. This is the scenario that concerns me, but with the Bar in place of Business Licensing. I am afraid that the administrative staff entrusted with policing this requirement would chase such non-practicing lawyers completely out of the profession, and that would be a shame. A third aspect of this is pro bono work NOT done though a bar-approved pro bono provider. If a party can convince a non-practicing attorney to take a case pro bono, that attorney should not have to endure the expense of paying malpractice premiums. "No good deed goes unpunished" shouldn't apply to pro bono work too. I understand that this could be avoided by simply going to a bar-approved provider but I suspect many non-practicers might warm up to an individual pro bono case brought to them by an acquaintance before they would seek out cases through a pro bono organization.
160. Professional liability insurance is recommended for all lawyers. The burden on solos and small firms and new lawyers and on all lawyers to fund the cost to monitor this program is not outweighed by the potential societal benefits of requiring such insurance. It is a good thought and worth considering. While the concept does have merit, the case has not been made for a need.
161. Many competent attorneys that provide services at reasonable cost to consumers will have to stop practicing which will result in fewer attorneys providing the public's needs. It will concentrate business increasingly to larger firms which is the real objective of the pursuit of this policy. GRAHAM thought he had professional liability insurance..
162. Your survey is obviously worded so as to give you the result you want, which is to force more regulation on everyone. I am adamantly opposed to mandatory insurance or anything else that would likewise tend to strangle private practice or private enterprise generally. This supposedly well meaning regulation will only make it even more difficult for people to get the legal help they need. This will drive out the part timers, semi-retired, and those who try to do a reasonable amount of pro bono work, as well as those just starting out because there is no insurance that is priced on a sliding scale for them. People with reasonable cases are already going without justice because the cost is too high or because they cannot find a lawyer at all. Rural areas will be disproportionately hit and they have a lot of trouble already. I'm sure that this will fall on deaf ears because you already decided to do it and just commissioned the survey to justify your predetermined outcome; but I vehemently dissent.
163. This is yet another fantastic way to ensure that private attorneys are run out of business. If you intend to make governmental employment or firm employment a mandatory exercise in the legal community you have found a wonderfully effective means of doing so.
164. I generally support this move in "theory" that it provides the public protection from negligence or willful acts like Graham. Insurance is "reactive". It only helps once a problem has arisen. The State Bar should be proactive in its approach. This would include raising (not lowering) the minimum scores to pass the Bar Exam (since pure politics were involved in trying to ensure more UNLV law

grads passed), tightening up Rule 51.5 regarding non-ABA grads and what constitutes functional equivalence, etc. The goal should be to put the best prepared and more ethical lawyers in our State. Not everyone who goes to law should be able to pass a Bar Exam. Similarly not everyone who applies to law school should get in or graduate. Lowering Bar Exams scores to increase the pass rate to appease UNLV and its big money boosters and having very liberal standards for functional equivalence of non-ABA grads does nothing but ensure that less prepared, unqualified and unethical lawyers are admitted. Mandatory malpractice insurance is just a knee-jerk reaction to the fallout from a prior bad decision by the Bar.

165. (1) Your survey is biased in favor of mandatory insurance. Have you surveyed a control group of non-lawyers? (2) I am mostly retired but every now and then other lawyers or companies consult me. The amount I get paid for doing this work would barely cover the annual premium of a minimum policy (I checked). If I am forced to buy coverage to maintain my ticket, I'll be forced to give up my ticket.
166. Do it.
167. There is little risk for part time practitioners in certain areas of law. Requiring insurance might make the difference whether a person could make this life-style choice. For that reason, I'm opposed to mandatory insurance.
168. I think the State Bar should provide minimum levels of malpractice insurance for every bar member, paid for by assessments against each attorney or their practice. An attorney desiring greater protections could then purchase more insurance on the open market. That way, it would not be necessary to disclose the existence or non-existence of insurance, which would likely encourage malpractice lawsuits by disgruntled former clients. Also, the State Bar could immediately suspend an attorney who has not paid his or her assessment, just as they do when the Bar fees are not paid, or CLE credits are not earned/reported in a timely manner.
169. Shame on you for attempting to increase the operating costs to low-cost providers like me. Someone likely has an hidden interest in selling insurance here, as I see no real, compelling facts to justify this push to force us to "buy insurance." Also, if the State Bar of Nevada is saying anything by mandating coverage, it is that the organization is one with zero trust in the quality of their own bar exam, CLE programs, or other work done to help ensure quality service to our public. This is a slap in the face to all these earnest support efforts to help each other in our bar organization.
170. THIS IDEA IS GOOD IN THEORY, BUT DOING THIS WILL HAVE A GRAVELY DISPROPORTIONATE IMPACT ON THOSE ATTORNEYS WHO ARE SOLOS OR IN SMALL FIRMS ON THE PLAINTIFF'S SIDE. FIRST, SOME OF MY PRACTICE CONSISTS OF CLASS ACTION LITIGATION. INSURANCE COMPANIES WILL EITHER NOT WRITE YOU, WILL HAVE AN EXCLUSION OR IF YOU PRACTICE ANY CLASS WORK THE COST IS SO PROHIBITIVE, YOU CAN'T AFFORD IT. I HAVE LOOKED. MOST IF NOT ALL MID TO LARGE DEFENSE FIRMS HAVE E & O INSURANCE AS THEY CAN AFFORD IT. SECOND, IF A SOLO OR SMALL FIRM GETS ANY STATE BAR COMPLAINT, INCLUDING A BOGUS ONE, THAT HAS TO BE ON THE APPLICATION AND REPORTED TO YOUR CARRIER. EVEN A BOGUS COMPLAINT. I HAVE NEVER HAD A COMPLAINT, BUT I HAVE HAD SOME OFF THE WALL UNREASONABLE CLIENTS THREATEN TO DO SO. ONE BOGUS COMPLAINT MAKES INSURANCE COST PROHIBITIVE. AGAIN, THIS WILL HURT MOSTLY SOLOS AND SMALL PLAINTIFF FIRMS DISPROPORTIONATELY. I DO NOT BELIEVE REQUIRING MAL PRACTICE INSURANCE IS THE WAY TO GO, BUT IF THE BAR BELIEVES DISCLOSURE IS IMPORTANT THEN THAT WOULD BE A GOOD COMPROMISE. CLASS ACTIONS ARE AN IMPORTANT PART OF ENFORCEMENT OF CONSUMER RIGHTS, BUT INSURANCE IS COST PROHIBITIVE IF THAT IS PART OF YOUR PRACTICE. CONSUMERS WILL BE HURT AS WELL BECAUSE THOSE WHO PRACTICE STATUTORY CONSUMER LAW, FCRA, FD CPA, TILA, AUTO FRAUD, WRONGFUL REPOSSESSION AND FORCLOSURE ETC... ARE SOLO FIRMS. I WOULD SURMISE THAT THE NUMBER OF THOSE WHO CARRY INSURANCE IN ACTIVE PRACTICE, MOST ARE DEFENSE

- FIRMS. OTHER PROFESSIONALS LIKE DOCTORS, ACCOUNTANTS ARE NOT REQUIRED TO HAVE SUCH INSURANCE. IT SHOULD BE LEFT UP TO THE ATTORNEY TO MAKE THE DECISION IF HE OR SHE WANTS TO PAY FOR E & O INSURANCE. ATTORNEYS CAN'T LIMIT OR INSULATE THEMSELVES FROM PERSONAL LIABILITY VIA THE CORPORATE SHIELD. THEY ARE SUBJECT TO LAWSUITS FOR THEIR MAL PRACTICE, AND AGGRIEVED CLIENTS HAVE REMEDIES TO SEEK DAMAGES, BUT REQUIRING MAL PRACTICE IS NOT THE ANSWER. DISCLOSURE TO THE IS OF HAVING NO INSURANCE IS A GOOD COMPROMISE IF E & O IS BEING CONSIDERED ON BEING ADOPTED INSTEAD OF REQUIRING INSURANCE.
171. This is completely unnecessary intrusion BY what is becoming a nanny, Overbearing mandatory bar. The free market should control this issue. I am opposed to mandatory insurance but OK with disclosures
172. I highly disagree with forcing all attorneys to buy malpractice insurance. Also those vote of those whom it would personally affect should take priority of those working in a large firm who would not feel a direct hit from this.
173. Not only will this skyrocket the costs of insurance, but it will absolutely increase the number of malpractice filings by unhappy clients, even when there is no legitimate claim.
174. Another way for the Bar to intimidate solo practitioners.
175. My practice is growing but remains very small. While the cost of malpractice insurance may or may not be very large, it would be a negative impact on my ability to grow my practice from the ground up. I think a mandatory rule such as this (if used at all), should be limited or conditioned upon a certain threshold for gross income of a firm. Very small firms such as mine really do not need insurance and imposing the cost would be an unfair burden on my practice.
176. I am retired from the active practice of law, but active as an arbitrator. No reason to be forced to acquire professional liability insurance.
177. I am a proponent of malpractice insurance but I am cognizant of the cost as a business owner. Yet, it is a protection also for the attorney as they can defend themselves.
178. I only represent family members for minor matters. The cost of insurance would prevent me from that representation and thus they would have no representation.
179. If the State Bar is concerned with protecting the citizens of Nevada from attorney malpractice, the State Bar should take a more active role in determining and punishing attorney's instead of trying to push these responsibilities onto the Court system.
180. Mandatory insurance is a bad idea
181. I am now in-house counsel in another state but still have Social Security Disability cases and occasionally do estate planning for Nevada clients. Even when practicing full time, my areas of practice were extremely low risk and also focused more on providing assistance to low-income clients. That is a high level of coverage for a lot of attorneys in private practice and totally unnecessary. \$100/\$300 is what I carried and was far more than any liability could have been for my clients. Applying a universal requirement like that prevents attorneys from doing part-time and reduced fee work.
182. Professional Liability insurance protects the lawyer more than the client. I maintain such insurance to preserve my assets, not to protect my clients from my wrongdoing. Ethics rules and my own sense of professionalism and ethics protect my clients, not that I have insurance. Neither do I take unnecessary risks simply because I have insurance to back me up. On the other hand, there are sufficient numbers of lawyers, especially in solo and small practices that are not financially stable, causing them to take undue risks to earn that extra fee and putting their clients at unnecessary risk. Clients of those lawyers do need some protection from those unnecessary risks. Other states, like New Jersey, where I am also admitted already require professional liability insurance as a condition of admission to the bar. I do not believe there is any increase in

- malpractice claims due to such insurance requirement. If the concept is to protect clients, an alternative such as a client security fund, as in effect in New Jersey also, would do more to protect clients than simply requiring lawyers to be insured. Insurance only kicks in when a claim, and usually a lawsuit is instituted, making it more difficult and time-consuming for the client. A protection fund, administered by the State Bar and managed by volunteers, could resolve claims more quickly and efficiently and make client pay-outs more efficiently than simply requiring insurance as a back up to the attorney's ability to pay a claim.
183. I want to express my opinion that this will only increase malpractice suits. Not one person has ever asked me if I had it. It is required for my work with Insurance carriers.
184. Before mandating coverage, the Board of Governors should perform a study and report on how many instances of clients suing for malpractice and being unable to recover (ie insolvent attorney/practice) occur in Nevada annually; otherwise, we're just lining insurance company pockets for a problem that does not exist. In other words, I am very much unconvinced that this is a problem at all.
185. I have coverage and always have, yet I strongly oppose a mandatory requirement. All that accomplishes is to increase in premium costs and to encourage more malpractice suits. I have never heard anyone state that they have a lower opinion of the legal profession based upon maintenance of malpractice coverage. I am further concerned that the current Board of Governors is entirely to activist. We just had a survey regarding mandatory audits of trust accounts, which would certainly be intrusive, time consuming and expensive. That won't stop the bad actors either, clients always find out first because they are unable to obtain their funds and then report it to the bar.
186. I do not think that we should have to publish this information. However, it should be made available on the State Bar's website.
187. This proposed over-regulation brings the Bar over the line into the free market and free competition, including giving big firms another competitive edge over solos. The proposed regulation will negatively impact the market, including edging out solos who are not insurable, but who are highly competent. Insurer underwriters look at frequency and severity of loss histories. Requiring insurers to offer coverage would solve this, but the Bar has no jurisdiction over carriers.
188. Like the proposed amendment to rule 8.4[g], another stupid BOG idea.
189. The questions and array of possible answers in this "survey" are for the most part extremely embarrassing. I cannot believe the State Bar of Nevada is playing lawyer games with members of the bar.
190. If history and economics are any indication, mandatory insurance drives insurance rates higher because companies know that they have mandatory consumers. An increase in insurance will result in an increase in fees to the public, eliminating more of the public from being able to retain legal assistance. In an attempt to protect the public from a few bad eggs, you prevent the public access to the good ones.
191. Mandatory malpractice insurance will increase the cost of doing business, pass that cost on to the clients, and thereby limit access to justice for indigent clients. Additionally, in-house counsel should not be required to maintain malpractice insurance.
192. Please share the approximate cost (or the price range) for the minimum coverage under consideration. Thank you.
193. Govern yourselves. Leave it up to each attorney or office. It will create a cesspool of malpractice suits. It is called a "practice" isn't it? More insurance money, more bad cases, more nonsense.
194. Requiring all private practice attorneys to carry malpractice insurance minimum limits is overall a good thing for the attorneys, the clients, and the legal industry as a whole. The concern is that the insurance limits that attorneys actually have should not be something that is publicly available. If suit is filed against an attorney then disclosure of insurance limits is obviously necessary, but

- availability of that information before suit is filed will lead to a cottage industry of seeking out lawyers with higher limits to target for lawsuits...just like personal injury lawyers ignoring valid claims that are small in order to pursue often frivolous claims against a commercial defendant (like a trucking company) just because they have higher insurance limits. Also, since the State Bar is also considering a policy of random trust account audits, if you are going to do that then you MUST also mandate malpractice insurance for lawyers.
195. I have seen malpractice in cases handled by other attorneys that is very disturbing (e.g. litigation attorneys who do no discovery and take a case to trial with no witnesses, attorneys who take cases with inherent conflicts without adequately explaining the conflict to clients, attorneys who miss deadlines, etc.), and many of these attorneys had no malpractice insurance. If there is an increase in malpractice litigation simply from attorneys having insurance, this is likely because before making an insurance requirement, these clients who were harmed by their attorneys' negligent representation had no recourse and could do nothing. There may be some frivolous cases of people who just are upset they were unsuccessful with their litigation and are hoping to collect from someone else's insurance company to help compensate for their losses, but there are a lot of legitimate cases out there of attorneys who are mishandling cases. I strongly support the requirement for attorneys to have malpractice insurance. But it might be worth getting more detailed feedback from practitioners in different practice areas with different office sizes, with some quotes from available insurers, to provide better feedback on policy costs and limits to make it something affordable for a variety of practitioners. It is difficult for me, as a larger firm practitioner, to take an online survey and say what the policy limits should be for all attorneys, without having some idea of the cost of providing that insurance, for example, to a solo practitioner.
196. There aren't enough companies who write malpractice insurance or broker who sell malpractice insurance in Nevada to warrant mandatory liability insurance. Rates in Nevada are very high and requiring mandatory insurance will encourage insurers to raise rates even higher because they know we need it. Mandatory insurance is a stupid idea and will only benefit the malpractice insurance companies. If more companies start writing insurance in Nevada and there is an effective broker network for the purchase of malpractice insurance, I may change my opinion. But right now, there is either enough competition or enough effective distribution to make it mandatory.
197. Having previously been in private practice and left to join a government office, the BOG should carefully consider that most policies are "claims made" policies. For an attorney leaving private practice, the issue of whether, how long and the cost of purchasing "tail coverage" or ongoing protection after the attorney is no longer engaged in practice is a significant issue. Given that some statute of limitations are going to be based upon the "discovery" of harm, the need for coverage for years after ceasing to practice is a significant issue and can be costly. Those issues must be addressed as part of any "mandatory" coverage.
198. If an attorney only represents criminal defendants, it is almost impossible for a legal malpractice law suit to end with payment of fees to the prior client. In the criminal defense context, the prior client must have a conviction reversed and then either be found not guilty or the case is dismissed. Requiring attorneys, who only represent criminal defendants, to have more than a minimal amount of malpractice insurance just costs the attorney a significant amount of money and is a windfall to the insurance company which, in all likelihood, will never pay a single penny. Clark County requires attorneys who accept criminal appointments to carry \$1,000,000 in malpractice insurance which costs approximately \$3000 per year. It is absurd!
199. There should be no mandatory insurance, period. The insurers overcharge for their coverage and there is no real competition among the few insurers who write policies, so premiums are exorbitant, esp. for solo, semi-retired and part time attorneys (assuming the coverage is available, which it often is not). This is a bad idea.

200. If I make a mistake, I make it right with the client, period. The board and the courts have no business intruding like this, and if it becomes a rule, I hope it will be challenged in the courts, I will consider helping with that challenge.
201. I do not think mandating every lawyer to obtain malpractice insurance is a good idea, other than helping disgruntled clients try to exact some measure of revenge.
202. The mission of the State Bar of Nevada is to make the law work for everyone. This is one more instance of making it harder for the small or solo law firm, which are doing the bulk of the work, very often without pay.
203. Mandating that an attorney carries professional liability insurance gives clients (i.e., the customer) a false sense of security. The onus should be on the client to make an informed decisions about his or her representation, which might include deciding to pay a lower fee for taking on the risk of hiring an attorney who does not carry insurance.
204. I am guessing this idea came from attorneys who represent insurance companies. How about those pushing this matter disclose the the identity of their insurance company clients? But again, let me guess, that could violate attorney/client confidentiality, right? This appears to be nothing more than a money grab by insurance industry.
205. I represent consumers and charge them nothing. I only ever recover if they do, and they're statutorily capped at \$1000 most times. That practice method and the requirement to have insurance would negatively impact my business, and a single policy claim would likely be barely more than my deductible
206. For some reason the State Bar continues to follow the Oregon Trail. Yet, only a hugely small percentage of attorneys ever see a malpractice action against them while most carry insurance that adequately covers their practice. Most policies, if not all, do not cover theft (intentional acts) by attorney's of their client's money. I practiced law for two decades and never had a claim against my policy. Instead of mandatory requirements for coverage (we would be only the second state in the country) why not increase, not decrease, bar admission standards. The most recent bar pass rate was artificially inflated through political means. Might as well have complete reciprocity then. Let anyone practice in Nevada. In addition, you do not ask the right questions nor do you give us the proper information to make a more informed decision. Each year we need to disclose to the bar if we carry professional liability insurance. This is public record and any consumer can request the information from the Bar. However, even though you have that information, you have failed to disclose how many private practicing licensed attorney's in this state carry insurance v. those that don't. What the size of their practice is? If they carry individual policies or are covered by their firm? Etc. I think the Board of Governors should get back to representing their attorney's and advocating for them, not presuming negligence and giving us all bad names.
207. Mandatory insurance is a good idea and should be implemented. It protects the public and I feel it will potentially lower rates by making every attorney purchase to spread risk and increase premiums to the insurers of the state.
208. Nowadays, legal directories (including the state bar) report incidents of claims or complaints, without reporting the details or outcome. I am concerned that suddenly reporting insurance availability to the public acts as as if malpractice insurance is new, and therefore creates an incentive to make questionable claims. Even questionable claims are reported publicly, seemingly perpetually, without detail to allow the public to make an opinion about whether the claim says anything about the attorney's quality. Attorneys need the leeway to make judgment calls- it's what we do- and arming clients with information about mandatory insurance puts the attorney and client at odds with one another. I am generally in favor of mandatory malpractice insurance, if it can be accomplished without becoming a news story.
209. hard to take court appointed cases on a part time basis if required

210. I think that maintaining professional liability protects all concerns: The legal profession, the client, and of course, the practitioner!
211. If I felt they would listen or it would help, I would spend as much time as necessary to put this matter out there. At this time, however, I do not feel that is the case.
212. Insurance is very expensive , it makes you a target for greedy clients and then it costs another \$10,000 or so deductible to hire a defense attorney before the insurance kicks in to help.
213. I am in general not in favor of more rules governing what we do. Over regulation
214. the Nevada bar has been way to lax for way too long. all but the most sophisticated clients assume tat lawyers are required to carry E&O. we should, at an absolute bar minimum, be obliged to disclose if we do not carry E&O. at least let the consumer have a level playing field. why can't the bar get a group rate? the time has come to fix this gaping hole in our credibility
215. It will advance the public's view of the profession.
216. What concerns me is the requirement that this be Nevada Admitted Coverage - My firm has \$15 million in coverage with an SIR which is presently \$250,000 I believe for lawyers outside Oregon (which has mandatory primary layer bar-provided coverage). We're about to move our coverage to the Pilot Legis Risk Retention Group -that's NOT Nevada admitted coverage - PilotLegis purchases their coverage or reinsurance in the London Market. If the PilotLegis coverage is not qualifying, then my firm would have to buy an extra Nevada only policy for me, at an additional cost. I do a moderate amount of Nevada work, but am primarily a California lawyer. The requirement to buy a wholly unnecessary Nevada policy is likely to be resisted by my firm, thus forcing me to either go inactive or resign from the Bar, despite having substantially more coverage than the bar proposes requiring. This proposal is poorly thought out and appears not to have had sufficient vetting by people who understand the insurance industry. Do NOT require the coverage to be admitted coverage in Nevada, simply require that it be coverage that may legally be offered in Nevada through a Risk Retention Group or through the surplus lines market, as well as admitted. Thanks,
217. Are criminal defense lawyers going to be required to carry malpractice insurance? If so then this rule is just a scam to benefit insurance carriers. In the real world, there is no malpractice liability in criminal cases.
218. Over the last decade, it is prohibitively expensive to get malpractice insurance if you do even occasional class action work (>1 per year) - even low value (e.g., injunctive) class actions where the only person taking any financial risk or facing financial consequences of the attorney's negligence, is the class action attorney. Mandating attorneys to get insurance on the open market is a VERY BAD idea.
219. Clients already have a remedy in that they can sue their attorney and file a bar complaint.
220. When I find out that an attorney does not have malpractice insurance, it causes me great concern. If they are not willing to carry insurance, it makes me wonder about the quality of the legal services being provided. Anyone can make a mistake. Insurance is there to protect our clients if we do.
221. If the insurance is mandated, I think it is imperative that the Bar provide access to reasonably-priced insurance to all licensed attorneys, including those who may be difficult to insure due to practice areas or history.
222. Between this and audits of trust accounts, the bar is definitely on the right track.
223. There are many competent attys like myself who are conscientious and careful. I take good care of my clients and go above and beyond. However after paying huge prices for malpractice insurance for years - I finally could not afford it. However, I do not practice in areas where I am likely to cause damage to my clients and I have safeguards (as always) to ensure I am not committing

- malpractice. By forcing malpractice insurance, you will likely force many cost-effective lawyers out of business.
224. I am over 70 years of age and practice only in the field of real estate where I prepare Deeds, etc. I was trained in New York and served in the Real Estate Division of the Attorney General's Office. I have taught real estate law for many years. The probability of my making an error which will cost my clients money is very very low. My net worth exceeds \$1,000,000. I had \$1,000,000 of liability insurance when I had my own full time practice and when I was managing partner for LePome, Willick & Gorman, Esqs. We never had a claim. I bought "tail" coverage for 5 years after leaving full time practice. My semi-retired part time practice generates income below the level which requires a business license. Requiring me to pay for liability insurance in view of the foregoing is abusive and wholly unnecessary.
225. Clients can decide whether to hire an attorney to provide services who has or does not have coverage. It should be a choice. I specifically elect not to carry insurance to prevent clients from wrongly believing an insurance company will provide a guaranty of any result. However, this choice does not prevent lawsuits or disciplinary action. More regulation does not provide protection to the public. It funnels money to insurance companies which are not required to pay claims. It's a false sense of security.
226. The worst damage to clients has been done by attorneys who INTENTIONALLY embezzled funds and insurance does NOT cover intentional wrongdoing. Requiring anyone to buy a product from for profit companies should be unconstitutional.
227. I worry that requiring insurance may have a negative impact on small offices offering low cost services to clients that make enough so as to not qualify for pro bono services but not enough to hire higher priced firms. Usually, attorneys who do not maintain insurance likely do not serve clients in high-value matters. These attorneys may assist with immigration, child custody, and eviction matters, where risk of monetary loss is not as high. This policy could create a bar of entry for these attorneys, and clients could go without representation if fees have to be raised. I do not know the extent of the problem surrounding uninsured attorneys. So that is a definite caveat to my concerns
228. Solo attorneys, especially those who are retired or semi-retired, should only be required to carry malpractice insurance as part of reinstatement from suspension or disbarment.
229. An attorney should be left to make their own decision whether to have their personal assets at risk (versus having insurance) in the event of a professional negligence claim, whether their personal assets are adequate to fairly compensate a client in the event of a claim, and as what types of services to provide and not provide in order to manage the risks of a claim being made and the potential amount of a claim.
230. A family member of mine hired an attorney in San Diego who didn't carry malpractice insurance. He blew a statute of limitations and then pretended for months like he was actively litigating the case. Then they hired another attorney to sue the first attorney for malpractice. They still haven't recovered anything from the first attorney. It's just been a very disappointing experience. They just want their fees back at this point.
231. Malpractice insurance for all is wrong. It punishes all for the acts of a few greedy lawyers. Most lawyers are reputable. Lawyers who bill inflated costs that they never incurred, like Marjorie Hauf, coerce clients to sign settlement agreement statements before they hand over the checks, so they get away with this fraud. As a result, clients are freely gouged by unscrupulous lawyers like her.
232. I frankly thought that malpractice insurance was already mandatory so I am shocked (and embarrassed) to learn now that this is not so. I might also say that I have always been shocked (and embarrassed) by the ridiculously low number of CLE hours required. Compare the CPA's and their 40 hours of CPE. And some of the "CLE" for which credit was granted was pathetic.
233. I am mostly retired. As noted, I work only part-time and only for other attorneys, covering, say, depositions, a motion argument, etc. I presently never have a client for more than a couple of

- hours at a time. I do my best to ascertain coverage for me on the contracting firm's malpractice insurance. Inasmuch as I have been mostly retired for some years, without much work history, I doubt I would be able to purchase malpractice insurance, and I'm certain I would not be able to afford it. Therefore, I would be forced never to work for anyone, ever. Also, I am uncertain about the efficacy of malpractice insurance. When I had a practice that wasn't under the umbrella of a corporation or someone else's practice, I maintained malpractice insurance. Even though I never had a claim, it was my 2nd largest expense, almost as much as my office rent. Personally, I do not much trust insurance companies. They do not have billions of dollars in assets because they pay claims. In my personal experience, collecting from an insurance company tends to be difficult, not just in circumstances in which one's client has been, say, involved in a collision. Along the way, I have represented sundry individuals who were suing their own insurance companies because the companies had declined to pay valid claims. I don't believe attorneys having malpractice insurance provides any assurance of settlements to any wronged clients. I also believe it will encourage frivolous claims. There are many reasons for problems in matters that don't involve negligence, error or omission on an attorney's part.
234. It is unconstitutional for you to require me to have legal malpractice insurance. If somehow it were constitutional for you to require me to have legal malpractice insurance it must be allowed that I can self insure by showing proof of my net worth. As a former legal malpractice defense attorney I am sure that having legal malpractice insurance increases frivolous lawsuits. This is because insurance companies are willing to settle frivolous claims to avoid having to pay Council to defend against them.
235. 1. My practice involves a substantial amount of time representing people of very limited financial means. If I am required to incur the significant expense of carrying malpractice insurance, this is going to significantly affect my ability to offer services at a reduced fee or to represent clients where I know the fee earned will be low. You are going to make it much more difficult for people of limited financial means to find reasonably-priced legal services (outside of personal injury) if you require attorneys to incur this significant additional cost as a requirement of licensure. 2. I think it was a mistake to stop listing whether an attorney carried malpractice insurance on the state bar website. 3. I think the survey results are going to be of questionable validity given that the questions were loaded in an attempt to force an attorney to answer that he/she is in favor of mandatory malpractice minimums.
236. I think this is the worse idea the Board of Governors has considered in the 24 years I have practiced law. I can't even believe the BofG is considering it. I think it is reprehensible for a semi private exclusive guild to be mandating that I do business with an industry that's only purpose is to harvest premiums and limit claims whenever possible. I have gone w/o malpractice insurance for years because one, I don't commit malpractice and have never had anyone so much as hint that they wanted to make a claim. I should have the right to self insure and given the standards of what is necessary to make a claim succeed I measure the possibility of loss to either myself or any client to be minimal. I would think any attorney that doesn't carry malpractice insurance is probably the better attorney for it as they are willing to risk their own assets against any claim.
237. Right now the State Bar requires who are listed on the Bar's website as a "specialist" to carry malpractice insurance. I think this should be required at a minimum, but I am not sure that every lawyer should be forced to have it. I have a lawyer client right now that did PI work. After a few claims his insurance company dropped him and he cannot get insurance. He is not a bad lawyer, he just had some bad clients. I personally don't believe that he was wrong, but the clients still made claims. After a few of those, the insurer dropped him. If mandatory insurance were required then he would be unable to practice law, and I don't believe we should have insurance companies governing whether or not we can practice. That is one significant concern I have. Therefore I believe that having an insurance requirement for those advertising/holding themselves out as a "specialist" should be in place, but others I don't believe that it should be a requirement (though I

- would certainly suggest it - maybe encourage in the same manner we do for pro-bono service - maybe even offer discounts on bar fees for those who are insured and can prove it. With extra fees from uninsured we could look into placing those fees into the recovery fund).
238. Forcing attorneys to obtain malpractice insurance is an unnecessary added financial and administrative burden in an already tough economic environment. I practice out of state but want the ability to practice in Nevada without an added expense (ie in addition to my bar and CLE dues which I pay regardless). Please don't make make malpractice insurance mandatory.
239. I am retired but have a small practice serving poor clients and veterans and pro bono with legal services. I disclose to potential clients that I do not have malpractice insurance. I also tell them that my fees would be a lot higher if I carried it. My practice does not involve complex issues. If it does, I refer them to other legal counsel. My practice is limited to tribal courts and tribal forums. If I have to carry malpractice insurance, I would consider becoming inactive and then practice as a tribal advocate as allowed under tribal laws (without State Bar oversight).
240. If you do require reporting, please require premium reporting so that the Bar can track expenses and measure the burden this requirement is causing. Also reporting this would allow for determination of whether it would be preferable to go to an Oregon style system. Also, consider adding additional CLE / Professional Counseling in lieu of malpractice insurance for those attorneys who cannot or chose not to carry such coverage. Finally don't require the posting of how much coverage you have as it will unduly burden those who carry some coverage but less than the next guy.
241. Unlike med.mal. policies, attorney E&O policies are "burning" policies, i.e., defense costs go against limits. In many cases, the defense costs will completely burn up a small policy, which is why we went from \$1M to \$2M per claim. We have \$2M claim / \$4M aggregate, which isn't in your survey. Many policies are \$1M claim / \$3M aggregate. VERY concerned about newbie lawyers and solos being able to obtain affordable insurance; State Bar may need to arrange such insurance, and maybe coordinate with the Department of Insurance to create a pool for those who cannot obtain it commercially for whatever reason.
242. This is a bad idea.
243. 1) I already at for license just to be a short trial judge so please don't add to that cost for me when I dont practice law 2) i do have a type of business insurance that covers ADR if I were to need it but would expect to have immunity or be covered by AG on court appointed work anyaay
244. Do not mandate!
245. Attorneys are "NOT THE MOMMY". We cannot be guarantors of outcomes and should not be REGULATED TO THE POINT THAT SOON WE WILL BE REQUIRED TO USE SPECIFIC SOFTWARE AND SPECIFIC INK COLORS FOR SPECIFIC PAPERS. We are Professionals and should not be treated like we have to provide porridge and warm milk for our clients with cookies in the lobby. That is absurd.
246. More meddling. Are you people bored? STOP!
247. Clients should be able to choose whether to retain a lawyer who is insured or a lawyer who is not insured according to what the client is able and willing to pay. Many clients now cannot afford to hire a lawyer and mandatory insurance will raise the price to retain a lawyer even higher. Therefore, mandatory malpractice insurance will increase the number of people who need legal services but cannot afford them. Furthermore, mandatory liability insurance will not likely make whole clients who have been harmed by attorney negligence. Mandatory insurance always increases costs in an industry without necessarily providing the desired payout to the intended beneficiaries. Insurance companies are notorious for maximizing profits by refusing to timely provide the benefits which they have contracted to provide. The companies delay and litigate valid claims to attain at least a reduced payout if not complete elimination of any payment.

- Mandatory malpractice insurance will increase litigation over claims and only those clients financially able to litigate with the insurance companies will benefit. Furthermore, historic insurance costs to lawyers are not proportional to the volume of cases handled by the lawyer and thus mandatory malpractice insurance will cause attorneys who only handle a small volume of work to be unable to help the potential clients who are unable to pay the price demanded by high-volume firms. Insurance premiums demanded of me have been the same for my practice handling only a few cases per year as the premiums demanded of my colleagues who handle ten to a hundred times more cases per year. The insurance companies have been absolutely unwilling to tailor the premiums to the level of risk presented by my low-volume practice. Therefore, I was forced to drop malpractice insurance. I have only helped clients that claim they cannot hire an attorney elsewhere, usually because the up-front retainer is too expensive or the fees are just too high. If I am required to buy malpractice insurance, I will not be able to help these people. While one may think that I would help poor people through a legal aid organization that provides malpractice insurance rather than not help poor people at all, that thinking would be wrong. I tried helping people through a legal aid organization and found the organization's people so unsupportive and the experience so adverse and misrepresented that I promised myself that I would never do it again. Therefore, in my case, mandatory professional liability insurance will decrease the number of poor people who are able to attain legal aid in our state. So that reduces the issue to a very simple choice. The simple choice is to allow clients the freedom to make an informed decision to hire an attorney who does not carry malpractice insurance and assume the risk or require all attorneys to carry malpractice insurance, deny potential clients the right to make an informed choice, and exclude more of the poor who cannot pay higher fees from being able to hire an attorney for legal representation.
248. Each and every client is a walking lawsuit. Providing additional sources of recovery to specious claims exponentially increases the likelihood of client lawsuits when they absolutely know that there is an untapped financial resource. A mandate of liability insurance encourages unnecessary litigation and I am absolutely opposed to requiring it. As it is, 90% of my work is gratis. Not only do I not get paid, but then they can sue and cause me to have to pay them for doing free work for them. I owe these people my best effort, not a lottery ticket.
249. I believe this requirement and disclosures to clients as to whether the attorney has insurance will negatively affect small firms, create a false distinction in the attorneys' abilities and projected outcomes and encourage malpractice litigation once the minimum limits are disclosed for vexatious clients.
250. This is a very very very bad idea and would force me to potentially close my Nevada practice. I practice law in 12 jurisdictions and have not been able to obtain even a quote on insurance despite numerous attempts due to the complexities of my firm. Malpractice insurance is a crutch used by inept lawyers to perform sloppy work rather than be appropriately diligent.
251. It is so very difficult to maintain a solo practice. The increased coat of malpractice insurance would put put me out of business. Stop this.
252. Current regulation is onerous enough. Please stop making it more difficult to run a small business.
253. Level of coverage could be tied in some way to the amount of exposure (value of matters being handled).
254. Mandatory insurance is a much better way to protect the public than mandatory audits of lawyers and law firms every five years. Bravo to the State Bar of Nevada.
255. I represent clients in special education. I have done so for since 2001. I make very little income but have a passion to assist the marginalized. My practice does not have monetary damages as a remedy. I should not be forced into insurance that is not relevant and hurts my ability to protect those who cannot afford representation. When I do engage in legal actions that include monetary damages, I contract with co counsel. This would have a devastating outcome on my ability to

- assist those who require legal services. I earn less than most secretaries and could not afford the premiums.
256. Did you obtain or investigate price quotes for how much an attorney can expect to pay or budget for this type of insurance premium? What if providers gouge like health care insurance providers did before the health ins exchange was implemented? What if it is so truly unaffordable it puts single practitioners out of business? How are attorneys protected from price gouging? Thank you for asking membership for their questions and input.
257. Lawyers can decide what is right for their practices. There is no need to legislate mandatory insurance for all attorneys. Many attorneys do not face the potential for malpractice lawsuits.
258. bad idea
259. Make disclosure to the client mandatory, but don't require the lawyer to carry it. It will simply discourage those who want to devote a lot of time to pro bono work. Not all pro bono work comes through Legal Aid offices. Many times, lawyers take clients on directly when they have a good cause but no money. In those instances, the requirement of insurance will simply keep a lawyer from taking the case. Let the clients decide who they want to work with -- just make disclosure mandatory. This method works in CA, and should work in NV.
260. Minimum coverage requirements, if any, should take into consideration the nature and monetary value of the type of claims handled by the attorney. In many cases, even a minimum of \$50,000 per occurrence could far exceed any potential damage to a client. Unfortunately, insurers only seem to offer higher minimums than what's really needed based on the type of practice.
261. For specialized areas of practice, the costs and the carrier selection is limited. For example, for patent law, there are no in state carriers and a special tax has to be paid on the policy. If the State Bar passes this, then the insurance companies must insure everyone- it has to work both ways.
262. The Nevada Bar Board of Governors Nevada is infuriating. Young lawyers and solos are already struggling, especially in rural counties. Moreover, young lawyers in particular are straddled with huge law school loan debt even from Boyd where the debt can easily exceed \$100,000. Good paying jobs are still hard to find. Solo and small firm practice means low salaries. We are not making six figures. Do you have a clue about the cost of malpractice insurance, especially for so-called high risk practice areas like real estate, family law and personal injury? This is insane. Nevada is already one of the highest cost to practice states at just under \$500 annually along with 13 hours of MCLE. And the BOG just increased cost to practice by mandating one extra hour of CLE annually. Now you want to increase cost to practice even further by thousands of dollars! This is so ridiculous. What is driving this other than a parochial do-gooder mentality by the BOG at the expense of its members? Moreover, your survey is absurdly unfair. It is biased, replete with assumptions, leading questions and agenda-driven to get the results you want. The Nevada BOG is apparently hell bent on causing an insurrection among members. Keep it up. You are well on your way of entrenching an adversarial relationship if not a deep animus toward the Bar and the BOG. Add to the equation a heightened prosecutorial mentality by the Office of Bar Counsel and many of us ready to throw you guys out. Time for a voluntary membership bar that will dramatically lower our practice costs. The BOG is delusional, out-of-touch and totally tone deaf.
263. My suggestion is limited to the small sole practitioner. Disclosure of no insurance to a client, or mandatory requirements to buy insurance should be governed by the dollar amount of exposure or potential malpractice claim. e.g. A firm that routinely litigates seven or eight figure claims or defends should not be treated the same as a sole practitioner who seldom, if ever deals with seven figures, or defends same. It's just common sense. Most attorneys who avoid or refer out or co-counsel on the big ones can very effectively be self-insured. Why drive them out of business with extra expense. The current trends in expenses are heavily felt by senior sole practitioners. Demarcation points on mandatory coverage should be linked to exposure.

264. I wonder about the requirement to obtain from any carrier licensed in Nevada. I do not know if the carriers which provide malpractice insurance to those at high risk- for instance those who have had prior claims- are licensed in Nevada.
265. Money is power in our honored profession as it is throughout our national life, it now appears. Mandating yearly insurance premiums in unknown amounts is just another way the huge law offices compete for business: by exercising their economic leverage and squeezing out the solo practitioners via the back door. They then can less guiltily charge their \$350+ an hour and deprive even more poor and hard working people the legal advice they so desperately need in this dog-eat-dog world. I have serious doubts about the constitutionality of any such proposed insurance mandate (hmmm: why does that sound so familiar?). But I am far more concerned with the Nevada public, who will -- as usual -- be the ultimate sufferers if this is imposed.
266. Please do not require mandatory insurance. This is a boon to insurance companies and is not really going to do much to protect clients from bad lawyers. Better screening at the front end (about who to admit to practice in Nevada) would be a better solution for the problem.
267. This makes no economic sense. The reality is that malpractice insurance doesn't more to protect a lawyer than it does clients damaged by lawyer. Also, we should be able to decide whether we want to risk it without insurance
268. I have been practicing personal injury law in California starting in 1975 and then in Nevada since 1992. I represent plaintiffs. I have always carried E & O coverage until 2 years go when I mostly retired. I am 72 years old. I will handle an occasional case or a SS Appeal. It is burdensome, when I will earn a small income doing a little work in retirement, to pay up to \$10,000 for coverage. Maybe there should be an exclusion for those over 70 as there is with CLE requirements after that age. If I were still practicing full time I would carry coverage and I believe those in those practices should carry insurance.
269. Attorneys who have never had a claim or complaint against them for 20 or more years should not have to carry liability insurance and particularly if they practice in an area of law such as Family law.
270. One's area of practice can greatly impact the availability and cost of insurance which is not necessarily subject to debate with the carrier. Their underwriters make their determination and the attorney must either accept it or go without coverage.
271. Mandatory insurance is a rip-off just like CLE. The intentions are great but the results accomplish little. In the case of insurance, those of us who are exempt from dues can hardly afford any insurance and in fact do not need mandatory insurance. If we needed insurance we would buy it.
272. This may be seen by solo and small-firm practitioners as an additional barrier to entry into the legal marketplace. Take, for example, a solo practitioner who practices primarily in securities law. This rule may have the effect of forcing that practitioner out of the practice of law, as the cost of liability insurance is prohibitive. I would hope that the Board of Governors would consider the disparate effect on solo and small-firm attorneys when considering this new rule.
273. This is a HORRIBLE idea! The only other state that has done this experienced increased premiums of 3-4 fold once such coverage was no longer an optional purchase. Moreover, mandating coverage is unnecessary as offending attorneys are personally liable anyway, and the huge increase in cost to everyone doesn't offset a totally unknown cost to a few clients (that still have recourse) who hire substandard attorneys.
274. Stop the regulations. Attorneys are fiduciaries of their clients. We should not enact rules that put a burden on all attorneys, as nearly all are ethical and take their duties of trust very seriously. There are penalties for unethical attorneys (and criminal laws). Please treat us with dignity and respect rather than like mischievous children. Throwing more costs at us isn't going to fix malpractice or fiduciary breaches by bad apples.
275. I had always assumed malpractice insurance was required. When I first learned it wasn't I was shocked. I'm glad the bar is taking this up.

276. This proposal will drastically affect small practices, because IMHO, \$250,000/\$250,000 is NOT adequate protection for clients. My malpractice insurance for a low risk solo practice is very high because Las Vegas is considered a high risk legal community. Rob Graham ripped off over \$13 million in hard cash from vulnerable clients & left them with no potential assets for recovery. As a very long time lawyer, I have seen far too many recurring frauds by lawyers, because they have ready access to fungible cash in trust accounts [or probably not in trust accounts], which is a huge temptation for unscrupulous legal-types who live beyond their means. Although this proposal is a start in correct direction, it will never stem the tide of theft from clients because stone-cold thieves cannot resist the temptation to steal ready cash. I have represented dozens of defrauded clients against lawyers through Fee Dispute Committee in which large sums of money was stolen. Not one of those so-called lawyers expressed a second of remorse. Selfish motivations by that ilk will always overcome good ethics and honest dealings. IMHO the Bar is far too lenient on dishonest legal-types, who I hesitate to designate "lawyers," since that denigrates the title of those real lawyers who work hard and observe high ethical standards. However, some positive steps to protect the public is better than none. I constantly hear folks in the public sector identifying all lawyers with scum such as Rob Graham, who has sullied our proud profession for dozens of years to come. Makes me sick to my stomach, because Graham has destroyed what little positive reputation the legal profession managed to maintain.
277. I have found myself working on cases with other attorneys only to find out later that they had no coverage. So it is not only clients who need to know if a particular attorney is going "naked" or not.
278. Requiring a separate Nevada Malpractice Policy will force active attorneys who only work part-time in Nevada, to go inactive.
279. The true beneficiaries would be insurance companies. This regulation would increase the cost of legal services for most individual clients in Nevada in order for a small percentage of clients (probably the most disputatious) to dependably sue their lawyers. Why would the BOG support corporate interests over individual Nevadans?
280. I think the amount of liability insurance should coincide with the type of practice. I personally think it is unlike in the type of law I practice that I would cause \$250K in damages. I also don't think its unduly burdensome to mandate that but I do think the 100/300 policies may be sufficient depending on the area of practice.
281. For my last years of practice I will have one criminal case pending at a time; generally an appeal or other non-trial case and then I do a fair amount of pro bono work not covered by LACSN policy. Mandating insurance coverage would probably mean that I would go inactive.
282. This is a ridiculous proposal that will rightfully draw significant litigation
283. These questions are loaded, and designed to prompt answers that support a mandated malpractice insurance requirement. That's disappointing. It's also very disappointing these questions suggest malpractice insurance should exist and be the same for every attorney. Practices vary so significantly, one centrally mandated policy seems to suggest a lack of understanding of the profession. Such a requirement would probably not apply to me, as I do not have clients in Nevada and do primarily in-house work. I am a member of two other bars, both doing the same thing...group think...
284. 1. It is a reasonable expectation of the public that lawyers be appropriate insured. 2. If you can't afford to be insured, then you shouldn't be in business 3. No reasonable lawyer would advise their client to engage a lawyer without insurance 4. There is no sense in having a "race to the bottom" with some lawyers avoiding cost of insurance and trying to undercut other lawyers on cost - everybody loses 5. Lawyers who are not ensured are more likely to engage in unprofessional conduct to keep their mistakes hidden, or to mislead clients, rather than to do the right thing and make proper disclosure where mistake has been made 6. Lawyers who are not

- insured are going to be more prone to depression and substance abuse due to the constant pressure of having their personal assets exposed to risk 7. This is the perspective of a Canadian resident lawyer where insurance is mandatory and the concept of mandatory insurance has not been debated in at least my 25 years of practice
285. In house counsel/employees of non-law firms should be excepted from required insurance.
286. Insurance is very high for solo practitioners. We already have to deal with annual renewal Bar fees, CLE's, and etc.
287. This is a prime example of the Californication, with its heavy over-regulation, of Nevada.
288. My firm carries malpractice insurance, but mandatory disclosures prior to signing would likely increase lawsuits whether frivolous or not. Mandating malpractice coverage could greatly increase the cost of coverage. Additionally, many situations are not covered by malpractice insurance anyway, so this would likely increase the cost of doing business in Nevada and may not have the intended result. It would likely make it much more difficult to start a new practice in the future.
289. I'm an employee-attorney. My firm has insurance for all the attorneys, but the wording in this survey was ambiguous, so I selected "no" for the question whether I purchase insurance. This raises a question: is the proposal that individual employee-attorneys be required to buy insurance? If so, I don't like the sound of that. I'd much rather that be at the firm level. As a former solo, I thought insurance was too expensive. But I gather that may be a minority opinion.
290. Is there really a problem that needs to be fixed?
291. There is serious concern that requiring mandatory private malpractice insurance for all attorneys would be a significant burden on small firms and solo practitioners. Especially those who provide services to low income clients in need of legal help in areas like employment and labor law, medical malpractice, criminal defense or other areas where larger firms are uninterested in representing those clients because there is no guarantee of a big pay day. Requiring mandatory private insurance would have the effect of pushing attorneys who want to help poor and middle class people get justice who are less concerned about making large sums of money out of the market all together because it would put a significant financial burden on them. The American justice system, if you can even call it that, is already a pay for play system. The few attorneys out there who refuse to succumb to the soulless money grubbing industry the law has become cannot afford the significant burden of private insurance. This would leave only larger established firms in the market, who's only real care is how much money they can bleed from the system. However, I do support malpractice insurance. The best, and most equitable system of malpractice insurance is what the state of Oregon has done. Oregon created the Professional Liability Fund (PLF), a fund run by the state bar. Essentially, the fund acts as a single insurer for attorneys in the state, all attorneys practicing in Oregon must carry insurance. Insurance is a risk pool, and by establishing a single insurer with one risk pool in the state, it allows premiums for coverage to remain extremely low. This is the same premise behind Obamacare, and universal healthcare coverage generally. New attorneys get a discount on their coverage, those who get sued and lose pay an increased rate. Good, experienced attorneys pay a flat rate. It is inconceivable to me that the Nevada State Bar, with intelligent attorneys working on a solution to attorney malpractice would try to model our proposed attorney malpractice system the way insurance companies want them to. Requiring private insurance benefits one party, Corporate insurers. They get to rake in the money at high rates because of small risk pools and relative monopolies on the market share like a cartel that keeps prices high. This forces small attorneys that help everyday people out of the market forcing them to work for larger firms, most of whom practice in insurance defense, limiting the number of meritorious cases they have to defend because large plaintiffs firms will only take on cases with a relatively high probability of success and high ceiling for damages, leading to less claims for other

- things like injury, employment liability etc. This would be a win win for Corporate Insurers and the law firms who represent them. If we are going to mandate malpractice insurance why are we modeling our mandated system off of the predatory insurance market that has plagued America for a century. Lets model our malpractice insurance system after the well reasoned and equitable system Oregon adopted that is working incredibly well for their state. Small firms and solo practitioners are not burdened with high premiums because of a single risk pool, clients can get some recovery in the event a bad attorney commits malpractice, and were not pandering to corporate interests that have already poisoned our legal system with unethical, morally bankrupt pursuit of profits. If we are going to mandate insurance, it should not be handed to the private insurance market. I think history, past and recent has shown us that unchecked capitalism and turning over control of the legal system to corporations almost always hurts the everyday American. This is the website for Oregon's PLF. I am opposed to any mandatory system that is not modeled off of this single state run insurer pool. <https://www.osbar.org/plf/plf.html>
292. Attorneys that care to do pro bono work if they are not employed or not actively practicing are covered by the insurance carried by the legal services with whom they volunteer. Providing it on their own and not through a legal services program is another matter.
293. Insurance doesn't necessarily protect clients. It's a means for counsel to fund a malpractice defense. In addition, many carriers simply offer max policy benefits if the matter will be litigated to minimize the expense to the carrier - leaving the attorney without protection, even if the attorney had a viable/strong defense. Insurance is a necessary evil. But, I do believe it encourages unfounded claims.
294. You are asking for a feeding frenzy that will effectively take money from your members and redistribute it to insurance companies and a set of individuals that may have been financially harmed without actually protecting the individuals I think you are hoping to protect. If only 6 states have this sort of disclosure or mandatory cover - why do you think that is?
295. Please don't be too quick to burden responsible attorneys with perceived protection needed against irresponsible attorneys. Especially don't make the legal profession as a whole pay for Attorney Graham's bad acts. Mandatory insurance will definitely drive up the cost of practice and may decrease consumers' options. That benefits the attorneys who can afford malpractice insurance but doesn't benefit good attorneys who can't. If you have to do something different, which is extremely questionable, perhaps lesser burden on attorneys would be better. For example, perhaps the option could exist of carrying malpractice insurance or disclosing that you don't. Some of your questions are well worded in that they seem to recognize that too much discussion about legal malpractice seems likely to increase malpractice litigation and to drive up premiums. Customers/clients have the right to ask if an attorney is insured, if that matters to them. Would this proposal have prevented the Graham debacle/scandal? Probably not. Most attorneys are not like Graham.
296. I like the Oregon method. By using one mandatory fund, it avoids market inefficiencies and other problems that can arise by obligating attorneys to obtain coverage on their own.
297. While in a perfect world malpractice coverage would be great in the abstract, in the real world it is an expense that many small practices cannot afford. I have been in practice since 1982 (NY) and 2008 (NV) and have NEVER had a claim. It is simply unfair to require it as a condition of licensing. Require disclosure and let the free market take care of matter, as clients can make informed choices if disclosure is made.
298. The questions posed were blatantly biased toward provoking answers that appear favorable toward malpractice insurance in general and for specific minimum level requirements. The Bar is obviously seeking this change in policy regardless of membership opinion and is only circulating this charade of a survey to justify any such change.
299. It's a must

300. I am going into semi-retirement and will handle only existing cases until they are completed. I am not taking on new clients and new cases. Malpractice insurance would be an unnecessary expense for me.
301. As a sole practitioner who provides a reduced fee to my clients and takes "small" cases, a mandatory insurance requirement would cause me to close my doors and will limit access to lawyers for the public.
302. Making anything mandatory, including insurance, inevitably leads to increased costs for the product or service. It's not simply supply and demand, but a forced artificial influence on the market. Currently, having malpractice insurance is a good idea considering the ramifications of not having it in the event a mistake is made. However, insurance companies know that malpractice insurance is a choice and they price their product accordingly. Forcing attorneys to purchase malpractice insurance will lead to increased premiums as the insurance companies no longer have to be concerned with overpricing their product. The fact that a group of educated individuals such as the BOG would even be considering this move is a travesty. Did the insurance companies put you up to this?
303. I am mostly retired but occasionally appear in court to help a friend, neighbor or family member at no cost. It is unfair to impose this requirement on attorneys such as myself who are providing our services infrequently and at no cost.
304. I have always carried malpractice insurance. But this is a HORRIBLE idea. What happens if you get sued and lose the ability to obtain malpractice insurance? No carrier will cover you. It is hard to get insurance even when you haven't been sued. Then you can't practice law if you can't get insurance? HORRIBLE. A better way would be to consider increasing bar dues and the State Bar obtaining coverage for a client protection fund in the event of malpractice-caused losses. You lose the ability to practice if you can't get insurance? Is that what you want to do? I can't believe that.
305. Most large firms are insured by Lloyds of London underwriters or other foreign carriers, as most US insurers do not have the capacity to insure large law firms. If insurance is mandatory, the rules must be worded in such a way that the insurance is not required to be issued by carriers admitted to write policies in Nevada, since most London Underwriters are not admitted to write coverage in Nevada.
306. In terms of protecting the public, disclosing you do not have insurance is waaay better than disclosure of having insurance.
307. Does the proposed law account for a practice with only one or a handful of clients that are sophisticated or related to or even owned by the attorney and therefore willing to allow the attorney to go bare?
308. This seems to make more sense for attorneys who provide legal services to the general public. I am in-house and would be interested to know the rationale for requiring. I am not aware of situations where this had been a big issue with in-house counsel.
309. I don't have an active law practice but provide a great deal of work to pro bono clients, helping with corporate compliance, formation, etc. I help a lot of neighbors & friends who can't pay a regular attorney. I meet all annual CLE requirements. Why do I have to pay for insurance? My skill and time help a lot of clients who can't afford legal fees.
310. As someone who currently sits on both the disciplinary board and client security fund board, it is imperative that attorneys practicing in the private sector maintain malpractice insurance. There may be certain areas of practice that may not have a high probability of malpractice activity, but it is my belief that we, as a profession, need to protect the public in both perception and practice.
311. What is the effect for those who do not maintain coverage. Will their license be suspended? Claims made policy may not provide coverage for claims made after the expiration of a policy. What protection is considered for the client?

312. I maintain and have always maintained professional liability insurance. However, it dawns on me that there may be those who are unable to obtain it. It seems intrusive to deny those attorneys the right to practice simply because they are in private practice as opposed to those who work for government agencies or in-house for corporations.
313. As a solo practitioner I have looked into the cost of professional malpractice insurance. Due to factors outside of my control, such as age, my premium would put me under sever financial distress. I believe that mandatory notice of insurance status would help inform consumers and would not necessarily hurt my practice. Also, in my experience, clients who have claims which would be subject to large damages are not going to small or solo firms. Instead, they opt for larger established firms which would either have insurance or significant financial means to defend or settle a malpractice claim.
314. Requiring attorneys in private practice to carry professional liability insurance is excessive. Malpractice insurance is sufficient.
315. I think the phrasing of the questions in this survey were super loaded.
316. This is just another money grab like CLE, but this time for insurance companies who will hold attorneys hostage with high insurance rates. Clients are free to inquire if their attorney carries malpractice insurance, and decide whether or not they want to retain their services. This is not something the Board of Governors should be poking their noses into.
317. Malpractice insurance should be encouraged, but not required unless there is a particular reason for it, i.e. an attorney had a prior issue. Moreover, if an attorney has a problem, he/she should have to fix the problem, not just get insurance to cover the problem.
318. Oregon has tried this tack and the system did not work or is at least faltering upon bankruptcy. Premiums have been wholly out-of-control. The system simply did and does not work. To require attorneys to have a certain amount of coverage permits insurers to pervert the marketplace as they know that there is a certain number of policies at the minimal coverage range. Finally, one cannot protect all Clients. They pay, to a certain extent, for the coverage and should inquire as to coverage. Depending upon the answer, they can either retain that attorney or look elsewhere. We say that attorneys and doctors have the closest relationships of any profession with their Clients and Patients. It is a contradiction in terms to say that the relationship is confidential under all circumstances on one hand, but hey, we want to insure that you have these attributes on the other hand.
319. In my view mandating insurance coverage threatens the availability of attorneys to provide legal services to the public. The competence and ability of an attorney to assist a client has nothing to do with whether they have malpractice insurance. Mandating disclosure of insurance (or making that information available on the Nevada State Bar's website for public access) may have merit. But restricting attorneys from being available to assist the public because they lack malpractice insurance is not appropriate and not in the public interst. Too few laypersons can afford or obtain legal assistance from an attorney. Restricting the pool of attorneys by mandating malpractice insurance (that some cannot afford or that some would just elect to not obtain and cease practicing) would not serve the public interest. It would make attorney's services, already difficult for persons of modest means to secure, less available to the public.
320. There is no "one size fits all" that is going to protect the public from malpractice/negligence. And, if all attorneys are required to carry insurance and the plaintiffs' bar knows that, might you see an increase in malpractice claims? I again see the Bar trying to address an isolated problem through some mandatory requirement for all attorneys. Address the problem; don't burden all attorneys with more rules. I would note this won't affect my practice because I carry malpractice insurance at a relatively high level for a small, rural firm (\$5 million/\$5 million).
321. If imposed I would give up my active license and would no longer provide pro bono advice to nonprofits in the state of Nevada

322. This proposal is in interference with the public's right to freely contract with legal counsel of their choosing under the circumstances of their choosing. If the public desires to contract with legal counsel who carries significant malpractice insurance, they are free to ask that question of the lawyer. If the lawyer refuses to answer, or does not have malpractice insurance, the client can seek representation elsewhere. If the Client desires to contract with an attorney who does not carry malpractice insurance for any number of reasons, relationship, expertise, lower overhead etc. they should have that ability to do so, as should the lawyer to have the ability to take on the risk of malpractice without insurance if he/she so chooses. The State Bar should not interfere on this issue and should leave this issue between the lawyers of the State of Nevada and their clients.
323. I have been denied coverage and this would put me out of business.
324. I am semi retired from private practice and do less than 250 hours of legal work per year mostly in the ADR area, for nonprofits or for friends and families. Having to purchase insurance before I could do these things would prohibit me from doing these community services.
325. This is yet another dumb idea. Clients can already find out IF a lawyer has insurance. In this day and age clients have never had more access to info about a lawyer prior to hiring one (i.e. webpages, Avvo rankings, state bar web info). If a client cares about insurance they can use these tools to make sure they hire a lawyer that has it. Take a free market approach and forget this plan to require insurance. Thank you.
326. If the Bar wants to impose mandatory insurance it needs to make a case for it. You know, like lawyers do. What is the average malpractice judgment amount? What is the average settlement amount? What areas of practice attract the most malpractice claims? How many clients are damaged by attorney malpractice? Not intentional wrongdoing; but actual negligence. Let's see some evidence that there is a problem before issuing yet another edict.
327. I think mandatory insurance to practice law is not the right answer. However, mandatory disclosure would be an effective way to put clients on notice. I believe that the bar currently lists whether an attorney has malpractice insurance, and I believe that disclosure is sufficient.
328. The questions appear to be biased toward reaching the conclusion that malpractice insurance should be mandatory in order to practice law. They are like asking if someone still beats his mother. Any answer is unfair. I have been practicing for nearly 35 years -- some time with insurance, and some time without -- and have never had an issue with malpractice. To force me to have to have it or be barred from practicing my profession is personally distasteful. Perhaps the Bar's energies should be concentrated more on providing younger lawyers professional education in ethics and civility.
329. In my practice, most of the claims I handle are not worth \$250,000, so having that amount as a policy minimum is excessive and unnecessary to protect the client. For me, having a policy is a good business practice, but it is not necessary the only business practice. I do not like the idea of the State Bar forcing me to run my business in a particular way or obtaining a specific policy. This amounts to an additional fee or fine to be a lawyer. Also, this will likely harm smaller and solo practices more than larger firms which already have these types of policies. If I worked at a large firm, the firm might cover my insurance, whereas smaller firms may not have those resources for its employees (or themselves). Also, my clients could still sue me even if I did not have insurance - I sue plenty of uninsured Defendants and sometimes that helps get me a resolution better than dealing with an insurance company. I see no benefit by enforcing this kind of policy.
330. How about you work on the pitiful state of the Bar's finances, and leave me and my insurance alone?
331. When I served on the Board of Governors I was a strong advocate for (1) Mandatory Malpractice Insurance and (2) Mandatory Pro Bono. It is inconceivable that one cannot drive a car without insurance but one can practice law without insurance and I do believe that the overwhelming majority of non-corporate clients believe that lawyers carry professional liability insurance. DO IT!

- It will also help reduce marginal practitioners since they will not be able to afford insurance. It's time ...way past time.
332. Malpractice coverage should NOT be required. The mandating of such coverage will cause the coverage to become more expensive and less worthwhile, as in virtually all other settings where coverage is mandated. Mandating coverage is also a method for substantially increasing the costs of solo and small firm practices in order to favor larger firms. Many knowledgeable clients avoid large firms, and NONE of these clients is looking for lawyers based on the malpractice coverage they carry.
333. I can't emphasize how much I disagree with this proposal. Don't do it. Nothing about this proposal will improve the delivery of legal services in this Nevada. All you're going to do is force attorneys, good and bad, to charge more to clients. Your survey questions are complete garbage by the way. Could you at least be a little subtle about putting your thumb on the scale?
334. No questions were asked about the possibility that regulations might include a restriction requiring authorization of the insurer to do business in Nevada. Depending on what this means (e.g., does it exclude what are called "non-admitted" insurers who are not covered by a state's insurance fund?), such a requirement might severely hamper the ability of some lawyers (with either a claims history, disciplinary issues, or a particularly risky area of practice) from obtaining the mandated insurance coverage.
335. I would like to know the number of actual lawsuits filed against Nevada attorneys for malpractice, how many attorneys actually carry malpractice, the average amount of coverage for such attorneys, and the average amount being paid in annual premiums.
336. I am 75 years old and consider myself semi-retired. Since I closed my office, I have been covered by tail coverage for work done prior to that date. The only new matters I have taken on have been from a single source and all parties have been in agreement. The remainder of my work is for previous clients who have questions or want to make simple changes to their estate plans. Since my total fees for this year are less than \$5,000, malpractice insurance would not make sense.
337. The practice area, firm size, and types of cases typically taken needs to be considered when determining policy limits.
338. An attorney should have the ability to decide how he or she wants to manage his practice. That includes not having malpractice insurance if he/she wishes not to have malpractice insurance. (btw you did not have \$250k/\$500k as an option which is what I have.) We should not be required to carry malpractice insurance, but we should be required to have to publicly disclose whether we have malpractice insurance or not, and whether it meets the \$250k/\$250k suggested minimums, but not disclose the actual amount of coverage. "Let the market decide" is a good mantra here. If a client knows that an attorney doesn't have malpractice insurance, that client may be inclined to take their business elsewhere.
339. Perhaps merely require disclosure of lack of malpractice insurance before assuming representation of a client if the attorney does not carry malpractice insurance.
340. We live in a society with the freedom to contract. Every business potentially can injure its clients/customers by the business' negligent acts. However, we do not require every business in Nevada to maintain errors and omission insurance to cover such negligence. Attorneys are no different than any other business. We should maintain the freedom to contract and not mandate a requirement when the marketplace allows consumers to choose with whom they do business. Consumers already make decisions about whether to do business based on whether the attorney maintains malpractice insurance.
341. There are several questions in the survey that are clearly meant to tilt the results of the survey in favor of mandatory insurance. this give the appearance that a decision has already been made and the survey is just cover to support that decision. Very unbecoming of a State Bar. I have practiced for 30 years in California (12 years in Nevada) without malpractice insurance. I have not

- had a single claim made against me. Why? Good client relationships; ethical behavior; excellent work; matters properly calendared. I suggest the Bar work to raise the standards of attorneys instead of adding a government mandate. I would also suggest a portion of all Bar dues go to a common pool to provide minimal coverage of claims not covered by malpractice insurance. that
342. Malpractice isn't determined by having malpractice insurance. Malpractice is determined by competence. You may have the highest requirements for insurance and still have incompetence and malpractice. Practitioners of the law are professionals who undergo lengthy educational requirements along with a difficult Bar Exam and character fitness vetting process. Where do you draw the line? How is the community protected if you have limited legal services only available the top earners in the community? These added requirements do nothing more than increase expenses for attorneys who represent the vast majority of members of our community. Implementing these additional hurdles will only harm the local community and serve the interest of the few who can afford to higher expensive legal advocates. If the Nevada State Bar is concerned about the community - they should emphasize targeting those engaged in the unauthorized practice of law. Focus on expanding legal services to average citizens with medium to lower income as opposed to creating hurdles that result in higher legal fees which prevent middle to low income earners from affording legal advocates. These additional hurdles will only diminish the availability of advocates who fight on behalf of members in our community with limited financial resources. How do these additional hurdles help a single mother who requires reduced legal fee to help fight abusive creditors preventing her from financing a home for her and her family? How do these additional hurdles help the local hotel/casino employee, making 10 dollars an hour, fight against creditors engaged in wage garnishment? How do these additional hurdles help a single-parent defend an aggressive custody matter? We have to draw boundaries - there are minimum requirements to protect the community. But we must also be cautious about implementing additional hurdles that will end up doing exactly the opposite of their intent - protect the community. Additional hurdles for legal advocates will very likely harm the community as a whole and make it easier for those who can afford legal advocates further exploit members of our community who are not as fortunate. Additional Note: I am deeply offended by the expression used in this Survey "Going Bare." The sexual innuendo with that expression is unprofessional and gives the impression that this important issue is not taken serious. I am deeply offended. I assume these survey's influence policy decisions in our profession and there is no room for such language in this very important dialogue.
343. I have over 35 years of experience as a lawyer practicing in both Nevada and California, representing both individuals and corporations. While I am well covered under my firm's policy, I am strongly against mandatory insurance requirements for all attorneys. Putting aside the question of how much coverage is "sufficient" for everyone's practice, or whether accommodations should be allowed for those attorney who are just starting out, what happens to existing clients if the attorney or firm can no longer afford coverage. Does he or she simply end his carrier and sent out "Dear John" letters to the clients? What if the lapse in coverage is only temporary? Does he or she then send out "Just Kidding" letters? Can the client waive the requirement so he or she may hold onto the attorney he or she selected notwithstanding the lack of coverage? Given the sometime arbitrary evaluations of risks by insurance underwriters, firms can find themselves without coverage without much notice. This is particularly so when considering the insurance market available to solo practitioners and smaller firms. I respect my clients and fully inform them of coverage when asked. In my opinion, the only effective answer is to keep the client informed. Written confirmation by the client of the attorney's insurance status is a good practice to memorialize the disclosure.
344. Cost of such insurance is a major concern.

345. The data for actual malpractice actions which result in a unrecoverable judgment needs to be disclosed and analyzed to determine whether this really an issue as compared to attorneys gambling or drinking away trust accounts, which wouldn't be covered by malpractice insurance.
346. during a short period of prior practice in a mandatory malpractice state, it was common for opposing counsel to make references about the ease of submitting a complaint to the bar and or carrier and how that would effect future rates even if the allegations were unfounded. it seems like there will always be some type of abuse no matter what the final decision is.
347. This is a "feel good" remedy that will actually create more problems than it will resolve. It is similar to the way bar discipline has been meted out by the SBN, in that the small fish are prosecuted while the powerful members of silk stocking firms often get a pass. It is a bad idea.
348. Shouldn't be mandatory.
349. I can afford to better serve my clients at more reasonable rates the less that I have to pay out for malpractice insurance. The nature of E&O coverage is that it keeps going up, year after year with a claims made policy, while simultaneously providing no coverage upon retirement unless the attorney keeps coverage alive. The majority of small firms and solos simply are barely getting by without this added burden and expense.
350. I would strongly request that the Board of Governors NOT mandate that lawyers carry professional liability insurance.
351. Any economic burden that is mandated in order to conduct business should be minimized and avoided as much as possible; especially insurance because mandatory insurance creates an uneven business playing field for the consumer. Also, mandatory insurance for attorneys will create a market place for claims and will encourage the filing of marginal claims against attorneys as well as will generally promote the filing of legal malpractice cases. Just as accident/injury attorneys advertise, it is highly foreseeable that TV lawyers will advertise legal malpractice claims, which will degrade the legal profession.
352. Insurance companies do not look out for the best interests of the policy holder (Attorney) or the beneficiaries (Clients) of the policy. Insurance companies primary focus is profit and their own best interests. Further, insurance companies often will not act in good faith even if a claim is valid and will initially deny and/or delay the payment of a claim since it is in the insurance companies best interest to do so.
353. 250000 is way to high for a minimum. this is a ridiculous barrier for solo and part time attorneys. I carried malpractice and insurance when I was taking on cases with significant assets at risk. now working part time I don't carry coverage because it is not necessary for what I do. Some attorneys only do traffic tickets. They should not be forced to carry 250,000 in insurance. Some attorneys don't actually practice because they are raising children and only keep their licence active in case an old client needs something small done or to keep current for when they want to return to work. The fact you are even considering this just shows how completely detached from the reality of most attorneys the board of governors actually is.
354. Generally speaking, it is good for the public, the attorney and the profession when attorneys carry malpractice insurance. Requiring attorneys to disclose when they do not carry E&O insurance is a good idea. I don't believe those attorneys who do carry insurance should be burden with making mandatory disclosures. Imposing that on them exposes them to discipline for failing to make the disclosure. Instead, burden those attorneys who do not want to carry insurance by requiring them to disclose that to the public. I am aware of several attorneys who had active licenses, but were not actively practicing , who have helped a person in need at no cost and did not have insurance at the time. Further, the matters handled were not remotely likely to result in a claim being brought against the attorney. Increasing regulation and the cost of maintaining an active license deprives the public from receiving help from attorneys that may be willing to handle a small matter at no cost on behalf of a client. In the situations I am thinking of, neither the

- attorney nor the client would have been dissuaded from proceeding in the relationship because the attorney did not have insurance. I don't have the view that those working in the bar office have. I suspect you see egregious harm caused by uninsured attorneys. So, I respect that this is of concern to you. But generally, in life, I think as a society we are better off with regulations that require disclosure rather than regulations that increase the cost of doing business, which gets passed on to the clients and results in additional people being priced out of the market.
355. The BOG seems intent on making serious and substantial knee-jerk PR reactions to the Rob Graham situation by pushing this proposal and the random IOLTA audit proposal. The BOG seems to be oblivious to the overhead costs incurred by solo attorneys and the impact these proposals will have on solos. Requiring malpractice insurance is no way a guarantee that a lawyer will not commit malpractice. While it arguably gives the client some source of recovery it will not fully compensate a client in the event a mistake exceeds the policy limit. What it will do for sure is to impose further overhead costs each year on an attorney who gets NOTHING back for not committing any malpractice. All this so the BOG can promote they "are protecting the public" and for insurance companies to get even more profit. If this proposal is mandated the costs of malpractice premiums are going to skyrocket.
356. Foolish idea. No other businesses are mandated to have insurance. You just increase the public's cost for attorney services, and as a practical matter, you also increase litigation over such services. Bad idea in business.
357. I strongly believe there should be an exemption for pro bono work done outside the supervision an agency that carries its own malpractice insurance. I work in-house and don't have malpractice insurance. However, I enjoy doing pro bono work. I would be unable to do this work if I had to carry insurance to do so. The insurance premium would be paid by me and would be cost prohibitive.
358. Is this separate than the malpractice the firm carries that each associate is protected under? Is it insurance for the individual lawyer no matter where the lawyer goes and basically the lawyer pays for it? It was unclear.
359. I do not believe it should be mandatory to have malpractice insurance, and mandatory malpractice insurance would restrict and limit public access to attorneys. However, I do believe an adequate disclosure of information concerning whether or not an attorney has insurance should be mandatory and would serve the public.
360. No additional comments at this time.
361. This will make rates go up even for those who opt to get insurance coverage without the mandate
362. The cost of liability insurance is very high. There are too few liability insurance carriers to make the market competitive. Shopping for liability insurance is very frustrating since there is little or no difference in the costs of insurance. Making insurance coverage mandatory would be a huge benefit to insurance companies but will prejudice the ability of many lawyers from practicing outside a law firm. This in turn reduces the competition for good lawyers thus increasing the costs of attorneys. In order for this Rule to be practicable the minimum limits of liability would have to be very small which translates into limitations on scope of coverage rendering the protection illusory. Additionally, set lower limits would encourage lawyers to "buy" lo-cost insurance under the impression that additional coverage is unnecessary. Mandating lawyers inform their client that they do not carrier insurance is good but requiring insurance is unreasonable
363. I only see this as helping the high risk plaintiff's law firms that have been hit with a sufficient number of legal malpractice cases that they have become self insured because of the high premiums. To put something like this in place does not help the average solo practitioner trying to get by on teeny tiny cases where \$250k limits gets eaten up by defense costs. Without a doubt, as soon as there are limits like that required of attorneys, all legal malpractice plaintiff's attorney

- will start making the \$250k demand because legal malpractice suits are expensive to litigate and even if a case is only worth \$15k, defense fees could be that as high as \$250k, thereby forcing a higher settlement. Also, even if you require insurance, that does not mean there will be coverage. Legal malpractice insurance is always a notice claim policy such that before you change carriers, you have to list all known claims even if not filed yet so that it is covered by the next policy. This type of policy makes it very easy for carriers to deny coverage, saying the insured did not make the required disclosure. In all practicality, an attorney may not know he had to give notice to the new carrier because often times as attorneys, you don't know when your client is just angry or is actually going to sue you. So if the goal is to protect the community, implementing mandatory carrying of policies is not going to accomplish that purpose. All this will do is create a bigger market for attorneys who sue other attorneys.
364. One prior claim whether meritorious or not renders most attorneys ineligible to obtain renewal and/or new coverage. The only way this works is a pool system where everyone can obtain coverage...will need to be handled by State Bar .
365. This will not concern me because I have no Nevada business to speak of. I do know that the underwriting process can separate the wheat from the chaff. I have been shocked at the number of bare attorneys in my practice. They rely largely on their poverty to insure they don't get sued.
366. How about the Bar finding low-cost insurance that could be available to members. Right now, my malpractice insurer is making more money from my practice than I am.
367. What will be the impact of mandatory insurance on premiums and coverage. As a solo my coverage is limited to \$2 million/\$4 million with a \$4400 premium. I would prefer higher coverage but it is not available, and it would be less affordable. Will mandatory coverage affect my coverage and/or my premium? Also, what happens to an attorney's ability to practice law if carriers refuse to provide a policy or a policy is prohibitively expensive? Will the Bar or the Insurance Commissioner compel carriers to provide coverage and set a ceiling on rates as long as the attorney is licensed to practice?
368. the 250K requirement needs to be "per firm" rather than per attorney. The requirement of 250K is ambiguous. Compare California 100K per attorney with max of 500K per firm, I think.
369. As an attorney not practicing in Nevada who might plan on retiring there and with an interest in possibly becoming engaged in pro bono work, the potential lack or cost of malpractice cover would be a tremendous disincentive to engaging in such activity.
370. If malpractice insurance will be mandated it should either be a smaller amount, such as \$25K, or else the State Bar should provide pool coverage so it can be affordable by lawyers that are either new to the professional and paying student loans, etc., or older attorneys that look to wind down or slow down their practice
371. I once heard my mentor say that practicing w/o malpractice insurance was like driving w/o brakes. I concur. What is probably prompting this is Mr. Graham's travesty and I think about his former clients often and what a blemish he has left on our community. However, I am a also baby attorney, a single parent, 130k in debt, and am not yet affiliated with a firm so I would worry how this extra cost is going to affect me once my clerkship is over (but I am strong and determined as all heck-no whining here). In sum, good idea, but don't make it something that is overly burdensome to the baby attorneys saddled with 130k in loan debt, solo practitioners, retired counsel that give back with pro bono, etc.
372. This would seriously impact semi retirees
373. This survey looks like the Board is considering a one size fits all solution. I would suggest that insurance is not the primary issue with the reputation attorneys have in the community. Rather the primary issue we face is attorneys stealing money from their clients. Insurance will not cover these claims as it arises from intentional conduct. Making the client security fund more accessible would be one alternative solution. Furthermore, disbaring and criminally prosecuting attorneys

- who steal should further be aggressively pursued to ensure the public trust. As it is, I understand the Office of Bar Counsel has limited funding and is losing lawyers at such a fast rate that indicates they are either underpaid, subject to adverse working conditions, or both. And the DA's office has failed to prosecute lawyers for their wrongdoing. These issues need to be corrected before instituting program that will not solve the underlying problem.
374. I believe this should have been done long ago. Health care professionals and other professional organizations carry liability insurance. I think it would be about a forced and positive change to the legal community. I believe it would force attorneys to be diligent, and would provide the courts an ability to enforce procedural rules without concern for the non-offending party client being penalized for their counsel's lack of adherence to NRCP and court orders. It would allow the court to issue the sanctions provided in many of the Rules because the client would still have recourse against their counsel for any misconduct that precludes their case from going forward. I am strongly in favor of this. It will weed out the attorneys that do a disservice to our profession and protect those who routinely follow rules and orders.
375. Mandatory malpractice insurance will be an effective tool in helping to disbar bad attorneys.
376. I'm not sure my responses should carry any weight. I'm a newly admitted attorney and work in-house so have no idea what the costs of insurance may be. If insurance costs could be lowered through a group insurance plan offered by the State Bar, then I think mandating insurance would be beneficial. But if it's cost prohibitive to the point you're preventing an attorney from practicing, I think that would be a huge disservice to the community...
377. This is a very bad idea. Very bad. Maybe a minimal \$100K policy, but what if lawyer can't get insurance or afford it? Need lots of waivers and options out of it to keep good ethical lawyers serving the community in business. I have malpractice insurance, but it's expensive. Just post on state bar web site and fee agreement if lawyer doesn't have insurance.
378. More regulation is not the answer. Let market forces dictate whether attorney's have malpractice insurance or not. Bad attorneys need to fail so they are eliminated from the market place.
379. This was a very biased poll designed to get the desired results.
380. I think even the suggestion of mandatory malpractice insurance is burdensome, unreasonable, and unnecessary.
381. This makes sense only if the State Bar also obtains a number of carriers who will guarantee that they will provide coverage to all members, regardless of practice area or loss history. Also, the proposed minimum limits are too high; and fail to provide the amount of deductible. This is a good idea in principle, but it needs a lot more fine tuning.
382. Nevada has run-away jury awards against attorneys causing limited carriers (my first carrier pulled out of Nevada) and a "jackpot" mentality against attorney malpractice. Among clients, losing a case = malpractice. Not malpractice. Every 'bare' attorney I've ever known has personally made the client whole when there was an issue, so I don't think this is about protecting the public. It will negatively impact the 'average' professional by creating a barrier to entry to middle class attorneys and their middle class clients, who cannot afford the premiums. Simply put, this will negatively impact upper/lower to middle class people and the attorneys who service them.
383. I am assuming that "attorneys in private practice" will be defined to exclude Government attorneys and other public attorneys.
384. Requiring lawyers to disclose whether and/or how much insurance they have would be tantamount to putting a bullseye on our backs. Any disgruntled client, even in the absence of true (insurable) malpractice could file suit and it could evolve into what the personal injury market is now. Everyone has to carry insurance, so everyone is a target for unreasonable demands related to lawsuits because "who cares, it's the insurance company paying."

385. Requiring attorneys to publically disclose or list the amount of coverage would create a disadvantage to smaller firms. Large firms can afford to carry more coverage than a smaller or solo firm. This may be perceived by clients as a disadvantage of using smaller firms.
386. I have been admitted to the bar for 32 + years (31 + in Nevada). I have never had a claim of any sort for negligence and/or negligent representation. I believe the decision as to whether to carry professional liability insurance should continue to rest with me. Thank your for the opportunity to express my views.
387. Just like any other business, it is for the client to ask whether you have malpractice insurance. I do not believe it should be a required disclosure to the client and think the incidence of false claims will increase dramatically.
388. First mandate disclosure of insurance and see how that goes. Then, with more information and some data from requiring disclosure, only THEN should the Board consider mandating insurance coverage. I think at this point, requiring disclosure of coverage or lack thereof is sufficient!
389. The State Bar needs to ensure that "bad" attorneys are disciplined, and received more than a slap on the wrist.
390. I am semi-retired. I occasionally represent people on a pro bono basis and represent a corporate entity on mostly non legal matters but sometimes on a legal matter. I pay a \$500 bar fee, a \$40 CLE fee, \$500+ talking required CLE courses. If the bar requires me to purchase malpractice insurance I will surrender my law license and will do no pro bono work. The state bar will also not receive dues from me. I disclose on the bar web site that I don't have malpractice insurance. I will be personally liable for any malpractice. Adding an additional expense for someone who does not practice law full time will be the straw that breaks the camel's back and there are unintended consequences.
391. There should be different standards for those practicing exclusively in criminal law, where the standard for being sued for malpractice is far different than those in civil practice.
392. It is sad that the profession has come to this given the egregious acts of a minority of attorneys. With that being said, public protection from unscrupulous attorneys is paramount and practicing without liability insurance should no longer be allowed.
393. Mandatory insurance will prevent uninsured attorneys from charging less than those that have insurance and thereby obtaining a competitive advantage
394. Please consider the Washington State example, where insurance is not mandatory, but information regarding whether attorneys carry a policy is publicly available via the WSBA website. If the State Bar of Nevada is going to require its members to carry a policy, the Bar should consider offering insurance coverage to help keep the cost manageable.
395. I already thought it was mandatory
396. This is the most biased survey I have seen in professional use. It's written like the decision is already made and you all need some data to make it look like you have support. The BOG is off the rails recently
397. Perhaps there should be a formal study done by an economist on the likely impacts.
398. We have too many regulations as it is. We do NOT need any more nor does the public.
399. Another solution in search of a problem. The Nevada State Bar should let market forces dictate insurance... And, if there is a problem with trust accounting, demonstrably incorrect legal decisions, and the like THAT RISE TO A VIOLATION OF THE NRPC, then the Bar should act. And swiftly. If the rumors are right, the flagship situation is Lawyers West, and, if the rumors are right, there was not enough insurance for the losses EVEN IF coverage could be triggered, which would take artful pleading. It is the Bar that is supposed to investigate and discipline attorneys. If the Bar wants to buy insurance for all attorneys and to cover up its poor discipline record, then maybe it

- should -- and name every Nevada licensed attorney as an additional insured. But to cram down a new obligation, that would threaten small firms and create viability concerns is misguided.
400. Attorneys are tasked with assessing risks on a regular basis. One such risk is malpractice. new attorneys especially are both at the highest risk on performing malpractice but also are faced with the highest costs and lowest returns. As such, I am concerned that mandating malpractice insurance will reduce the availability of attorneys, but also not allow attorneys to structure their practices in the most efficient manner, especially when providing legal service to low income clients.
401. If mandatory insurance is required, I will not be able to practice law in Nevada. This will add to an already very long list of costs to practice law in Nevada.
402. The questions in this survey were incompetently designed and have an inherent bias in favor of mandating insurance coverage. If the Bar wanted real opinions, instead of a survey designed to validate its predisposition, it could have at least designed a survey that has some validity to it.
403. Just more babysitting by the bar. Trying to protect all victims of the world. Only trying to look good to the public with a obvious disregard for those who practice law. Increasing regulations, increasing your control. Typical power grab for a government-sanctioned institution. Social justice for all? These are just a few of my thoughts. Gets old seeing these types of proposals coming from the bar.
404. This is a decision between the attorney and the client. I have not seen this to be an issue, and if so, the State Bar has not communicated this very well. It will eliminate any pro bono work I would do (since I am a government attorney and do not carry insurance).
405. I strongly oppose the BOG's proposal for mandatory professional liability insurance.
406. Typical BOG over-reach.
407. I think it's about time that malpractice insurance was required for all Nevada attorneys in private practice.
408. attorneys who carry small case loads or who do low bono or pro bono work should have lesser requirements; conversely, attorneys who carry high case loads, work in very large firms, and/or have high-risk practice areas should be required to carry proportionately more insurance
409. A mandatory disclosure requirement would be more than sufficient to advise clients of any potential risk and allow them to make an informed choice. Mandating liability coverage would simply increase the cost burden for small practices, quite possibly substantially and further reduce the availability of legal counsel for under-served areas of our community.
410. An exemption for public sector attorneys who aren't actively representing clients should be exempted from the requirement.
411. Yet another solution to a problem that would not exist if the State Bar of Nevada adequately limited the number of attorneys entering the profession in Nevada, and made the Nevada Bar Exam sufficiently difficult. Rather than aggressively regulate the entire bar to remedy the wrongs caused by proverbial overfishing of the Nevada legal market's waters, it would make more sense for everyone if the State Bar effectively limited the number of entrants who may participate.
412. I am TOTALLY opposed to mandatory requirements for insurance

Additional Comment: This comment was received via email for inclusion in the survey results.

I took the emailed survey and submitted it last week but it took me a while to get some quotes for coverage so I could submit some more detailed comments.

I went to ALPS because I saw they were endorsed by the Bar and I had gotten coverage from them briefly many years ago. I assume their rates are competitive.

I do not want to be made to buy malpractice insurance. I have been in practice for 37 years, I have never received any claim of malpractice and I do not expect any.

I have never had a client ask me if I had insurance coverage.

I have sufficient funds available to cover the proposed limits for mandatory coverage.

I put in about 400 billable hours last year and I do not expect much more this year.

ALPS will give me about \$35 discount for having a light practice.

I was quoted premiums of \$1,339 for \$100/300k or \$1,883 for \$250/250k of coverage. That requires me to commit malpractice during the 12 months' coverage and for the claim to be made also within the same 12 months. I find this to have a ridiculously low chance of occurrence.

I just really do not see why the bar should require me to pay \$1,300 or \$1,800 for a year's coverage. What are the chances me committing malpractice in the next 12 months, the client filing the claim within the same 12 months and me not just paying off the claim from my own funds if it has any merit?

Each year I buy coverage the premium increases to cover the prior years. The estimates given to me by ALPS are as follows, quote:

An example/estimate would be:

Limits of \$100,000 / \$300,000

Year 1 - \$1,300

Year 2 - \$1,430

Year 3 - \$1,600

Year 4 - \$2,000

Year 5 - \$2,200

Year 6 - \$2,400

Year 7 - \$2,400

Year 8 - \$2,400

My last time in court on a contested matter was 2012. Right now I have one client who is being sued for declaratory relief on an easement, two client traffic tickets, an HOA converting from a profit to non profit corporation, a pending negotiation of a wrongful termination in public employment, a guardianship that requires annual accountings, a small family corporation where I mediate any internal frictions, a family with some real estate holdings that requires counseling in a legal context and a restaurant that wants a management contract for two employees. I have a variety of smaller matters pending.

The only litigation matter in this portfolio had a complaint filed in August, my client was served in September, I pointed out some confusion on the Plaintiff's part and we have had an open extension since

then to allow us to *not* have to file any responsive pleading while the Plaintiff thinks about their case a little longer. My client signed my retainer letter where I stated the expected ruling of the court, just so he would know where I predicted this matter would end if submitted to a Judge.

I make some routine probate appearances, I file annual lists of corporate officers, I prod corporate clients to hold annual meetings, I expect to file a petition for change of name next spring when my client turns 18. People call with simple questions that I answer over the phone. I steer people to inquire further about their situation and to get back to me. I make myself available to VARN and Nevada Legal Services with my free time. I have a relaxed practice with low overhead and I make a modest living from this.

I do not know what the State Bar and the Supreme Court think about the quality of legal services being offered to the public but I know they want us to be accessible and affordable and to try and steer conflicts towards extra judicial resolution. I do not think that mandatory malpractice insurance would promote any of these goals.

Thank you for considering these comments.



November 15, 2018

Washington State Bar Association
Mandatory Malpractice Insurance Task Force
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539
Email: insurancetaskforce@wsba.org

Dear Members of the Mandatory Malpractice Insurance Task Force:

The Government Lawyers Bar Association of Washington (GLBA) submits the following comments to the Washington State Bar Association's Mandatory Malpractice Insurance Task Force (Task Force). The GLBA is comprised of its membership and a fifteen member executive board. Among other things, the GLBA strives to promote, protect, and further the interests and ethics of lawyers in governmental service, as well as promoting a better understanding of the role of a government lawyer.

The GLBA would support the tentative conclusion of the Task Force that government lawyers should be exempt from any mandatory malpractice insurance requirements.¹ The GLBA also supports the recent recommendations of a Task Force Committee that government lawyers should be "automatically exempted because they would not be 'engaged in the private practice of law.'" The GLBA would also propose that the Task Force consider a broad interpretation of the term government lawyer to include those attorneys licensed to practice in Washington and employed by a state department or agency, a county, a city, or other public or municipal corporation.

The states that have mandated malpractice insurance for lawyers have included an exemption for government lawyers. In Oregon, mandatory malpractice insurance is required for those attorneys who are engaged in the private practice of law.² Exempt from this requirement are attorneys employed by "the state, an agency or department thereof, a county, city, special district or any other public or municipal corporation or any instrumentality thereof."³ Moreover, in

¹ Mandatory Malpractice Insurance Task Force, *Mandatory Malpractice Insurance Task Force Interim Report to Board of Governors*, July 10, 2018 at 2. Found at: [https://www.wsba.org/docs/default-source/legal-community/committees/mandatory-malpractice-insurance-task-force/mandatory-malpractice-insurance-task-force-interim-report-july-10-2018\(00430844\).pdf?sfvrsn=398306f1_3](https://www.wsba.org/docs/default-source/legal-community/committees/mandatory-malpractice-insurance-task-force/mandatory-malpractice-insurance-task-force-interim-report-july-10-2018(00430844).pdf?sfvrsn=398306f1_3) (last accessed November 5, 2018).

² ORS 9.080(2).

³ ORS 9.080(2)(b).

Idaho an attorney is not required to submit proof of mandatory malpractice insurance if they do not represent private clients.⁴ Finally, Illinois exempts those attorneys who are not engaged in the private practice of law from completing a self-assessment of the operation of his or her legal practice in lieu of obtaining mandatory malpractice insurance.

The concerns underpinning the Task Force's tentative conclusion that malpractice insurance should be mandated for Washington-licensed lawyers engaged in the private practice of the law does not apply to government lawyers. The Task Force has identified that a key goal of its project is to "ensure that clients are compensated when attorneys make mistakes."⁵ In addition, the Task Force is focused on "the risk of injury to the *public* that arises from uninsured lawyers."⁶ Put simply, the work of government lawyers does not engage these concerns.

The GLBA appreciates this opportunity to provide the Mandatory Malpractice Insurance Task Force with comments on this important issue. If you have any questions or wish to discuss our comments further, please feel free to contact the GLBA via email at GovtLBA@gmail.com.

Sincerely,



Merediththe Quinn-Loerts, WSBA # 27320
Board President
Government Lawyers Bar Association of Washington

⁴ Idaho Bar Commission Rule 302(2)(5).

⁵ *Interim Report* at 1.

⁶ *Id.*

From: [Joshua McKarcher](#)
To: [Mandatory Malpractice Insurance Task Force](#); [PJ Grabicki](#)
Cc: inezpetersenj@gmail.com
Subject: Mandatory malpractice insurance
Date: Thursday, November 15, 2018 4:32:00 PM

Dear Task Force Members and Mr. Grabicki,

I have been covered by or carried malpractice from Day One of my career, both at large firms, small firms, and now as a solo practitioner. I expect always to do so, especially as I practice on the Idaho border and am an active attorney in Idaho, one of two mandatory states. (I am admitted and have practiced in Washington DC, Virginia, Idaho, and Washington.)

First, I am grateful for the work of the task force, and I approach this issue on the premise that each member has pursued his or her work with good intentions. (Had I been asked to join such a task force, I probably would have thought, "Oh, doesn't every lawyer have malpractice insurance?")

However, on reflection and reading, I oppose the implementation of mandatory malpractice insurance for all active Washington lawyers, at least before Washington attempts incremental steps, such as at least a two-year period of requiring full disclosure to clients that a lawyer does not carry insurance. There are other options, and I believe our colleague Inez Petersen raises fair points and should be heard before a decision is made.

I did not have this issue on my radar until recently when I received her letter to Bar members, and, today, an alert about the Nevada Supreme Court denying that state's attempt to impose the requirement. But her points are compelling: What is the harm in not trying the full disclosure option first? Let clients who are working with lawyers receive the relevant information and make their choice. But it seems apparent to me now that many who do not carry malpractice may be helping those who are less fortunate than my clients and me, or may be charging less for their services. (If they are not helping such clients, and they have to disclose not carrying malpractice insurance, then their high-paying clients may flee quickly. Fine.)

Market mechanisms work. Give them a chance before turning to the easiest solution of imposing this requirement on 8% of Washington lawyers who don't carry malpractice insurance. I suspect that, as often with well-intentioned mandates, the burden will fall nearly entirely upon the most disadvantaged among us, not the most advantaged.

Thank you for your work and your consideration.

Best regards, Josh

Joshua D. McKarcher
McKarcher Law PLLC
537 6th Street
Clarkston, WA 99403
(509) 758-3345

(509) 758-3314 (fax)

josh@mckarcherlaw.com

From: [PJ Grabicki](#)
To: [Joshua McKarcher](#)
Cc: [Mandatory Malpractice Insurance Task Force](#); inezpetersenjd@gmail.com
Subject: Re: Mandatory malpractice insurance
Date: Thursday, November 15, 2018 4:37:20 PM

Joshua

Thank you for taking the time to analyze this issue and providing your thoughts.

I want to assure you that I have read and reflected on Ms. Peterson's emails at some length, and I am confident the other members of the Taskforce have as well.

PJ

Sent from my iPad

On Nov 15, 2018, at 4:33 PM, Joshua McKarcher <josh@mckarcherlaw.com> wrote:

Dear Task Force Members and Mr. Grabicki,

I have been covered by or carried malpractice from Day One of my career, both at large firms, small firms, and now as a solo practitioner. I expect always to do so, especially as I practice on the Idaho border and am an active attorney in Idaho, one of two mandatory states. (I am admitted and have practiced in Washington DC, Virginia, Idaho, and Washington.)

First, I am grateful for the work of the task force, and I approach this issue on the premise that each member has pursued his or her work with good intentions. (Had I been asked to join such a task force, I probably would have thought, "Oh, doesn't every lawyer have malpractice insurance?")

However, on reflection and reading, I oppose the implementation of mandatory malpractice insurance for all active Washington lawyers, at least before Washington attempts incremental steps, such as at least a two-year period of requiring full disclosure to clients that a lawyer does not carry insurance. There are other options, and I believe our colleague Inez Petersen raises fair points and should be heard before a decision is made.

I did not have this issue on my radar until recently when I received her letter to Bar members, and, today, an alert about the Nevada Supreme Court denying that state's attempt to impose the requirement. But her points are compelling: What is the harm in not trying the full disclosure option first? Let clients who are working with lawyers receive the relevant information and make their choice. But it seems apparent to me now that many who do not carry malpractice may be helping those who are less fortunate than my clients and me, or may be charging less for their services. (If they are not helping such clients, and they have to disclose not carrying malpractice insurance,

then their high-paying clients may flee quickly. Fine.)

Market mechanisms work. Give them a chance before turning to the easiest solution of imposing this requirement on 8% of Washington lawyers who don't carry malpractice insurance. I suspect that, as often with well-intentioned mandates, the burden will fall nearly entirely upon the most disadvantaged among us, not the most advantaged.

Thank you for your work and your consideration.

Best regards, Josh

Joshua D. McKarcher
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537 6th Street
Clarkston, WA 99403
(509) 758-3345
(509) 758-3314 (fax)
josh@mckarcherlaw.com

-----Original Message-----

From: Extra [REDACTED]

Sent: Thursday, November 15, 2018 4:00 PM

To: Questions

Subject: Mandatory Attorney Liability Insurance - Bad Idea

Dear WSBA (please forward this to several decision makers),

I am reading that mandatory insurance may be likely. Please re-consider.

In a survey response this past year, I detailed for WSBA the hardship on my many clients if my part-time practice was forced to purchase an annual commercial professional liability policy. I serve the underserved - many low income, post-immigration residents of our community that would not find high quality attorneys otherwise - or any attorney at all. I provide the highest quality legal work. I might practice at a monetary loss under an insurance-mandatory regime.

I want to echo 2 of the 3 attorneys' letters to the editor in the October 2018 "NW Lawyer," attorneys Yanasak and Kogut. Their letters reveal that I am not an unusual practitioner. In the modern economy, we probably represent a great many solo practitioners who cannot afford the economics of the insurance industry - but who nonetheless probably have reserves to pay the non-existent and unlikely claims.

The arguments for mandatory insurance should be extremely clear, unbiased, logical, and should serve all practitioners - and their clients. A mandatory insurance rule must not have a disproportionate effect on solo practitioners, forcing them to close their doors to their clients and leading attorneys to reluctantly give up their expensive law licenses.

My answer is that it should not be required. Many citizens will lose the high quality legal services that attorneys in my position have been

providing.

David Menz

From: [Inez "Ine" Petersen](#)
To: [Hugh D. Spitzer](#); [John Bachofner](#); stan_bastian@waed.uscourts.gov; dan@mcbdlaw.com; christy@myllt.com; gretchen@halehana.com; [PJ Grabicki](#); pl.isaki@comcast.net; [Mark Johnson](#); [kara@appeal-law.com](#); evanm@jdsalaw.com; spierce@davisrothwell.com; pinkhamb@seattleu.edu; tstartzel@ks-lawyers.com; anniey@atg.wa.gov
Cc: [Mandatory Malpractice Insurance Task Force](#)
Subject: Short-term fixes to help the Public become aware of insurance
Date: Friday, November 16, 2018 10:46:29 AM
Attachments: [111618 EXHIBITS A and B.pdf](#)

Dear Task Force members:

I am writing to you individually because getting a packet before a meeting doesn't give you time to read the correspondence and discuss the issues raised during the meeting. It is way to fulfill the letter of the law re distribution of feedback; but it misses the mark on the spirit of the law if you are busy and don't devote time to thoughtfully reading why attorneys do not support you.

The Task Force moved onto [mandatory malpractice insurance](#) so quickly that I'm wondering if there was any productive debate about long-term alternatives and [short-term fixes](#). I share with you my additional comments on both today but mainly focus on short-term fixes.

Long-term alternatives

As you know, I strongly oppose what I consider to be the ALPS-inspired idea of mandatory malpractice insurance.¹

Instead I've written extensively about my ideas for long-term alternatives; specifically to implement an enhanced disclosure procedure which requires an uninsured attorney to disclose this fact in his/her contracts for legal services.

Such an enhanced full disclosure requirement would also be accompanied by a two-year fact finding period to determine the extent of unpaid legal malpractice judgments and how many missed opportunities there are to sue an uninsured attorney for legal malpractice.

Our public image

Has the Task Force considered what a **predatory specialty** will be created by mandatory malpractice insurance and what that will do to our professional image? Attorney suing attorney--not a pretty picture.

It is far better to prevent a client from becoming a victim in the first place by full disclosure than it is to try to use insurance to make the client whole after becoming a victim. There

is so much wisdom in that sentence.

Easy to implement short-term fixes

I have several ideas about short term fixes which are easy to implement.

Paula Littlewood's IT staff should be able to make these changes quickly either on their own or at the direction of the Task Force or even the Governors if that is needed.

My first short term fix

Add "Has insurance?" to the pull down menu on the LEGAL DIRECTORY search with the choice of YES or NO. **See my EXHIBIT "A"**.

This puts the question of insurance front and center for the Public for whom the LEGAL DIRECTORY was created.

My second short term fix

My other idea for today is to re-organize the LEGAL PROFILE which is returned when a person makes a search on the LEGAL DIRECTORY. **See my EXHIBIT "B"**.

By re-organizing the way the data is shown on the LEGAL PROFILE, the information is right at the top about the attorney having insurance or not . . . and NO PAGING is required to see it.

Thank you for considering my additional comments. The only criticism I ever received in performance reviews during my 30 years at Boeing was from an uncreative supervisor who told me that I had too many ideas. I have more ideas and will be forwarding them to you prior to Dec 1st.

Respectfully,

Inez Petersen, WSBA #46213, <https://StarfishLaw.com>

¹ ALPS has self-servingly put forth the idea that mandatory malpractice insurance is "gaining ground" which is not true, Nevada being the latest ALPS casualty.

See interview with Douglas Ende (on Task Force) and Chris Newbold, ALPS vice president, under "Resources" on the homepage of the Mandatory Malpractice Insurance Task Force: <https://blog.alpsnet.com/alps-in-brief-podcast-episode-10-why-is-mandatory-malpractice-insurance-gaining-ground>

See also: <https://lawmrh.wordpress.com/tag/nevada-supreme-court/>

INEZ PETERSEN'S EXHIBIT "A"

The screenshot shows a web browser window displaying the WSBA website. The address bar shows the URL <https://www.wsba.org/>. The browser's address bar and tabs are visible at the top. The website header includes the WSBA logo (Washington State Bar Association) and navigation links: LEGAL DIRECTORY, myWSBA, WSBA STORE, CASEMAKER, and CONTACT US. Below the header, there are additional links: FOR LEGAL PROFESSIONALS, T WSBA, SECTIONS, CAREER CENTER, and CONNECT & SERVE. The main content area features a search form with the following fields: "What are you looking for?", "First Name", "Last Name", "Area of Practice" (with a dropdown arrow), and a "SUBMIT" button. Below the "SUBMIT" button is a link for "Advanced Search". To the right of the search form is a magnifying glass icon. Below the search form is a button labeled "Has insurance?". The background of the search area is a teal banner with the text "PRACTICE MANAGEMENT DISCOUNT NETWORK" and "Save on state-of-the-art tools and services to power your practice." The Windows taskbar is visible at the bottom, showing the search bar, task view button, and several application icons. The system tray shows the time as 8:39 AM on 11/16/2018.

WSBA Home Legal Profile

REGISTER LOGIN LEGAL DIRECTORY WSBA.ORG CLE STORE CASEMAKER CONTACT US

MY WSBA PROFILE MCLE ACTIVITIES SEARCH CLE STORE MY CLE PURCHASES



LEGAL PROFILE

- MEMBER DIRECTORIES**
- Legal Directory
 - Discipline Notice Directory

Home > Legal Directory > Legal Profile

LEGAL PROFILE

Inez P Petersen

License Number: 46213
License Type: Lawyer
Eligible To Practice: Yes
License Status: Active
WSBA Admit Date: 7/23/2013
Private Practice: Yes
Has Insurance? Yes - [Click for more info](#)

Contact Information

Public/Mailing Address: Starfish Law PLLC
 1166 Edel Ct
 Enumclaw, WA 98022-2137
 United States

Email: InezPetersenJD@gmail.com
Phone: (425) 255-5543
Fax: (888) 253-1074
Website: StarfishLaw.com
TDD:

Practice Information Identified by Legal Professional

Firm or Employer: Starfish Law PLLC
Office Type and Size: Solo practice
Practice Areas: None Specified
Languages Other Than English: None Specified

Committees

Member of these committees/boards/panels:
 None

Disciplinary History

In some cases, discipline search results will not reveal all disciplinary action relating to a Washington licensed legal professional, and may not display links to the official decision documents.

Last Updated: 3/13/2018 7:00:00 AM

From: [Linda Patterson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Opposition to Mandatory Malpractice Insurance for Freelance Independent-Contractor Attorneys . . .
Date: Friday, November 16, 2018 4:09:02 PM
Attachments: [Comments re Freelance Attorneys -- 11-2018.pdf](#)

Please see the attached letter, which contains my comments in opposition to mandatory malpractice insurance for:

- (1) Freelance independent-contractor attorneys who work with law firms; and
- (2) Attorneys who practice outside Washington.

I appreciate your consideration and would be happy to answer any questions you may have.

Regards,

Linda Patterson
WSBA #25947

November 16, 2018

Via email to insurancetaskforce@wsba.org

**RE: Opposition to Mandatory Malpractice Insurance for
(1) Freelance Independent-Contractor Attorneys Who Work with Law Firms; and
(2) Attorneys Who Practice Outside Washington**

To the WSBA Malpractice Insurance Task Force;

I'm writing to respectfully request that if the Task Force recommends requiring malpractice insurance for active WSBA members that it provides exemptions for the following: (1) attorneys who practice exclusively as freelance independent-contractors for law firms; and (2) attorneys who practice outside Washington.

By way of brief background, I'm an attorney who maintains an active license in both California and Washington. I live in San Diego and practice as a freelance litigation attorney for law firms in California (conducting legal research, reviewing documents, and drafting pleadings, memoranda, motions, etc.). I neither represent members of the public nor act as an "attorney of record." Instead, I work as an independent contractor on discrete projects, typically of unpredictable duration. I reviewed the Task Force's 11-page Interim Report to the Board of Governors, dated July 10, 2018, and the 4-page Brochure entitled *Should Malpractice Insurance Be Mandatory for All Washington Lawyers?*, and I did not see my situation addressed in either document.

Independent-Contractor Attorneys

According to the Interim Report and the Brochure, the primary purpose of mandatory malpractice insurance is to protect the public. **Notably, the malpractice insurance policies maintained by the law firms I work with include coverage for the activities of freelance attorneys like me, as the policies include language such as "an Insured is defined as, amongst other persons . . . any non-employee independent-contractor attorney to the Named Insured."** To require freelance attorneys to obtain malpractice insurance is therefore not only unnecessary to protect the public, such a requirement would provide a windfall to insurance carriers who would collect multiple premiums for effectively the same coverage.

Requiring me to obtain malpractice insurance may also put me at a competitive disadvantage, as I would likely need to increase my hourly rate to cover malpractice insurance that is not required of other freelance attorneys practicing in California. Such a disadvantage would be unwarranted because: (a) I do not represent any members of the public in California or Washington; and (b) members of the public are protected by the malpractice policies maintained by the firms I work with as an independent contractor.

Also, traditional law firms that employ attorneys full-time can quite easily calculate the cost of maintaining annual malpractice insurance policies and incorporate the cost into billing rates. My workload, on the other hand, varies rather dramatically each year. As an independent contractor, I can go months at a time without working. As a result, it would be very difficult for me to estimate my hours for purposes of purchasing a malpractice policy, and it would be inequitable for an insurer to collect

premiums during my down-times. The option of switching my law license back and forth from “active” to “inactive” during the year is also infeasible because of the time and expense involved in changing status, and because law firms expect me to have an “active” license when they consider my resume.

Attorneys Who Practice Outside Washington

I’ve been a member of the Washington Bar since 1996, and have maintained my license over the years by paying the annual fees and by keeping up with the 45-credit MCLE requirement (which is almost twice the number of MCLE credits I’m required to take for my California license) because I’ve wanted to keep open the option of moving back to Washington. I’ve also wanted to keep open the option of assisting family and friends in Washington in the event they are in need of legal assistance. Finally, having worked for firms in Seattle before moving to San Diego, I’ve also wanted to keep open the possibility of working with those firms remotely from California as a freelance attorney. However, if I’m required to purchase malpractice insurance to maintain my “active” license in Washington (while malpractice insurance is not required in California), I would be forced to switch to “inactive” status in Washington.

Proposals

As you may know, California Rule of Professional Conduct 1.4.2 provides in relevant part as follows regarding “Disclosure of Professional Liability Insurance”:

(a) A lawyer who knows or reasonably should know that the lawyer does not have professional liability insurance shall inform a client in writing, at the time of the client’s engagement of the lawyer, that the lawyer does not have professional liability insurance.

(b) If notice under paragraph (a) has not been provided at the time of a client’s engagement of the lawyer, the lawyer shall inform the client in writing within thirty days of the date the lawyer knows or reasonably should know that the lawyer no longer has professional liability insurance during the representation of the client.

In the unlikely event that I represent a member of the public in the future (as opposed to working as a freelance attorney for firms), I would be obligated to inform the potential client that I do not carry malpractice insurance. Having been so notified, the client could make an informed decision about whether to retain my services. Perhaps Washington could adopt a similar disclosure rule, instead of mandating malpractice insurance.

If the Task Force nevertheless decides to recommend making malpractice insurance mandatory, I respectfully propose an exemption for independent-contractor attorneys who work with law firms, and further propose that all law firms which retain the services of such attorneys be required to maintain malpractice coverage for the activities of independent-contractor attorneys as “named insureds.” As indicated above, it’s my understanding that this coverage is already provided by malpractice insurance carriers.

///

Another option may be an exemption with language such as the following:

“Malpractice insurance shall not be required of an active member of the Washington State Bar Association who (a) does not represent as a client any resident of Washington in connection with any legal matter, litigation, or transaction inside or outside Washington; and (b) does not represent any person in any State or Federal court located in Washington as an attorney of record.” [“Person” would include business entities.]

These proposals would provide sufficient safeguards for members of the public, forestall an unnecessary financial burden on freelance attorneys, and prevent windfall premiums to malpractice insurance carriers.

Conclusion

According to page 10 of the July 2018 Interim Report, the Task Force would be focusing its efforts on “identifying in detail the recommended exemptions from the professional liability insurance requirement,” and “drafting a proposed Court rule for the Board of Governor’s consideration.” Given the importance and impact of the ultimate findings and conclusions regarding malpractice insurance, I’m hopeful that the public and members of the WSBA will have the opportunity to submit comments regarding the Court rule and detailed exemptions that will be proposed by the Task Force, which, to my knowledge, are not yet available for review.

Thanks for your consideration of my situation, which I suspect is shared by other attorneys licensed in Washington who practice as freelancers for law firms and/or practice in a different state. I’m happy to answer any questions you may have.

Regards,

Linda Patterson
WSBA #25947

From: [Inez "Ine" Petersen](#)
To: [Bill Pickett](#); [Rajeev Majumdar](#); [Dan@mcbdlaw.com](#); [Michael Cherry](#); [carla@higginsonbeyer.com](#); [kyle.s@bullivant.com](#); [danclarkbog@yahoo.com](#); [PJ Grabicki](#); [BHMToleelson@outlook.com](#); [Paul S](#); [jkang@smithfreed.com](#); [Kim Hunter](#); [meservebog@yahoo.com](#); [Athán Papailiou](#); [rknight@smithalling.com](#); [Alec Stephens](#)
Cc: [Paula Littlewood](#); [Mandatory Malpractice Insurance Task Force](#)
Subject: 2019 Voluntary Demographic Information (accompanied 2019 Lawyer License Renewal)
Date: Saturday, November 17, 2018 9:21:28 PM

Dear Governors:

Inappropriate question

On the last page of 2019 Voluntary Demographic Information, the following paragraph appears:

"Please check the box(es) that most closely represents your identity. **Please check all that apply.** If you wish to supply a more specific identity, please check "not listed," fill in the blank and also check the box for the most applicable sexual orientation from the list provided.

And then the choices are:

Asexual,
Gay, Lesbian, Bisexual, Pansexual, or Queer
Heterosexual
Two-spirit
Not listed

Is it relevant for the Washington State Bar Association to know the sexual preference of its members?

If this paragraph was inserted in the name of diversity, then it serves to divide us, not unite us, on matters that should be personal and private. I do not believe how attorneys achieve sexual gratification is relevant to the operation of the Washington State Bar Association.

Missed opportunities

More important, however, is the huge opportunity that was missed in this year's license renewal package. That was the opportunity to gather something which is relevant to all active members in private practice and also relevant to the operation of the WSBA: and that would have been to inquire about legal malpractice with some basic questions such as the following:

1. Have you filed a legal malpractice complaint in the past year? If so, how many?
2. Did the defendant attorney have insurance?
3. If not, did the defendant attorney have other assets?
4. If a judgment was awarded, was it paid by the defendant or the defendant attorney's insurer?
5. How many times did you encounter a meritorious legal malpractice claim but did not file a complaint because the defendant attorney had no insurance?
6. May the Mandatory Malpractice Task Force contact you for additional information?

Thank you again

The Task Force simply does not have the right data to justify its dedication to making insurance mandatory. It missed the opportunity to gather relevant information this year and it missed it last year too. The Malpractice Insurance Work Group missed it the year before that.

Again, I share my opinion with you with the best of intentions and appreciate your taking the time to give it your consideration. I cannot be the only one who has the thoughts just like the ones I recapped above.

Respectfully,

Inez Petersen, WSBA #46213

From: [Drew Foerster](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Licensed Lawyer, But Non-Practicing
Date: Sunday, November 18, 2018 11:26:07 AM

Bottom Line: Any rule change should continue to permit licensed but non-practicing lawyers not to have to maintain malpractice insurance.

Why should I pay for malpractice insurance if I am not practicing? It's facially nonsensical.

Truth is, I still do a little bit of pro bono work, but no paid work. If the WSBA issues rules that require malpractice insurance even if I am only doing a little pro bono work (no paid work) but don't require malpractice insurance if I am not doing anything, pro bono or not, then I won't do anything, pro bono or not.

Alternatively or additionally, for part-time lawyers, could you cap malpractice insurance cost to a maximum of a reasonable percentage of the yearly profit a part-time lawyer earns that year as a lawyer?

I received my law license in 2014 hoping to become a lawyer, but my pre-law school career led me into cybersecurity, and I earn more doing that than I would as a lawyer.

Sincerely,
Drew Harrison Foerster
<https://www.linkedin.com/in/foersterdrew>

From: [Melissa Williams](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: pig@randalldanskin.com
Subject: Comments re: Mandatory Malpractice Insurance and Exemptions
Date: Monday, November 19, 2018 12:05:45 PM
Attachments: [Comments re Mandatory Malpractice Insurance.pdf](#)

Good afternoon,

Please see the attached correspondence from Dan Brunner. The correspondence includes Mr. Brunner's comments concerning the mandatory malpractice insurance system and exemptions currently under consideration, from his perspective as the Standing Chapter 13 Trustee for the Eastern District of Washington.

If you have any questions or concerns, please let me know.

Thank you,

Melissa Williams
Attorney
Daniel Brunner, Chapter 13 Trustee
801 W. Riverside Suite 515
Spokane, WA 99201
melissa.williams@spokane13.org
P(509) 747-8481 ext 105

THE OFFICE OF THE CHAPTER 13 TRUSTEE

EASTERN DISTRICT OF WASHINGTON

P.O. Box 1513

Spokane, Washington 99210-1513

Phone (509) 747-8481

Fax (509) 623-2126

ADMINISTERING BANKRUPTCY
TITLE 11, UNITED STATES CODE

Daniel H. Brunner, *Trustee*
Mike I. Todd, *Counsel*
Melissa Williams, *Counsel*
Julie Waters, PHR, HR/Operations

Creditor Website: www.13network.com

Debtor Website: www.ndc.org

November 19, 2018

VIA ELECTRONIC MAIL

To the Mandatory Malpractice Insurance Task Force and
Staff Liaison, Douglas J. Ende

Dear Mr. Ende and Task Force Members:

I am writing in response to your request for comments regarding the Task Force's initial recommendation to mandate malpractice insurance for attorneys licensed in Washington. In particular, my concerns are centered on the ultimate exemption categories which may apply to individuals such as my staff attorneys and me.

As a chapter 13 bankruptcy trustee, the nature of my business operations and required legal representation are extremely unique. Consequently, as will be explained in further detail below, there is no legitimate reason to require malpractice insurance for trustees like myself or their staff attorneys, *e.g.* such requirement would not reduce the risk of injury to the public or affect the integrity of the legal profession. Moreover, my organization does not fit into a traditional private practice, government, non-profit, or corporate model. Thus, it is not clear if chapter 13 trustees or their counsel would qualify for an exemption based on the categories that appear to be under consideration by the Task Force, such as those adopted in Oregon.

The following information is intended to provide the Task Force with a description and background of my occupation, duties, and business operations, relevant to the malpractice insurance proposals and exemption categories currently under consideration:

- I am the Standing Chapter 13 Bankruptcy Trustee for the Eastern District of Washington (the "Chapter 13 Trustee"). Pursuant to 28 U.S.C. § 586(b), standing trustees are appointed by the United States Trustee Program ("USTP")—more specifically, by the individual serving as the United States Trustee ("UST") for a particular region, in accordance with the authority delegated to them by the United States Attorney General. The USTP is a component of the Department of Justice and maintains general oversight of cases filed under the Bankruptcy Code, 11 U.S.C. § 101 et seq., among other duties.
- As the Chapter 13 Trustee, I am responsible for the administration of all chapter 13 cases filed in the U.S. Bankruptcy Court for the Eastern District of Washington. My duties include, but

are not limited to investigating debtors' financial affairs, reviewing plans of reorganization and other documents for compliance with the Bankruptcy Code and Rules, objecting, when appropriate, to proposed plans and other filings affecting the administration of a case (*e.g.*, claims, motions, notices), and administering plans of reorganization—specifically, collecting payments from debtors and disbursing funds to creditors as required per the terms of a debtor's plan.

- Though I was appointed as the Chapter 13 Trustee by the UST for Region 18, I am not an employee of the USTP, the Department of Justice, or any other federal, state, or local government entity. I am essentially an independent contractor whose sole business function is to administer chapter 13 bankruptcy cases as described above. Additionally, I do not conduct my operations as a separate legal entity, such as a Limited Liability Company, or under a separate sole proprietorship.
- My income and business operations are funded solely by a percentage fee collected on plan payments, pursuant to 28 U.S.C. § 586(e)(1). I do not receive income or funding from any other sources, including the federal government.
- Additionally, I do not conduct my operations under a “for-profit” business model; in fact, federal law prohibits me from doing so. *See*, 28 U.S.C. § 586(e)(2). Nevertheless, I do not qualify as a nonprofit, “501(c)” organization under the Internal Revenue Code.
- Though chapter 13 trustees are not required to maintain a license to practice law, I am also a Washington-licensed attorney. I am not employed by, nor do I have any affiliation with a private law firm. I do not represent other individuals or entities as clients. From time to time, I do represent myself, *pro se*, in my capacity as Chapter 13 Trustee, in bankruptcy proceedings and related matters. I do not maintain attorney malpractice insurance.
- I also employ various individuals to assist me with the many facets of chapter 13 case administration, including two staff attorneys. The staff attorneys are my full-time employees. They do not work as independent contractors or for private law firms. They represent me in my capacity as the Chapter 13 Trustee and primarily appear before the U.S. Bankruptcy Court for the Eastern District of Washington. To appear before the U.S. Bankruptcy Court for this district, and on occasion, in state court matters affecting chapter 13 case administration, my staff attorneys must be licensed to practice law in Washington.
- I do not require my staff attorneys to carry malpractice insurance, and therefore do not provide reimbursement or additional compensation for malpractice insurance coverage.
- Instead, I have an “errors and omissions” (“E&O”) insurance policy, which covers damages resulting from professional negligence and other activities related to the performance of professional duties.

Given the facts and circumstances outlined above, my staff attorneys should be exempt from any mandatory malpractice insurance requirements adopted by the Washington State Bar Association. It is important to emphasize that I am the staff attorneys' sole client. My existing E&O insurance already affords more protections and liability coverage than traditional attorney malpractice insurance provides—including damages resulting from any potential professional negligence of my counsel. Thus, I would have no reason to rely on an individual attorney malpractice policy as a source of compensation.

Moreover, I should also qualify for an exemption in my capacity as Chapter 13 Trustee. Again, I am not required to maintain a license to practice law to serve as the Chapter 13 Trustee or represent myself in legal proceedings. As previously indicated, I do not represent other individuals or entities. Therefore, I would most likely resign my license to practice law in Washington, rather than incur a

significant expense for an unnecessary, superfluous insurance policy that fails to provide any benefit for my business, the public, or myself.

It is my understanding that the Task Force is now in the process of identifying exemption categories and drafting related rules for consideration by the WSBA. I ask that you include specific exemptions that would apply to chapter 13 trustees such as myself, and their staff attorneys, when preparing your final recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel H. Brunner", with a long horizontal flourish extending to the right.

Daniel H. Brunner
Chapter 13 Trustee

cc: P.J. Grabicki

From: [Richard Gordon](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: r-gordon-7@alumni.uchicago.edu
Subject: Comment re Need for Retired Attorney Exemption from Proposed Mandatory Malpractice Insurance
Date: Monday, November 19, 2018 2:23:42 PM

I am a 68 year old WSBA member attorney who retired in 2017 when the company for which I served as in-house counsel for 33 years closed its doors. I previously practiced for almost 10 years, largely in the public sector (state and federal governments).

Though I am now retired and no longer practice law, I have chosen to keep my WSBA membership status “active” for reasons of personal and professional pride and accomplishment – something of significant personal value, not to be given up lightly, despite my no longer actively engaging in the practice of law. My hope is to continue to keep my WSBA membership status “active”, provided it doesn’t become financially unreasonable and/or burdensome for me to do so. I am content to continue paying the several hundred dollars per year for my WSBA active membership status dues and for my requisite Mandatory CLEs. However, being required to additionally pay what might-well be several thousand dollars per year for Mandatory Malpractice Insurance to keep my WSBA membership status “active” – despite my no longer practicing law – would be an unreasonably mandated financial burden. Moreover, it would provide no benefit to anyone except to the insurance industry as pure profit to them, because such insurance would effectively cover nothing, as there is nothing for it to cover.

I have read the “WSBA Mandatory Malpractice Insurance Task Force Interim Report to Board of Governors July 10, 2018” and do note that it recognizes, “the need for certain categories of exemptions”. I also note the report does imply some sort of exemption for “retired attorneys” is likely to be part of the final proposal. However, the report does not indicate how “retired attorneys” would or should be defined or treated in this context. And, as with so many other things, not only is the “devil” in the details – so is the reasonableness or lack thereof.

In this regard, I would hope that “retired” will not simply be conflated with the existing “inactive” membership status, such that “retired” attorneys would be forced to give up “active” WSBA membership status in order to qualify for a “retired” exemption from Mandatory Malpractice Insurance.

I, for one, would be happy if retired attorneys who wish to retain their WSBA “active” membership status would be allowed to do so by annually certifying that we “are not engaged in the practice of law” (or some reasonably similar wording) as a condition of qualifying for the “retired” exemption from the Mandatory Malpractice Insurance requirement, while still being allowed to continue to maintain our WSBA “active” membership status. To be excluded from the “retired” exemption unless we formally drop our “active” membership status, would be an unfair and unreasonable indignity and disservice to those of us who served the profession and the WSBA well, throughout so many long years.

The current WSBA Lawyer License Renewal form effectively provides for exemption from the existing requirement for Mandatory Trust Accounts for those “active” membership status attorneys who annually disclose/certify by checking the following in Paragraph A (“Professional Liability Insurance”) of the form’s Section 7 (“Professional Liability Insurance and Trust Account”): “I certify that I am (choose one): NOT engaged in the private practice of law because: (1) I do not practice law, or...” Checking that option then enables the retired attorney who still maintains his or her “active” membership status, to also check in Section 7’s Paragraph B (“Trust Account”), “No” to whether he or she maintains “...either an IOLTA or other client trust account(s)...”. So-checking in those two paragraphs of Section 7 is deemed a sufficiently qualified disclosure/certification for exemption from the existing otherwise mandatory Trust Account requirement for “active” membership status attorneys. A similar disclosure/certification approach could be employed using relatively minor modification to the wording on the annual Lawyer License Renewal form to exempt retired attorneys from the Mandatory Malpractice Insurance requirement without requiring relinquishment of WSBA “active” membership status.

Thank you in advance for your consideration in this process of what I hope and trust will be the fair and honorable treatment of retired attorneys.

Richard Gordon

WSBA #7221

r-gordon-7@alumni.uchicago.edu

From: [Linda Gouge](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Tuesday, November 20, 2018 5:22:05 PM

Greetings:

I was first licensed in Oregon. The coverage through the Professional Liability Fund costs me just over \$3500 for one year. It is my understanding that this is considerably more expensive than some attorneys in Washington State pay for Malpractice insurance. When I was admitted to the Bar in Washington, I contacted a company concerning obtaining malpractice insurance for my Washington practice. The company told me that they could not cover me because I had PLF coverage in Oregon. I tried to find out if it would be possible to cancel my PLF coverage and obtain coverage that would cover both Oregon and Washington. I could not get a response.

I am concerned that , if there is mandatory coverage in Washington, either I will not be able to obtain it, or it will be too expensive, making it necessary for me to give up my license in either Oregon or Washington. This would be very distressing and disappointing.

What I would like to have happen is to be able to find coverage that would cover both states and at the same time cost about the same as what I am paying in Oregon.

Thank you for your consideration of my comments.

--

Linda Gouge
Attorney at Law
119 East Second Street, Suite 213
The Dalles, Oregon 97058

Tel: 541-296-8222
Fax: 541-296-8235

From: [Robert Bergstrom](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment Letter
Date: Wednesday, November 21, 2018 8:33:09 AM
Attachments: [Bergstrom Ltr to Bar re Insurance.docx](#)

Attached is a letter with my comments on the insurance proposal.

Bob

ROBERT L. BERGSTROM

Attorney at Law
1230 206th Street SE
Bothell, Washington 98012
(425) 482-2564

November 20, 2018

Attn: Mr. Doug Ende
Mandatory Malpractice Insurance Task Force
Washington State Bar Association
1325 Fourth Ave. Suite 600
Seattle, WA 98101-2539

Dear Mr. Ende:

I

I read the recent Bar news article about the proposed mandatory Malpractice insurance idea and I am opposed to it. I have set forth the reasons below.

My first objection is based on my personal situation. I am a senior lawyer with an active license who is no longer operating a regular law practice. Semi-occasionally I do a small law project for relatives or long - time friends & their families. I usually don't even charge them. My law income over the past few years has been far less than what I pay for the bar dues and CLE. Many young people and some seniors are struggling financially these days and living from month to month. So I am giving back a little. I know many other senior attorneys are doing something similar. Like me, most are doing very simple things that they have done over a multi decade career. If we are hit with a \$3,000 annual insurance bill I expect that most of that group will just surrender their license. So that bit of community service will disappear. Why would you want to do that?

The insurance model can discourage personal responsibility instead of supporting it. Persons who are self-insuring a risk know they are on the line and they develop the discipline to always do good work. But someone with insurance can say to himself. "What the heck. If I screw up the insurance company has my back. All of those other attorneys who are paying into the insurance pool are covering for me." Having a large pot of known funds could also encourage more claims and lawsuits against attorneys. If more and more state bars start require insurance the ABA may eventually develop or certify a specialty for attorneys who sue other attorneys. Now that's something for all of us to look forward to.

The insurance idea gets really discouraging when you look at the numbers. The article mentioned an expected annual premium of \$3,000 per attorney. There are 35,000 active attorneys in the Washington state bar. Multiply \$3000 times that number and you get 105 million dollars a year flowing out of Washington State into New York, London and other insurance centers. Over 5 years it's 525 million and 10 years it's 1 billion 50 million [1,050,000,000.] So how much will come back to Washington to pay those aggrieved clients mentioned in the article? Well, first the insurance company has to get their cut. Standard & Poors calculated that at the end of 2018 Q3 the average firm in the S&P 500 index had an operating margin of 12.21% [operating profit divided by total sales]. So let's be conservative and round that down to a 10% profit. What about their general overhead? They have the usual costs of their office space, facility operations, staff salaries + benefits, and sales commissions. They also have to hire some very high priced specialist to review claims and defend them in court. They call them "the lawyers". So

the insurance firms likely will have a large overhead to cover all of those costs. Let's estimate a conservative 20%. But it could be much higher. So a total of at least 30% of those billion dollars we will spend is gone out of the state forever. That's a cool 315 million dollars over ten years. The remaining 70% is called the "float" in the industry. It is invested and maintained to pay future claims. So the big question for us is "how much of that money will eventually come back to Washington State to reimburse local consumers of law services?"

That brings us to the next problem with the insurance idea. Under the proposal two other small states and Washington will be thrown into a nation - wide insurance pool with attorneys in 47 other states. In all of those other states the attorneys must go thru a risk & cost analysis to decide whether to buy insurance or self - insure. The firms that are operating in the most complex areas of the law, or running a large number of young associates on a steep learning curve, or are over worked & under staffed, or have a huge number of small cases to manage will elect to buy insurance. Others will decide the risk is lower and worth self-insuring. For those 47 states, the pool will contain the most high risk practices who want to share their risk with other attorneys.

It stands to reason that those higher risk firms will suffer more malpractice claims and draw down a disproportionate percentage of the total insurance pool. The lower risk practices in those 47 other states will not be in the pool – but they will be in 3 small states. All of the lawyers in those 3 small states will be helping to reduce the costs and subsidize the most risky firms in all 50 states. To answer my question above. I expect that a small percentage of the total insurance premiums paid by Washington Bar Members will actually come back to reimburse unhappy Washington clients.

There are many other options that you could choose. Some professions allow the members to self-insure if they have a net worth over a certain minimum threshold, or liquid assets over a minimum amount. But that does add another administrative burden to monitor and enforce such a rule. Another approach would be to require a written Disclosure to new clients as to whether the attorney has insurance or not.

You also have to deal with the issue of lawyers who are not in private practice. What about people who work for government agencies, or serve as in house council for corporations, or members who live and work in other states that do not have an insurance requirement? Will they have to get insurance too?

Instead of focusing on the client remedies, why can't you focuses on making the members better – better lawyers, better office & case managers, and better people. Do you have any good data about the types of activities the claims are coming from? Were they errors in substantive law? A lack of negotiating or trial skills? Case, office or schedule management? Is poor client communications a problem? Was attorney physical or mental health the likely culprit? What about drug or alcohol addictions? You have all kinds of CLE and personal development programs in place now. Consider taking a close look at how they might be improved to eliminate unhappy clients.

Thank you for all of your good work in service to the Bar.

Sincerely,



Robert L. Bergstrom
WSBA 3467

Cc Governor Higginson, President Pickett, Pres-Elect Majumdar

From: [Andrew Kottkamp](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: malpractice insurance
Date: Wednesday, November 21, 2018 11:14:20 AM

My thoughts after reading the interim report.

I don't have a problem making malpractice insurance mandatory, as I have been insured for my 29 years of practice. But do not REQUIRE me to buy insurance from the bar association or some component like Oregon's PLF, or to otherwise pay into a legal defense fund.. With my private insurance, I get much better coverage, at a cheaper price, by a huge margin, that the coverage and costs noted for Oregon's PLF. And in Oregon, any successful lawyer STILL has to buy additional insurance to reach an acceptable coverage level. I want MY premiums based upon MY risk factors based on MY practice areas.

So I agree you can make malpractice insurance mandatory, but allow me to buy it on the private market and show the WSBA proof of insurance in the minimum coverage amounts that you set. And if someone DOESN'T show proof of insurance, then take disciplinary action. But don't force me to subsidize other lawyers.

Also, with mandatory insurance, I think you could eliminate payment for the WSBA Client Protection Fund.

Andrew Kottkamp

Kottkamp & Yedinak P.L.L.C.
435 Orondo Ave.
P.O. Box 1667
Wenatchee, WA 98801
(509) 667-8667
www.wenatcheelaw.com

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From: [john goodall](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Re: question
Date: Wednesday, November 21, 2018 1:06:40 PM
Attachments: [image001.png](#)

Absent from the Charter is any preliminary determination that that mandatory malpractice insurance is necessary to correct a problem currently being caused caused by its absence. That seems to imply that this is a conclusion already made without any supporting facts.

The presence of insurance industry people on the Task Force, the very insurance industry that has a significant financial interest in the outcome, seems to support that implication.

Considering that the WSBA receives money from the insurance industry in the form of advertising full page ads as well as advocating certain insurance companies for health insurance, it seems to me that the first task of the 'task force' should be a determination that mandatory anything is justified by at least a few facts.

Otherwise this raises at least the appearance of a conflict of interest, especially to those of us who might be so old fashioned Americans as to think we should be the ones to determine what kind of insurance we must have.

So, yes. please include my comments as part of the 'public comments'

john goodall

wsba #6152

From: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>

Sent: Wednesday, November 21, 2018 8:53 AM

To: 'john goodall'

Subject: RE: question

Mr. Goodall,

Sorry for the delay in responding to your question. As Task Force members, these individuals have a vote on any recommendations of the Task Force. The Task Force is charged by its [Charter](#) with determining whether to recommend adoption of a mandatory malpractice insurance requirement in Washington.

As an aside, would you like this series of emails included in the public comments of the Task Force?
Thank you.



Thea Jennings | Disciplinary Program Manager | Office of Disciplinary Counsel

Washington State Bar Association | ☎ 206.733.5985 | theaj@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

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From: john goodall <rugshepherd@hotmail.com>

Sent: Thursday, October 25, 2018 8:56 AM

To: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>

Subject: Re: question

Thank you.

Can you tell me if these two individuals play any role in determining that mandatory malpractice insurance will be necessary in the State of Washington, or to determine whether there is a significant need for it due to legal malpractice judgments not being paid?

Is such a determination part of the "task" assigned to the "Task Force"?

John Goodall

From: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>

Sent: Thursday, October 25, 2018 8:46 AM

To: 'john goodall'

Subject: RE: question

Mr. Goodall,

Attached is the roster of the Task Force members with their designations, including our member who is listed as an industry professional. I also attach the Task Force Charter, which describes the Task Force's membership. Per the Task Force's Charter, the industry professional is "[a]n individual with professional experience in the insurance/risk management industry." Additionally, per the Charter, one of the Task Force lawyer members has "substantial experience in insurance coverage law" and is designated as such on the roster. Thank you.



Thea Jennings | Disciplinary Program Administrator | Office of Disciplinary Counsel

Washington State Bar Association | ☎ 206.733.5985 | theaj@wsba.org

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From: john goodall <rugshepherd@hotmail.com>

Sent: Friday, October 19, 2018 12:31 AM

To: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>

Subject: Re: question

Dear Rachel,

In other words you will not identify them until afterwards?

I see a number of names without any indication of who or what they are.

Is there a justifiable purpose to such secrecy?

john goodall

From: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>

Sent: Thursday, October 18, 2018 1:58 PM

To: 'john goodall'

Subject: RE: question

Thank you for your comments. The Task Force will receive your comments and review them, and will be sure to be clear in its final reports about the role of the industry professionals.

Sincerely,



Rachel Konkler

Washington State Bar Association | ☎ 206.733.5904 | rachelk@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

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From: john goodall <rugshepherd@hotmail.com>

Sent: Thursday, October 18, 2018 12:42 AM

To: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>

Subject: question

Hello

Your site mentions "industry professionals" as part of the "Task Force" but none appear to be identified as such in the list.

Who are these people?

Also, that term is undefined. and there is no explanation why any 'industry' should justifiably be involved in this process

Can you tell me what "industry professionals" means and what 'industries' it refers to?

Also, are any of them associated with the insurance industry?

John Goodall

From: [john goodall](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: One other question
Date: Wednesday, November 21, 2018 1:34:04 PM
Attachments: [image001.png](#)

I notice that that there has been no discussion at all of this matter in the letters section of Northwest Lawyer.

Can you tell me whether the 'public comments of the Task Force ' will appear in Northwest Lawyer?

If not, how would they be available to members of the bar or the public?

john goodall

6152

From: john goodall <rugshepherd@hotmail.com>
Sent: Wednesday, November 21, 2018 1:06 PM
To: Mandatory Malpractice Insurance Task Force
Subject: Re: question

Absent from the Charter is any preliminary determination that that mandatory malpractice insurance is necessary to correct a problem currently being caused caused by its absence. That seems to imply that this is a conclusion already made without any supporting facts.

The presence of insurance industry people on the Task Force, the very insurance industry that has a significant financial interest in the outcome, seems to support that implication.

Considering that the WSBA receives money from the insurance industry in the form of advertising full page ads as well as advocating certain insurance companies for health insurance, it seems to me that the first task of the 'task force' should be a determination that mandatory anything is justified by at least a few facts.

Otherwise this raises at least the appearance of a conflict of interest, especially to those of us who might be so old fashioned Americans as to think we should be the ones to determine what kind of insurance we must have.

So, yes. please include my comments as part of the 'public comments'

john goodall

wsba #6152

From: [Claudia La Rose](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: In-House Counsel
Date: Wednesday, November 21, 2018 2:48:48 PM

Will In-House Counsel be required to carry malpractice insurance as a condition of licensing?

Claudia La Rose | Attorney - Manager

E^xponent, Inc. | 15375 SE 30th Place, Ste. 250, Bellevue, WA 98007

Office: 425.519.8752 | clarose@exponent.com | www.exponent.com



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From: Mandatory Malpractice Insurance Task Force
Sent: Tuesday, November 27, 2018 2:18 PM
To: 'Claudia La Rose'
Subject: RE: In-House Counsel

Ms. La Rose,

The Task Force is currently working on its draft Final Report to the WSBA Board of Governors with recommendations regarding whether to require malpractice insurance of Washington lawyers. The draft Report includes its recommendations regarding possible exemptions. Among the possible exemptions the Task Force has included is "House Counsel. In-house company lawyers whose work in that role constitutes the lawyer's entire practice."

Sincerely,



Thea Jennings | Disciplinary Program Manager | Office of Disciplinary Counsel

Washington State Bar Association | ☎ 206.733.5985 | theaj@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

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From: Claudia La Rose <clarose@exponent.com>
Sent: Wednesday, November 21, 2018 2:49 PM
To: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>
Subject: In-House Counsel

Will In-House Counsel be required to carry malpractice insurance as a condition of licensing?

Claudia La Rose | Attorney - Manager
Exponent, Inc. | 15375 SE 30th Place, Ste. 250, Bellevue, WA 98007
Office: 425.519.8752 | clarose@exponent.com | www.exponent.com

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From: [Russo, Michael](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Question re insurance
Date: Wednesday, November 21, 2018 3:03:44 PM

Hello,

I am sorry if I missed this among the information we have received about the mandatory malpractice insurance proposal. I am a professor at Seattle University School of Law. I have remained an active member of WSBA, although I have not practiced since the end of 2010 (when I relocated here from California). I have found that it is sometimes useful to be an active member of the Bar as a professor, even though I am no longer representing clients.

Does the current proposal contain a provision which would allow one to certify that he or she is not practicing, thereby avoiding the necessity of purchasing malpractice insurance? If not, would the only options then be to buy the insurance or to transfer to inactive status?

Thanks in advance for any answers you can provide.

Best,

Michael Russo

From: Mandatory Malpractice Insurance Task Force
Sent: Tuesday, November 27, 2018 2:25 PM
To: 'Russo, Michael'
Subject: RE: Question re insurance

Professor Russo,

The Task Force is currently working on its draft Final Report to the WSBA Board of Governors with recommendations regarding whether to require malpractice insurance of Washington lawyers. The draft Report includes its recommendations regarding possible exemptions. Among the possible exemptions the Task Force has included is "Other lawyers either not "actively licensed" or not "engaged in the private practice of law," including, for example, retired lawyers maintaining their licenses, judicial law clerks, and Rule 9 interns."

Sincerely,



Thea Jennings | Disciplinary Program Manager | Office of Disciplinary Counsel

Washington State Bar Association | ☎ 206.733.5985 | theaj@wsba.org

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From: Russo, Michael <russom@seattleu.edu>
Sent: Wednesday, November 21, 2018 3:04 PM
To: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>
Subject: Question re insurance

Hello,

I am sorry if I missed this among the information we have received about the mandatory malpractice insurance proposal. I am a professor at Seattle University School of Law. I have remained an active member of WSBA, although I have not practiced since the end of 2010 (when I relocated here from California). I have found that it is sometimes useful to be an active member of the Bar as a professor, even though I am no longer representing clients.

Does the current proposal contain a provision which would allow one to certify that he or she is not practicing, thereby avoiding the necessity of purchasing malpractice insurance? If not, would the only options then be to buy the insurance or to transfer to inactive status?

Thanks in advance for any answers you can provide.

Best,

From: [Robert W. Strohmeyer](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance
Date: Wednesday, November 21, 2018 3:38:06 PM

I am voicing my opposition to this proposed. I have retired, but I want to keep my license. I do not have sufficient annual income (projected \$2000 in 2019) to pay for a premium, nor should I if I am not actively practicing. I do some pro bono work, but that doesn't pay a premium.

I worked long and hard to obtain my licenses to practice in Kansas and Washington. This proposed rule works to deprive me, ex post facto, of a valuable right to earn a living if I chose to return to practice.

Robert W. Strohmeyer WSB 17742

Sent from [Mail](#) for Windows 10

From: [Nick Verwolf](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance
Date: Wednesday, November 21, 2018 3:46:19 PM

Would the requirement apply to retired or non-practicing attorneys? Although I am retired, I still maintain my license. i do not have clients or engage in the practice of law, so it would seem ridiculous to require that I carry the expense of malpractice insurance. This would also be applicable to persons who are in business or teaching, who do not practice law but want to maintain their license.

Nick Verwolf
Bar No. 4983

From: nickverwolf3 <nickverwolf3@gmail.com>
Sent: Tuesday, November 27, 2018 3:44 PM
To: Mandatory Malpractice Insurance Task Force
Subject: RE: Mandatory malpractice insurance

Thank you for your response.

Sent via my Samsung Galaxy, an AT&T 4G LTE smartphone

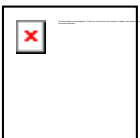
----- Original message -----

From: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>
Date: 11/27/18 2:26 PM (GMT-08:00)
To: 'Nick Verwolf' <nickverwolf3@gmail.com>
Subject: RE: Mandatory malpractice insurance

Mr. Verwolf,

The Task Force is currently working on its draft Final Report to the WSBA Board of Governors with recommendations regarding whether to require malpractice insurance of Washington lawyers. The draft Report includes its recommendations regarding possible exemptions. Among the possible exemptions the Task Force has included is “Other lawyers either not “actively licensed” or not “engaged in the private practice of law,” including, for example, retired lawyers maintaining their licenses, judicial law clerks, and Rule 9 interns.”

Sincerely,



Thea Jennings | Disciplinary Program Manager | Office of Disciplinary Counsel

Washington State Bar Association | 📞 206.733.5985 | theaj@wsba.org

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From: Nick Verwolf <nickverwolf3@gmail.com>
Sent: Wednesday, November 21, 2018 3:46 PM
To: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>
Subject: Mandatory malpractice insurance

Would the requirement apply to retired or non-practicing attorneys? Although I am retired, I still maintain my license. i do not have clients or engage in the practice of law, so it would seem ridiculous to require that I carry the expense of malpractice insurance. This would also be applicable to persons who are in business or teaching, who do not practice law but want to maintain their license.

Nick Verwolf

Bar No. 4983

From: [Bob Baird-Levine](#)
To: [Mandatory Malpractice Insurance Task Force](#); [Rajeev Majumdar](#); [Bob Baird-Levine](#)
Subject: mandatory insurance
Date: Wednesday, November 21, 2018 3:53:57 PM

Dear Task Force,

I have carried insurance for years. It is a condition of several contracts I have had over the years, and I agree that insurance is a good idea. I ask, however, that you not require all attorneys to carry it as a condition of licensing. .

New attorneys have fewer resources and should not be saddled with additional hurdles to market entry. Members of the public can determine for themselves if the attorneys they are considering hiring have insurance or not as this information is already made available to the public online for each lawyer who is licensed. The bar has a monopoly on licensing and should be reluctant to tax market entry for new and tuition debt-saddled lawyers--particularly those who might gain footing in markets where low cost market entry and low cost legal service is critically needed--i.e.family law and landlord/tenant law among a handful of other practice areas.

Instead, encourage lawyers to get involved as volunteers for legal services organizations that can cover them under umbrella policies for their volunteer work as they gain competence in critical need areas of practice. Chances are good that as they gain experience and competence, most lawyers will be able to pay their bills by providing competent representation and will have their own incentive AND SOON own budget to purchase malpractice insurance as they expand their practices.

Thank you for your work and for your consideration, and happy holidays to you!

Sincerely,

Bob

Bob Baird-Levine, Attorney at Law
103 E. Holly St. Ste. 415
Bellingham, WA 98225
360-920-7839 voice or text
bbairdlevinelaw@gmail.com

From: [Rodney Waldbaum](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance
Date: Wednesday, November 21, 2018 3:56:15 PM

As a retired, but still active dues paying member of WSBA, I object to proposals which would require me to pay for malpractice insurance. At 74 years of age, and after retirement from the law firm with which I was apart for 46 years, I have kept my bar membership active only so I could be honored for 50 years of membership and avoid future Bar dues. I believe anyone who has been a member of the Bar for 40 years, should be able to go inactive and have those inactive years qualify for the 50 year requirement.

Rodney J. Waldbaum

Sent from my iPhone

From: [Kohlmeier, Pamela S.](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Issues to consider
Date: Wednesday, November 21, 2018 3:58:43 PM

As a recent law school graduate, I raise 3 issues against mandatory malpractice insurance for attorneys in Washington. First, it is unnecessarily costly for new law school graduates who often need to be licensed to secure gainful employment. This may negatively impact law school grads, already straddled with debt, especially those from lower socioeconomic classes. Second, it may negatively impact those who wish to focus on legal education. State licensure adds to credibility for professors, even professors who are not actively practicing. However, it would be a waste of resources for professors to be required to carry malpractice insurance if they are not actively practicing. Third, with the current debate over whether state bar association monopolies create antitrust violations, mandating the purchase of insurance to “join the club” will not be favorable in that analysis.

In the alternative, if malpractice insurance is mandated, there should—in the least—be an inactive status option, which allows an attorney to remain licensed yet to bypass the mandate.

Pam Kohlmeier, MD, JD
(509)590-6885

Sent from my iPhone

From: [Gene DeFelice](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Big Mistake
Date: Wednesday, November 21, 2018 4:02:40 PM

Dear task force- please register my strong objection to mandatory malpractice insurance as a condition of licensure. This is more unnecessary and draconian and costly regulation that benefits insurance companies and the plaintiff bar.

I recently retired from corporate practice and may occasionally do light legal work. I am 60 years old primarily on a fixed income. I can't afford insurance. This is unfair

Gene DeFelice
Seattle WA

Sent from my iPhone

From: [Leavell, Ron](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Malpractice Insurance
Date: Wednesday, November 21, 2018 4:04:27 PM

Mandatory malpractice Insurance Task Force members, thank you for your work on this issue. Please excuse the brief response as this issue just came to my attention with limited time to formulate a response.

I recommend that malpractice insurance should not be mandatory for those who are not in private or other practice where there is limited exposure or essentially a “self-insured” situation by the government employer or agency. To require insurance would impose an unfair and unnecessary burden on such lawyers and/or their respective employers/agencies.

Respectfully,

Ron Leavell

From: [Patrick Brannon](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments on Mandatory Malpractice Insurance
Date: Wednesday, November 21, 2018 4:15:21 PM

Hello Task Force,

I wish to voice my opposition to Mandatory Malpractice Insurance. I am a recently-licensed attorney who does not currently practice. I work in the field of privacy, where it is common to find both licensed attorneys and professionals working in similar capacities. Emerging areas of the law like privacy can cover what is essentially a hybrid area, where attorneys and non-attorneys have overlapping duties. Indeed, the same duties I worked on in the legal department of one firm as an extern are called program management at another and considered a technical discipline.

I went to law school as well as earned a privacy certificate as part of my JD program to demonstrate competence and skills with respect to privacy guidance, but it was never my intention to practice as an in-house attorney in the traditional sense of transactions or litigation. It is not clear to me that I would be exempted as would an in-house counsel, though my employment is very similar. Any definition of in-house should encompass roles like mine, which I do not believe would conflict with the aims of mandatory malpractice insurance.

Preserving a law license for “someday” becomes a lot less attractive when, in addition to the cost of CLEs and licensing you add in the potential of thousands of dollars of insurance costs. I would urge careful consideration of exclusions, erring on the side of greater allowances and allowing the results to dictate whether more stringent requirements would become necessary. If I was not eligible for an exception, I would go inactive and strongly considering resigning my license. This saddens me, as all this work to become licensed was very recent, but the costs of malpractice insurance would be borne by me directly and not absorbed by the company. It wouldn’t make sense for me, wouldn’t serve any purpose for the public (other than a talking point), and the WSBA would lose a member.

Regards,

Patrick Brannon
WSBA Member 51142

From: [Peggy Wolf](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on mandatory malpractice insurance
Date: Wednesday, November 21, 2018 4:17:14 PM

Hello Task Force folks,

Thank you for considering this important question. I'm not sure what my opinion is on this matter, because two related issues that are both important to me seem to be in conflict. I'd like to tell you about my practice and its context and ask you to consider these in your overall analysis of this mandatory malpractice insurance question.

I am a lawyer practicing without malpractice insurance since my admission to the bar in 2013. I've never felt comfortable about that. I work for a 501c3 still in our startup period. Since co-founding Reparations Law 2013, I have accepted a very low salary because I am passionate about our mission and I believe we can develop organizationally to become financially viable. My salary, though it stands to increase as RL gets up on its feet, will always be very low in the range of what attorneys tend to earn, because I am mission-driven and our mission is about economic justice in our society of severe economic disparities. We provide some legal services, but we are not a legal services organization per se. We are a cooperative business developer and the people we serve are almost entirely members of financially marginalized communities. We do not yet have the funding to afford malpractice insurance. When we reach the point where we are financially viable, purchasing malpractice insurance is a high priority of mine and if it is not at that time required by law, I will advocate insistently to RL's board to make that annual investment on behalf of both our clients and our legal staff.

On the one hand, I care deeply about the integrity of our profession, the quality of the services we provide, the vulnerabilities clients experience when they engage our services, the importance of our being accountable to the profession and to our clients, and the importance of our clients having, if not protection from harm that might come of faulty legal services, at least the means by which to recover from such harm.

On the other hand, I think to reflect our profession's commitment to make legal services available to clients across the income spectrum, it is incumbent upon us to make the practice of law affordable for attorneys across that same spectrum, most especially because it tends to be the attorneys who earn the least that are most involved in providing services to non-wealthy clients with the fewest service options. I believe to be true to our profession's commitment to justice, the WSBA should financially incentivize attorneys practicing at relatively low income levels to serve low income people, not put financial barriers in our way. I care deeply about minimizing risk that my clients take to receive my services. But at this stage, a requirement to carry malpractice insurance would be such a barrier.

Rather than exempt some lawyers from a mandatory malpractice insurance rule, I would appreciate the task force's and the WSBA's consideration of some type of subsidy program that makes malpractice coverage available to attorneys and firms in certain situations such as mine, at no cost, or at graduated cost based upon some suitable affordability criteria. I have seen low income people suffer harm from sub-standard legal services, which I think is just as grievous as insufficient access to

legal services. I favor mandatory coverage, but I want our profession to value, support and accommodate those of us who practice at the margins.

Thanks very much for considering my comments.

Peggy

Peggy Wolf
Reparations Law
733 N. 76th Street
Seattle WA 98103
(206) 859-0206
pwolf@reparationslaw.com



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From: [Stacey Romberg](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment re: Proposed Mandatory Insurance Requirement
Date: Wednesday, November 21, 2018 4:20:11 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

I think the proposed insurance requirement is an absolutely fantastic idea. It will help protect the public. I fully support it.



Stacey L. Romberg, Attorney at Law
10115 Greenwood Avenue N., PMB #275
Seattle, Washington 98133
Telephone: 206-784-5305
Facsimile: 206-789-8103
E-mail: info@staceyromberg.com
Web site: www.staceyromberg.com

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Office Hours: Monday - Friday, 9:00 - 5:00. In-person appointments scheduled: Tuesday, Thursday, Friday.



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From: [Sandi Shelton](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance comment
Date: Wednesday, November 21, 2018 4:23:26 PM

Regarding the proposed Mandatory Malpractice Insurance for all lawyers, I am a licensed Washington attorney. However, I live out of state and have not been in private practice for decades and am presently unemployed. Nevertheless, I still pay my dues and keep my license active and keep up with the annual CLE requirements. A malpractice insurance requirement in my situation makes no sense and would be cost prohibitive. I respectfully request that you add an exemption for non-practicing attorneys.

Thank you.

Sandi H. Shelton
WSBA #14381

From: [Caroline Edmiston](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice
Date: Wednesday, November 21, 2018 4:31:05 PM

Will there be an exception for people who want to keep their license but not take paying clients?

I would like to know this before paying the bar fee for next year.

Caroline Edmiston

From: Caroline Edmiston <credmiston@live.com>
Sent: Tuesday, November 27, 2018 8:03 PM
To: Mandatory Malpractice Insurance Task Force
Subject: Re: Mandatory malpractice

Thank you for such a nice answer.

I like maintaining my license just in case.....

Sincerely,

Caroline Edmiston

----- Original message -----

From: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>
Date: 11/27/18 2:27 PM (GMT-08:00)
To: 'Caroline Edmiston' <credmiston@live.com>
Subject: RE: Mandatory malpractice

Ms. Edmiston,

The Task Force is currently working on its draft Final Report to the WSBA Board of Governors with recommendations regarding whether to require malpractice insurance of Washington lawyers. The draft Report includes its recommendations regarding possible exemptions. Among the possible exemptions the Task Force has included is "Other lawyers either not "actively licensed" or not "engaged in the private practice of law," including, for example, retired lawyers maintaining their licenses, judicial law clerks, and Rule 9 interns."

Sincerely,



Thea Jennings | Disciplinary Program Manager | Office of Disciplinary Counsel

Washington State Bar Association | ☎ 206.733.5985 | theaj@wsba.org

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From: Caroline Edmiston <credmiston@live.com>
Sent: Wednesday, November 21, 2018 4:31 PM

To: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>

Subject: Mandatory malpractice

Will there be an exception for people who want to keep their license but not take paying clients?

I would like to know this before paying the bar fee for next year.

Caroline Edmiston

From: [Aaron Johnson \(US - Tax\)](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Malpractice Insurance
Date: Wednesday, November 21, 2018 4:32:15 PM

Hello,

My wife and I are both WA licensed attorneys. We believe requiring malpractice insurance for all attorneys is inappropriate. We both do not practice before any jurisdiction. Additionally, we believe this financial burden is regressive and has a deleterious affect on low-income and disadvantaged attorneys. If anything, the bar should fund basic malpractice insurance for all licensed attorneys. The bar should be for attorney; not attorneys for the bar.

Aaron Charles Johnson

PwC | Tax

Seattle | 

PricewaterhouseCoopers LLP

pwc.com

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From: [Frank Washko](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Insurance feedback.
Date: Wednesday, November 21, 2018 4:42:26 PM

Sir/Madam,

I am against the mandatory malpractice insurance proposal. I think it will interfere with the practice of those who are semi-retired and who primarily practice pro bono, for public benefit, in school settings, or with a reduced caseload. It will make it more difficult for those attorneys to practice in those alternative formats. Those areas often represent clients who cannot afford most attorneys.

It should also be the right of attorneys to self-insure if they choose that route. I think if this proposal were adopted, it would substantially hinder an important and underappreciated portion of the bar. It would close off low cost or pro bono alternatives for some clients.

Thank you,

Frank Washko

From: [Tawnya Eller](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Malpractice insurance
Date: Wednesday, November 21, 2018 4:50:12 PM

Hi,

My name is Tawnya Tangel and I have been an active member of WA bar association for almost 20 years. I practiced law as a deputy prosecuting attorney in two counties for a total of 6 years. I haven't practiced for 15 years because I am currently a school counselor. I stay up with CLE credits and may return to practice when my kids are older.

WA state Bar Association makes it difficult to go inactive and return. So many of us, stay active. I, however do not practice law currently. Please consider an exemption for active members such as myself who do NOT have clients. I pay bar dues and pay for my CLEs already. Paying malpractice insurance when I don't have clients is extremely unfair. It's like paying for car insurance when I don't own a car.

Thank you.

Tawnya Tangel

#27143

Sent from my iPhone

From: [Dan Grausz](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Wednesday, November 21, 2018 4:54:14 PM

For those of us who are employed by a company for which we serve as in-house counsel and are not otherwise practicing law, there should be no requirement to purchase malpractice insurance. We do not need insurance to protect us from claims made by our employer given the nature of the employer/employee relationship. It would effectively just create an additional expense for our employer that they would not benefit from.

Dan Grausz
dangrausz@gmail.com
206-669-3899
Bar No. 11047

From: [frank.bartoletta](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory insurance
Date: Wednesday, November 21, 2018 4:55:29 PM

Has anyone considered the bar association providing a one payer system for insurance. In other words set a limit on a claim and not issuing a license to practice unless the lawyer has insurance. The lawyer could go the bar association pool and obtain insurance or go on the private market, his or her choice. The premium could be included in the licensing fee. Otherwise the bar is going to be held hostage to the insurance industry. I am sure if the bar started it's own program it could be run more efficient and less costly. I would appreciate an answer to this proposal. Frank Bartoletta bar number 3378 Spokane Wash.

Get [Outlook for iOS](#)

From: kervalz@comcast.net
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Washington Physicians Insurance Model
Date: Wednesday, November 21, 2018 5:04:15 PM

When I was practicing Family Law during the 80's, I was surprised to learn that the majority of physicians in Washington were insured through the same company, that they were also stockholders, that the insurance company paid out about ten cents in claims for every dollar collected for malpractice insurance, that when a stockholder retired without any claims during their career, they were paid for their shares by the insurance company and that the largest annual expense for this insurance company was stockholder repurchases.

As I recall, the doctors called their company, "Wispee".

If we are going to have mandatory malpractice insurance, then let's hire some smart doctors to run an insurance company for us.

Retired in Olympia,


Ken Valz

From: [Joe Dawson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance
Date: Wednesday, November 21, 2018 5:16:42 PM

My name is Joseph Dawson. I hold an active membership in the Bar Association, No. 0300, but I do not practice law. Instead, I practice public accounting.

I serve as the partner-in-charge of taxation services at Dawson & Gerbic, LLP, a certified public accounting firm. That firm carries \$5,000,000 of accounting malpractice insurance, which covers my tax practice.

Would that malpractice insurance be sufficient under the proposed mandatory insurance rule, or would I be required to obtain separate legal malpractice insurance covering my non-existent legal practice?

My telephone number is 206-781-5095. My email address is 

Thank you,

Joe Dawson

From: Mandatory Malpractice Insurance Task Force
Sent: Tuesday, November 27, 2018 2:30 PM
To: 'Joe Dawson'
Subject: RE: Mandatory malpractice insurance

Mr. Dawson,

The Task Force is currently working on its draft Final Report to the WSBA Board of Governors with recommendations regarding whether to require malpractice insurance of Washington lawyers. The draft Report includes its recommendations regarding possible exemptions. Among the possible exemptions the Task Force has included is "Other lawyers either not "actively licensed" or not "engaged in the private practice of law," including, for example, retired lawyers maintaining their licenses, judicial law clerks, and Rule 9 interns."

Sincerely,



Thea Jennings | Disciplinary Program Manager | Office of Disciplinary Counsel

Washington State Bar Association | ☎ 206.733.5985 | theaj@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

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From: Joe Dawson [REDACTED]
Sent: Wednesday, November 21, 2018 5:17 PM
To: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>
Subject: Mandatory malpractice insurance

My name is Joseph Dawson. I hold an active membership in the Bar Association, No. 0300, but I do not practice law. Instead, I practice public accounting.

I serve as the partner-in-charge of taxation services at Dawson & Gerbic, LLP, a certified public accounting firm. That firm carries \$5,000,000 of accounting malpractice insurance, which covers my tax practice.

Would that malpractice insurance be sufficient under the proposed mandatory insurance rule, or would I be required to obtain separate legal malpractice insurance covering my non-existent legal practice?

My telephone number is 206-781-5095. My email address is [REDACTED]

Thank you,

Joe Dawson

From: [Ron \[REDACTED\] Carpenter](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice insurance.
Date: Wednesday, November 21, 2018 5:27:38 PM

I have been retired as Clerk of the Washington State Supreme Court since April 1, 2016, but for a variety of reasons have chosen to retain my active status with the WSBA. I have not engaged in the practice of law since my retirement, nor have I otherwise had any clients. But should I chose in the future to represent any clients, I would not do such without first obtaining individual malpractice insurance coverage or ensuring I was covered by some organizations policy, e.g. if I decided to do pro bono work for a legal aid organization. Having said that, I find it odd that without any apparent empirical basis (data defining what if any actual problem exists in this State) the notion that mandatory malpractice insurance is necessary or otherwise justified, has apparently gained major traction and headlong speeding towards approval. My, seems like a run-away administrative train in search of a problem, as opposed to well thought out solution to a clearly demonstrated problem. The concept of Mandatory Malpractice Insurance seems like little more than a "feel good notion" that is not clearly supported by demonstrated need. What is the evidence that the status quo of voluntary purchase of malpractice insurance , a model that has served well for years, is not adequate. Although it seems futile to oppose the recommendation that seems well on its way to approval, not to do so and remain silent on the subject, would be an irresponsible support of what for all practical purposes is a rush to judgment. A rush to judgment championed by out of state consultants. Any changes that substantially interfere with an active members status to practice law should be well supported with statistical demonstrated need. Therefore, I register my opposition to the proposal to require Mandatory Malpractice Insurance, at least as the proposal is currently drafted. Simply stated, there needs to be in place reasonable exemptions that allow more flexibility; e.g. provisions that allow essentially retired active members of the Bar, to keep Active Practice Status until such time as they wish to return to representation of clients. I for one do not find conversion to Inactive status as a suitable or otherwise acceptable alternative.

Respectively submitted,

Ronald R. Carpenter
WSBA # 557

From: [Carole A. Grayson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: View of an active status lawyer who is not actively practicing law
Date: Wednesday, November 21, 2018 5:28:03 PM

To the Task Force:

Me

I am Carole Grayson, WSBA no. 12146, admitted 1981 (and earlier in FL in 1978; later voluntarily ended that affiliation).

Recommendations

1. The Task Force should continue with the status quo: Malpractice insurance is not required to practice law in Washington. Lawyers may choose to be insured, or not.
2. No proposal should compel malpractice insurance for a lawyer like me who a) maintains active status AND b) “is not actively practicing law”, as the option in the WSBA legal directory allows and as my WSBA page so indicates.

My practice history

1978 - 2017

I have no malpractice insurance because I ceased actively practicing law when I retired in June 2017 as director & staff attorney at UW Student Legal Services. I started there in 2000 in that position. For all those years my position required me to hire, train, and supervise Rule 9 Legal Interns in the actual practice of law. We had coverage in case of a malpractice complaint through UW: UW is self-insured.

1985 - 2000

Throughout my 15 year solo law practice, I maintained malpractice insurance.

1978 - 1983

I was an assistant public defender in Snohomish County and Florida from 1978 - 1983. I have no information about insurance coverage in those positions.

Today

Even after retirement from UW Student Legal Services in 2017, I continued teaching one quarter a year at UW School of Law, a role I first began in 2011. Pay for part-time faculty like me is minimal, very modest, even token; law school administrators know that dedicated lawyers like me will choose to accept the stipend because we find meaning and resonance engaging with law students — the next generation in the legal profession.

Conclusions

1. Compelling malpractice insurance as a condition of active status for lawyers not actively practicing law will create a problem disproportionate to any alleged need.
2. Compelling malpractice insurance as a condition of active status for lawyers not actively practicing law also will lead to resignations by many lawyers who still desire to contribute to the legal profession through teaching and other semi-pro bono or fully pro bono efforts.

Carole Grayson
WSBA no. 12146

For identification purposes only:

1. Affiliate Instructor of Law, UW School of Law
2. UW Student Legal Services (retired Director and Staff Attorney)
3. WSBA Senior Lawyers Section. Chair, 2014-17. Executive Committee 2007 - date. CLE Planning Committee chair 2014 - date

--

Carole Grayson
Affiliate Instructor of Law

From: [Jason Appelgate](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Member feed back regarding insurance
Date: Wednesday, November 21, 2018 5:31:10 PM

Hi,

I am a bar member who recently joined the bar three years ago. I have had malpractice insurance for most of that period.

I have started a new job at Microsoft, and have become a non- practicing attorney. With it ending recently, I do not have malpractice insurance, but I intend to renew my attorney license and be a member of the bar. This is very important principal for my family because we want to keep the license active to have career versatility in an ever changing job market. Its also important to my family to keep the active bar status as my family is an immigrant family and in our culture there is a precieved family honor issue around the preservation of the bar license.

It would be expensive and impractical for a non practicing attorney to be forced to pay for the malpractice insurance.

Regards,
Jason Appelgate

From: [Jeff Bean](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Input: Mandatory Insurance Should be Appropriate for the Practice
Date: Wednesday, November 21, 2018 5:39:10 PM

Greetings:

I understand you are considering mandatory insurance for bar licensing. Generally, I am in favor.

Yet please be careful not to require members to purchase insurance they would not use and that would not protect the public.

For example, I am an active member, but currently do not represent clients. My practice is limited to dispute resolution. I carry insurance appropriate to that practice. I do not need, nor would the parties mediating with me be protected by, insurance regarding legal representation.

Thank you for the opportunity to provide input.

Jeff

Jeff Bean
The Bean Law Firm PLLC
www.beanlawfirm.com
Seattle 206 794 5585

From: [Tim Higgins](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Frank Bartoletta](#); [Rich Relyea](#)
Date: Wednesday, November 21, 2018 5:59:23 PM

Get as much claims data as possible. WSBA runs an actuarial study. Look at an S.I.R. (Self Insured Retention - similar to a deductible). Accurately estimate S.I.R and buy excess policy. Insurance at a minimum mandatory amount. No insurance - no license. No difference than operating an automobile.

Timothy M Higgins

From: [Gerald Steel](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Opposition to mandatory malpractice insurance
Date: Wednesday, November 21, 2018 5:59:31 PM

I have been a professional engineer since 1973 and an attorney since 2001. I currently net less than \$35,000 a year and focus my practices on helping non-profits at reduced rates. I cannot afford malpractice insurance. I have never been threatened by a claim of malpractice. It is inappropriate to make attorney's such as myself have malpractice insurance. I support letting my clients know that I do not have malpractice insurance and if that is important to them, they can go elsewhere. No client or potential client has gone elsewhere when they were informed that I did not have malpractice insurance. There needs to be an exception for attorneys like me.

Gerald Steel PE
Attorney at Law
7303 Young Rd. NW
Olympia WA 98502
360.867.1166

From: Risrael@verizon.net
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory MalPractice Insurance
Date: Wednesday, November 21, 2018 6:30:32 PM

Task Force Members:

I have previously forwarded comments to your group regarding your work. And this is meant to supplement my earlier comments.

It is my understanding that your final report is due to the Board of Governors in March of 2019 and it is likely that you will recommend malpractice insurance as a condition of licensing. Assuming that is the case and that the Board adopts such a recommendation then the next questions important to me are when that requirement would take effect and what, if any, exceptions would there be?

As expressed in my earlier comments I was admitted to practice law in Washington in 1969 some 49 1/2 years ago. At all times during my active practice of law through my law firm I maintained malpractice insurance coverage and believed then that it was prudent and sensible.

Since retiring from active practice in 2015 (the last year I billed any hours, made any money and represented any clients, or provided legal advice) I have not maintained such coverage although, I have maintained my Bar License, paid my dues, and kept up with CLE requirements knowing that should I ever desire in the future to resume legal employment and representation of clients, I could do so. As a practical matter before resuming such a role I would as a matter of prudence and personal protection (in our ever more litigious society) certainly obtain malpractice insurance. I realize the primary motivation of requiring such insurance is to protect the public (the clients) however I personally view the concomitant value of protecting the lawyer as equally important.

Nevertheless, if such an expenditure (the cost of which will not be insignificant even at minimum required levels of coverage) is made a requirement of licensing then attorney's like myself and I know there are likely many who have and continue to take pride in their "active bar membership" and "law license" and ability to resume practice if the desire occurs or circumstances warrant will no longer have such opportunity without what could well be cumbersome, time consuming and perhaps even expensive re-licensing requirements.

Personally, after working my way through Harvard Law School, and studying for and thankfully passing the Bar exam and gaining admittance to the profession and maintaining my competence to practice through continuing CLE as well as private studies I made the determination to maintain "active status" rather than "inactive status" which can be had more cheaply (but depending on the length of such status perhaps require additional steps for re-admittance to active status including make-up CLE) and rather than resignation which avoids dues altogether (and which would require application for re-admittance to the Bar and likely require the expense and effort of another Bar Exam).

As I am about to renew my Bar license and pay Dues (before Feb 1, 2019) which coincidentally will be my 50th year of membership, I do so and pay the extra bucks to maintain "active" status expecting that any change and expense of such license to practice will not be burdened by retroactive additional financial requirements (such as purchasing malpractice insurance) until the commencement of the next annual licensing period (i.e., 2020) when I, and others similarly situated, can duly consider all costs and options available. Alternatively, your Task Force and the Board of Governors should consider either an exception to any requirement conditioning licensing on evidencing malpractice coverage to those actually and currently representing clients. I assume there will be exceptions for government or in-house lawyers and judges or those on medical leave or voluntary sabbatical from practice not currently engaged in representing clients. An attorney previously engaged and judged competent to represent clients (by fulfilling CLE requirements and having paid all dues and without any other issues) should not retroactively be required to expend additional (and given the circumstances outlined totally unnecessary) sums to maintain a license previously issued.

Presumably since a lawyer who represents individual clients who decides to work as a government or in-house attorney or becomes a judge or administrator will be exempt from any such requirement until and if they return to private practice then a private practitioner who temporarily ceases (for whatever reason) to represent clients should not be required to maintain the expense of premiums for malpractice insurance upon pain of forfeiting one's license

since the premiums and expense required would benefit no one.

Perhaps if such a requirement is instituted, the Bar should consider different categories and or add an additional category:

Active Member: attorney in private practice with required malpractice insurance.

Licensed Member: including attorneys not currently engaged in private practice, judge, administrator, government and in-house attorneys. (no malpractice requirement)

Formerly Licensed Inactive Member: self explanatory (no malpractice requirement)

Thank you for your consideration.

Robert L. Israel
Bar Number 1497

From: [Vera Ellich](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance
Date: Wednesday, November 21, 2018 7:49:38 PM

Dear Sir/Madam,

I hope you take into account those of us who work in industry and do not need to have malpractice insurance as an employee. Also, there should be a threshold amount, i.e., if you are earning less than \$10,000 per year you would be exempt. There are many that do favors for friends whose enumeration is small.

Thank you,
Vera Ellich

Sent from my iPad

From: [detamorelaw14](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory insurance
Date: Wednesday, November 21, 2018 8:07:23 PM

My practice is exclusively for Volunteer Lawyers of Island County. Pro bono.

I am also a GAL and use my license for 4 or 5 cases a year. Between the cost of CLE, records access and State Bar dues I can not afford Insurance.

How can you encourage attorneys to do pro bono work when you increase their cost to donate their services?

Donna J. Detamore

Sent from my T-Mobile 4G LTE Device

From: [M. Buttermilk](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Question regarding who has to purchase the proposed mandatory malpractice insurance
Date: Wednesday, November 21, 2018 8:59:26 PM

In today's email from the WSBA regarding the November's Board of Governor's meeting digest under the entry about the proposed malpractice insurance requirement, there is a statement saying "...malpractice insurance as a condition of licensing for all lawyers."

I am actively licensed and in good standing with the WSBA and I continue to keep in compliance with the MCLE requirements. However, I am not actively engaged in the practice of law in Washington at this time due to my responsibilities as a full-time caregiver for my wife who is recovering from a rare and devastating condition of autoimmune limbic encephalitis (severe brain and nervous system inflammation).

Does the proposed malpractice insurance requirement mean that I will have to purchase the insurance in order to keep my treasured license even though I am not currently practicing law?

I am aware that other states only require the purchase of the malpractice if one is actively engaged in the practice of law in the particular state.

I would appreciate clarification of how the proposed malpractice insurance would apply in my current case.

Thank you.

Sincerely,

Michael

Michael S. McNeely
WSBA No. 43658

From: [David Reed](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance
Date: Wednesday, November 21, 2018 9:11:53 PM

Dear Committee

We all want clients to be protected from the mistakes of lawyers. But I don't like insurance companies being the ones to decide who gets to practice law and who does not. Insurance companies go through hard markets and soft markets. They need to maintain profitability. They may decide that they don't like certain kinds of practices, like their recent dislike of virtual law firms. This is a policy decision that we as a bar association may not agree with; there would be many other differences.

Insurance companies may decide to leave a market that becomes unprofitable, or limit their coverage in ways that impair the ability of lawyers to practice areas of law and to have coverage for those areas of practice. Insurance companies may unfairly limit or decline coverage unfairly but leaving an attorney with no recourse; denying due process via the internal decision of a for-profit company, not the due process by which attorneys are now entitled to protect their right to practice.

Some of these issues might be avoided if the Bar owned and operated the insurance company or risk pool and gave attorneys due process rights to challenge the denial of coverage.

Thank you for your efforts in this important area.

David Reed
WSBA 7014

Sent from my iPhone

From: [Patrick Burns](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Date: Wednesday, November 21, 2018 9:31:45 PM

This is what was printed in the most recent report from the WSBA on board activities:

1. **Mandatory Malpractice Insurance Task Force:** The board extended the task force's charter through March 2019, when the final report will come before the board. Task-force members said in [an interim report](#) in July they are likely to recommend malpractice insurance as a condition of licensing for all lawyers. The deadline for member feedback to the task force is Dec. 1 (email insurancetaskforce@wsba.org).

.....hence this email.

I hope this is just a glib summary. The problem with “malpractice insurance as a condition of licensing” is that it would not be fair in my situation, I don't practice law in any manner. I don't even give a relative advice other than to refer them to a lawyer as needed. I'm a retired judge. All I do is occasional pro tem work. If I were to commit a professional act that could be argued to be erroneous, the error would not result in liability due to the principle of “judicial immunity” and the entity that contracts for my services would bear the cost of defense. Requiring me to carry malpractice insurance would not be fair. It would benefit no one except to the extent that it would lower costs for everyone else in the insurance pool who actually need the insurance. Why should I be required to subsidize the insurance pool?

Thank you,
Patrick Burns
#8395

From: [Alix Foster](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: malpractice insurance
Date: Wednesday, November 21, 2018 10:32:59 PM

Members of the Insurance Task Force,

While I believe that malpractice insurance is important for members to have, I also believe that there should be exceptions to any mandatory requirement in the following instances:

- 1) Retirees who choose to maintain an active license but do not actually engage in the practice of law. Some may simply wish to keep their license in the event that in the future they may choose to return to practicing for financial or other reasons. Should they return to practice, I have no objection to malpractice insurance being a requirement-subject to my second point below.
- 2) Retirees whose licenses are inactive but practice under the Emeritus Pro Bono program. It is my understanding that in participating in an approved pro bono program (i.e., qualified legal services provider), the program itself provides malpractice coverage for the attorney. I would think that that coverage would suffice should mandatory insurance be a requirement.
- 3) Retirees who choose to keep their licenses active but only to perform pro bono services. If they were to only provide pro bono services through an approved pro bono program (i.e., qualified legal services provider) and the program itself provides malpractice coverage for the attorney, I would hope that that coverage would suffice should mandatory insurance be a requirement.

Second, given that the practice of attorneys licensed in the state is varied (from large corporate law firms to small solo practitioners), the cost of the insurance must be affordable to those who earn the least from their practice. Otherwise, we will see the demise of the small solo practitioner. Perhaps, like health insurance, the WSBA can assist in this by making group coverage available at lower cost.

Thank you for providing me this opportunity to comment.

Alix Foster
WSBA # 4943

From: [Noelle Jackson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory for all?
Date: Thursday, November 22, 2018 7:29:19 AM

I am licensed in Washington and working in California as a risk and claims manager for a hospital system. I do not litigate, I am not in-house counsel; so I am not “practicing” law and I have no clients. Are you expecting me to pay for legal malpractice insurance just so that I can keep my WSBA license?
I have paid your dues for decades and I keep my CLEs current, and any more expense would be an undue burden for no reason and with no foreseeable benefit.

Noelle Jackson
WSBA #21950

From: [Fred Kull](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on the proposed mandatory malpractice initiative
Date: Thursday, November 22, 2018 8:53:08 AM

I have written to the task force before with my comments via email. (Summary: this will put me out of business).

I would now like to suggest that if mandatory malpractice insurance is required, that the starting date be set in the future and that it takes effect prospectively so that law students currently in law school can become lawyers and be able to pay off their \$300,000 student loan and that individuals thinking about becoming lawyers can consider the costs of law school and the cost of mandatory malpractice before they decide whether to go to law school at all.

Why not make the requirement effective on January 1, 2025? I might even be retired by then.

Fred D Kull
WSBA 6822

From: [Debbie Pirner](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance
Date: Thursday, November 22, 2018 9:10:58 AM

Dear Task Force,

I am a new member of the WSBA, I have been licensed in Oregon since 1999 and California since 1998. I see from the minutes of the recent meeting that you are leaning toward requiring malpractice insurance from all attorneys. Please do not.

One of the reasons I became licensed in, and recently moved my office to Washington from Oregon, was because there was NOT mandatory liability insurance. I complained for years to Oregon that their \$3500 mandatory insurance fee was not fair to attorneys like me, because we were paying the same fee as attorneys who did work with a high risk of litigation, basically having low fee, low risk attorneys subsidizing large firms and high risk work.

I charge a much lower hourly rate because of the type of work that I do, and feel that the WSBA should be able to trust that lawyers know when they need insurance, and when they do not. I am a sole practitioner, I only do contract work, and only for the legal departments of companies. I do not handle client funds, or do litigation, and know I do not need insurance. I am moving toward retirement and reducing my work gradually, and the insurance cost in Oregon was much too high for the amount of work and type of work I was doing. So I moved.

A law firm will already have insurance, and any lawyer with the type of work that requires handling of client funds or a high risk of malpractice claims will already have insurance, for their own protection. If you require everyone to purchase insurance, you are going to simply punish sole practitioners and low fee/low income attorneys who do LOW risk legal work, like me. The options for those attorneys will be to either move into other fields of work, to join large firms which charge higher hourly rates, or to substantially increase their fees in order to remain lawyers.

We already have huge problems with affordable legal services, this will make it even worse for consumers of legal services.

If you want to consider a requirement that malpractice insurance, if purchased, be purchased from the WSBA or an independent, affiliated entity, that seems reasonable, and would probably help reduce rates for purchasers and standardize coverage, but PLEASE do not require that insurance be purchased by everyone.

Thank you for considering my comments.

Debbie

Deborah L. Pirner
257 Runyan Road
Woodland, WA 98674
(360) 225-9959
dlplaw@iinet.com

From: [Ashley](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment regarding exceptions to malpractice insurance
Date: Thursday, November 22, 2018 9:31:18 AM

To the task force on malpractice insurance

The proposal for mandatory malpractice insurance under consideration has multiple benefits. However, as the task force considers the establishment of exceptions to the requirement for attorneys to maintain such insurance, please consider the following circumstances in which the burden to the attorney of paying for insurance does provide the intended benefits to a client.

1.) Attorneys working in government agencies in many different capacities

A. Jobs that require a law degree and license, but are not classified as attorneys. One example is the Administrative Office of the Courts, which has such staff who support court administration and judge's associations.

B. Jobs that list law degree as desirable or one of the types of education as a qualifying requirement.

C. Jobs for public policy, administrative appeals, or legislation, which use legal knowledge. Examples of these jobs abound in the executive and legislative branches.

2.) Attorneys who are unemployed

Thank you for considering carving our exceptions for government employees and for periods of unemployment.

~Ashley DeMoss, member of the WSBA

From: [Charles Cruikshank](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Letter to the Task Force
Date: Thursday, November 22, 2018 10:17:28 AM
Attachments: [2018.11.22 ltr WSBA Insurance task force.pdf](#)

Attached.

--

Charlie Cruikshank -o- Lawyer since 1975

**“We must let go of the life we have planned so
as to accept the one that is waiting for us.”
Joseph Campbell**

-----REMEMBER-----

When forwarding, [PLEASE REMOVE ALL](#) email addresses and use BCC!

Charles M. Cruikshank III
Lawyer
1417 Digby Place
Mount Vernon, Washington 98274
206 624-6761 – [REDACTED]

November 22, 2018

To: WSBA Insurance Task Force

Re: Mandatory Malpractice Insurance for Washington Lawyers

Dear Task Force:

I am not active, having closed my Seattle practice in 2013, and now aged 77, I have a history with no malpractice claims and I wish to continue as an active member.

An exemption from mandatory malpractice insurance for lawyers such as I am would not constitute a risk to the public, while requiring lawyers who have no practice to pay insurance premiums in order to remain in the active category would be of some direct monetary benefit to less careful or competent lawyers, but not to the public.

Are any exemptions being considered, and if yes, based upon what circumstances and to serve what purposes?

Very truly,

Charles M. Cruikshank III

Charles M. Cruikshank III 6682

Cruikshank Law Office
1417 Digby Place
Mt. Vernon, WA 98274

From: [elizabeth Rosenman](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: pro bono malpractice
Date: Thursday, November 22, 2018 2:10:40 PM

Hello Task Force.

My practice consists **exclusively** of representing *pro bono* NWIRP-referred asylum seekers. NWIRP covers my malpractice insurance and I do not carry any other malpractice insurance. I hope this type of situation is taken into account as you formulate new rules.

Best of luck and thanks.

Elizabeth M. Rosenman

WSBA #23200

From: [Craig Robertson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory licensing issue
Date: Thursday, November 22, 2018 6:54:04 PM

Hi. I am a Washington-licensed attorney living in California. I do not actively practice law, but am keeping my license "active" in case my circumstances change. (I am currently teaching.) Would someone in my situation be required to obtain malpractice insurance? I doubt my situation is all that common, but I would hope that some sort of exception would be included to cover my circumstance. If you would provide me with some information on this topic, I would appreciate it.

Craig Robertson

From: Mandatory Malpractice Insurance Task Force
Sent: Tuesday, November 27, 2018 2:30 PM
To: 'Craig Robertson'
Subject: RE: mandatory licensing issue

Mr. Robertson,

The Task Force is currently working on its draft Final Report to the WSBA Board of Governors with recommendations regarding whether to require malpractice insurance of Washington lawyers. The draft Report includes its recommendations regarding possible exemptions. Among the possible exemptions the Task Force has included is "Other lawyers either not "actively licensed" or not "engaged in the private practice of law," including, for example, retired lawyers maintaining their licenses, judicial law clerks, and Rule 9 interns."

Sincerely,



Thea Jennings | Disciplinary Program Manager | Office of Disciplinary Counsel

Washington State Bar Association | ☎ 206.733.5985 | theaj@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

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From: Craig Robertson <pinseeker206@yahoo.com>
Sent: Thursday, November 22, 2018 6:54 PM
To: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>
Subject: mandatory licensing issue

Hi. I am a Washington-licensed attorney living in California. I do not actively practice law, but am keeping my license "active" in case my circumstances change. (I am currently teaching.) Would someone in my situation be required to obtain malpractice insurance? I doubt my situation is all that common, but I would hope that some sort of exception would be included to cover my circumstance. If you would provide me with some information on this topic, I would appreciate it.

Craig Robertson

From: [john goodall](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Follow up regarding what material has been put forth by the Task Force and the Bar
Date: Friday, November 23, 2018 2:05:46 AM
Attachments: [image001.png](#)

Even if Bar members dig into the minutes of Task Force meetings there is no way to have a real grasp of what they are doing or, more importantly, why they are doing it. I reviewed all the minutes and do not see anything about the Task Force having made an initial determination that uninsured lawyers in the State of Washington have not been financially responsible for malpractice claims. All I was able to find was one such incident being referred to along with a statement saying that there is "no data on whether uninsured lawyers are more inclined to commit malpractice. Why is the necessity for mandatory insurance not the first task for the "task force?"

Northwest Lawyer would better serve Bar members if more details about the mandatory insurance task force were included in its pages, instead of only brief summaries. For example, the task force report on its meeting of April 25, 2018, shows that that it was dominated by a "panel presentation" by the insurance industry, including ALPS Property and Casualty with whom the WSBA apparently has such a cozy relationship that it endorses them for a sort of Obamacare type of obligatory insurance coverage mandating the inclusion of the insurance industry.

Such a relationship between the insurance industry and the Bar Association while this issue is in the process of being determined is not reassuring. The singular reliance on information from an industry with a significant financial interest in the outcome is even less reassuring.

The subsequent report of the July 10, 2018 meeting expresses a conclusion that the lack of malpractice insurance "has had a significant impact on clients", but there are no facts presented to back that up. The only reference to support that conclusion is what is vaguely referred to as 'information that has been gathered by the panel' coming from the aforementioned ALPS Property and Casualty as well as unnamed 'plaintiffs attorneys'. Who and how many plaintiffs attorneys are unfortunately not referenced. Was it only two?

ALPS Property and Casualty apparently offered some 'statistical

information' but none that is based on the State of Washington.

The Task Force pages also suggest that the approximately 400 "comments" that have been received from Bar members are available for us to view. But this is not accurate. None of the comments are available to read, only their subject matter. Consequently it is impossible for us to see what our fellow bar members have said or suggested. Considering that the Task Force has imposed an arbitrary December 1, 2018 "deadline" for comments this entire situation appears to be unnecessarily opaque.

This is an important enough issue to merit more transparency on the part of the Bar.

john goodall
6152

From: john goodall <rugshepherd@hotmail.com>

Sent: Wednesday, November 21, 2018 1:06 PM

To: Mandatory Malpractice Insurance Task Force

Subject: Re: question

Absent from the Charter is any preliminary determination that that mandatory malpractice insurance is necessary to correct a problem currently being caused caused by its absence. That seems to imply that this is a conclusion already made without any supporting facts.

The presence of insurance industry people on the Task Force, the very insurance industry that has a significant financial interest in the outcome, seems to support that implication.

Considering that the WSBA receives money from the insurance industry in the form of advertising full page ads as well as advocating certain insurance companies for health insurance, it seems to me that the first task of the 'task force' should be a determination that mandatory anything is justified by at least a few facts.

Otherwise this raises at least the appearance of a conflict of interest, especially to those of us who might be so old fashioned Americans as to think we should be the ones to determine what kind of insurance we must have.

So, yes. please include my comments as part of the 'public comments'
john goodall

From: [REDACTED]
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Ins
Date: Friday, November 23, 2018 6:58:32 AM

Dear Sir or Madam:

I am a sole practitioner and have licensed to practice law in Washington since 1997. I live and practice mostly in Montana, but have retained my Washington license because occasionally I have done some estate planning work in Washington.

I read some of the Mandatory Malpractice emails recently. I feel like this is one more expense and burden that should not be required by a state bar - forcing the members to purchase malpractice insurance. I don't have time to spend hours making good arguments about this issue - as most sole practitioners, I am busy running a practice, raising a family, and being involved in the community.

I have found that malpractice insurance tends to provide a situation for settlement in cases just to "get them off the books" for the carrier. Even though we as attorneys know that the "client" has control of the case. In reality, the carrier has the ultimate control of the case and many times the plaintiff receives a settlement just to get him or her out of the system - even though the attorney being sued did nothing wrong.

Further, this is one more cost for solo's to bear that raises the bottom line and will increase costs to the consumer.

Please lodge this as my objection to the Mandatory Malpractice Insurance requirement being imposed on Washington attorneys.

Thank you.

Jason L. Harkins

From: [Anita Redline](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: No mandatory malpractice insurance
Date: Friday, November 23, 2018 2:05:57 PM

Hello, I disagree with mandatory malpractice insurance.

One reason -

Attorneys become “uninsurable” due to prior lawsuit (equivalent to pre-existing conditions for health insurance) is very possible OR become cost-prohibitive to have insurance

Other reasons -

1. Potential clients can already verify insurance coverage online lawyer directory
2. Insurance when mandatory results in increased rates
3. Most attorneys have this insurance, few do not have it
4. Added requirement would financially squeeze new attorneys who
 - are already competing with 3 law schools of graduates AND
 - LLLTs! AND
 - live within saturated attorney populations
5. Decrease in law school applicants, likely
6. Clients who are litigious hire insured attorneys
7. LLLTs better be required to have malpractice insurance if attorneys are required
8. Many states do not require malpractice insurance and results are fine
9. Keep the Bar out of our personal decision making

I do have malpractice insurance and will continue to have it - not because a Bar requires it. Attorneys’ viewpoints must carry heavy weight involving malpractice insurance requirement. We are not here for enriching insurance companies, which could start dictating coverage limits.

Anita Redline, Attorney
Waterfront Park Building, 144 Railroad AVE, STE 308, Edmonds, WA 98020
Mail: PO BOX 772, EDMONDS, WA 98020
PHONE: 425-879-4628
FAX: 425-771-7919
Anita@RedlineLaw.NET

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recipient. Receipt or transfer of this email does not constitute legal representation and must not rely upon the contents therein unless there is a written agreement executed by both attorney and client.

From: [NEIL SUSSMAN](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance proposals
Date: Friday, November 23, 2018 2:39:33 PM

Dear Task Force,

I have been licensed to practice law in Washington since 1982. I have had my own solo practice ever since then. At least 50% of my practice is devoted to entertainment law matters - contracts, copyrights and trademarks, setting up small LLC's or corporations for bands, etc.

When I first started practicing law and attempted to obtain malpractice insurance, most insurance firms would not even offer me coverage because I practiced entertainment law. There were a few years when I was able to obtain some coverage, but for the great bulk of my professional career I have not had any. I have not had any significant claims either. The largest one was for around \$800 and I paid that out of my own funds.

I do not agree that Washington attorneys should be required to carry malpractice insurance just to practice law.

The most important point I want to make is this - if the state bar ultimately decides differently and does require attorneys to have malpractice insurance, then the bar must make sure that there will be insurers willing to offer coverage at reasonable rates. If I am not able to obtain coverage due to the type of legal matters I handle - which was my prior experience - or obtain it at a reasonable rate, I should not be barred from practicing.

Sincerely, Neil Sussman

10751 Densmore Ave. North

Seattle, WA 98133

WSBA # 12846

From: [jason hatch](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: I, for one, will never accept your attempt to force me to send money to a private insurance company. Ever.
Date: Friday, November 23, 2018 3:45:31 PM

This is a lawsuit waiting to happen. I am not allowing you, or any other unauthorized body, to force me to pay money to a private insurance company for a service I do not want or need. Threatening the livelihood of individuals is a poor decision on the part of the bar. I will continue to practice law, and I will never, ever allow malpractice insurance to be forced upon me. This is clearly not your choice to make.

Jason Hatch 31798

From: [Patricia Halsell](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory malpractice insurance won't work for me
Date: Friday, November 23, 2018 4:02:02 PM

Dear Task Force members,

I'm concerned about the requirement to maintain malpractice insurance for attorneys in my circumstances. I keep my license active as a "security blanket" while I pursue a non-law-related career as a fine artist. I haven't practiced law since 2012, and hopefully won't have to return to the practice of law in the future, but I do wish to keep my license active out of prudence while my paintings sales grow. Besides, I worked hard at a successful career in the law for more than twenty years, and I'm proud to be a lawyer. But I'm not practicing law in any capacity these days.

Since I'm not actively practicing law, I really don't want the financial burden of having to carry malpractice insurance merely to stay active. It's hard enough to pay my yearly dues and keep up with my CLE requirements.

Going inactive is not a solution for me. I went inactive once for a few years, but had to take the bar exam again to be readmitted since I'd missed the cutoff to reactivate my license by six months. I have chosen to remain active ever since to avoid the hassle of reactivation.

I hope the task force will take into account the circumstances of members like me and carve out an exemption rather than require all of us to maintain malpractice insurance.

Thank you for your consideration.

Patricia Halsell
WSBA # 14037



www.PatriciaHalsell.com
www.Instagram.com/pathalsell

The aim of art is to represent not the outward appearance of things, but their inward significance, and this, and not the external manner and detail, is true reality. - Aristotle

From: [REDACTED]
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Just questions?
Date: Friday, November 23, 2018 4:45:19 PM

Dear Task Force,

Thank you for your work. This is a very complex issue, especially as to what the impact may be on small firm, solo practitioners, a beginning solo practitioners.

SUBMISSION
TO WSBA

11/23/2018

FROM Beverley Brown Losey WSBA 14747 e-mail [REDACTED]

Maybe there is a need for Mandatory Minimum Insurance? That is beyond my field of expertise. I do know this: hypothetically speaking, that, Hypothetical Client C, was referred to Attorney B (for a tort claim) against C's "drinking buddy" and former attorney, A. B filed tort claim with motion for summary judgment. Eventually, C received her day in court. Now, when C received her Judgment for \$X, A, in fact, had no insurance coverage and lacked ability to pay C's. Now, A was a partner in small law firm (less than five attorneys). Surprise to A's partners (P): C's tort was for legal mal-practice and not a tort claim related to a couple fighting in a bar. Well, A's partners had no legal mal-practice insurance; but, P and B, negotiated a settlement, to which C agreed and C's claim was paid. So, P was "self-insured." (This hypothetical is for educational and illustrative purposes only; facts that resemble any actual case are purely accidental or coincidental.)

What I do know is this: the number of insurance companies that provide legal mal-practice has decreased since I began legal practice. The price of insurance has increased for private solo practitioners, and the number of people who can afford an attorney for even a \$20,000 legal fee case has decreased. Yes, there are reduced fees; yes, there are underfunded, understaffed pro bono legal services. See President's Corner in a more recent issue of "NWLawyer".

And, there are certain pro bono legal services provided by lawyers who report 50 hours on more on the licensing forms. But, while underfunded, understaffed pro bono legal services do take extremely significant litigation to State and local trial and appellate courts, those cases are general carefully screened and selected. And, so are the limited services to those who meet or slightly exceed the Federal standard for poverty.

The "middle class" seems to have less time and resources for volunteer work or discretionary income. And, at least on my insurance form there are questions about complex legal activities which could change my rates. So, is there any high-risk pool for attorneys who provide lower cost services to client C. Is there a different test for the legal standard of care to C if C is provided services by a solo practitioner? Is there any special defense if C's services are provided by a pro bono solo practitioner that vs. any of Seattle's largest and prestigious law firms? I know that standard of care in medicine is determined by the standard of care in the community where the doctor is providing services.

If you are in a remote jungle on this planet without adequate telephone or cell phones, you

cannot expect to receive the same care as provided at a major trauma center such as Harborview. I have not heard of the “Good Samaritan” rule that applies to any lawyer.

I am not certain. Maybe C needs legal services that a beginning practitioner with a good mentor cannot provide due to the cost of mandatory legal mal-practice insurance? If that is true, maybe there is no lawyer or remedy for Client C unless, of course, Client C, could appear pro se?

Please consider these issues in deciding mandatory insurance rules? Large prestigious firms have cases worth millions of dollars. I doubt that the small attorney in South King County who represents lower income/blue collar / teachers etc. with “lemon law” cars, actually has cases with the potential for those handling cases worth millions of dollars? So, could the standard amount for legal mal practice insurance be about what the damages would be for middle class people who need assistance in any area of law vs. the damages of litigation for the top 1-10% of the population, who, as far as I know, can afford top rate lawyers or at least afford top rate lawyers until the legal fees mount up to drain the value of the assets of a member of the top 1-10%. /// nothing follows/////

What Popcorn Really Does To Your Memory

clearstateofmind.com

<http://thirdpartyoffers.juno.com/TGL3132/5bf89efdcf38a1efd30b1st04vuc>



From: [Sandy Hayes](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory malpractice insurance
Date: Friday, November 23, 2018 5:02:48 PM

To whom it may concern,

I have concerns about the proposal to require malpractice insurance for all licensed attorneys. I am and have been a dues paying member of the Washington State Bar for the last 23 years. Like many of my UW classmates, I have used my law degree and license in a variety of ways from running a business to serving in elective office. None of these positions justified malpractice insurance but being a licensed attorney has been a benefit. If this were to go into effect, I would be forced to give up my license as I could not justify the expense. The bar would lose my dues and I can imagine that there would be many others in the same situation.

Because of my decade of work in government, I have learned to ask "what is the problem we are trying to solve?" I am unaware that there is a huge issue that this would be resolving. Before you go through with this, please inform bar members how this would help solve a problem.

I am proud to call myself an attorney and the effort it took to become one. It breaks my heart that I would be forced out of this profession for an unclear problem.

Sincerely,

Sandy Hayes
#24781

From: [Meredith Hutchins](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Date: Saturday, November 24, 2018 1:16:32 AM

I passed the Bar in 1978. I was on the Board of Bar Examiners for twenty years and used to attend the Board of Governor's meetings as a representative from the Governmental Lawyers Bar.

I had hoped to be a 50 year member of the Bar like my father and grandfather both were. If the Bar requires mandatory insurance, I will be forced to resign. I can't afford it.

The Bar association seems more and more to be an organization geared to big city practitioners. You are overlooking those of us who have a few clients and hardly earn enough to pay for our licenses, let alone most of the CLE Courses offered via the Bar. I provide simple legal advice, and for matters that require greater legal expertise, I refer people to other lawyers who charge much more than I do. Much of my legal work is provided pro bono.

I don't need or want mandatory insurance.

Meredith Wright Hutchins
2817 81st Avenue NW
Olympia, WA 98502

From: [Alexandra Cock](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance
Date: Saturday, November 24, 2018 9:00:15 AM

Dear Task Force,

I have been a member of the Bar since 1981. When I had my law practice, from 1981 - 1988, I carried malpractice insurance. I have maintained my license since then but have resided in other states and have not practiced law. In 2014, I was introduced to a death row inmate at San Quentin. I have been working on his case on a pro bono basis since then, performing non-court appearance tasks. I have put in many hundreds of hours on the case. It would be a real hardship for me to pay for malpractice insurance. If you decide to adopt mandatory insurance, I ask that you have exceptions, including pro bono work.

Thanks

Alexandra Cock

Bar #11775

Sent from my iPad

From: [Yvonne Chapman](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance Task Force
Date: Saturday, November 24, 2018 11:01:37 AM

I do not support mandating professional liability insurance. The free market establishes whether the public determines that this is a concern when hiring an attorney. WSBA has publicized the status of insured/uninsured attorneys for several years on its public website and there is no evidence that the public chooses an attorney based upon such status.

Additionally, should the task force disregard the majority of comments, which oppose this proposal, then it should establish a wide range of exceptions. For example, I no longer reside in Washington State, but maintain an active license. In recent years, I have engaged in a high percentage of non-billable activity in service to the profession and service to non-profits - these organizations would not be provided free legal counsel, nor uncompensated hours of service to the profession, should it become necessary to finance a mandatory policy for my Washington license. In comments filed to date, many other lawyers have expressed similar concerns regarding mandating insurance.

For the majority of my years of private law practice, I have been a sole practitioner. Solo lawyers accept clients that many medium and large firms will not handle, often resulting in noncollectable and/or reduced fees. Many also teach law courses as adjunct professors or serve in pro bono clinics. [While lawyers from large firms also do these activities, they continue to receive an established salary, while solo attorneys do not as these hours are not billable.] Consequently, it is financially impractical for many solo proprietors to purchase liability insurance; if they do, it is minimal with high deductibles. [Lawyers employed by law firms are covered by the firm's policy and do not have to pay out of pocket for such coverage.]

Furthermore, should I choose to maintain professional liability insurance for my own peace of mind, the free market should establish a recommended level of coverage and deductibles, not court rules.

Finally, we should all be concerned regarding the obvious conflict of interest in that representatives of malpractice insurance carriers serve on this task force which now recommends mandatory insurance.

Yvonne K Chapman, J.D., M.A.
901-494-4420
WSBA 33682

Reference:**Mandatory Malpractice Insurance Task Force:** The board extended the task force's charter through March 2019, when the final report will come before the board. Task-force members said in [an interim report](#) in

July they are likely to recommend malpractice insurance as a condition of licensing for all lawyers. The deadline for member feedback to the task force is Dec. 1 (email insurancetaskforce@wsba.org).

From: [Richard Flamm](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance comments
Date: Saturday, November 24, 2018 3:53:08 PM

Please consider these two examples that are in my opinion inappropriate for mandatory coverage.

1) Active bar member has a single client, a/o does not deal in client funds, a/o does not appear in litigations, a/O is semi retired. (Limited hours)... I am sure you can also think of other conditions that make mandatory insurance unduly onerous. One size does not fit all.

2) Active bar member does not engage in the practice of law but still maintains their active membership status.

Richard Flamm
9472

From: [Paul Okner](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory insurance?
Date: Saturday, November 24, 2018 9:01:34 PM

I'm against mandatory insurance.

Happy to elaborate on my reasoning, but wanted you to hear my opinion.

Sincerely,

-Paul Okner
Fremont Law Group PLLC
3417 Fremont Ave. N. Suite 225
Seattle, WA 98103
[REDACTED]

From: [Dawn Thorsness](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Sunday, November 25, 2018 5:41:38 AM


WSBA,

As you consider mandatory malpractice insurance for "all" lawyers, please exempt lawyers who do not practice law. To mandate malpractice insurance for lawyers who do not practice law is reason to become inactive.

I have not practiced law for many years but keep my license active as life is uncertain. We presently live in Florida.

Thank you,

Dawn Thorsness
WSBA # 14123



From: [Irina Anta](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Sunday, November 25, 2018 7:24:01 AM

Hello,

I would like to ask the task force not to recommend mandatory malpractice insurance, as it would be a huge financial burden for small nonprofit attorneys like myself. Because a nonprofit attorney salary is not high, it is already a big burden for me just to pay nearly \$1000 in law school loans every month, in addition to the yearly \$480 WSBA membership fee. Adding another sizable cost of several thousand dollars per year would be entirely prohibitive for me. I fear that I would need to take out more loans to cover these expenses.

Furthermore, it makes the decision to begin a solo practice -- something I've been considering in the near future -- out of the question. As a beginning solo attorney, I would not be able to make ends meet if I was faced with mandatory malpractice insurance costs.

I ask the task force to please take this significant burden for nonprofit and solo attorneys into consideration.

Thank you,
Irina Anta

From: [Cheryl D. Kringle](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance
Date: Sunday, November 25, 2018 5:16:18 PM

Please provide the membership with more data about why this is believed to be necessary. It seems like another restriction on access, by reducing the ability for some attorneys to practice. If the Bar is heading in this direction, maybe the Bar should also be working to determine how it could provide a cost – effective option for attorneys who practice on a limited basis, or coverage for pro bono practice and such. (If such programs exist, then the Bar should be advertising them more aggressively to alleviate the concerns this proposal is raising in the membership).

I am a huge consumer advocate, I was an AAG for Consumer Protection for several years, but I have yet to see any data that persuades me this is a good idea with benefits that will outweigh the costs.

I was a member of the Practice of Law Board and a huge proponent for the LLLT program. I say that to point out I am not an attorney “protectionist.” However, I feel the Bar has really lost it’s way the past couple of years by failing to consider the needs of its larger membership and using resources on extraneous issues and staffing, therefore unnecessarily driving up the costs the membership. The Bar’s focus should be on making it easy for attorneys to get and remain qualified to provide services that are so needed, as this is the best way to provide more access to the public. I fail to see how adding another cost on its membership will benefit the greater good, but I could be persuaded if the data was made available and proved persuasive.

One other question: If the final report on this is not due until March, why is the deadline to comment on December 1st?

Cheryl Kringle
WSBA #32443

Sent from [Mail](#) for Windows 10

From: [michael pierson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Consideration of mandatory malpractice insurance
Date: Sunday, November 25, 2018 10:05:26 PM

To whom it may concern:

I have been an active member of the WSBA since 1986, but in September 2015 retired from my firm of 30 years (Riddell Williams) and since then have not purchased malpractice insurance on my own. My limited practice now consists of doing pro bono work through organizations that provide me with coverage and on occasion serving as a hearing officer in medical peer review matters. It appears from your Interim Report that serious consideration is being given to exempting neutrals from insurance requirements — e.g., arbitrators and judges — and I think this is appropriate and that any such exemption should be defined broadly enough to include people acting in roles like the one I fill when hired as a hearing officer in a medical peer review matter. Medical peer review matters seldom go all the way to a hearing. It would not make a lot of sense for me to have to obtain annual insurance for work that is sporadic at best and whose occurrence is highly unpredictable. In the past year, for example, I served as a hearing officer three times; the last one ended over the summer and I do not know when, or for that matter even if, I will be asked to do such work in the future. I believe that the justifications for exempting a judge or arbitrator or other neutral from an insurance requirement would also extend to someone doing hearing officer work. In many years of doing this work from time to time, going back to when I worked at Riddell Williams, no peer review matter has resulted in a claim against me.

I urge you to endorse an insurance requirement for neutrals, and to define any exemption of that kind broadly enough to apply to people doing work of the kind I'm doing or which may otherwise be that of a neutral — but perhaps in a context that doesn't spring quickly to mind and isn't specifically that of a judge or arbitrator.

Thanks for your consideration,

Mike Pierson
WSBA #15858

From: [Janet Foster Goodwill](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance
Date: Sunday, November 25, 2018 11:35:46 PM

Dear Task Force:

If this becomes mandatory, I will have to give up my license to practice law in WA. I currently am an active member of the bar but do not practice law, I teach at a college. I pay my bar dues and do my CLEs to keep myself up-to-date, however, I do not practice law. So, could you consider the group of attorneys who want to keep their credentials but do not practice law?

Sincerely,

Janet Foster Goodwill
Bar # 12642

From: [Arnold Jin](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Statement in Opposition to Mandatory Malpractice Insurance
Date: Monday, November 26, 2018 6:31:27 AM

Dear WSBA Insurance Task Force:

I'm writing to state my opposition to the Board's recommendation of mandatory malpractice insurance for Washington State attorneys. I believe this direction goes against the WSBA's stated purpose of access to justice. There does not seem to be any articulated reasons for why requiring this condition would remedy any real problem facing Washington attorneys. Furthermore, I think adopting this requirement will result in many members changing their active status which would not benefit the bar or its members. I highly urge the Board not to adopt this measure.

Regards,

Arnold Jin, WSBA #42482

From: Carrie_Selby@wawb.uscourts.gov
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Government attorneys
Date: Monday, November 26, 2018 7:35:22 AM

Good morning,

This email is regarding proposed malpractice insurance as a condition of licensing for all lawyers. I have not followed this issue closely, but would like to make sure any such requirement contains exceptions, including attorneys who work for the government. I am a career law clerk for a federal bankruptcy judge, thus have no clients or need for malpractice insurance. Thank you.

Carrie Selby
Law Clerk to Judge Mary Jo Heston
United States Bankruptcy Court
Western District of Washington
(253) 882-3953

From: [Inez "Ine" Petersen](#)
To: [Bill Pickett](#); [Rajeev Majumdar](#); [Dan@mcdblaw.com](#); [Michael Cherry](#); [carla@higginsonbeyer.com](#); [kyle.s@bullivant.com](#); [danclarkbog@yahoo.com](#); [PJ Grabicki](#); [BHMToleffson@outlook.com](#); [Paul S](#); [jkang@smithfreed.com](#); [Kim Hunter](#); [meservebog@yahoo.com](#); [Athanas Papailiou](#); [rknight@smithalling.com](#); [Alec Stephens](#); [Mandatory Malpractice Insurance Task Force](#)
Cc: [Paula Littlewood](#)
Subject: Concerning malpractice insurance - a "must read"
Date: Monday, November 26, 2018 8:10:20 AM
Attachments: [112518 letter to Task Force cc Governors re least restrictive means.pdf](#)

Dear Governors and Task Force members:

I am more convinced than ever that making malpractice insurance mandatory at this time is wrong due to lack of facts and data to support such a decision.

Please see enclosed letter which elaborates on "enhanced full disclosure" including protective requirements from the RPC.

This is an adjunct to the article I wrote for the *NWLawyer* which was declined due to length regarding full disclosure as the "least restrictive means" to protect clients from not being able to collect on legal malpractice judgments.

Respectfully submitted for your review,

Inez Petersen, WSBA #46213
Cell 425-255-5543
Email [REDACTED]
FAX 888-253-1074



Starfish Law PLLC

Inez PETERSEN, J.D., WSBA #46213

1166 Edel Ct, Enumclaw, WA 98022-2137

Telno 425-255-5543; [REDACTED]

— InezPetersenJD@gmail.com

November 25, 2018

Dear Governors and Task Force members:

In lieu of making malpractice insurance mandatory AT THIS TIME, I have made a recommendation that the Task Force approve a two-year period of "enhanced full disclosure" by attorneys who are uninsured while facts and data are gathered to determine the true extent of the problem related to:

(1) How often legal malpractice judgments are uncollectible because the lawyer will not pay, and (2) How many additional meritorious legal malpractice complaints would there be "if only" all lawyers had malpractice insurance.

Enhanced Full Disclosure

This "enhanced full disclosure" is the "least restrictive means" to prevent the client from becoming a victim of an unpaid legal malpractice judgment while at the same time preserving the attorney's right to remain uninsured.

For starters, uninsured attorneys would be required to disclose their uninsured status in their contracts for legal services.

BUT notice of no malpractice insurance is not enough to fully inform the client.

The uninsured attorney must also give the client a reasonable opportunity to find and consult with an independent attorney about the ramifications of contracting with an uninsured attorney.

In this way, a client who chooses to contract for the services of an uninsured attorney does so knowingly; and the business reasons why an attorney remains uninsured are preserved.

Facts and Data

Regarding the "facts and data" portion of full disclosure to obtain statistics (now missing) to determine if mandatory malpractice insurance is justified:

(1) Uninsured defendant attorneys would be required to self- report to the WSBA when a legal malpractice judgment against them goes unpaid.

(2) Attorneys of the legal malpractice plaintiffs would also be required to report to the WSBA when a legal malpractice judgment goes unpaid OR when they do not file a meritorious legal malpractice complaint because the defendant attorney is uninsured and has no assets.

Without such facts and data, there is no way to have a reasonably accurate idea of how often a client is uncompensated for legal malpractice in Washington State.

Making malpractice insurance mandatory at this time is a severe solution to a problem which may rarely occur. In which case, it would be a boon to ALPS (WSBA's declared preferred provider) which has been ever ready to assist the Task Force down the mandatory insurance road. But it could also be a severe financial burden on a much larger number of solo and small law firm attorneys than the number of victim/clients the Task Force is seeking to help.

RPC - another safeguard for the client

Using the contract for legal services as a vehicle to fully inform the client about malpractice insurance would work in conjunction with RPC 1.8(h)(1) which currently reads as follows:

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented by a lawyer in making the agreement;

The and in RPC 1.8(h)(1) makes the legal representation mandatory.

Mandatory representation ensures that the client understands the ramifications of contracting with an uninsured attorney before entering into the contract for legal services.

Accompanied by the gathering of facts and data, RPC 1.8(h)(1) makes enhanced full disclosure the truly "least restrictive means" to address an alleged problem of unpaid legal malpractice judgments. **This is far superior to jumping immediately to making malpractice insurance mandatory.**

Respectfully,



Inez PETERSEN, WSBA #46213
1166 Edel Ct, Enumclaw WA 98022
<https://StarfishLaw.com>; cell 425-255-5543

From: [Eric Christianson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory insurance
Date: Monday, November 26, 2018 8:11:44 AM

I join those opposing the change to require insurance, for probably the same reason as the others. I am near "retirement" and would like to keep licensed to help the occasional relative/friend when in need. this will not be possible if I have to pay for insurance, a financial cost that i do not have budgeted into my "retirement plan".

You are trying to "fix" a problem that does not exist. Please DON'T!

Eric Christianson
WSBA 19598

--

Eric M. Christianson
[REDACTED]

*~To Defend is Divine ~
Honor first, honor last, honor always!*

From: [Mark McClure](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance.
Date: Monday, November 26, 2018 9:21:21 AM

Greetings,

I consider it to be a competitive advantage to maintain insurance - plus it protects my assets.

While I would not make it a requirement to be insured, I would make it mandatory to disclose on websites or on business cards if they were not insured.

PS. I am not in favor of limited law licenses under APR 6. (wrong time and too late, I know, but I am now, after 25 years, just paying off the last of my student loans for a JD and the Bar has authorized/granted greater competition - thanks.)

Mark C. McClure

Managing Attorney

Law Office of Mark McClure, PS

"Why Retire With Debt?"

1103 West Meeker Street, #101

Kent, WA 98032

Office: 253.631.6484

Email: Mark@NorthWestBk.com

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From: [Brian Russell](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Malpractice insurance
Date: Monday, November 26, 2018 9:30:27 AM

I have malpractice insurance but I believe it would be a mistake to make insurance mandatory. This should be left to the discretion of each individual attorney and not be something forced upon them by the bar association. Thanks.-Brian

Brian P. Russell

Attorney at Law
The Russell Law Firm
17820 First Ave. South,
Normandy Park, WA. 98148
(206) 244-3200

From: [Cherry Davis](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory malpractice insurance
Date: Monday, November 26, 2018 9:49:00 AM

if this is to be a requirement for all Washington attorneys, i will be forced to either go inactive, or voluntarily resign as i am no longer an employed attorney. clearly, the insurance lobby in this state has something to do with the proposal. shame on you WSBA.

From: [kg7mx](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory malpractice insurance should not be required of Emeritus members, who pose no risk and, since they cannot charge for services, will simply resign.
Date: Monday, November 26, 2018 9:50:06 AM

N. Michael Hansen, WSBA 1509

From: [Orion Inskip](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on Mandatory Malpractice Insurance
Date: Monday, November 26, 2018 9:50:25 AM

To cut through the rhetoric surrounding the issue, I think we need to boil the issue down to the fundamental question. What is the purpose of Malpractice Insurance?

Is it to protect the professional from potentially career ending mistakes that would leave the public with ever diminishing access to legal assistance?

Or, is it to protect the public from mistakes made by [legal] professionals in the course of providing legal advice?

If it is the later, than the public policy would say that all attorneys should be covered by malpractice insurance. And logic would dictate that this insurance would be standardized across the profession. The most efficient way to do this would be to make mandatory malpractice insurance part of Bar membership and include it in our Bar dues. Attorneys could supplement the mandatory policy based on their individual risk assessments, but then all members of the Bar would be covered and the Bar could administer the policy and claims centrally at the state level.

If it is the former, than only attorneys that feel that they have sufficient assets and risks should carry insurance. Like life insurance, you cover yourself to cover the loss of income to your dependents should you lose the ability to produce income. Once those dependents become self-sufficient, the need for insurance diminishes. What this would mean is that the new attorney with more debt than assets would not logically carry insurance because they have little to nothing to lose, despite being far more likely to commit malpractice (at least in the solo practitioner world).

Bottom line, if it is mandatory it should be administered centrally by WSBA as part of Bar membership.

--

Yours truly,
Orion Inskip

Pace שלום سلام Hasitî शान्ति Baris 和平 Мир สันติภาพ

From: [Larry Berg](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Exceptions to mandatory insurance proposal
Date: Monday, November 26, 2018 10:02:19 AM

I am a government lawyer, occasionally advising family and friends for no compensation and I perform other pro bono.

Minimally, the IOLTA exceptions should apply to any mandatory insurance provisions. However, I also support exception for attorneys with less than \$10K annual billings/client funds and young attorneys in years 1-2.

~~ Larry Berg, #22334

From: [Emily Carlin](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on possible exemption for mandatory malpractice insurance
Date: Monday, November 26, 2018 10:04:02 AM

Good morning,

I don't have a strong opinion about mandatory malpractice insurance for attorneys actively practicing. I am an attorney that works in a law firm, but in IT rather than as a practicing attorney. I keep my license current in case I might want to practice in the future. I would propose that non-practicing attorneys should be exempt from mandatory malpractice insurance should it be enacted.

Thank you,

Emily Carlin
Data Operations
Weinstein & Riley, LLC
WSBA #41778

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From: [Mike Warren](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance
Date: Monday, November 26, 2018 10:15:25 AM

Dear Task Force

I practiced law for 34 years, and carried malpractice insurance the entire time. I retired in May, 2017, although keep my license active. This includes attending the requisite number of CLE seminars. Since retirement, I have handled one small legal matter, a pro bono minor real estate transaction for a friend. I have no intent on returning to the practice of law, but would like the option of handling small matters, as just described.

If the WSBA does elect to mandate malpractice insurance, something I do not necessarily oppose, I would hope that there would be exemptions for attorneys such as myself that do not have an active practice, but still desire to maintain active licensing. If I am forced to insure, I am sure I would go on an inactive status, which would prevent me from handling the very occasional pro bono matter for those in need.

Mike Warren
WSBA #14177

From: [Info](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Monday, November 26, 2018 10:19:19 AM

Although I do think that most attorneys should have malpractice insurance, I do not think that malpractice insurance should be mandatory. This is just one more example of WSBA overreach.

James Laukkonen

--

Laukkonen Law, PLLC
1800 Cooper Point Rd SW STE 12
Olympia, WA 98502

From: [Rush Riese](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance
Date: Monday, November 26, 2018 10:20:25 AM

Good morning.

For the record, I am a former corporate attorney so I have never had the need to purchase my own malpractice insurance. Now that I am “retired” from 35 years of in-house title, escrow and insurance claims work, I still maintain my license and take the mandatory CLE’s. I am not, however, actively practicing. But if I am also required to pay thousands of dollars per year for mandatory malpractice insurance, I’ll let the license lapse. I agree with others that those who are not actively practicing law should be financially burdened with such an insurance requirement. Please reconsider your draft decision in that light and carve out an appropriate exception.

Thank you.

Rush Riese
WSBA 8180

From: [Smith, Charles S.](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments on Mandatory Malpractice Insurance
Date: Monday, November 26, 2018 10:24:28 AM

I am opposed to making malpractice insurance mandatory as a condition of licensure. My firm maintains malpractice insurance coverage, as any reputable firm **already does** (and as all firms/solo practitioners should as a matter of common sense!). I am aware of no good reasons to make it mandatory as a licensing condition.

Oregon is an example of cost-prohibitive licensing/insurance fees. If WA's proposal to make insurance mandatory results in anything remotely resembling Oregon's system, this will have a net negative effect on the practice of WA law, in my humble opinion.

Charles S. Smith
McGlinchey Stafford PLLC
Direct: (504) 596-2842
Email: csmith@mcglinchey.com

12th Floor, 601 Poydras Street PO Box 60643
New Orleans LA 70130 New Orleans LA 70160-0643

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From: [Anne van Leynseele](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: In support of, with an exception
Date: Monday, November 26, 2018 10:25:17 AM

I am the owner of a four attorney law firm and I am licensed to practice in Washington, Oregon, and Maryland. I fully support mandatory malpractice insurance for all licensed attorneys in Washington with self selected, private insurance providers and, similar to car insurance, some minimum coverage standards.

However, I am very dissatisfied with the flat fee and inadequate coverage of the mandatory malpractice insurance offered through the Oregon State Bar Association and would oppose any efforts for Washington to adopt that system.

ANNE M. VAN LEYNSEELE
[Legal Strategist](#)

[7 POINT LAW PLLC](#)
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From: [Grant](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance
Date: Monday, November 26, 2018 10:29:25 AM

To Whom It May Concern:

I am interested in this matter, but do not believe I have enough information to take an informed position. I may have missed the information on the web site and if so, please direct me to the appropriate location. Otherwise, would the committee please publish information on the following questions, which I believe are essential to the issue and which I believe I would place all members in a better position to comment:

1) What would be the impact on existing insured attorneys? There is a basic presumption that high risk attorneys (whether they are bad attorneys or practicing in high risk areas) are less likely to be able to obtain malpractice insurance due to their higher risk. Therefore, those higher risks are borne entirely by the attorneys engaging in high risk practice. Should those attorneys be forced to obtain insurance, it would necessarily increase the rate of claims and amounts of insurance payouts among all attorneys (both aggregately and per attorney).

Therefore, I believe the risk (of high risk practices) will be inappropriately borne by low risk attorneys in the same insurance pool. It is effectively the same risk as including pre-existing condition patients in the same insurance pool as 18 year old healthy individuals. Premiums must go up. As anecdotal evidence, I have never had a claim and my insurance premiums are a fraction of the \$3,500 charged in Idaho.

2) What percentage of attorneys are presently uninsured?

3) Of the uninsured attorneys, how many malpractice claims are brought where the attorney is unable to satisfy the claim amount through their personal resources (self insurance)?

I believe these are some of the central issues to the mandatory malpractice insurance decision. Please consider making them available for member evaluation in order to make informed decisions.

Thank you,

Grant

Grant Learned
Attorney at Law
learnedg@hotmail.com
206-856-4424

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From: [Thoroughman \(US\), Todd R](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Monday, November 26, 2018 10:31:54 AM

Malpractice Insurance Task Force:

In response to your consideration of mandatory malpractice insurance for all licensed legal professionals, I add my support to the many concerns you have received stating that mandatory malpractice insurance is unnecessary, indiscriminate, and burdensome. Aside from the numerous comments that many attorneys will struggle to pay for such insurance, there are many situations where it is simply unnecessary to carry malpractice insurance (for instance, working in a non-attorney position for a company but wanting to maintain the option of returning to practice).

Already, the cost of meeting CLE obligations and licensing is significant. Many of us, however, are willing to pay these fees in order to maintain our status given the significant time and money spent in education to achieve the privilege of being a licensed attorney and member of the WSBA. If the cost of maintaining licensed status and WSBA membership becomes increasingly burdensome, I suspect that membership may ultimately decline.

As a condition of obtaining a driver's license, individuals are not required to maintain auto liability insurance if they do not own/operate a vehicle, why should licensed attorneys be required to maintain malpractice insurance if they do not actively practice.

Thank you for your consideration,

Todd R. Thoroughman
Seattle, WA
WSBA# 28693

From: [Myles Van Leuven](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Malpractice insurance
Date: Monday, November 26, 2018 10:36:04 AM

Hello,

If carrying malpractice insurance becomes a requirement for license, I will have to let my license go. I currently work for a company in a non-practicing capacity, but continue to keep my license because the company I work for pays the annual fee. They won't pay for malpractice insurance. With the amount of lawyers that are graduating from law schools in Washington and the limited opportunities for traditional practice, there have to be many people like me who will no longer relicense. As an aside, I work with at least 10 other lawyers who are licensed in Washington and who will likely make the same decision. Given that the WSBA was so concerned about the decrease to bar dues a couple of years ago, I'm surprised that the WSBA is considering a strategy that will result in losing additional bar dues from people like me. For the sake of the WSBA, please do not move forward with this strategy that seems intended to help insurance companies. I believe that the WSBA will do more to protect the public by providing services with revenue from bar dues than cutting services that will inevitably result from this strategy.

Myles Van Leuven
WSBA 42053

Sent from my iPhone

From: [michael.jordan](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: MANDATORY INSURANCE
Date: Monday, November 26, 2018 10:39:40 AM

I have always had insurance though it was a waste of money since I only did criminal defense for most of my 30 years. (Before that I did exclusively insurance defense.) There are no known civil malpractice cases arising from a criminal defense- the remedy is an appeal. There is no civil cause of action for "ineffective assistance of counsel".

Insurance companies do not care that your line of work cannot give rise to a claim for malpractice- they make you pay whatever they decide. This attitude has passed on to cities and counties who often require a million or more coverage to sign for a criminal defense contract. Cities and counties have an umbrella policy that says anyone the city contracts with must have coverage up to X and the umbrella comes in after that. In fact in these contracts it often calls for mandatory auto insurance also, if you can believe that. All of these requirements affect an attorney's ability to provide indigent defense when he or she is already accepting a fee way below the norm.

So now the bar wants to require mandatory insurance. What about the small law firm that survives (barely) accepting criminal indigent defense? Why would the bar demand insurance for a practice that cannot give rise to a civil suit for damages? In theory the city or county hiring the lawyer could be sued for "negligent hiring" if you want to stretch the possibility. In that case- though I know of none- the lawyer's malpractice policy would NOT come into play anyway. And if you are worried about an attorney stealing the advance deposit money there is no coverage for a criminal act of the attorney- it is malpractice insurance for negligence, not assault, not robbery, not theft. (Hence the phrase "errors and omissions")

The bar's interest in this planned rule is to protect the public from malpracticing attorneys who commit an "offense" that could give rise to a suit for money damages. If that becomes the rule the bar would need to obtain a commitment from an insurance company to parse out the attorney who does for example 90% criminal defense and 10% whatever. As of now there is no such thing. The bottom line is that there is someone who will benefit from mandatory insurance but it ain't the client. It's the insurance industry. Plus the bar can claim they took an action to protect the public. A good way to easily repair a fence is to white wash it.

From: [Sewell \(US\), Robert L](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Monday, November 26, 2018 10:43:58 AM

Dear Task Force Members,

Upon review of the Task Force's Interim Report (dated 7/10/2018), I noticed a sample list of exemptions that would apply to certain attorney groups. Unfortunately, this list is not exhaustive in identifying a group of attorneys that maintain an active Bar status but do not actively represent any clients. Although the sample list includes an exemption for "in-house private company lawyers", it does not address active Bar members that work full-time for a private company in a non-lawyer capacity. For instance, some active Bar members might work for a private company but not in the private company's legal department. Therefore, they are not identified as "in-house private company lawyers" for such a company. Those active Bar members, for example, might work in a risk management or contracts organization as a non-lawyer within such private company. Since this group would not be actively representing private individuals in that capacity, there should not be a requirement for such a group to be obligated to maintain malpractice insurance. As such, the exemption list should be expanded to include the group of members that maintain an active status with the Bar but work full-time for a private company, in a capacity other than a lawyer for such company, and that certifies that they do not represent any clients. Otherwise, the above referenced group will not be able to choose an exemption category to identify with even though it clearly would not be the intent of the Bar to require such a group to maintain malpractice insurance when they are not engaged in the representation of any individual clients.

The Task Force needs to be aware that there is a missing category of active Bar members in the sample exemptions. It might be semantics, but if you work for a private company but not in their legal department, you do not identify yourself as an "in-house private company lawyer" for such company. Further, none of the other stated sample exemptions apply to this group either. I would respectfully request that the Task Force consider extending the exemptions so that they also cover any active member that certifies they do not represent any clients in a legal capacity.

Thank you for your consideration of this issue.
Robert L. Sewell
17307

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From: [jason hatch](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: The horrible idea you have
Date: Monday, November 26, 2018 10:51:17 AM

The only possible outcome for this is hurting small and solo practitioners, while acting as a hand-out to firms that are able to (OBVIOUSLY) use their size in negotiating costs. This is not an equal application by any standard, and should be acknowledged as such. As I have previously made clear, I will never, ever be forced into handing any private entity money; by the bar association or anyone else. All the best.

Jason Hatch 31798

From: [Paul Apple](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: FW: Urgent and Important News about Mandatory Malpractice Insurance
Date: Monday, November 26, 2018 11:06:28 AM
Attachments: [image001.png](#)
[image003.png](#)
[112518 transmittal email with 112518 letter attached.pdf](#)

Dear Governors and Task Force Members:

I have reviewed the attached letter from attorney Inez Petersen and I am in agreement that the task force should approve a two-year period of fact finding on who are uninsured while facts and data are gathered to determine the true extent of the problem related to:

- (1) How often legal malpractice judgments are uncollectible because the lawyer will not pay, and
- (2) How many additional meritorious legal malpractice complaints would there be "if only" all lawyers had malpractice insurance.

In addition I would also ask the task force to determine what the financial impact upon attorneys would be in applying and paying for additional costs of malpractice insurance for those who practice in "high risk" practice areas such as criminal and family law practices, where the majority of bar complaints (founded or not) are generated? Will this increase cost of insurance for lawyers in these practice areas drive down the number of lawyers willing to represent clients in these legal areas?

Is there truly a factual basis to ensure that clients are protected from those few attorneys who actually cause harm, verses creating another industry model for attorneys to sue attorneys who allegedly commit malpractice? I don't believe that the task force has fully examined these questions. Research data and facts should drive any findings or recommendations by this task force.

Respectfully,

Paul B. Apple
Senior Attorney
paul@weierlaw.com

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Inez Petersen <inezpetersenjd@gmail.com>

Concerning malpractice insurance - a "must read"

1 message

Inez "Ine" Petersen <inezpetersenjd@gmail.com>

Mon, Nov 26, 2018 at 8:09 AM

To: Bill Pickett <bill@wdpickett-law.com>, Rajeev Majumdar <rajeev@northwhatcomlaw.com>, Dan@mcbdlaw.com, Michael Cherry <mikech@lexquiro.com>, carla@higginsonbeyer.com, kyle.s@bullivant.com, danclarkbog@yahoo.com, PJ Grabicki <pjg@randalldanskin.com>, BHMTollefson@outlook.com, Paul S <pswegle@gmail.com>, jkang@smithfreed.com, Kim Hunter <kim@khunterlaw.com>, meservebog@yahoo.com, Athan Papailiou <athan.papailiou@pacificallawgroup.com>, rknight@smithalling.com, Alec Stephens <alecstephensjr@gmail.com>, insurancetaskforce@wsba.org

Cc: Paula Littlewood <paulal@wsba.org>

Dear Governors and Task Force members:

I am more convinced than ever that making malpractice insurance mandatory at this time is wrong due to lack of facts and data to support such a decision.

Please see enclosed letter which elaborates on "enhanced full disclosure" including protective requirements from the RPC.

This is an adjunct to the article I wrote for the *NWLawyer* which was declined due to length regarding full disclosure as the "least restrictive means" to protect clients from not being able to collect on legal malpractice judgments.

Respectfully submitted for your review,

Inez Petersen, WSBA #46213

Cell 425-255-5543

Email [REDACTED]

FAX 888-253-1074



112518 letter to Task Force cc Governors re least restrictive means.pdf

135K



Starfish Law PLLC

Inez PETERSEN, J.D., WSBA #46213

1166 Edel Ct, Enumclaw, WA 98022-2137

Telno 425-255-5543; 206-339-8210

— InezPetersenJD@gmail.com

November 25, 2018

Dear Governors and Task Force members:

In lieu of making malpractice insurance mandatory AT THIS TIME, I have made a recommendation that the Task Force approve a two-year period of "enhanced full disclosure" by attorneys who are uninsured while facts and data are gathered to determine the true extent of the problem related to:

(1) How often legal malpractice judgments are uncollectible because the lawyer will not pay, and (2) How many additional meritorious legal malpractice complaints would there be "if only" all lawyers had malpractice insurance.

Enhanced Full Disclosure

This "enhanced full disclosure" is the "least restrictive means" to prevent the client from becoming a victim of an unpaid legal malpractice judgment while at the same time preserving the attorney's right to remain uninsured.

For starters, uninsured attorneys would be required to disclose their uninsured status in their contracts for legal services.

BUT notice of no malpractice insurance is not enough to fully inform the client.

The uninsured attorney must also give the client a reasonable opportunity to find and consult with an independent attorney about the ramifications of contracting with an uninsured attorney.

In this way, a client who chooses to contract for the services of an uninsured attorney does so knowingly; and the business reasons why an attorney remains uninsured are preserved.

Facts and Data

Regarding the "facts and data" portion of full disclosure to obtain statistics (now missing) to determine if mandatory malpractice insurance is justified:

(1) Uninsured defendant attorneys would be required to self- report to the WSBA when a legal malpractice judgment against them goes unpaid.

(2) Attorneys of the legal malpractice plaintiffs would also be required to report to the WSBA when a legal malpractice judgment goes unpaid OR when they do not file a meritorious legal malpractice complaint because the defendant attorney is uninsured and has no assets.

Without such facts and data, there is no way to have a reasonably accurate idea of how often a client is uncompensated for legal malpractice in Washington State.

Making malpractice insurance mandatory at this time is a severe solution to a problem which may rarely occur. In which case, it would be a boon to ALPS (WSBA's declared preferred provider) which has been ever ready to assist the Task Force down the mandatory insurance road. But it could also be a severe financial burden on a much larger number of solo and small law firm attorneys than the number of victim/clients the Task Force is seeking to help.

RPC - another safeguard for the client

Using the contract for legal services as a vehicle to fully inform the client about malpractice insurance would work in conjunction with RPC 1.8(h)(1) which currently reads as follows:

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented by a lawyer in making the agreement;

The and in RPC 1.8(h)(1) makes the legal representation mandatory.

Mandatory representation ensures that the client understands the ramifications of contracting with an uninsured attorney before entering into the contract for legal services.

Accompanied by the gathering of facts and data, RPC 1.8(h)(1) makes enhanced full disclosure the truly "least restrictive means" to address an alleged problem of unpaid legal malpractice judgments. **This is far superior to jumping immediately to making malpractice insurance mandatory.**

Respectfully,



Inez PETERSEN, WSBA #46213
1166 Edel Ct, Enumclaw WA 98022
<https://StarfishLaw.com>; cell 425-255-5543

From: [FRED SEGO JR](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance feedback
Date: Monday, November 26, 2018 11:13:18 AM

I'm not sure how broad the application of mandatory malpractice insurance would be applied, but I work for a corporation in Boston as house counsel, and don't represent clients outside of my employer. As such, many others like myself would not need insurance, and to be "forced" to pay for something that I don't want, or need, seems to violate a number of principles, as well as possible freedoms. As well, I've worked the majority of my life in another capacity outside of law, and while I keep my Washington License active, haven't engaged in the practice of Law in Washington for many, many years, and feel that to impose this burden would be over-reaching.

FRED SEGO Jr
WSBA # 21498

From: [Jeff Jared](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Please vote "No" to mandatory insurance
Date: Monday, November 26, 2018 11:17:08 AM

--

JEFF E. JARED
Atty & Counselor at Law
830 Kirkland Wy, # 203
Kirkland WA 98033
425 828-4545

From: [Amy Stephson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [REDACTED]
Subject: No Broad Mandatory Malpractice Insurance Requirement
Date: Monday, November 26, 2018 11:32:46 AM

Task Force,

I am in that category of lawyer who (1) is retired or semi-retired; (2) has maintained my practice license, but not my malpractice insurance; (3) is doing mostly non-law work; and (4) does some low-risk law work from time to time. I cancelled my malpractice insurance because it was expensive, I never had a claim, and I was drastically reducing my law practice. In these circumstances (and similar ones), I do not think that mandatory malpractice insurance is appropriate or necessary.

So long as malpractice insurance is so expensive, I also think it should not be required for those who do limited, non-risky law work. As for those who have a normal law practice, mandatory insurance is appropriate only if (1) a low cost option is available; or (2) a claim is made against someone who is uninsured and that person is unable to make the client whole due to a lack of insurance.

Thank you,

Amy Stephson

Amy J. Stephson
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Seattle, WA 98115
(206) 223-7215
www.amystephson.com

From: [Inez "Ine" Petersen](#)
To: [Hugh D. Spitzer](#); [John Bachofner](#); stan_bastian@waed.uscourts.gov; dan@mcbdlaw.com; christy@myllt.com; [Gretchen Gale](#); [PJ Grabicki](#); pl.isaki@comcast.net; [Mark Johnson](#); kara@appeal-law.com; evanm@jdsalaw.com; spierce@davisrothwell.com; pinkhamb@seattleu.edu; tstartzel@ks-lawyers.com; annley@atg.wa.gov
Cc: [Bill Pickett](#); [Paula Littlewood](#); [Paul S](#); [Mandatory Malpractice Insurance Task Force](#)
Subject: ATTN: Task Force - Important information regarding malpractice insurance
Date: Monday, November 26, 2018 11:42:31 AM
Attachments: [112518 transmittal email with 112518 letter attached.pdf](#)
[112518 Binder1 - Schmidt v Coogan - Copy.pdf](#)

Dear Task Force members:

I wish to transmit the enclosed letter to you personally. It concerns the "least restrictive means" to deal with unpaid judgments for legal malpractice claims and provides for capturing facts and data to justify making malpractice mandatory later if it is discovered there is a justifiable need for this extreme action.

I am also enclosing the copies of the *Schmidt v. Coogan* case. Please read the PDF.

This case does not represent what you have been told it represents in the *NWLawyer*. It is not a "poster child" example of how a plaintiff was victimized by an incompetent uninsured attorney. Read the Letter to the Editor about this case first (Pages 00002-00004 of the PDF).

I ask you to sincerely consider voting for "enhanced full disclosure" as described in the enclosed letter. It eliminates controversy by:

- Providing that when a client hires an uninsured attorney, the client is doing so fully (and adequately) informed; and
- It preserves the attorney's right, based upon business reasons, to remain uninsured; and
- It provides a way to gather real facts and data to determine if mandatory insurance is warranted later.

I hope that, after reading my enclosures, you would want to take another look at the "least restrictive means" of dealing with unpaid legal malpractice judgments. **The "least restrictive means" will protect clients (and attorneys) while the Task Force gathers the needed facts and data to consider adopting a more restrictive remedy.**

Thank you again for considering my comments.

Sincerely,
Inez Petersen, WSBA #46213



Inez Petersen <inezpetersenjd@gmail.com>

Concerning malpractice insurance - a "must read"

1 message

Inez "Ine" Petersen <inezpetersenjd@gmail.com>

Mon, Nov 26, 2018 at 8:09 AM

To: Bill Pickett <bill@wdpickett-law.com>, Rajeev Majumdar <rajeev@northwhatcomlaw.com>, Dan@mcbdlaw.com, Michael Cherry <mikech@lexquiro.com>, carla@higginsonbeyer.com, kyle.s@bullivant.com, danclarkbog@yahoo.com, PJ Grabicki <pjg@randalldanskin.com>, BHMTollefson@outlook.com, Paul S <pswegle@gmail.com>, jkang@smithfreed.com, Kim Hunter <kim@khunterlaw.com>, meservebog@yahoo.com, Athan Papailiou <athan.papailiou@pacificallawgroup.com>, rknight@smithalling.com, Alec Stephens <alecstephensjr@gmail.com>, insurancetaskforce@wsba.org

Cc: Paula Littlewood <paulal@wsba.org>

Dear Governors and Task Force members:

I am more convinced than ever that making malpractice insurance mandatory at this time is wrong due to lack of facts and data to support such a decision.

Please see enclosed letter which elaborates on "enhanced full disclosure" including protective requirements from the RPC.

This is an adjunct to the article I wrote for the *NWLawyer* which was declined due to length regarding full disclosure as the "least restrictive means" to protect clients from not being able to collect on legal malpractice judgments.

Respectfully submitted for your review,

Inez Petersen, WSBA #46213

Cell 425-255-5543

Email 

FAX 888-253-1074



112518 letter to Task Force cc Governors re least restrictive means.pdf

135K



Starfish Law PLLC

Inez PETERSEN, J.D., WSBA #46213

1166 Edel Ct, Enumclaw, WA 98022-2137

Telno 425-255-5543; [REDACTED]

— InezPetersenJD@gmail.com

November 25, 2018

Dear Governors and Task Force members:

In lieu of making malpractice insurance mandatory AT THIS TIME, I have made a recommendation that the Task Force approve a two-year period of "enhanced full disclosure" by attorneys who are uninsured while facts and data are gathered to determine the true extent of the problem related to:

(1) How often legal malpractice judgments are uncollectible because the lawyer will not pay, and (2) How many additional meritorious legal malpractice complaints would there be "if only" all lawyers had malpractice insurance.

Enhanced Full Disclosure

This "enhanced full disclosure" is the "least restrictive means" to prevent the client from becoming a victim of an unpaid legal malpractice judgment while at the same time preserving the attorney's right to remain uninsured.

For starters, uninsured attorneys would be required to disclose their uninsured status in their contracts for legal services.

BUT notice of no malpractice insurance is not enough to fully inform the client.

The uninsured attorney must also give the client a reasonable opportunity to find and consult with an independent attorney about the ramifications of contracting with an uninsured attorney.

In this way, a client who chooses to contract for the services of an uninsured attorney does so knowingly; and the business reasons why an attorney remains uninsured are preserved.

Facts and Data

Regarding the "facts and data" portion of full disclosure to obtain statistics (now missing) to determine if mandatory malpractice insurance is justified:

(1) Uninsured defendant attorneys would be required to self- report to the WSBA when a legal malpractice judgment against them goes unpaid.

(2) Attorneys of the legal malpractice plaintiffs would also be required to report to the WSBA when a legal malpractice judgment goes unpaid OR when they do not file a meritorious legal malpractice complaint because the defendant attorney is uninsured and has no assets.

Without such facts and data, there is no way to have a reasonably accurate idea of how often a client is uncompensated for legal malpractice in Washington State.

Making malpractice insurance mandatory at this time is a severe solution to a problem which may rarely occur. In which case, it would be a boon to ALPS (WSBA's declared preferred provider) which has been ever ready to assist the Task Force down the mandatory insurance road. But it could also be a severe financial burden on a much larger number of solo and small law firm attorneys than the number of victim/clients the Task Force is seeking to help.

RPC - another safeguard for the client

Using the contract for legal services as a vehicle to fully inform the client about malpractice insurance would work in conjunction with RPC 1.8(h)(1) which currently reads as follows:

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented by a lawyer in making the agreement;

The and in RPC 1.8(h)(1) makes the legal representation mandatory.

Mandatory representation ensures that the client understands the ramifications of contracting with an uninsured attorney before entering into the contract for legal services.

Accompanied by the gathering of facts and data, RPC 1.8(h)(1) makes enhanced full disclosure the truly "least restrictive means" to address an alleged problem of unpaid legal malpractice judgments. **This is far superior to jumping immediately to making malpractice insurance mandatory.**

Respectfully,



Inez PETERSEN, WSBA #46213
1166 Edel Ct, Enumclaw WA 98022
<https://StarfishLaw.com>; cell 425-255-5543



November 11, 2018

Editor, NWLawyer
Washington State Bar Association
1325 Fourth Avenue Suite 600
Seattle WA 98101-2539

No On Mandatory Insurance

Dear NWLawyer Editor:

The WSBA has convened the Mandatory Malpractice Insurance Task Force which, according to its Interim Report dated 7/10/18, intends to recommend to the Board of Governors that Washington lawyers be required to carry malpractice insurance. But such a proposal should require evidence of the number of clients in Washington who have brought meritorious malpractice claims against uninsured attorneys but who are unable to collect their judgments because of the lack of malpractice insurance. This necessary data is conspicuously missing from the Interim Report.

Instead, Professor Leslie Levin's August 2018 *NWLawyer* article entitled "*Uninsured Lawyers and Professional Liability Insurance Requirements: What Does the Research Tell Us?*" promotes mandatory malpractice insurance for Washington lawyers and uses the case of *Schmidt v. Coogan*, 181 Wn. 2d 661 (2014) as its poster child.

Professor Levin states – “ . . . *an uninsured lawyer [Timothy Coogan] sued the wrong party, resulting in dismissal of his client's claim. He then fought tooth and nail through two jury trials, three trips to the Court of Appeals, and two trips to the Washington Supreme Court to avoid paying a claim that an insurance company likely would have settled many years earlier.*”

Apparently Professor Levin has not read this case.

Examining the first Washington Supreme Court ruling in this case, *Schmidt v. Coogan*, 162 Wn. 2d 488 (2007), we find that the plaintiff, Theresa Schmidt, slipped on some shampoo in a grocery store and that defendant attorney Timothy Coogan failed to file her case against the correct grocery store owner in time. Theresa Schmidt then sued Timothy Coogan to try to get a recovery in damages from him that she might have gotten from the grocery store, demanding many thousands of dollars.

At one point in the litigation the Court of Appeals dismissed the case entirely for lack of evidence of grocery store negligence (the case within the case). If the plaintiff had let the case go at that point, there would have been no further litigation. Yet she continued to press her claims through further appeals and another trial. This is not the uninsured defendant attorney prolonging the litigation.

Why is Timothy Coogan characterized as stubbornly “[fighting] *tooth and nail*” when he defends himself, but Theresa Schmidt is not stubbornly prolonging the litigation when she continues to press her claims through further appeals and a second trial?

In the end Theresa Schmidt collected an award from Timothy Coogan of about \$80,000. This is likely more than what she would have gotten from an insurance company in this slip and fall case. The case clearly does not stand for any proposition that damages are uncollectible from uninsured attorneys.

Before the WSBA Board imposes mandatory malpractice insurance on Washington lawyers we should know the following:

The number of malpractice cases that are filed against uninsured lawyers;

The number of those malpractice cases filed against uninsured lawyers that are successful;

And the number of successful malpractice suits filed against uninsured lawyers that are uncollectible because of lack of malpractice insurance.

Since the vast majority of Washington attorneys already have malpractice insurance we are only talking about a tiny fraction of cases, likely a very small number or maybe none at all. So we have no measurable reason to impose mandatory malpractice insurance on Washington attorneys.

And insurance premium rates will likely rise when this mandate gives the insurance industry a captive market of attorneys. Solo practitioners and small firms will struggle and a certain amount of pro bono and low bono legal services will disappear. Poorer members of the public who make up a large part of the clientele of solo practitioners and small firms will experience a rise in the cost of legal services.

The small percentage of presently uninsured lawyers is actually performing a service to the profession and to the public by keeping insurance rates down. Insurance companies know that if they squeeze too hard, then the presently insured attorneys can vote with their feet and join the uninsured. If we lose freedom of choice we lose this important safety valve.

Insurance companies are the real winners in a mandatory malpractice insurance scheme. They will have a lock on the legal profession and will be able to raise their rates at will and drop “problem” lawyers. In effect, lawyers could be “disbarred” by the insurance companies.

Moreover, mandatory insurance is unlikely to protect the public. The public will be forced into litigation against insurance companies, one of the most aggressive and

difficult litigants in the legal profession. Insurance companies prefer to collect premiums rather than pay out claims. Also, common insurance policy exclusions, such as for criminal or fraudulent conduct, would act to foreclose relief to client claimants.

At this stage when insurance companies are eager for Washington to invoke mandatory insurance, it is reminiscent of the story of the spider and the fly . . . “*Come into my parlor,*” said the spider to the fly. Here, the spider is insurance companies and the fly is the small firms and solo practitioners that the Task Force is trying to force into the insurance company's web. However, once insurance is mandatory then all lawyers will be captive and all will eventually be drained by insurance costs. The public will suffer as well due to the increase in legal costs caused by the increase in insurance costs.

There is a reason that 48 states do not require malpractice insurance and it is encouraging to note that the Nevada Supreme Court has recently rejected a mandatory malpractice insurance rule. The WSBA should also reject this expensive monopoly scheme.

Sincerely,

Tom Stahl
WSBA # 17434
115 West 9th Avenue
Ellensburg WA 98926

Page 1216

145 P.3d 1216
135 Wn. App. 605
Teresa SCHMIDT, an individual, Appellant/Cross-Respondent,
v.
TIMOTHY P. and "Jane Doe" Coogan, and the marital community comprised
thereof; and The Law Offices of Timothy Patrick Coogan, and all partners
thereof, Respondents/Cross-Appellants.
No. 32840-2-II.
Court of Appeals of Washington, Division 2.
September 6, 2006.
Publication Ordered October 31, 2006.

Paul Alexander Lindenmuth, Ben F. Barcus & Associates PLLC, Tacoma, WA, for Respondent.

Dan'l Wayne Bridges, Law Offices of Dan'L W Bridges, Bellevue, WA, for Appellant/Cross-Respondent.

Paul Alexander Lindenmuth, Ben F. Barcus & Associates PLLC, Tacoma, WA, for Respondent/Cross-Appellant.

Page 1217

ARMSTRONG, J.

¶ 1 Teresa Schmidt hired attorney Timothy Coogan to represent her in her slip-and-fall claim against a grocery store. The case was dismissed when Coogan failed to serve the proper defendant. Schmidt then sued Coogan for malpractice and the jury awarded her \$212,000 in damages. The trial court granted Coogan's motion for a new trial on damages. Both parties appeal. Schmidt argues that the trial court erred in overturning the jury's damage award; Coogan argues that Schmidt failed to prove the elements of her underlying claim, specifically that the store had notice of the slippery condition. **We agree with Coogan and, therefore, reverse and remand for dismissal.**

FACTS

¶ 2 In December 1995, Teresa Schmidt went to a grocery store to buy shampoo. As she walked down the shampoo aisle, Schmidt stepped in a puddle of shampoo and slipped and fell. After her sister and a bystander helped her up, **Schmidt shopped for a few more items and then waited in the checkout line for about 10 minutes before reaching a checker.**

¶ 3 Schmidt told the checker of her fall and the spilt shampoo, which she could see from her position next to the register. The store employee did not call anyone to clean the spill while Schmidt was there, and during her brief visit to the store, Schmidt saw no one cleaning

the spill or inspecting the aisles for spills. She left immediately after reporting the incident and paying for her groceries.

¶ 4 Afterward, Schmidt suffered pain and numbness in her arm, migraines, and back spasms. These symptoms prevented her from engaging in her usual activities, such as playing with her child and playing softball. At the trial eight years later, Schmidt still had many of the symptoms.

¶ 5 **Schmidt knew Coogan through her fiancé, John MacMonagle, who had been an attorney in Coogan's office. Coogan agreed to take Schmidt's case against the grocery store. In the meantime, Schmidt took a job at Coogan's firm as a receptionist.**

¶ 6 Schmidt presented evidence that Coogan failed to investigate and prepare her case. In addition, when she asked him about the case, Coogan responded with profanity, telling Schmidt not to worry about it, that he was the lawyer, and that he had it under control. On the last day to file the complaint within the statute of limitations, Coogan still had not filed. **After talking with Coogan, MacMonagle drafted the complaint and filed it over Coogan's signature.**

¶ 7 The complaint, however, named the wrong party as owner of the store. Coogan attempted to amend the complaint and name the proper party, but for reasons not clear from the record, the attempt failed and the claim was ultimately dismissed.

¶ 8 Schmidt then sued Coogan for malpractice. Schmidt testified about the incident in the store, **but she presented no evidence that the store had actual knowledge of the spilt shampoo before she fell. Nor did she provide evidence of how long the spill had been there or what the store's inspection routine, if any, was.**

¶ 9 At the end of Schmidt's case, Coogan moved for judgment as a matter of law. He argued in part that Schmidt had failed to prove an element of the underlying slip and fall claim, **specifically that the store had actual or constructive knowledge of the spill.** The trial court denied the motion. Coogan renewed the motion after the jury verdict. The trial court granted the motion for a **new trial on the issue of damages only.**

ANALYSIS

¶ 10 We review a trial court's decision to deny judgment as a matter of law de novo. *Hizey v. Carpenter*, 119 Wash.2d 251, 271-72, 830 P.2d 646 (1992). Judgment as a matter of law is proper only when the court can find, "as a matter of law, that there is neither evidence nor reasonable inference therefrom sufficient to sustain the verdict." *Goodman v. Goodman*, 128 Wash.2d 366, 371, 907 P.2d 290 (1995) (quoting *Brashear v. Puget Sound Power & Light Co.*, 100 Wash.2d 204, 208-09, 667 P.2d 78 (1983)). Under the "case within a case" principle, the plaintiff in a legal malpractice claim must

prove that, but for the attorney's negligence, the plaintiff would probably have prevailed in the underlying claim. *See Daugert v. Pappas*, 104 Wash.2d 254, 263, 704 P.2d 600 (1985).

¶ 11 When a plaintiff sues a business owner for failing to correct a dangerous condition, the plaintiff must show either that the defendant caused the condition or that the defendant had actual or constructive notice of the condition. *See Pimentel v. Roundup Co.*, 100 Wash.2d 39, 49, 666 P.2d 888 (1983). The "self-service" exception eliminates this notice requirement where "the nature of the proprietor's business and his methods of operation are such that the existence of unsafe conditions on the premises is reasonably foreseeable." *Pimentel*, 100 Wash.2d at 49, 666 P.2d 888.

¶ 12 At oral argument, Schmidt focused on the self-service exception. Courts have applied this narrow exception only when the slip-and-fall happens in an area where there is constant handling of slippery products. *See, e.g., Morton v. Lee*, 75 Wash.2d 393, 397-98, 450 P.2d 957 (1969) (outdoor produce display); *O'Donnell v. Zupan Enters., Inc.*, 107 Wash.App. 854, 856, 28 P.3d 799 (2001) (grocery store check-out aisle); *Ciminski v. Finn Corp.*, 13 Wash.App. 815, 823-24, 537 P.2d 850 (1975) (cafeteria buffet line); *cf. Carlyle v. Safeway Stores, Inc.*, 78 Wash.App. 272, 276, 896 P.2d 750 (1995). In *Carlyle*, the plaintiff asked the court to extend the self-service exception to encompass a shampoo spill in the coffee aisle. Division Three, noting that the produce department was the most hazardous area of the store and that neither the coffee nor the shampoo was kept in the produce section, declined to do so. *Carlyle*, 78 Wash.App. at 278, 896 P.2d 750.

¶ 13 But Schmidt attempts to distinguish *Carlyle*. According to Schmidt, *Carlyle* turns on the fact that the spilled shampoo was in the coffee aisle; here, the spilled shampoo was in the shampoo aisle, a more foreseeable location for a shampoo spill. But shampoo in the coffee aisle was not a critical fact in *Carlyle*. *Carlyle* mentioned the coffee aisle location in discussing the distance of the spill from the produce section. Later, the court discussed the coffee location in its constructive notice analysis. *See Carlyle*, 78 Wash.App. at 278, 896 P.2d 750. The other distinguishing factors noted by Schmidt—the frequency of inspections and the size of the spill—are relevant to whether the store had constructive notice, but not to whether the shampoo aisle is such an inherently hazardous section to justify the self-service exception to showing knowledge.

¶ 14 Schmidt also reasons that a slip-and-fall is reasonably foreseeable in the shampoo aisle because a customer might open a shampoo bottle to smell it and accidentally spill it in front of the shelf. If so, most areas of modern grocery stores would be especially hazardous and qualify for the self-service exception. Yet the courts have never intended the exception to be so broadly applied. *See Wiltse v. Albertson's Inc.*, 116 Wash.2d 452, 461, 805 P.2d 793 (1991).

¶ 15 As *Ingersoll v. DeBartolo, Inc.* explained,

Self-service has become the norm throughout many stores. However, the *Pimentel* rule does not apply to the entire area of the store in which customers serve themselves. Rather, it

applies if the unsafe condition causing the injury is "continuous or foreseeably inherent in the nature of the business or mode of operation."

Ingersoll v. DeBartolo, Inc., 123 Wash.2d 649, 653-54, 869 P.2d 1014 (1994) (quoting *Wiltse*, 116 Wash.2d at 461, 805 P.2d 793). **We decline to apply the self-service exception to the shampoo spill here.**

¶ 16 Accordingly, Schmidt had to prove that the grocery store had actual or constructive notice of the spilled shampoo before her accident. *See Pimentel*, 100 Wash.2d at 49, 666 P.2d 888. "The constructive notice rule requires the plaintiff to establish how long the specific dangerous condition existed in order to show that the proprietor should have noticed it." *Wiltse*, 116 Wash.2d at 458, 805 P.2d 793. Schmidt has argued three pieces of evidence to this effect: (1) that the spill was visible from the cash registers when she informed an employee about it; (2) that she saw no employees in the aisles checking for spills; and (3)

Page 1219

that after she reported the spill, nothing was done about it.

¶ 17 **None of this evidence satisfies Schmidt's burden.** The spill's visibility from the cash registers does not tell us how long the spill had been there before Schmidt's fall. That Schmidt saw no employees checking for spills does not tell us what the store's routine was or whether the routine was reasonable within industry standards. Nor does the evidence tell us where Schmidt's fall occurred within the routine's timing. In short, no reasonable juror could infer from the fact that Schmidt witnessed no inspection, that the store's inspection practices were either not reasonable or were not being followed. *See Carlyle*, 78 Wash.App. at 278, 896 P.2d 750.

¶ 18 In *Carlyle*, there was evidence that Safeway employees conducted inspections from once per hour to two or three times per shift. Division Three affirmed summary judgment for Safeway, holding that the plaintiff had presented no evidence that these procedures were inadequate. *Carlyle*, 78 Wash.App. at 278, 896 P.2d 750. Schmidt offered no evidence that the risk of shampoo spills was so great that the failure to inspect the aisle within the short time frame she was there established a lack of reasonable care. And that nobody cleaned up the spill after she reported it to the checker is irrelevant because she testified that she spoke with the checker while her groceries were being checked and then left immediately after paying.

¶ 19 Still, Schmidt suggests that we employ a more lenient standard to Schmidt's obligation to prove her underlying case. She points to Coogan's failure to investigate and his last minute filing of the complaint. Schmidt cites no authority to support this argument. More importantly, she offered no evidence that her malpractice attorney was frustrated in proving the underlying slip-and-fall by Coogan's delay. We would be more sympathetic to her position if she had shown that evidence of the store's actual or constructive notice had been available to Coogan and was not available to her malpractice attorney. In short, we find

neither legal nor equitable grounds to lower Schmidt's burden of proof because of the nature of Coogan's malpractice.

¶ 20 Because Schmidt failed to prove the notice element of her underlying slip-and-fall case, **Coogan was entitled to judgment as a matter law** and we need not discuss the other issues. We reverse and remand for the action to be dismissed.

We concur: HUNT, J., and VAN DEREN, A.C.J.

173 P.3d 273

162 Wn.2d 488

Teresa SCHMIDT, an individual, Appellant/Cross-Respondent,

v.

Timothy P. and "Jane Doe" COOGAN, and the marital community comprised thereof; and The Law Offices of Timothy Patrick Coogan, and all partners thereof, Respondent/Cross-Appellants.

No. 79554-1.

Supreme Court of Washington, En Banc.

December 13, 2007.

Dan'l Wayne Bridges, Justin E. Bolster, McGaughey Bridges Dunlap PLLC, Bellevue, WA, for Appellant/Cross-Respondent.

Paul Alexander Lindenmuth, Ben F. Barcus & Associates PLLC, Tacoma, WA, for Respondent/Cross-Appellants.

[173 P.3d 274]

PER CURIAM.

¶ 1 Teresa Schmidt hired Timothy Coogan to represent her in a premises liability action against a grocery store. Coogan waited until the final day of the statutory period to file the complaint and then named the wrong defendant. The case was dismissed. Schmidt successfully sued Coogan for malpractice and was awarded \$212,000 in damages. The trial court ordered a new trial as to damages only. Both parties appealed. The Court of Appeals reversed and remanded the action for dismissal, holding that Schmidt had failed to prove all the elements of the underlying premises liability claim and that Coogan was entitled to judgment as a matter of law. Schmidt contends that she presented enough evidence to submit the question to the jury. We agree and reverse the Court of Appeals.

FACTS

¶ 2 In December 1995, Schmidt was shopping at the Grocery Outlet in Tacoma, Washington. While walking down the shampoo aisle, she slipped on a puddle of shampoo and injured her arm. She did not see anyone else in the aisle.

¶ 3 Schmidt finished her shopping and proceeded to the checkout stand, where she informed a store employee of her slip and fall. She waited in line for about 10 minutes. She noticed from her position at the checkout stand that the shampoo she had slipped on was visible. The employee did not call anyone to clean the spill, and Schmidt did not see anyone checking the aisles. Schmidt left the store after paying for her groceries.

¶ 4 Schmidt then hired Timothy Coogan to represent her in a suit against the store. As the statutory period to file the claim drew to an end, Coogan had still not filed the complaint. Schmidt approached Coogan about her case on several occasions but was told that it was

under control. The day the statute of limitations was to run Coogan had still not filed the complaint. **Schmidt called her former fiancé, John MacMonagle, who had been an attorney in Coogan's firm.** After talking with Coogan, **MacMonagle** drafted a complaint and had it filed over Coogan's signature. However, the complaint named the wrong party. Coogan attempted to amend the complaint and name the correct party but, for reasons that are unclear, was unable to do so. The claim was ultimately dismissed. Schmidt filed suit against Coogan for malpractice.

¶ 5 At the close of Schmidt's case, Coogan moved for judgment as a matter of law. He argued that Schmidt had failed to produce any evidence that Schmidt would have prevailed on her slip and fall claim against the store but for Coogan's negligence. Specifically, he argued that Schmidt had failed to prove that the store had actual or constructive notice of the spilled shampoo prior to the fall. The trial court denied his motion and submitted the case to the jury with instructions that to find Coogan liable it must, in part, find that the store had actual or constructive notice of the spill. The jury returned a verdict in favor of Schmidt. The trial court then granted a new trial as to damages only, **finding that remarks by plaintiff's attorney during closing argument inflamed the jury and resulted in an excessive award.** The Court of Appeals reversed and remanded for dismissal, **holding that Coogan's motion for judgment as a matter of law should have been granted.**

ANALYSIS

¶ 6 When reviewing decisions granting or denying a judgment as a matter of law, we apply the same standard as the trial court. *Hizey v. Carpenter*, 119 Wash.2d 251, 271, 830 P.2d 646 (1992). Judgment as a matter of law is not appropriate if, after viewing the evidence in the light most favorable to the nonmoving party and drawing all reasonable inferences, substantial evidence exists to sustain a verdict for the nonmoving party. *Id.* at 271-72, 830 P.2d 646.

¶ 7 A plaintiff in a malpractice suit is required to prove that, but for the attorney's negligence, she probably would have prevailed on the underlying claim. *See Daugert v. Pappas*, 104 Wash.2d 254, 263, 704 P.2d 600 (1985). In a premises liability claim, the plaintiff must establish that the defendant either caused the dangerous condition or knew or should have known of its

[173 P.3d 275]

existence in time to remedy the situation. *Ingersoll v. DeBartolo, Inc.*, 123 Wash.2d 649, 652, 869 P.2d 1014 (1994) (citing *Brant v. Market Basket Stores, Inc.*, 72 Wash.2d 446, 451-52, 433 P.2d 863 (1967)). Whether a defective condition existed long enough so that it should have reasonably been discovered is ordinarily a question of fact for the jury. *Presnell v. Safeway Stores, Inc.*, 60 Wash.2d 671, 675, 374 P.2d 939 (1962) (citing *Bridgman v. Safeway Stores, Inc.*, 53 Cal.2d 443, 348 P.2d 696, 2 Cal.Rptr. 146 (1960)).

¶ 8 Schmidt offered evidence that the spill was visible to employees from the cash registers and that during the time she was at the checkout stand none of the store employees made any effort to clean it up. In addition, there was evidence that preceding the fall the aisle was clear of other customers who might have recently caused the spill.

¶ 9 The Court of Appeals held that, as a matter of law, Schmidt failed to prove the notice element of her premises liability claim. Coogan concedes that the jury was properly instructed on the issue of constructive notice. The jury heard evidence from which it could reasonably infer that, given the surrounding circumstances, the spill existed for a sufficient period of time and under such circumstances that the owner should have discovered it in the exercise of reasonable care. Schmidt was not required to convince the trial judge or the Court of Appeals of the correctness of her position. At that stage of the proceeding, she was required to have produced only enough evidence so that a reasonable jury could return a verdict in her favor. Viewing the evidence in the light most favorable to Schmidt, we believe she carried her burden.

CONCLUSION

¶ 10 An order granting judgment as a matter of law should be limited to circumstances in which there is no doubt as to the proper verdict. Where the evidence produced by the nonmoving party produces facts that would allow a reasonable person to find for that party, judgment as a matter of law is inappropriate. **Accordingly, we reverse the Court of Appeals and remand to that court for consideration on the remaining issues.**

203 P.3d 379

165 Wash.2d 1020

SCHMIDT v. COOGAN.

No. 82184-4.

Supreme Court of Washington, Department I.

March 3, 2009.

Appeal from 32840-2-II.

Disposition of petition for review. Denied.

**171 Wash.App. 602
287 P.3d 681**

Teresa SCHMIDT, Respondent/Cross–Appellant,

v.

**Timothy P. COOGAN and Deborah Coogan, and the marital community
comprised thereof; and The Law Offices of Timothy Patrick Coogan and all
partners thereof, Appellants/Cross–Respondents.**

No. 41279–9–II.

**Court of Appeals of Washington,
Division 2.**

Oct. 30, 2012.

[287 P.3d 682]

John Patrick Mcmonagle II, Attorney at Law, Fox Island, WA, Robert Spajic, Gordon & Polsker LLC, Portland, OR, for Defendant.

Paul Alexander Lindenmuth, Ben F. Barcus & Associates PLLC, Tacoma, WA, for Appellants/Cross–Respondents.

Dan'l Wayne Bridges, McGaughey Bridges Dunlap PLLC, Bellevue, WA, Christopher Alfred J. Wong, King County Prosecutor's Office, Seattle, WA, for Respondent/Cross–Appellant.

JOHANSON, A.C.J.

[171 Wash.App. 604]¶ 1 In 1995, Teresa Schmidt was injured when she slipped and fell at a Tacoma grocery store. She retained attorney Timothy P. Coogan to handle her personal injury suit against the grocery store, but Coogan failed to file Schmidt's suit before its statute of limitations expired. Schmidt sued Coogan, and a jury found Coogan liable for malpractice. On appeal, we affirmed the trial court's order granting a new trial to determine damages only. At the damages-only trial, a jury awarded Schmidt damages, and Coogan now appeals various trial court rulings, including its denial of his CR 50 motion for judgment as a matter of law, because Schmidt failed to prove collectibility at trial. Schmidt never proved collectibility, an essential component of damages in a legal malpractice claim, so we reverse the trial court's denial of Coogan's CR 50 motion as a matter of law because there was insufficient evidence to support the jury's verdict. We remand for dismissal of Schmidt's action and need not address Coogan's other claims on appeal.

¶ 2 Schmidt cross-appeals (1) the trial court's denial of her motion to amend her complaint and (2) its denial of her motion to seek general damages. First, we do not address

availability of general damages because, absent proof of collectibility, Schmidt cannot collect any damages. Second, the

[287 P.3d 683]

trial court did not abuse its discretion in denying Schmidt's motion to amend her complaint because she only sought amendment after an undue delay, and an amended complaint would have worked an undue hardship on Coogan's defense. Accordingly, we affirm the trial court actions that Schmidt challenges on cross-appeal.

[171 Wash.App. 605]FACTS

¶ 3 On December 23, 1995, Schmidt slipped and fell at a Tacoma grocery store. On January 8, 1996, Coogan agreed to represent Schmidt in her slip-and-fall tort case. Coogan failed to properly perfect Schmidt's tort claim within the statute of limitations, and Schmidt sued Coogan and his associates, alleging legal malpractice. Schmidt filed her suit on November 3, 2000, claiming negligence and breach of contract. The case finally went to trial in November 2003, and a jury entered a verdict against Coogan for \$32,000 in past economic damages and \$180,500 for non-economic damages. Coogan filed a series of post-trial motions, and the trial court granted his motion “for a new trial on the issues of Damages Only.” Clerk's Papers (CP) at 27. Schmidt appealed and we issued an unpublished opinion affirming the trial court's “grant of a new trial on damages.” See *Schmidt v. Coogan*, noted at 145 Wash.App. 1030, 2008 WL 5752059 (2008). Schmidt's trial against Coogan to determine damages was set for August 2010.

¶ 4 In March 2010 Schmidt sought to amend, under CR 15, her complaint against Coogan. She sought to add a cause of action for outrage/reckless infliction of emotional distress against Coogan. The trial court denied this motion because it deemed the motion untimely. Then in May 2010, Schmidt filed motion for summary judgment, asking the trial court to determine whether she could pursue general damages. The trial court denied this motion as well. Before the damages-only trial, both parties filed motions in limine. Schmidt pursued general damages, and Coogan sought to prevent Schmidt from obtaining general damages and to confine her damages award to the amount originally collectible from the grocery store. In support of his motions in limine, Coogan filed an article that detailed a plaintiff's need to prove collectibility in a legal malpractice action. And while arguing this motion, Coogan alluded to collectibility, “The only issues remaining in this case under case-within-a-case theories is [171 Wash.App. 606]simply what—if Mr. Coogan had done his job successfully, what would [Schmidt] have gotten in her claim against the [the grocery store].” Verbatim Report of Proceedings (VRP) (Aug. 20, 2010) at 21.

¶ 5 After Schmidt rested her case in the damages trial, Coogan filed a CR 50 motion for a judgment as a matter of law asserting, among other things, that Schmidt failed to present any evidence that, had Coogan originally filed this case within the statute of limitations and won a jury verdict, the verdict would have been collectible.¹ Coogan stated:

There has been no evidence presented in this case, none whatsoever, as to whether or not even if Mr. Coogan had handled this case right, even if Mr. Coogan had taken it to a jury trial and got a verdict for Ms. Schmidt that that verdict would have been collectible. **That is an essential element of their case, they put on no proof; therefore, dismissal is warranted.** 3 VRP at 504. Schmidt responded to Coogan's motion:

I think what the argument of defendant ignores is that the issue of malpractice or negligence has already been tried, and that if this issue was to have any merit, or to be argued, or when it should have been argued was at the first trial. If Ms. Schmidt could not have demonstrated that any judgment would have been collectible, that would have been a liability defense. It's not an issue of quantum of damages and people often ignore this. You can have liability and be liable but there'd be no damages. That's a fine result. Or you could have damage, but no proximate cause and, therefore, no liability.

....

[287 P.3d 684]

The first trial established and I think, I hope, and I've heard defendant argue this many times already, this is a damages only trial. Division II has already indicated duty, breach, proximate cause. That's what the first trial established. Now [171 Wash.App. 607]we are only here to talk about the damages Ms. Schmidt sustained.

....

To inject a new element at this time, which frankly has already been tried and resolved, would itself be an ambush even if it were a proper argument to make, and it's simply not a proper argument to make in the first place.

3 VRP at 505–06. The trial court denied this motion, finding that Coogan should have raised questions of collectibility at the first trial, not at this damages-only trial:

The motion is denied. The element of proximate cause with regard to damages will be an instruction given to this jury.... I believe it is a fine line, however, this case is not about any element of malpractice other than damages and proximate cause as it relates to damages.

If there was a question as to collectibility, that should have been addressed at the first trial. This trial is about damages only.

3 VRP at 508.

¶ 6 **On August 27, 2010, the jury ultimately awarded Schmidt \$3,733.16 in past economic damages and \$80,000 in non-economic damages.** Coogan filed a motion under CR 50 and/or CR 59 for judgment as a matter of law and/or a new trial, and he again claimed that Schmidt failed to establish collectibility ² **The trial court ultimately denied Coogan's motion without issuing findings of fact or conclusions of law.**

[171 Wash.App. 608]¶ 7 Coogan now appeals, on various grounds, the trial court's denial of his CR 50 motion for judgment as a matter of law and his CR 50 and/or CR 59 motion for a new trial. Schmidt cross-appeals the trial court's denial of her motion to amend her complaint and its denial of her motion to include a jury instruction on general damages arising from legal malpractice.

ANALYSIS

I. Denial of Motion for Judgment as a Matter of Law

¶ 8 Coogan first argues that the trial court improperly denied his CR 50 motion for a judgment as a matter of law because Schmidt failed to establish collectibility, a necessary element of damages in a legal malpractice claim. We agree.

¶ 9 Judgment as a matter of law is appropriate where a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on a specific issue. See CR 50(a). We review de novo a trial court's ruling on a CR 50 motion for judgment as a matter of law, applying the same standard as the trial court. *Goodman v. Goodman*, 128 Wash.2d 366, 371, 907 P.2d 290 (1995).

[287 P.3d 685]

II. Collectibility

¶ 10 Coogan argues that Schmidt failed to establish the essential element of collectibility that he contends is necessary [171 Wash.App. 609] for Schmidt's damages claim. Because collectibility is a component in determining legal malpractice damages, and Schmidt failed to prove collectibility at trial, the trial court improperly denied his CR 50 motion for judgment as a matter of law.

¶ 11 As an initial matter, we must decide whether Coogan preserved this issue for appeal. Coogan did not challenge Schmidt's failure to prove collectibility at the first trial. Instead he raised this issue during the damages-only trial.³ But because this second trial involved damages only, and collectibility is a “component of damages in a legal malpractice action,” Coogan validly pursued his collectibility challenge during the second trial. See *Matson v. Weidenkopf*, 101 Wash.App. 472, 484, 3 P.3d 805 (2000). Accordingly, Coogan validly raises this issue on appeal, and we will consider the merits of his claim.

¶ 12 The measure of damages for legal malpractice is the amount of loss actually sustained as a proximate result of the attorney's conduct. *Matson*, 101 Wash.App. at 484, 3 P.3d 805. And collectibility of the underlying judgment is a “component of damages in a legal malpractice action.” *Matson*, 101 Wash.App. at 484, 3 P.3d 805. Courts consider collectibility of the underlying judgment to prevent the plaintiff from receiving a windfall because it would be inequitable for the plaintiff to be able to obtain a greater judgment against the attorney

than the judgment that the plaintiff could have collected from the third party. *Matson*, 101 Wash.App. at 484, 3 P.3d 805.

¶ 13 Here, Schmidt did not prove collectibility at the first trial. Then, the trial court granted Coogan's motion [171 Wash.App. 610] for a new trial “on the issues of Damages Only.” CP at 27. Schmidt did not prove collectibility at the damages-only trial, and Coogan challenged Schmidt's failure to prove collectibility in a CR 50 motion for judgment as a matter of law. The trial court denied Coogan's motion, determining that collectibility was not at issue in the damages-only trial. **But collectibility was at issue because collectibility is a component of damages in a legal malpractice action.** *Matson*, 101 Wash.App. at 484, 3 P.3d 805. **Accordingly, Schmidt needed to prove collectibility at trial and failed to do so.**

¶ 14 Schmidt argues that two pieces of evidence established collectibility. First, she states that she “testified the grocery store was a large, busy going concern.” Br. of Resp't at 9. Second, she asserts that five photographs, apparently showing the shampoo aisle inside the grocery store, demonstrate the grocery store's solvency and the collectibility of a judgment. Schmidt's evidence, however, does not prove collectibility.

¶ 15 *Matson* demonstrates the required showing of judgment collectibility in legal malpractice claims. The Matsons retained attorney Jerry Weidenkopf to assist them in collecting on three promissory notes executed by the Shafers. *Matson*, 101 Wash.App. at 474, 3 P.3d 805. But Weidenkopf took no action to recover on the notes, and the statute of limitations ran. *Matson*, 101 Wash.App. at 474, 3 P.3d 805. The Matsons sued Weidenkopf for legal malpractice and were awarded the full amount on the notes, plus interest accrued through the expiration of the statute of limitations. *Matson*, 101 Wash.App. at 474, 3 P.3d 805. Weidenkopf appealed, challenging the award of damages and arguing that the collectible damages included the amount the Matsons could have collected before the statute of limitations ran. *Matson*, 101 Wash.App. at 484, 3 P.3d 805. We held that collectibility of an underlying judgment is a component of damages in a legal malpractice action and that the Matsons presented sufficient evidence to support a

[287 P.3d 686]

finding that they could have collected on a judgment against the Shafers. *Matson*, 101 Wash.App. at 484, 3 P.3d 805.

[171 Wash.App. 611]¶ 16 Evidence in *Matson* related to collectibility included the testimony of Julie Schafer, who stated that she worked continuously during the relevant time period, earning between \$35,000 and \$55,000 over that time. *Matson*, 101 Wash.App. at 485, 3 P.3d 805. She also possessed between \$10,000 and \$12,000 in savings. *Matson*, 101 Wash.App. at 485, 3 P.3d 805. Finally, she testified that she would have tried to pay a legal obligation to the Matsons. *Matson*, 101 Wash.App. at 485, 3 P.3d 805.

¶ 17 Unlike *Matson*, where the record contained sufficient evidence showing that the Matsons could have collected the judgment, Schmidt submitted just five photos of the

grocery store's shampoo aisle and offered a blanket statement that her observation was that the grocery store's business was bustling. Given the dearth of evidence proving collectibility of a judgment against the grocery store—an essential component in determining damages in Schmidt's legal malpractice action against Coogan—the trial court erred in denying Coogan's motion for judgment as a matter of law because Schmidt presented insufficient evidence establishing grocery store's collectibility. *See Matson*, 101 Wash.App. at 484, 3 P.3d 805.

¶ 18 Accordingly, we reverse the trial court's denial of Coogan's CR 50 motion for judgment as a matter of law, remand for dismissal of Schmidt's claim, and decline to consider the other issues Coogan raised on appeal.

III. Schmidt's Cross Appeal

¶ 19 Schmidt cross-appeals the trial court's denial of her motion to amend her complaint and its denial of her motion to seek general damages arising out of legal malpractice. We need not address the general damages issue because, absent proof of collectibility, Schmidt cannot collect any damages, including general damages. Also, the trial court did not abuse its discretion in denying Schmidt's motion to amend her complaint because she sought to amend the complaint only after an undue delay, and an amended [171 Wash.App. 612]complaint would have worked an undue hardship on Coogan's defense.

¶ 20 We review a denial of a plaintiff's motion for leave to amend a complaint for a manifest abuse of discretion. *McDonald v. State Farm Fire & Cas. Co.*, 119 Wash.2d 724, 737, 837 P.2d 1000 (1992). Undue delay, which works a hardship or prejudice on an opposing party, constitutes sufficient reason for denial of leave to amend. *Appliance Buyers Credit Corp. v. Upton*, 65 Wash.2d 793, 800, 399 P.2d 587 (1965). And hardship sufficient to deny a motion to amend includes the need to find and disclose new witnesses and experts, reformulate defense strategies and the disruptions of an already set case schedule. *See Donald B. Murphy Contractors, Inc. v. King County*, 112 Wash.App. 192, 199–200, 49 P.3d 912 (2002).

¶ 21 In March 2010, Schmidt sought to amend her complaint to include a cause of action against Coogan for outrage/reckless infliction of emotional distress. The trial court, however, denied this motion. Schmidt proposed her amendment well over a decade after the alleged infliction of emotional distress occurred, and well after the first trial established Coogan's liability for negligence in failing to comply with the statute of limitations relating to Schmidt's slip and fall. Accordingly, raising a new claim against Coogan in March 2010 constituted an undue delay and would have broadened the trial's scope and forced Coogan to reformulate his defense strategies. Therefore, the trial court did not abuse its discretion in denying Schmidt's motion to amend her complaint. *See Appliance Buyers*, 65 Wash.2d at 800, 399 P.2d 587; *Murphy Contractors*, 112 Wash.App. at 199–200, 49 P.3d 912.

¶ 22 We affirm the trial court actions Schmidt challenges on cross-appeal and deny her request to sanction Coogan [171 Wash.App. 613]under CR 11. We also deny Schmidt's request for attorney fees because she is not a substantially prevailing party.

We concur: QUINN–BRINTNALL and PENOYAR, JJ.

Notes:

^{1.} In this context, collectibility refers to Schmidt proving that the owners of the grocery store had assets from which Schmidt could have collected her jury verdict award.

^{2.} Specifically, Coogan argued,

There was no evidence submitted regarding the financial wherewithal of the owner of the [grocery store] at the time of Ms. Schmidt's slip and fall. There was no evidence regarding what insurances were in place at the time in question, and it simply would be rankly speculative just to assume that the [grocery store], a discount store, which apparently had changed hands a number of times between the years 1995 and 1998, necessarily had all available insurance coverages in place.

CP at 1334–35 (emphasis omitted). Schmidt responded, asserting that Coogan's arguments failed as a matter of law because the first trial determined all the elements of liability, including proximate cause:

Division Two was clear that the retrial was limited to determining Ms. Schmidt's damage—not to allow defendant to reopen a basic liability element by contesting the basic prong of proximate cause. If Division Two intended defendant to be able to argue an element of liability itself, that would have required the court to specifically say that only “duty and breach” had been determined, with a remand to determine both proximate cause and damage. Division Two clearly did not do that, saying only that it was ordering a “new trial on damages.”

CP at 1716–17.

^{3.} At oral argument, the parties agreed that Coogan raised the collectibility issue before the damages-only trial. In his pretrial motions in limine at the damages-only trial, Coogan argued that Schmidt could only pursue the damages that she would have collected against the grocery store had Coogan successfully prosecuted her original claim. Coogan also attached to his reply to Schmidt's response to Coogan's motions in limine a lengthy article detailing the need for a plaintiff to prove collectibility in legal malpractice actions. Then, in his CR 50 motion, Coogan asserted that collectibility, “is an issue here that I raised [pretrial].” 3 VRP at 503. Thus, Coogan did not “ambush” Schmidt by waiting to raise this

issue until it was too late for Schmidt to present evidence of collectibility. 3 VRP at 506.

**177 Wash.2d 1019
304 P.3d 115**

**Teresa Schmidt
v.
Timothy P. Coogan**

NO. 88460-9

Supreme Court of Washington

July 10, 2013

Appeal From: 41279-9-II, 171 Wash.App. 602, 287 P.3d 681

Petition For Review: Granted.

**181 Wash.2d 661
335 P.3d 424**

Teresa SCHMIDT, Petitioner

v.

**Timothy P. COOGAN and Deborah Coogan, and the marital community
comprised thereof; and The Law Offices of Timothy Patrick Coogan and all
partners thereof, Respondents.**

No. 88460–9.

Supreme Court of Washington, En Banc.

Oct. 9, 2014.

[335 P.3d 426]

Dan'L Wayne Bridges, McGaughey Bridges Dunlap PLLC, Seattle, WA, for Petitioner.

Paul Alexander Lindenmuth, Benjamin Franklin Barcus, Ben F. Barcus & Associates PLLC,
Tacoma, WA, for Respondent.

Opinion

WIGGINS, J.

[181 Wash.2d 662]

¶ 1 This legal malpractice case presents two questions that we have never before addressed. The first is whether the elements of legal malpractice include the collectibility of an underlying judgment. Jurisdictions are split. **We adopt the growing trend to make the uncollectibility**

[181 Wash.2d 663]

of an underlying judgment an affirmative defense that negligent attorneys must plead and prove. The second is whether emotional distress damages are available in legal malpractice cases. We hold that the facts of this case do not support an award of emotional distress damages.

FACTS AND PROCEDURE

¶ 2 In December 1995, Teresa Schmidt slipped and fell while visiting a Tacoma Grocery Outlet. She retained Timothy Coogan to represent her in a claim against the store. On December 21, 1998, just days before the statute of limitations ran, Coogan filed a complaint naming the wrong defendant. He subsequently filed two amended complaints, but the trial court dismissed the case as barred by the statute of limitations.

¶ 3 Schmidt then filed a complaint against Coogan, asserting claims for negligence and

[335 P.3d 427]

breach of contract. The case went to trial in November 2003, and the jury returned a verdict in favor of Schmidt in the amount of \$32,000 for past economic damage and \$180,000 for noneconomic damages. The trial court granted a new trial on the issue of damages only, finding that Coogan was denied a fair trial. Schmidt's counsel gave an improper closing argument, and the damages were so excessive as to unmistakably indicate that the verdict was the result of passion and prejudice. The Court of Appeals affirmed the trial court's order granting a new trial on damages.¹

¶ 4 In March 2010, Schmidt moved for leave to amend the complaint to add a claim for outrage/reckless infliction of emotional distress. She alleged that Coogan harassed, intimidated,

[181 Wash.2d 664]

and belittled her when she raised the problem of the statute of limitations before it expired.² During the 2003 trial, the jury was instructed to determine general damages arising out of Coogan's conduct and malpractice. In the second trial, however, Coogan challenged the availability of general damages in legal malpractice cases. Because her counsel could not find settled authority either affirming or denying the availability of emotional distress damages in Washington, Schmidt sought to add a claim that encompassed the damages. The trial court denied Schmidt's motion to amend. Schmidt also filed a motion for summary judgment on the availability of general damages and a motion in limine. The court denied both motions.

¶ 5 After Schmidt rested her case in the damages-only trial, Coogan moved for judgment as a matter of law. He argued that collectibility was an essential element of legal malpractice and that Schmidt presented no evidence that a judgment against Grocery Outlet would have been collectible. The court denied the motion, and the jury returned a verdict in favor of Schmidt for \$83,733.16 plus interest.

¶ 6 Coogan appealed the jury verdict, arguing that the trial court should have granted his motion for judgment as a matter of law. Schmidt cross appealed on the ground that general damages are available in attorney malpractice claims and that the trial court erred in denying her motion to amend the complaint. The Court of Appeals concluded that collectibility was an essential component of damages that Schmidt failed to prove, and it reversed the trial court's denial of Coogan's motion for judgment as a matter of law. *Schmidt v. Coogan*, 171 Wash.App. 602, 604, 287 P.3d 681 (2012), review granted, 177 Wash.2d 1019, 304 P.3d 115 (2013).

[181 Wash.2d 665]

ANALYSIS

¶ 7 The primary questions before us are (1) whether collectibility is an element of malpractice and (2) whether a plaintiff may recover emotional distress damages for legal malpractice. These are questions of law, which we review de novo. *Cost Mgmt. Servs., Inc. v. City of Lakewood*, 178 Wash.2d 635, 641, 310 P.3d 804 (2013).

I. Collectibility

¶ 8 Our court has never addressed how the collectibility of an underlying judgment intersects with the elements of legal malpractice. We hold that the burden of establishing collectibility is *not* on the plaintiff-client. Rather, uncollectibility is an affirmative defense that a defendant-attorney must plead and prove.

¶ 9 Uncollectibility may be a relevant inquiry because it relates to proximate cause and damages elements of legal malpractice. The essential elements are:

“(1) The existence of an attorney-client relationship which gives rise to a duty of care

[335 P.3d 428]

on the part of the attorney to the client; (2) an act or omission by the attorney in breach of the duty of care; (3) damage to the client; and (4) proximate causation between the attorney's breach of the duty and the damage incurred.”

Ang v. Martin, 154 Wash.2d 477, 482, 114 P.3d 637 (2005) (quoting *Hizey v. Carpenter*, 119 Wash.2d 251, 260–61, 830 P.2d 646 (1992)). The measure of damages is the “amount of loss actually sustained as a proximate result of the attorney's conduct.” *Matson v. Weidenkopf*, 101 Wash.App. 472, 484, 3 P.3d 805 (2000). If the underlying judgment was uncollectible, for example, due to insufficient assets or bankruptcy, the lost value of the judgment is not the proximate result of an attorney's negligence. The client could not have collected the judgment even if the attorney used reasonable care.

[181 Wash.2d 666]

¶ 10 While the collectibility of an underlying judgment may be relevant, the great weight of public policy considerations support our holding that uncollectibility is an affirmative defense. Traditionally, a majority of jurisdictions placed the burden of proving collectibility on the plaintiff. See *McDow v. Dixon*, 138 Ga.App. 338, 339, 226 S.E.2d 145 (1976) ; *Whiteaker v. State*, 382 N.W.2d 112, 114–15 (Iowa 1986) ; *Jernigan v. Giard*, 398 Mass. 721, 723, 500 N.E.2d 806 (1986) ; *Eno v. Watkins*, 229 Neb. 855, 857, 429 N.W.2d 371 (1988). However, in more recent years, states have begun departing from this rule and have placed the burden on the defendant-attorney. See *Power Constructors, Inc. v. Taylor & Hintze*, 960 P.2d 20, 31 (Alaska 1998) ; *Clary v. Lite Machines Corp.*, 850 N.E.2d 423, 440 (Ind.Ct.App.2006) ; *Jourdain v. Dineen*, 527 A.2d 1304, 1306 (Me.1987) ; *Teodorescu v. Bushnell, Gage, Reizen & Byington*, 201 Mich.App. 260, 268, 506 N.W.2d 275 (1993) ; *Hoppe v. Ranzini*, 158 N.J.Super. 158, 171, 385 A.2d 913 (1978) ; *Carbone v. Tierney*, 151

N.H. 521, 533, 864 A.2d 308 (2004) ; *Kituskie v. Corbman*, 552 Pa. 275, 285, 714 A.2d 1027 (1998).

¶ 11 The traditional approach rests primarily on the theory that it is consistent with tort law: plaintiffs may recover only the amount that will make them whole (and not a windfall), and the plaintiff must prove both proximate cause and injury. *See Klump v. Duffus*, 71 F.3d 1368, 1374 (7th Cir.1995) ; *McKenna v. Forsyth & Forsyth*, 280 A.D.2d 79, 84, 720 N.Y.S.2d 654 (2001). This approach overlooks major policy concerns.

¶ 12 First, the traditional approach unfairly presumes that an underlying judgment is uncollectible when the record is silent. *See Power Constructors, Inc.*, 960 P.2d at 31–32. The presumption is unnecessary and requires a client to always prove the opposite, even when there is no real question regarding solvency. Generally, collectibility is an issue only after the client has established the existence of a fiduciary relationship, the failure of the attorney to exercise due care, the attorney's negligence resulted in

[181 Wash.2d 667]

losing a valid claim (i.e., proving the “case within a case”), and the amount of the lost judgment. The need to establish collectibility is the result of an attorney's established malpractice at this point in the trial. It is a burden created by the negligent attorney. The presumption that a judgment would have been uncollectible places an unfair burden on the wronged client.

¶ 13 Second, the negligent attorney is in as good a position, if not better, than the client to discover and prove uncollectibility. If the underlying judgment would have been uncollectible, the original attorney should have advised his client of this fact. Failing to do so is negligent and, potentially, a breach of the attorney-client fiduciary relationship. Here, Coogan undertook an investigation of whether the slip-and-fall case was a good faith lawsuit when he represented Schmidt. Coogan testified by deposition (in a statement not placed into evidence before the jury) that an insurance company representative for Tacoma Grocery Outlet confirmed insurance coverage on more than one occasion. This suggests that the attorney is in a better position than the client to establish uncollectibility because the attorney has investigated the underlying claim closer to the time of the accident.

¶ 14 Third, the traditional approach has the unfortunate effect of introducing evidence of liability insurance into every legal malpractice case. The rules of evidence and

[335 P.3d 429]

the case law generally prohibit introducing evidence of liability insurance in negligence cases. *See ER 411 ; Todd v. Harr, Inc.*, 69 Wash.2d 166, 168, 417 P.2d 945 (1966) (“[T]he fact that a personal injury defendant carries liability insurance is entirely immaterial, and the deliberate or wanton injection of this matter into the case by plaintiff is ground for reversal.”); *Kappelman v. Lutz*, 141 Wash.App. 580, 590, 170 P.3d 1189 (2007) (“[T]he fact that a

defendant in a personal injury case carries liability insurance is not material to the questions of negligence and damages.”). Our holding is more consistent with this rule by limiting introduction of evidence

[181 Wash.2d 668]

of liability insurance to a subset of the cases, i.e., when an attorney raises uncollectibility as an affirmative defense.

¶ 15 Fourth, a delay usually, if not always, ensues between the original injury and the legal malpractice action. The delay may hinder the client's ability to gather evidence of collectibility. Here, Schmidt fell in 1995 and nearly two decades later this case is still unresolved. In that amount of time, companies may have failed, ownerships changed, and other circumstances may have made evidence of collectibility unavailable. It is unfair to place this burden on plaintiffs when the attorney's negligence created the delay in the first place. *See Kituskie*, 552 Pa. at 283, 285, 714 A.2d 1027.

¶ 16 Fifth, clients are further burdened because requiring them to prove collectibility ignores the fact that judgments are valid for 10 years after entry in Washington and may be renewed thereafter. *See* RCW 4.56.190 ; 28 Marjorie Dick Rombauer, *Washington Practice: Creditors' Remedies—Debtors' Relief* § 7.8 (1998 & Supp.2014); *see also Hoppe v. Ranzini*, 158 N.J.Super. 158, 169–71, 385 A.2d 913 (1978). This is significant because people and entities have financial positions that change over time. If a judgment would not have been immediately collectible against the original defendant, it may have become collectible over time. Ignoring this reality unfairly harms clients. It also seems to go against the guiding principle in tort law, which “ ‘is to make the injured party as whole as possible through pecuniary compensation.’ ” 16 David K. DeWolf & Keller W. Allen, *Washington Practice: Tort Law and Practice* § 6:1, at 259 (2013) (quoting *Shoemaker ex rel. Guardian v. Ferrer*, 168 Wash.2d 193, 198, 225 P.3d 990 (2010)).

¶ 17 Sixth, placing the burden of disproving collectibility on the negligent attorney acknowledges the important fiduciary relationship between client and attorney. *See Hoppe*, 158 N.J.Super. at 171, 385 A.2d 913. The traditional approach places every burden on the client. Our holding is more balanced. It requires the client to prove the existence of a

[181 Wash.2d 669]

fiduciary relationship, that the attorney did not exercise proper care, that this negligence caused the loss of a judgment, and the amount of that loss. If the wrongdoer believes the lost judgment amount could not have been collected from original defendant, the burden is on him or her to establish the fact as an affirmative defense.

¶ 18 After weighing these policy concerns, we conclude that the plaintiff-client does not bear the burden of establishing collectibility. Rather, a negligent attorney may raise uncollectibility as an affirmative defense to mitigate or eliminate damages.

¶ 19 Coogan did not argue in either of the two trials that a judgment against Grocery Outlet would be uncollectible. Nor did he argue that collectibility was an affirmative defense. He argued in an oral motion for judgment as a matter of law only that Schmidt presented no evidence of collectibility, and the judge did not err in denying his motion because Schmidt presented sufficient evidence of damages. **Therefore, we reverse the Court of Appeals. Coogan is not entitled to a third trial concerning whether he may prove the affirmative defense.**

¶ 20 The concurrence argues that we should not address the merits of Coogan's collectibility argument for two reasons: **it was not raised in the first trial and Coogan invited the error when he successfully moved at the second trial to exclude evidence of Coogan's malpractice insurance policy.** While we are sympathetic with the unfairness of allowing Coogan to raise this issue for the first time after the case had been pending for several decades and after multiple appellate reviews, we address the issue because it is important and in order to provide

[335 P.3d 430]

guidance on legal malpractice cases in the future.

¶ 21 Our appellate rules allow us to decline to address on appeal issues inadequately raised at the trial court, but they do not require us to decline consideration of such issues. RAP 2.5(a) (“The appellate court *may* refuse to review any claim of error which was not raised in the trial

[181 Wash.2d 670]

court.” (emphasis added)). Our rules also encourage us to decide cases on the merits, not on procedural flaws. RAP 1.2(a) (“These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands[subject to timeliness exceptions not relevant here].”)

¶ 22 The concurrence would also decline to address collectibility on the ground of invited error, reasoning that Coogan succeeded in excluding evidence that the grocery store was insured—thus providing an asset making any judgment collectible—and then arguing that Schmidt failed to present any evidence of collectibility. Coogan's argument to exclude evidence of insurance was inconsistent with his argument that Schmidt was required to prove collectibility, but it did not lead to invited error because the trial court did not decide whether collectibility was an element of legal malpractice. Instead, the trial court held that collectibility was outside the scope of the remanded trial on damages.

¶ 23 The issue of collectibility was extensively briefed by the parties in almost every brief filed here and in the Court of Appeals. The issue is of first impression in Washington State, and we granted review in order to address it. Making collectibility an element of a legal

malpractice claim would be a major change in litigating these cases in Washington. While we respect the differing opinion of the concurrence, this was an appropriate case in which to exercise our discretion to resolve the issue.

II. Damages

¶ 24 Schmidt also argues that the trial court and the appellate court denied her right to recover emotional distress damages and attorney fees. The measure of damages is the “amount of loss actually sustained as a proximate result of the attorney's conduct.”

[181 Wash.2d 671]

Matson, 101 Wash.App. at 484, 3 P.3d 805. We hold that the plaintiff in a legal malpractice case may recover emotional distress damages **when significant emotional distress is foreseeable from the sensitive or personal nature of representation or when the attorney's conduct is particularly egregious.** However, simple malpractice resulting in pecuniary loss that causes emotional upset **does not support emotional distress damages.** Here, the nature of representation was not sensitive nor was Coogan's conduct particularly egregious. **We hold that Schmidt is not entitled to attorney fees.**

¶ 25 Because no Washington case has settled whether emotional distress damages are available in a legal malpractice action, we look to the availability of emotional distress damages under other Washington claims and consider the rules developed in other jurisdictions.

¶ 26 We begin by analyzing the availability of emotional distress damages in Washington. When emotional distress is the sole damage resulting from negligent acts, our court is cautious in awarding damages. *See Bylsma v. Burger King Corp.*, 176 Wash.2d 555, 560–61, 293 P.3d 1168 (2013). Originally, we adopted a general rule of “no liability for mental distress” when a “defendant's actions were negligent and there was no impact to the plaintiff....” *Hunsley v. Giard*, 87 Wash.2d 424, 432, 553 P.2d 1096 (1976). However, we departed from this rule and now allow recovery when a plaintiff's emotional distress is “within the scope of foreseeable harm ..., a reasonable reaction given the circumstances, and ... manifest by objective symptomatology.” *Bylsma*, 176 Wash.2d at 560, 293 P.3d 1168.

¶ 27 Our reluctance to award emotional distress damages absent an impact in negligence cases contrasts starkly to emotional distress damages for intentional torts. “From early in its history, this court has allowed recovery for damages for mental distress ... when the defendant's act was willful or intentional.”

[335 P.3d 431]

Hunsley, 87 Wash.2d at 431, 553 P.2d 1096 ; *see Kloepfel v. Bokor*, 149 Wash.2d 192, 201, 66 P.3d 630 (2003) (**intentional infliction of emotional distress**); *Birchler v.*

[181 Wash.2d 672]

Castello Land Co., 133 Wash.2d 106, 116, 942 P.2d 968 (1997) (violation of the timber trespass statute); *Cagle v. Burns & Roe, Inc.*, 106 Wash.2d 911, 914–18, 726 P.2d 434 (1986) (wrongful discharge in violation of public policy). We have also allowed emotional distress damages in a variety of other statutory and common law tort claims. See *Chuong Van Pham v. Seattle City Light*, 159 Wash.2d 527, 533–38, 151 P.3d 976 (2007) (Washington Law Against Discrimination, ch. 49.60 RCW); *Berger v. Sonneland*, 144 Wash.2d 91, 112–13, 26 P.3d 257 (2001) (medical malpractice under chapter 7.70 RCW based on unauthorized disclosure by a physician of confidential information); *Whaley v. Dep't of Soc. & Health Servs.*, 90 Wash.App. 658, 674, 956 P.2d 1100 (1998) (breach of professional duty by a day care provider); *Price v. State*, 114 Wash.App. 65, 71–74, 57 P.3d 639 (2002) (wrongful adoption). **With the increasing availability of emotional distress damages, we see no reason to categorically preclude the damages in attorney malpractice actions.**

¶ 28 We now turn to the issue of when emotional distress damages are available for attorney negligence. To determine whether emotional distress damages are compensable, we should consider the foreseeability of emotional distress. See *Hunsley*, 87 Wash.2d at 435, 553 P.2d 1096 (“The element of foreseeability plays a large part in determining the scope of defendant's duty.”). In *Bylsma*, we noted that the court has allowed emotional distress damages in cases concerning “emotionally laden personal interests, and [when] emotional distress was an *expected result* of the objectionable conduct...” 176 Wash.2d at 561, 293 P.3d 1168 (emphasis added). The nature of the parties' relationship is also relevant to foreseeability of emotional distress damages. See *Price v. State*, 114 Wash.App. 65, 71–74, 57 P.3d 639 (2002). In *Price*, the Court of Appeals stated:

The availability of emotional distress damages depends on whether the parties had a relationship that preexisted the defendant's breach of duty. If the parties lacked a preexisting relationship, and the defendant's breach was negligent rather

[181 Wash.2d 673]

than intentional, emotional distress damages are available only if the plaintiff proves “objective symptomatology.” If the parties had a preexisting relationship, the availability of emotional distress damages turns generally on the characteristics of the particular relationship. If the relationship was primarily economic, emotional distress damages may not be available. If the relationship was not primarily economic, emotional distress damages may be available.

Id. at 71, 57 P.3d 639 (footnotes omitted). The relationship in *Price* was between an adoption agency and prospective adoptive parents. *Id.* at 73, 57 P.3d 639. The Court of Appeals held that the relationship was “not merely economic, and a reasonable person standing in the defendant's shoes would easily foresee that its breach is likely to cause significant emotional distress.” *Id.*

¶ 29 Other jurisdictions consider the foreseeability of emotional distress when deciding whether to award emotional distress damages. See Restatement (Third) of the Law Governing Lawyers SSS § 53 cmt. g at 393 (2000) (“General principles applicable to the recovery of damages for emotional distress apply to legal-malpractice actions. In general, such damages are inappropriate in types of cases in which emotional distress is unforeseeable. Thus, emotional-distress damages are ordinarily not recoverable when a lawyer's misconduct causes the client to lose profits from a commercial transaction, but are ordinarily recoverable when misconduct causes a client's imprisonment.”).

¶ 30 Many jurisdictions do not allow emotional distress damages for legal malpractice unless there has been an intentional act, egregious conduct, or physical injury. See *Vincent v. DeVries*, 2013 VT 34, 193 Vt. 574, 72 A.3d 886, 894–95. Other courts allow recovery when a “lawyer is contracted to perform services involving deeply emotional responses in the event of a breach.” *Id.* at 894–95 (quoting *Miranda v. Said*, noted at 820 N.W.2d 159, 2012 WL 2410945, at *4 (Iowa Ct.App.2012)). This has included

[335 P.3d 432]

cases in which “legal malpractice [led] to a loss of

[181 Wash.2d 674]

liberty or of one's child, as contrasted with purely pecuniary loss.” *Id.* at 895.

¶ 31 For example, a Florida court created a narrow exception to its impact rule for certain legal malpractice claims. *Rowell v. Holt*, 850 So.2d 474 (Fla.2003). The exception applies when a harm is grievous and foreseeable. See *id.* at 478–81. The court held that a plaintiff could recover emotional distress damages when he “had been wrongfully arrested and confined” and had given his attorney the documents necessary to “secure his immediate release....” *Id.* at 479. The attorney did not give the documents to the “judge as the judge had specifically instructed,” and a lengthy period of wrongful confinement resulted. *Id.* at 479–80. The rule was narrow:

The instant case does not simply involve negligence arising from insufficient preparation, incomplete investigation, legal ineptitude, or any other subjective indicia of a lawyer's performance. To obtain his client's release, [petitioner's] attorney ... needed only to deliver, transmit, or hand over to the judge the document which he had been provided and which he held in his hands.

Id. at 481. The exception created by the Florida court follows the national trend of allowing emotional distress damages when the attorney's actions are particularly egregious and the harm is both great and foreseeable.

¶ 32 Having examined Washington law and explored the rule in other jurisdictions, we hold that emotional distress damages are available for attorney negligence when emotional distress is foreseeable due to the particularly egregious (or intentional) conduct of an

attorney or the sensitive or personal nature of the representation. Here, the facts do not warrant damages for emotional distress. Schmidt experienced a pecuniary loss when Coogan negligently failed to perfect her personal injury lawsuit, and this lawsuit compensates her for that loss. Additionally, the subject matter of the litigation was not particularly sensitive: she did not lose her freedom and Coogan's actions were not egregious.

[181 Wash.2d 675]

Therefore, we affirm the trial court's rulings concerning the availability of general and emotional distress damages.

¶ 33 The dissent misreads our opinion and accordingly expends considerable energy defeating an imaginary straw man. The dissent accuses us of “[i]nsisting that emotional distress damages require a showing that the attorney's actions were ‘particularly egregious,’ ” dissent at 437.³ We have quite clearly said that egregious action is *one* way of establishing a claim for emotional distress damages: “emotional distress damages are available for attorney negligence when emotional distress is foreseeable due to the particularly egregious (or intentional) conduct of an attorney or the sensitive or personal nature of the representation.” *Supra* p. 432; *accord supra* p. 430. In other words, egregious action is sufficient, but not necessary.

¶ 34 The dissent urges that the attorney-client relationship should lead us to conclude that emotional distress damages are available without proof of physical impact or objective symptomatology. Dissent at 436. Nothing in this opinion requires either impact or symptomatology.

¶ 35 The dissent criticizes our characterization of Schmidt's harm as primarily pecuniary, citing testimony from the underlying trial. *Id.* This is another misreading of our opinion. Two types of emotional distress damages are involved here: Schmidt's emotional distress caused by her underlying injury and Schmidt's emotional distress caused by defendant-attorney Coogan. The emotional distress damages at issue in this appeal are the emotional distress damages caused by Coogan, not the damages caused by her fall in the grocery store. The dissent cites only to emotional distress caused by the grocery store fall, which does not

[181 Wash.2d 676]

support a

[335 P.3d 433]

conclusion that it is foreseeable that Coogan's malpractice might cause emotional distress damages to Schmidt. *Id.*

¶ 36 The dissent argues that we should analogize legal malpractice claims against attorneys to insurance bad faith cases in order to determine the recoverability of emotional distress damages. *Id.* This argument places the cart before the horse in that we have never before

addressed the availability of emotional distress damages for insurance bad faith, and the dissent cites only one case asserting without analysis that emotional distress damages are recoverable for insurance bad faith. *See* dissent at 436 (citing *Miller v. Kenny*, 180 Wash.App. 772, 800–02, 325 P.3d 278 (2014) (citing *Anderson v. State Farm Mut. Ins. Co.*, 101 Wash.App. 323, 333, 2 P.3d 1029 (2000))). *Anderson* simply cites to *Coventry Assocs. v. American States Insurance Co.*, 136 Wash.2d 269, 961 P.2d 933 (1998). Neither *Miller* nor *Anderson* actually analyzes emotional distress damages. They simply say that insurance bad faith is a tort, and therefore emotional distress damages are available. *Miller*, 180 Wash.App. at 800–02, 325 P.3d 278 ; *Anderson* 101 Wash.App. at 333, 2 P.3d 1029. *Coventry* simply says that general tort damages are available for insurer bad faith. 136 Wash.2d at 285, 961 P.2d 933. In other words, the dissent relies on three bad faith cases that fail to analyze the availability of emotional distress damages in the context of insurance bad faith, and that say nothing about legal malpractice.

¶ 37 Moreover, attorney malpractice differs considerably from insurer bad faith.⁴ We have not articulated a sufficiently narrow definition of insurance bad faith to use it as a model to determine attorney malpractice. *See, e.g., Tank v.*

[181 Wash.2d 677]

State Farm Fire & Cas. Co., 105 Wash.2d 381, 386, 715 P.2d 1133 (1986) (“an insurer must deal fairly with an insured, giving equal consideration *in all matters* to the insured's interests”); *Smith v. Safeco Ins. Co.*, 150 Wash.2d 478, 484, 78 P.3d 1274 (2003) (“To succeed on a bad faith claim, the policyholder must show the insurer's breach of the insurance contract was ‘unreasonable, frivolous, or unfounded’ ” (quoting *Overton v. Consol. Ins. Co.*, 145 Wash.2d 417, 433, 38 P.3d 322 (2002))); *Besel v. Viking Ins. Co. of Wisconsin*, 146 Wash.2d 730, 737, 49 P.3d 887 (2002) (“The[se] principles ... do not depend on how an insurer acted in bad faith. Rather, the principles apply whenever an insurer acts in bad faith, whether by poorly defending a claim under a reservation of rights, refusing to defend a claim, or failing to properly investigate a claim.” (citations omitted)). Additionally, insurance bad faith does not constitute a single body of law; it “derives from statutory and regulatory provisions, and the common law.” *St. Paul Fire & Marine Ins. Co. v. Onvia, Inc.*, 165 Wash.2d 122, 128, 196 P.3d 664 (2008). Insurance bad faith claims are often brought under common law, the Insurance Fair Conduct Act (ch. 48.30 RCW), and the Consumer Protection Act (ch. 19.86 RCW). Each of these causes of action offers unique remedies. *See* RCW 19.86.090 (attorney's fees available for Consumer Protection Act claims); RCW 48.30.015(2) (treble damages available for Insurance Fair Conduct Act claims); *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wash.2d 299, 318, 858 P.2d 1054 (1993) (emotional distress damages unavailable for Consumer Protection Act claims). Importing insurance bad faith standards into the arena of attorney malpractice will only cause confusion. The analogy between insurance bad faith and attorney malpractice must await a fuller exploration than either the dissent or the parties have offered.

¶ 38 Schmidt also argues that plaintiffs in legal malpractice claims should recover the cost of obtaining the malpractice award. She argues that it is within the scope of foreseeability

[181 Wash.2d 678]

that a client will incur additional

[335 P.3d 434]

attorney fees, expert fees, and other costs when an attorney commits malpractice. **Schmidt offers no case law to support her position. In fact, our case law does not support an award of attorney fees in attorney malpractice cases.** *Perez v. Pappas*, 98 Wash.2d 835, 845, 659 P.2d 475 (1983) (Our court rejected the client's argument that “a defendant is always liable for attorney fees when a lawsuit results from the defendant's breach of fiduciary duties.” We held that the trial court properly refused to award attorney fees.); *Shoemake v. Ferrer*, 143 Wash.App. 819, 830–31, 182 P.3d 992 (2008) (trial court abused its discretion by awarding attorney fees to the injured client), *aff'd on different grounds*, 168 Wash.2d 193, 225 P.3d 990 (2010) ; *Kelly v. Foster*, 62 Wash.App. 150, 153–55, 813 P.2d 598 (1991) (trial court did not abuse its discretion when it denied attorney fees). Attorney fees are not awarded to plaintiffs in other tort cases, including other forms of malpractice. *See Cosmo. Eng'g Grp., Inc. v. Ondeo Degremont, Inc.*, 159 Wash.2d 292, 296–97, 149 P.3d 666 (2006) (“The general rule in Washington, commonly referred to as the ‘American rule,’ is that each party in a civil action will pay its own attorney fees and costs. This general rule can be modified by contract, statute, or a recognized ground in equity.” (citations omitted)); *Jaramillo v. Morris*, 50 Wash.App. 822, 826–27, 750 P.2d 1301 (1988) (court reversed attorney fee award because the claims concerned professional negligence/malpractice and were not a violation of the Consumer Protection Act). It would be anomalous to award attorney fees in this context but not in other tort cases.

¶ 39 The facts in *Shoemake* are similar to the facts of our case. The Shoemakes were seriously injured in a car accident, they hired an attorney to represent them, and the attorney failed to perfect the lawsuit before the statute of limitations ran. 143 Wash.App. at 821, 182 P.3d 992. The case was initially dismissed, but the attorney convinced the court to reinstate the claim. *Id.* at 821–22, 182 P.3d 992. He failed to appear for the scheduled

[181 Wash.2d 679]

trial, and the court dismissed the Shoemakes' complaint. *Id.* at 822, 182 P.3d 992. The attorney never told the Shoemakes about the events; instead, he lied to them for years. *Id.* The trial court awarded the Shoemakes attorney fees, but the Court of Appeals reversed the award. *Id.* at 823, 832, 182 P.3d 992. It rejected the argument that an injured client was entitled to attorney fees in a “malpractice action based on their breach of fiduciary duty claims.” *Shoemake*, 143 Wash.App. at 830, 182 P.3d 992. **“Attorney fees may be awarded only if authorized by contract, statute, or a recognized ground in equity.”** *Id.* The court concluded that “breach of fiduciary duty by a lawyer is not a recognized equitable ground upon which to award attorney fees under Washington law, the trial court erred in [awarding attorney fees].” *Id.* The Court of Appeals also noted, “ ‘Washington courts have not recognized the ordinary legal malpractice action as one in which attorney's fees can be

recovered as part of the cost of litigation.’ ” *Id.* at 832, 182 P.3d 992 (quoting *Kelly*, 62 Wash.App. at 155, 813 P.2d 598). We denied review of the attorney fee award issue while accepting review of other issues. *Shoemake*, 168 Wash.2d at 197, 225 P.3d 990.

¶ 40 The approach taken by the court in *Shoemake* follows the rule as set out in the *Restatement*

Like other civil litigants, the winning party in a malpractice action ordinarily cannot recover its attorney fees and other expenses in the malpractice action itself, except to the limited extent that the jurisdiction allows the recovery of court costs. The rule barring fee recovery has exceptions, which may be applicable in a malpractice action in appropriate circumstances. For example, many jurisdictions allow recovery of attorney fees against a plaintiff or defendant that litigates in bad faith.

Restatement (Third) of Law Governing Lawyers § 53 cmt. f at 392–93. We hold that plaintiffs in legal malpractice cases are not automatically entitled to attorney fees.

[181 Wash.2d 680]

¶ 41 None of the remaining issues presented by Schmidt are errors or merit discussion.⁵

[335 P.3d 435]

CONCLUSION

¶ 42 We reverse the Court of Appeals and affirm the trial court's judgment. We hold that the uncollectibility of an underlying judgment is an affirmative defense to legal malpractice that defendant-attorneys must plead and prove. We also hold that the trial court properly denied emotional distress damages because Coogan's actions were not particularly egregious, nor was the subject matter personal.

WE CONCUR: C. JOHNSON, and OWENS JJ.

MARY I. YU, J., not Participating.

FAIRHURST, J. (concurring).

¶ 43 I agree with the lead opinion that the Court of Appeals should be reversed. However, I believe it is unnecessary and improper for this court to hold that collectibility is an affirmative defense under the facts of this case.¹ Rather than fashion new rules of law, I would simply affirm the trial court's denial of Timothy P. Coogan's motion for judgment as a matter of law. I would hold Coogan could not raise collectibility in the damages only trial because Coogan (1) failed to expressly raise collectibility as an issue in the first jury trial and (2)

[181 Wash.2d 681]

sought to exclude insurance evidence from the damages only trial.

¶ 44 This case has a long and tortured history. The events began almost 20 years ago when Teresa Schmidt slipped and fell at a Tacoma grocery store on December 23, 1995. In January 1996, Schmidt retained attorney Coogan to handle her personal injury suit against the store. In 2000, Schmidt filed this attorney malpractice suit against Coogan for his failure to perfect her claim. In 2003, a jury entered a verdict against Coogan for \$32,000 in past economic damages and \$180,000 for noneconomic damages. Coogan moved for a new trial, remittitur, and reconsideration, claiming Schmidt failed to prove the grocery store had notice of the hazardous condition, a necessary element of the underlying claim. The trial court granted a new trial on the issue of damages only on the basis that Coogan was denied a fair trial.

¶ 45 Specifically, the court found that a new trial on damages was warranted because (1) Schmidt's counsel improperly promoted awarding punitive damages during closing arguments to the jury, (2) the damages were so excessive as to unmistakably indicate that the verdict must have been the result of passion and prejudice, (3) the verdict for noneconomic damages was not supported by the evidence, and (4) the trial court improperly allowed the lack of Schmidt's insurance testimony to be presented during the course of trial.

¶ 46 Both parties appealed the trial court's decision. *Schmidt v. Coogan*, noted at 134 Wash.App. 1055, 2006 WL 2556633. Schmidt claimed the trial court erred in overturning the jury's damage award. 134 Wash.App. 1055, 2006 WL 2556633, at *1. Coogan claimed Schmidt failed to prove the elements of her underlying claim. *Id.* The Court of Appeals agreed with Coogan, reversing and remanding the case for dismissal. *Id.* On appeal, this court reversed the Court of

[181 Wash.2d 682]

Appeals decision, holding there was sufficient evidence to support the jury's verdict with respect to the underlying slip and fall. *Schmidt v. Coogan*, 162 Wash.2d 488, 492, 173 P.3d 273 (2007). The court remanded for consideration on the remaining issues. *Id.* at 493, 173 P.3d 273.

[335 P.3d 436]

¶ 47 On remand, the Court of Appeals affirmed the trial court order granting a new trial limited to the issue of damages. *Schmidt v. Coogan*, noted at 145 Wash.App. 1030, 2008 WL 5752059. The Court of Appeals found that the trial court did not abuse its discretion in granting a new trial on damages only because Schmidt proved no factual basis for the jury's award of \$32,000 for past economic damages. 2008 WL 5752059, at *1. The Court of Appeals mandated the case back to the trial court for a new trial on damages. *Id.*

¶ 48 On remand for the damages only trial, Coogan sought to confine Schmidt's damages to "what [Schmidt would] have gotten in her claim against the Grocery Outlet" if Coogan had

done his job properly. Verbatim Report of Proceedings Motion in Limine (Aug. 20.2010) at 21. Pretrial, Coogan never directly briefed or argued the issue of collectibility. Coogan alleges he raised collectibility in a motion contesting Schmidt's motion for summary judgment on the issue of general damages by discussing *Lavigne v. Chase, Haskell, Hayes & Kalamon, PS*, 112 Wash.App. 677, 50 P.3d 306 (2002) and by quoting and attaching an 86 page article in support of his motion in limine on the issue of general damages.

¶ 49 Neither reference was focused on collectibility. Coogan was arguing that Schmidt's damages should be limited to actual damages. During the pretrial proceedings, Coogan never directly stated that collectibility was a necessary element of Schmidt's case. To the contrary, Coogan affirmatively moved for and the trial court granted a motion in limine that excluded a reference to the grocery store's insurance.

[181 Wash.2d 683]

¶ 50 The first time Coogan expressly raised collectibility was in an oral motion to dismiss following the completion of Schmidt's case-in-chief during the damages only trial. 3 Verbatim Tr. of Proceedings (Aug. 25, 2010) at 503–04. His counsel stated:

One element in a legal malpractice case is proof that if, in fact, the lawyer had done a better job and there would have been a better result, that they actually wouldn't have been able to collect on that result. In other words, collectability is an essential element of the plaintiff's case.

There has been no evidence presented in this case, none whatsoever, as to whether or not even if Mr. Coogan had handled this case right, even if Mr. Coogan had taken it to a jury trial and got a verdict for Ms. Schmidt that that verdict would have been collectible. That is an essential element of their case, they put on no proof; therefore, dismissal is warranted.

Id. at 504.

¶ 51 The trial court then asked Coogan's counsel whether collectibility is an element of malpractice or a component of damages. *Id.* at 507. Counsel responded:

Element two, proximate cause is what I'm talking about here. They're still going to have to prove proximate cause of damages. And in this context, [Schmidt] has to prove that but for his negligence, she would have faired [sic] better. An element of that concept and that goes to the value of the underlying claim. An element of that concept is the plaintiff's burden of proof collectability.

Id. The trial court denied the motion to dismiss, finding that collectibility was outside the scope of the damages only trial: “[T]his case is not about any element of malpractice other than damages and proximate cause as it relates to damages. If there was a question as to collectability, that should have been addressed at the first trial. This trial is about damages only.” *Id.* at 508.

¶ 52 In August 2010, the jury returned a verdict in favor of Schmidt for \$3,733.16 in past economic damages and

[181 Wash.2d 684]

\$80,000.00 in noneconomic damages. Coogan moved for judgment as a matter of law and for a new trial on the basis that Schmidt failed to prove collectibility, an essential element of a legal malpractice claim. The trial court denied the motions.

¶ 53 Coogan appealed, claiming the trial court erred by denying his motion for judgment as a matter of law. The Court of Appeals reversed the trial court's denial of Coogan's motion for judgment as a matter of law and remanded for dismissal of Schmidt's claim.

[335 P.3d 437]

Schmidt v. Coogan, 171 Wash.App. 602, 611, 287 P.3d 681 (2012). The court first determined Coogan preserved the issue of collectibility for appeal, reasoning collectibility is a component for damages. *Id.* at 609, 287 P.3d 681. Further, the court held that Schmidt failed to prove collectibility. *Id.* at 611, 287 P.3d 681.

¶ 54 I believe the trial court properly denied Coogan's motion for judgment as a matter of law. First, Coogan did not expressly raise collectibility as an issue in the first trial. He raised it when this case was almost 15 years old and after there had been multiple appellate reviews. If collectibility was an issue, it should have been raised during the first jury trial. If collectibility had been argued successfully in the first trial, there would have been a defense verdict and the case would have been over. I would hold, as the trial court did, that the claim of collectibility had no place in the damages only trial.

¶ 55 Second, collectibility was not at issue in the damages only trial because during pretrial proceedings Coogan moved to exclude evidence of the grocery store's insurance. To support the exclusion of insurance information, among other exhibits, Coogan reasoned,

a number of these exhibits are now irrelevant given the fact that this case is now limited to a new trial on the issues of damages only. In other words, any exhibit submitted by the plaintiff that relates to liability should be excluded as generally being irrelevant ... as well as unduly confusing and prejudicial.

[181 Wash.2d 685]

Resp't's Mot. for Recons. (of Court of Appeals decision, filed Nov. 16, 2012), App. at 22. Specifically, Coogan objected to "**Exhibit 1. Cover of Coogan's file regarding Ms. Schmidt**"; this exhibit is objected to on the grounds that it clearly depicts the words 'Safeco' on its cover thus inappropriately references insurance which as discussed above is inadmissible." *Id.* Schmidt demurred, and the trial court granted the motion in limine.

¶ 56 Coogan's motion in limine evidences that at the beginning of the damages only trial, he did not consider insurance relevant. However, insurance would be relevant if collectibility was an issue. Under the invited error doctrine, Coogan waived the right to complain of the fact that Schmidt did not present any evidence of collectibility. The invited error doctrine prohibits a party from setting up an error in the trial court and then complaining about it on appeal. *In re Pers. Restraint of Tortorelli*, 149 Wash.2d 82, 94, 66 P.3d 606 (2003). Here, Coogan moved to exclude the exact type of evidence that he later claimed Schmidt had to present in order to prevail in her case.

¶ 57 I would reverse the Court of Appeals and hold that collectibility was not at issue in the damages only trial because it was not raised during the first jury trial and Coogan invited error by moving to exclude evidence of insurance during the damages only trial. Although there may be unanswered questions about collectibility, this case is not the proper vehicle to decide them.

GORDON McCLOUD, J., J.M. JOHNSON, J.P.T., and MADSEN C.J., concur.

STEPHENS, J. (dissenting).

¶ 58 The attorney-client relationship is vital to the functioning of our justice system. The lead opinion erodes the trust that is central to this relationship by erecting artificial barriers to a client's ability to fully recover damages against a negligent attorney. Insisting that emotional distress damages require a

[181 Wash.2d 686]

showing that the attorney's actions were "particularly egregious," lead opinion at 432, the lead opinion discounts the special nature of the attorney-client relationship and relies on a faulty analogy between attorney malpractice claims and negligent infliction of emotional distress (NIED) claims involving strangers. It would make more sense to analogize attorney malpractice claims to tort claims in other fiduciary contexts more closely resembling the attorney-client relationship. Because such damages should be allowed, where proved, I respectfully dissent.¹

[335 P.3d 438]

¶ 59 The lead opinion begins its analysis by discussing claims between strangers and noting that historically, Washington courts were cautious to award emotional distress damages. Lead opinion at 430. This reasoning relies on the refrain that "a negligent act should have some end to its legal consequences." *Hunsley v. Giard*, 87 Wash.2d 424, 435, 553 P.2d 1096 (1976). But, Washington has moved away from the reasoning of *Hunsley* and allows recovery "when a plaintiff's emotional distress is 'within the scope of foreseeable harm ..., a reasonable reaction given the circumstances, and ... manifest by objective symptomatology.'" Lead opinion at 430 (alterations in original) (quoting *Bylsma v. Burger King Corp.*, 176 Wash.2d 555, 560, 293 P.3d 1168 (2013)).

¶ 60 As the lead opinion acknowledges, there are numerous circumstances where the State's interest in protecting members of the public supersedes any reluctance to recognize valid emotional distress and does not require a physical impact or "objective symptomology." Lead opinion at 430 (citing *Chuong Van Pham v. Seattle City Light*, 159 Wash.2d 527, 533–38, 151 P.3d 976 (2007) (emotional distress damages available for ethnic and race discrimination under Washington's Law Against Discrimination, ch. 49.60 RCW);

[181 Wash.2d 687]

Berger v. Sonneland, 144 Wash.2d 91, 113, 26 P.3d 257 (2001) (emotional distress damages available for medical malpractice); *Whaley v. State*, 90 Wash.App. 658, 674, 956 P.2d 1100 (1998) (emotional distress damages for breach of professional duty by a day care provider)). These situations reveal a common thread justifying the imposition of liability for emotional distress: a special relationship based on trust. When such a special relationship exists,

[i]t is not merely economic, and a reasonable person standing in the defendant's shoes would easily foresee that its breach is likely to cause significant emotional distress. It will support emotional distress damages without proof of physical impact or objective symptomatology.

Price v. State, 114 Wash.App. 65, 73, 57 P.3d 639 (2002). In *Price* the court held that emotional distress damages were available against an agency that negligently facilitated a wrongful adoption. We should recognize that the attorney-client relationship is similarly a special relationship.

¶ 61 Instead, the lead opinion places a new restriction on plaintiffs alleging legal malpractice: they must prove the attorney's negligence was "particularly egregious." Lead opinion at 429. "Egregious" means "[e]xtremely or remarkably bad." Black's Law Dictionary 629 (10th ed.2014). The lead opinion provides no additional guidance on how plaintiffs might show this. Yet, the lead opinion holds as a matter of law that Coogan's actions were not egregious. Lead opinion at 431–32. Coogan failed to file a personal injury lawsuit against the correct defendant before the statute of limitations ran. Schmidt repeatedly inquired about the case, and Coogan ridiculed her for not trusting him. These actions look "remarkably bad" to me.

¶ 62 The lead opinion also characterizes Schmidt's harm as primarily pecuniary, though her testimony at trial suggested that her personal injury has materially affected every aspect of her life. *Id.* at 432–33; Pet'r's Suppl. Br.App. at 22–36. The authorities the lead opinion cites to draw a

[181 Wash.2d 688]

dividing line between negligence that foreseeably causes emotional distress and negligence that produces only economic losses do not support cutting off Schmidt's emotional distress damages. Lead opinion at 431–32 (citing *Vincent v. DeVries*, 2013 VT 34, 193 Vt. 574, 72 A.3d 886, 894–95 (2013) ; Restatement (Third) of the Law Governing Lawyers § 53 cmt. g

(1998)). Rather, they speak to *commercial* transactions or purely pecuniary losses. A personal injury involves much more. As the Court of Appeals recognized in *Price*, emotional distress damages are appropriate when negligence occurs in the context of a relationship preexisting the defendant's duty, i.e., within a special relationship. *Price*, 114 Wash.App. at 71, 57 P.3d 639.

¶ 63 There is a significant difference between the relationship of a tortfeasor and a bystander and between an attorney and a client. While a negligent driver might not foresee that his negligent driving will cause emotional distress to a stranger, an attorney handling a personal injury case can foresee

[335 P.3d 439]

that negligent performance might cause emotional distress to the client. Our NIED rule anticipates the tortfeasor/bystander scenario, and applies in the particular situation where a plaintiff “observ[es] an injured relative at the scene of an accident after its occurrence and before there is substantial change in the relative's condition or location.” *Hegel v. McMahan*, 136 Wash.2d 122, 132, 960 P.2d 424 (1998). I do not see why the lead opinion chose to analogize this situation to the present case, where an attorney, who owes specified fiduciary duties to a client, violates those duties and causes both financial and emotional harm to the client.

¶ 64 A far better analogy is to torts involving special relationships. Consider, for example, insurance bad faith, which involves a quasi-fiduciary relationship. “An action for bad faith handling of an insurance claim sounds in tort.” *Safeco Ins. Co. of Am. v. Butler*, 118 Wash.2d 383, 389, 823 P.2d 499 (1992). “Claims of insurer bad faith ‘are analyzed applying the same principles as any other tort: duty, breach

[181 Wash.2d 689]

of that duty, and damages proximately caused by any breach of duty.’ ” *Mut. of Enumclaw Ins. Co. v. Dan Paulson Constr., Inc.*, 161 Wash.2d 903, 916, 169 P.3d 1 (2007) (quoting *Smith v. Safeco Ins. Co.*, 150 Wash.2d 478, 485, 78 P.3d 1274 (2003)). Emotional distress damages are recognized in this context based on the relationship of trust between the insurer and insured. As the Colorado Supreme Court explained:

[I]nsurance contracts are unlike ordinary bilateral contracts. First, the motivation for entering into an insurance contract is different. Insureds enter into insurance contracts for the financial security obtained by protecting themselves from unforeseen calamities and for peace of mind, rather than to secure commercial advantage. Second, there is a disparity of bargaining power between the insurer and the insured; because the insured cannot obtain materially different coverage elsewhere, insurance policies are generally not the result of bargaining.

Goodson v. Am. Standard Ins. Co. of Wis., 89 P.3d 409, 414 (Colo.2004) (citations omitted); see also *Miller v. Kenny*, 180 Wash.App. 772, 802, 325 P.3d 278 (2014) (explaining that tort damages for insurance bad faith in Washington include emotional distress damages).

¶ 65 Many of the same characteristics are equally prominent in the attorney client relationship. People turn to attorneys to help them recover after calamities occur. People hire attorneys for the peace of mind that comes from having the assistance of a professional, rather than facing a lawsuit alone. Attorneys inherently have more bargaining power than their clients when entering into a contract for service, if for no other reason than such contracts are legal documents; laypeople hire attorneys primarily because they need assistance to understand the legal consequences of events and documents.

¶ 66 These considerations appear in this case as well. Schmidt suffered significant injuries from an unexpected slip and fall at a grocery store. Lead opinion at 426; Pet'r's Suppl. Br.App. at 12–34. These injuries interfered with her

[181 Wash.2d 690]

relationships and work. Pet'r's Suppl. Br.App. at 12–34. She sought legal counsel because she needed professional assistance in order to bring her claims. *Id.* at 40–41. Coogan prepared a contingency fee arrangement without any bargaining with Schmidt. *Id.* at 39–40. There is no evidence in the record to suggest that Schmidt had a realistic chance of finding a substantially different arrangement with another attorney. See *Goodson*, 89 P.3d 409. And, Schmidt continued relying on Coogan because she trusted him. Pet'r's Suppl. Br.App. at 55. Certainly the relationship between attorney and client here was no less one of trust than the insurer/insured relationship. The lead opinion offers no justification for cutting off the emotional distress damages in this true fiduciary relationship when an insured would be entitled to pursue such damages against a negligent insurer in a quasi-fiduciary relationship.

¶ 67 In the end, the lead opinion's rule rests on the wrong analogy, that of NIED claims between strangers. It reflects nothing more than a judicial determination that emotional distress damages are unforeseeable in this context. The proffered rationale for erecting a barrier to recovery is the lead

[335 P.3d 440]

opinion's conclusion that Schmidt suffered merely a “pecuniary loss” and that the subject matter of her personal injury suit “was not particularly sensitive” because “she did not lose her freedom and Coogan's actions were not egregious.” Lead opinion at 432. Given that other classes of fiduciaries and quasi-fiduciaries do not receive the special protections that attorneys do under the lead opinion's rule, I find this unsatisfying. The special relationship between attorneys and their clients should not shield attorneys whose malpractice foreseeably causes emotional distress. Rather, the special relationship should allow for greater recovery because of the greater harm that a negligent attorney may inflict upon a trusting client. I respectfully dissent.

STEPHENS, and GONZALEZ, JJ., dissent.

Notes:

¹ The Court of Appeals opinion followed our decision in *Schmidt v. Coogan*, 162 Wash.2d 488, 173 P.3d 273 (2007). In *Schmidt*, we held that Schmidt produced enough evidence of Grocery Outlet's constructive notice of the dangerous condition to withstand a motion for judgment as a matter of law. *Id.* at 492–93, 173 P.3d 273. Therefore, we reversed the Court of Appeal's holding that Coogan should have been granted judgment as a matter of law and directed the court to consider the remaining issues on appeal. *Id.*

² Schmidt worked at Coogan's law office for a portion of the time he was representing her. Their relationship extended beyond a simple attorney-client relationship.

³ We do not understand the dissent's accusation that our opinion “discounts the special nature of the attorney-client relationship and relies on a faulty analogy between attorney malpractice claims and negligent infliction of emotional distress ... claims involving strangers.” Dissent at 437. Unlike the dissent, we have considered out-of-state authorities and a leading treatise on lawyers, all analyzing this very issue in the context of lawyering. It is the dissent that ranges far afield of the attorney-client relationship.

⁴ The negligence basis for attorney malpractice and the bad faith standard are distinct theories of liability. *Coventry*, 136 Wash.2d at 280, 961 P.2d 933 (noting that “an insured is not entitled to base a bad faith or [Consumer Protection Act, chapter 19.86 RCW] claim against its insurer on the basis of a *good* faith mistake”); *First State Ins. Co. v. Kemper Nat'l Ins. Co.*, 94 Wash.App. 602, 612, 971 P.2d 953 (1999) (“the plaintiff is entitled to a jury verdict on theories of either negligence or bad faith, *independent of each other* because a party may fail to use ordinary care yet still not act in bad faith” (footnote omitted)).

⁵ The trial court did not err when it denied Schmidt's motion to amend to add a claim for outrage/reckless infliction of emotional distress. The Court of Appeals held, “[T]he trial court did not abuse its discretion in denying Schmidt's motion to amend her complaint because she sought to amend the complaint only after an undue delay and an amended complaint would have worked an undue hardship on Coogan's defense.” *Schmidt*, 171 Wash.App. at 611–12, 287 P.3d 681. The court noted that the amendment was proposed “well over a decade after the alleged infliction of emotional distress occurred, and well after the first trial established Coogan's liability for negligence in failing to comply with the statute of limitations....” *Id.* at 612, 287 P.3d 681. Allowing the amendment “would have broadened the trial's scope and forced Coogan to reformulate his defense strategies.” *Id.* We agree. It was not an error to deny the motion to amend.

¹ Also under the facts of this case emotional distress damages are not available.

¹ I agree with the lead opinion that collectability is an affirmative defense, not an element of every plaintiff-client's case. Lead opinion at 427. This dissent addresses only the issue of emotional distress damages in attorney malpractice cases.

UNINSURED LAWYERS AND PROFESSIONAL LIABILITY INSURANCE REQUIREMENTS: WHAT DOES THE RESEARCH TELL US? *By Leslie C. Levin*

August 2018 NWLAWYER, Page 36, quote from Leslie C. Levin

We do not know whether uninsured lawyers are more likely to commit malpractice than other lawyers, but we do know that when they commit malpractice, their clients may be doubly victimized. For example, in *Schmidt v. Coogan*, 181 Wn.2d 661, 335 P.3d 424 (2014), an uninsured lawyer sued the wrong party, resulting in dismissal of his client's claim. He then fought tooth and nail through two jury trials, three trips to the Court of Appeals, and two trips to the Washington Supreme Court to avoid paying a claim that an insurance company likely would have settled many years earlier.⁷

After reading the Letter to the Editor (Pages 00002-00004) with the *Schmidt v. Coogan* case (Pages 00005-00044), which person understands *Coogan* better?

- The author of the Letter to the Editor, or
- The author of the article in the August 2018 NWLawyer?

Wouldn't you say that the *NWLawyer* was misleading when it printed the paragraph quoted above?

From: [Jimenez, Diana](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on Mandatory Insurance
Date: Monday, November 26, 2018 11:46:46 AM

To Whom It May Concern:

I believe that in-house counsel that are employees of an organization should not be subject to this requirement, since our only client is the organization, and most organizations (especially large organizations such as Intel) do not require that we in-house employee counsel carry malpractice insurance, and we are obligated not to provide legal services outside the organization we are employed by, as there may be conflicts if we also had private client, especially when employed by very large organizations.

However, if a lawyer provides "consultant" services to an organization and is therefore not an employee of the organization, they should be treated like any other lawyer having multiple clients and be required to carry malpractice insurance, as they will usually be required by the organization to have other clients outside of the organization so they will not be deemed to be an "employee" of the organization they are providing legal services to.

This is why requiring malpractice insurance for in-house counsel makes sense only in the context of lawyer "consultants" not lawyer employees.

Thank You.

Diana

Diana T. Jimenez, CIPP/E
Managing Counsel IT
Cybersecurity, Data and Privacy Legal

Intel Corporation
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Security is living in a world short on trust

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From: [James Catalinich](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance
Date: Monday, November 26, 2018 12:28:11 PM

Dear Task Force:

I have been a member since 1983. Rather than practice law, I chose to remain in education. I was a teacher in the public schools for 40 years and now teach at a small Catholic School. I have maintained my license because it was good to have and also so very interesting to keep up with the law through the CLEs. I do not give legal advice nor practice, but the license has intrinsic value to me. I hope the task force would consider an option for those like me. Thank you for your attention. James Catalinich 13272

Sent from my iPhone

From: [Jeff Oster](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Problems With Mandatory Insurance
Date: Monday, November 26, 2018 12:35:20 PM

Dear Taskforce:

Have you considered that the way certain areas of legal practice are changing so rapidly that insurance is not available to those lawyers who do not do traditional practices? It is one thing to mandate insurance, it is another to find insurance where none exists.

Please consider that your classification systems for attorney practices are woefully out of date and, most importantly, do not cover attorneys who work like me, part time in-house, part time for start-ups and part time on contingency litigation teams (including the *Syntrix v. Illumina* team that won the largest patent infringement damage award in Washington State history). There is no insurance product to cover that practice. Nothing comes close because intellectual property insurance follows old line traditional law firm models of litigation or IP procurement/prosecution. That practice segregation model was turned on its head with the implementation of the 2012 AIA (America Invents Act). While yes there are old line law firms that still operate on the traditional silo'd model, the world has changed and insurance has not kept up with the changes. I have tried to obtain insurance from the usual carriers but they ask only which silo (litigation or prosecution) where I fit. When I indicate neither (it's PTAB or Patent Trial and Appeal Board and the European Opposition Division as I am a dual citizen), I am informed no insurance product exists.

So how am I supposed to comply? Please expand your thinking to its global implications. Please consider the insurance market, or lack thereof, before issuing edicts that present an impossible situation.

Jeff Oster WSBA 17,709

Sent from [Mail](#) for Windows 10

From: [Martin Rollins](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance?
Date: Monday, November 26, 2018 12:53:10 PM

Ladies and Gentlemen,

My view is that the WSBA should NOT require mandatory malpractice insurance. In my case, I'm retired but I keep my law license active just in case I might need it in the future. Since I'm not actively practicing law and I'm on a fixed income, it would be a hardship if I were forced to obtain mandatory malpractice insurance.

Please consider the situation of everyone who is currently licenced before adopting such a heavy handed approach.

Regards,
Martin Rollins
WSBA #14676

From: [Gary Abolofia](#)
To: [Mandatory Malpractice Insurance Task Force; tomwampold@gmail.com](#)
Date: Monday, November 26, 2018 12:54:05 PM

I am 72 years old and have been a member of the bar for over 40 years. I am effectively retired and have really not practiced for several years. I have maintained my bar membership because it is hard to let go, I will probably never practice commercially ever again but I would like to stay a member and have the ability to help a friend if I wanted. I malpractice requirement would prohibit that. Will there be any limited practice or retired lawyer exemption?

Also, is it really necessary to require insurance when the info is available on the bar website. Wouldn't a notice requirement with a client sign-off be less invasive and Big Brotherish?

Gary Abolofia WSBA#1683

From: Mandatory Malpractice Insurance Task Force
Sent: Tuesday, November 27, 2018 2:47 PM
To: 'Gary Abolofia'
Subject: RE:

Mr. Abolofia,

The Task Force is currently working on its draft Final Report to the WSBA Board of Governors with recommendations regarding whether to require malpractice insurance of Washington lawyers. The draft Report includes its recommendations regarding possible exemptions. Among the possible exemptions the Task Force has included is "Other lawyers either not "actively licensed" or not "engaged in the private practice of law," including, for example, retired lawyers maintaining their licenses, judicial law clerks, and Rule 9 interns." The recommendation would include fully retired lawyers who do not practice law but choose to maintain their active licenses without engaging in the private practice of law. The recommendation would require that if a retired lawyer chose to engage in the private practice of law, he or she would need to obtain insurance. The Task Force has not recommended a limited practice exemption.

Sincerely,



Thea Jennings | Disciplinary Program Manager | Office of Disciplinary Counsel

Washington State Bar Association | ☎ 206.733.5985 | theaj@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

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From: Gary Abolofia [REDACTED]
Sent: Monday, November 26, 2018 12:54 PM
To: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>; tomwampold@gmail.com
Subject:

I am 72 years old and have been a member of the bar for over 40 years. I am effectively retired and have really not practiced for several years. I have maintained my bar membership because it is hard to let go, I will probably never practice commercially ever again but I would like to stay a member and have the ability to help a friend if I wanted. I malpractice requirement would prohibit that. Will there be any limited practice or retired lawyer exemption?

Also, is it really necessary to require insurance when the info is available on the bar website. Wouldn't a notice requirement with a client sign-off be less invasive and Big Brotherish?

Gary Abolofia WSBA#1683

From: [john allison](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments on Mandatory Malpractice Insurance Proposal
Date: Monday, November 26, 2018 12:54:56 PM

Dear Task Force Members:

I have been an active member in good standing of the Washington State Bar Association since the fall of 1969, and was covered by malpractice insurance while representing clients as a private practitioner in Washington State from the fall of 1969 until December of 1994. At the end of 1994 I moved to Minnesota and joined the Legal Department of 3M Company as an in-house lawyer. After retiring from 3M and practicing for a while as of-counsel in a St. Paul, Minnesota law firm, I moved to California where I own and operate The Coach for Lawyers, LLC, a firm that offers coaching, mentoring and law practice consulting services for lawyers and law firms. Since moving to California I have not engaged in the practice of law. Nevertheless, I want to maintain my active status as a member of the Bar, and do not want to be put to the choice of going inactive or purchasing malpractice insurance I do not need.

I am aware that you have already received hundreds of comments on the proposal to make malpractice insurance mandatory, and would like to limit my comments to two points. First, I suggest that full disclosure is preferable to a mandatory requirement, because full disclosure will avoid many of the pitfalls and hardships associated with a mandatory requirement that others have pointed out. By full disclosure I mean that the WSBA website page for each lawyer should disclose whether or not that lawyer has malpractice insurance, and lawyers who do not have malpractice insurance should be required to disclose that fact in their written fee agreements with clients.

Second, if malpractice insurance is made mandatory as a condition of licensure, there should be a number of exemptions for lawyers who do not need to have malpractice insurance. Since the intended purpose of requiring malpractice insurance is to protect clients, the requirement should only apply to lawyers representing private clients in the State of Washington. Exemptions should be made available for lawyers who are not representing private clients in the State of Washington, including retired lawyers, lawyers who are not practicing law, lawyers working in-house, lawyers employed by a government agency, law professors and judges.

Thank you for considering my comments. If you have any questions I can be reached by email or phone as indicated below.

Respectfully submitted,

John R. Allison
WSBA # 4335
jrallison27@gmail.com
707.357.3732

From: [Laura Dowty](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Proposed Mandatory Malpractice Insurance
Date: Monday, November 26, 2018 1:05:53 PM

To Whom It May Concern:

I am strongly against mandatory malpractice insurance. I believe it would cause a financial burden on many attorneys who are under active status, but may not be currently serving clients, and it have a negative effect on small law firms. I would fall under this category. I have had my WSBA license (#31086) since 2001, I opened my solo law firm shortly after receiving my license. At first I kept malpractice insurance, but the cost was so high I could no longer afford it. My clients at that time were low income and could hardly afford an attorney, often I ended up doing a lot of pro bono work. During this time I was diagnosed with a life changing disease which keeps me from being able to work on a regular basis. I pay my bar dues and keep my CLE's up to date, but I do not represent any clients at this time. If I am forced pay mandatory malpractice insurance, I will no longer be able to keep my license to practice law, which I worked very hard to achieve. Even though I do not currently have any clients, my active license allows me to help those who are in need of legal counsel and perform pro bono if necessary. Requiring attorneys to have malpractice insurance may result in a high loss of seasoned attorneys, and as a result would leave the community with unreliable legal assistance.

Thank you for considering my input on this matter. If you have any questions for me I can be contacted at (509)324-0491.

Sincerely,

Laura A. Dowty
Attorney at Law

From: [Kary Krismer](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Monday, November 26, 2018 1:10:19 PM

I submitted comments early on, and will repeat them in case they dropped off due to being part of an earlier process.

The system needs to account for attorneys who do not actively practice law in the traditional sense, are who are basically retired but still licensed.

As to the former, there are many real estate agents who are also licensed attorneys. If they did obtain malpractice insurance it would almost certainly exclude their activities as a real estate agent. So it would be costly insurance that would not provide the consumer any protection.

As to the latter there would seemingly be no need for such attorneys to have malpractice insurance, and it would be a shame to force them to give up their license due to an inflexible policy.

Kary L. Krismer
Managing Broker
John L. Scott/KMS Renton
206 723-2148 (direct)
425 272-2734 (fax direct)
425 227-5224 (fax office)

Our Facebook Page: [Kary and China](#)

From: [Jon Bial](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance
Date: Monday, November 26, 2018 1:16:59 PM
Importance: Low

I echo the gent that wrote about not being able to practice law on a limited basis for friends because the insurance is cost prohibitive. I'm also an in-house attorney, and I love being able to help out people - either with no charge or minimal charge. I'm afraid the new insurance requirement will prohibit me from doing so in the future.

Perhaps an exemption for attorneys making less than x (10k? \$20k?) dollars in gross revenue?

Thanks,

Jon

From: [Nightingale, Noel](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: does the mandatory malpractice insurance apply to government attorneys?
Date: Monday, November 26, 2018 1:23:09 PM

I have not been following the issue. Does the mandatory malpractice requirement, as proposed, apply to government attorneys?

Noel Nightingale
General Attorney (Civil Rights)
Office for Civil Rights
U.S. Department of Education
915 Second Avenue, Suite 3310
Seattle, WA 98174-1099
Telephone: (206) 607-1632
Facsimile: (206) 607-1601
E-Mail: noel.nightingale@ed.gov
Website: www.ed.gov/ocr

From: [Jeffletts](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Monday, November 26, 2018 1:40:23 PM

I am opposed to the plan for mandatory malpractice insurance.

I graduated from law school in 1988 and had malpractice insurance for the first four years of my practice while I worked in Silverdale, WA. In 1992 I moved back to New Jersey for family reasons. The insurer I had in Washington would no longer cover me because I now lived in New Jersey, The insurers I checked with in New Jersey would not cover me because I was a member of the Washington bar. Consequently, I have not had malpractice since 1992.

I practice federal employment law and have had no claims filed against me. At this point I don't see the need to be required to have malpractice insurance.

Thank you for your consideration.

Jeff Letts
WSBA #18090

PS - What is the overlap between mandatory malpractice insurance and the Client Protection Fund?

From: [Thomas Wampold](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Gary Abolofia](#)
Subject: Fwd:
Date: Monday, November 26, 2018 1:41:32 PM

I am in the same position. If you require insurance from those of us that our retired, I will as other friends of mine be forced to quit the bar. thomas s. wampold 3287

- Forwarded message -----

From: Gary Abolofia [REDACTED]
Date: Mon, Nov 26, 2018 at 12:54 PM
Subject:
To: insurancetaskforce@wsba.org <insurancetaskforce@wsba.org>, tomwampold@gmail.com <tomwampold@gmail.com>

I am 72 years old and a have been a member of the bar for over 40 years. I am effectively retired and have really not practiced for several years. I have maintained my bar membership because it is hard to let go, I will probably never practice commercially ever again but I would like to stay a member and have the ability to help a friend if I wanted. I malpractice requirement would prohibit that. Will there be any limited practice or retired lawyer exemption?

Also, is it really necessary to require insurance when the info is available on the bar website. Wouldn't a notice requirement with a client sigh-off be less invasive and Big Brotherish?

Gary Abolofia WSBA#1683

From: [K.V](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance Remarks
Date: Monday, November 26, 2018 1:48:01 PM

Some of us like to keep our bar membership even when we don't practice, as a point of pride and identity. We as active members also keep up with our CLE, which is income to the bar association. Making insurance mandatory, versus an absolute disclosure requirement (which I believe is prudent for the public) makes me ask: is this really a problem? Myself, I have stage IV breast cancer, and being in the bar is important to me just as something akin to lifelong identity (since I started practicing for the Ninth Circuit in 1978 and including one petition to the United States Supreme Court for a client, besides other matters I was engaged on in Washington & rated A/V). Do I want to pay for mandatory insurance when I don't practice, no. Would I give up my bar association registration if mandatory insurance was enacted, yes, because I have huge medical expenses and family to worry about.. So far I have chosen to pay to keep my bar association because it was personally important to me. I continue to pay my dues and CLE expenses for the love of the law. And I would be very unhappy to do that (have to resign). Am I willing to state that I have no insurance, yes, absolutely. Am I seeking any clients, no.

If you think that people actually representing people are not revealing that they don't have malpractice insurance, make that a requirement of disclosure to any client (if that doesn't already exist: issue here is whether lawyer must disclose to each client versus the existing bar disclosure under one's number: here I am uncertain whether its a matter of record only at bar (yes) or whether must be disclosed to each and every client (which should be yes). I have no problem with a mandatory disclosure to each and every client.

Anyway, I hope you won't send me to the bottoms, old lawyers who want to keep their bar numbers, who, while not now actively engaged, take CLEs and did extremely good work during their careers. My proudest moments were two things: getting a Ninth Circuit ruling that transcript costs at the magistrate level should not prevent review by an Article 3 (District Court) Judge under the Constitution, and getting a reversal in the Ninth Circuit & automatic increase in damages, without remand, for a child born with cerebral palsy. I'm proud of other things as well. There should be some area in your thought that old lawyers can remain without having to keep malpractice insurance, and, I would also add, you might figure out ways to honor some to them. I, myself, loved Bill Helsell, who was my mentor and like my Washington dad.

Karen J Vanderlaan
Bar No 10883

From: [Brian Schuster](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance Requirements
Date: Monday, November 26, 2018 1:55:09 PM

Dear members of the insurance task force,

I have been a member of the WSBA since 1988. However, I have not been engaged in the practice of law since October 1999. Until July 2015, I worked at a large corporation on the business side, where many of my colleagues were also "recovering attorneys." Since then, I have not been working. For a variety of reasons I have continued my active status with the WSBA. There should be an exemption from any mandatory insurance requirement for nonpracticing attorneys. The categories of sample exemptions do not seem to encompass this general category. There is no reason why members of the bar who are not engaged in the practice of law should be required to carry malpractice insurance just as nonpracticing attorneys are not required to maintain an IOLTA account.

Thank you for considering this comment in preparing your final report and recommendations.

Brian Schuster
WSBA #18170

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From: [Rob Gudmundson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on Mandatory Malpractice Insurance
Date: Monday, November 26, 2018 2:08:45 PM

Dear Committee Members,

I oppose mandatory malpractice insurance for several reasons.

- 1) It drives up the cost of insurance.
- 2) The WSBA has tried and failed to create programs ensuring that all members can purchase affordable malpractice insurance. The WSBA simply is not good at ensuring access to malpractice insurance.
- 3) It effectively places insurance companies in the role of regulating lawyers through mandatory “best practices” rules.
- 4) It forces attorneys who cannot purchase insurance into practicing in a larger firm or for institutional clients.

Thank you for considering these comments.

Sincerely,
Robert Gudmundson
WSBA #27876

Sent from my iPhone

From: [Daniel Haverty](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on the Mandatory Malpractice Insurance Task Force
Date: Monday, November 26, 2018 2:23:59 PM

Although my license is active, I am not presently practicing and live/work overseas. If I were to practice in the foreseeable future, it would be overseas either legal volunteering in southeast Asia, obtaining certification/license in Australia/Canada or working for an international organization like the UNHCR or Red Cross.

I think the mandatory malpractice should be limited to those specifically practicing in WA. I would like to see specific exceptions that exclude those not actively practicing and for those practicing overseas. I would hope the overseas exception be broad to include those that are licensed overseas, those working in that volunteer/NGO/nonprofit capacity as I will be doing that does not require certification in that country and for those working under international organizations (i.e. UN, Red Cross, etc).

For those working/living overseas, the added insurance cost on top of visas and other licensing would be detrimental, particularly given exchange rates. The \$3,500 quoted for Oregon annual is roughly \$5,000 NZD which is nearly 10th of my middle class income and as much as I pay in rent per year.

Lastly, I think it is very important the Task Force clearly articulate a purpose statement especially when advising one exceptions. I can hardly imagine a purpose for which my recommended exceptions would not be contrary to the purpose of this task force.

Kind Regards,

Daniel Haverty

From: [Killian King](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Monday, November 26, 2018 2:38:15 PM

Hello,

Just writing to let you know that I am completely 100%, sh*t you not, opposed to this ridiculous idea. I thought I had been clear before, but somehow, you did not get the point. I fear it's because you have already made up your minds to implement this farce regardless of how the majority of WSBA members respond.

Good day sir/ma'am, I said good day!

Killian King (26347)

From: [Susan Stewart](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Date: Monday, November 26, 2018 3:04:53 PM
Attachments: [mandatory malpractice insurance comment.pdf](#)

Attached is a comment concerning proposed mandatory malpractice insurance.

Opposition to Mandatory Malpractice Insurance

Thank you for the opportunity to comment on your intent to establish mandatory malpractice insurance.

I have read the task force summary and many of the comments already submitted by WSBA members. My first impression was that malpractice insurance should be mandatory, but in studying both sides, I now believe that it is more harmful to the general public to impose mandatory insurance. Therefore, I strongly oppose it. I do, however, equally strongly support clear disclosure of the lack of malpractice coverage (the South Dakota option).

Most people living in Washington do not have good access to legal assistance, largely due to the enormous costs associated with representation. Obviously, when the costs of practicing law increase, so do the costs of representation.

This task force's target appears to be, in effect, small law firms and solo practitioners. Yet, it also seems that these are the same entities often providing the most affordable legal services. I have more than once advised working class friends to seek out a small firm or solo practitioner for legal assistance for that very reason. I previously worked in both medium-sized and small specialized firms, both of which were fully insured. While representation costs were quite expensive, more flexibility was afforded in these firms to assist clients in need, and both firms undertook pro bono work. After reading the comments, I am convinced that mandatory malpractice insurance will further increase the costs of representation, further reduce access to affordable representation and will only benefit a small circle of clients, certain plaintiff lawyers and insurance companies. Further, mandatory malpractice insurance will, pursuant to your own findings, increase litigation—but not necessarily end in more just results. Having represented insurance companies, it is likely that plaintiffs will get paid if insurance is involved—whether they deserve it or not; as you know, every claim has nuisance value. However, is this worth further reducing the general public's access to affordable legal services?

On the other hand, clear and complete disclosure of the lack of malpractice insurance importantly allows clients to make reasoned decisions whether to hire particular legal representation. Just like elsewhere in the marketplace, one can choose the level of risk: to pay less and not get the warranty or pay more and get the warranty. Further, it is likely that this disclosure may be an incentive for lawyers to procure the insurance on their own volition.

Further, I am concerned about the treatment of retired lawyers and part-time practitioners. Again, the comments show that many "retired" lawyers and younger attorneys, such as with young families, engage in reduced practices, mostly helping people and organizations by providing free or low-cost legal assistance. I don't believe that your exemptions adequately address the various permutations involved in a retirement or part-time practice. As expressed above, imposing mandatory malpractice insurance will surely eliminate much of this good work, again resulting in the further reduction of affordable access to legal services.

I am quite concerned about this task force and its direction which already seems to be imminent—without any concern about the increased costs of practicing law and resulting inability of the public to access affordable legal representation. I have to say, respectfully, that, with mandatory malpractice insurance and significant bar dues increases, the WSBA appears to be out of touch with its members and going in a direction opposite of facilitating the affordable provision of legal services. Therefore, I encourage the WSBA leadership to allow the membership to ultimately decide important issues such as mandatory malpractice insurance and other changes that increase the costs of providing legal services. While, on the surface, it 'sounds good' that everyone must have malpractice insurance, I fear that there are serious unintended consequences that undermine the overall benefit to the public.

This is the first time I have taken the time to comment on a WSBA issue, and I thank you now for considering this comment.

Respectfully,
Susan S., WSBA Member 16861

From: [Charles J Rupnick](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Monday, November 26, 2018 3:08:32 PM

To Whom It May Concern,

Regarding mandatory malpractice insurance, I am a sole practitioner in the area of Federal Patent Law. I have carried malpractice insurance throughout my career, even during the period when I was associated with a full-size firm. This type of insurance is very expensive, I have paid over \$4,500.00 per year and, to my knowledge, have never had so much as a single complaint against me. I am about to turn 65 years of age and am severely scaling back my practice in view of retirement. However, I still carry a very few clients for whom I do a little follow-up and maintenance work. Frankly, maintaining such expensive malpractice insurance at this stage of my practice is prohibitively expensive because of the significantly reduced workload. At this point, I would be forced to retire completely if malpractice insurance were to be made mandatory. Full retirement would prematurely and permanently remove my expertise and advice from the market and reduce the options of my not-wealthy clients. Therefore, if the Board decides to go ahead with making malpractice insurance mandatory, an option should be included for practitioners in my position, those who would like to work a little but cannot justify the hefty expense of malpractice insurance. Thank you.

Charles J Rupnick

WA Bar No.: 25705

Charles J. Rupnick
Attorney at Law
4742 - 42nd Ave. S. W., Ste. 494
Seattle, WA 98116
Direct: (206) 439-7956

From: [Chris Evans](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on Mandatory Malpractice Insurance
Date: Monday, November 26, 2018 4:48:14 PM

I passed the bar in 1996 and, in 2007 after 10 years of practicing in venture capital and technology licensing, my application for malpractice insurance was declined without giving me any reason. I had never had a complaint against me and spent most of my career working in-house.

At the time, 90% of my revenue was from one corporate client with whom I had a long relationship. I was only told that my profile was not what they wanted to underwrite.

The insurance company was recommended to me by the WSBA.

And to this day I don't have insurance.

It seems to me that if insurance is required by the bar, insurance companies shouldn't be able to decline outright.

Chris Evans

venture counsel law

227 Bellevue Way NE #465

Bellevue, Washington 98004

P 425.247.0600 / **M** 425.765.6063 / **F** 425.458.7511

From: [Bob Ferguson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Malpractice insurance
Date: Monday, November 26, 2018 7:02:07 PM

I have been an active member of the Washington state bar since 1973. I am also an inactive member of the state bar of California since 1972. I also belonged to the Maryland and D.C. bar in the past. Being from Seattle, I am proud to be a member of the Washington State bar. As a retired Government attorney, I am not rich. California, a much more liberal state than Washington, charges me nothing for my inactive status since I turned 70 years old. I am now 76. I have paid my Washington state bar dues of over \$500.00 for many years.

I have worked as a voluntary guardian ad litem (CASA) for abused kids for 15 of the last 20 years in two counties. My membership in the bar has helped me in my duties.

Over the last 10 years or so I have only gone to court on behalf of a person that I believe was been screwed over and unable to afford an attorney on one occasion. I simply cannot afford to pay an additional \$250+ a month for the privilege of helping a needy soul. I am an animal lover, and would like the ability to help out in an appropriate case. I have also written a brief to the U.S. Supreme Court and met the solicitor John Roberts.

Can't you genius figure out a way to allow we old folks, who keep up with our bar dues and CLE requirements, to be available to help someone in need without putting us into bankruptcy (obviously hyperbole)? Maybe, if I meet a needy soul I can sign up for a one time malpractice policy?

Regards,

Bob

Robert W. Ferguson, WSBA # 4941

From: [Leonard Rolfes Jr.](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: comment on idea of mandatory malpractice insurance
Date: Monday, November 26, 2018 7:26:18 PM

Dear Sir/Madam,

I oppose mandatory malpractice insurance. I don't need it for my business, so to require it would simply drive up my costs.

Question: have you identified a significant number of situations where a client has been harmed because of the lack of insurance? If not, then idea of mandating malpractice insurance seems like a solution in search of a problem.

Regards,

Leonard Rolfes
WSBA #20042

From: [bon](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory insurance
Date: Tuesday, November 27, 2018 3:53:38 AM

I am not in favor of mandatory insurance, except perhaps in the case of attorneys found to have committed malpractice with actual financial injury to a client.

From: [Douglas Scott](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory malpractice
Date: Tuesday, November 27, 2018 8:09:06 AM

The issue is too important not to have a full member vote on it.

DOUGLAS W. SCOTT

Rainier Legal Advocates|LLC

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465 Rainier Blvd. N., Suite C | Issaquah, Washington 98027 | 425.392.8550 (tel) | 425.392.2829 (fax)

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From: [James Halstead](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Fwd: Take Note: Call for Help from AG Ferguson, Comment on Mandatory Malpractice Insurance, Earn Money Writing Exam Questions
Date: Tuesday, November 27, 2018 9:37:22 AM

----- Forwarded message -----

From: James Halstead [REDACTED]
Date: Tue, Nov 27, 2018 at 7:53 AM
Subject: Re: Take Note: Call for Help from AG Ferguson, Comment on Mandatory Malpractice Insurance, Earn Money Writing Exam Questions
To: <noreply@wsba.org>

I'm sure this proposed rule poses no problem for the big law firms of Seattle and other locals who are most likely the primary proponents of this rule change. I believe its greatest impact will be on sole practitioners and their clients as well as semi retired attorneys such as myself who volunteer their legal services without charge and have never been sued for malpractice. To require them to fork over \$3,000,00 or more for malpractice is unreasonable, unfair and punitive. I thought we had a fund comprised from our bars dues for uninsured claims. If there isn't such a fund there should be one. If this rule is adopted there should be a means by which attorneys not wishing to purchase insurance can pay a reasonable sum to a bar fund for uninsured malpractice so they can continue to practice law. If uninsured attorneys are posing a problem there are ways to deal with it without requiring mandatory insurance coverage. For example, the bar could adopt a rule requiring attorneys to disclose to prospective clients whether or not they have insurance in force or some other disclosure requirement. Has the lack of malpractice insurance become a significant problem or issue or are we simply following the herd and being P. C. correct. I believe I heard somewhere that Oregon and other states have adopted such rules. What are the statistics on uninsured malpractice claims. Did Abraham Lincoln or Clarence Darrow have malpractice insurance? Did the civil rights lawyers of the 60's worry about malpractice insurance. If an attorney commits malpractice it is his or her responsibility to make the client whole not the bar association. If they can't make the client whole then the bar could take disciplinary action based on a promulgated rule or their malpractice and/or lack of insurance or the ability to fully compensate the client

James R Halstead II
518 No. 11th
Tacoma, Wa. 98403
WSBA: 5166

On Mon, Nov 26, 2018 at 10:35 AM Washington State Bar Association <noreply@wsba.org> wrote:

From: [Chad Hansen](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Out of State Exception Recommendation
Date: Tuesday, November 27, 2018 10:12:13 AM

To whom it may concern,

I urge that the Mandatory Malpractice Insurance Taskforce, if it does decide to recommend mandatory malpractice insurance for all licensed legal professionals, to also recommend an exception to this requirement for WSBA attorneys living outside the state of Washington and who do not actively represent clients within the State of Washington.

This requirement would negatively affect me as I live and practice exclusively in the State of Alaska. There is no current risk of my committing malpractice within the State of Washington, so I would not benefit from malpractice insurance. Further, I work for a low paying public interest law firm and paying into an insurance safeguard would complicate my finances, with no discernable benefit. I maintain my WSBA membership because I grew up in Washington, went to law school in Washington, and foresee that I may someday live in Washington again. If that were to happen, I would follow the malpractice insurance requirements for attorneys who live and practice in Washington.

My situation is not unique. There are likely many members of the WSBA who do not live or practice in Washington. Creating an exception to any recommendation for mandatory malpractice insurance for WSBA members living outside the state of Washington and not actively representing clients within the State of Washington would prevent these members from suffering an undue hardship for no tangible risk protection.

Thank you for your consideration,

Chad S. Hansen

From: [Donald Graham](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory insurance - no
Date: Tuesday, November 27, 2018 10:14:54 AM

Committee Members:

Mandatory malpractice insurance is an overreaction to a minimal problem. A great majority of Washington lawyers are already covered by insurance and the vast majority of lawyers throughout the United States are not required to have insurance. Nationally, there is no major trend to required insurance.

A possible alternative might be to establish a requirement for disclosure to clients by uninsured lawyers for work anticipated to go above a certain level (\$50,000?). This would perhaps be helpful but not really necessary. Alternatively, how about creating an ethics rule that says if a lawyer cannot pay a malpractice claim it would reflect on lawyer competence in maintaining effect service? It seems it would suffice to have focused messaging to uninsured lawyers. In addition there could be general information from the Bar to the public to consider checking attorney insurance.

Despite articles in the NW Lawyer by out of state academics and positions taken by public service lawyers who are immune from malpractice and don't pay for insurance, there really is no public demand for mandating insurance. Malpractice insurance is not like car insurance. Lawyers do not randomly expose members of the public to risk as do auto drivers. Clients should be able to judge their own level of risk taking. Surely, with the bad press lawyers already receive, the Bar should not be taking a position that lawyers need to be compelled to carry insurance to protect clients from their own lawyers.

Most Washington lawyers already carry insurance. Lawyers already guarantee their work and bet their home and savings if they are sued and not covered.

The Leslie Levin article in the recent NW Lawyer was really off. She suggested that uninsured private practice lawyers could go to work for an insured firm or government if the cost of insurance was too high. How ridiculous is that! It assumes jobs are available and that a lawyer should give up entrepreneurial lifestyle to work for somebody else if they want to be a lawyer. Really a sad argument.

As a retired lawyer, I continue to carry insurance just in case one of my past client needs me to follow up on something. But my 100/300k insurance is far cheaper than the suggested insurance cost available via one suggestion for a mandated program based on the Oregon model.

The vast majority of state bars do not get involved in the private insurance market. Why should Washington? Who actually is behind this discussion? Do we really feel compelled to do what only two other states have done?

It would be very good if the WSBA allowed lawyers to be lawyers without requiring more and more costs on top of the hundreds of dollars for annual dues and hours of required continuing education.

In any case, the word "mandatedto describe insurance is offensive. How about we just discuss "required" insurance. But still, requiring insurance is unnecessary.

It seems the Bar becomes distracted with fairly inconsequential issues. How about tackling a tough one. Perhaps consider why the Bar, with its membership required by law to fund it, maintains a 2 million dollar budget reserve? Could that money not be better be used to help the homeless mothers sleeping in cars with their children within walking distance of the Bar's high rise office in downtown Seattle?

But, as for insurance, based on the great weight of national practice, let well enough alone.

Thanks,

Donald H Graham
Gig Harbor
(22554)

From: [John Steinnes](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Exception for WSBA Attorneys Living and Practicing Outside of Washington State
Date: Tuesday, November 27, 2018 12:01:18 PM

To whom it may concern,

Should the Mandatory Malpractice Insurance Taskforce decide to recommend mandatory malpractice insurance for all licensed legal professionals, I urge it to also recommend an exception to this requirement for WSBA attorneys living outside the State of Washington and who do not actively represent clients within the State of Washington.

Requiring malpractice insurance for all WSBA attorneys, regardless of whether they practice in Washington State, would negatively affect me as I live and practice exclusively in the State of Alaska. There is no current risk of my committing malpractice within the State of Washington, so there would be no benefit to the State, the public, or myself from requiring me to carry malpractice insurance.

Further, I work for a low paying public interest law firm and paying into an insurance safeguard would complicate my finances, with no discernable benefit. I maintain my WSBA membership because I grew up in Washington, went to law school in Washington, and foresee that I may someday live in Washington again. If that were to happen, I would follow the malpractice insurance requirements for attorneys who live and practice in Washington.

My situation is not unique. Many of my friends and colleagues are in a similar situation and there are likely many members of the WSBA who do not live and practice in Washington. Creating an exception to any recommendation for mandatory malpractice insurance for WSBA members living outside the state of Washington and not actively representing clients within the State of Washington would prevent these members from suffering an undue hardship for no tangible risk protection.

Thank you for your consideration,

John Steinnes

From: [Matt Arpin](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Homemaker/Caregiver Attorney Exemption
Date: Tuesday, November 27, 2018 1:22:14 PM

Dear WSBA Insurance Task Force,

I am writing to suggest an exemption from any malpractice insurance requirement recommended by the task force based on the part-time (but not retired) and/or "homemaker" status of an attorney.

My spouse, Meg Arpin, and I both graduated from Gonzaga Law in 1996, and actively practiced law until March of 2006 when Meg suffered a ruptured brain aneurysm rendering her disabled and ultimately requiring her to surrender her license.

Since that time, I have worked primarily as a caregiver for Meg and our two children, who were 1 and 3 at the time of the aneurysm. I have also, however, performed occasional contract appellate work for the Stevens County Prosecuting Attorney's office, as well as represented a handful of family members and friends on a variety of fairly straight forward legal matters.

During the 12 years since Meg's injury, I have never earned as much as \$10,000 during a calendar year, and more often have earned between \$0 and \$2000 per year. During the first years, maintaining my license (without insurance) cost more money than I earned. During the middle years, I was fortunate to break even (without insurance). I have recently made a few dollars, but again, never earned even \$10,000 in a single year since Meg's injury.

Unlike many retired and semi-retired attorneys, quitting the practice of law completely is not an option for me. Once our kids move on to college, I hope to be able to return to work closer to full time, but simply cannot do so at this time due to the competing needs of Meg and the kids.

Mandating professional liability insurance in my circumstance could force me to compromise my caregiving abilities in order to earn enough to pay the premiums necessary just to keep my license active, and/or to turn down what little contract work

I am privileged to perform for family, friends, and Stevens County.

While my situation is complicated by Meg's disability, I think it analogous to that of the homemaking attorney who temporarily leaves the full time practice of law to raise children and manage a household. For these brave men and women, the occasional foray into the law on behalf of family, friends, and/or community not only provides those in need with a valuable (and typically low cost) service, but also keeps the attorney engaged beyond mere compliance with CLE requirements, and thus keeps them better prepared for their ultimate return to the profession.

Imposing requirements that force the homemaking/caregiving attorney to refuse to help friends, family and community because we are not insured, or make us help for free or not at all, is simply not in the best interest of the attorney, their dependents, the community, or the legal profession.

Please consider some sort of exemption from mandatory liability insurance for the less-than-part-time homemaking/caregiving attorney.

Yours truly,

Matt Arpin

1117 E. 35th Ave.

Spokane, WA 99203

509-280-4905

WSBA# 26302

From: [Carole A. Grayson](#)
To: [Brian L. Comstock](#); [Mandatory Malpractice Insurance Task Force](#)
Subject: Part two: View of an active status lawyer who is not actively practicing law
Date: Tuesday, November 27, 2018 3:44:06 PM

To follow up on my Nov. 21 submission (it appears at the bottom of this scroll):

Mandatory malpractice insurance would also negatively affect many full-time law faculty at our state's three law schools (and in other states) who are active members of WSBA but do not actively practice law.

Carole Grayson
WSBA no. 12146

For identification purposes only:

1. Affiliate Instructor of Law, UW School of Law
2. UW Student Legal Services (retired Director and Staff Attorney)
3. WSBA Senior Lawyers Section. Chair, 2014-17. Executive Committee 2007 - date. CLE Planning Committee chair 2014 - date

On Wed, Nov 21, 2018 at 5:27 PM Carole A. Grayson <cag8@uw.edu> wrote:

To the Task Force:

Me

I am Carole Grayson, WSBA no. 12146, admitted 1981 (and earlier in FL in 1978; later voluntarily ended that affiliation).

Recommendations

1. The Task Force should continue with the status quo: Malpractice insurance is not required to practice law in Washington. Lawyers may choose to be insured, or not.
2. No proposal should compel malpractice insurance for a lawyer like me who a) maintains active status AND b) "is not actively practicing law", as the option in the WSBA legal directory allows and as my WSBA page so indicates.

My practice history

1978 - 2017

I have no malpractice insurance because I ceased actively practicing law when I retired in June 2017 as director & staff attorney at UW Student Legal Services. I started there in 2000 in that position. For all those years my position required me to hire, train, and supervise Rule 9 Legal Interns in the actual practice of law. We had coverage in case of a malpractice complaint through UW: UW is self-insured.

1985 - 2000

Throughout my 15 year solo law practice, I maintained malpractice insurance.

1978 - 1983

I was an assistant public defender in Snohomish County and Florida from 1978 - 1983. I have no information about insurance coverage in those positions.

Today

Even after retirement from UW Student Legal Services in 2017, I continued teaching one quarter a year at UW School of Law, a role I first began in 2011. Pay for part-time faculty like me is minimal, very modest, even token; law school administrators know that dedicated lawyers like me will choose to accept the stipend because we find meaning and resonance engaging with law students — the next generation in the legal profession.

Conclusions

1. Compelling malpractice insurance as a condition of active status for lawyers not actively practicing law will create a problem disproportionate to any alleged need.
2. Compelling malpractice insurance as a condition of active status for lawyers not actively practicing law also will lead to resignations by many lawyers who still desire to contribute to the legal profession through teaching and other semi-pro bono or fully pro bono efforts.

Carole Grayson
WSBA no. 12146

For identification purposes only:

1. Affiliate Instructor of Law, UW School of Law
2. UW Student Legal Services (retired Director and Staff Attorney)
3. WSBA Senior Lawyers Section. Chair, 2014-17. Executive Committee 2007 - date. CLE Planning Committee chair 2014 - date

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Carole Grayson
Affiliate Instructor of Law

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Carole Grayson
Affiliate Instructor of Law

From: [Mike Fisher](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Malpractice insurance
Date: Tuesday, November 27, 2018 4:16:38 PM

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Hi folks --

.
Have heard rumors that your group is preparing to recommend (that WSBA should require?) malpractice insurance for WA attorneys. May not have heard all the details, but if it's true that you're tending towards a recommendation that WA attorneys must buy malpractice insurance, I strongly disagree.

.
As a non-trial lawyer who has mostly done corporate work, along with some government work, I do not need malpractice insurance. [Nor will my employer(s) pay for it -- and if they won't, you can bet I won't do so...] And, if my practice changes, I'll be the one to decide whether it's necessary -- not some committee that includes -- guess what(!) -- some insurance industry reps.

.
So, for this reason, I'd strongly recommend against any finding that suggests that everyone with a WA law license must buy insurance. Save this recommendation for only those who are proud, card-carrying members of the Trial Lawyer's Association!

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Thanks for your time and efforts!

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Sincerely --

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-- Mike Fisher, WSBA 31597
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From: [Sue Goldstein](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Opposed to mandatory insurance
Date: Tuesday, November 27, 2018 4:40:39 PM

I recently retired from a governmental legal job (nonpartisan legislative employee). I have maintained my active bar membership and am participating in CLEs, however I am not currently practicing law in any capacity. I have planned to maintain active bar membership until I decide whether I am going to do any activity that would be the practice of law. However, if I am required to purchase insurance I will change my bar membership to inactive. No question about it. I understand the desire to protect the public by requiring malpractice insurance, but there should be exceptions, including for lawyers who do not see clients.

Susan Cohen Goldstein

Bar # 12608

From: [Laurence Weatherly](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments on mandatory malpractice insurance and scope of requirements
Date: Tuesday, November 27, 2018 5:30:54 PM

Greetings: I have looked at the interim report. It contains no data about the nature or extent of unpaid claims or judgments against lawyers in Washington. The cost of newly required insurance may be many times the benefit in the odd case where a claim against a lawyer is uncollectable. Lawyers are rarely judgment proof even if uninsured. I submit you are operating on anecdotal "evidence" and that real data is needed.

Secondly, with regard to your request for suggestions on exceptions/exemptions to a mandatory insurance requirement I would like to suggest the following. I actively practiced for 37 years and was insured for every minute of that time. Eight years ago I retired from serving my clients but kept my license so that I could serve as an arbitrator in mandatory arbitration cases where I am appointed by the Superior Court. This is not a job where I am making much money. The five or six cases I handle each year help pay my bar dues, cle expenses and cover unreimbursed travel and other expenses. I cases I take are the same as those I handled during my active career and I think I can bring a lot of experience and sound judgment to bear in making decisions. There is also a public service element here in that arbitrators are helping resolve matters and saving the county some money certainly when compared to the cost of a trial. Given the modest level of this work, if there were to be a mandatory insurance requirement, I would be quite far underwater every year. Please consider making an exception for lawyers handling Superior Court mandatory arbitration cases. Also, I note that you mentioned "full time arbitrator" in your interim report. The only legal work that I do is as an arbitrator but five or six cases a year does not make me full time by a long shot. These thoughts also apply to lawyers who do mediation work.

Finally, although none of us can see the future with respect to our health, some day I'd like to take off my shorts, put on a coat and tie and sit for the annual 50 year member of the bar picture. If I have to pay 3 or 4 thousand a year for insurance along with the hassle of obtaining the same, that is unlikely to happen.

Best regards,

Laurence R. Weatherly WSBA 5394

From: [Brian L. Comstock](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Inez "Ine" Petersen](#); [Carole A. Grayson](#)
Subject: SENIOR LAWYERS SECTION - Important and Urgent Information re Mandatory Malpractice Insurance
Date: Tuesday, November 27, 2018 6:59:47 PM

My comments below sent to Ms. Petersen are herewith forwarded to the Mandatory Malpractice Insurance Task Force per her direction to section leaders.

From: Brian L. Comstock
Sent: Tuesday, November 27, 2018 1:05 PM
To: 'Inez "Ine" Petersen' <inezpetersenjd@gmail.com>; armstronglaw47@outlook.com; remthomp@gmail.com; cag8@uw.edu; rcmattson@att.net; sdeforest@foxrothschild.com; eleanor@pathwaylaw.net; haleyd10311@aol.com; anne1700@gmail.com; mgs@stokeslaw.com
Cc: 'Carole A. Grayson' <cag8@uw.edu>
Subject: SENIOR LAWYERS SECTION - Important and Urgent Information re Mandatory Malpractice Insurance

Inez,

Carole Grayson has submitted a statement detailing the serious problems that would arise if mandatory malpractice insurance were to be imposed on her areas of professional service. I fully share her concerns and would add that my activities in recent years have focused primarily on serving our profession, such as serving on the BOG and now chairing the Senior Lawyers Section. We now have some 14,000 attorneys in the category identified as seniors. Many have retired and others are approaching transition. Their status in terms of maintaining malpractice insurance is extremely varied.

I will only briefly sum up the extreme variety of coverages I have observed over the years. Major law firms negotiate coverages which vary according to the makeup of the firm – the number of attorneys involved, the professional record of the attorneys being covered, the areas of practice being covered and the risks involved in each area, the ages of the attorneys involved and their retirement status, etc. When it comes to small firms and sole practitioners, many of the same factors come into play. One variance is that attorneys engaged in high risk practices have radically different coverages that those engaged in practices that involve virtually no risk. The costs and breadth of coverage are radically different.

As I see it, this imposes some immense challenges in determining, initially, who are the attorneys subject to the new system and, next, how do you regulate such an immensely complicated and varied system. To impose some uniform standard on all attorneys in practice appears impractical if not impossible to implement and in contradiction with long-established practice and basic fairness. These are at least some of my preliminary observations. Please let me know if I can assist in any way.

Brian L. Comstock
The Comstock Law Firm, PLLC

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Mercer Island, WA 98040
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Cell: (206) 200-7709
Fax: (425) 671-1740
Brian@ComstockLaw.com

From: Inez "Ine" Petersen <inezpetersenjd@gmail.com>

Sent: Monday, November 26, 2018 10:31 AM

To: Brian L. Comstock <Brian@comstocklaw.com>; armstronglaw47@outlook.com;
remthomp@gmail.com; cag8@uw.edu; rcmattson@att.net; sdeforest@foxrothschild.com;
eleonor@pathwaylaw.net; haleyd10311@aol.com; anne1700@gmail.com; mgs@stokeslaw.com

Subject: Re: SENIOR LAWYERS SECTION - Important and Urgent Information re Mandatory Malpractice Insurance

Dear Section leaders:

Please distribute the enclosed email/letter to your members and encourage them to write to the Mandatory Malpractice Insurance Task Force to share their opinions about whether mandatory insurance for all active attorneys in private practice is the appropriate course of action at this time.

Task Force email is insurancetaskforce@wsba.org

Thank you,
Inez Petersen, WSBA #46213

From: [john goodall](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Re: One other question
Date: Wednesday, November 28, 2018 1:32:13 AM
Attachments: [image001.png](#)

Thank you. I had difficulty finding the actual comments. In fact it took me several tries because the actual comments are somewhat hidden by the itemized list of comments that is not possible to open.

Having looked at the comments and seen the significant number of comments I am once again struck by the paucity of information on this important topic in recent issues of Northwest Lawyer.

Likewise, the pages of the so called "Task Force" offer virtually no informative details about what facts are being presented or by whom. This is a process that should rightly be completely transparent, but it appears to be anything but.

I have been practicing for 45 years without any complaints of any kind so it feels sort of insulting that I should be now required to buy malpractice insurance.

john goodall
6152

From: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>
Sent: Tuesday, November 27, 2018 2:06 PM
To: 'john goodall'
Subject: RE: One other question

Mr. Goodall,

The comments are available for viewing on the [Task Force's webpage](#). Thank you.



Thea Jennings | Disciplinary Program Manager | Office of Disciplinary Counsel

Washington State Bar Association | ☎ 206.733.5985 | theaj@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

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From: john goodall <rugshepherd@hotmail.com>
Sent: Wednesday, November 21, 2018 1:34 PM
To: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>
Subject: One other question

I notice that that there has been no discussion at all of this matter in the letters section of Northwest Lawyer.

Can you tell me whether the 'public comments of the Task Force ' will appear in Northwest Lawyer?

If not, how would they be available to members of the bar or the public?

john goodall

6152

From: john goodall <rugshepherd@hotmail.com>
Sent: Wednesday, November 21, 2018 1:06 PM
To: Mandatory Malpractice Insurance Task Force
Subject: Re: question

Absent from the Charter is any preliminary determination that that mandatory malpractice insurance is necessary to correct a problem currently being caused caused by its absence. That seems to imply that this is a conclusion already made without any supporting facts.

The presence of insurance industry people on the Task Force, the very insurance industry that has a significant financial interest in the outcome, seems to support that implication.

Considering that the WSBA receives money from the insurance industry in the form of advertising full page ads as well as advocating certain insurance companies for health insurance, it seems to me that the first task of the 'task force' should be a determination that mandatory anything is justified by at least a few facts.

Otherwise this raises at least the appearance of a conflict of interest, especially to those of us who might be so old fashioned Americans as to think we should be the ones to determine what kind of insurance we must have.

So, yes. please include my comments as part of the 'public comments'

john goodall

wsba #6152

From: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>
Sent: Wednesday, November 21, 2018 8:53 AM
To: 'john goodall'
Subject: RE: question

Mr. Goodall,

Sorry for the delay in responding to your question. As Task Force members, these individuals have a vote on any recommendations of the Task Force. The Task Force is charged by its [Charter](#) with determining whether to recommend adoption of a mandatory malpractice insurance requirement in Washington.

As an aside, would you like this series of emails included in the public comments of the Task Force? Thank you.



Thea Jennings | Disciplinary Program Manager | Office of Disciplinary Counsel

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From: john goodall <rugshepherd@hotmail.com>
Sent: Thursday, October 25, 2018 8:56 AM
To: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>
Subject: Re: question

Thank you.

Can you tell me if these two individuals play any role in determining that mandatory malpractice insurance will be necessary in the State of Washington, or to determine whether there is a significant need for it due to legal malpractice judgments not being paid?

Is such a determination part of the "task" assigned to the "Task Force"?

John Goodall

From: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>
Sent: Thursday, October 25, 2018 8:46 AM

To: 'john goodall'
Subject: RE: question

Mr. Goodall,

Attached is the roster of the Task Force members with their designations, including our member who is listed as an industry professional. I also attach the Task Force Charter, which describes the Task Force's membership. Per the Task Force's Charter, the industry professional is "[a]n individual with professional experience in the insurance/risk management industry." Additionally, per the Charter, one of the Task Force lawyer members has "substantial experience in insurance coverage law" and is designated as such on the roster. Thank you.



Thea Jennings | Disciplinary Program Administrator | Office of Disciplinary Counsel

Washington State Bar Association | ☎ 206.733.5985 | theaj@wsba.org

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From: john goodall <rugshepherd@hotmail.com>
Sent: Friday, October 19, 2018 12:31 AM
To: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>
Subject: Re: question

Dear Rachel,
In other words you will not identify them until afterwards?
I see a number of names without any indication of who or what they are.
Is there a justifiable purpose to such secrecy?
john goodall

From: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>
Sent: Thursday, October 18, 2018 1:58 PM
To: 'john goodall'
Subject: RE: question

Thank you for your comments. The Task Force will receive your comments and review them, and will be sure to be clear in its final reports about the role of the industry professionals.

Sincerely,



Rachel Konkler

Washington State Bar Association | ☎ 206.733.5904 | rachelk@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

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From: john goodall <rugshepherd@hotmail.com>

Sent: Thursday, October 18, 2018 12:42 AM

To: Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org>

Subject: question

Hello

Your site mentions "industry professionals' as part of the "Task Force" but none appear to be identified as such in the list.

Who are these people?

Also, that term is undefined. and there is no explanation why any 'industry' should justifiably be involved in this process

Can you tell me what "industry professionals' means and what 'industries' it refers to?

Also, are any of them associated with the insurance industry?

John Goodall

From: [James Halstead](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory malpractice
Date: Wednesday, November 28, 2018 9:47:14 AM

One final thought regarding the movement to require all Washington attorneys to maintain malpractice insurance. Washington has been a state since 1889 and has and had lawyers practicing law without an insurance mandate since its inception. What is the compelling reason or driving force behind the push for such a requirement now. This may have been discussed or disclosed somewhere but I haven't seen it. An article in the bar news might be helpful.

James R Halstead II
518 No, 11th
Tacoma, Wa. 98403
WSBA: 5166

From: [Rachel McCart](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments on Mandatory Malpractice Insurance
Date: Wednesday, November 28, 2018 10:45:32 AM

Good morning. I have been a practicing attorney since 1996 and am admitted in four states. Of these, only Oregon requires malpractice insurance, and as you know, it has the PLF, a captive insurance program that is the only option for Oregon-based attorneys. I don't necessarily oppose mandatory malpractice insurance (it's simply a good business practice to be insured), but I DO oppose any proposal that would effectively require WA attorneys to obtain their coverage from any particular provider (WA bar included). Here are what I see to be the primary problems with the OSB PLF.

- Although I practice in four states, I am REQUIRED to obtain my malpractice insurance from the PLF simply because my mailing address happens to be located in Oregon. I have no choice in the matter and can't even obtain supplemental coverage from a third-party provider (I've looked, and there are no insurers offering supplemental coverage to Oregon-based attorneys). This lack of choice is problematic in light of the coverage issues and costs described below.
- There is an obvious conflict of interest inherent in the bar insuring its own members (which results in the PLF not covering any bar complaint defense, which is a part of most third-party malpractice insurance). The cost of PLF insurance does NOT reflect this reduced coverage. In fact, it's more expensive than third-party insurance would be (at least for me – see note below).
- The PLF insurance premiums are not based on individual risk (as third-party insurance would be). Rather, the PLF spreads the risk over all attorneys, resulting in those attorneys who present lower risks of malpractice subsidizing those who present much higher malpractice risks. This is particularly true for newer attorneys, because the PLF provides them with lower premium rates. The result? I am involuntarily subsidizing some of my competitors' malpractice insurance, a concept I find offensive.
- The PLF was created at a time when the vast majority of Oregon attorneys practiced only in Oregon (and maybe Washington). That is no longer true, and the PLF is ill-equipped to handle malpractice claims originating outside of Oregon. For example, to my knowledge, it has no established relationships with defense firms in New York or California (two the four states in which I practice).
- The size of the PLF staff and budget is disproportionate to the number of attorneys covered by the PLF. To me, it appears this is because the PLF provides resources that overlap with resources provided by the OSB – CLE courses, for example. I am paying for those types of resources through the OSB already, but I have to pay for them again through my PLF premiums. In general, I don't use either the OSB CLE programs or the PLF ones, because the credits are only good in Oregon (unless I want to go to the hassle of submitting applications to have them approved in the three other states where I practice).

Rachel Kosmal McCart, Esq.
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Facebook: <https://www.facebook.com/PreserveLegalSolutions/>

Email: rachel@preservelegalsolutions.com

From: [Alan Torres](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: No Mandatory Insurance
Date: Wednesday, November 28, 2018 11:56:13 AM
Attachments: [image001.png](#)

Insurance Task Force:

I am writing to voice my opinion that no Mandatory Insurance should be required to practice law in the state of Washington.

There was ample testimony regarding the reasons why, at the hearing held in November 2018.

Best regards,
Alan Torres, Esq.



General Counsel | 425-443-2228

From: [REDACTED]
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance Feedback
Date: Wednesday, November 28, 2018 12:21:26 PM
Attachments: [Mandatory Insurance.docx](#)

Dear Taskforce:

I have attached my feedback about Mandatory Malpractice Insurance and if you are unable to access it I have also included it's text below.

Sincerely,
Terry Rhodes
WSBA 11945

November 28, 2018

To: Mandatory Insurance Task Force
From: Terry G. Rhodes
Subject: This is a second more comprehensive comment. Please log it in.

My name is Terry Rhodes and I have practiced law for 37 years. This letter is a second comment and better explains my opposition to mandatory malpractice insurance and asks some questions.

DOES THE \$1,200 COST OVER TIME REALLY TURN INTO 1.25 BILLION DOLLARS AND EACH ATTORNEY PAYS \$250,000?

The Interim Report tells us that of the 32,000 Washington lawyers who have active licenses 14% of those in private practice have consistently reported being uninsured. If insurance is mandated the majority of these 4,480 lawyers would have a "fully matured" 6 year experience and the insurance company would be responsible immediately on these "claims made" policies so the cost would not be \$1,200 but would start at \$2,775 per year. Using a 5% per year increase, if the average attorney practices just 35 years that would make the cost to each attorney over \$250,000 during his time in practice. These 4,480 attorneys would pay about \$2,775 their first year for a total of \$12,430,000 dollars that year. The total cost, with increases, for that many attorneys for 35 years is \$1,123,000,000. That's 1.1 billion. But when an attorney quits the practice he may still be liable up to a 6 year statute of limitations so you add on the half price 6 year insurance tail that starts after the 35 years in practice, extending this to 41 years and that adds, because of inflation, roughly another \$135,000,000 more that they will pay during their retirement years. Only 8% of commenters favor mandatory insurance. So does this mean 8% of the membership wants to impose 1.25 billion dollars of cost on a different 14% of the membership? Can anyone vote for that?

Do we want to be responsible for costing the attorneys in Washington State a billion dollars when they are 6 to 1 against it? The smallest firms are mostly involved here. Are we prepared to levy a billion dollar tax against the smallest law firms to pay for the mistakes that an extremely small percentage of them might make and might not be able to pay for? How many claims would be paid? We don't know? Then how can we make any decision with this lack of any fact based estimate of the number and value of claims it would actually pay? The report's statements of "significant" and "numerous" are vague. We probably need a hard factual basis to spend someone

else's billion dollars to buy something we don't know the value of. We know the cost but we don't know the value.

Then there is the cost to the WSBA. If just half of the uninsured attorneys quit then the WSBA will lose \$1,082,000 per year in fees and assessments. This will occur continuously as attorneys age out and, in 35 years, with increases, is close to \$100,000,000.

DOES THE BOARD HAVE A DUTY OF DISCLOSURE TO ADVISE THE BAR MEMBERS ABOUT THE FULL COSTS AND TO THEN OPEN UP ANOTHER COMMENT PERIOD?

As the representative of the bar members, the board appears to have a duty to report to the membership directly by email or mail and in an article in NW Lawyer the proposal's mathematical costs: financial, human, and societal. Once the membership knows the costs a further comment period should probably be advertised. The costs members would probably expect to be made aware of are: (1.) The \$250,000 cost per lawyer. It is highly unlikely that the members have any idea of the scope of these costs when they are only told insurance will be \$1,200 and rise for 6 years. (2.) The \$12 million cost each year to the 14% of the attorneys. (3.) The 1.4 billion dollar cost for the 14% over their careers. (4.) How many thousands of the bar's best and most experienced retired, semi-retired, and retiring attorneys are expected give up their license to practice because of this and will never again, on a pro bono basis speak to anyone, impoverished or otherwise, to help them solve any legal problems. (5.) The increase in unmet legal needs in this state. (6.) An estimate of how many attorneys who don't buy insurance for very good reasons will quit the practice.

If the bar's response is that we do not have some of this information or cannot obtain it then we cannot tell if the proposal will cause widespread damage to our legal system and the public. This concern cannot be ignored by pointing out that another state did this. Just following another state's example can be flawed because their systems and people may be suffering serious damage that is unrecognized because they may not have evaluated the effects.

SHOULD A LAW PRACTICE ENVIRONMENTAL IMPACT STATEMENT BE REQUIRED?

To restate the situation, 8% of the members are for, and 47% against, charging 14% of the members 1.4 billion dollars. A change with such a huge environmental effect on the legal system may require an appropriate "law practice environmental impact statement." It might follow the procedures that commonly apply to such statements. Considering the potential for serious damage to lawyer's, their practices, the legal system, and delivery of legal services to the poor, lack of such an analysis could be viewed by the members as failing to evaluate serious risks.

WHY DOES THE TASK FORCE DISAGREE WITH THE MAJORITY OF COMMENTERS?

The name of the Malpractice Insurance Task Force and all its language and presentation show a preference for insurance. Also it appears from the occupational positions of the members of the task force that most, if not all, would either be exempt from this insurance requirement or already have insurance and therefore would be unaffected by it. There is even an insurance representative as a member. Are there any members on the task force who are uninsured private practice attorneys who would be forced to pay \$250,000 if it was made mandatory? 14% of attorneys in private practice are uninsured, Are 14% (3) of the task force members uninsured private practitioners? Are any? The interim report states, "The members emphasized that a key goal of this project is to recommend effective ways to ensure that clients are compensated when attorneys make mistakes." Wasn't the key goal to

determine if insurance should even be required? The task force embraces this proposal so strongly when only 8% of comments agree with them. If the task force members were of the same opinion in the same percentages as the bar members, as indicated by the comments on the proposal, there would only be 1 out of the 18 who would actually recommend insurance.

The task force's interim report shows that among bar members commenting there is an overwhelming majority of opinion against this proposal. The report says "47% of the comments thus far expressed opposition to an insurance mandate. 45% did not indicate support or opposition..." and "...8% expressed support." That's almost 6 to 1 against. So why are 45% undecided? Is it because they don't realize that this measure would tax each attorney \$250,000 during their practice?

DIDN'T THE U.S. SUPREME COURT ALREADY DECIDE MANDATORY INSURANCE IS A TAX?

In the Obamacare case of *NFIB v. Sebelius* the U.S. Supreme Court decided that mandating the purchase of insurance was a tax and affirmed the power of the legislature to impose a tax. The NFIB kept arguing it was a mandate but the court just said it's a tax. It would be very embarrassing to the bar if this proposal is brought to the Washington State Supreme Court for adoption and it pointed out that as a judicial body it cannot assume legislative authority to impose a tax in violation of the doctrine of separation of powers. Also, it appears the board cannot levy this tax under its power to regulate the practice of law because it is conclusively just a tax and it's doubtful the board can enact a tax. It also appears to be out of the board's authority of the regulation of the practice of law because it is insurance for after-the-fact claims. It doesn't appear to have anything to do with actually practicing law, other than taxing it, because it is about what happens after the practice is over, not how the practice is carried out. Also it is doubtful the members could vote to tax themselves in this way because the bar is a mandatory one. Voluntary organizations can do that because people can just quit and not pay it. But a compulsory bar is more quasi governmental and has no legislative power to tax. The majority of a compulsory membership voting to tax all members would really open a can of worms in light of recent cases. If this mandate did actually get put in place the WSBA might be subject to a suits for injunctive and declaratory relief and damages for any of these reasons but also under *Janus v. State, County and Municipal Employees* pages 47, 48. Such a suit might also knock out the Client Protection Fund Assessment as a tax as well. In this proposal the WSBA is following the Oregon State Bar. Such a course could result in a lawsuit similar to the recently filed *Gruber v. Oregon State Bar* which asks for the bar association to be abolished, presumably based on the *Janus* Supreme Court case.

Exceeding authority is a danger here. I didn't find authority in the WSBA bylaws for this type of a proposal. There may be authority to require the Proactive Management Based Regulation Model because it regulates the practice of law. But of course it should probably apply to insured lawyers too because they all make mistakes.

The board represents the bar members, not the task force members. The bar members have made their preference clear even without knowing that the measure will cost each attorney \$250,000 during their 35 year time in practice. Who will you represent? The 47% against insurance or the 8% for it? We should consult the 45% undecided after they are advised of the true cost. They may have strong opinions after that. They would surely want this knowledge beforehand.

IT SOUNDED LIKE A GOOD IDEA

But we are hearing that many of the attorneys who do not carry insurance will quit if this is enacted. They may already protect the public far more than this insurance would. There is no responsibility to mandate insurance. The financial and personal costs seem insurmountable. A billion dollars. No help for large numbers of poor people by these attorneys who will be forced to quit.

How do we define protecting the public? Many commenters indicate that requiring insurance will cause them and an army of pro bono semi-retired attorneys to quit. It seems evident that if they quit then public suffering will increase. The unseen, unmet legal needs of the poor will likely increase in an amount we will not be able to measure and will have no ability to resolve.

But what about the two other states that did this? Oregon did this as a defensive measure to protect the majority of attorneys with insurance against skyrocketing market rates. They had no choice. Idaho just implemented it recently and has not counted the costs and my never do so. They may be afraid to.

Terry G. Rhodes

From: [Chris Neal](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Forced Insurance - Suggestion/Request for Exemption - Input of Chris Neal and Lisa Neal
Date: Wednesday, November 28, 2018 1:29:42 PM
Attachments: [Letter Insurance1.pdf](#)
[LCN insurance letter.pdf](#)

Mr. Ende:

Please include my and my wife (Lisa Neal)'s attached letters in the collected comments and suggested exemptions re: the mandatory insurance issue. I would also appreciate your email confirmation of receipt of this email.

Thank you.

- Chris Neal

Christopher L. Neal | Neal Firm, PLLC
*Attorney at Law Licensed in Washington, Oregon (Inactive),
Texas (Inactive) and Colorado (Inactive)*
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~ ATTORNEY AT LAW ~

Christopher L. Neal
cneal@coveragenorthwest.com
*Admitted in Washington,
Oregon (Inact.), Texas
(Inact.) & Colorado (Inact.)*

November 28, 2018

Mandatory Insurance Task Force

RE: Mandatory Insurance – Potential Exemption

Dear Task Force:

Ironically, the same WSBA that spends so much paper and ink to publicly decry working lawyers' stress, strife, substance abuse and financial issues, has finally acted to visit the opportunity for those same issues onto me. Consequently, I have to take time and energy away from earning a living just to keep my job, and I'm self-employed.

I've been practicing law since passing the Texas bar in 1989. I'm licensed in 4 states, including Washington (1996, Bar No. 025685). I've handled hundreds of cases without issue or complaint. I've spent most of my career in law firms, but since 2011 I've been winding down, working on my own assisting insurance companies. I carry my own liability insurance for work done on behalf my own insurance company clients. Not surprisingly, there was only one carrier willing to insure a part-time lawyer, Zurich, and, as with all "claims made" tail-coverage policies, the premium increased every year due to increased exposure, until I am paying \$1,600/yr. for \$1m in coverage, subject to a \$5k deductible.

As part of my pre-retirement plan, however, my practice will shortly transition to insurance coverage work done for client law firms who hire me to assist them with work for their insurance company clients. Because I will be covered by my retaining firms' own insurance policies, I planned to stop carrying individual insurance due to the redundant expense and lack of necessity. I'm working toward retirement and business expenses are a major factor for me. I would not expose my personal assets to a claim for legal malpractice, and, therefore, do not intend to render legal service beyond that offered to my insured client firms. Do you have in mind an exemption for someone like me who is insured by the insurance carried by another? If not, perhaps you should.

The call for mandatory insurance struck me as a solution in search of a problem because I'd not heard from WSBA, or from any source, about any injured client shortfall problem due to the lack of mandatory insurance. As a lawyer, I don't win my client's case unless the facts and law are on my client's side, so I went in search of data that would support the call for mandatory insurance. I reviewed all of the provided materials accessible on the WSBA website, but I did not see any data regarding how

many Washingtonians injured by legal malpractice were unable to recover their damages from their malpracticing attorneys (whether insured, or not). Sure, I did find arguments similar to this one:

Malpractice plaintiffs' lawyers report numerous instances of worthy claims they must reject for representation because the defendant lawyer is uninsured, making a recovery much less likely.

It's understandable the malpractice lawyers want all lawyers insured – it helps make their own fee recovery “more likely.” More insureds to sue mean more available funds for questionable suits filed to drive nuisance settlements at the expense of lawyers' reputations and retiring lawyers' dwindling funds. You can't blame a shark for being a shark, after all, however, you don't invite him to have a seat at the table. But malpractice plaintiffs' lawyers wouldn't be the first self-interested group to overstate a problem to serve its own end, so there must be more to support a call by our trusted Bar Association for a change that is almost universally opposed by the WSBA's membership it serves.

From the July 10, 2018 Task Force Interim Report:

We continue to receive useful technical assistance from ALPS, the WSBA's endorsed professional liability insurance provider, as well as from mandatory program administrators in Oregon and Idaho.

Like the malpractice plaintiffs' lawyers, the insurance industry (which also has at least one seat on the Task Force) has much to gain from tapping this uninsured resource – a new market for its product. Unaddressed in the provided materials, however, is the impact on premiums once the newly revived malpractice lawyers start filing their questionable suits, driving up defense costs that the Task Force also fails to address in its “settlement” estimates for the typical malpractice case (“less than \$300k”). As an insurance lawyer, I can assure you that it's common to have defense costs dwarf the ultimate settlement amount, so that statistic is misleading. The insurance industry representative(s) on the Task Force also know this, and they know premiums will have to rise once the suit floodgates open for the malpractice lawyers, but I saw no discussion on this important point in the materials. And guess what happens to a lawyer who has even a spurious claim brought against him? Either his rates go way up, or he becomes uninsurable. If he can't get insurance, or can't afford it, the WSBA's potential new condition on licensure suddenly means he can't earn a living doing what he spent his life preparing to do. Do the impacted client numbers support such a drastic result? In addition to forcing part-time lawyers from the ranks, one unaddressed consequence might be that lawyers stop taking the types of cases that are more likely to get them sued – and where does that leave those clients?

I thought, surely there are some numbers to which the WSBA can point to show the affected membership the scope of the problem the WSBA is trying to correct, but the best I could find in the provided materials came again from the July 10 Interim Report:

Over the last five years, WSBA Client Protection Fund application statistics indicate that 11% of applications were denied because they described instances of malpractice rather than

theft or dishonest conduct. (The Client Protection Fund compensates clients only for lawyer theft or dishonest activities.)

The Protection Fund does not pay out for negligent lawyering, but extrapolating a need to force insurance onto all lawyers *for* negligent lawyering does not flow from the data point that 11% of the people who came to the Protection Fund had malpractice claims, rather than intentional malfeasance claims. Of that 11% with malpractice claims, how many pursued their claims against the attorneys? Of those that did, how many were claims against uninsured attorneys? Of that much smaller percentage, how many clients did not recover, or recovered less than they were owed? The Task Force and the WSBA do not say, and that's not surprising, as there is no viable way to drill down on that point, but, similar to using anecdotal reports from interested malpractice lawyers, it's fallacious to use a misleading data point to support the WSBA's position here. I expected higher quality argument, frankly, as this is a very big deal for many lawyers, one that will impact lives and livelihoods.

Apart from some unknown/unknowable number of clients who weren't able to be made whole by their malpracticing lawyers, there are 3 groups who too obviously benefit from forced insurance: (1) the malpractice insurance industry, (2) the malpractice lawyers who want to bring cases against lawyers, and, to a lesser degree, (3) law firms that want to scoop up the clients abandoned by lawyers who had to leave the business due to the insurance requirement. The WSBA ran an article recently in the *NW Lawyer* written by a Connecticut law professor regarding forced insurance and the impact on the State's lawyers. In it, she addressed the problem of someone who finds himself in my contemplated pre-retirement position – self-employed and working for others. Her concerning paternalistic response was that such lawyers should simply “take a job at a law firm that provides insurance coverage for its lawyers” – problem solved. As recently addressed by a letter to the Editor of *NW Lawyer*, try getting a job at a law firm when you're 60, as I am (and I'm fairly able-bodied) – nobody wants old lawyers, though old law professors remain painfully in abundance. That letter's writer charitably characterized the law professor's solution as “naive.”

I've spent 30 years practicing law so as to be able to transition to a retirement via work for other law firms – I'll need the money. I've literally built my current practice on that lengthy foundation, and it's beyond condescending of that Connecticut law professor to so cavalierly dismiss my career and then flippantly suggest I modify my planned-for business model. Frankly, I expect better treatment of its senior lawyers from the WSBA. If the forced insurance requirement becomes a new condition of licensure, I, and perhaps others, will have to consider leaving the profession, and that's simply not fair. What does it benefit a profession to be self-policing if its unsupportable actions hurt its own membership? Once driven from the profession, I won't have enough money to retire, so what's to become of me? I'll be stressed/depressed with lots of time on my hands. Will I resort to substance abuse to pass the time? I'd like to think the answer is “no,” but regardless of what happens to me, the WSBA should not be putting older lawyers into the stressful position of not knowing whether they'll be able to carry on with their livelihoods – we deserve better than that. There's a reason only 2 states

require forced insurance – it's not good for lawyers, and for the reasons discussed above, ultimately not good for people who need lawyers.

The WSBA's not made its case to this lawyer that forced insurance is necessary, and I believe its imposition will harm a significant portion of its membership. The decision appears generated to feed plaintiffs' lawyers and the insurance industry at Washington lawyers' expense, with no discernible, or at least no disclosed, benefit to the public. If this rule goes forward, the impacts will include lawyers being sued, not for malpractice, but because the client did not get a good result and now wants a consolation prize, which path will be encouraged by hungry malpractice lawyers comforted by the newly placed insurance coverage. Such suits will unfairly damage the reputations and livelihoods of good attorneys, and will drive up the cost of insurance to all. These costs will be passed on to legal consumers at the same time the WSBA is pushing for more pro bono work by lawyers for would-be clients who already can't afford their services. Forcing more lawyers from the profession is antithetical to the WSBA's goal, but several have told you that's their only alternative. All to benefit a few lawyers, and the insurance industry, as there are no numbers to show any benefit to consumers who, after all, may simply confirm their lawyer has insurance protection by checking the WSBA site.

Even without forced insurance as an additional headwind, the WSBA already offers reduced Bar dues to those experiencing reduced circumstances – what do you think loading another \$3k a year (and where does WSBA get that number?) onto those poor souls is going to do to them? How will they pay for insurance if they can't pay their full Bar dues? How will they stay in the profession? If WSBA is determined to go forward with forced insurance as a condition of continued licensure, the least it can do is to create an **exemption** for those in my position (including, not incidentally, my wife – Bar No. 025686, whose letter will come separately) – **Exempt: lawyers who agree to limit their legal work to that performed through lawyers/firms that are insured as required under the new rule.**

Thanks for your consideration. Please let me know of questions regarding this letter.

Very truly yours,

NEAL FIRM



Christopher L. Neal

Lisa C. Neal

Attorney at Law

November 26, 2018

Mandatory Insurance Task Force

RE: Mandatory Insurance – Potential Exemption

Dear Task Force:

The Bar has not provided any information supporting its assumption that the number of individuals adversely impacted by malpracticing and uninsured lawyers mandates imposition of a liability insurance requirement on the practice of law.

I have been practicing law since 1992, since 1996 in Washington. In about 2004, I began working as a contract lawyer. While the insurance carried by the firms I work with usually cover me as well, one attorney I worked for did not. When I discovered that she had expressly removed that coverage from her policy to save money, I looked for liability coverage.

Only **one** insurer would sell me a policy, at a cost that was disproportionately high compared to the income received from that firm. That insurer was not ALPS, I note. It carried a high deductible and the policy limit was eroded by defense costs. The firm's work and clientele was rated against me, making it even more difficult to find and buy coverage. Because I could not certify that I would work at least 2000 hours per year (based upon my recollection), I had to pay more, not less. When I stopped working with that lawyer, I had to buy very expensive tail coverage.

The cost was very high, but it was still lower than the \$3,000 policy premium blithely suggested by the Task Force. This number was likely obtained from the insurance industry waiting in the wings for this last bit of insurance premium dry powder, and will represent an unreasonably high percentage of my income. Paying \$3,000 for only \$300,000 in eroding coverage is an even more outrageous suggestion.

The solution offered by a professor from another state that I should simply go work for a firm is dismissive and belittling. I hesitate to even dignify that suggestion with a response. Many lawyers are self-employed, and the suggestion that only those who work "for firms" are "real lawyers" is disturbing. Personally, I have several reasons I have decided to not be an "employee," including the control of my own health insurance and health care (to the extent possible). I now have to fear that firms will remove coverage for contract attorneys from their policies in light of the mandate, similar to corporations withdrawing health insurance from employees in light of the Affordable Care Act.

To the Task Force
November 28, 2018
Page 2

And what will happen to my livelihood if I have a claim brought against me? I can tell you what will happen – it will be virtually impossible to find and/or afford the liability insurance required for me to practice law. I will not only lose the insurance protections, I will lose my bar license.

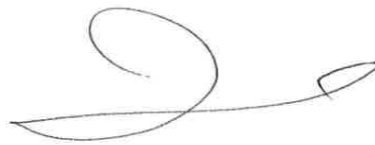
Another likely outcome is that lawyers will simply drop out – leaving the many, many potential clients who do not have cases or issues that a “law firm” will take on without representation, insured or not.

The WSBA should reject this notion. If the Bar really believes there are numerous injured clients falling through the cracks, simply expand the Protection Fund to cover malpractice claims. Do not force me to pay high premiums and cover profits for insurance companies to prevent the small percentage (11%) of all those coming to the Protection Fund from “going without.”

If the Bar ignores all of this information and imposes the requirement, it must exempt lawyers or firms making less than \$200,000 per year. Anything else will be an elitist money grab from the lawyers on the lower end of the income scale. That grab is unsupported by any data that those lawyers are the ones who are more likely to adversely impact clients.

Please let me know of questions regarding this letter.

Regards,

A handwritten signature in black ink, appearing to read 'Lisa C. Neal', with a large, stylized initial 'L'.

Lisa C. Neal



From: [Thomas Hayden](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Active Malpractice Insurance Requirement
Date: Wednesday, November 28, 2018 1:44:51 PM

If malpractice insurance is required of all active members, it should only apply to those who are “actively” practicing - simply, doing legal work, be it litigation, counseling, whatever, for which negligence could result in liability. Be advised, there are many active members who aren’t doing anything for which insurance is required. Query, then why are they active? Two reasons: First, the Bar has a silly rule that if one is inactive more than three years, he/she can be forced to take the bar exam again. Second, for those practicing in-house, government, etc..., who aren’t representing clients, or those who are just looking for a position, many positions require active status in good standing in a bar association. If this goes through, one looking for a position would be required to have malpractice insurance to obtain an offer, when he/she could literally be on the other end of the country and having nothing to do with practicing law in Washington. Nonsense. In my own situation, I have not been in a representation capacity in years. However, I maintain an active license to look for any interesting opportunities and in order to not be inactive three years and be forced to take another exam.

Simply, if this mandate goes through, you will force many WSBA members into inactivity and, ultimately, resignation. To what end? To force them to carry insurance coverage they’ll never need? Silly. Liken it to driving a car. If you have a driver’s license (i.e., law license), you only need automobile liability insurance when you actually drive a vehicle (i.e., representation of clients, litigation and other). It’s very analogous. In short, do not go down this road (pun unintended). Mandatory malpractice insurance only for those attorneys active and actively representing clients in whatever capacity.

Sincerely, Thomas L. Hayden #18641

From: [William D. Richard](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance Task Force Comment re: Low-Risk Services for Family
Date: Wednesday, November 28, 2018 4:02:33 PM
Attachments: [Comment on Mandatory Malpractice 2018-11-28.pdf](#)

Attached is my comment regarding the Mandatory Malpractice Insurance Task Force's consideration of whether to create an exception for certain representations provided to members of the lawyer's family. As a government lawyer, I am quite alarmed by the Task Force's proposal, and wanted to call the Task Force's attention to the unintended consequences that such a rule might create, as well as the fact that creating a rule might not be as daunting as it would appear (in fact, I've gone so far as to draft rule text).

I would be happy to discuss this further with staff or members of the Task Force.

-- William D. Richard
WSBA #44027

William D. Richard
Attorney and Counselor at Law
915 2nd Avenue, Room 2704, Mail Stop W670
Seattle, Washington 98174

November 28, 2018

by e-mail

Washington State Bar Association
Mandatory Malpractice Insurance Task Force

According to the minutes of its October 24 meeting, the Task Force rejected a proposed exception to the insurance requirement for government lawyers advising family members on two grounds: first, that providing legal services to family members posed a “high risk” of malpractice “in certain situations” that would remain unaddressed, and second, that it would be “too difficult” to define who is a family member for the purposes of such an exemption. I write to invite the task force to reconsider those bases and craft a rule that would allow government lawyers (like me) and other exempt lawyers to provide services in low-risk situations to related persons as defined in RPC 1.8(c); I also propose the text of such a rule. In my job as a lawyer for the federal government, I often say that half the law I practice is the “Law of Unintended Consequences”; I write to point out to the Task Force some points that might have been missed, and hope that the Task Force will rectify what I hope was an oversight; if in fact it was not an oversight, I hope that a minority of the Task Force will present this proposal or a similar proposal to the Board of Governors as a minority report. Of course, all views expressed in this comment are my own and not my employer’s.

For the families of exempt lawyers, the proposed rule will cause more harm than it proposes to avoid: By not excepting low-risk situations, the proposed rule creates a universe of matters in which a lawyer’s parent, spouse, or child would benefit from the advice of a person trained in the law (but not so grave that it merits hiring counsel) regarding a matter in which the lawyer might see an obvious, glaring problem that is easily rectified, but finds himself or herself gagged by APR 26 from keeping his or her loved ones out of the legal weeds. For example, the lawyer would have to sheepishly tell a parent (who might have paid for the lawyer to go to law school) to hire a lawyer at considerable expense to draft a deed

transferring the family home to a sibling, or tell a spouse to rely on intestate succession rather than draft a will (and being forbidden from explaining how intestate succession works), tell a sibling in need of a domestic violence protective order that the lawyer's hands are tied, or tell a child facing eviction that he will have to face a judge without any advice help from his or her parent. What is more, with the lawyer finding himself or herself unable to speak, other voices around the proverbial Thanksgiving table from those not trained in the law (but with quite strong opinions about it) might be quick to render bad advice on weighty matters, an outcome that does nothing to enhance public understanding of and respect for the law.

A requirement (as in the proposed rule) that otherwise exempt lawyers obtain malpractice insurance before advising or counseling the lawyer's relatives on legal matters would effectively forbid an exempt lawyer from engaging in that representation. The annual cost of insurance quoted in materials reviewed by the Task Force run into the thousands of dollars. While the Task Force may believe that the insurance market will create a reasonably priced alternative for otherwise exempt lawyers providing services to their relatives, such insurance has not yet been shown to exist. Given that such insurance would be written on a blank slate without a loss history for this class of lawyers, it is unclear how an insurer could set premiums or underwrite a policy on any basis other than the population of all lawyers, with premiums to match. While the market may eventually create such a limited product, the market is not obliged to do so, and may be unwilling to do so if premiums may be increased without affecting demand, which would be the effect of the proposed rule. To write a rule with so broad a sweep and hope that the marketplace will respond in a certain way is to regulate not the way things are, but the way we wish they would be; as we have recently seen with health insurance, the market does not always respond to regulation in the way the regulators expected.

Consider also the likelihood that, faced with a rule such as the one proposed by the Task Force, many exempt lawyers would, if confronted with compelling circumstances, simply break the rule and render advice without obtaining insurance, and then lie on their next annual certification. Upstanding lawyers would find themselves forever in fear of discipline for an act of familial devotion, turning dedicated public servants into so many Jean Valjeans.

We all read *United States v. Carroll Towing Co.* in law school: we evaluate risk by multiplying the magnitude of the harm posed by the risk by the probability of its occurrence. In those cases where the probability of malpractice is low and the monetary harm posed is also low, then the risk is low. By barring exempt lawyers from advising relatives in low-risk situations, a small burden is avoided, but at a great price. As someone who views the law as ultimately a helping profession, I think the proposed rule, as written, would constitute a step backward in this respect, a counterintuitive result for a rule that is supposed to protect the public.

Not every representation of a family member is a “high risk situation”:

It is undeniably true that providing legal services poses risks. However, as the Task Force meeting minutes note, the risk is “high ... in certain situations.” Other situations pose little, if any, risk. For example, writing a securities opinion or tax opinion poses a great deal of risk, even for experienced practitioners. On the other hand, a simple will or statutory form health care power of attorney for one’s parents poses a little (though not zero) risk. Other matters may present greater or lesser risk, depending on the lawyer’s experience and education and the facts of the matter. By forbidding otherwise competent lawyers from engaging in these low-risk representations with a small universe of potential clients who might otherwise lack access to legal advice, the proposed rule would expand the universe of matters in which a lawyer’s relatives are obliged to go without such advice, creating a greater risk of legal grief for the lawyer’s family that dwarfs a small risk of actionable malpractice.

It is possible — although the Task Force’s public documents do not show that it considered the possibility — to define by genus and differentia the kinds of activities that pose low risk. The “high risk situations” alluded to in the October 24 meeting minutes could be carved out of a broader exemption. I don’t know what those situations are, and I don’t know whether the Task Force knows what those situations are because they are not discussed in the Task Force’s public documents. If I were asked to draft such a rule, I would certainly include the following as examples of high-risk situations:

- any opinion for the use of an unrelated third party (such as a securities or transactional opinion, or any opinion for a business organization or its owners);

- any form of advocacy in a contested matter before any court, agency, or tribunal, although I might not include ex-parte proceedings and some forms of non-advocacy advice provided to unrepresented parties on a limited-representation basis (such as advice on rules in a small-claims case in district court or reviewing a claim for disability insurance), and to nonadjudicative proceedings before administrative agencies under RPC 3.9;
- any matter requiring the lawyer to hold property belonging to the client (avoiding the pitfalls associated with maintaining client trust accounts); and
- any contested domestic proceeding such as a dissolution or child-custody matter, in which the potential for conflicts of interest is too great (although this might be included in the general exclusion of advocacy before a tribunal).

Alternatively, a rule could define low-risk situations where exempt lawyers could serve related persons without engaging in “private practice” under APR 26. Those might include:

- drafting wills and revocable inter-vivos trusts of which family members and charities are the sole grantors, trustees, and beneficiaries;
- powers of attorney;
- the preparation of individual tax returns and advice in connection with taxes;
- drafting property transfer documents such as deeds where family members are the sole parties to the transaction; and
- Ex parte court proceedings and applications for domestic violence protective orders, and reviewing pleadings for otherwise unrepresented clients.

In any event, the rule should also exclude advice or guidance provided in connection with any matter in which the lawyer is himself or herself a participant, which does not fit within a naïve understanding of a “representation.” An example would be an explanation about the terms of a real-estate purchase-and-sale agreement for the benefit of the lawyer’s spouse in a transaction in which both the lawyer and the spouse were parties.

The rule could also require that any services provided by the lawyer be gratis (though perhaps not including the voluntary gift of the client where the gift is the object of the representation, such as a will under which the lawyer is a devisee; the lawyer couldn't charge for drafting the will, but could receive the devise), and could also require disclosure to the family member that the lawyer has no professional malpractice insurance, so that the client can make an informed decision.

The rule need not define “family member” when we already have a definition of “related person”: The Task Force was also concerned with the potential for gamesmanship in the definition of “family member.” It is certainly true that lawyers, as a group, are prone to reading rules in self-serving ways when there is an opportunity to do so, and that the task of writing a rule that could apply in all situations at all times would be a most daunting one.

Fortunately, the Task Force need not write such a rule, for the rule is already written, and carries with it a body of interpretive law. RPC 1.8(c) forbids a lawyer from preparing an instrument giving the lawyer or a related person a gift unless the lawyer or other recipient is related to the client. The rule defines “related persons” to include a “spouse, child, grandchild, parent, grandparent or other relative or individual with who[m] the lawyer or the client maintains a close, familial relationship.” (While the text of the rule could be interpreted to apply this definition solely to the class of persons who are prohibited donees, Comment 6 clarifies that the exception applies “where the lawyer is related to the client as set forth in paragraph (c),” and the only definition provided is the one just described.

Similar language appears in section 127 of the Restatement (Third) of the Law Governing Lawyers, which forbids lawyers from preparing instruments effecting any gift from client to lawyer “unless the lawyer is a relative or other natural object of the client’s generosity”; a similar rule forbids a lawyer from accepting a gift from a client, with the same excepted class of clients. Comment e points out that the exception covers those situations where the lawyer is so related to the client that the gift should not cause suspicion of undue influence. The comment also points out that “in many families, one of whose members is a lawyer, it would be thought unusual for a family member for a family member to go outside the family for legal advice, for example, to write a will or create a trust for a family member.” The

Restatement discusses a few cases in which the “relative” definition has been tested.

The point is that, rather than take on the arduous task of defining “family member” (or more to the point, avoiding the task and thus throwing the baby out with the bathwater), the Task Force can simply adopt by reference the definition of “related persons” in RPC 1.8(c) in defining the class of clients for whom an otherwise exempt lawyer may provide services without coming within the ambit of the mandatory malpractice insurance rule. While the risks are different, the comment in the Restatement correctly points out that, when it comes to relatives, the rules are, and ought to be, relaxed in some respects so as to increase, rather than limit, access to advice.

Proposed rule text: In light of the foregoing, I would propose adding a subsection to the proposed APR 26 as follows:

- (_) For the purposes of this rule, a lawyer does not represent a private client where
 - (1) the client is a related person, as defined in RPC 1.8(c);
 - (2) the lawyer is not compensated for the representation (other than the reimbursement of expenses actually incurred or a gift that is the object of the representation);
 - (3) the lawyer discloses to the client before the representation that the lawyer has no malpractice insurance; and
 - (4) the representation does not include the following:
 - (A) rendering an opinion applying any principle of law to facts for the intended reliance or reasonably anticipated reliance of any person other than a related person of the lawyer;
 - (B) appearance as an advocate before any court, tribunal, or administrative agency, not including any an ex parte proceeding, domestic violence protection order, or nonadjudicative proceeding within the scope of RPC 3.9, and not including advice rendered in connection with litigation that, with the informed consent of the client, does not require entry of an appearance and in which the client is otherwise unrepresented;

- (C) any representation in which the lawyer knows or reasonably should know that the lawyer's representation of the client arises as a result of undue influence;
- (D) any representation in which the lawyer will hold property belonging to the client or a third party in trust for the benefit of the client in the lawyer's capacity as such, not including holding property for a client as trustee under a trust instrument drafted by the lawyer; and
- (E) any representation in which the lawyer solely renders advice in a matter in which the lawyer is personally interested.

Alternatively, a more circumscribed rule could read as follows:

- () For the purposes of this rule, a lawyer does not represent a private client where
 - (1) the client is a related person, as defined in RPC 1.8(c);
 - (2) the lawyer is not compensated for the representation (other than reimbursement of expenses actually incurred or a gift which is the object of the representation);
 - (3) the lawyer discloses to the client before the representation that the lawyer has no malpractice insurance; and
 - (4) where the representation is limited to the following:
 - (A) drafting a will where the client is the testator (which may name the lawyer as executor);
 - (B) drafting a power of attorney where the client is the principal (which may name the lawyer as attorney-in-fact);
 - (C) drafting a revocable inter-vivos trust under which all grantors and trustees are either the lawyer or related persons of the lawyer, and all beneficiaries are either the lawyer, related persons of the lawyer, or charities;
 - (D) preparing individual income tax returns for the client or providing advice in connection with the preparation of the client's tax returns;
 - (E) drafting a deed, excise tax affidavit, or other instrument necessary to effect a transaction involving

- property where all transferors and transferees are related persons of the lawyer;
- (F) representation in an ex-parte proceeding or application for a domestic violence protection order;
 - (G) rendering advice with respect to any matter pending before a court, tribunal, or administrative agency with respect to which, under a limited-representation agreement with the client's informed consent, the lawyer will not enter an appearance before the court, tribunal, or administrative agency; and
 - (H) rendering advice in a matter in which the lawyer is an interested party.

I appreciate your attention to this matter, and look forward to the Task Force amending the proposed rule to better align it with the public interest. I noted that a minority of members of the Task Force voted in favor of considering creating an exception for otherwise-exempt lawyers at the October 24 meeting; if a majority of the Task Force is unwilling to modify the proposed rule as outlined in the interim report, I would suggest that, in accordance with Purpose No. 6 of the Task Force's charter, a minority report recommending the exclusion discussed above be presented to the Board of Governors along with the majority report.

Yours very truly,

William D. Richard
WSBA #44027

From: [Inez "Ine" Petersen](#)
To: [Hugh D. Spitzer](#); [John Bachofner](#); stan_bastian@waed.uscourts.gov; dan@mcbdlaw.com; christy@mylllt.com; [Gretchen Gale](#); [PJ Grabicki](#); pl.isaki@comcast.net; [Mark Johnson](#); kara@appeal-law.com; evanm@jdsalaw.com; spierce@davisrothwell.com; pinkhamb@seattleu.edu; tstartzel@ks-lawyers.com; annley@atg.wa.gov; [Mandatory Malpractice Insurance Task Force](#)
Cc: [Bill Pickett](#); [Paul S](#); [Kim Hunter](#); [Paula Littlewood](#); [Sarah Kolpacoff](#)
Subject: TASK FORCE MEETING TODAY: Where's the beef? It is still missing (need for statistics not anecdotes)
Date: Wednesday, November 28, 2018 4:25:11 PM

Dear Task Force members:

I listened to this entire meeting today on my cell, and my first thought was that NBI uses a dependable and simple to use software package for its CLEs <https://www.nbi-sems.com/> . But the WSBA can't use something similar for its meetings.

Our comments mean squat?

I couldn't believe what I heard at this meeting. First, why ask for attorney comments by Dec 1st? Your comments today indicate you are dedicated to making insurance mandatory; and nothing we attorneys submit to you will apparently change that. At the last of meeting I think I heard the answer. One of you stated that you'd make everything public so we couldn't say what you did snuck up on us. So it is all about the appearance of fairness.

Second, if all Task Force members were in attendance today, they weren't participating. I heard maybe 2-3 persons carrying the meeting.

About attorneys who won't be able to get insurance

Other attorneys should hear the cavalier comments today about lawyers who won't be able to get insurance when it becomes mandatory (the ones your alleged free market will not cover). I heard one person suggest that the attorney just change the focus of his practice. Or the State Supreme Court could change the rule? And what is the attorney to do while the bureaucratic wheels turn (and the employees his legal services support)? This area requires facts and data to know the extent of the problem NOW before you go making a final recommendation to the Governors.

Statistics are not impossible to get

I worked in computer programming for almost 30 years at Boeing in the area of statistics. I was a certified programmer and a lead analyst for most of that time; and I can't get to first base with Paula Littlewood and Sarah Kolpacoff on my Public Information Request so that I can gather statistics I believe you need.

You do not have to pay \$20,000 to get the statistics you need. But you do need time because even today you talked yourselves out of gathering the

very facts and data you need regarding (1) the occurrences of legal mal judgments that are uncollectable due to lawyers who will not pay and (2) legal mal claims that are never filed in the first place due to lawyers who have no insurance (and I suppose no other assets either which is hard to believe). This is the "meat" to that old question, "Where's the meat?"

Between the Work Group and your task force, 3 years have passed; and today you are talking about gathering anecdotal stories to bolster your position when that 3 years could have been used to gather relevant data as described in (1) and (2) above. And it could still be gathered if you would reconsider your final report: Adopt "the least restrictive means" I have suggested WHILE YOU GATHER STATISTICS.

You have disregarded impacts in these areas

Solos and small firms (2-10 lawyers), based on 2/9/18 demographics, **compose more than a third of the members.** These are the attorneys on one end of the spectrum who will be hurt by increased cost of insurance once it becomes mandatory. You need to know how they will be affected from their mouths.

On the other end of the spectrum are **semi and semi-retired and senior members.** Their situation has been raised in multiple responses sent to you. You need to know how these attorneys will be affected too. You proposed today that the semi retired and retired could do legal work for their family members ONLY to escape mandatory insurance.

You must not throw these two groups "under the bus" in your attempt to protect the public. High ideals are or should be subject to business sense.

Forcing attorneys out of business under the guise of protecting the public from unpaid malpractice judgments, when we don't know the extent of those judgments, **makes no business sense.** If this is "a sliver of a sliver" of cases, then the "least restrictive means" should prevail, not the most tyrannical answer--mandatory insurance.

If all meetings went as today's, then what I observed is a couple people lead and the rest do basically nothing but capitulate to the couple who lead. For all I could tell, a majority of the rest might not even have been in attendance today.

Please slow down and re-examine the path you've taken and consider how important the missing statistics are to that path. Again, I say, "Where's the beef?"

Respectfully,

Inez Petersen, WSBA #46213

From: sjcba@rockisland.com
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [SJCBA-Carla Higginson](#); [SJCBA-Rajeev Majumdar](#)
Subject: San Juan Co. Bar Assn Letter in Opposition to Mandatory Malpractice Insurance
Date: Wednesday, November 28, 2018 4:39:47 PM
Attachments: [ltr_opposition_wsba_ins_task_force_letterhead_b&w_11-27-2018.bmp](#)

Wednesday Nov. 28, 2018

WSBA Mandatory Malpractice Insurance Task Force
Washington State Bar Assn.
Seattle, Washington 98101

Via Email: insurancetaskforce@wsba.org

Dear Task Force Members:

Attached please find our letter expressing the opposition of the San Juan County Bar Association to the proposal requiring mandatory legal malpractice insurance.

Very Truly Yours,

John W. Chessell, Pres.
San Juan Co. Bar Assn.
PO Box 133
Friday Harbor, WA 98101
sjcba@rockisland.com

SAN JUAN COUNTY BAR ASSOCIATION

P.O. Box 133

FRIDAY HARBOR

SAN JUAN ISLAND, WA 98250

360.317.5951

SJCBA@ROCKISLAND.COM

November 28, 2018

WSBA Mandatory Malpractice Insurance Task Force
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101

Dear Task Force Members, the Washington State Bar Assn., & the Hon. Carla Higginson (Bd/Govs Mbr Dist 2):

The members of the San Juan County Bar Association are overwhelmingly opposed to the imposition of mandatory malpractice insurance on the lawyers of Washington State.

The reasons cited in justification of mandatory malpractice insurance do not stand up to scrutiny, and a review of the task force membership reveals a lack of background and motive among many of the task force members to conduct a balanced inquiry into the necessity of such a requirement.

A requirement of mandatory malpractice insurance would provide a multi-million dollar windfall to malpractice insurance carriers while historically claims paid are \$60,000 or less. Further, if half of the Washington State lawyers now in active status without insurance – approximately 2,732 – decide to purchase insurance, and the other half decide to become inactive or resign (approximately the same as found by Prof. Leslie C. Levin in her law review article published at 68 Florida Law Rev. 1281 [2016] concerning New Mexico attorneys and the issue of mandatory malpractice insurance) thus making an economic calculation that they make less from the practice of law than it would cost them to maintain their licenses, the WSBA will lose more than \$650,000 per year in membership fee revenue at current fee levels. How will this shortfall be made up? In the alternative what portions of the budget will be cut? Or is the WSBA flush with cash?

In addition, this proposal would impact the availability of low-cost legal services to an identifiable group of Washington State consumers: those people of limited means with small claims or demands not suitable for adjudication in small claims court, such as writing “attorney letters,” giving preliminary advice on simple legal matters, collecting the scattered assets of small estates, or helping research and write appellate briefs, for a few examples. A substantial number of older lawyers use their skills to assist people who could otherwise not afford an attorney; many do so at little or no charge; a requirement of mandatory malpractice insurance would put them out of business and their clients in the probable position of being unable to proceed with their claims due to lack of knowledge concerning the processes involved. A requirement of full and complete disclosure of the lack of malpractice insurance, as proposed by the American Bar Assn., would allow the clients to make an informed decision concerning seeking advice from, or becoming a client of, such a lawyer.

Nor is the proposal currently in-force throughout the United States – only two of fifty-two jurisdictions so require – and indeed only seven states require medical doctors to maintain a minimum level of malpractice insurance. As others have opined, it seems more like “a solution in search of a problem” rather than an attempt to address an issue of supposed great moment and import. For these reasons and more, the members of the San Juan County Bar Association oppose mandatory malpractice insurance for Washington State lawyers.

Very Truly Yours,


John Chessell, SJCBRA President

cc: Rajeeve Majumdar (WSBA Pres. Elect);
county bar assns; Editor, NW Lawyer Magazine

From: [Nancy Bradburn-Johnson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment re Mandatory Insurance
Date: Wednesday, November 28, 2018 5:45:04 PM

Dear Task Force Members:

I am licensed to practice only in order to be able to serve as a pro tem judicial officer. I do not see clients. I do not give advice. I do not supervise any staff. Requiring me to obtain malpractice insurance would be a hardship for me as I don't earn much income. If the requirement is adopted, please consider adding an exception to the requirement for those of us who only provide pro tem judicial officer services.

Thank you

From: [Lori PREUSS](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: No to mandatory malpractice insurance
Date: Wednesday, November 28, 2018 7:59:10 PM

Please do not require all WA-licensed attorneys to get mandatory malpractice insurance. We are smart people. If you cannot trust us to buy insurance if/when we need it, what does that say about us? And about you?

I seriously mistrust the WSBA. I do not believe you are good stewards of our money. Our bar dues are extremely expensive. This proposal to require us to buy malpractice insurance only bolsters my mistrust. I suspect collusion and corruption between WSBA and ALPS.

I wish I felt differently. It will help if you nix the ridiculous proposal to mandate malpractice insurance.

Lori Preuss
WSBA #33045

From: [Meredith Lehr](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance - against
Date: Thursday, November 29, 2018 7:09:42 AM

I am against mandatory malpractice insurance. I have always worked in-house, and still do some work for my prior company on a consulting basis in my own "firm". Requiring me to have mandatory malpractice insurance simply doesn't make sense – the corporation for which I do work is part of a multi-billion dollar enterprise; they are a sophisticated client who does not need this.

Meredith Lehr

Meredith L. Lehr, Esq.
Attorney at Law
7785 Westwood Lane
Mercer Island, WA 98040
Cell: 206-459-8322

From: [Richard Llewelyn Jones](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance for Attorneys
Date: Thursday, November 29, 2018 8:13:43 AM

I am **against** any attempt to impose mandatory malpractice insurance on attorney's. I do not see the need and cannot think of a justification for the cost.

Please let me know if you have any questions or concerns. R. Jones WSBA 12904

Richard Llewelyn Jones

Kovac & Jones, PLLC
PO Box 1548
Snohomish, WA 98291
Office: 425-462-7322
Cell: [REDACTED]
Email: rlj@kovacandjones.com

From: [Lavin, Stacy](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: NO on Mandatory Insurance!
Date: Thursday, November 29, 2018 8:22:18 AM

Mandatory insurance is just another “feel good” solution looking for a problem. Coming from a group so drunk with power that it cannot or will not get its act together through proper and beneficial governance reforms, it would truly be a slap in the face to the “lesser” members of the bar.

Basic economic principles indicate the imposition of such an obligation would be a windfall for the insurers and catastrophe to those practicing near the edge of solvency. Other than some short lived enhancement of the BOG’s feeling of superiority and exulting the power of wielding the hammer, there seems little benefit to any other parties. On the other hand, there would surely be a meaningful blow to access to justice in the state of Washington.

Then we get to the details (or maybe not). “Still to be determined are the categories of lawyers to be exempt, such as government and in-house private company lawyers, and non-practicing attorneys who maintain their licenses.” Why would the do-gooders not have given these groups any consideration in advance? There is no public to protect from this group of perceived potential evil doers. It could not be an oversight.. I posit a strong influence of the insurance industry that has so much to gain.

How about getting your own house in order?

Stacy Lavin
Spokane

Stacy D. Lavin
General Counsel & SVP
2001 S. Flint Rd., Spokane, WA 99224
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From: [Karin Quirk](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory insurance
Date: Thursday, November 29, 2018 8:22:24 AM

I very much oppose the imposition of mandatory insurance. I have practiced family law for more than 22 years and have never had a claim. Family law carries a higher premium and would be prohibitively expensive for me.

Karin Quirk

THE QUIRK LAW GROUP
520 Kirkland Way, Suite 400
P.O. Box 599
Kirkland, Washington 98083
Tel: (425) 289-0293 | Fax: (425) 827-8725
Karin@thequirklawgroup.com | www.divorceforgrownups.net

From: [Ganga, Elaine \(ATG\)](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Mitchell, Kristen \(ATG\)](#)
Subject: Mandatory Malpractice Insurance
Date: Thursday, November 29, 2018 8:36:19 AM
Attachments: [scan-11292018081215.pdf](#)

Good Morning,

Attached is a letter from Deputy Attorney General Kristen Mitchell regarding mandatory malpractice insurance.

Thank you,

*Elaine Ganga
Executive Assistant
Office of the Attorney General
Administration Division
P.O. Box 40100
Olympia, WA 98504
Phone: (360) 753-9672*



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

Administration Division
PO Box 40100 • Olympia WA 98504-0100 • (360) 753-6200

November 29, 2018

Sent Via Email: insurancetaskforce@wsba.org

Washington State Bar Association
Mandatory Malpractice Insurance Task Force
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Dear WSBA Mandatory Malpractice Insurance Task Force:

We are writing on behalf of the Washington State Attorney General's Office in response to the call for written comments on the issue of mandatory malpractice insurance for attorneys in Washington. With over 600 Assistant Attorneys General representing every state agency, board, commission and state institution of higher education in Washington, we write to endorse the Mandatory Malpractice Task Force's (Task Force) recommendation to include an exemption from any mandatory malpractice requirement for government attorneys. As such, we urge the Task Force to forward this recommendation to the Board of Governors.

The Washington State Attorney General's Office supports an exemption for government attorneys for several reasons. First, requiring malpractice insurance for government lawyers does not further the goal of protecting individual clients. We commend the Task Force for its focus on protection of the public. It is our mission to protect the public and we are very proud of our work in this regard. While we believe our work benefits all Washingtonians, the Washington State Attorney General's Office does not directly represent private individuals.

Second, malpractice insurance is not an effective risk management tool when attorneys are employed by their client, particularly in the governmental setting. Assistant Attorneys General are both the lawyers for and employees of the State of Washington. When attorneys are employed by an entity, risk created by attorneys is internal to the entity and that entity should be allowed to manage risk in a way that reflects the entity's structure and risk exposure. We would also note that the standard to establish a claim of legal malpractice does not anticipate an employment relationship between the client and attorney.

Finally, we ask the Task Force to investigate the issues of cost and availability of malpractice insurance for government lawyers should there be any change in the current recommendation.



ATTORNEY GENERAL OF WASHINGTON

November 29, 2018

Page 2

No state currently requires government attorneys to obtain malpractice insurance. Whether malpractice insurance is available or economical to purchase for the office's 600-plus Assistant Attorneys General is a significant question for budgetary and personnel reasons.

Thank you for the opportunity to comment on the Task Force's recommendations. We commend the Task Force for its thorough and thoughtful analysis. We again request that the Task Force forward a recommendation to the Board of Governors that government attorneys be exempt from a requirement to purchase malpractice insurance.

Sincerely,

Handwritten signature of Kristen K. Mitchell in black ink.

KRISTEN K. MITCHELL
Deputy Attorney General

KKM/eg

From: [Cameron Fleury](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Opposition to Mandatory Malpractice Insurance
Date: Thursday, November 29, 2018 8:38:24 AM

Greetings:

I am in opposition to Mandatory Malpractice Insurance. I am a family law practitioner with over 25 years' experience. I have always maintained malpractice insurance. So, why would I be against forcing all attorneys to do the same? Because it has been my experience that costs do not go down, thus any argument that spreading the risk further will lower costs is utterly without merit. I also believe that having insurance increases the likelihood of meritless claims being filed. This is because 1) the cost of insurance increases after claims (including ones that are dismissed) are made, and 2) the deductible is so large that claimants know they have a large "nuisance value" they can cash in on.

I also believe that a substantial number of attorneys who are semi-retired provide occasional pro bono, or low bono, services would simply retire and cease doing so. Thus, by trying to serve/protect low income parties this would actually have the opposite effect.

In short, if Mandatory Malpractice Insurance becomes the rule, then costs will rise, claims will rise and pro bono service will decrease.

Regards,
Cameron J. Fleury
23422

From: [Wynnia Kerr](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Pro Bono, Cost
Date: Thursday, November 29, 2018 8:54:16 AM

Background:

I retired from law firm practice and now have no paying clients. I limit my clients to small 501(c)(3) charitable organizations struggling with funding. I provide only compliance and board governance services. No litigation. I also am active in WSBA Section leadership.

Comment:

Along with the cost of Bar membership and mandatory CLEs, the additional cost of mandatory malpractice insurance may force me to discontinue active practice for pro bono clients and Section leadership. This result is not in the best interest of the public or the practice of law.

H. Wynnia Kerr

From: [Mark](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory malpractice - opposed
Date: Thursday, November 29, 2018 8:58:55 AM

I believe the present system is the best balance: not mandatory, but disclosed. The latter provides information which helps protect the public. However, making malpractice insurance mandatory will have a huge impact on solo/small practitioners. I had my own solo practice for 13 years, which barely scraped by (I'm not a marketer.) After paying the rent, part-time bookkeeping, and off-site file storage, my net income for years was in the 30Ks. Paying for malpractice insurance would have made continued practice in that situation unfeasible.

I am opposed to mandatory malpractice insurance.

Mark Alexander
Seattle Divorce Services
2317 NW Market Street
Seattle, WA 98107
(206) 784-3049

From: [P.blauert](#)
To: [Mandatory Malpractice Insurance Task Force](#); [Paul Email](#)
Subject: Malpractice Insurance
Date: Thursday, November 29, 2018 9:11:43 AM

I am against mandatory malpractice for several reasons. I am 78 years old and a member of the Bar since 1965. I do not carry malpractice insurance. Even though I am retired, I keep my membership active and do some consulting, wills and probate. I enjoy keeping active to some extent and would not like this taken away from me. Even though I do not have malpractice insurance, I understand and know that if I am negligent I am responsible. I have an adequate net worth and assets in order to respond to any possible malpractice case that might arise as a result of my continuing to consult and to handle some relatively minor legal work. It would be cost prohibitive for myself to be forced to carry malpractice insurance. I am aware of many other lawyers over 65 who continue to practice on a modified basis.

Paul F. Blauert

From: [Tom McDonough](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance
Date: Thursday, November 29, 2018 9:17:52 AM

Dear Taskforce

Thank you for taking on this important issue. I am adamantly against mandatory malpractice insurance. While I have always had insurance by choice, I do not think it should be a condition precedent to practicing law in the State of Washington. There is no reason to prohibit attorneys such as semi-retired attorneys from providing legal advice to friends and family for routine legal matters for a fee or free without having malpractice insurance. To require insurance would inhibit access to justice and monopolize the practice of law to those who can afford malpractice insurance. I fail to see the risk to the public who is becoming ever so more educated. If the bar wants to protect the public they can asterisk the attorneys who do not have insurance and let the buyer beware. I believe the WSBA website already has something like that in effect. This appears to be another case of Big Brother trying to control commerce while the marketplace seems to do a pretty good job. Thank you for your consideration and please do not impose mandatory malpractice insurance on your overburdened and over- regulated members. Tom

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Thomas F. McDonough
McDonough's Law Office
510 Bell Street
Edmonds, WA 98020
Ph: 425-778-8555
Fax: 425-778-8550
Email: thomas.mcdonough@frontier.com

From: [John McCrady](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Thursday, November 29, 2018 9:21:07 AM

I am adamantly opposed to such mandatory malpractice insurance. Many of us do occasional ad hoc work for friends and family who cannot afford the fees charged by a practicing attorney. Being required to obtain malpractice insurance would simply deprive many people of legal assistance.

John McCrady
Counsel
Puget Sound Title Company
5350 Orchard Street West
University Place WA 98467
253-476-5721
j.mccrady@pstitle.com

From: [Brian Wikner](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance Task Force: Comment in Opposition
Date: Thursday, November 29, 2018 9:38:18 AM

Members of the Mandatory Malpractice Insurance Task Force:

I'm writing in response to the Task Force's request for comments concerning the proposal to require that all members carry malpractice insurance. I oppose this proposal. While the objective of protecting the public is certainly laudable, the proposal would strongly and adversely affect many attorneys whose practices do not involve traditional, client-facing relationships. Specifically, I fear that this proposal fails to account for (1) practitioners who work as independent contractors, providing legal services for other law firms and (2) small firm or solo practitioners who practice in areas where malpractice insurance is either scarcely available or prohibitively expensive.

My practice falls into both of these categories. I am a member of both the Washington and California bars and have been practicing as a defense-side patent litigator for all twelve years of my career. I spent the first eight of these years as an associate with two international law firms before establishing my own practice, wherein I work for other law firms on patent litigation matters on a contract basis. Given the discrete focus of my practice and that all of it is performed for other firms, it makes little sense for me carry malpractice insurance of my own. As you're certainly aware from the comments of other WSBA members on this topic, independent contractors are almost always covered by malpractice policies carried by such law firms. Carrying malpractice insurance makes even less sense for me, given that the entirety of my practice is in federal court and that the firms for which I perform work as a contractor, as well as their clients, are located outside of Washington State. Simply put, requiring attorneys in this situation to carry malpractice insurance would fail to serve the stated policy interest of protecting the Washington public and would be little more than a wasted expense.

Even more troubling is how the proposal fails to account for the cost and availability of malpractice insurance in certain practice areas. As you've likely heard from other intellectual property attorneys, it can be difficult—particularly as a solo practitioner or small firm—to find a carrier who will even *offer* malpractice insurance covering a practice that deals with patents. Even if a carrier can be found, the rates are exorbitant compared to any other type of professional liability insurance, making it prohibitively expensive for small practitioners. If mandatory malpractice insurance is required, I would ask the Task Force what an attorney in my position is to do: if I cannot find a carrier to cover the patent work I perform, am I to cease practicing this area of law in Washington? If I'm even able to find such a carrier, must I pay whatever sum they demand, even if patent litigation has a low level of malpractice claims and I have a spotless record personally?

I would urge the Task Force to carefully consider these issues when weighing a blanket policy of mandatory malpractice insurance. Many of us in non-traditional practices have carefully weighed the risks and benefits associated with the decision to not carry malpractice insurance—if it is available at all—and maintain successful, thriving practices. Should the WSBA mandate malpractice insurance, the continued existence of these nuanced and specialized practices in Washington State—including my own—would be threatened.

Best regards,

Brian Wikner
Attorney at Law

--



Brian Wikner

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+1 (206) 519-5600

wiknerplc.com

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From: [Matthew Dresden](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Feedback on Mandatory Malpractice Insurance
Date: Thursday, November 29, 2018 10:29:46 AM

Dear WSBA:

I am opposed to the requirement to impose mandatory malpractice insurance on all WSBA members. This is a solution in search of a problem; it would impose a burden on numerous WSBA members, create an increased administrative burden on the WSBA (with attendant costs), and would not clearly be an improvement over the current situation.

Best,

Matthew

Matthew Dresden - Attorney



600 Stewart Street, Suite 1200
Seattle, Washington 98101
tel: 206.224.5657 - fax: 206.224.5659

[bio](#) | [vCard](#) | [blog](#)

From: [James E. Macpherson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance Task Force - Comment
Date: Thursday, November 29, 2018 11:01:04 AM

To WSBA Mandatory Malpractice Insurance Task Force:

Please indicate in your records that I am opposed to mandatory malpractice insurance for WSBA members.

After careful consideration, I have changed my mind, and now believe that there are other ways to protect the consumer of legal services with fewer negative impacts overall. While I will not enumerate those options here, I regularly attend the meetings of the WSBA Board of Governors and will make my comments directly to the BOG, either in writing or at an open meeting. My opinions in this area are my own, and are not made as the BOG liaison for the Washington Defense Trial Lawyers.

I appreciate your efforts on behalf of the WSBA, and the public. Thank you for your service.

Sincerely,

James E. Macpherson, WSBA #8952

James E. Macpherson
Kopta & Macpherson
216 Grow Avenue NW
Bainbridge Island, WA 98110
206-780-4050
Jim@KoptaMacpherson.com

From: [Kyle Trethewey](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: I oppose Mandatory Malpractice Insurance
Date: Thursday, November 29, 2018 11:07:56 AM

Dear Malpractice Task Force,

I am a licensed attorney in the State of Washington, #45971.

I am opposed to requiring mandatory malpractice insurance for Washington attorneys.

I have not seen evidence of widespread harm that would require this change. In fact, only two states in the country require this type of mandatory insurance policy.

Imposing a mandatory malpractice scheme would reduce access to justice and would likely force older attorneys to retire and surrender their licenses.

There should be less obtrusive solutions than requiring every licensed attorney in the state to buy insurance. For instance, a victim compensation fund could be set up.

Victim compensation funds exist to help victims of crime, and are paid by taxes. A similar fund could be used by the State to compensate those who have a malpractice claim against an uninsured attorney that results in an unpaid final judgment due to that attorney's bankruptcy.

I absolutely support reasonable initiatives to protect the public. This proposal goes too far, and I oppose it.

Sincerely,

Kyle Trethewey

From: [Alan Bornstein](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Coverage
Date: Thursday, November 29, 2018 11:30:38 AM

Dear fellow members of the bar:

Thank you for the opportunity to offer comments about mandatory-malpractice coverage for Washington-licensed attorneys.

Mandatory-malpractice coverage has its pros and cons.

The pros include protection for clients of the covered attorney and the yearly, cautionary reminder to the attorney that he or she is subject to a malpractice claim whenever renewing malpractice-insurance coverage.

The cons include its costs, particularly for semi-active attorneys or out-of-state attorneys, and the lack of choice given to attorneys and knowledgeable clients.

Having weighed the pros and cons, I am opposed to the proposed coverage requirement. What follows is my reasoning for opposing the proposed requirement.

A prospective or existing client should be able to pick and choose whether she, he, or it wants to engage a lawyer with or without coverage. Does the client want the protection? Does the client want to pay for the protection, indirectly, by paying a higher rate for fees or greater percentage of a monetary result, or forgo that protection? Ultimately, this should be a call by the prospective or current client, and the lawyer factors those collective calls when making a decision to seek or not seek coverage every year.

How better to help the prospective or current client?

The bar website for the public currently allows a prospective or current client to determine if a lawyer has malpractice coverage. It may be a simpler and more pro-choice obligation for a lawyer to disclose, as a precondition of

engagement, a notice stating that she or he has coverage. An analogy would be a contractor's registration notice (RCW 18.27.114) that must be given to a prospective client. This notice then allows the prospective client to make an informed decision. Should a lawyer be covered at the time of engagement, there should be an obligation that the lawyer maintain coverage throughout the engagement in order to avoid hardship to the client.

Last, any proposal relating to malpractice coverage, including the present proposal, should be subject to a vote for approval, or at least an advisory vote, before enacting it.

Best regards,

Alan Bornstein, WSBA #14275

Alan Bornstein
Jameson Babbitt Stites & Lombard, PLLC
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From: [Bill Wood](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Paul S](#)
Subject: Opposed to Mandatory Prof. Liability Insurance
Date: Thursday, November 29, 2018 11:33:54 AM

1. If the justification for making such insurance mandatory is that plaintiff's lawyers say they would bring more lawsuits if they knew insurance coverage was available, then maybe the real problem is too many lawyers don't have sufficient assets to make a lawsuit worthwhile.
2. Or maybe the problem is that too many lawyers are either not competent in the subject matter of the case or matter they take on, are insufficiently diligent in pursuit of that case or matter, or simply fail to follow the practice rules promulgated by the bar/Sup. Ct. If so, you don't fix any of those problems by mandating insurance be carried. You instead do things like support competency by requiring minimum CLE hours, which the bar of course already does. Another idea to assure competency is by promulgating a program of specialty certification in certain practice areas deemed to be high-risk to the public.
3. Leave it up to the consumer to find out/ask whether insurance is carried and then make an informed decision.
4. If all lawyers have to be covered, then insurers can charge whatever they wish to charge for what they deem to be higher-risk practice areas, denying the market place to offer a balance of perceived risk/reasonable rates.
5. Older lawyers, part-time lawyers, lawyers with a tightly confined practice area, semi-retired lawyers like me, will all be faced with mandated insurance requirements at a cost far out of proportion to the risk to the public.
6. Costs will go up so therefor will the fees charged by lawyers. Some lawyers will just quit.
7. The WSBA has failed on at least two of its attempts to offer insurance to lawyers, the ALPS program has inferior coverage for 130% of the premium I paid Zurich, and the health insurance fiasco that offers nothing not already available in the public market and certainly nothing that is a particular benefit to a WSBA member.
8. Is the goal of the proponents of mandatory insurance protection of the public or reduction in the number of practicing lawyers?
9. I have yet to learn of the compelling need for mandatory insurance other than plaintiff's lawyers need defendants who are covered by insurance. WSBA should share with all members data on source and nature of all complaints received by consumers so that the true nature and extent of a problem may be understood by all. If we cannot specifically articulate what the problem is, then we have little hope of properly addressing it.
10. This proposal for mandatory insurance feels like a solution in search of a problem.

William M. Wood
Attorney at Law

William Morgan Wood PLLC
20818 44th Ave. W., #201
Lynnwood, WA 98036
206 240 7031
bwood@wmwoodpllc.com

From: [Inez "Ine" Petersen](#)
To: [Hugh D. Spitzer](#)
Cc: [Bill Pickett](#); [Paul S](#); [Kim Hunter](#); [Paula Littlewood](#); [Sarah Kolpacoff](#); [John Bachofner](#); [stan_bastian@waed.uscourts.gov](#); [dan@mcbdlaw.com](#); [christy@myllit.com](#); [Gretchen Gale](#); [PJ Grabicki](#); [pl.isaki@comcast.net](#); [Mark Johnson](#); [kara@appeal-law.com](#); [evanm@jdsalaw.com](#); [spierce@davisrothwell.com](#); [pinkhamb@seattleu.edu](#); [tstartzel@ks-lawyers.com](#); [anniey@atg.wa.gov](#); [Mandatory Malpractice Insurance Task Force](#)
Subject: Re: TASK FORCE MEETING TODAY: Where's the beef? It is still missing (need for statistics not anecdotes)
Date: Thursday, November 29, 2018 11:40:50 AM

Dear Prof. Spitzer:
I will be honest in my comments in red below.
Sincerely,
Inez

On Wed, Nov 28, 2018 at 7:55 PM Hugh D. Spitzer <spith@uw.edu> wrote:

Ine,

Thanks so much for listening in today. I'm sorry about the sound—hopefully it improved over the course of the meeting. Apparently there are still some bugs in the system.

[No test run? No customer usability testing? That should have been part of the Statement of Work when the WSBA contracted for that meeting software package.]

A couple of thoughts:

First, the Task Force has been receiving comments for at least six months, and every month we get copies of all the new comments and an updated report on how the comments break out. [But how many Task Force members actually read them? But you can't just read them, you have to seriously consider what attorneys are saying. The only reason you are listening to me now is that I am fighting for my right to continue to practice law and I'm "yelling" as loud as I can to keep what I sacrificed so much for.] The comments from WSBA members are particularly helpful, and have had a huge impact on the development of our recommendations. [I'm bothered by the fact that you have identified over half of the comments received as "Unclear" which I was told meant you could not ascertain if the writer was in favor or against mandatory malpractice insurance. It is hard to believe that attorneys are that inarticulate on such a vital subject.] In fact, Task Force members have paid a lot of attention to YOUR comments, and we are trying to address many of the concerns and critiques you have raised. Certainly not all of them, because on some issues the Task Force consensus is

going in another direction. [By the content of yesterday's Task Force meeting, I would conclude that the Task Force "is going in another direction" on all my issues.] But everyone is taking your letters and emails seriously. [I appreciate your considering my comments, but as I just indicated, they appear to have made no difference really. Your team is forging ahead as if they have the necessary justification to forge ahead when they do not. And it all goes back to "Where's the beef?" Three years have been wasted in my view--time that could have been used to gather real data to know for sure whether unpaid legal malpractice judgments OR the "would be" unpaid legal malpractice judgments constitute a problem so significant that every active attorney must have malpractice insurance or work for a government employer who is self-ensured. There is "no jury of our peers" on that task force. The Task Force received a letter from Attorney Patricia Michl elaborating on how biased members were. I wonder if that prompted you to change your status in the LEGAL DIRECTORY to "solo" so there would be one solo member on the Task Force. But you are not a solo in the true sense of word--you did not form a PLLC in order to practice law and pay your own insurance.]

We have to end the formal comment period on the proposals we're developing on December 1 so that we can fold the comment content and totals into the final report. That doesn't mean we won't stop listening. As additional comments come in, we'll let people know that although the formal period for comments have ended, everyone on the Task Force will continue to get copies. Obviously, once our final report goes to the Board of Governors, I know I can count on you and a number of others to actively voice your concerns and ideas. Bottom line: your comments DO mean squat.

Next, we're not cavalier about insurance costs. [Maybe there is another adjective to describe the comments I head today, but the word captured the tone adequately in my view. Are these meetings recorded?] While the VAST majority of currently-uninsured lawyers will be able to obtain insurance at rates they will likely see as affordable, [You don't know whether the VAST majority will view mandatory insurance as affordable because you have done no surveys of the uninsured attorneys or insurers--no surveys at all! ALPS appears to be the Task Force's best buddy; and that company has another initiative than helping a few alleged victims of unpaid legal malpractice judgments.] I'm certain that people in some specialties, perhaps patent law for example, would have to pay significant amounts. [And why do you think sacrificing them is OK? This is what bothers me about the leading voices on the Task Force. I get the impression that you are so enthralled by the high and mighty goal of protecting the alleged victims of unpaid legal malpractice

judgments that you have forgotten "mandatory insurance" is connected at the hip to "access to justice." Protecting "access to justice" has a wider application for protecting the Public than protecting the alleged few victims of legal malpractice who didn't get an insurance settlement. If "access to justice" is going to suffer in a big way, then it is time to step back and take an UNBIASED look at the alternatives which will have the least impact to "access to justice," and, of course, that is the alternative I have been promoting which the Task Force dismissed without any real study.]

We have added hard data on the problem to the report draft—[Hard data may not be the same as relevant data.] **and that's in part due to your comments. Some types of data would be quite expensive to develop, such as the number of clients who have experienced potential malpractice by a lawyer but who haven't filed claims. [You don't know that and you have not seriously considered what I wrote in my letter of Nov 25, 2018.] That's a type of negative data that is not within the WSBA's budget to obtain. \$20,000 is real money, [You don't know this either; I have offered to help gather statistics but have been dead-ended by Paula's staff and you yourself remained silent when I offered to help the Task Force gather "the meat." But \$20,000 is a drop in the bucket to the costs you would impose on attorneys; and you don't need to spend any money actually for us to do email surveys. But even if it did cost \$20,000 (and I don't know where you got that figure), that money should be available from the huge budget increase obtained by WSBA leaders who trampled on the Bylaws the year before last.] when you're talking about license fee funds. Boeing probably has the budget to develop very useful data that smaller entities can't afford, and that's completely understandable. [How much money has Paula Littlewood and her presentation partner spent travelling over the country promoting the LLLT and LPO programs? That is unnecessary travel and represents money that could have been diverted to something of a higher priority. A survey sent via email to uninsured attorneys costs nothing. I volunteered to help with this. Attorneys would realize that a couple of minutes to respond is in their best interest. Today someone on the Task Force suggested getting some anecdotal stories. If you are going to foist mandatory insurance on us, we deserve something more substantial than anecdotes.]**

Finally, I don't think we're throwing anyone under the bus. Obviously, our greatest concern is about protecting clients. [Your sentence sums up the problem: "Obviously, our greatest concern is about protecting clients." What you are really saying: "Obviously our greatest concern is the victims of unpaid legal

malpractice who don't get an insurance settlement." You are focused on a few "victims" when you should be focused on the whole Public as mandatory insurance relates to "access to justice." There would be many more "victims" who could not find an attorney and many attorneys also hurt in the process. Regarding attorneys who could not get insurance for their practice in a mandatory insurance world, the Task Force answer was: change the focus of the law practice to one where insurance is easy to obtain.] **But with that as the starting point, we have spent more attention on a reasonable approach to solos and small firm lawyers than anyone else. [Did you send a survey to the solos and small firms? No. So how do you know what is reasonable for them?] And, as far as semi-retired lawyers are concerned, you'll see in our final recommendations several important accommodations to that group, including our approach to pro bono activities. [Was that the pro bono approach the one where the retired and semi-retired could perform legal services for family members only? or the one where they performed ONLY pro bono. Either approach takes away the pro bono attorney's chance at making a little income to pay the necessary expenses of doing pro bono work; performing pro bono legal services is not free to the lawyer. And it would take away my right to practice law too. I do almost 100% pro bono and make enough to pay the necessary expenses like business license, stamps, paper, ink, etc. I draw upon my retirement income to pay for CLEs and malpractice insurance. All I sacrificed for will be lost because of the Task Force's high and mighty belief that the few victims of unpaid legal malpractice judgments (or "would be" judgments) can only be served by making insurance mandatory. You have no idea what the impact to "access to justice" will be to the Public or to our members.]**

I know that you feel super-strongly about this issue. While the Task Force is going in a different direction than you would like, please be assured that we are taking your thoughts, and those of many others, very seriously. [It is seriously time for the Task Force to take a serious look at the Public as a whole and the attorneys as a whole, instead of having a microscopic lens focusing on only a few members of the Public. In something as important and far reaching as mandatory insurance, attorneys must be given the same priority as the Public. That is the only way "access to justice" is preserved for the greatest number of the Public.]

Hugh

From: Inez "Ine" Petersen <inezpetersenjd@gmail.com>

Sent: Wednesday, November 28, 2018 4:25 PM

To: Hugh D. Spitzer <spith@uw.edu>; John Bachofner <john.bachofner@jordanramis.com>; stan_bastian@waed.uscourts.gov; dan@mcbdlaw.com; christy@myllt.com; Gretchen Gale <gretchen@halehana.com>; PJ Grabicki <pjg@randalldanskin.com>; pl.isaki@comcast.net; Mark Johnson <mark@johnsonflora.com>; [REDACTED] <kara@appeal-law.com>; evanm@jdsalaw.com; spierce@davisrothwell.com; pinkhamb@seattleu.edu; tstartzel@ks-lawyers.com; anniey@atg.wa.gov; insurancetaskforce@wsba.org

Cc: Bill Pickett <bill@wdpickett-law.com>; Paul S <pswegle@gmail.com>; Kim Hunter <kim@khunterlaw.com>; Paula Littlewood <paulal@wsba.org>; Sarahk@wsba.org

Subject: TASK FORCE MEETING TODAY: Where's the beef? It is still missing (need for statistics not anecdotes)

Dear Task Force members:

I listened to this entire meeting today on my cell, and my first thought was that NBI uses a dependable and simple to use software package for its CLEs <https://www.nbi-sems.com/> . But the WSBA can't use something similar for its meetings.

Our comments mean squat?

I couldn't believe what I heard at this meeting. First, why ask for attorney comments by Dec 1st? Your comments today indicate you are dedicated to making insurance mandatory; and nothing we attorneys submit to you will apparently change that. At the last of meeting I think I heard the answer. One of you stated that you'd make everything public so we couldn't say what you did snuck up on us. So it is all about the appearance of fairness.

Second, if all Task Force members were in attendance

today, they weren't participating. I heard maybe 2-3 persons carrying the meeting.

About attorneys who won't be able to get insurance

Other attorneys should hear the cavalier comments today about lawyers who won't be able to get insurance when it becomes mandatory (the ones your alleged free market will not cover). I heard one person suggest that the attorney just change the focus of his practice. Or the State Supreme Court could change the rule? And what is the attorney to do while the bureaucratic wheels turn (and the employees his legal services support)? This area requires facts and data to know the extent of the problem NOW before you go making a final recommendation to the Governors.

Statistics are not impossible to get

I worked in computer programming for almost 30 years at Boeing in the area of statistics. I was a certified programmer and a lead analyst for most of that time; and I can't get to first base with Paula Littlewood and Sarah Kolpacoff on my Public Information Request so that I can gather statistics I believe you need.

You do not have to pay \$20,000 to get the statistics you need. But you do need time because even today you talked yourselves out of gathering the very facts and data you need regarding (1) the occurrences of legal mal judgments that are uncollectable due to lawyers who will not pay and (2) legal mal claims that

are never filed in the first place due to lawyers who have no insurance (and I suppose no other assets either which is hard to believe). This is the "meat" to that old question, "Where's the meat?"

Between the Work Group and your task force, 3 years have passed; and today you are talking about gathering anecdotal stories to bolster your position when that 3 years could have been used to gather relevant data as described in (1) and (2) above. And it could still be gathered if you would reconsider your final report: Adopt "the least restrictive means" I have suggested WHILE YOU GATHER STATISTICS.

You have disregarded impacts in these areas

Solos and small firms (2-10 lawyers), based on 2/9/18 demographics, **compose more than a third of the members.** These are the attorneys on one end of the spectrum who will be hurt by increased cost of insurance once it becomes mandatory. You need to know how they will be affected from their mouths.

On the other end of the spectrum are **semi and semi-retired and senior members.** Their situation has been raised in multiple responses sent to you. You need to know how these attorneys will be affected too. You proposed today that the semi retired and retired could do legal work for their family members ONLY to escape mandatory insurance.

You must not throw these two groups "under the bus" in your attempt to protect the public. High ideals are or should be subject to business sense.

Forcing attorneys out of business under the guise of protecting the public from unpaid malpractice judgments, when we don't know the extent of those judgments, **makes no business sense.** If this is "a sliver of a sliver" of cases, then the "least restrictive means" should prevail, not the most tyrannical answer-mandatory insurance.

If all meetings went as today's, then what I observed is a couple people lead and the rest do basically nothing but capitulate to the couple who lead. For all I could tell, a majority of the rest might not even have been in attendance today.

Please slow down and re-examine the path you've taken and consider how important the missing statistics are to that path. Again, I say, "Where's the beef?"

Respectfully,

Inez Petersen, WSBA #46213

From: [Richard L. Johnson](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments
Date: Thursday, November 29, 2018 11:50:28 AM

Name of Member: Richard Johnson
Theme: Barrier to Entry/Manipulates Market/Cost/Inefficient
Position: In Opposition

Requiring mandatory malpractice insurance:

- Creates a barrier to entry for those who may offer valuable services to the public who, for myriad reasons, either do not need malpractice insurance or are not insurable.
- Causes an artificial level of demand and encourages insurers to limit supply, which will substantially increase the cost of insurance.
- Is an inefficient means to the WSBA goal of protecting the public.
 - Educating the public on factors to consider when hiring an attorney will better serve the public and attorneys.
 - Educating attorneys on the benefits of malpractice insurance to encourage insurance will better serve the public and attorneys.
 - Creating a safety net for the public without any education does not resolve the malpractice problem, it simply results in higher premiums, more claims, and more insurance payouts.

Thanks,

Rich

Richard L. Johnson | Attorney | [LeSourd & Patten, P.S.](#)
600 University Street, Ste. 2401 | Seattle, Washington 98101
Desk: 206-357-5084 | Mobile: [REDACTED]
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[Upload Documents](#) of any size via ShareFile

From: [Kathy Weber](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Task Force
Date: Thursday, November 29, 2018 11:51:58 AM

I am writing to express my opposition to the proposed mandatory malpractice insurance requirement for licensed attorneys in Washington State.

I have been a licensed attorney in Washington state since June 1979. My area of emphasis during most of these almost 40 past years has been immigration law, representing people of limited means. I presently carry malpractice insurance, which costs me about \$2,500.00 a year.

Next year I am planning to retire and volunteer at various free immigration clinics. I want to keep being an active member of the WSBA and intend to keep paying my bar dues. However, the cost of maintaining mandatory malpractice insurance when I no longer have an office or active cases will be a high expense for me.

I respectfully ask the Task Force to reconsider the mandatory malpractice insurance proposal.

Kathleen M. Weber
Attorney at Law
WSBA #9009
9221 Roosevelt Way NE, #B
Seattle, WA 98115
(206) 783-7361
(206) 783-5261 - fax

From: weissinger@rockisland.com
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory malpractice insurance comments
Date: Thursday, November 29, 2018 1:40:18 PM

I'm retired but occasionally assist those in need with free advice, and I'm also able to take on small matters.

I also am doing work like Personal Representative and Trustee for which I need not be a lawyer, but I'm willing to pay the dues to the WSBA because it keeps me more well-rounded and makes me appear more qualified.

If you require that I carry malpractice insurance I will certainly cease being a member of WSBA and will no longer pay WSBA dues.

Bill

William Weissinger
Friday Harbor, WA
360-378-5674

From: [Hartley Paul](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: opposition to mandatory malpractice insurance
Date: Thursday, November 29, 2018 1:54:59 PM

This submission ADAMANTLY OPPOSES IMPOSITION OF MANDATORY MALPRACTICE INSURANCE ON WSBA MEMBERS.

This submission especially opposes mandatory malpractice insurance for WSBA members like me. I joined the WSBA in 1963. I have not billed any client for attorney fees since 2002 other than as in-house counsel employee January 2003 through May 2017.

Please understand:

1. The only reason an attorney needs to be a member of the WSBA is because the law mandates that no attorney can make a living by practicing law in the State of Washington unless the attorney passes the Bar Exam and joins the WSBA.
2. That's it. Nothing more is mandated by law.
3. Without statutory or judicial mandate, the WSBA has increasingly been adding and adding and adding more and more and more activities cloaked as "services" or "benefits to the public": (i) that are not mandated by law, (ii) that constitute takings of WSBA members' private resources for public charity, and (iii) that are paid for by each WSBA member without the member's personal consent.
4. For years the WSBA has increasingly been adding and adding and adding more and more expense burdens for activities that have no statutory or judicial mandate, and that are imposed on each WSBA member without the member's personal consent.
5. No statutory or judicial mandate requires malpractice insurance be carried by WSBA members.
6. Mandatory malpractice insurance would no doubt increase each now uninsured WSBA member's out of pocket expenses by the largest increment of all prior activities and expenses that have no statutory or judicial mandate, and that are imposed on each WSBA member without the member's personal consent.

In fairness and equity for all WSBA members, Governors of the WSBA who wish to pursue charitable purposes or to provide benefits to the public would be well advised to pursue those purposes personally or through a charitable organization. The WSBA was not statutorily or judicially created, and has no legal duty, to be a charity or to provide any public benefit. The WSBA has never been statutorily or judicially mandated, and has no legal duty, to be a charity or to provide any public benefit.

Hartley Paul
WSBA # 2569

From: [Rea](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory malpractice insurance
Date: Thursday, November 29, 2018 1:56:19 PM

I oppose mandatory malpractice insurance. This will ONLY raise attorneys fees and reduce access to justice for those in need either through being priced out of the market, or by reducing pro bono work attorneys can do because they now have mandatory increased costs.

Rea

32080

Rea L. Culwell
Attorney at Law



From: [Tom McCully](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance
Date: Thursday, November 29, 2018 2:11:22 PM

To the Mandatory Malpractice Insurance Task Force:

Please consider mine a strong voice against mandatory malpractice insurance as a condition of licensing.

I have been a member of the WSBA since 1980; I am licensed in no other state. I practiced only briefly, so I can appreciate the need for practicing lawyers to have malpractice insurance. The balance of my career was spent in banking and academia. For the past 10 years I have been a staff member on the finance team at a small not-for-profit college in Illinois. Adding the cost of completely unnecessary malpractice insurance on top of my bar dues would be a personal hardship financially, and a waste of money that would only enrich the insurer while benefitting no one.

It is my license that allows me to say, "I am a lawyer." There is nothing symbolic about that – it is a fact. If you choose to require malpractice insurance across the board, I will be forced to consider inactive status or voluntary resignation. I suspect there will be many of us in that camp.

Please make a reasoned decision, keeping in mind the many bar members like me who pose no risk of committing malpractice.

Thank you,

Tom McCully
WSBA 11429

Wheaton College Investments
501 College Avenue, Wheaton, IL 60187
tom.mccully@wheaton.edu
630-752-5538

From: [Penelope Rundle](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance
Date: Thursday, November 29, 2018 2:37:56 PM

November 28, 2018

Dear Sirs:

Any member certifying through Lawyer License Renewal that he or she is not engaged in the practice of law should not be required to purchase professional liability insurance.

Sincerely,
Penelope B. Rundle
License # 22328

Sent from my iPad

From: [Patricia Paul](#)
To: [Michael Cherry](#); [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments re mandatory malpractice insurance
Date: Thursday, November 29, 2018 2:59:39 PM

Dear WSBA,

Thank you for this opportunity to provide comments. I oppose the mandatory malpractice insurance.

I am a member of WSBA. I am a tribal judge, an appellate judge for a tribe in Oregon. Their tribal code requires I be a member in good standing of a state bar association that has reciprocity with the Oregon bar.

In my work as a tribal judge, tribes are sovereign and I work within their jurisdiction.

I have often wished for a WSBA membership status for tribal judges. There is a category for state judges.

Thank you for listening.

Patricia Paul

--

Patricia Paul, Esq.
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From: [W. David Mellen](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Member Feedback Regarding Mandatory Malpractice Insurance in Washington
Date: Thursday, November 29, 2018 3:06:52 PM

Greetings:

I would like to thank the Mandatory Malpractice Insurance Task Force for its work and, as an attorney who is currently (and for more than 20 years has been) actively licensed in Washington State, provide the following feedback regarding a proposed malpractice insurance requirement:

1. I am writing in opposition to a requirement for malpractice insurance. I do not believe that there is sufficient cause for such a requirement. Further, such a requirement will likely cause more harm than benefit to Washington State licensed attorneys and their clients. I am concerned that the requirement:

- imposes unnecessary costs that will be indirectly be passed to clients,
- solves an unproven need,
- lacks a cost-benefit analysis that justifies the requirement, and
- creates a strong likelihood of negative, unintended consequences, some of which may be extremely harmful to attorneys and the public.

2. If such a requirement is adopted, failure to incorporate appropriate exceptions and exemptions will result in significant hardship to many attorneys and the clients that they otherwise could have helped, but for the lack of appropriate exceptions/exemptions. Again, this will result in much more harm than good.

3. If such a requirement is adopted, a partial list of exceptions or exemptions needed (one of which I do not believe was included in the last Task Force Report) include:

- (a) pro bono services (defined very broadly to include *any* legal services for which no legal service fees are charged);
- (b) unemployed attorneys and contract attorneys who are between paying engagements;
- (c) in-house and government attorneys; and
- (d) retired and semi-retired attorneys.

My Background:

I have been licensed by and in good standing with the WSBA for more than 20 years. I have never been subject to or involved in any disciplinary action of any type or dispute or claim that was or had the potential of being subject to any type of malpractice insurance claim or coverage (relating to me or any entity with which I was associated). I have had the experience of representing clients who were the victim of very clear and material legal malpractice (by their former attorney) -- while insurance became involved in one instance, it actually caused as many problems as it eventually, after a prolonged period, solved. I have a fairly broad background, having served as Vice President & General Counsel since 2008 and practiced in-house most of my career. I cut my teeth in-house and in a small commercial litigation firm.

Further, during my career, I have also experienced periods of unemployment due to layoffs. Had insurance been a condition to licensing while I was unemployed, I would have been forced to abandon my decades long career as a lawyer -- paying the annual license fee is already a hardship when unemployed, malpractice insurance premiums while unemployed are not feasible for most/many/me. (Note to the uninitiated: at least in the in-house job market, if you are not actively licensed, then you will not be selected to interview. Period. To state the obvious, no interviews means no job and no job prospects. Thus, for many attorneys, loss of a job would mean the complete loss of a career.)

Moreover, in-house counsel who are going through a period without income would find a malpractice insurance requirement doubly punitive, since (a) while unemployed, malpractice insurance protects no one and imposes a punitive and unwarranted cost, and (b) in-house counsel should be exempted from such requirements, in any case. However, if one is unemployed, how would an in-house exemption apply?

As you know, many of us provide pro bono services. During a period of unemployment, attorneys often have more time available to help those in need. Further, continuing to practice (pro bono) allows the attorney to keep his/her skills sharp, stay connected, and stay up-to-date -- which lessens the likelihood of malpractice in the first place. However, as noted above, when unemployed, paying for malpractice insurance is burdensome for all and impossible for many. As a result, our pro bono clients will have to find other help or, often, simply go without. Of course, if malpractice insurance is a requirement for the unemployed lawyer, many of us will have been forced to relinquish our licenses anyway -- so the public loses a valuable resource and the attorney loses a career. Even the insurance companies lose a potential future client and the Bar loses a member and membership fees.

Requiring malpractice insurance will, for many talented, conscientious, ethical attorneys (who are otherwise in good standing), mean that they are always a hair's breath away from losing their license and their entire legal career, not because of any breach or violation of any law or rule, not because of any negligence or misconduct, but simply because they may lose their job or contract. For those of you young and/or fortunate enough to have not experienced the precariousness of employment yet -- perhaps you missed the effects of the crash of 2001 or 2007, please speak with someone who has to gain a broader perspective. Requiring malpractice insurance of the unemployed (or of those between contracts/engagements) would be a massive mistake.

I believe that the Task Force has already recommended an exemption for in-house counsel and for pro bono services, so I will not belabor those points. If either exception becomes tenuous or narrowed at any point (e.g., if pro bono services must be provided through an organization or group), I would urge the Task Force to recirculate a request for feedback on the matter.

Lastly, in response to the attorney(s) who suggested that the WSBA hand this matter to the State legislature, presumably because the legislature will not be daunted by the costs of insurance -- that is a prime reason not to give this matter to the State legislature. The legislature, as a group, does not know or understand the issues involved. They are very likely to make a decision that ignores or fails to account for many key factors (this is experience talking), including the cost of premiums. It is not possible to competently evaluate this issue without considering a cost-benefit analysis as part of the process. Yet, that is exactly the sort of approach they are likely to take. While I strongly urge the Task Force to reconsider their recommendation in favor of the insurance requirement, I would desperately urge the Task

Force and Governors of the WSBA not to punt this matter to the legislature.

Thank you for your time and consideration.

Sincerely,

W. Mellen



From: [Dawn Vyvyan](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Dawn Vyvyan](#)
Subject: Mandatory Malpractice Insurance
Date: Thursday, November 29, 2018 3:46:19 PM

Dear Task Force,

Short and simple, I am a government lobbyist. Will there be an exception for me? My clients are benefited by my work because I am a lawyer and am proud to be a member of the Bar. If my work is not accomplished for them, there are numerous reasons why, and not that I committed malpractice.

I object to being required to carry this insurance for my practice because as a “government” lobbyist/lawyer I am working with many lobbyists who are not licensed, nor are a student of the law, nor probably understand it as well as I do. Yet, they are helping to make the law.

Plus, who are you trying to protect here? Your members or the public who hire us? Those who take the risk of not carrying insurance, practice at their own peril. It is not up to the Bar to decide this risk.

Dawn

Dawn P. Vyvyan
Vyvyan Law Office

117 E. Louisa, Suite 310 Seattle, WA 98102 206-628-3014

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From: [Darvas, Andrea](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice insurance
Date: Thursday, November 29, 2018 3:51:09 PM

Dear Task Force Members:

While in general I believe that it's a good idea for all practicing lawyers to have malpractice insurance, I have some significant concerns about the proposed rules, unless the WSBA is prepared to offer coverage to its members at a nominal cost under certain circumstances.

I spent a little over 22 years in the private practice of law, and made sure that I always was covered by malpractice insurance. Although I never had a claim or a bar complaint, the insurance was relatively expensive.

I have now served as a Superior Court judge for 14 years. have no near-term plans to retire. However, I recognize that one day, whether it be 6 years, or 8 years, or 10 years from now, I WILL retire. It was always my intention to retain my license to practice law on retirement, even though I have no intention of returning to the regular practice of law. However, I want to maintain my license so that I can take on occasional pro bono cases, offer advice to low-income people at legal aid clinics, etc. I am perfectly prepared to pay dues to the WSBA every year to enable me to do this when I retire from the bench. However, if I am required to purchase malpractice insurance that will cost several thousand dollars a year (my husband, who is a sole practitioner, pays around \$4,000 a year for malpractice insurance, even though he has never had a claim made against him), I will likely just allow my WSBA membership to lapse. That would be shame – both for me personally, and for people I would like to help with my legal knowledge and experience when I am no longer serving as a judge.

If the Supreme Court and the WSBA decide that mandatory malpractice insurance should be required, I very much hope that an exception is made for experienced lawyers and judges who wish to retire, but who still wish to be able to practice law on a limited basis during their retirement.

Respectfully,

Judge Andrea Darvas
King County Superior Court
Maleng Regional Justice Center
401 Fourth Avenue North
Kent, WA 98032
Phone: (206) 477-1465

From: [Camille Adair](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance comment
Date: Thursday, November 29, 2018 4:30:59 PM

I strongly oppose the mandatory malpractice insurance requirement. I am currently employed by Thrivent Financial as a Financial Associate (statutory employee) and provide financial advice with the appropriate licenses. I have maintained my Active License although I do not practice (I am prohibited from practicing law due to my contract with Thrivent). Prior to this career, I worked as a Regulatory Attorney for Quorum Review IRB. I pay my bar dues and attend CLEs in order to maintain my active status as I am proud to be an active member of our Bar and worked very hard to obtain my license.

However, if you make it mandatory for me to obtain unnecessary malpractice insurance I will have to go to an inactive membership. I think that is ridiculous and discriminatory against attorneys who are not actively practicing law. We worked extremely hard to graduate from law school and pass the bar exam. We should be able to retain our status in case we reenter the practice of law in the future. Thank you for your consideration of these comments.

Best regards,
Camille Adair-Hatch
Bar #44432

Sent from my iPhone

From: [Conrad Reynoldson](#)
To: [Mandatory Malpractice Insurance Task Force](#); bill@wdpickett-law.com; rajeev@northwhatcomlaw.com; Dan@mcbdlaw.com; mikech@lexquiro.com; carla@higginsonbeyer.com; kyle.s@bullivant.com; danclarkbog@yahoo.com; pjg@randalldanskin.com; BHMTollefson@outlook.com; pwsegle@gmail.com; jkang@smithfreed.com; kim@khunterlaw.com; meservebog@yahoo.com; athan.papailiou@pacificalawgroup.com; rknight@smithalling.com; Alec Stephens
Subject: Mandatory malpractice insurance attorney comment
Date: Thursday, November 29, 2018 4:39:50 PM
Attachments: [11.29.18 Reynoldson Malpractice Insurance Letter.pdf](#)

Dear Governors and Task Force Members,
Please accept my attached comments for the proposed mandate on malpractice insurance.
Thank you for your consideration of these comments in your deliberation process.
Best,

--

Conrad Reynoldson, Attorney at Law
Washington Civil & Disability Advocate
www.wacda.com
3513 NE 45th Street, Suite G
Seattle, WA 98105
Office (206) 855-3134



WASHINGTON CIVIL & DISABILITY ADVOCATE
3513 NE 45TH STREET
SUITE G
SEATTLE, WASHINGTON 98105

November 29th, 2018

Dear Governors and Task Force Members,

My name is Conrad Reynoldson, I am an attorney practicing in the State of Washington and the founder of Washington Civil & Disability Advocate (WACDA). I am writing you today to express my deep opposition to the practice of mandating malpractice insurance for all Washington State attorneys. WACDA, my organization, is a non-profit that offers invaluable legal representation at no charge so that our clients can assert their civil rights under the Americans with Disabilities Act. Due to my organization's non-profit status, we would be exempt from the proposed mandate. My concern, however, is for not myself, but for attorneys working for the rights of people with disabilities and other marginalized groups who are in small practices or who are solo practitioners.

These attorneys make up a large portion of this practice area and forcing this undue burden on them would be a great disadvantage to the clients we all work to defend. If this malpractice insurance mandate is instituted it will hinder many civil rights attorneys' ability to keep up their service levels at an affordable rate, or perhaps even remain in practice at all. Many people with disabilities who face accessibility and discrimination issues will be forced go without a vigorous advocate in the justice system. This lack of legal remedy will threaten to impede their quality of life, their ability to enjoy public spaces, and their access to their own homes and offices. Additionally, the work of these attorneys provides the great social benefit of not only seeking justice for their clients, but also mandating changes in treatment protocols and physical conditions that works to benefit all people with disabilities.

Though the intention of mandating insurance is to ensure that clients wronged by their counsel can adequately collect on their claims, the everyday cost of such a mandate would be a greater injustice. While to some this additional cost may be a mere annoyance, to attorneys that work in small and specialized fields that provide a social good without the shield of non-profit status, it could be a serious detriment. I would also be remiss if I also did not mention that such an effect would be compounded on many minority attorneys due to a historic imbalance of access to financial resources. This disparate impact would spread to all of those without a traditional stronghold on wealth and power. It is because of these listed reasons that I respectfully request that you do not implement any such mandate on malpractice insurance in the State of Washington at this time.

Sincerely,

DocuSigned by:

56661F5226DA4FF... 11/29/2018

Conrad Reynoldson, JD

From: [Jackie Brown](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory malpractice insurance
Date: Thursday, November 29, 2018 4:48:35 PM

Dear Task Force:

I am writing in opposition to mandatory malpractice insurance. I have been a non-practicing attorney for the last 16 years, since becoming a stay-at-home dad. During that time my license status has been both active and inactive (currently inactive). I am interested in re-entering the workforce as a business attorney at some point in the future, when my children have graduated high school, but an additional requirement to maintain this insurance will create a burden that may make it too costly for me to restart my career. My history includes practice in the corporate finance department of a large Seattle law firm as well as serving as in-house and general counsel for two software companies; I have also spent much time as a community volunteer supporting several nonprofits in my community. I believe I am still capable of adding value as a lawyer in this community; it would be unfortunate if this new requirement makes that impractical.

Sincerely,
Jackie Brown

From: [Patricia Simon](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Thursday, November 29, 2018 6:04:14 PM

I am writing to say that I am very much against requiring members to buy malpractice insurance as a condition of their licensing to practice law. I was admitted at 54 years old and have been unable in all these years to secure a well-paying attorney position. Right now, at 69 years old, I keep paying outlandish licensing fees-\$479 this year-just in order to be able to volunteer, which I love, and to earn \$25/hour or less working temp jobs where my being actively licensed is required.

I think licensing fees should be means tested so that people like me, who can't get a decent paying legal position, are not priced out of practice. Requiring mandatory malpractice insurance would just perhaps push me over the edge. My ability to practice should not be premised on how much I can pay.

I know of a great many people similarly situated. We are not being hired for reasons of age, gender, or both, and we depend on our licenses to continue to make our lesser livings and to volunteer. It is wrong to deny us that opportunity.

Please do not make malpractice insurance mandatory.

Thank you

Patricia A. Simon
WSBA # 35145

From: [Steve G](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Insurance
Date: Thursday, November 29, 2018 8:15:48 PM

I strongly object to mandatory insurance. There is insufficient evidence to show that the presence or absence of insurance has any benefit to clients. And, there is no evidence to support that the presence of insurance will have any effect on the behaviour of attorneys.

--

Steve Gross WSBA 24658

From: [Jenny Rydberg](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: WSBA malpractice insurance proposal
Date: Friday, November 30, 2018 7:09:30 AM

Greetings,

The malpractice insurance mandate is a solution in search of a problem. It invalidates the active license of an unemployed attorney or mandates a high cost to be borne by the attorney. My malpractice insurance premium now is about \$4000/year and I've never had a claim filed against me or been the subject of a disciplinary action. The premium is due to the area of law in which I practice.

When I soon retire, why would I pay such a premium to keep my license so that I could continue to do the work I love and do very well, pro bono or for pay? If access to justice is valued by WSBA, don't impose licensing costs that motivate good, experienced attorneys to walk away from the practice of law. If I was a young attorney just starting my own practice, where is the money to cover the cost of this insurance to come from? Has WSBA policy now changed to run solo and small firms out of business?

I've turned 3 attorneys into the bar for disciplinary issues since acquiring my license years ago: two different clients came to me after their prior attorneys each embezzled over \$300,000 from my clients; a third client was harmed when opposing counsel obtained my client's signature on an agreed order ending a temporary restraining order and entered it, both without my knowledge while I was her attorney of record. While WSBA eventually disbarred the two embezzlers and admonished the third attorney, processes that took 1-3 years, malpractice insurance did nothing to help these clients. Similarly, the Client Protection Fund has also been useless for my clients.

I've not seen any evidence that a problem exists for which mandatory insurance is an effective solution. Until such compelling evidence is provided clearly to the WSBA membership, do NOT mandate malpractice insurance.

With kindest regards,

Jenny Rydberg

From: [Tom Brotherton](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory malpractice Insurance.
Date: Friday, November 30, 2018 7:21:44 AM

To WSBA

I live in a rural county with few jobs, no high tech at all. 1/4 of the school children live in poverty and the greatest sources of income are pensions and social security received by retired people who enjoy a rural lifestyle. I am a retired prosecutor and do a very small practice helping indigent neighbors. I earn less than \$5,000 a year from legal work. I will not be able to continue legal work if required to purchase malpractice insurance.

My legal work consists of representing people in District Court for misdemeanors and dealing with government agencies over social security and veterans benefits.

Not all attorneys deal with large sums or serious crimes.

Sincerely,
Thomas Brotherton, WSBA # 37624

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Everything is too long a list to work with.
No one knows everything about anything.
No one knows something about everything.
Everyone knows something about some things.
Anyone could be the world's foremost expert on something.
Never think that something you don't know must not be true or important.

From: [Diane J. Kiepe](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory insurance
Date: Friday, November 30, 2018 7:32:07 AM

I was shocked to learn (by way of implication from the e-mail requesting comments) that malpractice insurance is not required. I would presume that most, if not all, of the public at large would assume every lawyer is covered. If malpractice coverage is not a mandate at this time, it should be.

Diane J. Kiepe

Diane J. Kiepe, Attorney at Law
Douglas • Eden
717 W. Sprague Ave., Suite 1500
Spokane, WA 99201
Phone: (509) 455-5300
Fax: (509) 455-5348
djkiepe@depdslaw.com

From: [Douglas W. Scott](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory malpractice
Date: Friday, November 30, 2018 7:59:00 AM

I have had malpractice ins for 30 plus years. I am against it becoming mandatory. This should be something that the entire Bar votes on.

Douglas W. Scott
Rainier Legal Advocates, LLC
465 Rainier Boulevard North, Suite C
Issaquah, Washington, 98027
V. 425.392.8550
F. 425-392-2829
www.rainieradvocates.com f/k/a
www.davisscottlaw.com

From: joseph@moore.law
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Friday, November 30, 2018 9:16:51 AM

Hello,

I am emailing to urge the WSBA to adopt rules requiring all attorneys carry malpractice insurance in Washington. It is inexplicable why we would require drivers to carry minimum insurance, but don't require lawyers (who have the capacity to do great harm to their clients) to do the same.

One anecdote—a couple years ago I was referred a hispanic (non-English speaking) woman who could not get ahold of her attorney. I learned that this person had hired an English-only speaking attorney to handle a wrongful death claim arising from the tragic death of her daughter. She was unsure of whether the claim had been made, settled, or what steps to take next—and her lawyer would not return her calls (or calls from her friends, or another lawyer who tried to help her). She had tried for over a year to reach the lawyer.

After I sent multiple letters over a period of months, with the final one threatening to contact the bar association, I received the client's file back from her former attorney. It was almost immediately apparent why the lawyer was not responding to me: he had settled the claims without his client's consent and had misused a large portion of the funds.

Can you guess whether the lawyer had malpractice insurance? He did not. The bar is still investigating—and it appears that this lawyer who I caught trying to steal (in my opinion) from a vulnerable person facing one of the worst tragedies imaginable will face, at worst, a suspended license. That is not justice. But, is a lawsuit against a fly-by-night lawyer, who has no insurance, preying off of a vulnerable population economically feasible? Not in my view—which means my client does not receive justice for this betrayal.

Lawyers that resist malpractice insurance requirements, in my view, are resisting accountability and inhibiting justice for wronged clients. Mandatory insurance should be part of the cost of practicing law in Washington.

Joe

Joseph W. Moore

Moore Law Group, PLLC

www.moore.law

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From: [Jim Maloney](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Friday, November 30, 2018 9:17:52 AM

I am absolutely opposed to a requirement to purchase malpractice insurance.

I am semi-retired. I have no clients. Most of the legal work I do consists of research and writing projects for other attorneys. I am pretty sure I am covered by their malpractice insurance. I also serve as a mandatory arbitration arbitrator in several counties.. I don't make much money from these activities, certainly not enough to pay for unnecessary malpractice insurance. If this requirement is adopted I will essentially be forced to give up my license (and the limited income I receive from these activities).

James D. Maloney III
WSBA No. 16909



Virus-free. www.avg.com

From: [David Heller](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Re: Opposition to mandatory insurance from someone who has insurance
Date: Friday, November 30, 2018 9:28:35 AM
Attachments: [Comments opposing mandatory insurance.pdf](#)

Dear Task Force Members:

Please see attached. Thank you for your consideration.

-- David Heller
WSBA #12669

[By email to insurancetaskforce@wsba.org](mailto:insurancetaskforce@wsba.org)

November 30, 2018

Dear Task Force Members:

I want to add my voice to those opposing this proposal as it is now constituted.

I have always had malpractice insurance, and I always will. I pay about \$4,000 per year for coverage. So this isn't about me. And it's not as if I am unfamiliar with the issues. My work has sometimes involved suing other lawyers for malpractice, and I have had the unpleasant experience of suing lawyers for malpractice when the lawyers don't have insurance - then the issue becomes, not winning, but getting the client compensated when you do win. This is not fun for the client or for the lawyer, and it is not any way to try to earn a living.

Nevertheless, I believe the negatives arising from mandatory insurance outweigh the positives it would bring.

1. Some lawyers can't get insurance because of the nature of their practice. Yes, it is worrisome that there are uninsured lawyers out there. But if insurance is mandatory, then we have effectively outsourced the decision about who can practice law in this state from the WSBA and the Supreme Court, to the insurance industry's faceless underwriters. What requirements or restrictions would insurance underwriters impose? "If you do this we won't insure you. If you don't do that, we won't insure you." And in effect the WSBA and the Supreme Court would be enforcing those requirements on behalf of the insurance industry. I simply cannot believe that the WSBA or the Supreme Court would or should relinquish control over the practice of law to such an extent.

And what happens when the insurance industry decides, for example, to put plaintiff personal injury lawyers, or insurance bad faith lawyers, or insurance coverage litigators, out of business, by denying them coverage at a reasonable, or any, price? This kind of thing HAS happened before. There was a "Tort Reform" wave that crossed America in the early to mid 1980s - it hit Washington in 1986. It later developed that in the early 1980s the insurance industry had intentionally started refusing to insure certain groups like churches and Little Leagues, to generate grass roots support for "Tort Reform". Remember, antitrust laws do not generally apply to insurance companies, 15 U.S.C. §1011-1015 a/k/a the McCarran-Ferguson Act. They can, and do, act in concert.

If we are going to have mandatory insurance, it is VITAL that there be a "safety valve" - that the WSBA provide insurance to those who cannot obtain it in the marketplace. Unless such a program is developed in conjunction with mandatory insurance, there should never be mandatory insurance.

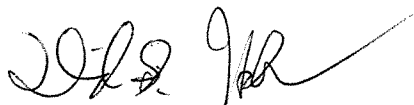
2. One of the continuing problems for the WSBA is the perception, if not the reality, that the Bar favors large firms and government and corporate lawyers over small firms and solo practitioners. This proposal dramatically disfavors small firms and solo practitioners. Large firms never have trouble getting insurance - they even have their own semi-captive insurance companies. Government and in-house counsel don't need insurance because they are employed by their only client. It is small firms and solo practitioners that sometimes have trouble finding coverage. If coverage becomes mandatory, some small firms and solos will be forced out of business.

3. The Task Force seems enamored of the malpractice insurance company ALPS. As I read ALPS's website, their "basic", *i.e.*, bare-bones, no-features, wasting policy costs \$5,000 per lawyer, which is substantially more than most of us are paying now. Their "preferred" coverage costs \$25,000 per lawyer and their "premier" coverage \$50,000 per lawyer! If this is the wave of the future, half the Bar will be out of business because of the crushing overhead.

There is a small problem in Washington: a few negligent lawyers are uninsured and judgment proof. But this proposed solution will create very large problems in Washington: disempowering the WSBA and the Supreme Court, and driving many good and a few bad lawyers out of business. The solution is worse than the problem, and it should be rejected.

Very truly yours,

HELLER LAW FIRM, PLLC

A handwritten signature in black ink, appearing to read "DSH", with a long horizontal flourish extending to the right.

David S. Heller

DSH:mcv

From: [Lisa E. Schuchman](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment
Date: Friday, November 30, 2018 9:43:49 AM

Greetings,

In reviewing the comments from others, I see that most of my concerns have already been raised. I am adding my voice here to be clear about my position on the issues raised.

I recently retired from a long-time solo practice. I plan to renew my license for 2019 and possibly after that. I'll be renewing for two reasons: first, it's hard to give up a license I worked so hard to get (law school, the bar exam) and was proud to maintain for 33 years; second, because I plan to do some pro bono work in my retirement.

I have had an E&O policy for most of the years of my practice. I do not plan to buy it in 2019. I hope that will not mean I will not be allowed to renew my license or do pro bono work.

Thank you.

Lisa E. Schuchman
WSBA# 15405

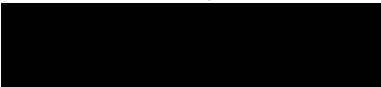
I learn, I give. – Gloria Steinem
Please consider the trees before printing this document

From: [Austin Watkins](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment re: Mandatory Malpractice Insurance
Date: Friday, November 30, 2018 10:17:21 AM

As a new attorney, I do not support mandatory malpractice insurance. This one size fits all approach harms the legal community and our ability to provide needed legal representation. For my career path, I chose to pursue a "JD Advantage" position with a Washington county government. I do not actively practice law in my county government position. However, I am active with pro bono representation and assisting friends and colleagues with basic legal tasks. The mandatory malpractice requirement would force me to stop providing all legal representation outside of activities exempted or covered by malpractice insurance (e.g., pro bono services through an existing organization). This reduces legal services available in my small, rural county and reduces my career mobility if I want to transition from my non-legal to legal job as I will lack legal experience. Overall, this one size fits all approach is inappropriate for many situations, including those like mine.

Respectfully,

Austin Watkins
WSBA # 53646
61 Shorecrest Ct.
Port Townsend, WA 98368



From: [Law Office of Cynthia Hodges](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Law Office of Cynthia Hodges](#)
Subject: Comment Against Mandatory Malpractice Insurance
Date: Friday, November 30, 2018 10:29:43 AM

Dear Sir or Madam:

I am writing in opposition to mandatory malpractice insurance for WSBA members. My arguments are as follows:

1. A mandatory program could result in limiting an attorney's choice of insurance carriers, assuming that the attorney can even obtain insurance. If the insurance companies refuse to insure an attorney, then that would bar him or her from practicing law. Therefore, requiring each member to carry malpractice coverage would be equivalent to placing the power of deciding who can practice law in the hands of private insurance companies.
2. The number of malpractice claims may increase due to the existence of compulsory coverage. People who might not otherwise make a claim will do so because they know there is insurance money to be had. The increase in the number of claims would also increase premiums. This was the experience of British Columbia.
3. A mandatory program could create a conflict of interest within the bar. The conflict would arise as a result of two factors: (1) the direct effect losses will have on malpractice premiums, and (2) the bar's interest in keeping down both the number and size of claims.
4. The fact that an attorney is among the insureds in a self-insured or one-insurer mandatory program may mean that he or she has a conflict of interest when involved in prosecuting a legal malpractice case, because the defendant attorney and both counsel would be covered by the same program or insurer.
5. Requiring malpractice insurance is tantamount to a public admission by WSBA that attorneys are often negligent.
6. A compulsory legal malpractice insurance requirement may be in conflict with both the state and US constitutions. The primary issue is whether the insurance requirement is an unconstitutional interference with the opportunity to practice law.
7. Some lawyers may become more careless in their practice because they know they are covered by insurance.
8. There is no need for a mandatory insurance program because of the small number of unsatisfied judgments against attorneys.

Thank you for considering my arguments against mandatory legal malpractice insurance for WSBA members.

Sincerely,

Cynthia Hodges

Cynthia Hodges, J.D., LL.M., M.A.
Attorney at Law

Edmonds, WA
Tel: 425-298-8810
Fax: 303-362-6896
Email: lawyer@[cynthiahodges.com](mailto:lawyer@cynthiahodges.com)

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From: [Eileen Farley](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments on Proposal for Mandatory Insurance
Date: Friday, November 30, 2018 10:42:56 AM

Dear Task Force Members:

Malpractice insurance should not be a condition of WSBA membership unless the WSBA member represents anyone other than the attorney member or immediate family.

Requiring malpractice insurance as a condition of WSBA membership and then defining and monitoring exceptions will be cumbersome and expensive. It will also harm members of the bar, such as myself, who stepped back from practice to raise a family but maintained WSBA membership and kept up with CLE credits. During the ten years I did not provide direct representation I, with a friend who also stepped back to raise children, wrote the well-received Washington Practice in Courts of Limited Jurisdiction practice manual and served as a very part-time *pro tem* in superior court, district court and municipal court. In my personal circumstances malpractice would have been something I could afford, though it would have been completely unnecessary and a waste of money. For others, it well might not have been an option.

Like many WSBA members I am no longer representing clients but keep my membership active. Being an attorney, even though my work now involves consulting and not direct representation, is important to me because it is something denied to women for many years. I encourage you to require malpractice insurance only of those who are actually representing clients and who practice in areas where insurance is available. (I understand it may not be easily available for patent law attorneys.) For anyone who is not actively representing clients it is a waste of money.

Eileen Farley
WSBA 9264

From: [Bob Boruchowitz](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory insurance
Date: Friday, November 30, 2018 10:58:26 AM

Dear Task Force members:

I support having an exception from mandatory malpractice insurance for attorneys who are not representing clients. It should be clear that when representing clients, attorneys should maintain the insurance.

But attorneys could be maintaining their license while not representing clients, including, for example, raising children or teaching or consulting or some combination of those activities.

Thank you for your consideration.

Sincerely,

**Bob Boruchowitz
WSBA 4563**

From: [Mike Winslow](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: mandatory professional liability insurance
Date: Friday, November 30, 2018 11:32:46 AM

Please note my objection to professional liability insurance being mandatory.

However, if such coverage is nonetheless recommended by the taskforce to be mandatory, please recommend the following:

- 1) a carve out for attorneys providing *pro bono* legal services; and
- 2) a carve out for retired attorneys that maintain their license, but carry no client load (to be distinguished from “emeritus” attorney classification, which status is more difficult to obtain).

Michael A. Winslow
1204 Cleveland Ave.
Mount Vernon, WA 98273
Ph. 360-336-3321
Em. Mike@winslegal.com

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From: [Anne Seidel](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on Proposed Mandatory Malpractice Insurance
Date: Friday, November 30, 2018 11:43:57 AM

Dear Taskforce members:

My practice is limited to legal ethics issues and I have represented numerous lawyers defending against bar grievances. I am writing to provide you with my thoughts on the proposal for mandatory malpractice insurance based on what I have observed through this representation. To place my comments in context, I have malpractice insurance and would not consider engaging in private practice without it. I personally believe that malpractice insurance benefits both the lawyer and the lawyer's clients. If adopted, the current proposal would not affect me personally.

Despite that, I have two concerns about the proposal for mandatory malpractice insurance. First, I have represented lawyers who are unable to obtain insurance or unable to do so at an affordable price. In some cases, this is due to disciplinary action that was completely unrelated to the practice of law. If malpractice insurance is required, I believe there should be an exemption for lawyers who can demonstrate that they cannot obtain insurance for less than some specified reasonable amount. Or perhaps the bar could insure a high risk pool the way Washington State did for individual health insurance before Obamacare. I do not believe the solution to this problem is a system like Oregon's as that would unnecessarily increase rates for many lawyers.

Second, I am disappointed that your Taskforce did not consider the intersection between grievances and malpractice claims and whether there are other actions the bar should take that would better protect the public instead of or in addition to mandating malpractice insurance. According to your report, the Taskforce heard from a legal malpractice plaintiff's lawyer and experienced insurance industry professionals, all of whom would benefit from mandatory malpractice insurance, but apparently did not reach out to anyone who could speak to other solutions. The Taskforce also apparently did not consider the potential effect of your proposal on the lawyer discipline system and whether it would result in increased work for ODC (and therefore increased dues for bar members). I would expect that if malpractice insurance is mandated and there is no exemption for lawyers unable to find reasonably-priced insurance, more respondents will be reluctant to stipulate to discipline, as doing so would eliminate their livelihood.

Thank you for considering my comments.

Sincerely,

Anne I. Seidel

Anne I. Seidel

Law Office of Anne I. Seidel
1817 Queen Anne Ave. N., Suite 311
Seattle, WA 98109
www.anneseidel.com Phone 206.284.2282 Fax 206.284.2491

From: [P. Douglas House](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: WSBA Task Force Considering Mandatory Malpractice-Insurance
Date: Friday, November 30, 2018 11:45:08 AM

Fellow Counsel:

Thank you for reaching out to WSBA members for their opinions on the above-referenced issue.

At the outset, I would like to provide a little context for my views. I have been a licensed, practicing attorney in King County, Washington, since May of 1980. I no longer practice full time. I have an online *curriculum vitae*, but I do not advertise or solicit business. I have a few long-term clients who are still active in business and call me for occasional advice and/or representation because they know me well, they trust my advice, and they want a veteran lawyer who is familiar with their business interests and legal affairs. I stay active so my clients can consult with the lawyer who earned their trust and is generally familiar with their undertakings. If they ask me to do something for them, I do so only if I am confident that I have the experience, expertise and resources I need to competently handle it. I am careful and thorough in my work. I have an “AV Preeminent” peer-review rating (the highest possible rating for legal ability and ethical standards) from Martindale Hubbell, and I have been so rated for many years. Accordingly, I do not feel that I should now be ordered to either buy malpractice insurance or stop practicing law. No one knows me or my law practice as well as I do, and I have enough experience to decide whether or not I need malpractice insurance. Nor do I think the Bar Association should order lawyers to give an unwarranted boon to for-profit insurance companies and their agents.

Malpractice insurance is not an insignificant expense. If I must now incur that expense so my long-term clients do not have to find new lawyers and pay them to get up to speed on matters I am already familiar with, I may simply retire. It is not inconceivable that others in my position feel as I do on this issue. In my opinion, neither the Bar Association nor the public-at-large would benefit if skilled, experienced and able lawyers chose to stop practicing law because they were ordered to pay for insurance they neither needed nor wanted. That would be an unfortunate waste of invaluable human resources.

I do not know how the Bar Association intends to implement this proposal. The Bar could simply order its members to buy malpractice insurance, with no further requirements regarding the scope and/or amount of coverage, allowable exclusions, riders, etc. In my opinion, such a directive – which I will refer to as the “buy-whatever-you-want” approach – would not provide the intended benefit in many instances, as there would be no guarantee that any given lawyer would buy sufficient coverage to adequately protect his or her clients in every legal matter he or she handled.

Another approach would be for the Bar to order its members to buy insurance with Bar-mandated coverage terms. There would be two ways to implement this approach; I will refer to them as the “one-size-fits-all” approach, in which every lawyer

would be ordered to buy the same coverage, and the “individually-tailored” approach, in which each lawyer would be ordered to buy coverage determined to be necessary to protect his or her clients given the risks associated with his or her law practice.

The one-size-fits-all approach would not only fail to adequately provide the desired benefit in many instances, it also would be patently unfair to many lawyers. Every law practice is unique, and there is a wide spectrum of risk attendant to each practice. Coverage limits, riders and exclusions adequate for one lawyer’s practice would be woefully inadequate in some practices and would be absurd overkill in others. A first-year lawyer who spends all of his or her time doing legal research in the law library, reviewing documents, and writing research memos for seniors lawyers presents little or no risk to the client, while a first-year sole practitioner handling high-stakes complex litigation with no help or supervision presents an astronomically higher risk to the client. Likewise, a lawyer with 38 years of experience negotiating, drafting, interpreting, and litigating contracts who advises a long-term client about the parties’ respective rights and duties under a contract that the lawyer drafted a few years ago presents little or no risk to the client, while a less-experienced lawyer handling a lawsuit with billions of dollars at stake presents an astronomically higher risk to the client. If each of these lawyers is ordered to buy the same insurance coverage, it would either be patently unfair to one of them, or patently inadequate for the intended purpose. The same would hold true for part-time lawyers who are ordered to buy the same coverage as full-time lawyers, lawyers in their prime who are ordered to buy the same coverage as lawyers approaching senility, experienced lawyers who are ordered to buy the same coverage as inexperienced lawyers, specialized lawyers who are ordered to buy the same coverage as general practitioners, healthy lawyers who are ordered to buy the same coverage as unhealthy ones, etc. Nor would this serve clients well, as some would undoubtedly have too little protection while others would have far more than needed. The one-size-fits-all approach would fit few and be unfair to many.

The individually-tailored approach is the only fair and meaningful way to adequately protect most clients from legal malpractice in most legal matters, but it would be a nightmare to administer. To do this right, each lawyer would have a unique insurance requirement (amount of coverage, required riders, acceptable exclusions, etc.) based on risk factors attendant to that particular lawyer (skill level, experience, track record, age, mental and physical health, etc.) and to his or her actual law practice (scope of practice, type of cases, amounts at stake, complexity, wealth and sophistication of clients, etc.). In other words, the nature and amount of coverage would be different for each and every lawyer. That is the only way to avoid the problems associated with the buy-whatever-you-want approach and the one-size-fits-all approach while providing the intended benefit for most clients in most cases.

The individually-tailored approach might be the only fair and meaningful way to implement this proposal, but I would be shocked if the Bar Association were to even consider it, as it would be an extraordinary undertaking. As a result, the likely implementation would either be the buy-whatever-you-want approach – which would fail to adequately provide the desired benefit in many instances – or the one-size-fits-all approach – which would fail to adequately provide the desired benefit in many

instances *and* would be patently unfair to many lawyers.

In my opinion, the current system is neither broken nor deficient. A lawyer must obtain a law degree and pass a rigorous bar exam before he or she will be licensed to practice law. The free market allows a client to balance risk with cost by choosing to pay higher rates for greater skill, experience and/or insurance coverage, or lower rates for lesser skill, experience and/or insurance coverage. A lawyer who handles matters beyond his or her skill and experience can be disciplined by the Bar Association and the Supreme Court. A client who is injured by malpractice has well-established legal rights and remedies. The system works. Most lawyers have adequate skills for the work they do, most legal matters are competently handled, and adequate procedures are in place to address the occasional breakdown. Requiring *every* lawyer to either buy malpractice insurance or stop practicing law would unfairly penalize careful and prudent lawyers while providing an unwarranted boon to for-profit insurance companies and their agents – and there is no guarantee that the malpractice requirement would adequately address the perceived problem. This draconian proposal begs the question, how many instances are there of uninsured legal malpractice where the client cannot obtain adequate redress from the offending lawyer? Does the Bar Association have data on this? Is the perceived problem purely hypothetical? If so, the proposed solution strikes me as misguided “nanny-state thinking” that opens a Pandora’s box of difficult questions and leads to questionable “solutions.”

If the Bar Association wants every client to be covered by malpractice insurance in every legal matter, then perhaps the Bar Association should set aside a fund for that purpose and apportion the cost amongst the members in an equitable manner as part of our dues. What would be equitable, you might ask? For the answer, open Pandora’s Box ...

Finally, I would say this. I am passionately devoted to serving my clients and solving their problems, and I work very hard to do just that. It should not be forgotten that practicing law is also a business, and there are risks to both parties in any business transaction. As in any market, there is an allocation of risk in each transaction. Some clients are wealthy and sophisticated and are well able to assess the risks for themselves; if they choose to retain a lawyer who has no malpractice insurance, it can and should be presumed that they have assessed the risks and have negotiated an agreement with the lawyer that adequately reflects the risks assumed by each party. Some clients have no business experience, are less sophisticated, and may need more protection. On the other side of the transaction, there is a very real risk of non-payment, and I know of no insurance for that. In my practice, I represent experienced, sophisticated business and property owners, and I do my very best to give them the highest quality legal services notwithstanding the risk of non-payment, and I do not bill (and do not get paid for) all of the time I spend in that effort. The client holds the “upper hand” in our “business” transaction, as the legal work is done before the client pays for it, the client can withhold payment if unsatisfied, and the client can seek redress in the courts if he or she believes that malpractice has been committed. Ordering me to buy malpractice insurance is, in my view, unnecessary “belt-*and*-suspenders” thinking that skews the risk equation to the point that it

undermines my desire and willingness to undertake the business transaction at all. Hopefully the Bar Association understands that and acts accordingly.

Thank you again for seeking member input on this issue, and thank you for considering my viewpoint.

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From: [Paul McIlrath](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Friday, November 30, 2018 12:14:30 PM

I am opposed to the mandatory malpractice insurance requirement being considered by the WSBA. I believe it is unnecessary; that current programs administered by the WSBA adequately address the issue; that imposition of a mandatory insurance requirement will reduce, significantly, access to justice for the very groups who most desperately need such services; and finally, such a requirement targets practitioners who are least able to afford it but offer the most service to the neediest.

Paul

From: [Kenneth Gates](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: kennygates@me.com
Subject: Position statement about mandatory malpractice insurance
Date: Friday, November 30, 2018 12:15:31 PM

My name is Kenneth W. Gates WSBA #7474

I am semi-retired. I still serve a small group of clients. Mandatory Insurance appears to be more costly than what I bill out. I have inserted my statement below. Competitiveness and fear of losing a valued client in a small practice setting cannot be solved by insurance.

**

I disagree with a proposal to make malpractice insurance mandatory. It would put me out of business. I have been licensed for more than 40 years and have no malpractice claims made. I have stayed in practice areas that I know very well. My practice involves business planning, estate planning and consulting clients about how to conduct business or often how to form a business and which entity type is most suitable. Regrettably, business formations, wills and planning are areas that most attorneys, even personal injury, bankruptcy, construction law, family law and real estate attorneys—to name a few—feel they are qualified to do as they have **attended** a seminar. I work with clients that I have known in some case for many years. or have been referred to me, The type of counsel my clients seek from me is not conducive to malpractice issues as there is seldom an adversarial situation.

An argument that is forwarded apparently by the proponents seeks parity on insurance costs with the mandatory insurance requirements of limited practice. That is a specious argument as those individuals are provided a skill set and a area of practice that can be parleyed without passing the bar exam and without the arduous and time consuming education required to become a fully licensed attorney.

My work involves perhaps 4 billable hours a week. With that work load it is highly unlikely that I am in a malpractice setting. I have the luxury of fully researching an issue even if I only minimally bill for research time. As I am required to obtain the same CLE as a full practicing attorney I am much more apt to be well schooled and up to date in the narrow areas that I practice. The attorney that is working 60 or more hours a week with the same CLE support as what a semi-retired attorney has is far more likely to make a mistake. Malpractice coverage for my practice and I dare say many other qualified attorneys would represent a disproportionate expense. As an example my 16 hours a month is supported by 45 hours of CLE compared to 240 monthly hours. That is a ratio of 16/240 or one fifteenth (1/15) the exposure—6.66%.

I believe the mistakes come from attorneys doing what they can to retain their clients and feeling the financial pressure to take on all clients. The study bears that out.

Of all malpractice claims reported in the 2015 study, the two highest areas of practice were personal injury (plaintiff) at 18.24% and real estate law at 14.89%. The firms with the highest percentage of claims had between 1 and 5 attorneys, with 34.21% of claims against solo practitioners and 32.03% of claims against firms with 2-5

attorneys. In other words, over 65% of claims arose from firms with 5 or fewer attorneys.

The report did not speculate on the David and Goliath issue. I dare say the large firms make mistakes at the same rate as smaller firms. The large firms are perceived to be “Goliaths” and a much more formidable opponent. The Bar should address the client retention problem as it is more likely the source of errors than malpractice per se.

The mandatory insurance has exactly the wrong effect. It will increase the overhead for those highly qualified semi-retired individuals who are supplementing their income and not supporting their lifestyle as they were when practicing full time.

My practice involved primarily those matters that are available to the public at large, online business formations and other low level internet activities (“Legal Zoom” type of activities) and should not subject a practitioner such as myself to mandatory malpractice insurance.

Attorneys who are involved in, the high exposure areas such as Plaintiff personal injury litigation and real estate in excess of some “threshold” should be required to carry malpractice. If that threshold is not met there should be no mandatory insurance.

The ethical question of "do you have an attorney" should be addressed. When I was practicing full time the my clients would be asked to leave me for another attorney. The competition for clients and how a hungry attorney gets a client is, in my humble opinion, the root of the problem.

Respectfully,

S/KWG

Kenneth W, Gates

From: [Jean Cotton](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Question
Date: Friday, November 30, 2018 12:35:15 PM

Please add my name to the list of persons opposed to mandatory malpractice insurance. While I have always maintained my own professional liability insurance, I oppose any effort to mandate it for all members and am particularly opposed to an option that would be run through the Bar Association rather than via private arrangements between vendor and customer. There are far too many reasons to list as to why I oppose this proposal but join in the voices of others who have done so eloquently.

Jean

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From: [REDACTED]
To: [Mandatory Malpractice Insurance Task Force](#)
Date: Friday, November 30, 2018 12:43:41 PM

November 30, 2018

I am writing to express my opposition to the proposal for mandatory malpractice insurance. I agree wholeheartedly with the views expressed by Merry A. Kogut, Lakebay. See NWLawyer, October 2018, p. 5. In recent years, I have severely limited my practice, but I still perform a valuable service for a number of people (mostly family and friends). If the recommended proposal is adopted, I will be forced to change my status. I don't do enough "paying" legal work to justify the expense of malpractice insurance. The end result is that I no longer will be able to perform pro bono work and give legal advice.

The advocates of mandatory malpractice insurance do not seem to care about "the good" that is being provided by individuals such as myself. Currently, if anyone in the public is concerned about malpractice insurance, they can easily find out whether a lawyer has an insurance policy. I don't understand what is wrong with the present policy of disclosure. The proposal for mandatory malpractice insurance needs to be rejected.

David John Burke
WSBA 16163

From: julie@juliefowlerlaw.com
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Re: Mandatory Malpractice Insurance
Date: Friday, November 30, 2018 12:47:55 PM

I don't agree that WSBA members should be required to carry malpractice insurance as a condition of licensing. The cost is prohibitive for many lawyers. The insurance premiums increase each year even if your record is clean. The reporting period for malpractice increases each year for potential incidents so your coverage potentially decreases the longer a client has the ability to report against a lawyer.

The WSBA fosters a culture of punishing lawyers for client dishonesty and promotes the client's interests over the lawyer. I feel the requirement of mandatory malpractice further protects the client interests at the expense of the WSBA lawyer member.

Julie K. Fowler

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~ OFFICE HOURS ~ 9:30 am - 3:30 pm

From: pam.bradley
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: WSBA Task Force - comments
Date: Friday, November 30, 2018 1:26:11 PM

To the members of the WSBA Task Force,

Thank you for the opportunity to provide comments. I participated in the teleconference this fall and am following up with written comments.

I have been licensed in Washington for 33 years without issue – no claims or disciplinary actions. I am now semi-retired, and my practice is currently very limited. As stated during the call, I provide contract legal support to a former employer. I was the Acting General Counsel at the time I terminated employment. I've provided contract legal support to this company, on and off, since 2011. My contract states that I work under the direction of the General Counsel – in essence, my work is subject to review, the same as that of all the in-house counsel staff. In return, I charge a very reasonable rate. I frequently work on multi-million-dollar transactions.

A requirement to purchase malpractice insurance would be detrimental to my business model as I could not offer the same low rate; therefore, my business opportunity would end. That equates to the WSBA interfering with my business relationships and doing so with an ineffective rationale. First, this work does not involve the general public – I am not putting clients at risk. Second, a requirement to purchase some minimal required insurance would be meaningless as any actual exposure may be millions of dollars.

For these reasons, I ask that an exception or exclusion for in-house counsel include those of us who provide contract legal services and work directly for and under the guidance of the corporate legal manager or general counsel. The exposure to the company client is no different than being an in-house staff counsel.

Also, as stated above, my work is off and on. I may work 3 months in one year or 8 months. My gross income the last two years has been ~\$20,000 but has been as low as \$3000/year. With this work, I don't advertise my legal services and I do not seek out clients. I always renew my license in an active status. I am concerned about renewing as active and having to pay for insurance immediately if I don't have work. Is the alternative to file as inactive? Will the WSBA expect those of us in these situations to file as inactive and keep going back and forth to active/inactive during the year based on work projects? That seems like a nightmare in the making. And it seems highly prejudicial to those of us who admittedly work part-time, particularly the semi-retired attorneys.

To help alleviate this issue, I ask that the Task Force recommend insurance only for those attorneys who are specifically practicing law for the general public and are actively engaged in practicing law – attorneys who advertise their businesses, offer services to a myriad of consumers. It seems this could be handled in a certification.

Thank you for your consideration of the above.

Respectfully,

Pamela Bradley

Bar # 15124

From: [June Campbell](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on proposed rule re mandatory malpractice insurance
Date: Friday, November 30, 2018 1:53:51 PM

I am a semi-retired solo practitioner focusing on estate planning. I provide a lot of pro bono and low bono legal services. While I have had malpractice insurance during the past four years of my semi-retirement, it is increasingly expensive every year, even with no claims history whatsoever. If the bar is going to mandate malpractice insurance, I would love to see an option to cover part-time and retired lawyers like myself for a premium of less than \$1000 a year.

Thanks,

June Campbell
WSBA 11427

From: [Matt Newberg](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance
Date: Friday, November 30, 2018 2:37:49 PM

Task Force,

I would like to start by stating I oppose a recommendation for mandatory malpractice insurance. From the outset, I find it troubling that the reason(s) for the task force and the mandatory insurance requirement has not been at the forefront of the discussion. I find it troubling that a membership to a mandatory bar association will be at the will of a private industry. How will this work? Upon passage of a bar examination I will be notified that I must now go secure malpractice insurance? Upon proof of said insurance I will get my bar number? As you know there are too many unique variations of 'lawyer' in this state to create such a simplistic rule.

I am primarily a governmental attorney. I assume that by way of my employment I will be covered in some fashion so as to comply with your rule. But, I do some pro bono work and often help with family members legal questions. Where would your rule leave somebody like me?

I do not oppose a discussion regarding malpractice insurance, but it needs to be based on a real problem not a perceived concern.

Matt Newberg
WSBA#36674

From: [Michael Izak](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: My comments on mandated WSBA malpractice insurance
Date: Friday, November 30, 2018 3:08:49 PM

Dear sirs and madams:

I am a solo attorney. I do not have a secretary or any other assistant. I work for myself out of my own office.

I specialize in a small specialized legal area which involves only deaf and hard of hearing clients. I do not work with hearing people.

My area of these deaf and hard of hearing people are low-paying low-income clients. Low-paying low-income clients have very limited resources to pay legal costs and attorney fees. I do not get paid very much very often.

I do not carry attorney malpractice insurance. I used to do so for many years. My economies of scale does not allow me to afford attorney malpractice insurance. I was very careful and ethical about my legal business. I was never sued for malpractice.

Furthermore, I learned that malpractice attorneys do not sue any attorneys who does not carry attorney malpractice insurance unless the attorney acted egregiously in matters involving substantial loss of money, real property, or life.

I am opposed to attorney malpractice insurance. I was licensed with the Oregon Bar for many years. Oregon is the only state in the United States which require attorney malpractice insurance. They demand proof of attorney malpractice insurance every time I pay my annual Oregon Bar dues. Attorney malpractice insurance is very expensive. I never had a need for it. I never used it to defend myself from any malpractice matter, either.

Mandatory attorney malpractice insurance will be considered as a major part of the annual WSBA Bar licensing fee. If the attorney malpractice insurance is mandated, this mandate shall mean the current WSBA annual bar fees will increase from \$500 to \$3,500 or more.

Attorney fees to clients will increase dramatically to cover the attorney malpractice insurance expenses.

The WSBA attorney malpractice insurance mandate will price me out of my right to practice law within the Washington. I will be forced to seek law employment in another state that does not mandate attorney malpractice insurance. This WSBA attorney malpractice insurance is a job-killer for many solos and small law firms.

I've learned many attorneys do not sue other attorneys who do not carry malpractice insurance, except in egregious cases which the attorney had caused substantial losses of money, life, or real property.

Every WSBA attorney would be sued for malpractice because they carry attorney malpractice insurance. Many "nuisance" malpractice suits will multiply. Many WSBA attorneys will be sued for slights or past "errors," real or imagined. Furthermore, many

WSBA attorneys will be sued for malpractice over something that happened 20, 30, or 40 years ago. There is no statute of limits imposed on attorney malpractice suits. Many attorneys would be sued for discriminatory practices that happened 40 years ago as “malpractice.”

Clients who refuse to pay their attorneys’ fees will resort to suing their attorneys for malpractice to get out of paying the attorney fees. Mediation, resolution and arbitration will disappear when clients find it is more effective and lucrative to sue in court.

WSBA mandated attorney malpractice insurance would put WSBA attorneys in the same position as doctors and nurses in the medical profession plagued with “nuisance” malpractice suits for every misdiagnosis, slights, discriminatory practices, and hurt feelings.

I believe WSBA mandated attorney malpractice insurance has economical consequences statewide and will alter the way the law profession is practiced. I don’t think the attorney malpractice insurance should be mandated nor be imposed upon hardworking and honest WSBA attorneys. Oregon is the only state in the United States that require mandatory malpractice insurance. Oregon has not made any difference or improvements with their mandatory malpractice insurance other than increasing the number of attorney malpractice cases. I urge WSBA to not mandate but to keep the current attorney malpractice insurance optional as we have it today.

Michael Izak
WSBA #27729

From: [Michael Rossotto](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Paul S](#); [Michael J. Cherry](#); [Kim E Hunter](#)
Subject: Supplemental comments on mandatory malpractice insurance proposal
Date: Friday, November 30, 2018 3:20:11 PM
Attachments: [image003.png](#)

Dear WSBA Mandatory Malpractice Insurance Task Force members:

I appreciate the opportunity to comment on the work and interim report of the Mandatory Malpractice Insurance Task Force. My comments are submitted as an individual member of WSBA – they have not been reviewed or endorsed by my employer, the Quileute Tribe.

I have previously provided comments to the MMITF by phone during its October 16, 2018 public forum. I am providing these written comments because (1) I wish to provide the additional recommendation to explicitly limit any requirement for mandatory insurance to persons who are actively engaged in the practice of law as defined by GR 24; (2) the November register and compilation of comments received by MMITF provided to me by WSBA Governor Cherry makes no mention of the comments made at the October 16 public forum, so I want to be sure my recommendations are available for consideration by the entire MMITF; (3) certain people who spoke after me at the October 16 public forum either expressly or implicitly referenced my comments as support for exemptions that vary somewhat from my recommendations concerning exemptions, so I want to clarify and distinguish precisely what I meant to recommend.

By way of background, I have been a WSBA member since 1992. I have spent the vast majority (approximately 22 years) of my legal career directly employed by nonprofit organizations and local and tribal government. The rest of my legal career (approximately 6 years) has been spent in self-employment providing consulting and law-related services to nonprofit organizations and local and tribal government on a contract basis. To the best of my recollection and understanding, only about 200 hours (two hundred hours) of my work during those periods of self-employment would have constituted the practice of law as defined by GR 24. I did secure malpractice insurance to cover those activities. My service to WSBA includes six years on the executive committee of the Indian Law Section, six years on the executive committee of the Environmental and Land Use Law Section, one year as Treasurer of the Environmental and Land Use Law Section, one three-year term as Chair-elect/Chair/Chair emeritus of the Environmental and Land Use Law Section, and a two-year term on the WSBA Amicus Curiae Brief Committee before that committee was dis-established by the BoG.

Per my oral telephonic comments at the October 16 public forum, I am neither expressing support or opposition to a general requirement for mandatory malpractice insurance for those engaged in the practice of law, so the following recommendations are intended to apply only if WSBA adopts such a requirement.

Please explicitly limit the application of any requirement for mandatory malpractice insurance to “persons who are actively engaged in the practice of law as defined by GR 24”, rather than applying the requirement overly broadly to “lawyers” or “members of WSBA.”

The primary thrust of my October 16 comments was that many members of WSBA use their legal

training to provide a myriad of services to the public, WSBA, and the profession in ways that would never be considered practice of law as defined by GR 24, could never give rise to a claim for malpractice damages, and therefore should not trigger a requirement for malpractice insurance. Such activities would include (presumably) but not be limited to lobbying, legislative drafting, other aspects of government relations consulting, political consulting, teaching, journalism, certain aspects of human resources management, legal recruiting, mediation services, service on bar committees, etc. Some of these types of activities might merit the provider carrying consultants' errors and omissions insurance, but few if any of them as I understand the rules could trigger a claim for damages for legal malpractice. It makes no sense to impose the heavy financial burden of mandatory malpractice insurance and/or discourage these types of employment and activities by WSBA members on WSBA members who are not actively engaged in the practice of law as defined by GR 24. Lawyers who would like to maintain their license and WSBA membership even though they are not engaged in the practice of law as defined by GR 24 should be encouraged to do so, not forced to choose between a burdensome financial mandate or resigning from WSBA.

Having done a cursory review of the 300+ comments received by the MMITF as of November 2018, I am struck by how many of the comments raise this exact issue. It appears that many more WSBA members than I had realized want to maintain their WSBA membership while not actually practicing law or providing legal services in a manner that might give rise to a malpractice claim for damages. The comments I have reviewed consistently call for an "exemption" for these types of activities, as I myself did during the October 16 public forum. While I still support such an exemption, it occurs to me that the wording and list of activities for such an exemption would necessarily be long, yet always incomplete and subject to interpretation. It occurred to me that a clean, complementary approach would be to explicitly limit the application of any requirement for mandatory malpractice insurance to "persons who are actively engaged in the practice of law as defined by GR 24," rather than applying the requirement overly broadly to "lawyers" or "members of WSBA." While such a limitation would certainly still encompass certain lawyers whose work could never give rise to a claim for damages for malpractice who should be afforded exemptions elsewhere in the rules, such a limitation would provide a helpful, rule-based definition and relief for those members of WSBA who are employed or otherwise providing services without engaging in the practice of law.

Please do provide an exemption for lawyers employed by nonprofit organizations and government entities.

Since the MMITF interim report already tentatively concludes that government attorneys and attorneys providing services through nonprofit entities are among the categories of attorneys who should be exempt, and since this recommendation appears to have received overwhelming support in the comments already submitted (including y October 16 oral comments), I will not belabor the point except to say that employment with tribal government should of course be included in this category. Of exemptions.

Please provide an exemption when a corporate or government entity expressly waives the requirement for malpractice insurance, regardless of whether the lawyer is an employee or contractor.

I have had personal experience providing law related services to a public agency had a standard requirement for malpractice insurance in its boilerplate legal services provider agreement, but that agency was willing to expressly waive the insurance requirement on multiple occasions because of (1) the nature of the work; (2) the limited scope and dollar value of the contract; and/or (3) the fact that the law related services I would be performing would be subject to close supervision and/or review by the agency's in-house legal staff. Any malpractice rule adopted by WSBA should not impose a requirement to secure malpractice insurance when a corporation or government entity is willing to expressly waive malpractice coverage for designated services. This type of exemption for contractors appears to have been recommended by several other commenters and this type of exemption is possibly implied by some of the tentatively recommended categories of exemptions listed in the fifth bullet on page 10 of the MMITF interim report, but the interim report does not expressly address an exemption for situations where a sophisticated client expressly waives any requirement for malpractice insurance. Any final proposal to mandate insurance should not interfere with an employer/client and attorney's contractual ability to expressly waive such a mandate.

My recommendations should not be bundled or confused with other recommendations made at the October 16 public forum.

I was the first person to comment telephonically at the October 16 public forum, and I mentioned that I was not full-time engaged in the practice of law during certain periods of self-employment that did not include any types of law-related activities that would have subjected me to a claim for damages for legal malpractice. Several subsequent speakers then either referenced me by name or referred generally to "previous" speakers in support of exemptions for part-time practitioners, lawyers providing services to friends and families, lawyers facing financial challenges, solo practitioners, and other types of exemptions. I would like to take this opportunity to clarify and emphasize that I am not making any recommendations regarding exemptions for part-time practitioners, lawyers providing services to friends and families, lawyers facing financial challenges, solo practitioners, or any other type of exemption or aspect of insurance other than those specified above or raised during my October 16 oral comments. I recognize that there are good arguments pro and con for providing exemptions for those other special circumstances, and as noted at the outset of both my written and oral comments, I am not supporting or opposing mandatory malpractice insurance for any category of practitioner at this time beyond the specific recommendations I have made in my written and oral comments.

I appreciate the time and effort invested in this endeavor by the members of the WSBA MMITF and thank you for considering my recommendations.



Michael Rossotto, WSBA # 21996
Environmental Attorney/Policy Analyst
Quileute Natural Resources



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From: [Tom Owens](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory insurance
Date: Friday, November 30, 2018 3:59:49 PM

Folks,

I am in opposition to a mandatory insurance requirement. It seems reasonable to me that have a mandatory insurance requirement will reduce access to justice for poor people. Given the Bar's current struggle to serve this population, now is not the time to place a burden on those who are helping.

Tom

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From: [Scott Stafne](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Comment
Date: Friday, November 30, 2018 4:32:45 PM
Attachments: [WSBA. Comments on Mandatory Malpractice-2018.pdf](#)

Please see the comments attached below related to mandatory malpractice. Thank you,

--

Scott Stafne, Attorney





November 30, 2018

Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

RE: Mandatory Malpractice

Dear Mandatory Malpractice Insurance Task Force Members,

I write on behalf of the Church of the Gardens and Stafne Law Advocacy and Consulting to comment on the Task Force's proposal to require mandatory malpractice insurance.

In 2015 the Washington Supreme Court published the "[Civil Legal Needs Study Update](#)¹." The Executive Summary of that report begins: "[j]ustice is absent for low-income Washingtonians who frequently experience serious civil legal problems." Study, p. 3. The Study goes on to conclude that "even limited legal Assistance helps people solve problems." *Id.* p. 16. Further, that:

As the [2003 Study](#) found², and results from the 2014 survey confirm, those who get legal help - even limited legal advice or assistance - are able to solve their problems. Nearly two-thirds (61%) of those who sought and received some level of legal assistance were able to solve some portion of their legal problem. Of these, nearly 30% were able to resolve their problems completely.

Id.

The Task Force's suggestion in the 2015 study that the lack of adequate legal assistance is a problem for only the poor in Washington is belied by national statistics which document that over 70% of those people who find themselves in court nowadays are not represented by attorneys. *See* Bibliography below.

If less than 30% of litigants can afford legal assistance then this obviously affects the middle class as well because a significant majority of people (70%) in court are not represented by counsel. This not

¹ This 2015 Study can be accessed at http://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf

² The 2003 Study was also published by a Washington State Supreme Court Task Force. The 2003 Civil Legal Needs Study can be accessed at <https://www.courts.wa.gov/newsinfo/content/taskforce/civillegalneeds.pdf>

only hurts these people’s chances of obtaining any relief in court, but in many cases actually causes people injury, See Huffer, Karin, Legal Abuse Syndrome: 8 Steps for Avoiding Traumatic Stress Caused by the Justice System (July 23, 2013), and in some cases death.

A legal system in which “justice is absent” for a majority of litigants is not consistent with the duties imposed upon government by the social compacts between the people and governments established by the Constitutions of the United States and Washington State.

I believe the first criterion by which the imposition of mandatory malpractice insurance on lawyers should be judged is its impact on the ability of the current legal system to provide justice for all. Increasing the costs lawyers must pay to practice law will increase the costs lawyers must charge. Accordingly, this Task Force should determine first and foremost what the effect of this economic consequence will have on the ability of Washington’s government to provide justice.

I am a third generation lawyer. As I approach my eighth decade I am increasingly aware that the practice of law has become more about making money than securing that justice which our founders believed must be the goal of government and all civil society. See [Federalist Paper No. 51](#).³ (“... Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. ...”)

This Task Force’s apparent preference for requiring attorneys to obtain malpractice insurance, without consideration of the consequences on the ability of the people to obtain justice, is characteristic of a bad government. In this regard, I would note that Jean Jacques Rousseau wrote in his conclusion The Social Contract of Principles of Political Right (a book which was highly influential on the framers of the United States Constitution) that:

I shall end this chapter and this book by remarking on a fact on which the whole social system should rest: *i. e.* that, instead of destroying natural inequality, the fundamental compact substitutes, for such physical inequality as nature may have set up between men, an equality that is moral and legitimate, and that men, who may be unequal in strength or intelligence, become every one equal by convention and legal right. [1](#)

Note 1 states:

Under bad governments, this equality is only apparent and illusory: it serves only to keep the pauper in his poverty and the rich man in the position he has usurped. In fact, laws are always of use to those who possess and harmful to those who

³ Federalist Paper No. 51 can be accessed at <https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-51>

have nothing: from which it follows that the social state is advantageous to men only when all have something and none too much.

Rousseau, Jean Jacques Rousseau, [The Social Contract of Principles of Political Right. Book I. Chapter IX. Real Property](#)⁴.

Almost two centuries later Deborah L. Rhode (2016) wrote:

It is a shameful irony that the nation with one of the world's highest concentrations of lawyers does so little to make legal services accessible. According to the World Justice Project, the United States ranks 67th (tied with Uganda) of 97 countries in access to justice and affordability of legal services."Equal justice under law" is one of America's most proudly proclaimed and routinely violated legal principles. It embellishes courthouse doors, but in no way describes what goes on behind them. Millions of Americans lack any access to justice let alone equal access. Over four-fifths of the legal needs of the poor and a majority of the needs of middle-income Americans remain unmet.")

[WHITE PAPER: WHAT WE KNOW AND NEED TO KNOW ABOUT THE DELIVERY OF LEGAL SERVICES BY NONLAWYERS](#), 67 S.C. L. Rev. 429 (Winter 2016).

Please consider as part of your task what impact imposing malpractice insurance on lawyers generally will have on the ability of the people to obtain justice in Washington State both now and in the future.

Thank you for your consideration.

Very truly yours,

/s/ Scott E. Stafne

Scott E. Stafne

WSBA #6964

⁴ This chapter can be accessed at <https://www.bartleby.com/168/109.html#txt1>

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Russell G. Pearce, [Redressing Inequality in the Market for Justice: Why Access to Lawyers Will Never Solve the Problem and Why Rethinking the Role of Judges Will Help](#), 73 Fordham L. Rev. 969, 978 (2004).

Drew A. Swank, [IN DEFENSE OF RULES AND ROLES: THE NEED TO CURB EXTREME FORMS OF PRO SE ASSISTANCE AND ACCOMMODATION IN LITIGATION](#), 54 Am. U.L. Rev. 1537 (August 2005) ("This article suggests that these proponents of greater pro se assistance and accommodation are wrong. Just as with schools and drinking fountains, 'separate but equal' justice systems will be neither equal nor just.)

Drew A. Swank, [The Pro Se Phenomenon](#), 19 BYU J. Pub. L. 373 (2005).

ARTICLE: [JUDICIAL ASSISTANCE TO SELF-REPRESENTED LITIGANTS: LESSONS FROM THE CANADIAN EXPERIENCE](#), 17 Mich. St. J. Int'l L. 601 (2008-2009).

In America, the judiciary has increasingly had to grapple with the question of how far a judge can go in guiding or assisting an SRL in such a way as to avoid the possibly harsh or unjust consequences resulting from their lack of familiarity with the judicial process? Despite calls for clarification of the judge's role in these circumstances, the current reluctance of the U.S. judiciary to assist SRLs is fostered by both the traditionally passive role of the adversarial trial judge, and by the general rule of non-assistance in U.S. case law. Yet most U.S. trial judges have realized that they must assist SRLs to some extent to avoid the harsh results that can occur when SRLs lacking sufficient legal knowledge represent themselves in court.

Legal services Corporation, An Updated Report of the Legal Services Corporation, "[Documenting the Justice Gap In America The Current Unmet Civil Legal Needs of Low-Income Americans](#)" (2009).

Gillian K. Hadfield, "Higher Demand, Lower Supply? [A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans](#)", 37 Fordham Urb. L.J. 129 (2009) Article can be obtained from link.

Deborah L. Rhode, [SYMPOSIUM: WHATEVER HAPPENED TO ACCESS TO JUSTICE?](#), 42 Loy. L.A. L. Rev. 869 (Summer 2009) (“‘Equal justice under law’ is a principle widely embraced and routinely violated. Although the United States has the world’s highest concentration of lawyers, it fails miserably at making their assistance accessible to those who need it most. Litigants who remain unrepresented are less likely to obtain a fair outcome in court. The gap between our rhetorical commitments and daily practices regarding access to justice is a function of inadequate funding, restrictions on cases and activities by government-funded legal aid programs, insufficient concern by courts, overbroad restrictions on nonlawyer services, and inadequate pro bono involvement by lawyers and law students. Narrowing the justice gap will require a coordinated effort by all of the stakeholders—the bench, bar, clients, nonprofits, and legal educators.”)

Michael Correll, [FINDING THE LIMITS OF EQUITABLE LIBERALITY: RECONSIDERING THE LIBERAL CONSTRUCTION OF PRO SE APPELLATE BRIEFS](#), 35 Vt. L. Rev. 863 (2011)

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Jessica Dixon Weaver, [Overstepping Ethical Boundaries? Limitations on State Efforts To Provide Access to Justice in Family Courts](#), 82 Fordham L. Rev. 2705 (2014).

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Conference of Chief Judges and Conference of State Court Administrators, “[RESOLUTION 5 - Reaffirming the Commitment to meaningful Access to justice For All](#)” (2015)

ARTICLE: [Adversary Breakdown and Judicial Role Confusion in “Small Case” Civil Justice](#), 2016 B.Y.U.L. Rev. 899 (2016) This article can be downloaded from link.

(“This Article calls attention to the breakdown of adversary procedure in a largely unexplored area of the civil justice system: the ordinary, two-party case. The twenty-first century judge confronts an entirely new state of affairs in presiding over the average civil matter. In place of the adversarial party contest, engineered and staged by attorneys, judges now face the rise of an unrepresented majority unable to propel claims, facts, and

evidence into the courtroom. The adversary ideal favors a passive judge, but the unrealistic demands of such a paradigm in today’s “small case” civil justice system have sparked role confusion among judges, who find it difficult to both maintain stony silence and reach merits-based decisions in the twelve million cases involving unrepresented parties.”)

Lawyerist.com, “[Measuring the Access-to-Justice Gap: Nearly 70% of All Civil Defendants Aren’t Represented](#)” (2016).

ABA Journal, “[Can the access-to-justice gap be closed](#)” (2016).

Deborah L. Rhode, [WHITE PAPER: WHAT WE KNOW AND NEED TO KNOW ABOUT THE DELIVERY OF LEGAL SERVICES BY NONLAWYERS](#), 67 S.C. L. Rev. 429 (Winter 2016).

(It is a shameful irony that the nation with one of the world’s highest concentrations of lawyers does so little to make legal services accessible. According to the World Justice Project, the United States ranks 67th (tied with Uganda) of 97 countries in access to justice and affordability of legal services.”Equal justice under law” is one of America’s most proudly proclaimed and routinely violated legal principles. It embellishes courthouse doors, but in no way describes what goes on behind them. Millions of Americans lack any access to justice let alone equal access. Over four-fifths of the legal needs of the poor and a majority of the needs of middle-income Americans remain unmet.”).

[ABA Commission on the Future of Legal Services](#).

The Commission presents this compendium of scholarly papers on the future of legal services. With the generosity of the University of South Carolina Law Review and its faculty advisors and members, the papers of leading academicians have been gathered.

[Table of Contents](#)

[FORWARD](#) – *William C. Hubbard & Judy Perry Martinez*

[INTRODUCTION: WHAT WE KNOW AND NEED TO KNOW ABOUT THE STATE OF “ACCESS TO JUSTICE” RESEARCH](#) – *Elizabeth Chambliss, Renee Newman Knake & Robert L. Nelson*

[WHAT WE KNOW AND NEED TO KNOW ABOUT DISRUPTIVE INNOVATION](#) – *Raymond H. Brescia*

[WHAT WE KNOW AND NEED TO KNOW ABOUT CIVIL GIDEON](#) – *Tonya L. Brito, David J. Pate Jr., Daanika Gordon, & Amanda Ward*

[WHAT WE KNOW AND NEED TO KNOW ABOUT COURT-ANNEXED DISPUTE RESOLUTION](#)
–*Deborah Thompson Eisenberg*

[WHAT WE KNOW AND NEED TO KNOW ABOUT PRO BONO SERVICE DELIVERY](#) – *April Faith-Slaker*

[WHAT WE KNOW AND NEED TO KNOW ABOUT OUTREACH AND INTAKE BY LEGAL SERVICES PROVIDERS](#) – *D. James Greiner*

[WHAT WE KNOW AND NEED TO KNOW ABOUT IMMIGRANT ACCESS TO JUSTICE](#) – *Elinor R. Jordan*

[WHAT WE KNOW AND NEED TO KNOW ABOUT ONLINE DISPUTE RESOLUTION](#) – *Ethan Katsh & Colin Rule*

[WHAT WE KNOW AND NEED TO KNOW ABOUT GAMIFICATION AND ONLINE ENGAGEMENT](#) –
Stephanie Kimbro

[WHAT WE KNOW AND NEED TO KNOW ABOUT MEDICAL-LEGAL PARTNERSHIP](#) – *Bharath Krishnamurthy, Sharena Hagins, Ellen Lawton, & Megan Sandel*

[WHAT WE KNOW AND NEED TO KNOW ABOUT LEGAL STARTUPS](#) – *Daniel W. Linna Jr.*

[WHAT WE KNOW AND NEED TO KNOW ABOUT WATSON, ESQ.](#) – *Paul Lippe*

[WHAT WE KNOW AND NEED TO KNOW ABOUT THE DELIVERY OF LEGAL SERVICES BY NONLAWYERS](#) – *Deborah L. Rhode*

[WHAT WE KNOW AND NEED TO KNOW ABOUT THE LEGAL NEEDS OF THE PUBLIC](#) – *Rebecca L. Sandefur*

[WHAT WE KNOW AND NEED TO KNOW ABOUT GLOBAL LAWYER REGULATION](#) – *Carole Silver*

[WHAT WE KNOW AND NEED TO KNOW ABOUT LEGAL PROCUREMENT](#) – *Silvia Hodges Silverstein*

[WHAT WE KNOW AND NEED TO KNOW ABOUT LAW SCHOOL INCUBATORS](#) – John Christian Waites & Fred Rooney

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Scott E. Stafne, scottstafne.com “[BETTER TO HAVE ADA ADVOCATE THAN LAWYER IN STATE COURTS](#)” (July 7, 2017).

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(Free-market enthusiasts celebrate Adam Smith’s “invisible hand,” which describes how markets harness self-interest to serve the broader interests of society. Yet Smith himself understood that greed alone wouldn’t create a just community. He believed that markets could function adequately only in the context of an elaborate foundation of laws and ethical norms.)

From: putnamjim@comcast.net
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments re Mandatory Malpractice Insurance proposal
Date: Friday, November 30, 2018 4:41:56 PM
Attachments: [comments to WSBA re mandatory ins.docx](#)

Greetings to the Board of Governors and the Mandatory Malpractice Insurance Task Force,

Attached please find my comments for your consideration.

Best regards,

James Putnam

WSBA # 34495

Greetings to the Board of Governors and the Mandatory Malpractice Insurance Task Force:

Concern for the public' welfare led the Governors to look into mandatory malpractice insurance, that same concern will lead them to reverse course, and *instead decide in favor of access to justice*.

FACTS AND IMPLICATIONS

FACT 1. This change mostly hits the small firm attorneys and their clients. The Taskforce's initial research shows that this proposal would most heavily impact small firm attorneys, proportionally more of whom are uninsured. **IMPLICATION 1: FEWER SMALL FIRM ATTORNEYS.** Proceeding with the mandatory insurance proposal would thus tilt the balance of competitiveness further in favor of large firm attorneys. This would hurt small firm clients. Clients benefit from the large number of small firm attorneys who keep costs and fees down; for this to continue, individuals need to be incented to first join the profession, then to practice under a low-cost model, and lastly to stick around. The clients who have attorneys who bill fewer hours per year (and thus for whom the insurance premium will be a big tack-on when computed on a per hour basis) will be the most severely impacted, by a combination of higher hourly rates and fewer attorneys available.

FACT 2. All or part of the premium cost would be borne by clients in the form of higher hourly fees. Having studied and taught Economics I can say with confidence that some portion of the increased cost of doing business will be borne by clients. If the demand function is steep and "inelastic" at the market price-point (inelastic is the situation where if they need an attorney they really need an attorney; sure they want to get the best deal, but if there is no better deal out there then they largely will just pay the price rather than do without), then the client absorbs proportionally more – these higher rates are one aspect of the access to justice problem. Even if the demand function is "elastic" (i.e. if attorneys raise prices, prospective clients largely say sorry, I'll go without an attorney) then what happens is a small price increase coupled with a large drop in use of attorney services – this having to go without an attorney is the second aspect of the access to justice problem. **IMPLICATION 2. Whether through increased rates, lower availability, or both, there is no way that the access to justice problem is not exacerbated by a mandatory malpractice insurance proposal.**

FACT 3. Mandatory insurance will always involve a net transfer of wealth out of the public's hands. *Ignoring for argument's sake any effect on the attorneys themselves*, if we guess that 75% (see FACT 2 re uncertainty regarding precise percentage) of the premium driven cost will ultimately be borne by the client through increased fees, and additionally assume (until the research comes in) that ratio of aggregate benefit payouts to aggregate premiums is 20% (due to insurance company marketing costs, operating costs, litigation costs, and profit) then this leads to a situation where the aggregate financial costs to the non-attorney public of mandatory insurance far outweigh the aggregate benefits to the non-attorney public.

BENEFIT PAY OUTS NET OF ATTORNEY FEES

Net cost to the public (excluding costs to attorneys)

For every \$1,000 in premiums, 75% is effectively passed on in higher rates= (\$750)

For the same \$1,000 in premiums, 20% is received back by clients in benefit payouts= \$200

Net benefit to the non-attorney public per \$1,000 in premiums: -\$550 (cost exceeds benefit).

IMPLICATION 3. Although the exact numbers are actually unknown, what is known is that the net cost to society, in aggregate (not necessarily at the individual level), outweighs the benefit by a lot. This is because small policies are relatively expensive for insurance companies to market, administer, and sometimes litigate and that cost must come out of the premiums.

Discussion: Let's not foreclose the options to the public.

Aggregate insurance benefits to be *received by clients* are but a small fraction of insurance premiums that would be *paid by clients* through increased legal fees. Thus, this proposal would mandate a *huge financial net transfer out of the pockets of the public*. Solid economic research and dispassionate analysis will demonstrate this. Once mandatory insurance is rejected, the public can specifically be grateful that:

1. The public retains the option of choosing a small firm attorney that charges **lower fees** because they are not required to incur a cost for malpractice insurance;
2. The public retains greater attorney choice including the option of choosing a part-time, low-caseload, and/or semi-retired attorney, **who does not leave the profession** due to higher costs, and who is also more likely to be local and more directly involved in the case than the large-firm alternative. By analogy, we don't increase housing availability and reduce rents by making it more expensive to build or operate apartments.
3. The public retains the option of choosing self-insured, **careful attorneys** who know they must act with the utmost of diligence to preclude liability
4. We avoid unnecessary costs upon clients of those attorneys who have ample wealth, future income stream, business reputation and client-focus to be incented to first of all avoid problems and then, if there is a claim, to settle it; these attorneys self-insure. This cost-avoidance occurs whether or not malpractice occurs. If any of the clients are harmed by malpractice, they will not have to fight an insurance company that has no relationship, is in the business of litigating aggressively, and only wants to settle for as little as possible.
5. On balance, the **public ends up with far more money in its pocket;**
6. The real target of the mandatory insurance proposal, which is the subset of situations where clients are harmed by uninsured attorneys who do not have sufficient wealth or reputational concern to settle, is not best solved by disrupting the relationship between clients and attorneys who practice carefully and in any event would settle any valid claim. To the extent this is a societal problem, an alternative that a) allows attorneys of means to declare a net asset level and self-insure, and b) spreads the cost of funding those claims across society with a light fee, rather than heavily assessing one sector that is not creating the problem, would be less disruptive.
7. the public retains the option of obtaining services from someone who *does* carry malpractice insurance, if that is important to the client in the light of the case at hand. *An alternative requirement for attorneys to clearly disclose that they do not have malpractice insurance and the implications of that*, may solve or go a long way toward solving the problem, and would preserve all of the positives and avoid all of the negatives listed above.
8. The Board of Governors retains its reputation for prudence, by demanding solid data and expert, unbiased economic analysis showing the source and extent of the problem, and that any solution provide a clear net benefit to the public, not a net loss as would occur here.

The research and analysis bar must be set high for an unpopular change to be imposed on members

“Beware the secondary effects!” economists warn policymakers. Revenue initiatives often don’t raise the predicted amounts, because payers at the margin alter behavior, just as I-90 becomes more crowded when Highway 520 adds a toll. In this case, we must not assume that all the same attorneys will practice, that their diligence in how they practice will be just as high, and that their fees to clients will be no higher. With such negative impact to the public looming, one must ask: Where are the studies? Where are the data from the states that have tried mandatory insurance? Where is the economic analysis that assembles, quantifies, analyzes, and predicts the costs and the unintended secondary effects?

Where we go from here: “Consensus” of the Task Force is a red flag.

The “tentative consensus” of the panel is a red flag because it flies in the face of

- 90% of states not requiring any form of mandatory insurance;
- A very low percentage of responders support the initiative. Vastly more oppose it and/or desire an exemption for themselves; knowing that a large number such exemptions can’t generally be granted without gutting the program, then these members should be tallied as being in opposition.
- Considering the above, at a minimum the proposal is highly controversial, with opposition vastly outweighing support. It should strike us as odd then, that the Task Force has reached a consensus in the opposite direction, either avoiding, suppressing, or dismissing the real controversies, perhaps unintentionally and with nothing but good will. This would suggest that absent immediate termination of this initiative, the Board should revisit either the a) the composition of task force, b) the dynamics of its operation, and/or c) a different level of information and expertise needed to properly analyze this proposal.

Respectfully submitted,
James Putnam
WSBA # 34495

From: [Dan Fessler](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment
Date: Friday, November 30, 2018 7:00:29 PM
Attachments: [Mandatory Malpractice Comment.pdf](#)

Please find attached a letter comment.

--

Dan Fessler
WSBA# 4301

L. Daniel Fessler
Yakima, WA 98908
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E-mail: ldfessler@gmail.com

November 30, 2018

Washington State Bar Association
ATTN: Task Force on Mandatory Malpractice Insurance
1325 4th Avenue | Suite 600
Seattle, WA 98101-2539
insurancetaskforce@wsba.org

Re: Comment on Proposed Rule for Mandatory Malpractice Insurance

Dear Members of the Task Force

I didn't think I would be writing this comment. But after reading the Task Force interim report and other available materials in preparation to renew my license this year, I am compelled to do so.

Inactive but Licensed:

I retired in 2015 after 40 years of practice and service to the WSBA but kept my license. My area of practice during the final 30 years of practice was *indigent* criminal defense. After retirement I explored malpractice insurance in case I wanted to do some appointed cases or consulting. I thought I had something to offer after 40 years of active practice. However, the cost of insurance even from the bar's preferred provider quickly dissuaded me. I now limit my practice to representing myself and family members.

I am about half way through the 771 pages of comments posted to date. But, even that far in, I can see that there are a wide variety of attorneys with licenses that want to keep them and are otherwise qualified but don't engage in actively representing the public for profit. And, they don't appear to be 'problem' attorneys. Some examples are:

- attorneys between jobs,
- attorneys with extended illness,
- attorneys who are stay-at-home parents,
- attorneys who are caregivers,
- attorneys who own property or business and use lawyering in them,
- hearings officers, arbitrators, and mediators,
- *pro tem* judges who need a license to serve,

Letter to WSBA
ATTN: Mandatory Malpractice Insurance Task Force
November 30, 2018
Page 2

- attorneys in public service positions that require a law license,
- attorneys whose only work is volunteer, *pro bono*, or reduced fee work for poor people,
- attorneys who sit on public or private boards of organizations not financially able to hire counsel,
- attorneys who practice in a very narrow specialty which insurance is not realistically available,
- people licensed in more than one state but don't practice in WA,
- and of course, retired attorneys who occasionally do volunteer work or give advice to/represent a family member or friend or community group.

Having read the comments, it is easy to see that there is a wealth of unappreciated and largely ignored lawyer knowledge, ethics, and skill embedded in society at all levels that shouldn't be inadvertently deleted from the profession. These lawyers have the ability to instruct and instill the core values of lawyers and the WSBA in the many places of the communities in which they interact with others. We shouldn't abandon them, and neither should we inadvertently purge them from the community where their identity as lawyers can positively influence the people and organizations around them.

To me, it is clear that if this proposal is adopted that a new status of membership is needed: ***Licensed but not actively representing the public for profit.***

General Need and Justification.

Having read the Task Force reports and summaries, my general view is that much more work needs to be done to identify the problem and quantify it before a preferred course can be chosen.

As anyone working with statistics knows, percentages only tell part of the story, The actual numbers are needed to quantify the problem and support either the need or the solution. I don't see many in the material available. An example is Key Finding #8 noting that 11% of all claims to the WSBA Client Protection Fund claims. Well, what is the actual number? Is it a large number? A small number? Over what period of time? Any trends? The members of the bar and Board of Governors in particular should know a lot more about this issue.

Along with others who have commented, I am concerned about the access to justice issues for people who have income but not enough to attract the attention or services of relatively high-priced larger law firms consisting of 5+ lawyers. And, what about all the people in this segment of the "public" that are

competently represented by counsel without insurance? It would be nice to see comparative statistics on this issue. Driving attorneys from representing these clients may not be in the overall best interest of either them or the profession.

The interim report notes that there are lower malpractice incidence rates in larger firms. But, is that the result of good lawyering practices or is it the result of those firms having the resources, contacts, time, and funds to defend against them. The interim report advocates as a justification that *'all lawyers make mistakes'*. If that is true, then lawyers in larger firms should be making them too, and at the same rate as other lawyers. But that isn't what numbers cited seem to demonstrate, at least in percentages. So what is the real problem? How many lawyers are in each group? What are the actual malpractice incidence numbers in each group? National statistics don't necessarily fit our state's circumstances as has been shown time and again in adopting model rules and laws. A more rigorous identification and quantification of the actual problem seems warranted.

One item of concern to me is the subjective justification in Key Finding #7 that plaintiffs' malpractice attorneys report *"numerous instances of worthy claims that they must reject for representation because the defendant lawyer is uninsured, making a recovery much less likely"*. Both the terms "worthy claims" and "numerous" leave a lot of room for discussion. More importantly, this Key Finding seems to imply that many such claims can and should be made because settlements are easier to come by when insurance is available regardless of the merit of the claim. This is a 'money machine' aspect of the practice at its worst. I am disappointed to find it in an official WSBA report.

Sole Reliance on the Private Insurance Market.

I must confess serious reservations about insurance companies being able to significantly tailor policies and pricing to fit the wide variety of circumstances presented to you in the comments. Some comments note the inability to even obtain insurance in niche areas of practice. Of course, insurance companies are businesses that depend on averaging to make a profit. But that begs the question about how the pricing structure will look and whether it will even be available in certain areas. Not to mention what the pricing will be like for the 'suspect' group of attorneys.

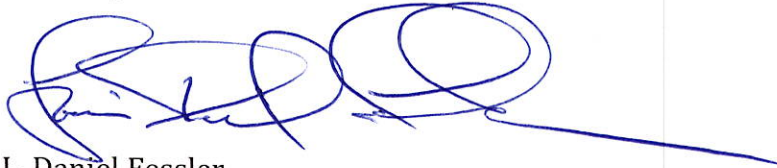
Idaho is held out as an example of reasonable rates in Key Finding #1. Although you must do your own math, that example shows that the annual cost for attorneys with only 6 years of practice experience will be \$2,776/year. And the 'tail' for a retiring attorney will be six years of at least that rate or \$16,656. Those numbers may be modest to some practitioners, but as the comments demonstrate, it is not to others.

Letter to WSBA
ATTN: Mandatory Malpractice Insurance Task Force
November 30, 2018
Page 4

In short, the private carrier malpractice model does not fit all circumstances. It seems to me that the WSBA, if it requires insurance, also has an obligation to assure that coverage is available for all and be reasonably priced.

Thank you for your time and attention.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. Daniel Fessler", with a long horizontal line extending to the right.

L. Daniel Fessler
WSBA# 4301

From: [REDACTED]
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comments regarding mandatory malpractice insurance
Date: Friday, November 30, 2018 7:38:13 PM

To the Mandatory Malpractice Insurance Task Force,

To understand my concern and comments regarding possible mandatory malpractice insurance, some background information on my legal career may be helpful for perspective.

After graduating from the University of Washington School of Law in 1999, I accepted a position with a law firm in Portland, Oregon and returned to my hometown of Vancouver. I was a litigation attorney for nearly 12 years with the same law firm until I transitioned to planned giving with a Vancouver nonprofit in August 2011. Unfortunately, that position was eliminated in August 2012. Eventually, I decided to take time off as I had two children under the age of four years old. Currently, I'm hoping to return to the philanthropy field on a part-time basis, but I have not yet found employment.

For various reasons, I kept my Washington bar license active. Like all other lawyers, I worked extremely hard to earn my juris doctorate and pass the bar exam. There's a degree of pride to keeping my bar license. It can be cumbersome to resume active status, particularly considering the number of years I've been a stay at home mom. At some point, I want to return to work so I kept my bar license active. It would not do anyone any good for me to maintain malpractice insurance. However, the unnecessary expense would force me to give up my license. This seems incredibly unjust.

I have noted and appreciate the exemptions that have been mentioned to date. Unfortunately, I don't think any of those address my particular situation. I can't imagine I'm the only mom or person in this position.

Thank you for considering this issue as you move forward.

Sincerely,

Jennifer Kampsula
WSBA #29508

From: [Kari Petrasek](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Solo & Small Practice Section Statement on Mandatory Malpractice Insurance
Date: Friday, November 30, 2018 10:15:38 PM
Attachments: [Solo & Small Practice Section Statement on Mandatory Malpractice Insurance.pdf](#)

Professor Spitzer,
Please find attached a Statement from the Executive Committee of the Solo & Small Practice section for the Mandatory Malpractice Insurance Task Force's consideration.

Kari Petrasek
Chair, Solo & Small Practice Section



Kari Petrasek
Attorney at Law
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**Washington State Bar Association
Solo & Small Practice Section**

November 30, 2018

Solo and Small Practice Section Statement on Mandatory Malpractice Insurance

Before the Mandatory Insurance Task Force proceeds further in their study of imposing mandatory malpractice insurance on the practicing attorneys of Washington State, it is imperative that they conduct an economic study on the financial impact of mandatory insurance premiums on the members of the Bar.

According to the Washington State Bar Association Diversity & Inclusion Plan, "The Washington State Bar Association is committed to advancing diversity and inclusion within the legal profession." The Mandatory Insurance Plan is directly opposed to the Bar's expressed promotion of diversity.

Let's look at some of the Bar's statistics from the WSBA Membership Study 2012. 10.4% reported an income of below \$25,000, 13% an income of \$25-50,000, 17% an income of \$50-75,000, and 20% an income of \$75-100,000. Collective, over 60% of the Bar members report an income of less than \$100,000, almost 25% reported an income of less than \$50,000.

19% of the Bar are solo practitioners (the number in small firms was not reported). 48% of the respondents working in law firms (as opposed to government, corporate, education, the courts, etc.) were solo practitioners.

12% of the Bar were reported to be nonCaucasian/White, and the median annual estimated income was \$80,000.

9% reported a non-straight sexual orientation, and the median income was \$75,000.

45% were reported to be female, with a median income of \$80,000.

19% were reported as having a disability or impairment. For active practicing attorneys in this category, they reported a median income of \$90,000.

Of these minority groups (among others listed in the report), 31% of the ethnic and racial minorities were in solo practice – half again as high as the overall average. 28% of the sexual orientation minorities were in solo practice – half again as high as the overall average. 38% of the

women were identified as solo practitioners – double the overall average. 47% of persons with disabilities and impairments were in solo practice – two and one-half times the overall average.

The study noted, “An analysis of the relationship of diversity to solo practice yielded notable findings. Across the board, members of each of the seven diversity groups in the study identify as solo practitioners at a higher rate than the overall membership. These discrepancies are striking, ranging from a 50 percent difference (sexual orientation) up to a 300 percent difference (military personnel and veterans) in the degree to which they exceed the overall membership average.” (WSBA Membership Study 2012 at 108) “The prominence of solo and related forms of practice such as contract attorney and small-firm practice are notable in the bar membership at present. In particular, solo practitioners appear more likely than non-solos to also be members of one or more diversity groups. Older members, persons with disabilities and impairments, parents and caregivers, women, and military personnel and veterans are all prominently represented among solo practitioners, so to some extent, to advocate for the needs of the solo practitioner is also to advocate for these groups.” (at 123)

The Malpractice Insurance Taskforce Report states that Lawyers who practice in solo or small firms are most likely to be uninsured – approximately 28% of the solo practitioners (at page 3), but nowhere in the report do they identify that solo practitioners also represent a larger group of the lower income attorneys and a larger group of the diversity attorney population.

On point, when reporting the expressed concerns of the Bar membership, nowhere do they list a concern that the mandatory costs of malpractice insurance would work a larger hardship on diversity members than on members as a whole, on solo practitioners of the Bar, and the lower economic status members. This discrimination is contradictory to the stated goals of the Bar on advancing diversity and inclusion within the legal profession and raises another bar to the practice of law.

We strongly encourage you to conduct an economic study on the financial impact of mandatory insurance premiums on the members of the Bar before imposing such mandatory requirements on members of the Washington State Bar Association.

Sincerely,



Kari Petrsek
Chair, Solo & Small Practice Section

From: [Courtney Lewis](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Comment on Mandatory Malpractice Insurance
Date: Saturday, December 1, 2018 9:38:20 AM

To whom it may concern,

I urge that the Mandatory Malpractice Insurance Taskforce, if it does decide to recommend mandatory malpractice insurance for all licensed legal professionals, to also recommend an exception to this requirement for WSBA attorneys living outside the state of Washington and who do not actively represent clients within the State of Washington.

This requirement would negatively affect me as I live and practice exclusively in the State of Alaska. There is no current risk of my committing malpractice within the State of Washington, so I would not benefit from malpractice insurance. Further, the State of Washington requires that any WSBA member who is active in any state be active in the State of Washington so I cannot elect to be an inactive WSBA member. I already pay the high bar dues of the State of Washington and Alaska, totaling over \$1,1000 per year. Adding an insurance safeguard would complicate my finances, with no discernible benefit. I maintain my WSBA membership because my husband grew up in Washington, went to law school in Washington, and we foresee that we may someday live in Washington again. If that were to happen, I would follow the malpractice insurance requirements for attorneys who live and practice in Washington.

My situation is not unique. There are likely many members of the WSBA who do not live or practice in Washington. Creating an exception to any recommendation for mandatory malpractice insurance for WSBA members living outside the state of Washington and not actively representing clients within the State of Washington would prevent these members from suffering an undue hardship for no tangible risk protection.

I apologize for sending this on December 1 - I had planned to send it yesterday but was in the Anchorage earthquake, and was without power most of the day.

Thank you for your consideration,

Courtney Lewis

From: [Inez "Ine" Petersen](#)
To: [Bill Pickett](#); [Rajeev Majumdar](#); [Dan@mcbdlaw.com](#); [Michael Cherry](#); [carla@higginsonbeyer.com](#); [kyle.s@bullivant.com](#); [danclarkbog@yahoo.com](#); [PJ Grabicki](#); [BHM Tollefson@outlook.com](#); [Paul S. Jkang@smithfreed.com](#); [Kim Hunter](#); [meservebog@yahoo.com](#); [Athanas Papailiou](#); [rknight@smithalling.com](#); [Alec Stephens](#)
Cc: [Mandatory Malpractice Insurance Task Force](#); [Paula Littlewood](#)
Subject: My December 1st comments
Date: Saturday, December 1, 2018 9:47:01 AM
Attachments: [120118 Statement Against Making Malpractice Insurance Mandatory.pdf](#)

Dear Governors:

I put my fate in your hands.

Respectfully,
Inez Petersen

Statement Against

Making Malpractice Insurance Mandatory (at this time)

*Protecting the Public is the goal -
This includes more than making sure that a "sliver of a sliver"
Receives reimbursement for legal malpractice*

December 1, 2018

from

Inez P. PETERSEN, WSBA #46213

1166 Edel Ct, Enumclaw, WA 98022

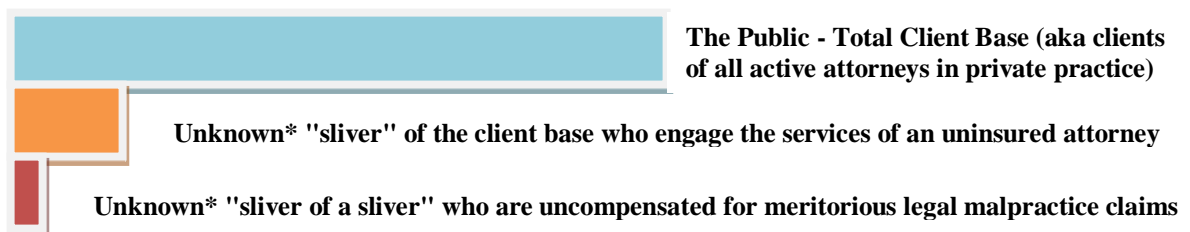
Cell 425-255-5543

FAX 888-253-1074

I believe that the Mandatory Malpractice Insurance Task Force members are sincere in their efforts to make sure a "sliver of a sliver" of clients of uninsured attorneys is reimbursed for legal malpractice BUT . . .

- **Their focus is too narrow, ignoring the "trickle down" effect on the Public as a whole and on attorneys as a whole; and**
- **They do not have the right facts and data to move forward with making malpractice insurance mandatory at this time.**

Figure 1



*Facts and data have not been gathered about the "sliver" and the "sliver of a sliver." These specific facts, no matter the myriad of other facts presented by the Task Force, are the cornerstone of any decision to make malpractice insurance mandatory. And once malpractice insurance is made mandatory, the "trickle down" effects will occur with no way to go back and undo that damage to the Public as a whole and to attorneys as a whole.

Lack of data was the basis for my "Where's the meat?" comments. Hugh Spitzer told me in an email dated Thru, Nov 29, 2018, at 11:40 AM that the Task Force has added "hard data" to its Final Recommendation.

(1) BUT I do not believe his "hard facts" are the right facts to justify making malpractice insurance mandatory at this time.

(2) AND I do not believe his "hard facts" address the "trickle down" effect on the Public as a whole and attorneys as a whole which mandatory insurance would cause.

These two points are crux of this paper, and I hope that a **Board of Governors** will give them weight as they review the Task Force's final recommendation. Please look at each page of the Task Force's final recommendations and ask yourself, "Does this really justify why insurance must be made mandatory at this time to eliminate a "sliver of a sliver"? And does this page ignore the impacts to the Public as a whole and attorneys as a whole caused by the "trickle down" effect mandatory insurance would cause?.

CURRENT TASK FORCE PROPOSAL: For the sake of the "sliver of a sliver," the Task Force recommends requiring all active attorneys in private practice to purchase malpractice insurance.

- **In so doing, the Task Force dismisses the resulting impacts to a significant number of attorneys (47% comprised predominantly *pro bono* attorneys like myself, solo practitioners, attorneys in small law firms (2-10 attorneys), and retired/semi-retired/ready to retire attorneys).**

Using WSBA Member Demographics Report dated 2/9/2018

Figure 2



Solo practitioners and small law firms total 14,825 attorneys (5,947+1,730+4,999+2,146) or 37% of all member types (14,825/39,769). 10,480 attorneys or 26% (10,480/39,769) of all member types did not respond. It is not known what portion of the no responders are solos or attorneys in small law firms. But using 37% as a WAG, then 37% of 10,480 is 3,878.

Adding 3,878 to the solo/small law firm total of 14,825, then 18703/39,769 = **47%** of all member types are potentially in a group which would be impacted by the "trickle down" effect caused by mandatory malpractice insurance and the expected increase in cost. But to what degree and specifically how we do not know.

We would have an opportunity to gather these facts if the **Board of Governors** adopts the LEAST RESTRICTIVE MEANS as a PREPARATORY STEP to making malpractice insurance mandatory.

Those of retirement age (5,743+1380+119) and those preparing to retire constitute (6,839) constitute 35% of all member types (14,081/39,769). Mandatory insurance and the expected increase in cost would affect this group. But to what degree and specifically how we do not know.

We would have an opportunity to gather these facts if the **Board of Governors** adopts the LEAST RESTRICTIVE MEANS as a PREPARATORY STEP to making malpractice insurance mandatory.

The missing data is essential to any decision which would make malpractice insurance mandatory; and the Task Force should not move forward with their recommendation with it.

Even though the Task Force has requested attorney input, Task Force leaders are devoted to mandatory insurance to the exclusion of viable consideration of the comments sent. Hugh Spitzer wrote these words to me in an email dated Thru, Nov 29, 2018, at 11:40 AM, **"It's just that when you get right down to it, the Task Force's policy conclusions and approach are, overall, different from your recommended approach."**

Well, when we get right down to it, I believe the majority of those sending comments to the Task Force agree with me.

The impact to attorneys as a whole which is the focus of this first bullet point leads us into the second bullet point which addresses the impact to "access to justice" for the Public as a whole.

- **The Task Force dismisses the resulting impacts to "access to justice" for the Public as a whole. This comes by way of the "trickle down" effects from negative impacts which mandatory insurance would have on active attorneys in private practice.**

Figure 2 gives you a visualization of attorneys as a whole who could suffer negative effects from mandatory insurance which would then "trickle down" to the Public as a whole. "

"Access to justice" examples include: no services available for no and low income clients, increased workloads at non profits providing legal services, increased cost to clients to cover increased cost of insurance, and attorneys using risk management to a greater extent to turn clients away.

The "trickle down" impacts to the Public as a whole are important because: **What good does it do to solve the problem of a "sliver of a sliver" of clients while creating a bigger problem affecting far more members of the Public?**

And, after all, protecting the Public is the goal here, and that is not restricted to a "sliver of a sliver" as depicted in Figure 1.

This is actually a two dimensional problem. The first dimension is the "sliver of a sliver" which the Task Force wants to remedy through mandatory insurance. The second dimension is "access to justice" for the Public as a whole. I believe that to avoid impacts to "access to justice" for the Public as a whole, a remedy may be needed which does not involve mandatory insurance. This is something I believe that the Task Force currently fails to recognize.

Will *pro bono* services dwindle? How much? Who will be hurt if this occurs? Will attorneys be forced to abandon their careers and retire against their wishes? What other impacts could attorneys divulge if surveyed? We do not know.

We would have an opportunity to gather these facts if the **Board of Governors** adopts the LEAST RESTRICTIVE MEANS as a PREPARATORY STEP to making malpractice insurance mandatory.

LEAST RESTRICTIVE MEANS: The "Least Restrictive Means" is the PREPARATORY STEP to making malpractice mandatory, if in the end it is truly justified. It is comprised of (1) fully informing the client and (2) fact finding to provide the necessary statistics, now missing, to determine whether malpractice insurance should be made mandatory.

For a two-year period, (1) uninsured attorneys would provide notice of no insurance as part of their contracts for legal services; and (2) new rules covering fact finding would be instituted (a) to determine if the "sliver of sliver" is significant enough to justify requiring all active attorneys in private practice to carry malpractice insurance and (b) to assess the "trickle down" effect to the Public as a whole if insurance were to be made mandatory. This would not be an expensive undertaking contrary to the Task Force's reason for not gathering such data which was expense.

During this two-year fact finding period, the fully informed client may, at his own discretion, choose to opt for an insured attorney. And the attorney, at his own discretion, may choose to practice without insurance. Sufficient discussion would occur between uninsured attorney and client that it could be assumed that each party had a valid business reason for their choice.

New rules would be adopted prior to the two-year fact finding period requiring self reporting on matters of legal malpractice with disciplinary action for non compliance. Fact finding would cover both collected and

uncollected legal malpractice judgments, including "would be" complaints where the plaintiff's attorney declined to file a complaint because the defendant attorney had no malpractice insurance and/or no assets.

In my letter of Nov 25, 2018, I had thought that the uninsured attorney was under an obligation to require a prospective client to seek independent counsel about the attorney's notice of no insurance. But as I reread RPC 1.8(h)(1) I do not believe that merely informing a client that the attorney has no malpractice insurance requires independent counsel. (Imagine how onerous this would be for the clients of the 15% of uninsured attorneys and for the attorneys themselves.)

I foresee a niche market with one attorney suing another attorney because mandatory insurance would encourage litigation. There will no doubt be a proliferation of frivolous insurance claims just as there are with frivolous bar complaints. The stereotype image of attorneys in general will not be enhanced by using mandatory insurance as way to ensure that a "sliver of a sliver" receives reimbursement for legal malpractice.

Also, just as with vehicle insurance, an insurance company may choose to pay a claim rather than litigate if the former appears to represent the lower cost. What will that do to an innocent attorney's insurance rate and reputation?

I have given this much thought over the past several weeks that I have been writing on the subject. I believe my 30-year career at Boeing gives me standing to speak as I do. For most of those years I prepared rates and factors for the Defense and Space side of Boeing and then later statistics for Boeing's hardware/software acquisition process. I was a certified computer programmer and took Master level statistics courses as part of the MBA program in which I was enrolled.

I suggested that I be attached to the Task Force to develop the missing statistics but received no acknowledgment.

I have submitted several short term, easy to implement suggestions to Paula Littlewood and the Task Force which would improve client visibility of insurance information on the LEGAL DIRECTORY. I did not receive even an acknowledgment which indicates to me that there is no formal process improvement policy at the WSBA.

"Better, faster, cheaper" were the by-words during most of my 30 years at Boeing. Such a mission statement would have been worthless without a routine, efficient, and speedy procedure (1) for process improvements and (2) organizational changes. *Janus* I believe will force both upon the WSBA.

THINKING OUTSIDE THE BOX: What about the client being the insured instead of the attorney? The client could have the option of buying malpractice insurance himself applicable to his one contract for legal services. This would be a way of ensuring the "sliver of a sliver" would receive reimbursement for legal malpractice. This alternative leaves both parties with the freedom to choose, accommodating a variety of business reasons, and without impacting all active attorneys in private practice.

Insurance companies, however, are not in the business to pay on claims, and the exclusions are wide and varied. It could be that, after all is said and done, a malpractice insurance policy will still not result in payment to the "sliver of a sliver."

When a team works on an idea for a significant length of time, egos and ownership can make neutrality and the ability to consider alternatives difficult if not impossible. Some of this may be at work here for persons who worked on this project over the past three years, first on the Mandatory Malpractice Insurance Work Group and then on the Mandatory Malpractice Insurance Task Force.

Had the Task Force taken a two-step approach early on, (1) they could have engaged in adequate fact finding by now to know whether mandatory insurance is needed, and (2) notice in contracts for legal services could already have been alerting clients when an attorney was uninsured. As it stands now, there are too many unanswered questions to proceed immediately to mandatory insurance.

CONCLUSION: Mandatory insurance should stay in limbo for two more years so that necessary statistics can be gathered while clients are protected via full disclosure. If, at the end of two years, statistics support making malpractice insurance mandatory, then it would be time "to make it so." <https://www.youtube.com/watch?v=sZt6eU5REN8>

Respectfully submitted,



WSBA #46213, Cell 425-255-5543

Email JusticeSpokenHere@gmail.com

From: [Edgar Hall](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: opposition to mandatory malpractice
Date: Saturday, December 1, 2018 10:28:19 AM

My name is Edgar Hall. I am largely a consumer protection and bankruptcy attorney. I do a great deal of pro bono work and already operate a borderline sliding scale practice that would like qualify as low bono- as most of my clients are quite impoverished or going through very hard times.

I am opposed to making the malpractice mandatory. This is largely based upon the belief that making it mandatory will reduce the availability of pro bono services, that any increases in costs will be passed to consumers and will disproportionately impact the most at risk citizens, and will lead to less legal assistance for Washington citizens.

First: Attorney salaries are essentially bifurcated.....there are those making 100-300k plus and are comfortable. Then there are those who struggle, greatly, to survive making much less than that. Some are retired or semi retired or in government service, others are new, or some other reason. But this IS the reality of being an attorney in the modern area. This proposal acts as a larger burden tax upon the lower income attorneys- like a gas tax that disproportionately affects the poor. This also means the poor citizens of Washington will be taxed as these costs are passed down to the ultimate consumer.

Second: Making malpractice mandatory will raise costs for all attorneys. If you look to Oregon, the cost (whether you are rich or poor) is \$3,300.00 per year per attorney. I am insuring two attorneys for three times the coverage for that amount. The problem, is by forcing coverage of the small percentage of bad apples with a lot of claims or risk is smoothing their costs to the rest of us. Also there is no need to be price competitive once it is mandatory, it can just be more profits because if you don't buy it you don't practice.

Third: The LIKELY response by many attorneys will be to just get the minimum coverage or to not practice in this state or provide pro bono services. This will reduce the availability of services to the poor, working poor, and middle class, who can least afford to lack services or have increased costs. Reduced coverage means reduced recovery for those who are harmed.

Fourth: the other response is for attorneys to charge more to cover this expense. Again, this disproportionately impact the poor and middle class citizens who can least afford increase to service costs already.

Fifth: There is already a client protection fund that can serve to protect clients who did retain an attorney without coverage. It is not perfect, but it is an option.

Sixth: Clients have the ability to see if an attorney has insurance and can ask. Its publicly available. It is a false analogy to liken this to auto insurance. I don't know if the person next to me on the road is insured. There is no excuse to not know if the attorney you retain is not insured and there is no risk of "driving" next to an uninsured attorney.

Exceptions: If this is going to be implemented, and I suspect it will even if 95% of the entire bar objects because its house money being spent and it sounds really good from a PR perspective, then at least build in exceptions for government attorneys, retired attorneys who

do pro bono work, etc.

Alternate Idea: Someone in the already posted comments had suggested that like the medical field, mandatory malpractice should be implemented after a certain number of claims. There are numerous attorneys who have had a whole career without a claim.

Disclosure: I have maintained malpractice insurance my entire career. I am not seeking a pass from coverage. But I do believe this will impact the availability of services and the costs of those services that will have a detrimental impact upon citizens obtaining and affording legal services.

SUMMARY

- implementing mandatory malpractice will lead to many attorneys retiring early or not providing pro bono services or working in another state
- it will likely lead to a reduction to the minimum policy limits to defray costs
- it will lead to increased costs for legal services, which the public already has a hard time covering
- there is already a client protection fund and the ability for consumers to see who is insured and who is not
- this proposal will largely benefit the insurance industry, NOT the public. The public will absorb these higher costs and receive less pro bono services.
- the majority of Washington citizens can barely afford legal services, they will less be able to afford them if less pro bono services are offered and legal prices increase
- this is a solution in search of a problem

-is the PRO of the worst attorneys being insured and a few people who were too shy to inquire about the client protection fund worth the CON of increased prices and reduced services for the vast majority of Washingtonians? If this were presented from a game theory perspective on absolute numbers it is no because costs will increase and services will reduce- the needs of the many outweigh the needs of the few. However, when viewed from a political lens, this is essentially using non-budgetary funds (i.e. the membership's pocket books) to make a good PR headline and the public generally will not think about or see the invisible tax of less services and higher costs.

Edgar I. Hall, Attorney
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From: [Larry Stout](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Proposed Mandatory Malpractice Insurance
Date: Saturday, December 1, 2018 12:22:09 PM

Dear MMI Task Force,

I am strongly opposed to the proposal to require mandatory malpractice insurance. I was born in Olympia in 1956, admitted to practice in 1987, and have run my solo-practice law firm by myself, with no staff, for the past 31 years. Over the years I have built two areas of practice, a Chapter 7 bankruptcy practice and an estate planning-probate practice, which I see are two of the larger areas of practice that generate malpractice claims.

So as a sole-practitioner in those areas of practice your sights are trained directly on me. But if you Google either practice area for Olympia, which I doubt you will bother to do, you would see that I am the #1 ranked attorney in both areas, with more than 50 five-star reviews, many of them lengthy and specific. I choose, and it should remain my choice, as it currently is in 48 of our 50 states, not to carry malpractice insurance.

And in over 31 years of solo practice I have never had a judgment entered against me for malpractice. But now, in the twilight of my career, you as a quasi-governmental entity are telling me that I am a risk to the public so I must carry malpractice insurance..?

The Task Force seems to believe there is some urgency in moving in this direction. Perhaps if Washington was one of two states that had yet to require MMI, things might be different. Yet only two states currently require MMI. Hardly seems like the crisis it is being made out to be.

I have gone through the list of the “findings” which are offered to support this proposal. To most of them, my response is “so what..?” For example, the assertion that “the vast majority of common law countries outside the US” require some type of MMI. Are we to look at what other countries are doing to guide us in how we should act in every aspect of our lives..? Of course not. Any why don’t you flip the statistics around and point out that the vast majority of states (48-2) do not require MMI..? Your findings are skewed to be self-serving.

I note that one of the findings is that virtually all physicians carry MI because hospitals require it. Huh..? How is that possibly relevant to the issue of MMI for attorneys..? As far as the statistics showing that solo practitioners are responsible for a high percentage of malpractice claims, is it not also true that solo practitioners make up a disproportionate percentage of the WSBA membership..? So of course solo practitioners are going to have a higher percentage of claims than non-solo practitioners.

Of the commentators who have expressed an opinion, according to your statistics 128 are opposed to the proposal while only 28 are in favor. To proceed in the face of that opposition sends a clear message that the WSBA is more concerned about it’s image than the welfare of its members.

A number of commentators have stated that the WSBA is there to serve its members, not the public or the WSBA’s public image. However, I see that that our Supreme Court does not agree, and apparently could care less. This “protection of the public” objective, now listed at the top of the list of objectives adopted in 2017, was never there before. #1 used to be to

provide independence of the judiciary and the bar; #2 used to be to promote an effective legal system, and #3 used to be to provide service to its members. That objective is now gone. Really..?

If the WSBA wants to protect the public, then why doesn't it revamp it's CLE requirements, which are a complete joke..? An attorney who practices family law can satisfy his or her CLE requirements year after year without ever participating in a family law CLE. That really makes a lot of sense, doesn't it..? There are other administrative actions that could be taken to safeguard the public besides forcing solo practitioners to incur yet another business expense which is not related in any way to that attorney's personal performance.

As a self-employed individual, I already pay an additional "self-employment" tax to the federal government for the privilege of working on my own, often six days a week, without a net, without retirement benefits, sick leave, paid holidays or health insurance. I purchase health insurance because at my age I really cannot afford the risk not to have it, but thanks to the government I have only one provider that will offer health insurance to me that covers services provided by my primary-care physician of over 25 years. So I am currently paying \$822 a month for health insurance that covers almost nothing but an annual physical. If I have a major illness it only covers 60% of the cost. I looked at the WSBA's options for health coverage but unfortunately only one provider was available, and I would not have been able to continue using my doctor. So while laudable, the WSBA's effort along those lines did nothing for me. Now this...

If you must shove some form of MMI down our throats, over the majority of members' objections, how about an exemption for practitioners with 25-30 years of experience who have never had a malpractice judgment entered against them..? The irony of the malpractice game is that the more experienced you get, the more your premiums go up. I understand the offered justification for this, but it is just wrong. As to mandatory minimum coverage, \$100,000 would suffice to protect that vast majority (89%) of the public according to your own findings...

Thank you for the opportunity to get my \$.02 in...

Sincerely,

Larry D. Stout
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larrydeanlaw@earthlink.net

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From: [Peggy Whitmore](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: pswegle@gmail.com
Subject: Comments per: "The Task Force will be accepting written comments through Dec. 1, 2018. "
Date: Saturday, December 1, 2018 12:43:36 PM

Re: "The Task Force invites you to submit written comments to insurancetaskforce@wsba.org. The Task Force will be accepting written comments through Dec. 1, 2018. "

I am submitting these comments at the last moment, because this is a deeply personal issue, and I have been hesitant to "go public" with my concerns. However, I realize I must add my voice to those who are troubled about the proposed requirement for active lawyers to carry malpractice insurance. At the moment, I am covered by malpractice insurance carried by the firm with which I am currently affiliated. My personal situation, however, mirrors that of many others who have already commented on this proposal.

I work part-time due to personal circumstances, and a good portion of my work is pro bono (I don't report those hours because I don't need any external recognition of same). If my affiliation with the current firm ends, I will be faced with changing to inactive status, because my annual income is only slightly higher than current estimates for malpractice insurance. Add in bar dues, and I'd be losing money to remain active.

I've been a lawyer for over 20 years and take great pride in a J.D. from an Ivy League law school and a distinguished legal career, having worked as a federal government attorney fighting health care fraud, as an in-house lawyer, and as a regulatory attorney in some of the largest law firms in the world (see, e.g., McDermott Will & Emery). I maintain my continuing education and practice in an area where I am never in court, never face court deadlines, and typically don't have to deal with holding client funds. Is there still risk associated with my practice? Of course. But this one-size-fits-all approach will likely end up excluding people like me, who arguably pose much lower risk to clients than many.

In addition, I am extremely concerned about the implications of going inactive in Washington – which will be forced on many lawyers here if the malpractice requirement is passed. I've gone inactive in Washington DC and California and never seen such punitive language as appears in the form for selecting inactive status in Washington. I was shocked and dismayed to see the following in this bar's form (emphasis added):

By signing this application I acknowledge that I am aware that to change my license status back to Active **I must submit an application that will be subject to full investigation as to both my character and my fitness to practice law**, and that I must be compliant with all continuing legal education and licensing requirements necessary for that status change at that time. Further, I understand that the Board of Governors **may require that I take the admissions examination** for my license type and/or conduct a hearing in connection with my application to return to Active status.

I've been subject to intense character investigations both as a part of joining the California bar and getting law enforcement level clearance for the federal government. The thought that simply by going inactive for a period of time I will face that level of scrutiny again is offensive. It also strikes me as yet another example of how dimly this bar views its membership and is a poor steward of our dues.

Further, I can't believe I'd have to agree that I might have to take the bar again. Why?! If I maintain my CLE, what makes me different from any lawyer who has the cash to remain active but isn't practicing? I don't know many lawyers who would willingly take the bar again unless it's absolutely necessary. I started with the California bar because I knew they didn't let people waive in (maybe they do now, but they didn't then) and I knew I'd never want to take the bar again.

If you implement the malpractice requirement, which I expect you will do regardless of member concerns, please at least revisit this punitive approach to inactive status. See, for example, California's form for selecting inactive status [here](#), and, in particular, this language (emphasis added): "eligibility, if not under suspension, to transfer back to active status (not retroactively), **at any time upon written request and payment** of the difference between the active and inactive fee for the current year." [This](#) is the DC form for status changes. As you can see, changing status in at least two other jurisdictions is mostly an administrative action. Why does Washington look askance on those who choose to be inactive? As I've seen from other comments about the malpractice issue, there are many lawyers who will have to consider the ramifications of selecting inactive status here. So - along with access to legal services problems, there will likely be some other unintended consequences of implementing mandatory malpractice insurance.

Thank you.

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From: [Peter H. Arkison](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Mandatory Malpractice Insurance.
Date: Saturday, December 1, 2018 3:35:41 PM

Good Morning:

It is nice to say that every lawyer should be required to carry malpractice insurance; that would provide a redress procedure when a lawyer fails to do an adequate job. However, the "Law of Unintended Consequences" will create a nightmare which will probably materially change the practice of law. I would submit that what has happened to the practice of medicine in the past few years would be a foretaste of what will happen to the practice of law. It will become the insurance companies who will decide who gets to practice law.

Insurance companies are notorious for being risk-adverse. If the insurance company decides to terminate the coverage for a particular attorney because the attorney has beaten the insurance company several times, what redress will the attorney have? If the attorney advises the client to not take the settlement offered by the insurance company, what redress will there be for the attorney when the malpractice policy is cancelled?

I doubt that many of the people on Task Force really understand what the costs of requiring that insurance will be to many of the members of the Bar.

I have carried malpractice insurance since I started practicing in Washington 44 years ago. I have not had a claim against me. However, for me to renew a fairly basic policy is going to cost me approximately \$5,000. That means that I will be spending approximately \$100 per week, even though I have not had any losses or any claims reported to the insurance company.

The economics of practicing law have changed in the past few years. There are large firms which routinely have, as their first response to a Complaint against their client, a letter saying that the Complaint is not well founded and that their client will be seeking attorney fees and damages for bringing this action. It is a very chilling threat which is probably unethical to send. That type of tactic will become more prevalent when there is mandatory malpractice insurance.

There are a number of aggressive law firms which attempt to win cases by unethically generating excessive pleadings, the effect of which is to defeat the other party economically, not on the merits. If the attorney does not have the resources to respond to such tactics, it means that justice will be denied.

Has the Task Force given careful consideration to the way the disciplinary process works? Look carefully at the disciplinary actions reported periodically. The ratio of actions taken against attorneys is disproportionately larger in the areas outside of the Seattle metropolitan area. Why? What is the effect of this pattern on any possibly required malpractice insurance? Disciplinary proceedings will affect the premium a lawyer will have to pay; until the implicit protection given to Seattle-area lawyers is removed, mandatory malpractice insurance is just going to give additional advantages to the Seattle firms.

Another example of the “Law of Unintended Consequences” will be the increased number of malpractice claims filed. Any time a client loses, regardless of the merits of the case, the mandatory insurance requirement will invite a claim to be made against the insurance policy. Since most insurance companies will settle rather than going to trial, the lawyer can expect to lose regardless of the quality of representation.

Just a thought or two.

Thank you for your consideration.

Peace.

Pete

From: [R Reams Goodloe](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: COMMENTS REGARDING MANDATORY MALPRACTICE INSURANCE
Date: Saturday, December 1, 2018 3:39:04 PM

>>>*The Task Force will be accepting written comments through Dec. 1, 2018.*<<<

TO: Washington State Bar Association
MANDATORY MALPRACTICE INSURANCE TASK FORCE

The Oregon Bar claims that “*Over time, the cost of coverage provided by the PLF has proved to be less than the cost of comparable commercial coverage.*” But, I have no idea how they do their arithmetic... Anyway, they also say that about half of lawyers in private practice ALSO carry EXCESS coverage from commercial carriers. So, that takes care of both the “haves” and the “have nots” – while they are actually practicing and maintaining their Oregon license. Regardless, the task force’s tentative conclusion that coverage should be obtained in the private marketplace, rather than by a captive fund such as is used in Oregon, solves some potential problems but ignores some common commercial marketplace gaps, and does not adequately address the problems that might be faced by many WSBA members.

While there are lots of comments on the Task Force database, I don’t seen any viable suggestions for a plan to work with commercial insurance providers to enable the insurance of “part-time” practitioners, or semi-retired practitioners during a “slow down” period, or for time-to-time consultations or project work after withdrawal from full time practice. Likely, there should be some adjustment mechanism for reduced insurance premiums – perhaps based on reduced revenues of such practices – but at this point, there is no indication that commercial carriers are interested in addressing such a market. Nor is there any indication that the Task Force has attempted to sort out with the commercial marketplace whether or not such coverage could be obtained, or at what price. But, an example, E&O policies for businesses are commonly based on gross revenues of the business. Commercial insurance providers might be in a position to provide a rating mechanism that enables lower premiums based on good claims history, or increased premiums based on bad claims history. In this regard, the present WSBA client protection fund (which has a \$30/year per member dues assessment) has a history of making a large number of payouts in some years for single bad actors. If such characters are not disbarred – then at least they should absorb some of the economic pain of their own history of misdeeds. Perhaps the private commercial insurance marketplace will resolve that issue on its own... But, the Task Force cannot and should not ignore such issues.

And, I have not seen anything that addresses the GAP between “end date” of policy coverage on a year-to-year “claims made” policy and the later date of a statutory bar date. So, how would any “tail” coverage plan work? Will the mandatory rule require licensed attorneys to buy a “tail” policy as a mandatory requirement before resignation from the bar? Or, will the bar association be able to negotiate an “occurrence” policy, rather than a “claims-made” policy, for its members, so that claims later made on something that occurred during a coverage period will be

covered? Although that would drive up initial insurance costs, it would eliminate the many GAP situations which can be presently envisioned, regardless of practice type, for many different types of practices. Such insurance is not easily found, if at all at any price for some types of practices, in the commercial marketplace.

As an example, in my Intellectual Property practice, patents are good for 20 years from the earliest effective filing date (assuming maintenance fees are timely paid), plus any “patent term extension” due to delays in USPTO handling. Then, then infringement claims could be brought for up to 6 years after the date of expiry - and any malpractice claims would then likely have an additional statutory bar date (likely three years, but it will be based on statutes as they exist in the future, not today’s statute), based on the date the claimant “discovered, or reasonably should have discovered, the facts which give rise to the malpractice claim.” So, that’s a presently foreseeable 29+ year “exposure” period. I’ve prosecuted various patents with substantial patent term extensions (1-3+ years), which would make the “exposure” period up to 32 years, and perhaps more in some cases. How is that going to be covered? If an “occurrence” policy is obtained, great, no problems with a GAP, as far as the WSBA’s C-suite and the Supreme Court’s worry of having the “public protected”. But, what about protection of the WSBA members? Any **legitimate rule making process** must squarely address the needs, risks, and economic burden of the WSBA members....!!!

In any event, details of rate adjustments for “**startup**” **solo or small firm practices**, for “**part-time**” practices, and for “**semi-retired**” practices, should be well thought out and vetted before any mandatory insurance plan is adopted. Indeed, there **absolutely must be adjustments for such situations**, or there will be a major disruption in the supply of legal services to those who can least afford such services in the State of Washington. Tentatively proposed exemptions to not adequately address the economic reality of many groups of attorneys, such as those just noted, who would be burdened under a mandatory insurance rule.

I have long maintained insurance for my IP practice, so I’m not looking to avoid coverage. But, since it seems to be a foregone conclusion that this ship is going to sail (regardless of what WSBA members might think, if given a chance to actually vote on the matter) perhaps if you take the time to study various situations in enough detail, then some easily foreseeable problems (e.g. GAPs in coverage), or adverse consequences (e.g. loss of legal assistance to those of limited economic means) of such a rule may be avoided.

R. Reams Goodloe, Jr.

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From: [RONALD SCHAPS](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: pl.isaki@comcast.net
Subject: mandatory malpractice insurance
Date: Saturday, December 1, 2018 5:20:20 PM
Attachments: [Memo re Malpractice Insurance.docx](#)
Importance: Low

Please see attached comments. Ronald T. Schaps, WSBA #2203

November 30, 2018

TO: Mandatory Malpractice Insurance Task Force

FROM: Ronald T. Schaps, WSBA #2203

I have been admitted to the practice of law in the State of Washington since February, 1961. I practiced roughly 40 years with the former law firm of Bogle & Gates until it closed in 1999. I then practiced as in-house counsel to a closely held corporation until I retired as of 12/31/2015.

During my practice with Bogle & Gates I became very familiar with various insurance issues (coverage, policy language, insurer conduct and conflicts) including matters relating to malpractice insurers that led to the formation of a captive off-shore insurer to provide insurance to major law firms. I am also familiar with disciplinary issues having served three years on the Disciplinary Board and approximately nine years as a Conflict Review Officer for the Washington Supreme Court.

Exclusions

After I retired I was retained by the corporation as a legal consultant to its new, young in house General Counsel, on the basis of a nominal monthly retainer. At this point, that is the entirety of my practice. Much of my work with in house counsel probably could be argued to not be “the practice of law” but I have elected to avoid any such issues and describe myself as engaged in the practice of law in renewing my license. I see no valid reason to require me to acquire malpractice insurance. I am certainly willing to certify to the WSBA that my activities will be so limited, and I am sure I could get the corporation to verify that it knows I do not carry malpractice insurance and waive and need for it.

In reviewing the various on line material, I have noted various concerns about “monitoring” any exclusion to assure that the attorney is not exceeding the limitations. This is not a valid reason for denying an appropriate exclusion. There are many other requirements imposed upon licensed attorneys where the WSBA requires at most a certification and relies upon imposing consequences if there is any breach. Indeed, in every one of the existing proposed exclusions, there is nothing to prevent the attorney from providing services outside the scope of the employment that forms the basis for the exclusion – and no attempt by the WSBA to monitor.

Motive for Proposal

Aside from references that “OTHERS” are doing it, the primary motive for considering the mandatory imposition of a malpractice insurance requirement appears to be statements from plaintiff’s attorneys that they do not pursue some malpractice claims because the defendant would be unable to financially pay a resulting judgment – without any quantitative data. It could be suggested that the real motivation for their concern is that the presence of insurance materially increases the likelihood that they will be able to secure a settlement without having to go to trial (much less an appeal). Insurance companies generally are not concerned about the defendant’s reputation, whether the claim presents unresolved issues of law, etc. –they are concerned about money. If a case, no matter how tenuous, will cost \$200,000 to defend and it can be settled early for \$75,000, the company will want to force a settlement.

Not only does the settlement save them money, but it allows them to double-dip by using the settlement as a basis for increasing the attorney's premiums. If you think this is an exaggeration, please note the handling of *Schmidt v. Coogan* in the article immediately following the task force report in the August 2018 NWLawyer.

Analysis of The Lawyers That Would be Impacted and The Effect on the Availability of Legal Assistance.

The analysis of the attorneys that do not carry malpractice insurance is rather superficial. These solo and small firms probably fall into one or more of the following three categories:

- Young lawyers fresh out of law school without job offers from established firms and seeking to establish their own practice;
- Lawyers who are members of a minority, again without job offers from established firms and seeking to establish their own practice; and
- Lawyers dedicated to serving minority, ethnic, or other lower income groups that cannot afford or cannot otherwise acquire legal representation from established firms.

In many cases, the imposition of a mandatory requirement to carry malpractice insurance of a specified minimum amount will not merely be the addition of a minor expense, but the imposition of a new financial burden that will result in the increased economic demise of such firms

If a client is fully advised that the attorney does not carry malpractice insurance and elects to engage that attorney rather than go without legal representation, what is the WSBA's overwhelming interest is preventing this from occurring? That may not be an acknowledged purpose of the proposal, but it certainly will be a significant result of the proposal if adopted.

This problem is further aggravated by the lack of any oversight and control by the WSBA over the terms, underwriting standards and premiums of the mandated policies. It must be anticipated that attorneys in the above three categories will face significant adverse conditions in each of those areas

In that regard, I assume the task force is fully aware of Anne Block v WSBA et. al. presently pending in the Ninth Circuit (to be argued early in February). To support her various legal theories, the plaintiff (a disbarred Washington attorney) makes significant, if unsupported, allegations of systemic discrimination against those three categories of attorneys as a part of a purpose to drive them out of the professional market. While, I fully anticipate that the Ninth Circuit will affirm the dismissal of all claims in that case (and the other consolidated cases), if it does not and remands to the trial court, it would not be unrealistic to anticipate that the members of the task force approving this proposal could be added as additional individual defendants.

Do "Claims Made" Policies Really Provide A Realistic Solution to the Alleged Perceived Problem?

An "Occurrence" based policy with reasonable premiums might provide a solution, but does the typical "claims made" based policy do so? Claims do not necessarily get raised in the year in which the malpractice occurs; and even a one year tail will not necessarily provide any relief to the plaintiff since the statute of limitations will be significantly longer than one year. Is there even any basis for the WSBA

to be able to force an attorney to purchase tail coverage, particularly if the attorney elects to cease practicing? When the insurer specifies that if the insured attorney refuses to agree to a settlement, the ongoing obligations of the insurer are limited to the settlement amount regardless of the coverage limits – does that mean the non-consenting attorney is now in breach of the insurance requirements?

Alternatives

Would enhanced disclosure requirements (bold statement on first page of all fee agreements; statement regarding malpractice insurance required as a footer on all attorney stationary) be adequate?

How about a new form of fund that would simply mimic the recovery potential of a claims made insurance policy – such as:

1. Claim must arise from an act of malpractice occurring after the commencement date of the fund.
2. There is no claim if at the time the act of malpractice occurred the attorney had malpractice insurance in an amount of at least \$250,000.
3. There is no claim until it has been reduced to a final settlement or a final judgment no longer subject to appeal.
4. For a claim that meets all of the above three criteria, the maximum amount of the claim shall be the LESSER of the amount of the settlement or judgment or \$250,000, minus ALL of the following:
 - a. The amount of any malpractice insurance coverage less than \$250,000 in existence at the time of the act of malpractice; and
 - b. All unreimbursed defense costs incurred by the defendant attorney; and
 - c. All amounts recoverable from the defendant attorney within 180 days of the settlement or final judgment.
5. Any amount paid from the fund would be subject to the same terms of collection and/or discipline as exist for the WSBA's current fund for the protection of client assets.

It could be funded by a small assessment on all license renewals. You could even take a page from the Seattle City Council and assess a small assessment on all license renewals for attorneys practicing in firms with more than \$XXXXX in annual revenue.

Procedures

I understand the Washington Supreme Court shall set a pause on by-law etc. changes pending a study of the impact of a recent U.S. Supreme Court decision. I assume the task force has considered whether that has any impact on their present activities.

The WSBA should expressly notify the members as to whether or not they will submit and proposed mandatory malpractice insurance requirement to a vote of the members before submitting any such proposal to the Washington Supreme Court.

If the WSBA is not going to itself submit the matter to a vote of the members, it should at least expressly provide a reasonable delay between adopting any such proposal and submitting it to the Washington Supreme Court, sufficient to allow the members to put together a petition for such a vote

From: [Sandra Perkins](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Subject: Please do not make malpractice insurance mandatory
Date: Saturday, December 1, 2018 5:58:37 PM

Dear Insurance Tax Force,

I am opposed to making malpractice insurance mandatory.

First: Attorney salaries are essentially in two categories.....there are those making 100-300k plus who are comfortable. Then there are those who struggle, greatly, to survive making much less than that. Some are retired or semi-retired or in government service, others are new, or some other reason. But this IS the reality of being an attorney in the modern era. This proposal acts as a larger burden tax upon the lower income attorneys---like a gas tax that disproportionately affects the poor. This also means the poor citizens of Washington will be taxed as these costs are passed down to the ultimate consumer.

Second: Making malpractice mandatory will raise costs for all attorneys. If you look to Oregon, the cost (whether you are rich or poor) is \$3,300.00 per year per attorney. It is possible in WA to insure two attorneys for three times the coverage for that amount. The problem, is by forcing coverage of the small percentage of bad apples with a lot of claims or risk is smoothing their costs to the rest of us. Also there is no need to be price competitive once it is mandatory; the insurance company will get more profits because if you don't buy it you don't practice.

Third: The LIKELY response by many attorneys will be to just get the minimum coverage or to not practice in this state or provide pro bono services. This will reduce the availability of services to the poor, working poor, and middle class, who can least afford to lack services or have increased costs. Reduced coverage means reduced recovery for those who are harmed.

Fourth: the other response is for attorneys to charge more to cover this expense. Again, this disproportionately impact the poor and middle class

citizens who can least afford increase to service costs already.

Fifth: There is already a client protection fund that can serve to protect clients who did retain an attorney without coverage. It is not perfect, but it is an option.

Sixth: Clients have the ability to see if an attorney has insurance and can ask. Its publicly available. It is a false analogy to liken this to auto insurance. I don't know if the person next to me on the road is insured. There is no excuse to not know if the attorney you retain is not insured and there is no risk of "driving" next to an uninsured attorney.

Exceptions: If this is going to be implemented (and I suspect it will even if 95% of the entire bar objects because it sounds really good from a PR perspective), then at least build in exceptions for government attorneys, retired attorneys who do pro bono work, etc.

Alternate Idea: Someone in the already posted comments had suggested that like the medical field, mandatory malpractice should be implemented after a certain number of claims. There are numerous attorneys who have had a whole career without a claim. Maybe this is something to consider.

Disclosure: I have maintained malpractice insurance my entire career. I am not seeking a pass from coverage. But I do believe this will impact the availability of services and the costs of those services that will have a detrimental impact upon citizens obtaining and affording legal services.

SUMMARY

- implementing mandatory malpractice will lead to many attorneys retiring early or not providing pro bono services or working in another state
- it will likely lead to a reduction to the minimum policy limits to defray costs
- it will lead to increased costs for legal services, which the public already has a hard time covering
- there is already a client protection fund and the ability for consumers to see who is insured and who is not

-this proposal will largely benefit the insurance industry, NOT the public. The public will absorb these higher costs and receive less pro bono services.
-the majority of Washington citizens can barely afford legal services, they will less be able to afford them if less pro bono services are offered and legal prices increase
-this is a solution in search of a problem

-is the PRO of the worst attorneys being insured and a few people who were too shy to inquire about the client protection fund worth the CON of increased prices and reduced services for the vast majority of Washingtonians? If this were presented from a game theory perspective on absolute numbers, the answer is no, because costs will increase and services will be reduced-- the needs of the many outweigh the needs of the few. However, when viewed from a political lens, this is essentially using non-budgetary funds (i.e. the membership's pocket books) to make a good PR headline and the public generally will not think about or see the invisible tax of less services and higher costs.

Thank you for considering my comments.

Sandra Perkins, WSBA # 15993

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From: [John David Wickham](#)
To: [Mandatory Malpractice Insurance Task Force](#)
Cc: [Carla Higginson](#)
Subject: Opinion on Mandatory Malpractice Insurance
Date: Saturday, December 1, 2018 9:19:26 PM

To the WSBA Insurance Task Force,

I am opposed to the imposition of mandatory malpractice insurance. I have carried malpractice insurance since I started my practice in 1996, and intend to until the day I close my law practice. However, as with most family law attorneys, I do a considerable amount of pro bono work (not reported to WSBA), and expect to continue doing so after I close my office, as public service. If I have to carry malpractice insurance to do volunteer legal work as a retiree, I probably will choose to not do so, as there is plenty of public service I can do in my community that is outside the practice of law. It is likely that most lawyers who don't carry malpractice insurance can't afford it, and if required to buy it, will need to quit their practices and service to folks of moderate means who hire young lawyers with limited resources and low hourly rates.

The intent of the proposed policy of mandatory malpractice insurance is laudable, but ultimately, the costs to the public in lost service are too high to protect the few who might have a viable claim against the uninsured lawyer. As long as WSBA maintains public information on whether an attorney maintains malpractice information, that is adequate notice of the risk to the client who can't afford an insured attorney.

John D. Wickham, WSBA No. 26068