WASHINGTON STATE
BAR ASSOCIATION

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; 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)

A.
Task Force Charter

MANDATORY MALPRACTICE INSURANCE TASK FORCE

(Adopted by the WSBA Board of Governors on September 28, 2017)

CHARTER

Background

Admission and Practice Rule (APR) 26 requires annual reporting of whether a lawyer is covered by professional liability insurance. Washington State does not, as a condition of licensing, require that lawyers have such insurance. By contrast, Washington's two other licenses to practice law (limited practice officers and limited license legal technicians) are, by court rule, obligated to show proof of insurance coverage or demonstrate financial responsibility in order to obtain and maintain their licenses to practice. In 2016, the Board of Governors (BOG) 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. The Work Group gathered information from Oregon, Idaho, and other non-U.S. jurisdictions, investigated a number of system models, examined data collected from APR 26 insurance disclosure records, and reviewed historical documentation about a 1986 WSBA initiative to adopt a mandatory malpractice rule. Without formulating a recommendation or proposal, the Work Group presented this information to the Board of Governors as a generative discussion topic at the May 2017 Board meeting. After consideration of the information presented, the BOG decided to form a Task Force to review the topic in greater depth, receive member input, and present a recommendation about whether to proceed with a mandatory malpractice insurance proposal.

Task Force Purpose

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 Mandatory Malpractice Insurance Work Group and gather any additional information needed for a comprehensive analysis of the topic, including alternative options.
3. Consider oral presentations and/or written materials regarding mandatory malpractice insurance systems used in the U.S. and elsewhere, together with other potential system models, and evaluate the feasibility, suitability, and practicality of such a regulatory requirement in Washington.
4. Determine whether to recommend adoption of a mandatory malpractice insurance requirement in Washington.

5. If a regulatory requirement is recommended, determine the most suitable contours of such a system, including development of a model that addresses the means of providing or procuring coverage, as well as issues of scope, exemptions, and enforcement.
6. After considering relevant materials and input, submit a final report to the BOG, including, as appropriate, draft rules to implement a system of mandatory malpractice insurance for Washington lawyers, and including any minority report(s).

Timeline

- Begin meeting no more than six weeks after appointments are completed;
- Complete work and submit a final report not later than the January 2019 BOG meeting, unless the timeline for completion is extended by the BOG;
- If the task force recommends adoption of a mandatory malpractice system, prepare a BOG-approved set of suggested rule amendments for submission to the Supreme Court before the first GR 9 deadline after the draft amendments are approved by the BOG;
- Provide updates on the work of the task force as requested by the BOG.

Task Force Membership

The task force shall consist of the following voting members:

- A WSBA member who shall be appointed to serve as Chair;
- Three current or former members or officers of the BOG;
- Not fewer than ten at-large members of the WSBA, including
    - at least one lawyer member with substantial experience in insurance coverage law;
    - at least one lawyer member who is also an active member of the Oregon State Bar and who participates in Oregon's Professional Liability Fund;
    - at least one limited practice officer or limited license legal technician member;
- A full-time superior court, district court, municipal court, or court of appeals judge;
- An individual with professional experience in the insurance/risk management industry;
- Two community representatives who are not licensed to practice law.

The Executive Director will designate a WSBA staff liaison.

In accordance with WSBA Bylaws Art. IX(B)(2)(e) and (f), the members and the Chair of the task force will be appointed by the WSBA President subject to being accepted or rejected by the BOG. Such appointment and approval shall be completed by no later than the BOG's November 2017 meeting.

B.

Task Force Roster

WASHINGTON STATE
BAR ASSOCIATION

MANDATORY MALPRACTICE INSURANCE TASK FORCE

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C.
Introductory Memo with Appendices

WASHINGTON STATE
BAR ASSOCIATION

Mandatory Malpractice Insurance Task Force

MEMO

To: Mandatory Malpractice Insurance Task Force

From: Douglas J. Ende, Chief Disciplinary Counsel

Date: January 17, 2018

Re: A Brief Introduction to Mandatory Malpractice Insurance

A. Introduction

Welcome to the Mandatory Malpractice Insurance (MMI) Task Force. To provide the Task Force with some context as it begins its work, this Memorandum provides a brief introduction into the state of affairs and current trends in malpractice insurance requirements among different jurisdictions, including in Washington State, other U.S. jurisdictions, and non-U.S. jurisdictions.

B. Washington State Requirements & Historical Efforts Related to MMI

In Washington State, lawyers have no requirement to maintain malpractice insurance. In contrast, financial responsibility obligations are currently imposed on limited practice officers (LPOs) and limited license legal technicians (LLLTs) by court rule. Lawyers are, however, as part of the annual licensing process, required to disclose to the WSBA whether they maintain malpractice insurance. From 2015 to 2017, 85 percent of Washington state lawyers in private practice reported carrying insurance. Of the remaining 15 percent, 14 percent reported that they did not carry insurance and one percent did not intend to renew their insurance at the end of its term.

In the late 1980s, the WSBA investigated the issue of creating a mandatory malpractice insurance program. The key initiative was proposed in 1986 in a report of the WSBA Lawyers' Malpractice Insurance Task Force, chaired by former WSBA President William H. Gates, Sr. The task force recommended the creation of a professional liability fund and system for requiring malpractice insurance, which would have been incorporated into the former APR. In December 1986, by a 7-4 vote, the WSBA Board of Governors (BOG) approved the proposal for submission to the Supreme Court, subject to submission of the issue to a referendum of the membership. The membership defeated the referendum by a vote of 6,971 to 1,693.

In 2016, the BOG formed a workgroup to gather information about the topic of mandatory malpractice insurance. The workgroup included four BOG members (Mario Cava, Bill Pickett, Andrea Jarmon, and Kim Risenmay), one WSBA member (PJ Grabicki), and one WSBA staff liaison (Douglas J. Ende). The workgroup met four times in 2016, investigating various models employed in the United States and abroad, compiling statistics regarding the percentage of private practitioners in Washington who carry insurance, and speaking with experts in the insurance industry. It reported back to the BOG for a generative discussion on May 19, 2017.

On September 28, 2017, the Board of Governors established the Mandatory Malpractice Insurance Task Force and issued a Charter to guide the Task Force's work.

Accompanying Documents

- Appendix 1: Admission and Practice Rule (APR) 26 FAQ and Professional Liability Disclosure Certification
- Appendix 2: 2016 WSBA Malpractice Insurance Disclosure Reporting Statistics for Those in Private Practice
- Appendix 3: APR 12(f)(2) and 28(I)(2), financial responsibility rules for LPOs and LLLTs
- Appendix 4: 1986 Status Report on Malpractice Insurance Coverage and Professional Liability Fund Proposal, *Washington State Bar News*

C. Other U.S. Jurisdictions

1. States with MMI or Proactive Management-Based Regulation

Although many U.S. jurisdictions, including Washington State, have insurance disclosure rules requiring reporting and/or disclosure of whether a lawyer is covered by professional liability insurance, few U.S. jurisdictions require, as a condition of licensing, that lawyers have insurance. Since the 1970s, Oregon alone has had a comprehensive system (known as the Professional Liability Fund) requiring malpractice insurance for all licensed lawyers in Oregon representing private clients.

In 2016, the Idaho Supreme Court enacted a rule (effective in January 2018) that now requires Idaho lawyers to submit proof of minimum coverage at the time of annual licensing. Idaho attorneys are permitted to purchase insurance from any provider they wish under the "open-market model."

In January 2017, the Illinois Supreme Court announced rule amendments making Illinois the first state to adopt "proactive management-based regulation" (PMBR). PMBR is an alternative approach to lawyer regulation, whereby programs are instituted to promote the ethical practice of law and, as a consequence, avoid the filing of grievances and malpractice claims. Starting this year, Illinois lawyers in private practice who do not annually certify the existence of malpractice insurance coverage must complete an interactive, online assessment regarding law firm management and business practices.

2. Other States Reviewing the Concept of MMI

The California legislature recently passed the 2017 State Bar Act Bill, which includes provisions (Section 26) requiring the State Bar of California to conduct a review and study of various issues relating to professional liability insurance, including "the advisability of mandating errors and omissions insurance for attorneys in this state that will further the goal of public protection."

The State Bar of California is in the process of forming a work group to comply with this legislation.

On November 8, 2017, the State Bar of Nevada's Board of Governors approved moving forward with next steps to require MMI for licensed attorneys in Nevada under an open market model. Nevada is currently seeking feedback related to the Board's proposal. After collecting feedback, the next step would be to submit the proposal to the Nevada Supreme Court for a rule change.

Accompanying Documents

- Appendix 5: About the PLF (from the PLF website)
- Appendix 6: Idaho Supreme Court Amended Order, March 30, 2017
- Appendix 7: Idaho Professional Liability Insurance Coverage Certification Form
- Appendix 8: Illinois Supreme Court Rule 756(e) Amendments
- Appendix 9: Bill Text - SB-36 Attorneys: State Bar: Sections of the State Bar (California 2017 State Bar Bill Act)
- Appendix 10: Join the Discussion: Whether Malpractice Insurance Should Be Mandatory for Nevada Attorneys, *Nevada Lawyer,* Dec. 2017

D. Non-U.S. Jurisdictions

A number of other countries, including the Canadian provinces, the Australian states, England and Wales, and a number of European nations, require lawyers to have professional liability insurance as a condition of licensing. The mechanisms used by these jurisdictions and the coverage requirements vary.

Accompanying Documents

- Appendix 11: Professional Indemnity Insurance Requirements Around the World

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E. Additional Documents of Interest

- Appendix 12: ALPS White Paper Available to ALPS-Endorsed State Bars Contemplating Mandatory Lawyers' Professional Liability Insurance

APPENDIX 1

Professional Liability Insurance

Professional Liability Insurance Policies

Frequently Asked Questions about Professional Liability Insurance

APR 26

Insurance Resources

Washington lawyers are not required to have professional liability insurance coverage. However, they are required to report to the Washington State Bar Association, on a yearly basis, whether they have coverage. They are not required to report the following:

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

Not all lawyers maintain professional liability insurance. Some lawyers may make a responsible decision not to maintain insurance because the lawyer is an in-house or government lawyer, or because the lawyer may choose to be financially responsible (self-insured).

The Washington State Bar Association does not independently verify the insurance information provided by lawyers. There is no guarantee that a lawyer has maintained insurance coverage after the report date or will continue to maintain insurance coverage in the future. There is also no guarantee that a lawyer has adequate insurance limits to cover all potential claims or that a particular claim will be covered by the policy. Note that it is also possible that the information displayed was erroneously reported or incorrectly entered in the State Bar's database.

The following is a list of questions that a prospective client might ask before entering into a lawyer-client relationship with a particular lawyer:

- Do you presently maintain professional liability insurance coverage?
- What is the name of your insurer?
- What are the limits of your coverage? Have any of those limits been used in the payment of other claims?
- What is the deductible under your policy?
- Does your policy cover the type of work you are doing for me?
- What is the term of your current coverage?
- Will you advise me if you discontinue your coverage or change your limits?
- Could you provide me with a Certificate of Insurance (evidence from an insurance company that the lawyer is insured)?
- If you do not maintain professional liability insurance, why have you made that decision?

Professional liability insurance policies provide insurance coverage for some but not all professional liability (malpractice) claims made against a lawyer. Most professional liability policies are written on a "claims-made" basis. This is different from the usual home-owners or automobile insurance policy. This means that the insurance company providing the insurance has agreed to cover claims that are made against the lawyer during the term of the policy. In other words, the policy that applies to a particular claim is the policy that is in effect at the time the claim is presented to the insurance company with a demand for payment - not the policy in effect when the lawyer's alleged negligence or mistake took place. Malpractice insurance policies typically limit the amount that the insurance company can be required to pay on each claim and the total amount that the insurance company can be required to pay on all claims made against the lawyer during the term (or effective period) of the policy. The maximum amount of coverage provided by a malpractice insurance policy is called the "limits" of the policy.

Frequently Asked Questions about Professional Liability Insurance

Why am I required to disclose whether I have Professional Liability Insurance?

Rule 26 of the Admission to Practice Rules (APR) provides that every active member of the Washington State Bar Association is required to disclose annually whether the lawyer maintains professional liability insurance.

What is the purpose of required insurance disclosure?

The purpose of the insurance disclosure rule is client protection. Under the Washington Rules of Professional Conduct, one of the basic principles of the lawyer-client relationship is that the lawyer will give the client sufficient information regarding material facts to allow the client to make an informed decision in matters relating to the representation. See, e.g., RPC 1.4; 1.7. Whether a lawyer maintains professional liability insurance may be a material fact for some persons in considering whether to hire a lawyer, and it should be easily available to a client or prospective client.

What does the rule require?

APR 26 requires that each active status lawyer certify annually on a form approved by the Board of Governors (a) whether the lawyer is in private practice; (b) if so, whether the lawyer maintains professional liability insurance; (c) whether the lawyer intends to continue to maintain insurance; and (d) whether the lawyer is a full-time government lawyer or house counsel and does not represent clients outside that capacity. The rule also requires

notification to the WSBA within 30 days if the lawyer in private practice ceases to be insured. The rule does not require lawyers to have professional liability insurance.

Is failure to disclose a disciplinary violation?

Failure to comply with the disclosure requirement will result in administrative suspension from practice until the information is disclosed, in the same way that lawyers may be suspended for failure to comply with the continuing legal education reporting requirements, but it is not a disciplinary violation.

What is done with this information?

This insurance information is available to clients or prospective clients on the lawyer directory on the WSBA website or by contacting the WSBA. In practice, the availability of this information will operate similarly to the contractor insurance and bonding information available to the public through the Department of Labor and Industries by contacting the Department or searching the Department's website.

Where can I find information on purchasing legal malpractice insurance?

The ABA Standing Committee on Lawyers' Professional Liability has a very helpful webpage with links to insurance resources for lawyers.

How should I fill out the Professional Liability Insurance Disclosure?

Mark the one box that fits your situation. If you represent clients in any capacity (whether it be pro bono or as a contract attorney) you should find out whether or not the organization for which you are providing services maintains and intends to maintain professional liability insurance and mark the appropriate box.

How should I notify the WSBA if my coverage lapses, is no longer in effect or terminates for any reason?

APR 26 requires written notification within 30 days if your coverage lapses, is no longer in effect or terminates for any reason. After you have filed your Professional Liability Insurance Disclosure during the license renewal process, you may make changes to it by logging into www.mywsba.org and clicking the Edit Liability Insurance Info link. Or, you may send a letter or email to the WSBA, attention Licensing Project Lead.

Be sure to certify this form by signing at the bottom of this page.

Professional Liability Insurance (APR 26)

Washington lawyers are not required to have professional liability insurance coverage. However, they are required to report to the WSBA, on a yearly basis, whether they have coverage. APR 26 requires written notification within 30 days if your coverage lapses, is no longer in effect, or terminates for any reason. Such notification should be made online at myWSBA.org.

I certify that I will **(*Mark the one box that fits your situation*)**:

- ☐ be engaged in the private practice of law, covered by, and intend to maintain Professional Liability Insurance.
- ☐ be engaged in the private practice of law, covered by, but DO NOT intend to maintain, Professional Liability Insurance.
- ☐ be engaged in the private practice of law BUT NOT covered by Professional Liability Insurance.
- ☐ NOT be engaged in the private practice of law because: (1) I do not practice law, or (2) I practice law as a government lawyer, or (3) I am employed by an organizational client, and I do not represent clients outside that capacity.

Trust Account (ELC 15.5; APR 17)* (*Choose either Yes or No, do not leave blank*)

The trust account information question should be answered according to the facts as they exist on the date the form is certified. You do not need to report closed IOLTA accounts - only currently open accounts. You do not need to notify the WSBA if you open an IOLTA account midyear. You report only once a year.

Mark Yes or No. Write in information for ALL accounts if applicable, attaching separate page if necessary.

☐ Yes ☐ No I or my firm maintain(s) either an IOLTA account or other client trust account(s) for the deposit of client funds received in connection with representations undertaken using my Washington license.

If yes, write in information for ALL accounts, if applicable, attaching a separate page:

Institution Branch/City **IOLTA** Account Number

_____

_____

***All funds and property of WA clients, if any, and all WA trust accounts and records, if any, must be maintained in compliance with RPC 1.15A and B.**

I certify under penalty of perjury under the laws of the state of Washington that the foregoing information is true and correct.

_____

Signature **Date** **Place Signed**

Name: _____ **WSBA No.** _____

APPENDIX 2

2016 WSBA ACTIVE LAWYERS MALPRACTICE INSURANCE DISCLOSURE REPORTING STATISTICS FOR THOSE IN PRIVATE PRACTICE

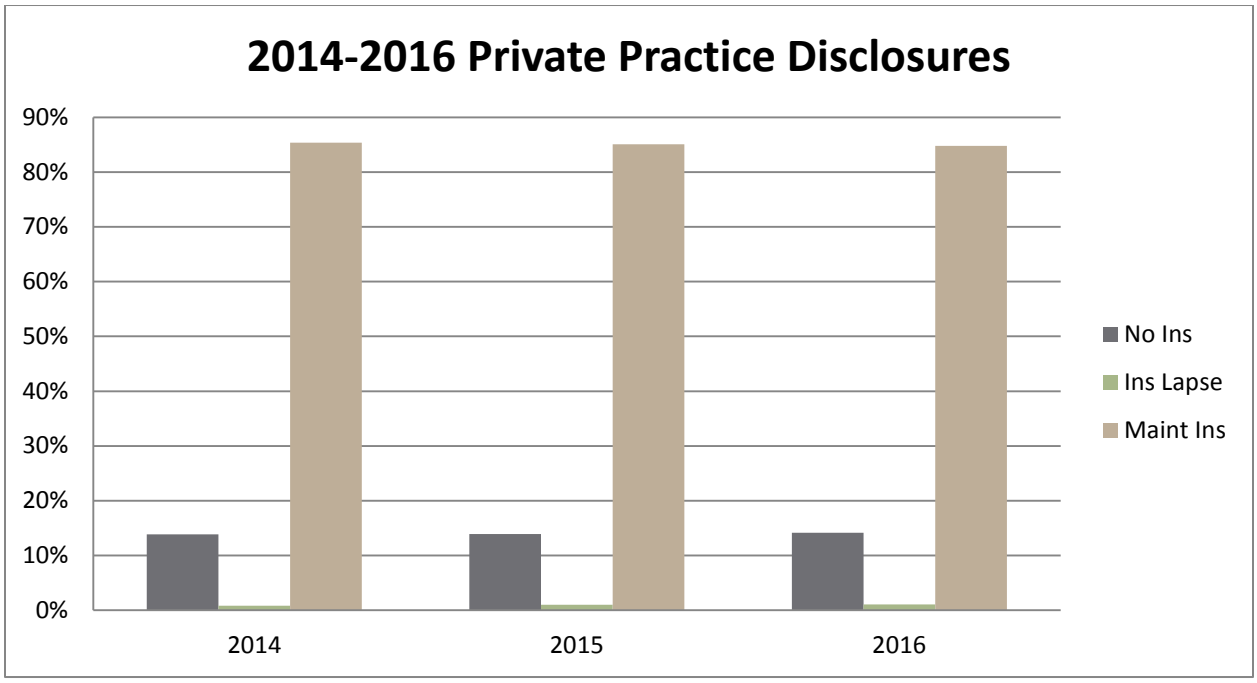
Under APR 26, active lawyers are required to report whether they carry malpractice insurance on an annual basis. During the annual licensing renewal process, lawyers must report whether they:

- do not have insurance (No Ins),
- have insurance but that it will not be maintained in the next reporting year (Ins Lapse), or
- have insurance and that it will be maintained (Maint Ins).

What follows are graphical representations of membership statistics along with demographic information relating to the size of firm for those in private practice related to malpractice insurance disclosures. Those not in private practice are not captured in this data. All information is detailed in percentages.

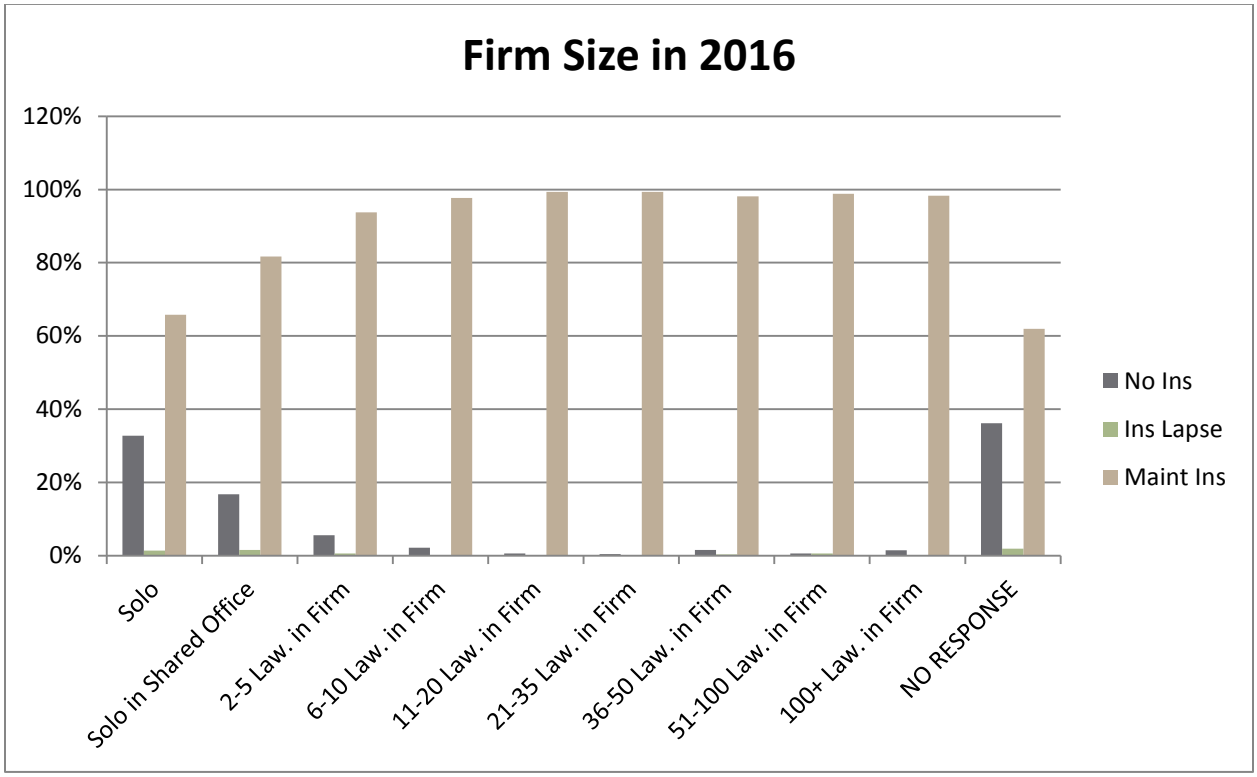
PRIVATE PRACTICE INSURANCE DISCLOSURES FOR 2014-2016

For the years 2014-2016, the graph below details the percentage of those in private practice reporting that they had no insurance, had insurance but intended to let it lapse, or had insurance and intended to maintain it. The chart reveals that consistently 14% of those in private practice do not carry insurance and 1% let their insurance lapse.



FIRM SIZE REPORTING

For the year 2016, the graph below details by size of firm what lawyers in private practice disclosed about their malpractice insurance in 2016.[1] Of those who responded regarding their firm size, the data reveals that approximately 30% of lawyers who identified themselves as solo practitioners are uninsured.



[1] This chart does not include lawyers who reported working in private practice in the government sector or acting as in-house counsel.

APPENDIX 3

RULE 12. LIMITED PRACTICE RULE FOR LIMITED PRACTICE OFFICERS

(f) Continuing License Requirements.

(2) *Financial Responsibility.* Each active limited practice officer shall submit to the LP Board proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted under APR 12 in one of the following described manners.

A. Submit an individual policy for Errors and Omissions insurance in the amount of at least $100,000;

B. Submit an Errors and Omissions policy of the employer or the parent company of the employer who has agreed to provide coverage for the LPO's ability to respond in damages in the amount of at least $100,000;

C. Submit the LPO's audited financial statement showing the LPO's net worth to be at least $200,000;

D. Submit an audited financial statement of the employer or other surety who agrees to respond in damages for the LPO, indicating net worth of $200,000 per each limited practice officer employee to and including five and an additional $100,000 per each limited practice officer employee over five, who may be subject to the jurisdiction of the Limited Practice Board; or

E. Submit proof of indemnification by the limited practice officer's government employer.

Each active LPO shall certify annually continued financial responsibility in the form and manner as prescribed by the Bar. Each LPO shall notify the Bar of any cancellation or lapse in coverage. When an LPO is demonstrating financial responsibility by 1) an endorsement on the employer's Errors and Omissions insurance policy, or 2) submission of the employer's audited financial

statement accompanied by the Certificate of Financial Responsibility, the Bar shall notify the employer when the LPO's status changes from Active to another status or when the LPO is no longer admitted to practice.

RULE 28. LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS

I. Continuing Licensing Requirements

(2) *Financial Responsibility*. Each LLLT shall show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted under APR 28 by:

a. submitting an individual professional liability insurance policy in the amount of at least $100,000 per claim and a $300,000 annual aggregate limit;

b. submitting a professional liability insurance policy of the employer or the parent company of the employer who has agreed to provide coverage for the LLLT's ability to respond in damages in the amount of at least $100,000 per claim and a $300,000 annual aggregate limit; or

c. submitting proof of indemnification by the LLLT's government employer.

APPENDIX 4

MEMORANDUM

TO: ALL WASHINGTON LAWYERS

RE: STATUS REPORT ON MALPRACTICE INSURANCE COVERAGE AND PROFESSIONAL LIABILITY FUND PROPOSAL

Background

In May of this year a special WSBA Task Force reported findings to the Board of Governors and described possible models of a professional liability fund and a traditional insurance company. After reviewing this report, the Board of Governors appointed a new Task Force to design a professional liability fund. This Task Force did its work and sent out a description of its proposal in late August. It then conducted hearings in six different cities in the state, at which Bar members had an opportunity to see the details of the plan as set forth in the documents available at those hearings.

During this period and in addition to the hearings, there has been a large amount of communication from members in the form of letters and phone calls to members of the Task Force and the Board of Governors. In addition, a formal study of the proposal was conducted by a task force of the Seattle-King County Bar Association.

The intention had been to have the Board of Governors act at their September 20 meeting. It became obvious that this time table was too short. Accordingly, on the recommendation of the Task Force, the Board set a new time table. It also provided for this special *Bar News* article.

The revised time table now calls for the Board of Governors to act on the proposal at its December meeting. *If* the Board approves the concept/proposal, a substantial portion of the January *Bar News* will be devoted to a final description of the plan and the arguments pro and con.

What Now?

It is hoped that bar organizations of one kind and another, law firms and groups of Washington lawyers everywhere will exchange ideas, ask questions and debate this program. Members of the Task Force will be available to come talk to any group. The coupon included with this article is for you to send in to get a copy of the proposed court rule and the coverage plan.

All of the elements of this proposal are based on the deliberations of the Task Force, which undoubtedly will be meeting again before the December Board meeting; if you have questions or comments, the Task Force would be pleased to receive them. In addition, you should feel free to address any comments you want to any member of the Board of Governors.

The Task Force would like to note here that it has simply not been able to respond to all of your letters. In many cases, the letters have asked questions, and it is hoped that this material will furnish the answers. If it does not, please write again, and an effort will be made to respond promptly.

It seems unlikely that the ingredients of the plan would be changed in any substantial way from this point forward. However, the plan remains to be approved by the Board of Governors and, in this process, changes could occur.

Recent Changes

After receiving your many comments and conducting the hearings, the Task Force concluded that two fairly fundamental changes had to be made: provision for a less expensive program for those with part-time practices and a provision for a schedule of "deductibles."

One consistent and impressive objection came from those lawyers who have only a very small practice. While this may not be a large number in terms of the size of our Bar, nevertheless it did not seem right to fail to make a provision in the plan to avoid the possibility of terminating the practices of some of these part-time practitioners. Accordingly, the following provisions would be made for the lawyer who complied with the criteria: a lower coverage limit of $100,000 and a substantially reduced assessment, *i.e.*, 35% of the regular assessment or $417 per year in the start-up phase. The criteria for this status have not yet been formalized. They will appear in the material which will be mailed to you if you send in the coupon which is part of this article. Generally, the thought is that the provisions would be available to a lawyer whose legal work over a period of the last three or four years has not exceeded an average value of $20,000 per year and who does not have any vicarious liability for the activities of any other lawyer.

Since it was concluded that the above special category of limited exposure should be recognized, it seemed to follow that a lawyer should be permitted to elect to have only $100,000 in coverage rather than the full normal $250,000. One

thought here is that there will be many lawyers who do not have large practices and who will not qualify for the special limited exposure category but who should have the opportunity to pay a somewhat lower assessment and have lower coverage. The assessment for $100,000 coverage would be 70% of the normal assessment for the full coverage of $250,000.

Finally, the Task Force has decided to design into the schedule a series of "deductibles" ranging from $2,500 up to $100,000. These are not deductibles in the strict sense because, in keeping with the principle of the Fund which addresses public or client protection, the Fund should be committed to pay all losses from the first dollar. Therefore, the deductible would actually be an amount for which the lawyer indemnifies the Fund, and it would apply to both damages and claims expense. The Fund would have the right to demand the payment of the indemnified amount from the lawyer at any time after a claim was made.

The deductibles of $2,500 and $5,000 would be available to a lawyer electing to have only $100,000 of coverage. The higher deductibles would be available only in the case of the full coverage of $250,000 of the Fund.

As to the larger deductibles beginning at $25,000, there would be a requirement of a showing of financial ability to cover the indemnity. This requirement could take a variety of forms depending on the circumstances.

Structure

The proposal is that the Fund would operate essentially under the control of the State Supreme Court. Under the terms of the rule, a nonprofit corporation, the Washington Lawyers' Professional Liability Fund, would be created with a Board of nine members, six of whom would have to be lawyers.

Failure to pay an assessment or failure to pay a "deductible" would be grounds for suspension from practice.

The key elements of the Professional Liability Fund are the assessment schedule and the coverage plan. The assessment schedule would set forth the assessment amount for the various types of coverage available including any surcharges that might be imposed and obligatory deductibles. The coverage plan would describe the acts and omissions which are covered; the exclusions would contain all of the terms which are typically in an insurance policy. The proposed court rule provides that each year the assessment schedule would have to be furnished in advance to the Board of Governors of the State Bar, and that Board would have the ability to ask the court to review the schedule. In addition, the rule would require that any change in the coverage plan would have to be submitted to the Board of Governors in advance of its acceptance by the court so that the Board of Governors would have an opportunity to object or seek modifications.

The rule *does* contemplate that the Board of the Fund would have the authority to establish a basis for both surcharges and imposed deductibles. This means that, as is presently the case in Oregon, the lawyer who generates claims would be required to pay a higher assessment or to accept a substantial deductible. It is also possible that the Board of the Fund could conclude from its observation of the loss data that certain types or characteristics of practice require treatment with larger assessments or imposed deductibles.

The Amount of the Assessment

A professional liability fund is different from an insurance company. An insurance company sets a premium for a year of coverage on the basis of a prediction of the amount of money that will be necessary to cover all of the claims that will be made during that policy year, whether paid during that year or not, and cover its profit and taxes. The company relies on these premiums and its capital to be able to pay all claims. A Fund, on the other hand, relies simply on its membership to pay assessments from year to year to cover its cash needs. Because of this difference, the start-up of a Fund permits it to make a lower charge because its cash needs to pay the claims in the first year are obviously smaller than will be the case after it has been running for a period of time and has accumulated a history of claims which will mature in the year ahead.

To compute what is needed for a Professional Liability Fund for lawyers in Washington, the actuary engaged by the Task Force studied loss data from Washington insurance carriers and from the Oregon Professional Liability Fund. These studies led to the conclusion that, on a paid-claim basis, the assessments required for 1987, 1988 and 1989 would be, respectively, $571, $1,227 and $1,776. The actuary counseled against a start-up with minimum funding, and the Task Force agreed. The Task Force resolved this by averaging the three figures for 1987, 1988 and 1989 to come up with an assessment of $1,191. It is the hope that starting with what amounts to a substantial cushion would enable the Fund to maintain the same assessment for a period of three years.

It should be pointed out that the actuary concluded that there would be a 15%-per-year increase in claims expense based on observed results in recent years and a 7% increase in expenses. On these assumptions, the assessment for 1990 for the basic coverage would be $2,282. Again, using these assumptions, the figures become rather staggering as one looks ahead even further. The implication of this, of course, is that the trend of increasing claims must be terminated.

This article is *not* intended to make a case for the Fund—It is intended to bring everyone up to date and to encourage all members to make the effort to become as knowledgeable as possible.

APPENDIX 5

About the PLF

The Oregon State Bar Board of Governors created the Professional Liability Fund in 1977 pursuant to state statute 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.

The PLF provides coverage of $300,000 per claim/$300,000 aggregate to every attorney engaged in the private practice of law in Oregon. This coverage includes defense costs and, in addition, there is a $50,000 claims expense allowance. In 2016, the basic assessment for this coverage is $3,500 for each attorney; the assessment has remained the same for five consecutive years.

The PLF's philosophy is that a program of this type must be mandatory for all lawyers in private practice in the state, as purely voluntary participation could result in adverse selection and a concentration of only the "bad" risks, leading to financial instability. Over time, the cost of coverage provided by the PLF has proved to be less than the cost of comparable commercial coverage.

Protecting Oregon Lawyers

Of the roughly 14,950 active members of the Oregon State Bar who live in Oregon, approximately 7,300 are in private practice and participate in the PLF. The remaining Bar members claim exemption from the PLF as corporate counsel, government lawyers, law professors, etc. These numbers fluctuate slightly throughout the year.

The coverage provided by the PLF is on a "claims made" basis rather than an "occurrence" basis. The PLF also provides automatic extended reporting or "tail" coverage at no cost to attorneys who discontinue practicing law in Oregon.

The PLF has enjoyed support from the membership and very good success with the handling of its claims. Based on recent data, roughly 67% of claim files are closed without payment of any settlement or judgment, while 33% involve some payment to a claimant. The average claim payment (including claims for which no payment was made) is approximately $9,600. Roughly 40% of claim files are closed without payment of any claims expense, while 60% involve some claims expense. The average claims expense paid on a claim (including claims with no claims expense) is approximately $11,400.

Services We Provide

In order to keep malpractice claims as low as possible, the PLF offers an extensive array of loss prevention programs, including (1) legal education seminars, publications, and practice aids that alert lawyers to malpractice traps, (2) a practice management advisor program that helps lawyers improve office systems and procedures, and (3) a personal assistance program that helps lawyers practice more effectively (Oregon Attorney Assistance Program).

Beginning in 1991, the PLF has also offered optional excess coverage on an underwritten basis to Oregon law firms. Coverage is available up to aggregate limits of $10 million. Excess coverage is also available from commercial insurers. Roughly half of the lawyers in private practice carry some excess coverage.

APPENDIX 6

In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO SECTIONS OF THE IDAHO BAR COMMISSION RULES (I.B.C.R.)

AMENDED ORDER

The Board of Commissioners of the Idaho State Bar having presented proposed changes to the Idaho Bar Commission Rules (I.B.C.R), and the Idaho Supreme Court having reviewed and approved the recommendations;

NOW, THEREFORE, IT IS HEREBY ORDERED, that the Idaho Bar Commission Rules (I.B.C.R.), as they appear in the Idaho State Bar Desk Book and on the Idaho State Bar website be, and they are hereby, amended as follows:

1. That Rule 302 of SECTION III be, and the same is hereby, amended as follows:

SECTION III
Licensing

RULE 302. Licensing Requirements. Following admission as a member of the Bar, an attorney may maintain membership as follows:

(a) **Active or House Counsel Member.** An Active or House Counsel Member shall:

(1) Pay the annual license fee required by Rule 304;

(2) Comply with trust account requirements;

(3) Comply with all applicable MCLE requirements under I.B.C.R. 402;

(4) Verify the attorney's membership information under Rule 303, including an email address for electronic service from the courts; and

(5) Certify to the Bar ~~on or before February 1 of each year~~ (~~1~~A) whether the attorney represents private clients; and (~~2~~B) if the attorney represents private clients, ~~whether the attorney is currently covered by professional liability insurance; and (3) whether the attorney intends to maintain professional liability insurance during the next twelve (12) months~~ submit proof of current professional liability insurance coverage at the minimum limit of $100,000 per occurrence/$300,000 annual aggregate. Each attorney admitted to the active practice of law in this jurisdiction who ~~reports being covered by~~ is required to have professional liability insurance shall identify the primary carrier and shall notify the Bar in writing within thirty (30) days if the professional liability insurance policy providing

coverage lapses, is no longer in effect, or terminates for any reason, unless the policy is renewed or replaced without substantial interruption.

...

2. That Rule 303 of SECTION III be, and the same is hereby, amended as follows:

SECTION III
Licensing

RULE 303. Membership Information.

(a) **Required Information.** All members of the Bar must provide the following membership information, which shall be considered public information:

(1) Full name;
(2) Name of employer or firm, if applicable;
(3) Mailing address;
(4) Phone number;
(5) Email address for use by the Bar; and
(6) In addition to the above information, an Active or House Counsel Member shall also provide:

(A) An email address for electronic service of notices and orders from the courts in those counties and district courts where electronic filing has been approved by the Supreme Court. This email address may be the same as the email address identified in subsection (a)(5) above. If no separate email address for electronic service from the courts has been designated, the email address identified in subsection (a)(5) will be used for such service; and

(B) Whether the attorney has professional liability insurance, if such ~~disclosure~~ insurance is required under Rule 302(a).

...

3. That Rule 402(e) of SECTION IV be, and the same is hereby, amended as follows:

SECTION IV
Mandatory Continuing Legal Education

RULE 402. Education Requirement Report.

...

(e) **Exemptions.** Exemptions from all or part of the CLE requirements of subsection (a) may be granted as follows:

(1) **Eligibility**. An exemption may be granted:

(A) Upon a finding by the Executive Director of special circumstances constituting an undue hardship for the attorney; or

(B) Upon verification of the attorney's disability or severe or prolonged illness, in which case all or a specified portion of CLE credits may be earned through self-study; or

(C) For an attorney on full-time active military duty who does not engage in the practice of law in Idaho.

...

IT IS FURTHER ORDERED that the amendments to Rule 302 and 303 shall be effective January 1, 2018, and amendments to Rule 402 shall be effective immediately.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Rules.

DATED this 30 day of March, 2017.

By Order of the Supreme Court

Daniel T. Eismann, Vice Chief Justice

ATTEST:

for Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the [illegible] entered in the above entitled cause and now on record in my office.

WITNESS my hand and the Seal of this Court 3-30-17

STEPHEN W. KENYON, Clerk

By: [illegible], Chief Deputy

APPENDIX 7

PROFESSIONAL LIABILITY INSURANCE COVERAGE CERTIFICATION

to be completed by all Active and House Counsel Members

(Please make any necessary corrections.)

I, _____, ISB Number _____,

hereby certify the following pursuant to Idaho Bar Commission 302(a)(5):

1. I am an Active or House Counsel Member of the Idaho State Bar; and

(Choose One)

2. (A) ❑ I DO NOT represent private clients and am not required to carry professional liability insurance.

or

(B) ❑ I represent private clients and am currently covered by professional liability insurance. The name of my primary insurance carrier is: _____.

- Attorneys selecting option (B) must submit proof of current professional liability insurance coverage at the minimum limit of $100,000 per occurrence/$300,000 annual aggregate. Proof may be in the form of a certification from your insurer that includes the name of the carrier, name of the insured(s), term and policy limits. *If you submit the Declaration page from your policy to prove compliance with this rule, please redact any information not required by this rule, including the premium amount.* Please submit your proof of coverage with this form.

(C) ❑ I am an Active or House Counsel Member whose practice of law is limited to practicing within an employment setting exclusively for an employer and its commonly owned organizational affiliates and my employer is not in the business of providing legal services.

The name of my employer is _____.

My employer maintains insurance coverage that is the equivalent of that required by I.B.C.R. 302(a)(5) that covers my practice of law.

- Attorneys selecting option (C) do not need to submit proof of insurance coverage.

3. I will notify the Idaho State Bar in writing within 30 days if any professional liability insurance policy providing coverage lapses, is no longer in effect, or terminates for any reason, unless the policy is renewed or replaced without substantial interruption.

Dated this _____ day of _____, _____.

_____

Attorney's Signature

PLEASE SEE REVERSE FOR ADDITIONAL INFORMATION

Professional Liability Insurance Coverage Requirement
General Information

IDAHO BAR COMMISSION RULE 302. Licensing Requirements.

Following admission as a member of the Bar, an attorney may maintain membership as follows:
(a) Active or House Counsel Member. An Active or House Counsel Member shall:
***

(5) Certify to the Bar (A) whether the attorney represents private clients; and (B) if the attorney represents private clients, submit proof of current professional liability insurance coverage at the minimum limit of $100,000 per occurrence/$300,000 annual aggregate. Each attorney admitted to the active practice of law in this jurisdiction who is required to have professional liability insurance shall identify the primary carrier and shall notify the Bar in writing within thirty (30) days if the professional liability insurance policy providing coverage lapses, is no longer in effect, or terminates for any reason, unless the policy is renewed or replaced without substantial interruption.

What information must I provide to confirm I have coverage?
You must provide information from your carrier listing the name of carrier, name of insured, coverage limits and policy expiration date. If you submit your policy declaration page to demonstrate your compliance with this rule, please redact the premium amount and any other information not required by the rule.

Can I maintain an active license and not obtain coverage?
Yes, if you do not represent private clients.

If I only take a few cases a year, am I required to obtain coverage?
Yes.

If I only do pro bono work, do I need coverage?
Yes. However, if you only plan to take pro bono cases, coverage may be available through the Idaho Law Foundation's Idaho Volunteer Lawyers Program. You can contact the program at 208-334-4500.

If I practice out of state am I required to obtain coverage?
Yes, if you practice out of state and represent private clients, under the rule you are required to have professional liability insurance coverage.

What prompted the rule change?
A resolution proposing to amend the Bar Commission Rules to require a minimum amount of professional liability insurance 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.

Who can I contact about getting a policy?
The Idaho State Bar endorses ALPS, https://www.alpsnet.com/. If you have an insurance broker, he or she may be able to provide options. PayneWest in Spokane, Moreton and Company in Boise, and the Hartwell Corporation in Caldwell and Idaho Falls assist lawyers with obtaining legal professional liability insurance coverage and may have other carrier options. In addition to ALPS, a few carriers we know provide coverage in Idaho are; Attorney Protective, Travelers, and Allied World. There are other carriers that offer coverage. If you find a carrier that is not listed above, we recommend that you confirm the carrier has a history of providing professional liability insurance coverage in Idaho.

Questions?
Please contact Diane Minnich, Executive Director, (dminnich@isb.idaho.gov) or Maureen Ryan Braley (mryanbraley@isb.idaho.gov) at (208) 334-4500 if you have any additional questions.

APPENDIX 8

M.R. 3140

**IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS**

Order entered January 25, 2017.

(Deleted material is struck through and new material is underscored.)

Effective immediately, Illinois Supreme Court Rule 756 is amended, as follows.

Amended Rule 756

Rule 756. Registration and Fees

(a) Annual Registration Required. Except as hereinafter provided, every attorney admitted to practice law in this state shall register and pay an annual registration fee to the Commission on or before the first day of January. Every out-of-state attorney permitted to appear and provide legal services in a proceeding pursuant to Rule 707 shall register for each year in which the attorney has such an appearance of record in one or more proceedings. Annual registration fees and penalties paid for the year or prior years shall be deemed earned and non-refundable on and after the first day of January. Except as provided below, all fees and penalties shall be retained as a part of the disciplinary fund. The following schedule shall apply beginning with registration for 2017 and until further order of the ~~c~~Court:

(1) No registration fee is required of an attorney admitted to the bar less than one year before the first day of January for which the registration fee is due; an attorney admitted to the bar for more than one year but less than three years before the first day of January for which the registration fee is due shall pay an annual registration fee of $121; an out-of-state attorney permitted to appear and provide legal services pursuant to Rule 707 shall pay a registration fee of $121 for each year in which the attorney's appearance is of record in one or more such proceedings if a per-proceeding fee is required in any such proceeding under Rule 707(f); an attorney admitted to the bar for more than three years before the first day of January for which the registration fee is due shall pay an annual registration fee of $385, out of which $10 shall be remitted to the Lawyers' Assistance Program Fund, $95 shall be remitted to the Lawyers Trust Fund, $25 shall be remitted to the Supreme Court Commission on Professionalism, and $25 shall be remitted to the Client Protection Program Trust Fund. For purposes of this rule, the time shall be computed from the date of the attorney's initial admission to practice in any jurisdiction in the United States.

(2) An attorney in the Armed Forces of the United States shall be exempt from paying a registration fee until the first day of January following discharge.

(3) No registration fee is required of any attorney during the period he or she is serving in one of the following offices in the judicial branch:

(A) in the office of justice, judge, associate judge or magistrate of a court of the

United States of America or the State of Illinois; or

(B) in the office of judicial law clerk, administrative assistant, secretary or assistant secretary to such a justice, judge, associate judge or magistrate, or in any other office included within the Supreme Court budget that assists the Supreme Court in its adjudicative responsibilities, provided that the exemption applies only if the attorney is prohibited by the terms of his or her employment from actively engaging in the practice of law.

(4) Upon written application and for good cause shown, the Administrator may excuse the payment of any registration fee in any case in which payment thereof will cause undue hardship to the attorney.

(5) An attorney may advise the Administrator in writing that he or she desires to assume inactive status and, thereafter, register as an inactive status attorney. The annual registration fee for an inactive status attorney shall be $121. Upon such registration, the attorney shall be placed upon inactive status and shall no longer be eligible to practice law or hold himself or herself out as being authorized to practice law in this state, except as is provided in paragraph (k) of this rule. An attorney who is on the master roll as an inactive status attorney may advise the Administrator in writing that he or she desires to resume the practice of law, and thereafter register as active upon payment of the registration fee required under this rule and submission of verification from the Director of MCLE that he or she has complied with MCLE requirements as set forth in Rule 790 *et seq.* If the attorney returns from inactive status after having paid the inactive status fee for the year, the attorney shall pay the difference between the inactive status registration fee and the registration fee required under paragraphs (a)(1) through (a)(3) of this rule. Inactive status under this rule does not include inactive disability status as described in Rules 757 and 758. Any lawyer on inactive disability status is not required to pay an annual fee.

(6) An attorney may advise the Administrator in writing that he or she desires to assume retirement status and, thereafter, register as a retired attorney. Upon such registration, the attorney shall be placed upon retirement status and shall no longer be eligible to practice law or hold himself or herself out as being authorized to practice law in this state, except as is provided in paragraph (k) of this rule. The retired attorney is relieved thereafter from the annual obligation to register and pay the registration fee. A retired attorney may advise the Administrator in writing that he or she desires to register as an active or inactive status lawyer and, thereafter so register upon payment of the fee required for the current year for that registration status, plus the annual registration fee that the attorney would have been required to pay if registered as active for each of the years during which the attorney was on retirement status. If the lawyer seeks to register as active, he or she must also submit, as part of registering, verification from the Director of MCLE of the lawyer's compliance with MCLE requirements as set forth in Rule 790 *et seq.*

(7) An attorney who is on voluntary inactive status pursuant to former Rule 770 who wishes to register for any year after 1999 shall file a petition for restoration under Rule 759. If the petition is granted, the attorney shall advise the Administrator in writing whether he or she wishes to register as active, inactive or retired, and shall pay the fee required for that status for the year in which the restoration order is entered. Any such attorney who petitions

for restoration after December 31, 2000, shall pay a sum equal to the annual registration fees that the attorney would have been required to pay for each full year after 1999 during which the attorney remained on Rule 770 inactive status without payment of a fee.

(8) Permanent Retirement Status. An attorney may file a petition with the ~~c~~Court requesting that he or she be placed on permanent retirement status. All of the provisions of retirement status enumerated in Rule 756(a)(6) shall apply, except that an attorney who is granted permanent retirement status may not thereafter change his or her registration designation to active or inactive status, petition for reinstatement pursuant to Rule 767, or provide *pro bono* services as otherwise allowed under paragraph (k) of this rule.

(A) The petition for permanent retirement status must be accompanied by a consent from the Administrator, consenting to permanent retirement status. The Administrator may consent if no prohibitions listed in subparagraph (a)(8)(B) of this rule exist. If the petition is not accompanied by a consent from the Administrator, it shall be denied.

(B) An attorney shall not be permitted to assume permanent retirement status if:

1. there is a pending investigation or proceeding against the attorney in which clear and convincing evidence has or would establish that:

a. the attorney converted funds or misappropriated funds or property of a client or third party in violation of a rule of the Illinois Rules of Professional Conduct;

b. the attorney engaged in criminal conduct that reflects adversely on the attorney's honesty in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct; or

c. the attorney's conduct resulted in or is likely to result in actual prejudice (loss of money, legal rights, or valuable property rights) to a client or other person, unless restitution has been made; or

2. the attorney retains an active license to practice law in any jurisdictions other than the State of Illinois.

(C) If permanent retirement status is granted, any pending disciplinary investigation of the attorney shall be closed and any proceeding against the attorney shall be dismissed. The Administrator may resume such investigations pursuant to Commission Rule 54 and may initiate additional investigations and proceedings of the attorney as circumstances warrant. The permanently retired attorney shall notify other jurisdictions in which the he or she is licensed to practice law of his or her permanent retirement in Illinois. The permanently retired attorney may not reactivate a license to practice law or obtain a license to practice law in any other jurisdiction.

(b) The Master Roll. The Administrator shall prepare a master roll of attorneys consisting of the names of attorneys who have registered and have paid or are exempt from paying the registration fee and of recently admitted attorneys who are not yet required to register. The Administrator shall maintain the master roll in a current status. At all times a copy of the master roll shall be on file in the office of the clerk of the ~~c~~Court. An attorney who is not listed on the master roll is not entitled to practice law or to hold himself or herself out as authorized to practice law in this state. An attorney listed on the master roll as on inactive or retirement status

shall not be entitled to practice law or to hold himself or herself out as authorized to practice law in Illinois, except as is provided in paragraph (k) of this rule.

(c) Registration.

(1) Each attorney is obliged to register on or before the first day of January of each year unless the attorney is on retirement status pursuant to paragraph (a)(6) of this rule, has been allowed to assume permanent retirement status pursuant to paragraph (a)(8) of this rule, or has been placed on inactive status pursuant to former Rule 770, except that an attorney not authorized to practice law due to discipline or disability inactive status is not required to register until the conclusion of the discipline or disability inactive status.

(2) Registration requires that the attorney provide all information specified under paragraphs (c) through (g) of this rule. An attorney's registration shall not be complete until all such information has been submitted.

(3) On or before the first day of November of each year, the Administrator shall send to each attorney on the Master Roll a notice of the annual registration requirement. The notice may be sent to the attorney's listed Master Roll mail or email address. Failure to receive the notice shall not constitute an excuse for failure to register.

(4) Each attorney must submit registration information by means of the ARDC online registration system or other means specified by the Administrator. Registration payments may be submitted online, by check sent through the mail to the address designated by the Administrator, or through other means authorized by the Administrator.

(5) Each attorney shall update required registration information within 30 days of any change, except for those attorneys relieved of the registration obligation under a provision of this rule.

(6) Except as otherwise provided in this rule or Supreme Court Rule 766, information disclosed under paragraphs (c) through (g) shall not be confidential.

(d) Disclosure of Trust Accounts. Each lawyer shall identify any and all accounts maintained by the lawyer during the preceding 12 months to hold property of clients or third persons in the lawyer's possession in connection with a representation, as required under Rule 1.15(a) of the Illinois Rules of Professional Conduct, by providing the account name, account number and financial institution for each account. For each account, the lawyer shall also indicate whether each account is an IOLTA account, as defined in Rule 1.15(i)(2) of the Illinois Rules of Professional Conduct. If a lawyer does not maintain a trust account, the lawyer shall state the reason why no such account is required.

(e) Disclosure of Malpractice Insurance.

(1) Each lawyer, except for those registering pursuant to (a)(2), (a)(3), (a)(5), (a)(6), and (k)(5) of this rule, shall disclose whether the lawyer has malpractice insurance on the date of the registration, and if so, shall disclose the dates of coverage for the policy. The Administrator may conduct random audits to assure the accuracy of information reported. Each lawyer shall maintain, for a period of seven years from the date the coverage is reported, documentation showing the name of the insurer, the policy number, the amount of coverage and the term of the policy, and shall produce such documentation upon the Administrator's request. ~~The requirements of this subsection shall not apply to attorneys~~

~~serving in the office of justice, judge, associate judge or magistrate as defined in subparagraph (a)(3) of this rule on the date of registration.~~

(2) Every other year, beginning with registration for 2018, each lawyer who discloses pursuant to paragraph (e)(1) that he or she does not have malpractice insurance and who is engaged in the private practice of law shall complete a self-assessment of the operation of his or her law practice or shall obtain malpractice insurance and report that fact, as a requirement of registering in the year following. The lawyer shall conduct the self-assessment in an interactive online educational program provided by the Administrator regarding professional responsibility requirements for the operation of a law firm. The self-assessment shall require that the lawyer demonstrate an engagement in learning about those requirements and that the lawyer assess his or her law firm operations based upon those requirements. The self-assessment shall be designed to allow the lawyer to earn four hours of MCLE professional responsibility credit and to provide the lawyer with results of the self-assessment and resources for the lawyer to use to address any issues raised by the self-assessment. All information related to the self-assessment shall be confidential, except for the fact of completion of the self-assessment, whether the information is in the possession of the Administrator or the lawyer. Neither the Administrator nor the lawyer may offer this information into evidence in a disciplinary proceeding. The Administrator may report self-assessment data publicly in the aggregate.

(f) Disclosure of Voluntary *Pro Bono* Service. Each lawyer shall report the approximate amount of his or her *pro bono* legal service and the amount of qualified monetary contributions made during the preceding 12 months.

(1) *Pro bono* legal service includes the delivery of legal services or the provision of training without charge or expectation of a fee, as defined in the following subparagraphs:

(a) legal services rendered to a person of limited means;

(b) legal services to charitable, religious, civic, community, governmental or educational organizations in matters designed to address the needs of persons of limited means;

(c) legal services to charitable, religious, civic, or community organizations in matters in furtherance of their organizational purposes; and

(d) training intended to benefit legal service organizations or lawyers who provide *pro bono* services.

In a fee case, a lawyer's billable hours may be deemed *pro bono* when the client and lawyer agree that further services will be provided voluntarily. Legal services for which payment was expected, but is uncollectible, do not qualify as *pro bono* legal service.

(2) *Pro bono* legal service to persons of limited means refers not only to those persons whose household incomes are below the federal poverty standard, but also to those persons frequently referred to as the "working poor." Lawyers providing *pro bono* legal service need not undertake an investigation to determine client eligibility. Rather, a good-faith determination by the lawyer of client eligibility is sufficient.

(3) Qualified monetary contribution means a financial contribution to an organization as enumerated in subparagraph (1)(b) which provides legal services to persons of limited means

or which contributes financial support to such an organization.

(4) As part of the lawyer's annual registration fee statement, the report required by subsection (f) shall be made by answering the following questions:

(a) Did you, within the past 12 months, provide any *pro bono* legal services as described in subparagraphs (1) through (4) below? ____ Yes ____ No

If no, are you prohibited from providing legal services because of your employment? ____ Yes ____ No

If yes, identify the approximate number of hours provided in each of the following categories where the service was provided without charge or expectation of a fee:

(1) hours of legal services to a person/persons of limited means;

(2) hours of legal services to charitable, religious, civic, community, governmental or educational organizations in matters designed to address the needs of persons of limited means;

(3) hours of legal services to charitable, religious, civic or community organizations in furtherance of their organizational purposes; and

(4) hours providing training intended to benefit legal service organizations or lawyers who provide *pro bono* services.

Legal services for which payment was expected, but is not collectible, do not qualify as *pro bono* services and should not be included.

(b) Have you made a monetary contribution to an organization which provides legal services to persons of limited means or which contributes financial support to such organization? ____ Yes ____ No

If yes, approximate amount: $_____.

(5) Information provided pursuant to this subsection (f) shall be deemed confidential pursuant to the provisions of Rule 766, but the Commission may report such information in the aggregate.

(g) Practice Related Information. Each attorney shall provide the following practice related information:

(1) An address, email address, and telephone number designated by the attorney as the attorney's listings on the Master Roll;

(2) The attorney's residential address, which shall be deemed to be the address required by paragraph (g)(1) above if the attorney has not provided such an address;

(3) The name of all other states of the United States in which the lawyer is licensed to practice law; and

(4) For attorneys on active status and engaged in the practice of law, the type of entity at which the attorney practices law, the number of attorneys in that organization, the principal areas of law in which the attorney practices, and whether that organization has established a written succession plan.

Information provided pursuant to paragraphs (g)(2) and (g)(4) of this rule shall be deemed confidential pursuant to this rule. Information pursuant to paragraph (g)(1) shall be confidential pursuant to this rule for a lawyer registered under paragraph (a)(5) or (a)(6) of this rule, on

inactive status pursuant to former Rule 770, on permanent retirement status under paragraph (a)(8) of this rule, or exempt from payment of a fee under paragraph (a)(3) of this rule. The Administrator may release confidential information under paragraph (g)(1) of this rule upon written application demonstrating good cause and the absence of risk of harm to the lawyer. The Commission may report in the aggregate information made confidential by paragraph (g).

(h) Removal from the Master Roll. On or after February 1 of each year the Administrator shall remove from the master roll the name of any person who has not registered for that year. A lawyer will be deemed not registered for the year if the lawyer has not paid all required fees and has not provided the information required by paragraphs (c) through (g) of this rule. Any person whose name is not on the master roll and who practices law or who holds himself or herself out as being authorized to practice law in this state is engaged in the unauthorized practice of law and may also be held in contempt of the ~~c~~Court.

(i) Reinstatement to the Master Roll. An attorney whose name has been removed from the master roll solely for failure to register and pay the registration fee may be reinstated as a matter of course upon registering and paying the registration fee prescribed for the period of his suspension, plus the sum of $25 per month for each month that such registration fee is delinquent.

(j) No Effect on Disciplinary Proceedings. The provisions of this rule pertaining to registration status shall not bar, limit or stay any disciplinary investigations or proceedings against an attorney except to the extent provided in Rule 756(a)(8) regarding permanent retirement status.

(k) *Pro Bono* Authorization for Inactive and Retired Status Attorneys and Attorneys Admitted in Other States.

(1) Authorization to Provide *Pro Bono* Services. An attorney who is registered as inactive or retired under Rule 756(a)(5) or (a)(6), or an attorney who is admitted in another state and is not disbarred or otherwise suspended from practice in any jurisdiction shall be authorized to provide *pro bono* legal services under the following circumstances:

(a) without charge or an expectation of a fee by the attorney;

(b) to persons of limited means or to organizations, as defined in paragraph (f) of this rule; and

(c) under the auspices of a sponsoring entity, which must be a not-for-profit legal services organization, governmental entity, law school clinical program, or bar association providing *pro bono* legal services as defined in paragraph (f)(1) of this rule.

(2) Duties of Sponsoring Entities. In order to qualify as a sponsoring entity, an organization must submit to the Administrator an application identifying the nature of the organization as one described in section (k)(1)(c) of this rule and describing any program for providing *pro bono* services which the entity sponsors and in which attorneys covered under paragraph (k) may participate. In the application, a responsible attorney shall verify that the program will provide appropriate training and support and malpractice insurance for volunteers and that the sponsoring entity will notify the Administrator as soon as any attorney authorized to provide services under this rule has ended his or her participation in the program. The organization is required to provide malpractice insurance coverage for any attorneys participating in the program and must inform the Administrator if the organization

ceases to be a sponsoring entity under this rule.

(3) Procedure for Attorneys Seeking Authorization to Provide *Pro Bono* Services. An attorney admitted in Illinois who is registered as inactive or retired, or an attorney who is admitted in another state but not Illinois, who seeks to provide *pro bono* services under this rule shall submit a statement to the Administrator so indicating, along with a verification from a sponsoring entity or entities that the attorney will be participating in a *pro bono* program under the auspices of that entity. An attorney who is seeking authorization based on admission in another state shall also disclose all other state admissions and whether the attorney is the subject of any disbarment or suspension orders in any jurisdiction. The attorney's statement shall include the attorney's agreement that he or she will participate in any training required by the sponsoring entity and that he or she will notify the Administrator within 30 days of ending his or her participation in a *pro bono* program. Upon receiving the attorney's statement and the entity's verification, the Administrator shall cause the master roll to reflect that the attorney is authorized to provide *pro bono* services. That authorization shall continue until the end of the calendar year in which the statement and verification are submitted, unless the lawyer or the sponsoring entity sends notice to the Administrator that the program or the lawyer's participation in the program has ended.

(4) Renewal of Authorization. An attorney who has been authorized to provide *pro bono* services under this rule may renew the authorization on an annual basis by submitting a statement that he or she continues to participate in a qualifying program, along with verification from the sponsoring entity that the attorney continues to participate in such a program under the entity's auspices and that the attorney has taken part in any training required by the program. An attorney who is seeking renewal based on admission in another state shall also affirm that the attorney is not the subject of any disbarment or suspension orders in any jurisdiction.

(5) Annual Registration for Attorneys on Retired Status. Notwithstanding the provisions of Rule 756(a)(6), a retired status attorney who seeks to provide *pro bono* services under this rule must register on an annual basis, but is not required to pay a registration fee.

(6) MCLE Exemption. The provisions of Rule 791 exempting attorneys from MCLE requirements by reason of being registered as inactive or retired shall apply to inactive or retired status attorneys authorized to provide *pro bono* services under this rule, except that such attorneys shall participate in training to the extent required by the sponsoring entity.

(7) Disciplinary Authority. Lawyers admitted in another state who are providing legal services in this jurisdiction pursuant to this paragraph are subject to this Court's disciplinary authority and the Rules of Professional Conduct of this jurisdiction, as provided in Rule 8.5 of the Rules of Professional Conduct of 2010. Any lawyer who provides legal services pursuant to this rule shall not be considered to be engaged in the unlawful practice of law in this jurisdiction.

Adopted January 25, 1973, effective February 1, 1973; amended effective May 17, 1973, April 1, 1974, and February 17, 1977; amended August 9, 1983, effective October 1, 1983; amended April 27, 1984, and June 1, 1984, effective July 1, 1984; amended July 1, 1985, effective August 1, 1985; amended effective November 1, 1986; amended December 1, 1988, effective December 1, 1988;

amended November 20, 1991, effective immediately; amended June 29, 1999, effective November 1, 1999; amended July 6, 2000, effective November 1, 2000; amended July 26, 2001, effective immediately; amended October 4, 2002, effective immediately; amended June 15, 2004, effective October 1, 2004; amended May 23, 2005, effective immediately; amended September 29, 2005, effective immediately; amended June 14, 2006, effective immediately; amended September 14, 2006, effective immediately; amended March 26, 2008, effective July 1, 2008; amended July 29, 2011, effective September 1, 2011; amended June 5, 2012, eff. immediately; amended June 21, 2012, eff. immediately; amended Nov. 28, 2012, eff. immediately; amended Apr. 8, 2013, eff. immediately; amended June 18, 2013, eff. July 1, 2013; amended March 20, 2014, eff. immediately; amended June 23, 2014, eff. immediately; amended Feb. 2, 2015, eff. immediately; amended May 27, 2015, eff. June 1, 2015; amended Apr. 1, 2016, eff. immediately; amended Jan. 25, 2017, eff. immediately.

APPENDIX 9

SB-36 Attorneys: State Bar: Sections of the State Bar. (2017-2018)

Date Published: 09/15/2017 04:00 AM

ENROLLED SEPTEMBER 14, 2017

PASSED IN SENATE SEPTEMBER 12, 2017

PASSED IN ASSEMBLY SEPTEMBER 01, 2017

AMENDED IN ASSEMBLY AUGUST 28, 2017

AMENDED IN ASSEMBLY JULY 20, 2017

AMENDED IN SENATE APRIL 06, 2017

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL No. 36

Introduced by Senator Jackson

December 05, 2016

An act to amend Sections 6001, 6008.6, 6011, 6013.1, 6013.3, 6013.5, 6015, 6016, 6019, 6021, 6022, 6026.7, 6029, 6031.5, 6054, 6060.2, 6070, 6086.5, 6140.9, 6144, 6144.1, 6145, and 6232 of, to add Sections 6008.7, 6046.8, 6069.5, 6140.02, 6140.56, and 6141.3 to, to add Article 3 (commencing with Section 6055) to Chapter 4 of Division 3 of, to add and repeal Section 6140 of, and to repeal Sections 6008.5, 6009.7, 6012, 6013.2, 6018, and 6026.5 of, the Business and Professions Code, relating to attorneys.

LEGISLATIVE COUNSEL'S DIGEST

SB 36, Jackson. Attorneys: State Bar: Sections of the State Bar.

(1) The State Bar Act provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation governed by a board of trustees comprised of appointed and elected members. The act requires 6 members of the 19-member board to be attorneys elected from State Bar Districts. The act requires the board of trustees to elect or select the president, vice president, and treasurer of the State Bar, as specified.

This bill would state that it is the intent of the Legislature that the board transition to a 13-member board, as specified. The bill would require that a maximum of 6 members of the board be public members, appointed as specified, and would require members of the board to serve a term of 4 years. The bill would require the California Supreme Court to appoint a chair and vice chair, as specified, instead of the board electing a president

and vice president. The bill would require members of the executive committee of the board to include at least one member of the board appointed by each appointing authority.

The bill would, until January 1, 2019, require the board to charge an annual membership fee for active members in a specified amount for 2018, and would require the State Bar to adhere to a Supreme Court-approved policy to identify and address any proposed decision of the board of trustees that raises antitrust concerns.

(2) Existing law prohibits the Legislature, when the board places a charge upon or otherwise makes available all or any portion of the income or revenue from membership fees for the payment of security of an obligation of the State Bar and so long as any obligation remains unpaid, from reducing the maximum membership fee below the maximum in effect at the time the obligation is created or incurred and provides that this provision constitutes a covenant to the holder of such an obligation.

This bill would repeal the provision prohibiting the Legislature from reducing the maximum membership fee.

(3) Existing law prohibits the State Bar from awarding contracts for goods or services in excess of specified amounts unless certain standards are followed.

This bill would additionally require the approval of the board of trustees for those contracts and would, by January 1, 2019, require the State Bar to align its purchasing policies with those of other state agencies. The bill would also require the State Bar to conduct a review and study regarding errors and omissions insurance and to report its findings to the California Supreme Court and the Legislature, as specified. The bill would also require the State Bar to provide offers of discounts and other benefits to active and inactive members, including, but not limited to, insurance and affinity programs and would specify how the revenues received from those programs are to be allocated.

(4) Existing law requires applicants for admission to, among other things, take and pass a bar examination and be fingerprinted, as specified.

This bill would require the board of trustees to, at least once every 7 years, oversee an evaluation of the bar examination to determine if it properly tests for minimally needed competence for entry-level attorneys and to report on the results of the evaluation to the California Supreme Court and the Legislature, as specified. The bill would require the State Bar to notify the Department of Justice about individuals who are no longer members of the State Bar and applicants who are denied admission and to request from the Department of Justice subsequent arrest notifications services for applicants to, and members of, the State Bar.

(5) The act provides that the State Bar is subject to the Bagley-Keene Open Meeting Act and the California Public Records Act, as specified.

This bill would provide that access to records of the State Bar Court is subject to the rules and laws applicable to the judiciary instead of the California Public Records Act and would exempt the State Bar Court from the Bagley-Keene Open Meeting Act. The bill would authorize closed sessions for meetings, or portions thereof, relating to, among other things, the preparation, approval, grading, or administration of the California Bar Examination or the First-Year Law Students' Examination.

(6) Existing law establishes the Client Security Fund to relieve or mitigate pecuniary losses caused by the dishonest conduct of, among others, active members of the State Bar.

This bill would require the State Bar to conduct a thorough analysis of the Client Security Fund to ensure that the structure provides for the most effective and efficient operation of the fund by, among other things, making a determination of the ongoing needs of the fund to satisfy claims in a timely manner, as defined. The bill would require the State Bar to submit a report on its analysis to the Legislature, as specified.

(7) Existing law requires the State Bar to establish and administer an Attorney Diversion and Assistance Program and requires the program to be funded by mandatory fees. Existing law provides that funds from those fees may be applied to costs of the State Bar general fund programs if alternative sources of funding are obtained and a specified amount of funds remain available for support of the program each year.

This bill would instead authorize any excess funds not needed to support the program to be transferred to fund the Client Security Fund, provided there are sufficient funds available to support the program. The bill would also authorize applicants who are in law school or who have applied for admission to the State Bar to enter the program subject to the approval of the board of trustees.

(8) Existing law requires the net proceeds from the sale or lease of real property, after payment of obligations and encumbrances and reasonable costs of acquiring and relocating its facilities, if any, to be held by the State Bar without expenditure or commitment until approved by the Legislature.

This bill would instead require the net proceeds from the lease of real property, after payment of obligations and encumbrances and reasonable costs of acquiring and relocating its facilities, if any, to be used by the State Bar for the protection of the public.

(9) Existing law authorizes the State Bar to establish sections and prohibits the activities of the sections from being funded from the annual membership fee. Existing law authorizes the State Bar to provide the sections with administrative support services, provided that the State Bar is reimbursed for the full cost of those services, and authorizes the State Bar to collect voluntary fees to fund the State Bar sections in conjunction with the collection of the annual membership fee. Existing law requires members of the State Bar to complete continuing education requirements, as specified.

This bill would require the State Bar to assist the Sections of the State Bar to incorporate as a private, nonprofit corporation and to transfer the functions and activities of the existing State Bar Sections to the new private, nonprofit corporation, defined as the Association. The bill would provide that the Association is a voluntary association, is not part of the State Bar, is prohibited from being funded by membership fees, and is not considered a state, local, or other public body for any purpose. The bill would require the bylaws of the Association to ensure that the governing board of the Association includes one representative of each of the existing Sections of the State Bar and that each of these governing board members have equal voting power. The bill would require the bylaws of the Association to ensure that the governing board may terminate individual sections or add individual sections by a 2/3 vote of the governing board. The bill would require the Sections of the State Bar or the Association to enter into a memorandum of understanding with the State Bar regarding the terms of separation of the Sections of the State Bar from the State Bar. The bill would require the State Bar to, among other things, collect voluntary dues set by the Association with the annual membership fee and to pay any such voluntary dues collected to the Association. The bill would prohibit the State Bar from having sections and would transfer the existing Sections of the State Bar to the Association, as specified. The bill would require the Association to provide and develop low-cost continuing education programs and materials as a condition of the State Bar collecting membership fees on behalf of the Association.

(10) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6001 of the Business and Professions Code is amended to read:

6001. The State Bar of California is a public corporation. It is hereinafter designated as the State Bar.

The State Bar has perpetual succession and a seal and it may sue and be sued. It may, for the purpose of carrying into effect and promoting its objectives:

(a) Make contracts.

(b) Borrow money, contract debts, issue bonds, notes and debentures and secure the payment or performance of its obligations.

(c) Own, hold, use, manage and deal in and with real and personal property.

(d) Construct, alter, maintain and repair buildings and other improvements to real property.

(e) Purchase, lease, obtain options upon, acquire by gift, bequest, devise or otherwise, any real or personal property or any interest therein.

(f) Sell, lease, exchange, convey, transfer, assign, encumber, pledge, dispose of any of its real or personal property or any interest therein, including without limitation all or any portion of its income or revenues from

membership fees paid or payable by members.

(g) Do all other acts incidental to the foregoing or necessary or expedient for the administration of its affairs and the attainment of its purposes.

Pursuant to those powers enumerated in subdivisions (a) to (g), inclusive, it is recognized that the State Bar has authority to raise revenue in addition to that provided for in Section 6140 and other statutory provisions. The State Bar is empowered to raise that additional revenue by any lawful means. However, as of March 31, 2018, the State Bar shall not create any foundations or nonprofit corporations.

The State Bar shall conspicuously publicize to its members in the annual dues statement and other appropriate communications, including its Internet Web site and electronic communications, that its members have the right to limit the sale or disclosure of member information not reasonably related to regulatory purposes. In those communications the State Bar shall note the location of the State Bar's privacy policy, and shall also note the simple procedure by which a member may exercise his or her right to prohibit or restrict, at the member's option, the sale or disclosure of member information not reasonably related to regulatory purposes. On or before May 1, 2005, the State Bar shall report to the Assembly and Senate Committees on Judiciary regarding the procedures that it has in place to ensure that members can appropriately limit the use of their member information not reasonably related to regulatory purposes, and the number of members choosing to utilize these procedures.

No law of this state restricting, or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes thereof, including, but not by way of limitation, the provisions contained in Division 3 (commencing with Section 11000), Division 4 (commencing with Section 16100), and Part 1 (commencing with Section 18000) and Part 2 (commencing with Section 18500) of Division 5, of Title 2 of the Government Code, shall be applicable to the State Bar, unless the Legislature expressly so declares. Notwithstanding the foregoing or any other law, pursuant to Sections 6026.7 and 6026.11, the State Bar is subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and, commencing April 1, 2016, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 2. Section 6008.5 of the Business and Professions Code is repealed.

SEC. 3. Section 6008.6 of the Business and Professions Code is amended to read:

6008.6. The State Bar shall award no contract for goods, services, or both, for an aggregate amount in excess of fifty thousand dollars ($50,000), or for information technology goods, services, or both, for an aggregate amount in excess of one hundred thousand dollars ($100,000), except pursuant to the standards established in Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code and approval of the board of trustees. In the event that approval for a particular contract by the board is not feasible because approval of the contract is necessary prior to the next regularly scheduled meeting of the board of trustees, the chief executive officer of the State Bar may approve the contract after consultation with and approval by a designated committee of the board and subject to notification of the full board at the board's next regularly scheduled meeting. The State Bar shall establish a request for proposal procedure by rule, pursuant to the general standards established in Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code. For the purposes of this section, "information technology" includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion voice, video, and data communications, network systems, requisite facilities, equipment, system controls, stimulation, electronic commerce, and all related interactions between people and machines.

SEC. 4. Section 6008.7 is added to the Business and Professions Code, to read:

6008.7. The State Bar shall, by January 1, 2019, develop purchasing policies that align with the purchasing policies of other state agencies.

SEC. 5. Section 6009.7 of the Business and Professions Code is repealed.

SEC. 6. Section 6011 of the Business and Professions Code is amended to read:

6011. (a) The board shall consist of no more than 19 members and no fewer than 13 members.

(b) It is the intent of the Legislature that the board consist of no more than 19 members and no fewer than 13 members during the period of transition from a 19-member board to a 13-member board. It is the intent of the Legislature that the board decrease its size without shortening, lengthening, or abolishing terms commencing prior to December 31, 2017, with the ultimate goal of instituting a 13-member board no later than October 31, 2020. It is the intent of the Legislature that this transition occur by the expiration of the terms of the elected members who are serving on the board as of December 31, 2017.

SEC. 7. Section 6012 of the Business and Professions Code is repealed.

SEC. 8. Section 6013.1 of the Business and Professions Code is amended to read:

6013.1. (a) The Supreme Court shall appoint five attorney members of the board pursuant to a process that the Supreme Court may prescribe. These attorney members shall serve for a term of four years and may be reappointed by the Supreme Court for one additional term only.

(b) An attorney member elected pursuant to Section 6013.2 may be appointed by the Supreme Court pursuant to this section to a term as an appointed attorney member.

(c) The Supreme Court shall fill any vacancy in the term of, and make any reappointment of, any appointed attorney member.

(d) When making appointments to the board, the Supreme Court should consider appointing attorneys that represent the following categories: legal services; small firm or solo practitioners; historically underrepresented groups, including consideration of race, ethnicity, gender, and sexual orientation; and legal academics. In making appointments to the board, the Supreme Court should also consider geographic distribution, years of practice, particularly attorneys who are within the first five years of practice or 36 years of age and under, and participation in voluntary local or state bar activities.

(e) The State Bar shall be responsible for carrying out the administrative responsibilities related to the appointment process described in subdivision (a).

SEC. 9. Section 6013.2 of the Business and Professions Code is repealed.

SEC. 10. Section 6013.3 of the Business and Professions Code is amended to read:

6013.3. (a) One attorney member of the board shall be appointed by the Senate Committee on Rules and one attorney member of the board shall be appointed by the Speaker of the Assembly.

(b) An attorney member appointed pursuant to this section shall serve for a term of four years. Vacancies shall be filled for the remainder of the term. An appointed attorney member may be reappointed pursuant to this section.

SEC. 11. Section 6013.5 of the Business and Professions Code is amended to read:

6013.5. (a) Effective January 1, 2018, a maximum of six members of the board shall be members of the public who have never been members of the State Bar or admitted to practice before any court in the United States.

(b) Each of these members shall serve for a term of four years. Vacancies shall be filled for the remainder of the term.

(c) Effective January 1, 2018, one public member shall be appointed by the Senate Committee on Rules and one public member shall be appointed by the Speaker of the Assembly.

(d) Four public members shall be appointed by the Governor, subject to the confirmation of the Senate.

(e) Each respective appointing authority shall fill any vacancy in and make any reappointment to each respective office.

SEC. 12. Section 6015 of the Business and Professions Code is amended to read:

6015. No person is eligible for attorney membership on the board unless both of the following conditions are satisfied:

(a) He or she is an active member of the State Bar.

(b) Either:

(1) Prior to October 31, 2020, if elected, he or she maintains his or her principal office for the practice of law within the State Bar district from which he or she is elected.

(2) If appointed by the Supreme Court or the Legislature, he or she maintains his or her principal office for the practice of law within the State of California.

SEC. 13. Section 6016 of the Business and Professions Code is amended to read:

6016. The term of office of each attorney member of the board shall be four years and he or she shall hold office until his or her successor is appointed and qualified. Vacancies shall be filled for the remainder of the term.

The board of trustees may provide by rule for an interim board to act in the place and stead of the board when because of vacancies during terms of office there is less than a quorum of the board.

SEC. 14. Section 6018 of the Business and Professions Code is repealed.

SEC. 15. Section 6019 of the Business and Professions Code is amended to read:

6019. Each place upon the board for which a member is to be appointed shall for the purposes of the appointment be deemed a separate office.

SEC. 16. Section 6021 of the Business and Professions Code is amended to read:

6021. (a) On the effective date of the measure adding this subdivision, the selection of the chair and vice chair of the board shall be made by appointment of the Supreme Court.

(b) For 2018, the Supreme Court shall appoint a chair and a vice chair to serve a term that commences upon appointment and ends at the conclusion of the annual meeting in 2018. Thereafter, the term of the chair and the vice chair shall be one year, and the chair and vice chair shall assume the duties of their respective offices at the conclusion of the annual meeting following their appointment. The chair and vice chair shall not serve more than two terms, except that a chair or vice chair who is appointed to fill a vacancy for the balance of a term is eligible to serve two full terms in addition to the remainder of the term for which he or she was appointed.

(c) The president and vice president in place on the effective date of the measure adding this subdivision shall retain their positions until the chair and vice chair are appointed.

SEC. 17. Section 6022 of the Business and Professions Code is amended to read:

6022. The secretary of the State Bar shall be selected annually by the board and need not be a member of the State Bar.

SEC. 18. Section 6026.5 of the Business and Professions Code is repealed.

SEC. 19. Section 6026.7 of the Business and Professions Code is amended to read:

6026.7. (a) The State Bar is subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) and all meetings of the State Bar are subject to the Bagley-Keene Open Meeting Act.

(b) Notwithstanding any other law, the Bagley-Keene Open Meeting Act shall not apply to the Judicial Nominees Evaluation Commission or the State Bar Court.

(c) In addition to the grounds authorized in the Bagley-Keene Open Meeting Act, a closed session may be held for those meetings, or portions thereof, relating to both of the following:

(1) Appeals from decisions of the Board of Legal Specialization refusing to certify or recertify an applicant or suspending or revoking a specialist’s certificate.

(2) The preparation, approval, grading, or administration of examinations for certification of a specialist.

(3) The preparation, approval, grading, or administration of the California Bar Examination or the First-Year Law Students' Examination.

(4) Matters related to the Committee of Bar Examiners' consideration of moral character, including allegations of criminal or professional misconduct, competence, or physical or mental health of an individual, requests by applicants for testing accommodations in connection with an application for admission to practice law, or appeals of the Committee of Bar Examiners' determinations.

(5) Information about a law school's operations that constitutes a trade secret as defined in subdivision (d) of Section 3426.1 of the Civil Code.

SEC. 20. Section 6029 of the Business and Professions Code is amended to read:

6029. (a) The board may appoint such committees, officers and employees as it deems necessary or proper, and fix and pay salaries and necessary expenses.

(b) The members of the executive committee of the board shall include at least one board member appointed by each of the following appointing authorities:

(1) The Supreme Court.

(2) The Governor.

(3) The Speaker of the Assembly.

(4) The Senate Committee on Rules.

SEC. 21. Section 6031.5 of the Business and Professions Code is amended to read:

6031.5. (a) The Association and its activities shall not be funded with mandatory fees collected pursuant to subdivision (a) of Section 6140.

The State Bar may provide the Association with administrative and support services, provided the Association agrees, before such services are provided, to the nature, scope, and cost of those services. The State Bar shall be reimbursed for the full cost of those services out of funds collected pursuant to subdivision (b) or funds provided by the Association. The financial audit specified in Section 6145 shall confirm that the amount assessed by the State Bar for providing the services reimburses the costs of providing them, and shall verify that mandatory dues are not used to fund the Association. The State Bar and the Association may also contract for other services provided by the State Bar or by the Association.

(b) Notwithstanding any other law, the State Bar shall collect fees for the Association provided the Board of Trustees of the State Bar determines that both of the following conditions are met: (1) the Association continues to comply with the requirements in subdivision (b) of Section 6056, and (2) the Association continues to serve a public purpose by providing the services described in subdivision (f) of Section 6056. The Association shall pay for the actual costs of the collection.

(c) Notwithstanding any other law, the State Bar is expressly authorized to collect, in conjunction with the State Bar's collection of its annual membership dues, voluntary fees or donations on behalf of the Conference of Delegates of California Bar Associations, the independent nonprofit successor entity to the former Conference of Delegates of the State Bar which has been incorporated for the purposes of aiding in matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, and to convey any unexpended voluntary fees or donations previously made to the Conference of Delegates of the State Bar pursuant to this section to the Conference of Delegates of California Bar Associations. The Conference of Delegates of California Bar Associations shall pay for the cost of the collection. The State Bar and the Conference of Delegates of California Bar Associations may also contract for other services. The financial audit specified in Section 6145 shall confirm that the amount of any contract shall fully cover the costs of providing the services, and shall verify that mandatory dues are not used to fund any successor entity.

(d) The Conference of Delegates of California Bar Associations, which is the independent nonprofit successor entity to the former Conference of Delegates of the State Bar as referenced in subdivision (c), is a voluntary association, is not a part of the State Bar of California, and shall not be funded in any way through mandatory dues collected by the State Bar of California. Any contribution or membership option included with a State Bar of California mandatory dues billing statement shall include a statement that the Conference of Delegates of

California Bar Associations is not a part of the State Bar of California and that membership in that organization is voluntary.

SEC. 22. Section 6046.8 is added to the Business and Professions Code, to read:

6046.8. At least once every seven years, or more frequently if directed by the Supreme Court, the board of trustees shall oversee an evaluation of the bar examination to determine if it properly tests for minimally needed competence for entry-level attorneys and shall make a determination, supported by findings, whether to adjust the examination or the passing score based on the evaluation. The board of trustees shall report the results of the evaluation and any determination regarding adjustment in the passing score to the Supreme Court and the Legislature no later than March 15, 2018, and at least every seven years from the date of the previous report.

SEC. 23. Section 6054 of the Business and Professions Code is amended to read:

6054. (a) State and local law enforcement and licensing bodies and departments, officers and employees thereof, and officials and attachés of the courts of this state shall cooperate with and give reasonable assistance and information, including the providing of state summary criminal history information and local summary criminal history information, to the State Bar of California or any authorized representative thereof, in connection with any investigation or proceeding within the jurisdiction of the State Bar of California, regarding the admission to the practice of law or discipline of attorneys or their reinstatement to the practice of law.

(b) The State Bar of California shall require that an applicant for admission or reinstatement to the practice of law in California, or may require a member to submit or resubmit fingerprints to the Department of Justice in order to establish the identity of the applicant and in order to determine whether the applicant or member has a record of criminal conviction in this state or in other states. The information obtained as a result of the fingerprinting of an applicant or member shall be limited to the official use of the State Bar in establishing the identity of the applicant and in determining the character and fitness of the applicant for admission or reinstatement, and in discovering prior and subsequent criminal arrests of an applicant, member, or applicant for reinstatement. The State Bar shall notify the Department of Justice about individuals who are no longer members and applicants who are denied admission to the State Bar within 30 days of any change in status of a member or denial of admission. All fingerprint records of applicants admitted or members reinstated, or provided by a member, shall be retained thereafter by the Department of Justice for the limited purpose of criminal arrest notification to the State Bar.

(c) The State Bar shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for applicants to, and members of, the State Bar.

(d) If required to be fingerprinted pursuant to this section, a member of the State Bar who fails to be fingerprinted may be enrolled as an inactive member pursuant to rules adopted by the board of trustees.

(e) The State Bar shall report to the Supreme Court and the Legislature by March 15, 2018, regarding its compliance with the requirements of this section.

SEC. 24. Article 3 (commencing with Section 6055) is added to Chapter 4 of Division 3 of the Business and Professions Code, to read:

Article 3. Nonprofit Association

6055. This article shall be known, and may be cited, as the Nonprofit Association Act.

6056. (a) The State Bar, acting pursuant to Section 6001, shall assist the Sections of the State Bar to incorporate as a private, nonprofit corporation organized under Section 501(c)(6) of the Internal Revenue Code and shall transfer the functions and activities of the 16 State Bar Sections and the California Young Lawyers Association to the new private, nonprofit corporation, defined as the Association in this article. The new private, nonprofit corporation shall be called any name that sufficiently distinguishes itself from the State Bar, makes clear that it is not a government entity, and is approved by the Chief Justice of California. The Association shall be a voluntary association, shall not be a part of the State Bar, and shall not be funded in any way through mandatory dues collected by the State Bar. The Association shall have independent contracting authority and full control of its resources. The Association shall not be considered a state, local, or other public body for any purpose, including, but not limited to, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section

11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(b) The Association shall be governed in accordance with the bylaws of the Association, which shall ensure that all of the State Bar Sections and the California Young Lawyers Association are adequately represented and are able to make decisions in a fair and representative manner that complies with all provisions of state and federal law governing private nonprofit corporations organized under Section 501(c)(6) of the Internal Revenue Code. The bylaws of the Association shall ensure that the governing board of the Association includes one representative of each of the 16 sections of the State Bar Sections and one representative from the California Young Lawyers Association. The bylaws shall ensure that each of these 17 governing board members have equal voting power on the governing board. The bylaws shall ensure that the governing board may terminate individual sections or add individual sections by a two-thirds vote of the governing board.

(c) The State Bar may assist the Association in gaining appointment to the American Bar Association (ABA) House of Delegates, consistent with the Association's mission and subject to the consent of the ABA.

(d) The State Bar shall support the Association's efforts to partner with the Continuing Education of the Bar (CEB), subject to agreement by the University of California.

(e) The State Bar of California shall ensure that State Bar staff who support the sections, as of September 15, 2017, are reassigned to other comparable positions within the State Bar.

(f) The Sections of the State Bar or the Association and the State Bar shall enter into a memorandum of understanding regarding the terms of separation of the Sections of the State Bar from the State Bar and mandatory duties of the Association, including a requirement to provide all of the following:

(1) Low- and no-cost mandatory continuing legal education (MCLE).

(2) Expertise and information to the State Bar, as requested.

(3) Educational programs and materials to the members of the State Bar and the public.

6056.3. (a) On or before January 31, 2018, the State Bar shall transfer to the Association all membership fees and other funds paid for membership in the sections or paid in sponsorships, donations, or funds for the benefit of the sections, including, but not limited to, State Bar section financial reserves, with an accounting that specifies which funds are attributable to each individual section of the Association. The State Bar shall work with the Association to transfer all contracts previously entered into by the State Bar on behalf of the sections, as soon as practicable, consistent with any contractual obligations and legal requirements, unless an alternative arrangement is mutually acceptable to the State Bar and the Association.

(b) On or before January 31, 2018, the State Bar shall provide an itemized list of any outstanding expenses, including contracts made on behalf of section activities.

(c) The State Bar and the Association shall confer and work cooperatively to establish an orderly transition plan.

(d) All current intellectual property of the Sections of the State Bar and the board of governors, currently in the possession of the State Bar, shall be transferred to and retained by the Association, including, but not limited to, publications, educational materials, online education, membership lists of section members, and products.

(e) Programs created by the sections within the State Bar's online education catalog shall be transferred to the Association.

(f) The amount of the State Bar sections' reserves that are to be transferred shall be determined by cooperative review and accounting between the State Bar and the Association no later than January 31, 2018. If the State Bar and Sections of the State Bar do not agree on the amount by January 31, 2018, the parties shall submit the matter to binding arbitration by a neutral arbitrator who will determine the amount. If the parties cannot agree on a neutral arbitrator, each shall select a neutral arbitrator and the two neutral arbitrators shall select a single neutral arbitrator to determine the amount. The neutral arbitrator chosen to oversee the matter may hire an auditor to assist in this task. The fees charged by the arbitrator, including any auditor fees, shall be borne equally by the State Bar and the Association.

(g) The State Bar shall no longer include individual sections or voluntary organizations that are similar to Sections of the State Bar as they existed before being transferred to the Association.

SEC. 25. Section 6060.2 of the Business and Professions Code is amended to read:

6060.2. (a) All investigations or proceedings conducted by the State Bar concerning the moral character of an applicant shall be confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) unless the applicant, in writing, waives the confidentiality.

(b) Notwithstanding subdivision (a), the records of the proceeding may be disclosed in response to either of the following:

(1) A lawfully issued subpoena.

(2) A written request from a government agency responsible for either the enforcement of civil or criminal laws or the professional licensing of individuals that is conducting an investigation about the applicant.

SEC. 26. Section 6069.5 is added to the Business and Professions Code, to read:

6069.5. (a) In recognition of the importance of protecting the public from attorney errors through errors and omissions insurance, the State Bar shall conduct a review and study regarding errors and omissions insurance for attorneys licensed in this state. The State Bar shall conduct this review and study, which shall specifically include determinations of all of the following:

(1) The adequacy, availability, and affordability of errors and omissions insurance for attorneys licensed in this state.

(2) Proposed measures for encouraging attorneys licensed in this state to obtain and maintain errors and omissions insurance.

(3) The ranges of errors and omissions insurance limits for attorneys licensed in this state recommended to protect the public.

(4) The adequacy and efficacy of the disclosure rule regarding errors and omissions insurance, currently embodied in Rule 3-410 of the Rules of Professional Conduct.

(5) The advisability of mandating errors and omissions insurance for attorneys licensed in this state and attendant considerations.

(6) Other proposed measures relating to errors and omissions insurance for attorneys in this state that will further the goal of public protection.

(b) The State Bar shall report its findings under this section to the Supreme Court and the Legislature no later than March 31, 2019.

(c) The State Bar may consider any past studies, including, but not limited to, any relevant actuarial studies, and any current information that is available to the State Bar from other entities, such as the American Bar Association, regarding errors and omissions insurance.

SEC. 27. Section 6070 of the Business and Professions Code is amended to read:

6070. (a) The State Bar shall request the California Supreme Court to adopt a rule of court authorizing the State Bar to establish and administer a mandatory continuing legal education program. The rule that the State Bar requests the Supreme Court to adopt shall require that, within designated 36-month periods, all active members of the State Bar shall complete at least 25 hours of legal education activities approved by the State Bar or offered by a State Bar-approved provider, with four of those hours in legal ethics. The legal education activities shall focus on California law and practice and federal law as relevant to its practice in California or tribal law. A member of the State Bar who fails to satisfy the mandatory continuing legal education requirements of the program authorized by the Supreme Court rule shall be enrolled as an inactive member pursuant to rules adopted by the Board of Trustees of the State Bar.

(b) For purposes of this section, statewide associations of public agencies and incorporated, nonprofit professional associations of attorneys, including the Association, shall be certified as State Bar approved providers upon completion of an appropriate application process to be established by the State Bar. The certification may be revoked only by majority vote of the board, after notice and hearing, and for good cause

shown. Programs provided by the California District Attorneys Association or the California Public Defenders Association, or both, including, but not limited to, programs provided pursuant to Title 1.5 (commencing with Section 11500) of Part 4 of the Penal Code, are deemed to be legal education activities approved by the State Bar or offered by a State Bar-approved provider.

(c) Notwithstanding the provisions of subdivision (a), officers and elected officials of the State of California, and full-time professors at law schools accredited by the State Bar of California, the American Bar Association, or both, shall be exempt from the provisions of this section. Full-time employees of the State of California, acting within the scope of their employment, shall be exempt from the provisions of this section. Nothing in this section shall prohibit the State of California, or any political subdivision thereof, from establishing or maintaining its own continuing education requirements for its employees.

(d) The Association shall provide and encourage the development of low-cost programs and materials by which members of the State Bar may satisfy their continuing education requirements. Special emphasis shall be placed upon the use of internet capabilities and computer technology in the development and provision of no-cost and low-cost programs and materials. Towards this purpose, as a condition of the State Bar's collection of membership fees on behalf of the Association pursuant to subdivision (b) of Section 6031.5, the Association shall ensure that any member possessing or having access to the Internet or specified generally available computer technology shall be capable of satisfying the full self-study portion of his or her MCLE requirement at a cost of twenty dollars ($20) per hour or less.

SEC. 28. Section 6086.5 of the Business and Professions Code is amended to read:

6086.5. The board of trustees shall establish a State Bar Court, to act in its place and stead in the determination of disciplinary and reinstatement proceedings and proceedings pursuant to subdivisions (b) and (c) of Section 6007 to the extent provided by rules adopted by the board of trustees pursuant to this chapter. In these proceedings the State Bar Court may exercise the powers and authority vested in the board of trustees by this chapter, including those powers and that authority vested in committees of, or established by, the board, except as limited by rules of the board of trustees within the scope of this chapter.

Access to records of the State Bar Court shall be governed by court rules and laws applicable to records of the judiciary and not the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

For the purposes of Sections 6007, 6043, 6049, 6049.2, 6050, 6051, 6052, 6077 (excluding the first sentence), 6078, 6080, 6081, and 6082, "board" includes the State Bar Court.

Nothing in this section shall authorize the State Bar Court to adopt rules of professional conduct or rules of procedure.

The Executive Committee of the State Bar Court may adopt rules of practice for the conduct of all proceedings within its jurisdiction. These rules may not conflict with the rules of procedure adopted by the board, unless approved by the Supreme Court.

SEC. 29. Section 6140 is added to the Business and Professions Code, to read:

6140. (a) The board shall fix the annual membership fee for active members for 2018 at a sum not exceeding three hundred fifteen dollars ($315).

(b) The annual membership fee for active members is payable on or before the first day of February of each year. If the board finds it appropriate and feasible, it may provide by rule for payment of fees on an installment basis with interest, by credit card, or other means, and may charge members choosing any alternative method of payment an additional fee to defray costs incurred by that election.

(c) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

SEC. 30. Section 6140.02 is added to the Business and Professions Code, to read:

6140.02. (a) The Association shall adopt a dues schedule for membership and shall provide that schedule to the State Bar by October 1 of each year.

(b) Payment of dues for membership in the Association and individual sections of the Association is voluntary. Each member of the State Bar shall have the option of joining the Association and one or more individual sections by including the dues set by the schedule established pursuant to subdivision (a) with that State Bar member's annual membership fees. Any contribution or membership option included with a State Bar of California mandatory dues billing statement shall include a statement that the Association is not a part of the State Bar and that membership in that organization is voluntary.

(c) The State Bar shall collect, in conjunction with the collection of its annual membership fees under Section 6140, membership fees for the Association as provided by subdivision (b) of Section 6031.5.

(d) This section is not intended to limit the Association membership to members of the State Bar or restrict the Association from collecting membership dues or donations by other means.

SEC. 31. Section 6140.56 is added to the Business and Professions Code, to read:

6140.56. (a) To ensure that the Client Security Fund can adequately protect the public and relieve or mitigate financial losses caused by the dishonest conduct of members of the State Bar by paying claims in a timely manner, the State Bar shall conduct a thorough analysis of the Client Security Fund, including a review of the State Bar's oversight of the Client Security Fund, to ensure that the structure provides for the most effective and efficient operation of the fund, a determination of the ongoing needs of the fund to satisfy claims in a timely manner, a review of additional efforts that can be taken to increase the collection of payments from the responsible attorneys, and a review of other State Bar expenditures to determine whether other expenditures that do not directly impact the State Bar's public protection functions, including, but not limited to, executive salaries and benefits, can be reduced or redirected in order to better fund the Client Security Fund through existing revenue, and, whether, after all other options have been fully and thoroughly exhausted, an increase in membership dues is necessary to ensure that the Client Security Fund can timely pay claims.

(b) The State Bar shall submit a report on its analysis of the Client Security Fund to the Legislature by March 15, 2018, so that the plans can be reviewed in conjunction with the bill that would authorize the imposition of the State Bar's membership fee. The report shall be submitted in compliance with Section 9795 of the Government Code.

(c) For purposes of this section, "timely manner" means within 12 months from either the time the claim is received by the State Bar or the resolution of the underlying discipline case involving an attorney member that is a prerequisite to paying the claim, whichever is later.

SEC. 32. Section 6140.9 of the Business and Professions Code is amended to read:

6140.9. Moneys for the support of the program established pursuant to Article 15 (commencing with Section 6230) and related programs approved by the committee established pursuant to Section 6231 shall be paid in whole or part by a fee of ten dollars ($10) per active member per year, and by a fee of five dollars ($5) per inactive member per year.

The board may seek alternative sources for funding the program. Any excess funds not needed to support the program, including reserve funds, may be transferred to fund the Client Security Fund established pursuant to Section 6140.5, provided there are sufficient funds available to fully support the program.

SEC. 33. Section 6141.3 is added to the Business and Professions Code, to read:

6141.3. (a) Except as provided in subdivision (b), the State Bar shall provide offers of discounts and other benefits to active and inactive members of the State Bar, including, but not limited to, insurance and affinity programs. Any revenue generated by these programs shall be used as follows:

(1) The revenue received from the affinity programs shall support the programs of the California Bar Foundation.

(2) (A) For all other revenue received from January 1, 2018, until December 31, 2018, 50 percent of the revenue shall be used to assist the Association in transitioning to an independent entity, 25 percent of the revenue shall be distributed to qualified legal services projects and support centers as provided in Section 6216, and 25 percent shall be used to support the discipline functions of the State Bar or to support the Client Security Fund.

(B) For all other revenue received after December 31, 2018, 50 percent of the revenue shall be distributed to qualified legal services projects and support centers as provided in Section 6216, and 50 percent of the revenue

shall be used to support the discipline functions of the State Bar or to support the Client Security Fund.

(b) Notwithstanding subdivision (a), if approved by the board of trustees and the California Bar Foundation, the State Bar may transfer administration of the programs offering discounts and other benefits to active and inactive members of the State Bar under subdivision (a) to the California Bar Foundation provided that any revenue received, less the administrative costs of the California Bar Foundation in operating the program, shall be distributed as follows on and after January 1, 2019:

(1) All of the revenue received from the affinity programs shall be kept by the California Bar Foundation, which shall distribute 50 percent of that revenue to support the programs of the California Bar Foundation and 50 percent of that revenue to qualified legal services projects and support centers as provided in Section 6216.

(2) For all other revenue received, 50 percent of the revenue shall be kept by the California Bar Foundation, which shall distribute 50 percent of that revenue to support the programs of the California Bar Foundation and 50 percent of that revenue to qualified legal services projects and support centers in accordance with the formula provided in Section 6216, and 50 percent of the revenue shall be used to support the discipline functions of the State Bar or to support the Client Security Fund.

(c) Given the public protection mission of the State Bar, the Legislature finds that it would be inappropriate for the State Bar to administer the program on a long-term basis. Therefore, should the program continue to operate after December 31, 2018, it is the intent of the Legislature that the program be administered by an entity other than the State Bar.

SEC. 34. Section 6144 of the Business and Professions Code is amended to read:

6144. (a) All fees shall be paid into the treasury of the State Bar, and, when so paid, shall become part of its funds.

(b) Notwithstanding subdivision (a) and consistent with the reimbursement requirement under Section 6031.5, all fees paid pursuant to Section 6140.02 shall be paid by the State Bar to the Association, and, when paid, shall become part of the funds of the Association.

SEC. 35. Section 6144.1 of the Business and Professions Code is amended to read:

6144.1. The net proceeds from the sale of real property, after payment of obligations and encumbrances and reasonable costs of acquiring and relocating its facilities, if any, shall be held by the State Bar without expenditure or commitment for any purpose until approved by the Legislature by statute. The net proceeds from the lease of real property, after payment of obligations and encumbrances and reasonable costs of acquiring and relocating its facilities, if any, shall be used by the State Bar for the protection of the public.

SEC. 36. Section 6145 of the Business and Professions Code is amended to read:

6145. (a) The board shall engage the services of an independent national or regional public accounting firm with at least five years of experience in governmental auditing for an audit of its financial statement for each fiscal year. The financial statement shall be promptly certified under oath by the treasurer of the State Bar, and a copy of the audit and financial statement shall be submitted within 120 days of the close of the fiscal year to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

The audit also shall examine the receipts and expenditures of the State Bar to ensure that the funds collected on behalf of the Conference of Delegates of California Bar Associations as the independent successor entity to the former Conference of Delegates of the State Bar are conveyed to that entity, that the State Bar has been paid or reimbursed for the full cost of any administrative and support services provided to the successor entity, including the collection of fees or donations on its behalf, and that no mandatory dues are being used to fund the activities of the successor entity.

In selecting the accounting firm, the board shall consider the value of continuity, along with the risk that continued long-term engagements of an accounting firm may affect the independence of that firm.

(b) The board shall contract with the California State Auditor’s Office to conduct a performance audit of the State Bar’s operations from July 1, 2000, to December 31, 2000, inclusive. A copy of the performance audit shall be submitted by May 1, 2001, to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

Every two years thereafter, the board shall contract with the California State Auditor's Office to conduct a performance audit of the State Bar's operations for the respective fiscal year, commencing with January 1, 2002, to December 31, 2002, inclusive. A copy of the performance audit shall be submitted within 120 days of the close of the fiscal year for which the audit was performed to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

For the purposes of this subdivision, the California State Auditor's Office may contract with a third party to conduct the performance audit. This subdivision is not intended to reduce the number of audits the California State Auditor's Office may otherwise be able to conduct.

(c) Effective January 1, 2016, the board shall contract with the California State Auditor's Office to conduct an in-depth financial audit of the State Bar, including an audit of its financial statement, internal controls, and relevant management practices. The contract shall include reimbursement for the California State Auditor's Office for the costs of conducting the audit. The audit shall, at a minimum, examine the revenues, expenditures, and reserves of the State Bar, including all fund transfers. The California State Auditor's Office shall commence the audit no later than January 1, 2016, and a copy of the audit shall be submitted by May 15, 2016, to the board, the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary. The audit shall be submitted in compliance with Section 9795 of the Government Code. This subdivision shall cease to be operative January 1, 2017.

SEC. 37. Section 6232 of the Business and Professions Code is amended to read:

6232. (a) The committee shall establish practices and procedures for the acceptance, denial, completion, or termination of attorneys in the Attorney Diversion and Assistance Program, and may recommend rehabilitative criteria for adoption by the board for acceptance, denial, completion of, or termination from, the program.

(b) An attorney currently under investigation by the State Bar may enter the program in the following ways:

(1) By referral of the Office of the Chief Trial Counsel.

(2) By referral of the State Bar Court following the initiation of a disciplinary proceeding.

(3) Voluntarily, and in accordance with terms and conditions agreed upon by the attorney participant with the Office of the Chief Trial Counsel or upon approval by the State Bar Court, as long as the investigation is based primarily on the self-administration of drugs or alcohol or the illegal possession, prescription, or nonviolent procurement of drugs for self-administration, or on mental illness, and does not involve actual harm to the public or his or her clients. An attorney seeking entry under this paragraph may be required to execute an agreement that violations of this chapter, or other statutes that would otherwise be the basis for discipline, may nevertheless be prosecuted if the attorney is terminated from the program for failure to comply with program requirements.

(c) Neither acceptance into nor participation in the Attorney Diversion and Assistance Program shall relieve the attorney of any lawful duties and obligations otherwise required by any agreements or stipulations with the Office of the Chief Trial Counsel, court orders, or applicable statutes relating to attorney discipline.

(d) An attorney who is not the subject of a current investigation may voluntarily enter, whether by self-referral or referral by a third party, the diversion and assistance program on a confidential basis and such information shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). Confidentiality pursuant to this subdivision shall be absolute unless waived by the attorney.

(e) By rules subject to the approval of the board and consistent with the requirements of this article, applicants who are in law school or have applied for admission to the State Bar may enter the program.

SEC. 38. The State Bar shall adhere to a Supreme Court-approved policy to identify and address any proposed decision of the board of trustees of the State Bar that raises antitrust concerns, including a procedure for submitting any such proposed decisions to the California Supreme Court for the Supreme Court to review prior to implementation and for processing complaints from the public about antitrust issues.

SEC. 39. The Legislature finds and declares that Sections 19 and 28 of this act, which amend Sections 6026.7 and 6086.5 of the Business and Professions Code, impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the

following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the decisionmaking process of the State Bar Court in a manner that is similar to the deliberative functions of other courts and in order to ensure that personal or sensitive information regarding discipline by the State Bar Court is kept confidential, including for persons participating in discussions and offers of settlement pursuant to arbitration or mediation, it is necessary to exempt the State Bar Court from the provision of the Bagley-Keene Open Meeting Act and the California Public Records Act.

SEC. 40. The Legislature finds and declares that in order to assist the State Bar in fulfilling its licensing and regulatory duties and its duty to protect the public, the Sections of the State Bar and the California Young Lawyers Association are properly separated into an independent nonprofit organization and that these amendments serve a public purpose.

APPENDIX 10

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.

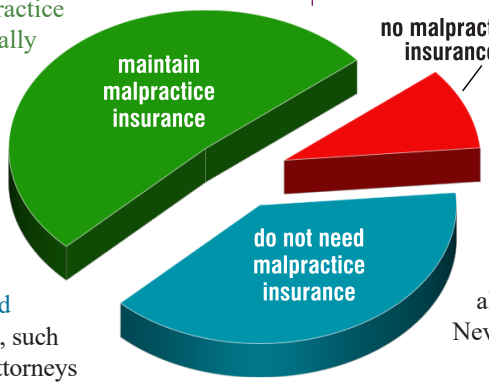
Illinois

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.

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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.

The price differential between the coverage should be minimal, but the effective coverage is much better with $250,000/ $250,000 limits.

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.

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

APPENDIX 11

Table 1:
PROFESSIONAL INDEMNITY INSURANCE REQUIREMENTS AROUND THE WORLD *Note: for information purpose; not a comprehensive listing

LOCATION	MANDATORY PROFESSIONAL INDEMNITY INSURANCE REQUIRED YES	NO	MINIMUM COVERAGE
ASIA[1]			
Malaysia	X		RM 250,000 for sole practitioner to maximum RM 2M for multi practitioner firm
Hong Kong	X		HK$10,000,000
Singapore	X		S$1,000,000
AUSTRALIA			
New South Wales[2]	X		AUS$2,000,000 per claim
South Australia[3]	X		AUS$2,000,000 per claim
Queensland[4]	X		See Note 4
Tasmania[5]	X		AUS$1,500,000
Victoria[6]	X		AUS$2,000,000
Western Australia[7]	X		
CANADA			
British Columbia	X		CDN$1,000,000
Alberta	X		CDN$1,000,000
Saskatchewan	X		CDN$1,000,000
Manitoba	X		CDN$1,000,000

[1] "Hong Kong Solicitors Indemnity Scheme Review of Insurance Arrangements Review Report" (28 November 2003), online: The Legislative Council of Hong Kong < http://www.legco.gov.hk/yr03-04/english/panels/ajls/papers/aj0129cb2-1092-1e-scan.pdf>.
[2] Professional Indemnity Insurance Policy 2010/2011", online: LawCover, <http://203.147.162.122/filelibrary/Files/Insurance/Sample_10.11CPII%20Policy(standard)_FINAL.pdf>.
[3] http://www.lawsocietysa.asn.au/other/lawclaims.asp
[4] http://www.qls.com.au/content/lwp/wcm/connect/QLS/Your%20Legal%20Career/Practice%20Support/Professional%20Indemnity%20Insurance/; Queensland Law Society Limitation of Liability Scheme acts to put a limit on liability in damages on solicitors effective July 1, 2010. Some members are eligible for a cap of liability of AUS$1.5M to AUS$10M depending on Class of Members: www.qls.com/content/lwp/wcm/resources/file/eb50b4068565216/100604-official-QLSLOL-scheme/document.pdf
[5] Taslawsociety.asn.au/web/en/lawsociety/practice/ConditionsPC.html; "Professional Indemnity Insurance Master Policy: 1 January 2006 to 31 December 2006", online: The Law Society of Tasmania <http://www.taslawsociety.asn.au/news/2006MasterPolicy.pdf>.
[6] "Contract for Professional Indemnity Insurance for Solicitors: 2010/2011" online: Legal Practitioners Liability Committee, <http://lplc.websynergy.com.au/media/file/policies/LPLC-Policyforsolicitors-10-11.pdf>.
[7] www.lawsocietywa.asn.au/moverview.htm

Ontario	X		CDN$1,000,000
Quebec	X		CDN$10,000,000
New Brunswick	X		CDN$1,000,000
Nova Scotia	X		CDN$1,000,000
Prince Edward Island	X		CDN$1,000,000
Newfoundland	X		CDN$1,000,000
Yukon	X		CDN$1,000,000
Northwest Territories	X		CDN$1,000,000
Yukon	X		CDN$1,000,000
EUROPE[8]			
Austria	X		€400,000 for a single lawyer
Belgium	X		€1,250,000 for a single lawyer
Czech Republic	X		Kč 1,000,000 for a sole lawyer
Denmark	X		Kr DKK 2.5M
Estonia	X		kr EEK 1,000,000 for one insured
Finland	X		FIM 1,000,000
France	X		€3,850,000 per loss per lawyer
Germany	X		€250,000 per loss
Greece		X	
Hungary	X		Ft 5,000,000 per damage
Iceland	X		
Ireland	X		€2.5M each claim
Italy		X	
Latvia		X	
Lithuania	X		LTL 100,000
Lichtenstein	X		CHF 1,000,000
Luxemburg	X		€1,250,000
The Netherlands	X		€453,780 per event
Norway	X		kr NOK 2,000,000 per claim
Poland	X		Zł PLN404,890 (2009)
Portugal	X		€150,000 per lawyer
Slovakia	X		SKK 3,000,000
Slovenia	X		€250,000
Sweden	X		kr SEK 3,000,000 for pure economic loss caused by error or

[8] Revised Comparative Table on Professional Indemnity October 2009" (27 August 2010), online: Counsel of Bars and Law Societies of Europe (CCBE) <http://www.ccbe.org/fileadmin/user_upload/NTCdocument/REVISED_Comparative_1_1282909942.pdf> at 39-43 and 62- 66.

			neglect and kr SEK 10,000,000 for damages caused by crime against property
NEW ZEALAND		X	
UNITED KINGDOM			
England and Wales[9]	X		£2,000,000 per claim for sole practitioner; bodies corporate £3M
Northern Ireland[10]	X		£250,000 for junior counsel; £500,000 for senior counsel
Scotland[11]	X		£2,000,000 per claim (2008)
UNITED STATES			
Oregon[12]	X		US$300,000 per claim
All Other States		X	
SOUTH AFRICA[13]			AIIF provides professional indemnity coverage to all legal practitioners: R 1,562,500 for sole practitioner (2010). Generally determined by number of partners or directors of firm

[9] Professional Indemnity Insurance" (8 June 2010), online: The Law Society <http://www.lawsociety.org.uk/productsandservices/practicenotes/piinsurance/4527.article>; *Supra* note 1

[10] www.lawsoc-ni.org/about-us/regulatory-framework-/?keywords=professional+indemnity; *Supra* note 1

[11] www.lawscot.org.uk/forthepublic/consumer-protections/professional-indemnity

[12] "Professional Liability Insurance Directory" *Standing Committee on Lawyers' Professional Liability* (6 May 2009) online: American Bar Association <http://www.abanet.org/legalservices/lpl/directory/carriers/oregon.html>; "State Implementation of ABA Model Court on Insurance Disclosure" *American Bar Association Standing Committee on Client Protection* (7 October 2010), online: American Bar Association Standing Committee on Client Protection < http://www.abanet.org/cpr/clientpro/malprac_disc_chart.pdf>.

[13] www.aiif.co.za/index.php?certificate-of-insurance; www.aiif.co.za/downloads/2010-2011_english_policy.pdf; Attorneys Insurance Indemnity Fund (AIIF) provides insurance coverage at no cost to practitioners. AIIF provides professional indemnity insurance cover to all legal practitioners through annual premiums paid by the Attorneys Fidelity Fund.

APPENDIX 12

White Paper Available to ALPS-Endorsed State Bars Contemplating Mandatory Lawyers' Professional Liability Insurance Options

State Bars contemplating mandatory professional liability insurance programs are usually motivated by ensuring the public as consumers of legal services are financially protected from attorney error, improving the practice of law in the state and enhancing the reputation of the profession generally.

This white paper was developed at the request of State Bars inquiring of how a mandatory program might work, leveraging ALPS' 30 years in the lawyers' professional liability market. It presents two models of governing mandatory coverage: an open-market model and a mandatory fund. The two models approach the problem from very different perspectives and both models contain positive and not so positive attributes depending on how you perceive each. The open Market Program has less State Bar involvement and is best described as a monitoring program. The Mandatory Fund Model is much more robust and really addresses, in a participatory way, the whole concept of comprehensive client protection with central administration of a number of aspects of financial and personal responsibility to clients.

Open Market Model

In an Open Market Model, every lawyer licensed to practice law in the state must maintain professional liability insurance consistent with the standards set by the Supreme Court and the State Bar. In addition, it would require professional liability insurers to report all cancellations and non-renewals. In its simplest form, this program establishes minimum standards of required coverage and reporting requirements, but allows attorneys the flexibility to select their own insurance carrier and operates entirely in the open market with no government fund or guarantees. For purposes of this proposal, we will assume a minimum limit of $500,000 per occurrence/ $1Million annual aggregate with deductibles not to exceed $1,000 per attorney insured under the policy.

This model is likely the one that most lawyers would favor, but puts a more significant supervisory burden on the State Bar and or the Court in the administration of program exceptions (discussed in detail later). For purposes of further reference, we assume the State Bar has the responsibility for all administrative functions as designee of the Supreme Court

Program Framework

The open-market model significantly increases the administrative responsibilities of lawyers' professional liability (LPLI) insurers by requiring carriers to report cancellations

and non-renewals to the State Bar. Because of the requirement for insurer reporting, it may require legislative action to authorize the Court to guarantee insurer compliance and create enabling financial responsibility legislation. At a minimum, insurers will be required to provide the State Bar, or its appointed party, with duplicate copies of all non-renewal and cancellation notices, at the same time such notices are sent to the attorney and to update the administrator of any rescissions of cancellation or non-renewal.

Insurer compliance can be done through legislative mandate or on a voluntary basis. The simplest is "voluntary" participation by the insurance community. The standards would state that in order for a certificate of insurance to be acceptable to the State Bar as proof of coverage, it must state that the carrier agrees to comply with Court's rules in regard to reporting. Prior to the commencement of the program, the State Bar would notify all licensed or authorized insurers in the state. They would have the opportunity to indicate they agree to comply and the list of compliant companies would form.

In order to facilitate the attorney's effort to secure appropriate coverage, the State Bar would maintain the list of compliant insurers on their web site and initially provide the list with the license renewal or application materials sent to individual lawyers or firms. All that said it would be the responsibility of the individual lawyer to be sure he or she obtained coverage from an acceptable company. Certification would be re-filed annually as part of the Bar renewal process.

If an attorney's coverage lapses, the State Bar would send a notice informing the attorney that they need to obtain an exemption (discussed below) from the State Bar to practice without Professional Liability coverage and how to make such an application. It would further advise the attorney that license revocation will occur at a time certain (or had occurred if the State Bar wanted to be hard nosed) if coverage is not restored or an exemption obtained.

Certain types of attorneys may not, for professional reasons, need malpractice insurance or wish to obtain it. That list could include governmental lawyers, law professors, in-house corporate counsel or private practitioners working solely on a *pro bono* basis. Under the program, these attorneys would be allowed to petition the court for an exemption from mandatory malpractice rules. Additionally, some attorneys may not be able to acquire coverage in the commercial market due to area of practice, prior loss experience or lack of insurance history. These attorneys will require the State Bar to make difficult decisions about who to exempt and who not to exempt. The conditions of exemption need to be well defined in the regulations or rules and should be strictly applied to avoid litigation. It may be that the State Bar would also consider an exemption for attorneys wishing to post a bond equal to the minimum insurance limit. All these issues will require deliberate definition as part of the organizational process.

The proposed program would be administered by the Bar or by ALPS as a program administrator selected and appointed by the Bar. Administrator responsibilities would include the following:

- Collection of filings from insurers,
- Notification to the Court in the event an attorney fails to comply with the insurance requirements,
- Compilation of requests for exemption, and such other things as the court or Bar may determine as appropriate for administration of the program.

Though both simple and comprehensive, the free-market model has potential drawbacks:

- Insurer Cooperation – The requirements placed on insurers will create increased administrative burden. The increased administrative burden may encourage existing or prospective Lawyers Professional Liability Insurance carriers to exit the market, reducing the availability of coverage and potentially increasing the cost of coverage.

- Exemption Administration – There would be a burden for administrating exemption requests and approvals/declinations. Further, in at least some cases, it is likely that the Court would have to revoke licenses of attorneys unable to comply with the requirements.

- Lack of integrated loss prevention - Though less a flaw in the open-market system than an opportunity cost of not pursuing the mandatory fund program, the open market model in its simplicity does not provide the comprehensive client protection included within the Mandatory Professional Liability Fund model. These resources (impaired lawyers program, comprehensive risk management and lawyer malfeasance coverage) could still be provided by the Bar, independently, and funded by an additional bar dues assessments.

Mandatory Professional Liability Fund

The implementation of a Mandatory Professional Liability Fund ("the Fund") goes beyond simply requiring attorneys to carry lawyers' professional liability insurance ("LPLI") to truly protecting the legal consumer through a State Bar operated facility which could do any or all of the following: 1) provide lawyers' professional liability malpractice coverage, 2) provide indemnification for clients against attorney malfeasance, 3) provide risk management and loss prevention resources to improve the practice of law in the state, and 4) identify and assist in the rehabilitation of impaired lawyers. Participation in the Fund would be mandatory for all attorneys licensed to practice in the state (subject to fee reductions for those attorneys not requiring professional liability insurance as discussed below).

Comprehensive Client Protection through The Fund

Participation in the Fund would be mandatory for all attorneys in private practice. Attorneys employed as in-house counsel, government or private industry, law professors and retired attorneys would be exempt from participation in the professional liability portion of the Fund. All others would be charged an assessment annually, on a per-

attorney basis for remaining portions of coverage. Only attorneys in private practice or other electing to participate fully would be afforded coverage for professional liability risks.

LPLI Coverage

The fund would provide all participants with LPLI coverage with no deductible. The limits provided by the Fund will need to be considered by the State Bar, and may be, on a per attorney basis, $500,000 per occurrence/ $500,000 annual aggregate, $1Million per occurrence/$1Million annual aggregate or any other amount selected by the State Bar. Those lawyers wishing to have greater protection would be able to obtain excess coverage above the fund in the open market through commercial carriers.

Unlike commercially available malpractice insurance, the Fund would incorporate coverage for attorney malfeasance with a sub-limit of $100,000 annually on an occurrence and aggregate basis. This enhanced coverage replaces current client protection fund mechanisms and provides greater protection for consumers of legal services and streamlines indemnification for clients. Clients often do not distinguish between malpractice and malfeasance, and a single source of recovery can help improve the reputation of the Bar. All lawyers who have a license would pay an assessment for coverage just as they do presently

Loss Prevention and Risk Management

The stated purpose of the Fund would be to provide the public with protection against, and in the event of, a lawyer's mistake. It stands to reason that reducing the incidences of malpractice serves that purpose as well as does providing for client indemnification. To that end, a fundamental part of the Fund would be to design, administer and require participation in risk management and loss prevention programs designed to improve the practice of law. Activities could include, but are not limited to, sample forms, manuals, articles, risk visits, practice audits and continuing legal education.

Impaired Lawyer Program

The Fund's impaired lawyer program is a humanitarian program intended to identify lawyers suffering from impairment due to alcohol or drug use, excessive stress, mental disease or disorder, and provide them with recovery tools and resources. As with loss prevention, the impaired lawyer component of the Fund ultimately serves the goal of protecting clients and ensuring we are addressing challenged attorneys for a self-regulating profession. It is certainly not too much for a client to expect their attorney to perform legal services with competency and without impairment from alcohol, drugs or excessive stress.

The State Bar or Program Administrator would staff counselors and attorneys to perform the following functions:

- Coordinate recovery programs
- Provide professional and peer counseling
- Administer recovery groups
- Design and administer career evaluations and counseling; and
- Provide support to family members.

Practice intervention could, on a case-by-case basis, assist attorneys seeking treatment by ensuring their clients are handled to avoid potential claims. This would be coordinated by the Fund's professional staff but would involve volunteer lawyers to provide direct practice support as needed. All attorneys licensed to practice would pay this portion of the assessment.

Underwriting and Assessment Considerations

The malfeasance and lawyer impairment portions of the fund assessment would be the same for all licensed lawyers and would likely be less than $250 per year depending on the ultimate design of coverage for the programs.

The LPLI portion of the assessment could be developed using one of two models. Both would collect the same total assessment for the Fund, but illustrates two different ways of distributing an assessment among participants.

The first model requires no underwriting, and would charge an equal base assessment to each and every participant. Preliminary review indicates that the assessment for the program would fall within the following ranges:

Limit	Assessment Range
$500,000	$2,000 - $2,600
$1,000,000	$2,650 - $3,300

The second model effectively underwrites attorneys by area of practice according to simplified classes of practice. Attorneys in higher-risk categories of practice (including but not limited to Mergers / Acquisitions and Securities Law) would be charged an assessment closer to the top of the range, attorneys in medium-risk practice (such as Civil Litigation plaintiffs' law and Real Estate) would be charged an assessment in the middle of the range, and attorneys in lower-risk practice (such as Domestic Relations or Criminal Law) would be charged a lower assessment. The preliminary indications of the range for this model are broader to reflect the risk classifications and higher expense involved in additional underwriting:

Limit	Assessment Range
$500,000	$1,300 - $6,500
$1,000,000	$1,625 - $8,125

Within either model, attorneys with prior malpractice claims would be charged an additional assessment to reflect their increased loss activity. The issue of part-time vs full-time attorneys would need to be addressed with respect to assessment charges and underwriting criteria. If elected, a separate lower assessment could be developed for part-time practitioners.

New attorneys entering the Bar would be charged a reduced rate (probably 50-60% of the normal assessment in year one) for the professional liability portion of the assessment on a step rated basis reaching full maturity in six years as their exposure on a claims-made and reported basis expands with experience.

If an attorney fails to pay their annual assessment, the Court would take disciplinary action against the attorney to include suspension or revocation of their law license to practice in the state.

Administration

The Fund could be overseen by a board or committee of comprised of members of the State Bar as appointed or elected by a process to be determined by the Supreme Court. The Fund could be administered by the Bar and by ALPS as a Program Administrator. In administering the program, the Program Administrator will at a minimum perform the following functions:

Certificate Management and Customer Service

- Determine individual attorney assessments and dissemination of license renewal materials.
- Administer a website for attorneys to renew licenses and pay assessments online. If applicable, it would also maintain the attorney profiles and underwriting information (if administering the underwriting model)
- Offer annual assessment payment options, including full payment at time of binding coverage, credit card billing for full premium payment at time of binding coverage and privately-funded financing plan terms of up to nine months.
- Issue Certificate of Coverages exhibiting the coverage terms and conditions. Once issued, the Certificate of Insurance remains in force until cancelled.
- Provide a full staff of customer service representatives available for telephone contact and discussion of the Fund and services.

Claims Management

The Program Administrator would need experienced claims professionals to administrator all aspects of claims handling. This staff would include state-based claims attorneys and appropriate support staff. The Program Administrator would be responsible for the initial intake through final resolution of all malpractice claims including:

- Determination of whether the allegations fall within coverage extended by the Fund
- Investigation and evaluation of each claim to determine the risk posed to the Fund. If litigation becomes necessary, the administrator will hire defense counsel to respond on behalf of the covered attorney and will monitor the claim throughout the litigation process. From the initial investigation through the claim conclusion, the administrator will make reasonable efforts to resolve the claim expeditiously and cost effectively under the facts and the law at issue.
- Timely establish and post the appropriate reserves reflecting the Fund's risk for its amount of coverage.
- Manage the reserve portfolio of the Fund
- Coordinate with the excess carrier responsible for excess layers of coverage, if any is purchased by the individual attorney or firm.
- Report relevant claims statistics in order for the Fund to determine the risk posed to the Fund each year and reset assessment amounts
- With regard to claims arising from lawyer malfeasance, the claims department will interface with the state's relevant client protection governing board, provide that board with claim information and follow the board's determination with regard to claim coverage

Accounting and Actuarial

The Program Administrator will:

- Receive assessments
- Manage assessment financing
- Administer accounting of the Fund on a GAAP basis
- Manage accounts payable and receivable
- Prepare monthly financial statements
- Book reserves as directed by claims personnel
- Issue expense and claim checks
- With the assistance of an independent actuary, review reserve adequacy, prepare annual budget recommendations and set annual assessment amount.

Investment Management

The Program Administrator will also manage the assets of the Fund in a manner designed to ensure adequate liquidity to meet Fund obligations, and provide an advantageous investment return on held assets.

Other Services

It is contemplated the Program Administrator, at the Bar's request, would assist the State Bar in developing and implementing an industry-leading risk management program, thus

providing additional Bar relevance to members. It would also, if requested, administer the lawyer impairment portion of the program.

While the potential is greater for ultimate client protection, it comes on the basis of a mandatory program for lawyers licensed in the state. Because of this, Supreme Court leadership is critical for leadership, approval and implementation.

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 polices 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

E.
State Bar of Nevada Uninsured Attorney Survey (2017)

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.

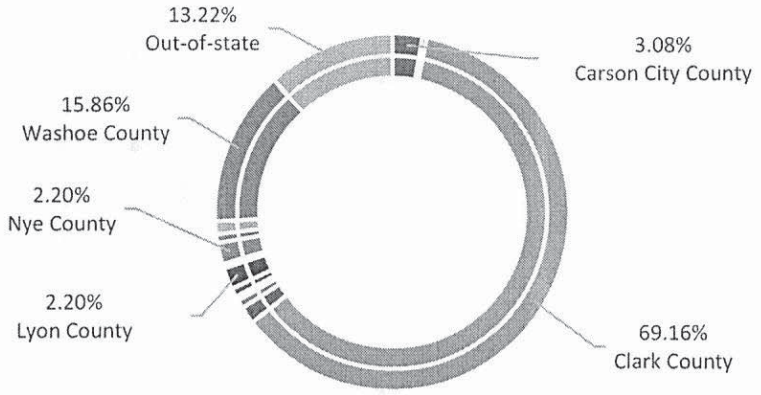
INSURANCE OPINIONS

- 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.

DEMOGRAPHCS/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.



(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.

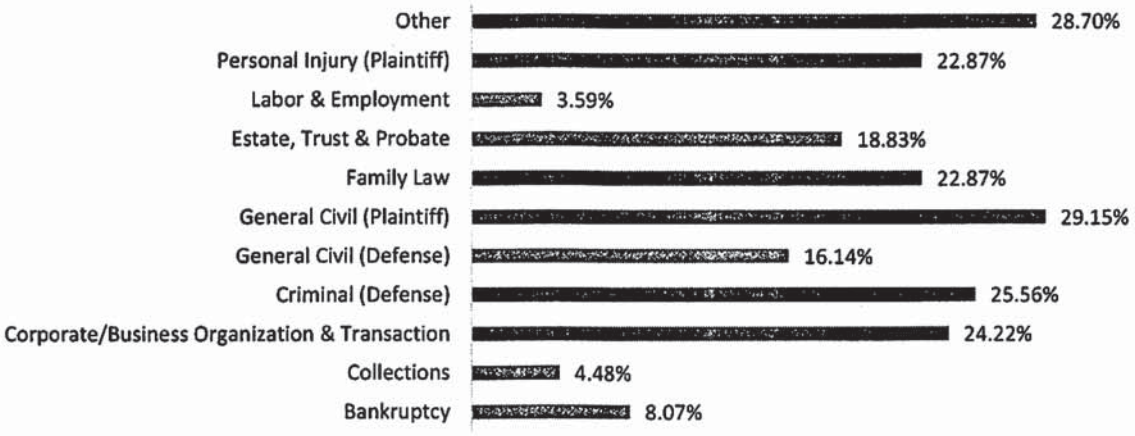
(5) **Practice Setting:** The majority of survey participants indicated that they are employed in a private practice/law firm setting.

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 practice[1]. **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 then 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**

F.
APR 15 Client Protection Fund

RULE 15. CLIENT PROTECTION FUND

(a) Purpose. The purpose of this rule is to create a Client Protection Fund (the Fund), to be maintained and administered as a trust by the Bar, in order to promote public confidence in the administration of justice and the integrity of the legal profession.

(b) Establishment. The Fund shall be established and funded through assessments ordered by the Supreme Court to be paid by members and other licensees to the Bar.

(1) The Board of Governors shall act as Trustees for the Fund.

(2) The Board of Governors shall appoint a Client Protection Board, to help administer the Fund pursuant to these rules. The Client Protection Board shall consist of 11 lawyers, LLLTs or LPOs and two community representatives who are not licensed to practice law, who shall be appointed to serve staggered three-year terms.

(3) Funds accruing and appropriated to the Fund may be used for the purpose of relieving or mitigating a pecuniary loss sustained by any person by reason of the dishonesty of, or failure to account for money or property entrusted to, any lawyer, LLLT or LPO of the Bar as a result of or directly related to the lawyer's, LLLT's or LPO's practice of law, or while acting as a fiduciary in a matter directly related to the lawyer's, LLLT's or LPO's practice of law. Such funds may also, through the Fund, be used to relieve or mitigate like losses sustained by persons by reason of similar acts of an individual who was at one time admitted to the practice of law in Washington as a lawyer, LLLT, or LPO but who was at the time of the act complained of under a court ordered suspension.

(4) The Fund shall not be used for the purpose of relieving any pecuniary loss resulting from a lawyer's, LLLT's or LPO's negligent performance of services or for acts performed after a lawyer, LLLT or LPO is disbarred or revoked.

(5) Payments from the Fund shall be considered gifts to the recipients and shall not be considered entitlements.

(c) Funding. The Supreme Court may by order provide for funding by assessment of lawyers, LLLTs and LPOs in amounts determined by the court upon the recommendation of the Board of Governors.

(d) Enforcement. Failure to pay any fee assessed by the Supreme Court in the manner and by the date specified by the Bar shall be a cause for suspension from practice until payment has been made.

(e) Restitution. A lawyer, LLLT or LPO whose conduct results in payment to an applicant shall be liable to the Fund for restitution.

(1) A lawyer, LLLT or LPO on Active status must pay restitution to the Fund in full within 30 days of final payment by the Fund to an applicant unless the lawyer, LLLT or LPO enters into a periodic payment plan with Bar counsel assigned to the Client Protection Board.

(2) Lawyers, LLLTs or LPOs on disciplinary or administrative suspension, disbarred or revoked lawyers, LLLTs or LPOs, and lawyers, LLLTs or LPOs on any status other than disability inactive must pay restitution to the Fund in full prior to returning to Active status, unless the attorney enters into a periodic payment plan with Bar counsel assigned to the Client Protection Board.

(3) A lawyer, LLLT or LPO who returns from disability inactive status as to whom an award has been made shall be required to pay restitution if and as provided in Procedural Regulation 6(I).

(4) Restitution not paid within 30 days of final payment by the Fund to an applicant shall accrue interest at the maximum rate permitted under RCW 19.52.050.

(5) Bar counsel assigned to the Client Protection Board may, in his or her sole discretion, enter into an agreement with a lawyer, LLLT or LPO for a reasonable periodic payment plan if the lawyer, LLLT or LPO demonstrates in writing the present inability to pay assessed costs and expenses.

(A) Any payment plan entered into under this rule must provide for interest at the maximum rate permitted under RCW 19.52.050.

(B) A lawyer, LLLT or LPO may ask the Client Protection Board to review an adverse determination by Bar counsel regarding specific conditions for a periodic payment plan. The Chair of the Client Protection Board directs the procedure for Client Protection Board review, and the Client Protection Board's decision is not subject to further review.

(6) A lawyer's, LLLT's or LPO's failure to comply with an approved periodic payment plan or to otherwise pay restitution due under this Rule may be grounds for denial of status change or for discipline.

(f) Administration. The Bar shall maintain and administer the Fund in a manner consistent with these rules and Regulations.

(g) Subpoenas. A lawyer member of the Client Protection Board, or Bar Counsel assigned to the Client Protection Board, shall have the power to issue subpoenas to compel the attendance of the lawyer, LLLT or LPO being investigated or of a witness, or the production of books, or documents, or other evidence, at the taking of a deposition. A subpoena issued pursuant to this rule shall indicate on its face that the subpoena is issued in connection with an investigation under this rule. Subpoenas shall be served in the same manner as in civil cases in the superior court.

(h) Reports. The Bar shall file with the Supreme Court a full report on the activities and

finances of the Fund at least annually and may make other reports to the court as necessary.

(i) Communications to the Bar. Communications to the Bar, Board of Governors (Trustees), Client Protection Board, Bar staff, or any other individual acting under authority of these rules, are absolutely privileged, and no lawsuit predicated thereon may be instituted against any applicant or other person providing information.