From: Timothy J. Nault
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Thursday, February 28, 2019 4:27:15 PM

Dear Task Force:

I'd like to suggest that a less onerous possibility than mandatory malpractice insurance could be requiring those attorneys who do not have malpractice insurance to disclose such fact to their clients, such as in part of any retainer agreement.

This could be a "softer" way of achieving the goal, assuming that the marketplace would react to it.

Thanks,

Timothy J. Nault

Randall | Danskin
A Professional Service Corporation
601 W. Riverside Avenue, Ste. 1500
Spokane, WA 99201
(509) 747-2052
(509) 624-2528 (fax)
www.randalldanskin.com

From:	Stephen Henderson
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory insurance
Date:	Thursday, February 28, 2019 4:48:40 PM

Hard to understand who the committee listened to. I don't see a need for this new requirement. It may help the insurance companies but not the practicing lawyers.
If I were still on the BOG, I would vote no.
Steve Henderson
Olympia

Sent from my iPhone

From:	Amy Stephson
To:	Mandatory Malpractice Insurance Task Force
Cc:	amystep@aol.com
Subject:	Opposition to Mandatory Insurance
Date:	Thursday, February 28, 2019 5:00:02 PM

Board of Governors:

I am a semi-retired lawyer who has maintained her license in order to do occasional, non-litigation-related, employment law. I do not have malpractice insurance and do not intend to get it since I do very low risk work, not very much of that, and would self-insure if a problem arose. Which is unlikely since I've never had a claim or even a hint of one in my 40+ years of practice.

The TF report states that semi-retired lawyers can get cheap insurance since they are working part-time. In my experience, that is not true. It is very difficult to obtain insurance in such a circumstance and it is not cheap.

I oppose mandatory malpractice insurance except in cases of lawyers who have been sued for malpractice and have not been able or willing to pay the judgment. Otherwise, I oppose it.

I would add that if the WSBA imposes this requirement, I will quit the bar rather than pay for unnecessary malpractice insurance -- and I suspect many others in my position will do it as well, resulting in serious financial loss for the Bar.

Please listen to your members and not an arrogant, out-of-touch task force that has little actual evidence to support its recommendation.

Amy Stephson

Amy J. Stephson
Employment Attorney & Coach
9725 3rd Avenue N.E., Suite 600
Seattle, WA 98115
(206) 223-7215
www.amystephson.com

From: Joseph Quinn
To: Mandatory Malpractice Insurance Task Force
Subject: Government Lawyers exemptions
Date: Thursday, February 28, 2019 5:19:50 PM

WSBA: My practice (90 percent) involves representing municipal clients, and almost exclusively fire district clients. The legal work is indistinguishable from that of a city attorney or civil deputy prosecutor. It seems unfair to require malpractice insurance for the minuscule work I do for private clients so am I forced to forego any private work? In a 42 year career I have never had a malpractice claim when insured (or not). Joseph F. Quinn, #6810.

Sent from my iPhone

From: mmittge@compprime.com
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory malpractice insurance
Date: Thursday, February 28, 2019 6:06:07 PM

I retired from law practice approximately 2 years ago (at age 68), but have now resumed working for just one client (a property management company) doing exclusively evictions. I had represented them for many years prior to retirement, and only resumed representation at their request (I'm very good at it, "if I do say so myself") My fees average $500 per month, and "it gives me something to do". I practiced in primarily real estate matters for 30 years without a single claim or even a fee dispute. Mandatory malpractice would effectively put me out of my (limited) business, much to the chagrin of my client. I'm sure they would execute a Covenant Not to Sue in a heartbeat, if requested. If I do make a mistake and they want recompense, they could recover most of it by simply not giving me the normal assortment of restaurant gift cards at Christmas.

It is also interesting that in representing plaintiffs in eviction actions, the malpractice exposure is approximately one month's rent for the property in question. If you get it wrong the first time, just start over the next month and get it right, and the client only loses one month's rent (if the tenant does not pay up in the meantime).

Thank you for your consideration.

Michael R. Mittge
Chehalis WA
WSBA 17249

From:	Mary Shea
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory professional liability insurance
Date:	Thursday, February 28, 2019 6:06:54 PM

‘I am adamantly opposed to a mandatory insurance requirement as it is too costly and reduces an attorney’s ability to effectively render legal services. Please do Not make mandatory the obtaining of professional liability insurance.
Sincerely,
Mary Shea, Esq. #34913

From:	Carolyn Cliff
To:	Mandatory Malpractice Insurance Task Force
Subject:	Opposition and Comment On Proposal for Mandatory Malpractice Insurance; Suggestion for Exemption
Date:	Thursday, February 28, 2019 7:37:09 PM

Dear Members of the Board of Governors;

I write to oppose adoption of a mandatory requirement for malpractice Insurance as a condition to practicing law in the state of Washington. I was engaged in the private practice of law in the State of Washington from the time of my admission to the bar, in 1984, until my retirement from private practice in 2016. For the first four years, I worked at a large law firm; for the remainder, I had my own sole practice. Throughout that time, I had malpractice insurance, even though the expense was a significant burden during the initial years that I was establishing my own practice. Throughout that time, none of my carriers ever paid a dime to any claimant; although I was sued twice during the course of my career, both were cases filed by pro se litigants, and both were resolved with orders of dismissal, without any payment to anyone but defense counsel, early in the process. Although hindsight thus demonstrated that I would have done better financially to self-insure, I nonetheless believe that I made the right decision, for me, to pay for malpractice insurance throughout my career: for my own peace of mind and for the protection of my family.

In my judgment, however, the decision whether to maintain or not to maintain malpractice insurance should be the subject lawyer's choice. I do not object to the requirement that any and every prospective client should be able to readily find out whether a lawyer does or does not have such insurance. But not once in over 30 years of private practice did a client or prospective client ever ask me whether I had malpractice insurance; not once in over 30 years of private practice did I ever see any indication that a client or prospective client had checked the records at WSBA to see if I had malpractice insurance (this information was, of course, only available to the public in the latter years of my practice). I do not know what is driving the push for the State of Washington to become what I believe to be only the second state to require its attorneys to secure malpractice insurance as a condition to the right to practice law. If adopted, however, such a requirement could have a significant impact on me. I retired from private practice in 2016. I continue to maintain my license to practice law, however, because I serve, on occasion, as a pro tem judicial officer in state court. Although the income that I earn from that service is not material, I enjoy the opportunity to be of service to my community and the associated costs (annual dues and CLE fees) are not prohibitive. If the Board adopts a requirement that I secure malpractice insurance as a condition to maintain my license, however, the associated cost then **would** be prohibitive, and I would no longer be able to accept opportunities to serve as a pro tem judicial officer. At a minimum, any requirement to maintain malpractice insurance should not be imposed on attorneys who are not representing clients.

Thank you for your consideration. If you are providing some kind of feedback or update to those commenting on this proposal, I will appreciate receiving it.

Very truly yours,

Carolyn Cliff

WSBA 14301

From:	Patricia Evans
To:	Mandatory Malpractice Insurance Task Force
Subject:	Limits
Date:	Thursday, February 28, 2019 8:12:23 PM

Why not make it the same as neighboring state. Idaho is 100,000/300,000. That seems to be the standard.

Thank you.

Patricia Evan's
WSB# 42878
ISB# 4831

Sent from my Samsung Galaxy smartphone.

From:	Swenson, Raymond T
To:	Mandatory Malpractice Insurance Task Force
Cc:	Swenson, Raymond T; [redacted]
Subject:	Comment on Mandatory Malpractice Insurance Recommendation
Date:	Thursday, February 28, 2019 8:36:38 PM

Dear WSBA:
February 28, 2019

I believe the scope of two of the "Recommended Exemptions" (at page 48 of the Task Force Report) are too narrow. Specifically "1. Employment as a government lawyer" and "3. Employment by a corporation or business entity, including nonprofits." I have excerpted these here, with my added emphasis:

> **Recommended Exemptions**
> Fundamentally, the recommended "exemptions," with the exception of the pro bono category, can be thought of as exclusions because these are categories of lawyers who are not in private practice and therefore not serving private clients who need the protection that malpractice insurance affords.
>
> **1. Employment as a government lawyer.** This category would include lawyers who are employed by: The U.S. Government;
>
> State of Washington;
>
> A federally-recognized American-Indian tribal government; or
>
> A county, regional, or city government or any other government body, board or commission.
>
> Governments, as well as private organizations, are often self-insured. In any event, actions by their own employees that might constitute malpractice are treated as acts of the organizations themselves. Therefore, a requirement for outside malpractice insurance is illogical for these lawyers. At the same time, if full-time government lawyers choose to engage in private practice apart from their regular work, they would be required to obtain malpractice insurance (unless they fall within one of the other exemptions, such as performing pro bono work through a QLSP).
>
> . . .
>
> **3. Employment by a corporation or business entity, including nonprofits.** A lawyer who provides legal services, solely as an employee, of a private for-profit or non-profit corporation or business entity would not be "engaged in the private practice of law." In-house lawyers are typically covered by an employer's errors and omissions policy or through the employer's self-insurance. Similar to lawyers employed by government agencies, house counsel's malpractice is treated as an act of the organization itself, so an insurance requirement is inapposite. At the same time, a lawyer who provides legal services to a private company as an independent contractor (rather than as an employee) would not be entitled to this exemption because the lawyer would be deemed to be engaged in the private practice of law.

With respect to category 1, the comment seems to be confused about who the party is who would be potential plaintiff alleging injury from attorney malpractice. When it says "Governments, as well as private organizations, are often self-insured", is this referring to a potential claim by a government entity against an attorney it has employed or engaged to provide a service to the government entity? Government entities generally have other attorneys who oversee the work of the attorneys it employs, and have significantly greater financial resources than an individual attorney to assume contingent financial risks. It would be unfair for a government entity, or any large private organization, to require attorneys it employs to purchase malpractice insurance for the purpose of guaranteeing the government's funds from contingent costs.

The next sentence states correctly that "actions by their own employees that might constitute malpractice are treated as acts of the organizations themselves", referring to a situation in which a third party, rather than the government itself, is the injured party. In the Federal realm, as part of the Federal Tort Claims Act, the 1988 Federal Employee Liability Reform and Tort Compensation Act (28 USC Section 2679) specifically provides that the Federal government will be substituted for a Federal employee who is being sued for negligence. This includes Federal attorneys, both civilian and military. Government entities "as well as private organizations" are responsible according to standards of *respondeat superior* for the negligence of their employees, so it would be absurd for a government entity to sue its own attorney to recover the costs of a tort suit against the government entity by an injured party. I fully agree with the Report that employees of government entities should not be expected to pay for malpractice insurance, because, as the general principle stated in the heading to the Recommended Exemptions explains, government entities are not "private clients who need the protection that malpractice insurance affords".

However, the Report fails to address the fact that government entities frequently perform their functions by engaging private contractors. When a government entity engages an attorney to provide legal advice, it does not need to look to the private attorney to insure it against contingent risks arising from the circumstances that created the need for legal advice. For some of the same reasons that government entities should not be looking to their own employees to assume financial risks, they should not look to a private attorney to insure the government entity against contingencies. Government entities have their own lawyers who will interface with outside counsel, and evaluate the advice given by the contracted attorney. Government entities are more sophisticated in hiring outside counsel. The Federal government has contractual remedies under the False Claims Act and other statutes to protect itself against intentional, fraudulent action by a contracted attorney, and does not need to bring a malpractice action, nor does legal malpractice insurance protect an attorney against such contract-based claims for damages. A private attorney who contracts to work for the Federal government who is forced to buy legal malpractice insurance would find himself paying for insurance that does not protect him against these real risks.

For these reasons, I believe the exemption for "government lawyers" should include private attorneys performing work under contract to government entities. Such attorneys would tend to not be performing general legal services for the public, but providing specialized advice in specialties, such as government contracts, public lands, utilities regulation, and environmental law. This would not apply to law firms that offer their services to the general public and business community, who already have malpractice insurance costs as part of their business risk management plan.

With respect to exemption 3, "Employment by a corporation or business entity, including nonprofits", I also agree that attorneys employed by such entities should be exempted for the same reasons that attorneys employed by government entities should be exempted. Corporations are also unlike "private clients who need the protection that malpractice insurance affords", because they have the resources to protect themselves against loss if an attorney they hire makes a mistake. However, the logic of the report breaks down when it denies this exemption to an attorney working for the corporation as "as an independent contractor (rather than as an employee)". The Report says that a contract attorney "would be deemed to be engaged in the private practice of law." But this makes no sense. If an attorney is generally offering services to the general public, including individuals, then the malpractice insurance he purchases for the risks of that work will still be with him if he takes on a corporate client. But if an attorney confines his work to consulting with corporations and government entities, in a specific specialty, and does not offer services to the general run of clients who need protection against his potential negligence, he should have no more duty to buy malpractice insurance to protect his sophisticated corporate clients than the attorneys who work directly as employees for one of those clients. The entire purpose of malpractice insurance is to protect clients against the malpractice risk, but corporations and government entities have other means to manage such risks, and have no more need to collect malpractice claims against their contractors than they do against their employees.

Indeed, we are all familiar with the vagueness of the legal boundaries between the status of "employee" and of "contractor". The complex rules used by courts to determine where the dividing line lies should not be introduced into WSBA procedures for enforcing mandatory legal malpractice insurance coverage. If an attorney confines his legal practice to government entities and corporate entities that engage him for specialized legal advice, there is no harm being done to exempt him from the malpractice insurance requirement, except for those who want more money put into the fund, especially from attorneys who will never have to claim against the fund. Where on the line are attorneys who volunteer their services to not-for-profit organizations, such as environmental advocacy groups? Can they be employees if they are not paid? A proper extension of exemptions 1 and 3 will not harm clients, but will directly benefit attorneys in these narrow practice areas.

I speak as an attorney who worked in the Air Force JAG Corps for 20 years, and for the last 20 years have been a member of the WSBA employed as corporate counsel for major companies working under contract to the US Department of Energy to cleanup nuclear waste sites. Attorneys exclusively performing work under contract for government agencies and for corporations do not need to buy malpractice insurance to protect their sophisticated clients.

Raymond Takashi Swenson
Lt. Colonel, USAF JAG Corps (Retired)
Senior Counsel
WSBA # 27844

CH2M HILL Plateau Remediation Company
Richland, Washington
[redacted] Office
509-713-0966 Smartphone
509-376-0334 Fax
Raymond_T_Swenson@rl.gov

From:	John Ziegler
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Malpractice Insurance Will Exclude Me From My Pro Bono Practice
Date:	Thursday, February 28, 2019 9:18:23 PM

JOHN G. ZIEGLER
New Address:
[redacted]
zieggie@hotmail.com
[redacted]

February 28, 2019

Washington State Bar Association
Malpractice Insurance Task Force
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

re: Mandatory Malpractice Insurance

Dear Task Force Members,

I was admitted to the WSBA in October 1974 and "retired" in November 1997, meaning that I still practice law but have not charged or accepted a fee from any client for more than 21 years. Each year I donate over 1,500 hours of *pro bono* representation. Most of my time is devoted to assisting criminal defense attorneys, primarily public defenders, with legal advice and mentoring, but I have paid my Bar Dues so that, when called upon, I can represent poor people and criminal defendants regardless of their income. With a Social Security income of only $804 per month, I will not be able to afford malpractice insurance and will no longer be able to represent the needy.

Many great attorneys assisted and encouraged me as a young lawyer, and I have spent nearly half of my "legal life" giving advice, encouragement and mentoring freely back to members of the Bar Association. If the WSBA Board does adopt mandatory malpractice insurance, I implore it to provide an exception for those of us who provide half or more of our practice hours to *pro bono* service.

Thank you for your attention and consideration.

Very Truly Yours,

/s/

John G. Ziegler
Attorney at Law
WSBA # 5875

From: Don Elliott
To: Mandatory Malpractice Insurance Task Force
Subject: RE: Take Note: Malpractice Report, Bar Act Legislative Update, Board Openings and Elections
Date: Friday, March 1, 2019 8:29:27 AM

March 1, 2019

Hello WSBA:

I would like to have no mandatory malpractice insurance.

For several years now, I have been slowly winding down a solo law practice. I have only a few probate cases left to complete, but some probate cases take a long time to finish. I sometimes do minor legal tasks for friends and relatives, such as a power of attorney, directive to physicians, or a simple will.

I have never had to pay a malpractice claim to anyone, nor have I had a malpractice claim filed in court against me in over 45 years of law practice. I have money and assets enough to cover any error that I make that can't be corrected.

The cost of insurance probably would make my complete retirement essential. I would rather not retire completely yet.

Thanks.

Don Elliott
954

From: Washington State Bar Association [mailto:noreply@wsba.org]
Sent: Thursday, February 28, 2019 5:03 PM
To: donald.e.elliott@gmail.com
Subject: Take Note: Malpractice Report, Bar Act Legislative Update, Board Openings and Elections

WSBA Take Note!

WSBA News and Updates

- **Mandatory Malpractice Report:** The Mandatory Malpractice Insurance Task Force has completed its report,

Hands on with Fastcase

which recommends malpractice insurance as a condition of licensing for lawyers, with specified exemptions. The task force will present its report and recommendation at the next Board of Governors meeting on March 7. The 18-member task force has met since January 2018 and considered more than 580 comments from members and the public. The board will consider the recommendation and decide whether to propose a mandatory malpractice-insurance rule change to the Washington Supreme Court. More information can be found here. Members can provide comments to the Board of Governors via insurancetaskforce@wsba.org and/or during public comments at the March 7 meeting.

- **Legislative Update:** As is common during most state legislative long sessions, several bills have been introduced to modify the State Bar Act. One, Substitute House Bill 1788, is gaining some traction; last week, it moved out of the House Civil Rights and Judiciary Committee with a unanimous vote and now goes to the House Rules Committee. The proposed bill's biggest change would be to strike the majority of the State Bar Act by recognizing the Court's inherent plenary authority: "The Legislature recognizes the inherent plenary authority of the Washington Supreme Court to regulate court-related functions, including the practice of law and administration of justice." WSBA leaders are closely monitoring the bill.

- **Take Your Solo Practice to the Next Level:** Come and learn from experienced practitioners how they got through the lean times and built a successful and sustainable business. The next WSBA MentorLink Mixer will be held from 11:30 a.m.-1:30 p.m., March 20, at the WSBA offices in Seattle. The networking event and a free 30-minute CLE (Networking with Authenticity: Creating Your Personal Brand) will be held in partnership with WSBA's Solo and Small Practice Section. If you'd like to attend, please RSVP by March 8.

- **Nominate Before It's Too Late:** WSBA is still seeking nominations for the 2019 APEX (Acknowledging Professional Excellence) Awards. These awards honor exemplary members of the legal community, including legal professionals, judges, and members of the public. Please complete a 2019 APEX Nomination Form, along with supporting materials, to barleaders@wsba.org by March

March 4. Webinar
Register to attend

Sexualized Atrocities during Genocide: Personal and Legal Implications
March 6. Webinar
Register to attend

The Washington Law & Practice Refresher
March 7 & 8. Seattle & webcast
Register to attend

Fastcase v. Google Scholar
March 11. Webinar
Register to attend

Legal Writing Workshop
March 13. Seattle & webcast
Register to attend

15. The awards will be presented at the Annual APEX Awards Dinner in Seattle on Sept. 26.

On Board

- **The Board of Governors is scheduled to hold an** emergency meeting executive session from 3-4 p.m., March 1, via teleconference to update on personnel and litigation matters, and discussion re legislative strategy. The Board will also have a special executive session meeting via teleconference from 12-1 p.m., March 4, to discuss and take action regarding the pending notice of tort claim and to consider the recent proposal as framed by Governor Grabicki.

- **The Board will hold a regular meeting** from 8 a.m.-5 p.m. on March 7 at the Hotel RL in Olympia.

- **Rock the Vote:** WSBA members living in Congressional Districts 9 and 10 are encouraged to vote in the Board of Governors elections, March 15-April 1. Watch your email for a link to your electronic ballot. Learn more about the districts' candidates.

- **Three More Years:** Congratulations to WSBA Governor Carla Higginson, who ran unopposed and continues on the Board of Governors in the District 2 position for an additional three years.

- **New Board Seat Available:** An opening is available to WSBA members who live in Congressional District 1 to serve on the Board of Governors. The application deadline is March 15. For more information, visit www.wsba.org/elections.

Service Opportunities

- **Apply for a Committee, Board, or Panel by March 1:** Applications are now being accepted from members interested in serving on the WSBA's committees, boards, and panels. Committee service gives you an opportunity to contribute to the legal community and your profession, a chance to get involved with issues you care about, and a way to connect with other lawyers around the state. There are over 20 committees, boards, and panels seeking new members, including the Court Rules and Procedures Committee, Judicial Recommendation Committee, and

Character and Fitness Board. Please apply by March 8 at myWSBA. Click here for more information. If you have questions, email barleaders@wsba.org or call Pam Inglesby, WSBA Bar Services Manager, at 206-727-8226.

- **State Committee Opportunities:** Interested in serving as a WSBA representative to the state courts' Washington Pattern Forms Committee or the state Legislature's Statute Law Committee? The application deadline for both positions is March 15. Visit the Represent WSBA page to learn more.

Member Resources

- **Fastcase for Members:** In addition to Casemaker, WSBA members now have complimentary access to Fastcase. WSBA member benefits with Fastcase include primary law research, reference support, and industry-leading technology. Access Fastcase and Casemaker by clicking on the Legal Research box on the upper-right corner of wsba.org, or log in to myWSBA directly. Fastcase offers a free, weekly CLE-accredited webinar, with advanced webinars available for purchase in March to help utilize the tool for your Washington state legal-research needs. If you have questions or feedback about this new option, contact legalresearch@wsba.org.

- The Member Wellness Program offers job search groups and consultations; educational programming on attorney self-care and mental health; web resources; trainings for peer advisors; and support for those concerned about an attorney.

Essentials

- From Printed Page to Sliver Screen: A Legal Primer on Taking Comics to Hollywood in 2019
- Red Light Malfunctioning? Bill in this State Would Allow you to Run It
- 'Meh': Apparent Note-to-Self Makes It Into Published Federal Decision
- Legal Recruiters Say Niche In-House Counsel Roles Are Hard to Fill

Job Listings

- Gonzaga University School of Law Lecturer-AT, Fellow-

Center for law, Commerce, and Ethics

- See current job listings at the WSBA Career Center

Our mailing address is:
Washington State Bar Association
1325 4th Ave., Ste. 600
Seattle, WA 98101

From:	mjbeyer mjbeyer
To:	Mandatory Malpractice Insurance Task Force
Subject:	mandatory malpractice
Date:	Friday, March 1, 2019 10:09:50 AM

I am sure members have commented about these concerns but I will state them anyway. I do not support mandatory malpractice.

1. There has to be some sort of scale or exception based upon income earned from the practice of law;
2. I do mostly collections and must comply with the FDCPA. If the client screws up, I get sued simply because the client agency or individual has made an error. They have the defense of bona fide error under federal law. I would say that 99.9% of this cases settle. The risk is very small because of the regulations and compliance. Mandatory increases the expenses for me and the fee charged the client.
3. The expense is always going to be passed on to the client and fees will climb and people will not be able to afford an attorney.
4. What about the attorneys who do wills and probates? My understanding is their risk is small. Will they pay the same as others?
5. Is the cost different based upon the risk or is there going to be a shared pool?
6. I believe and have talked to attorneys who have small practices. This is going to put them out of business and the public will have to go to the big firms.
7. What are the statistics? Are there that many claims that we need mandatory insurance? Who is going to run it? Who is being hurt with no insurance? Who benefits, the insurance companies and big firms that put the small one out.
8. Right now, the client can choose between someone with insurance and one without, whats wrong with that system?
9. Is the bar looking for a problem that does not exist and attempting to limit practice for only the elite?
10. I believe there should be an educational endeavor to let the bar members know if there really is a problem.

Michael J. Beyer 9109

From: Karen
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Friday, March 1, 2019 12:14:41 PM

I have reviewed the Task Force report. It is not clear where I will fall within the proposed mandatory coverage requirement or exemption from coverage status.

I currently maintain Active practice status. I do not desire to change to Retired status even though I am retired from practicing. I intentionally do not have any clients. Yet, I continue to comply with the Active status CLE requirements, as I desire staying current with aspects of the law in which I have a personal interest.

My path to becoming an Active practicing attorney was long and at times difficult. I had to overcome challenges posed by my disabilities. Thus I am very proud of my accomplishment and do not desire giving up that Active status. When I was actually practicing, as a government attorney, I had malpractice coverage through my governmental entity employer. Thus I fully understand the need for such protection when clients are involved.

For those of us maintaining Active status while intentionally retired from practice, we need to have our decision to retain our Active respected and appropriately recognized. If this requires a certification of non-representation on an annual basis, so be it.

Finally, I strongly suggest requiring a greater number of ethics CLE credits. Throughout my years of actually practicing, I was stunned by the number of attorneys I encountered who were on ethical "thin ice". Even more stunning was their respective ignorance as to the RPC's applicable to their practice.

Respectfully,

Karen Carlson Gulliver
WSBA # 21370

Sent from Mail for Windows 10

From:	stanley bonner
To:	Mandatory Malpractice Insurance Task Force
Subject:	re: mandatory malpractice insurance
Date:	Friday, March 1, 2019 1:19:59 PM

Dear Sir or Madam:

Malpractice insurance should not be mandatory. At the very least, all members of the WSBA should have the opportunity to vote on a measure of this magnitude.

Sincerely,

Stanley D. Bonner, WSBA #22604

From: George Kolin
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory liability insurance
Date: Friday, March 1, 2019 2:35:04 PM

Bad idea. Enforce the RPCs. This simply shifts the burden and punishes members who work at or below reasonable pay levels in order to help those in society who cannot afford a $300/hour attorney.

From:	Donald H Graham
To:	Mandatory Malpractice Insurance Task Force
Subject:	Tone of Insurancee Report "Establish minimum" NOT "Impose mandatory"
Date:	Saturday, March 2, 2019 12:40:46 PM

Committee Members and Board Members:

I object to the tone of the malpractice insurance report. It is just as substantive to use the words "establish minimum" insurance requirements as it is to insultingly use the words "impose mandatory" insurance requirements. We are a professional association and members should be treated so. The vast majority of members do not commit malpractice, are covered by insurance and are overwhelmingly compliant with Bar Association expectations. So why treat us as non-complying wayward souls that need to be "compelled".

The same goes for "Mandatory" continuing education that could just as properly be "Minimum" continuing education. In fact, minimum standards would imply additional activity is encouraged while manadatory hardly creates an expectation that additional will be forthcoming.

A quick word processing search and replace of the two words would fix this issue. It might be good to find out who would opposed the change in tone and why.

By the way, I have always carried malpractice insurance for over 25 years so this is not about being disgruntled with the report. Although I do have some substantive issues that I will share in another email.

Respectively submitted,

Donald Graham
#22554

From:	Debra Rhinehart
To:	Mandatory Malpractice Insurance Task Force
Subject:	Comment on recommendation
Date:	Sunday, March 3, 2019 9:05:21 AM

I am a licensed but not actively in practice attorney and public servant. After nearly 12 years, I still struggle under a mountain debt against a loan system that is determined to keep me enslaved. As I'm not young and willing to work 90 hours a week, I've little chance of being hired in a traditional firm even if I had litigation experience. On good days when I cling to the idea that there was some reason for me to graduate and pass the bar and then plunge into the Great Recession, I hope to hang on long enough to retire in two years so I can volunteer for legal aid work. No one pays for my license or the fundraising scheme called CLE. I hope the bar is serious about exemptions for government work, pro bono and perhaps sliding scale assessment or there will be no one willing to do legal work that is not high paid and glamorous. Why enrich more insurance companies? Why not consider a risk pool for those of us who can barely make the license fees? What happens to the bar when so many attorneys abandon their license because they cannot or will not bear another cost without a decent chance of compensation through good work? Respectfully but on the verge of giving up,

Debra Rhinehart

From: Courtney Lewis
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Monday, March 4, 2019 9:36:01 AM

For the committee's consideration:

I am an out of state lawyer that maintains an active Washington license because Washington state does not authorize inactive status for licensed attorneys who are active in another state. I commented during the task force's comment period that mandatory insurance I will never use while I am out of state is a financial burden for me. I understand this situation was considered but not recommended for an exemption, and the recommendation of the task force was I surrender my Washington license instead because it's "too difficult" to determine if I'm practicing in Washington. I strenuously disagree -- I work for the State of Alaska and am not counsel of record for any Washington case so it is very easy to ascertain that I do not currently practice in Washington. My situation is not unique. Further, Washington's ethics rules would never authorize me to hide practicing in Washington from the bar so there is already a remedy.

I maintain a Washington license because my husband is from Washington and we may wish to relocate to Washington. I am licensed in four states -- Alaska, Colorado, Texas, and Washington -- so I am familiar with how several states manage their professional licenses. Washington is the only one that makes me maintain an active -- and therefore a substantially more expensive -- license because I'm active elsewhere. If Washington adopts mandatory malpractice insurance then I urge Washington to also authorize inactive status for out of state lawyers with Washington licenses. It is unfair to penalize lawyers who cannot afford the continued high cost of maintaining a Washington license or ask us to continually sacrifice our finances just to maintain a professional license. I work in the public sector, and I anticipate many public sector and nonprofit attorneys will be pushed out of Washington because we cannot afford the cost. That does not make a diverse bar nor is it necessary to ensure professionalism/protect the public. As noted by this entire controversy, almost no states have mandatory insurance to begin with.

Thank you,

Courtney Lewis

From: Julie Shankland
To: Executive Management Team
Subject: FW: Report of the Malpractice Insurance Task Force
Date: Monday, March 4, 2019 11:11:22 AM
Attachments: image001.png

FYI.

Julie Shankland | General Counsel | Office of General Counsel
Washington State Bar Association | 206.727-8280 | julies@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

---

From: Athan Papailiou <Athan.Papailiou@pacificalawgroup.com>
Sent: Monday, March 4, 2019 10:54 AM
To: Julie Shankland <julies@wsba.org>
Subject: FW: Report of the Malpractice Insurance Task Force

From: Stan Sastry [mailto:stan_sastry@frontier.com]
Sent: Monday, March 04, 2019 10:53 AM
To: 'Bill Pickett'; 'Rajeev Majumdar'; 'Dan Bridges'; 'Carla Higginson'; kyle.s@millernash.com; 'Dan Clark'; 'PJ Grabicki'; BHMTollefson@outlook.com; 'Paul S'; jkang@smithfreed.com; 'Kim Hunter'; meservebog@yahoo.com; Athan Papailiou; rknight@smithalling.com; 'Alec Stephens'
Subject: Report of the Malpractice Insurance Task Force

To the Board of Governors:
As a Washington lawyer I am writing my response to the Final Report of the Malpractice Insurance Task Force. I am opposed to the imposition of Mandatory Malpractice insurance for personal reasons, and for reasons that the Final Report is not an unbiased analysis of Washington State situation right now with respect to solo practitioners, who bear the brunt of the negative impact by the recommendations of the task force.

My personal objection to carrying malpractice insurance: I am an intellectual property-patent lawyer. I simply cannot afford malpractice insurance. I just don't make enough money to buy malpractice insurance. Clients have become so cost-conscious that they simply expect bargain basement prices for my services. Even small businesses will not pay my hourly rate. If I were to buy malpractice insurance, the premium per year would be 30-50% of my revenue. Malpractice insurance for patent practice is almost impossible to get if you are a solo private practitioner. Even if I give a flat fee for clients, my actual hourly rate is less than $15 for the amount of work I put in for each patent case. If I add the cost of all the CLEs, business cost, Bar

dues, taxes etc., there is practically very little revenue left for profit. This is quite untenable. The recommendation of Malpractice Task Force is unworkable in my practice. It is either buy malpractice insurance and go broke or quit.

Remarks on the Final Report of Malpractice Insurance Task Force:

1. The sample size of the law firms examined is statistically insignificant compared to the total number of solo and small firm lawyers in the state of Washington. According to task force numbers (Page 8, item 1) 59% (19,813/32,189) of active WA layers are in private practice. However, the Task Force gives only 3 examples of malpractice insurance policy premiums for Firms A-C. This is a statistically insignificant sample of the cost of buying malpractice insurance. Clearly, the task force is cherry picking or is unwilling or unable to collect a broader demographic and statistically significant data. As a result, the cost of malpractice insurance is skewed toward a lower amount. Ideally, the task force should have presented a more unbiased statistics of malpractice insurance cost in Washington based on practice areas and firm size *vis-a-vis* cost of insurance.

2. The task force's approach is flawed because nowhere in the report it affirmatively makes a case for need to mandate malpractice insurance at this time. What has changed in the practice of law in Washington that requires a change in the court rule to mandate malpractice insurance? In other words, what is the new problem that has arisen which is solved by mandatory malpractice insurance? Instead, the Task Force makes pithy high falutin conclusory virtue-signaling assertions like:
"Lawyers in private practice who do not carry malpractice insurance pose a significant risk to their clients" See Page 3.
"Lack of malpractice insurance is, fundamentally, an access-to-justice issue, and the Task Force has concluded that it is more than appropriate for lawyers to ensure their own financial accountability." See page 3.
No independent concrete proof is offered as to the veracity of these assertions or to back up these assertions with evidence such as statistical number of Washington malpractice cases that have been decided by the Supreme Court where a sanctioned lawyer without malpractice insurance actually did not comply with the Court order to compensate the injured client. Instead, we are supposed to believe these assertions as self-evident truths because, otherwise we should feel guilty

3. Furthermore, the Report claims "A license to practice law is a privilege, and no lawyer is immune from mistakes." This is another example of an unexamined virtue-signaling statement (more like an aphorism) designed to tug at your heart and elevate the "nobility" of the profession. Firstly, a license to practice law is NOT a privilege. A license by definition is a PERMISSION to do something (Contacts 101). A license to practice law is hard EARNED and NOT simply granted by a fiat, like in a monarchy. In our profession, a license as a lawyer is EARNED by going to law school, earning a law degree, passing the bar, paying bar dues etc. Secondly, if the license to practice law is a

PRIVILEGE, why are there 32,189 practicing lawyers in WA, and growing by 800-1000 every year! Shouldn't a PRIVILEGE by definition be conferred on a few only?

4. The practice of law is not a "privilege". It is an EARNED RIGHT to a career path to make money (a property right), like any other employment career. It a fundamental property right under the Fifth Amendment of the United States Constitution (No person shall ---- be deprived of life, liberty, or property, without due process of law). By mandating malpractice insurance as a condition of licensing, the WSBA would be imposing a prior restraint on a Fundamental Right to earn money (property), in my humble opinion. The WSBA's mission statement includes client (public) protection. In this sense, if WSBA (a quasi-governmental organization) mandates malpractice insurance as a precondition for licensing, it is taking my property right under the Fifth Amendment and using my property for public use because WSBA is in the business of public client protection i.e., public use. This is a violation of the Fifth Amendment due process.

5. The malpractice insurance task force report states that its recommendation is consistent with the "client protection" mission of the WSBA." The Washington Supreme Court and the WSBA have a duty to protect the public and maintain the integrity of the profession." See Page 2. If so, the WSBA should raise money from the public for the public's own protection (from lawyers-good or bad) and <u>not</u> mandate the lawyer dues for client protection. It is like robbing Peter to pay Paul. This whole idea of "client protection" needs a closer examination. It is based on the false premise that clients are unsophisticated and can be easily led by the nose by an unscrupulous lawyer. Nothing could be farther from the truth. In my experience, the average client who walks into my office is a shrewd intelligent person who knows what she wants and knows that there are many options available. The idea of ""protecting the client" as a raison d'être for the existence of Bar Associations is a figment and is outdated The real way to protect clients is to ensure that ONLY very high quality lawyers are licensed. This starts with drastically cutting down the law school admission numbers, have very high standards for law school accreditation and admissions, and have not more than one law school per state, make the bar exam so tough to pass that only a few hundred takers per year will pass the bar exam. That is the right way to ensure "client protection" because only highly qualified and motivated lawyers will be allowed to practice. Mandatory malpractice insurance will not reduce the number clients injured by lawyers facing disciplinary action.

6. Elsewhere the Task Force makes another indefinite assertion: "Solo and small firm practitioners represent a disproportionate share of the malpractice claims. " Page 18. If the highest number of malpractice claims were on solo and small firms nationwide, that is because the highest numbers of lawyers are in solo and small firms. How is that a "disproportionate share of the malpractice claims" against solo and small firm lawyers? Quite the contrary, it is to be expected! In Washington, if only 14% of lawyers are uninsured (page 11), that

means most of the malpractice claims are against the 85% that are insured. This means that the small fraction of uninsured lawyers i.e., 14% DO NOT contribute "disproportionately" to the total number of malpractice victim claims. This also means that lack of malpractice insurance has no bearing on malpractice claims. The corollary is that lack of malpractice insurance makes the lawyer more cautious in taking on clients.

7. The Task Force recommended that "The required minimum coverage should be $250,000 per occurrence/$500,000 total per year ("$250K/$500K")". Page 45. "In Washington, for all claims, its average loss payment was $60,548 and average loss expense to defend those claims was $20,406." "Nationally, 89.1% of malpractice claims are resolved for less than $100,000 (including claims payments and expenses)". See Page 17. This statistic shows that the Task Force recommendation on minimum coverage for malpractice insurance is over-inflated by a factor of 2.5-4. The Task Force appears to have presented its "$250K/$500K" minimum coverage arbitrarily without a rationale or evidence. Where is the evidence that such highly inflated malpractice coverage is warranted? This is again an example of capricious and/or lack of reasoning displayed in the task force report.

8. Testimonial evidence in the task Force report is limited to a Law Professor, (who does not really practice law on a daily basis), an insurance industry person (lobbyist) and a state bar executive (may be a non-practicing bureaucrat). No testimonial evidence has been presented in the report from Washington solo and small practice attorneys (with or without malpractice insurance), who will be highly impacted by the Task Force Recommendations.

9. CONCLUSION: My assessment of the malpractice Insurance Task Force report is that the report is an advocacy document. It is not a comprehensive and objective analysis of the two key questions: Why is there an urgent and imminent need for all lawyers in Washington to carry malpractice insurance. Why we should change the existing APR or Court rules regarding malpractice insurance as a condition for license to practice law in Washington. On these two key questions the task force report is unfortunately not convincing in its analysis. The Report has some interesting statistics. But the conclusions of the report do not come from these statistics. The report is heavily biased in favor of mandating insurance coverage because it is supposedly a virtue ("access-to-justice issue") and an obligation ("privilege to practice law", "client protection") as a good lawyer to have malpractice insurance. It never addresses the core question: Why <u>now</u> have mandatory malpractice insurance? The Report pretends to be comprehensive by padding itself with large amounts of facts and figures in terms of statistics; bombastic and virtue-signaling grandiose and aspirational statements (some I have referenced above); and has conclusory statements that are not derivational but assertive. I RESPECTFULLY URGE THE BOARD OF GOVERNORS TO REJECT THE RECOMMENDATIONS OF THE MALPRACTICE TASK FORCE.

Stanley Sastry

WSBA# 36391
The Law Office of Stan Sastry PLLC
http://stansiplaw.com/
[redacted]
Mill Creek, WA [redacted]

Phone/FAX 425-357-6241

To: Bill Pickett <Bill@wdpickett-law.com>
Subject: WSBA Task Force on Mandatory Malpractice Insurance

Dear Bill,

I have attached a letter to you on the subject (again) of the Bar Task Force on Mandatory Malpractice Insurance. I was disappointed to read the report, in that it touted the "public welfare" as the paramount concern, then adopts an approach which is not supported by the necessary data, or economic analysis, but rather with non sequitur logic premised on solo practitioner disciplinary data. If the experience of the national health care paradigm put in place by Congress several years back suggests any lesson, reliance on the private insurance industry does not enhance broad affordability of health care nor broad public benefit. In the legal malpractice field, mandatory insurance could just as easily drive up insurance costs for the entire legal profession (presuming, as did the Task Force Report, that those who currently are uninsured (small firms) are the greater risk pool, that claims against them will be greater and that the insurance industry will raise the premiums on all its risk classes in order to cover the greater claims exposure they will have in the small firm sector). As the Task Force has presented absolutely no data on the risk/claim history of Washington practitioners (either by size of claim, substance or size of practice), I do not see how the Board, or later the state Supreme Court, can evaluate the advisability of the proposed course of action. I see no documented certainty of delivering public benefit. And I emphasize again that we, as practitioners, look to the bar association to responsibly qualify and discipline members of our profession as a manner of sustaining the public's interest, rather than to the insurance industry.

Please submit this e-mail and the attached letter to the Board's record of consideration of the proposed report.

With respect and thanks,

Jim Davenport

--
Jim Davenport
PO Box 297
Buena, WA 98921
(509)969 2141

James H. Davenport

Attorney at Law
JHDavenport, LLC

P.O. Box 297
Buena, WA 98921
(509) 969-2141

Washington State Bar # 7879
jhdavenportllc@gmail.com

March 1, 2019

William D. Pickett
President, Washington State Bar Association
917 Triple Crown Way Ste 100
Yakima, WA 98908-2426

Re: WSBA Proposal for Mandatory Malpractice Insurance

Dear Bill,

On October 12, 2018, I wrote you with my questions about the process then underway to evaluate whether the WSBA should require that all Washington lawyers carry malpractice insurance. On February 28, the WSBA published notice that the Mandatory Malpractice Insurance Task Force will present its final recommendation to the WSBA Board of Governors on March 7. Without adequate documentation of public harm, the Task Force premises its decision singly on the theoretical notion of "protection of the public."

> "The Board of Governor's decision whether to recommend action on uninsured lawyers, and the Court's ultimate decision on this matter, must be approached overwhelmingly from the perspective of what is good for the public and what is good for clients—not what might be convenient or desirable for lawyers themselves." Report, p. 5

In my October 12, 2018 correspondence to you, I asked the following questions:

"Has the WSBA collected any:

> "1. statistics on the total annual number of malpractice claims against WSBA members over any extended period of time?
>
> "2. statistics showing the number or nature of malpractice claims made against insured and uninsured WSBA members, respectively?
>
> "3. statistics on the dollar amount of collection on judgments against insured and uninsured WSBA members, respectively, found to have engaged in malpractice?

> "4. statistics on the number of malpractice claims related to particular forms or subject matters of practice?
>
> "5. statistics on the amount of profit (premiums paid minus claims paid) enjoyed by malpractice insurance companies doing business in Washington?
>
> "Has WSBA compared any of the above statistics against states where malpractice insurance is mandatory?" See comment # 346 in Comments-received-by the-mmi-task-force.pdf, pp. 7, 561-562/1165.

Although the Task Force has not answered these questions, the answer to all of them obviously is "no." Dodging these questions, the Task Force categorizes my questions as "other" and begs off on insufficient funds. The Task Force states at page 7 of its Report:

> "As a volunteer-driven and WSBA-funded project, the Task Force was charged with developing a recommendation and report with limited resources, so it focused much of its research and analysis on available sources and studies, the experience of other jurisdictions, and the perspective of industry professionals. Given the fiscal limitations and its reporting deadline, the Task Force did not perform the types of research and analysis that would have required the services of independent consultants and data analysts. However, through targeted outreach, the Task Force received a great deal of information, including comments from WSBA members, that filled in some of these gaps and informed the Task Force's thinking on many key decision points." Report, p. 7

The Task Force apparently did listen to:" experienced insurance industry professionals, including insurance brokers and underwriters," and a "legal malpractice plaintiff's lawyer," Report, p. 7, and relied upon American Bar Association data accumulating information received from insurance companies. These parties are necessarily biased, as they and the insured are the beneficiaries of the requirement, not the public. It doesn't appear that the Task Force listened much to WSBA membership.

You may want to note that the basis for the Nevada Supreme Court's denial of a similar proposal was "inadequate detail and support . . .demonstrating that the proposed amendment . . . is appropriate." (Comments-received-by the-mmi-task-force.pdf, 670/1165).

Will the Bar Association's final record of decision in this matter, subject of course to the State Bar Act (Ch. 2.48 RCW) and Washington State Administrative Procedures Act (Ch. 34.05 RCW), reflect the data necessary to conclude that Washington's public is in fact injured by 14 % of the bar membership not currently carrying malpractice insurance?

The fallacy of the Task Force' argument from statistics is just so glaring as to be somewhat embarrassing. They report, from the ABA Profile of Legal Malpractice Claims (2012-2015) that 66% of all claims relate to lawyers in law firms sized 1-5, which consort represents 64% of the total number of practitioners. Report, p. 15. This is essentially a one-to ratio, an

equivalence of number of claims to number of lawyers. Yet the Task Force concludes that "Solo and small firm practitioners represent a disproportionate share of the malpractice claims." And it should not be overlooked that the cited data reflects only those attorneys with insurance, including those in jurisdictions where insurance coverage is mandated. If anything, the data suggests that mandated insurance doesn't make a difference, that solo and small firm lawyers aren't any greater risk and that the incidence of malpractice by uninsured lawyers is no greater than those with insurance.

The Task Force Report lists total Washington Bar membership in 2017 at 32,189, 19,813 of whom were in private practice (Report, p.8). 85% of them (16,842) were insured; 14 % of them (2,752) were not. Report, p. 11. 6,799 of the 19,813 lawyers in private practice (34%) were solo practitioners. Report, Appendix A, p. 75, "Members in Firm Type".

The Task Force Report states that 14 % of the Bar's private practitioners reported being uninsured (Report, p. 11) but that 28 % of solo private practitioners reported being uninsured. (Report, p.11) At these percentages, 2,774 of the total 19,813 private practitioners would be uninsured, 1,904 of whom would be solo private practitioners (28 % of 6,799 solo practitioners). While 34% of all private practitioners (6,799/19,813) thus represent 69% of the total uninsured (1,904/2,774), no evidence is presented that solo practitioners engage in any more malpractice than others.

The Task Force Report admits that "the correlation between public disciplinary information and APR 26 insurance disclosure information might not accurately reflect whether the population of uninsured lawyers is more likely to make errors or become subject to malpractice claims. . . ." Report, p. 11. It also admits that whether "an individual lawyer does or does not obtain insurance will not necessarily affect the likelihood that the lawyer might violate the Rules of Professional Conduct." Report, p. 12. As a matter of fact, a lawyer's choice not to carry malpractice insurance may induce him/her to be more conscientious of error avoidance (he/she being a self insurer) than those who are insured.

In the absence of demonstrative evidence, and notwithstanding it's admissions, the Task Force Report argues *non secuitur* (stating a conclusion that does not follow from its premises) that a correlation of the number of could-be malpractice claims if malpractice insurance coverage were mandated with the number of solo practitioners follows from disciplinary data argued to be correlated with solo practice . That criminal maybe has blue eyes. Therefore, all blue-eyed persons are criminals. The Task Force Report falsely relies on disciplinary data to make its point, pinning the blame on solo practitioners:

> "most attorney misconduct grievances and disciplinary actions also involve solo and small firm practitioners. Of the 211 lawyers disciplined between 2014 and 2017, 101 reported maintaining a solo private practice as of the last time they reported voluntary demographic information to the Bar during the annual licensing process. Of the 101, 55 reported that they did not carry malpractice insurance. As of October 2018, only 62 of the total number of lawyers disciplined during that period had an active license to practice law and were in private

practice, and 22 of those individuals reported being uninsured. Eighteen of those uninsured actively licensed lawyers reported maintaining a solo private practice. Report, p. 12 (all premised on WSBA staff research of member-reported data).

No mention was made whether the discipline related to any client or public fiscal harm. Based on this data, however, 70 lawyers were disciplined per year on average (211 lawyers in 3 years (2014-2017)), 34 of them (101 lawyers in 3 years) were in solo private practice. (49%) Thus, we can calculate that 0.537% of non-solo lawyers (70/13,014) were disciplined and that 0.500% of solo practitioners (34/6,799) were disciplined each year (less than 1% is both cases). It does not appear that solo practice demographics bear any significant correlation with discipline or, at least from this data, that discipline bears any significant correlation with malpractice insurance coverage. Comparison of data for those not carrying malpractice insurance (14%) and those being disciplined (less than 1%) suggests that the two variables are not highly correlated. Neither does the data reflecting solo practitioners' 69% share of the total uninsured practitioners market (above) suggest anything other than the largest potential gain for the insurance industry. The Task Force Report contains no data on Washington State malpractice insurance claims history or analysis of it by market sector.

The data provided by the Task Force Report does permit some economic analysis, however. Only 6 (18/3) of the 70 lawyers disciplined each year, or 8.5 %, would arguably be different had they been licensed and mandated to purchase malpractice insurance. 3 of them (46%) would be solo practitioners. Half of these (1½ solo practitioners) would be "resolved without payment." (Report, p. 17). Presuming that every discipline case represented a malpractice case, a clearly questionable presumption, then the other half (1½ solo practitioners) would have an average loss payment of $60,548 plus a defense costs of $20,406 (Report, p. 17), or a total economic benefit of $121.431. If all of Washington's 2,752 uninsured practitioners' made claims on malpractice insurance policies in a single year (half of them "resolved without payment"), an absurd possibility, the total economic benefit would be $83,314,048 ($60,548*2,752*.5).

On the other hand, if all 2,752 of Washington's uninsured practitioners were mandated to purchase insurance, at $2,500 to $3,000 per year (Report, pp. 10, 30), the economic cost would be $6,880,000 to $8,256,000. It would take a minimum of 226 to 272 successful claims per year to recover the total costs. The economic benefits (public benefits) simply do not justify the costs. And more likely, the number of lawyers disciplined who had foregone their licenses altogether would increase (some, at least, giving up their license rather than purchasing malpractice insurance).

The Task Force Report does not compare the aggregate annual number nor amount of malpractice claims made or settled in Washington. Nor does it sort those amounts in terms of claims covered or not covered by malpractice insurance. Nor does it identify the aggregate amount of malpractice claims made in Washington against solo and larger law firms respectively. Neither the "Percentage of Claims by Practice Area" nor the "Years in Practice and Claims Rate" (Report, p. 15) reveal that the stated rates are proportionate or representative of the

membership distribution of Washington' bar association membership, or successful malpractice claims.

The Task Force Report does not document a single case of lawyer-injured clients whose recovery is barred by insufficient lawyer wealth together with lack of malpractice insurance coverage, although it does suggest a chilling effect on potential claims. Report, p. 21 The lack of lawyer wealth has more to do with lawyer qualification and discipline, for which the State Bar is responsible than the presence of third-party insurance. And the insurance disclosure requirement already in effect is sufficient to apprise would-be clients of this risk.

The Task Force Report clearly reflects an urban, large firm bias denigrative of small, and often small town or rural law practice. Yet, at least according to the ABA's numbers, this is still the practice format that a majority of lawyers choose. Why, do you suppose? Because they want to be helpful, responsive and close to their clients—the same reason that they care about the quality of their work and the cost of it to their clients, as well as about the intellectual challenge they enjoy. The Task Force recommendations will drive them out of the practice of law—to no advantage of the public to whom the Task Force states such an unswerving allegiance.

The Task Force Report is a smear of solo practitioners, suggesting that they are less competent than lawyers in large, corporate style law firms. It favors big city style over country/rural practitioners. And it injures the public—not everyone lives in the city, or wants to pay big-city law firm fees.

I again respectfully propose that the idea of mandatory malpractice for WSBA members be dropped. If the device must be utilized, use it only as a disciplinary sanction or condition of reinstatement.

Sincerely,

James H. Davenport

James H. Davenport
Attorney at Law

From: Mary-Anne Linden <[redacted]>
Sent: Friday, March 1, 2019 4:57 PM
To: Sciuchetti, Kyle <Kyle.Sciuchetti@MillerNash.com>
Subject: comment re: Mandatory malpractice insurance

Hi Kyle,

I would like to express a concern about the upcoming decision of the WSBA regarding malpractice insurance. I am totally in favor of requiring attorneys to carry malpractice insurance. However, the WSBA may be unaware of the difficulties Washington attorneys encounter in seeking coverage if they are employed by out-of-state firms.

I am licensed in Washington (WSBA #41553) and work for an Oregon firm. The firm represents clients in both states. I was hired specifically to represent our Washington clients. Here is the problem: Everybody else in the firm I work for is insured through the Oregon State Bar mandatory professional liability fund (PLF), which insures individuals. I cannot be insured through the Oregon PLF because I'm a Washington attorney. Washington insurers cover only firms, not individuals. In order to get malpractice insurance in Washington, my employer would have to buy insurance for the whole firm in Washington. Of course, she does not need double coverage nor double expense. This dilemma leaves me uninsured at the present.

Ideally for me and for others similarly situated, the WSBA would establish a professional liability fund similar to that in Oregon. I'm aware that many WSBA members oppose this idea, but I'm not sure why. This model is very simple and efficient and not, as far as my inquiries indicate, more expensive that malpractice insurance available for Washington firms.

I hope that, as my representative on the Board of Governors, you would ensure that this problem is part of the discussion and decision about mandatory malpractice insurance!

--
Mary-Anne Linden
[redacted]
www.WiscarsonLaw.com

From: Donald H Graham
To: Mandatory Malpractice Insurance Task Force
Subject: Malpractice Insurance Report Recommendations
Date: Monday, March 4, 2019 2:48:40 PM

Board Members and Committee Members;

I am writing in response to the general WSBA invitation to comment on the report recommending mandatory malpractice insurance. I have been in private practice for over 30 years, been continuously insured, had no malpractice claims and am not planning to be uninsured. Nevertheless, I have followed the development of this report and submitted comments from time to time in response to invitations to comment. I continue to find the report could be significantly improved..

First, the WSBA should consider using a private professional consulting firm to confirm the findings of the committee. The report confirms that the volunteer committee did not have resources to use independently develop data and could not afford a professional consultant to support analysis. The WSBA has an almost 18 million budget, and, specifically as a 2 million dollar reserve doing nothing in the bank. For a topic that will affect thousands of members and cost millions of dollars, it seems amateurish. To use an article about three East Coast states that do not require insurance seems inadequate if not almost irrelevant. Using scraps of information from here and there really seems inappropriate when the association is considering imposing millions of dollars on parts of it membership.

Secondly, to "boldly assert and plausibly maintain" that this problem is one of public protection is really passing the buck. The actual problem is attorney competence and discipline, which is the main responsibility of the WSBA. Washington had 62 bad actors without insurance out of 32,000 members. It is the fact that many clients seek and obtain services from small firms due to prices charged by large firms. Clients actually do have access and do obtain legal services and therefor access the justice system. The issue is therefore do clients obtain quality services. Competency is at issue. Insurance will only secondarily address this actual problem. More practical would be a requirement to provide clients with clear notice about lack of insurance after clients have been injured. Clients will continue to feel that incompetent lawyers deny them justice even if they lawyer is insured. It appears that continued harm to clients is acceptable if plaintiff attorneys are compensated and clients may be "made whole" by money payments. Probably only lawyers think money damages makes up for a sense of justice provided by competent attorneys. Money rarely makes the client whole after first damages from original error and suffering a lapse of time and suffering continued emotional distress during the malpractice litigation or settlement phase. Justice continues to be elusive for many. And with currently uninsured attorneys having to pay millions more insurance costs, the cost of engaging attorneys to seek services will continue to go up and justice will be even more elusive. Implementation of clear and specific warnings can be implemented much faster than selling insurance. The warnings would dissuade clients from risking using low cost private practitioners rather than high priced large practices. It might better than continuing to be injured in the first place and suffering damages and then being made whole later. Is this type of justice worth the access? Clients do not want to be damaged and then fixed, they want competent help in the first place. Requiring insurance, of course, will have a welcomed and immediate benefit to malpractice plaintiff attorneys and insurance companies

Thirdly, there is a fiction in the report that government, corporate and non-profit organizational attorneys are insured by their organization and the lawyers do not occasionally if not regularly provide "moonlighting" services to friends, family, acquaintance and perhaps even local service agencies. Surely, even if not paid, government lawyers, for instance, do not tell their relatives that

they cannot talk about, for example, what is community property. The relative is going to rely on the trusted family member. Quite simply, every lawyer gets hit up for free legal advice in one way or another and refusing to answer is not always possible. Surely, every lawyer knows this. Often this is considered pro-bono work or some necessary part of overhead in being a lawyer. This issue is essentially ignored or dismissed in the report, including when it indicates that retired attorneys who are involved in even very small legal issues must carry insurance.

Many of these proposed exempt attorneys will be in violation. It is unlikely that an attorney will break away from a lunch conversation with a low income acquaintance to buy malpractice insurance (retroactive coverage is never provided) when asked about a non-work related legal issue. I have practiced law for over 30 years and I know of no lawyer, except judges, who disqualifies themselves based on their employer. Do we really want to say that corporate lawyers can talk, if they choose, about any random legal topic even beyond their corporate practice, while private practitioners must have insurance?

Fourthly, apparently one concern is that malpractice plaintiff attorneys do not find it financially viable to prey on low income lawyers. Perhaps the WSBA efforts to encourage pro-bono work could be focused in-part on addressing claims against “judgment proof” attorneys. The report almost makes it sound like judgement proof attorneys plan to avoid malpractice claims by unethically maintaining a low economic lifestyle. There is no evidence of such activity.

Finally, what to do? Private clients could be asked to agree in writing after clear and obvious notice, before engaging services from uninsured attorneys. This would enable people to seek small firms to avoid cost of large firms. Potential clients should be informed that insurance coverage is not available and they assume the risk at their peril.

Is access to justice improved by mandating cost increases on small firms that are the only ones available to poor clients? The WSBA is establishing minimum overhead costs for law practice in Washington. It would seem to the proposed minimum cost to call oneself an active private practice attorney would be close to $3, 000 annually including dues, insurance and CLE.

Other less costly and more relevant approaches to assuring competence of the membership should be explored. Clients should not be protected simply by relying on after-the-fact monetary compensation for attorney errors.

On a personal note, as I approach full retirement, I do appreciate the recommended exemption to allow retired attorneys to still call themselves lawyers without spending thousands on insurance. It does seem a pity that even if I pay active bar dues and having decades of well-practiced experience, I will have to tell grandchildren they cannot rely on what I tell them about the law and they should go find themselves a real lawyer.

Thank you for your consideration.

Donald Graham
#22554

JOHN G. ZIEGLER,
Attorney at Law
New Address:
[redacted]
zieggie@hotmail.com
[redacted]

March 2, 2019

Washington State Bar Association
Malpractice Insurance Task Force
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

re: Mandatory Malpractice Insurance

Dear Task Force Members,

I was admitted to the WSBA in October 1974 and "retired" in November 1997, meaning that I still practice law but have neither charged nor accepted a fee from any client for more than 21 years. Each year I provide over 1,500 hours of *pro bono* representation.

Most of my time is devoted to assisting criminal defense attorneys, primarily public defenders, with legal advice and mentoring, but I have paid my Bar Dues so that, when called upon, I can represent poor people in civil cases and criminal defendants regardless of their income. With a Social Security income of only $804 per month, I will not be able to afford malpractice insurance and will no longer be able to represent the needy.

Many great attorneys assisted and encouraged me as a young lawyer, and I have spent nearly half of my "legal life" giving advice, encouragement and mentoring freely back to Bar members. If the WSBA Board does adopt mandatory malpractice insurance, I implore it to provide an exception for those of us who devote a significant portion of our practice hours to *pro bono* service.

Thank you for your attention and consideration.

Very Truly Yours,

John G. Ziegler
Attorney at Law
WSBA # 5875

cc. WSBA Board of Directors

From: Margaret Shane
To: Thea Jennings
Subject: FW: Mandatory Malpractice Insurance
Date: Tuesday, March 5, 2019 11:40:54 AM
Attachments: image001.png
Importance: High

HI Thea –

Please post Mr. Anderson's email on the "Comments to the Board of Governors" link on the Task Force webpage.

Thank you!

_____

Margaret Shane | Executive Assistant
Washington State Bar Association | 206.727.8244 | fax 206-727.8316 | margarets@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

---

From: Bill Pickett [mailto:Bill@wdpickett-law.com]
Sent: Tuesday, March 05, 2019 11:39 AM
To: Margaret Shane
Cc: Paula Littlewood; Julie Shankland; [redacted]
Subject: FW: Mandatory Malpractice Insurance

Margaret,
Please include Mr. Anderson's email in the late materials for the Board to review in advance of this week's meeting.

Thank you Martin. I enjoyed speaking with you and appreciate your thoughtful comments. I look forward to your ongoing input and/or participation as a member of WSBA.
As always, call with any questions.

Peace,
Bill WSBA President

Work Cell [redacted]

Bill Pickett
Trial Lawyer
The Pickett Law Firm
917 Triple Crown Way, Suite 100
Yakima, WA. 98908
Phone: 509-972-1825
Fax: 509-972-1826

From: Martin W. Anderson [redacted]
Sent: Tuesday, March 05, 2019 11:01 AM
To: Bill Pickett <Bill@wdpickett-law.com>

Subject: Mandatory Malpractice Insurance

Hi Bill,

Thanks so much for speaking with me this evening and for sharing your thoughts about the WSBA's proposal to require mandatory malpractice coverage for private practice attorneys. I enjoyed our conversation, and I appreciate your willingness to share your thoughts and to hear mine, even if we don't necessarily agree on every point.

I understand that the WSBA is considering adopting a rule requiring mandatory legal malpractice insurance for attorneys who are in private practice, and I would like to share several thoughts on the idea with the WSBA. I have no opinion on whether the WSBA should or should not impose a requirement of carrying legal malpractice insurance, at least in the abstract. I think that there are very good arguments on both sides of the issue. However, if the WSBA adopts a mandatory malpractice insurance requirement, I do have some thoughts on how the requirements should be structured:

1. If the goal of adopting mandatory malpractice insurance is to protect clients from errant lawyers, then the WSBA should not adopt a one-size-fits-all approach to coverage limits. Rather, the limits of coverage should depend entirely upon the scope of a lawyer's potential liability.

I handle lemon law cases involving automobiles. The average car costs around $35,000. I avoid taking cases involving cars that cost more than $100,000, because that is the maximum amount for which I can self-insure and I currently do not carry malpractice insurance. Any requirement that I carry malpractice insurance with more than $100,000 of coverage per incident would be wasteful and unnecessary. Conversely, if another attorney handles personal injury cases involving $10,000,000 claims, the goal of protecting the public would require that he carry sufficient coverage to protect the entirety of that claim.

I have chosen not to have malpractice insurance coverage because I can easily self-insure for the risk that I assume. I have received quotes for malpractice insurance coverage with rates starting at round $4,000 for the first year and increasing to about $8,000 for the fifth year forward. Over my 24 yours of practice, I would have paid more than $100,000 for insurance coverage - which I would never have used.

2. If the WSBA adopts a mandate that private attorneys obtain insurance through the private marketplace, the WSBA will be allowing insurance companies to decide which risks will be insured. By extension, that means that private insurance companies (and not the WSBA) will have the power to decide not to allow certain types of practice in Washington at all, simply by refusing to issues policies covering those types of practice. Insurance company underwriting practices will likely also impose other requirements on attorneys that are traditionally things that are considered and adopted by bar associations. For example, if insurance companies choose not to offer discounted rates to attorneys who only work part-time, or who handle only *pro bono* cases, then those types of practices may disappear.

This concern is not merely a hypothetical. I have a friend who handles cases similar to mine. She has never had a malpractice claim. However, she was sued for malicious prosecution several years ago after she lost a case at trial. The malicious prosecution claim was dismissed on the merits. However, her malpractice insurance carrier cancelled her policy. She was required to obtain insurance through Lloyd's of London. Thereafter, she paid $18,000 a year for malpractice insurance, even though her typical claim, like mine, involves about $35,000.

3. If the WSBA adopts a mandate that private attorneys obtain insurance through the private marketplace, the WSBA will be allowing insurance companies, and not the WSBA, to decide how to spread the risks associated with legal malpractice. If the WSBA believes that mandatory malpractice insurance is appropriate in order to protect clients, then the WSBA, and not private insurance companies, should decide how to spread those risks. Should attorneys who handle higher value claims bear more the risk? Or should attorneys who earn more money each year do so? What about part-time attorneys? What about attorneys who have had prior claims? What about attorneys who have never had a claim? If the WSBA doesn't make these decisions, the free market will. It may not do so in a manner that is fair to WSBA's members. In addition, because the cost of malpractice insurance will ultimately be passed along to clients in the form of higher fees, the fairness of these decisions is ultimately part and parcel of WSBA's obligation to protect clients.

For these reasons, I believe that if the WSBA chooses to require mandatory malpractice insurance, it should either (1) adopt the Oregon PLF model or (2) negotiate an agreement with a single provider that ensures that any lawful practice can receive coverage and that ensures that the risks are spread in a fair and equitable manner, rather than through the whims of private insurance companies.

As you may know, the Oregon PLF currently charges each attorney $3,300 per year for $300,000 of malpractice insurance, and excess coverage is available. Members may participate only if they have their principal office in Oregon. OSBA members whose offices are outside of Oregon are not allowed to participate, and are not required to have malpractice insurance unless they practice in Oregon. As I noted above, the cost of PLF in Oregon is roughly 1/3 of the cost that I would pay for similar coverage in the private marketplace in California.

I understand that the WSBA has rejected the Oregon PLF model because WSBA views the mechanism as too complex and too expensive. While I agree that setting up an insurance company is complicated, I see it as part and parcel of the decision to require malpractice insurance. If the WSBA is requiring malpractice insurance in its capacity as *parens patriae* to clients who would otherwise hire a lawyer without insurance, then the WSBA also has the responsibility to its members and to their clients to ensure that the risk is spread in a fair and equitable manner, that the client's interests are fully protected, and that members are protected from the whims of the free market.

Because every participating member must pay premiums, the expense of setting up an insurance company will be paid by WSBA members (and ultimately their clients), either to a WSBA sponsored PLF-like organization or to a private insurance company. By having a single, state-run provider, the Oregon PLF has dramatically reduced the administrative costs that its members must pay and allows Oregon to control the decisions on how to spread the risks. In the case of Oregon's PLF, Oregon has chosen to have every member share the risks equally. WSBA could set-up a PLF-like system but choose to spread the risks differently. If the WSBA adopts a private insurance model, then WSBA should negotiate a single contract with a single insurer that addresses the issues that I discussed above. Merely requiring attorneys to obtain malpractice insurance with a fixed limit, without addressing the issues that I discussed above, constitutes an abdication of WSBA's obligations to protect both the public **and** its members.

Finally, any mandate should exclude those active members who, like myself, do not actually practice law in Washington.

Again, thank you very much for speaking with me last night and for passing these concerns on to the Board.

Martin W. Anderson | Attorney | The Anderson Law Firm
Tel: (714) 516-2700 | Fax: [redacted]
2070 N. Tustin Ave., Santa Ana, CA 92705

From: Margaret Shane
To: Thea Jennings
Subject: FW: Your Update Email
Date: Tuesday, March 5, 2019 3:10:15 PM
Attachments: image001.png

HI Thea –

Please post Mr. Neal's email on the "Comments to the Board of Governors" link on the Task Force webpage.

Thank you!

_____

Margaret Shane | Executive Assistant
Washington State Bar Association | 206.727.8244 | fax 206-727.8316 | margarets@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

---

From: Bill Pickett [mailto:Bill@wdpickett-law.com]
Sent: Tuesday, March 05, 2019 3:08 PM
To: Margaret Shane
Cc: Paula Littlewood; Julie Shankland; Chris Neal
Subject: FW: Your Update Email

Hi Margaret,

Please include the following email string from member Chris Neal in this week's materials for the governors to review. Chris has a number of points that he would appreciate consideration of in advance of the mandatory malpractice insurance discussion. I know this is late material, but I would greatly appreciate it being added to everything being considered.

S_____

Chris ccing you on my email to WSBA. Thanks again for your comments. I am a trial lawyer, and suspect that I have been accused of having a "plaintiff's bias" on more than one occasion. That being said, please know that all comments are both welcome and appreciated when it comes to matters of consideration before WSBA.

Thanks and Peace,
Bill

Bill Pickett
Trial Lawyer
The Pickett Law Firm
917 Triple Crown Way, Suite 100
Yakima, WA. 98908
Phone: 509-972-1825
Fax: 509-972-1826

From: Chris Neal [redacted]
Sent: Tuesday, March 05, 2019 12:30 PM
To: Bill Pickett <Bill@wdpickett-law.com>
Subject: Re: Your Update Email

Bill,

Thanks for the prompt response. Please do share my comments with anyone in position to affect the outcome of this issue. My Bar No. is 25685 and my wife's is 25686.

I see you identify yourself as a Trial Lawyer, which term frequently suggests a plaintiff bias. If that is the case with you, please know that I do not mean to impugn the motives of that group - each type of practitioner has his/her place in the arena and I respect all of them, even the ones who prosecute legal malpractice cases - everybody's got to eat. That said,I forgot to mention another concern I have - the likelihood of an increase in frivolous claims/suits against lawyers filed by clients disappointed with their outcome, who want to get something back from the lawyer's E&O carrier with a sweetener for their E&O lawyer's efforts, all of which will come at the (potentially) innocent lawyer's expense.

From my 30+ years experience, some of which I spent as a plaintiff's lawyer, I know there will be lawyers to take those cases, but the impact on decent hardworking lawyers will be huge, even if they committed no harm, and even if the cases settle early. The affected lawyers will see E&O premium increases, their names on court dockets, their personal credit ratings will take a hit, some good home/auto companies (eg Amica) won't even take people who have been sued for any reason, a claim/suit will impact their getting future clients, affect their credibility with courts and opposing counsel, employers, neighbors, etc. - the beatdown goes on. Non-legal folk won't know the claim/suit was just a shakedown for quick cash - they'll just a lawyer who was sued and assume the worst. That will hurt, not help, the profession. Good lawyers may exit claim-prone practices to avoid frivolous claims, reducing the number of available lawyers to the public. All to fix a problem that the WSBA has not managed to convince me, or my brethren (per surveys and letters I've seen in NW Lawyer), even exists.

The last issue concerns the availability of suitable insurance products. I carried individual E&O coverage for my work as a part-time lawyer doing insurance coverage work. Several years ago, I obtained my coverage through a broker in Tacoma who handled lots of E&O insurers. Do you know how many offered a part-time program for my area of legal work?

One (Zurich), and it wasn't clear at the time they would continue to offer it. I'm sure if the E&O folks get their foot into Washington via mandatory insurance that they'll offer more "products," but it's less clear whether there would be sufficient competition to keep Washington's lawyers from being victimized on that end, as well. Incidentally, I was paying $800/yr for my coverage then (2012), and the number I'm hearing bandied about lately is $3,000 per lawyer (so $6K from our household), which, with already outsized health insurance premiums ($14K/yr) and high ($5K per) deductibles, is simply a bridge too far for this retirement-horizen couple.

I very hope much hope the WSBA does not force mandatory insurance on Washington's lawyers. If it does, my back-up hope is that lawyers in my and my wife's position who limit their practices to work done for others under their policies will be allowed to keep their law licenses lit. If not, we might have to fold up shop in Washington, sell our home, and move back to Texas, one of the 48 states that does not mandate insurance, where we're both licensed - nothing like starting over in your 60s, but it shouldn't have to end that way when we've been good/loyal legal soldiers in Washington for more than 20 years. We've spent our entire adult lives working to get to this point, and forcing us into insurance will simply pull the rug out from under me and my wife, just as we're trying to thread the retirement needle at the same time we're also heading into the infirmaries of old age while also trying to avoid being ground up by the medical insurance/expense machine. Nobody's saying it should be easy, but, after 30+ years of blemish-free legal practice, it just shouldn't be this hard at the end.

Thanks again for the response, and for listening.
- Chris Neal

Christopher L. Neal | Neal Firm, PLLC
Attorney at Law Licensed in Washington, Oregon (Inactive),
Texas (Inactive) and Colorado (Inactive)
P.O. Box 10729 | Bainbridge Island, WA 98110
Tel: 206.317.3000 | Fax: 206.842.1102
www.coveragenorthwest.com

On Mar 5, 2019, at 11:42 AM, Bill Pickett <Bill@wdpickett-law.com> wrote:

Thank you Chris. Good point and know that I appreciate your comments.
I will hope to include more issues in any future bar message.

With your permission I would like to relay your email to the full board for their consideration as they prepare to this week's meeting. Let me know.

As always, feel free to email and/or call with any questions or concerns. Again, your comments are well taken and appreciated.

Peace,
Bill

Work Cell [redacted]

Bill Pickett
Trial Lawyer
The Pickett Law Firm

917 Triple Crown Way, Suite 100
Yakima, WA. 98908
Phone: 509-972-1825
Fax: 509-972-1826

From: Chris Neal [redacted]
Sent: Tuesday, March 05, 2019 10:38 AM
To: Bill Pickett <Bill@wdpickett-law.com>
Subject: Your Update Email

Mr. Pickett,

This email address may not be the most appropriate way to contact you, so my apologies in advance if that's so.

I write to express concern that your update email omitted any reference to the only thing that's on the mind of every lawyer I know - mandatory insurance. Like too many others, I will be forced into early (and underfunded) retirement if/when the rule goes into effect. My solo firm's business model anticipates I do work only for larger firms to whose own insurance I am added for the work that I do - the public is protected. So, while I do not carry my own insurance, all of the work that I do is covered by insurance. However, under the new mandatory arrangement, it appears I will not be able to maintain my law license unless I can prove I, personally, carry my own separate liability coverage. My revenue stream is reduced as I head toward retirement, so that's not possible, and I'd have to leave the Bar, and the remainder of my career/income. As mentioned, many are in my boat, including my wife, Lisa Neal. We've practiced in Washington for more than 20 years.

And, yes, I have written Comments to this effect during the input period, asking that an exemption be applied to those in my position. I do not know the status of that request, and I received no response.

So far as I know, all of WSBA's polling shows Washington's lawyers are overwhelmingly against the mandatory insurance requirement for several reasons, including that WSBA has failed to make its case that the public has suffered in any way from the absence of mandatory insurance, even anecdotally. Cynically, this looks to me like an effort by the malpractice lawyers and E&O insurance industry (which has a seat at the table that I help pay for) to bring money in from the sidelines to further their own economic agendas at the expense of the very lawyers who want, and pay for, the WSBA to watch out for their interests, in addition to the public's.

For these reasons, I am surprised and disappointed your update email made no reference to the status of this important issue.
- Chris Neal

Christopher L. Neal | Neal Firm, PLLC
Attorney at Law Licensed in Washington, Oregon (Inactive), Texas (Inactive) and Colorado (Inactive)
P.O. Box 10729 | Bainbridge Island, WA 98110
Tel: 206.317.3000 | Fax: 206.842.1102
www.coveragenorthwest.com

From: Kary Krismer
To: Mandatory Malpractice Insurance Task Force
Subject: Exemptions From Mandatory Malpractice Coverage
Date: Tuesday, March 5, 2019 3:13:44 PM

I was sad to see that the report on mandatory malpractice insurance did not even give a mention of the exemption I requested. My situation is hardly unique. I am a licensed attorney, not actively practicing, and also licensed as a real estate broker. I have held this status for over 10 years and have not once during that time charged for my legal services. Part of my practice as a real estate broker though arguably covers the practice of law (drafting forms, explaining forms to clients, etc.)

It would be meaningless for me to buy malpractice insurance because the malpractice carriers would exclude any coverage for activities pertaining to my activity as a real estate broker. That means if you do not provide the exception I am requesting my choices would be:

1. Resigning as an attorney.

2. Paying for insurance that does not provide anyone any coverage.

As I mentioned above, there are a number of attorneys who are similarly situatuated. We should not be forced to make the choice of quitting the bar or paying an insurance company for what would effectively be no coverage.

--

Kary L. Krismer
206 723-2148

From: Margaret Shane
To: Thea Jennings
Subject: FW: Analysis of the Mandatory Malpractice Insurance Task Force Report
Date: Tuesday, March 5, 2019 5:50:40 PM
Attachments: image001.png

HI Thea –

Please post Michael's email on the "Comments to the Board of Governors" link on the Task Force webpage.

Thank you!

_____

Margaret Shane | Executive Assistant
Washington State Bar Association | 206.727.8244 | fax 206-727.8316 | margarets@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

---

From: Dan Bridges [mailto:dan@mcbdlaw.com]
Sent: Tuesday, March 05, 2019 5:38 PM
To: Michael J. Cherry
Cc: Bill Pickett (bill@wdpickett-law.com) (bill@wdpickett-law.com); Rajeev Majumdar (rajeev@northwhatcomlaw.com); Margaret Shane; Paula Littlewood; Hugh Spitzer (spith@uw.edu); P.J. Grabicki (pjg@randalldanskin.com)
Subject: RE: Analysis of the Mandatory Malpractice Insurance Task Force Report

Michael, thank you so much for that very detailed and thoughtful discussion. I am including some others here so they can have the benefit of your input and, although I suspect it is too late to be included in this specific Board book, hopefully we can capture this input so it is not lost.

Thank you so much for your time ! I hope things are going well.

Don't be a stranger.

DB

Dan'L W. Bridges
3131 Western Avenue
Suite #410
Seattle WA. 98121

Phone: 425-462-4000
Fax: 425-637-9638

From: Michael J. Cherry <mikech@lexquiro.com>
Sent: Tuesday, March 5, 2019 4:17 PM
To: Dan Bridges <dan@mcbdlaw.com>
Cc: Michael J. Cherry <mikech@lexquiro.com>
Subject: Analysis of the Mandatory Malpractice Insurance Task Force Report
Importance: High

Dan,

I am writing about the Mandatory Malpractice Insurance Task Force (Task Force), "Report to the WSBA Board of Governors" (Report), which you will be considering at the March 7th meeting of the Board of Governors (BOG). I spent considerable time researching this matter before resigning from the BOG for health reasons. I attended many Task Force meetings. And I have reviewed the draft and final Report, and my analysis is that the BOG *should not support* the Task Force recommendation because the Report is inadequate in several areas, which are outlined in this letter.

Rather than supporting a requirement for mandatory malpractice insurance please consider requiring attorney's report their insurance status to the WSBA (a requirement already in place), combined with a new requirement of mandatory disclosure of malpractice insurance status in all communications between an attorney and their clients. The Task Force can then monitor the effectiveness of disclosure over an adequate period to make a more informed decision about the need for mandatory malpractice insurance. The combination of mandatory reporting and disclosure will accomplish the goal of the Task Force of protecting the public, without introducing damaging unintended consequences to the profession.

I understand, the Task Force spent a lot of time on the Report. However, they had limited time and money, and could not afford to perform extensive or custom research. The Report's conclusion calls for a big and irreversible step. The goal of protecting the public can be achieved with the intermediate step of mandatory reporting and disclosure. If the intermediate step of mandatory disclosure and reporting does not work, the BOG can always implement mandatory malpractice coverage. But the reverse will be virtually impossible. If I am correct, and mandated malpractice insurance has unintended consequences, it cannot be easily reversed to repair the consequences.

In consideration of your time, I have attempted to keep this letter on point. I am available to discuss the individual points with you, however; due to medical

appointments I cannot reschedule, I may not be available when this matter comes up on Thursday's agenda. Please call me at your convenience before the meeting if you wish to discuss my conclusions.

My issues with the Task Force Report are:

Impact of Insurance Companies on the Profession. The Task Force Report appears to ignore the impact of mandatory malpractice insurance on how lawyers practice law. Consider that rising rates for Ob-Gyn doctors have resulted in these doctors changing how they practice, including withdrawing from providing services.[1] In other cases, which I have encountered in my struggles to battle a chronic illness, health insurers employ a variety of strategies to control their expenditures, including one that is common but has received relatively little attention: step therapy.

Step therapy programs require patients to try less expensive treatments and find them to be ineffective or otherwise problematic before the insurer will approve a more high-priced option.[2] When used, step therapy involves the insurance company telling the doctor how to practice their profession. Insurance companies may think of similar practices they demand we as attorneys use in place of our ability to decide with our client's wishes how to handle a matter.

It is feasible that insurance companies could have similar impacts on our profession. Not that they will tell us what to do, but, behavioral economics suggests lawyers will be nudged in the direction the companies want us to go. For example, based on what I have learned studying this issue, as I am renewing my insurance, I have backed off performing any legal service that falls below 20% of my total work. I am doing this because if you only practice in an area such as real estate law below a certain percent, the insurance company may label you as a "dabbler," and you will pay larger premiums. In my case, I previously reported I engage in real estate work because a client would occasionally ask me to review a lease. I interpreted this a real estate work. Going forward I must refuse clients seeking advice about a lease because of the cost of insurance coverage and honestly reporting practice areas to my insurance company. This is a prime example of the negative impact that mandatory insurance coverage may have on a solo practitioner's practice.

It is also conceivable that under mandatory insurance, a competent lawyer could be constructively disbarred because no insurance carrier will write an affordable policy. There is no backstop or appeal process I am aware of identified in the Report should this happen.

I am not aware that the Task Force gave this serious matter any consideration. Instead they viewed the insurance industry as neutral, and an ally or friendly partner whose only interest is helping the public. This is naïve. The impact of giving the insurance industry a defacto monopoly merits review. Such an internal review could be conducted while a mandatory reporting and disclosure program is in place. It is important to highlight that without such review the State's legal profession may be at the mercy of insurance companies once mandatory insurance requirements are enforced.

Impact of Mandatory Insurance on Access to Justice. The Task Force considered the implementation of mandatory malpractice insurance would have a net positive effect on Access to Justice (ATJ). The net positive effect stems from a shift from lawyers refusing cases involving a person harmed by a lawyer to lawyers taking these cases. Such cases will become enticing because malpractice insurance guarantees a payout to the client harmed by another attorney. The lawyer representing the harmed client now has a certain financial outcome.

I submit the effect on ATJ may be overall negative. The Task Force assumes that the cost of insurance is minimal or insignificant, and that it can be easily passed on to clients. This is a false premise. Few solo practitioners can simply pass increased costs onto clients. Therefore, rising costs for legal services will likely limit the number of people who can afford a lawyer to take any case—such as the tenant side of a landlord tenant dispute, and, simultaneously increase the number of people excluded from obtaining legal services.

To illustrate this point, I created a spreadsheet documenting corporate and living costs for solo practitioners and small firms. Based on this model, without malpractice insurance, an attorney can afford to charge $120 an hour, and not lose money. Leaving all other expenses the same, but adding in $2,500 per year for malpractice insurance from the Report,[3] the same attorney would have to charge $125 an hour. The $2,500 per year is an average across all practice areas and could be to low an estimate.

In addition, considering licensing fees, continuing legal education (CLE) costs, malpractice insurance costs, business license costs, taxes, student loan payments, and health care are mandatory costs—that is a lawyer cannot choose not to pay them —adding mandatory malpractice insurance means 45% of all corporate and living expenses are mandated. And, three of these fixed costs areas will be mandated by the Bar.

Finally, consider that fixed costs increase annually, effectively marginalizing other business-related opportunities such as marketing costs and retirement funding. More important, as business costs increase, solo practitioners are less likely to volunteer valuable hours to pro bono work; instead billing clients or spending to market new clients will become paramount to business survival.

The cost of running a small business is an issue the Task Force should have examined in more detail to properly address ATJ. If a large population cannot afford legal services because the cost of legal services continue to rise, even by five dollars as my model suggests, then the public is not being “protected;” it is actually being harmed by the additional costs of legal services in part mandated by the Bar. The Idaho bar reports: “No Idaho attorneys reported an inability to obtain the required insurance … some lawyers indicated that the requirement would affect their decision to retire from practice.[4] I validated these conclusions by calling several attorneys in Idaho to inquire about their experience obtaining insurance. All the lawyers I spoke with decided to pass their increased costs onto their clients. One indicated they were retiring earlier than originally planned because of the insurance mandate.

I also spoke with an attorney newly-admitted to the Oregon Bar who is also a member of the Washington State Bar Association. Her practice is low risk for malpractice claims because she advises clients on federal regulatory matters, all of which have outside legal counsel with final oversight of work product, and work product are not a function of Oregon state law. Further, as a new lawyer in Oregon, she is struggling to establish a solid client base and keep the business operating. The cost of mandatory malpractice insurance was greater than 10% of her earned income in Oregon in 2018. This is a significant expense when added to the business costs described above, and membership in two state bar associations; a possible deterrent to remaining a solo practitioner, and an actual deterrent to pro bono work.

I can provide the spreadsheets to the BOG for its own review of these data. The data are clear that negative financial effects are realized annually by solo practitioners and small legal firms. This impact increases each year. Further, insurance costs will increase each year. The costs of insurance coverage typically double over 5 years.

As suggested, the impact of rising rates for legal services on the legal services market and ATJ (due to fewer solo practitioners, early retirements, closed practices/displaced attorneys), could be studied while a program of mandatory reporting and disclosure is in place. Monitoring the beneficial and negative effects of a disclosure requirement is a harmless financial impact on solo practitioners. But if mandatory insurance is in place, and my data are valid, there is a significant negative risk to small legal firm culture and ATJ in the state.

Too Many Exemptions. The Task Force states in several places, that “A license to practice law is a privilege, and no lawyer is immune from mistakes.”[5] Lawyers make mistakes. A license to practice law is a privilege, and no lawyer should be immune from his or her responsibility to clients because of those mistakes.”[6] If this is true, then why is this mandate restricted to “lawyers in the private practice of law” and not all lawyers?

I am not being flip. Given the Task Force is correct—Lawyers make mistakes. Then let’s consider prosecutors for example. Then prosecutors make mistakes. Such mistakes harm the public, and this is easy to prove.[7] Settlements between those harmed by prosecutors are significant, and likely paid by taxes which must reduce services in some other part of the government.

The Task Force assumes all lawyers except those in solo practice or small firms have insurance through the organization that hires them. However, if lawyers in Washington must have malpractice insurance, then all lawyers should have to show they, or the organization they work for have such insurance or funds capable to self-insure. Otherwise, if you accept the Task Force’s recommendation then the Task Force and the bar is saying to its members “solo practitioners and small firms make mistakes and only they have to take personal responsibility for their mistakes.”

Improper Statistical Analysis. Many lawyers joke they are lawyers because they are bad at math. Unfortunately, if they are bad at math, they are worse at statistics.

Admittedly, the Task Force did not have funding to conduct its own studies. It relied on the work done, including a book that attempts to summarize a variety of studies about malpractice insurance.[7]

Based on my analysis of some of these statistical studies, many use varying metrics and categories (that is, an “apples-to-apples” data comparison cannot be made). Further, none of the studies relied upon were conducted in Washington State, and therefore, there are no statistics representative of Washington State Bar conditions to make an informed decision about the impact of Washington solo practitioners on malpractice claims. Attempting to use such varied statistical methods without representative data to spot trends or decide may introduce mistakes and errors in the Report conclusions.

For example, it is not clear all studies (or other state bars) define “private practice of law” the same. Using these statistics without proper analysis may lead to faulty decisions.

In addition, in at least one case where the statistics raises a question that should be answered to ensure an informed decision, was ignored by the Task Force. The Report states “Evidence suggests that lawyers with more than ten years of practice produce a disproportionate share of claims.”[8] Rather than examining this point the Task Force makes a conclusion that maybe the fact results from burnout, and moves on.

Insurance attempts to make a party whole long after the wrong has occurred and at a point where, frankly, making someone whole is impossible. The Task Force missed a tremendous opportunity to examine what could be done before the 10-year mark to reduce or eliminate the harm.

You do not just have to take my word for this point. Ms. Inez Petersen has sent the BOG and Mr. Spitzer several messages about such potential statistical analysis errors. Her analysis of the statistical data may be more thorough than my analysis. Although her delivery of her concerns may not be easy to read, I encourage you all to look at Ms. Petersen’s concerns and ensure the statistical analysis supports the decision which the Task Force is recommending.

Further, Ms. Petersen’s comments suggest that there are Bar members skilled in statistical analyses who should have been invited to assist the Task Force with its study. A call-out for such assistance could be made while the Bar is monitoring the effects of mandatory disclosure and studying the impacts of mandatory insurance.

Again, while such a review is being conducted, and consideration into what happens at the 10-year mark is reviewed, mandatory reporting and disclosure could be put in place to protect the public, and then should the analysis support the decision than mandatory insurance could be implemented on a solid foundation of valid decision making.

Conclusion. I hope I have convinced you that although the Task Force worked hard to produce its Report, there are still sufficient unaddressed issues that require a hard

look; supporting the Task Force conclusion is premature and could have irreversible, significant negative financial and ATJ consequences.

Your choice is not to do nothing, or to require mandatory malpractice insurance. Rather, you can take steps that will garner positive results acceptable to all parties including the public and the members. You can require mandatory reporting and disclosure with subsequent WSBA monitoring and study. You can ask for disclosure statement templates be provided to Bar members. You can approve a program of public education to teach people how to hire an attorney and how to work with an attorney to stop harm before it happens. You can work with Bar members to foster law school programs to instruct new lawyers on how to properly manage a solo practice. These measures will help prevent practice issues that insurance coverage will not cure by fostering good will among Bar members and the BOG and between Bar members and the public and improving the practice of law. And you will not cede power over the profession to the insurance industry.

I implore the BOG to take these intermediate steps. You can still take the next step of mandatory insurance requirements in a year or two if adequate, reliable research demonstrate the public remains unprotected by solo practitioners. Finally, if the BOG decides it must recommend mandatory malpractice insurance, please consider putting this to a vote of the membership. This is too critical of an issue with possible negative impacts on members to avoid member input beyond commenting.

Thank you for your time and consideration of this important Bar matter. If I can answer questions, or if you wish to discuss this further, please call me.

Respectfully yours,

Michael Cherry (Bar Number 48132)

(425) 8765-8977

---

[1]See American College of Obstetricians and Gynecologists, "2015 ACOG Ob-Gyn Professional Liability Survey Results," available at https://www.acog.org/About-ACOG/ACOG-Departments/Professional-Liability/2015-Survey-Results?IsMobileSet=false.

[2] See Sharona Hoffman, "Step Therapy: Legal and Ethical Implications of a Cost-Cutting Measure," Case Western Reserve University School of Law, available at https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=3009&context=faculty_publications

[3] Hugh Spitzer, et. al, "Mandatory Malpractice Insurance Task Force Report to the WSBA Board of Governors," 30, February 2019. (The $2,500 per year is taken from the Task Force Report).

[4] *Id.* at 24.

[5] *Id.* at 3

[6] *Id.* at 38.

[7] Mary B. McCord, Douglas Letter, "How Mistakes by State and Local Prosecutors Can Lead to Unfair Trials," The

Washington Post, May 22, 2018, available at https://www.washingtonpost.com/news/posteverything/wp/2018/05/22/how-mistakes-by-state-and-local-prosecutors-can-lead-to-unfair-trials/?noredirect=on&utm_term=.0e802c0c909a.

[8] See generally, Kritzer and Vidmar, "When Lawyers Screw Up, Improving Access to Justice for Malpractice Victims, University of Kansas Press, 2018.

[9] Spitzer *supra*, at 16.

From: weissinger@rockisland.com
To: Mandatory Malpractice Insurance Task Force
Subject: Objection from retired attorney about mandatory malpractice insurance
Date: Wednesday, March 6, 2019 9:26:33 AM

I'm already 11.5 hours in CLE credit toward my reporting which is next due in 2021. But I will certainly surrender my WSBA license to practice if you require I buy mandatory malpractice insurance.

The exemption for pro bono doesn't help. In a typical pro bono case involving litigation (say I'm defending a tenant), I'd say "I'm doing this pro bono, but if the Court awards attorneys fees against the Landlord I'm collecting that for the time I've incurred." But I couldn't do that under the pro bono exemption.

And I should be able to help out a few people here and there if I want to do that, without having to spend a few thousand dollars each year on insurance.

Have you investigated the conflicts of interest of those on the "malpractice insurance task force"? My understanding, for example, is that Mark Johnson is in the business of suing lawyers, and according to what he said in a CLE he taught, he won't take the case against those lawyers without malpractice insurance. It is offensive to me that someone with so clear a monetary interest in the outcome would have been allowed on the task force to begin with.

Sincerely,

William Weissinger
Friday Harbor, WA
360-378-5674

WASHINGTON DEFENDER ASSOCIATION

March 5, 2019

Washington State Bar Association
Mandatory Malpractice Insurance Task Force
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539
VIA EMAIL: insurancetaskforce@wsba.org

Re: Mandatory Malpractice Insurance

Dear Task Force Members:

We write in support of John Ziegler's suggestion that if the WSBA recommends a rule requiring practicing Washington attorneys to carry malpractice insurance, it make an exception for attorneys who do much of their legal work *pro bono*.

Mr. Ziegler provides a great deal of *pro bono* assistance to public defenders throughout Washington. For example, Mr. Ziegler generously shares his tremendous knowledge about the complex case law and statutes that govern writs in Washington. Writs are often the only avenue available to criminal defendants in courts of limited jurisdiction who seek pre-trial review of rulings of the court in which they are charged. Pre-trial review by a higher court can be necessary if, for example, a court of limited jurisdiction sets illegal conditions of pre-trial release from jail or incorrectly requires bail. Mr. Ziegler has shared templates for writs with numerous public defenders and coached them through the legal and procedural hurdles they must navigate before superior courts can consider their arguments. Writs are just one area of the law where Mr. Ziegler has shared his expertise. There are others, including statutory construction, contempt of court, and appellate procedure.

In assisting public defenders *pro bono*, Mr. Ziegler has helped protect the rights of indigent people accused of crimes and improved the quality of criminal defense in Washington. We hope the WSBA will recommend a rule that would allow Mr. Ziegler to continue his important *pro bono* work even though he cannot afford malpractice insurance. It would be a significant loss to the criminal defense bar statewide if he could not continue to share his knowledge and expertise.

Sincerely,

Christie Hedman

Magda Baker

Christie Hedman, Executive Director

Magda Baker, Misdemeanor Resource Attorney

cc: WSBA Board of Governors

March 6, 2019

TO: WSBA Board of Governors

From: Ronald T. Schaps, WSBA#2203

Re: Mandatory Malpractice Insurance Task Force Report

PROPOSED APR 26 (b)(2) and (3)

Proposed APR 26 (b)(2) and (3) deal with exemptions from the malpractice coverage requirements and read as proposed:

> "(2) Employment by a corporation or business entity, including nonprofits:
>
> (3) Employees or independent contractors for a nonprofit legal aid or public defense office that provides insurance to its employees or independent contractors;"

There are two problems with this language.

First, as to subsection (2), there is no explanation or analysis in the Report as to why independent contractors for "a corporation or business entity, including nonprofits" cannot, and should not, also be exempt from the malpractice coverage requirements if the corporation or business entity itself provides insurance covering the independent contractor. There is no logical or rational basis for such a distinction. In each case the independent contractor would have the requisite insurance coverage. There would also not be any additional administrative burden on the WSBA as the independent contractor would certify that he or she is providing legal services only to that entity and that the entity provides insurance.

Second, as to subsection (3), the manner in which it uses the word "or" creates an ambiguity.

It is suggested that the language of proposed APR (b)(2) and (3) be changed to read:

> (2) Employment by a corporation or business entity, including nonprofits, and independent contractors to such an entity when the entity itself provides insurance coverage for the independent contractor;
>
> (3) Employees and independent contractors for a nonprofit legal aid or public defense office that provides insurance coverage for such employee and/or independent contractor.

PROPOSED APR 26 (e)

A review of the Report indicates that the problem is not so much a matter of "collectability" of any judgment, but the fact that in virtually all civil cases (not just malpractice cases) it is difficult for a private plaintiff's attorney to economically handle claims for under $100,000 (or $150,000) particularly if it is likely that the claim will have to be processed al; the way through a trial and possibly an appeal. Note that the Report's own statistics etc. tend to focus on claims under $100,000.

This is where insurance becomes a critical factor. Insurance companies are decidedly "for profit" entities. If a case, no matter how tenuous, will cost $200,000 to defend and defeat but can be settled early for $75,000, the insurance company will want to force a settlement. Such a settlement not only allows the insurance company to save money, but it allows the insurance company to double-dip by using the settlement as a basis for increasing the attorney's premiums. If you think this is an exaggeration, please note the handling of *Schmidt v Coogan* in the article immediately following the task force's interim report in the August 2018 NW Lawyer. That Washington Supreme Court decision involved two separate issues as to the damages that could be recovered in that malpractice case – each of which was considered a major issue of first impression for the court. The plaintiff won one and lost one. There, however, was no discussion in the article on any problem with the "collectability" of the final judgment. Instead the emphasis of the article was that if there had been insurance, the insurance company would have forced a settlement and plaintiff and plaintiff's attorney would have been spared the effort and expense of litigation.

The above discussion provides a background for the fact that a common way malpractice insurance companies force a defendant attorney to consent to a settlement the insurance company wishes to make, even if the defendant attorney feels the claim is legally and/or factually unjustified, is to provide that if the defendant attorney fails to consent, the coverage limits are then reduced to the amount of the proposed settlement. For example, if the coverage limit is $500,000, and the proposed settlement that is rejected is $175,000, then the policy limits immediately and automatically reduced to $175,000 (including defense costs) for that claim.

This raises an issue as to the intent and effect of some language to be added by the proposed APR 26(e):

> "If a lawyer … fails to maintain the coverage required throughout the licensing period, the lawyer may be ordered suspended from the practice of law..."

Under the circumstances described above, where a malpractice insurance company has reduced the coverage for a particular claim below $250,000 because the defendant attorney has refused to consent to a settlement the attorney considered unjustified, has the defendant attorney now violated APR 26(e) and is subject to suspension. In other words, is the WSBA using the coercive powers of its disciplinary system to coerce a defendant attorney to consent to a settlement the attorney feels is legally and/or factually unjustified? If that is not the Board of Governors' intent, I would suggest adding the following language to APR 26 (e):

> Provided, however, an insurance carrier's reduction of coverage limits for a particular claim because the defendant attorney refuses to consent to a proposed settlement shall not constitute a violation of this APR.

<u>ALTERATIVES NOT CONSIDERED IN REPORT</u>

The Report reflects a review of alternatives that other state have already enacted, considered or rejected, but does not attempt to develop or analysis any new approach.

I would repeat a suggestion that I previously made to the task force.

Combine enhanced malpractice insurance disclosures directly to clients with a new form of fund that would simply mimic the collectability potential of the proposed claims made insurance coverage, without getting involved in claims analysis and adjudication, settlements, or extensive administration maters --- such as:

1. Claim must arise from an act of malpractice occurring after the commencement date of the fund.
2. There is no claim if at the time the act of malpractice occurred the attorney had malpractice insurance in an amount of at least $250,000.
3. There is no claim until it has been reduced to a final settlement or a final judgment no longer subject to appeal.
4. For a claim that meets all of the above three criteria, the maximum amount of the claim shall be the LESSER of the amount of the settlement or judgment or $250,000, minus ALL of the following:
    a. The amount of any malpractice insurance coverage less than $250,000 in existence at the time of the act of malpractice; and
    b. All unreimbursed defense costs incurred by the defendant attorney; and
    c. All amounts recoverable from the defendant attorney within 180 days of the settlement or final judgment.

Any amount paid from the fund would be subject to the same terms of collection and/or discipline as exist for the WSBA's current fund for the protection of client assets.

KENNETH J. PEDERSEN
ARBITRATOR · ATTORNEY AT LAW

P.O. BOX 15164, SEATTLE, WA 98115-9998
(425) 202-5835
ken@pedersenadr.com

March 13, 2019

—Via Email Attachment—

William D. Pickett, President
Washington State Bar Association
c/o The Pickett Law Firm
917 Triple Crown Way #100
Yakima, WA 98908
bill@wdpickett-law.com

re: **Representation and Right to Vote on Task Force proposals**

Dear President Pickett,

At the Board's March 7, 2019 meeting, Hugh Spitzer and Doug Ende presented the Mandatory Malpractice Insurance Task Force's report for first reading. A member from Oregon asked Professor Spitzer how many of the Task Force members were engaged in solo practice, and how many carried malpractice insurance. Professor Spitzer huddled with Mr. Ende and then claimed that three of the members were solo practitioners.

That is not correct. In fact, *none* of the Task Force members are actively engaged in the solo private practice of law. I don't know who Professor Spitzer and Mr. Ende counted, but if they included Task Force members Gretchen Gale and Lucy Isaki, both answered "No" to the question in the lawyer directory as to whether they were in private practice, and Ms. Isaki's license status is listed as "Inactive" in the directory. Who the third might be is unclear.

Why does it matter? It matters because the report itself admits that its recommendations will have the greatest impact on solo practitioners. Thus,

> "In Washington State, lawyers in private practice who practice in solo or small firms are most likely to be uninsured. According to 2017 voluntary demographic information reported by Washington lawyers as part of the annual licensing process, approximately 28% of solo practitioners reported being uninsured." (Report, 38.)

The report goes on to state that between 45% to 49% of private practitioners are solo. (Report, 42.) It is unfair that active solo practitioners were completely

unrepresented in a process resulting in recommendations which, if adopted, will have the greatest impact on them as a group. Disenfranchising nearly half the membership in the press for mandatory insurance for all is indefensible.

Second, in its initial report, the Task Force failed to mention that the Bar Association has previously considered the matter of mandatory insurance and submitted it to a membership vote. Only after the period for public comment expired did the Task Force add the following footnote, buried deep in its report to the Governors:

> In the late 1980s, the WSBA previously considered and rejected such a proposal. Specifically, in 1986, the WSBA Board of Governor's considered creating a professional liability fund and system for requiring malpractice insurance, which would have been incorporated into the former Admission to Practice Rules. *Status Report on Malpractice Insurance Coverage and Professional Liability Fund Proposal*, Wash. St. B. News, October 1986, at 27. In December 1986, by a 7-4 vote, the BOG approved the proposal for submission to the Supreme Court, subject to submission of the issue to a referendum of the membership. Carole Grayson, *Washington State Bar Newsline: The Board's Work*, Wash. St. B. News, January 1987, at 29. The membership defeated the referendum by a vote of 6,971 to 1,693. Carole Grayson, *Washington State Bar Newsline: The Board's Work*, Wash. St. B. News, March 1987, at 16. (Report, 70, footnote 218.)

I raised the matter during the Task Force's January 30 meeting, and asked whether they intended to address the subject of a membership vote in their report. Several Task Force members responded that they regarded a vote by the members as inconsistent with their conviction that mandatory insurance was a moral obligation owed to the public. Professor Spitzer summed up the thinking of the group with the remarkable comment that allowing the members of the Bar to vote on the matter of mandatory insurance would be like "appointing the fox to guard the henhouse." Mr. Ende and Governor Bridges stated that the procedural question of a membership vote was outside the Task Force's charter and needn't be referenced in the final report.

Maybe so, but the matter of a membership vote is squarely within the Board of Governor's mandate. If the Governors intend to recommend approval of the Task Force's ill-advised report to the Supreme Court, they must do so only after submission of the issue to a referendum of the membership. The recently-beleaguered but still binding State Bar Act empowers the Board of Governors to provide for matters "affecting in any way whatsoever, the organization and functioning of the state bar," and goes on to state that any new rule must be

approved "by a vote of the active members under rules to be prescribed by the board of governors."[1] Imposing a new rule requiring members to carry malpractice insurance without a vote by active members would therefore be *ultra vires*.[2] The Board of Governors in place in 1986 clearly understood this when they submitted the issue of mandatory insurance to the membership for a vote.

The Task Force shouldn't function as philosopher kings, handing down their moral imperatives to a disenfranchised membership. The Board should reject the Task Force recommendations. If it doesn't though, in order for the insurance mandate to carry any moral or legal suasion, it must be submitted to a vote by the active WSBA membership before submission to the Supreme Court.

Very truly yours,

Kenneth J. Pedersen

cc: WSBA Board of Governors (via email)

KJP/as

---

[1] RCW 2.48.050(7).

[2] The WSBA staff appears to adopt the position that a membership referendum on the Task Force recommendations needn't occur. Following a letter in the January 2019 edition of the *NWLawyer* from Mr. Tom Stahl that is critical of those recommendations, the following note appears, blithely presuming out of existence the voting requirement of the State Bar Act:

> ***WSBA replies**: If the Task Force recommends that Washington lawyers be required to carry malpractice insurance, it would be in the form of a suggested court rule, which, if approved, the Board of Governors would submit to the Washington Supreme Court under General Rule 9. The Court would decide whether to adopt such a rule.*

From:	Todd Buskirk
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Malpractice Insurance - opposition
Date:	Thursday, March 14, 2019 9:22:26 AM

To Whom it May Concern:

I have not had malpractice insurance for some time because of the cost. As a sole practitioner, controlling overhead is paramount.

It is naive to think that compelling attorneys to obtain malpractice insurance will do anything to help with "access to justice."

It is a source of pride, and passion, that over the course of my career, I have become a "go to" attorney for victims of domestic violence who need to get divorced. Almost all of these cases I've done pro bono or at a very, very reduced rate. I've been able to do this because I can control my overhead and am not compelled to pay for products/services (other than taxes) that I don't want, or need, to be part of my overhead.

I can guarantee that if I am compelled to purchase malpractice insurance in order to remain an attorney, my hourly rates will be increased to pay for the imposed cost and I will have to seriously reevaluate my availability to pro bono clients because I will have to focus even more on clients who can afford attorneys.

It's not a complicated analysis: increase cost of business = increased rates. I fail to see how this does anything to increase "access to justice."

--
Todd Buskirk
(360) 792-8638

From: Athan Papailiou
To: Paula Littlewood; Doug Ende
Subject: Fwd: Your Letter to Members of the WSBA and Mandatory Malpractice
Date: Friday, March 15, 2019 2:19:04 PM

Begin forwarded message:

From: Jeff Oster <jeffoster0@gmail.com>
Date: March 15, 2019 at 2:16:49 PM PDT
To: "alecstephensjr@gmail.com" <alecstephensjr@gmail.com>, "Athan.Papailiou@pacificalawgroup.com" <Athan.Papailiou@pacificalawgroup.com>
Subject: Your Letter to Members of the WSBA and Mandatory Malpractice

Dear Sirs,
I've been in California working as a part time in-house contractor this week and have been bombarded with emails about the WSBA that seems to be in crisis mode.

The issue that is driving me crazy is mandatory malpractice. I sent in comments to the task force but they are not listed and seem to have been ignored. My comments were that my practice is so eclectic and unique that there is no malpractice coverage available for my practice. Without going into the details of what I do, it is international intellectual property freedom to operate, patent enforcement defense of invalidity at administrative levels and start up company based. Yet in this field, the insurance companies look at how law firms have traditionally set up their IP practices as either (1) patent prosecution or (2) patent litigation. And yes I can choose either one for coverage, only available on a full time basis. I don't do either and only work part time outside of an in-house role for now. I also don't bill by the hour but am part of national contingency patent enforcement teams, where my role on the team is to work on Patent Office (US and Europe) administrative proceedings for challenging patent claim validity. These are neither patent prosecution nor federal district court litigation. I've done this successfully, never had a claim and even was part of the team, with my usual role on the team, that won the case in Syntrix v. Illumina, the largest patent litigation damage award in Washington history. And I didn't have malpractice insurance. I'm currently on the team for The Scripps Research Institute v. Illumina in the Southern District of Cal, where one of the inventors won a Nobel Prize. These are not off-the-street inventors where the task force seems to be worried about malpractice.

Please stop mandatory malpractice insurance or define "private practice" more narrowly as full time and taking any client. More importantly, couple mandatory insurance with a requirement that insurance policies tailored for actual practices must be available. Require insurance companies to write and tailor insurance policies to unique situations, like mine. Please also investigate if there has been undue influence

and lobbying by insurance carriers who think a windfall is coming. There needs to be much greater regulation of this marketplace if mandatory insurance is required.

No one on the task force looked at the problem of malpractice insurance not fitting a lawyers practice, or requiring mandatory tailored policies so that square pegs like mine are not required to fit into round holes. This is a big problem the task force choose to ignore. Please require the task force to go back and work on this problem, they are creating. Insurance regulatory needs to be coupled to mandatory insurance. Right now, insurance is an impossibility for me, mandatory or not, because appropriate policies do not exist.

Thank you for listening. The task force certainly didn't (my comments sent by email were not on the listed comments page of their website, and the category of no insurance available for a practice was not even noted as an issue or ever considered).

Jeff Oster
WSBA 17709

From: Athan Papailiou
To: Doug Ende
Subject: Fwd:
Date: Friday, March 15, 2019 4:47:31 PM

Begin forwarded message:

> **From:** "Ron Santi" [redacted]
> **Date:** March 15, 2019 at 4:35:53 PM PDT
> **To:** <Athan.Papailiou@pacificalawgroup.com>
>
> Thank you for elucidating some of what the rest of us WSBA members have felt with the hell-bent tumultuous regime and the out of control emails to manage all of us. As a 41 year member I feel betrayed by the rush to mandate what for many of us will be prohibitively expensive insurance. If I don't qualify for exemption I won't be able to last to my 50th anniversary. The way it was rammed through it almost felt like there were some kind of arrangements to make it happen when to date no one has demonstrated a need, let alone one costing around $2000. a year. What happened to a minimalist approach that seems to work fine in states that try it. I would say tumultuous, chaotic, and needlessly stressful describes pretty well what is going on beginning with the 10 emails a week from WSBA.
> -- Ron Santi
> #8817

From: none
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Insurance Comment...
Date: Friday, March 15, 2019 6:28:40 PM

Dear Board of Governors,

I wanted to weigh in on the proposal to require mandatory insurance for all lawyers/members of WSBA. I oppose such a measure primarily for financial reasons. I also feel that there are sufficient safeguards to protect clients and the public. Making insurance mandatory would create a hardship for those lawyers, particularly solo practitioners, who are already struggling to meet existing mandatory annual requirements. The hardship would indeed lead to access to justice issues because practitioners who would normally be pre-disposed to offer pro-bono or moderate means services may be discouraged from doing so.

If this measure is adopted I would like to know when it would be implemented.
Thank you

Bernadette Joseph, WSBA Lawyer/Member

--

From:	Joe Chalverus
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Insurance for Attorneys
Date:	Friday, March 15, 2019 6:34:28 PM

I oppose mandatory insurance.

Should it be required, it should be funded by the State since attorneys are officers of the court, necessary for the well functioning of our society.

Otherwise, Mandatory Insurance will reduce the number of attorneys to only those with a legal practice having earned to afford the insurance.

Many attorneys do not maintain a commercial legal practice. Many attorneys consider their legal efforts contributions to the community and voluntary, part of their duty to society for the privilege of representing and counseling members.

Requiring insurance as a condition for attorneys to serve our community will only reduce the number of attorneys available to the public, a number already scare. Mandatory insurance will make public access to our legal system even more difficult than it already is. I know. I've been part of our neighborhood legal for almost 35 years and hear many complaints about how unaffordable lawyers are.

Many lawyers will not be able to continue these contributions to our society in the event that insurance payments are mandatory.

Sent from my iPhone

Joe Chalverus
13449

From: Mark J. Koslicki
To: Mandatory Malpractice Insurance Task Force
Subject: RE: Mandatory Malpractice Insurance
Date: Saturday, March 16, 2019 8:26:21 PM

Dear Board Members:

I strongly oppose the proposed requirement for mandatory malpractice insurance. Rather, a disclosure statement for engagement letters should be considered.

I will be forced to change from my "active" status if the proposal is adopted as it would be much too costly for me.

The current proposal does not represent the majority of WSBA members and should not be adopted.

The WSBA is in turmoil with the firing of the executive director and the bill to repeal the State Bar Act (Substitute House Bill 1788). Yet, the Board is seriously considering the imposition of mandatory malpractice insurance without a vote of the members. Is this a last-ditch effort to inflict costly requirement onto members and further alienate members before the WSBA is radically changed?

Please reject the proposal for mandatory malpractice insurance.

Sincerely,

Mark J. Koslicki

#31640

From:	Julie Shankland
To:	Doug Ende
Subject:	Fwd: Reply to WSBA Board of Governors update
Date:	Sunday, March 17, 2019 6:26:14 PM

Julie Shankland
General Counsel
Washington State Bar Association

Begin forwarded message:

> **From:** Athan Papailiou <Athan.Papailiou@pacificalawgroup.com>
> **Date:** March 17, 2019 at 6:12:10 PM PDT
> **To:** "Julie Shankland <julies@wsba. org>" <julies@wsba.org>
> **Subject: Fwd: Reply to WSBA Board of Governors update**
>
> Begin forwarded message:
>
> > **From:** milawoff@aol.com
> > **Date:** March 17, 2019 at 11:56:24 AM PDT
> > **To:** Athan.Papailiou@pacificalawgroup.com, alecstephensjr@gmail.com
> > **Subject: Reply to WSBA Board of Governors update**
> >
> > Mr. Papailiou and Mr. Stephens:
> >
> > Thank you for your supplemental report regarding the recent Board of Governors meeting. My Governor, Peter Grabicki, does not send out any notices to me, so all I receive are the general information announcements sent by the Bar.
> >
> > I have heard rumors that Paula Littlewood, the Executive Director of the Bar, met privately with one or more of the justices at the Washington State Supreme Court regarding the efforts of the members of the bar to put the issue of the recent dues increase to a vote. Apparently, as a result of this meeting, an order was signed by the Supreme Court prohibiting the members from voting on the due increase. There has been very little written about this, so I am left in the dark.
> >
> > I have heard rumors about Ms. Littlewood's actions, but without

any factual information, this is nothing more than gossip. Clearly, if the Board voted to terminate Ms. Littlewood, there is something seriously wrong.

With regard to the restructuring of the Bar, do you know if the Bar's attempt to restructure itself is a way to avoid the U.S. Supreme Court's decision in the *Janus* case? There is so much going on behind the scenes and there appears to be so much secrecy that it is nearly impossible to determine what is actually taking place. I am reminded of what an administrative law judge once told me, "They (meaning the government) treat us like mushrooms: they feed us manure and keep us in the dark."

Concerning the task force efforts to require all attorneys to purchase E&O insurance (malpractice insurance), I am gravely concerned because it will lock out many attorneys who are unable to afford to purchase such insurance. Attorneys who work part-time, attorneys who are semi-retired, attorneys who do pro bono work (such as myself) and recent law school graduates who are carrying enormous amounts in student loan debt will likely be unable to afford to purchase such insurance.

By way of background, my husband and I are authors of seven volumes of *Washington Practice*, including four volumes of *Methods of Practice,* two volumes on elder law and one volume on probate law. My time is mainly devoted to research and writing, but I do try to help those who cannot afford to hire an attorney. I don't know if you are aware of how many people are turned away by legal service providers, but every week I receive many calls from individuals who are in dire need of legal representation and have been denied help from every agency they have contacted.

The requirement for attorneys to purchase mandatory insurance appears to be a way to cut down on the competition. Everyone knows that there are too many attorneys being produced by law schools and there are finite number of clients. Eliminating some attorneys will help the large law firms. I view this as a restraint of trade issue.

At one time my husband and I checked on E&O premiums to find out how much we would have to pay if we were to practice on a part-time basis. We were told that attorneys can do just as much damage on a part-time basis as they can on a full-time basis. If this proposal passes, then I would be put in a position that would mean I will have to pay to practice law. This is something I am not willing to do. Although the Bar consistently

and stridently asserts that all attorneys should be doing ***more*** pro bono work, requiring mandatory insurance will surely eliminate a large number of attorneys who are providing such services to the public.

I remember one retired attorney here in Spokane who spent one day each week at the courthouse volunteering to help individuals who were being evicted from the places they lived. He provided a valuable service, both to the public and to the court. He attended the unlawful detainer hearings where the judge who was hearing the cases would ask if the tenant had an attorney. If the answer was no (and it generally was) the judge would tell the person that he or she could meet with the attorney at no charge.

I don't know if you are familiar with the Delphi method, but I have seen this approach used by a large number of governmental agencies. It appears to me that the task force is using this approach. Although the intent of the Delphi method is to utilize experts in order to produce better results, this method can (and frequently is) misused and manipulated by those who wish to reach a predetermined conclusion.

Using the Delphi method, "experts" meet to discuss a situation and exchange ideas. Supposedly, through the exchange of these ideas, some persons in the group will change their minds and come to a consensus. The opinions of persons who are to be impacted are solicited and should be considered as a part of the process.

I am not sure how the members of the task force were selected, but apparently none of them is a solo practitioner. This concerns me. According to the data I have seen, between 45 and 49% of private attorneys in Washington State are solo practitioners. This means that about half of us have been cut out of the decision-making process regarding mandatory malpractice insurance.

Although the task force allowed bar members to submit comments, the task force does not appear to have factored these comments into their analysis in a meaningful manner. This seems to be a classic situation in which the old adage applies, "Don't bother me with the facts--I have my mind made up."

I am also concerned that the Bar may have relationship with the insurance industry which may not have been fully disclosed to the members of the bar or to the public. Full disclosure and

transparency should be mandatory in this matter.

The task force appears to have worked to cut off the membership from having any meaningful say in this matter. I have been an attorney for 35 years and over that period of time I have observed that the Bar has become more secretive, more autocratic, less responsive to the membership and increasingly intolerant of the views of others. There are no longer open discussions of some issues.

There has also been a marked decline in promoting an academic analysis and understanding of the law, and an increase in the Bar's view of political correctness which is constantly imposed on the membership. All of these matters are of significant concern to me because if the views and opinions of some are suppressed, everyone loses because there is no free and open discussion of the issues.

Thank you again for your update. Any additional information you have would be appreciated.

Cheryl C. Mitchell
Attorney at Law
Mitchell Law Office
24 W. Augusta Ave.
Spokane, WA 99205

Phone (509) 327-5181
email: MiLawOff@aol.com

From: Athan Papailiou
To: Doug Ende
Subject: Fwd:
Date: Monday, March 18, 2019 8:56:35 AM

Begin forwarded message:

From: [redacted]
Date: March 17, 2019 at 6:30:55 PM PDT
To: <Athan.Papailiou@pacificalawgroup.com>, <alecstephensjr@gmail.com>

Thanks to both of you for the update and your service to the Bar and justice in our state.

I wanted to comment on a current issue before the Bar. I have practiced in Wenatchee for over 27 years. For most of the last 16 years, I have had full-time non-law jobs and practiced law on a very part-time basis. It allows me to fulfill why I went to law school - to help people in our legal system. Because I don't support myself with the practice of law, I can work for who I want doing the type of law I want to do and can charge nothing or a modest amount. The cost of many legal services and proceedings is financially out of the reach of many people. I do not carry malpractice insurance. I purposely limit my practice to manage potential liability. I fear that the cost of mandatory liability insurance will force me from the practice of law, or at least increase what I charge people, to the detriment of my clients. This proposal will raise the financial burdens people face to obtain legal services in our state. I ask you to oppose this proposal.

thank you again.

Craig Larsen
Attorney at Law
509-421-2116

From: Athan Papailiou
To: Doug Ende
Subject: Fwd: WSBA
Date: Monday, March 18, 2019 8:57:03 AM

Begin forwarded message:

From: Thomas Weissmuller [redacted]
Date: March 16, 2019 at 1:00:28 PM PDT
To: Athan.Papailiou@pacificalawgroup.com, alecstephensjr@gmail.com
Subject: WSBA

Ethan and Alec:

I am distressed by recent WSBA actions and cannot fathom what might be happening at the board level. I live in Rhode Island, own a gym, and practice very little. For the most part, I mediate a handful of matters each year and serve as legal counsel for two emergency management councils located in Washington. My WSBA license is essential because I advise clients outside of my in-house responsibilities. I do not intend to surrender my license, nor should I, given my experience. I do not intend to purchase legal liability insurance unless I decide to take a case that might justify it. I am fully capable of determining when insurance might be necessary to secure my assets; I have professional liability insurance to cover non-law-related claims; and I routinely assess the risk of taking on any legal matter. As a judge, I handled many hundreds of cases and feel comfortable with risk assessments.

The new proposed rule on insurance will more than double the cost of my professional liability insurance - but it will afford me no benefit. While someone might engage me in frivolous litigation, I do not intend to take on a case I cannot handle or cannot afford in the event I were to make some error.

I am disgusted by the notion that I might be disbarred for failing to secure insurance to the WSBA's satisfaction. In anticipation of the possibility, I intend to form a working group to investigate the possibility of a class action suit against the WSBA for overreaching the authority delighted to it under the Bar Act and interfering with every attorney's independent right to contract on any case. The legislature may resolve this issue by repealing the bulk of the act this session, and reducing the WSBA to a social bar. I never thought I would welcome that possibility.

Once upon a time, I was a fan of the WSBA. I worked with the Access to Justice Project and supported many CLE programs as a writer or presenter. Today, I get the impression the board is attempting to weed out sole practitioners in favor of corporate super-firms.

As you can see, the WSBA is not a comfort to me as an attorney. It should be. It has become the subject of wild speculation and distrust. Who is it serving?

I hope you will call me and tell me what is happening. I am happy to speak with you. I hope you will tell me if you support the insurance rule and why you do or do not.

Thank you for any reply.

Kind regards,
Tom

Thomas W. Weissmuller, CJ, Ret.
(860)572-8100
[redacted]

From: Athan Papailiou
To: Doug Ende
Subject: Fwd: March 7 Board of Governors Meeting Update from Your At-Large Governors
Date: Monday, March 18, 2019 8:58:50 AM

Begin forwarded message:

From: john goodall <rugshepherd@hotmail.com>
Date: March 18, 2019 at 5:22:10 AM PDT
To: Athan Papailiou <athan.papailiou@pacificalawgroup.com>, Alec Stephens <alecstephensjr@gmail.com>
Subject: Fw: March 7 Board of Governors Meeting Update from Your At-Large Governors

---

From: john goodall <rugshepherd@hotmail.com>
Sent: Saturday, March 16, 2019 2:12 AM
To: Anthan.Papailiou@pacificlawgroup.com; Alec Stephens
Subject: Re: March 7 Board of Governors Meeting Update from Your At-Large Governors

Dear Mr. Papailiou and Mr. Stephens,
I appreciate hearing your views about the current state of the WSBA.
On the other hand, I could not disagree with you more strongly.
During my forty five years as a member, I have seen the WSBA morph into a bloated self serving organiization that appears to be out of touch with the needs and interests of many of its members.

I fully support the removal of the executive director.
The fact that no explanation or reasons have been given should not obscure the fact that reasons do exist and I am surprised that you have no awareness of them.

The recent shabby handling of the mandatory liability insurance issue is one example.
The so called 'task force' hearings were led and dominated by ALPS Insurance Company, a company that stands to reap millions of dollars from the outcome and a company with whom the WSBA has an ongoing financial relationship.
ALPS is not only 'endorsed' by the WSBA, but they were give a vote on the panel. This is an outrageous confilict of interest.
Not only that , but not a single solo practicioner was allowed to be on the panel.
If you are concerned about 'reasons' for the firing of the executive director, then you should be equally concerned about the lack of 'reasons' given for the conclusions of this task force.

Liability insurance has no bearing whatsoever on my qualifications or ability to practice law and the WSBA has no busiiness making it so.

You should also be aware that some of us believe that members should be allowed to VOTE on such an issue.
If allowing members to have a say by voting is a concept that has become too radical for the WSBA then some massive changes are in order

john goodall
6152

From: Washington State Bar Association <noreply@wsba.org>
Sent: Friday, March 15, 2019 1:01 PM
To: rugshepherd@hotmail.com
Subject: March 7 Board of Governors Meeting Update from Your At-Large Governors

Washington State Bar Association

March 7 Board of Governors Meeting Update from Your At-Large Governors

These are trying times to be a member of the WSBA Board of Governors, and we wanted you to hear our take on what's been happening as a supplement to the meeting overview WSBA recently sent.

Executive Director

As you have probably heard, the Board of Governors voted to terminate the employment of the WSBA's executive director in an executive session in January. All governors were prohibited from reporting the action, which had apparently been planned and orchestrated for some time. We were unaware that the issue would be coming up for a vote. The Personnel Committee (on which we both serve) received no complaints about the executive director's performance, which is where complaints and concerns are supposed to go. No reason has been given for the termination except that WSBA wants to move in a "new direction." There has been no explanation provided by those who supported the decision what that "new direction" looks like, although we and other governors in the minority have asked the question on a number of occasions. The Board of Governors, on advice of counsel, voted again—this time in public session—with the same result (termination) but still without any explanations or reasons. Again without particulars and without basic adherence to the principles of due process, we did not and could not support termination.

The Personnel Committee recommended that the executive director stay on at least through the completion of the Court's Bar Structure Work Group process. She has a great deal of familiarity with the national-level issues causing bars to reevaluate their structures and would have been a tremendous resource at a time when the landscape for the WSBA will certainly be changing. That recommendation was rejected, on the same 9-4 vote by which the executive director was terminated.

An interim executive director will soon be appointed, and the search for a new and permanent executive director probably won't get underway until the Bar Structure Work Group makes its recommendations and the Court issues its directive regarding the status of WSBA. Even though we are troubled with what has taken place, there is reason to believe that the interim appointment will serve to stabilize what has been a tumultuous set of circumstances. We are committed to making things better.

While these may be trying times to serve on the Board of Governors, we are blessed to have a very hardworking and skilled staff who support and serve our members every day. We have been very impressed by their professionalism and dedication.

Investigations

At the last meeting, the board voted to have an investigator review the claims of Governor Dan Bridges, who has written a letter purporting a million-dollar tort claim against WSBA, the entity for

which he currently serves on the governing board. The Supreme Court has also ordered an investigation into staff claims of a hostile work environment, which has allegedly been created by the conduct of the Board of Governors.

Mandatory Malpractice Insurance

The Mandatory Malpractice Insurance Task Force has made its recommendation in favor of requiring attorneys in private practice to carry insurance. Click here to learn more. We will continue to consider this issue, which is scheduled for action in May, when the board will be meeting in Yakima.

Board of Governors Elections

Because Athan's term is expiring, we hope someone who will also champion equity and inclusion as well as access to justice in the legal system will come forward serve in the at-large position. [As the continuing at-large Governor, I, Alec, want to step out of our joint report to express my appreciation to Athan for his hard work and dedication and commitment to diversity in all of its forms, and for advancing issues that serve us all.] It is more important than ever to keep these issues front and center on the Board of Governors. The application filing deadline is April 22, and more information is online. The Board selects among candidates (there is no election). Please reach out to either one of us if you're interested in hearing about our experiences. Recall that at the beginning of this update we stated, "These are trying times to be a member of the WSBA Board of Governors." That should not dissuade you, but encourage you to step forward to share your views and your values in times of trial. Your strength in dealing with issues of diversity and inclusion and fairness and justice is what is always needed. Your voice is essential "in the room where it happens."

As for elections in the open district positions, it is unfortunate that very few members vote in Board of Governors elections, let alone research the candidates. If someone says they support the "new direction," make sure to ask them what that direction looks like—and please let us know! Above all, please vote and be heard.

Questions?

We are always happy to speak with members. Please feel free to reach out if you have questions, concerns, or complaints.

Your Diversity At-Large Governors,

Athan Papailiou
Athan.Papailiou@pacificalawgroup.com
Alec Stephens
alecstephensjr@gmail.com

From: james donohue [redacted]
Sent: Tuesday, March 19, 2019 8:57 AM
To: Mandatory Malpractice Insurance Task Force
Subject: Please DON'T adopt mandatory malpractice insurance

I left the federal bench at the end of February. I hope to engage in some form of limited pro bono practice involving political asylum practice at the SW border. I believe to do so, I must be licensed in some state, so I decided to reactivate my license after 14 years on the bench. This has already cost me about one thousand dollars for the privilege of working for nothing. To add the cost of malpractice insurance will cause me to change Plans. I believe you will be doing a disservice to the public and the poor by adding this requirement.

James P. Donohue
7426

Sent from my iPad

From:	Glenn Slate
To:	Mandatory Malpractice Insurance Task Force
Subject:	comment on mandatory insurance
Date:	Monday, March 25, 2019 9:56:02 AM

I am writing to oppose legal malpractice insurance becoming mandatory in Washington based on my personal experience in Oregon.

Oregon is a mandatory malpractice state and I was a member of the Oregon state bar for many years. I worked as corporate counsel in Oregon for close to a decade. During that time I volunteered in my free time with groups that had historically been denied access to the legal system. I spoke at events, attended legal clinics, and answered general questions but was unable to provide even the most modest legal help to individuals in those communities due to lack of mandatory malpractice insurance.

If the bar is truly committed to increasing access to justice for marginalized groups, then mandatory malpractice is a counter productive proposal. It pushes out of active legal practice those who want to practice for passion and limits legal work to only those who do so for profit.

Glenn Slate
Attorney | Heritage Family law
11105 NE 14th St., Suite 101 | Vancouver, WA 98684
E: [redacted] | **P**: 360-450-2372

From:	Joseph Ellsworth
To:	Mandatory Malpractice Insurance Task Force
Subject:	No on mandatory insurance
Date:	Thursday, March 28, 2019 5:55:09 PM

To whom it may concern,

Your argument that "lack of insurance is fundamentally an access to justice issue" is plain wrong. All lawyers know you can find facts to support any wild arguments. This is a one sided argument based on a leftist belief in the almighty insurance gods. Yes, leftist beliefs are a sort of religion that doesn't require facts or logic just belief.

I have practiced 10 years as a solo patent attorney. I write 3 patents a year and my insurance is more than I make doing my work. I had to drop my malpractice insurance because IP insurance is $9000 a year. I would not have made a cent in 10 years and my clients would be without patent protection if I quit. I have money saved away for any issues I may cause. Almost every patent issue can be resolved with a petition that costs me $1000. So, I keep $5000 in an account and hypothetically, if anything goes abandoned I can immediately petition to have it revived and off we go. (I have never had to do this.)

If I have to buy insurance I will have to quit or make my 5 inventors foot the bill...

Joseph Z. Ellsworth
Patent Attorney
(253) 797-8968
ellsworthpatentlaw.com

From:	Merry Kogut
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Malpractice Insurance
Date:	Friday, March 29, 2019 3:04:33 PM

I am brokenhearted and angry that the task force recommended that an attorney in my shoes would be required to obtain malpractice insurance to keep my license. I hoped I would fall into an exemption.

I have been licensed since 1986. I have not practiced since around 2010 when I got onto Social Security Disability. I have faithfully paid my bar dues and taken CLE's. I answer one or two "quick" legal questions a year - on the order of explaining the different types of Powers of Attorney or explaining what an adult guardianship entails. I have no clients. I keep my license as an honor and a "fall-back" position.

Under the task force's proposal, unless I pay for malpractice insurance, I will be FORCED to go "inactive." Why? I have assets of $1.5 million or more. Why can't I self-insure? Was this option even considred?

I am VERY upset with the WSBA bar, and very, very hurt by your proposal.

Sincerely,
Merry A. Kogut #16153

From: Paul Majkut
To: Mandatory Malpractice Insurance Task Force
Subject: mandatory malpractice insurance
Date: Wednesday, April 3, 2019 12:43:54 AM

WSBA,
I am concerned that your draft rule omits a class of pro bono attorneys who provide advice to environmental non profits, such as the Coalition of Oregon Land Trusts and its Washington member the Columbia Land Trust, that provide malpractice insurance for those attorneys. Exception (5) is limited to qualified legal services providers:
"(5)Volunteer pro bono service for a qualified legal services provider as defined in APR 1(e)(8) that provides insurance to its volunteers. APR1(e)(8) defines "Qualified legal services provider" means a not for profit legal services organization in Washington State whose primary purpose is to provide legal services to low income clients."
Please amend your exception to apply to provision of volunteer pro bono legal services to environmental non profits that provide insurance to its volunteers. On the other hand, if providing advice to environmental nonprofits is not considered "the private practice of law," that would be an acceptable outcome. I have attached your draft rule and my prior correspondence on this issue. Thank you Paul Majkut WSBA #6523 OSBar #872900.

malpractice insurance 4-3-19.docx
(21K)

From:	Steve Cook
To:	Paul Majkut; Mandatory Malpractice Insurance Task Force
Subject:	RE: mandatory malpractice insurance--exception for attorneys working in conservation with coverage
Date:	Wednesday, April 3, 2019 8:45:37 AM
Attachments:	image001.png image002.png image003.png image004.png

---

To the WSBA Insurance Task Force:

I want to second, and strongly support, the comments of Paul Majkut.

I'm the General Counsel for Columbia Land Trust, and a member of both the Washington and Oregon bars. We're a nonprofit conservation organization headquartered in Vancouver, Washington that works in both Washington and Oregon. We have to stretch and leverage resources to accomplish conservation for the benefit of both people and nature, and pro bono services from attorneys, including Mr. Majkut, have been and will continue to be invaluable to us.

This is not a small issue. We have closed roughly 200 projects and have conserved over 40,000 acres, the majority of that in Washington, over the last 20 years. Pro bono work by Mr. Majkut and other volunteer attorneys have made much of that work possible. If you want to get a sense of the work, see our website: www.columbialandtrust.org

Since we work in both Washington and Oregon, we belong to the Coalition of Oregon Land Trusts (COLT) and its counterpart in Washington. COLT operates an innovative pro bono program in which attorneys, including Mr. Majkut, can provide pro bono services to us or other COLT member land trusts for conservation projects in both Washington and Oregon and both the attorney and the land trust, as the client, receive the benefits of malpractice insurance coverage through a policy COLT pays for. At least two other land trusts work in both states and can take advantage of COLT's pro bono program to receive insured pro bono services for Washington projects--Blue Mountain Land Trust, based in Walla Walla, and the Friends of the Columbia Gorge Land Trust.

If the exception is not revised as Mr. Majkut urges, then we and these other land trusts will lose the Washington pro bono services of good attorneys like Mr. Majkut who do not have other malpractice insurance, but who **do** have malpractice insurance through the COLT program. This would lead to an unfortunate result for Washington—conservation projects in Oregon would continue to receive the benefit of these pro bono services, but conservation projects in Washington would not. That would be unfortunate for conservation in Washington, would deny attorneys like Mr. Majkut who would like to donate their legal services for such work in Washington the opportunity to do so, and would be unnecessary, since the COLT program provides malpractice insurance for this work, which is the whole point of the mandatory malpractice rule.

Thanks for considering my concerns. I would be glad to provide additional information.

Steve Cook

Stephen F. Cook | General Counsel

Columbia Land Trust
850 Officers' Row | Vancouver, WA 98661
Direct: (360) 213-1208 | Main: [redacted]
Also in Astoria | Portland | Hood River
www.columbialandtrust.org

From: Paul Majkut [mailto:paulsmajkut@gmail.com]
Sent: Wednesday, April 3, 2019 12:44 AM
To: insurancetaskforce@wsba.org
Subject: mandatory malpractice insurance

WSBA,
I am concerned that your draft rule omits a class of pro bono attorneys who provide advice to environmental non profits, such as the Coalition of Oregon Land Trusts and its Washington member the Columbia Land Trust, that provide malpractice insurance for those attorneys. Exception (5) is limited to qualified legal services providers:
"(5)Volunteer pro bono service for a qualified legal services provider as defined in APR 1(e)(8) that provides insurance to its volunteers. APR1(e)(8) defines "Qualified legal services provider" means a not for profit legal services organization in Washington State whose primary purpose is to provide legal services to low income clients."
Please amend your exception to apply to provision of volunteer pro bono legal services to environmental non profits that provide insurance to its volunteers. On the other hand, if providing advice to environmental nonprofits is not considered "the private practice of law," that would be an acceptable outcome. I have attached your draft rule and my prior correspondence on this issue. Thank you Paul Majkut WSBA #6523 OSBar #872900.
malpractice insurance 4-3-19.docx
(21K)

From:	Chad Hansen
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Malpractice Insurance Task Force - Out of State Exemption
Date:	Thursday, April 11, 2019 12:18:26 PM

I strongly urge the Washington State Bar Association Board of Governors to ignore the Mandatory Malpractice Insurance Task Force's decision not to recommend an exemption for Washington licensed lawyers practicing out of state (Mandatory Malpractice Insurance Task Force, REPORT TO WSBA BOARD OF GOVERNORS, p. 52).

I submitted a comment asking that the taskforce consider such an exemption during the public comment period. Many other attorneys practicing outside Washington did so as well. The taskforce refused to recommend this exemption in their report. Their suggestion that "[i]f a lawyer in private practice is certain that he/she will not practice law in Washington, then that lawyer may wish to reconsider whether it makes sense to maintain an active license in this state" is not well taken.

I was born and raised in Washington State. I went to law school in Washington State. Until meeting my wife out of state, it was my intention to practice law in Washington State. Because of my strong roots in Washington State, I may one day wish to return and practice there. Just because I do not currently have plans to do so, does not make surrendering my law license a workable option. I would gladly switch to inactive status if that were an option, but Washington requires attorneys to maintain active status if they are practicing law out of state.

I work as an attorney in the non-profit sector. It would be untenable for me to maintain malpractice insurance. Not just because it would be cost prohibitive, but because it would not serve a purpose. There is no risk that I will commit malpractice in Washington. If I were to make the decision to practice in Washington, even for a single client/matter, I would then carry malpractice insurance for that purpose and as the WSBA adopts. Writing an exemption that would provide me with this opportunity if it were to arise, would not be difficult. Nor would it create ambiguity. It is certainly a less restrictive option that forcing out of state attorneys to surrender their licenses.

The taskforce worries that it is difficult to define where the practice of law occurs. I argue that the ethical rules assign to me the duty to be vigilant about where I am practicing law and to exhibit honesty if I do in fact find myself practicing in Washington. I would then fall outside of such an exemption for out of state attorneys.

Not creating such an exemption may force experienced attorneys licensed in Washington to follow through on the taskforce's ill-advised recommendation of surrendering their licenses. The institutional diversity and experience of the Washington bar would suffer for it.

I strongly urge the Washington State Bar Association Board of Governors to adopt an exemption to any mandatory malpractice insurance requirement for Washington licensed attorneys practicing solely out of state.

Thank you,

Chad Hansen
WSBA# 52947

From:	Paul Brain
To:	Mandatory Malpractice Insurance Task Force
Subject:	Comment on Mandatory Insurance
Date:	Thursday, April 11, 2019 2:57:49 PM

I have been in practice for 35 years and have never had a claim made. This would be equally true of most of the lawyers I have practiced with over that time period. Why would you want to provide a subsidy to the professional negligence insurance industry at the expense of practitioners like me? I am just going to pass it on in rate and make legal services that much less affordable to the public. I would think it obvious that people who cannot afford legal services are not going to be overly concerned about whether there is malpractice insurance. The end result will only be to limit the availability of legal services to that segment of the public that has a need.

From:	IGC
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Malpractice Insurance comment
Date:	Thursday, April 11, 2019 7:20:54 PM

Dear Sir/Madam,

I would respectfully like to comment that I believe there should be an exemption to the proposed mandatory malpractice insurance requirement for attorneys who may object to insurance on religious grounds.

Sincerely,

Ian Clapp
WSBA #31231

From:	Hugh D. Spitzer
To:	john goodall
Cc:	Doug Ende; Thea Jennings
Subject:	RE: Mandatory Insurance
Date:	Friday, April 12, 2019 6:18:04 AM

Dear John,

Obviously not every experienced lawyer poses a risk! But when you look at the situation overall, you'll see that as a group, having 14% of all lawyers without insurance results in harm to the public. I have practiced law since 1974. I have never encountered even a hint of a malpractice problem. But I still carry insurance. it is possible to make mistakes.

Anyway, I'll pass your comments on to the WSBA staff (who are cc'd here).

Hugh

From: john goodall <rugshepherd@hotmail.com>
Sent: Friday, April 12, 2019 6:10 AM
To: Hugh D. Spitzer <spith@uw.edu>
Subject: Mandatory Insurance

Dear Mr. Spitzer
I've practiced law for nearly 50 years without liability insurance and have followed the rules of professional conduct.
I have had no complaints made against me, and Iam not the only one.

I am dismayed to see that the so called "task force" you were a part of has concluded that lawyers who have been admitted to the WSBA pose a significant risk to the public?
I think this needs to be brought to the attention of the public

I assure you of one thing, if this rule is passed I will not purchase the insurance.
If the WSBA wants to disbar me for that then so be it!

You also appear to have arrived at this conclusion without a providing any of those "supporting facts" we were taught were so important when we were in law school.

john goodall
6152

From: Josh Moultray
To: Mandatory Malpractice Insurance Task Force
Subject: I support mandatory malpractice
Date: Friday, April 12, 2019 3:04:39 PM

I am fully in support of mandatory malpractice insurance though I want to be clear that I also believe the bar should not set up too many rules for insurers, etc. let the market forces operate. Set a minimum level and tie it to inflation, let the market forces act from there.

I support for three reasons:

1. It will lower the cost for everyone by having more people participate and spread out the risk. Also invites more competition if more people are buying.
2. It protects clients—the number who actually ask if we carry insurance is almost nill, consumers should be protected from attorneys making mistakes—almost all reputable attorneys already carry insurance so this is just to make sure those on the fringe get in line.
3. It protects third parties—I had a case where an attorney made so many mistakes that were costly to his clients, to the point where it impacted my client through additional legal fees. The entirety of the case was predicated on his poor advice and his client's actions. By making false and completely baseless claims of racial discrimination by my client and advising his client to vacate a commercial lease early it harmed all parties—he apparently had insurance at one time but by the time any claim would have been ripe he had terminated his policy. That should not happen and left everyone in the case worse off because he was judgment proof.

I would also be curious if the task force is considering changing the rules such that policies are not claims made but occurrence based? Seems to me that requiring tail insurance would be hard (what are you going to do, disbar someone who retired and didn't buy tail insurance?). I suppose the other option would be to create a risk pool and fund it from bar dues that covers all retired lawyers with tail insurance—this would actually be a good use of bar dues. I am more concerned about this than I am insurance on practicing lawyers, quite frankly… the disbarred, resigned, retired lawyer is more likely to have had insurance when the mistake was made and then lapsed by the time a claim is filed--back to the fact that most private attorneys have malpractice already.

I also would find it reasonable that there is an exception for lawyers working either for government or as employees of a single client—no reason for Microsoft lawyers to buy malpractice, just lawyers in private practice—but that should be clearly indicated on their bar card and online directory—this lawyer is licensed but not authorized to engage in the private practice of law at this time—something like that.

Joshua M. Moultray
Partner
Moultray & McMahon, PS
www.Moultray.com
st

11661 SE 1 Street
Suite 201
Bellevue, WA 98005
Phone: 206-777-1435
E-Mail: Josh@Moultray.com

Trusted Advisors of
Business & Real Estate Law

From: Questions
To: Mandatory Malpractice Insurance Task Force
Subject: FW: Mandatory insurance
Date: Monday, April 15, 2019 8:57:52 AM
Attachments: image001.png

Member comment
Matt

Matt Muzio | Service Center Representative
Washington State Bar Association | ☎ 1-800-945-9722 | mattm@wsba.og
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

From: jason H [mailto:jayhatch11@gmail.com]
Sent: Saturday, April 13, 2019 12:05 PM
To: Questions
Subject: Mandatory insurance

Just writing to let you know I will never, ever pay for mandatory insurance, and that I will continue to practice law. Your belief that you can command dollars from my pocket into the pocket of the CEO of a private insurance company shows how little respect you have for the law to begin with. Get ready to sue me next year if you try to maintain this odious and untenable position. All the best.

Jason Hatch 31798

From: BallardLawOffice <ballardlawoffice@gmail.com>
Sent: Friday, March 29, 2019 2:41 PM
To: Mandatory Malpractice Insurance Task Force
Subject: recent E/O renewal and ins hearing content

Hello Doug - You were listed as the contact person for questions like this.

I left the media player running earlier this month, to listen to hearings on mandatory insurance, as I was tending to in-office tidying and replying to correspondence from my E&O carrier.
It sounded like some ball-park numbers were being tossed around w/ a hypothetical new solo atty, and a solo w/ some experience (and a developing coverage tail).
I thought I heard them use numbers in the one thousand range for new solo and numbers in the two thousand range for the experienced solo.

The renewal bid from my carrier was about four thousand - see att.
I wondered if my practice matrix was larded with info that worried the underwriter, so I went back to the spreadsheet breaking down my 2018 activities, and found that
52% of my work fit a **"quasi judicial"** description (arbitrator, mediator, trainer of mediators, hearing officer, etc)
35% was related to **modest (non-taxable) probates** and planning, and the remainder left to assisting family/friends w/ resolution of minor criminal matters, addressed in diversions.

Having access to **CNA's Loss Runs that confirmed no payments were ever made on my behalf**, I thought my micro-practice represented a pretty dull and low risk enterprise - they said otherwise.
Ultimately, I found another carrier at a little over $3k for $1M/1M coverage.

Did I mis-hear the malpractice coverage hearing testimony?
Is my practice **riskier** than I thought?
Are the underwriters Always gonna snow the customer in this **opaque risk-evaluation** process?
Can you identify **"safer" practice areas**?

All respect – David K. Hiscock

Ballard Law Office 206-789-9551
BallardLawOffice@gmail.com
Arbitration/Mediation/Pro Tem scheduling assistance:
https://tinyurl.com/Hiscock-ProTemCalendar

From:	Hugh D. Spitzer
To:	BallardLawOffice
Cc:	Thea Jennings; Rachel Konkler; Doug Ende
Subject:	Re: recent E/O renewal and ins hearing content
Date:	Saturday, March 30, 2019 9:38:50 AM

My impression is that pricing varies significantly among carriers, and it can be opaque. ALPS tells you what the criteria are, but someone ultimately makes judgement calls.

Hugh

From: BallardLawOffice <ballardlawoffice@gmail.com>
Sent: Friday, March 29, 2019 7:08:08 PM
To: Hugh D. Spitzer
Cc: Thea Jennings; Rachel Konkler; Doug Ende
Subject: Re: recent E/O renewal and ins hearing content

Thank you for taking time to respond.
Yes, I am not a new to practice solo.
I have prior acts coverage - a point addressed at about pg 33 or 34 of the report.
I was not looking for a 101 level response, but something to carry back to the broker & underwriter in a pricing experience that appears rather opaque.
Either the testifying witnesses were not entirely candid with the body they testified before (yes, I have some experience hearing witnesses provide half-truths - which is why the oath I administer asks for the Whole Truth)
Or the agent/broker and under writer were counting on an opaque pricing system.
Possibly both.

Yes, I'd welcome a call to bring up things I might not be taking into consideration.
All respect - David K. Hiscock
206-789-9551

On Fri, Mar 29, 2019, 6:50 PM Hugh D. Spitzer [redacted]> wrote:

> Hi, David,
>
> I have chaired the WSBA's Mandatory Malpractice Insurance Task Force, and I wanted to get back to you re your email to Doug Ende.
>
> Attached is a copy of the Task Force Report. There's a discussion on p. 33 et seq. of "typical" costs of ALPS policies for lawyers who are purchasing insurance for the first time. Obviously (and as discussed in the report) the actual premium costs vary depending the type of practice, number of lawyers, etc. So it's hard to know if there's something about your specific practice that causes premiums to be higher than "normal." It might be worth contacting ALPS to see what they would offer. Also, one of the appendices in the report lists all the insurers who write malpractice policies in Washington State. It makes sense to shop around--though I recently purchased a policy when I

semi-retired, and I did it straight through ALPS and it's about $1300. However, I practice on a part-time basis. And I probably purchased higher limits than I need—certainly higher than the minimum 250K/500K our Task Force recommended.

So, you didn't mis-hear. We were discussing what ALPS (the WSBA's sponsored carrier) calculates a "standard" 250/500 police to be for a "typical" newly-insured lawyer.

Hugh

Hugh Spitzer

Professor of Law

[redacted]

206-790-1996 (cell)

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

From:	Athan Papailiou
To:	Doug Ende
Cc:	Julie Shankland
Subject:	FW: Mandatory Liability Insurance
Date:	Monday, April 15, 2019 1:21:06 PM

From: john goodall [mailto:rugshepherd@hotmail.com]
Sent: Monday, April 15, 2019 1:17 PM
Subject: Mandatory Liability Insurance

Dear Governor,

On the advice of one of the mandatory insurance task force members I read all the minutes and the meeting materials.

The first meeting stated that the goal of the Task Force was "to gather more information concerning the correlation between grievances against lawyers and lack of liability insurance". This goal omits any reference to Washington State attorneys, and now that I have read all the materials I can see why.

The only reference to malpractice grievances against Washington State attorneys during the 13 meetings was provided by Mark Johnson during the fourth meeting.
His firm firm represents malpractice plaintiffs but his testimony does not reveal any facts concerning any specific cases regarding Washington State attorneys.
His primary claim, without any reference, was that his firm won't take a malpractice claim against an uninsured attorney. That fact alone apparently ends any further inquiry regarding whether they are or are not "judgment proof".

Likewise, during none of the 13 meetings was a single consumer heard from who had suffered due to malpractice by an uninsured attorney in the State of Washington.
The absence of even a single case of a Washington State legal client who has suffered a loss due to lack of malpractice insurance is a striking omission concerning the relevance of that topic to the determinations that followed.

Kevin Bank addressed the task force the same day as Mark Johnson and he was somewhat more explicit regarding the Client Protection Fund, but he did not touch the "key issue".
The most relevant thing he said is that "the CPS has "no evidence whether any applicants claims (claims of malpractice) were meritorious".

Looking back at the first meeting, the objective of the Task Force was describes as "to identify key issues".
But that term never showed up again in the materials.

So, during 13 meetings, the key issue, "to gather more information concerning the correlation between grievances against lawyers and lack of liability insurance" was mentioned once at the beginning and then abandoned. This is according to the minutes of the very next meeting on May 23.

Those minutes say that the panel "discussed" the "key issue" without offering a reader anything further, nothing else is revealed , such as what was said , or what further evidence, if any , was presented. Not one word .

This is significant because it was at that same May 23 meeting that the task force made a final decision.
They decided that they didnnot need to "gather" any more information.
To quote: "Now is the time to move boldly regarding the demonstrated problem of lawyers who go uninsured".

IE, they said the key issue had already been proven.
The problem I see with this conclusion is the absence of facts showing that the so called "demonstrated problem" has been proven anywhere in the minutes or materials of any of those first four meetings.

What follows, as demonstrated by the minutes, is that the task force meetings where subsequently taken over and dominated by representatives of the ALPS insurance company, the same company that the WSBA has chosen to be their recommended insurance company.

The task force reached its conclusion quickly without spending much time pursuing their stated goal of "gathering and presenting" factual data on the issue of uninsured attorneys, and then essentially turned the remaining meetings over to the insurance industry who was also allowed to cast a vote on an obviously self-serving issue.

In my opinion, more material should have been gathered and then presented to all WSBA members, followed by a Vote, as they did in Idaho.

By not allowing WSBA members to vote on this important issue, but allowing the insurance industry to dominate the proceedings as well as to vote the WSBA has effectively proven that they do not care what members think.
Considering their track record on over riding the votes of members, I am not surprised
Cordially
John Goodall

From:	Gabe Galanda
To:	Mandatory Malpractice Insurance Task Force
Subject:	Fwd: Special Board Meeting on Mandatory Malpractice Insurance April 22
Date:	Tuesday, April 16, 2019 1:42:04 PM

Please take no further Board action until the current mess that is the WSBA is cleaned up.

Gabriel S. Galanda
Galanda Broadman, PLLC
206.300.7801

Begin forwarded message:

> **From:** "Washington State Bar Association" <noreply@wsba.org>
> **Date:** April 16, 2019 at 1:33:34 PM PDT
> **To:** gabe@galandabroadman.com
> **Subject: Special Board Meeting on Mandatory Malpractice Insurance April 22**
> **Reply-To:** noreply@wsba.org
>
> insurance

From: Andre Castillo
To: Mandatory Malpractice Insurance Task Force
Subject: Feedback
Date: Tuesday, April 16, 2019 1:42:27 PM

My quick two cents: I'm a newly admitted solo practitioner attorney, currently admitted to practice in two jurisdictions (via UBE transfer). While it is difficult to break out on my own, I am able to get my start by having a few clients in each state so far. I couldn't do this with mandatory malpractice insurance. My clients are very happy even with me not having it as I am a transactional attorney and they prefer my lower cost services, which is the only way I could get any clients at all. Frankly, if Washington State requires mandatory malpractice insurance, there is a very good chance I will forfeit my bar status in the state, and focus on the jurisdictions I can practice in without it. I do intend to eventually get such insurance, I just can't afford it right now, and it has informed which jurisdictions I am practicing in.

From: Fred Cann
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Tuesday, April 16, 2019 1:45:44 PM

I have been a member of the Oregon State Bar since 1978 and the OSB captive insurer with mandatory coverage has been in existence for almost that entire time.

In my opinion the system works very well and is fairly priced.

I think there is one problem which is universal availability of coverage results in the PLF having some pretty serious loss centers, both as to defense and indemnity, without a way to underwrite out of them, but, that is probably a necessary tradeoff to getting mandatory coverage into place.

One thing that happened when the SUA was in place, and still happens with lawyers who don't have economically viable practices, is that they move their offices just over the state line, for instance, to Vancouver, WA. If your principal office is in Washington (or similarly just over the border in Idaho, Nevada or California), then you are not eligible for PLF coverage, but you can still practice in Oregon, at least as I understand it.

I have an office in Washington and the effect for me is that while I could (I am 65 and I don't need to live or have an office in Portland anymore), I have not made Long Beach either my principal residence or my principal place of business. This is for many reasons but one is because I would have to go into the private market for coverage, although I doubt I would have a problem being underwritten.

I assume all comments are public.

Regards,

Cann Lawyers, a professional corporation
By: Frederic Cann
[redacted] – phone Portland, Oregon
360 642 3108 – phone Long Beach, Washington
503 228 6529 – incoming fax for all offices

Portland: Mail and office: [redacted]
Long Beach - Mail: PO Box F, Long Beach, Washington 98631
Long Beach - Office: 212 Pacific Way North, Long Beach, Washington

From:	Emily Lieberman
To:	Mandatory Malpractice Insurance Task Force
Subject:	mandatory insurance for active but non-practicing lawyers?
Date:	Tuesday, April 16, 2019 1:47:43 PM

Hi, I saw your email that the bar is considering requiring malpractice insurance as a condition of licensing.

I am currently not engaged in the practice of law (I'm not working at all while I stay home with 3 kids)--but I keep my license active because I plan to start working again some year soon. I hope you will exempt non-practicing lawyers from this insurance requirement--otherwise you'll be making it a lot more expensive for a lot of moms to keep their licenses active while we take time out of the workforce to be home with kids.

Thanks for considering this.
Emily

From: Gene DeFelice
To: Mandatory Malpractice Insurance Task Force
Subject: Crazy insanity
Date: Tuesday, April 16, 2019 1:59:07 PM

This is a crazy insane and unfair proposal to have mandatory malpractice insurance.

I am a sole practitioner and most of my work is for free for poor people. I've been a lawyer for 35+ years and am a member of the bar of 5 jurisdictions. None require mandatory malpractice. The application of this requirement to me will result in me not providing any pro bono work for poor people. Nice job control freaks.

Gene DeFelice
#30829

Sent from my iPhone

From: Stanton M. Cole
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Insurance Rates
Date: Tuesday, April 16, 2019 2:03:03 PM

Dear Sir/Madam,

I haven't read the most recent draft of the proposal for mandatory insurance, but I have contacted the WS PA earlier regarding my position. My earlier email stated the following:

I understand the need for mandatory insurance for attorneys, but I think that there are certain exceptions that should be made.

For myself, my practice is limited to probate and simple estate planning which I have done over the last 40 years. As I am semi-retired, I probably put in fewer than 10 hours a week, and I earn less than $10,000 per year. Under these circumstances I feel that mandatory insurance at the cost normally charged for attorneys is unpropitious high food an attorney in my case, Oh that although there are some insurance companies that charge much less for part-time attorneys.

I would like the Board of Governors to take the above into consideration when making a final decision decision on mandatory insurance.

****

If a proposal for mandatory insurance is passed, I would ask, based upon the factors that I have described above, that any limit on insurance coverage for semi-retired attorneys or attorneys practicing in very limited areas, be set at a lower rate, so that those attorneys need not pay the same insurance premiums charged to attorneys practicing full-time.

Thank you.

Respectfully yours,

Stanton M. Cole, WSBA 2161
2826 40th Ave. W.
Seattle, WA 98199
(206) 473-2928

From:	Rick Ockerman
To:	Mandatory Malpractice Insurance Task Force
Subject:	Why I oppose mandatory malpractice insurance
Date:	Tuesday, April 16, 2019 2:05:32 PM

As a sole practitioner who is semi-retired and headed toward retirement in another two years, I simply cannot afford malpractice insurance. Frankly, the real reason many, if not most, carry malpractice insurance is for the defense costs, not for anything that might cover an act of malpractice. Mandatory malpractice insurance would force me to retire earlier than I would like because of the cost, and after nearly 40 years of practicing law (almost 38 in the State of Washington) it seems like a very heartless thing for the Bar to do; to force me out because of the wrongful acts of a few that you want to make sure are "covered".
sincerely,
Frederick H. "Rick" Ockerman
WSBA #12248

From:	Kira Franz
To:	Mandatory Malpractice Insurance Task Force
Subject:	Opposed to mandatory malpractice insurance
Date:	Tuesday, April 16, 2019 2:07:05 PM

Hello to the Board of Governors,

I am opposed to the mandatory insurance requirement.

I have been employed by private entities for many years, and so for purposes of my work, I'll be exempt from the requirement. But I wonder how many attorneys realize that if they are required to be covered to practice outside of work (assuming that is required, which is still unclear to me after reading the published report), they won't be able to help friends and family having a rough legal time.

I volunteer for NWIRP regularly, but most of my non-work-related legal exercise happens when a friend calls me to ask about their unemployment payments, or asks for help for a friend facing eviction, or says that they are being stalked and they don't know what to do or who to turn to.

I don't get any pay for these interactions, but I do help, sometimes going so far as to appear in court with folks who would otherwise be wholly unrepresented. I always tell these friends (and friends of friends) that I don't have malpractice insurance, and that they should know that before I help them.

So now, if malpractice insurance is required of me to help these people, and my bar card is on the line if I go ahead without it, I'm going to have to tell that person whose mom is headed into major surgery without a Power of Attorney that, no, they are going to have to get on a waiting list with the Northwest Justice Project or figure it out on their own using Nolo. Good luck, friend.

If I actually made money practicing law, it would probably make sense for me to pay the $2,000-4,000/year for malpractice insurance, but I don't. But I do like helping my friends and friends of friends when time permits, and the world is a better place when those people don't have to go it alone.

I see that you've made an exception (potentially) for entities like NWIRP, but I see nothing for the person who wants to help their friend or family member with zero intention of getting paid. Do you WANT more people with no recourse to an attorney? Surely not. I realize this looks like a minor issue, but when you consider that NEARLY EVERY attorney is occasionally approached by family and friends looking for help in a crisis, it's not so minor after all.

Thank you,

-Kira

From: John Jensen
To: Mandatory Malpractice Insurance Task Force
Date: Tuesday, April 16, 2019 2:08:19 PM

While I have always carried insurance, I have not seen a need for it in the criminal defense area. We will be doing nothing but making insurance companies more money.

--
John Van Dyke Jensen Attorney-at-Law – Serving TriCities, Walla Walla, and SE WA Region
Office: 7014 West Okanogan Place, Kennewick, WA
Phone: (509) 735-8529
Website: www.JensenLawOffices.com

From: James Headley
To: Mandatory Malpractice Insurance Task Force
Subject: Insurance requirement
Date: Tuesday, April 16, 2019 2:09:21 PM

Dear Members of the Task Force,

As you consider exemptions for requiring malpractice insurance, please consider a few members that may be in my position- I am a tenured full professor with no practice and no clients, though I maintain an active bar membership. Please allow an exemption from the insurance requirement for members in my position. I like keeping an active membership, like keep the door open to one day perhaps practicing again(though unlikely), and don't want to take the bar exam again-

Thank you for your consideration.

Sincerely,

James Headley
WSBA #25178

From: Julie VanDerZanden
To: Mandatory Malpractice Insurance Task Force
Subject: Malpractice input
Date: Tuesday, April 16, 2019 2:19:54 PM

Hello,

I currently have a professional limited liability company through which I contract with companies to provide outsourced General Counsel services. This enables clients to obtain GC services on a part-time or on-demand basis.

For each client, I spend a significant amount of time understanding the business and participating in both legal and business discussions. The legal topics are the typical corporate legal issues.

I would be in favor of exempting this type of work arrangement from requiring professional liability insurance. I see it as being no different than the risks an employer takes when hiring an attorney employee. In that regard, I typically ask to be a named insured person on the client's D&O policy.

If there is any additional information I can provide, please let me know.

Thank you,
Julie VanDerZanden
+1 206-390-4621

From: Robert W. Sealby
To: Mandatory Malpractice Insurance Task Force
Subject: WSBA Insurance Task Force
Date: Tuesday, April 16, 2019 2:31:13 PM

WSBA Insurance Task Force:

Prior to my current legal position, I was in private civil practice for 27 years (and insured every year) and am very familiar with the high cost of malpractice insurance .

I adamantly oppose requiring mandatory malpractice insurance for all members of the WSBA. I would suggest, and support, a WSBA rule that requires a licensed attorney to disclose whether she/he has insurance. A prospective client can then make an informed decision whether to hire an attorney who is not insured.

Sincerely

Robert W. Sealby
Chelan County Deputy Prosecuting Attorney
Civil Division
P.O. Box 2596
Wenatchee, WA 98807
[redacted]

Robert W. Sealby
Chelan County Deputy Prosecuting Attorney
Civil Division
P.O. Box 2596
Wenatchee, WA 98807
[redacted]

From:	Wade Carolyn G
To:	Mandatory Malpractice Insurance Task Force
Cc:	"Zack Mosner"; "rknight@smithalling.com"; "alecstephensjr@gmail.com"; "athan.papailiou@pacificalawgroup.com"; "meservebog@yahoo.com"; "kim@khunterlaw.com"; "jkang@smithfreed.com"; "BHMTollefson@outlook.com"; "pjg@randalldanskin.com"; "kyle.s@millernash.com"; "carla@higginsonbeyer.com"; "Dan@mcbdlaw.com"; "rajeev@northwhatcomlaw.com"; "bill@wdpickett-law.com"
Subject:	Mandatory malpractice insurance
Date:	Tuesday, April 16, 2019 2:31:39 PM

I note that I am employed by a governmental agency and am exempt from the Oregon mandatory malpractice rule and will probably be exempt from any Washington rule as well. Nonetheless, as a member of the bar, I have an interest in its operations and compliance with constitutional limitations on restrictions of one's freedom of contract. The last time the membership voted on the concept, in 1986, it was defeated by a vote of 6,971 to 1,693. In 2016, the BOG apparently thought that 5,000 members didn't know what they were talking about, and started another workgroup designed to lead to this taskforce.

My first question about mandatory malpractice insurance is "**What problem is this rule intended to solve?**" The question isn't "Might it be a good idea for most full-time lawyers to have malpractice insurance?" which I think is the question driving the Bar, it asks if there is a recognizable problem that requires the Bar to FORCE (essentially) ALL LAWYERS to spend upwards of $3,000 per year each to retain the right, beyond their bar dues, to practice law AT ALL.

I suggest that this is an elephant gun being used to kill a mosquito. Lawyers in the large firms already have malpractice insurance, because it **is** a good idea. The Task Force itself notes that uninsured lawyers themselves constitute only 14% of Washington attorneys. Mandatory insurance will not only require that 14% to acquire insurance, it will dictate the **amount** of insurance the other 86% must carry.

Although the presentations we are receiving are full-speed ahead, suggesting that it's only common sense to impose a requirement that all lawyers be insured , it takes some digging to learn that ONLY THREE STATES require any form of malpractice insurance. Only Idaho, Oregon, and Illinois have any requirement, and the Illinois requirement is a practice-management approach, which requires those lawyers who choose not to carry insurance to undergo an on-line practice management assessment that also provides four hours of CLE credit—and if they pass, they are not required to carry insurance.

Has anyone considered the constitutional implications of such a restriction of the freedom to contract? Does not a client have a right to contract with lawyers whose rates may be lower because they choose not to purchase malpractice insurance?

The BOG does not have a roving imperative to do good. GR 12.1 sets out the purposes of the bar. Not knowing exactly what problem this rule is intended to solve—indeed, believing that there IS NO PROBLEM, just a general idea that it would be a good idea for most lawyers to have insurance—I found it difficult to identify a particular goal listed in GR 12.1(a) that is advanced by imposing an obligation on every single lawyer in private practice to purchase insurance, regardless of its appropriateness for the business model. I wonder if doing so even falls within the list of specific

activities authorized, but THERE IS NO ALLOWED ACTIVITY that describes imposing such a burden on every lawyer.

So with no particular problem that needs solving, no purpose of the bar association that is served, and no specific authorized activity permitting the restriction of one's freedom of contract, why have so many hours of time been spent chasing a goal that more than 80% of the lawyers who voted on the question last time rejected?

Carolyn G. Wade | Civil Enforcement | Civil Recovery
Senior Assistant Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(541) 686-7846 Eugene (primarily)
[redacted] Salem (Mondays, usually)

From:	Connaughton Law Office
To:	Mandatory Malpractice Insurance Task Force
Subject:	mandatory malpractice
Date:	Tuesday, April 16, 2019 2:34:19 PM

There are people such as myself who may be retiring from regular practice in a few years that would like to keep the license. How is this situation being dealt with? I would not want to pay a $3000 plus bill for insurance I should or would not need.

Connaughton Law Office
connlawoffice@gmail.com
509.249.0080
509.469.8836 fx

From:	TRACY GILROY
To:	rajeev@northwhatcomlaw.com
Cc:	Mandatory Malpractice Insurance Task Force
Subject:	Opinions of limits.
Date:	Tuesday, April 16, 2019 2:43:01 PM

Rajeev,

Been trying to reach you. I k ow you are busy. So here's the scoop:

Insurance and Dispute Resolution Ideas

1. Has it been demonstrated that there is need to require malpractice insurance?

If so, what was that demonstration?

2. The suggested limits of the required insurance are higher than may be necessary.
What is the basis for such amounts?
Wouldn't 100/300 cover most claims that the bar seeks to protect?

The insurance companies should be consulted as to the mean, median and mode of purchased liability amounts.

Did the Bar consider Self-Insurance?

I believe in having insurance, but requiring lawyers to have it may be counterproductive and creating expenses that are unnecessary to practicing lawyers.

3. Could the Bar achieve the same goals, e.g. protecting the public, by just acknowledging (with a designation) the attorneys who are insured.
Alerting the public that way seems best.

4. If the bar is going to have mandatory coverage, will the Bar negotiate coverage options for the group? And require carriers to have hotlines for advice?

5. Also, other state bars provide for Complaint Dispute Resolution via mediation and arbitration for legal fee disputes and for ethics complaints.
Does WSBA provide that service? If not, I will be glad to advise having been quite active in Missouri Bar's.

Let me know how I can help.

Tracy Gilroy
THE GILROY LAW FIRM
Stanwood, Washington
[redacted]
Sent from my iPhone

From: Robert Leen
To: Mandatory Malpractice Insurance Task Force
Subject: If your going to require malpractice ins
Date: Tuesday, April 16, 2019 2:49:40 PM

Self insure.

From: Daniel Clark
To: Mandatory Malpractice Insurance Task Force
Cc: NWLawyer
Subject: Mandatory Malpractice Insurance for Licensing
Date: Tuesday, April 16, 2019 2:54:26 PM

I have been retired from active practice for several years, but still maintain my license in order to do pro bono legal work on occasion, including petitions for remission of LFOs for clients of the Exit Homelessness Program I have organized and coordinate in Walla Walla, as well as some civil liberties work. During this period, I have never charged a fee for my work on behalf of a variety of nonprofits and low-income individuals, and I don't intend to in the future. Implementing the proposed mandatory insurance requirement would make it difficult for me to continue providing this community service as the profession, the association, and the community would like me to do.

At the very least, any such requirement should exempt licensed attorneys who charge no fees for their services.

Thanks for taking this into consideration.

Best wishes,
Dan

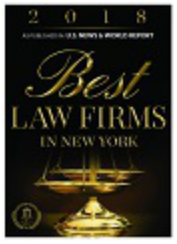
Daniel N. Clark
PO Box 1222
Walla Walla WA 99362
clarkdn@charter.net
509-522-0399

From:	Barbara Hoffman
To:	Mandatory Malpractice Insurance Task Force
Subject:	mandatory insurance
Date:	Tuesday, April 16, 2019 2:56:26 PM
Attachments:	image002.png

I am admitted to the Washington and new York state bar and have practiced more than forty years. I have never had a malpractice claim. I rarely practice in washington but have brought two lawsuits which wre settled in the past six years. mandatory insurance would ne financially prohibitive for me. it would mean I would have to give up my license unless exempt while out of state I maintain and meet cle requirements. New York does not require such insurance.

Sincerely yours,

Barbara T. Hoffman, Esq.
The Hoffman Law Firm
330 W. 72nd Street
New York, NY 10023
Tel: 212.873.6200
Fax: 212.974.7245
artlaw@hoffmanlaw.org
www.hoffmanlawfirm.org



Selected to Super Lawyers: 2010-2017; Blouin Art + Auction Power 2016: 51 High Wattage Women in the Art World

From:	Martin Rollins
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory malpractice insurance?
Date:	Tuesday, April 16, 2019 2:57:48 PM

Good afternoon task force members.

I am requesting an exemption from the proposed mandatory malpractice insurance for the following reason. I am a licensed attorney but I don't actively practice. I am retired from county prosecutor's office practice. The only reason I maintain my license is in the off chance that I am hired in a law office in the future.

Until then, because I do not actively practice law and because I don't have any clients, I respectfully request an exemption from any proposed mandatory malpractice insurance requirement in circumstances such as mine.

Thank you for your time in this important matter.

Regards,
Martin D Rollins
WSBA #14676

From:	Patricia Halsell
To:	Mandatory Malpractice Insurance Task Force
Subject:	mandatory malpractice insurance
Date:	Tuesday, April 16, 2019 3:02:13 PM
Importance:	High

Dear Board of Governors,

Although I have changed careers to become a full-time artist, I choose to maintain an active bar license as a financial security blanket. I have not actively practiced law since 2011, but may need to accept an occasional doc review job in slow periods when I haven't sold a painting for a while.

Besides the psychological security blanket of keeping my license active, I worked hard to obtain my law degree and license, am proud of this accomplishment, so do not wish to give it up.

It would be unfair to make someone like me maintain professional malpractice insurance when I'm not directly serving clients, and the current system we've always had in place adequately addresses my circumstances, by providing a place on the license renewal form to declare that one is not currently servicing clients and doesn't maintain an IOLTA account, etc.

It's enough of a financial hardship for me to pay the annual dues to keep active a license that I'm not currently using. Yet, in this uncertain economy, I feel it would be imprudent for me to not keep my license active. Please do not put another financial burden on me by requiring that I also maintain malpractice insurance.

Thank you for your consideration.

Patricia Halsell
WSBA #14032
[redacted]
www.PatriciaHalsell.com

www.Instagram.com/pathalsell

From: Wes [redacted] Hensley
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Mal practice insurance Comment
Date: Tuesday, April 16, 2019 3:07:03 PM

Greetings:

My name is Earl W. Hensley III. WSBA # 12137. Mandatory Mal Practice Insurance is a bad idea. On the surface it is designed to protect the consumer. But in reality it only makes the insurance companies rich and puts the consumer at more risk.

Mal Practice comes from sloppy work on the part of the attorney. If the attorney is risking his or her own fortune, indeed his or her own livelihood then one would expect them to exercise great care and thus reduce their exposure. In the end it will be the insurance company that determines who may and may not practice law. No coverage offered at a honestly reasonable rate = no practice.

I would expect that the WSBA would be as effective in policing the rate structure for insurance coverage as it has been in controlling the fees charged for CLE credits.

Big firms would be able to "self insure" but I doubt that would be offered to small or solo practices and that would of course result in fewer small and solo firms. That of course would result in all of those wonderful "socially beneficial" programs wilting away. Never happen you say. Look at the medical field. Doctors associate with huge medical corporations because they cannot afford the costs of medical malpractice.

Perhaps the answer is to require legal malpractice for certain ares of practice like S&E, tax law, or patents & copyright law. Thank you for considering my comments. Respectfully submitted, E.W. "Wes" Hensley WSBA 12137

From: MICHAEL GOLDENKRANZ
To: Mandatory Malpractice Insurance Task Force
Subject: Re: Special Board Meeting on Mandatory Malpractice Insurance April 22
Date: Tuesday, April 16, 2019 3:14:14 PM

Yes, to mandatory price effective malpractice for attorneys, other than in house, volunteer, emeritus, retired,

or others that should be exempt or self insured by their organization. The options and prices should be very competitive,

> Special Board Meeting on Mandatory Malpractice Insurance April 22On April 16, 2019 at 1:33 PM Washington State Bar Association <noreply@wsba.org> wrote:

Washington State Bar Association

All members are invited to provide direct feedback to the WSBA Board of Governors about the Mandatory Malpractice Insurance Task Force Report recommending malpractice insurance as a condition of licensing, possible exemptions, or anything else regarding the report during a special board meeting from **1-5 p.m. Monday, Apr. 22**, at the WSBA Conference Center. **Participant call in: 1-877-331-7677**. No access code is needed. Callers will be greeted by an operator and placed into the conference call. Check the board's webpage the day of the meeting to view a live webcast. Members are also invited to submit supporting materials or more information to insurancetaskforce@wsba.org. The board will possibly take action at its meeting in May on whether to require mandatory malpractice insurance for lawyers, with specified exemptions, as a condition of licensing.

WSBA seal

Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539 | Map
Toll-free: 800-945-9722
Local: 206-443-9722

From:	Marnee Milner
To:	Mandatory Malpractice Insurance Task Force
Subject:	feedback on this issue
Date:	Tuesday, April 16, 2019 3:38:43 PM

To Whom it May Concern:

I am a member in good standing of the WA Bar but do not practice law. I am a forensic psychologist and my practice consists of evaluation work. If required to purchase malpractice insurance simply to hold an active Bar License then I will need to switch to inactive status - which would decrease the amount of revenue from me to the WSBA.

If you are to require malpractice then I urge you to have a caveat for those of us who have an active license but do not practice.

Thank you,
Dr. Marnee Milner

Marnee W. Milner, J.D., Ph.D.
Licensed Psychologist
Forensic and Clinical Psychology/Neuropsychology

PHYSICAL ADDRESS
Milner Evaluation and Consultation Services, INC
[redacted]

MAILING ADDRESS
Milner Evaluation and Consultation Services, INC
4742 42nd Ave SW, #410
Seattle, Washington 98116
Tel: 206.548.4709
[redacted]
www.drmarneemilner.com

From:	Douglas Scott
To:	Mandatory Malpractice Insurance Task Force
Subject:	mandatory malpractice
Date:	Tuesday, April 16, 2019 3:38:52 PM

Dear Task Force,
I have been practicing law in Washington for over 42 years and have had malpractice insurance as far back as I can remember. I participated at a previous call-in session on this issue conducted by the WSB. Prior to my call being heard I listened to several callers and they were ALL opposed to mandatory malpractice. My call was in favor of the current system of indicating whether the attorney was insured on their WSB profile.

Therefore, I am opposed to making it mandatory, and at the very least believe that the issue should be voted on by the entire Bar members. In the event that it becomes mandatory, then here are some, but not all, of the exceptions that need to be carved out:
1. If no longer involved in the practice of law, but still licensed and acting as an attorney for a family member, such as in traffic or collection matters.
2. If still covered by malpractice tail coverage.
3. If practicing only part time.
4. If a Judge, Judge pro-tem, mediator or arbitrator.

Truly,

DOUGLAS W. SCOTT
Rainier Legal Advocates|LLC

Eastside Office
465 Rainier Blvd. N., Suite C | Issaquah, Washington 98027 | 425.392.8550 (tel) | 425.392.2829 (fax)

Seattle Office
[redacted]

www.rainieradvocates.com f/k/a
www.davisscottlaw.com

From:	Zachary Wright
To:	Mandatory Malpractice Insurance Task Force
Subject:	Comment Regarding Mandatory Malpractice Insurance
Date:	Tuesday, April 16, 2019 3:54:25 PM

Dear Board of Governors:

I am writing to comment on the proposal for mandatory malpractice insurance. While I have had malpractice insurance continuously since admission and generally support the concept to require it, I do have one concern.

The concern is around affordability after a lawyer has unfortunately had a claim or a bar complaint. Certainly, malpractice insurance is reasonably affordable if you have no claims or bar complaints. But I have heard of instances where, after a firm has had even one malpractice claim, the annual malpractice insurance premiums are in the $35,000-$100,000 range, even for a firm of two lawyers. This may not always be affordable.

As far as I can see, the February 2019 Task Force report does not properly address this issue. For example, all of the pricing examples on pages 33-34 of the report regarding affordability cover firms with no claims or bar complaints. How much is it with one claim that resulted from, say, a staff member who made a docketing error? What about a bar complaint, even if it was dismissed? I bet the premium increase is massive. And the discussion of the issue buried on page 51 basically says "well, we haven't heard of problems in Idaho," without any further specifics at all.

At a minimum, the Bar needs to have in the public record what the average insurance premiums really are for lawyers with claims and/or discipline, before it requires insurance for them to keep working.

My suggestion would be either: (1) a cap on the premium that insurance companies can charge (this is essentially what Oregon has for their insurance pool, i.e. everyone pays the same); or (2) an "affordability" or "hardship" exception to the mandatory malpractice insurance requirement. Perhaps a lawyer would be able to obtain relief from the requirement if he/she submitted, say, three quotes from insurance companies, all of which exceeded some hefty price level, and also submitted an affidavit that he or she could not afford the premium given the current state of the lawyer's practice.

We should not be handing private insurance companies control over whether or not a lawyer can continue to practice in Washington. Nor should we be disciplining -- or even disbarring -- good lawyers simply because they had, say, a staff member who made an error, and then they cannot pay whatever massive amount their insurance company demands at the next renewal. No one benefits from that.

Thank you for consideration of these comments.

Sincerely,

Zack Wright
WSBA Bar No. 28714

Zachary A. Wright
Wright Law PLLC
701 Fifth Avenue, Suite 4200
Seattle, Washington 98104
Direct Phone: [redacted]

Main Office Phone: 206-971-3350
Facsimile: 206-577-5099
Email: zwright@wright.pro

From:	Rich Greiner
To:	Mandatory Malpractice Insurance Task Force
Subject:	perspective of a mature lawyer
Date:	Tuesday, April 16, 2019 4:08:39 PM

Greetings; although it sounds like this is a done deal and that the task force is merely going through the motions of permitting input into a done deal, I would like to render a perspective of a 65 year old who has practiced since l983. I work three days a month, mostly maintaining estate plans for existing clients; however there is occasionally a new Will or powers of attorney for a new client. I consider my practice to be very low impact and safe from the client's perspective. I enjoy the practice of law at this level and have very happy clients and fill a niche in my community.

As I read the proposed amendment, I would be required to have malpractice insurance at the same level and same costs as a full time practitioner, most likely at the same cost. I understand that with my choice of part-time there come consequences, but do not see anywhere in the articles that I have read any by the task force of a true grasp of consequences to the community. It seems to be the attitude of the task force that I probably should not be practicing if I do not choose to buy into the kool aid that the task force is mandating.

I have recently talked with at least 20 other lawyers, fine gentlemen and ladies, that I have come to know over the years in the practice of law. We are all of the opinion that the proposal is designed to squeeze us part -timers out and will in fact squeeze us out of practicing law. This is too bad because it does affect the community. As part-timers we are able to offer our services at a lesser price than someone who is full time, due to our reduced overhead; one major component of which is malpractice premiums. I can represent that most of us will simply no longer practice, thus denying the community of a value service and denying the WSBA of our contribution to it's top line.

What bothers us most is that the task force is not being honest with the legal community or public. If the true intent is to protect the public then the public should be given options to make the decision of whom they want to deal with.

One suggestion is to require an attorney who chooses to not have malpractice insurance clearly notify at the onset of representation any potential client of the lack of insurance. This should be in writing and signed by both the client and the attorney. This would give the client the option of hiring whom they wanted, rather than restrict the client's options.

Again, I suspect this will fall upon deaf ears, but it is worthy of consideration.

Thank you. Richard Greiner – WSBA 13230

From: Shannon Underwood
To: Mandatory Malpractice Insurance Task Force
Subject: Opposition to malpractice insurance
Date: Tuesday, April 16, 2019 5:35:23 PM

Task Force, I am a solo practitioner. Though I generally limit my work to my own real estate development firm, I will occasionally advise a friend on legal matters within my area of expertise. I've also done significant pro bono work. If this malpractice requirement is approved, I intend to give up my license.

This proposal seems short sighted and I think it will hurt many of those most in need of low cost or free legal services.

Best regards,

M. Shannon Underwood
[redacted]
Bar No 20087

Sent from my iPad

From: Kathleen Holt
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory malpractice
Date: Tuesday, April 16, 2019 5:37:17 PM

Greetings,

I am licensed in WA and CT. I have practiced Medicare public interest law in CT for the past five years, but maintain active bar membership in WA as I practiced in WA for over twenty years. My CT office maintains CT malpractice insurance although no IOLTA since we do not typically charge to help individuals and when we do it is post service delivery.

If required to carry malpractice insurance in WA, I will no longer remain an active member of the bar, although I wish to maintain membership in the event I would practice again in WA in the future. Thank you for consideration of out of state active bar members.

Sincerely,
Kathleen Unger Holt
WSBA#23,843

From: Joel Gilman
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory malpractice insurance
Date: Tuesday, April 16, 2019 6:18:27 PM

Dear Task Force,

I am absolutely opposed to mandatory malpractice insurance for Washington attorneys.

The report reads like marketing literature from the malpractice insurance industry. It appears to rely only on "anecdotal evidence" of the problems arising from the 14% of WSBA members who do not carry such insurance. Surely you can do better than "anecdotal evidence" if you are going to impose yet another mandatory cost on all lawyers.

Idaho and Oregon are the only other states in the US that require malpractice insurance. Oregon does so under the authority of state legislation. Oregon also provides insurance through the bar association. The report discourages this approach, extolling the virtues of the "free market" approach as used in Idaho.

So on the basis of one other state, Idaho, the report now recommends Washington require all attorneys to have malpractice insurance, and to impose this requirement without authorization from the state legislature, and to require lawyers to seek out such insurance from the "free market".

It sounds like another feel-good public relations exercise that will be paid for by members. The beneficiary will be the insurance industry, not law clients. Frankly, I am surprised that the Board of Governors would even consider doing this without a vote of the members and/or state legislation.

At the very least, please hold off on this decision until after the restructure project is complete. Imposing mandatory malpractice insurance raises serious anti-trust issues.

Regards,

Joel Gilman
13322

From: Ted Gathe
To: Mandatory Malpractice Insurance Task Force
Subject: mandatory malpractice insurance issue
Date: Tuesday, April 16, 2019 6:40:29 PM

I strongly suggest the WSBA Board of Governor's get their own house in order before making any further major policy decisions. The pending bill in the State Legislature is further evidence of that.

Theodore H. Gathe
WSBA 5632

From: Ron Phillips
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory insurance requirement
Date: Tuesday, April 16, 2019 7:02:32 PM

Dear fellow counselors,

As a part time practitioner I definitely support some degree of mandatory insurance for lawyers, however the current proposed one-size-fits-all minimum policy caps doesn't make sense where the attorney is not a full time attorney. This would definitely impact e.g. largely-pro-bono practitioner handling cases part time.

I hope you will consider this in your discussions.

Respectfully,

Ron Phillips
Wsba 44605
Wisbar 1051311

From:	Ron Santi
To:	Mandatory Malpractice Insurance Task Force
Subject:	thoughts on insurance
Date:	Tuesday, April 16, 2019 7:03:25 PM

The Bar could charge every attorney $100 annually which would generate about $2,500,000 that the Bar could use all or part of to buy a pool policy of say $50,000,000 covering all attorneys. Not only would this be much less oppressive than having to buy individual coverage, but would insure the adequacy of coverage. Only a handful of attorneys generate any claims in an entire career so the rest should not be punished with burdensome mandates. Mandatory expensive insurance seems like a remedy in search of an ailment. It will certainly up the depression factor for many of our colleagues.
--Ron Santi
#8817

From: edwin.b.sterner@gmail.com
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory malpractice insurance - April 22 special hearing
Date: Tuesday, April 16, 2019 7:03:39 PM

I strongly believe that mandatory disclosure (maybe even disclosing whether or not you have a net worth over $XXXX which might be whatever the mandatory minimum insurance coverage would be) rather than mandatory insurance is the way to go.

So this feedback does not get labeled in the "unclear position" category, let me be clear. I oppose mandatory insurance. Here is why.

I have plenty of net worth to make it worth suing me. However, in the one time someone was looking at the possibility of suing me, when he learned I did not have insurance, so it would not be some "faceless" deep pocket covering the litigation costs and any resulting judgment or, more likely, a deep pocket to do the "calculation" and just write a check to make the matter go away, since he knew the the case had no real merit and I would fight it, that disappeared.

If someone commits real malpractice and there is merit to the case, that attorney should be sued whether or not he/she has insurance and most attorney's would be good for a meritorious claim of fairly good size even if it might be a bit painful to come up with the money.

I have the feeling that insurance simply justifies the bringing of unjustified malpractice actions on the "bet" the insurance company will write a check rather than go to the expense to defend. That definitely would have been the case in my one experience.

If someone chooses not to sue merely because the attorney does not have malpractice insurance, then that is a strong indication that they do not really think such a suit is justified. If they think the suit is justified, insurance should have nothing to do with it.

All of my clients know very clearly that I do not carry malpractice insurance and as a result I can charge them less than I otherwise would. All mandatory insurance will do is cause my clients to pay more for something they are not interested in paying for.

Sincerely,
Edwin B. Sterner
WSBA No. 9420

From:	Bree Hamilton
To:	Mandatory Malpractice Insurance Task Force
Subject:	Opinion on mandatory malpractice ins.
Date:	Tuesday, April 16, 2019 7:06:46 PM

Good evening:

I just wanted to provide some feedback on Washington State Bar's decision about malpractice insurance.

While I can see how it protects clients against attorneys who make reckless mistakes, I still think it should be optional.

I believe such a requirement is cost prohibitive and that if an attorney can't afford the cost, or if they were for some reason denied coverage under an open market, then the private insurance companies are the ones deciding who gets to practice law instead of the State bar.

It would also be logical to assume that if insurance is indeed mandatory, then the number of claims would likely increase.

I do hope it remains optional.

Breann Hamilton Cortes, Esq.

From:	Steve G
To:	Mandatory Malpractice Insurance Task Force
Subject:	Opposition to mandatory insurance
Date:	Tuesday, April 16, 2019 7:39:17 PM

I have no personal stake in this, as I've been a government lawyer for most of my career. But, I'd like to add my voice to the "no" votes on this issue. If the Bar wants to mandate something related to this issue, it should require attorneys to inform potential clients in writing whether they do or don't have insurance.

--
Steve Gross
Port Townsend, WA

From: Ioana Hyde
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Wednesday, April 17, 2019 12:46:33 AM

Dear Sir or Madam:

I am a WSBA member in active status practising US immigration law outside the USA in the United Kingdom.

With regards to the proposed mandatory malpractice insurance for WSBA members, kindly please be aware that US attorneys practising outside the USA have extremely limited options for malpractice insurance. To the best of my knowledge, there is only one provider for non-US based attorneys which is Complete Equity Markets, Inc. I will enclose the contact details for them at the bottom of this email.

To the extent that WSBA adopts minimum requirements for malpractice insurance for members, I would urge WSBA to either provide an exemption for non-US based attorneys or otherwise ensure that Complete Equity Markets offers insurance products meeting the minimum requirements.

Thank you in advance for your consideration.

Sincerely,
Ioana Hyde
WSBA#37079

Complete Equity Markets, Inc.

[redacted]

Ioana Hyde | Attorney At Law

+44 (0)208 611 2826 www.ailawoffice.com

88 Wood Street, 10th Floor, London EC2V 7RS
United Kingdom

From:	George Purdy
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory malpractice insurance is LONG OVERDUE
Date:	Wednesday, April 17, 2019 3:48:22 AM
Attachments:	image001.png

George A. Purdy

999 Third Avenue, Suite 2525, Seattle, WA 98104
Telephone (206)382-2600 | [redacted]
www.sksp.com

From:	Wendell Dyck
To:	Mandatory Malpractice Insurance Task Force
Subject:	mandatory malpractice insurance
Date:	Wednesday, April 17, 2019 7:12:41 AM

There needs to be an exemption for those of us who aren't quite ready to go inactive, but who aren't actually practicing law.

Wendell Dyck

massage for seattle inc.

206.660.9139

From: Patrick Vane
To: Mandatory Malpractice Insurance Task Force
Subject: NO ON MANDATORY MALPRACTICE INSURANCE.
Date: Wednesday, April 17, 2019 8:29:14 AM

The board should put this question to a direct vote of the members who will be most affected by this proposed effort.

Mandatory insurance amounts to an unwanted tax on an already over taxed membership. WSBA annual dues are too high already. The WSBA does almost nothing for its members except publish a magazine which contains articles which mostly congratulate themselves on their fancy dinners and various “board meetings” and which look like boondoggles designed to pat themselves in their own backs.

In over 30 years of law practice I’ve never had a claim filed or a even bar complaint. So why should I have to pay for malpractice insurance I don’t want or need.

The WSBA has fallen victim to the lobbyists and scavengers of the insurance industry who are looking to make a buck on premiums.

How much of the WSBA budget has been spent so far trying to get this passed and imposed on a membership which does not need or want mandatory insurance?

How much money has been spent by the insurance companies to provide “studies” to the WSBA who no doubt are rubbing their hands together anticipating all those premiums being paid?

Forget the Board deciding on this bogus issue. Put this issue to a direct vote by the members it affects most and stop spending our dues on expensive studies and meetings for something most members don’t want.

Surely you have better things to do with our money and your time, like improving the pro-bono system for indigent clients or developing a meaningful solution to the homelessness crisis gripping our state..

Patrick Vane
WSBA # 8006
Sent from my iPhone

From: Beth Picardo
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Insurance comments
Date: Wednesday, April 17, 2019 8:46:07 AM

When considering exemptions to any mandatory insurance requirement, please consider those of us who continue to maintain our licenses but do not actively practice. There should be a specific exemption for those of us in that category.

Beth Picardo

From:	Patrick Vane
To:	Mandatory Malpractice Insurance Task Force
Subject:	Exemption for experienced lawyers who have never had a claim filed against them.
Date:	Wednesday, April 17, 2019 9:14:39 AM

Here's a simple suggestion:

If the purpose of MP insurance is the protect the public from lawyers who make mistakes, why not have an exemption from mandatory coverage for lawyers who have never had a claim filed against them for malpractice.

I've been practicing for 35 years.

There has never been a claim filed against me for MP.

I've demonstrated by my 35 years of actual claim free practice that I am at no risk of malpractice by the best measure possible: A perfect 35 year no claim record.

Lawyers like me, who have a 35 year perfect record of no claims, present no risk to the public.

Why can't such a lawyer be exempt?

I recommend that a simple exemption be inserted into the rule, should one be adopted, that lawyers who present no threat to the public because they can demonstrate a perfect "no claim" record for a designated number of years, be exempt from any mandatory MP requirement.

Patrick Vane
WSBA # 9006

Sent from my iPhone

From:	Richard Peyser
To:	Mandatory Malpractice Insurance Task Force
Subject:	comment
Date:	Wednesday, April 17, 2019 9:14:52 AM

I am a retired lawyer who keep up bar membership in case I want to go back to practice one day. The bar should not require malpractice insurance from active members who are not actively practicing. This would be an extrememe hardship. best regards Richard Peyser

From:	Pilar Tirado Murray
To:	Mandatory Malpractice Insurance Task Force
Subject:	Comment on proposed, mandatory malpractice insurance
Date:	Wednesday, April 17, 2019 10:55:15 AM

I practice primarily in New Mexico, but maintain my bar membership in the states of Washington and New York. As a solo practitioner, Class of 1995, University of Puget Sound/Seattle University SOL, with a primarily criminal defense practice, I let my malpractice insurance coverage lapse after 20 + years in February of this year. Despite practicing in three states I have never had a claim, the continuing expense is better spent on improving office technology with encryption software, and coverage for the bulk of my practice is provided through my contract with the New Mexico Law Office of the Public Defender.

For the occasional employment, personal injury or civil rights case that I choose to accept, I post notice in my office advising my clients that I am self-insured. This meets the requirements of the NMBA and I trust, will meet WSBA's as well.

Thank you.

Pilar Tirado Murray
Murray Law Firm
[redacted]
P.O. Box 26085
Albuquerque, NM 87125
T: (575) 779-7054/ F: (575) 613-7270
Graduate, Gerry Spence Trial Lawyers' College (2006)
Admitted in Washington, New York and New Mexico

From: jean schiedler-brown
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Liability Insurance
Date: Wednesday, April 17, 2019 11:38:06 AM

I have practiced for 40 years ,and carried malpractice insurance since shortly after starting my own practice in the 1980's. I also assisted the City of Seattle to re-write its regulatory code for occupations during the 1970's.

The debate about requiring insurance balances the interest of the public and the rights of business people. Occupations that require malpractice insurance have traditionally done so to discourage competition, since it increases the start-up costs of new, younger members of the occupation. On the other hand, in some occupations, like taxi drivers, collisions are so common that any regulatory scheme will require insurance to protect customers.

How often are there violations by lawyers that will result in a valid malpractice claim? While the likelihood of finding counsel to represent a person in a motor vehicle collision is high, I submit that the likelihood of finding counsel to spearhead a malpractice litigation is low. That is because of the difficulties in proof, the need for expensive expert testimony, the fervent defense that most lawyers will present for their license, and the legal elements that create a need to essentially "try a case within a case". I wonder if it would serve the public more to expand what the Bar has now--a client relief fund. If Bar members could be assessed the expense of buying insurance whether they want to or not, then they could be assessed the expense of contributing more to a client relief fund whether they want to or not.

Second question: How many practicing lawyers do not have insurance? If almost everyone has insurance, then the impact on the profession of requiring it would not be great in any event.

I do not have this data. I assume the committee has it. I would guess, however, that more relief to clients and faster relief, results from a relief fund than a universal insurance requirement. If that is so, then the function of insurance is only to reduce competition from new entries into the professional practice.

Thanks for listening,

Jean Schiedler-Brown, Attorney at Law
Law Offices of Jean Schiedler-Brown and Assoc.
606 post avenue, Suite 103
Seattle, WA 98104
206 223-1888
FAX 206 622 4911

From: Jonathan Parramore
To: Mandatory Malpractice Insurance Task Force
Subject: Opposed to Mandatory Malpractice Insurance
Date: Wednesday, April 17, 2019 10:41:45 AM

Good Morning,

I'm writing to echo many of my fellow attorneys opposing mandatory malpractice insurance. The modern practice of law is too varied impose a blanket rule like the one proposed. Additionally, I agree with another commenter that a rule of this magnitude must be put to a vote of the members.

Jonathan Parramore | Data Scientist II

o: [redacted]

e: [redacted]

Avalara | Tax compliance done right

From: mpmillen@aol.com
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory insurance
Date: Wednesday, April 17, 2019 10:26:05 AM

I oppose mandatory insurance. The only rule that should exist is that an attorney must disclose in writing to each client whether do or do not have insurance.

Please oppose his rule, as it will only drive up the cost of legal services.

From:	Paul Kanter
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Malpractice Insurance
Date:	Wednesday, April 17, 2019 1:08:52 PM

I am an out of state member with an active license in Washington . I am in private practice in California with no clients in Washington. I keep an active license in Washington because some day I may move to Portland and it will make me more marketable to be licensed in Washington as well as Oregon.

If an attorney could go inactive and then activate at any time in the future, then I would do that. It would save me a great deal of money. However, Washington does (or at least may) require passing the bar exam if you have been in inactive status of more than three years. That is not an acceptable option for me.

The task force report states that it considered, but rejected, an exemption for attorneys in private practice who do not practice law in Washington. It states that if an attorney is in that position he or she should consider whether he or she needs to be licensed at all.

The obvious response to that comment is my situation which I assume is not unique. I have the active license so that if I move to Portland I can practice in Washington as well as Oregon. I already pay a significant fee for that privilege. I pay the active dues and comply with all CLE requirements. It makes no sense to require me to comply with malpractice insurance requirements to keep an active license that will only be needed if and when I move to Portland.

The report states that it may be difficult to determine whether someone is practicing law in Washington. It may be that for some people there are grey areas (for the most part that would be transactional work that involves Washington residents), but there are no grey areas for attorneys like myself. I can say with 100% certainty that I do not practice law in Washington.

Oregon has a box on its dues that makes me certify that I do not practice law in Oregon a majority of the time. Washington can similarly require that attorneys certify they do not practice law in Washington. If an attorney so certifies but that is not true, I assume that could be the basis for discipline.

I just wish convey to the WSBA that it would be unjustifiable burden to require attorneys who do not practice at all in Washington to obtain malpractice insurance. For me, it would almost certainly mean going inactive and losing the ability to practice in Washington without taking the bar examination.

I appreciate the WSBA's consideration of this comment.

Paul Kanter
WSBA #35194.

From:	Toby Thaler
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory malpractice is bad for low income public interest attorneys
Date:	Wednesday, April 17, 2019 2:41:19 PM

I have been engaged in public interest law for over 40 years. See https://www.linkedin.com/in/tobythaler/

When I was at legal services I had malpractice coverage. However, when working for individual clients and non-law firm non-profits, I have never had coverage.

In my experience the type of legal work I do does not warrant malpractice coverage. The type of cases I handle rarely involve matters with a potential for errors that would result in monetary harm.

I did look into getting coverage a few years ago. The premiums were ridiculously high.

I suggest that the system you have in place for attorneys who steal from clients (Client Protection Fund) could be extended to compensate for clearly proven instances of harm caused by malpractice. I would gladly pay a modest increase in bar dues for such a program.

--
Toby Thaler, WSBA 8318
PO Box 1188
Seattle, WA 98111-1188
206 697-4043

From:	Kenneth Coleman
To:	Mandatory Malpractice Insurance Task Force; Tony Russo
Subject:	RE: Mandatory Malpractice Insurance
Date:	Thursday, April 18, 2019 11:49:13 AM

I am a solo practitioner nearing the end of my career. I do not accept or carry any cases independently, and currently only act as co-counsel (i.e. second chair) on four medical malpractice cases. I am a physician as well which makes my participation helpful on these medical malpractice cases.

The cost of mandatory malpractice insurance would be prohibitive for me and would force me to not participate on these cases, which would be to the detriment of the clients.

Further, a requirement for malpractice insurance reduces the number of attorneys available to the public and therefore falsely assumes that the public is better served. Therefore, the arguments in favor of mandatory malpractice insurance are one-sided and ignore the adverse effects of such a requirement.

Sincerely,

Kenneth H. Coleman, M.D., J.D.

From:	Gerald Steel
To:	Mandatory Malpractice Insurance Task Force
Subject:	WSBA Board of Governors Should Not Support a Requirement for Mandatory Malpractice Insurance
Date:	Thursday, April 18, 2019 6:56:24 PM
Attachments:	4-18-19 League Letter to WSBA Board of Governors for 4-22-19 Meeting.pdf

Board of Governors:

Please find attached the 4-18-19 League Letter to the WSBA Board of Governors for the 4-22-19 Meeting. I will not otherwise participate in the meeting but ask that all Board Members review the attached letter.

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

GERALD STEEL, PE
ATTORNEY-AT-LAW
7303 YOUNG ROAD NW
OLYMPIA, WA 98502
Tel/fax (360) 867-1166

April 18, 2019 Sent by email to: insurancetaskforce@wsba.org

WSBA Board of Governors
1325 Fourth Ave., Ste. 600
Seattle, WA 98101

Re: April 22 Board Meeting: WSBA Board of Governors Should Not Support a Requirement for Mandatory Malpractice Insurance

Dear Governors,

I submit this letter on behalf of my Client, Attorneys for Access to Justice League ("League"). We request that this Board not send the 2/2019 Draft Revised APR 26 to the Supreme Court for adoption. The Mandatory Malpractice Insurance Task Force ("Task Force") Report ("Report") does not have sufficient evidence or analysis to justify the Report's recommendation.

The Report at 3 concludes, "Lack of malpractice insurance is, fundamentally, an *access-to-justice* issue." But the Report does not adequately address the more significant "*access-to-justice*" issue caused by mandatory malpractice insurance. The Report at 20, Note 110 cites to a December 18, 2018 NORC Survey ("Survey") for the State Bar of California. This Survey found 28% of the general public would not support a law requiring mandatory malpractice insurance for attorneys if it would raise hourly attorney fees by $10.[1] This additional cost will prevent "*access-to-justice*" for people who cannot afford this additional cost. On March 27, 2019, the California Bar Board of Trustees sent a letter to the California Supreme Court that includes this analysis:

> One of the principal arguments against mandatory malpractice insurance is that it would impose an unnecessary financial burden. This financial burden could negatively impact access to justice for the low income population that requires legal services, since low/pro bono lawyers might reduce provision of those services or might have to increase their fees to cover the cost of insurance. These claims were supported in a presentation made to the MIWG[2] by San Joaquin School of Law Professor Andrew Kucera. Professor Kucera discussed his "Practice 99" course, which provides practice management guidance for law students who wish to serve clients with incomes that preclude them from eligibility for pro bono services, but who cannot afford to hire attorneys at prevailing hourly rates (the"99%"). Professor Kucera includes malpractice insurance

1 http://www.calbar.ca.gov/Portals/0/documents/reports/Malpractice-Insurance-Report_Summary_and_Supreme-Court-Cover-Letter.pdf at 16 and 42.

2 Malpractice Insurance Working Group established by the California Bar Board of Trustees.

among the expenses that may be unnecessary and can therefore be eliminated, thereby reducing practice costs.[3]

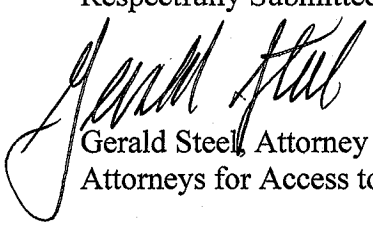
Mandatory malpractice insurance will primarily impact uninsured sole practitioners whose focus is serving low income clients (and it will impact their clients). None of the Task Force members are uninsured sole practitioners. Pages 61 and 62 of the Report list 21 people on the Task Force. Only 9 are active attorneys in private practice (Spitzer, Bachofner, Bridges, Grabicki, Masters, McCauley, Pierce, Pinkham, and Startzel). None of these attorneys are uninsured and most are not sole practitioners. In our opinion, this Task Force does not have representation from those attorneys who will be most impacted by the proposed rule and does not have adequate information concerning the interests of these attorneys' clients. This Board should not recommend mandatory insurance.

The Report at 7 admits that the Task Force was not funded to be able to get professional services of "independent consultants and data analysts." This is not acceptable. The Report at 11 states that in 2017, 2,752 lawyers in private practice were uninsured. At a minimum, all Washington lawyers in private practice should be surveyed and they should be encouraged to contact some of their clients to find out if their clients would want to pay higher hourly fees for malpractice insurance. We believe that their clients would rather minimize their costs to be able to keep some legal services.

There are only two (OR and ID) out of 50 states that are said to have any mandatory malpractice insurance. Only one state requires practitioners to have private insurance (ID). When the federal government mandated health insurance, the price of this insurance skyrocketed. The price for Washington attorney malpractice insurance is also likely to skyrocket if the Supreme Court mandates attorney malpractice insurance. This Board should not recommend such mandatory insurance.

It is understandable that the Task Force is recommending mandatory insurance. All attorneys in private practice on the Task Force have insurance and so they naturally, being competitive, would want all other attorneys to have such insurance. These Task Force attorneys appear to be more interested in getting malpractice suits against currently uninsured attorneys rather than protecting attorney-access to low-income people who need low-fee attorneys. Mandatory insurance defeats "*access-to-justice*" more than it benefits "*access-to-justice*" and so mandatory insurance should be rejected. More information must be collected before any mandatory insurance can be approved. We ask this Board to not recommend any rule that requires mandatory insurance. Other options used by other states should be given greater consideration to provide more protection to the public.

Respectfully Submitted,



Gerald Steel, Attorney
Attorneys for Access to Justice League

---

3 Same cite as for Note 1 at 16-17.

From: [redacted]
To: Mandatory Malpractice Insurance Task Force
Subject: RE: April 22, 2019 Special WSBA Board Meeting on Mandatory Malpractice Insurance
Date: Thursday, April 18, 2019 9:27:49 PM

TO : WSBA Insurance Task Force
WSBA Board of Governors

RE: April 22, 2019 Special WSBA Board Meeting on Mandatory Malpractice Insurance

Thank you for the opportunity to provide input on this matter actively considered by the WSBA Board of Governors.

I write from the perspective of a WSBA attorney member (from District 2) who is retired , and who does not practise law . I sincerely hope that the Committee/Board consider granting exemption to this category of attorney members.

The programs of WSBA and other institutions are intellectually enriching. I have enjoyed these opportunities to be informed in the diverse, evolving role of law in society and in civilisations in the world.

If mandatory malpractice requirement without exemption for retired attorney members comes into effect, I will have to reluctantly consider resigning from WSBA. I hope this does not happen.

Sincerely,

Annie Wong Daly

WSBA attorney member (District 2)