

**MANDATORY MALPRACTICE INSURANCE TASK FORCE**

**AGENDA**

March 28, 2018

1:00 p.m.

Conference Call: 1-866-577-9294; Code: 52824#

**AGENDA**

1. Call to Order and Preliminary Matters
  - a. Approval of February 21, 2018 minutes
2. Research and Analysis on Uninsured Lawyers and Public Protection Options – Professor Leslie C. Levin, University of Connecticut School of Law
3. Illinois State Bar Presentation on Practice Management Based Regulation – Jerry Larkin, Attorney Register & Disciplinary Commission Administrator, Illinois State Bar
4. Nevada Mandatory Malpractice Insurance Initiative Presentation – Gene Leverty, President, State Bar of Nevada
5. WSBA Regulatory Services Department Presentation on Member Demographics – Jean McElroy, Chief Regulatory Counsel, WSBA

**MEETING MATERIALS**

- A. Draft February 21, 2018 Minutes (pp. 167-170)
- B. Leslie C. Levin, *Lawyers Going Bare and Clients Going Blind*, 68 Fla. L. Rev. 1281 (2016). (pp. 171-224)
- C. Supreme Court of Illinois Press Release, January 25, 2017 (pp. 225-227)
- D. Draft Petition Before the Supreme Court of the State of Nevada in the Matter of Amendments to Supreme Court Rule 79 regarding professional liability insurance for attorneys engaged in private practice (pp. 228-301)
- E. Nevada Lawyer article “Join the Discussion: Whether Malpractice Insurance Should Be Mandatory for Nevada Attorneys” by Robert Horne and Jennifer Smith (pp. 302-305)
- F. WSBA Membership Statistics, updated March 1, 2018 (pp. 306-308)



A.

Draft February 21, 2018  
Minutes

**MANDATORY MALPRACTICE INSURANCE TASK FORCE**

**MEETING MINUTES**

**February 21, 2018**

Members present were Chair Hugh Spitzer, Stan Bastian (by phone), Christy Carpenter, Gretchen Gale (by phone), P.J. Grabicki (by phone), Mark Johnson (by phone), Rob Karl, Kara Masters (by phone), Evan McCauley (by phone), Brad Ogura, Suzanne Pierce, Brooke Pinkham, Todd Startzel, Stephanie Wilson, and Annie Yu. Members John Bachofner, Dan Bridges, and Lucy Isaki were excused.

Also present were Carol Bernick (Chief Executive Officer of the Oregon State Bar), Doug Ende (WSBA Staff Liaison), Thea Jennings (Office of Disciplinary Counsel Disciplinary Program Administrator), Rachel Konkler (Office of Disciplinary Counsel Legal Administrative Assistant), Diane Minnich (Executive Director of the Idaho State Bar), Chris Newbold (Executive Vice President, ALPS), and Sara Niegowski (WSBA Chief Communications and Outreach Officer).

The meeting was called to order at 1:00 p.m.

**A. MINUTES**

The minutes of the January 24, 2018 meeting were approved by consensus.

**B. PRESENTATION BY CAROL BERNICK, CHIEF EXECUTIVE OFFICER, OREGON PROFESSIONAL LIABILITY FUND**

Carol Bernick, Chief Executive Officer of the Oregon State Bar Professional Liability Fund (PLF), presented a history and overview of the PLF. The PLF was created in 1977 for the purposes offering Oregon State Bar (OSB) members low cost insurance and meaningful access to preventive and education services for risk management. The PLF was established through legislative enactment to create a shared risk pool to ease the difficulty in obtaining insurance, which at the time was scarce and expensive. The PLF is an independently managed subdivision of the OSB governed by a Board of Directors appointed by the OSB Board of Governors. Under the PLF program, all licensed Oregon lawyers engaged in private practice with a principal office in Oregon who are not otherwise exempt must participate. Each participating lawyer pays the same flat-rate annual assessment of \$3,500 for coverage of \$300,000 per claim/\$300,000 aggregate, with optional excess coverage and no deductibles. Coverage also includes \$50,000 of expenses (principally costs of representation). The PLF is a shared risk pool, with no underwriting of the individual participants. The program covers lawyers, and not law firms. Both lawyers and firms are free to arrange for excess coverage on the open market. The amount of the assessment has remained the same for seven consecutive years, both through management of risk and favorable returns on investments. The annual assessment is reduced



for new lawyers in their first three years of practice. The PLF has high favorability ratings among the OSB membership and is seen as a resource for lawyers facing problems. The PLF emphasizes loss prevention through legal education, publications, and practice aids, as well as funding of the Oregon Attorney Assistance Program and a practice management advisor program. Ms. Bernick noted that the PLF was originally created 30 years ago as a service for lawyers (rather than clients) because of difficulties that attorneys had obtaining malpractice insurance at that time. At the same time, the PLF provides distinct benefits to clients and the public as well. Ms. Bernick also observed that very few claims reach the \$300,000 maximum.

### **C. DISCUSSION OF COMMENTS SNAPSHOT**

Thea Jennings provided a snapshot of the common themes found in comments submitted by WSBA members for the Task Force's consideration. While the substance of many of the comments were subject to some interpretation, the themes presented reflected the main issues that WSBA members raised regarding whether a mandatory malpractice insurance rule should be adopted. The themes presented were as follows:

1. Cost – commentator expressed concern about costs;
2. Idea for exemption – commentator suggested one or more specific exemptions;
3. Needs more information – commentator needed more information;
4. Not engaged in private practice – commentator not engaged in private practice;
5. Public protection – commentator raised issues of public protection;
6. Reputation of the profession – commentator noted possible impact of imposing malpractice insurance on the public's perception of the profession;
7. Retired/semi-retired/retiring – commentator noted possible impact of imposing malpractice insurance on retirees;
8. Uninsurable – commentator indicated he or she is unable to obtain insurance; and
9. Other – comment could not easily be categorized, was an inquiry, or presented multiple issues for consideration.

The Task Force reviewed a summary of the distribution of comments among themes. These themes will be updated as the Task Force receives additional feedback.

### **D. PRESENTATION BY DIANE MINNICH, EXECUTIVE DIRECTOR, IDAHO STATE BAR**

Diane Minnich, Executive Director of the Idaho State Bar, provided a history and overview of the Idaho State Bar's adoption and implementation of its malpractice coverage requirement. Malpractice insurance in Idaho was adopted in Idaho without creation of a formal task force or vetting committee. Rather, the Idaho State Bar's then-president proposed a rule change to implement mandatory malpractice insurance, which was submitted to the Idaho State Bar's membership for a vote in 2016. The measure won by a slim majority of 51% to 49%. Following membership approval, the Idaho Supreme Court adopted the proposed rule with an effective

date of January 1, 2018. Under the new requirements, actively licensed lawyers who represent private clients must report coverage annually and provide proof of minimum coverage of \$100,000 per claim/\$300,000 aggregate. Idaho lawyers may purchase insurance from any provider they wish on the free market. The rule purposely provides for no hardship exemptions.

Idaho is currently in the final stages of implementing its first licensing season with mandatory malpractice insurance. Ms. Minnich stated that this new regulatory scheme has required a large time commitment from staff and extensive Bar resources to implement. As of February 1, 2018, less than 10 lawyers had failed to submit their proof of coverage. Ms. Minnich stated that so far no lawyer has been categorically unable obtain insurance. Although some have expressed concern about the cost, no premium quoted has exceeded \$3,500. Some lawyers have indicated that the requirement will affect their decision to retire from practice.

#### **E. COMMUNICATIONS UPDATE**

Chief Communications Officer Sara Niegowski presented communication strategies for the Task Force to consider when communicating with members and the public about the topic of mandatory malpractice insurance. WSBA Communications staff has begun efforts to inform the membership of the Board of Governors' discussions about mandatory malpractice insurance and the Task Force's work. Communications efforts by staff have included circulating information via publications, such as *NWLawyer* and *Take Note*, and by distributing a one-page informational sheet on the Task Force's work at WSBA events. Ms. Niegowski emphasized that the next steps of a communications strategy should be to focus on targeted information gathering rather than generalized "What do you think" inquires.

#### **F. NEXT STEPS**

Chief Regulatory Counsel Jean McElroy is expected to attend the next Task Force meeting and provide an overview of membership demographics and statistics on lawyers in private practice who carry malpractice insurance in Washington. Task Force members also discussed reaching out to states with more stringent malpractice insurance disclosure requirements.

#### **G. ADJOURNMENT**

The meeting adjourned at 4:00 p.m.

B.

Leslie C. Levin, *Lawyers  
Going Bare and Clients Going  
Blind*, 68 Fla. L. Rev. 1281  
(2016).

September 2016

## Lawyers Going Bare and Clients Going Blind

Leslie C. Levin

Follow this and additional works at: <http://scholarship.law.ufl.edu/flr>

 Part of the [Legal Ethics and Professional Responsibility Commons](#)

---

### Recommended Citation

Leslie C. Levin, *Lawyers Going Bare and Clients Going Blind*, 68 Fla. L. Rev. 1281 (2016).

Available at: <http://scholarship.law.ufl.edu/flr/vol68/iss5/2>

This Article is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Law Review by an authorized editor of UF Law Scholarship Repository. For more information, please contact [averyle@law.ufl.edu](mailto:averyle@law.ufl.edu), [kaleita@law.ufl.edu](mailto:kaleita@law.ufl.edu).

## LAWYERS GOING BARE AND CLIENTS GOING BLIND

*Leslie C. Levin* \*

### Abstract

Many U.S. lawyers “go bare” and represent clients without maintaining malpractice insurance. Efforts to require these lawyers to carry lawyer professional liability (LPL) insurance have mostly foundered, due to bar opposition and concerns about the cost of insurance. As a compromise between protecting the public and protecting lawyers’ interests, many states now require lawyers to disclose whether they carry LPL insurance to clients, regulators, or both. This Article draws on survey data from Arizona, Connecticut and New Mexico lawyers that shed light on which lawyers go bare and the reasons why they do so. The Article then looks at states’ insurance disclosure requirements and assesses how well they achieve their primary purpose of public protection and their secondary aim of inducing uninsured lawyers to purchase LPL insurance. It also examines whether some of the bar’s arguments against disclosure requirements have proved meritorious. The Article then returns to the question, first considered forty years ago, of whether U.S. lawyers should be required to maintain LPL insurance. The evidence suggests that—like lawyers throughout much of the rest of the world—U.S. lawyers should be required to maintain LPL insurance. It explains why the current disclosure rules do not sufficiently alert clients to the risks posed by uninsured lawyers. The Article recommends measures to improve the current insurance disclosure rules, while recognizing the limitations of any disclosure scheme.

INTRODUCTION .....	1282
I. PORTRAITS OF THE UNINSURED LAWYERS .....	1288
II. INSURANCE DISCLOSURE REQUIREMENTS AND THEIR IMPACT ON LAWYERS .....	1296
A. <i>The Disclosure Requirements</i> .....	1297

---

\* Joel Barlow Professor of Law, University of Connecticut School of Law. I thank the anonymous insurance executives and plaintiffs’ malpractice lawyers who spoke to me about uninsured lawyers and the bar regulators in twenty-five states who provided me with information for this Article. I am also grateful to the Arizona State Bar for distributing my surveys to its members, and to the New Mexico State Bar, which shared with me data it had previously collected from uninsured lawyers. Thanks also go to Jon Bauer, John Holtaway Peter Kochenburger, Herbert Kritzer, Peter Siegelman, Laurel Terry, and James Towery for their generous assistance, in various ways, with this Article.

B. *The Impact of Disclosure Rules on Insurance Purchasing*.....1303

C. *The Adverse Impact of Disclosure Requirements on Lawyers?* .....1308

III. DO LAWYERS WHO GO BARE CAUSE HARM? .....1309

IV. SHOULD LAWYERS BE PERMITTED TO GO BARE WHILE CLIENTS GO BLIND? .....1317

A. *Mandatory Insurance Redux* .....1318

B. *The Limits of Insurance Disclosure Requirements* .....1325

CONCLUSION.....1329

INTRODUCTION

At a time when the U.S. bar’s ability to self-regulate is eroding, the bar’s continued strength can be seen in the fact that lawyers have maintained their freedom to go “bare” and can practice law without carrying malpractice insurance. A substantial number of lawyers—mostly solo and very small firm practitioners—do so.<sup>1</sup> The freedom of U.S. lawyers to go bare contrasts with the requirements throughout the rest of the common law world and many civil law countries, where legal professionals must carry insurance in order to practice law.<sup>2</sup> It also

---

1. See, e.g., Chuck Herring, *Pro: Disclosure Should Be Required*, 72 TEX. B.J. 822, 823 n.2 (2009) (reporting on a state bar survey indicating 63% of Texas solo practitioners were uninsured); V. Lowry Snow, *Professionally Insured...To Be or Not to Be*, UTAH B.J., Nov.–Dec. 2007, at 6, 6 (reporting on state bar survey indicating 62% of Utah’s solo practitioners were uninsured); *Professional Liability Insurance Report*, CAL. LAW. (Feb. 2011), [https://ww2.callawyer.com/Clstory.cfm?eid=913846&wteid=913846\\_Professional\\_Liability\\_Insurance\\_Report](https://ww2.callawyer.com/Clstory.cfm?eid=913846&wteid=913846_Professional_Liability_Insurance_Report) (estimating that 30,000 California lawyers were uninsured). The precise number of uninsured lawyers in most jurisdictions is not known. See *infra* text accompanying notes 30–34.

2. See, e.g., *Legal Profession Uniform Law Application Act 2014* (Vic) sch 1 s 211 (Austl.) (“An Australian legal practitioner must not engage in legal practice . . . unless the practitioner holds or is covered by an approved insurance policy for this jurisdiction and the policy covers that legal practice.”); *Legal Profession Act*, S.B.C. 1998, c 9, s 30(1) (Can.) (In British Columbia, “benchers must make rules requiring lawyers to maintain professional liability and trust protection insurance.”); Jennifer Ip & Nora Rock, *Mandatory Professional Indemnity Insurance & a Mandatory Insurer: A Global Perspective*, LAWPRO MAG., Fall 2011, at 10, 10, 12, <http://practicepro.ca/LawPROMag/Mandatory-Insurance-Global-Perspective.pdf> (noting that lawyers in Hong Kong, Malaysia, Scandanavia, and the United Kingdom are required to carry insurance).

distinguishes lawyers from other professionals such as physicians<sup>3</sup> and dentists,<sup>4</sup> and some other service providers,<sup>5</sup> who in many states must carry liability insurance to maintain their licenses.

Relatively little is known about the backgrounds of uninsured lawyers or the reasons why they go bare. There is even less information about their malpractice experience. This is not surprising, because so much about the true incidence of legal malpractice is not known.<sup>6</sup> Perhaps lawyers who go bare are more careful than their insured counterparts because they have no insurance. Conversely, perhaps they are less careful because they have few assets and are essentially judgment-proof. Regardless of how careful uninsured lawyers may attempt to be, however, they sometimes make mistakes. Some injured clients do not pursue claims against their uninsured lawyers because there is no chance of being compensated. Some malpractice judgments against uninsured lawyers go unpaid.<sup>7</sup>

---

3. See, e.g., COLO. REV. STAT. § 13-64-301(1)(a.5)(I) (2015); CONN. GEN. STAT. § 20-11b(a) (2015); KAN. STAT. ANN. § 40-3402(a) (2014); N.J. STAT. ANN. § 45:9-19.17(a) (West 2015); 42 R.I. GEN. LAWS § 42-14.1-2 (2016); 243 MASS. CODE REGS. 2.07(16) (2016). While most other states do not require doctors to carry malpractice insurance as a condition of licensure, there are other strong incentives to purchase insurance. For example, hospitals typically require doctors with admitting privileges to carry insurance. 1 RONALD E. LUNDEEN ET AL., HEALTH CARE LAW: A PRACTICAL GUIDE § 16.04(2)(d) (2d ed. 2014). Many health insurers also require physicians who participate in their plans to carry malpractice insurance. See, e.g., *Provider Requirements*, BLUE SHIELD CAL., <https://www.blueshieldca.com/provider/guidelines-resources/prospective-providers/join/providers-requirements.sp> (last visited Aug. 10, 2016).

4. See, e.g., COLO. REV. STAT. § 13-64-301(1)(a)(I) (2015); CONN. GEN. STAT. § 20-126d(a) (2015); KAN. STAT. ANN. § 65-1468 (2015); NEV. REV. STAT. § 428.095 (2015); 63 PA. STAT. AND CONS. STAT. ANN. § 122.2 (West 2016); 42 R.I. GEN. LAWS § 42-14.1-2 (2015).

5. Service providers required to carry liability insurance include, but are not limited to, massage therapists, pest inspectors, and real estate brokers. For examples of regulations regarding massage therapists, see ALA. CODE § 34-43-7 (2016); COLO. REV. STAT. § 12-35.5-116 (2015); IND. CODE § 25-21.8-4-2 (2016); S.D. CODIFIED LAWS § 36-35-21 (2015); WIS. STAT. § 460.05(1)(g) (2015). For examples of regulations regarding home and pest inspectors, see GA. CODE ANN. § 2-7-103(a) (2015); MD. CODE ANN., BUS. OCC. & PROF. § 16-4A-04 (LexisNexis 2016); OKLA. STAT. ANN. tit. 2 § 3-82 (West 2015); OR. REV. STAT. § 634.116 (2015). For examples of regulations regarding real estate brokers, see IDAHO CODE § 54-2013 (2015); LA. STAT. ANN. § 37:1466 (2015); 42 R.I. GEN. LAWS § 5-20.5-25(a) (2015).

6. See Manuel R. Ramos, *Legal Malpractice: No Lawyer or Client Is Safe*, 47 FLA. L. REV. 1, 5, 9 (1995) (stating that “scholars will never be able to present a complete and accurate picture of legal malpractice”). Ramos also discusses some of the reasons the incidence of legal malpractice is unknown. *Id.* at 15–19.

7. See VA. STATE BAR ASS’N, REPORT OF STUDY UNDERTAKEN BY CLIENT PROTECTION SUBCOMMITTEE OF THE SPECIAL COMMITTEE ON LAWYERS MALPRACTICE INSURANCE 2005–2006, at 3 (2006); *infra* note 186.

The debate over whether lawyers should be required to carry lawyer professional liability (LPL) insurance arose in the late 1970s.<sup>8</sup> At that time, legal malpractice claims increased, and it became harder—and more expensive—for lawyers to obtain LPL insurance.<sup>9</sup> A few states, including California, Oregon, Washington, and Wisconsin, considered whether to require all lawyers to purchase malpractice insurance from state insurance funds as a way to lower insurance costs and protect the public from uninsured lawyers.<sup>10</sup> Only Oregon adopted this approach—in 1977—requiring its lawyers in private practice to purchase insurance from its Professional Liability Fund.<sup>11</sup> Other states subsequently considered whether to require all lawyers in private practice to carry malpractice insurance.<sup>12</sup> Ultimately, those states decided against it due to bar opposition<sup>13</sup> and the challenges of providing affordable coverage to all of its lawyers.<sup>14</sup>

---

8. See George M. Cohen, *Legal Malpractice Insurance and Loss Prevention: A Comparative Analysis of Economic Institutions*, 4 CONN. INS. L.J. 305, 308 (1998). These debates continued for many years thereafter. See, e.g., Manuel R. Ramos, *Legal Malpractice: The Profession's Dirty Legal Secret*, 47 VAND. L. REV. 1657, 1726–29 (1994); Jeffrey D. Watters, *What They Don't Know Can Hurt Them: Why Clients Should Know If Their Attorney Does Not Carry Malpractice Insurance*, 62 BAYLOR L. REV. 245, 247–50 (2010).

9. Cohen, *supra* note 8, at 307–08; Fredric L. Goldfein, *Legal Malpractice Insurance*, 61 TEMPLE L. REV. 1285, 1285–86, 1295 (1988); John J. Lynch, *The Insurance Panic for Lawyers*, A.B.A. J., July 1, 1986, at 42, 43.

10. Goldfein, *supra* note 9, at 1296; Jerome B. Schultz, *Ensured Insurance: Bars Look at Mandatory Coverage*, B. LEADER, Jan.–Feb. 1987, at 18, 18.

11. *About the PLF*, OR. ST. B. PROF. LIABILITY FUND, <https://www.osbplf.org/about-plf/overview.html> (last visited Aug. 10, 2016). Oregon requires all of its lawyers in private practice whose principal offices are in Oregon to purchase LPL insurance, including lawyers who only work on a pro bono basis, unless the lawyers are exclusively providing pro bono services for Oregon State Bar certified pro bono programs. OR. REV. STAT. § 752.035 (2015); *Professional Liability Fund Coverage*, OR. ST. B., <https://www.osbar.org/probono/PLFCoverage.html> (last visited Aug. 10, 2016).

12. These states included Arizona, Colorado, Delaware, and Nevada. Goldfein, *supra* note 9, at 1296. More recently, Pennsylvania and Virginia have considered the question. See Robert I. Johnston & Kathryn Lease Simpson, *O Brothers, O Sisters, Art Thou Insured? The Case for Mandatory Disclosure of Malpractice Insurance Coverage*, PA. LAW., May–June 2002, at 28, 28; Darrel Tillar Mason, *Mandatory Malpractice Insurance—It's Time to Call the Question*, VA. ST. B. (Aug. 4, 2008), <http://www.vsb.org/site/news/item/mandatory-malp-ins-080408>.

13. Opponents argued that some lawyers cannot afford LPL insurance, and would be unable to practice; that some lawyers who provide pro bono and low-cost legal services would have to raise their rates or discontinue practicing law; and that mandatory insurance would increase frivolous malpractice lawsuits. Goldfein, *supra* note 9, at 1296–97; Schultz, *supra* note 10, at 19 (presenting the arguments for and against mandatory coverage in chart form). They also claimed there was no evidence uninsured lawyers pose a substantial problem for the public. John Schlegelmilch, *Insufficient Evidence to Support Mandatory Malpractice Insurance Requirements*, NEV. LAW., June 2000, at 9, 9.

14. Some states that considered whether to require all lawyers to carry LPL insurance were concerned that without a state insurance fund, some lawyers would not be able to afford to purchase insurance from commercial carriers. See Johnston & Simpson, *supra* note 12, at 30; see

Since then, many states have concluded that requiring lawyers to disclose their LPL coverage—or lack thereof—to state regulators<sup>15</sup> or clients is an appropriate compromise between protecting the public and protecting lawyers' interests.<sup>16</sup> Theoretically, insurance disclosure provides clients with material information that enables them to make informed decisions about whether to hire lawyers who are uninsured.<sup>17</sup> Proponents also hoped that many uninsured lawyers would obtain LPL coverage if they had to disclose their lack of insurance.<sup>18</sup> Opponents of disclosure requirements argued that disclosure was unnecessary because there was no evidence that uninsured lawyers caused substantial harm to the public.<sup>19</sup> They also claimed that disclosure would unnecessarily stigmatize uninsured lawyers,<sup>20</sup> increase malpractice lawsuits,<sup>21</sup> and give

---

also James E. Towery, *Should Disclosure of Malpractice Insurance Be Mandatory? Pro*, GPSOLO MAG., Apr.–May 2003, at 36, 38. Yet they also concluded it was not possible to create a state insurance fund for lawyers, similar to the one in Oregon, in states without a unified and fairly homogenous bar. Johnston & Simpson, *supra* note 12, at 30.

15. This Article uses the term “state regulators” to refer to bar licensing authorities. Lawyer licensing is typically administered by the state court or by an integrated state bar.

16. See Susan Saab Fortney, *Law as a Profession: Examining the Role of Accountability*, 40 FORDHAM URB. L.J. 177, 193–94 (2012); Farbod Solaimani, *Watching the Client's Back: A Defense of Mandatory Insurance Disclosure Laws*, 19 GEO. J. LEGAL ETHICS 963, 978 (2006).

17. See Fortney, *supra* note 16, at 196–98; Watters, *supra* note 8, at 247–49. Disclosure requirements can be viewed as another manifestation of the lawyer's duty to communicate with clients so that clients can make informed decisions concerning representation. See MODEL RULES OF PROF'L CONDUCT r. 1.4(b) (AM. BAR ASS'N 2015).

18. See COLO. SUP. CT. RULE 1.4 SUBCOMM., INTERIM REPORT 1–2 (2004); Watters, *supra* note 8, at 249–50; Carole J. Buckner, *Malpractice Insurance Disclosure Lurches Toward Approval*, ORANGE COUNTY LAW., Apr. 2008, at 50, 51 (2008); Mark Hansen, *Under Covered*, A.B.A. J., Nov. 2001, at 46, 47–48; Larry Rulison, *State Bar Mulls Disclosure of Coverage Status*, PHILA. BUS. J. (Feb. 7, 2005, 12:00 AM), <http://www.bizjournals.com/philadelphia/stories/2005/02/07/newscolumn4.html?page=all>.

19. See Devin S. Mills & Galina Petrova, *Modeling Optimal Mandates: A Case Study on the Controversy over Mandatory Professional Liability Coverage and Its Disclosure*, 22 GEO. J. LEGAL ETHICS 1029, 1034 (2009); Watters, *supra* note 8, at 251; Jason Mil, *New Rule Would Require Attorney Disclosures Regarding Malpractice Coverage*, LAW. J., Sept. 2005, at 7, 7 (2005); Towery, *supra* note 14, at 39; Memorandum from David J. Beck, Chair, State Bar of Tex. Bd. of Dirs., to State Bar of Tex. Bd. of Dirs. 4 (June 11, 2008), [https://www.texasbar.com/pliflashdrive/material/3\\_TaskForce\\_Report\\_June08.pdf](https://www.texasbar.com/pliflashdrive/material/3_TaskForce_Report_June08.pdf).

20. Edward C. Mendryzcki, *Should Disclosure of Malpractice Insurance Be Mandatory?: Con*, GPSOLO MAG., Apr.–May 2003, at 37, 41; Bill Miller, *Con: Disclosure Should Not Be Required*, 72 TEX. B.J. 824, 826 (2009); Rodney Snow, *Is Mandating Disclosure in Your Fee Letter That You Do Not Carry Malpractice Insurance a Sound Idea?*, UTAH B.J., Sept.–Oct. 2005, at 12, 13; Andrew Wolfson, *Kentucky Lawyers Need No Insurance*, COURIER-J., June 17, 2014, at A4; Memorandum from David J. Beck, *supra* note 19, at 4.

21. See, e.g., Miller, *supra* note 20, at 826; Insurance Disclosure Task Force – Final Report and Recommendations from James E. Towery, Chair, Ins. Disclosure Task Force et al., to Members of the Bd. of Governors, Cal. State Bar 19 (Sept. 14, 2007), <http://www.calbar.ca.gov/>

clients a false sense of security that any claims that might arise would be compensated.<sup>22</sup>

In 1988, California became the first state to adopt an insurance disclosure rule when it required lawyers to disclose to clients in their written fee contracts whether they maintained LPL insurance.<sup>23</sup> After a few other states adopted disclosure requirements, the ABA, in 2004, adopted a Model Court Rule on Insurance Disclosure, which requires lawyers to disclose whether they carry LPL insurance on their annual registration forms and provides for courts to determine how to make this information available to the public.<sup>24</sup> Today, seven states require that uninsured lawyers disclose directly to clients that they do not carry LPL insurance (“direct disclosure”).<sup>25</sup> Seventeen other states require disclosure about LPL insurance coverage on attorney registration forms,<sup>26</sup> and ten of those states post the insurance information on state bar or judicial websites.<sup>27</sup> Failure to truthfully disclose insurance information may result in a disciplinary sanction.<sup>28</sup> Many states do not, however, require lawyers to make any disclosures to clients or regulators about LPL insurance, including some large states such as Florida, New York, and Texas.<sup>29</sup>

---

portals/0/documents/publiccomment/2007/Insurance-Dis\_BOG-Sept14.pdf [hereinafter Insurance Disclosure Report].

22. See Mendryzcki, *supra* note 20, at 40; Miller, *supra* note 20, at 825.

23. See Towery, *supra* note 14, at 38. California subsequently amended the disclosure requirement in the 1990s so only lack of insurance needed to be disclosed. *Id.* This requirement lapsed in 2000, but California adopted a new disclosure requirement in 2009. *Id.*; see CAL. RULES OF PROF'L CONDUCT r. 3-410 (2015).

24. MODEL CT. RULE ON INS. DISCLOSURE preface (AM. BAR ASS'N 2004) (stating that the “information . . . will be made available [to the public] by such means as designated by the highest court in the jurisdiction”).

25. These states are Alaska, California, New Hampshire, New Mexico, Ohio, Pennsylvania, and South Dakota. AM. BAR ASS'N STANDING COMM. ON CLIENT PROT., AM. BAR ASS'N, STATE IMPLEMENTATION OF ABA MODEL COURT RULE ON INSURANCE DISCLOSURE (2016), [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/chart\\_implementation\\_of\\_mcrd.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/chart_implementation_of_mcrd.authcheckdam.pdf) [hereinafter STATE IMPLEMENTATION].

26. These states are Arizona, Colorado, Delaware, Hawaii, Idaho, Illinois, Kansas, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, North Dakota, Rhode Island, Virginia, Washington, and West Virginia. *Id.*

27. See *infra* Table 3.

28. See, e.g., MASS. SUP. JUD. CT. R. 4:02(2A)(c) (noting that false filing will subject a lawyer to disciplinary sanction); Columbus Bar Ass'n v. Roy, 34 N.E.3d 109–10 (Ohio 2015) (imposing public reprimand for failure to comply with direct disclosure requirement). In other states, failure to disclose the information to regulators may result in an administrative suspension. See, e.g., Wash. State Bar Ass'n, *Professional Liability Insurance Policies*, <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Annual-License-Renewal/License-Renewal-FAQs/Professional-Liability-Insurance> (last visited Aug. 10, 2016).

29. STATE IMPLEMENTATION, *supra* note 25.

Somewhat surprisingly, the number of uninsured lawyers who represent private clients is still not known, even in many states that require insurance disclosure. For example, four of the seven states that require direct disclosure to clients do not require disclosure of insurance information to state regulators.<sup>30</sup> Some state regulators that collect insurance information do not calculate the data they collect,<sup>31</sup> will not share the information,<sup>32</sup> or do not ask about LPL insurance in ways that enable them to calculate the number of uninsured lawyers who are representing private clients. For instance, Idaho requires its lawyers to disclose insurance information to state regulators, but it does not differentiate between lawyers in private practice and government lawyers or in-house counsel.<sup>33</sup> Other states include as “uninsured” lawyers who maintain “active” licenses but are not currently practicing law.<sup>34</sup> In the states that can calculate the number of uninsured lawyers who represent private clients, the percentage of lawyers in private practice who are uninsured ranges from 6% to 20%.<sup>35</sup>

At a time when half the states impose some insurance disclosure requirement on lawyers, it is time to consider how well these requirements are working and to look more closely at the lawyers who go bare. In Part I, this Article draws on survey data that shed light on which lawyers go bare and the reasons why they do so. It uses information derived from a 2011 survey of uninsured New Mexico lawyers and more

30. See *infra* Table 2.

31. For example, Rhode Island requires licensed attorneys to indicate on their registration statements whether they maintain malpractice insurance, but the information is not included in a field that can be tracked or counted electronically. E-mail from Craig N. Berke, Assistant State Court Adm’r, R.I. Supreme Court, to author (May 13, 2015, 11:41 EDT) (on file with author).

32. E-mail from Marty Cole, Dir., Minn. Office of Lawyers Prof’l Responsibility, to author (Apr. 16, 2015, 16:36 EDT) (on file with author).

33. In Idaho, all lawyers who are active members of the Idaho State Bar must report whether they are “currently covered by professional liability insurance,” however, the disclosure form does not allow lawyers to indicate they are government lawyers or in-house counsel. See Idaho State Bar, Disclosure of Professional Liability Insurance, [https://isb.idaho.gov/pdf/licensing/disc\\_prof\\_liability\\_ins.pdf](https://isb.idaho.gov/pdf/licensing/disc_prof_liability_ins.pdf).

34. Massachusetts asks lawyers whether they are covered by LPL insurance, not covered by LPL insurance, or not covered because they are government lawyers or employed by an organizational client and do not represent clients outside that capacity. MASS. SUP. JUD. CT. R. 4:02(2)(A); *Certification of Professional Liability Insurance*, MASS. BOARD B. OVERSEERS, <https://massbbo.org/insurance-prof-liability-form.pdf> (last visited Aug. 10, 2016). This does not reveal, however, how many of the uninsured lawyers were not practicing law at all but nevertheless retaining their “active” status.

By counting these lawyers as “uninsured”—and posting this information on websites—states make it easier for the public to check on any lawyer who might decide to provide legal services to private clients. But this approach makes it difficult to determine the number of uninsured lawyers who are currently posing a risk to private clients because they are representing clients while uninsured.

35. See *infra* Tables 2 and 3.

recent (and limited) surveys of insured and uninsured lawyers in Arizona and Connecticut. In Part II, this Article looks at states' insurance disclosure requirements. Drawing on information obtained from state regulators, it calculates the percentage of uninsured lawyers who represent private clients where that information is available. It also explores whether insurance disclosure requirements appear to have induced lawyers to purchase LPL insurance and considers whether two of the arguments against disclosure requirements—the concerns about stigma and frivolous malpractice lawsuits—have proved to be true. This Article then addresses, in Part III, the claim that lawyers who go bare do not cause substantial harm to the public. It draws on conversations with plaintiffs' malpractice lawyers about their experiences with uninsured lawyers, as well as other data. In Part IV, this Article returns to the larger question of what to do about uninsured lawyers. It considers whether, in light of the available evidence, courts and legislatures should permit lawyers to continue to go bare. It also explains why—if lawyers are allowed to go bare—the current disclosure rules are inadequate to protect the public. Although it seems unlikely that disclosure rules can ever be strengthened sufficiently to facilitate truly informed consent, this Article suggests some ways to make the disclosure rules somewhat more effective by changing the timing, method, and content of the disclosure. The Article concludes that the arguments for allowing lawyers to go bare do not outweigh the interests in public protection. It identifies some questions state courts and legislatures should be asking as they consider how best to protect the public from lawyers who go bare.

## I. PORTRAITS OF THE UNINSURED LAWYERS

Uninsured lawyers are an understudied group. The only previously published study is a 2011 New Mexico State Bar survey of 503 uninsured lawyers, which yielded 202 responses, including 131 responses from uninsured lawyers in private practice.<sup>36</sup> The previous accounts of the survey results did not report exclusively on the responses of the uninsured lawyers who were representing private clients,<sup>37</sup> but the New Mexico Bar has since provided me with the data for analysis of the responses of uninsured private practitioners.<sup>38</sup> A small number of uninsured Arizona

---

36. Jack Brant, *Survey of Lawyers Who Do Not Have Legal Malpractice Insurance*, N.M. LAW., May 2012, at 3, 4. The survey defined “private practice” to include lawyers who engaged in pro bono representation. *Id.*

37. The previous report of the data analyzed the responses from all the lawyers who responded to the survey, including some lawyers who were insured or were not engaged in private practice. *Id.* at 4.

38. State Bar of N.M., *New Mexico Uninsured Lawyers Survey (2011)* (unpublished survey data) (on file with author) [hereinafter *New Mexico Survey*].

lawyers (48)<sup>39</sup> and uninsured Connecticut lawyers (28),<sup>40</sup> who were predominantly solo practitioners, also responded to surveys in 2015. The response rates by the Arizona and Connecticut uninsured lawyers were very low, and so those results cannot be viewed as representative.<sup>41</sup> Nevertheless, taken together, the three surveys provide some insights into the circumstances and attitudes of uninsured lawyers<sup>42</sup> and confirm some anecdotal information previously gathered about this group.<sup>43</sup>

The surveys revealed that the time uninsured lawyers devote to law practice varies considerably. Some uninsured lawyers maintain “active” status but provide legal services on a very limited basis. For example, some of the New Mexico lawyers were essentially retired, or only represented family members occasionally, or were exclusively performing pro bono work.<sup>44</sup> Approximately 21% of the uninsured Arizona lawyers and 25% of the uninsured Connecticut lawyers practiced

39. Leslie C. Levin, Arizona Uninsured Lawyers Survey (2015) (unpublished survey data) (on file with author) [hereinafter Arizona Uninsured Lawyers Survey].

40. Leslie C. Levin, Connecticut Lawyers Survey (2015) (unpublished survey data) (on file with author) [hereinafter Connecticut Survey]. The Connecticut and Arizona surveys asked almost identical questions and solicited responses from attorneys working in one- to five-lawyer firms. Approximately 88% of the uninsured Arizona lawyers and 86% of the Connecticut uninsured lawyers who responded to the surveys worked alone.

41. I sent the Connecticut survey via e-mail to 1,764 lawyers in private practice who worked in firms of one to five lawyers. The names were obtained from the active attorneys listed on the Connecticut Judicial Branch website and from bar association membership lists that could be accessed on the internet. A total of 668 lawyers responded, yielding a response rate of 38%. This is considered a good response rate, but the number of uninsured lawyers who responded (28) was much lower than would be expected, even if the overall percentage of Connecticut uninsured lawyers in private practice were, conservatively estimated, 10%. At my request, the Arizona State Bar e-mailed separate surveys to 6,751 insured Arizona lawyers and 2,232 uninsured Arizona lawyers in private practice for whom the State Bar had e-mail addresses, and who appeared to work in firms of one to five lawyers. Arizona Uninsured Lawyers Survey, *supra* note 39; Leslie C. Levin, Arizona Insured Lawyers Survey (2015) (unpublished survey) (on file with author) [hereinafter Arizona Insured Lawyers Survey]. Thus, the responses from forty-eight uninsured lawyers reflect a very low response rate.

42. It should be noted that the three states utilize different approaches to the disclosure of insurance information: New Mexico requires direct disclosure to clients, Arizona posts insurance information on the state bar website, and Connecticut has no insurance disclosure requirement. See STATE IMPLEMENTATION, *supra* note 25.

43. See, e.g., VA. STATE BAR ASS'N, *supra* note 7, at 7 (providing an anecdotal description of reasons why lawyers are uninsured); Jill Sundby, *What Montana Lawyers Think About...Mandatory Malpractice Insurance: Your Answers to State Bar Survey*, MONT. LAW., Aug. 2001, at 24, 24 (reporting on individual comments from Montana lawyers in response to a state bar survey).

44. See Brant, *supra* note 36, at 4; New Mexico Survey, *supra* note 38. The New Mexico survey did not ask respondents to indicate how much time they performed legal work, so it was impossible to calculate the percentage of uninsured lawyers who performed legal work on a part-time basis.

law no more than fifteen hours per week.<sup>45</sup> Yet a majority of the uninsured Arizona lawyers (57%) and the uninsured Connecticut lawyers (54%) practiced law more than thirty hours per week.<sup>46</sup>

In all three of these jurisdictions, annual LPL premiums for solo and small firm practitioners cost around \$3,000 per lawyer for minimum levels of coverage (\$100,000/\$300,000).<sup>47</sup> LPL insurance is a deductible business expense.<sup>48</sup> Nevertheless, uninsured New Mexico lawyers most frequently cited cost as the reason for not carrying malpractice insurance.<sup>49</sup> In the other two states, uninsured lawyers most frequently cited unaffordability as the reason: Among the uninsured Arizona and Connecticut lawyers, 65% and 58% responded, respectively, that one of the reasons they did not carry LPL insurance was because they could not afford it.<sup>50</sup> It is unclear, however, whether all of the uninsured lawyers knew the cost of LPL coverage. Among the uninsured New Mexico lawyers in private practice, 40.8% had never applied for insurance coverage,<sup>51</sup> suggesting that they may have been unaware of the actual cost of insurance. Among the fifteen Arizona lawyers who had never been insured, seven had never communicated with an insurance agent, broker, or underwriter about the possibility of obtaining LPL insurance.<sup>52</sup>

---

45. Arizona Uninsured Lawyers Survey, *supra* note 39; Connecticut Survey, *supra* note 40.

46. Arizona Uninsured Lawyers Survey, *supra* note 39; Connecticut Survey, *supra* note 40.

47. See Daymon Ely, *Survey Results: What About Them?*, N.M. LAW., May 2012, at 3, 3; E-mail from Insurance Executive No. 2 to author (July 16, 2015, 19:23 EDT) (on file with author) (stating that Arizona LPL insurance ranged from \$1,500–\$2,500 for mid-risk areas of practice and \$3,000–\$5,000 for high-risk areas); Telephone Interview with Insurance Executive No. 1 (Aug. 15, 2014) (stating that insurance ranged from \$2,500–\$4,000 in Connecticut).

48. DEP'T OF TREASURY, I.R.S. PUB. NO. 535: BUSINESS EXPENSES 18 (2016).

49. Brant, *supra* note 36, at 4.

50. Arizona Uninsured Lawyers Survey, *supra* note 39; Connecticut Survey, *supra* note 40. The New Mexico survey asked an open-ended question about why the lawyer was uninsured. Survey Regarding Insurance Coverage of New Mexico Attorneys 2 (on file with author). The Arizona and Connecticut surveys framed the question about why the lawyer was not currently insured in a way that allowed the lawyers to provide multiple responses, including "I cannot afford it." They also allowed the respondents to indicate "other" and fill in a response.

51. For ease of reference to some of the New Mexico results, see Table 1. Due to the small numbers of responses to the Arizona and Connecticut surveys, the Article describes but does not set forth those results in tabular form.

52. Arizona Uninsured Lawyers Survey, *supra* note 39. This question was not asked in the Connecticut survey.

**TABLE 1**  
**SURVEY RESPONSES FROM NEW MEXICO UNINSURED LAWYERS<sup>53</sup>**

Question	Strongly Agree or Agree	Strongly Disagree or Disagree
I have never applied for insurance coverage	40.8% (51)	59.2% (74)
If I was required by the New Mexico Supreme Court to purchase insurance, I would do so	53% (61)	47% (54)
If I was required to purchase insurance, I would stop practicing law in New Mexico	58.6% (68)	41.4% (48)
If I am sued for malpractice, I can afford to retain separate counsel	57.5% (69)	42.5% (51)
I am not insured because my claims experience is not acceptable	4.4% (5)	95.6% (108)
My areas of practice do not expose me personally to any risk of liability	43.2% (54)	56.8% (71)
I have no problem telling a potential client that I am not insured	83.7% (103)	16.3% (20)
I believe clients assume that lawyers are insured	20.8% (25)	79.2% (95)
All lawyers should be insured, if they can afford the premium	32.8% (40)	67.2% (82)

Even though the cost of LPL insurance was an issue for many uninsured lawyers, the cost of insurance was not prohibitive for some of them. Among the uninsured New Mexico lawyers, 53% strongly agreed or agreed that if they were required by the New Mexico Supreme Court to purchase insurance they would do so, indicating they were able to pay for LPL insurance.<sup>54</sup> Among the 47% who strongly disagreed or disagreed that they would pay for LPL insurance if required to do so, the narrative responses indicated the issue for some lawyers was not the cost

---

53. Table 1 reflects the responses of uninsured lawyers who answered the question and work in private practice. The numbers in parentheses reflect the number of lawyers who answered the question in the manner indicated.

54. See *supra* Table 1. Somewhat inconsistently, 58.6% of the uninsured New Mexico lawyers strongly agreed or agreed that if they were required to purchase LPL insurance, they would stop practicing law in New Mexico. See *supra* Table 1. There were sixteen lawyers who responded that they both would purchase insurance if it were required and would cease practicing law in New Mexico if insurance were required. The narrative responses indicated some of them were genuinely unsure what they would do. For example, one such lawyer wrote, "I'm not sure[.] I know my premiums now will be sky high because I've not had coverage for a few years. I'd try probably, to comply, but more than likely I'd [do] something else." New Mexico Survey, *supra* note 38.

of insurance but philosophical opposition to an insurance requirement.<sup>55</sup> The comments of some of the other uninsured lawyers who said they would not pay for LPL insurance if it were required (and might instead, for example, retire) suggested the issue was not necessarily an inability to afford LPL insurance but rather, an economic calculation that they were making less from the practice of law than it would cost them to maintain their licenses. Further evidence that some of the fifty-four lawyers who indicated they would not purchase LPL insurance if so required might have been able to afford insurance could be found in the fact that the majority (31) of them strongly agreed or agreed that if they were sued for malpractice they could afford to retain separate counsel to defend them.<sup>56</sup>

Nevertheless, the survey responses also revealed that some of the uninsured lawyers genuinely could not pay for LPL insurance. One New Mexico lawyer noted in narrative comments, “I provide the majority of my service pro bono or at reduced rates. I live below the poverty level. I have no medical/health or homeowners insurance either. If I could afford insurance, I’d buy those before I purchased legal malpractice insurance.”<sup>57</sup> Another New Mexico lawyer wrote, “I am struggling to survive. I earned enough net income to pay for food, shelter, clothing, gasoline, and utilities; I have had to decline recommended medical diagnostic tests for cancer because I do not have enough money to pay for those tests.”<sup>58</sup> An uninsured Connecticut lawyer, who had been on inactive status for some time and had recently resumed practice explained, “My income is very low (under \$25,000 for 2014) and there is little demand for my services.”<sup>59</sup>

Responses to the questions on the Arizona and Connecticut surveys were consistent with reports that some uninsured lawyers may not have very profitable practices, making it difficult for some of these lawyers to pay for LPL insurance. More than half of the uninsured Arizona lawyers (52%) and three-quarters of the uninsured Connecticut lawyers maintained their offices in their homes, as compared to insured Arizona (22%) and Connecticut (11%) lawyers who maintained their offices at

---

55. See *supra* Table 1. For instance, one lawyer who strongly disagreed with the statement wrote, “I believe this would be unconstitutional and would not comply.” Another wrote, “Are you kidding me? Now you’re going to make us buy insurance like [O]bamacare? If I couldn’t afford it, then I either would practice illegally or quit.” New Mexico Survey, *supra* note 38.

56. New Mexico Survey, *supra* note 38.

57. *Id.* This type of response has been echoed in other jurisdictions. See, e.g., Sundby, *supra* note 43, at 24 (reporting on a response to a Montana survey stating, “I don’t make enough money. I can’t afford my own medical insurance, either”).

58. New Mexico Survey, *supra* note 38.

59. Connecticut Survey, *supra* note 40.

home.<sup>60</sup> The majority of uninsured Arizona (63%) and Connecticut (61%) lawyers had no support staff, and were significantly less likely than insured lawyers to have such staff.<sup>61</sup> A small percentage of the uninsured Arizona lawyers (10.4%) and one of the uninsured Connecticut lawyers (3.6%) were recent law school graduates (2011 or later) who were working on their own and may have been unable to afford LPL insurance.<sup>62</sup>

Difficulty obtaining LPL coverage due to poor claims experience did not appear to be a significant reason why most lawyers were uninsured. Only five uninsured New Mexico lawyers (3.8%) strongly agreed or agreed that they were not insured because their claims experience was unacceptable,<sup>63</sup> including two who indicated in narrative comments that they could not find a company to insure them or were having difficulty doing so.<sup>64</sup> None of the uninsured Arizona lawyers and only one uninsured Connecticut lawyer indicated they did not maintain insurance because they were unable to obtain coverage.<sup>65</sup>

It appears that some uninsured lawyers do not carry LPL insurance because they believe the areas in which they practice do not put them at risk of malpractice claims. Over 43% of uninsured New Mexico lawyers indicated their areas of practice did not expose them personally to any risk of liability.<sup>66</sup> In some cases they were correct, because they worked as guardians ad litem<sup>67</sup> or for other reasons had personal immunity for their legal work. Approximately 10% of the uninsured New Mexico lawyers exclusively practiced criminal law, and a few of them indicated that they did not carry LPL insurance because criminal defense lawyers

60. Arizona Insured Lawyers Survey, *supra* note 41; Arizona Uninsured Lawyers Survey, *supra* note 39; Connecticut Survey, *supra* note 40. The fact that a lawyer maintains his office at home does not necessarily mean the practice is not profitable, but some lawyers work from home for this reason. The differences between insured and uninsured lawyers were statistically significant for the Connecticut lawyers ( $p < .01$ ) but not for the Arizona lawyers, using Fisher's Exact Test, which is used in lieu of the chi-square test because small numbers are involved.

61. Arizona Uninsured Lawyers Survey, *supra* note 39; Connecticut Survey, *supra* note 40. In contrast, 31% of Arizona insured lawyers and 23% of Connecticut insured lawyers had no support staff. Significance at  $p < .01$  was determined using Fisher's Exact Test.

62. Arizona Uninsured Lawyers Survey, *supra* note 39; Connecticut Survey, *supra* note 40.

63. *See supra* Table 1.

64. New Mexico Survey, *supra* note 38. Four of the five lawyers indicated that they had been declined insurance coverage by more than one insurance carrier.

65. Arizona Uninsured Lawyers Survey, *supra* note 39; Connecticut Survey, *supra* note 40. The Connecticut lawyer also indicated an inability to afford coverage, which suggests that the problem may not have been a true inability to obtain coverage, but rather that the lawyer could not afford it at the price quoted.

66. *See supra* Table 1.

67. Guardians ad litem are absolutely immune from liability for actions taken within the scope of their employment. *See Kimbrell v. Kimbrell*, 331 P.3d 915, 919 (N.M. 2014).

are rarely sued or found liable for malpractice.<sup>68</sup> In other cases, the uninsured lawyers' responses that their areas of practice did not expose them to personal liability were surprising, as some practiced in areas such as a family law, collections, and real property, which give rise to a greater number of malpractice claims than some other areas of law.<sup>69</sup>

The narrative comments also indicated that a cohort of uninsured lawyers believe that their careful practices insulate them from malpractice liability and that they could responsibly handle a malpractice lawsuit if necessary. A New Mexico lawyer noted, "I have sufficient assets to hire an attorney and pay a claim. I have never had a claim filed and believe insurance creates lazy and negligent attorneys. I chose to walk the high wire without the net. I have been practicing law for over 30 years."<sup>70</sup> An Arizona lawyer explained:

I do not practice in high risk areas, am particular about clients I accept, am detailed and double-triple check everything to be able to refute any alleged malpractice (including having a written record of every conversation/financial transaction), employ asset protection vehicles, and believe that having insurance is a double-edged sword: if an illmotivated [sic] claimant knows there is insurance they're more likely to file a claim in the hope of getting some financial settlement without regard to merit, and insureds have no control over who is hired by insurance companies as defense counsel. Early in my solo practice career, I carried insurance because I didn't know what I didn't know, took on work for some clients that required it, and may have taken on clients that I wouldn't today. Now,

---

68. See New Mexico Survey, *supra* note 38. The perception that criminal defense attorneys are rarely involved in malpractice actions is accurate. To prevail in a malpractice case, a criminal defendant usually must demonstrate actual innocence. See Meredith J. Duncan, *The (So-Called) Liability of Criminal Defense Attorneys: A System in Need of Reform*, 2002 BYU L. REV. 1, 37–38. Nevertheless, criminal defense lawyers sometimes report claims for malpractice. AM. BAR ASS'N STANDING COMM. ON LAWYERS' PROF'L LIAB., PROFILE OF LEGAL MALPRACTICE CLAIMS 2012–2015, at 11 (2016) [hereinafter PROFILE OF LEGAL MALPRACTICE CLAIMS]. They are also sometimes found liable for their actions. See Celeste King & Barrett Breitung, *Not Actual Protection: Actual Innocence Standard for Criminal Defense Attorneys in California Does Not Eliminate Actual Lawsuits and Actual Payments*, COMPLETE EQUITY MARKETS (Oct. 7, 2004), [http://www.cemins.com/pdf/NACDL\\_Actual\\_Innocence.pdf](http://www.cemins.com/pdf/NACDL_Actual_Innocence.pdf).

69. See PROFILE OF LEGAL MALPRACTICE CLAIMS, *supra* note 68, at 11; Herbert M. Kritzer & Neil Vidmar, *When the Lawyer Screws Up: A Portrait of Legal Malpractice Claims and Their Resolution* 37–40, 49–50 (June 29, 2015) (unpublished manuscript) (on file with the Duke Law Scholarship Repository), [http://scholarship.law.duke.edu/faculty\\_scholarship/3491](http://scholarship.law.duke.edu/faculty_scholarship/3491); New Mexico Survey, *supra* note 38.

70. New Mexico Survey, *supra* note 38.

with the previous protective steps mentioned, many years of premium payments are better not spent or best placed into an investment vehicle.<sup>71</sup>

Like this lawyer, a few other Arizona survey respondents who viewed themselves as responsible professionals also believed that maintaining LPL insurance would make them a target for meritless claims. Another Arizona lawyer wrote:

It all comes down to personal and professional responsibility. In 28 years, I've followed all laws, rules, ethical/professional requirements. If I make a mistake, I'm going to admit it and correct it. But, [I] won't run my life or practice by insurance contract terms, clients who may want to pursue a claim because they know there's insurance regardless of merit, or other "fear." Nor do I want additional regulatory or financial requirements that serve no end. . . .<sup>72</sup>

As the preceding quote indicates, some of the lawyers' responses revealed that at least part of the reason they did not carry LPL insurance was due to their attitudes towards insurance companies.<sup>73</sup> One New Mexico lawyer wrote in response to the question why the lawyer was uninsured, "Extreme mistrust/dislike of/for insurance industry."<sup>74</sup> Another lawyer observed, "I do not believe that I need it. It is an unnecessary extra expense. If insurance is in place the lawyers give up defense decisions to the insurance adjusters and lawyers which [is] unacceptable."<sup>75</sup> Yet another explained:

The cost is outrageous and the coverage appears to be a scam—or practically a scam. I struggled to pay for insurance for years, but the only time I contacted the provider, I was told they would not cover me because I had not given them notice of the claim back at the time of the incident that gave rise to the claim. I [was] not going to pay premiums and then have to fight that

---

71. Arizona Uninsured Lawyers Survey, *supra* note 39.

72. *Id.*

73. *See id.* The hostility toward insurance companies was especially notable in the responses of the New Mexico lawyers. This may have been because the New Mexico survey invited more narrative responses than the Arizona and Connecticut surveys or because uninsured lawyers in New Mexico are already subject to direct disclosure requirements and are concerned about further regulation. Indeed, more than two-thirds of the New Mexico uninsured lawyers strongly disagreed or disagreed that lawyers should be insured if they could afford it. *See supra* Table 1.

74. New Mexico Survey, *supra* note 38.

75. *Id.*

company for coverage I've paid for.<sup>76</sup>

Finally, there was some suggestion that early practice experiences may affect the likelihood that lawyers will carry malpractice insurance later in their careers. The Arizona survey responses revealed that 61.7% of uninsured lawyers were covered by LPL insurance in their first jobs in private practice, while 89% of insured lawyers were covered by insurance in their first jobs in private practice.<sup>77</sup> Among the Connecticut lawyers, 75% of the uninsured lawyers were covered by insurance in their first jobs in private practice, while 97% of the insured lawyers were covered by insurance in their first jobs in private practice.<sup>78</sup> Some of the uninsured lawyers had never been covered by LPL insurance during their careers: Among the Arizona lawyers, fifteen out of forty-seven had never been covered by LPL insurance, including six who had been practicing more than fifteen years.<sup>79</sup> Among the Connecticut lawyers, five out of twenty-eight had never been covered by LPL insurance, including three lawyers who had been practicing more than fifteen years.<sup>80</sup> It may be that lawyers who are covered by malpractice insurance when they first enter private practice come to view insurance as a necessary part of doing business, while those who are not covered when they enter private practice are less likely to view insurance as essential.<sup>81</sup> A larger study would be needed to determine whether and in what ways early practice experiences affect decisions to maintain malpractice insurance during a lawyer's career.

## II. INSURANCE DISCLOSURE REQUIREMENTS AND THEIR IMPACT ON LAWYERS

Even though about half of the states have adopted insurance disclosure requirements, it appears that no one has systematically examined the situation in states that adopted such requirements, either with respect to the number of uninsured lawyers in those states or the impact of the

---

76. *Id.*

77. Arizona Uninsured Lawyers Survey, *supra* note 39; Arizona Insured Lawyers Survey, *supra* note 41.

78. Connecticut Survey, *supra* note 40.

79. Arizona Uninsured Lawyers Survey, *supra* note 39.

80. Connecticut Survey, *supra* note 40.

81. When I interviewed thirty insured Connecticut solo and small firm lawyers during the same time period, they almost all reported that they had maintained continuous LPL insurance coverage since they started in private practice. I did not directly ask whether their early experiences affected their decision to continue to carry insurance. There is some evidence, however, that lessons learned early in practice can significantly affect lawyers' decisions later in their careers. See Leslie C. Levin, *Immigration Lawyers and the Lying Client*, in *LAWYERS IN PRACTICE: ETHICAL DECISION MAKING IN CONTEXT* 87, 101–02 (Leslie C. Levin & Lynn Mather eds., 2012); Leslie C. Levin, *The Ethical World of Solo and Small Law Firm Practitioners*, 41 *HOUS. L. REV.* 309, 376–81 (2004) [hereinafter Levin, *Small Law Firm Practitioners*].

requirement on insurance purchasing by previously uninsured lawyers. Nor have there been efforts to evaluate whether two of the major concerns expressed by disclosure opponents—that disclosure rules would stigmatize uninsured lawyers and cause an increase in frivolous lawsuits—have proved to be true. Unfortunately, the evidence on all counts is limited. Nevertheless, this Section begins to address these questions.

### A. *The Disclosure Requirements*

Twenty-four states require lawyers to make disclosures—to their clients, state regulators, or both—concerning LPL insurance.<sup>82</sup> The disclosure requirements vary considerably. Direct disclosure requirements are the most onerous as they typically require uninsured lawyers to advise their clients that they do not maintain minimum amounts of LPL insurance or that they have ceased to maintain insurance during the representation.<sup>83</sup> As Table 2 reveals, however, direct disclosure requirements vary in the extent to which insurance information is revealed to the public and to state regulators who enforce direct disclosure rules.

---

82. *See supra* notes 25–26 and accompanying text. In addition, Maine asks a question on its registration form about whether lawyers carry LPL insurance but does not currently have a rule requiring insurance disclosure. *See* ME. BD. OF OVERSEERS OF THE BAR, NEW ATTORNEY REGISTRATION STATEMENT, [http://www.mebaroverseers.org/attorney\\_services/registration/pdf/NewAdmitteeStatement.pdf](http://www.mebaroverseers.org/attorney_services/registration/pdf/NewAdmitteeStatement.pdf).

83. The minimum amount is usually \$100,000 per occurrence. *See, e.g.*, PA. RULES OF PROF'L CONDUCT r. 1.4(c) (2016). California is the only direct disclosure state that does not specify a minimum amount of LPL insurance. CAL. RULES OF PROF'L CONDUCT r. 3-410 (2015).

**TABLE 2**  
**STATES REQUIRING DIRECT DISCLOSURE BY UNINSURED**  
**LAWYERS TO CLIENTS**

State	Form of Disclosure by Uninsured Lawyer to Client	Additionally Reported to Regulator	Posted on Official Website	Percent of Lawyers in Private Practice who are Uninsured <sup>84</sup>
Alaska	In writing to existing clients			Unknown
California <sup>85</sup>	In writing at time lawyer engaged			Unknown
New Hampshire	In writing at time lawyer engaged on separate form signed by client			Unknown
New Mexico	In writing at time lawyer engaged on separate form signed by client	X <sup>86</sup>		15.3% <sup>87</sup>
Ohio	In writing at time lawyer engaged on separate form signed by client			Unknown

84. I obtained the percentages in Tables 2 and 3 by contacting the officials in each state who have access to the insurance information. The figures generally reflect the percentage of lawyers engaged in private practice who are uninsured. The percentages are not completely comparable because the states do not frame the insurance question in precisely the same way. *See infra* notes 87, 90, 92, 105–06, 110, and 112–15. In addition, the New Mexico and South Dakota figures reflect the percentage of uninsured lawyers who actually engage in private practice in those states, while the Pennsylvania figure includes all uninsured private practitioners who are admitted to the Pennsylvania bar, regardless of whether they actually practice in Pennsylvania.

85. Disclosure is required only if it is reasonably foreseeable that the representation will exceed four hours of time. CAL. RULES OF PROF'L CONDUCT r. 3-410(A) (2015).

86. *In re* Mandatory Disclosure of Professional Liability Insurance Coverage, No. 05-8500 (N.M. July 29, 2005).

87. STATE BAR OF N. M., PROFESSIONAL LIABILITY INSURANCE REPORT (2015) (on file with author). This figure reflects the percentage of lawyers engaged in private practice in New Mexico who are uninsured. New Mexico asks lawyers whether they are “engaged in the private practice of law.” STATE BAR OF N.M., 2015 LICENSING STATEMENT (on file with author).

Pennsylvania	In writing to new and existing clients	X <sup>88</sup>	X <sup>89</sup>	6.9% <sup>90</sup>
South Dakota	Notice to client on letterhead and in every writing sent to client; also in advertising	X <sup>91</sup>		6% <sup>92</sup>

For example, South Dakota lawyers who do not carry a minimum of \$100,000 of LPL insurance must disclose this fact to clients at the inception of the attorney-client relationship.<sup>93</sup> This information must appear on any firm letterhead sent to clients in the same size font as lawyers use for their names.<sup>94</sup> Lawyers must also disclose this information in every written communication with their clients and in any advertising.<sup>95</sup> Potential clients typically only obtain this information if they contact a lawyer directly, as this information is not posted on the state bar website or otherwise provided to the public.<sup>96</sup> New Mexico requires uninsured lawyers to provide clients with written notice on a separate document at the time of engagement that they do not carry LPL insurance of at least \$100,000 per occurrence and to obtain written acknowledgement by the client that the client has received

---

88. See CERTIFICATION OF PROFESSIONAL LIABILITY INSURANCE, DISCIPLINARY BD. SUP. CT. PA., <http://www.padisiplinaryboard.org/documents/InsuranceCertification-Fillable.pdf> (last visited Aug. 10, 2016).

89. See *Disciplinary Board of Pennsylvania Makes It Easy for the Public to Know If Lawyers Have Professional Liability Insurance*, DISCIPLINARY BD. SUP. CT. PA., <http://www.padisiplinaryboard.org/newsroom/rules/2010/0914.php> (last visited Aug. 10, 2016).

90. Letter from Suzanne E. Price, Pa. Attorney Registrar, to author (Apr. 21, 2015) (on file with author). This figure reflects lawyers who do not maintain LPL insurance “but do have private clients and/or a possible exposure to malpractice actions.” CERTIFICATION OF PROFESSIONAL LIABILITY INSURANCE, *supra* note 88. Lawyers are excluded if they “do not have private clients and have no possible exposure to malpractice actions (e.g., retired, full-time in-house counsel, prosecutor, full-time government counsel, etc.)” *Id.*

91. STATE IMPLEMENTATION, *supra* note 25.

92. E-mail from Nicole Ogan, Dir. of Commc’ns, S.D. Bar, to author (Apr. 16, 2015, 11:06 EDT) (on file with author). This figure reflects the percentage of lawyers engaged in private practice in South Dakota who are uninsured. See S.D. CODIFIED LAWS § 16-18-20.2 (2016) (containing Insurance Disclosure form). Lawyers are asked whether they are “engaged in the private practice of law in South Dakota” as a sole practitioner or in a firm. *Id.*

93. See S.D. RULES OF PROF’S CONDUCT r. 1.4(c) (2016).

94. *Id.* r. 1.4 cmt. 8.

95. *Id.* rr. 1.4(d), 7.2(l).

96. E-mail from Nicole Ogan, Dir. of Commc’ns, S.D. Bar, to author (Apr. 10, 2015, 10:12 EDT) (on file with author). South Dakota does not have an official online lawyer directory.

this notice.<sup>97</sup> Like South Dakota, New Mexico does not otherwise provide insurance information to the public.<sup>98</sup> In contrast, Pennsylvania requires its uninsured lawyers to disclose this information to new clients in writing<sup>99</sup> and also posts lawyers' insurance information on the Pennsylvania Supreme Court's Disciplinary Board's website.<sup>100</sup> In the four other direct disclosure states, lawyers do not report insurance coverage information to regulators, making it difficult to ascertain the number of uninsured lawyers in those states.<sup>101</sup>

Of the seventeen other states that require insurance disclosure to regulators—but not direct disclosure to clients—ten states post lawyers' insurance information on websites.<sup>102</sup> In some of the other states, the information can be obtained by the public through alternate methods, but not easily. In Delaware, Idaho, Kansas, North Dakota, and Rhode Island, the public must contact state authorities to request this information.<sup>103</sup> None of these jurisdictions clearly advertise to the public that this information is available or how to obtain it. In Hawaii and Michigan, state regulators collect the information but do not make it available to the public.<sup>104</sup> The states' approaches to disclosing insurance information to the public appear in Table 3.

97. N.M. RULES OF PROF'L CONDUCT r. 16-104(C) (2015).

98. *In re Mandatory Disclosure of Professional Liability Insurance Coverage*, No. 05-8500 (N.M. July 29, 2005).

99. PA. RULES OF PROF'L CONDUCT r. 1.4(c) (2016).

100. *Disciplinary Board of Pennsylvania Makes It Easy for the Public to Know If Lawyers Have Professional Liability Insurance*, *supra* note 89.

101. *See supra* Table 2. The failure to require lawyers to report this information to regulators also makes it difficult to check whether uninsured lawyers are making disclosures to clients. Three of these states do, however, require that attorneys maintain a record of disclosure to clients for several years after the termination of the representation. *See* ALASKA RULES OF PROF'L CONDUCT r. 1.4(c) (2016); OHIO RULES OF PROF'L CONDUCT r. 1.4(c)(1) (2015); N.H. RULES OF PROF'L CONDUCT r. 1.19(b) (2016).

102. *See* STATE IMPLEMENTATION, *supra* note 25; *see, e.g., A Brief Word About Professional Liability (Malpractice) Insurance*, COLO. SUP. CT., <https://www.coloradosupremecourt.com/PDF/Complaints/A%20word%20about%20professional%20liability.pdf> (last visited Aug. 10, 2016); *Attorney Records Search*, VA. ST. B., <http://www.vsb.org/attorney/attSearch.asp?S=M> (last visited Aug. 10, 2016).

103. E-mail from Laurie Guenther, Dir. of Admissions, N.D. State Bd. of Law Exam'rs, to author (May 7, 2015, 17:47 EDT) (on file with author); E-mail from Cathy Howard, Clerk, Del. Supreme Court, to author (Aug. 19, 2016, 14:06 EDT); E-mail from Debra Saunders, Clerk of R.I. Supreme Court, to author (May 11, 2015, 10:05 EDT) (on file with author); Telephone Interview with Stanton A. Hazlett, Disciplinary Adm'r, Kan. Office of the Disciplinary Adm'r (Apr. 28, 2015); Telephone Interview with Annette Strauser, Idaho State Bar, Licensing, MCLE & IT Adm'r (May 22, 2015).

104. *See* E-mail from Liberty Castillo, Accounting and Membership Specialist, Haw. State Bar Ass'n, to author (June 1, 2015, 14:00 EDT) (on file with author); E-mail from Joan Kreutzman, Member Records Specialist, State Bar of Mich., to author (June 30, 2015, 10:09 EDT) (on file with author).

**TABLE 3**  
**OTHER STATES REQUIRING INSURANCE DISCLOSURE**  
**TO REGULATORS**

State	Posted on Official Website	Information Only Available by Contacting Regulator	Information Unavailable to Public	Percent of Lawyers in Private Practice who are Uninsured
Arizona	X			19.6% <sup>105</sup>
Colorado	X			17% <sup>106</sup>
Delaware		X		Unknown
Hawaii			X	Unknown <sup>107</sup>
Idaho		X		Unknown
Illinois	X			15.7% <sup>108</sup>
Kansas		X		Unknown
Massachusetts	X			Unknown <sup>109</sup>

105. E-mail from Lisa Panahi, Sr. Ethics Counsel, Ariz. State Bar, to author (July 16, 2016, 19:18 EDT) (on file with author). Arizona lawyers are asked to indicate whether they are engaged in private practice and are instructed that “the categories of practice that do not require this [insurance compliance] notification [are] government lawyers, in-house counsel, judges, and legal services lawyers.”

Annual Member Fees Statement Instructions, ST. B. ARIZ., <http://www.azbar.org/membertools/annualfees/annualfeesinstructions> (last visited Aug. 10, 2016).

106. This figure was rounded to the nearest whole percentage point. E-mail from Elvia Mondragon, Clerk of Attorney Registration, Colo. Supreme Court, to James Coyle, Colo. Supreme Court Attorney Regulation Counsel (Apr. 15, 2015, 12:37 EDT) (on file with author). The Colorado registration form asks whether the lawyer is engaged in private practice but does not define the term. *New Attorney Registration Form*, COLO. SUP. CT., <https://www.colorado.supremecourt.com/PDF/registration/New%20Attorney%20Registration%20Form.pdf> (last visited Aug. 10, 2016).

107. Hawaii lawyers must report if they have insurance unless they are a government lawyer or in-house counsel and do not represent clients outside that capacity. HAW. SUP. CT. R. 17(d)(1)(C). More than 25.6% of Hawaii lawyers reported they were uninsured, but this includes lawyers who maintain “active” status but do not represent any clients. *See* HAW. STATE BAR ASS’N, 2016 BAR STATISTICS AND SUMMARIES 7, <http://hsba.org/images/hsba/HSBA/Annual%20Statistics%20Results/2016%20Bar%20Statistics%20and%20Summaries.pdf>.

108. E-mail from Jim Grogan, Deputy Administrator & Chief Counsel, Ill. Attorney Registration & Disciplinary Comm’n, to author (July 19, 2016, 13:39 EDT) (on file with author) [hereinafter Grogan I]. Lawyers in Illinois are required to indicate their “predominant” practice setting. The choices of setting include “academia,” “corporate/in-house,” “government/judicial,” “not-for-profit,” “private practice,” and “other.” E-mail from Jim Grogan, Deputy Administrator & Chief Counsel, Ill. Attorney Registration & Disciplinary Comm’n, to author (Sept. 8, 2016, 13:22 EDT) (on file with author).

109. As of July 2016, 10,325 “active” Massachusetts lawyers reported they were not insured and were not exempt (i.e., they were not working exclusively as government lawyers or for an organization), and 33,178 lawyers were insured, indicating almost 24% of active non-exempt Massachusetts lawyers were not insured. *See* E-mail from Constance Vecchione, Chief Bar

Michigan			X	20.86% <sup>110</sup>
Minnesota	X			Unknown <sup>111</sup>
Nebraska	X			Unknown
Nevada	X			16.36% <sup>112</sup>
North Dakota		X		Unknown
Rhode Island		X		Unknown
Virginia	X			10.17% <sup>113</sup>
Washington	X			14.3% <sup>114</sup>
West Virginia	X			13.5% <sup>115</sup>

Counsel, Mass. Office of the Bar Counsel, to author (Aug. 16, 2016, 15:45 EDT) (on file with author). This figure includes some lawyers who maintain “active” status but do not represent clients.

110. E-mail from Clifford T. Flood, General Counsel, State Bar of Mich., to author (Sept. 8, 2016, 17:45 EDT) (on file with author). Michigan lawyers are required to provide one of four responses to the insurance question, including one that states “I do not maintain malpractice insurance, but I do have private clients and/or a possible exposure to malpractice actions.” E-mail from Clifford T. Flood, General Counsel, State Bar of Mich., to author (Aug 1, 2016, 17:50 EDT) (on file with author). There were 5,185 lawyers who responded affirmatively to that question, and another 18,629 who responded “I maintain, either individually or through my firm, malpractice insurance.” *Id.*; Malpractice Insurance Disclosure Statistics from the 2015–2016 State Bar Fiscal Year (on file with author).

111. Minnesota does not track lawyers by their type of practice. *See* E-mail from Linda Olson, Lawyer Registration Specialist, Minn. Supreme Court, to author (Apr. 21, 2015, 09:45 EDT) (on file with author). Nevertheless, a 2012 examination of registration data in Minnesota revealed 18% of lawyers who represented private clients did not carry LPL insurance. *See* Kritzer & Vidmar, *supra* note 69, at 4.

112. E-mail from Mary Jorgensen, Member Services Manager, State Bar of Nev., to author (Sept. 7, 2016, 12:28 EDT) (on file with author). In Nevada, lawyers are asked whether they are “engaged in the private practice of law” and maintain malpractice insurance. *Id.*

113. E-mail from Debra C. Isley, Admin. Assistant, Va. State Bar, to author (Apr. 23, 2015, 10:23 EDT) (on file with author). Virginia asks whether lawyers are “engaged in the private practice of law involving representation of clients drawn from the public.” VA. STATE BAR, PROFESSIONAL LIABILITY INSURANCE CERTIFICATION FORM (2008), [www.vsb.org/docs/PL\\_certification.doc](http://www.vsb.org/docs/PL_certification.doc).

114. E-mail from Shelly Wick, Membership/Systems Mgr., Wash. St. Bar Ass’n, to author (May 11, 2015, 15:46 EDT) (on file with author). Washington excludes from its definition of private practice lawyers who do not practice law and lawyers who practice as a government lawyer or as a lawyer employed by an organizational client and do not represent clients outside that capacity. WASH. STATE BAR ASS’N, 2015 LICENSE RENEWAL FORM, at 2 (on file with author).

115. E-mail from Mike Mellace, Tech. & Commc’ns Specialist, W. Va. State Bar, to author (Apr. 14, 2015, 03:01 EDT) (on file with author). The percentage reflects all lawyers admitted in West Virginia who engage in private practice and are uninsured. The percentage of in-state uninsured lawyers is 14.7%. *Id.*

West Virginia’s form seeks insurance information from lawyers who are “engaged in the private practice of law and represent clients” and expressly excludes in-house and government lawyers who do not represent clients outside that capacity. W. VA. STATE BAR, NOTICE OF COMPLIANCE WITH STATE BAR BYLAWS ARTICLE III (A). FINANCIAL RESPONSIBILITY DISCLOSURE, (2013), <http://www.wvbar.org/wp-content/uploads/2012/04/13frd.pdf>.

Tables 2 and 3 also attempt to report the percentage of uninsured lawyers who engage in private practice in the states that require disclosure, but in many jurisdictions these statistics are “unknown” because the state does not compile the information, will not reveal it, or does not ask the question in a way that permits calculation of the percentage of uninsured lawyers in private practice. For the states where the percentages of uninsured lawyers are shown, the information is not entirely comparable because the questions state regulators ask differ. In some states, the questions do not define “private practice” or do so in different ways.<sup>116</sup> Consequently, some lawyers may report that they are not engaged in private practice if they primarily work in another occupation (e.g., teaching, real estate) or practice context (e.g., government, in-house counsel) and only occasionally charge a private client for legal work. Some may report they are not engaged in private practice if they only provide legal services on a pro bono basis. As a result, some of the percentages in Tables 2 and 3 likely undercount the percentage of uninsured lawyers who occasionally represent private clients.<sup>117</sup>

### B. *The Impact of Disclosure Rules on Insurance Purchasing*

Although proponents of insurance disclosure hoped that disclosure requirements would induce uninsured lawyers to purchase LPL insurance,<sup>118</sup> it is difficult to assess whether disclosure requirements have had a significant effect on insurance purchasing. Claims that insurance disclosure requirements led to a marked decrease in uninsured lawyers appear overstated.<sup>119</sup> Most state regulators did not gather insurance

---

116. See *supra* notes 87, 90, 92, 105–06, 110, 113–15.

117. The accuracy of the percentages in Tables 2 and 3 are, of course, also dependent on the truthfulness of the reporting by lawyers. The likelihood that the percentages are accurate may be higher in states such as South Dakota and West Virginia, which require lawyers to provide substantiating information about their insurance coverage, including the name of the insurer and the policy number. See S.D. CODIFIED LAWS § 16-18-20.2 (2015) (containing Insurance Disclosure form); W. VA. STATE BAR, *supra* note 115.

118. See *supra* note 18 and accompanying text.

119. See, e.g., Mil, *supra* note 19 (quoting the chair of the Pennsylvania Supreme Court Disciplinary Board who claimed some states requiring direct disclosure “saw reductions in the number of uninsured lawyers go from about 30% to 10%”). One commentator claimed that after Virginia instituted its disclosure requirement, it experienced a drop in its rate of uninsured lawyers from 60% to 10%. James C. Gallagher, *Should Lawyers Be Required to Disclose Whether They Have Malpractice Insurance?*, VT. B.J., Summer 2006, at 5, 6. In fact, a 1987 survey of Virginia lawyers, which was conducted only a few years before Virginia’s insurance disclosure requirement went into effect, indicated the percentage of uninsured lawyers in Virginia was 13.8%. See *infra* note 141 and accompanying text.

information from lawyers prior to instituting disclosure requirements.<sup>120</sup> Insurers apparently did not track changes in insurance purchasing in a systematic fashion during the relevant periods.<sup>121</sup> Some insurers have anecdotally reported an increase in the purchasing of LPL coverage by uninsured lawyers around the time that states adopted direct disclosure requirements.<sup>122</sup> Others have not observed such a trend.<sup>123</sup> One insurance company executive, whose company writes LPL insurance for solo and small firm lawyers in a number of states, noted that disclosure rules “likely only affect take-up rates in the one or two years following the rule passage, and even on that basis, [it is] hard to put a concrete number on the impact.”<sup>124</sup> Nevertheless, the relatively low percentage of uninsured lawyers in the states with the most rigorous disclosure requirements suggests that those requirements may help reduce the number of uninsured lawyers who continue to go bare.

---

120. See AM. BAR ASS’N STANDING COMM. ON CLIENT PROT., EXPERIENCE OF STATES WITH DISCLOSURE ON REGISTRATION STATEMENT, Table 2 (July 21, 2004) (on file with author). In 2007, a California Insurance Disclosure Task Force sought information from state bars and insurers about the impact of insurance disclosure requirements in jurisdictions that had adopted them. Insurance Disclosure Report, *supra* note 21, at 8–9. The Task Force asked, *inter alia*, whether jurisdictions had noted an increase in the assertion of legal malpractice claims or a decrease in the percentage of uninsured lawyers. *Id.* Those inquiries yielded little useful information because most jurisdictions did not collect relevant data or did not respond. See *id.* at 9–10.

121. The only exception is ALPS, a lawyers’ professional liability insurer, which reportedly analyzed the impact of the insurance disclosure requirement when South Dakota and Alaska first adopted their direct disclosure rules and did not note any decrease in the percentage of uninsured lawyers who were practicing law. See *id.* at 9. Otherwise, I have been unable to find any information published by insurance companies, and my informal communications with several insurance executives did not suggest any of them knew of efforts to track this information systematically.

122. See KIRK R. HALL, PROF’L LIAB. FUND, MINIMUM FINANCIAL RESPONSIBILITY FOR LAWYERS 7 (2000) (reporting that “[a]necdotally, the malpractice insurance carriers who write in South Dakota have indicated there was a significant increase in the number of new applications just before the 1999 effective date of [South Dakota’s] disclosure rule”); *Professional Liability Insurance Report*, *supra* note 1 (reporting a “noticeable spike in demand for coverage” in California since the disclosure requirement went into effect). In Pennsylvania, there was also reportedly an increase in purchasing by previously uninsured lawyers after the disclosure requirement went into effect. E-mail from Insurance Executive No. 3 to author (June 8, 2015, 12:37 EDT) (on file with author). Whether the uninsured lawyers who purchased insurance around the time the disclosure rules were instituted continued to maintain insurance thereafter is not known.

123. See *Professional Liability Insurance Report*, *supra* note 1 (reporting on law management expert who stated that after the change in the disclosure rule, many California attorneys were “just sitting it out”).

124. E-mail from Insurance Executive No. 4 to author (June 16, 2015, 12:04 EDT) (on file with author).

The biggest success story may be South Dakota, where 94% of lawyers who engage in private practice in the state carry LPL insurance.<sup>125</sup> This state also has the most demanding direct disclosure requirements. After South Dakota required uninsured lawyers to directly disclose their lack of insurance to clients in all written communications and advertising, the percentage of insured lawyers practicing in the state reportedly reached a high of 96%.<sup>126</sup> South Dakota reported anecdotally that some senior lawyers chose to retire fully rather than disclose to their few remaining clients that they did not maintain insurance.<sup>127</sup> The state did not, however, gather data concerning the percentage of uninsured lawyers before 1990, when it adopted the direct disclosure requirement, so it is not possible to determine whether the percentage of uninsured lawyers significantly decreased thereafter.<sup>128</sup>

It may not be a coincidence, however, that Pennsylvania—which requires direct disclosure to clients *and* posts lawyers' LPL insurance information on a website—reports the next highest rate of insured lawyers in private practice (93.1%).<sup>129</sup> Like South Dakota, Pennsylvania did not systematically gather information about its uninsured lawyers before its disclosure requirement went into effect in 2010.<sup>130</sup> There is anecdotal evidence, however, that there was an increase in the number of uninsured lawyers who purchased LPL insurance around the time Pennsylvania's disclosure requirement went into effect.<sup>131</sup> The relatively

125. See *supra* note 92 and accompanying text.

126. Insurance Disclosure Report, *supra* note 21, at 10.

127. *Id.*

128. The state bar at one point reported that it “suspects” that 80% of South Dakota lawyers were insured before direct disclosure was required. *Id.* Nevertheless, that figure may be incorrect. There was no survey of South Dakota lawyers before the disclosure requirement became effective, and the 80% figure appears to have been someone's best guess. Telephone Interview with Thomas Barnett, Exec. Dir., S.D. State Bar (May 4, 2015).

129. See *supra* note 90 and accompanying text. This figure includes lawyers engaged in private practice in Pennsylvania and lawyers admitted to the Pennsylvania bar who practice outside the state. It is possible that lawyers with multiple admissions are less likely to be solo practitioners and are more likely to carry insurance. Thus, if one looked only at the Pennsylvania lawyers who engage in private practice in the state, the percentage of insured lawyers might be somewhat lower. This appears to be the trend in the other states that track insurance coverage of lawyers practicing in and outside the state. See *supra* note 115 and accompanying text; *infra* note 146 and accompanying text.

130. Before the adoption of the disclosure rule, there were reports that as many as 20% of Pennsylvania lawyers did not carry malpractice insurance. Johnston & Simpson, *supra* note 12, at 28. This was based on an informal survey of some insurance carriers and not all carriers responded.

131. One insurance executive noted, “[W]e definitely experienced an increase in sales after the rule went into effect. The majority of new policies were sold to solo practitioners who placed the minimum coverage \$100/\$300. I would estimate a one-time increase of 10% in new policies within the year.” E-mail from Insurance Executive No. 3, *supra* note 122. There were also many

low percentage of uninsured lawyers—as compared to other states—suggests that the nature of the disclosure requirement in Pennsylvania encouraged a number of uninsured lawyers to purchase LPL insurance or to retire from practice. It is impossible, however, to state this with certainty or to quantify the effect.

At the same time, in New Mexico, direct disclosure requirements do not appear to have encouraged a significant number of uninsured lawyers to purchase LPL insurance. In 2005, New Mexico adopted a requirement that lawyers disclose insurance information to the state bar but did not make this information available to the public.<sup>132</sup> That year, 19.7% of New Mexico lawyers in private practice reported they were uninsured.<sup>133</sup> That percentage rose to 20.3% in 2006 and declined to around 17% in 2007, 2008, and 2009.<sup>134</sup> In 2009, the New Mexico Supreme Court promulgated a direct disclosure rule,<sup>135</sup> but did not require that this information be posted on an official website. In 2010, 17.4% of New Mexico lawyers were uninsured—the same as before the direct disclosure requirement was adopted.<sup>136</sup> The next year, the percentage declined to 15.5%<sup>137</sup> but subsequently fluctuated from a high of 19.1%<sup>138</sup> to a low of 15.3% in 2015.<sup>139</sup>

There is also little evidence that uninsured lawyers are motivated to purchase LPL insurance simply because state regulators post their lack of insurance coverage on an official website. Virginia reports the lowest

---

inquiries from uninsured lawyers who decided not to purchase LPL insurance when they learned the new Pennsylvania rule did not require lawyers to carry insurance. *Id.*

132. *In re Mandatory Disclosure of Professional Liability Insurance Coverage*, No. 05-8500 (N.M. July 29, 2005).

133. *Q & A: Mandatory Disclosure to Clients of an Attorney's Lack of Professional Liability Insurance*, N.M. B. BULL., Mar. 2, 2009, at 7, 7.

134. *Id.*; STATE BAR OF N.M., PROFESSIONAL LIABILITY INSURANCE BY SIZE OF FIRM (2005–2007) (Apr. 7, 2008) (on file with author). The actual percentage of uninsured lawyers may have been somewhat higher because some lawyers were reporting they were “self-insured” or were not providing adequate information to confirm the respondent carried LPL insurance coverage. *Q & A, supra* note 133, at 7.

135. Brant, *supra* note 36, at 3.

136. STATE BAR OF N.M., PROFESSIONAL LIABILITY INSURANCE (2010) (on file with author).

137. STATE BAR OF N.M., PROFESSIONAL LIABILITY INSURANCE (2011) (on file with author).

138. STATE BAR OF N.M., PROFESSIONAL LIABILITY INSURANCE (2013) (on file with author).

139. STATE BAR OF N.M., PROFESSIONAL LIABILITY INSURANCE REPORT (2015) (on file with author). It is difficult to account for the fluctuations. Roughly 500–600 lawyers were reportedly uninsured in any year and the statistics only included bar members who had paid their dues by the report date. During the two years when the uninsured lawyers were reportedly in the 15.3–15.5% range, the statistics were extracted in March rather than in May. *Id.*; STATE BAR OF N.M., *supra* note 137. It is conceivable that lawyers without insurance were slower in submitting their registration forms and were not as likely to be counted in the years when the statistics in the 15% range were reported.

percentage of uninsured lawyers among these states<sup>140</sup> and illustrates the challenges of determining the impact—if any—of disclosure requirements on uninsured lawyers' decisions to purchase insurance. In 1987, before Virginia instituted any disclosure requirement, a large survey of Virginia lawyers indicated 13.8% of active members in private practice did not carry malpractice insurance.<sup>141</sup> Virginia's insurance disclosure requirement went into effect in 1990, and by 2001 11% of all Virginia lawyers in private practice reported that they did not carry malpractice insurance.<sup>142</sup> At that time, the information could only be obtained by calling the Virginia State Bar's membership department.<sup>143</sup> In July 2005, when Virginia made insurance information available on the state bar's website,<sup>144</sup> 10.85% of Virginia lawyers in private practice reported that they were uninsured.<sup>145</sup> In 2006, 10.85% of its members were still uninsured.<sup>146</sup> There was an additional small decrease in the percentage of uninsured lawyers—to 10.17%—by 2015.<sup>147</sup> Whether Virginia's decrease in uninsured lawyers since 1987 is due to the insurance disclosure requirement or to other factors that incentivize lawyers to carry insurance is not clear. For example, starting in 1997, Virginia required its lawyers to be bonded or carry malpractice insurance in order to perform real estate closings.<sup>148</sup> This requirement—rather than the insurance disclosure rule—may have induced more Virginia lawyers to carry malpractice insurance since the time the disclosure requirements went into effect.

---

140. See *supra* Table 3.

141. VA. STATE BAR, REPORT OF THE SPECIAL COMMITTEE TO STUDY LAWYER PROFESSIONAL FINANCIAL RESPONSIBILITY 12 (1988); see William R. Rakes, *Lawyer Financial Responsibility and the Public Interest*, VA. LAW., June 1988, at 26, 28. This survey was sent to all Virginia lawyers with their bar dues statement and yielded responses from 14,873 lawyers, or a 77% response rate. See VA. STATE BAR, REPORT OF THE SPECIAL COMM., *supra*.

142. Memorandum from Darrel Tillar Mason, Chair, Special Comm. on Lawyer Malpractice Ins., to the Exec. Comm. & Bar Council of the Va. State Bar 2–3 (Oct. 2, 2007), <http://www.vsb.org/docs/mmi-en6-080408.pdf>. The Virginia State Bar has statistical data going back only to 2001. E-mail from Debra C. Isley, *supra* note 113. The 1987 bar dues survey asked lawyers if they were working in “private practice.” It did not specify, as the question on the Virginia registration form now states, that this includes lawyers who are representing clients drawn from the public. VA. STATE BAR, REPORT OF THE SPECIAL COMM., *supra* note 141, at A-1.

143. Memorandum from Darrel Tillar Mason, *supra* note 142, at 3.

144. *Id.*

145. VA. STATE BAR ASS'N, *supra* note 7, at 3.

146. Memorandum from Darrel Tillar Mason, *supra* note 142, at 2. The percentage of uninsured lawyers who actually practiced in Virginia was 11.8%. *Id.*

147. E-mail from Debra C. Isley, *supra* note 113.

148. *Unauthorized Practice of Law (UPL) Guidelines for Real Estate Settlement Agents*, VA. ST. B., <http://www.vsb.org/site/regulation/upl-guidelines-for-real-estate-settlement-agents> (last updated Mar. 13, 2012).

### C. *The Adverse Impact of Disclosure Requirements on Lawyers?*

While it is not clear that disclosure requirements have caused a large number of uninsured lawyers to purchase insurance, twenty-five years of experience with these requirements suggests that they have also not produced the harms that opponents feared. For example, there is no evidence to support opponents' arguments that frivolous malpractice claims against lawyers would increase because of disclosure requirements.<sup>149</sup> In fact, the states that have looked at this issue after implementing disclosure requirements have not reported any increase in malpractice claims.<sup>150</sup> To be fair, it is exceedingly difficult to test this assertion because many factors affect claims rates.<sup>151</sup> It is telling, however, that insurance companies, which price premiums by location<sup>152</sup> and have a strong interest in identifying all possible factors that affect claims rates so that they can price insurance properly, have not concluded that lawyers in states requiring insurance disclosure should pay higher premiums.<sup>153</sup>

The argument that uninsured lawyers would be unfairly stigmatized by disclosure rules<sup>154</sup> also appears overstated. One indication that even direct insurance disclosure does not adversely affect most uninsured lawyers can be seen in the fact that most uninsured New Mexico lawyers (83.7%) reported they have no trouble advising potential clients they are not insured.<sup>155</sup> Among uninsured Arizona lawyers, whose insurance information is disclosed on the Arizona State Bar website, only 13%

---

149. Mendryzcki, *supra* note 20, at 41; *see* Mason, *supra* note 12. There is a somewhat distinct argument that the total number of malpractice claims may increase if all lawyers are insured. *See infra* notes 238–42 and accompanying text.

150. *See* Insurance Disclosure Report, *supra* note 21, at 9–10.

151. One insurance company executive, when asked whether his company had seen an increase in insurance claims after two states' direct disclosure rules were implemented responded,

The short answer is no, but truth be told, there really is no way to know. Frequency rates vary over time in individual states for all kinds of reasons and understand that claims can take even years to come to light. In light of this, I have no idea how one might try to justify pinning a change in frequency rates to a jurisdiction passing an insurance disclosure notice requirement.

E-mail from Insurance Executive No. 5 to author (Apr. 27, 2015, 12:43 EDT) (on file with author).

152. *See* RONALD E. MALLIN, LEGAL MALPRACTICE: THE LAW OFFICE GUIDE TO PURCHASING LEGAL MALPRACTICE INSURANCE § 14:10 (2016).

153. When I interviewed several insurers for a different study and asked them about the factors affecting premium pricing for solo and small firms, none of them suggested insurance disclosure rules were relevant to pricing.

154. *See supra* note 20 and accompanying text.

155. These lawyers either strongly agreed or agreed that “I have no problem telling a potential client that I am not insured.” *See supra* Table 1.

believed that even direct disclosure of this information to potential clients would result in clients not retaining them.<sup>156</sup> While the Arizona lawyers do not actually know what would happen if they directly disclosed their lack of insurance to clients, their responses suggest that these lawyers have not experienced significant problems with obtaining or retaining clients, even though the state bar website discloses their lack of insurance coverage.<sup>157</sup>

### III. DO LAWYERS WHO GO BARE CAUSE HARM?

As previously noted, one of the arguments against LPL insurance requirements—and against insurance disclosure requirements—is that there is insufficient evidence that uninsured lawyers present a substantial problem for the public.<sup>158</sup> In truth, it is exceedingly difficult to determine how much legal malpractice occurs, even among insured lawyers.<sup>159</sup> It is impossible to know how much harm uninsured lawyers actually cause. There is little evidence these lawyers are more likely to commit malpractice than insured lawyers, but there is also no evidence they are less likely to commit malpractice.<sup>160</sup>

It is not clear how many lawyers receive a malpractice claim annually, but it appears to be less than 6% of insured lawyers.<sup>161</sup> At least one insurer

156. Arizona Uninsured Lawyers Survey, *supra* note 39. Forty-six uninsured lawyers answered this question. Of the remaining group, twenty-one (46%) indicated that they did not think disclosure would result in the client not retaining them and nineteen (41%) said that they did not know.

157. Another indication uninsured Arizona lawyers do not view the disclosure rule as seriously affecting their business can be seen in the fact that almost 20% of Arizona lawyers in private practice continue to be uninsured, even though the cost of insurance is usually less than \$3,000 per year. *See supra* notes 47, 105, and accompanying text. If these lawyers believed they were losing significant business because of Arizona's disclosure rule, more would presumably rectify the situation by purchasing LPL insurance.

158. *See supra* note 19 and accompanying text.

159. *See Kritzer & Vidmar, supra* note 69, at 15.

160. There is some evidence, however, that uninsured lawyers are more likely than insured lawyers to be sanctioned for violating professional rules. Virginia found that of 109 private practitioners who were subject to discipline sanctions in 2005–2006, forty-two lawyers (38.5%) were uninsured. Memorandum from Darrel Tillar Mason, *supra* note 142, at 2. During this time, 10.85% of Virginia private practitioners were uninsured. *See supra* note 145 and accompanying text. As noted, however, solo and small firm lawyers are more likely to be uninsured than other lawyers. They are also more likely to be disciplined. Levin, *Small Law Firm Practitioners, supra* note 81, at 312–13. Thus, the Virginia results would need to be analyzed controlling for practice setting to know what to make of this data.

161. A few sources assert that on average the claims rate is 5–6% annually for all lawyers. *See, e.g., Frequently Asked Questions (FAQs)—Lawyers Professional Liability*, HERBERT L. JAMISON & CO., L.L.C., [http://www.jamisongroup.com/program\\_services/faq.aspx](http://www.jamisongroup.com/program_services/faq.aspx) (last visited Aug. 10, 2016) (reporting that “[a]pproximately 6% of all attorneys in the U.S. are likely to face an allegation of professional liability in any given year”); *Malpractice Insurance—Why*

of predominantly solo and small firm lawyers reports that almost half of the company's insureds have experienced a malpractice claim at some point in their careers.<sup>162</sup> Insurance companies include in their definition of "claims" matters that lawyers report as *possible* claims so if an actual dispute arises, the matter will be covered under a "claims made" policy.<sup>163</sup> Unfortunately, there is no way to assess whether uninsured lawyers experience a comparable number of problems because they do not report this information.

There is some evidence, however, concerning the rates of *threats* of malpractice actions against insured and uninsured lawyers. In the Connecticut survey, the same percentage of insured and uninsured respondents (33%) reported that they or a lawyer in their current firm had been threatened with a malpractice action.<sup>164</sup> Roughly the same percentage of insured Arizona lawyers (36%) reported that they or a lawyer in their firm had been threatened with a malpractice action,<sup>165</sup> but only 22% of the uninsured Arizona lawyers reported receiving threats.<sup>166</sup>

---

*Buy?*, B. PLAN, <http://www.thebarplan.com/products/product-malpractice-insurance/malpractice-insurance-why-buy/> (last visited Aug. 10, 2016) (reporting that nationally 5–6% of lawyers are confronted with a malpractice claim annually). It seems likely that the estimates are referring to insured lawyers, as there is no way to calculate the claims against uninsured lawyers. For insured lawyers, the annual claims rates vary by insurer, location, and firm size. *See, e.g.*, Kritzer & Vidmar, *supra* note 69, at 16–17 (reporting lower claims rates for larger firms); Telephone Interview with Insurance Executive No. 6 (Aug. 7, 2014) (reporting that his company experienced an annual claims rate of 7.5%); David D. Hudgins, *Committee on Lawyer Malpractice Insurance*, VA. ST. B. (July 1, 2014), [http://www.vsb.org/site/about/lmic\\_1314](http://www.vsb.org/site/about/lmic_1314) (reporting that ALPS had a claims frequency of 3.27% in Virginia in 2013); *Malpractice Insurance—Why Buy?*, *supra* (stating that in Missouri, 3–4% of insured attorneys receive a claim in any given year). In Oregon, where all lawyers are insured—including high-risk insureds—the annual claims rate in 2015 was 11.37%. *See* E-mail from Carol Bernick, Chief Exec. Officer, OSB Prof'l Liab. Fund, to author (Aug. 19, 2016, 14:56 EDT) (on file with author).

162. *Malpractice Insurance—Why Buy?*, *supra* note 161.

163. A claims made policy covers claims reported to the underwriter, in writing, during the policy period or any applicable extended reporting period. *See* AM. BAR ASS'N STANDING COMM. ON LAWYERS' PROF'L LIAB., EXTENDED REPORTING ("TAIL") COVERAGE 1 (2013), [http://www.americanbar.org/content/dam/aba/administrative/lawyers\\_professional\\_liability/lis\\_1pl\\_tail\\_coverage\\_faq\\_glossary.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/lawyers_professional_liability/lis_1pl_tail_coverage_faq_glossary.authcheckdam.pdf).

164. Connecticut Survey, *supra* note 40. As previously noted, only a small number of uninsured Connecticut lawyers responded to the survey. Nine of them indicated that they or a lawyer in their firm had been threatened with a malpractice action, while eighteen reported no threats. Among the insured Connecticut lawyers, 209 reported such threats and 415 reported no threats.

165. Arizona Insured Lawyers Survey, *supra* note 41.

166. Arizona Uninsured Lawyers Survey, *supra* note 39. Ten uninsured Arizona lawyers said they or another lawyer in their firm had been threatened with a malpractice action and thirty-five reported that there had not been threats. Among the insured Arizona lawyers, 104 lawyers or their firms had received threats of a malpractice action and 188 had not. Arizona Insured Lawyers Survey, *supra* note 41.

It is not clear whether the uninsured Arizona lawyers actually received fewer threats of malpractice actions than the insured lawyers. Insured lawyers may be more sensitive to client communications that imply such threats, because they must report possible claims to their insurers in order to preserve coverage. Insured attorneys may also be more likely to remember such threats because they communicated with insurers about them. Nevertheless, these survey responses indicate that at a minimum, between 22–33% of uninsured lawyers were threatened, or someone in their firm was threatened, with at least one malpractice action. Of course, some threatened lawsuits will never result in actual lawsuits,<sup>167</sup> but these statistics reveal that a number of uninsured lawyers do receive threats from clients or third parties.

It is exceedingly difficult to quantify the damage these uninsured lawyers cause as a result of malpractice. It is not even known how much LPL insurers pay annually in indemnity payments to resolve malpractice claims against insured solo and small firm lawyers. Claims-level data are not easily obtainable and are only reported by insurers to insurance regulators in Florida and Missouri.<sup>168</sup> Professors Herbert Kritzer and Neil Vidmar analyzed Missouri claims data and found that from approximately 1988 to 2013, the median indemnity payment for claims against solo lawyers was \$24,351 and for claims against two- to five-lawyer firms was \$33,651.<sup>169</sup> Using their calculations, it appears that, on average, insurers made \$3.85 million in indemnity payments annually to resolve claims against Missouri solo and small firm lawyers.<sup>170</sup> Missouri lawyers comprise only about 1.5% of all solo and small firm practitioners in the United States.<sup>171</sup> If the levels of indemnity payments are comparable in all of the states, this suggests that—very roughly—LPL insurers pay more than \$260 million annually in indemnity payments for claims against solo and small firm practitioners. Insured lawyers may pay

---

167. Nevertheless, a threatened lawsuit is more likely to suggest a serious problem than a mere “claim” that is reported to an insurer. See Mark Bassingthwaighe, *General Lawyers’ Professional (LPL) FAQs*, ALPS CORP. 3 (2014), <http://www.alpsnet.com/media/773992/general-lpl-faqs.pdf> (noting that insurers ask insureds to report potential claims even if the client is unaware that there is a problem).

168. Kritzer & Vidmar, *supra* note 69, at 12–13. Missouri requires all insurers writing policies in the state to report claims-level data, while Florida only requires claims to be reported if the insurer paid more than \$5,000 in indemnity payments or expenses. *Id.*

169. *Id.* at 24. Indemnity payments for claims against solo lawyers averaged \$52,964 per claim paid and averaged \$108,257 for claims against two- to five-lawyer firms. *Id.*

170. This is a crude calculation. To derive the estimate, the total indemnity payments by Missouri insurers from 1988–2013 was divided by the number of years over which the claims were paid.

171. In 2005, there were 429,216 solo and small firm practitioners (two to five lawyers) in the United States. See CLARA N. CARSON, *THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2005*, at 10 (2012). There were 6,317 in Missouri. *Id.* at 141.

additional money to satisfy their deductibles.<sup>172</sup> Assuming that 25% of all solo and small firm lawyers who represent private clients are uninsured nationwide,<sup>173</sup> it appears that tens of millions more dollars would be paid annually to compensate the clients of uninsured lawyers for legal malpractice if their lawyers were insured.<sup>174</sup>

Unfortunately, a major challenge that clients confront when they discover their uninsured lawyers mishandled their legal matters is finding another competent lawyer who will represent them in a malpractice lawsuit.<sup>175</sup> Many clients of uninsured lawyers cannot afford to hire a malpractice lawyer on an hourly basis and cannot find a lawyer who will represent them on a contingent fee basis because the likelihood of obtaining a sizable recovery from an uninsured lawyer is low.<sup>176</sup> Some plaintiffs' legal malpractice lawyers effectively discourage potential clients from even contacting them if their lawyer is uninsured.<sup>177</sup>

---

172. Some policies only require lawyers to pay the deductible if an indemnity payment is made. See, e.g., The Bar Plan, *Policy Features & Additional Coverages*, <https://www.thebarplan.com/products/product-malpractice-insurance/policy-features/> (last visited Aug. 10, 2016). In such cases, for example, if a malpractice claim is settled for \$10,000 and the firm has a \$5,000 deductible, the insurer will contribute \$5,000 as an indemnity payment and the remainder will be paid by the insured.

173. This probably understates the actual percentage of uninsured solo and small firm lawyers. In Illinois, 41% of all solo lawyers are uninsured. Grogan I, *supra* note 108. The percentage appears to be higher in some jurisdictions. See *supra* note 1.

174. Of course, in some cases uninsured lawyers pay out-of-pocket to settle malpractice disputes. But for the lawyers who cannot afford to purchase insurance, it seems unlikely that if they make a payment, it will fully compensate the client for the loss.

175. The number of plaintiffs' legal malpractice lawyers who devote a substantial amount of their practice to such work is relatively small. See Herbert M. Kritzer & Neil Vidmar, *Handling Legal Malpractice Claims: Plaintiffs' Lawyers, Defense Lawyers, and Insurers* 11–13 (June 13, 2015) (unpublished manuscript) (on file with author). There are, in addition, a number of lawyers who occasionally handle plaintiffs' legal malpractice actions, but they may not always be competent to do so. *Id.* at 20, 23–24.

176. See ROBERT D. WELDEN, AM. BAR ASS'N STANDING COMM. ON CLIENT PROT., REPORT OF THE MODEL COURT RULE ON INSURANCE DISCLOSURE 4 (2004), [http://www.americanbar.org/content/dam/aba/migrated/cpr/clientpro/malprac\\_disc\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/cpr/clientpro/malprac_disc_report.authcheckdam.pdf) (noting that a threshold issue for plaintiffs' lawyers when evaluating whether to bring a claim is whether the lawyer is insured); Kritzer & Vidmar, *supra* note 175, at 16 (reporting that plaintiffs' malpractice lawyers are very reluctant to pursue malpractice claims against uninsured lawyers); Letter from Kenneth Kirwin, Chair, Rules of Prof'l Conduct Comm. of Minn. State Bar Ass'n, to John Holtaway, ABA Client Prot. Counsel (Feb. 27, 2004), <https://www.mnbar.org/docs/default-source/judiciary-committee/comments-on-proposed-aba-model-rule-on-financial-responsibility-%28feb-04%29-and-oneil's-letter-re-malpractice-coverage.pdf> (describing a letter from an attorney who handles lawyer malpractice cases stating he will not take cases against uninsured lawyers).

177. For example, one lawyer warns potential clients on his website that even if the individual can prove each element of legal malpractice:

Nevertheless, all six of the plaintiffs' legal malpractice lawyers contacted in connection with this Article<sup>178</sup> reported that they periodically encounter potential clients whose lawyers turn out to be uninsured.<sup>179</sup> Some plaintiffs' lawyers will "absolutely never" take such cases, at least on a contingent fee basis.<sup>180</sup> If plaintiffs' malpractice lawyers discover that a lawyer is uninsured during the representation, some drop the case if there are no substantial assets.<sup>181</sup> One such lawyer, who encounters two to three cases a year in which he learns after the lawsuit commences that the lawyer is uninsured, noted, "It has gotten to the place where I tell clients up front that if it turns out their lawyer is uninsured, I will have to send the case elsewhere or drop the claim. It does not make sense to chase lawyers for their condos and BMWs. They will file for bankruptcy."<sup>182</sup>

---

Another potential problem to understand before bringing a legal malpractice case is the fact that many attorneys lack professional liability insurance. These are often the same attorneys who make themselves "judgment proof" by putting their assets in a spouse's name or making other perfectly legal maneuvers. Most verdicts are meaningless without financial recovery, so the availability of insurance or other means of recovery should be considered as early as possible.

*Legal Malpractice*, LAW OFF. DANIEL L. ABRAMS, <http://www.lawyerquality.com/legal-malpractice/> (last visited Aug. 10, 2016).

178. I spoke with the lawyers in 2015. The lawyers practiced in California, Florida, and the New York City metropolitan area, and they all devoted a substantial amount of time to plaintiffs' malpractice work. I obtained their names through a combination of recommendations by other attorneys and internet searches.

179. Some had practices that were mostly devoted to suing large law firms for high-dollar amounts, so this was not a common event. One of the other lawyers estimated that about 5% of potential clients who contacted him were calling about uninsured lawyers. Telephone Interview with Plaintiffs' Attorney No. 4 (May 4, 2015). Another estimated that it occurred in one out of five matters, but conceded that the estimate could be high. Telephone Interview with Plaintiffs' Attorney No. 3 (Apr. 30, 2015).

180. Telephone Interview with Plaintiffs' Attorney No. 6 (May 8, 2015); see Miller, *supra* note 20, at 825 (reporting on an attorney who will "almost never take a case, regardless of the wrongdoing" if the lawyer is uninsured); Dan Abendschein, *State Bar Considers Insurance Disclosure*, WHITTIER DAILY NEWS (July 15, 2007, 12:01 AM), <http://www.whittierdailynews.com/general-news/20070715/state-bar-considers-insurance-disclosure> (quoting lawyer who explained that "I have had to decline cases where the attorney doesn't have insurance, because the client is not going to get any money out of it").

181. Telephone Interview with Plaintiffs' Attorney No. 5 (May 6, 2015); see Steve Lash, *MD Court Asked to Reopen 19-Year-Old Lead-Paint Poisoning Case*, DAILY REC. (May 4, 2011), <http://thedailyrecord.com/2011/05/04/court-asked-to-reopen-19-year-old-lead-paint-poisoning-case/> (reporting on a case in which the plaintiff's lawyer filed a legal malpractice claim, but "realized [the] case would be fruitless because [the defendant lawyer] had no insurance" and lacked significant assets to satisfy meaningful judgment).

182. Telephone Interview with Plaintiffs' Attorney No. 5, *supra* note 181. The report of another plaintiffs' malpractice lawyer, who had only recovered damages once against an uninsured lawyer in seventeen years of practice, echoed the difficulty of recovering from

For this reason, among others, malpractice cases against uninsured lawyers are rarely pursued to judgment.<sup>183</sup> In Virginia, which requires its lawyers to report unsatisfied malpractice judgments against them, ten Virginia lawyers reported that they had unsatisfied judgments in 2015, and six of those lawyers were uninsured.<sup>184</sup> Some uninsured lawyers have more than one unsatisfied malpractice judgment against them.<sup>185</sup> Unsatisfied malpractice judgments against uninsured lawyers presumably occur in every state, but it is hard to find published cases.<sup>186</sup>

---

uninsured lawyers. See Phillip Bantz, *Survey Says... Not Much*, S.C. LAW. WKLY., Feb. 25, 2015. Some uninsured lawyers will go to great lengths to avoid paying malpractice judgments. See, e.g., *In re Dorfman*, 917 N.Y.S.2d 126, 127–28 (App. Div. 2011).

183. Instead, some plaintiffs' lawyers who discover the defendant is uninsured may try to settle the case on a heavily discounted basis. For example, a Connecticut lawyer who did not regularly handle legal malpractice actions but had commenced a malpractice case against a lawyer who proved to be uninsured, described settling a "good" case worth "a couple hundred thousand dollars" for "pennies on the dollars." Telephone Interview with Attorney No. 7 (Apr. 20, 2015).

184. E-mail from Debra C. Isley, Admin. Assistant, Va. State Bar, to author (Apr. 23, 2015, 11:15 EDT) (on file with author). West Virginia is the only other state that requires lawyers to report this information, but it does not maintain the information in a form that can be easily accessed. E-mail from Anita Casey, Exec. Dir., W. Va. State Bar, to author (Apr. 25, 2015, 12:38 EDT) (on file with author).

185. See, e.g., *In re Jobi*, 896 N.Y.S.2d 328, 329 (App. Div. 2010).

186. *But see, e.g.,* *Patton v. Stillman*, No. RIC382810 (Cal. App. Dep't Super. Ct. Sept. 26, 2002) (describing a malpractice judgment entered on default judgment in amount of \$206,184 against uninsured California lawyer); *Bell v. Law Offices of Howard A. Lawrence*, No. NNHCV116025442S, 2013 WL 1943849, at \*2 (Conn. Super. Ct. April 19, 2013) (describing a malpractice judgment against uninsured Connecticut lawyer in amount of \$537,000 which he could not pay); *Bland v. Hammond*, 935 A.2d 457, 467 (Md. Ct. Spec. App. 2007) (reporting on a client who was unable to recover over \$25,000 in damages against an uninsured Maryland lawyer who committed malpractice); see also Thomas G. Bousquet, *It's Time for Mandatory Malpractice Insurance*, TEX. LAW., Dec. 6, 1993, at 11 (describing two malpractice judgments, of \$260,000 and \$310,000, in which default judgments entered against uninsured Texas lawyers went unrecovered); P.J. D'Annunzio, *Attorney Fights \$245K Default Judgment in Legal Mal Case*, LEGAL MONITOR WORLDWIDE, Oct. 11, 2014 (reporting on a default judgment of \$245,000 against an uninsured Pennsylvania lawyer in which the plaintiff's lawyer looking for other assets); Robert Elder, *Limited Help for Lawyers' Victims*, AUSTIN AMERICAN STATESMEN, June 23, 2008, at A1 (describing a client who had an uncollectible \$10 million judgment against an uninsured lawyer); Molly Selvin, *Lawyers Split on Insurance Proposal: If the Disclosure of Malpractice Coverage Was Mandatory, Costs May Rise, But Plaintiffs May Select Better*, L.A. TIMES, July 2, 2007, <http://articles.latimes.com/2007/jul/02/business/fi-legal2> (describing a client who was only able to recover a "tiny fraction" of a \$450,000 judgment against an uninsured California lawyer); Caryn Tamber, *Longtime Rockville Lawyer Loses License*, DAILY REC., May 12, 2010 (reporting on a client who won a \$700,000 judgment against an uninsured Maryland lawyer on which she could not collect); Andrew Wolfson, *Lawyer's Lack of Insurance Costs Okolona Woman*, COURIER-J. (June 16, 2014, 6:47 PM), <http://www.courier-journal.com/story/news/local/2014/06/16/lawyers-lack-insurance-costs-okolona-woman/10638183/> (describing a Kentucky plaintiff who collected only \$4,000 on a \$120,000 legal malpractice judgment because the lawyer was uninsured); Andrew Wolfson, *Legal Malpractice Award Still Unpaid After 18 Years*,

It appears, however, that some of these judgments are substantial.<sup>187</sup> One plaintiffs' malpractice lawyer reported that he had four or five legal malpractice cases against uninsured lawyers that resulted in uncollectible judgments, including one for \$1 million.<sup>188</sup>

Further indication that clients are often unable to recover for malpractice from their uninsured lawyers can be seen in claims submitted to state client protection funds. These funds typically provide some compensation for lawyer dishonesty (usually defalcations) and often state on their websites that they are not available to compensate for lawyer negligence or malpractice.<sup>189</sup> Nevertheless, the Virginia Client Protection Fund denies 25% of the petitions filed because the behavior complained

---

COURIER-J. (June 16, 2016, 6:48 PM) [hereinafter Wolfson, *Legal Malpractice Award Still Unpaid*], <http://www.courier-journal.com/story/news/local/2014/06/16/legal-malpractice-award-still-unpaid-years/10639615/> (reporting on plaintiff who was unable to collect \$590,000 malpractice judgment against uninsured lawyer).

In some cases, the opinions do not expressly state the lawyer was uninsured, but the failure to defend the action or to pay the judgment suggests there was no insurance. *See, e.g., In re Kelly*, 182 B.R. 255, 257 (9th Cir. 1995) (describing a lawyer who declared bankruptcy sometime after a \$351,000 malpractice judgment was entered against him); *Kuruwa v. Meyers*, 823 F. Supp. 2d 253, 261 (S.D.N.Y. 2011), *aff'd*, 512 Fed. Appx. 45 (2d Cir. 2013) (describing a case in which a default judgment of more than \$140,000 was entered against a defendant in a legal malpractice case); *In re Slosberg*, 225 B.R. 9, 12 (Bankr. D. Me. 1998) (describing a lawyer who defended himself and failed to pay a \$27,000 malpractice judgment); *Okoye v. Abbott*, No. C058642, 2009 Cal. App. LEXIS 4730, at \*1 (June 9, 2009) (reporting on an unsatisfied malpractice judgment of \$350,000 entered on default judgment); *Comm. on Prof'l Ethics v. Jackson*, 391 N.W.2d 699, 701 (Iowa 1986) (reporting on a lawyer who failed to defend against a malpractice action or pay the \$40,000 judgment); *In re Stewart*, 934 N.Y.S.2d 133, 134 (App. Div. 2011) (sanctioning a lawyer who had an unsatisfied \$50,000 malpractice judgment against him obtained by default judgment); *Columbus Bar Ass'n v. Roseman*, No. 5085, slip op. at 6 (Ohio July 26, 2016) (reporting on lawyer who must resolve a \$135,000 malpractice judgment against him before seeking reinstatement); *In re Lawler*, Conn. Statewide Grievance Comm., 96-0344 (reporting on a judgment-proof lawyer who refused to pay client a more than \$14,000 malpractice judgment); *Jankura v. Piombino*, Conn. Statewide Grievance Comm., 14-0065 (Nov. 7, 2014) (sanctioning an attorney for, among other things, failing to pay judgment for negligence against him); *French v. Evans*, Conn. Statewide Grievance Comm., 08-0250 (June 5, 2009) (noting the lawyer's failure to pay all but \$1,500 of a \$42,000 malpractice judgment entered against him).

187. *See, e.g., Norm Pattis, Malpractice Insurance Shouldn't Be Mandated*, CONN. L. TRIB., May 24, 2013, <http://www.ctlawtribune.com/id=1202601597368/Opinion-Malpractice-Insurance-Shouldnt-Be-Mandated?mcode=0&curindex=0> (describing uninsured lawyer with \$550,000 malpractice judgment against him and no reachable assets).

188. Telephone Interview with Plaintiffs' Attorney No. 4, *supra* note 179.

189. *See, e.g., Client Protection Fund*, ST. B. ARIZ., <http://www.azbar.org/LegalHelpandEducation/ConsumerBrochures/ClientProtectionFund> (last visited Aug. 10, 2016) (stating that claims for negligence, incompetence or malpractice are not reimbursable); *Frequently Asked Questions*, CLIENT PROTECTION FUND B. MD., <http://mdcourts.gov/cpf/faq.html> (last visited Aug. 10, 2016) (stating that "[t]he Fund does not handle malpractice claims").

of constitutes malpractice and not dishonesty.<sup>190</sup> Of course, this does not reveal whether the clients' claims would have been successful. It does suggest, however, that there are a sizable number of claims based on lawyer malpractice for which clients feel they have no other recourse, even in a state where almost 90% of lawyers in private practice carry LPL insurance.<sup>191</sup>

Thus, there is evidence that clients of uninsured lawyers are being harmed by their lawyer's malpractice, clients are not always compensated for the harm, and sometimes clients suffer substantial harm. The question, then, is *how substantial* should that harm be before taking steps to protect the public from these lawyers? The dollar values of the claims may not always be high,<sup>192</sup> but the harm may be significant to the injured client. Clients will likely feel doubly aggrieved when the uninsured lawyer shelters assets in a family member's name<sup>193</sup> or seeks bankruptcy protection after-the-fact.<sup>194</sup> While the percentage of cases in which uninsured lawyers commit malpractice may not be large, the percentage of lawyers who steal from their clients is even smaller—yet there are fairly elaborate mechanisms in place to protect clients from such lawyers

---

190. VA. STATE BAR ASS'N, *supra* note 7, at 8; *see also* E-mail from Alecia Ruswinckel, Prof'l Standards Assistant Counsel, State Bar of Mich., to author (June 22, 2015, 13:51 EDT) (on file with author) (reporting that 6.4% of closed files that Michigan Client Protection Fund maintains were closed or denied because they were based on lawyer negligence or malpractice).

191. *See supra* text accompanying note 113.

192. Most claims paid by insurers to claimants are in the \$1 to \$10,000 range. PROFILE OF LEGAL MALPRACTICE CLAIMS, *supra* note 68, at 21. It is not unreasonable to assume that most claims against uninsured lawyers would be of equal value.

193. *See, e.g.,* Okoye v. Abbott, No. C058642, 2009 Cal. App. LEXIS 4730, at \*2–3 (June 9, 2009) (describing a lawyer who transferred assets to his wife's name and family trust to avoid paying a malpractice judgment). Lawyers are sometimes advised to transfer their assets so that they are not reachable in the event of a malpractice claim. *See, e.g.,* Amy K. Kanyuk, *Asset Protection Planning for New Hampshire Attorneys*, N.H. B. NEWS, May 20, 2005, <http://www.mckan.com/assets/uploads/pdf/Asset-Protection-Planning-05-20-05.pdf>.

194. For example, after New York attorney Michael Bressler had a \$900,000 judgment entered against him, he sought bankruptcy protection. *See In re Bressler*, No. 06-11897, 2008 Bankr. LEXIS 754, at \*3, \*4 (S.D.N.Y. Mar. 10, 2008); Dareh Gregorian, *'Deceitful' Lawyer Socked for 900G*, N.Y. POST (Aug. 17, 2004, 4:00 AM), <http://nypost.com/2004/08/17/deceitful-lawyer-socked-for-900g/>; *see also In re Kelly*, 182 B.R. 255 (9th Cir. 1995) (describing a lawyer who declared bankruptcy sometime after a \$351,000 malpractice judgment entered against him); *In re Slosberg*, 225 B.R. 9 (D. Me. 1998) (describing a lawyer who sought bankruptcy protection after a \$27,000 malpractice judgment entered against him). In some cases, lawyers declare bankruptcy to head off a judgment. One plaintiffs' malpractice lawyer described a case in which the defendant declared bankruptcy eight days before the trial in a case brought by an elderly couple in which \$1 million was at issue. Telephone Interview with Plaintiffs' Attorney No. 5, *supra* note 181.

and to reimburse them for their losses.<sup>195</sup> These protections are no doubt due, in part, to the publicity associated with lawyer defalcations<sup>196</sup> and the negative views of the profession that result from these events. The harm caused by uninsured lawyers who are not sued—or fail to pay malpractice judgments—is much less likely to garner as much public attention.<sup>197</sup> Nevertheless, the impact of their malpractice can be devastating, especially in cases where physical injuries were sustained or a client's liberty is at stake.<sup>198</sup>

#### IV. SHOULD LAWYERS BE PERMITTED TO GO BARE WHILE CLIENTS GO BLIND?

The question of whether lawyers should be allowed to go bare has been much debated.<sup>199</sup> So has the question of what *else* should be required of uninsured lawyers if they are permitted to go bare. This Section returns to those questions with the benefit of some data about uninsured lawyers. It first considers what the evidence suggests about whether lawyers

195. A review of the discipline histories of 6,200 lawyers admitted to the Connecticut bar from 1989–1992 revealed that the bar imposed discipline for violations of rules concerning safekeeping of client property in only 49 cases. LESLIE C. LEVIN ET AL., LSAC GRANT REPORT SERIES: A STUDY OF THE RELATIONSHIP BETWEEN BAR ADMISSIONS DATA AND SUBSEQUENT LAWYER DISCIPLINE 14 (2013), [http://www.lsac.org/docs/default-source/research-\(lsac-resources\)/gr-13-01.pdf](http://www.lsac.org/docs/default-source/research-(lsac-resources)/gr-13-01.pdf). Not all of the discipline involved theft. Nevertheless, even if all 49 decisions involved 49 separate lawyers, the rate of discipline for any kind of violation concerning safekeeping of property among the Connecticut lawyers over a 20-year period was less than 0.8%. Notwithstanding the low incidence of lawyer theft, many states conduct random audits of client trust accounts and all states have client protection funds to provide clients with some redress when lawyers steal, even though lawyer theft is a very rare event. See AM. BAR ASS'N, DIRECTORY OF LAWYERS' FUNDS FOR CLIENT PROTECTION (2010), [http://www.americanbar.org/content/dam/aba/migrated/cpr/clientpro/cp\\_dir\\_fund.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/cpr/clientpro/cp_dir_fund.authcheckdam.pdf).

196. See, e.g., Jennifer Emily, *Disbarred Lawyer Faces up to Life in Prison for Stealing from Dallas Area Clients*, DALL. MORNING NEWS (Oct. 22, 2013, 10:43 PM), <http://www.dallasnews.com/news/crime/headlines/20131022-clients-testify-lawyer-never-paid-them-lawsuit-settlements.ece>; Jerry Sandusky's Lawyer Charged with Stealing Money from Clients, FOXSPORTS.COM (Feb. 20, 2015, 4:26 PM), <http://www.foxsports.com/college-football/story/jerry-sandusky-lawyer-charged-with-stealing-money-from-clients-022015>; Amanda Marazzo, *Crystal Lake Lawyer Gets Nine Years for Stealing from Clients*, CHI. TRIB. (Nov. 13, 2014, 10:18 AM), <http://www.chicagotribune.com/suburbs/ct-lawyer-theft-met-20141112-story.html>.

197. When lawyers steal from clients, they are often criminally prosecuted and publicly disciplined, which is all a matter of public record. Indeed, the legal press routinely publishes disciplinary sanctions, which helps bring them to the attention of the mainstream media. In contrast, there is often no way to learn about uninsured lawyers who are not sued, as this information is not a matter of public record.

198. See, e.g., Bell v. Law Offices of Howard A. Lawrence, No. NNHCV116025442S, 2013 WL 1943849, at \*2 (Conn. Super. Ct. Apr. 19, 2013); Selvin, *supra* note 186; Tamber, *supra* note 186; Wolfson, *supra* note 20; Wolfson, *Legal Malpractice Award Still Unpaid*, *supra* note 186.

199. See HALL, *supra* note 122, at 2–3; Schlegelmilch, *supra* note 13; Memorandum from Darrel Tillar Mason, *supra* note 142; see also *supra* note 8 and accompanying text.

should be required to maintain LPL insurance. It then considers how well the compromise—insurance disclosure requirements—is working to inform clients of the risks they undertake when they hire an uninsured lawyer.

### A. *Mandatory Insurance Redux*

The argument for mandatory insurance is primarily based on public protection: Clients should be able to obtain redress if their lawyers' negligence causes them harm.<sup>200</sup> In many cases, the clients of solo and small firm lawyers can only obtain meaningful redress through malpractice claims.<sup>201</sup> While the clients of larger firm lawyers, who are repeat players in the legal system, can often negotiate effectively with those firms for compensation if their lawyers make mistakes, the clients of solo and small firm lawyers—often individuals who are one-shot players in the legal system—lack this leverage.<sup>202</sup> Their recourse is usually limited to lawyer discipline complaints or malpractice claims.<sup>203</sup> Lawyer discipline authorities can sanction lawyers for neglect, but they almost never monetarily compensate clients for the harm their lawyers cause.<sup>204</sup> Thus, if the clients of solo and small firm lawyers cannot pursue these lawyers through malpractice claims, they are left with no meaningful remedy. For the reasons discussed above, this avenue is mostly unavailable to clients whose lawyers are uninsured.<sup>205</sup>

There are reasons to be especially concerned about the risks that uninsured lawyers pose. While there is no hard evidence that uninsured lawyers are more likely to commit malpractice than insured lawyers, there is reason to suspect that this may be the case.<sup>206</sup> The process of applying for LPL insurance forces insured lawyers to review annually the adequacy of their office systems and procedures.<sup>207</sup> This is less likely to

---

200. See, e.g., Bousquet, *supra* note 186, at 11; Schultz, *supra* note 10, at 19; Memorandum from Darrel Tillar Mason, *supra* note 142, at 3.

201. Bousquet, *supra* note 186, at 11.

202. See David B. Wilkins, *Who Should Regulate Lawyers?*, 105 HARV. L. REV. 799, 828–29 (1992).

203. *Id.* at 829–30.

204. Moreover, in some cases of incompetence or neglect, disciplinary authorities will not become involved at all. See Leslie C. Levin, *The Case for Less Secrecy in Lawyer Discipline*, 20 GEO. J. LEGAL ETHICS 1, 18–19 (2007).

205. See *supra* notes 175–76, 180–82 and accompanying text.

206. See *supra* note 160 and accompanying text.

207. For instance, insured lawyers must provide insurers with information about their risk management practices—including calendaring and conflicts checking systems—when they apply for insurance and typically again at the time of renewal. See Leslie C. Levin, *Regulators at the Margins: The Impact of Malpractice Insurers on Solo and Small Firm Lawyers*, 49 CONN. L. REV. 553, 570, 574 (2016).

systematically occur if lawyers are uninsured. Moreover, lawyers who do not carry insurance because they cannot afford it are less likely to be able to afford to pay for office staff to help them avoid mistakes.<sup>208</sup> They are also less likely to be able to afford to belong to voluntary bar associations, which are important sources of information about best professional practices and changes in the law.<sup>209</sup>

Uninsured lawyers also threaten to undermine the public's trust in lawyers. This loss of trust occurs at the individual client level, when clients discover that they have no meaningful recourse against their uninsured lawyers. Public trust in lawyers is also undermined when the news media report stories about clients who cannot recover for the harm caused by their uninsured lawyers.<sup>210</sup> These concerns have given rise to arguments that if the bar does not self-regulate responsibly and require lawyers to carry LPL insurance, legislatures may impose the requirement on them.<sup>211</sup> Once confidence is lost in the bar's ability to regulate itself in ways that are consistent with the public interest, state legislatures may increasingly become involved in lawyer regulation.<sup>212</sup>

---

208. Of the forty-eight uninsured Arizona survey respondents, thirty (63%) had no support staff. Arizona Uninsured Lawyers Survey, *supra* note 39. In contrast, among the 303 insured Arizona lawyer respondents, only 31% had no support staff. Arizona Insured Lawyers Survey, *supra* note 41. Likewise, seventeen out of the twenty-eight uninsured Connecticut lawyers (61%) had no support staff as compared to 23% of insured lawyers (148 out of 656) who had no support staff. Connecticut Survey, *supra* note 40.

209. See Leslie C. Levin, *Specialty Bars as a Site of Professionalism: The Immigration Bar Example*, 8 U. ST. THOMAS L.J. 194, 196–97, 202 (2011).

210. See, e.g., Elder, *supra* note 186, at A01 (describing a client who had a large malpractice judgment against an uninsured lawyer); Selvin, *supra* note 186 (describing a client who was only able to recover a “tiny fraction” of a \$450,000 judgment against an uninsured lawyer); Wolfson, *supra* note 20, at A1 (describing an uninsured lawyer who filed for bankruptcy protection to avoid paying a malpractice judgment to disabled clients); Christina M. Wright, *Judge: Anderson Attorney Must Pay Former Client \$270,000*, HERALD BULL. (Aug. 28, 2010), [http://www.heraldbulletin.com/news/local\\_news/judge-anderson-attorney-must-pay-former-client/article\\_9ad68fe5-5ea91-50ed-938a-19e3f4e7cf47.html](http://www.heraldbulletin.com/news/local_news/judge-anderson-attorney-must-pay-former-client/article_9ad68fe5-5ea91-50ed-938a-19e3f4e7cf47.html) (noting that it was unknown how long it would take a legal malpractice plaintiff to obtain the \$277,000 awarded in a malpractice case against an uninsured lawyer).

211. A similar argument was made in Texas, when it appeared that the legislature was considering mandating insurance disclosure for lawyers. In response, the Texas Supreme Court asked the bar to take up the question to head off legislative action. See Bruce A. Campbell, *A Viewpoint on Disclosure of Malpractice Insurance by Texas Lawyers*, CAMPBELL & ASSOCS. L. FIRM, P.C. (July 2010), <http://www.cllegal.com/wp-content/uploads/2012/10/A-Viewpoint-on-Disclosure-of-Malpractice-Insurance-by-Texas-Lawyers.pdf>. At the time, there were predictions that if the Texas Supreme Court did not adopt a disclosure rule, the legislative initiative would resurface. See Herring, *supra* note 1, at 822. While the Texas Supreme Court did not ultimately adopt a disclosure rule, at some point the legislature may revisit this question. See Campbell, *supra*.

212. See Herring, *supra* note 1, at 822. Of course, the legal profession's ability to self-regulate has already eroded in some jurisdictions. See, e.g., William T. Gallagher, *Ideologies of*

The most common argument against requiring lawyers to maintain LPL insurance is the cost of the insurance, which is said to be prohibitively expensive for some lawyers.<sup>213</sup> This argument requires careful scrutiny. The average cost of minimum levels of LPL insurance (\$100,000/\$300,000) for individual lawyers is \$3,000 or less annually in much of the United States,<sup>214</sup> although it runs higher in a few states.<sup>215</sup> Opponents of an insurance requirement argue, however, that some lawyers—including new lawyers and lawyers who practice part-time—cannot afford to pay for LPL insurance.<sup>216</sup> This claim may be overstated. In some states, part-time lawyers (working fewer than 25 hours per week) can obtain LPL insurance for \$600 per year or less.<sup>217</sup> For many new lawyers, it is possible to purchase policies for amounts as low as \$500 the first year and at reduced rates for a few years thereafter.<sup>218</sup>

Nevertheless, it may be truly impossible for some lawyers who represent private clients to pay for LPL insurance.<sup>219</sup> It is difficult to obtain an accurate estimate of the percentage of uninsured lawyers who fall into that category. The New Mexico survey responses suggest, however, that the percentage of uninsured lawyers who truly cannot

---

*Professionalism and the Politics of Self-Regulation in the California State Bar*, 22 PEPP. L. REV. 485, 490–91, 556–60 (1995).

213. See Glenn Fischer, *Professional Liability Insurance Coverage—Viable Form of Self-Regulation or Simply Another Business Decision?*, LPL ADVISORY, Fall 2002, at 1, 2; see also Mason, *supra* note 12. Alternatively, opponents argue that the cost of insurance would be passed on in the form of higher fees charged to clients. See Watters, *supra* note 8, at 252.

214. See Ely, *supra* note 47, at 3. See also Todd C. Scott, *Attorney Malpractice Insurance: Who's Got Your Back?*, GPSOLO, Jan./Feb. 2014, at 38, 41 (stating that the annual premium can average from \$1,500 to \$3,000 for experienced attorneys); Gary Gosselin, *Going Bare: Not Carrying Malpractice Insurance Could Leave You and Your Firm Exposed*, INGHAM CTY. LEGAL NEWS (Oct. 12, 2013), <http://www.legalnews.com/ingham/1381823> (premium for solo Michigan lawyer averages from \$2,000 to \$3,500). Premiums are higher in all states for lawyers who practice in certain areas such as securities and intellectual property. Scott, *supra*.

215. In California, the annual cost of \$100,000/\$300,000 coverage for lawyers working in low-risk practice areas (e.g., criminal, family, immigration) averages about \$1,500, and for lawyers working in mid-range risk practices (e.g., slip-and-fall personal injury, residential real estate), the average cost is about \$3,500. The annual cost is about \$7,500 for lawyers in high-risk practices (e.g., class actions, securities or intellectual property). The premiums are even higher in Los Angeles. Telephone Interview with Insurance Executive No. 2 (July 6, 2015).

216. Mendryzcki, *supra* note 20, at 41; Memorandum from Darrel Tillar Mason, *supra* note 142.

217. E-mail from Insurance Executive No. 1 to author (May 20, 2015, 14:29 EDT) (on file with author). In Texas, part-time lawyers with minimal practices can pay as little as \$450 for LPL insurance. TEXASBARCLE, BASIC CONSIDERATIONS REGARDING LAWYER PROFESSIONAL LIABILITY INSURANCE (2005), <http://www.texasbarcle.com/CLE/site/LawOfficeMgmtPracticeMaterials/tlie.pdf>.

218. *Strong Start Program*, LIMIC, [http://www.lmic.com/policies\\_offered/strong\\_start\\_program](http://www.lmic.com/policies_offered/strong_start_program) (last visited Aug. 10, 2016); TEXASBARCLE, *supra* note 217; Scott, *supra* note 214.

219. See *supra* notes 57–59 and accompanying text.

afford annual LPL premiums may be less than 20%.<sup>220</sup> If these lawyers commit malpractice, their low incomes and lack of assets may also render them unable to fully compensate clients for the harm they cause.

Furthermore, uninsured lawyers who currently cannot afford LPL insurance will most likely not be able to pay for insurance even if their state establishes a mandatory professional liability insurance fund like the one in Oregon. The cost of insurance in Oregon is \$3,500 per lawyer,<sup>221</sup> which is higher than the average cost in the commercial market in many states.<sup>222</sup> Some have argued, however, that without a state fund, a law requiring lawyers to maintain LPL insurance would result in commercial insurance companies deciding who practices law.<sup>223</sup> This claim has rhetorical resonance but is less persuasive when carefully considered. Any insurance requirement would only apply to lawyers who represent private clients and would not prevent lawyers from working in other practice settings (e.g., in-house, government), associating with a firm that provides insurance, or working in lower risk practice areas so they can afford the cost of insurance. Lawyers in every state also have a number of insurance companies from which they can purchase LPL insurance.<sup>224</sup> Only five uninsured lawyers who responded to the New Mexico survey

---

220. See New Mexico Survey, *supra* note 38. As previously noted, 53% of the uninsured New Mexico lawyers (61) indicated that they would purchase LPL insurance if the New Mexico Supreme Court required them to do so. See *supra* Table 1. Of the fifty-four uninsured lawyers who indicated they would not pay for insurance if required to do so, only twenty of the lawyers (17.4% of all uninsured respondents) also indicated they could not afford to hire representation to defend them if sued in a malpractice action, suggesting they truly may have difficulty paying for insurance. Three other lawyers who indicated they would not pay for insurance did not answer the question about their ability to pay for representation.

221. In Oregon, all lawyers who have been in practice more than three years—including lawyers who practice part-time—must pay the same premium of \$3,500 for \$300,000/\$300,000 coverage. Coverage, OR. ST. B. PROF. LIABILITY FUND, <https://www.osbplf.org/coverage/overview.html> (last visited Aug. 10, 2016).

222. See *supra* note 214 and accompanying text. It is possible, however, that the insurance premiums for high-risk lawyers (either because of their claims history or their areas of practice) would be lower if they could purchase insurance from a state professional liability provider than if they had to obtain insurance in the commercial market.

223. See, e.g., Fischer, *supra* note 213, at 1; Hansen, *supra* note 18, at 49; Mason, *supra* note 12.

224. For example, Missouri has eighteen companies that are admitted to write LPL insurance in the state. 2015 MO. DEP'T OF INS. ET AL., MISSOURI PROPERTY & CASUALTY SUPPLEMENT REPORT 183 (2016), <http://insurance.mo.gov/reports/suppdata/documents/2015PropertyCasualtySupplementReport.pdf>. Even a state with relatively few lawyers, such as Montana, has fifteen companies admitted to write LPL insurance in that state. *Professional Liability Insurance Directory: Montana*, A.B.A. STANDING COMMITTEE ON PROF'L LIABILITY, <http://apps.americanbar.org/legalservices/lpl/directory/states/mt.html> (last visited Aug. 10, 2016). Not all of the insurance companies write policies for solo and small firms, but in every jurisdiction, there are more than a few companies that do so.

indicated that they had difficulty obtaining insurance due to their claims experience.<sup>225</sup> It was not clear that most of these lawyers had exhausted the alternatives for finding coverage. If lawyers cannot obtain or afford LPL insurance, it is not the insurer that “decides” who practices law. Rather, it is the lawyer’s choice of practice setting, financial circumstances, practice areas, and other risk factors that are determinative.

Another argument against mandatory insurance that merits consideration is that requiring all lawyers to purchase LPL insurance will adversely affect the provision of legal services to people of limited means.<sup>226</sup> There is some evidence supporting this argument. The responses from some of the uninsured New Mexico lawyers indicated that they would cease doing pro bono work (because they were not otherwise practicing), would do less pro bono work (presumably because they would need to earn more money), or would have to raise their legal fees if they were required to maintain LPL insurance.<sup>227</sup> Only 23 of 131 uninsured lawyers in private practice (17.6%) indicated that they performed some pro bono work.<sup>228</sup> Nevertheless, sixteen of these uninsured lawyers (12.2%) indicated in narrative comments that they performed all or most of their legal work on a pro bono basis.<sup>229</sup> In many cases, they were retired, semiretired, or working full-time in a job unrelated to law practice. Thirteen of the sixteen lawyers strongly agreed or agreed that they would stop practicing law in New Mexico if they were required to purchase LPL insurance.<sup>230</sup> Some of the other uninsured lawyers who mentioned they performed some pro bono work indicated that an insurance requirement would cause them to close their practices or reduce the amount of pro bono work that they perform.<sup>231</sup> It was sometimes unclear from the responses, however, what the lawyers meant by “pro bono” work. For solo and small firm lawyers, pro bono may encompass not only free legal work but also discounted work (“low bono”) and “carrying” clients who can no longer pay.<sup>232</sup> Although a majority of the uninsured lawyers who indicated they performed “pro

---

225. See *supra* notes 63–64 and accompanying text.

226. See, e.g., Mason, *supra* note 12.

227. New Mexico Survey, *supra* note 38.

228. *Id.* The New Mexico survey did not systematically inquire about pro bono work. It is possible that some additional uninsured lawyers performed pro bono work but did not mention it because they did not view it as relevant to the questions about LPL insurance.

229. *Id.*

230. *Id.*

231. *Id.*

232. Leslie C. Levin, *Pro Bono Publico in a Parallel Universe: The Meaning of Pro Bono in Solo and Small Law Firms*, 37 HOFSTRA L. REV. 699, 718–24 (2009).

bono” work appeared to be assisting clients of limited means,<sup>233</sup> a few of the lawyers may have been providing free legal services to clients who could otherwise afford to pay.

Most of these uninsured New Mexico lawyers did not indicate how many hours they devoted to pro bono work, and for some lawyers the time may not have been substantial.<sup>234</sup> Nevertheless, any significant diminution in pro bono or low bono work for people of limited means is a concern when so many people cannot afford to pay for legal services. One alternative for lawyers who wish to perform pro bono work, however, is to work in state bar pro bono programs or state legal services programs that provide LPL coverage for their volunteer lawyers.<sup>235</sup> If lawyers in private practice were required to maintain LPL insurance, an exception could be created—as it was in Oregon—for lawyers who represent clients exclusively through these pro bono programs.<sup>236</sup> It is probably not possible, however, to create an exception to an insurance requirement for lawyers who provide pro bono or low bono services in other ways.<sup>237</sup> Nor would it be desirable to leave pro bono clients without recourse if their lawyers commit malpractice. Thus, if LPL insurance is required, some lawyers may perform less pro bono or low bono work in order to pay for insurance. Some otherwise retired lawyers may become “inactive” and cease to perform pro bono work. The question is *how much* pro bono work for people of limited means would actually be lost if uninsured lawyers were required to carry LPL insurance or confine their pro bono efforts to bar programs that provide insurance coverage? It is also important to consider whether states could implement measures to offset the loss of pro bono services that might result from an insurance requirement.

---

233. One lawyer wrote:

I usually only take cases where clients have been rejected by other attorneys and they cannot get help. I do not call all of my work pro bono because they sometimes generate a fee or my client pays me a small amount of money. [R]ecently once [sic] client brought me a sack of onions and a sack of chile.

New Mexico Survey, *supra* note 38.

234. At least a few of the lawyers did, however, devote substantial time to pro bono or low bono work. One lawyer wrote, “80% of the cases I do are pro bono. I am the only practicing private (full time) attorney in [name omitted] County. If I don’t help these people no one will.” *Id.* Another lawyer indicated that 200 hours was devoted to pro bono. *Id.* A few others referred to working on one to three pro bono matters. *Id.*

235. In fact, three of the uninsured New Mexico lawyers were performing pro bono through such programs. *Id.*

236. See *Professional Liability Fund Coverage*, *supra* note 11.

237. The California Supreme Court has held that an attorney’s obligation to pro bono clients is no less than it is to other clients. *Siegel v. State Bar of California*, 751 P.2d 463, 466 (Cal. 1988). In addition, there is no support under lawyers’ professional rules for the proposition that lawyers owe lesser duties to pro bono clients than to paying clients.

A further argument against an insurance requirement—that malpractice claims will increase if all lawyers who represent private clients are required to carry LPL insurance—is less compelling, and the evidence is equivocal. While the highest annual claims rate I could find for a commercial insurer was 7.5%,<sup>238</sup> the Oregon Professional Liability Fund (PLF), which insures all Oregon private practitioners, experienced a claims rate of 11.37%.<sup>239</sup> This rate may be due, in part, to the fact that the Oregon PLF insures all Oregon private practitioners whose principal office is in Oregon, including higher risk lawyers many commercial insurers may decline to cover. Oregon lawyers may also be more willing to report all possible claims to the PLF because reported claims will not affect the lawyers' premiums.<sup>240</sup> The possibility cannot be discounted, however, that the higher claims rate against Oregon lawyers is due, in part, to the fact that clients—and plaintiffs' malpractice lawyers—are aware that all Oregon lawyers in private practice maintain LPL insurance, and that if a plaintiff proves malpractice, as much as a \$300,000 recovery is possible.<sup>241</sup>

The comments of plaintiffs' malpractice attorneys also reveal that if uninsured lawyers are required to maintain insurance, this will increase the chances they will be sued if they engage in malpractice.<sup>242</sup> It would be a perverse outcome, however, to allow these lawyers to reduce their chances of being sued by declining to purchase insurance that would compensate clients if the lawyers commit malpractice. The failure to purchase insurance is especially concerning when some uninsured lawyers use their legal knowledge to shelter their assets.<sup>243</sup> Failure to carry insurance may further lead to clients suing lawyers who have less involvement with the matter than the uninsured lawyer who most directly

---

238. In other words, 7.5% of the LPL policyholders reported claims in a year. Telephone Interview with Insurance Executive No. 6, *supra* note 161.

239. E-mail from Carol Bernick, *supra* note 161. This rate is comparable to the claims rates in three provinces in Canada that also require that lawyers carry LPL insurance. See Herbert Kritzer, *Lawyers Professional Liability: Comparative Perspectives*, 24 INT'L J. LEGAL PROFESSION (forthcoming 2017), <http://www.tandfonline.com/doi/full/10.1080/09695958.2016.1223673> (reporting that claims rates in Alberta, Ontario, and British Columbia in 2014 ranged from 10.3–12.3%).

240. See E-mail from Carol Bernick, Chief Exec. Officer, OSB Prof'l Liab. Fund, to author (July 30, 2015, 14:07 EDT) (on file with author).

241. See *supra* note 221 and accompanying text.

242. See *supra* notes 176, 180 and accompanying text. It is also conceivable that maintaining insurance will increase the chances they will be sued even if no malpractice occurs, but in that case they are protected by insurance.

243. See *supra* note 193 and accompanying text; see also Bantz, *supra* note 182 (“People are consciously deciding these days to not carry malpractice insurance . . . . You start searching public records to find out what’s in their names and you see that they don’t have any property, that they’ve put stuff in a partnership or in their wife’s name and they’re basically judgment-proof.”).

caused the harm.<sup>244</sup> These uninsured lawyers are free riders who benefit from the fact that most private practitioners carry LPL insurance and form the public's belief that lawyers carry insurance.<sup>245</sup>

### B. *The Limits of Insurance Disclosure Requirements*

Alternatively, if lawyers are not required to maintain LPL insurance, and clients must bear the risk that they cannot recover for the negligence of their uninsured lawyers, what—if anything—should be communicated to these clients before they retain an uninsured lawyer? Not surprisingly, there is evidence the public believes insurance information should be disclosed.<sup>246</sup> Some members of the public believe that if they knew a lawyer was uninsured, it would affect their decision to retain the lawyer.<sup>247</sup> Seventeen states currently mandate direct disclosure or provide for disclosure of insurance information to the public via websites.<sup>248</sup> Yet even those states fail to provide effective disclosure to clients concerning lawyers who are uninsured.

As previously noted, in the seven jurisdictions that require direct disclosure to clients, lawyers must advise their clients in writing that they are uninsured.<sup>249</sup> It is not known whether clients actually read this information, especially in jurisdictions that do not require the information to be communicated in a separate document or do not require a written acknowledgement by the client.<sup>250</sup> Even if clients read the disclosure, it

244. Fortney, *supra* note 16, at 200; Bousquet, *supra* note 186.

245. See VA. STATE BAR ASS'N, *supra* note 7, at 7; WELDEN, *supra* note 176, at 3 n.2; Nancy McCarthy, *Bar Board Will Tackle Disclosure Again*, CAL. B.J., Nov. 2007, <http://archive.calbar.ca.gov/Archive.aspx?articleId=89185&categoryId=89063&month=11&year=2007>. Further evidence that the public assumes lawyers are insured can be found in the survey of uninsured New Mexico lawyers. These lawyers are required to directly advise clients that they do not carry insurance. Almost 80% of these lawyers strongly disagreed or disagreed with the statement that clients assume that lawyers are insured. See *supra* Table 1.

246. Memorandum from David J. Beck, *supra* note 19, at 3 (stating that 70% of surveyed members of the public believed the law should require lawyers to inform potential clients whether they carry LPL insurance).

247. A small Texas study of the public indicated almost half of the respondents (48.6%) believed that if the lawyer informed the individual she did not carry professional liability insurance, the information would affect whether the individual would hire the lawyer. TEX. STATE BAR, PLI DISCLOSURE SURVEY OF THE PUBLIC 5 (2009), <https://www.texasbar.com/pliflashdrive/material/PublicSurvey.pdf>. Another 15% did not know whether it would affect them or did not respond. *Id.* It is not clear whether all the respondents understood what function professional liability insurance performs.

248. See *supra* Table 2 and Table 3.

249. See *supra* Table 2.

250. Alaska only requires its lawyers to “inform an existing client in writing if the lawyer does not have malpractice insurance.” ALASKA RULES OF PROF'L CONDUCT r. 1.4(c) (2016). In contrast, Ohio lawyers must provide this information on a separate form and clients must sign a

is often ambiguous, and it is unlikely clients will fully understand the implications of lawyers being uninsured.<sup>251</sup> Clients may assume lawyers have other assets if they need to sue.<sup>252</sup> Clients may also discount the information because they are unaware of the incidence of malpractice. Moreover, clients may believe there will not be a problem with the representation if someone they trust recommended the lawyer to them.<sup>253</sup>

The timing of direct disclosure is also problematic, because it comes at a time when it may be difficult for clients to objectively process the information they receive. Direct disclosure is not typically required until the client engages the lawyer.<sup>254</sup> Yet at this point, the client has already committed time to the relationship and made a decision to proceed with the representation. Social norms and power imbalances may make it difficult for a client to change course once the client has orally indicated that she will hire the lawyer.

Cognitive biases may also make it difficult for a client to change course once a decision to retain a lawyer is made. When someone has formed a belief, it is very difficult to erase.<sup>255</sup> Once people reach a conclusion, they pay more attention to information confirming the

---

written acknowledgement that they have been advised their lawyers are uninsured. OHIO RULES OF PROF'L CONDUCT r. 1.4(c) (2015).

251. For example, the Ohio Rules of Professional Conduct provide that the notice to the client shall state: "Pursuant to Rule 1.4 of the Ohio Rules of Professional Conduct, I am required to notify you that I do not maintain professional liability (malpractice) insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate." OHIO RULES OF PROF'L CONDUCT r. 1.4(c) (2015). This notice does not clearly convey that the lawyer carries no LPL insurance whatsoever or that the lawyer may be unable to satisfy a malpractice judgment as a result.

252. See, e.g., LEO J. SHAPIRO & ASSOCS., PUBLIC PERCEPTION OF LAWYERS: CONSUMER RESEARCH FINDINGS 18 (2002), [http://www.americanbar.org/content/dam/aba/migrated/market\\_research/PublicDocuments/public\\_perception\\_of\\_lawyers\\_2002.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/market_research/PublicDocuments/public_perception_of_lawyers_2002.authcheckdam.pdf) (noting that the public believes that law careers are lucrative); David O'Boyle & Michael Smith, *Survey Reveals Public Perceptions of Lawyers and Legal Profession*, WASH. LAW. (Apr. 2015), <https://www.dcb.org/bar-resources/publications/washington-lawyer/articles/april-2015-legal-beat.cfm> (reporting that nearly half of respondents think lawyers are rich).

253. Clients of solo and small firm lawyers often find their lawyers through recommendations or word of mouth. See CARROLL SERON, *THE BUSINESS OF PRACTICING LAW: THE WORK LIVES OF SOLO AND SMALL-FIRM ATTORNEYS* 139-40 (1996); Stephen Daniels & Joanne Martin, *Plaintiffs' Lawyers: Dealing With the Possible But Not Certain*, 60 DEPAUL L. REV. 337, 366 (2011).

254. The exception may be South Dakota, as lawyers there must include this information in advertising. See *supra* Table 2. It is not known whether many uninsured South Dakota lawyers advertise.

255. See Lee Ross et al., *Perseverance in Self-Perception and Social Perception: Biased Attributional Processes in the Debriefing Paradigm*, 32 J. PERSONALITY & SOC. PSYCHOL. 880, 880 (1975); Timothy D. Wilson & Nancy Brekke, *Mental Contamination and Mental Correction: Unwanted Influences on Judgments and Evaluations*, 116 PSYCHOL. BULL. 117, 122 (1994).

correctness of their decisions than to negative information.<sup>256</sup> This phenomenon is called confirmation bias: Individuals seek out and pay attention to information that supports their tentative decisions and downplay evidence that does not.<sup>257</sup> In addition, the overconfidence bias, which causes people to be more confident in their judgments than is warranted by existing facts,<sup>258</sup> may cause clients to believe they are making good decisions when they decide to retain a lawyer. These biases may make it difficult for clients to revisit the decision to hire a lawyer if they do not learn, until after they orally agree to retain the lawyer, that the lawyer is uninsured.

States that disclose a lawyer's lack of insurance coverage on websites enable clients to obtain this information before they contact a lawyer, but it is likely that many clients never consult these sources.<sup>259</sup> Many solo and small firm lawyers report that new clients come to them through word of mouth.<sup>260</sup> If lawyers are personally recommended, these clients may not perform extensive online research before hiring the lawyers. Even if clients perform an internet search, it seems unlikely they would consider checking whether lawyers carry LPL insurance, as the public generally believes that lawyers in private practice are required to maintain insurance.<sup>261</sup> Members of the public are also unlikely to know they can check a state court or state bar website to learn whether a lawyer maintains LPL insurance. This information typically does not appear when a lawyer's name is input into an internet search engine.<sup>262</sup> Insurance information is not available on commercial websites, such as Avvo,<sup>263</sup> that the public is more likely to find in a general internet search. Consequently, the current insurance disclosure rules do not enable the

---

256. See MAX H. BAZERMAN, *JUDGMENT IN MANAGERIAL DECISION MAKING* 82 (5th ed. 2002); SCOTT PLOUS, *THE PSYCHOLOGY OF JUDGMENT AND DECISION MAKING* 234 (1993).

257. See BAZERMAN, *supra* note 256, at 34–35; Ross et al., *supra* note 255, at 889–90.

258. See Dale Griffin & Amos Tversky, *The Weighing of Evidence and Determinants of Confidence*, 24 *COGNITIVE PSYCHOL.* 411, 411 (1992).

259. *But see* Memorandum from Darrel Tillar Mason, *supra* note 142, at 3 (reporting that from 2005–2007, the number of hits on the Virginia State Bar internet attorney record site ranged from about 1,500–2,300 per month). It is not clear, however, whether the searches were to obtain insurance information or discipline information, which is reported separately. It is also unclear whether the searches were performed by potential clients, lawyers, or others.

260. See *supra* note 253.

261. See *supra* note 245 and accompanying text.

262. The official lawyer directories often require confirmation that the information is being sought by an individual and not being mined for commercial purposes. Currently only the California State Bar's website seems to provide lawyer registration information that the public can access through a general internet search. ST. B. CAL., <http://www.calbar.ca.gov/> (last visited Aug. 10, 2016). The California Bar does not, however, post lawyers' insurance information on its website.

263. AVVO, <https://www.avvo.com/> (last visited Aug. 10, 2016).

public to readily identify uninsured lawyers or to engage in truly informed decision-making with respect to the risks of hiring an uninsured lawyer.

The better approach would be to design disclosure requirements so they provide meaningful information to the public before the client makes the decision to retain a lawyer. This would start with direct disclosure to clients of the sort required in South Dakota, where insurance information is not only provided to clients at the time of engagement, but is also provided in advertising, on letterhead, and in all written communications to clients.<sup>264</sup> Direct disclosure rules should additionally require this information to appear on lawyers' websites and in any written communications with potential clients, so people can consider this information before they have psychologically committed to the relationship. The disclosure rule should also require—as it does in New Hampshire, New Mexico, and Ohio—that notice that the lawyer is not insured must be provided to the client in a separate document and that the client sign an acknowledgement stating this information has been received.<sup>265</sup> Written disclosures should not only state that the lawyer does not carry LPL insurance but should also briefly explain in plain language the potential consequences of a lawyer being uninsured.<sup>266</sup>

In order to enable members of the public to find insurance information even before contacting a prospective lawyer, state regulators should make the information readily available through a simple internet search. They should also educate the public about the possible consequences of hiring a lawyer who is uninsured. Currently, most official websites do not explain the relevance of insurance coverage.<sup>267</sup> This information should be available in official lawyer directories and in other sections of state

---

264. See *supra* notes 93–95 and accompanying text.

265. See *supra* Table 2.

266. For a discussion of some techniques for disclosing information to consumers in ways they are likely to understand, see Lauren E. Willis, *The Consumer Financial Protection Bureau and the Quest for Comprehension*, in FINANCIAL REFORM: PREVENTING THE NEXT CRISIS (Michael S. Barr ed., forthcoming 2016); Vanessa G. Perry & Pamela M. Blumenthal, *Understanding the Fine Print: The Need for Effective Testing of Mandatory Mortgage Loan Disclosures*, 31 J. PUB. POL'Y & MARKETING 305, 307 (2012).

267. For example, the Arizona State Bar discloses on its website in its “Find a Lawyer” section whether individual lawyers maintain LPL insurance, but it simply states that active Arizona lawyers are required to report whether they carry LPL insurance without explaining the significance of not carrying insurance. See *Find a Lawyer*, ST. B. ARIZ., <http://www.azbar.org/lawyers/> (last visited Aug. 10, 2016). The Arizona State Bar also has a section on its website for the public entitled, “What Should I Find Out About a Lawyer,” that suggests clients find out about lawyers' locations, practice areas, and disciplinary histories, but makes no reference to malpractice coverage. *Quick and Easy Tips for Legal Help*, ST. B. ARIZ., <http://www.azbar.org/WorkingWithLawyers/Topics/QuickAndEasyTipsForLegalHelp> (last visited Aug. 10, 2016).

bar and judicial websites that inform the public about the factors they should consider when hiring a lawyer.<sup>268</sup> The public should also be informed that if the lawyer commits malpractice and the client obtains a judgment, it may not be possible to recover damages from an uninsured lawyer. In addition, the public should be advised of the limitations of LPL insurance, including that insurance does not cover all misconduct.<sup>269</sup> Without these measures, the disclosure requirements will not effectively communicate to clients the information they need to make an informed decision before hiring an uninsured lawyer.

### CONCLUSION

There are still many unanswered questions about uninsured lawyers, but the picture that emerges from the data helps clarify who these lawyers are and the harm some of them cause to their clients. The research confirms there are two broad categories of uninsured lawyers. The first are lawyers who can afford insurance but choose not to purchase it. They make this decision for philosophical reasons, because they believe they can afford to pay any judgment against them, because they shelter their assets from judgments, or because they are essentially retired and are only occasionally performing legal work, often on a pro bono basis. From a public protection perspective, it is hard to justify not requiring these lawyers to purchase LPL insurance or, alternatively, to demonstrate they have sufficient assets available to pay a malpractice judgment. While the possible loss of pro bono work by near-retired lawyers is a legitimate concern, these lawyers can provide pro bono services through bar-organized pro bono programs that insure participating lawyers. Bar associations might also be able to work with their preferred carriers to offer low-cost insurance for individuals who limit their practice to occasional pro bono work for people of limited means.

In the second category are lawyers who barely earn a living and truly cannot afford LPL insurance. These same lawyers may also be unable to

---

268. The Virginia State Bar suggests that the public ask whether lawyers have reported that they have malpractice insurance. *Selecting and Working with a Lawyer*, VA. ST. B. (Nov. 3, 2015), <http://www.vsb.org/site/publications/selecting-and-working-with-a-lawyer/>. Unfortunately, this does not effectively communicate to most clients the potential implications of a lawyer not carrying insurance.

269. This information addresses a common objection to insurance disclosure raised by disclosure opponents, which is that clients may be misled or lulled into a false sense of security if they are told there is insurance. See Watters, *supra* note 8, at 253–54. I did not find evidence that clients have been misled in states with disclosure rules, but the public should be advised of the limitations of LPL insurance, including that LPL insurance does not cover intentional acts such as defalcations and may be insufficient to fully cover a claim. The public should also be advised that even if the lawyer maintains minimum levels of LPL insurance, the limits may be inadequate to fully cover a claim.

hire support staff that would help them avoid mistakes. Some of them are good lawyers representing people of limited means. Every lawyer makes mistakes, however, and sometimes those mistakes rise to the level of malpractice. In such cases, these lawyers are unlikely to have the means to compensate their clients for the harm they cause. Again, from a public protection perspective, it is difficult to justify requiring clients to bear the risk of loss.

The issue of what to do about uninsured lawyers should not be left in the hands of the organized bar to decide.<sup>270</sup> Instead, the highest state courts—with input from the bar and the public—should carefully examine the conditions in their jurisdictions to determine how to better deal with lawyers who go bare. This process should begin by determining the number of uninsured lawyers in the state who represent private clients, on either a paid or pro bono basis. As previously noted, many jurisdictions cannot answer this basic question because they do not collect the data or do not collect it in ways that yield useful information. In some states, the number of uninsured lawyers may already be relatively low because of other requirements that incentivize lawyers to maintain LPL insurance, such as a requirement that lawyers maintain insurance to operate as an LLC or LLP.<sup>271</sup> In other states, the percentage of uninsured lawyers may be high for reasons such as the cost of LPL insurance or the ease with which lawyers can shield their assets from malpractice judgments.<sup>272</sup> In either case, states should also determine the number of uninsured lawyers who truly cannot afford LPL insurance and the impact that an insurance requirement would have on the provision of pro bono or low bono legal services by these lawyers.<sup>273</sup> Courts must then weigh this information against the interest in protecting the public from uninsured lawyers.

---

270. In some states, such as Texas, the courts have largely deferred to the recommendations of the bar on this issue. *See, e.g.*, Fortney, *supra* note 16, at 203–09.

271. *See, e.g.*, DEL. SUP. CT. R. 67; N.J. SUP. CT. R. 1:21-1B. Likewise, in states where real estate closings are primarily handled by lawyers, banks or title companies impose insurance requirements that cause many solo and small firm lawyers to carry LPL insurance.

272. For instance, Florida has a very generous homestead provision in its constitution which prevents creditors from forcing the sale of a lawyer's home to satisfy a malpractice judgment. *See* FLA. CONST. art. X, § 4. Florida law also provides that assets held jointly as a tenancy by the entirety by a married couple cannot be obtained to satisfy a judgment against only one of the spouses. *Winters v. Parks*, 91 So. 2d 649, 652 (Fla. 1956). This affects the willingness of malpractice lawyers to pursue claims against uninsured Florida lawyers, except on an hourly basis. Telephone Interview with Plaintiffs' Attorney No. 6, *supra* note 180. It may also affect lawyers' decisions to purchase LPL insurance in Florida.

273. Oregon has not reported a problem with losing a significant number of lawyers from practice who might otherwise perform pro bono work, but this has not been investigated systematically.

If LPL insurance is not required, it is important to develop more effective insurance disclosure regimes. Under the current rules, the timing, method, and content of disclosure are inadequate to provide a meaningful opportunity for clients to consider the risks they run by hiring an uninsured lawyer.<sup>274</sup> In addition, it is not known whether uninsured lawyers in states with disclosure rules are truthfully disclosing this information, either to clients or to regulators.<sup>275</sup> It would not be surprising if a substantial number of uninsured lawyers are not directly disclosing to clients, as states do not appear to be performing random audits or systematically enforcing the rules.<sup>276</sup> It is important to learn more about the public's experience with insurance disclosure to formulate disclosure requirements in ways that provide meaningful information to the public.

Finally, it must be acknowledged that neither insurance requirements nor insurance disclosure will fully protect clients. Even if lawyers maintain LPL insurance, insurers will not provide coverage for criminal or intentional acts.<sup>277</sup> Insurers may decline to cover other claims for a variety of reasons, including the failure by the lawyer to timely notify the insurer of a claim. Even where coverage is available, clients' claims may greatly exceed the insurance limits.<sup>278</sup> Thus, mandatory insurance coverage is not a perfect solution. Enhanced disclosure requirements are an even less satisfying response, as it is unclear that even with more information, most individuals will fully understand the implications of hiring an uninsured lawyer. Nevertheless, either approach would be an improvement over the current regulatory regimes and would afford the public better protection from lawyers who go bare.

---

274. See *supra* notes 251, 254–59, 262 and accompanying text.

275. In at least a few cases, they are not. See, e.g., *Cincinnati Bar Ass'n v. Leahr*, 873 N.E.2d 288, 289 (Ohio 2007); *Cuyahoga Cty. Bar Ass'n v. Frenden*, 871 N.E.2d 570, 572 (Ohio 2007).

276. One disciplinary counsel I spoke with informally advised me he has not enforced his state's direct disclosure rule, even though he knew of cases in which lawyers were not disclosing insurance information. Instead, he described a process of allowing lawyers to cure their approach to insurance disclosure.

277. 5 RONALD E. MALLEN & ALLISON MARTIN RHODES, *LEGAL MALPRACTICE* 38:52 (2015 ed.).

278. In most cases, however, insurance claims are settled within the \$100,000 limit of the most basic LPL policy. See *PROFILE OF LEGAL MALPRACTICE CLAIMS*, *supra* note 68, at 22 (reporting that more than 89% of all claims are resolved for \$0–\$100,000, including defense costs).



C.

Supreme Court of Illinois  
Press Release, January 25,  
2017



## Supreme Court of Illinois

January 25, 2017

### **ILLINOIS BECOMES FIRST STATE TO ADOPT PROACTIVE MANAGEMENT BASED REGULATION**

The Illinois Supreme Court has announced today the adoption of certain new rules governing the legal profession in Illinois. The changes are intended to help minimize many of the risks that lawyers face in the private practice of law.

In doing so, Illinois becomes the first state in the nation to adopt Proactive Management Based Regulation (PMBR). The rule changes were based upon a multi-year study of PMBR initiatives in other countries and in the United States, and after consultation with key Illinois stakeholders, including many bar association and lawyer groups.

“Traditionally, attorney regulation has tended to be reactive. Enforcement efforts have come into play only after a problem has arisen. PMBR represents a fundamentally different approach. As its name implies, PMBR is aimed at helping lawyers avoid disciplinary problems before they occur,” Chief Justice Lloyd A. Karmeier said. “Today’s rule changes are a vital step in implementation of that new strategy. PMBR promises a new level of protection for the public, and the Court is optimistic that it will be embraced by practicing attorneys with the same level of enthusiasm expressed by the numerous professional bodies that have urged its adoption.”

Under the Illinois PMBR model, lawyers in private practice must consider establishing mechanisms and protocols to avoid the filing of disciplinary grievances and malpractice claims.

Beginning in 2018, Illinois attorneys in private practice who do not have malpractice insurance must complete a four hour interactive, online self-assessment regarding the operation of their law firm. This self-assessment will require lawyers to demonstrate that they have reviewed the operations of their firm based upon both lawyer ethics rules and best business practices. The program will be administered by the Attorney Registration and Disciplinary Commission (ARDC), the Illinois Supreme Court agency that regulates lawyers.

Following a lawyer’s self-assessment, the ARDC will provide the lawyer with a list of resources to improve those practices that are identified during the self-assessment process. All information gathered in a lawyer’s online self-assessment is confidential, although the ARDC may report data in the aggregate.

**MORE**

## **IL Becomes First State to Adopt Proactive Management Based Regulation Add One**

Lawyers who do not maintain malpractice insurance are required to complete a self-assessment every two years. Other lawyers are encouraged to self-assess as well. Lawyers who participate in the PMBR self-assessment will earn free Minimum Continuing Legal Education (MCLE) credits.

James R. Mendillo, the Chair of the ARDC noted: “The adoption of PMBR in Illinois demonstrates the continuing commitment of the Supreme Court to the public and to the legal profession. These changes once again establish the Court as being a leading and progressive force in this country.”

According to ARDC Vice-Chair David F. Rolewick: “With PMBR, the Supreme Court is reaching out to sole proprietors and small firm lawyers and providing them with the tools to better manage their practices. Good practice management improves the quality of a lawyer’s services to a client and reduces the stresses in a lawyer’s life.”

Jayne Reardon, Executive Director of the Illinois Supreme Court Commission on Professionalism, said: “I am delighted to work with the ARDC to educate and support lawyers in this new way. PMBR will encourage principles of professionalism that are at the heart of the Commission’s mission.”

The PMBR amendments benefited from the contributions of various organizations that are governed by the Supreme Court including the MCLE Board, the Lawyers Trust Fund of Illinois, the Lawyers Assistance Program, as well as the Commission on Professionalism.

The language of the Amended Rule 756(e) and all of the Supreme Court rules can be found on the Court's website at <http://www.illinoiscourts.gov/SupremeCourt/Rules>.

—30—

**(FOR MORE INFORMATION, CONTACT: Chris Bonjean, Communications Director to the Illinois Supreme Court at 312.793.2323 or [cbonjean@illinoiscourts.gov](mailto:cbonjean@illinoiscourts.gov) or James J. Grogan, Attorney Registration and Disciplinary Commission at 312.565.2600 or 800.826.8625.)**

D.

Draft Petition Before the  
Supreme Court of the State  
of Nevada



1 Worker's Compensation. However, that requirement does not extend to all  
2 attorneys in private practice.

3 Robert Fellmeth, Price Professor of Public Interest Law at the University of  
4 San Diego School of Law argues that it is the responsibility of bar associations to  
5 ensure public protection through mandated malpractice insurance<sup>1</sup>. Fellmeth  
6 stated that “an admiralty attorney, a bankruptcy lawyer, or attorneys practicing  
7 criminal defense, real estate law, intellectual property, or juvenile dependency  
8 court law will not normally practice competently in more than one or two such  
9 markets.” However, Fellmuth noted that beyond the administration of a bar  
10 examination and minimal continuing legal education requirements, there is no  
11 assurance of competence for the entirety of attorney's career. By requiring  
12 professional liability insurance, bar associations fulfill their mandates to protect  
13 the public.

14 The concept of mandating liability insurance is not new. According to  
15 James Towery, past chair of the ABA Standing Committee on Client Protection,  
16 “The reason for these requirements is simple and common sense: To obtain a state  
17 license, you must demonstrate that you have the ability to protect the public if  
18 anyone is injured by your negligence in your use of that license.<sup>2</sup>”

19 State bar associations in the United States have examined mandatory  
20 professional liability models since the 1970s when there was a need for affordable  
21 insurance policies and malpractice claims were on the rise. It was at that time that  
22 the Oregon State Bar enacted the Professional Liability Fund which mandates  
23

---

24 <sup>1</sup> Testimony of Robert C. Fellmeth, Price Professor of Public Interest Law, University of San Diego  
School of Law before the Little Hoover Commission, February 4, 2016.

25 <sup>2</sup> GPSolo Magazine, Vol. 20, No. 3, April/May 2003.

1 coverage through its own captive insurance company and assesses premiums on  
2 the annual license renewal form. Since then, other states have taken various  
3 approaches to the issue, typically through disclosure requirements to the state bar  
4 or directly to clients<sup>3</sup>.

5       Nationally, the tide has slowly begun to turn toward mandating professional  
6 liability insurance for all attorneys engaged in private practice. Beginning in 2018,  
7 attorneys who opt to practice in Illinois without insurance will be required to  
8 complete an annual four-hour interactive online self-assessment regarding the  
9 operation of their law firms. The State Bar of Idaho recently mandated its  
10 attorneys to carry professional liability insurance obtained on the open market.  
11 The concept is also actively being explored by the State Bar of Washington and  
12 the State Bar of California.

13       Mandatory professional liability insurance has been adopted by lawyer  
14 regulatory associations on a global scale as well. As a condition of licensure,  
15 malpractice insurance is required by solicitors and attorneys practicing in the  
16 United Kingdom, Hong Kong, Malaysia, Singapore and some Canadian  
17 provinces. As described by the Law Society for England and Wales, professional  
18 liability insurance not only increases a solicitor’s financial security, it “serves an  
19 important public interest function...[and] ensures that the public does not suffer  
20 loss as a result of your civil liability, which might otherwise be uncompensated.”<sup>4</sup>

---

24 <sup>3</sup> Disclosure to the state bar association: AZ, CO, DE, HI, ID, IL, KS, MA, MI, NE, NV, NC, ND, RI,  
VA, WA and WV. Direct disclosure to clients: AK, CA, NH, NM, OH, PA and SD.

25 <sup>4</sup> *Professional liability insurance*, L. SOC’Y §3.2 (July 4, 2012).

1                   *Rates of Uninsured Lawyer Practice and the Effect on Clients*

2           No lawyer is immune from a malpractice claim, regardless of the size of his  
3 or her practice. “In fact, even good lawyers who do great work can still get sued.<sup>5</sup>”  
4 Nevada attorneys agree. More than 60 percent of surveyed attorneys either agreed  
5 or strongly agreed that attorneys without insurance are no more likely to commit  
6 malpractice than those with insurance. Yet, 16 percent of all actively licensed  
7 Nevada attorneys in private practice elect to not carry professional liability  
8 insurance<sup>6</sup> and according to a 2017 survey of all attorneys who do not carry  
9 professional liability insurance, 73 percent of those uninsured practitioners are in  
10 solo practice. Another 15 percent work in a small practice setting. (The April 2017  
11 survey is attached as **Exhibit B.**)

12           The statistics on uninsured attorneys solicits the question – “What is the  
13 effect on clients?” From a data driven perspective, studies that prove harm to  
14 clients due to uncollectible malpractice judgments and claim abandonment are not  
15 readily available because one cannot measure the number of justified claims that  
16 were never initiated or abandoned. However, when considered on principle, the  
17 legal profession sets high standards for the practice of law, both in the quality of  
18 the legal services provided and our commitment to public protection; professional  
19 liability insurance provides a measure of public protection.

20           The public at large believe that attorneys are required to carry malpractice  
21 insurance. However, as with the assumption that doctors must carry liability

---

22  
23 <sup>5</sup> *Saying ‘No’ to Malpractice Insurance – The True Cost of “Going Bare,”*  
<http://solopracticeuniversity.com/2014/08/21/saying-no-to-malpractice-insurance-the-true-cost-of-going-bare/>

24 <sup>6</sup> Based on 2017 mandatory license disclosures, which are not verified, 84% of all private practice  
25 attorneys in Nevada carry professional liability insurance.

1 insurance, this is incorrect. Opponents of mandated professional liability  
2 insurance consider programs like the State Bar’s Clients’ Security Fund to be  
3 available to cover the losses clients may suffer due to attorney negligence.  
4 However, the Clients’ Security Fund’s jurisdiction does not extend to those who  
5 have been the victim of negligent representation. In fact, of the 33 claims denied  
6 by the Clients’ Security Fund in the past five years, 22 (66 percent) were denied  
7 because the claim resulted from attorney negligence or malpractice, rather than  
8 theft.

9 *Professional Liability Insurance and the Cost of Doing Business*

10 Given the rates of uninsured practice, the State Bar questioned why  
11 attorneys would elect to engage in the practice of law without the safety net that  
12 professional liability insurance affords both them and their clients. When asked  
13 their reasons for electing to not carry insurance, Nevada attorneys cited several  
14 reasons, with cost being the primary explanation<sup>7</sup> (51 percent of survey  
15 respondents). The State Bar considered this issue further in its survey of all  
16 licensed attorneys in the state<sup>8</sup>. When asked to rate their level of concern about  
17 several statements regarding professional liability insurance, three areas were  
18 identified as having a high level of concern (or were given a “very concerned”  
19 rating). They were:

- 20 - Impact on solo/small practices and the cost of doing business;  
21 - Premiums for high-risk practices; and  
22

23  
24 <sup>7</sup> April 2017 State Bar of Nevada survey of all attorneys who do not carry professional liability insurance.

25 <sup>8</sup> December 2017 State Bar of Nevada survey of all attorneys with an active and active exempt license status.

- 1 - Ability to provide low cost or free legal services if not employed or actively  
2 practicing.

3 While recognizing the impact of mandating a minimum professional  
4 liability insurance policy on private practice attorneys, especially those in a solo  
5 or small firm practice, it does not negate the State Bar's responsibility to ensure  
6 that all clients are adequately protected, regardless of the size of the law firm  
7 providing representation or the type of work performed. (The December 2017  
8 survey of all actively licensed attorneys in the State is attached as **Exhibit C.**)

9 The State Bar has endorsed ALPS as its preferred professional liability  
10 insurance carrier. ALPS provides competitively priced policies and will assist  
11 those attorneys who cannot afford their premiums to find other suitable carriers.

12 To address affordability concerns for new entrants into the Nevada lawyer's  
13 professional liability market, ALPS recently introduced a "Basic" policy option.  
14 This policy was designed to offer solid firm protection, albeit with fewer coverage  
15 enhancements, in exchange for a 20 percent premium reduction from their middle-  
16 tiered Preferred policy. For those entering the market with no prior acts coverage  
17 and electing "Basic" coverage, premium charged should be significantly less than  
18 most LPL policies in the market. Additionally, ALPS offers special tiered rates to  
19 new lawyers, which starts at \$500 in their first year of practice and increases on a  
20 fixed basis by \$500 a year where in year three they will be charged \$1,500 as the  
21 liability exposure grows year over year. After year three, they enter the standard  
22 Nevada market, whereby rates will vary depending on underlying risk factors.

23 To address attorneys who are semi-retired and may only represent a few  
24 selected clients, most professional liability carriers possess filed rates with the  
25

1 Department of Insurance which allow a significant premium credit for limited  
2 exposure. For instance, at ALPS, for firms averaging 25 hours or less in monthly  
3 billings, Underwriting can apply a 50 percent premium credit, in effect reducing  
4 premium by half. Actual premiums will ultimately depend on difference risk  
5 factors such as law firm size, areas of practice, prior claims history, Nevada office  
6 location, etc. Berkley Insurance also offers coverage for part-time practice based  
7 on the type of work performed. For example, the average premium for a part-time  
8 attorney practicing criminal law would be around \$550 annually. This is based on  
9 an average of 11-25 billable hours per week.

10 *Professional Liability Insurance Models Considered*

11 State bar associations that have mandated professional liability insurance  
12 have done so using one of three models:

13 (1) Captive Carrier (“Oregon Model”) which creates a legislatively enacted  
14 fund operated by a component unit of the state bar that is exempt from insurance  
15 regulations. This model creates a shared risk pool regardless of the attorney’s  
16 practice area or geographic location. Annual premiums are assessed on the  
17 attorney’s license renewal application. The State Bar also considered a version of  
18 this model in which a third-party carrier would provide minimum liability  
19 insurance to all Nevada attorneys.

20 (2) Management Based Regulation (“Illinois Model”) which requires those  
21 attorneys who do not carry professional liability insurance to complete a four-hour  
22 interactive online self-assessment annually. The assessment poses questions about  
23 the operations of the law firm and educates attorneys about deficiencies identified  
24 during the self-assessment process.

1 (3) Open Market (“Idaho Model”) which, as a condition of licensure,  
2 requires every attorney engaged in private practice to obtain a minimum level of  
3 insurance obtained on the open market.

4 The State Bar also considered mandating disclosures to clients prior to  
5 representation regarding (a) whether the attorney carries professional liability  
6 insurance and (b) the amount of coverage the attorney has. Questions regarding  
7 both these proposals were included in the State Bar’s December 2017 survey of all  
8 actively licensed attorneys and both proposals were strongly opposed, receiving  
9 56 percent and 57 percent negative feedback respectively. Furthermore, when the  
10 data was broken down by practice size and public attorneys were removed from  
11 the survey results, the rate of opposition was higher. For example, more than 64  
12 percent of all solo practice attorneys were not in favor mandatory disclosures to  
13 clients and 61 percent of all those in full-time private practice (69 percent of those  
14 in part-time private practice) were opposed to disclosing the amount of coverage.

15 In the December 2017 issue of *Nevada Lawyer*, the State Bar explained the  
16 various approaches to requiring professional liability insurance. The article drew  
17 additional comments, both in favor and opposed to the concept. One concern that  
18 came through was the potential boon to insurance companies. For example, if  
19 insurance was required on the open market, would carriers increase their rates?  
20 While the State Bar cannot predict the market reaction with certainty, given the  
21 relatively low number of attorneys without insurance (approximately 1,000) who  
22 would seek insurance among various carriers, there would be an unlikely negative  
23 impact on overall rates.

1 Another concern that was raised in response to the *Nevada Lawyer* article  
2 was the ability to continue to provide affordable rates to clients if professional  
3 liability insurance was mandated. The State Bar understands the economic  
4 pressures faced by attorneys in private practice and the impact of this requirement  
5 on the cost of doing business. However, as the regulatory authority, the State Bar  
6 has a responsibility for public protection and this Rule amendment puts in place  
7 safeguards for both the attorney and client if a negligent act occurs

8 Ultimately, the State Bar concluded that establishing a professional liability  
9 fund similar to the Oregon model would require a significant ramp up of a new  
10 organizational and financial structure. For example, the Oregon Professional  
11 Liability Fund employs nearly 50 staff and obtained specific legislative authority  
12 to operate outside the state's requirements for insurance providers. Nevada  
13 Insurance Commissioner Barbara Richardson expressed concern over premium  
14 rates, should the State Bar establish a captive carrier, especially for those attorneys  
15 without a claims history. Furthermore, the State Bar elected to not pursue an  
16 educational model, similar to the Illinois model, as is not sufficient for public  
17 protection; and disclosure requirements may not go far enough to protect the  
18 public.

19 An open market model is the most equitable approach in that attorneys may  
20 obtain competitive quotes and select a carrier with services and pricing that best  
21 meet their needs.

1 *Implementation*

2 If adopted by the Court, this Rule amendment would impact all attorneys  
3 engaged in private practice, regardless of the number of matters or clients or the  
4 amount charged for those services. It is the position of the State Bar that  
5 regardless of the attorney's practice size, the number of clients served, or fees  
6 charged, clients are entitled to the same level of protection afforded to them by  
7 professional liability insurance. Those attorneys who desire to provide pro bono  
8 legal services may do so under the insurance policy offered by one of several pro  
9 bono legal service organizations.

10 Additionally, because the proposed amendment only applies to those  
11 attorneys who are engaged in private practice, there are attorneys for whom the  
12 Rule would not apply, including, but not limited to those attorneys who:

13 - Maintain an active license, but have retired from the practice of law and  
14 have attested that they do not represent clients;

15 - Are employed by an organizational client and do not represent clients  
16 outside that capacity;

17 - Are unemployed or are not working in the legal field and attest to not  
18 representing clients; and

19 - Are employed in the public sector, either as an attorney or member of the  
20 judiciary.

21 To facilitate compliance with the proposed Rule, the State Bar will provide  
22 a list of insurance providers authorized to transact legal professional liability  
23 insurance in Nevada on its website and in communications to our members. The  
24 State Bar will also request updates to professional liability insurance carrier  
25

1 information when an attorney changes firms through its change of address forms.  
2 The State Bar will conduct random annual audits of attorneys subject to this Rule  
3 and request proof of insurance, such as the declaration page.

4 The State Bar would anticipate implementation of the professional liability  
5 insurance requirement beginning January 2019. This would allow time for  
6 notification to the attorneys affected by the amendment and necessary changes to  
7 the bar’s membership database. Additionally, the State Bar would engage with  
8 professional liability insurers doing business in Nevada to promote affordable  
9 coverage and ensure compliance with the Rule changes.

10  
11 RESPECTFULLY SUBMITTED this \_\_\_ day of \_\_\_\_\_ 2017.

12  
13 STATE BAR OF NEVADA  
14 BOARD OF GOVERNORS

15 \_\_\_\_\_  
16 VERNON “GENE” LEVERTY, President  
17 Nevada Bar No. 1266  
18 State Bar of Nevada  
19 3100 W. Charleston Boulevard  
20 Las Vegas, NV 89102  
21 (702) 382-2200  
22  
23  
24  
25



1 (b) Suspended from membership in the State Bar, but may be reinstated upon  
2 filing verification of compliance on a form to be provided by the State Bar.

3 A member may apply for a one-year hardship exemption from the e-mail  
4 provision on a form provided by the state bar. Supplying false information in  
5 response to the requirements of this rule shall subject the lawyer to appropriate  
6 disciplinary action.

7 8. [7.] The state bar shall provide the board of continuing legal education  
8 with an annual membership roster within 60 days of the due date for annual  
9 membership fees and registration forms.  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## **EXHIBIT B**

### OVERVIEW

In preparation for the Professional Liability Insurance Taskforce meeting, we attempted to gather information from attorneys who do not carry professional liability insurance about their reasons for electing against it. This survey also captures information including geographical demographics, years in practice, areas of practice, etc.

An electronic survey was sent to 976 attorneys in Nevada with active and active exempt status licenses. These attorneys indicated that that did not carry professional liability insurance on their 2016 mandatory license disclosures. Of those surveyed, responses were received from 232 individuals (24% of those surveyed).

Those surveyed were provided an “opt out” if they believed the information reported was incorrect and were provided an opportunity to make corrections to their disclosure statements. Fewer than a dozen attorneys indicated the information on their disclosure statements was incorrect.

---

### SURVEY RESULTS SYNOPSIS

#### DEMOGRAPHICS

- The areas in the state where survey participants practice is statistically consistent with those surveyed.
- More than 55% of those surveyed have been in practice 20 years or longer, with the next largest segment being in practice for 10-19 years (26%).
- 96% maintain an active license.
- Nearly 80% survey participants indicated that they are employed in a private practice/law firm setting.
- More than 73% of survey participants are in private practice, with the next largest segment (15%) in small practices of 2-4 attorneys.
- The highest concentrations of practice areas are in: personal injury (plaintiff), family law, general civil (plaintiff), criminal defense, and corporate/business organization & transaction.

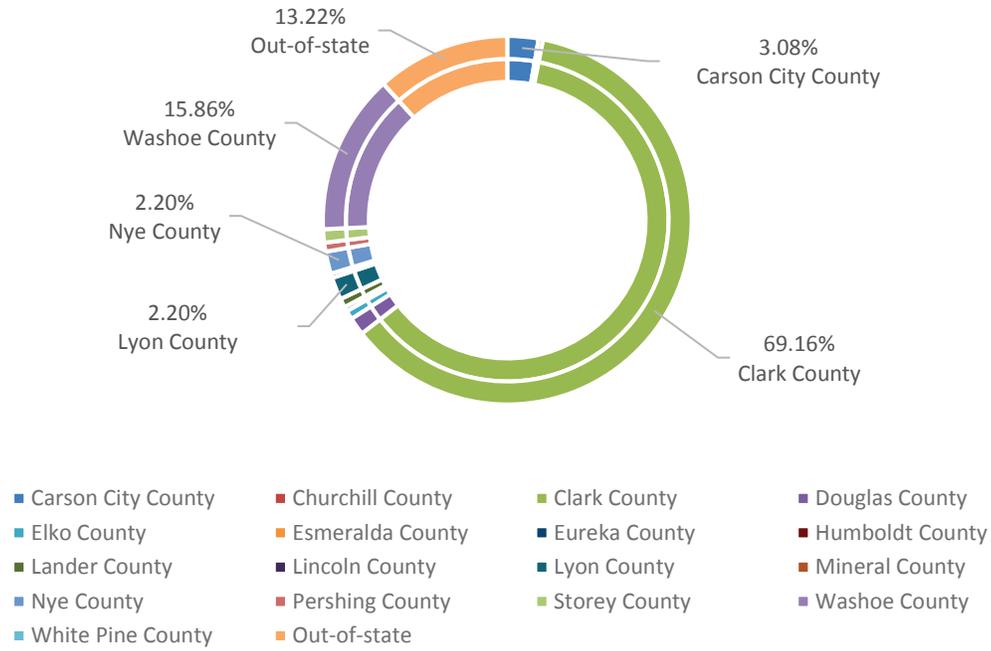
#### INSURANCE OPINIONS

- When asked why they elect to not carry professional liability insurance, the top reason was “cost prohibitive.”
- More than a third of the attorneys who responded stated they would elect to carry liability insurance if it was affordable.
- 72% of the survey participants stated that attorneys should not inform their clients that they do not carry insurance. (Of the 28% who responded affirmatively, disclosure by fee agreement was ranked as the best mechanism to inform clients.)
- More than half (56%) of survey participants stated that there is no reasonable expectation from the public that a lawyer maintains some amount of professional liability insurance.

DEMOGRAPHICS/AREA OF PRACTICE

- (1) **Practice Location:** Survey participants were asked to indicate which areas of the state they primarily practice. Participants were given the option of selecting more than one practice location. **The majority of those responding reside in either Clark (69%) or Washoe (16%) County or practice out of state (13%).**

*Those counties not called out on the chart below made up fewer than 2% of the respondents.*



- (2) Of those who responded that their practice was out-of-state, 93% do not carry professional liability insurance in that state.

- (3) **Years in Practice:** Survey participants were asked to indicate how many years they have been licensed to practice law. **More than 55% of those surveyed have been in practice 20 years or longer**, with the next largest segment being in practice for 10-19 years (26%).

Years in Practice	%	Total
Less than 4 years	5.83%	13
4-9 years	13.45%	30
10-19 years	25.56%	57
20-29 years	22.87%	51
30 years or longer	32.29%	72
<b>Total</b>	<b>100%</b>	<b>223</b>

- (4) **License Status:** Of those who responded, the majority (96%), maintain an active license to practice law.

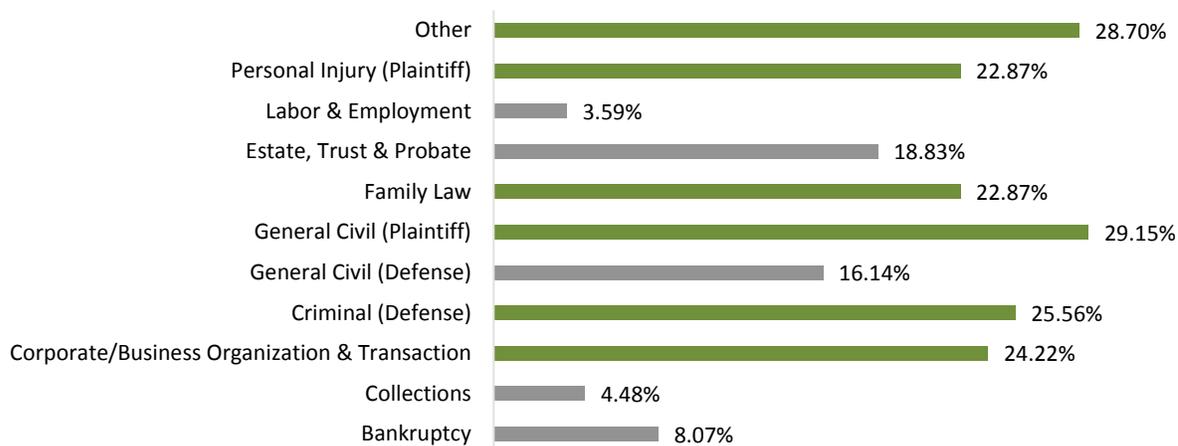
(5) **Practice Setting:** The majority of survey participants indicated that they are employed in a private practice/law firm setting.

Practice Setting	%	Total
Private Practice (Law Firm)	79.82%	178
Corporate/In House	4.48%	10
Government/Government Agency	1.79%	4
Legal Services/Non-Profit	0.90%	2
Private Trials/Arbitration/Mediation	2.24%	5
Retired	5.38%	12
Not Employed as a Lawyer	3.59%	8
Unemployed	1.79%	4
<b>Total</b>	<b>100%</b>	<b>223</b>

(6) Most survey participants (73%) indicated that they are in solo practice.

Firm Size	%	Total
Solo (1)	73.54%	164
2-4 attorneys	15.25%	34
5-14 attorneys	1.35%	3
15 attorneys or more	0.90%	2
N/A	8.97%	20
<b>Total</b>	<b>100%</b>	<b>223</b>

**(7) Areas of Law.** Survey participants were asked to indicate the area(s) of law that best describe their practice<sup>1</sup>. **The highest concentrations of practice areas are in: personal injury (plaintiff), family law, general civil (plaintiff), criminal defense, and corporate/business organization & transaction.**



Those who indicated “other” were provided an opportunity to list their area of practice. A summary of the responses is below:

- Administrative (x 3)
- ADR (2)
- Appellate
- Automotive BI Defense
- Business litigation
- HOA Law
- Intellectual Property (x 4)
- Entertainment
- Freelance/Contract/Research and Writing (x3)
- Real Property/Real Estate (x 3)
- Insurance Coverage
- Immigration (x 8)
- Tax law (2)
- Not employed (x2)
- Labor Primarily
- State Bar Discipline and Admissions cases.
- No cases, but keep license (x2)
- Represent family members
- Pro Bono legal work (x2)
- Simple matters: sending out demand letters, pre-litigation, etc.
- Constitutional Law Impact Litigation
- Professional liability; professional privileges

<sup>1</sup> Suggested areas of practice were drawn from a 2013 study conducted by the Lawyers Mutual Insurance of Kentucky, which analyses the percentage of claims by areas of law.

LIABILITY INSURANCE OPINIONS

(8) **Reasons for Not Carrying:** Participants were asked to rank their top three reasons for not electing to carry professional liability insurance. Participants were provided the option of selecting one of the reasons below or adding a different/other reason.

The primary reason cited by 166 survey participants was “cost prohibitive.” Other top reasons include:

- Confidence in practice/not needed;
- Practice doesn’t require it; and
- Other

	Primary Reason	Second Reason	Third Reason	Not a Reason	Total
Cost prohibitive	51% (85)	25% (41)	19% (31)	5% (9)	166
Other	47% (22)	17% (8)	26% (12)	11% (5)	47
Confidence in practice/Not needed	40% (55)	28% (38)	15% (21)	16% (22)	136
Practice doesn't require it	27% (30)	24% (27)	16% (18)	34% (38)	113
Prefer to defend myself against charges/pay claims directly	11% (11)	19% (19)	29% (29)	42% (42)	101
Confusion about what type of insurance to purchase	7% (5)	12% (9)	13% (10)	68% (52)	76
Other	6% (1)	25% (4)	38% (6)	31% (5)	16
Represent clients pro bono	3% (2)	12% (9)	14% (10)	71% (52)	73
Unable to obtain coverage	3% (2)	11% (8)	5% (4)	81% (60)	74

Reasons marked as “Other” are categorized and listed as follows:

Type of Practice

- Low-risk area and type of practice
- Private practice is limited in scope and type of work.
- Primarily engage in business not law practice
- Entertainment Law denied coverage
- Almost all clients are firms in which I own an interest, am an officer or a director. Typical policies exclude coverage under these circumstances.
- Type of practice
- Practice mostly in tribal courts
- Unable to obtain coverage due to representation of medical marijuana clients
- Employed in real estate where my law background is an asset but I do not practice per se - I do exercise risk management skills
- Stay within my knowledge of specific fields

Maintenance Not Justified

- Don't have enough clients for it to make sense
- Very small case load does not justify cost, risk is low
- I have limited clients and limited activities
- Judgment proof/No assets
- My one claim in my entire career, my malpractice insure. co. refused to accept, so I handled it myself successfully.
- Only do a small amount of law work over the course of the year, probably more expensive to buy insurance than the amount of money that work would even generate.
- I'm not representing anyone
- I work part time for only one client, which is my husband's company.
- Rarely practice as lawyer
- Confidence in clients
- Business' total worth is under \$2000.00
- Only active case is an appeal
- Insurance companies will not adjust rates for low volume practice.
- In the past when I inquired about malpractice insurance, they said I needed to be working mostly full-time.

Affordability:

- Don't make enough \$ to make it worth it.
- Can't afford it!
- Law school debt and housing crash renders me judgment proof
- Meager assets are judgment proof
- Can't afford!

History/Perception:

- 41 years without claim
- No client complaint about service given
- If you have a claim the insurance companies in my experience do[n't] want to provide coverage
- Will make me a target
- Insurance makes me a target.
- Insurance is an invitation to be sued
- Encourages claims
- Insurance Companies interests are not the same as the attorney's best interests

Employer:

- I'm just an associate/no authority
- Boss doesn't want it
- Boss prefers to pay claims himself

Obtained Elsewhere

- I have it through my employer
- Provided by other(s)
- Only do appearance work for attorneys who are insured
- Work for insurer, self-insured
- In House
- I have usually work for another law firm or lawyer which carry liability insurance.

Semi-Retired/Limited Practice:

- Semi-retired and limit what I will do to existing clients or referrals from one source where all parties have agreed in writing.
- Semi-retired/very few cases/clients
- Almost completely retired
- I don't practice very much and it would be cost prohibitive for me
- Too few clients
- Not in Active Practice
- Retired
- Part-time practice; semi-retired
- Practice limited to friends as clients
- I am 76; practice narrowly limited, mostly for friends without charge
- I have not been active recently however wish to keep my options open.
- Basically retired. No court work.
- Not full-time attorney (not even really a part-time attorney)
- Minimal practice
- Unemployed

Work Outside Nevada

- Not in NV
- Do not engage in substantial work in the State of Nevada

(9) **Affordability.** Survey participants were asked if they would elect to carry professional liability insurance if affordable insurance was made available to them. **More than a third of the attorneys who responded stated they would elect to carry liability insurance if it was affordable.**

	%	Total
Yes	38%	81
Maybe	40%	86
No	22%	47

**Total | 100% | 214**

(10) **Client Notification.** Survey participants were asked to state whether attorneys should inform their clients if they carry professional liability insurance. **The majority, 72%, stated that attorneys should not inform their clients.**

	%	Total
Yes	28.5%	59
No	71.5%	148
<b>Total</b>	<b>100%</b>	<b>207</b>

(10)(A) **How to best inform.** Those attorneys who responded “yes” to question 10 were asked to rank the top three best mechanisms for informing their clients. Survey participants were given the option of selecting from the list provided below or giving another response. **Disclosure by fee agreement was ranked as the best mechanism to inform clients.**

	Best Mechanism	Second Best Mechanism	Third Best Mechanism	Total
Disclosure in Fee Agreement	71% (40)	20% (9)	8% (3)	<b>52</b>
Verbal Disclosure Prior to Retention	12% (7)	32% (14)	23% (8)	<b>29</b>
Posted on SBN Website/Attorney Profile	11% (6)	21% (17)	17% (6)	<b>21</b>
Posted Notice on Website	4% (2)	9% (4)	26% (9)	<b>15</b>
Posted Notice in Office	2% (1)	11% (5)	26% (9)	<b>15</b>
Other	0% (0)	7% (3)	0% (0)	<b>3</b>
Other	0% (0)	0% (0)	0% (0)	<b>0</b>

“Other” responses include:

- RE California Disclosure
- Written disclosure to client
- Tattoo on secretary's forehead

(11) **Public Expectations.** Finally, survey participants were asked if, generally speaking, the general public seeking legal aid from an attorney have a reasonable expectation the lawyer maintains some amount of professional liability insurance. **More than half the respondents indicated that there was no reasonable expectation.**

	%	Total
Yes	8.02%	17
Maybe	35.85%	76
No	56.13%	119
<b>Total</b>	<b>100%</b>	<b>212</b>

## EXHIBIT C

# PROFESSIONAL LIABILITY INSURANCE

Survey Report

December 22, 2017

The State Bar of Nevada sent a survey to 8,908 active and active exempt attorneys regarding their perceptions about mandatory professional liability insurance. The survey was open for a two-week period; 1,001 responses were received (11% response rate).

## DEMOGRAPHICS

1. **Practice Setting:** The majority of survey takers are in private practice either full time (52%) or on a part-time/semi-retired basis (18%).

	%
<b>Private practice (full time)</b>	<b>51.74%</b>
<b>Private practice (part-time or semi-retired)</b>	<b>18.34%</b>
Public lawyer	11.37%
In House Counsel	6.05%
Judiciary	2.56%
Not currently working/Retired	3.79%
Not currently working in the legal field	2.46%
Other	3.69%

### Other:

- I have a very limited practice due to limited internet and other resources where I live. I also am contracted as a municipal court judge and juvenile court master;
- Mix of private practice and public sector practice
- Inactive, but practicing in another state.
- I currently have a half-time contract as an independent contractor with a public agency to provide, primarily labor relations and lobbying services. I also have independent contractor agreements to hear administrative cases involving the discipline of licensees of the State Board of Medical Examiners and to hear appeals by pupils, coaches, officials and school found to have violated the regulations governing those individuals participation in interscholastic activities. I have a very limited private practice that does not accept new clients.
- Arbitration/mediation (x4)
- Professor (x2)
- Volunteer pro bono work on an occasional basis
- Semi-retired (Part time limited practice)
- I am a new attorney with intent to enter in private practice.
- occasional, contract for other attorneys only
- Judicial Law Clerk/Law School Fellow (x2)
- Work for federal government agency

2. **Size of Office** (NV Office only if multi-jurisdictional firm): **More than 70% of all survey takers practice in a solo or small practice setting.**

	%
Solo Practice	51.03%
2-4 attorneys	20.27%
5-14 attorneys	14.60%
15+ attorneys	14.11%

3. **Office Location** (or residence if not practicing)

- 58 % are in Clark County
- 19 % are in Washoe County
- 5% are in Carson City County
- 4% are in Rural Nevada counties; and
- 14% practice or reside out of state

**Of those who practice out of state:**

- 51% carry malpractice insurance in that state;
- 39% have clients in Nevada;
- 44% handle clients' legal cases in Nevada

4. **Rate of PLI Coverage. Just over 50% of those attorneys who responded, carry professional liability insurance that affords coverage for their practice in Nevada (49.8% do not).**

**Breakdown of PLI Coverage:** Of those who carry professional liability insurance, the following represents a breakdown by practice size:

- 48% are solo practice attorneys;
- 72% are in 2-4-person practices;
- 70% are in 5-14-person firms; and
- 53% are in 15+ member firms.

**Of those who carry PLI, the most common policy limit is \$1M per claim/\$1M aggregate**

	%
Less than \$100,000 per claim/\$300,000 aggregate	0.82%
\$100,000 per claim/\$300,000 aggregate	3.47%
\$250,000 per claim/\$250,000 aggregate	7.96%
\$500,000 per claim/\$500,000 aggregate	8.98%
\$750,000 per claim/\$750,000 aggregate	0.61%
<b>\$1M per claim/\$1M aggregate</b>	<b>40.61%</b>
\$3M per claim/\$3M aggregate	5.92%
\$5M per claim/\$5M aggregate	3.67%
More than \$5M per claim/\$5M aggregate	5.51%
Unsure	22.45%

*This policy limit is consistent among all practice sizes.*

*Most of those who are unsure practice in 5-14-person or 15+ member firms.*

## PERCEPTIONS

As attorney practices can migrate between private and public-sector settings, we asked that survey participants complete this section of the survey regardless of whether they are in private practice or not.

5. **Duty to Protect.** 66% of the survey takers stated they believed an attorney has a responsibility to protect his or her client from financial loss that may be caused by his or her negligence.

	%
<b>Yes</b>	<b>65.90%</b>
Maybe	18.92%
No	9.88%
Unsure	5.30%

6. **Method of Financial Recovery.** Nearly 64% stated that professional liability insurance provides a method of financial recovery for clients injured by attorney negligence.

	%
<b>Yes</b>	<b>63.76%</b>
Maybe	22.95%
No	9.76%
Unsure	3.53%

7. **Public Protection.** Just over 35% of the survey respondents stated that mandating minimum malpractice insurance was a way to protect the public. 39% disagreed.

	%
<b>Yes</b>	<b>35.31%</b>
Maybe	25.44%
<b>No</b>	<b>39.25%</b>

8. **Public Assumption.** When asked if they agreed that most (non-corporate) clients assume lawyers carry professional liability insurance, the results were nearly equal.

	%
<b>Yes</b>	<b>33.50%</b>
Maybe	12.32%
<b>No</b>	<b>35.96%</b>
Unsure	18.23%

9. **Attorney Reputation.** Survey takers were asked if they think attorneys who do not carry professional liability insurance negatively affect the reputation of the legal community. **More than 59% responded that it did not.**

	%
Yes	21.08%
Somewhat	19.83%
<b>No</b>	<b>59.09%</b>

10. **Statements about professional liability insurance.** Those surveyed were asked to indicate how strongly they agreed with the following statements. The two statements that had the most consensus are highlighted below.

	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
<b>Attorneys without insurance are no more likely to commit malpractice than those with insurance.</b>	<b>37.47%</b>	<b>23.40%</b>	19.36%	11.59%	8.18%
Having insurance encourages malpractice lawsuits.	25.23%	25.23%	21.82%	18.41%	9.31%
<b>Not having insurance (or "going bare") is an effective strategy for avoiding malpractice lawsuits.</b>	3.73%	6.95%	27.18%	<b>36.93%</b>	<b>25.21%</b>
Uninsured lawyers negatively affect the reputation of the legal community when injured clients are left without recovery.	13.90%	25.31%	22.72%	18.15%	19.92%

11. **Mandatory Disclosures.** Survey respondents were asked if they were in favor of mandating disclosure to the client whether they carry malpractice prior to engaging in representation. **More than half (56%) stated they were not in favor of mandatory disclosures.**

**Of those 44% who were in favor of mandatory disclosures:**

- The majority (57%) were not in favor of disclosing to clients the amount of insurance coverage they have.
- The **top three best mechanisms to disclose** whether they have insurance coverage are: (1) Written disclosure in the fee agreement; (2) Written disclosure, separate from fee agreement; and (3) Posted notice in the attorney's office. "Other" disclosure methods include:
  - o Disclosure when asked
  - o Verbal disclosure/discussion at the onset
  - o Publication of mandatory requirement
  - o In lawyer advertising
  - o Email to client
  - o All of the above

12. **Minimum Insurance Policy.** Those surveyed were asked if they think a minimum policy of \$250,000 per claim/\$250,000 annual aggregate is adequate to protect clients. **35% stated that the policy minimum was adequate and 46% were unsure.**

Of the 19% who stated that the minimum policy was not adequate, **31% stated there should be no minimum policy and 30% stated a higher policy of \$1M per claim/\$1M aggregate was appropriate.**

- **31% stated that \$0 (or none) was appropriate;**
- 5% stated that a minimum policy of less than \$100,000 per claim/\$300,000 aggregate was appropriate;
- 0.5% stated that a minimum policy of \$100,000 per claim/\$300,000 aggregate was appropriate.
- 18% stated that a minimum policy of \$500,000 per claim/\$500,000 aggregate was appropriate;
- 2% stated that a minimum policy of \$750,000 per claim/\$750,000 aggregate was appropriate;
- **30% stated that a minimum policy of \$1M per claim/\$1M aggregate was appropriate;**
- 1% stated that a minimum policy of \$3M per claim/\$3M aggregate was appropriate;
- 0.5% stated that a minimum policy of \$5M per claim/\$5M aggregate was appropriate; and
- 6% stated that an “Other” amount was appropriate.

Of those who responded “Other” to the appropriate minimum policy, responses included:

- Depends on the type of cases/practice/services the attorney provides or the amount of recovery sought
- \$1M per claim/\$3M aggregate

13. **Concerns if Implemented.** Survey takers were asked to indicate their level of concern with the following statements if professional liability insurance is required for all private practice attorneys. The three areas with which attorneys voiced the greatest concern were in regard to (1) the impact on solo/small practice and the cost of doing business; (2) premiums for high-risk practice areas; and (3) ability to provide low cost or free legal services.

	Not at all Concerned	Moderately Concerned	Very Concerned
<b>Impact on solo/small practices and cost of doing business</b>	11.33%	29.52%	<b>59.15%</b>
Potential increase in the number of malpractice lawsuits filed	28.15%	35.56%	36.29%
<b>Premiums for high-risk practice areas</b>	11.89%	33.47%	<b>54.64%</b>
<b>Ability to provide low cost or free legal services if not employed/actively practicing</b>	14.39%	26.80%	<b>58.81%</b>
Inability to obtain insurance for my practice	39.83%	26.13%	34.04%

15. **Additional Comments.** Comments have been received from 412 of the survey takers. They are displayed in full below.

1. The State Bar of Nevada is exploring a proposal to require all attorneys engaged in private practice to maintain a state-mandated minimum amount of professional liability insurance. It appears that the primary purpose of the proposal is to protect private individuals who are generally more vulnerable to professional legal malpractice because most private individuals typically do not have the same market experience or bargaining power as more sophisticated clients, such as state or local agencies. Given that the primary purpose of the proposal is to protect private individuals, application of the proposal to all attorneys engaged in private practice is overly broad because there are some attorneys who are engaged in private practice—often as solo practitioners—who do not represent private individuals in any matters because they represent only state or local agencies. For example, the private practice of some attorneys consists exclusively of contracting with state or local agencies to perform legislative drafting services, such as drafting bills, regulations or ordinances, and the accompanying legal research services. It is highly doubtful that such legislative drafting or legal research services could result in any liability for professional legal malpractice, especially given the well-established protections from liability afforded by the doctrine of absolute legislative immunity. See *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (explaining that absolute legislative immunity applies to each of the “integral steps in the legislative process.”); *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 510 (1975) (explaining that absolute legislative immunity protects the legislative body’s counsel). Therefore, application of the proposal to such attorneys would impose an overly expensive and unreasonable burden on them without providing any corresponding benefit to the private individuals who are the intended beneficiaries of the proposal. In fact, the only benefit would be the windfall enjoyed by the insurance carriers collecting premiums under the state-mandated policies without being exposed to any realistic probability of liability risks under the policies because such attorneys do not represent private individuals in any matters. Accordingly, the proposal should be refined so that it does not apply to any attorneys engaged in private practice who do not represent private individuals in any matters but represent only state or local agencies. Alternatively, the proposal should include a waiver process whereby such attorneys are entitled to a waiver from the proposal upon declaring each year with their license renewal that they do not represent private individuals in any matters but represent only state or local agencies. Thank you for your consideration of these matters.
2. More than 90% of my work is as in-house counsel for a group of businesses. I currently work on other cases occasionally, to help my friends. This proposal would effectively prevent me from doing that. I wouldn't even be able to represent my own family members. Stop trying to hurt everyone because of what a couple idiots have done. Focus on cleaning up the profession, not on making it harder for those of us who are already doing the right thing.
3. May be forced to give up my small practice.
4. I oppose any mandatory malpractice insurance for attorneys. I have been a sole practitioner for 31 years, never carried malpractice insurance, and never had so much as a letter of complaint to the state bar. Of course, that means I have also never had a dispute with a client concerning my representation. This proposal is a prime example of a few bad apples spoiling the bunch. The bar maintains a client security fund to assist any client left high and dry by their attorney. I do appreciate that such fund is sometimes inadequate to cover all losses in any given year. My practice is down to about 3 clients, as I am semi-retired, and would like to see some smaller minimum coverage requirement for part-time, reduced practice for sole practice attorneys, if mandatory coverage is adopted.
5. I definitely think malpractice insurance should be required. I only have concerns as to whether clients should be informed or in what manner. I have seen malpractice occur unfortunately and

	<p>seen lower income clients/ non- corporate clients get raked by mistakes, lose money, and not be aware they had any financial recourse against the lawyer. (I don't know that mainstream public is even aware they can sue their attorney, as they seem to think "the buck stops there", with their attorney, so to speak.) Although there may be a slight chance of increase in malpractice suits with clients knowing there's malpractice insurance required, if the true interest is to protect clients and cause lawyers to think twice about practicing in areas in which they lack competence, and ultimately hurt clients often times, by all means, require insurance, let clients know they have recourse when pummeled by an attorney's mistakes.</p>
6.	<p>The idea that insurance is the cure to all problems with the legal profession is nuts. It will only encourage sleazy malpractice lawyers to file more needless lawsuits in hope of making an easy buck with an insurance settlement.</p>
7.	<p>For solo attorneys that are trying to establish their own practice this may be too onerous a regulation, the cost of practice is already high with student loans, advanced costs for clients, bar and CLE fees, adding mandatory malpractice insurance will definitely make it harder for solo attorneys like myself to stay afloat.</p>
8.	<p>I think \$100k as the minimum is sufficient. Solo practitioners will be severely impacted if having malpractice becomes mandatory - many just barely make it as is and the cost of obtaining that insurance can be quite high, especially if it is 250/500. I know many solos that struggle financially already - this requirement may simply be another financial burden they don't need. Plus, no client decides to retain an atty based on whether they have malpractice because they don't intend to sue their own attorney when they retain him/her. This will simply be yet another reason for the Bar to sanction attorneys; plus, clients can sue their attorney individually regardless of whether that atty has mal insurance.</p>
9.	<p>The article in the recent Nevada Lawyer did not provide enough information for state bar members, particularly when faced with a potentially expensive MANDATE. It is significant that approximately FORTY states DO NOT MANDATE this type of coverage, so the attempt to make it seem as if there is some sort of crisis is unconvincing. In addition, what is the rush?? Why is this being presented with very short time frames for us to consider and comment, when the "task force" had months and months? This is a very busy time of year for certain members (counseling clients about year-end tax matters, pension plan considerations, etc.). Moreover, why was there no discussion about the potential range of premium costs? Where did the task force get its information that "the public" assumes all attorneys have malpractice coverage? Absent any evidence, it sounds like nothing more than anecdotal and self-serving drivel. The monthly columns about attorney discipline are primarily from the Southern Nevada panel (i.e., Las Vegas)...the task force presented neither any evidence nor any argument that attorneys in the rest of the state suffer from deficiencies that would warrant MANDATORY malpractice coverage. In short, the case has not been made for this unwarranted imposition.</p>
10.	<p>Most of the losses sustained by clients have not been due to malpractice but by intentional misconduct which insurance would never cover.</p>
11.	<p>This is simply ridiculous.</p>
12.	<p>I am retired and no longer have any active files, however I occasionally reopen a file to facilitate satisfaction of an outstanding judgment. Would I have to obtain coverage? I carried malpractice coverage for 40 years and in favor of it being mandatory. However the policies do not cover intentional acts such as Bob Graham's theft of client funds. And if it did the coverage would not be anywhere enough. From my experience the premiums for some practice areas may be exorbitant and beyond the reach of many solo or small firm practitioners. While malpractice coverage is important, I don't think it address the major problem of theft of client funds which is a bigger stain on the profession and receives greater notoriety in the press than the occasional mistake that would be covered by a malpractice policy. I believe that there are many more issues that should</p>

	be considered before acting and burdening an entire industry for reasons that might not truly address the problems. I am also concerned that the Bar Association not be overly influenced by our President who has had a long standing relationship with ALPS a malpractice carrier. Thank you for considering my remarks A Happy New Year to all.
13.	I am not sure you can mandate it. But, if you choose to do so, there must be some studies to see how the state bar can provide low-cost insurance to its solo members.
14.	This is a bad idea.
15.	I believe attorneys should carry professional liability insurance. It is the right thing to do. None of us want to commit malpractice but if it does occur it not only protects the client but provides financial protection to the attorneys and to their firm as well. This particular issue was not addressed in your questions. I do have concerns about premium cost but I do believe this is an inherent cost of doing business, like GL insurance for example.
16.	I have 1 million / 2 million, which was not a selection, so I chose 1mil/1mil
17.	I understand the practice of law is a privilege, not a right, but this proposal is a bad idea. An insurance company is not properly the enforcer of attorney discipline in the State of Nevada. This requirement could potentially place the privilege to practice law after passing the bar exam in the hands of insurance companies. An attorney should not be limited in his or her practice of law by an insurance company. An insurance company is not the Nevada Supreme Court or the Disciplinary Board of the State Bar of Nevada. The client can make the decision on their own. My view is this proposed requirement is overbearing and could be subject to selective abuse. Thank you.
18.	Attorneys over age 70 should be exempt.
19.	I'm an active bar member who currently does not practice law. With student loans, CLE's, Bar dues, cost of living and cost of healthcare I am barely able to eat let alone cover one more insurance premium. I am financially unable to take on one more debt at this point. Additionally, it is my opinion private attorneys who don't have insurance are less likely to commit malpractice as it comes out of their own pocket which can end them financially. An attorney who causes malpractice gives other attorneys a bad whether they are insured or not. I have known attorneys who work at large firm take a more lacidascal approach in practicing because they are covered and don't have to worry. To me that is much worse.
20.	Need to somehow any requirement does not negatively impact providing services to low income persons.
21.	For a semi-retired attorney handling very few cases of moderate value (and primarily for personal acquaintances) with little chance of malpractice occurring even inadvertently, there is no need for insurance and the cumulative yearly cost would be prohibitive.
22.	Insurance should not be required. This is a "buyer beware" issue and would run many solos and small firms out of practice. If insurance is going to be required, the coverage needs to be minimal (like Nevada's auto limits).
23.	What exemptions would there be, for example: inactive attorneys, PT, public service attorneys, those not engaged in the practice of law but who have a law license (like a trust officer, business manager, CPA ), those who have an active license but aren't working (like stay at home parent)? What would you do to attract insurance providers, so rates don't sky rocket if/when a provider exits (like the "Affordable" Care Act)? What about attorneys that retire — are you going to require a tail policy? Will you provide or work with the Legislature to provide a mechanism to protect us from unwarranted/excessive suits, like what was created for med mal?
24.	Mandatory coverage would put me out of business with no other means of income. I have been licensed since 1990 and have never had a malpractice threat, claim, or suit. I have had less than 4 fee disputes in 27 years; and, in each case resolved these claims in favor of the clients. I take

	<p>great caution in following all ethical rules, recently losing a potential client when I referred him to another attorney who specializes in the area of law the client needed. He lost all confidence in my abilities, and while I could not afford to lose the income, my ethical duties required that I make the referral as there was too much potential risk in his matter. That is adherence to the ethics of our profession. I do not earn enough to maintain an office, and presently my practice has a single client. The Bar would literally put me on the streets if I had to carry malpractice insurance. Not all attorneys are as fortunate as a Robert Eglett for e.g., and while I hold Robert in very high regard, I also take my career and ethical requirements very seriously. It is unconscionable to mandate that every attorney carry such coverage. If malpractice coverage is to be mandated, it should only be for lawyers either practicing in matters with a good deal of malpractice risk or only for those attorneys earning a certain threshold of income each year. If a client or consumer considers malpractice coverage a primary consideration they can always ask if an attorney is covered; and, if not, find another attorney. Again, to mandate such coverage would literally put me out of business after 27 years. Where is the fairness in that? Who protects the lawyers? Yes, there are some bad apples out there, as there are attorneys who take on too much work, or work they have no business taking on - but these decisions should be left to the clients and not forced on attorneys with very small practices.</p>
25.	<p>My sole client is a public agency and all potential litigation is farmed out to outside counsel. Otherwise, my only practice is as a mediator in court sponsored programs. I have no private clients. If my practice was otherwise, I would acquire insurance as a best practice.</p>
26.	<p>As insurance information is already being provided to the bar, there is no need to disclose it to clients.</p>
27.	<p>I do not see any reason why the limits should be 250/500. In the small town practice I engage in 100/300 is more than adequate. Making the requirement 250/500 would be cost prohibitive</p>
28.	<p>This seems like a solution in search of a problem. Nothing good ever happens when that approach is taken.</p>
29.	<p>Semi-retired or part-time attorneys should not be mandated to carry insurance if they do not routinely represent clients.</p>
30.	<p>I would strongly support the type of self-insured, mandatory coverage provided by the Oregon State Bar. I attended law school in Oregon and am licensed there. The fact that Oregon's PLF is actively involved with risk management, beginning with the earliest days of law school, creates a preventive way of thinking that provides unparalleled protection for clients and attorneys.</p>
31.	<p>Mandating professional liability insurance protects insurance companies, not clients.</p>
32.	<p>In Clark county solo practitioners and small firms have proportionally larger financial liabilities with increased business license fees and "professional" license fees, along with the other fees required to maintain an active license. Forcing malpractice insurance could make it cost prohibitive to practice law, especially when insurers could raise rates because they know that attorneys must buy insurance.</p>
33.	<p>Exceptions to mandatory malpractice insurance for government attorneys, those without an active Nevada practice, in house counsel.</p>
34.	<p>The Survey fails to consider attorneys who practice part time. \$250K is ridiculous considering an attorney may only handle a dozen legal matters a year, and said matters may be fully covered by a policy of say, \$50K per. This idea needs to be thought through a little better. I believe it will negatively impact many part time and semi retired attorneys. And, consequently, I believe it will impact the general public with fewer choices and higher fees. Mandating malpractice insurances is a good idea, but fixing the number at \$250K makes no sense whatsoever.</p>
35.	<p>Consider a tiered amount of insurance, based on annual billings by the attorney/firm. I am mostly retired and find serving low-cost and pro bono clients' needs very fulfilling. I dropped my</p>

	liability insurance this past year because the annual premium for \$1 million coverage amounted to nearly 50% of my billings (currently less than \$10,000 per year).
36.	<p>1.The survey seems written to obtain support for a pre-determined conclusion(s). Not really an objective inquiry, but rather intended to support a decisions and conclusions already made. Has the bar done any research or gathered any statistics on how big of a problem / what level of risk exists for the public from uninsured attorneys in Clark county? Seems like the survey is seeking to validate a theory, I would like to see some real research done on this topic first. 2. Insurance companies are exploitative. They charge over-inflated premiums, and mandating insurance will open the door for them to raise premiums and charge even more predatory prices (due to the lack of competition and limited number of carriers). has the bar done any research regarding the costs that this will mandate and the availability of reasonably priced insurance in nevada ? I don't understand why the survey does not address this issue as it is an important consideration. 3 Is the insurance industry active in any way in influencing this policy change? If so, this should be disclosed to the bar. If not, this should also be clearly stated. 4. I would like to see the bar do research regarding the availability of affordable, reasonably priced insurance through a not for profit mutual insurance fund supported by and on behalf of state bar members.</p>
37.	As in house counsel malpractice insurance does not protect my main client. Yet in-house counsel often provide legal services or give legal advise to employees, officers and directors free of charge or for reduced fees. If such services place in-house counsel in the private arena they will be discontinued to avoid paying for malpractice insurance. In my opinion this will not be a benefit to Nevada citizens but rather stifle pro bono work currently being provided. Also in my instance, as a semi-retired attorney, I would have to resign from the bar due to the cost of such insurance if in-house counsel are covered by this rule change.
38.	The issue of malpractice insurance is not one that can be resolved with a broad brush rule. For instance, a solo practitioner who does family law should not have to have the same insurance as a 150+ lawyer firm that handles complex civil litigation, or class action cases, that result multi-million dollar judgments. It is an absurd notion to think that a single rule will work for a community as diverse and complex as the legal community, without the rule taking the particulars of the practice into consideration. Additionally, your questions reflect the myopic approach you are taking to this complicated situation. How can anyone give an accurate opinion with a three-bubble answer sheet?
39.	I am very concerned that required malpractice insurance will encourage nuisance suits brought by dissatisfied clients who had unreasonable expectations and wouldn't accept the advise of competent attorneys. Also, based on quotes for malpractice insurance I received while in private practice, I am concerned that required insurance may make it cost prohibitive for young attorneys and solo practitioners/small firms to represent clients in domestic and family law, and other highly emotionally charged cases.
40.	I believe that this requirement would substantially effect solo attorneys while not really effecting any other attorney when it comes to absorbing the cost. We already pay over \$500 for bar dues, \$50 for CLE board plus very expensive CLE courses, \$200 state business license, \$300 county business license not to mention all the other office overhead including mandatory workers' comp, unemployment taxes, state business taxes and county business property taxes. Only solos foot all these cost by themselves. Almost all other lawyers have these expenses paid by their employer. This is not fair and would drive a lot of solos out of business. I think solos provide a lot to the community that others do not: low cost fees to the less fortunate and a lot of pro bono work. When we do not have insurance I think we provide a higher level of service knowing that a recovery will come straight out of our very own pocket. Please provide data showing that solos are leaving clients with no recover to justify this requirement. Or for that matter, what data can be presented showing that this requirement would actually solve a existing problem.

41.	While I understand the importance of protecting Clients from instances of malpractice, I fear that the idea of mandating malpractice insurance at a particular rate may have the potential to adversely affect many attorneys such as myself and our ability to continue to practice law and offer pro bono services to and or serve indigent individuals as well as employ other attorneys
42.	None.
43.	High cost will discourage small practices and low volume practice, for example, a retired lawyer who might take a case, either pro bono or small recovery.
44.	I feel there is movement towards greater regulation of attorneys (see also, trust account audits and increasing CLE). I think there should be less. Probably because I haven't seen the statistics to validate that any of this is necessary because of some increase or spike in problems these requirements are intended to cure (or that this is the way to cure the problem). So, it looks like well intentioned programs that complicate my life without purpose.
45.	I support the idea of mandatory malpractice insurance, but I think the required rates should be based on what kind of practice an attorney has. Ham-and-egggers don't deal with the same kind of money as the big boys on the Strip. Ticket-fixing and DUIs are way less life-or-death than capital-qualified lawyers. I think there should be graduated rates of required coverage, perhaps based on a firm's total revenue. I also think the Bar should consider spinning off some kind of insurance co-op to provide the coverage, so that we don't all get gouged by private insurance premiums. I mean, I don't do insurance law, so I don't know if that's even a legal option. But I think "stupid high premiums" is the best argument against mandatory malpractice liability, and a co-op structure would solve it.
46.	I am 73, have practiced law for nearly 50-years and serve as a court appointed arbitrator and short trial judge without any bar complaints or claims for legal malpractice. I limit my private practice to only a few small cases per year and then only on referral in limited areas of law which do not require a long-term commitment. I carried professional liability insurance for many years, but oppose any sweeping mandatory requirement for senior members of the bar. I am aware of disciplinary action against attorneys who have defrauded their clients (misappropriated funds, etc) but am deeply concerned that mandatory liability insurance, which will not cover criminal misconduct, will multiply malpractice claims and lawsuits and increase premiums, that will impose a hardship upon solo practitioners or small law firms. Sanctions are available to govern attorneys engaged in litigation.
47.	Need to consider exclusions for public attorneys: District Attorney, Public Defender, Attorney General, etc.
48.	I represent a few cases in the rural areas in order to meet my pro bono obligations. I refer cases to Nevada legal services but they have not taken any cases that I have referred to them. I answer numerous calls from individuals who have tribal court cases and cannot find an attorney to answer even general questions. The mandatory insurance requirements would prevent me from practicing even the small amount of cases that I now provide assistance. The rural attorneys typically do not get the big money cases because the real attorneys in Reno and Las Vegas are retained.
49.	I currently have 1 case in Nevada. My client is a previous client from when I practiced full time. I keep my license current but I own another business in another state where I live. The other business is unrelated to law.
50.	I would have liked to see some statistics from the Bar about client losses and lack of malpractice insurance.
51.	Mandatory insurance is a terrible idea! Disclosure is all that is necessary, if anything.
52.	I am retired but we always carried malpractice insurance

53. I disagree with a requirement for mandatory malpractice insurance or mandatory disclosures to clients because it will increase the burden on lawyers and law firms to do business, it will discourage attorneys from taking high risk types of cases because their insurance rates will increase, and it will encourage clients to pursue malpractice claims even when claims are not meritorious. In my experience, the general public and general clients do not even consider malpractice insurance when selecting an attorney because attorneys are already licensed and regulated by the State. Mandatory disclosures to clients will increase tension and burdens on the attorney client relationship, and will raise a potential conflict of interest from the inception of the attorney client relationship. The only malpractice case I have seen was initiated against a reputable attorney of another local firm by a developer as a business decision for the mere fact that insurance was available. Although the case was hotly disputed, the insurance was paid in settlement to avoid a trial because the insurance was available. The claim resulted in serious physical and mental distress of the attorney, and the firm. Mandatory insurance requirements will increase lawsuits against attorneys and result in economic loss and greater distrust and attacks on attorneys from the public, the press, and will motivate clients to bring more bar complaints (exaggerated to correspond with their insurance claims), insurance claims, and lawsuits against their attorneys. Mandatory insurance or insurance disclosures will increase the cost and risk of delivering legal services to the public. Any increase in security to the client, will be greatly outweighed by the increase in claims, lawsuits, bar complaints, and burden on the legal community.
54. Having Insurance does not in any way affect your ability to do your job any better or worse than not having it.
55. I am licensed in Nevada and California and have malpractice insurance for California but I do not believe it covers Nevada. I do not have any clients in Nevada and so not do any work in Nevada, so I do not think it is reasonable for me to have to pay for Malpractice insurance for Nevada.
56. Virtually all professional liability policies are "claims made", which provide no coverage for acts prior to first obtaining coverage, or after an attorney ends practice (or the policy ends). This proposal does little or nothing to protect the public (this is not like car insurance) and is an undue burden on maintaining a law license.
57. Limits of \$250,000/ \$250,000 should not be unaffordable for any attorney. Also legal aids provide malpractice so legal services legal aid can still be provided.
58. Greetings, Thanks for conducting this survey before taking action on this issue. If you require all practicing attorneys to carry MI then you will drive up the cost of doing business for attorneys who provide services to the poor, thereby further limiting the already limited access to justice for low income residents of the state. Small practitioners provide a valuable service to those in our State who can't afford to pay white-shoe attorneys to pursue smaller cases, and those small practitioners are already being squeezed in all directions by the ever increasing (and rarely decreasing) regulatory and procedural requirements of pursuing basic legal remedies. Further, because of technical requirements in the way malpractice insurance works coverage is often not available to clients as one would believe - the scope of what is typically covered is very narrow and filled with catch-22 provisions that void coverage. I ask that you consider the quality, availability, and cost of such coverage before requiring all attorneys to carry it. In my experience, what is on offer is low quality and high cost. If you were to strictly regulate the terms of how malpractice insurance is provided by carriers, then you may be able to achieve the result you are aiming at, e.g. like car insurance is strictly regulated, but this would require legislative action and could not be implemented by the State Bar, I believe. Mandatory insurance typically has the effect of distorting markets - just consider the mess that we have for a health care system, i.e. very high cost and low quality care - especially for poor people. I ask that you don't take the initial steps to turn the legal profession into a similar expensive and inefficient mess. Ours is one of the last existing professions that has not been completely co-opted by insurance companies into

	submission - I ask that you strongly consider the unseen long terms consequences before you go down this path. Cheers! Luke Busby
59.	I am in favor of mandatory malpractice insurance
60.	One issue that should be looked at is the price of insurance for small practices. If the Bar is going to require insurance, which I am not opposed to, the Bar should go to bat for us and find good and, most importantly, affordable insurance. The Bar cut a deal to assist us with legal research. I propose that the Bar try to get insurance that will cover us that does not cost a fortune. I am trying to get insurance for next year, and the price went up 3 times what I was paying last year. It is insane what it costs for smaller firms to obtain insurance.
61.	I am a public lawyer, so the requirement as proposed would not directly affect me. But any such requirement that is imposed should not affect the availability of legal services or the ability of attorneys in high-risk practices to continue to work without high insurance costs.
62.	This survey is way too vague, and requires answers that cannot accurately reflect a well-informed attorney set of responses. Many of the questions require conjecture or suppositions. I am in favor of malpractice insurance, though, I do believe it is a steep burden for some attorneys, especially those with low income clients, or pro bono advocates. In the end good malpractice coverage will do the most to limit an injured client's recovery, because a good team of malpractice defense attorneys are likely to overcome a complaint by a lay person client. basically, there needs to be some level of caveat emptor in a client's mind, and the threat of sanctions from the Nevada Bar should be sufficient motivation for most attorneys to do what is right.
63.	I am a contract attorney. I ensure that the law firms that I work for carry malpractice insurance and that I am covered under their policies. I am concerned that this new rule will require me to either obtain my own insurance, causing an overlap of coverage and issues as to which policy is primary, or cause issues with reporting as I work for a variety of clients. I am also concerned as I only work occasionally and the cost of carrying my own insurance may lead me to abandoning my pro bono work.
64.	As an attorney who has practiced for 43 years, while licensed in Nevada and California, and never had a malpractice claim, I am concerned about the cost of such coverage- especially in my speciality with a Masters in Tax. I agree with California procedure that lack of E & O insurance must be disclosed in writing. The mandatory coverage requirement would unfairly discriminate against solo and small firm practitioners in favor of medium to large firms who always have E& O coverage. Coverage only means the insured has a right to argue that coverage exists, to which the carrier will argue reservation of rights as to whether coverage does in fact exist or is the event/act/occurrence excluded. There should be consideration to opt out for attorneys with no claims and consideration of the practice period during which no claims were made or paid. I am opposed to the modification as I understand it presently.
65.	As a sole practitioner who does a small volume of cases each year and gives personal attention to each client, it would be punitive to make it mandatory for me to have malpractice insurance with premiums of \$10,000 per year. Only large firms that do high volume or any attorney who advertises on tv should be required to have malpractice insurance. This would take care of the greedy irresponsible attorneys who advertise for volumes of clients and give little personal care to each client, like attorney Robert Graham. I actually believe that I am more responsible to each client because I do not want to commit malpractice, especially because I am not insured. Plus, my years of experience and low volume make me able to give my clients first class service.
66.	Requiring insurance presumes sufficient diversity of Carriers and competitive pricing. If the State Bar is going to require malpractice insurance, then I submit the State Bar must be prepared to offer that insurance if private carriers will not insure, for whatever reason. A solo practioner could be effectively forced out of business if he or she has one or more claims as a carrier will always increase premiums substantially after claims are paid. Will lawyers be required to carry first dollar

	defense since this also affects the premium cost. What about deductibles? Eventually I can foresee the bar requiring depositing of insurance premium deductibles as a condition of licensure. I would recommend that if malpractice insurance becomes mandatory that Bar fees be reduced to \$100 per year, that CLE be free and that malpractice insurance be partially subsidized by IOLTA income.
67.	The questions seem slanted toward requiring mandatory minimum insurance. I favor mandatory disclosure of whether a lawyer or law firm has malpractice insurance but not mandatory insurance, or minimum mandatory amount.
68.	A client's potential financial loss from attorney malpractice varies depending on the type of case, the resources of the parties in the underlying matter, and a huge number of other factors. To require all attorneys, regardless of practice area or practice size, to carry the same minimum insurance amount ignores the diversity of the profession and the public served. In addition, it seems unlikely that many non-corporate clients would consider whether an attorney has malpractice insurance when choosing a lawyer. Likewise, an act of malpractice itself would likely have a greater effect on the reputation of the profession than a harmed client's inability to recover from the attorney.
69.	Some solo practitioners and under-employed attorneys are facing financial difficulties and struggle to pay regular ongoing bills. Moreover, there are attorneys that do not practice full-time. The addition of an extra expense an attorney is required to pay may not be feasible in these situations. Unless such an attorney is brought before the State Bar for professional misconduct or is a repeat violator of the professional responsibility rules, the requirement that an attorney be forced to carry malpractice insurance should not be mandated.
70.	It is a free market. I carry insurance that is substantial and more than what I put down because my practice covers up to as many people as are hurt with no cap
71.	Question the wordage of several of the questions, which appear to be slanting the issues toward a desired result. Double negatives? Clients are better protected by a competent, prepared attorney and an unbiased judiciary, along with strict disciplinary standards enforced against over reaching and/or unethical prosecutors.
72.	Mandatory insurance is a terrible idea for a number of reasons. First, it will raise the cost of doing business. Secondly, it will likely lead to a cottage industry of malpractice lawsuits. We've already seen the deplorable PI industry here in Las Vegas and I have no doubt attorney malpractice will follow. It's not the legitimate claims that I am concerned about, it is the client who heard what he/she wanted to hear instead of what was actually said or the client who just isn't happy even though the service was rendered and the result is typical. The insurance companies will be left paying \$5,000 here, \$10,000 there just to make the claimants go away. We already see this practice in PI, specifically automobile accidents, and it is embarrassing to the profession. We don't need to add to the insurance demand practice. If someone is truly harmed, bring it to the attention of the Bar who can deal with the Attorney and/or file a legitimate claim or lawsuit. However, this mandatory insurance is NOT the way to deal with legitimate claims. Finally, it will drive the reasonably priced good attorneys who wish to practice in a high-risk area out of the field. You are going to simply price good attorneys out of business. For all of these reasons, and more which I won't get into, I STRONGLY disagree with this proposal.
73.	I do not have not enough information to really opine on this as a mandatory requirement for all private practice attorney's, whether active in Nevada or not.
74.	Just thought I would mention that the design of your survey has a problem with it because it does not allow an attorney to identify him or herself as being employed by a firm which provides malpractice insurance.
75.	The proposed regulation, while perhaps well-intentioned, is completely ill-conceived. All it will do is impose additional costs on solo attorneys, particularly those in low-margin fields like criminal defense as well as giving an incentive for clients to file claims in bad faith in the hope of a quick payday. Even the California State Bar, which regulates my practice far tighter than Nevada does,

	doesn't mandate insurance cover, but does mandate disclosure (which I fully support). This is the worst idea to come out of the State Bar of Nevada in the last three years.
76.	A few bad apples should not burden and entire community
77.	<p>1. Cost of having insurance coverage can be hard on the small private practitioners who have to keep their administrative costs low in order to provide inexpensive but still quality service to clients. 2. The Board of Governors should probably look into the practice of other State Bars, like California, as regards MANDATORY requirement to carry professional liability insurance on its bar members. 3. Mandatory requirement to carry professional liability insurance can force lawyers to abandon their solo/small practice notwithstanding that they provide quality service to clients. Where will indigent clients go to for help in the alternative? To paralegals maybe or they go pro se. Are paralegals required to carry professional liability insurance? Does the State Bar regulate Paralegals? If clients go pro se because of the prohibitive cost to hire lawyers who must now increase their rates due to additional cost of professional liability insurance, would not that be pushing such clients to more risks of incompetent and inadequate self-representation? 4. Why does the State Bar not look first into the statistical complaints received on lawyers carrying professional liability insurance side by side with statistics on those without professional liability insurance. From the data and results gathered, how many were clearly actionable negligence? 5. I think requiring lawyers to include in their retainer agreement a provision about not having professional liability insurance is an effective disclosure to the clients. Maybe, the bar can require the lawyers to insists upon the clients to initial such disclosure provision so the clients are made fully aware of the lawyers' not having professional liability insurance. (Something like making a defendant aware of the waivers he has to make before making a plea to guilty or nolo contendere). 6. If a lawyer is disciplined at all, but is deemed still able to provide assistance to clients, then at that time maybe part of the order of the disciplinary body would be to require the lawyer to carry a professional liability insurance, if s/he does not carry one.</p>
78.	requiring liability insurance will put my practice out of business ...
79.	Jury verdicts are low, and clients will want to blame their attorneys and try to collect malpractice insurance where there is none.
80.	Criminal defense lawyers, which I am, are almost impossible to successfully sue because of barriers of a showing of actual innocence and success in post-conviction as a prerequisite. I haven't been sued in over 20 years and went bare four years ago.
81.	I think this requirement will negatively impact both the clients and the smaller practitioners currently operating. Malpractice insurance prices generally rise as an attorney becomes more experienced in the field. This requirement will force experienced solo practitioners to either charge more for their services or quit the practice entirely. This has the potential for leaving large swaths of the middle-class public without representation or with inexperienced representation because they can't afford the rates the larger firms currently charge and the solo attorneys will be left without the flexibility to discount rates because they simply can't afford to. I take on a lot of pro bono cases and low-cost cases because I want to help people who can't normally afford an attorney. This will force me to stop doing that in a few years.
82.	We are still personally liable regardless of whether or not we carry insurance so it only results in an additional expenditure. I carried insurance when I was practicing, however I don't feel the need to mandate everyone should. That should be an individual choice as it's their risk. The bar appears to be increasingly attempting to micro manage attorneys but fail to apply that same micromanagement to yourselves.
83.	If the bar is going to require malpractice insurance it should also recommend a two year statute of limitations for such claims to the Legislature. Otherwise malpractice insurance will eventually become too expensive.

84.	The question that should be answered is whether mandatory professional liability insurance will effectively resolve the real or perceived ills the Board of Governors is trying to cure. The Board of Governors will not cure the evil of "bad" attorneys by mandating the purchase of professional liability insurance (they will help out the already flush insurers). It has been proven time and again that it is virtually impossible to legislate good behavior. The bad actors will continue to be bad actors whether or not professional liability insurance is required. If the desire is to strengthen the quality of the profession and in turn protect the consuming public, then make the entry or admission requirements more stringent so that the less competent are winnowed out before they have a chance to start, and follow that with imposing stronger requirements to maintain an active license.
85.	Raising the idea of malpractice insurance to prospective clients is not ideal to me. It puts in their head the idea that they may want to sue me at some point.
86.	I'm in government but I am surprised that malpractice insurance is not a requirement. I had it when I was in private practice and would not sleep well if I did not have it. I believe the general public assumes all private attys have it. If it's not mandatory, the client should be informed expressly that her lawyer does not have malpractice insurance.
87.	I think insurance is a cost of doing business in the practice of law. Even the best lawyer can make a mistake that can seriously impact a client. Insurance at least provides some avenue of redress. I understand, however, the concern of solo practitioners, and admit that it does not really impact me as an employee of a lawfirm that pays for my insurance coverage.
88.	This is a terrible idea for small law firms.
89.	If you are required to have insurance to drive a vehicle, should you not be required to have insurance for practicing law? The bar may have to be involved to arrange for reasonable rates for new, or low income attorneys.
90.	I have always carried E&O to protect myself. I do not want to loss what I have worked a life time to obtain because I was 98%rather 100% accurate. My concern is that once Carriers know they have a captive market that rates will significantly increase as happened with the cost of CLE when it became mandatory.
91.	Retired attorneys who keep an active license may represent 1 or 2 clients within a 12 month span. Need to recognize this group when mandating insurance.
92.	Have the bar impose additional fees on uninsured lawyers and increase the fund available for compensation to clients damaged by uninsured lawyers
93.	The idea of mandating how an attorney or a firm protects themselves from business risk is reprehensible and the State Bar has no business delving into such decisions. Rather the BOG should be focused on working to better revise and enforce the existing rules of professional conduct. The reputation of the legal community isn't going to change one iota by mandating insurance (which the vast majority of attorney have anyway). But demonstrating to the public a willingness to truly police and discipline bad acting attorneys makes all the difference in the world.
94.	If I am in private practice and representing a governmental agency or entity as my only client, this new rule would require me to obtain the insurance (the cost of which I would have to pass through to my only client the agency). That cost would, depending upon the case, be extremely high. There should be some sort of insurance waiver for attorneys like me who represent only governmental agencies, but are NOT governmental employees.
95.	The issue for a small practice is cost. Most carriers want to charge higher rates for smaller practices apparently assuming that the small practice generate more risks. Also, as in all insurance, the carriers very often deny liability and force litigation. My experience had been that client will work things out with the attorney if a mistake has been made and the attorney is forthright about it.

96.	I have a million dollar policy for \$3700 per year. I have noticed in mandatory malpractice insurance jurisdictions the price of malpractice insurance is about the same for half the coverage. I am strongly against mandatory malpractice insurance as it lessens competition among insurers and drives up cost. I strongly oppose this measure.
97.	Mandating disclosure makes sense so that clients can be informed, but mandating insurance will cause the rates to go up for everyone.
98.	A lawyer who does not carry liability insurance already exposes him/herself and his/her assets to a malpractice suit.
99.	I would instead suggest a court or bar managed recovery fund similar to that already in place for other licensed categories (Real Estate Division, Manufactured Housing Division). Fund it by a small increase in bar dues.
100.	I already pay state bar dues that afford remedies for attorneys who have engaged in malfeasance. I shouldn't be forced to incur more expenses due to the conduct of others.
101.	Some information about the rate of malpractice claims over the past 10 years and the average settlement/judgment would be helpful to judge the need for insurance to protect the public, not just fatten already fat insurance companies.
102.	\$100,000 should be enough if forced to have insurance. \$200,000 is excessive.
103.	Malpractice insurance does not "protect" clients from attorneys' negligent or intentional malpractice. At best, it may provide for some remedial compensation when an attorney fails to fulfill her or his professional responsibilities. True and effective client "protection" is prospective, and is best achieved initially through appropriate ethical and moral screening.
104.	Malpractice Insurance isn't going to help clients in Robert Graham's case. He had a large practice and for years was stealing money. For small firms ,depending on the practice, the possibility of malpractice is very low. If a malpractice claim arises settlement is always an option, The best way to avoid malpractice is in determining whether or not to represent a client. And fortunately the relationship can be terminated if the lawyer determines the representation is fraught with problems that the attorney is uncomfortable in dealing with..
105.	Concerned for probono attorneys and attorneys who elect not to work full-time, but will accept clients on a case-by-case bases which allows for access to justice.
106.	As a government attorney for the majority of my career (12/16 years) I haven't really had to worry about this as much (and the firms at which I did work in private practice carried insurance for all attorneys), so it is not something I have given much thought. however, I believe that if a client is reduced to suing their attorney for malpractice, their opinion of the legal profession is already poor, and that attorney not having insurance will not be able to reduce that opinion much more.
107.	I practice criminal defense/traffic on a part-time basis. This insurance is not only not necessary, but it is a complete waste of my funds.
108.	There should be some differentiation for lawyers who practice in criminal defense versus civil litigation because the standards for a client's recovery are vastly different. It is not reasonable to require lawyers who focus on indigent criminal defense to maintain the same levels of insurance, since clients are limited in their avenues of recovery - an ineffective assistance of counsel claim is the primary method for a criminal defendant and by law does not involve money.
109.	This survey amounts to blatant push-polling and is written like the decision has already been made. With that being said, I have noticed that some sketchy law firms (e.g., Law Office of Dan Winder, PC, that everyone knows employees several disbarred attorneys as "case managers" that are clearly engaged in the unauthorized practice of law) do not carry malpractice insurance. These are the type of firms that should be required to carry malpractice insurance due to their improper dealings.
110.	Cost of insurance

111.	Most younger or new attorneys fall under their firm's insurance umbrella. Will they also have to provide insurance for themselves? Where is the money for this coming from?
112.	many lawsuits happen because it is cheaper to settle a case than it is to take it to trial. When looking into suing anyone, the first thing I look for is: Do we have deep pockets to go after? Usually insurance. EVEN ON QUESTIONABLE CLAIMS. I can always stop and not file if I cannot get a settlement.
113.	I think too many new attorneys are already being nickel-and-dimed to death by Bar-imposed costs.
114.	I think the better way to stop malpractice and protect clients is to continue focusing on why attorneys commit malpractice. It's typically substance abuse, mental health issues, or personal debt. The bar should focus more resources on these issues and I think malpractice will decrease
115.	This is another example of small practices being forced out of business. Not everybody wants to be associated with a large firm.
116.	Practices vary, and requiring a minimum may be far too much for some practices and far too little for other practice. Furthermore, it will increase the legal fees lawyers must charge, which clients already believe are too high. Finally, demanding that lawyers provide malpractice insurance is creating another form of government oversight that is unneeded and unwanted.
117.	This is a horrible idea. I would stop doing pro bono work, stop offering reduced fees for people who can't afford my work, this would increase my costs and cause me to drastically reduce my legal business.
118.	Any rule needs to have an exception for out of state lawyers who carry adequate insurance in their state of residence; for example I have a policy through a carrier of the State Bar of CA which covers my NV practice so any rule in NV should provide an exception for out of state carriers that are not contracted with the state bar of NV as it would be unfair to require out of state lawyers to carry two policies.
119.	As a collections attorney FDCPA bogus lawsuits are something I have to contend with on a daily basis for the past 20 years. My field of practice has outrageous insurance rates because of this and suits can be settled for far less because I don't have insurance, Thank God.
120.	Professional liability insurance for lawyers is extremely important and needs to be mandatory.
121.	We are professionals. We do not need every facet of how we conduct business to be micromanaged. Mandating insurance will significantly increase the cost of doing business so that solos will be forced to join larger firms. This will also result in an increase in the cost of retaining attorneys - something that most people already cannot afford. I currently do family law in a mid-sized firm. I want to open my own firm so that I can have more control over how my cases are handled and to provide a greater level of service to my clients. This will be harder, if not impossible, to accomplish if I am forced to pay a business expense according to what the State Bar deems appropriate. Instead, I will remain at my firm and continue to grind out cases and clients according to what is most profitable rather than what is best for the client. Such an outcome works against the reputation of attorneys in our state rather than improves it.
122.	Mandating insurance serves no purpose other than increasing costs of premiums, decrease competition both in the insurance industry and the legal profession, and unnecessarily increases the cost of providing legal services which will impact the availability of services for pro bono and other unprofitable areas.
123.	If insurance is mandated, there can be a stark difference between the income stream of a solo practitioner and an attorney in a law firm (even a small firm). Will the employer be required to cover the premium? Having the attorney be solely responsible could artificially/negatively impact a firm's salary structure.
124.	Forcing insurance and disclosures of the same is completely unnecessary and may cause confusion to the public

125.	Whose idea is this? If it was generated by a plaintiff's attorney trying to reduce competition, that would be a negative.
126.	This is a horrible idea. The only things it will accomplish is to create barriers for new attorneys, and increase premiums for those who have insurance.
127.	Do not do this. Malpractice is too expensive and will close small attorneys out of practice. It will become like PI, where lawsuits are abundant to get at policy limits.
128.	This is a HORRIBLE idea. Certain practices can surely be self-insured. I practice 95% criminal defense and simply have no need for coverage. Of far greater concern is the fact that the majority of situations where clients are financially harmed involve intentional conduct on the part of the attorney, something not covered under malpractice policies. At the very least there should be some provision that allows an attorney to explain why his/her practice can be self-insured exempting them from any such requirement. Please do not implement this horrible across the board rule.
129.	I thought we were mandated to have insurance already.
130.	My only concern is that State Bar of Nevada having an approved list of malpractice carriers. Working in a non-profit that is federally mandated, my agency purchases malpractice insurance through national association.
131.	It's worked fine so far- why change it? Charge more for bar dues- put it in a fund for "injured" clients.
132.	I have to have because if my contracts it but always have had it. I don't think it should be mandatory unless the state bar wants to find special rates. It's way too expensive right now.
133.	While I agree with the overall premise, once mandatory, our rates are going to increase dramatically. That is a huge concern.
134.	I am a patent attorney, and am not even sure insurance is available for my area as a solo.
135.	It would be helpful to know the ball park cost for the required coverage maybe with a couple of examples if possible. Obviously the practice area and firm size will affect price, but the variables could also be provided.
136.	My limits are actually \$1,000,000/\$2,000,000 but that option was not allowed in the previous question. The costs of the premiums are an anticipated cost of doing business and practice in high risk practice areas would be reflected by the association of practitioners in those areas to spread the premiums and their rates for providing services in those areas.
137.	This proposal will not improve the quality of legal services in Nevada. It will harm small practices, increase costs which must be passed on to clients, and reduce options for "risky" or "difficult" clients. It is hard enough dealing with such clients without them impressed with the idea that any result they do not like can be remedied by a claim against an insurance carrier who will pay them a few thousand dollars to go away. Nevada is a national joke with respect to excessive minor auto insurance claims already. Don't add another industry.
138.	I definitely don't think we should need to disclose whether we have insurance to clients; that will certainly lead to more lawsuits, and perhaps frivolous ones. I plan to carry insurance as long as I practice, but mandating it, I think, is excessive regulation. There are plenty of other incentives to be a good attorney and to avoid malpractice (e.g. bar discipline) that I don't think requiring insurance will help much in that regard. If you do mandate it, please make the requirement as low as possible because as a solo I already have so many expenses due to bar compliance, business license fees, etc. that it's difficult to make a good profit. Thanks for asking us; I do appreciate that.
139.	Although I do not provide services as an attorney to the public, I do carry insurance for my Arbitration/Mediation Practice. As there are few cases in which a malpractice case would survive an informed judge, I feel better carrying such insurance. However, I would not make insurance mandatory in such a practice.

140.	The board should ask an insurance broker to suggest several carriers meeting minimum coverage levels so that lawyers have an expert to advise them on obtaining the coverage and the premiums.
141.	I am retired but maintain my license. I represent no clients. I am happy to pay my dues and complete all CLE requirements. Imposing an insurance requirement on me serves no legitimate purpose and would be an unnecessary cost. I would likely go inactive.
142.	What if an attorney gets a claim against him/her and they cannot obtain coverage. this could effectively result in the loss of ability to practice.
143.	I would probably favor mandatory insurance for active, full time attorneys, but the statement in the survey email that insurance would be required "regardless of the number of cases or clients the attorney represents or whether cases are taken on a reduced fee or pro bono basis" indicates the contemplated rule goes too far. Semi-retired or occasional lawyers, and pro bono lawyers, will think twice about whether to provide services, as opposed to retiring, if they are required to maintain insurance.
144.	I have carried professional insurance for some time. I do so for the sake of my clients and my own piece of mind. But, I have a successful practice so the financial burden is not a big deal. I fear that mandating professional insurance will impact that segment of the bar that is providing affordable services to those in the most need. It will probably reduce over reaching by attorneys that may be tempted to accept cases they shouldn't. That being said, any requirement will necessarily have a greater impact on those attorneys who represent regular people and their problems and not corporate or insurer's interests.
145.	I carried liability insurance for many years - it is very expensive and not worth the price; lawyers are at the mercy of the insurance companies. It is a very bad idea to require lawyers to carry it, it would be a major financial gift to the insurance companies. If the Bar wants to make it mandatory, then the Bar should provide it on a sliding scale of cost. Part time practitioners should not be required to pay the same premium as full time practitioners or firms. The sole practitioner working part time should be not more than a third of the full time practice price. The Bar has a remedy in place already for those who purposefully do not follow the Rules of Professional Responsibility, we do not need to give the insurance companies a built in big payday. The number of lawyers who commit malpractice to the financial injury to a client is a small percentage of the total number of lawyers; to require malpractice insurance makes all the practitioners pay for the few that are at fault.
146.	If required, the Bar should facilitate getting it offered at a discounted rate
147.	I find this survey to be worded in a very pro insurance manner. I think another survey should be sent out that would ask attorneys about professional liability insurance in a more neutral format. Such as "Do you believe professional liability insurance is necessary to protect the public from attorney malpractice?" "Do you believe professional liability insurance is necessary for a client of an attorney who has committed malpractice to adequately recover for said mal practice?" "Do you believe professional liability insurance is necessary to protect attorneys?" I am not sure how an attorney's insurance coverage affects the public's perception. If a client looks to my professional liability limits prior to hiring me as an attorney, I am not sure I want that client. That would indicate to me that the client may be looking for trouble, or a reason to bring suit against me. That is discouraging. I believe clients select attorneys for a number of reasons, namely an attorneys particular skill and expertise. I do not choose a doctor based upon the insurance he or she carries. I chose my doctor based upon their skill and expertise/recommendation etc. Choosing an attorney should be no different. Additionally, there are medical malpractice limits here in Nevada. If we force all attorneys to obtain professional liability insurance it would seem that there would be a very strong lobby to ensure a very low malpractice liability limit.
148.	I do wonder whether a blanket \$250K policy for every single attorney in private practice is a good idea. It does not take into account type or size of practice, type of clients, amounts of typical client

	recovery, or any other factor that might affect what a client might need. This is not like car insurance, where the types of injuries have the potential to be very similar no matter the type of driver.
149.	I am retired but for finishing up cases for clients that no one else would take on because they are native American claims that no one else is familiar with. I would not be able to do this if I am required to carry malpractice insurance.
150.	I have had insurance and it became useless and completely unaffordable. It would put me out of business. This is a GROSS OVERREACH by the Bar and disparately affects solo practitioners. I treat my clients with the utmost care and respect and I deeply disapprove of this move on the part of the Bar. If the Bar is so concerned with the competency of its lawyers, it should do a better job selecting them.
151.	If insurance is "required," there will definitely be an increase in cost. Some smaller firms or solo practitioners may be priced out of the market.
152.	I have practiced for more than 60 years without one malpractice claim. My practice now is very limited, but necessary for my older friends and family which is quite large in this area. My income level is substantially lower and my practice is extremely limited. I practice out of my home. Most of my work is pro bono, but is needed. Requiring liability would make it almost impossible for me to continue helping my friends and family.
153.	An across the board requirement that all practicing attorneys carry malpractice insurance is too broad of a measure. Requiring attorneys who do not represent private citizens to obtain malpractice insurance will impose a financial burden on the attorney but not protect the intended targeted group.
154.	Affordability will be an issue. If an attorney has been part of a malpractice lawsuit, even if they personally found to have committed no fault, but their firm pays through a settlement, this can make it extremely difficult to obtain future insurance on an affordable basis. Also, need to evaluate whether this would be applicable to pro bono work.
155.	Attorneys are (for the most part) intelligent people and should decide for themselves whether malpractice insurance is in their own and their clients' best interests and is financially feasible.
156.	I wanted to get some of my retired colleagues to work together in a practice with me, but they cannot afford to pay malpractice in certain specialities (i.e. Intellectual Property, Securities). Due to my work on real estate transactions, my malpractice premiums are 2-3x of what a general practitioner would be so affordability is a big concern. I am concerned about the brain drain where there are many very experienced attorneys who have retired from law firms, want to stay engaged on a limited basis, but affordability of malpractice insurance is a barrier to doing so.
157.	Back in 1986, there was a legal malpractice carrier void which required the Bar to bring in ALPS. Before that the carriers were increasing the malpractice premiums significantly or not writing small office policies. This could occur again if steps are not take to prevent this.
158.	The proposal is the result of one prominent attorney's push for mandatory malpractice insurance. Mandating such insurance will drive many small practitioners out of the business. It will encourage claims. It will do nothing to protect the public. Mandating malpractice insurance will make it expensive. Mandating insurance is only required in a three states--a very small minority. The amount proposed is so small that it will do nothing. This is a knee jerk reaction to one bad lawyer--Rob Graham. This proposal would not protect his aggrieved clients.
159.	Rather than making disclosure to clients mandatory, I would prefer mandatory disclosure to the Bar. Clients wanting to know an attorney's malpractice carrier information could simply access this information online, without creating yet another potential tripwire for the attorney consulting with potential clients. However, for the reasons I explain below, I would also create an exemption from the mandatory coverage for "non-practicing" active attorneys handling smaller matters. I am concerned for the "non-practicing" lawyers who elect to keep their bar membership active while not maintaining a practice. The first aspect of that concern is that retirees, new mothers

and other "non-practicers" do occasionally practice in a very limited capacity. If called upon to quash a traffic warrant for a neighbor, seal a misdemeanor record for a friend or write a letter to an insurance company on behalf of a nephew, those attorneys should not run afoul of the new rule. The second aspect of my concern is in enforcement. Would the aforementioned "non-practicers" face penalties or harassment from the Bar based upon the perception that they need coverage? By way of example I will use my wife. My wife closed her small criminal defense practice more than 2 years ago but maintained her "active" status with the Bar. Since then she has sat as a judge pro tem, worked as a substitute teacher, pursued artistic endeavors and, yes, even handled one pro bono case. During this time, she kept a P.O. Box with the same Executive Office within the City of Las Vegas that she had used while in practice, for the purpose of not publicly disseminating our home address to her many former clients. To the outside world, it might have looked like she was still in practice—so much so that the City of Las Vegas Business Licensing began to harass her to renew her business license. Even after she explained how she was no longer in business, they persevered. She finally got rid of her P.O. Box and now just runs the risk that our home address will be made public. This is the scenario that concerns me, but with the Bar in place of Business Licensing. I am afraid that the administrative staff entrusted with policing this requirement would chase such non-practicing lawyers completely out of the profession, and that would be a shame. A third aspect of this is pro bono work NOT done through a bar-approved pro bono provider. If a party can convince a non-practicing attorney to take a case pro bono, that attorney should not have to endure the expense of paying malpractice premiums. "No good deed goes unpunished" shouldn't apply to pro bono work too. I understand that this could be avoided by simply going to a bar-approved provider but I suspect many non-practicers might warm up to an individual pro bono case brought to them by an acquaintance before they would seek out cases through a pro bono organization.

160. Professional liability insurance is recommended for all lawyers. The burden on solos and small firms and new lawyers and on all lawyers to fund the cost to monitor this program is not outweighed by the potential societal benefits of requiring such insurance. It is a good thought and worth considering. While the concept does have merit, the case has not been made for a need.
161. Many competent attorneys that provide services at reasonable cost to consumers will have to stop practicing which will result in fewer attorneys providing the public's needs. It will concentrate business increasingly to larger firms which is the real objective of the pursuit of this policy. GRAHAM thought he had professional liability insurance..
162. Your survey is obviously worded so as to give you the result you want, which is to force more regulation on everyone. I am adamantly opposed to mandatory insurance or anything else that would likewise tend to strangulate private practice or private enterprise generally. This supposedly well meaning regulation will only make it even more difficult for people to get the legal help they need. This will drive out the part timers, semi-retired, and those who try to do a reasonable amount of pro bono work, as well as those just starting out because there is no insurance that is priced on a sliding scale for them. People with reasonable cases are already going without justice because the cost is too high or because they cannot find a lawyer at all. Rural areas will be disproportionately hit and they have a lot of trouble already. I'm sure that this will fall on deaf ears because you already decided to do it and just commissioned the survey to justify your predetermined outcome; but I vehemently dissent.
163. This is yet another fantastic way to ensure that private attorneys are run out of business. If you intend to make governmental employment or firm employment a mandatory exercise in the legal community you have found a wonderfully effective means of doing so.
164. I generally support this move in "theory" that it provides the public protection from negligence or willful acts like Graham. Insurance is "reactive". It only helps once a problem has arisen. The State Bar should be proactive in its approach. This would include raising (not lowering) the minimum scores to pass the Bar Exam (since pure politics were involved in trying to ensure more UNLV law

	grads passed), tightening up Rule 51.5 regarding non-ABA grads and what constitutes functional equivalence, etc. The goal should be to put the best prepared and more ethical lawyers in our State. Not everyone who goes to law should be able to pass a Bar Exam. Similarly not everyone who applies to law school should get in or graduate. Lowering Bar Exams scores to increase the pass rate to appease UNLV and its big money boosters and having very liberal standards for functional equivalence of non-ABA grads does nothing but ensure that less prepared, unqualified and unethical lawyers are admitted. Mandatory malpractice insurance is just a knee-jerk reaction to the fallout from a prior bad decision by the Bar.
165.	(1) Your survey is biased in favor of mandatory insurance. Have you surveyed a control group of non-lawyers? (2) I am mostly retired but every now and then other lawyers or companies consult me. The amount I get paid for doing this work would barely cover the annual premium of a minimum policy (I checked). If I am forced to buy coverage to maintain my ticket, I'll be forced to give up my ticket.
166.	Do it.
167.	There is little risk for part time practitioners in certain areas of law. Requiring insurance might make the difference whether a person could make this life-style choice. For that reason, I'm opposed to mandatory insurance.
168.	I think the State Bar should provide minimum levels of malpractice insurance for every bar member, paid for by assessments against each attorney or their practice. An attorney desiring greater protections could then purchase more insurance on the open market. That way, it would not be necessary to disclose the existence or non-existence of insurance, which would likely encourage malpractice lawsuits by disgruntled former clients. Also, the State Bar could immediately suspend an attorney who has not paid his or her assessment, just as they do when the Bar fees are not paid, or CLE credits are not earned/reported in a timely manner.
169.	Shame on you for attempting to increase the operating costs to low-cost providers like me. Someone likely has an hidden interest in selling insurance here, as I see no real, compelling facts to justify this push to force us to "buy insurance." Also, if the State Bar of Nevada is saying anything by mandating coverage, it is that the organization is one with zero trust in the quality of their own bar exam, CLE programs, or other work done to help ensure quality service to our public. This is a slap in the face to all these earnest support efforts to help each other in our bar organization.
170.	THIS IDEA IS GOOD IN THEORY, BUT DOING THIS WILL HAVE A GRAVELY DISPROPORTIONATE IMPACT ON THOSE ATTORNEYS WHO ARE SOLOS OR IN SMALL FIRMS ON THE PLAINTIFF'S SIDE. FIRST, SOME OF MY PRACTICE CONSISTS OF CLASS ACTION LITIGATION. INSURANCE COMPANIES WILL EITHER NOT WRITE YOU, WILL HAVE AN EXCLUSION OR IF YOU PRACTICE ANY CLASS WORK THE COST IS SO PROHIBATIVE, YOU CAN'T AFFORD IT. I HAVE LOOKED. MOST IF NOT ALL MID TO LARGE DEFENSE FIRMS HAVE E & O INSURANCE AS THEY CAN AFFORD IT. SECOND, IF A SOLO OR SMALL FIRM GETS ANY STATE BAR COMPLAINT, INCLUDING A BOGUS ONE, THAT HAS TO BE ON THE APPLICATION AND REPORTED TO YOUR CARRIER. EVEN A BOGUS COMPLAINT. I HAVE NEVER HAD A COMPLAINT, BUT I HAVE HAD SOME OFF THE WALL UNREASONABLE CLIENTS THREATEN TO DO SO. ONE BOGUS COMPLAINT MAKES INSURANCE COST PROHIBATIVE. AGAIN, THIS WILL HURT MOSTLY SOLOS AND SMALL PLAINTIFF FIRMS DISPROPORTIONATELY. I DO NOT BELIEVE REQUIRING MAL PRACTICE INSURANCE IS THE WAY TO GO, BUT IF THE BAR BELIEVES DISCLOSURE IS IMPORTANT THEN THAT WOULD BE A GOOD COMPROMISE. CLASS ACTIONS ARE AN IMPORTANT PART OF ENFORCEMENT OF CONSUMER RIGHTS, BUT INSURANCE IS COST PROHIBATIVE IF THAT IS PART OF YOUR PRACTICE. CONSUMERS WILL BE HURT AS WELL BECAUSE THOSE WHO PRACTICE STATUTORY CONSUMER LAW, FCRA, FDCPA, TILA, AUTO FRAUD, WRONGFUL REPOSSESSION AND FORCLOSURE ETC... ARE SOLO FIRMS. I WOULD SURMISE THAT THE NUMBER OF THOSE WHO CARRY INSURANCE IN ACTIVE PRACTICE, MOST ARE DEFENSE

	FIRMS. OTHER PROFESSIONALS LIKE DOCTORS, ACCOUNTANTS ARE NOT REQUIRED TO HAVE SUCH INSURANCE. IT SHOULD BE LEFT UP TO THE ATTORNEY TO MAKE THE DECISION IF HE OR SHE WANTS TO PAY FOR E & O INSURANCE. ATTORNEYS CAN'T LIMIT OR INSULATE THEMSELVES FROM PERSONAL LIABILITY VIA THE CORPORATE SHIELD. THEY ARE SUBJECT TO LAWSUITS FOR THEIR MAL PRACTICE, AND AGGRIEVED CLIENTS HAVE REMEDIES TO SEEK DAMAGES, BUT REQUIRING MAL PRACTICE IS NOT THE ANSWER. DISCLOSURE TO THE IS OF HAVING NO INSURANCE IS A GOOD COMPROMISE IF E & O IS BEING CONSIDERED ON BEING ADOPTED INSTEAD OF REQUIRING INSURANCE.
171.	This is completely unnecessary intrusion BY what is becoming a nanny, Overbearing mandatory bar. The free market should control this issue. I am opposed to mandatory insurance but OK with disclosures
172.	I highly disagree with forcing all attorneys to buy malpractice insurance. Also those vote of those whom it would personally affect should take priority of those working in a large firm who would not feel a direct hit from this.
173.	Not only will this skyrocket the costs of insurance, but it will absolutely increase the number of malpractice filings by unhappy clients, even when there is no legitimate claim.
174.	Another way for the Bar to intimidate solo practitioners.
175.	My practice is growing but remains very small. While the cost of malpractice insurance may or may not be very large, it would be a negative impact on my ability to grow my practice from the ground up. I think a mandatory rule such as this (if used at all), should be limited or conditioned upon a certain threshold for gross income of a firm. Very small firms such as mine really do not need insurance and imposing the cost would be an unfair burden on my practice.
176.	I am retired from the active practice of law, but active as an arbitrator. No reason to be forced to acquire professional liability insurance.
177.	I am a proponent of malpractice insurance but I am cognizant of the cost as a business owner. Yet, it is a protection also for the attorney as they can defend themselves.
178.	I only represent family members for minor matters. The cost of insurance would prevent me from that representation and thus they would have no representation.
179.	If the State Bar is concerned with protecting the citizens of Nevada from attorney malpractice, the State Bar should take a more active role in determining and punishing attorney's instead of trying to push these responsibilities onto the Court system.
180.	Mandatory insurance is a bad idea
181.	I am now in-house counsel in another state but still have Social Security Disability cases and occasionally do estate planning for Nevada clients. Even when practicing full time, my areas of practice were extremely low risk and also focused more on providing assistance to low-income clients. That is a high level of coverage for a lot of attorneys in private practice and totally unnecessary. \$100/\$300 is what I carried and was far more than any liability could have been for my clients. Applying a universal requirement like that prevents attorneys from doing part-time and reduced fee work.
182.	Professional Liability insurance protects the lawyer more than the client. I maintain such insurance to preserve my assets, not to protect my clients from my wrongdoing. Ethics rules and my own sense of professionalism and ethics protect my clients, not that I have insurance. Neither do I take unnecessary risks simply because I have insurance to back me up. On the other hand, there are sufficient numbers of lawyers, especially in solo and small practices that are not financially stable, causing them to take undue risks to earn that extra fee and putting their clients at unnecessary risk. Clients of those lawyers do need some protection from those unnecessary risks. Other states, like New Jersey, where I am also admitted already require professional liability insurance as a condition of admission to the bar. I do not believe there is any increase in

	malpractice claims due to such insurance requirement. If the concept is to protect clients, an alternative such as a client security fund, as in effect in New Jersey also, would do more to protect clients than simply requiring lawyers to be insured. Insurance only kicks in when a claim, and usually a lawsuit is instituted, making it more difficult and time-consuming for the client. A protection fund, administered by the State Bar and managed by volunteers, could resolve claims more quickly and efficiently and make client pay-outs more efficiently than simply requiring insurance as a back up to the attorney's ability to pay a claim.
183.	I want to express my opinion that this will only increase malpractice suits. Not one person has ever asked me if I had it. It is required for my work with Insurance carriers.
184.	Before mandating coverage, the Board of Governors should perform a study and report on how many instances of clients suing for malpractice and being unable to recover (ie insolvent attorney/practice) occur in Nevada annually; otherwise, we're just lining insurance company pockets for a problem that does not exist. In other words, I am very much unconvinced that this is a problem at all.
185.	I have coverage and always have, yet I strongly oppose a mandatory requirement. All that accomplishes is to increase in premium costs and to encourage more malpractice suits. I have never heard anyone state that they have a lower opinion of the legal profession based upon maintenance of malpractice coverage. I am further concerned that the current Board of Governors is entirely to activist. We just had a survey regarding mandatory audits of trust accounts, which would certainly be intrusive, time consuming and expensive. That won't stop the bad actors either, clients always find out first because they are unable to obtain their funds and then report it to the bar.
186.	I do not think that we should have to publish this information. However, it should be made available on the State Bar's website.
187.	This proposed over-regulation brings the Bar over the line into the free market and free competition, including giving big firms another competitive edge over solos. The proposed regulation will negatively impact the market, including edging out solos who are not insurable, but who are highly competent. Insurer underwriters look at frequency and severity of loss histories. Requiring insurers to offer coverage would solve this, but the Bar has no jurisdiction over carriers.
188.	Like the proposed amendment to rule 8.4[g], another stupid BOG idea.
189.	The questions and array of possible answers in this "survey" are for the most part extremely embarrassing. I cannot believe the State Bar of Nevada is playing lawyer games with members of the bar.
190.	If history and economics are any indication, mandatory insurance drives insurance rates higher because companies know that they have mandatory consumers. An increase in insurance will result in an increase in fees to the public, eliminating more of the public from being able to retain legal assistance. In an attempt to protect the public from a few bad eggs, you prevent the public access to the good ones.
191.	Mandatory malpractice insurance will increase the cost of doing business, pass that cost on to the clients, and thereby limit access to justice for indigent clients. Additionally, in-house counsel should not be required to maintain malpractice insurance.
192.	Please share the approximate cost (or the price range) for the minimum coverage under consideration. Thank you.
193.	Govern yourselves. Leave it up to each attorney or office. It will create a cesspool of malpractice suits. It is called a "practice" isn't it? More insurance money, more bad cases, more nonsense.
194.	Requiring all private practice attorneys to carry malpractice insurance minimum limits is overall a good thing for the attorneys, the clients, and the legal industry as a whole. The concern is that the insurance limits that attorneys actually have should not be something that is publicly available. If suit is filed against an attorney then disclosure of insurance limits is obviously necessary, but

	<p>availability of that information before suit is filed will lead to a cottage industry of seeking out lawyers with higher limits to target for lawsuits...just like personal injury lawyers ignoring valid claims that are small in order to pursue often frivolous claims against a commercial defendant (like a trucking company) just because they have higher insurance limits. Also, since the State Bar is also considering a policy of random trust account audits, if you are going to do that then you MUST also mandate malpractice insurance for lawyers.</p>
195.	<p>I have seen malpractice in cases handled by other attorneys that is very disturbing (e.g. litigation attorneys who do no discovery and take a case to trial with no witnesses, attorneys who take cases with inherent conflicts without adequately explaining the conflict to clients, attorneys who miss deadlines, etc.), and many of these attorneys had no malpractice insurance. If there is an increase in malpractice litigation simply from attorneys having insurance, this is likely because before making an insurance requirement, these clients who were harmed by their attorneys' negligent representation had no recourse and could do nothing. There may be some frivolous cases of people who just are upset they were unsuccessful with their litigation and are hoping to collect from someone else's insurance company to help compensate for their losses, but there are a lot of legitimate cases out there of attorneys who are mishandling cases. I strongly support the requirement for attorneys to have malpractice insurance. But it might be worth getting more detailed feedback from practitioners in different practice areas with different office sizes, with some quotes from available insurers, to provide better feedback on policy costs and limits to make it something affordable for a variety of practitioners. It is difficult for me, as a larger firm practitioner, to take an online survey and say what the policy limits should be for all attorneys, without having some idea of the cost of providing that insurance, for example, to a solo practitioner.</p>
196.	<p>There aren't enough companies who write malpractice insurance or broker who sell malpractice insurance in Nevada to warrant mandatory liability insurance. Rates in Nevada are very high and requiring mandatory insurance will encourage insurers to raise rates even higher because they know we need it. Mandatory insurance is a stupid idea and will only benefit the malpractice insurance companies. If more companies start writing insurance in Nevada and there is an effective broker network for the purchase of malpractice insurance, I may change my opinion. But right now, there is either enough competition or enough effective distribution to make it mandatory.</p>
197.	<p>Having previously been in private practice and left to join a government office, the BOG should carefully consider that most policies are "claims made" policies. For an attorney leaving private practice, the issue of whether, how long and the cost of purchasing "tail coverage" or ongoing protection after the attorney is no longer engaged in practice is a significant issue. Given that some statute of limitations are going to be based upon the "discovery" of harm, the need for coverage for years after ceasing to practice is a significant issue and can be costly. Those issues must be addressed as part of any "mandatory" coverage.</p>
198.	<p>If an attorney only represents criminal defendants, it is almost impossible for a legal malpractice law suit to end with payment of fees to the prior client. In the criminal defense context, the prior client must have a conviction reversed and then either be found not guilty or the case is dismissed. Requiring attorneys, who only represent criminal defendants, to have more than a minimal amount of malpractice insurance just costs the attorney a significant amount of money and is a windfall to the insurance company which, in all likelihood, will never pay a single penny. Clark County requires attorneys who accept criminal appointments to carry \$1,000,000 in malpractice insurance which costs approximately \$3000 per year. It is absurd!</p>
199.	<p>There should be no mandatory insurance, period. The insurers overcharge for their coverage and there is no real competition among the few insurers who write policies, so premiums are exorbitant, esp. for solo, semi-retired and part time attorneys (assuming the coverage is available, which it often is not). This is a bad idea.</p>

200.	If I make a mistake, I make it right with the client, period. The board and the courts have no business intruding like this, and if it becomes a rule, I hope it will be challenged in the courts, I will consider helping with that challenge.
201.	I do not think mandating every lawyer to obtain malpractice insurance is a good idea, other than helping disgruntled clients try to exact some measure of revenge.
202.	The mission of the State Bar of Nevada is to make the law work for everyone. This is one more instance of making it harder for the small or solo law firm, which are doing the bulk of the work, very often without pay.
203.	Mandating that an attorney carries professional liability insurance gives clients (i.e., the customer) a false sense of security. The onus should be on the client to make an informed decisions about his or her representation, which might include deciding to pay a lower fee for taking on the risk of hiring an attorney who does not carry insurance.
204.	I am guessing this idea came from attorneys who represent insurance companies. How about those pushing this matter disclose the the identity of their insurance company clients? But again, let me guess, that could violate attorney/client confidentiality, right? This appears to be nothing more than a money grab by insurance industry.
205.	I represent consumers and charge them nothing. I only ever recover if they do, and they're statutorily capped at \$1000 most times. That practice method and the requirement to have insurance would negatively impact my business, and a single policy claim would likely be barely more than my deductible
206.	For some reason the State Bar continues to follow the Oregon Trail. Yet, only a hugely small percentage of attorneys ever see a malpractice action against them while most carry insurance that adequately covers their practice. Most policies, if not all, do not cover theft (intentional acts) by attorney's of their client's money. I practiced law for two decades and never had a claim against my policy. Instead of mandatory requirements for coverage (we would be only the second state in the country) why not increase, not decrease, bar admission standards. The most recent bar pass rate was artificially inflated through political means. Might as well have complete reciprocity then. Let anyone practice in Nevada. In addition, you do not ask the right questions nor do you give us the proper information to make a more informed decision. Each year we need to disclose to the bar if we carry professional liability insurance. This is public record and any consumer can request the information from the Bar. However, even though you have that information, you have failed to disclose how many private practicing licensed attorney's in this state carry insurance v. those that don't. What the size of their practice is? If they carry individual policies or are covered by their firm? Etc. .... I think the Board of Governors should get back to representing their attorney's and advocating for them, not presuming negligence and giving us all bad names.
207.	Mandatory insurance is a good idea and should be implemented. It protects the public and I feel it will potentially lower rates by making every attorney purchase to spread risk and increase premiums to the insurers of the state.
208.	Nowadays, legal directories (including the state bar) report incidents of claims or complaints, without reporting the details or outcome. I am concerned that suddenly reporting insurance availability to the public acts as as if malpractice insurance is new, and therefore creates an incentive to make questionable claims. Even questionable claims are reported publicly, seemingly perpetually, without detail to allow the public to make an opinion about whether the claim says anything about the attorney's quality. Attorneys need the leeway to make judgment calls- it's what we do- and arming clients with information about mandatory insurance puts the attorney and client at odds with one another. I am generally in favor of mandatory malpractice insurance, if it can be accomplished without becoming a news story.
209.	hard to take court appointed cases on a part time basis if required

210.	I think that maintaining professional liability protects all concerns: The legal profession, the client, and of course, the practitioner!
211.	If I felt they would listen or it would help, I would spend as much time as necessary to put this matter out there. At this time, however, I do not feel that is the case.
212.	Insurance is very expensive , it makes you a target for greedy clients and then it costs another \$10,000 or so deductible to hire a defense attorney before the insurance kicks in to help.
213.	I am in general not in favor of more rules governing what we do. Over regulation
214.	the Nevada bar has been way to lax for way too long. all but the most sophisticated clients assume tat lawyers are required to carry E&O. we should, at an absolute bar minimum, be obliged to disclose if we do not carry E&O. at least let the consumer have a level playing field. why can't the bar get a group rate? the time has come to fix this gaping hole in our credibility
215.	It will advance the public' s view of the profession.
216.	What concerns me is the requirement that this be Nevada Admitted Coverage - My firm has \$15 million in coverage with an SIR which is presently \$250,000 I believe for lawyers outside Oregon (which has mandatory primary layer bar-provided coverage). We're about to move our coverage to the Pilot Legis Risk Retention Group -that's NOT Nevada admitted coverage - PilotLegis purchases their coverage or reinsurance in the London Market. If the PilotLegis coverage is not qualifying, then my firm would have to buy an extra Nevada only policy for me, at an additional cost. I do a moderate amount of Nevada work, but am primarily a California lawyer. The requirement to buy a wholly unnecessary Nevada policy is likely to be resisted by my firm, thus forcing me to either go inactive or resign from the Bar, despite having substantially more coverage than the bar proposes requiring. This proposal is poorly thought out and appears not to have had sufficient vetting by people who understand the insurance industry. Do NOT require the coverage to be admitted coverage in Nevada, simply require that it be coverage that may legally be offered in Nevada through a Risk Retention Group or through the surplus lines market, as well as admitted. Thanks,
217.	Are criminal defense lawyers going to be required to carry malpractice insurance? If so then this rule is just a scam to benefit insurance carriers. In the real world, there is no malpractice liability in criminal cases.
218.	Over the last decade, it is prohibitively expensive to get malpractice insurance if you do even occasional class action work (&gt;1 per year) - even low value (e.g., injunctive) class actions where the only person taking any financial risk or facing financial consequences of the attorney's negligence, is the class action attorney. Mandating attorneys to get insurance on the open market is a VERY BAD idea.
219.	Clients already have a remedy in that they can sue their attorney and file a bar complaint.
220.	When I find out that an attorney does not have malpractice insurance, it causes me great concern. If they are not willing to carry insurance, it makes me wonder about the quality of the legal services being provided. Anyone can make a mistake. Insurance is there to protect our clients if we do.
221.	If the insurance is mandated, I think it is imperative that the Bar provide access to reasonably-priced insurance to all licensed attorneys, including those who may be difficult to insure due to practice areas or history.
222.	Between this and audits of trust accounts, the bar is definitely on the right track.
223.	There are many competent attys like myself who are conscientious and careful. I take good care of my clients and go above and beyond. However after paying huge prices for malpractice insurance for years - I finally could not afford it. However, I do not practice in areas where I am likely to cause damage to my clients and I have safeguards (as always) to ensure I am not committing

	malpractice. By forcing malpractice insurance, you will likely force many cost-effective lawyers out of business.
224.	I am over 70 years of age and practice only in the field of real estate where I prepare Deeds, etc. I was trained in New York and served in the Real Estate Division of the Attorney Generals Office. I have taught real estate law for many years. The probability of my making an error which will cost my clients money is very very low. My net worth exceeds \$1,000,000. I had \$1,000,000 of liability insurance when I had my own full time practice and when I was managing partner for LePome, Willick & Gorman, Esqs. We never had a claim. I bought "tail" coverage for 5 years after leaving full time practice. My semi-retired part time practice generates income below the level which requires a business license. Requiring me to pay for liability insurance in view of the foregoing is abusive and wholly unnecessary.
225.	Clients can decide whether to hire an attorney to provide services who has or does not have coverage. It should be a choice. I specifically elect not to carry insurance to prevent clients from wrongly believing an insurance company will provide a guaranty of any result. However, this choice does not prevent lawsuits or disciplinary action. More regulation does not provide protection to the public. It funnels money to insurance companies which are not required to pay claims. It's a false sense of security.
226.	The worst damage to clients has been done by attorneys who INTENTIONALLY embezzled funds and insurance does NOT cover intentional wrongdoing. Requiring anyone to buy a product from for profit companies should be unconstitutional.
227.	I worry that requiring insurance may have a negative impact on small offices offering low cost services to clients that make enough so as to not qualify for pro bono services but not enough to hire higher priced firms. Usually, attorneys who do not maintain insurance likely do not serve clients in high-value matters. These attorneys may assist with immigration, child custody, and eviction matters, where risk of monetary loss is not as high. This policy could create a bar of entry for these attorneys, and clients could go without representation if fees have to be raised. I do not know the extent of the problem surrounding uninsured attorneys. So that is a definite caveat to my concerns
228.	Solo attorneys, especially those who are retired or semi-retired, should only be required to carry malpractice insurance as part of reinstatement from suspension or disbarment.
229.	An attorney should be left to make their own decision whether to have their personal assets at risk (versus having insurance) in the event of a professional negligence claim, whether their personal assets are adequate to fairly compensate a client in the event of a claim, and as what types of services to provide and not provide in order to manage the risks of a claim being made and the potential amount of a claim.
230.	A family member of mine hired an attorney in San Diego who didnt carry malpractice insurance. He blew a statute of limitations and then pretended for months like he was actively litigating the case. Then they hired another attorney to sue the first attorney for malpractice. They still haven't recovered anything from the first attorney. It's just been a very disappointing experience. They just want their fees back at this point.
231.	Malpractice insurance for all is wrong. It punishes all for the acts of a few greedy lawyers. Most lawyers are reputable. Lawyers who bill inflated costs that they never incurred, like Marjorie Hauf, coerce clients to sign settlement agreement statements before they hand over the checks, so they get away with this fraud. As a result, clients are freely gouged by unscrupulous lawyers like her.
232.	I frankly thought that malpractice insurance was already mandatory so I am shocked (and embarrassed) to learn now that this is not so. I might also say that I have always been shocked (and embarrassed) by the ridiculously low number of CLE hours required. compare the CPA's and their 40 hours of CPE. And some of the "CLE" for which credit was granted was pathetic.
233.	I am mostly retired. As noted, I work only part-time and only for other attorneys, covering, say, depositions, a motion argument, etc. I presently never have a client for more than a couple of

hours at a time. I do my best to ascertain coverage for me on the contracting firm's malpractice insurance. Inasmuch as I have been mostly retired for some years, without much work history, I doubt I would be able to purchase malpractice insurance, and I'm certain I would not be able to afford it. Therefore, I would be forced never to work for anyone, ever. Also, I am uncertain about the efficacy of malpractice insurance. When I had a practice that wasn't under the umbrella of a corporation or someone else's practice, I maintained malpractice insurance. Even though I never had a claim, it was my 2nd largest expense, almost as much as my office rent. Personally, I do not much trust insurance companies. They do not have billions of dollars in assets because they pay claims. In my personal experience, collecting from an insurance company tends to be difficult, not just in circumstances in which one's client has been, say, involved in a collision. Along the way, I have represented sundry individuals who were suing their own insurance companies because the companies had declined to pay valid claims. I don't believe attorneys having malpractice insurance provides any assurance of settlements to any wronged clients. I also believe it will encourage frivolous claims. There are many reasons for problems in matters that don't involve negligence, error or omission on an attorney's part.

234. It is unconstitutional for you to require me to have legal malpractice insurance. If somehow it were constitutional for you to require me to have legal malpractice insurance it must be allowed that I can self insure by showing proof of my net worth. As a former legal malpractice defense attorney I am sure that having legal malpractice insurance increases frivolous lawsuits. This is because insurance companies are willing to settle frivolous claims to avoid having to pay Council to defend against them.
235. 1. My practice involves a substantial amount of time representing people of very limited financial means. If I am required to incur the significant expense of carrying malpractice insurance, this is going to significantly affect my ability to offer services at a reduced fee or to represent clients where I know the fee earned will be low. You are going to make it much more difficult for people of limited financial means to find reasonably-priced legal services (outside of personal injury) if you require attorneys to incur this significant additional cost as a requirement of licensure. 2. I think it was a mistake to stop listing whether an attorney carried malpractice insurance on the state bar website. 3. I think the survey results are going to be of questionable validity given that the questions were loaded in an attempt to force an attorney to answer that he/she is in favor of mandatory malpractice minimums.
236. I think this is the worse idea the Board of Governors has considered in the 24 years I have practiced law. I can't even believe the BofG is considering it. I think it is reprehensible for a semi private exclusive guild to be mandating that I do business with an industry that's only purpose is to harvest premiums and limit claims whenever possible. I have gone w/o malpractice insurance for years because one, I don't commit malpractice and have never had anyone so much as hint that they wanted to make a claim. I should have the right to self insure and given the standards of what is necessary to make a claim succeed I measure the possibility of loss to either myself or any client to be minimal. I would think any attorney that doesn't carry malpractice insurance is probably the better attorney for it as they are willing to risk their own assets against any claim.
237. Right now the State Bar requires who are listed on the Bar's website as a "specialist" to carry malpractice insurance. I think this should be required at a minimum, but I am not sure that every lawyer should be forced to have it. I have a lawyer client right now that did PI work. After a few claims his insurance company dropped him and he cannot get insurance. He is not a bad lawyer, he just had some bad clients. I personally don't believe that he was wrong, but the clients still made claims. After a few of those, the insurer dropped him. If mandatory insurance were required then he would be unable to practice law, and I don't believe we should have insurance companies governing whether or not we can practice. That is one significant concern I have. Therefore I believe that having an insurance requirement for those advertising/holding themselves out as a "specialist" should be in place, but others I don't believe that it should be a requirement (though I

	would certainly suggest it - maybe encourage in the same manner we do for pro-bono service - maybe even offer discounts on bar fees for those who are insured and can prove it. With extra fees from uninsured we could look into placing those fees into the recovery fund).
238.	Forcing attorneys to obtain malpractice insurance is an unnecessary added financial and administrative burden in an already tough economic environment. I practice out of state but want the ability to practice in Nevada without an added expense ( ie in addition to my bar and CLE dues which I pay regardless). Please don't make make malpractice insurance mandatory.
239.	I am retired but have a small practice serving poor clients and veterans and pro bono with legal services. I disclose to potential clients that I do not have malpractice insurance. I also tell them that my fees would be a lot higher if I carried it. My practice does not involve complex issues. If it does, I refer them to other legal counsel. My practice is limited to tribal courts and tribal forums. If I have to carry malpractice insurance, I would consider becoming inactive and then practice as a tribal advocate as allowed under tribal laws (without State Bar oversight).
240.	If you do require reporting, please require premium reporting so that the Bar can track expenses and measure the burden this requirement is causing. Also reporting this would allow for determination of whether it would be preferable to go to an Oregon style system. Also, consider adding additional CLE / Professional Counseling in lieu of malpractice insurance for those attorneys who cannot or chose not to carry such coverage. Finally don't require the posting of how much coverage you have as it will unduly burden those who carry some coverage but less than the next guy.
241.	Unlike med.mal. policies, attorney E&O policies are "burning" policies, i.e., defense costs go against limits. In many cases, the defense costs will completely burn up a small policy, which is why we went from \$1M to \$2M per claim. We have \$2M claim / \$4M aggregate, which isn't in your survey. Many policies are \$1M claim / \$3M aggregate. VERY concerned about newbie lawyers and solos being able to obtain affordable insurance; State Bar may need to arrange such insurance, and maybe coordinate with the Department of Insurance to create a pool for those who cannot obtain it commercially for whatever reason.
242.	This is a bad idea.
243.	1) I already at for license just to be a short trial judge so please don't add to that cost for me when I dont practice law 2) i do have a type of business insurance that covers ADR if I were to need it but would expect to have immunity or be covered by AG on court appointed work anyaaay
244.	Do not mandate!
245.	Attorneys are "NOT THE MOMMY". We cannot be guarantors of outcomes and should not be REGULATED TO THE POINT THAT SOON WE WILL BE REQUIRED TO USE SPECIFIC SOFTWARE AND SPECIFIC INK COLORS FOR SPECIFIC PAPERS. We are Professionals and should not be treated like we have to provide porridge and warm milk for our clients with cookies in the lobby. That is absurd.
246.	More meddling. Are you people bored? STOP!
247.	Clients should be able to choose whether to retain a lawyer who is insured or a lawyer who is not insured according to what the client is able and willing to pay. Many clients now cannot afford to hire a lawyer and mandatory insurance will raise the price to retain a lawyer even higher. Therefore, mandatory malpractice insurance will increase the number of people who need legal services but cannot afford them. Furthermore, mandatory liability insurance will not likely make whole clients who have been harmed by attorney negligence. Mandatory insurance always increases costs in an industry without necessarily providing the desired payout to the intended beneficiaries. Insurance companies are notorious for maximizing profits by refusing to timely provide the benefits which they have contracted to provide. The companies delay and litigate valid claims to attain at least a reduced payout if not complete elimination of any payment.

	<p>Mandatory malpractice insurance will increase litigation over claims and only those clients financially able to litigate with the insurance companies will benefit. Furthermore, historic insurance costs to lawyers are not proportional to the volume of cases handled by the lawyer and thus mandatory malpractice insurance will cause attorneys who only handle a small volume of work to be unable to help the potential clients who are unable to pay the price demanded by high-volume firms. Insurance premiums demanded of me have been the same for my practice handling only a few cases per year as the premiums demanded of my colleagues who handle ten to a hundred times more cases per year. The insurance companies have been absolutely unwilling to tailor the premiums to the level of risk presented by my low-volume practice. Therefore, I was forced to drop malpractice insurance. I have only helped clients that claim they cannot hire an attorney elsewhere, usually because the up-front retainer is too expensive or the fees are just too high. If I am required to buy malpractice insurance, I will not be able to help these people. While one may think that I would help poor people through a legal aid organization that provides malpractice insurance rather than not help poor people at all, that thinking would be wrong. I tried helping people through a legal aid organization and found the organization's people so unsupportive and the experience so adverse and misrepresented that I promised myself that I would never do it again. Therefore, in my case, mandatory professional liability insurance will decrease the number of poor people who are able to attain legal aid in our state. So that reduces the issue to a very simple choice. The simple choice is to allow clients the freedom to make an informed decision to hire an attorney who does not carry malpractice insurance and assume the risk or require all attorneys to carry malpractice insurance, deny potential clients the right to make an informed choice, and exclude more of the poor who cannot pay higher fees from being able to hire an attorney for legal representation.</p>
248.	<p>Each and every client is a walking lawsuit. Providing additional sources of recovery to specious claims exponentially increases the likelihood of client lawsuits when they absolutely know that there is an untapped financial resource. A mandate of liability insurance encourages unnecessary litigation and I am absolutely opposed to requiring it. As it is, 90% of my work is gratis. Not only do I not get paid, but then they can sue and cause me to have to pay them for doing free work for them. I owe these people my best effort, not a lottery ticket.</p>
249.	<p>I believe this requirement and disclosures to clients as to whether the attorney has insurance will negatively affect small firms, create a false distinction in the attorneys' abilities and projected outcomes and encourage malpractice litigation once the minimum limits are disclosed for vexatious clients.</p>
250.	<p>This is a very very very bad idea and would force me to potentially close my Nevada practice. I practice law in 12 jurisdictions and have not been able to obtain even a quote on insurance despite numerous attempts due to the complexities of my firm. Malpractice insurance is a crutch used by inept lawyers to perform sloppy work rather than be appropriately diligent.</p>
251.	<p>It is so very difficult to maintain a solo practice. The increased coat of malpractice insurance would put put me out of business. Stop this.</p>
252.	<p>Current regulation is onerous enough. Please stop making it more difficult to run a small business.</p>
253.	<p>Level of coverage could be tied in some way to the amount of exposure (value of matters being handled).</p>
254.	<p>Mandatory insurance is a much better way to protect the public than mandatory audits of lawyers and law firms every five years. Bravo to the State Bar of Nevada.</p>
255.	<p>I represent clients in special education. I have done so for since 2001. I make very little income but have a passion to assist the marginalized. My practice does not have monetary damages as a remedy. I should not be forced into insurance that is not relevant and hurts my ability to protect those who cannot afford representation. When I do engage in legal actions that include monetary damages, I contract with co counsel. This would have a devastating outcome on my ability to</p>

	assist those who require legal services. I earn less than most secretaries and could not afford the premiums.
256.	Did you obtain or investigate price quotes for how much an attorney can expect to pay or budget for this type of insurance premium? What if providers gouge like health care insurance providers did before the health ins exchange was implemented? What if it is so truly unaffordable it puts single practitioners out of business? How are attorneys protected from price gouging? Thank you for asking membership for their questions and input.
257.	Lawyers can decide what is right for their practices. There is no need to legislate mandatory insurance for all attorneys. Many attorneys do not face the potential for malpractice lawsuits.
258.	bad idea
259.	Make disclosure to the client mandatory, but don't require the lawyer to carry it. It will simply discourage those who want to devote a lot of time to pro bono work. Not all pro bono work comes through Legal Aid offices. Many times, lawyers take clients on directly when they have a good cause but no money. In those instances, the requirement of insurance will simply keep a lawyer from taking the case. Let the clients decide who they want to work with -- just make disclosure mandatory. This method works in CA, and should work in NV.
260.	Minimum coverage requirements, if any, should take into consideration the nature and monetary value of the type of claims handled by the attorney. In many cases, even a minimum of \$50,000 per occurrence could far exceed any potential damage to a client. Unfortunately, insurers only seem to offer higher minimums than what's really needed based on the type of practice.
261.	For specialized areas of practice, the costs and the carrier selection is limited. For example, for patent law, there are no in state carriers and a special tax has to be paid on the policy. If the State Bar passes this, then the insurance companies must insure everyone- it has to work both ways.
262.	The Nevada Bar Board of Governors Nevada is infuriating. Young lawyers and solos are already struggling, especially in rural counties. Moreover, young lawyers in particular are straddled with huge law school loan debt even from Boyd where the debt can easily exceed \$100,000. Good paying jobs are still hard to find. Solo and small firm practice means low salaries. We are not making six figures. Do you have a clue about the cost of malpractice insurance, especially for so-called high risk practice areas like real estate, family law and personal injury? This is insane. Nevada is already one of the highest cost to practice states at just under \$500 annually along with 13 hours of MCLE. And the BOG just increased cost to practice by mandating one extra hour of CLE annually. Now you want to increase cost to practice even further by thousands of dollars! This is so ridiculous. What is driving this other than a parochial do-gooder mentality by the BOG at the expense of its members? Moreover, your survey is absurdly unfair. It is biased, replete with assumptions, leading questions and agenda-driven to get the results you want. The Nevada BOG is apparently hell bent on causing an insurrection among members. Keep it up. You are well on your way of entrenching an adversarial relationship if not a deep animus toward the Bar and the BOG. Add to the equation a heightened prosecutorial mentality by the Office of Bar Counsel and many of us ready to throw you guys out. Time for a voluntary membership bar that will dramatically lower our practice costs. The BOG is delusional, out-of-touch and totally tone deaf.
263.	My suggestion is limited to the small sole practitioner. Disclosure of no insurance to a client, or mandatory requirements to buy insurance should be governed by the dollar amount of exposure or potential malpractice claim. e.g. A firm that routinely litigates seven or eight figure claims or defends should not be treated the same as a sole practitioner who seldom, if ever deals with seven figures, or defends same. It's just common sense. Most attorneys who avoid or refer out or co-counsel on the big ones can very effectively be self-insured. Why drive them out of business with extra expense. The current trends in expenses are heavily felt by senior sole practitioners. Demarcation points on mandatory coverage should be linked to exposure.

264. I wonder about the requirement to obtain from any carrier licensed in Nevada. I do not know if the carriers which provide malpractice insurance to those at high risk- for instance those who have had prior claims- are licensed in Nevada.
265. Money is power in our honored profession as it is throughout our national life, it now appears. Mandating yearly insurance premiums in unknown amounts is just another way the huge law offices compete for business: by exercising their economic leverage and squeezing out the solo practitioners via the back door. They then can less guiltily charge their \$350+ an hour and deprive even more poor and hard working people the legal advice they so desperately need in this dog-eat-dog world. I have serious doubts about the constitutionality of any such proposed insurance mandate (hmmm: why does that sound so familiar?). But I am far more concerned with the Nevada public, who will -- as usual -- be the ultimate sufferers if this is imposed.
266. Please do not require mandatory insurance. This is a boon to insurance companies and is not really going to do much to protect clients from bad lawyers. Better screening at the front end (about who to admit to practice in Nevada) would be a better solution for the problem.
267. This makes no economic sense. The reality is that malpractice insurance doesn't more to protect a lawyer than it does clients damaged by lawyer. Also, we should be able to decide whether we want to risk it without insurance
268. I have been practicing personal injury law in California starting in 1975 and then in Nevada since 1992. I represent plaintiffs. I have always carried E & O coverage until 2 years ago when I mostly retired. I am 72 years old. I will handle an occasional case or a SS Appeal. It is burdensome, when I will earn a small income doing a little work in retirement, to pay up to \$10,000 for coverage. Maybe there should be an exclusion for those over 70 as there is with CLE requirements after that age. If I were still practicing full time I would carry coverage and I believe those in those practices should carry insurance.
269. Attorneys who have never had a claim or complaint against them for 20 or more years should not have to carry liability insurance and particularly if they practice in an area of law such as Family law.
270. One's area of practice can greatly impact the availability and cost of insurance which is not necessarily subject to debate with the carrier. Their underwriters make their determination and the attorney must either accept it or go without coverage.
271. Mandatory insurance is a rip-off just like CLE. The intentions are great but the results accomplish little. In the case of insurance, those of us who are exempt from dues can hardly afford any insurance and in fact do not need mandatory insurance. If we needed insurance we would buy it.
272. This may be seen by solo and small-firm practitioners as an additional barrier to entry into the legal marketplace. Take, for example, a solo practitioner who practices primarily in securities law. This rule may have the effect of forcing that practitioner out of the practice of law, as the cost of liability insurance is prohibitive. I would hope that the Board of Governors would consider the disparate effect on solo and small-firm attorneys when considering this new rule.
273. This is a HORRIBLE idea! The only other state that has done this experienced increased premiums of 3-4 fold once such coverage was no longer an optional purchase. Moreover, mandating coverage is unnecessary as offending attorneys are personally liable anyway, and the huge increase in cost to everyone doesn't offset a totally unknown cost to a few clients (that still have recourse) who hire substandard attorneys.
274. Stop the regulations. Attorneys are fiduciaries of their clients. We should not enact rules that put a burden on all attorneys, as nearly all are ethical and take their duties of trust very seriously. There are penalties for unethical attorneys (and criminal laws). Please treat us with dignity and respect rather than like mischievous children. Throwing more costs at us isn't going to fix malpractice or fiduciary breaches by bad apples.
275. I had always assumed malpractice insurance was required. When I first learned it wasn't I was shocked. I'm glad the bar is taking this up.

276. This proposal will drastically affect small practices, because IMHO, \$250,000/\$250,000 is NOT adequate protection for clients. My malpractice insurance for a low risk solo practice is very high because Las Vegas is considered a high risk legal community. Rob Graham ripped off over \$13 million in hard cash from vulnerable clients & left them with no potential assets for recovery. As a very long time lawyer, I have seen far too many recurring frauds by lawyers, because they have ready access to fungible cash in trust accounts [or probably not in trust accounts], which is a huge temptation for unscrupulous legal-types who live beyond their means. Although this proposal is a start in correct direction, it will never stem the tide of theft from clients because stone-cold thieves cannot resist the temptation to steal ready cash. I have represented dozens of defrauded clients against lawyers through Fee Dispute Committee in which large sums of money was stolen. Not one of those so-called lawyers expressed a second of remorse. Selfish motivations by that ilk will always overcome good ethics and honest dealings. IMHO the Bar is far too lenient on dishonest legal-types, who I hesitate to designate "lawyers," since that denigrates the title of those real lawyers who work hard and observe high ethical standards. However, some positive steps to protect the public is better than none. I constantly hear folks in the public sector identifying all lawyers with scum such as Rob Graham, who has sullied our proud profession for dozens of years to come. Makes me sick to my stomach, because Graham has destroyed what little positive reputation the legal profession managed to maintain.
277. I have found myself working on cases with other attorneys only to find out later that they had no coverage. So it is not only clients who need to know if a particular attorney is going "naked" or not.
278. Requiring a separate Nevada Malpractice Policy will force active attorneys who only work part-time in Nevada, to go inactive.
279. The true beneficiaries would be insurance companies. This regulation would increase the cost of legal services for most individual clients in Nevada in order for a small percentage of clients (probably the most disputatious) to dependably sue their lawyers. Why would the BOG support corporate interests over individual Nevadans?
280. I think the amount of liability insurance should coincide with the type of practice. I personally think it is unlike in the type of law I practice that I would cause \$250K in damages. I also don't think its unduly burdensome to mandate that but I do think the 100/300 policies may be sufficient depending on the area of practice.
281. For my last years of practice I will have one criminal case pending at a time, generally an appeal or other non-trial case and then I do a fair amount of pro bono work not covered by LACSN policy. Mandating insurance coverage would probably mean that I would go inactive.
282. This is a ridiculous proposal that will rightfully draw significant litigation
283. These questions are loaded, and designed to prompt answers that support a mandated malpractice insurance requirement. That's disappointing. It's also very disappointing these questions suggest malpractice insurance should exist and be the same for every attorney. Practices vary so significantly, one centrally mandated policy seems to suggest a lack of understanding of the profession. Such a requirement would probably not apply to me, as I do not have clients in Nevada and do primarily in-house work. I am a member of two other bars, both doing the same thing...group think...
284. 1. It is a reasonable expectation of the public that lawyers be appropriately insured. 2. If you can't afford to be insured, then you shouldn't be in business 3. No reasonable lawyer would advise their client to engage a lawyer without insurance 4. There is no sense in having a "race to the bottom" with some lawyers avoiding cost of insurance and trying to undercut other lawyers on cost - everybody loses 5. Lawyers who are not insured are more likely to engage in unprofessional conduct to keep their mistakes hidden, or to mislead clients, rather than to do the right thing and make proper disclosure where mistake has been made 6. Lawyers who are not

	insured are going to be more prone to depression and substance abuse due to the constant pressure of having their personal assets exposed to risk 7. This is the perspective of a Canadian resident lawyer where insurance is mandatory and the concept of mandatory insurance has not been debated in at least my 25 years of practice
285.	In house counsel/employees of non-law firms should be excepted from required insurance.
286.	Insurance is very high for solo practitioners. We already have to deal with annual renewal Bar fees, CLE's, and etc.
287.	This is a prime example of the Californication, with its heavy over-regulation, of Nevada.
288.	My firm carries malpractice insurance, but mandatory disclosures prior to signing would likely increase lawsuits whether frivolous or not. Mandating malpractice coverage could greatly increase the cost of coverage. Additionally, many situations are not covered by malpractice insurance anyway, so this would likely increase the cost of doing business in Nevada and may not have the intended result. It would likely make it much more difficult to start a new practice in the future.
289.	I'm an employee-attorney. My firm has insurance for all the attorneys, but the wording in this survey was ambiguous, so I selected "no" for the question whether I purchase insurance. This raises a question: is the proposal that individual employee-attorneys be required to buy insurance? If so, I don't like the sound of that. I'd much rather that be at the firm level. As a former solo, I thought insurance was too expensive. But I gather that may be a minority opinion.
290.	Is there really a problem that needs to be fixed?
291.	There is serious concern that requiring mandatory private malpractice insurance for all attorneys would be a significant burden on small firms and solo practitioners. Especially those who provide services to low income clients in need of legal help in areas like employment and labor law, medical malpractice, criminal defense or other areas where larger firms are uninterested in representing those clients because there is no guarantee of a big pay day. Requiring mandatory private insurance would have the effect of pushing attorneys who want to help poor and middle class people get justice who are less concerned about making large sums of money out of the market all together because it would put a significant financial burden on them. The American justice system, if you can even call it that, is already a pay for play system. The few attorneys out there who refuse to succumb to the soulless money grubbing industry the law has become cannot afford the significant burden of private insurance. This would leave only larger established firms in the market, who's only real care is how much money they can bleed from the system. However, I do support malpractice insurance. The best, and most equitable system of malpractice insurance is what the state of Oregon has done. Oregon created the Professional Liability Fund (PLF), a fund run by the state bar. Essentially, the fund acts as a single insurer for attorneys in the state, all attorneys practicing in Oregon must carry insurance. Insurance is a risk pool, and by establishing a single insurer with one risk pool in the state, it allows premiums for coverage to remain extremely low. This is the same premise behind Obamacare, and universal healthcare coverage generally. New attorneys get a discount on their coverage, those who get sued and lose pay an increased rate. Good, experienced attorneys pay a flat rate. It is inconceivable to me that the Nevada State Bar, with intelligent attorneys working on a solution to attorney malpractice would try to model our proposed attorney malpractice system the way insurance companies want them to. Requiring private insurance benefits one party, Corporate insurers. They get to rake in the money at high rates because of small risk pools and relative monopolies on the market share like a cartel that keeps prices high. This forces small attorneys that help everyday people out of the market forcing them to work for larger firms, most of whom practice in insurance defense, limiting the number of meritorious cases they have to defend because large plaintiffs firms will only take on cases with a relatively high probability of success and high ceiling for damages, leading to less claims for other

	<p>things like injury, employment liability etc. This would be a win win for Corporate Insurers and the law firms who represent them. If we are going to mandate malpractice insurance why are we modeling our mandated system off of the predatory insurance market that has plagued America for a century. Lets model our malpractice insurance system after the well reasoned and equitable system Oregon adopted that is working incredibly well for their state. Small firms and solo practitioners are not burdened with high premiums because of a single risk pool, clients can get some recovery in the event a bad attorney commits malpractice, and were not pandering to corporate interests that have already poisoned our legal system with unethical, morally bankrupt pursuit of profits. If we are going to mandate insurance, it should not be handed to the private insurance market. I think history, past and recent has shown us that unchecked capitalism and turning over control of the legal system to corporations almost always hurts the everyday American. This is the website for Oregon's PLF. I am opposed to any mandatory system that is not modeled off of this single state run insurer pool. <a href="https://www.osbar.org/plf/plf.html">https://www.osbar.org/plf/plf.html</a></p>
292.	<p>Attorneys that care to do pro bono work if they are not employed or not actively practicing are covered by the insurance carried by the legal services with whom they volunteer. Providing it on their own and not through a legal services program is another matter.</p>
293.	<p>Insurance doesn't necessarily protect clients. It's a means for counsel to fund a malpractice defense. In addition, many carriers simply offer max policy benefits if the matter will be litigated to minimize the expense to the carrier - leaving the attorney without protection, even if the attorney had a viable/strong defense. Insurance is a necessary evil. But, I do believe it encourages unfounded claims.</p>
294.	<p>You are asking for a feeding frenzy that will effectively take money from your members and redistribute it to insurance companies and a set of individuals that may have been financially harmed without actually protecting the individuals I think you are hoping to protect. If only 6 states have this sort of disclosure or mandatory cover - why do you think that is?</p>
295.	<p>Please don't be too quick to burden responsible attorneys with perceived protection needed against irresponsible attorneys. Especially don't make the legal profession as a whole pay for Attorney Graham's bad acts. Mandatory insurance will definitely drive up the cost of practice and may decrease consumers' options. That benefits the attorneys who can afford malpractice insurance but doesn't benefit good attorneys who can't. If you have to do something different, which is extremely questionable, perhaps lesser burden on attorneys would be better. For example, perhaps the option could exist of carrying malpractice insurance or disclosing that you don't. Some of your questions are well worded in that they seem to recognize that too much discussion about legal malpractice seems likely to increase malpractice litigation and to drive up premiums. Customers/clients have the right to ask if an attorney is insured, if that matters to them. Would this proposal have prevented the Graham debacle/scandal? Probably not. Most attorneys are not like Graham.</p>
296.	<p>I like the Oregon method. By using one mandatory fund, it avoids market inefficiencies and other problems that can arise by obligating attorneys to obtain coverage on their own.</p>
297.	<p>While in a perfect world malpractice coverage would be great in the abstract, in the real world it is an expense that many small practices cannot afford. I have been in practice since 1982 (NY) and 2008 (NV) and have NEVER had a claim. It is simply unfair to require it as a condition of licensing. Require disclosure and let the free market take care of matter, as clients can make informed choices if disclosure is made.</p>
298.	<p>The questions posed were blatantly biased toward provoking answers that appear favorable toward malpractice insurance in general and for specific minimum level requirements. The Bar is obviously seeking this change in policy regardless of membership opinion and is only circulating this charade of a survey to justify any such change.</p>
299.	<p>It's a must</p>

300.	I am going into semi-retirement and will handle only existing cases until they are completed. I am not taking on new clients and new cases. Malpractice insurance would be an unnecessary expense for me.
301.	As a sole practitioner who provides a reduced fee to my clients and takes "small" cases, a mandatory insurance requirement would cause me to close my doors and will limit access to lawyers for the public.
302.	Making anything mandatory, including insurance, inevitably leads to increased costs for the product or service. It's not simply supply and demand, but a forced artificial influence on the market. Currently, having malpractice insurance is a good idea considering the ramifications of not having it in the event a mistake is made. However, insurance companies know that malpractice insurance is a choice and they price their product accordingly. Forcing attorneys to purchase malpractice insurance will lead to increased premiums as the insurance companies no longer have to be concerned with overpricing their product. The fact that a group of educated individuals such as the BOG would even be considering this move is a travesty. Did the insurance companies put you up to this?
303.	I am mostly retired but occasionally appear in court to help a friend, neighbor or family member at no cost. It is unfair to impose this requirement on attorneys such as myself who are providing our services infrequently and at no cost.
304.	I have always carried malpractice insurance. But this is a HORRIBLE idea. What happens if you get sued and lose the ability to obtain malpractice insurance? No carrier will cover you. It is hard to get insurance even when you haven't been sued. Then you can't practice law if you can't get insurance? HORRIBLE. A better way would be to consider increasing bar dues and the State Bar obtaining coverage for a client protection fund in the event of malpractice-caused losses. You lose the ability to practice if you can't get insurance? Is that what you want to do? I can't believe that.
305.	Most large firms are insured by Lloyds of London underwriters or other foreign carriers, as most US insurers do not have the capacity to insure large law firms. If insurance is mandatory, the rules must be worded in such a way that the insurance is not required to be issued by carriers admitted to write policies in Nevada, since most London Underwriters are not admitted to write coverage in Nevada.
306.	In terms of protecting the public, disclosing you do not have insurance is waay better than disclosure of having insurance.
307.	Does the proposed law account for a practice with only one or a handful of clients that are sophisticated or related to or even owned by the attorney and therefore willing to allow the attorney to go bare?
308.	This seems to make more sense for attorneys who provide legal services to the general public. I am in-house and would be interested to know the rationale for requiring. I am not aware of situations where this had been a big issue with in-house counsel.
309.	I don't have an active law practice but provide a great deal of work to pro bono clients, helping with corporate compliance, formation, etc. I help a lot of neighbors & friends who can't pay a regular attorney. I meet all annual CLE requirements. Why do I have to pay for insurance? My skill and time help a lot of clients who can't afford legal fees.
310.	As someone who currently sits on both the disciplinary board and client security fund board, it is imperative that attorneys practicing in the private sector maintain malpractice insurance. There may be certain areas of practice that may not have a high probability of malpractice activity, but it is my belief that we, as a profession, need to protect the public in both perception and practice.
311.	What is the effect for those who do not maintain coverage. Will their license be suspended? Claims made policy may not provide coverage for claims made after the expiration of a policy. What protection is considered for the client?

312. I maintain and have always maintained professional liability insurance. However, it dawns on me that there may be those who are unable to obtain it. It seems intrusive to deny those attorneys the right to practice simply because they are in private practice as opposed to those who work for government agencies or in-house for corporations.
313. As a solo practitioner I have looked into the cost of professional malpractice insurance. Due to factors outside of my control, such as age, my premium would put me under sever financial distress. I believe that mandatory notice of insurance status would help inform consumers and would not necessarily hurt my practice. Also, in my experience, clients who have claims which would be subject to large damages are not going to small or solo firms. Instead, they opt for larger established firms which would either have insurance or significant financial means to defend or settle a malpractice claim.
314. Requiring attorneys in private practice to carry professional liability insurance is excessive. Malpractice insurance is sufficient.
315. I think the phrasing of the questions in this survey were super loaded.
316. This is just another money grab like CLE, but this time for insurance companies who will hold attorneys hostage with high insurance rates. Clients are free to inquire if their attorney carries malpractice insurance, and decide whether or not they want to retain their services. This is not something the Board of Governors should be poking their noses into.
317. Malpractice insurance should be encouraged, but not required unless there is a particular reason for it, i.e. an attorney had a prior issue. Moreover, if an attorney has a problem, he/she should have to fix the problem, not just get insurance to cover the problem.
318. Oregon has tried this tack and the system did not work or is at least faltering upon bankruptcy. Premiums have been wholly out-of-control. The system simply did and does not work. To require attorneys to have a certain amount of coverage permits insurers to pervert the marketplace as they know that there is a certain number of policies at the minimal coverage range. Finally, one cannot protect all Clients. They pay, to a certain extent, for the coverage and should inquire as to coverage. Depending upon the answer, they can either retain that attorney or look elsewhere. We say that attorneys and doctors have the closest relationships of any profession with their Clients and Patients. It is a contradiction in terms to say that the relationship is confidential under all circumstances on one hand, but hey, we want to insure that you have these attributes on the other hand.
319. In my view mandating insurance coverage threatens the availability of attorneys to provide legal services to the public. The competence and ability of an attorney to assist a client has nothing to do with whether they have malpractice insurance. Mandating disclosure of insurance (or making that information available on the Nevada State Bar's website for public access) may have merit. But restricting attorneys from being available to assist the public because they lack malpractice insurance is not appropriate and not in the public interst. Too few laypersons can afford or obtain legal assistance from an attorney. Restricting the pool of attorneys by mandating malpractice insurance (that some cannot afford or that some would just elect to not obtain and cease practicing) would not serve the public interest. It would make attorney's services, already difficult for persons of modest means to secure, less available to the public.
320. There is no "one size fits all" that is going to protect the public from malpractice/negligence. And, if all attorneys are required to carry insurance and the plaintiffs' bar knows that, might you see an increase in malpractice claims? I again see the Bar trying to address an isolated problem through some mandatory requirement for all attorneys. Address the problem; don't burden all attorneys with more rules. I would note this won't affect my practice because I carry malpractice insurance at a relatively high level for a small, rural firm (\$5 million/\$5 million).
321. If imposed I would give up my active license and would no longer provide pro bono advice to nonprofits in the state of Nevada

322. This proposal is in interference with the public's right to freely contract with legal counsel of their choosing under the circumstances of their choosing. If the public desires to contract with legal counsel who carries significant malpractice insurance, they are free to ask that question of the lawyer. If the lawyer refuses to answer, or does not have malpractice insurance, the client can seek representation elsewhere. If the Client desires to contract with an attorney who does not carry malpractice insurance for any number of reasons, relationship, expertise, lower overhead etc. they should have that ability to do so, as should the lawyer to have the ability to take on the risk of malpractice without insurance if he/she so chooses. The State Bar should not interfere on this issue and should leave this issue between the lawyers of the State of Nevada and their clients.
323. I have been denied coverage and this would put me out of business.
324. I am semi retired from private practice and do less than 250 hours of legal work per year mostly in the ADR area, for nonprofits or for friends and families. Having to purchase insurance before I could do these things would prohibit me from doing these community services.
325. This is yet another dumb idea. Clients can already find out IF a lawyer has insurance. In this day and age clients have never had more access to info about a lawyer prior to hiring one (i.e. webpages, Avvo rankings, state bar web info). If a client cares about insurance they can use these tools to make sure they hire a lawyer that has it. Take a free market approach and forget this plan to require insurance. Thank you.
326. If the Bar wants to impose mandatory insurance it needs to make a case for it. You know, like lawyers do. What is the average malpractice judgment amount? What is the average settlement amount? What areas of practice attract the most malpractice claims? How many clients are damaged by attorney malpractice? Not intentional wrongdoing; but actual negligence. Let's see some evidence that there is a problem before issuing yet another edict.
327. I think mandatory insurance to practice law is not the right answer. However, mandatory disclosure would be an effective way to put clients on notice. I believe that the bar currently lists whether an attorney has malpractice insurance, and I believe that disclosure is sufficient.
328. The questions appear to be biased toward reaching the conclusion that malpractice insurance should be mandatory in order to practice law. They are like asking if someone still beats his mother. Any answer is unfair. I have been practicing for nearly 35 years -- some time with insurance, and some time without -- and have never had an issue with malpractice. To force me to have to have it or be barred from practicing my profession is personally distasteful. Perhaps the Bar's energies should be concentrated more on providing younger lawyers professional education in ethics and civility.
329. In my practice, most of the claims I handle are not worth \$250,000, so having that amount as a policy minimum is excessive and unnecessary to protect the client. For me, having a policy is a good business practice, but it is not necessary the only business practice. I do not like the idea of the State Bar forcing me to run my business in a particular way or obtaining a specific policy. This amounts to an additional fee or fine to be a lawyer. Also, this will likely harm smaller and solo practices more than larger firms which already have these types of policies. If I worked at a large firm, the firm might cover my insurance, whereas smaller firms may not have those resources for its employees (or themselves). Also, my clients could still sue me even if I did not have insurance - I sue plenty of uninsured Defendants and sometimes that helps get me a resolution better than dealing with an insurance company. I see no benefit by enforcing this kind of policy.
330. How about you work on the pitiful state of the Bar's finances, and leave me and my insurance alone?
331. When I served on the Board of Governors I was a strong advocate for (1) Mandatory Malpractice Insurance and (2) Mandatory Pro Bono. It is inconceivable that one cannot drive a car without insurance but one can practice law without insurance and I do believe that the overwhelming majority of non-corporate clients believe that lawyers carry professional liability insurance. DO IT!

	It will also help reduce marginal practitioners since they will not be able to afford insurance. It's time ...way past time.
332.	Malpractice coverage should NOT be required. The mandating of such coverage will cause the coverage to become more expensive and less worthwhile, as in virtually all other settings where coverage is mandated. Mandating coverage is also a method for substantially increasing the costs of solo and small firm practices in order to favor larger firms. Many knowledgeable clients avoid large firms, and NONE of these clients is looking for lawyers based on the malpractice coverage they carry.
333.	I can't emphasize how much I disagree with this proposal. Don't do it. Nothing about this proposal will improve the delivery of legal services in this Nevada. All you're going to do is force attorneys, good and bad, to charge more to clients. Your survey questions are complete garbage by the way. Could you at least be a little subtle about putting your thumb on the scale?
334.	No questions were asked about the possibility that regulations might include a restriction requiring authorization of the insurer to do business in Nevada. Depending on what this means (e.g., does it exclude what are called "non-admitted" insurers who are not covered by a state's insurance fund?), such a requirement might severely hamper the ability of some lawyers (with either a claims history, disciplinary issues, or a particularly risky area of practice) from obtaining the mandated insurance coverage.
335.	I would like to know the number of actual lawsuits filed against Nevada attorneys for malpractice, how many attorneys actually carry malpractice, the average amount of coverage for such attorneys, and the average amount being paid in annual premiums.
336.	I am 75 years old and consider myself semi-retired. Since I closed my office, I have been covered by tail coverage for work done prior to that date. The only new matters I have taken on have been from a single source and all parties have been in agreement. The remainder of my work is for previous clients who have questions or want to make simple changes to their estate plans. Since my total fees for this year are less than \$5,000, malpractice insurance would not make sense.
337.	The practice area, firm size, and types of cases typically taken needs to be considered when determining policy limits.
338.	An attorney should have the ability to decide how he or she wants to manage his practice. That includes not having malpractice insurance if he/she wishes not to have malpractice insurance. (btw you did not have \$250k/\$500k as an option which is what I have.) We should not be required to carry malpractice insurance, but we should be required to have to publicly disclose whether we have malpractice insurance or not, and whether it meets the \$250k/\$250k suggested minimums, but not disclose the actual amount of coverage. "Let the market decide" is a good mantra here. If a client knows that an attorney doesn't have malpractice insurance, that client may be inclined to take their business elsewhere.
339.	Perhaps merely require disclosure of lack of malpractice insurance before assuming representation of a client if the attorney does not carry malpractice insurance.
340.	We live in a society with the freedom to contract. Every business potentially can injure its clients/customers by the business' negligent acts. However, we do not require every business in Nevada to maintain errors and omission insurance to cover such negligence. Attorneys are no different than any other business. We should maintain the freedom to contract and not mandate a requirement when the marketplace allows consumers to choose with whom they do business. Consumers already make decisions about whether to do business based on whether the attorney maintains malpractice insurance.
341.	There are several questions in the survey that are clearly meant to tilt the results of the survey in favor of mandatory insurance. this give the appearance that a decision has already been made and the survey is just cover to support that decision. Very unbecoming of a State Bar. I have practiced for 30 years in California (12 years in Nevada) without malpractice insurance. I have not

- had a single claim made against me. Why? Good client relationships; ethical behavior; excellent work; matters properly calendared. I suggest the Bar work to raise the standards of attorneys instead of adding a government mandate. I would also suggest a portion of all Bar dues go to a common pool to provide minimal coverage of claims not covered by malpractice insurance. that
342. Malpractice isn't determined by having malpractice insurance. Malpractice is determined by competence. You may have the highest requirements for insurance and still have incompetence and malpractice. Practitioners of the law are professionals who undergo lengthy educational requirements along with a difficult Bar Exam and character fitness vetting process. Where do you draw the line? How is the community protected if you have limited legal services only available the top earners in the community? These added requirements do nothing more than increase expenses for attorneys who represent the vast majority of members of our community. Implementing these additional hurdles will only harm the local community and serve the interest of the few who can afford to higher expensive legal advocates. If the Nevada State Bar is concerned about the community - they should emphasize targeting those engaged in the unauthorized practice of law. Focus on expanding legal services to average citizens with medium to lower income as opposed to creating hurdles that result in higher legal fees which prevent middle to low income earners from affording legal advocates. These additional hurdles will only diminish the availability of advocates who fight on behalf of members in our community with limited financial resources. How do these additional hurdles help a single mother who requires reduced legal fee to help fight abusive creditors preventing her from financing a home for her and her family? How do these additional hurdles help the local hotel/casino employee, making 10 dollars an hour, fight against creditors engaged in wage garnishment? How do these additional hurdles help a single-parent defend an aggressive custody matter? We have to draw boundaries - there are minimum requirements to protect the community. But we must also be cautious about implementing additional hurdles that will end up doing exactly the opposite of their intent - protect the community. Additional hurdles for legal advocates will very likely harm the community as a whole and make it easier for those who can afford legal advocates further exploit members of our community who are not as fortunate. Additional Note: I am deeply offended by the expression used in this Survey "Going Bare." The sexual innuendo with that expression is unprofessional and gives the impression that this important issue is not taken serious. I am deeply offended. I assume these survey's influence policy decisions in our profession and there is no room for such language in this very important dialogue.
343. I have over 35 years of experience as a lawyer practicing in both Nevada and California, representing both individuals and corporations. While I am well covered under my firm's policy, I am strongly against mandatory insurance requirements for all attorneys. Putting aside the question of how much coverage is "sufficient" for everyone's practice, or whether accommodations should be allowed for those attorney who are just starting out, what happens to existing clients if the attorney or firm can no longer afford coverage. Does he or she simply end his carrier and sent out "Dear John" letters to the clients? What if the lapse in coverage is only temporary? Does he or she then send out "Just Kidding" letters? Can the client waive the requirement so he or she may hold onto the attorney he or she selected notwithstanding the lack of coverage? Given the sometime arbitrary evaluations of risks by insurance underwriters, firms can find themselves without coverage without much notice. This is particularly so when considering the insurance market available to solo practitioners and smaller firms. I respect my clients and fully inform them of coverage when asked. In my opinion, the only effective answer is to keep the client informed. Written confirmation by the client of the attorney's insurance status is a good practice to memorialize the disclosure.
344. Cost of such insurance is a major concern.

345. The data for actual malpractice actions which result in a unrecoverable judgment needs to be disclosed and analyzed to determine whether this really an issue as compared to attorneys gambling or drinking away trust accounts, which wouldn't be covered by malpractice insurance.
346. during a short period of prior practice in a mandatory malpractice state, it was common for opposing counsel to make references about the ease of submitting a complaint to the bar and or carrier and how that would effect future rates even if the allegations were unfounded. it seems like there will always be some type of abuse no matter what the final decision is.
347. This is a "feel good" remedy that will actually create more problems than it will resolve. It is similar to the way bar discipline has been meted out be the SBN, in that the small fish are prosecuted while the powerful members of silk stocking firms often get a pass. It is a bad idea.
348. Shouldn't be mandatory.
349. I can afford to better serve my clients at more reasonable rates the less that I have to pay out for malpractice insurance. The nature of E&O coverage is that it keeps going up, year after year with a claims made policy, while simultaneously providing no coverage upon retirement unless the attorney keeps coverage alive. The majority of small firms and solos simply are barely getting by without this added burden and expense.
350. I would strongly request that the Board of Governors NOT mandate that lawyers carry professional liability insurance.
351. Any economic burden that is mandated in order to conduct business should be minimized and avoided as much as possible; especially insurance because mandatory insurance creates an uneven business playing field for the consumer. Also, mandatory insurance for attorneys will create a market place for claims and will encourage the filing of marginal claims against attorneys as well as will generally promote the filing of legal malpractice cases. Just as accident/injury attorneys advertise, it is highly foreseeable that TV lawyers will advertise legal malpractice claims, which will degrade the legal profession.
352. Insurance companies do not look out for the best interests of the policy holder (Attorney) or the beneficiaries (Clients) of the policy. Insurance companies primary focus is profit and their own best interests. Further, insurance companies often will not act in good faith even if a claim is valid and will initially deny and/or delay the payment of a claim since it is in the insurance companies best interest to do so.
353. 250000 is way to high for a minimum. this is a ridiculous barrier for solo and part time attorneys. I carried malpractice and insurance when I was taking on cases with significant assets at risk. now working part time I don't carry coverage because it is not necessary for what I do. Some attorneys only do traffic tickets. They should not be forced to carry 250,000 in insurance. Some attorneys don't actually practice because they are raising children and only keep their licence active in case an old client needs something small done or to keep current for when they want to return to work. The fact you are even considering this just shows how completely detached from the reality of most attorneys the board of governors actually is.
354. Generally speaking, it is good for the public, the attorney and the profession when attorneys carry malpractice insurance. Requiring attorneys to disclose when they do not carry E&O insurance is a good idea. I don't believe those attorneys who do carry insurance should be burden with making mandatory disclosures. Imposing that on them exposes them to discipline for failing to make the disclosure. Instead, burden those attorneys who do not want to carry insurance by requiring them to disclose that to the public. I am aware of several attorneys who had active licenses, but were not actively practicing , who have helped a person in need at no cost and did not have insurance at the time. Further, the matters handled were not remotely likely to result in a claim being brought against the attorney. Increasing regulation and the cost of maintaining an active license deprives the public from receiving help from attorneys that may be willing to handle a small matter at no cost on behalf of a client. In the situations I am thinking of, neither the

	attorney nor the client would have been dissuaded from proceeding in the relationship because the attorney did not have insurance. I don't have the view that those working in the bar office have. I suspect you see egregious harm caused by uninsured attorneys. So, I respect that this is of concern to you. But generally, in life, I think as a society we are better off with regulations that require disclosure rather than regulations that increase the cost of doing business, which gets passed on to the clients and results in additional people being priced out of the market.
355.	The BOG seems intent on making serious and substantial knee-jerk PR reactions to the Rob Graham situation by pushing this proposal and the random IOLTA audit proposal. The BOG seems to be oblivious to the overhead costs incurred by solo attorneys and the impact these proposals will have on solos. Requiring malpractice insurance is no way a guarantee that a lawyer will not commit malpractice. While it arguably gives the client some source of recovery it will not fully compensate a client in the event a mistake exceeds the policy limit. What it will do for sure is to impose further overhead costs each year on an attorney who gets NOTHING back for not committing any malpractice. All this so the BOG can promote they "are protecting the public" and for insurance companies to get even more profit. If this proposal is mandated the costs of malpractice premiums are going to skyrocket.
356.	Foolish idea. No other businesses are mandated to have insurance. You just increase the public's cost for attorney services, and as a practical matter, you also increase litigation over such services. Bad idea in business.
357.	I strongly believe there should be an exemption for pro bono work done outside the supervision an agency that carries its own malpractice insurance. I work in-house and don't have malpractice insurance. However, I enjoy doing pro bono work. I would be unable to do this work if I had to carry insurance to do so. The insurance premium would be paid by me and would be cost prohibitive.
358.	Is this separate than the malpractice the firm carries that each associate is protected under? Is it insurance for the individual lawyer no matter where the lawyer goes and basically the lawyer pays for it? It was unclear.
359.	I do not believe it should be mandatory to have malpractice insurance, and mandatory malpractice insurance would restrict and limit public access to attorneys. However, I do believe an adequate disclosure of information concerning whether or not an attorney has insurance should be mandatory and would serve the public.
360.	No additional comments at this time.
361.	This will make rates go up even for those who opt to get insurance coverage without the mandate
362.	The cost of liability insurance is very high. There are too few liability insurance carriers to make the market competitive. Shopping for liability insurance is very frustrating since there is little or no difference in the costs of insurance. Making insurance coverage mandatory would be a huge benefit to insurance companies but will prejudice the ability of many lawyers from practicing outside a law firm. This in turn reduces the competition for good lawyers thus increasing the costs of attorneys. In order for this Rule to be practicable the minimum limits of liability would have to be very small which translates into limitations on scope of coverage rendering the protection illusory. Additionally, set lower limits would encourage lawyers to "buy" lo-cost insurance under the impression that additional coverage is unnecessary. Mandating lawyers inform their client that they do not carrier insurance is good but requiring insurance is unreasonable
363.	I only see this as helping the high risk plaintiff's law firms that have been hit with a sufficient number of legal malpractice cases that they have become self insured because of the high premiums. To put something like this in place does not help the average solo practitioner trying to get by on teeny tiny cases where \$250k limits gets eaten up by defense costs. Without a doubt, as soon as there are limits like that required of attorneys, all legal malpractice plaintiff's attorney

	will start making the \$250k demand because legal malpractice suits are expensive to litigate and even if a case is only worth \$15k, defense fees could be that as high as \$250k, thereby forcing a higher settlement. Also, even if you require insurance, that does not mean there will be coverage. Legal malpractice insurance is always a notice claim policy such that before you change carriers, you have to list all known claims even if not filed yet so that it is covered by the next policy. This type of policy makes it very easy for carriers to deny coverage, saying the insured did not make the required disclosure. In all practicality, an attorney may not know he had to give notice to the new carrier because often times as attorneys, you don't know when your client is just angry or is actually going to sue you. So if the goal is to protect the community, implementing mandatory carrying of policies is not going to accomplish that purpose. All this will do is create a bigger market for attorneys who sue other attorneys.
364.	One prior claim whether meritorious or not renders most attorneys ineligible to obtain renewal and/or new coverage. The only way this works is a pool system where everyone can obtain coverage...will need to be handled by State Bar .
365.	This will not concern me because I have no Nevada business to speak of. I do know that the underwriting process can separate the wheat from the chaff. I have been shocked at the number of bare attorneys in my practice. They rely largely on their poverty to insure they don't get sued.
366.	How about the Bar finding low-cost insurance that could be available to members. Right now, my malpractice insurer is making more money from my practice than I am.
367.	What will be the impact of mandatory insurance on premiums and coverage. As a solo my coverage is limited to \$2 million/\$4 million with a \$4400 premium. I would prefer higher coverage but it is not available, and it would be less affordable. Will mandatory coverage affect my coverage and/or my premium? Also, what happens to an attorney's ability to practice law if carriers refuse to provide a policy or a policy is prohibitively expensive? Will the Bar or the Insurance Commissioner compel carriers to provide coverage and set a ceiling on rates as long as the attorney is licensed to practice?
368.	the 250K requirement needs to be "per firm" rather than per attorney. The requirement of 250K is ambiguous. Compare California 100K per attorney with max of 500K per firm, I think.
369.	As an attorney not practicing in Nevada who might plan on retiring there and with an interest in possibly becoming engaged in pro bono work, the potential lack or cost of malpractice cover would be a tremendous disincentive to engaging in such activity.
370.	If malpractice insurance will be mandated it should either be a smaller amount, such as \$25K, or else the State Bar should provide pool coverage so it can be affordable by lawyers that are either new to the professional and paying student loans, etc., or older attorneys that look to wind down or slow down their practice
371.	I once heard my mentor say that practicing w/o malpractice insurance was like driving w/o brakes. I concur. What is probably prompting this is Mr. Graham's travesty and I think about his former clients often and what a blemish he has left on our community. However, I am a also baby attorney, a single parent, 130k in debt, and am not yet affiliated with a firm so I would worry how this extra cost is going to affect me once my clerkship is over (but I am strong and determined as all heck-no whining here). In sum, good idea, but don't make it something that is overly burdensome to the baby attorneys saddled with 130k in loan debt, solo practitioners, retired counsel that give back with pro bono, etc.
372.	This would seriously impact semi retirees
373.	This survey looks like the Board is considering a one size fits all solution. I would suggest that insurance is not the primary issue with the reputation attorneys have in the community. Rather the primary issue we face is attorneys stealing money from their clients. Insurance will not cover these claims as it arises from intentional conduct. Making the client security fund more accessible would be one alternative solution. Furthermore, disbaring and criminally prosecuting attorneys

	<p>who steal should further be aggressively pursued to ensure the public trust. As it is, I understand the Office of Bar Counsel has limited funding and is losing lawyers at such a fast rate that indicates they are either underpaid, subject to adverse working conditions, or both. And the DA's office has failed to prosecute lawyers for their wrongdoing. These issues need to be corrected before instituting program that will not solve the underlying problem.</p>
374.	<p>I believe this should have been done long ago. Health care professionals and other professional organizations carry liability insurance. I think it would being about a forced and positive change to the legal community. I believe it would force attorneys to be diligent, and would provide the courts an ability to enforce procedural rules without concern for the non-offending party client being penalized for their counsel's lack of adherence to NRCP and court orders. It would allow the court to issue the sanctions provided in many of the Rules because the client would still have recourse against their counsel for any misconduct that precludes their case from going forward. I am strongly in favor of this. It will weed out the attorneys that dona disservice to our profession and protect those who routinely follow rules and orders.</p>
375.	<p>Mandatory malpractice insurance will be an effective tool in helping to disbar bad attorneys.</p>
376.	<p>I'm not sure my responses should carry any weight. I'm a newly admitted attorney and work in-house so have no idea what the costs of insurance may be. If insurance costs could be lowered through a group insurance plan offered by the State Bar, then I think mandating insurance would be beneficial. But if it's cost prohibitive to the point you're preventing an attorney from practicing, I think that would be a huge disservice to the community...</p>
377.	<p>This is a very bad idea. Very bad. Maybe a minimal \$100K policy, but what if lawyer can't get insurance or afford it? Need lots of waivers and options out of it to keep good ethical lawyers serving the community in business. I have malpractice insurance, but it's expensive. Just post on state bar web site and fee agreement if lawyer doesn't have insurance.</p>
378.	<p>More regulation is not the answer. Let market forces dictate whether attorney's have malpractice insurance or not. Bad attorneys need to fail so they are eliminate from the market place.</p>
379.	<p>This was a very biased poll designed to get the desired results.</p>
380.	<p>I think even the suggestion of mandatory malpractice insurance is burdensome, unreasonable, and unnecessary.</p>
381.	<p>This makes sense only if the State Bar also obtains a number of carriers who will guaranty that they will provide coverage to all members, regardless of practice area or loss history. Also, the proposed minimum limits are too high; and fail to provide the amount of deductible. This is a good idea in principle, but it needs a lot more fine tuning.</p>
382.	<p>Nevada has run-away jury awards against attorneys causing limited carriers (my first carrier pulled out of Nevada) and a "jackpot" mentality against attorney malpracticte. Among clients, losing a case = malpractice. Not malpractice. Every 'bare' attorney I've ever known has personally made the client whole when there was an issue, so I don't think this is about protecting the public. It will negatively impact the 'average' professional by creating a barrier to entry to middle class attorneys and their middle class clients, who cannot afford the premiums. Simply put, this will negatively impact upper/lower to middle class people and the attorneys who service them.</p>
383.	<p>I am assuming that "attorneys in private practice" will be defined to exclude Government attorneys and other public attorneys.</p>
384.	<p>Requiring lawyers to disclose whether and/or how much insurance they have would be tantamount to putting a bullseye on our backs. Any disgruntled client, even in the absence of true (insurable) malpractice could file suit and it could evolve into what the personal injury market is now. Everyone has to carry insurance, so everyone is a target for unreasonable demands related to lawsuits because "who cares, it's the insurance company paying."</p>

385.	Requiring attorneys to publically disclose or list the amount of coverage would create a disadvantage to smaller firms. Large firms can afford to carry more coverage than a smaller or solo firm. This may be perceived by clients as a disadvantage of using smaller firms.
386.	I have been admitted to the bar for 32 + years (31 + in Nevada). I have never had a claim of any sort for negligence and/or negligent representation. I believe the decision as to whether to carry professional liability insurance should continue to rest with me. Thank your for the opportunity to express my views.
387.	Just like any other business, it is for the client to ask whether you have malpractice insurance. I do not believe it should be a required disclosure to the client and think the incidence of false claims will increase dramatically.
388.	First mandate disclosure of insurance and see how that goes. Then, with more information and some data from requiring disclosure, only THEN should the Board consider mandating insurance coverage. I think at this point, requiring disclosure of coverage or lack thereof is sufficient!
389.	The State Bar needs to ensure that "bad" attorneys are disciplined, and received more than a slap on the wrist.
390.	I am semi-retired. I occasionally represent people on a pro bono basis and represent a corporate entity on mostly non legal matters but sometimes on a legal matter. I pay a \$500 bar fee, a \$40 CLE fee, \$500+ talking required CLE courses. If the bar requires me to purchase malpractice insurance I will surrender my law license and will do no pro bono work. The state bar will also not receive dues from me. I disclose on the bar web site that I don't have malpractice insurance. I will be personally liable for any malpractice. Adding an additional expense for someone who does not practice law full time will be the straw that breaks the camel's back and there are unintended consequences.
391.	There should be different standards for those practicing exclusively in criminal law, where the standard for being sued for malpractice is far different than those in civil practice.
392.	It is sad that the profession has come to this given the egregious acts of a minority of attorneys. With that being said, public protection from unscrupulous attorneys is paramount and practicing without liability insurance should no longer be allowed.
393.	Mandatory insurance will prevent uninsured attorneys from charging less than those that have insurance and thereby obtaining a competitive advantage
394.	Please consider the Washington State example, where insurance is not mandatory, but information regarding whether attorneys carry a policy is publicly available via the WSBA website. If the State Bar of Nevada is going to require its members to carry a policy, the Bar should consider offering insurance coverage to help keep the cost manageable.
395.	I already thought it was mandatory
396.	This is the most biased survey I have seen in professional use. It's written like the decision is already made and you all need some data to make it look like you have support. The BOG is off the rails recently
397.	Perhaps there should be a formal study done by an economist on the likely impacts.
398.	We have too many regulations as it is. We do NOT need any more nor does the public.
399.	Another solution in search of a problem. The Nevada State Bar should let market forces dictate insurance... And, if there is a problem with trust accounting, demonstrably incorrect legal decisions, and the like THAT RISE TO A VIOLATION OF THE NRPC, then the Bar should act. And swiftly. If the rumors are right, the flagship situation is Lawyers West, and, if the rumors are right, there was not enough insurance for the losses EVEN IF coverage could be triggered, which would take artful pleading. It is the Bar that is supposed to investigate and discipline attorneys. If the Bar wants to buy insurance for all attorneys and to cover up its poor discipline record, then maybe it

	should -- and name every Nevada licensed attorney as an additional insured. But to cram down a new obligation, that would threaten small firms and create viability concerns is misguided.
400.	Attorneys are tasked with assessing risks on a regular basis. One such risk is malpractice. new attorneys especially are both at the highest risk on performing malpractice but also are faced with the highest costs and lowest returns. As such, I am concerned that mandating malpractice insurance will reduce the availability of attorneys, but also not allow attorneys to structure their practices in the most efficient manner, especially when providing legal service to low income clients.
401.	If mandatory insurance is required, I will not be able to practice law in Nevada. This will add to an already very long list of costs to practice law in Nevada.
402.	The questions in this survey were incompetently designed and have an inherent bias in favor of mandating insurance coverage. If the Bar wanted real opinions, instead of a survey designed to validate its predisposition, it could have at least designed a survey that has some validity to it.
403.	Just more babysitting by the bar. Trying to protect all victims of the world. Only trying to look good to the public with a obvious disregard for those who practice law. Increasing regulations, increasing your control. Typical power grab for a government-sanctioned institution. Social justice for all? These are just a few of my thoughts. Gets old seeing these types of proposals coming from the bar.
404.	This is a decision between the attorney and the client. I have not seen this to be an issue, and if so, the State Bar has not communicated this very well. It will eliminate any pro bono work I would do (since I am a government attorney and do not carry insurance).
405.	I strongly oppose the BOG's proposal for mandatory professional liability insurance.
406.	Typical BOG over-reach.
407.	I think it's about time that malpractice insurance was required for all Nevada attorneys in private practice.
408.	attorneys who carry small case loads or who do low bono or pro bono work should have lesser requirements; conversely, attorneys who carry high case loads, work in very large firms, and/or have high-risk practice areas should be required to carry proportionately more insurance
409.	A mandatory disclosure requirement would be more than sufficient to advise clients of any potential risk and allow them to make an informed choice. Mandating liability coverage would simply increase the cost burden for small practices, quite possibly substantially and further reduce the availability of legal counsel for under-served areas of our community.
410.	An exemption for public sector attorneys who aren't actively representing clients should be exempted from the requirement.
411.	Yet another solution to a problem that would not exist if the State Bar of Nevada adequately limited the number of attorneys entering the profession in Nevada, and made the Nevada Bar Exam sufficiently difficult. Rather than aggressively regulate the entire bar to remedy the wrongs caused by proverbial overfishing of the Nevada legal market's waters, it would make more sense for everyone if the State Bar effectively limited the number of entrants who may participate.
412.	I am TOTALLY opposed to mandatory requirements for insurance

**Additional Comment:** This comment was received via email for inclusion in the survey results.

I took the emailed survey and submitted it last week but it took me a while to get some quotes for coverage so I could submit some more detailed comments.

I went to ALPS because I saw they were endorsed by the Bar and I had gotten coverage from them briefly many years ago. I assume their rates are competitive.

I do not want to be made to buy malpractice insurance. I have been in practice for 37 years, I have never received any claim of malpractice and I do not expect any.

I have never had a client ask me if I had insurance coverage.

I have sufficient funds available to cover the proposed limits for mandatory coverage.

I put in about 400 billable hours last year and I do not expect much more this year.

ALPS will give me about \$35 discount for having a light practice.

I was quoted premiums of \$1,339 for \$100/300k or \$1,883 for \$250/250k of coverage. That requires me to commit malpractice during the 12 months' coverage and for the claim to be made also within the same 12 months. I find this to have a ridiculously low chance of occurrence.

I just really do not see why the bar should require me to pay \$1,300 or \$1,800 for a year's coverage. What are the chances me committing malpractice in the next 12 months, the client filing the claim within the same 12 months and me not just paying off the claim from my own funds if it has any merit?

Each year I buy coverage the premium increases to cover the prior years. The estimates given to me by ALPS are as follows, quote:

**An example/estimate would be:**

**Limits of \$100,000 / \$300,000**

**Year 1 - \$1,300**

**Year 2 – \$1,430**

**Year 3 – \$1,600**

**Year 4 – \$2,000**

**Year 5 - \$2,200**

**Year 6 – \$2,400**

**Year 7 – \$2,400**

**Year 8 – \$2,400**

My last time in court on a contested matter was 2012. Right now I have one client who is being sued for declaratory relief on an easement, two client traffic tickets, an HOA converting from a profit to non profit corporation, a pending negotiation of a wrongful termination in public employment, a guardianship that requires annual accountings, a small family corporation where I mediate any internal frictions, a family with some real estate holdings that requires counseling in a legal context and a restaurant that wants a management contract for two employees. I have a variety of smaller matters pending.

The only litigation matter in this portfolio had a complaint filed in August, my client was served in September, I pointed out some confusion on the Plaintiff's part and we have had an open extension since

then to allow us to *not* have to file any responsive pleading while the Plaintiff thinks about their case a little longer. My client signed my retainer letter where I stated the expected ruling of the court, just so he would know where I predicted this matter would end if submitted to a Judge.

I make some routine probate appearances, I file annual lists of corporate officers, I prod corporate clients to hold annual meetings, I expect to file a petition for change of name next spring when my client turns 18. People call with simple questions that I answer over the phone. I steer people to inquire further about their situation and to get back to me. I make myself available to VARN and Nevada Legal Services with my free time. I have a relaxed practice with low overhead and I make a modest living from this.

I do not know what the State Bar and the Supreme Court think about the quality of legal services being offered to the public but I know they want us to be accessible and affordable and to try and steer conflicts towards extra judicial resolution. I do not think that mandatory malpractice insurance would promote any of these goals.

Thank you for considering these comments.

E.

Nevada Lawyer article “Join  
the Discussion: Whether  
Malpractice Insurance  
Should Be Mandatory for  
Nevada Attorneys” by  
Robert Horne and Jennifer  
Smith

# JOIN THE DISCUSSION: WHETHER MALPRACTICE INSURANCE SHOULD BE MANDATORY FOR NEVADA ATTORNEYS

*Weigh in with your input to help shape these potential programs!*

BY ROBERT HORNE, PROGRAMS AND SERVICES MANAGER, AND  
JENNIFER SMITH, PUBLICATIONS MANAGER, STATE BAR OF NEVADA

On November 8, 2017, the State Bar of Nevada's Board of Governors approved moving forward with the next steps to require Nevada attorneys to maintain professional malpractice insurance as a condition of being licensed in the state of Nevada. The board invites responses from *Nevada Lawyer* readers on this topic; bar members can join the discussion by sending feedback to [publications@nvbar.org](mailto:publications@nvbar.org).

## Proposal

The initial concept of the proposal regards bar members in private practice, requiring them to maintain minimum coverage limits of \$250,000 per claim with a \$250,000 aggregate for all claims. Nevada attorneys will be permitted to purchase malpractice insurance from any provider they wish: a system known as the "open-market model."

## Taskforce Evaluation

Part of the State Bar of Nevada's mission is to protect the public. In order to study issues regarding mandatory malpractice insurance, the Board of Governors established a Professional Liability Insurance Taskforce, which has been meeting regularly throughout 2017.

"The taskforce has learned that the public believes all lawyers have malpractice insurance," said State Bar of Nevada President Gene Leverty. "Our lawyers are not required to have malpractice insurance." The taskforce made its recommendation to the Board of Governors after exploring various concepts it has evaluated.

Some options they explored included:

- Requiring attorneys to disclose to clients whether or not they carry insurance;
- Requiring all Nevada attorneys to carry malpractice insurance, leaving the responsibility of retaining the insurance to each attorney or firm; or
- Adopting a single insurer through the state bar that would provide minimum limits to all Nevada lawyers, while still allowing lawyers to retain excess limits on the open market.

## Approaches in Other States

Alaska, California, New Hampshire, New Mexico, Ohio, Pennsylvania and South Dakota currently require attorneys to disclose whether or not they have malpractice insurance to their clients.

Three states require malpractice insurance.

### *Idaho*

Idaho operates on the open-market model, and that state will also soon require all its attorneys to purchase minimum coverage through a professional liability insurance carrier. Idaho's rules become effective in January 2018, and they require attorneys to maintain insurance coverage at a minimum limit of \$100,000 per occurrence, with a \$300,000 annual aggregate.

## Oregon

Since the 1970s, Oregon has required the maintenance of a mandatory professional liability fund, operated by Oregon's state bar. All attorneys licensed in Oregon receive minimum coverage through the fund; premiums attach to their annual license fees. Oregon's Professional Liability Fund serves as the insurance provider for Oregon lawyers in private practice.

In 2016, the Oregon assessment was \$3,500, with a reduced rate for lawyers in their initial years of practice. The fund provides coverage of up to \$300,000 per claim with a \$300,000 aggregate, including defense costs, and a \$50,000 claims expense allowance.

## Illinois

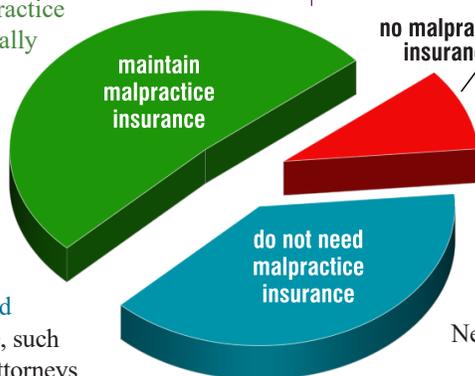
Illinois has adopted a practice-management approach to liability insurance, requiring attorneys who choose not to carry insurance to undergo an online practice assessment that also provides four hours of CLE credit.

## Most Bar Members Already Covered

### Nevada's Current Coverage Statistics:

- Attorneys engaged in the private practice of law who **maintain malpractice insurance**, either personally or through their firms: **5,301**
- Attorneys engaged in the private practice of law who **do not maintain malpractice insurance**: **988**
- Bar members **not in need of malpractice insurance**, such as judges, government attorneys and attorneys not representing clients: **4,012**

Already, most state bar members practicing private law in Nevada report that they either maintain malpractice insurance themselves or receive coverage through their firms. A strong majority – 5,301 bar members – reported this information on their mandatory disclosures. (The state bar does not verify information reported by attorneys.) There are 988



members engaged in the private practice of law who report they do not maintain insurance.

## Five Possibilities Considered

During its evaluation period, the taskforce considered five models of malpractice insurance, including:

- **Open Market:** Recently adopted in Idaho, this model requires all attorneys to purchase minimum coverage through a professional liability insurance carrier. This is the model the Board of Governors selected for Nevada.
- **Mandatory Professional Liability Fund:** Oregon is the only state with such a fund. Operated by the Oregon bar, this model provides all Oregon attorneys with minimum coverage; premiums are attached to annual license fees.
- **Captive Insurance Carrier:** This model also provides minimum coverage to all the state's attorneys; however, in this model, a specific carrier is selected to provide policies to all bar members.
- **Risk Management Model:** This model was recently adopted in Illinois. It requires all Illinois attorneys to carry minimum liability insurance; however, if they elect not to do so, they must take a four-hour online course in risk management annually.
- **Association Group Captive Insurer Model:** In this model, an insurance company is owned by an association, its members or both. Nevada law allows captive insurers for associations, according to Nevada Revised Statute Chapter 694C.

**Participate in the discussion! Share your thoughts on the topic of mandatory malpractice insurance by emailing the state bar at [publications@nvbar.org](mailto:publications@nvbar.org).**

## Expert Opinions Gathered

On October 23, 2017, the taskforce held a round table discussion with some insurers currently providing malpractice insurance in Nevada and with Nevada Insurance Commissioner Barbara Richardson concerning various options under consideration by the taskforce. The insurers presented arguments to support certain options and recommended against others. For example, the commissioner expressed concern over premium rates, should the bar lock into one insurance carrier for minimum limits coverage.

*continued on page 31*

## WHETHER MALPRACTICE INSURANCE SHOULD BE MANDATORY FOR NEVADA ATTORNEYS

Minimum limits of coverage were also discussed. Attendees recommended considering minimum limits of \$250,000/\$250,000 rather than \$100,000/\$300,000. The price differential between the coverage should be minimal, but the effective coverage is much better with \$250,000/\$250,000 limits. The taskforce thanked the insurers and commissioner for participating in the round table discussion.

### Next Steps

The Board of Governors is looking at all avenues with respect to the open market model as they work out details and specifics prior to considering submitting this matter to the Nevada Supreme Court for a rule change. “The consideration process will ... allow everyone to vent their full pros and cons of the concept [through the process],” Leverty said.

### Weigh In

The Board of Governors invites members to participate in the discussion. Share your thoughts on the topic of mandatory malpractice insurance by emailing the state bar at [publications@nvbar.org](mailto:publications@nvbar.org).

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

## RANDOM TRUST ACCOUNT AUDIT PROGRAM

The State Bar of Nevada’s Board of Governors is studying the creation of a mandatory trust account audit program.

### Program Overview

Under the initial concept for this program, each year, a set percentage of active attorneys would be selected at random to have their trust accounts audited by a professional auditor with experience specific to lawyer trust accounts. The audits would incur no fees or charges, involve minimal, if any disruption, and be conducted as desk audits at the state bar offices. In addition, bar dues would not increase as a result of this program; it is expected the audits will reduce costs for the Office of Bar Counsel.

At the onset, approximately 60 attorneys would be selected each year for random audits. Attorneys who do not handle client money are exempt from random audits. If a lawyer is randomly selected, the trust account records from that attorney’s entire firm will be audited. At the conclusion of the audit, the attorney and/or firm will be provided with a written report of the auditor’s findings.

### Purpose and Benefits

This program, designed to improve the state bar’s mission to protect the public, will provide three important benefits to both attorneys and their clients, including:

- **Education:** Attorneys subject to the random audit will receive a hands-on critique and evaluation of their trust account management. In addition, a similar program in North Carolina has been successful at encouraging members to engage in self-study and monitor their voluntary compliance.
- **Deterrence:** The use of external audits is a common practice in other fields, such as banking, security and taxation. This compliance protocol provides a deterrent aspect, leading to the prevention of possible violations.
- **Detection:** Many of the issues reported to the Office of Bar Counsel involve trust account violations. The ability to proactively detect deficiencies will help the state bar protect the public through self-regulation.

It is believed that the presence of a random trust account audit program will not only reduce the number of safekeeping complaints made to the state bar, but it will also encourage attorneys to be more proactive when managing their trust accounts, helping them self-detect minor infractions before they become substantial deficiencies that negatively impact clients and the public at large.

### Your Feedback Matters

A survey was distributed via email to nearly 9,000 active and active exempt bar members to gather input related to the implementation of a random trust account audit program. Members’ feedback is already helping shape the program, and survey responses have also identified the need to avoid misconceptions by more fully informing bar members about the program’s concepts.

More input is invited! The Board of Governors is interested in members’ feedback on the envisioned random trust account audit program. Email your thoughts to [publications@nvbar.org](mailto:publications@nvbar.org). **NL**

F.

WSBA Membership  
Statistics, updated March 1,  
2018

# WSBA Member\* Licensing Counts 3/1/18 9:59:51 AM GMT-08:00

Member Type	In WA State	All
Attorney - Active	25,888	32,090
Attorney - Emeritus	108	112
Attorney - Honorary	345	390
Attorney - Inactive	2,400	5,553
Judicial	620	643
LLLT - Active	25	25
LLLT - Inactive	2	2
LPO - Active	787	798
LPO - Inactive	160	172
	30,335	39,785

By District		
	All	Active
0	2,848	2,052
1	2,854	2,345
2	1,938	1,548
3	2,035	1,707
4	1,335	1,117
5	3,098	2,496
6	3,169	2,647
7N	5,217	4,420
7S	6,892	5,648
8	2,127	1,797
9	4,750	4,006
10	2,768	2,307
	39,031	32,090

By State and Province	
Alabama	24
Alaska	200
Alberta	8
Arizona	320
Arkansas	16
Armed Forces Americas	3
Armed Forces Europe, Middle Eas	26
Armed Forces Pacific	19
British Columbia	92
California	1,686
Colorado	239
Connecticut	50
Delaware	4
District of Columbia	332
Florida	246
Georgia	84
Guam	18
Hawaii	137
Idaho	406
Illinois	152
Indiana	34
Iowa	29
Kansas	31
Kentucky	23
Louisiana	48
Maine	12
Maryland	115
Massachusetts	82
Michigan	67
Minnesota	100
Mississippi	4
Missouri	64
Montana	170
Nebraska	17
Nevada	135
New Hampshire	8
New Jersey	66
New Mexico	59
New York	240
North Carolina	73
North Dakota	9
Northern Mariana Islands	8
Nova Scotia	1
Ohio	67
Oklahoma	25
Ontario	12
Oregon	2,624
Pennsylvania	73
Puerto Rico	3
Quebec	1
Rhode Island	12
Saskatchewan	1
South Carolina	27
South Dakota	6
Tennessee	51
Texas	329
Utah	163
Vermont	19
Virginia	277
Virgin Islands	1
Washington	30,335
West Virginia	7
Wisconsin	44
Wyoming	20

By WA County		By Admit Yr	
Adams	14	1940	3
Asotin	28	1941	2
Benton	326	1942	1
Chelan	233	1944	1
Clallam	149	1945	1
Clark	755	1946	2
Columbia	7	1947	6
Cowlitz	130	1948	8
Douglas	25	1949	19
Ferry	14	1950	16
Franklin	49	1951	28
Garfield	2	1952	27
Grant	107	1953	26
Grays Harbor	98	1954	29
Island	129	1955	20
Jefferson	93	1956	40
King	14,438	1957	34
Kitsap	698	1958	39
Kittitas	75	1959	41
Klickitat	22	1960	33
Lewis	93	1961	29
Lincoln	13	1962	35
Mason	87	1963	34
Okanogan	90	1964	42
Pacific	22	1965	58
Pend Oreille	19	1966	63
Pierce	2,032	1967	66
San Juan	67	1968	96
Skagit	265	1969	106
Skamania	16	1970	115
Snohomish	1,423	1971	124
Spokane	1,570	1972	192
Stevens	47	1973	289
Thurston	1,396	1974	280
Wahkiakum	8	1975	344
Walla Walla	101	1976	421
Whatcom	525	1977	414
Whitman	70	1978	471
Yakima	405	1979	507
		1980	522
		1981	554
		1982	533
		1983	574
		1984	651
		1985	463
		1986	710
		1987	622
		1988	593
		1989	626
		1990	762
		1991	759
		1992	756
		1993	793
		1994	814
		1995	830
		1996	767
		1997	865
		1998	814
		1999	853
		2000	868
		2001	936
		2002	1,010
		2003	1,038
		2004	1,050
		2005	1,069
		2006	1,104
		2007	1,182
		2008	1,097
		2009	1,005
		2010	1,093
		2011	1,067
		2012	1,108
		2013	1,249
		2014	1,378
		2015	1,647
		2016	1,326
		2017	1,401
		2018	235

Misc Counts	
All License Types **	40,038
All WSBA Members	39,785
Members in Washington	30,335
Members in western Washington	22,424
Members in King County	14,438
Members in eastern Washington	3,217
Active Attorneys in western Washington	18,916
Active Attorneys in King County	12,563
Active Attorneys in eastern Washington	2,597
New/Young Lawyers	6,602
MCLE Reporting Group 1	10,628
MCLE Reporting Group 2	11,138
MCLE Reporting Group 3	10,676
Foreign Law Consultant	20
House Counsel	223
Indigent Representative	10

By Section ***	All	Previous Year
Administrative Law	253	279
Alternative Dispute Resolution	327	384
Animal Law	101	118
Antitrust, Consumer Protection and Unfair Business Practice	197	212
Business Law	1,181	1,386
Cannabis Law	32	
Civil Rights Law	153	202
Construction Law	476	528
Corporate Counsel	1,028	1,165
Creditor Debtor Rights	487	550
Criminal Law	378	540
Elder Law	620	710
Environmental and Land Use Law	759	841
Family Law	1,033	1,296
Health Law	368	415
Indian Law	289	337
Intellectual Property	821	992
International Practice	210	278
Juvenile Law	187	218
Labor and Employment Law	941	1,052
Legal Assistance to Military Personnel	87	100
Lesbian, Gay, Bisexual, Transgender (LGBT) Law	103	137
Litigation	983	1,191
Low Bono	91	132
Real Property Probate and Trust	2,218	2,402
Senior Lawyers	232	300
Solo and Small Practice	873	1,038
Taxation	612	667
World Peace Through Law	91	116

\* Per WSBA Bylaws 'Members' include active attorney, emeritus pro-bono, honorary, inactive attorney, judicial, limited license legal technician (LLLT), and limited practice officer (LPO) license types.

\*\* All license types include active attorney, emeritus pro-bono, foreign law consultant, honorary, house counsel, inactive attorney, indigent representative, judicial, LPO, and LLLT.

\*\*\* The values in the All column are reset to zero at the beginning of the WSBA fiscal year (Oct 1). The Previous Year column is the total from the last day of the fiscal year (Sep 30). WSBA staff with complimentary membership are not included in the counts.

**WSBA Member\* Demographics Report 3/1/18 10:01:15 AM GMT-08:00**

By Years Licensed	
Under 6	8,453
6 to 10	5,650
11 to 15	5,500
16 to 20	4,507
21 to 25	4,053
26 to 30	3,483
31 to 35	2,979
36 to 40	2,460
41 and Over	2,700
<b>Total:</b>	<b>39,785</b>

By Firm Size	
Solo	5,963
Solo in Shared Office or	1,737
Government/ Public Secto	5,196
In House Counsel	3,031
2-5 Lawyers in Firm	5,010
6-10 Lawyers in Firm	2,151
11-20 Lawyers in Firm	1,553
21-35 Lawyers in Firm	958
36-50 Lawyers in Firm	714
51-100 Lawyers in Firm	743
100+ Lawyers in Firm	2,328
<b>Respondents</b>	<b>29,384</b>
<b>No Response</b>	<b>10,401</b>
<b>All Member Types</b>	<b>39,785</b>

By Practice Area	
Administrative-regulator	2,298
Agricultural	231
Animal Law	113
Antitrust	304
Appellate	1,655
Aviation	165
Banking	457
Bankruptcy	1,103
Business-commercial	5,346
Civil Litigation	5,490
Civil Rights	1,080
Collections	612
Communications	230
Constitutional	655
Construction	1,363
Consumer	803
Contracts	4,316
Corporate	3,580
Criminal	4,033
Debtor-creditor	1,047
Disability	702
Dispute Resolution	1,397
Education	502
Elder	967
Employment	2,917
Entertainment	328
Environmental	1,343
Estate Planning-probate	3,636
Family	2,987
Foreclosure	574
Forfeiture	88
General	2,955
Government	2,862
Guardianships	939
Health	981
Housing	320
Human Rights	332
Immigration-naturaliza	1,039
Indian	620
Insurance	1,775
Intellectual Property	2,283
International	935
Judicial Officer	395
Juvenile	932
Labor	1,184
Landlord-tenant	1,397
Land Use	842
Legal Ethics	290
Legal Research-writing	753
Legislation	413
Litigation	4,651
Lobbying	174
Malpractice	809
Maritime	307
Military	388
Municipal	972
Non-profit-tax Exempt	624
Not Actively Practicing	1,769
Oil-gas-energy	223
Patent-trademark-copyr	1,325
Personal Injury	3,432
Real Property	2,591
Real Property-land Use	2,397
Securities	827
Sports	158
Subrogation	101
Tax	1,361
Torts	2,193
Traffic Offenses	749
Workers Compensation	752

By Languages Spoken	
Afrikaans	6
Akan /twi	4
Albanian	2
American Sign Language	13
Amharic	16
Arabic	53
Armenian	6
Bengali	11
Bosnian	7
Bulgarian	13
Burmese	2
Cambodian	6
Cantonese	93
Cebuano	3
Chamorro	4
Chaozhou/chiu Chow	1
Chin	2
Croatian	17
Czech	7
Danish	19
Dari	3
Dutch	23
Egyptian	2
Farsi/persian	57
Filipino	1
Finnish	7
French	692
French Creole	2
Fukienese	4
Ga/kwa	2
German	428
Greek	28
Gujarati	15
Haitian Creole	2
Hebrew	37
Hindi	87
Hmong	1
Hungarian	13
Ibo	5
Icelandic	2
Ilocano	9
Indonesian	11
Italian	149
Japanese	210
Kannada/canares	4
Khmer	1
Konqo/kikonqo	1
Korean	229
Lao	6
Latvian	6
Lithuanian	4
Malay	3
Malayalam	9
Mandarin	331
Marathi	5
Monqolian	2
Navajo	1
Nepali	3
Norwegian	38
Not listed	32
Oromo	3
Other	23
Pashto	1
Persian	21
Polish	33
Portuguese	121
Portuguese Creole	1
Puniabi	56
Romanian	19
Russian	230
Samoan	9
Serbian	16
Serbo-croatian	7
Sign Language	23
Sinhalese	2
Slovak	2
Somali	1
Spanish	1,774
Spanish Creole	9
Swahili	3
Swedish	54
Taqaloo	64
Taishanese	2
Taiwanese	17
Tamil	9
Telugu	3
Thai	14
Tigrinya	3
Tongan	1
Turkish	9
Ukrainian	41
Urdu	38
Vietnamese	85
Yoruba	9
Yugoslavian	2

By Ethnicity	
American Indian / Native American	255
Asian	1,441
Black/African descent	648
Caucasian/White	24,131
Multi Racial	796
Not Listed	181
Pacific Islander	57
Spanish/Hispanic/Latina/o	699
<b>Respondents</b>	<b>28,208</b>
<b>No Response</b>	<b>11,577</b>
<b>All Member Types</b>	<b>39,785</b>

By Gender	
FEMALE	12,214
MALE	17,362
<b>Respondents</b>	<b>29,576</b>
<b>No Response</b>	<b>10,209</b>
<b>All Member Types</b>	<b>39,785</b>

By Disabled Status	
N	18,030
Y	955

By LGBT	
N	17,843
Y	1,038

By Age	All	Active
21 to 30	2,038	1,953
31 to 40	9,143	8,163
41 to 50	9,598	7,876
51 to 60	8,686	6,836
61 to 70	7,686	5,755
71 to 80	2,084	1,389
Over 80	550	118
<b>Total:</b>	<b>39,785</b>	<b>32,090</b>

\* Includes active attorneys, emeritus pro-bono, honorary, inactive attorneys, judicial, limited license legal technician (LLLT), and limited practice officer (LPO).