

MANDATORY MALPRACTICE INSURANCE TASK FORCE

AGENDA

September 12, 2018

1:00 – 4:00 p.m.

Conference Call: 1-866-577-9294;

Committee 1 use code: 52821#; Committee 2 use code: 52824#

AGENDA

1. Preliminary Matters and Approval of August 22, 2018 minutes (1:00 p.m.) (10 minutes)
2. Committees Meet to Discuss Coverage, Exemptions, and Compliance Issues (1:10 p.m.) (90 minutes)
3. Report from Committee 1 (Coverage) (2:45 p.m.) (30 minutes)
4. Report from Committee 2 (Exemptions and Compliance) (3:15 p.m.) (30 minutes)
5. Legal Service Providers and Malpractice Insurance Coverage (3:45 p.m.) (10 minutes)
6. Meeting Wrap-up (3:55 p.m.) (5 minutes)

MEETING MATERIALS

- A. Draft August 22, 2018 Minutes (pp. 551 – 552)
- B. Committee Rosters (pp. 554)
- C. Draft List of Exemptions (pp. 556)
- D. Interim Memo re Legal Service Providers and Malpractice Insurance Coverage for Volunteer Lawyers (pp. 558 – 595)
- E. Comments Submitted to the Task Force (provided to Task Force separately)



MANDATORY MALPRACTICE INSURANCE TASK FORCE

Conference Call: 1-866-577-9294; Committee 1 use code: 52821#

AGENDA FOR COMMITTEE 1: COVERAGE

1:15 – 2:45 p.m.

Items for Discussion

1. Recommended coverage level (e.g. 100/300, 250/250, 250/500, 500/500)
2. Prior acts coverage
 - a. For lawyers renewing their policies, should lawyers be prohibited from excluding acts prior to the current year?
 - b. Should lawyers obtaining insurance for the first time be permitted to exclude prior acts coverage?
3. Deductibles
 - a. Should there be a cap on the deductible for a minimum policy?
 - b. Should the deductibles be capped at a maximum percentage, e.g. 15%?
4. Is mandated tail coverage feasible?
5. Other recommended constraints

MANDATORY MALPRACTICE INSURANCE TASK FORCE

[Conference Call: 1-866-577-9294; Committee 2 use code: 52824#](tel:1-866-577-9294)

AGENDA FOR COMMITTEE 2: EXEMPTIONS AND COMPLIANCE

1:15 – 2:45 p.m.

Items for Discussion

1. Exemption options, including:

Government lawyers

In-house private company lawyers

In-house nonprofit entity lawyers, including legal service providers/public defenders

Retired/non-practicing lawyers

Judges/administrative law judges/ hearing officers

Mediators/arbitrators

Law clerks

Lawyers providing law-related services under RPC 5.7

In-state lawyers practicing solely before federal tribunals

In-state lawyers practicing solely out-of-state

Law students/Rule 9 interns

Licensed lawyers in paralegal positions

Licensed lawyers engaged in limited practice and continually supervised by a lawyer

Lawyers only doing pro bono work

Lawyers not providing any legal services whether or not for compensation

2. Other exemption options to consider

3. Certification process for lawyers

4. Compliance enforcement procedures

a. Should there be a random audit process?

b. What should be the consequences for non-compliance?

c. Should there be a process for petitioning for an extension, medication, or waiver? If so, what entity should hear such petitions?

A.

Draft Minutes – August 22,
2018

MANDATORY MALPRACTICE INSURANCE TASK FORCE

MEETING MINUTES

August 22, 2018

Members present, all by telephone, were Chair Hugh Spitzer, John Bachofner, Stan Bastian, Dan Bridges, Christy Carpenter, Gretchen Gale, Rob Karl, Evan McCauley, Brad Ogura, Suzanne Pierce, Brooke Pinkham, Todd Startzel, Stephanie Wilson, and Annie Yu. P.J. Grabicki, Lucy Isaki, Mark Johnson, and Kara Masters were not in attendance.

Also present by telephone were Doug Ende (WSBA Staff Liaison and Chief Disciplinary Counsel), Thea Jennings (Office of Disciplinary Counsel Disciplinary Program Administrator), Rachel Konkler (Office of Disciplinary Counsel Legal Administrative Assistant), Jean McElroy (WSBA Chief Regulatory Counsel), Chris Newbold (Executive Vice President of 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 July 18, 2018 meeting were approved.

B. UPDATE ON INTERIM REPORT TO THE BOARD OF GOVERNORS

Chair Hugh Spitzer and Staff Liaison Doug Ende presented the Task Force's interim report to the Board of Governors at the Board's July meeting. Mr. Spitzer and Mr. Ende reported that the Board is focused on the issue and is aware of the Task Force's strong efforts to solicit member feedback.

C. DISCUSSION OF WORK PLAN FOR COMPLETION OF TASK FORCE REPORT

The Task Force has four more scheduled meetings before its final report to the Board of Governors is due in January 2019. The Task Force's current work plan is to decide the required malpractice insurance coverage levels to recommend, and to agree on a final list of recommended exemptions.

At its next meeting in September, the Task Force will split up into two committees for the first half of the meeting. One group will work on identifying the recommended levels of coverage, including potential issues surrounding gap coverage and tail coverage. The second group will work on finalizing the recommended exemptions to the proposed mandatory malpractice insurance rule, in addition to defining compliance procedures and any potential consequences



of noncompliance. The two groups will then reconvene for the second half of the meeting to report out and discuss each group's recommendations.

With respect to the Task Force's timeline, a draft final report will be circulated for the Task Force's consideration by its November meeting. On or around that time, staff will prepare a draft rule for the Task Force's consideration.

D. COMMENTS SUBMITTED TO THE TASK FORCE

The Task Force continues to receive and review feedback from the WSBA membership. The majority of feedback relates to possible exemptions, including an exemption related to pro bono service. In an effort to better understand the concerns the Task Force has heard about pro bono work and how it may be impacted by mandatory malpractice insurance, staff will reach out to Washington pro bono organizations to explore if, and how, they provide insurance for attorneys who volunteer for them.

E. UPDATE ON NWLAWYER ARTICLES

Two articles based on the work of the Mandatory Malpractice Insurance Task Force are forthcoming in the August issue of *NWLawyer*. WSBA communications staff have also developed an informational brochure for distribution to bar leaders and at WSBA events, with the goals of keeping members up to date on the Task Force's work and to invite feedback. The window for members to submit their comments about mandatory malpractice insurance remains open.

F. ADJOURNMENT

The meeting adjourned at 1:45 p.m.

B.
Committee Rosters

WASHINGTON STATE BAR ASSOCIATION

9/12/18 Mandatory Malpractice Insurance Task Force Meeting Committees

Committee 1: Coverage

Kara Masters, Chair

Rob Karl

Dan Bridges

Stan Bastian

Evan McCauley

PJ Grabicki

Brooke Pinkham

Committee 2: Exemptions and Compliance

Mark Johnson, Chair

Stephanie Wilson

Annie Yu

Christy Carpenter

Todd Startzel

Lucy Isaki

Brad Ogura

Cannot attend meeting:

John Bachofner

Gretchen Gale

Suzanne Pierce

C.

Draft List of Exemptions

If you carry an active license to practice law in Washington, you must carry the mandated insurance coverage unless one of the following exemptions apply, if done exclusively

Government attorney/judge, or government ALJs/hearing officers

Employed by business entity/non-profit

Employee of public defender

Mediator/arbitrator

Not providing any legal services whether or not for compensation

D.

Interim Memo re Legal
Service Providers and
Malpractice Insurance
Coverage for Volunteer
Lawyers

MEMO

To: Mandatory Malpractice Insurance Task Force
From: Thea Jennings, Disciplinary Program Administrator
Date: September 7, 2018
Re: Interim Report re Qualified Legal Service Providers and Malpractice Insurance Coverage for Volunteer Lawyers

INTRODUCTION

A common concern raised in comments received by the Task Force relates to whether imposing malpractice insurance would result in less pro bono services being offered throughout the state, as practitioners who primarily provide pro bono services would elect to give up their license rather than obtain insurance. The Task Force asked for information about whether and how qualified legal service providers are insuring their volunteer lawyers, so that it can better analyze the effect mandatory insurance might have on recipients of pro bono legal services. This interim report reflects the information obtained thus far on this issue. A final Memo will be issued once information gathering is complete.

A. Defining pro bono services

For purposes of this Memo, the definition of pro bono services is derived from the *ABA Report on the Pro Bono Work of America's Lawyers*, issued in April 2018. According to the Report, “pro bono services” are defined as services personally performed, without charge or the expectation of a fee, to individuals of limited means or organizations serving individuals of limited means. The Report specifically declined to include in the definition those services offered to develop a paying client, those services for which payment was expected but not collected, and free legal services offered to family or friends who are not of limited means. For further information on the Report, see attached as Appendix A Snapshot of ABA & WA Reports on the Pro Bono Work of Lawyers (presented to the Task Force in June 2017). The focus of the research for this Memo relates to lawyers providing pro bono services through organizations serving low-income individuals, rather than lawyers providing pro bono services through other means or lawyers providing services under the categories excluded from the definition of pro bono services.

B. What is a qualified legal service provider?

According to the *ABA Report on the Pro Bono Work of Washington's Lawyers* issued in April 2017, approximately 56% of lawyers in Washington found their clients through referrals from legal aid providers, non-profit organizations, or bar associations, many of which are likely qualified legal service providers. See Appendix A. In Washington State, qualified legal service providers (QLSP), as defined in APR 1(e)(8), are nonprofit legal service organizations whose

primary purpose is to provide legal services to low income individuals and families. The Washington State Bar Association receives and approves applications for organizations to be designated as QLSPs. Among five qualifying requirements to become a QLSP, an organization must either provide malpractice insurance for its volunteers or have a policy in place to require that all volunteers carry their own malpractice insurance. To seek approval, the organization submits a one-page letter addressing how the organization qualifies as a QLSP. In Washington, approximately 60 legal service providers are Bar-approved QLSPs. These organizations are geographically diverse with offices located in approximately 20 counties across the state. A complete listing can be found at <https://www.wsba.org/connect-serve/volunteer-opportunities/psp>.

C. Legal Foundation of Washington Grantee Insurance Program

The Legal Foundation of Washington (LFW) provides grants to many nonprofit legal aid providers in Washington State, many of which are QLSPs and provide legal services through volunteer lawyers. Caitlin Davis, Executive Director at LFW, stated that grants from her organization touch every part of the state. In 2017, LFW's grantees provided approximately 50,000 hours of pro bono services to Washington residents across the state, and some 31,000 families received legal aid.

Approximately five to eight years ago, LFW launched its own group insurance program for all of its grantees that provide services through volunteer lawyers when it discovered that prosecutors, criminal defense attorneys, and attorneys general declined to volunteer due to lack of insurance and when the downturn in the economy led to lawyers letting their insurance lapse. The LFW plan offers its grantees coverage up to \$500,000 and is purchased through the National Legal Aid and Defender Association (NLADA). LFW provides the insurance plan as a benefit to all of its 17 grantees who work with volunteer lawyers. See attached as Appendix B LFW's list of grantees who provide volunteer legal services. Individual grantees may then choose to buy additional coverage over and above that amount, which they often do. The plan costs the LFW \$22,000 per year and covers all of their volunteer legal aid providers. To be covered under the plan, all that is required is that a lawyer receive a referral from one of LFW's grantees. See attached as Appendix C the LFW Policy. To Ms. Davis's knowledge, since the program's inception, no claim has yet been filed.

D. Sampling of Qualified Legal Service Provider Programs

Among the organizations approved as QLSPs and listed as grantees of LFW are the King County Bar Association (KCBA) Pro Bono Services Program, Eastside Legal Assistance Program (ELAP), and Columbia Legal Services. I spoke with representatives from each of these organizations regarding the insurance plans they carry, how the system works for insuring their volunteers, and the concept of mandatory malpractice insurance and what impact that may have on lawyers providing pro bono services in Washington. I have further reached out to but not yet connected with individuals from NW Justice Project and the Washington Pro Bono Network.

1. KCBA Pro Bono Services Program

Anne Daly, KCBA Pro Bono Services Director, noted that between July 1, 2017, and June 30, 2018, the KCBA Pro Bono Program hosted 1,200 volunteers (approximately 300 of which were nonlawyers) and served over 10,000 clients.

As a preliminary matter, Ms. Daly indicated no impact would occur for KCBA's volunteers by imposing malpractice insurance, as KCBA is required to maintain malpractice insurance as a qualified legal service provider. Their plan covers all of their lawyer volunteers and extends to volunteers providing simple legal advice and consultation to direct representation through trial.

KCBA's coverage is obtained through LFW. Due to the requirements of other grants KCBA obtains, KCBA buys additional coverage over and above the \$500,000 provided by LFW. The total coverage KCBA maintains is \$1 million per claim/\$2 million aggregate and is obtained through the same carrier as LFW. The coverage includes the cost of legal fees for defending a claim. The only exclusion is that the claim must be brought by the client himself or herself and not a family member.

For lawyers to be covered under KCBA's plan, the lawyers must be providing services through one of KCBA's pro bono programs for no fee. There is never a circumstance where a lawyer would not be covered, unless the lawyer provides services to the clients in addition to those offered under the program. For example, if a lawyer volunteering for the family law clinic later identifies and represents the client pro bono on an immigration issue, the lawyer would only be covered as to the family law matter.

With respect to tail coverage, the coverage extends past the time of volunteering. The lawyer would thus be covered by the plan if a client files a claim arising from services provided by the lawyer through KCBA's pro bono program long after the lawyer has quit volunteering for the organization.

KCBA maintains partnerships with many organizations in Washington, including, among others: minority bar associations such as QLaw, the Loren Miller Bar Association, the Korean Bar Association, the Asian-Pacific Bar Association, etc.; the Federal Bar Association; and the Washington Attorney General's Office. Those partners often hold clinics, sponsor and staff the clinic, select the topics for the clinic, etc., while KCBA provides administrative support. Lawyers volunteering through these partnerships are covered by KCBA's plan.

2. ELAP

Gerald Kröon, Executive Director at ELAP, noted that ELAP hosted approximately 200 volunteer lawyers in 2017 and served approximately 2,000 clients.

Like KCBA, ELAP is required to maintain insurance as a qualified legal service provider and obtains its coverage through LFW. ELAP buys additional coverage over and above LFW's policy amount, with its policy totaling \$1 million per claim/\$2 million aggregate. Its plan covers all of

its lawyer volunteers and includes the cost of legal fees for defending a claim. Mr. Kröon was not aware of any exclusion on coverage.

Again, to be covered, the lawyers must be providing services through one of ELAP's pro bono programs and the services must be for no fee. There is never a circumstance where the lawyers would not be covered for services provided through the organization. Similar to KCBA, ELAP provides tail coverage to lawyers who are no longer volunteering for the organization.

ELAP maintains partnerships with many organizations in Washington, providing legal services to clients referred to them by those organizations, including, among other organizations, the Domestic Abuse Women's Network, LifeWire, and Sea Mar. Lawyers volunteering through these partnerships are covered by ELAP's plan.

3. Columbia Legal Services

Columbia Legal Services is a nonprofit civil legal aid program with five offices across the state, including in Seattle, Olympia, the Tri-Cities, Wenatchee, and Yakima. Per Merf Ehman, Executive Director at Columbia Legal Services, the organization primarily provides legal services through staff attorneys. Few volunteers work with their office annually though their client base is quite large. Ms. Ehman estimated that the organization works with approximately 30 volunteer lawyers per year, primarily as co-counsel on cases with its staff attorneys. Given that Columbia Legal Services sometimes prosecutes class action cases, its annual client base can be anywhere from 10,000 to 100,000 per year.

As a qualified legal service provider, Columbia Legal Services is required to maintain malpractice insurance. However, unlike KCBA and ELAP, Columbia Legal Services does not obtain its insurance through LFW given that it provides most of its legal services through staff attorneys rather than through volunteers. Instead, like LFW, it purchases its insurance through NLADA, which is a national organization focused on providing advocacy, guidance, information, training, and technical assistance to members of the equal justice community, especially those in public defense and civil legal aid. Since 1994, NLADA has had an insurance program, which it offers to its network of legal aid organizations, corporate pro bono law groups, law school clinics, and public interest groups. Ms. Ehman will provide contact information for the organization's NLADA insurance representative, if the Task Force would like more information on NLADA's work with legal aid providers in Washington.

Though Ms. Ehman could not recall the exact policy amount, she estimates that it is approximately \$1 to \$1.5 million. The plan has a pro bono rider for volunteer lawyers that work with Columbia Legal Services. With respect to how coverage works with volunteer lawyers, if the lawyer is self-insured, the lawyer's insurance would be the first to cover any claim arising from the pro bono representation. Then, Columbia Legal Services' insurance would cover any amount over and above the lawyer's policy limits. If the lawyer is uninsured, then Columbia Legal Services' plan would cover the lawyer. To Ms. Ehman's knowledge, there are no exclusions on coverage. Tail coverage would apply to a lawyer whose period of volunteering ends and a claim that is later filed related to the lawyer's volunteer work.

Columbia Legal Services maintains many informal partnerships with others in the Washington equal justice community as well as with various firms throughout the state whose lawyers provide pro bono services. It further offers mentoring and support to lawyers working pro bono on matters. Working as volunteer co-counsel on a Columbia Legal Services matter would be covered under its insurance plan, but offering advice and counsel to a volunteer lawyer would likely not be sufficient to extend Columbia Legal Services' coverage to the volunteer lawyer.

CONCLUSION

This Memo presents a general overview of how various legal aid organizations across the state provide professional liability insurance to their volunteer lawyers. The Memo will be supplemented with additional information once we have had an opportunity to speak with additional individuals in the volunteer legal aid community.

APPENDIX A



SNAPSHOT OF ABA & WA REPORTS ON THE PRO BONO WORK OF LAWYERS

ABA Standing Committee on Pro Bono & Public Service
American Bar Association, April 2018 & July 2017

ABA Report on the Pro Bono Work of America's Lawyers

- Issued April 2018
- Surveyed 47,000 attorneys in 24 states, incl. WA, about their pro bono activities
- Survey assesses how, when, and why attorneys are motivated to undertake pro bono
- 7.3% overall response rate nationally

ABA Report on the Pro Bono Work of Washington's Lawyers

- Issued July 2017
- ABA issued WA-specific report based on WA survey results
- The Pro Bono and Public Service Committee assisted the ABA
- 788 responded, 756 with active licenses – at 95% confidence level, i.e. 95% certain results represented how true population would respond

DEFINING PRO BONO SERVICES FOR SURVEY

Definition of Pro Bono Services

- Services personally performed, without charge or expectation of fee, to persons of limited means or organizations that serve persons of limited means

What Are Not Pro Bono Services

- Legal services performed to develop a paying client or legal services for which payment was expected, but not collected
- Free legal services provided for family or friends who are not of limited means

REPORT TOPICS

Amount and Type of Pro Bono

- Amount undertaken, types of services, to whom services were provided

Most Recent Pro Bono Experience

- Types of services, to whom services were provided, how attorneys found clients, etc.

Motivation and Attitudes

- Why attorneys are motivated to do pro bono work

Other Public Service Activities

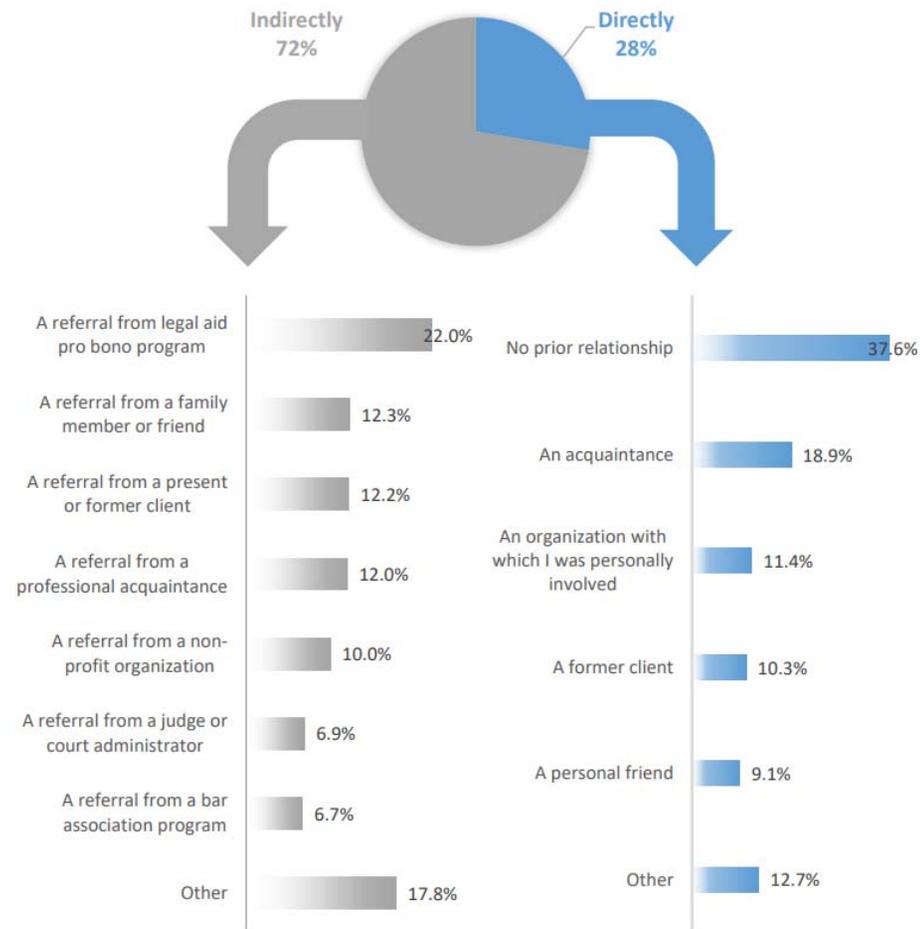
- Amount and type of law-related public service activities undertaken, incl. reduced fee services and limited scope rep

Population Trends

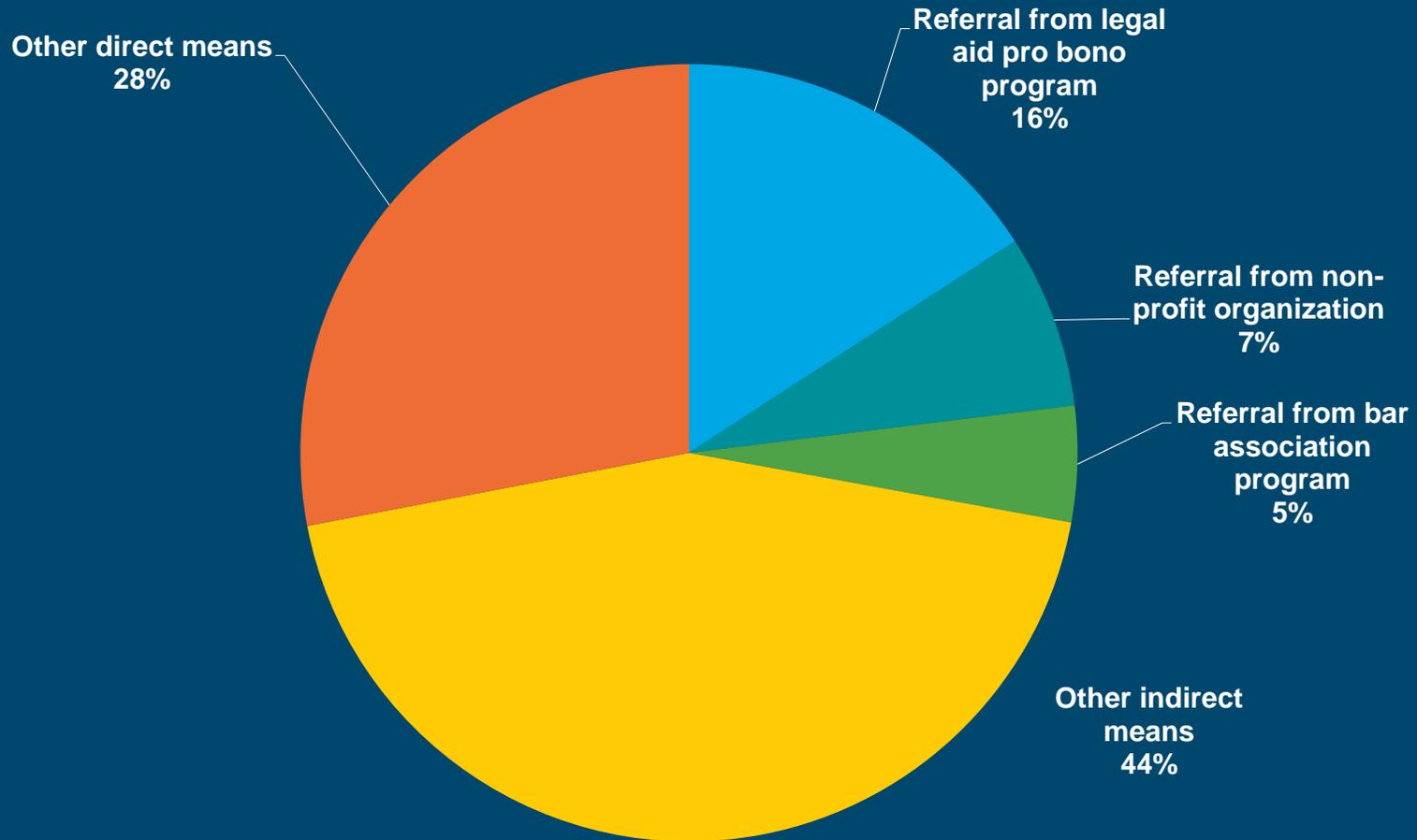
- Trends by age, practice setting, geography, and state

NATIONAL REPORT

FIGURE 6. HOW ATTORNEYS AND CLIENTS FIND EACH OTHER



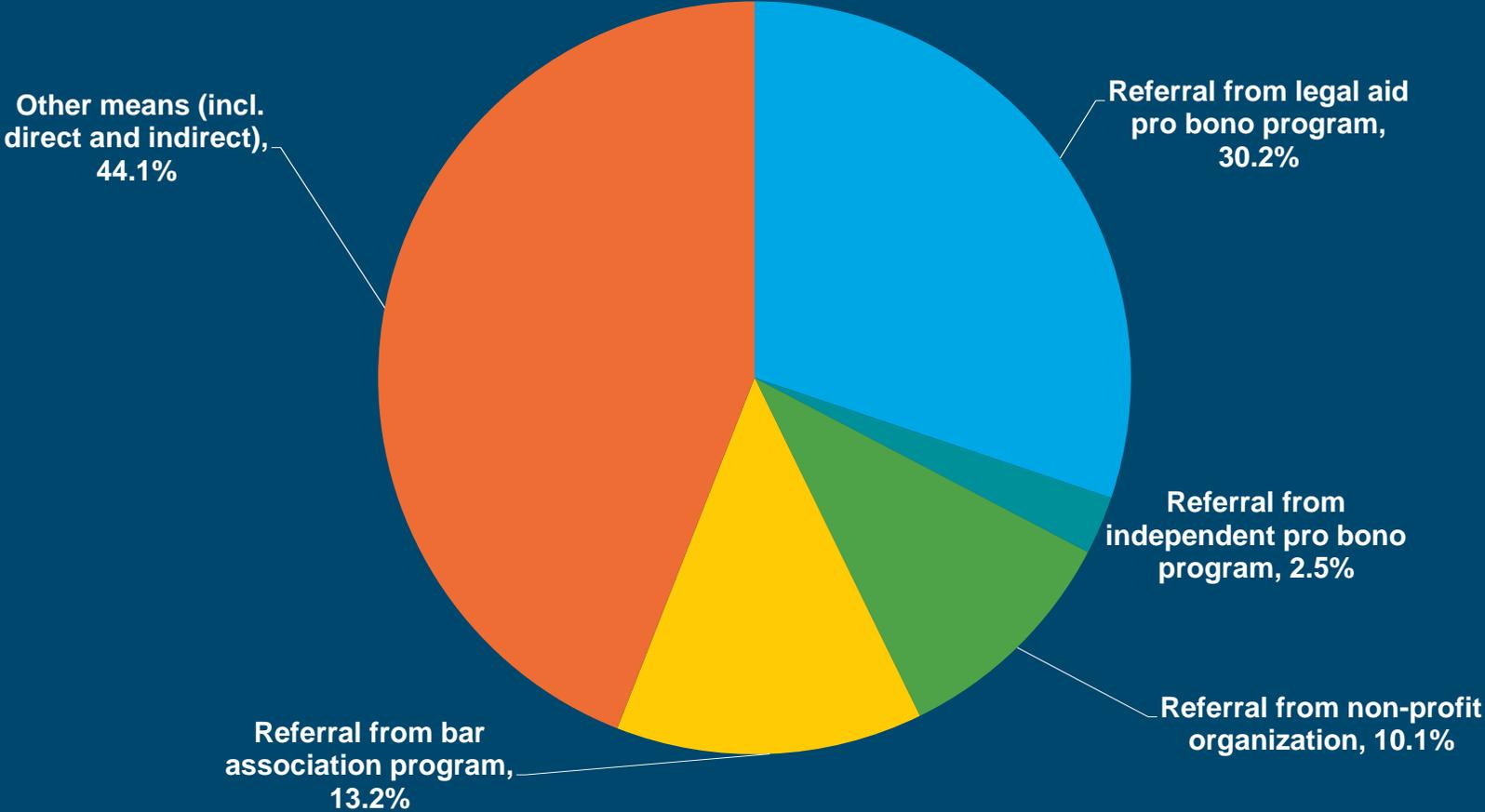
QUALIFIED LEGAL SERVICE PROVIDER STATISTICS



HOW ATTORNEYS FIND THEIR CLIENTS: WA REPORT

How did this client come to you?	Number	Percent
The client came directly to me	91	17.0
A referral from a family member or friend	17	3.1
A referral from your employer	7	1.2
A referral from a co-worker within your organization	8	1.5
A referral from an attorney outside of your organization	5	.9
A referral from a present or former client	19	3.6
A referral from legal aid pro bono program	161	30.2
A referral from an independent pro bono program	14	2.5
A referral from a self-help desk	1	.3
A referral from a public or law library	3	.5
A referral from a law school clinic	5	1.0
A referral from a mediation center	2	.4
A referral from a religious organization	3	.5
A referral from a non-profit organization	54	10.1
A referral from a judge or court administrator	4	.7
Other	54	10.1
A referral from a bar association pro bono program	70	13.2
A referral from a lawyer referral service	1	.3
A referral from a guardian ad litem program	1	.1
A referral from a professional acquaintance	10	1.9
From a posting on a pro bono listserv to which I subscribe	4	.7
Total	533	100.0

WA QUALIFIED LEGAL SERVICE PROVIDER STATISTICS



IN OTHER WORDS ...

Nationally

- Approx. 28% of lawyers find their clients through legal aid providers, non-profits, or bar associations

In
Washington

- Approx. 56% of lawyers find their clients through legal aid providers, non-profits, or bar associations

APPENDIX B

WASHINGTON STATE BAR ASSOCIATION

Legal Foundation of Washington Volunteer Lawyer Programs

Benton-Franklin Legal Aid Society
Blue Mountain Action Council
Chelan-Douglas County Volunteer Attorney Services
Clallam-Jefferson County Pro Bono Lawyers
Clark County Volunteer Lawyer Program
Cowlitz-Wahkiakum Legal Aid
Eastside Legal Assistance Program
King County Bar Association Pro Bono Services
Kitsap Legal Services
Lewis County Bar Legal Aid
Skagit Community Action Volunteer Lawyer Program
Snohomish County Legal Services
Spokane County Bar Association Volunteer Lawyer Program
Tacoma Pro Bono
Thurston County Volunteer Legal Services
Whatcom County LAW Advocates
Yakima County Volunteer Attorney Services

APPENDIX C

UNDERWRITERS AT LLOYD'S, LONDON

LAWYERS PROFESSIONAL LIABILITY INSURANCE

CLAIMS MADE FORM / DEFENSE WITHIN LIMITS

Unique Market Reference Number: B113516CPBA1328

IMPORTANT NOTICE

THIS IS A CLAIMS MADE FORM. COVERAGE IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD.

Please Read Carefully

In consideration of the undertaking of the Named Insured to pay, when due, the premium and deductible as described herein and in the amounts stated in the Evidence of Insurance, and in reliance upon the statements in the application and subject to the limits of liability shown in the Evidence of Insurance, and subject to all of the terms, conditions, exclusions and limitations of this insurance, **Underwriters at Lloyds, London** (the "**Company**") agrees with the Named Insured as follows:

Article I COVERAGE

A. Professional Liability and Claims Made Clause:

The Company shall pay on behalf of the Insured all sums in excess of the deductible amount stated in the Evidence of Insurance which the Insured shall become legally obligated to pay as damages as a result of **CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE PERIOD OF COVERAGE UNDER THE APPLICABLE EVIDENCE OF INSURANCE:**

- (1) By reason of any alleged or actual act, error, omission in Legal Aid Services or Defender Services rendered or that should have been rendered by the Insured or by any persons for whose acts, errors or omissions the Insured is legally responsible and arising out of the conduct of the Insured's profession as a lawyer or notary public employed to provide Legal Aid Services or Defender Services
- (2) By reason of any alleged or actual act, error, or omission committed by any non-Lawyer employee of the Named Insured or any Insured Organization, but arising solely out of services rendered within the scope of such person's employment by the Named Insured or such Insured Organization

- (3) Because of any alleged or actual Personal Injury by an Insured, subject, however, to the specific sublimits as to Personal Injury set forth in the applicable Evidence of Insurance
- (4) By reason of an Insured's referral of any legal matter to any outside Lawyer groups, or Lawyers thereof, approved by an Insured Organization (*in such regard, see limitations on treatment of outside Lawyers as "insureds" set forth at Section II.B(4) of this policy*); or
- (5) By reason of any alleged or actual act, error or omission in professional services rendered or that should have been rendered by any outside Lawyer groups, or Lawyers thereof, or by any person for whose acts, errors or omissions the Insured is legally responsible, and arising out of any legal matter referred by an Insured Organization to such outside Lawyer groups, or Lawyers thereof, whether or not for compensation (*in such regard, see limitations on treatment of outside Lawyers as "Insureds" set forth at Section II.B(4) of this policy*);
- (6) By reason of any alleged or actual act, error, or omission in professional services rendered or that should have been rendered by an Insured Lawyer or by any person for whose acts, errors or omissions the Insured is legally responsible, and arising out of the conduct of the Insured's Outside Practice of Law, but only if the Evidence of Insurance applicable with respect to such Insured designates "Outside Practice of Law Coverage" as being applicable coverage, and the additional premium for such optional coverage stated therein has been indicated:

PROVIDED ALWAYS THAT such alleged or actual act, error, omission or Personal injury happens subsequent to the retroactive date specified in the applicable Evidence of Insurance, and

- (a) during the policy period, or
- (b) prior to the policy period, *provided that*, prior to the effective date of such Evidence of Insurance:
 - (i) the Insured did not give notice to any other insurer of any such alleged or actual act, error, omission, or personal injury:
 - (ii) the Insured had no reasonable basis to believe that the Insured had committed any act, error, omission, or Personal Injury which would give rise to a claim, or to foresee that a Claim would be made against the Insured; and
 - (iii) there is no other policy or policies which provide insurance for such liability or claim, unless the available limits of liability are insufficient to pay any liability or claim in which event this policy will cover only the excess over such prior coverage, subject to this policy's terms, limits of liability, exclusions, and conditions.

Legal Aid Services, Defender Services, Mediation Services, or professional services performed by the Insured in a lawyer-client relationship on behalf of one or more clients shall be deemed for the purpose of this section to be the performance of professional services for others in the Insured's capacity as a lawyer, although such services could be performed, wholly or in part by non-lawyers.

It is a condition precedent to coverage under this policy that all Claims be reported in compliance with Article V, CLAIMS, Section V.A. Notice of Claim.

B. Disciplinary Proceedings (Defense Coverage Only)

The Company shall provide a defense for any Insured Lawyer in connection with any Disciplinary Proceeding against such Insured AND FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD, PROVIDED ALWAYS THAT such alleged or actual act, error, omission, or Personal Injury which is the basis of such Disciplinary Proceeding happens subsequent to the retroactive date specified in such Evidence of Insurance, and

- (1) During the Policy Period, or
- (2) Prior to the Policy Period, *provided that* prior to the Effective Date of such Evidence of Insurance:
 - (a) The Insured did not give notice to any other insurer of any such alleged or actual act, error omission, or Personal Injury;
 - (b) The Insured had no reasonable basis to believe that the Insured had committed any act, error, omission, or Personal Injury which would give rise to a Disciplinary Proceeding or to foresee that a Disciplinary Proceeding would be made against the Insured and
 - (c) There is no other policy or policies which provide insurance for such defense of such Disciplinary Proceeding, unless the available limits of liability of such prior policy or policies are insufficient to pay the costs of providing such defense, in which event this policy will cover only the excess over any such prior coverage, subject to this policy's terms, limits of liability, exclusions and conditions.

The costs of providing such defense shall constitute Claim Expenses for purposes of this policy, and such Disciplinary Proceeding shall be deemed to be a Claim for purposes of the application of the defense, settlement, and other general provisions of this policy; provided, however, that, notwithstanding any other provision hereof which might be construed to the contrary, the Company shall not be liable for any Damages, fines or penalties which may be imposed on the Insured by reason of such disciplinary claim or proceeding.

It is a condition precedent to coverage under this policy that all Claims be reported in compliance with Article V, CLAIMS, Section V.A. Notice of Claim.

C. Defense of Contempt Proceedings (Defense Coverage Only)

The Company shall provide a defense for any Insured Lawyer in connection with any contempt proceeding against such Insured AND FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD (whether or not an unfavorable adjudication is entered against the Insured Lawyer in such contempt proceeding); PROVIDED ALWAYS THAT such alleged or actual act, error, omission, or Personal Injury which is the basis of such contempt proceeding happens subsequent to the retroactive date specified in such Evidence of Insurance, and

- (1) During the Policy Period, or
- (2) Prior to the Policy Period, *provided that* prior to the Effective Date of such Evidence of Insurance:
 - (a) The Insured did not give notice to any other insurer of any such alleged or actual act, error omission, or Personal Injury;
 - (b) The Insured had no reasonable basis to believe that the Insured had committed any act, error, omission, or Personal Injury which would give rise to a Disciplinary Proceeding or to foresee that a Disciplinary Proceeding would be made against the Insured and
 - (c) There is no other policy or policies which provide insurance for such defense of such Disciplinary Proceeding, unless the available limits of liability of such prior policy or policies are insufficient to pay the costs of providing such defense, in which event this policy will cover only the excess over any such prior coverage, subject to this policy's terms, limits of liability, exclusions and conditions.

D. Management Liability (Optional)

If the Evidence of Insurance applicable with respect to any particular Insured designates "Management Liability Coverage" as being an applicable coverage, and the additional premium for such optional coverage stated therein has been indicated, the Company shall pay on behalf of such Insured all sums in excess of the deductible amount stated in the Evidence of Insurance which the Insured shall become legally obligated to pay as Damages as a result of CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD by reason on any alleged, or actual act, error, misstatement, misleading statement, breach of duty, or omission, based on negligence by the Insured or by any person for whose acts, errors, misstatements, misleading statements, breaches of duty, or omissions the Insured is legally responsible and arising in connection with such Insured's capacity as part of the Management of the Named Insured or Insured Organization named in such Evidence of Insurance: PROVIDED ALWAYS THAT such alleged or actual act, error, misstatement, misleading statement, breach of duty or omission happens subsequent to the retroactive date specified in such Evidence of Insurance, and

- (1) During the Policy Period, or
- (2) Prior to the Policy Period, *provided that* prior to the Effective Date of such Evidence of Insurance:
 - (a) The Insured did not give notice to any other insurer of any such act, error, misstatement, misleading statement, breach of duty or omission;
 - (b) The Insured had no reasonable basis to believe that the Insured had committed any act, error misstatement, misleading statement, breach of duty or omission which would give rise to a Claim, or to foresee that a Claim would be made against the Insured and
 - (c) There is no other policy or policies which provide insurance for such liability or claim, unless the available limits of liability of such prior policy or policies are insufficient to pay any liability or claim, in which event this policy will cover only the excess over any such prior coverage, subject to this policy's terms, limits of liability, exclusions and conditions.

It is a condition precedent to coverage under this policy that all Claims be reported in compliance with Article V, CLAIMS, Section V.A. Notice of Claim.

E. Employment Liability (Optional)

If the Evidence of Insurance applicable with respect to any particular Insured Organization designates "Employment Liability Coverage" as being an applicable coverage, and the additional premium for such optional coverage stated therein has been indicated, the Company shall:

- (1) Provide a defense for any Insured with respect to, and pay on behalf of such Insured all sums in excess of the deductible amount stated in the Evidence of Insurance which the Insured shall become legally obligated to pay as Damages as a result of, any Claim or administrative proceeding brought by or on behalf of an individual who is, was, or hereafter becomes an employee of, or who has sought employment with, such Insured Organization and which arises out of the employment practices of the Insured Organization, such as those with respect to employment, retention and termination and
- (2) Provide a defense for any Insured, but not pay any Damages, fines, or penalties which may be imposed on such Insured, with respect to any Claim made by an employee of such Insured Organization which arises out of (I) the bodily injury, sickness, disease, or death of any person, or injury to or destruction of any tangible property or loss of use resulting therefrom (ii) the violation of any workers compensation, unemployment compensation, employer liability, disability benefit, or other similar laws, or (iii) the assertion that any work premises, tools or practices must be rebuilt, removed, modified, or otherwise changed in order to accommodate the needs of disabled persons,

and FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD; PROVIDED ALWAYS THAT such alleged, or actual act, error, or omission, which is the basis of such Claim happens subsequent to the retroactive date specified in the Evidence of Insurance, and

- (a) During the Policy Period, or
- (b) Prior to the Policy Period, *provided that* prior to the Effective Date of such Evidence of Insurance:
 - (i) The Insured did not give notice to any other insurer of any such act, error or omission
 - (ii) The Insured had no reasonable basis to believe that the Insured had committed any act, error or omission, which would give rise to a Claim or to foresee that a Claim would be made against the Insured and
 - (iii) There is no other policy or policies which provide insurance for such liability or Claim, unless the available limits of liability of such prior policy or policies are insufficient to pay any liability or claim, in which event this policy will cover only the excess over any such prior coverage, subject to this policy's terms, limits of liability, exclusions and conditions.

The costs of providing such defense shall constitute Claim Expenses for purposes of this policy, and such claim of employment liability shall be deemed to be a Claim for purposes of the application of the defense, settlement, and other general provisions of this policy; *provided, however, that*, notwithstanding any other provision hereof which might be construed to the contrary, the Company shall not be liable for any Damages, fines or penalties which may be imposed on the Insured by reason of a Claim under Section I.E(2) above.

It is a condition precedent to coverage under this policy that all Claims be reported in compliance with Article V, CLAIMS, Section V.A. Notice of Claim.

F. Defense Settlement

With respect to the insurance afforded by this policy, the Company shall defend any Claim against the Insured, including the appeal thereof, seeking Damages to which this insurance applies even if any of the allegations of the suit are groundless, false, or fraudulent. It is further agreed that the Company may make such investigation of any Claim as it deems expedient, but the Company shall not be obligated to pay any claim or judgement or to defend, or to continue to defend any Claim after the limits of the Company's liability have been exhausted by payment of any Damages or Claims Expenses.

G. Consent to Settle

The Company shall not settle any Claim without the consent of the Insured, unless otherwise agreed between the Company and the Insured; *provided, however, that* if the Insurance shall refuse to consent to any settlement or compromise recommended by the Company and shall elect to contest the Claim or continue any legal proceedings in connection with such Claim, then the Company's liability for the Claim shall not exceed and shall be limited to, the amount for which the Claim could have been settled, or compromised, plus the amount of Claim Expenses incurred up to the date of such refusal. Thus, in the event of such refusal, when and if the Claim Expenses with respect to the Claim equal the amount for which the Claim could have been settled or compromised, the Company shall have the right to withdraw from the further investigation and/or defense thereof by tendering control of such investigations or defense to the Insured, and the Insured agrees, as a condition of the issuance of this policy, to accept such tender.

H. Discovery Clause

If, during the Policy Term or any optional Extended Claims Reporting Period purchased hereunder, the Insured first becomes aware that an Insured has committed a specific act, error, misstatement, misleading statement, breach of duty, omission, or Personal Injury for which coverage is otherwise provided hereunder, and if the Insured shall, during the Policy Period or the optional Extended Claims Reporting Period purchased hereunder, give notice to the Company of:

- (1) The specific act, error, misstatement, misleading statement, breach of duty, omission, or Personal Injury,
- (2) The injury or damage which has or may result from such act, error, misstatement, misleading statement breach of duty, omission, or Personal Injury, or
- (3) The circumstances by which the Insured first became aware of such act, error, misstatement, misleading statement, breach of duty, omission, or Personal Injury

then any Claim that may subsequently be made against the Insured arising out of such alleged or actual act, error, misstatement, misleading statement, breach of duty, omission, or Personal Injury shall be deemed for the purposes of this insurance to have been made during the Policy Period or during the optional Extended Claims Reporting Period purchased hereunder.

The insured shall cooperate fully with the Company as provided in Article V, CLAIMS, Sections V.A. and V.B. Notice of Claim and Assistance and Cooperation of the Insured, and any investigation conducted by the Company or its representatives shall be subject to the terms set forth in this policy.

I. Extended Claims Reporting Period

- (a) The Insured Organization shall have a non-cancelable Extended Claims Reporting Period of thirty (30) days starting at the expiration of coverage shown in Item 3 of the Evidence of Insurance, provided the Named Insured has purchased no other coverage to replace this policy.
- (b) OPTIONAL EXTENDED CLAIMS REPORTING PERIOD: If the Named Insured does not renew this policy, or if any Insured Organization does not renew its coverage under the Evidence of Insurance applicable to such Insured Organization, as the case may be, after complying with all the terms and conditions thereof, including the payment of all premiums and/or deductibles when due, or if the Company shall cancel or refuse to renew this policy or the coverage of an Insured Organization under an Evidence of Insurance for reasons other than the Named Insured's or Insured Organization's non-payment of premiums and/or deductibles or material breach of the terms and conditions of this policy, or the applicable Evidence Insured Organization, upon payment of an additional premium as set forth herein shall have the option to extend the insurance afforded by this policy and any applicable Evidence of Insurance, subject otherwise to the terms, limits of liability, exclusions and conditions thereof, to apply to CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING A 12 MONTH PERIOD following immediately upon the effective date of such cancellation or termination, but only by reason of any alleged or actual act, error, omission or Personal Injury arising out of professional services rendered, before such effective cancellation or termination date and otherwise covered by this insurance.

If purchased, the extension of coverage for claims made subsequent to cancellation or termination of the policy or an Evidence of Insurance, as applicable, shall be endorsed hereto or upon the applicable Evidence of Insurance, and shall hereinafter be referred to as the "**Extended Claims Reporting Period**".

The premium for the Optional Extended Claims Reporting Period elected by the Named Insured or the applicable Insured Organization shall be calculated at 100% of the full annual premium stated in the applicable Evidence of Insurance for the 12 month Period.

As a condition precedent to the Named Insured's or Insured Organization's right to purchase the optional Extended Claims Reporting Period coverage, the full annual premium for this policy or the applicable Evidence of Insurance and any deductible that are due must have been paid.

The Named Insured's or Insured Organization's right to purchase the Optional Extended Claims Reporting Period coverage must be exercised by written notice to the Company not later than thirty (30) days after the cancellation or termination date of this policy or any Evidence of Insurance, as applicable, AND MUST INCLUDE PAYMENT OF PREMIUM FOR THE OPTIONAL EXTENDED CLAIMS REPORTING PERIOD as well as payment of all premiums and/or deductibles due the Company.

If such notice, premium and deductible payments are not so given to the Company, the Named Insured or Insured Organization shall not at a later date be able to exercise such right.

At the commencement of the optional Extended Claims Reporting Period, the entire premium therefor shall be deemed earned and in the event that the Named Insured or Insured Organization terminates the optional Extended Claims Reporting Period before its term for any reason, the Company shall not be liable to return to the Named Insured or such Insured Organization any portion of the premium for the optional Extended Claims Reporting Period.

The fact that the period during which Claims must be first made against the Insured and reported to the Company under this policy extended by virtue of the optional Extended Claims reporting Period shall not in any way increase the limits of liability of this policy.

Article II **DEFINITIONS**

- A. Named Insured**, whenever used in this policy, means the CIMA Liability Protection Program for Legal Services and Defender Services Professionals and Specified Insured Organizations.
- B. Insured**, whenever used in this policy means:
- (1) the Named Insured;
 - (2) Any Insured Organization
 - (3) Any Lawyer while acting in a professional capacity on behalf of the Named Insured, or an Insured Organization;
 - (4) Solely for purposes of the Professional Liability coverage and Outside Referral Coverage provided for under Section I.A of this Policy, any Lawyer while acting in a professional capacity performing Legal Aid Services or Defender Services on behalf of any client referred to such Lawyer by the Named Insured or the applicable Insured Organization, whether or not compensation is received for such services, but, notwithstanding anything in this policy which might be construed to the contrary no outside Lawyer shall be deemed to be an Insured with respect to any matter not considered Legal Aid Services, Defender Services or Mediation Services;
 - (5) Any non-Lawyer who is, was or hereafter becomes an employee of the Insured or any Insured Organization solely while acting in such capacity;
 - (6) Any person who is, was, or hereafter becomes an uncompensated, part-time or full-time volunteer of an Insured Organization solely while acting in such capacity;
 - (7) Any person who is, was, or hereafter becomes a director or trustee of the Named Insured or any Insured Organization; and

(8) As respects the liability of each Insured otherwise covered herein, the heirs, executors, administrators, assignees, and legal representatives of each Insured in the event of such Insured's death, incapacity, or bankruptcy.

C. Insured Organization, whenever used in this policy, means any legal services or defender services organization named in an Evidence of Insurance issued pursuant to this policy.

D. Claim, whenever used in this policy, means a demand received by the Insured for money or services, including the service of suit or institution of arbitration proceedings against the Insured.

E. Claim Expenses, whenever used in this policy, means:

- (1) fees charged by any lawyer designated by the Company;
- (2) all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a claim, if incurred by the Company;
- (3) Fees charged by any lawyer designated by the Insured with the written consent of the Company;
- (4) Premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, and all premiums on appeal bonds required in any such defended suit, but without any obligation on the Company to apply for or furnish any such bonds; and
- (5) All costs assessed against the Insured in any such defended suit and all interest accruing after entry of judgement until the Company has paid or tendered or deposited in court such part of such judgement as does not exceed the limit of the Company's liability thereon.

However, "Claim Expenses" does not include salary charges of regular employees or officials of the Company or any supervisory counsel retained by the Company.

F. Damages, whenever used in this policy, means a monetary judgment, award or settlement and does not include fines, statutory penalties, or sanction, whether imposed by law or otherwise, nor the return of or restitution of legal fees, costs, and expenses.

G. Disciplinary Proceeding, whenever used in this policy, means any proceeding against an Insured by or before any judicial or regulatory authority (including any state bar association) based upon or arising out of an asserted violation,

breach, or infraction of any code of professional conduct or ethics arising out of the conduct of the Insured's profession as an attorney or notary public.

- H. Lawyer**, whenever used in this policy, means any person who is authorized to practice law in the jurisdiction in which such person renders Legal Aid Services, Defender Services, or other professional services.
- I. Legal Aid Services**, whenever used in this policy, means legal services or legal advice in matters provided by an Insured to a client who is unable to afford legal assistance elsewhere for financial or other reasons.
- J. Management**, whenever used in this policy with respect to the Named Insured or any Insured Organization, means any officer, director, trustee, manager, or other person or groups of persons who control, direct, administer, or manage such Named Insured or Insured Organization.
- K. Outside Practice of Law**, whenever used in this policy with respect to any particular Insured Lawyer, means the uncompensated provision of legal services or legal advice to a client who is not entitled to receive Legal Aid Services or Defender Services from the Insured Organization which employs the Lawyer, if (i) the provision of such services has been duly authorized by such Insured Organization and (ii) the Lawyer is acting pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in the Lawyer's jurisdiction or on behalf of a close friend or family member or a religious, community or charitable group.
- L. Personal Injury**, whenever used in this policy, means:
- (1) any false arrest, detention or imprisonment
 - (2) any wrongful entry or eviction, or other invasion of private occupancy;
 - (3) any malicious prosecution;
 - (4) any publication or utterance of a libel or a slander or other defamatory or disparaging material;
 - (5) any publication or utterance in violation of an individual's right of privacy; or
 - (6) any mental distress, mental anguish, mental illness or humiliation
- M. Policy Period**, whenever used in this policy, means the period from the inception date of this policy to the policy expiration date as set forth in the Master Policy Declarations or its earlier termination date, if any; provided, however, with respect to any Evidence of Insurance as to which the Period of Coverage (subject to any early termination in accordance with this policy)

extends past the end of what would otherwise be the Policy Period, the Policy Period shall be deemed to continue throughout such Period of Coverage.

- N. Defender Services**, whenever used in this policy, means legal services or legal advice in matters provided by an Insured to a client accused of a crime who is unable to afford legal assistance elsewhere for financial or other reason.
- O. Mediation Services**, whenever used in this policy, means professional services provided by the Insured Organization, whether by an Insured Lawyer or non-attorney employed by the Insured Organization, for the purpose of attempting to mediate or resolve a dispute between two or more parties, neither of whom is the client of the Insured Organization Insured Lawyer.

Article III **LIMITS OF LIABILITY**

A. Limit of Liability - Each Claim

The liability of the Company for payment of Damages, including Claim Expenses, incurred for each Claim **FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD**, including the Extended Claims Reporting Period, if purchased, shall not exceed the amount stated in the applicable Evidence of Insurance for each Claim.

B. Limit of Liability - Aggregate

The liability of the Company for payment of all Damages, including all Claim Expenses, shall not exceed the amount stated in the applicable Evidence of Insurance as “aggregate” as a result of all Claims **FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD**, including the Extended Claims Reporting Period, if purchased.

C. Deductible

The deductible amount stated in the Evidence of Insurance shall be paid by the applicable Insured Organization and shall be applicable to all Damages and Claim Expenses, whether or not payment for Damages is made.

The total payments requested from an Insured Organization with respect to all covered Claims reported during the Policy Period or any Optional Extended Claims Reporting Period shall not exceed the deductible amount stated in the applicable Evidence of Insurance.

D. Multiple Insureds, Claims and Claimants

The limits of liability set forth herein and in each Evidence of Insurance issued by the Company pursuant to this Policy shall be applied, separately as to the

applicable Insured Organization with respect thereto and shall not be reduced or otherwise affected by the limits of liability applicable to any other Insured Organization. The inclusion herein or more than one Insured or the making of Claims or the bringing of suits by more than one person or organization shall not operate to increase the Company's limit of liability per Insured Organization. Two or more claims arising out of a single alleged or actual act, error, omission or Personal Injury, or a series of related alleged or actual acts, errors, omissions or Personal Injuries, shall be treated as a single Claim with respect to each Insured Organization affected. All such claims, whenever made, shall be considered first made at the time the earliest Claim arising out of such alleged or actual act, error, omission, or Personal Injury, or related acts, errors, omissions, or Personal Injuries, was first made, and all such claims shall be subject to the same limits of liability with respect to each applicable Insured Organization.

E. Payment and Apportionment of Claim Expenses

All Claim Expenses shall first be subtracted from the limit of liability, with the remainder, if any, being the amount available to pay as Damages.

**Article IV
EXCLUSIONS**

A. This policy does not apply:

- (1) to any judgment or final adjudication based upon or arising out of any dishonest, deliberately fraudulent, criminal, maliciously or deliberately wrongful acts, errors, omissions, or Personal Injuries committed by the Insured or asserting a violation of the Racketeer Influenced and Corrupt Organizations ("RICO") Act or similar laws; *provided, however, that*, subject to the limits of liability under this policy, the Company will provide a defense against the allegation of any such act, error, omission, or Personal Injury unless an unfavorable adjudication of such allegation is entered against the Insured;
- (2) to any claim made by or against any business enterprise not named in the Evidence of Insurance, which is owned by the Insured or in which the Insured is a partner or employee, or which is controlled, operated, or managed by the Insured, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or to any Claim made against the Insured solely because the Insured is a partner, officer, director, stockholder or employee of any business enterprise not named in the Evidence of Insurance;
- (3) To liability arising out of the Insured's activities and/or capacity as:
 - (a) An owner, officer, director, partner, trustee or employee of a business enterprise, charitable organization, pension, welfare,

profit-sharing, mutual or investment fund or trust or other organization, other than the Named Insured or an Insured Organization to the extent that the optional Management Liability Coverage, if obtained, is applicable:

- (b) A fiduciary under the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto, except if an Insured is deemed to be a fiduciary solely by reason of legal advice rendered with respect to an employee benefit plan. This exclusion shall not apply to the optional Employment Liability coverage, if purchased, and if coverage is applicable thereunder;
- (4) To any Claim made by a present, former, or prospective partner, officer, director, trustee, stockholder, or employee of the Insured unless such Claim arises out of the professional services of the Insured in a lawyer-client relationship, except to the extent that the optional Employment Liability Coverage, if obtained, is applicable;
- (5) To any Claim based upon or arising out of the employment practices of the Insured, such as those with respect to employment, retention and termination except to the extent that the optional Employment Liability Coverage, if obtained, is applicable;
- (6) To punitive damages, exemplary damages, treble damages, or any other damages resulting from the multiplication of compensatory damages, except to the extent otherwise set forth in the Evidence of Insurance applicable to an Insured (in which event the specific sublimits of liability set forth therein shall apply, but only where the insurability of such damages are not in violation of any statutes, laws or public policy);
- (7) To any liability for bodily injury, sickness, disease or death of any person, or injury to or destruction of any tangible property or loss of use resulting therefrom;
- (8) To any Claim asserting a violation of any workers compensation, unemployment compensation, employer liability, disability benefit, or other similar laws;
- (9) To any Claim by one Insured against any other Insured, except to the extent that the optional Employment Liability Coverage, if obtained, is applicable;
- (10) To any liability under any contract or agreement except an engagement contract or agreement providing for the provision of Legal Aid Services or Defender Services by an Insured Organization to its client and except to the extent that the optional Employment Liability Coverage, if obtained, is applicable;

- (11) To any Claim based upon or arising out of professional services rendered or work performed by any Insured for compensation, except when these professional services rendered or work performed is for Legal Aid Services or Defender Services;
- (12) To any Claim for the return or an accounting of any funds *provided, however, that* subject to the limits of liability under this policy, the Company will provide a defense against such Claim;
- (13) To any Claim based upon or arising out of the alleged nonpayment of any federal, state or local taxes, or any penalties, interests, or costs in connection therewith;
- (14) To fines, penalties, sanctions, costs, or fees imposed by a court for the violation of the rules of procedure, state or federal, *provided, however, that* the Company shall provide a defense against the imposition of any such fines, penalties, sanctions, costs, or fees to the extent provided in this policy with respect to the Disciplinary Proceedings and except to the extent otherwise set forth in the Evidence of Insurance applicable to an Insured as to the defense of contempt proceedings (in which event, the specific sublimits of liability set forth therein shall apply).
- (15) To any liability of any Insured resulting from or in any manner related to an individual's right to or claimed right to unemployment insurance benefits. Such liability to which this Policy does not apply includes but is not limited to the following:
 - (1) Any increased tax liability resulting from an individual's claim for unemployment benefits; and
 - (2) Any increased liability for insurance premium(s) resulting from an individual's claim for unemployment benefits.

If the optional Employment Liability Coverage is purchased, Exclusion (13) will apply only to the payment of damages, awards, or settlements resulting from such claims but the Company will defend the Insured Organization against such claim. The limit of liability applicable for this coverage will be the amount set forth in the Evidence of Insurance for Employment Liability.

For the purpose of determining the application of any of the foregoing exclusions, the alleged or actual act, error, omission, or Personal Injury of any one Insured shall not be imputed to any other Insured.

Article V
CLAIMS

A. Notice of Claim

As a condition precedent to the right to the protection afforded by this insurance, the Insured shall, as soon as practicable, give to the Company written notice of any Claim made against the Insured.

In the event suit is brought against the Insured, the Insured shall immediately forward to the Company every demand, notice, summons, or other process received directly or by the Insured's representatives.

An Insured Organization shall have knowledge of a Claim against it, or of any demand, notice, summons, or other process received by it, only if an executive officer of such Insured Organization has actual knowledge of such Claim or receipt.

B. Assistance and Cooperation of the Insured

The Insured shall cooperate with the Company and upon the Company's request shall submit to examination and interrogation by a representative of the Company, under oath if required, and shall attend hearings, depositions and trials and shall assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits, as well as in the giving of a written statement or statements to the Company's representatives and meeting with such representatives for the purpose of investigation and/or defense, all without charge to the Company. The Insured shall further cooperate with the Company to secure and effect any rights of indemnity, contribution, or apportionment which the Insured may have. The Insured shall exercise the Insured's right to either reject or demand the arbitration of any Claim made against the Insured in accordance with the written instructions of the Company. The Insured shall not, except at his own cost, make any payment, admit any liability, settle any claims, assume any obligation or incur any expense without the written consent of the Company.

C. Subrogation

In the event of any payment under this policy, the Company shall be subrogated to all the Insured's rights of recovery therefor against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after the claim to prejudice such rights.

The Company shall not exercise any such rights against any persons, firms, organizations or corporations included in the definition of "Insured". Notwithstanding the foregoing, however, the Company reserves the right to exercise any rights of subrogation against an Insured in respect of any claim brought about or contributed to by the intentional, dishonest, fraudulent, criminal or malicious act or omission of such Insured.

D. Joining of Company as Co-Defendant; Bankruptcy of Insured

Nothing contained in this policy shall give any person or organization the right to join the Company as a co-defendant in any action against the Insured to determine the Insured's liability.

Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder.

E. False or Fraudulent Claims

If any Insured shall commit fraud in proffering any claim as regards amount or otherwise, this insurance shall become void as to such Insured from the date such fraudulent claim is proffered.

Article VI
CONDITIONS

A. Other Insurance

This insurance shall be in excess of the amount of the applicable deductible of this policy and any other valid and collectible insurance available to the Insured, whether such other insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such other insurance is written only as a specific excess insurance over the limits of liability provided in this policy.

B. Changes

The terms of this policy shall not be changed, except by endorsement issued to form a part of this policy.

Notice to and knowledge of an agent of the Company shall be considered notice to and knowledge of the Company, and any fact which breaches a condition of this policy and is known to the agent prior to a loss shall not void this policy or defeat a recovery hereunder in the event of loss.

C. Assignment

Assignment of interest under this policy shall not bind the Company unless its consent is endorsed in writing hereon.

D. Cancellations

This policy or an Evidence of Insurance may be cancelled by the Named Insured or by an Insured Organization, as applicable, by surrender of this policy or the Evidence of Insurance, as applicable, to the Company or by mailing or delivering to the Company written notice stating when thereafter such cancellation shall be effective. If cancelled by an Insured, the Company shall retain the customary short rate proportion of the premium.

If this policy or an Evidence of Insured has been in effect for 60 days or less, the Company may cancel this policy or such Evidence of Insurance by mailing or delivering to the Named Insured or Insured Organization as applicable, written notice of cancellation stating the reason for the cancellation. Such notice shall be mailed or delivered at least 10 days before the effective date of cancellation if the Company cancels for nonpayment of any premium or deductible when due, or at least 60 days before the effective date of cancellation if the Company cancels for any other reason.

If this policy or an Evidence of Insurance has been in effect for more than 60 days or is a renewal of a policy or Evidence of Insurance the Company issued, the Company may cancel this policy or such Evidence of Insurance only for one or more of the following reasons by mailing or delivering to the Named Insured or Insured Organization, as applicable, written notice of cancellation stating the reason for the cancellation:

- (1) Nonpayment of any premium or deductible when due;
- (2) Discovery of fraud or material misrepresentation made by an Insured or with an Insured's knowledge in obtaining, continuing or presenting a Claim under the policy or Evidence of Insurance, as applicable.

Such notice shall be mailed or delivered at least 10 days before the effective date of cancellation if the Company cancels for nonpayment of any premium or deductible when due, or at least 60 days before the effective date of cancellation if the Company cancels for any other reason.

If cancelled by the Company, earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter.

The effective date of cancellation stated in any notice of cancellation by the Insured or the Company shall become the end of the Policy Period.

E. Service of Suit (Not applicable in NJ, PA, DC, LA or IL)

It is agreed that in the event of the failure of the Company to pay any amount Claimed to be due hereunder, the Company, at the request of the Insured, will submit to the jurisdiction of any court of competent jurisdiction within the United States of America or Canada and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such court.

It is further agreed that service of process in such suit may be made upon John Hubbuch or his nominee at McCullough, Campbell & Lane, 205 North Michigan Ave, Suite 4100, Chicago, Illinois, 60601-5925, and that in any suit instituted against any one of them upon this policy, this Company will abide by the final decision of such court or any appellate court in the event of an appeal.

The above named is authorized and directed to accept service of process on behalf of the Company in any such suit and/or upon the request of the Insured to give a written undertaking to the Insured that it or they will enter a general appearance upon this Company's behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States of America or province of Canada which makes provision therefor, the Company hereby designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this policy of insurance and hereby designates the above-named as the person to whom the said officer is authorized to mail such process or true copy thereof.

F. Notices

All notices or other communications required by this policy shall be addressed as follows:

- (1) If to the Company:

XS/Group, Inc.
2750 Killarney Drive, Suite 202
Woodbridge, VA 22192

- (2) If to any Insured:

At the address for such Insured stated on the applicable Evidence of Insurance or at the last address for such Insured designated by written notice to the Company

G. Territory

The insurance afforded under this policy applies worldwide.

H. Innocent Insured

Whatever coverage under this Policy would be excluded, suspended or lost:

- (1) because of any exclusion relating to criminal, dishonest, fraudulent, malicious or intentional conduct by any Insured, and with respect to which any other Insured did not personally participate or personally acquiesce or remain passive after having personal knowledge thereof: or
- (2) because of noncompliance with any condition related to the giving of notice to The Company, with respect to which any Insured shall be in default solely because of the default or concealment of such default by one or more other Insureds hereunder;

The Company agrees that such insurance as would otherwise be afforded under this Policy shall be applicable with respect to each and every Insured who did not personally participate or personally acquiesce in or remain passive after having personal knowledge of the conduct described or forming the basis for such exclusion or condition; provided that if the condition be one with which such Insured can comply, after receiving knowledge thereof, the Insured entitled to the benefit of this provision shall comply with such condition promptly after obtaining knowledge of the failure of any other Insured to comply therewith.

IN WITNESS WHEREOF, the Company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned on the Master Policy Declarations Page by a duly authorized representative of the Company.

UNDERWRITERS AT LLOYD'S, LONDON

By: *Laurie S. Coleman*
Authorized Representative