

August 28, 2018

The Honorable Mary E. Fairhurst, Chief Justice
Washington State Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, Washington 98504-0929

Re: Limited Practice Officer – Client Protection Fund Assessment

Dear Justice Fairhurst:

I wrote to you concerning the proposed annual license fees for limited practice officers recommended by the Board of Governors of the Washington State Bar. I am writing separately to address a related issue, the \$30 LPO annual assessment for the Client Protection Fund maintained by the WSBA. As noted in the material submitted with my other letter, the recommendation to the BOG by the Budget and Audit Committee of the WSBA was not to assess the client security fee. The BOG decided not to follow this recommendation.

The recommendation to the BOG took into account the unique position of LPOs in the Washington regulatory landscape. LPOs are employed by title insurance companies, financial institutions and escrow companies. These entities are independently regulated by either the Office of the Commissioner of Insurance or the Department of Financial Institutions and are subject to specific statutory provisions concerning financial responsibility to protect the public. The BOG ignored these factors in proposing the assessment and assumed LPOs were in the same situation as practicing attorneys with respect to adequacy of financial reserves to protect clients. This was an erroneous assumption and not factually supported.

Escrow companies, governed by Chpt. 18.44 RCW, are required to maintain a fidelity bond in the amount of \$1 million (RCW 18.44.201(1)(a)) covering all employees, including LPOs; errors and omissions coverage not less than \$50,000 (RCW 18.44.201(1)(b)) and a separate \$10,000 bond to cover any other loss (RCW 18.44.201(1)(c)). Title insurance companies are subject to supervision of the Office of the Insurance Commissioner and are subject to extensive supervision and regulation to maintain adequate financial reserves for their operations. Maintaining mandated financial protection involves significant costs to these entities, but also provides protection to the members of the public dealing with escrow companies, title insurers and their LPO employees. Frankly, the level of public protection afforded by these alternative regulatory schemes is greater than that afforded under the CPF.

Attorneys do not bear the cost of mandatory bonds, errors and omissions insurance and financial reserves. As a means to provide some limited protection for the public dealing with attorneys, the Supreme Court has mandated the maintenance of the client protection fund. Given the regulatory framework applicable to LPOs, this method of client protection is duplicative and unnecessary. The

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BOGs proposal has the effect of imposing duplicative costs on LPOs in excess of costs imposed on practicing attorneys.

The potential exposure of the client protection fund to claims arising from LPOs is entirely the result of the BOG sponsored amendments to APR 15 making the client protection fund subject to claims from clients harmed by LPOs effective September 1, 2017. Although policy by anecdote is not necessarily the best practice, it is worth noting there is no record of unpaid client losses resulting from LPO defalcations. Given the financial resources available for client protection imposed by other regulatory bodies, there is no indication the client protection fund will ever be exposed to any losses as a result of LPO activity.

In light of these factors, the initial recommendation to the BOG should be adopted and the client protection fund assessment should not be applicable to LPOs.

Thank you again for your consideration.

Very truly yours,



Shelley Miner, Chair
Limited Practice Board

cc: William D. Pickett, President WSBA
Paula Littlewood, Executive Director WSBA

