

# WASHINGTON STATE BAR ASSOCIATION

## BOARD OF GOVERNORS SPECIAL MEETING

Public Session Minutes

Seattle, WA

April 22, 2019

The Special Public Session Meeting of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Bill Pickett on Monday, April 22, 2019, at 1:05 p.m. Governors in attendance were:

Daniel D. Clark (phone)  
Peter J. Grabicki  
Carla Higginson  
Kim Hunter (phone)  
Chris Meserve  
Kyle D. Sciuchetti  
Alec Stephens  
Paul Swegle  
Judge Brian Tollefson (ret.)

Also in attendance were Interim Executive Director Terra Nevitt, Associate Director of the Office of General Counsel Lisa Amatangel, Chief Disciplinary Counsel Doug Ende, Director of Human Resources Frances Dujon-Reynolds, and Disciplinary Program Manager Thea Jennings. President-elect Rajeev Majumdar and Governors Dan Bridges, Jean Kang, Russell Knight, and Athan Papailiou were not present for the meeting.

### **PURPOSE OF MEETING**

President Pickett announced that the purpose of this special meeting was to listen to members and the public regarding the Mandatory Malpractice Insurance Task Force Report in advance of the Board taking action on the recommendations during the May 16-17, 2019, Board meeting in Yakima. Members and the public were invited to provide direct comments to the Board and raise questions and concerns about the Report and its recommendations. President Pickett then opened the meeting to public comment.

## **COMMENTS AND DISCUSSION**

The Board took comments from a variety of speakers, including some opposed to the concept of mandatory malpractice insurance; some, including a member of the public, who spoke in support of the proposal; and others who shared ideas for alternative models, exemptions, and next steps.

### **1. Comments in Opposition to Mandatory Malpractice Insurance**

Those who spoke in opposition to mandatory malpractice insurance included retired/semi-retired lawyers, non-practicing lawyers, lawyers with limited practices, solo practitioners, practitioners in high-risk practice areas, and other concerned lawyers. Commentary in opposition to the Task Force recommendations included the following areas of concern:

- Cost having a disparate impact on solo practitioners;
- Uninsurability due to legal specialty;
- Prohibitively expensive for certain practice areas;
- Retired/semi-retired/retiring attorneys or those with a limited practice would no longer be able to practice;
- Lawyers providing pro bono services to nonprofits or clients not obtained through qualified legal services providers would be adversely impacted;
- Lack of representation by uninsured lawyers in private practice on the Task Force;
- Incorrect and/or insufficient data used in the report; more evidentiary support needed;
- Inadequate consideration or responsiveness by Task Force to comments;
- Feedback to the Task Force miscategorized.
- Adverse impact on access-to-justice;
- Captive market would be created resulting in increased price of professional liability insurance for all lawyers in Washington state; and
- Insurers would effectively determine who may practice law.

### **2. Comments in Support of Mandatory Malpractice Insurance**

Those who spoke in support of the proposal included a law professor, several plaintiffs' legal malpractice lawyers, a member of the public, and several Task Force members. Commentary in support of the Task Force recommendations included the following topics:

- Lawyers, as fiduciaries, should be obligated to maintain insurance to protect special relationship with clients;
- Among a lawyer’s professional duties is the duty to protect clients from the lawyer’s own mistakes;
- Mandating basic coverage is an access-to-justice issue;
- Mandatory insurance would improve the image of the profession and public confidence in professional self-governance;
- Plaintiffs legal malpractice lawyers report turning down potentially meritorious cases because the defendant lawyer was uninsured, demonstrating that some harm is caused by uninsured lawyers, but the magnitude of harm is difficult to quantify;
- When uninsured lawyers are sued for malpractice, they may hide assets or threaten bankruptcy, rendering such lawyers effectively judgment proof;
- Claims submitted to the Client Protection Fund and similar funds in other jurisdictions do not provide any remedy for allegations of malpractice;
- Disclosure mechanisms are inadequate because most clients assume lawyers are insured and thus do not look for such information, and clients may not understand the consequences of the lack of insurance; and
- Insurance industry professionals reported to the Task Force that all lawyers should be able to obtain insurance, although higher risks would be charged higher premiums and might need to insure on secondary (“surplus line”) markets. Additionally, no Idaho lawyer has reported to the Idaho State Bar being unable to obtain insurance.

### **3. Ideas for Alternative Models, Exemptions, and Next Steps**

Several who spoke suggested that, as an alternative to a free market model, the Board should consider a mandatory disclosure rule to clients as a step towards addressing client protection concerns. Others suggested that if the recommendation is approved, a professional liability fund or captive insurer option would be a better solution since member concerns about uninsurability and cost could be addressed under those models. Additionally, many advocated for a self-insurance or alternate financial instrument option for those who are able to self-insure and for those unable to obtain insurance on the private market. Finally, some proposed a vote of the membership on this issue before the Board takes any action. The Board further expressed some

support for hearing from insurance industry professionals prior to taking action on the recommendations.

#### **4. Conclusion of Comment Period**

President Pickett thanked all speakers for their comments and input. He noted that the Board takes seriously the comments received and will consider them as it prepares to take its final action on the Report in May. Members and the public may submit written comments through May 1, 2019, at [insurancetaskforce@wsba.org](mailto:insurancetaskforce@wsba.org).

#### **ADJOURNMENT**

There being no further business before the Board in Special Meeting, the Special Meeting was adjourned at 5:35 pm.

Respectfully submitted,

*Terra Nevitt*

Terra Nevitt  
Interim WSBA Executive Director & Secretary