

MANDATORY MALPRACTICE INSURANCE TASK FORCE

MEETING MINUTES

January 30, 2019

Members present were Chair Hugh Spitzer, John Bachofner (by phone), Stan Bastian (by phone), Dan Bridges (by phone), Christy Carpenter (by phone), Gretchen Gale (by phone), PJ Grabicki (by phone), Lucy Isaki, Mark Johnson, Rob Karl, Kara Masters (by phone), Evan McCauley (by phone), Brad Ogura, Suzanne Pierce (by phone), Brooke Pinkham (by phone), Todd Startzel, and Stephanie Wilson. Annie Yu was unavailable and not present at the meeting.

Also present were Doug Ende (WSBA Staff Liaison and Chief Disciplinary Counsel), Thea Jennings (Office of Disciplinary Counsel Disciplinary Program Manager), Rachel Konkler (Office of Disciplinary Counsel Legal Administrative Assistant), Jean McElroy (WSBA Chief Regulatory Counsel), Sara Niegowski (WSBA Chief Communications and Outreach Officer), WSBA member Ken Pedersen (by phone), and WSBA member Inez Petersen (by phone).

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

A. UPDATES & INFORMATION

Doug Ende notified the Task Force that the State Bar of Georgia has convened a Professional Liability Insurance Committee to study and make recommendations concerning lawyer malpractice insurance coverage. Mr. Ende has also reached out to a staff liaison at the State Bar of California to request an update on its Malpractice Insurance Working Group.

B. MINUTES

The minutes of the November 28, 2018 were approved. The minutes of the December 19, 2018 meeting, which memorialized the lack of a quorum and thus lack of a meeting on that date, were deemed approved.

C. DISCUSSION OF REVISED DRAFT FINAL REPORT

The Task Force discussed and made edits to the draft final report, the final version of which will be presented to the Board of Governors at its March 7, 2019 meeting. Some of the changes include emphasizing the Task Force's position that the practice of law is a privilege, not a right, and that all clients deserve access to recompense, so that these key concepts are clear in the final report. The Task Force would also like the Summary section to include a reference to lawyer obligations as fiduciaries with ethical and legal duties to protect client interests and how these duties correspond with the duty to maintain insurance.



Additionally, the Task Force further asked the staff to update the report's information on Georgia's and New Jersey's efforts. The Task Force will also add an explanation of the categorization of the member comments it has received to clarify that the categorization of comments was subjective and conducted by staff at the request of the Task Force in an effort to aid the Task Force in examining the nearly 600 comments that it received.

The Task Force members further emphasized the importance of addressing the issue of lawyers whose practice is limited solely to pro bono services and who could potentially be impacted by mandatory malpractice. In its report, the Task Force has recommended that the WSBA develop a plan for assisting pro bono lawyers, and work with volunteer lawyer programs to increase the availability of malpractice insurance for pro bono lawyers.

D. COMMENTS RECEIVED BY THE TASK FORCE

A member inquired as to whether the Task Force considered recommending that the Board refer the issue to a vote of the WSBA membership. Task Force members responded that a recommendation on a membership vote is not within the scope of the Task Force's charter. Ultimately, the Board of Governors will determine how the Task Force's recommendations should be considered and acted upon.

Upon the Chair's request, and in response to members concerns about uninsurability, the Task Force deliberated over whether letters of credit or bonds could serve as alternative instruments to malpractice insurance. The majority of members were not in favor of recommending that these financial instruments be allowed to replace a malpractice insurance policy, and determined that letters of credits and bonds can be cumbersome, expensive, and do not include defense costs, which malpractice insurance policies do. Further, the evidence the Task Force has received does not suggest that individuals practicing in unique areas or with prior discipline or claims history will be uninsurable. Rather, these lawyers may be required to obtain coverage through the secondary market, albeit at a higher cost.

The Task Force has continued to receive additional comments from members past the December 1, 2018 deadline. Staff will continue to distribute the comments to the Task Force and post them on the WSBA website.

E. COMMUNICATION PLAN FOR FINAL REPORT

Sara Niegowski discussed the possible channels through which the Task Force and WSBA can continue to inform members and the public of the Task Force's recommendations. The Communications and Outreach department will consider various means of member outreach, including a *NWLawyer* article for its upcoming issue, a press release, publications in *Take Note*, and emails to the membership.

F. DISCUSSION OF DRAFT OF AMENDED APR 26

There were no changes to the draft proposed amended APR 26.

G. ADOPTION OF REPORT AND DRAFT APR 26

On a motion, the Task Force voted unanimously to adopt the final report and draft APR 26 for submission to the Board of Governors, subject to minor technical edits.¹

H. DISCUSSION OF POSSIBLE FEBRUARY MEETING AND MARCH BOG MEETING

Unless any Task Force members specifically request it, the Task Force will not need to conduct an additional meeting in February. However, the Task Force was informed that they may attend the March 7, 2019, Board of Governors meeting in Olympia to represent the Task Force in the audience and to support the Chair's presentation of the Task Force's Report. Staff will send out details regarding location and time as more information is available.

I. ADJOURNMENT

The meeting adjourned at 3:06 p.m.

¹ One Task Force member was absent from the January 30, 2019, meeting, so that Task Force member did not participate in the vote.