

WASHINGTON STATE
B A R A S S O C I A T I O N

Board of Governors Meeting
Supplemental Meeting Materials

June 26-27, 2020
Webcast & Teleconference

**BOARD OF GOVERNORS MEETING
Supplemental Materials
June 26-27, 2020
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TO: WSBA Board of Governors
FROM: Alec Stephens, Chair
Personnel Committee
DATE: June 17, 2020
RE: Final Score and Qualitative Statement of the Performance Assessment of the Interim Executive Director

Action: Provide a final score and qualitative statement of the Performance Assessment of the Interim Executive Director

Taking into consideration the Performance Assessment Ratings of by the Board of Governors, and the Executive Management Team, the final rating for the Interim Executive Director and qualitative statement regarding the Interim Executive Director are as follows:

Rating—4.2 Qualitative Statement—Exceeded Expectations

From: [Jean Y. Kang](mailto:Jean.Y.Kang)
To: [Shelly Bynum](mailto:Shelly.Bynum)
Subject: Fwd: New WSBA Rules for Attorney Discipline May Put Vulnerable Populations At Risk
Date: Friday, June 26, 2020 9:01:04 PM

Jean Y. Kang
Sent from my iPhone

Begin forwarded message:

From: <esteen@wscollablaw.com>
Date: June 25, 2020 at 12:33:31 PM PDT
To: <jkang@smithfreed.com>
Subject: **New WSBA Rules for Attorney Discipline May Put Vulnerable Populations At Risk**

EXTERNAL SENDER

Dear Ms. Kang:

The public deserves to be protected from lawyers who behave unethically or abusively. I am concerned, however, that the new rules proposed do not increase protection for the public.

Clients are often upset for reasons that have nothing to do with wrongdoing on the part of the attorney. Attorneys who serve low-income populations, or offer unbundled legal services intending to lower the cost of legal services, are often most at risk of complaints due to the volume of cases handled by low-cost service provide.

I am afraid that, rather than protect the public, the new rules will instead artificially inflate default rates for disciplinary complaints against the lawyers who are trying their hardest to help the Board's stated goal of increasing access to justice.

Please ask that the board have the opportunity to review these rules, and propose some changes that will protect the lawyers who are serving our state's most vulnerable populations.

Thank you,

Elizabeth Steen

206-747-3029

www.wscollablaw.com

Divorce Without Court: Westside Collaborative Law PLLC

From: [Jean Y. Kang](#)
To: [Shelly Bynum](#)
Subject: Fwd: New Disciplinary rules being sent to Supreme Court
Date: Friday, June 26, 2020 9:01:17 PM

Jean Y. Kang
Sent from my iPhone

Begin forwarded message:

From: Brett Herron <brett@bherronlaw.com>
Date: June 25, 2020 at 11:41:03 AM PDT
To: "Jean Y. Kang" <JKang@smithfreed.com>
Subject: New Disciplinary rules being sent to Supreme Court

EXTERNAL SENDER

Ms. Kang, I understand you are my designated BOG for my district. I am emailing you to urge you to voice your concern over the new proposed Lawyer Disciplinary Rules being sent to the Supreme Court without input from all of the stakeholders. I urge that the BOG not permit the proposed rules to be sent directly to the Supreme Court but instead form a committee to revise the current procedural rules.

Thank you for your prompt attention to this matter.

Brett

--

Brett B. Herron
Herron Law Office, PLLC
860 SW 143rd Street
Burien, WA 98166
425-451-8110



From: [Anne Seidel](#)
To: rajeev@whatcomlaw.com; kyle.s@millernash.com; bill@wdpickett-law.com; sunitha@amlawseattle.com; carla@higginsonbeyer.com; pjg@randalldanskin.com; BHMTollefson@outlook.com; pswegle@gmail.com; jkang@smithfreed.com; Kim Hunter; bryn.peterson@brynpetersonlaw.com; tomamcbride@gmail.com; habel@williamskastner.com; rknigh@smithalling.com; alecstephensjr@gmail.com; DanClarkBoG@yahoo.com
Cc: [Kurt Bulmer](#); "Wavecable"; [Doug Ende](#); [Terra Nevitt](#)
Subject: Proposed changes to lawyer discipline system rules
Date: Thursday, June 25, 2020 7:13:50 AM
Attachments: [Former chief disc cnsl ltr.pdf](#)

Dear Board of Governors Members,

Yesterday in looking through the materials for this week's BOG meeting, I noticed on the third page of the Interim Executive Director's report a status update about the draft rules for discipline and incapacity, which if adopted will institute a "substantially modified discipline system." The report states, "We anticipate these will be sent directly to the Court, and the WSBA as a whole will have its opportunity to comment during the comment period if accepted by the Court."

I am attaching a letter from three former Chief Disciplinary Counsel asking that the Board of Governors instead follow its usual procedure of vetting any proposed rules. We are hopeful that the Board will be able to address this important issue at the meeting beginning tomorrow, since the report suggests that otherwise, the proposed rules will be sent to the court this month.

Thank you.

Anne I. Seidel

Law Office of Anne I. Seidel
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Seattle, WA 98109
www.anneseidel.com Phone 206.284.2282 Fax 206.284.2491

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From: [Anne Seidel](#)
To: [KCBA Solo/Small Firms Discussion List](#)
Subject: making it easier for lawyers to lose their licenses
Date: Thursday, June 25, 2020 7:53:34 AM
Attachments: [Former chief disc cnsl ltr.pdf](#)

Dear Colleagues,

Particularly since solo and small firm lawyers are more likely to be subject to grievances and discipline, I wanted to let those on this list know about a recent disturbing development about lawyer discipline cases. The Office of Disciplinary Counsel has come up with a new set of procedural rules that make it easier for them to take away lawyers' licenses. The last time there was a rewrite of the procedural rules, it was done by a committee composed of all stakeholders to the process (Disciplinary Board, hearing officers, Supreme Court, ODC, respondent counsel and the public). This time, only bar employees were involved in drafting the changes. They had a group of "stakeholders" they selected to provide feedback but it was up to ODC to decide whether to make any changes.

In the past, any rule changes proposed by WSBA would be discussed at two or more Board of Governors meetings, allowing an opportunity for WSBA members to provide feedback. I just learned yesterday afternoon when looking through the meeting materials for tomorrow's BOG meeting that instead, the rules are going to be sent directly to the Supreme Court. This will deprive WSBA members of any opportunity to comment on the rules before the Court receives them.

There are many changes that are concerning. For example, currently, if a lawyer does something wrong that's not very serious, a review committee has the option of dismissing the grievance and issuing a private advisory letter. That is eliminated. The review committees also now have the authority to order an admonition, which is the lowest form of discipline, and the lawyer can either accept that or ask for a hearing. That process is also eliminated, meaning if ODC doesn't agree that an admonition is appropriate, the lawyer would have to go through the time and expense of a hearing. As discussed in the attached letter, the currently lopsided discovery rights will be even more unfair to respondent lawyers. As another example, the new rules make it even easier for ODC to take away a lawyer's license on an interim basis when it claims the lawyer is incapacitated by shifting the burden of proof to the respondent lawyer. In any other context, it would be considered disability discrimination to deprive someone of their livelihood based solely on a diagnosis.

I'm attaching a letter that two other former Chief Disciplinary Counsel and I sent this morning to the Board of Governors. I don't have the version of the proposed rules with the changes ODC made as a result of the stakeholder comments (I understand ODC refused to provide that to the stakeholders) but if anyone wants to see the proposed rules that went to the stakeholders along with ODC's explanations, please let me know.

I urge anyone concerned to either contact their governor or attend tomorrow's virtual meeting and ask that the BOG not permit the proposed rules to be sent directly to the Supreme Court but instead form a committee to revise the current procedural rules.

The governors are listed here: <https://www.wsba.org/about-wsba/who-we-are/board-of->

[governors/governor-bios](#) . Your district depends on your home address.

Information about joining tomorrow's BOG meeting is here: <https://www.wsba.org/about-wsba/who-we-are/board-of-governors>

Thanks,
Anne

Anne I. Seidel

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King County Bar Association
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listnm=solosmallfirms&emailad=kim@khunterlaw.com](http://www.kcba.org/unsubscribe.aspx?listnm=solosmallfirms&emailad=kim@khunterlaw.com)

From: [Lee Thomas](#)
To: [Kim Hunter](#)
Subject: Lawyer Discipline Changes
Date: Thursday, June 25, 2020 11:54:53 AM
Attachments: [Former chief disc cnsl ltr.pdf](#)

Ms. Hunter – As my District 8 BOG representative, I would like to forward you the attached which I wholeheartedly agree with. I hope you will give this letter consideration in your upcoming BOG meeting.

Best,

Lee S. Thomas

Harpold Thomas, PC

1851 Central Pl. S., Ste. 203

Kent, WA 98030

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Harpoldlaw.com

June 25 2020

Board of Governors
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle WA 98101

Dear Board of Governors:

The three of us are all former Chief Disciplinary Counsel for the Washington State Bar Association and now represent lawyers who are going through the bar disciplinary process. We are extremely concerned about both the content of the proposed new procedural rules that ODC, OGC and RSD have drafted as well as the process used to develop these rules. We just learned that the draft is being sent directly to the Supreme Court without any Board of Governor review. We are unaware of any proposed rule changes not being presented to the Board before they are presented to the court.

All of us were involved in the previous rewrites of the procedural rules used for lawyer discipline. Those rules were drafted by a committee composed of all stakeholders to the disciplinary process and included representatives from the Board of Governors, Disciplinary Board, hearing officer panel, the Supreme Court, the public and respondent counsel. The proposed rules were sent to the Board of Governors for approval before going to the Supreme Court.

By contrast, the proposed rules were drafted by ODC and the other regulatory departments of WSBA. The current rules already make it difficult for respondents facing the potential loss of their careers and reputation to fight charges against them. The new rules, in the name of increased efficiency, make this even harder.

After its draft was complete, ODC convened representatives of external stakeholders, including one of us, to provide feedback and commentary, but was free to ignore any feedback. The stakeholders were not even told what changes would be made but instead told they could see the rules when they were sent to the Board of Governors. There were no public meetings and no way for anyone not invited by ODC to provide commentary. The process used here is akin to allowing prosecutors to revise the criminal procedural rules.

These rules have an extraordinary impact on WSBA members yet the usual procedures for member comment are being foreclosed. At least to our knowledge, the BOG always approves rule changes from WSBA. We have to question why the usual process is being ignored here.

We strongly believe that the only reasonable, fair, and appropriate way to revise the current procedural rules is to convene a committee where all stakeholders can participate equally in the drafting. If any of you would like, we can provide a list of specific rule changes that we believe are ill-advised. As just one example, ODC will be permitted full discovery before it files a formal complaint, including subpoenaing the respondent lawyer or any witness for a deposition and requiring the respondent lawyer to provide documents and information. Any respondent lawyer who does not promptly comply can be disciplined for failure to cooperate. In contrast

under the proposed rules, a respondent lawyer will have no discovery of any sort as a matter of right and can only get it by proving in contested litigation that he or she needs it. This is an expensive and time-consuming process and forces the respondent to go through a discovery gatekeeper who may deny discovery simply because he or she does not agree with the respondent's theory of the case and therefore, sees no need for the discovery. The ODC has no such gatekeeper. This will significantly adversely impact a respondent lawyer's ability to defend against unethical conduct allegations.

We ask the BOG to require more opportunity for member comment before the proposed rules are sent to the Supreme Court. We believe it would be appropriate for the BOG to have this topic as an agenda item for an upcoming meeting and allow ODC, respondent counsel, and WSBA members to comment on both the content of the rules and the procedure used to develop them.

Sincerely,



Kurt M. Bulmer
kbulmer@comcast.net



Leland G. Ripley
lelandripley@wavecable.com



Anne I. Seidel
anne@anneseidel.com

cc: Terra Nevitt, Interim Executive Director
Doug Ende, Chief Disciplinary Counsel

From: [William Buchanan](#)
To: [Kim Hunter](#)
Subject: RE: Lots of emails are fine !
Date: Thursday, June 25, 2020 10:54:07 AM

Dear Kim:

An attorney in my office shared with me an email written by Anne Seidel to the KCBA Solo Small Firm Listserv. In her email, Ms. Seidel stated the Office of Disciplinary Counsel of the WSBA plans to by-pass the Board of Governors and submit new disciplinary rules to the Supreme Court without the opportunity for comment by the members of the WSBA. She proposes that the Board of Governors oppose this process and form a committee to review the proposed changes to the rules and solicit comment from the members of the WSBA. I support her request.

William Buchanan
Attorney at Law
Suite 200, 1520 140th Ave. NE
Bellevue, WA
(ph) (425) 283-0336
(fax) 425-283-0361

-----Original Message-----

From: Kim E Hunter <kim@khunterlaw.com>
Sent: Wednesday, June 24, 2020 2:40 PM
To: Solo and Small Practice Section <solo-and-small-practice-section@list.wsba.org>
Subject: [solo-and-small-practice-section] Lots of emails are fine !

Hello all. I certainly don't mind sifting through any and all emails to me or to the list serve. I monitor it very closely so I can be aware and act on any issues or concerns my constituents have.
So don't worry. Email away !! If there's anything at all I can do for this group, I am right here.

I am listening (or reading I guess !!)

Kim.

Sent from my iPhone

From: [Brian Tollefson](#)
To: [Kim Hunter](#)
Subject: MMI Committee
Date: Wednesday, June 24, 2020 11:12:02 AM
Attachments: [Committee to Investigate Alternatives to MMI March 10, 2020 Meeting Materials\(00591754\).PDF](#)
[Orange County Bar Association MMI-Access to Justice.pdf](#)
[California RPC 1.4.2 \(Professional Liability Insurance Disclosure\).pdf](#)

Kim,

Here is the memo from the March, 2020 MMI Alternative Committee meeting about what other states do.

I also attach an article from the Orange County Bar publication about the California Approach.

I also attach the California RPC on disclosure.

Best regards,

Judge Brian Tollefson, retired
WSBA Governor, District 6

RULES OF PROFESSIONAL CONDUCT

(effective on November 1, 2018)

(b) For purposes of this rule, “reasonable diligence” shall mean that a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer.

Comment

[1] This rule addresses only a lawyer’s responsibility for his or her own professional diligence. See rules 5.1 and 5.3 with respect to a lawyer’s disciplinary responsibility for supervising subordinate lawyers and nonlawyers.

[2] See rule 1.1 with respect to a lawyer’s duty to perform legal services with competence.

Rule 1.4 Communication with Clients

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client’s informed consent* is required by these rules or the State Bar Act;

(2) reasonably* consult with the client about the means by which to accomplish the client’s objectives in the representation;

(3) keep the client reasonably* informed about significant developments relating to the representation, including promptly complying with reasonable* requests for information and copies of significant documents when necessary to keep the client so informed; and

(4) advise the client about any relevant limitation on the lawyer’s conduct when the lawyer knows* that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably* necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer may delay transmission of information to a client if the lawyer reasonably believes* that the client would be likely to react in a way that may cause imminent harm to the client or others.

(d) A lawyer’s obligation under this rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or limitation under statutory or decisional law.

Comment

[1] A lawyer will not be subject to discipline under paragraph (a)(3) of this rule for failing to communicate insignificant or irrelevant information. (See Bus. & Prof.

Code, § 6068, subd. (m).) Whether a particular development is significant will generally depend on the surrounding facts and circumstances.

[2] A lawyer may comply with paragraph (a)(3) by providing to the client copies of significant documents by electronic or other means. This rule does not prohibit a lawyer from seeking recovery of the lawyer’s expense in any subsequent legal proceeding.

[3] Paragraph (c) applies during a representation and does not alter the obligations applicable at termination of a representation. (See rule 1.16(e)(1).)

[4] This rule is not intended to create, augment, diminish, or eliminate any application of the work product rule. The obligation of the lawyer to provide work product to the client shall be governed by relevant statutory and decisional law.

Rule 1.4.1 Communication of Settlement Offers

(a) A lawyer shall promptly communicate to the lawyer’s client:

(1) all terms and conditions of a proposed plea bargain or other dispositive offer made to the client in a criminal matter; and

(2) all amounts, terms, and conditions of any written* offer of settlement made to the client in all other matters.

(b) As used in this rule, “client” includes a person* who possesses the authority to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class.

Comment

An oral offer of settlement made to the client in a civil matter must also be communicated if it is a “significant development” under rule 1.4.

Rule 1.4.2 Disclosure of Professional Liability Insurance

(a) A lawyer who knows* or reasonably should know* that the lawyer does not have professional liability insurance shall inform a client in writing,* at the time of the client’s engagement of the lawyer, that the lawyer does not have professional liability insurance.

(b) If notice under paragraph (a) has not been provided at the time of a client’s engagement of the lawyer, the lawyer shall inform the client in writing* within thirty days of the date the lawyer knows* or reasonably should know* that the lawyer no longer has professional liability insurance during the representation of the client.

RULES OF PROFESSIONAL CONDUCT

(effective on November 1, 2018)

(c) This rule does not apply to:

(1) a lawyer who knows* or reasonably should know* at the time of the client's engagement of the lawyer that the lawyer's legal representation of the client in the matter will not exceed four hours; provided that if the representation subsequently exceeds four hours, the lawyer must comply with paragraphs (a) and (b);

(2) a lawyer who is employed as a government lawyer or in-house counsel when that lawyer is representing or providing legal advice to a client in that capacity;

(3) a lawyer who is rendering legal services in an emergency to avoid foreseeable prejudice to the rights or interests of the client;

(4) a lawyer who has previously advised the client in writing* under paragraph (a) or (b) that the lawyer does not have professional liability insurance.

Comment

[1] The disclosure obligation imposed by paragraph (a) applies with respect to new clients and new engagements with returning clients.

[2] A lawyer may use the following language in making the disclosure required by paragraph (a), and may include that language in a written* fee agreement with the client or in a separate writing:

"Pursuant to rule 1.4.2 of the California Rules of Professional Conduct, I am informing you in writing that I do not have professional liability insurance."

[3] A lawyer may use the following language in making the disclosure required by paragraph (b):

"Pursuant to rule 1.4.2 of the California Rules of Professional Conduct, I am informing you in writing that I no longer have professional liability insurance."

[4] The exception in paragraph (c)(2) for government lawyers and in-house counsels is limited to situations involving direct employment and representation, and does not, for example, apply to outside counsel for a private or governmental entity, or to counsel retained by an insurer to represent an insured. If a lawyer is employed by and provides legal services directly for a private entity or a federal, state or local governmental entity, that entity is presumed to know* whether the lawyer is or is not covered by professional liability insurance.

Rule 1.5 Fees for Legal Services

(a) A lawyer shall not make an agreement for, charge, or collect an unconscionable or illegal fee.

(b) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following:

(1) whether the lawyer engaged in fraud* or overreaching in negotiating or setting the fee;

(2) whether the lawyer has failed to disclose material facts;

(3) the amount of the fee in proportion to the value of the services performed;

(4) the relative sophistication of the lawyer and the client;

(5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(6) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(7) the amount involved and the results obtained;

(8) the time limitations imposed by the client or by the circumstances;

(9) the nature and length of the professional relationship with the client;

(10) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(11) whether the fee is fixed or contingent;

(12) the time and labor required; and

(13) whether the client gave informed consent* to the fee.

(c) A lawyer shall not make an agreement for, charge, or collect:

(1) any fee in a family law matter, the payment or amount of which is contingent upon the securing of a dissolution or declaration of nullity of a marriage or upon the amount of spousal or child support, or property settlement in lieu thereof; or



X

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May 2019 – Mandatory Malpractice Insurance: An Attack on Access to Justice

by *Scott B. Garner*

Primum non nocere, which means “First do no harm,” is a maxim that is believed to be derived from the Hippocratic Oath that has been familiar to doctors since ancient times. The California State Bar was close to rushing into a plan to mandate that all California lawyers carry legal malpractice insurance, which could have done harm to the very public it professes to be protecting. Although the State Bar voted at its March 15, 2019 meeting not to recommend a mandate, the issue is far from dead and likely will be revived after the State Bar attempts to collect additional data. It remains to be seen whether the data it collects will be sufficient to justify the imposition of mandatory insurance or will simply provide the State Bar with cover to do so.

The State Bar’s mission includes the words, “to protect the public.” It also pledges to support “greater access to, and inclusion in, the legal system.” But what happens when a future State Bar proposal to protect the public is inconsistent with promoting or enhancing access to justice? Specifically, can the State Bar, consistent with its mission, implement a mandatory insurance regime without widening the already massive access-to-justice gap?

Although many non-lawyers, and even some lawyers, in California believe liability insurance already is mandatory for lawyers, it is not. Rather, California’s Rules of Professional Conduct merely require that any lawyer who does not have insurance disclose that fact to his or her clients. See Rule 1.4.2. Currently, only two states mandate the purchase of professional liability insurance: Oregon and Idaho. Oregon is somewhat of an anomaly in that it foregoes the insurance market in favor of a state-controlled insurance fund. The state of Washington currently is considering a mandatory insurance proposal. Many other states have considered mandating insurance for lawyers, but have not done so.

The California State Bar does not know exactly what percentage of lawyers do not have insurance because it currently does not require lawyers to report whether they carry it or not. Studies conducted in 2017 and 2018, however, revealed that approximately 7% of all California lawyers do not have malpractice insurance—almost all of whom are either sole practitioners or members of small firms. In a 2018 survey of just solo and small firm lawyers, it was reported that approximately 39% of sole practitioners do not carry liability insurance, while approximately 12% of small firm lawyers (defined as firms with two-to-five lawyers) do not carry liability insurance. Of those who responded to the survey, 66% reported that the reason they do not carry insurance is they cannot afford it.

To study these issues, the legislature added provisions to the 2018 State Bar Fee Bill providing: “(a) In recognition of the importance of protecting the public from attorney errors through errors and omissions insurance, the State Bar shall conduct a review and study regarding errors and omissions insurance for attorneys licensed in this state.” The working group formed to conduct this study was specifically tasked with studying, among other things, (1) “[t]he

adequacy, availability, and affordability of errors and omissions insurance . . .”; (2) “[t]he advisability of mandating errors and omissions insurance limits for attorneys licensed in this state,” and (3) “[t]he adequacy and efficacy of the disclosure rule regarding errors and omissions insurance, currently embodied in Rule [1.4.2] of the Rules of Professional Conduct.” Cal. Bus. & Prof. Code § 6069.5.¹ The appointed Malpractice Insurance Working Group then would report its findings to the State Bar, who would make its own recommendation to the supreme court or the legislature regarding mandatory liability insurance for lawyers. This process was to be completed by March 31, 2019.

The State Bar Working Group met throughout 2018 to discuss the various issues mandated by the legislature. In January 2019, it voted 8-6 that it could not recommend that the State Bar mandate that all California lawyers purchase professional liability insurance unless and until additional extensive data was collected. In other words, by a slim margin, the Working Group recommended that, at least at this time, the State Bar (and legislature) should not pass a rule or law mandating legal malpractice insurance. The Working Group also voted that, if mandatory insurance were implemented, the coverage should be \$100,000 per occurrence/\$300,000 aggregate. The Working Group also approved several recommendations for strengthening California’s existing disclosure rules.

Notwithstanding the Working Group’s vote, concern still abounded that the State Bar would move forward with the mandatory insurance plan at its March 15 meeting, as the State Bar leadership appears to be in favor of it. Although the State Bar’s Board of Trustees voted unanimously to accept the recommendation of the Working Group (that is, no mandatory insurance), the issue is far from dead, as the State Bar may try to gather the data that the Working Group felt was missing. Thus, it remains relevant to ask, what are the arguments for and against mandatory insurance?

The problem identified, and that mandatory insurance supposedly addresses, is that of clients being economically damaged by a lawyer providing negligent legal services, where the client subsequently is unable to recover from that lawyer. (Economic harm caused by lawyers stealing from their clients, as opposed to their lawyer’s negligence, is addressed through the State Bar’s client security fund, and was not a concern of the Mandatory Insurance Working Group.) This can happen where the client obtains a negligence judgment against the lawyer, but the lawyer does not have insurance or sufficient assets to pay the judgment. It is unclear how often this happens, as there is no clear data about it. A related problem is that some plaintiff-side malpractice lawyers may not want to take a client’s case when they learn the lawyer-defendant has no insurance. There also is no data about this phenomenon, other than anecdotal evidence. For those of us who field calls from lawyers without insurance who nonetheless have been sued for malpractice, we know there are at least some plaintiff’s lawyers who are more than willing to file a malpractice lawsuit against a lawyer without insurance.

To be sure, there are some clients who have been wronged by a lawyer’s negligence and are unable to recover because the lawyer does not have insurance or enough assets to satisfy a claim or judgment. But nobody knows how many such clients are out there. The State Bar apparently sees its mission of protecting the public as including the protection of these clients. This non-quantified increase in client protection, however, must be weighed against any costs—monetary and otherwise—of forcing lawyers to purchase malpractice insurance.

Because the State Bar’s mission of protecting the public does not include protecting lawyers (to the contrary, many would argue the State Bar is attempting to protect the public *from* lawyers), any argument that requiring lawyers to purchase insurance will harm lawyers would fall on deaf ears. At a minimum, however, it is reasonable to conclude that some lawyers simply could not afford to practice law at all if the expense of insurance were imposed on them. The countervailing interest, then, is not the harm that would come to lawyers, but rather the harm that would come to the non-lawyer public in the form of a wider access to justice gap.

Many would argue that the biggest problem California—and, in fact, the entire nation—has with its legal system is that so many individuals cannot afford to participate in that system. And the biggest cost barrier to participation is the cost of hiring a lawyer. The reality is that many of us could not even afford to hire ourselves. Thus, any solution to the problem identified above—that is, clients left without redress for the negligent acts of their attorneys—should not exacerbate the more urgent problem of people not being able to afford lawyers.

Although several scholars who have addressed these issues downplay the effect mandatory insurance will have on access to justice (see, e.g., Levin, Leslie, “Lawyers Going Bare and Clients Going Blind,” *Florida Law Review*, Vol. 68, Issue 5 (Sept. 2016)), there is little to no data on the subject. The reality is that many lawyers practice on a very tight profit margin, for myriad reasons. Some simply do not have enough clients. Some practice part time. Some choose to serve underserved and underprivileged client populations at below market rates (sometimes referred to as “low bono”). Some practice heavily in the pro bono space. Some are mostly retired but still desire to maintain their license. For these lawyers, taking on the extra cost of malpractice insurance—likely to be at least \$3,000-\$3,800 per year in what is thought to be a fairly open insurance market, and potentially significantly more if the market tightens—simply is not possible. Faced with the expense of mandatory malpractice insurance, at least some of these lawyers will choose (or will have no choice but) to close up shop and stop servicing their clients. Other lawyers may continue practicing, but will cut back on their pro bono or low bono practices in order to make enough money to pay for insurance. The supply of lawyers will go down, and fewer clients will be served. It is simple economics.

These economic concerns no doubt will be exacerbated by the State Bar’s recent decision to propose to the legislature a \$100 fee increase per lawyer, plus a special assessment of \$250 for capital and technology investments, plus an \$80 increase in the client security fund fee—all to go along with another \$75 or so that each lawyer has to pay for fingerprinting. Again, simple economics dictates that the supply of lawyers will go down.

One possible solution would be to exempt from the mandate certain categories of lawyers. The problem, however, is that myriad public comments were received requesting categories of exemptions—including for retired attorneys, part-time attorneys, low bono attorneys, pro bono attorneys, educators, government attorneys, attorneys who do only expert work, criminal defense attorneys, attorneys making under \$50,000 per year, immigration attorneys, mediators, new attorneys, and freelance attorneys, to name just a few. It is highly unlikely, however, that the State Bar would exempt all of these categories; more likely, it would reject all exemptions to avoid having the exemptions swallow the rule.

So what does this mean for access to justice? Again, the problem is a lack of data. Although we can say with some economic certainty that there would be fewer lawyers and, consequently, fewer options for clients looking to hire a lawyer, we simply do not have data measuring this effect. Put another way, we do not know how many potential clients who otherwise would be able to hire a lawyer will not be able to find and hire a lawyer because of a mandatory insurance requirement. It is very possible—and even likely—that, in trying to protect the public, the State Bar will actually end up hurting the very people it is trying to protect. *Primum non nocere*. First do no harm. Until the State Bar knows, based on actual data, (a) how many clients will be helped by having better recourse to recover for a lawyer’s negligence, and (b) how many clients will be unable to find and afford a lawyer because fewer lawyers will be offering low cost services, it cannot responsibly implement a mandatory insurance requirement.

And, the State Bar is not without other avenues to protect the public in the event it abandons the mandatory insurance path, at least until it has adequate data. For example, although the precise impact is difficult to quantify, there are some indications that a stronger disclosure rule would increase lawyers’ willingness to carry malpractice insurance.

Currently, lawyers without insurance only need to provide a very brief, non-detailed disclosure in their engagement letters in order to comply with Rule 1.4.2. Comment [2] to the rule provides the following safe harbor language: “Pursuant to rule 1.4.2 of the California Rules of Professional Conduct, I am informing you in writing that I do not have professional liability insurance.” Other states have more stringent disclosure requirements, with some reported success. By far the most stringent requirements are in South Dakota, where lawyers without professional liability insurance are required to disclose that fact in each and every communication with their clients (not just a single time, as in California). See Levin at p. 19. Whether these disclosure rules are the cause or a mere correlation, it has been reported that 94% of South Dakota private lawyers carry professional liability insurance. See H. Dritzter & N. Vidmar, *When Lawyers Screw Up: Improving Access to Justice for Legal Malpractice Victims* 41 (University Press of Kansas 2018). Other states, including Virginia and Alaska, with significant disclosure requirements also have reported upticks in the percentage of lawyers carrying insurance. See Levin at 23 n.119.

This is not to say California is like South Dakota, or that we can confidently predict that heightened disclosure requirements would lead to more lawyers carrying insurance. But it is a reasonable assumption—particularly when 75% of consumers that responded to the State Bar’s 2018 survey stated they think it is moderately, very, or extremely important that their lawyers have insurance. If it is so important to consumers, then, as long as those consumers are properly informed, the market should point them in the direction of lawyers who have insurance.

At a minimum, there is no reason to think that increased disclosure requirements would have the adverse effect of driving lawyers out of the market. Those lawyers who truly cannot afford to buy insurance still will not carry it, and those clients who either may not care if their lawyer has insurance or just want any lawyer they can find and afford will still utilize those lawyers. But at least those clients who do choose to go with uninsured lawyer will have a better chance of understanding what that means if things should go sideways during the relationship.

The State Bar seeks to protect the public, and that public includes some unknown number of clients who have been the victim of their lawyer’s malpractice, but who cannot recover because the lawyer lacks insurance and assets. Mandating that lawyers procure professional liability insurance will reduce that number. On the other hand, compelling lawyers to spend thousands of dollars on professional liability insurance will cause some unknown number of lawyers to shutter their practices, or at least curtail their low cost services, thereby abandoning current and future clients. This, of course, will have a negative impact on access to justice—particularly since many of the lawyers who will be most adversely affected are those most likely to serve underserved client populations.

Any policy change to address these issues must be based on actual data: How many wronged clients will the policy help to recover their losses? How many clients will the policy preclude from finding a lawyer in the first place? Until we know these numbers, we will be shooting in the dark—trying to fix one problem while potentially causing an even greater one.

ENDNOTE

1. The statute refers to Rule 3-410, which was re-numbered as Rule 1.4.2 when the Rules underwent a significant revision on November 1, 2018. The substance of the rule, however, was not materially changed.

Scott B. Garner is a partner at Umberg/Zipser LLP in Irvine, California, where he practices complex business litigation, with an emphasis on representation of law firms and lawyers in professional liability and ethics disputes. He also counsels lawyers on ethics issues, and serves as an expert witness on legal ethics and standard of care. Mr. Garner is the President-Elect of the OCBA and the Co-Chair of the OCBA’s Professionalism and Ethics Committee. He served as a member of the State Bar’s Malpractice Insurance Working Group. He can be reached at sgarner@umbergzipser.com. The views expressed herein are his own.

Return

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COMMITTEE TO INVESTIGATE ALTERNATIVES TO MANDATORY MALPRACTICE INSURANCE

AGENDA

Tuesday, March 10, 2020

9:00 a.m. – 11:00 a.m. WSBA Hearing Room, 1325 4th Ave., Suite 600, Seattle, WA 98101

Conference Call: 1-866-577-9294, Pass Code: 52824#

AGENDA

1. Call to Order and Introductions
2. Background
3. Discussion
4. Next Steps
5. Scheduling

MEETING MATERIALS

- A. March 2, 2020, Memo re Legal Malpractice Disclosures by State [p. 2-17]
- B. Illinois Rule 756(e) Disclosure of Malpractice Insurance [p. 18-20]
- C. January 25, 2017, Press Release, Illinois Becomes First State to Adopt Proactive Management Based Regulation, Supreme Court of Illinois [p. 21-22]
- D. PMBR Self-Assessment Course FAQs, ARDC, [p. 23-25]
- E. [Mandatory Malpractice Insurance Task Force Report to WSBA Board of Governors, February 2019](#)

MEMO

To: Committee to Investigate Alternatives to Mandatory Malpractice Insurance

Date: March 2, 2020

Re: Legal Malpractice Disclosure by State

This document reviews legal malpractice insurance coverage requirements throughout the United States. The following chart reviews the requirements of each state that requires disclosure of under/uninsured status directly to clients. The chart covers the seven jurisdictions that require disclosure of malpractice insurance coverage below certain values. Included in the chart is the rule number, key aspects of the rules, discipline associated with the rule, common themes, and a link to the text of the rules mandating disclosure. To ensure the accuracy of this chart, a survey of all 51 jurisdictions was completed, asking state bar associations whether they required disclosure of malpractice coverage either to the state bar, or directly to clients.

The results from the survey were:

- Two jurisdictions require lawyers to carry malpractice coverage of at least 100/300;¹
- Seven jurisdictions require disclosure of insurance coverage directly to clients;²
- Twenty jurisdictions require lawyers to disclose whether they carry insurance on their licensing renewal;³ of these jurisdictions, thirteen make this information available to the public in some form;⁴
- Twenty-two states do not require that lawyers disclose their insurance coverage in any fashion.⁵

In addition, two states have special requirements for lawyers who do not have insurance: In Alabama, lawyers who do not carry malpractice insurance coverage may not participate in the Alabama Bar Association lawyer referral programs; in Illinois, lawyers who do not carry

¹Oregon and Idaho.

²Alaska, California, New Hampshire, South Dakota, Pennsylvania, Ohio, New Mexico.

³North Dakota, Nebraska, Arizona, Washington, Hawaii, West Virginia, Virginia, Nevada, Colorado, Maine, Massachusetts, Minnesota, Michigan, Illinois, New Jersey, Wisconsin, Kansas, Rhode Island, Kentucky, Delaware.

⁴Arizona, Washington, West Virginia, Virginia, Nevada, Colorado, North Dakota, Massachusetts, Minnesota, Nebraska, Illinois, Kansas, Kentucky.

⁵Maryland, Louisiana, North Carolina, D.C., Oklahoma, South Carolina, New York, Alabama, Wyoming, Vermont, Utah, Florida, Tennessee, Connecticut, Georgia, Iowa, Texas, Missouri, Indiana, Mississippi, Arkansas, Montana.

insurance coverage must complete a four-hour long training course. Georgia is presently the only state that disclosed that they are actively considering a proposal that would mandate coverage for lawyers. In general, many states require LLCs to maintain some form of professional liability insurance, by statute or otherwise.

REQUIRED LEGAL MALPRACTICE DISCLOSURE CHART

STATE	RULE	KEY FEATURES	DISCIPLINE
Alaska	<u>RPC 1.4(c)</u> Effective 1999 (Rescinded/ readopted in 2009)	<ul style="list-style-type: none"> • Must be in writing; • Notice required for coverage below 100/300; • Notice required upon termination of insurance coverage; • 6-year record retention required; • No application to government lawyers. 	Violations have not been independently prosecuted; has been alleged in matters with more serious violations.
California	<u>RPC 1.4.2</u> Effective January 10, 2010; amended November 1, 2018	<ul style="list-style-type: none"> • Lawyers must inform clients in writing at time of retention; • Notice only required if representation will require more than 4 hours; • 30-day requirement to notify upon termination of insurance coverage; • No application to government lawyers or emergency services. 	No discipline yet. A malpractice working group was established. More information listed below rule text.
New Hampshire	<u>RPC 1.19</u> Effective January 1, 2008 ⁶	<ul style="list-style-type: none"> • Notice required if insurance coverage is less than 100/300; • No application to government or in-house counsel; • Lawyers must notify clients on separate document signed by client; • 5-year retention of disclosure record. 	No discipline.

⁶ The State Bar Association of New Hampshire gave an effective date of January 1, 2008. RPC 1.19 was adopted in 2008; however, the language requiring lawyers to disclose insurance coverage may have previously been included in another RPC.

STATE	RULE	KEY FEATURES	DISCIPLINE
New Mexico	<u>RPC 16-104</u> Effective November 2, 2009	<ul style="list-style-type: none"> • Notice required if insurance coverage is less than 100/300; • Lawyer must notify client in writing at time of retention using provided forms; • Lawyer must notify clients if insurance coverage terminates; • Rule does not apply to judges, in-house, or government lawyers; • Lawyer must retain disclosure record for 6 years. 	No discipline, only corrective action/client notification.
Ohio	<u>RPC 1.4(c)</u> Effective July 1, 2001	<ul style="list-style-type: none"> • Lawyers must notify client using provided form if they lack coverage; • Must retain disclosure letter for 5 years; • No application to in-house or government lawyers. 	Violations have been prosecuted. See sample cases under rule text.
Pennsylvania	<u>RPC 1.4(c)</u> Effective November 21, 2013	<ul style="list-style-type: none"> • Private practice must disclose if insurance coverage is less than 100/300; • Lawyer must retain disclosure record for 6 years. 	No discipline.
South Dakota	<u>RPC 1.4(c)</u> Effective July 1, 2004 ⁷	<ul style="list-style-type: none"> • Disclaimer must be included in letterhead if insurance coverage is less than \$100,000; • Disclaimer must be included in every written communication with client; • Rule does not apply to in-house or government lawyers. 	No discipline.

Common themes:

- Insurance coverage is not mandatory;
- Disclosure is required for lawyers who are uninsured or carrying less than 100/300 insurance coverage;

⁷ Per Susan Saab Fortney, the rule may have been adopted in 1999. *Law as a Profession: Examining the Role of Accountability*, 40 Fordham Urb. L.J. 177, 194 (2012), <https://ir.lawnet.fordham.edu/ulj/vol40/iss1/4>. The rule was reaffirmed as part of RPC 1.4 in 2004.

- Does not apply to lawyers who work full time as in-house or government counsel;
- Signed record of disclosure required;
- 5+ year required retention of signed disclosure.

Helpful Links:

ABA Standing Committee on Client Protection Proposed Amendments for Malpractice Coverage Disclosure – Center for Professional Responsibility (Proposed amendment to Rule 1.4 Communication)

https://www.americanbar.org/groups/professional_responsibility/committees_commissions/commission-on-multijurisdictional-practice/mjp_comm_sccp2/

Alaska

Alaska Rules of Professional Conduct - Rule 1.4

(c) A lawyer shall inform an existing client in writing if the lawyer does not have malpractice insurance of at least \$100,000 per claim and \$300,000 annual aggregate and shall inform the client in writing at any time the lawyer's malpractice insurance drops below these amounts or the lawyer's malpractice insurance is terminated. A lawyer shall maintain a record of these disclosures for six years from the termination of the client's representation. This paragraph does not apply to lawyers employed by the government as salaried employees or to lawyers employed as in-house counsel.

California

California Rules of Professional Conduct - Rule 1.4.2

(a) A lawyer who knows* or reasonably should know* that the lawyer does not have professional liability insurance shall inform a client in writing,* at the time of the client's engagement of the lawyer, that the lawyer does not have professional liability insurance.

(b) If notice under paragraph (a) has not been provided at the time of a client's engagement of the lawyer, the lawyer shall inform the client in writing* within thirty days of the date the lawyer knows* or reasonably should know* that the lawyer no longer has professional liability insurance during the representation of the client.

(c) This rule does not apply to:

- (1) a lawyer who knows* or reasonably should know* at the time of the client's engagement of the lawyer that the lawyer's legal representation of the client in the matter will not exceed four hours; provided that if the representation subsequently exceeds four hours, the lawyer must comply with paragraphs (a) and (b);
- (2) a lawyer who is employed as a government lawyer or in-house counsel when that lawyer is representing or providing legal advice to a client in that capacity;
- (3) a lawyer who is rendering legal services in an emergency to avoid foreseeable prejudice to the rights or interests of the client;
- (4) a lawyer who has previously advised the client in writing* under paragraph (a) or (b) that the lawyer does not have professional liability insurance.

Comment

[1] The disclosure obligation imposed by paragraph (a) applies with respect to new clients and new engagements with returning clients.

[2] A lawyer may use the following language in making the disclosure required by paragraph (a), and may include that language in a written* fee agreement with the client or in a separate writing:

"Pursuant to rule 1.4.2 of the California Rules of Professional Conduct, I am informing you in writing that I do not have professional liability insurance."

[3] A lawyer may use the following language in making the disclosure required by paragraph (b):

"Pursuant to rule 1.4.2 of the California Rules of Professional Conduct, I am informing you in writing that I no longer have professional liability insurance."

[4] The exception in paragraph (c)(2) for government lawyers and in-house counsels is limited to situations involving direct employment and representation, and does not, for example, apply to outside counsel for a private or governmental entity, or to counsel retained by an insurer to represent an insured. If a lawyer is employed by and provides legal services directly for a private entity or a federal, state or local governmental entity, that entity is presumed to know* whether the lawyer is or is not covered by professional liability insurance

Additional Information from the CA Malpractice Insurance Working Group:

March 27, 2019 Malpractice Insurance Working Group Report to the California Bar Board of Trustees http://www.calbar.ca.gov/Portals/0/documents/reports/Malpractice-Insurance-Report_Summary_and_Supreme-Court-Cover-Letter.pdf

New Hampshire

New Hampshire Rules of Professional Conduct - Rule 1.19

(a) A lawyer shall inform a client at the time of the client's engagement of the lawyer or at any time subsequent to the engagement of the lawyer if the lawyer does not maintain professional liability insurance in the amounts of at least one hundred thousand dollars per occurrence and three hundred thousand dollars in the aggregate or if the lawyer's professional liability insurance ceases to be in effect. The notice shall be provided to the client on a separate form set forth following this rule and shall be signed by the client.

(b) A lawyer shall maintain a copy of the notice signed by the client for five years after termination of representation of the client.

(c) The notice required by paragraph (a) of this rule shall not apply to a lawyer who is engaged in either of the following:

- (1) Rendering legal services to a governmental entity that employs the lawyer; or
- (2) Rendering legal services to an entity that employs the lawyer as in-house counsel.

NOTICE TO CLIENT

Pursuant to Rule 1.19 of the New Hampshire 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.

(Attorney's signature)

CLIENT ACKNOWLEDGEMENT

I acknowledge receipt of the notice required by Rule 1.19 of the New Hampshire Rules of Professional Conduct that [insert attorney's name] does not maintain professional liability (malpractice) insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate.

(Client's signature)

Date: _____

New Mexico

New Mexico Rules of Professional Conduct - Rule 16-104

C. Disclosure of professional liability insurance.

(1) If, at the time of the client's formal engagement of a lawyer, the lawyer does not have a professional liability insurance policy with limits of at least one-hundred thousand dollars (\$100,000) per claim and three-hundred thousand dollars (\$300,000) in the aggregate, the lawyer shall inform the client in writing using the form of notice prescribed by this rule. If during the course of representation, an insurance policy in effect at the time of the client's engagement of the lawyer lapses, or is terminated, the lawyer shall provide notice to the client using the form prescribed by this rule.

(2) The form of notice and acknowledgment required under this Paragraph shall be:

NOTICE TO CLIENT

Pursuant to Rule 16-104(C) NMRA of the New Mexico Rules of Professional Conduct, I am required to notify you that ["I" or "this Firm"] [do not] [does not] [no longer] maintain[s] professional liability malpractice insurance of at least one-hundred thousand dollars (\$100,000) per occurrence and three-hundred thousand dollars (\$300,000) in the aggregate.

Attorney's signature

CLIENT ACKNOWLEDGMENT

I acknowledge receipt of the notice required by Rule 16-104(C) NMRA of the New Mexico Rules of Professional Conduct that [insert attorney or firm's name] does not maintain professional liability malpractice insurance of at least one-hundred thousand dollars (\$100,000) per occurrence and three-hundred thousand dollars (\$300,000) in the aggregate.

Client's signature

(3) As used in this Paragraph, "lawyer" includes a lawyer provisionally admitted under Rule 24-106 NMRA and Rules 26-101 through 26-106 NMRA; however, it does not include a lawyer who is a full-time judge, in-house corporate counsel for a single corporate entity, or a lawyer who practices exclusively as an employee of a governmental agency.

(4) A lawyer shall maintain a record of the disclosures made pursuant to this rule for six (6) years after termination of the representation of the client by the lawyer.

(5) The minimum limits of insurance specified by this rule include any deductible or self-insured retention, which must be paid as a precondition to the payment of the coverage available under the professional liability insurance policy.

(6) A lawyer is in violation of this rule if the lawyer or the firm employing the lawyer maintain a professional liability policy with a deductible or self-insured retention that the lawyer knows or has reason to know cannot be paid by the lawyer or the lawyer's firm in the event of a loss.

...

Committee Commentary

Disclosure of Professional Liability Insurance

[8] Paragraph C of this rule requires a lawyer to disclose to the clients whether the lawyer has professional liability insurance satisfying the minimum limits of coverage set forth in the rule. Subparagraph (3) of Paragraph C defines "lawyer" to include lawyers provisionally admitted under Rule 24-106 NMRA and Rules 26-101 to 26-106 NMRA. Rule 24-106 NMRA applies to out-of-state lawyers who petition to be allowed to appear before the New Mexico courts. Rules 26-101 to 26-106 NMRA apply to foreign legal consultants. Subparagraph (4) of Paragraph C requires a lawyer to maintain a record of disclosures made under this rule for six (6) years after termination of the representation of the client by the lawyer. In this regard, the lawyer should note that trust account records must be kept for five (5) years but the statute of limitations for a breach of contract claim is six (6) years. Subparagraph (5) of Paragraph C provides that the minimum limits of insurance specified by the rule includes any deductible or self-insured retention. In this regard, the use of the term "deductible" includes a claims expense deductible. The professional liability insurance carrier must agree to pay, subject to exclusions set forth in the policy, all amounts that an insured becomes legally obligated to pay in excess of the deductible or self-insured retention shown on the declarations page of the policy.

DISCIPLINE UNDER THE RULE

New Mexico's Office of Disciplinary Counsel (ODC) approach to enforcement has been a "soft" rollout. Phase III was expected to begin October 1, 2019.

- Phase I: New Mexico ODC notified/reminded lawyers of the rule and asked lawyers to confirm that they were in compliance when a lawyer received a complaint.
- Phase II: New Mexico ODC Counsel required lawyers to provide either a copy of their Dec sheet or a sample retainer agreement showing the lawyer used the required language if the lawyer did not meet coverage minimums when responding to a complaint.
- Phase III: New Mexico ODC require lawyers to show either their Dec sheet or the actual notice given to the client filing the complaint, with the client's signature.

If lawyers are non-compliant, so far New Mexico ODC has simply required lawyers to fix it by notifying clients and getting signatures and, as of June 2019, New Mexico ODC had not had a lawyer go beyond that stage to actual discipline.

Ohio

Ohio Rules of Professional Conduct - Rule 1.4(c)

(c) A lawyer shall inform a client at the time of the client's engagement of the lawyer or at any time subsequent to the engagement if the lawyer does not maintain professional liability insurance in the amounts of at least one hundred thousand dollars per occurrence and three hundred thousand dollars in the aggregate or if the lawyer's professional liability insurance is terminated. The notice shall be provided to the client on a separate form set forth following this rule and shall be signed by the client.

- (1) A lawyer shall maintain a copy of the notice signed by the client for five years after termination of representation of the client.
- (2) A lawyer who is involved in the division of fees pursuant to Rule 1.5(e) shall inform the client as required by division (c) of this rule before the client is asked to agree to the division of fees.
- (3) The notice required by division (c) of this rule shall not apply to either of the following:
 - (i) A lawyer who is employed by a governmental entity and renders services pursuant to that employment;
 - (ii) A lawyer who renders legal services to an entity that employs the lawyer as in-house counsel.

NOTICE TO CLIENT

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.

Attorney's Signature

CLIENT ACKNOWLEDGEMENT

I acknowledge receipt of the notice required by Rule 1.4 of the Ohio Rules of Professional Conduct that [insert attorney's name] does not maintain professional liability (malpractice) insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate.

Client's Signature

Date

...

Comment

Professional Liability Insurance

[8] Although it is in the best interest of the lawyer and the client that the lawyer maintain professional liability insurance or another form of adequate financial responsibility, it is not required in any circumstance other than when the lawyer practices as part of a legal professional association, corporation, legal clinic, limited liability company, or limited liability partnership.

[9] The client may not be aware that maintaining professional liability insurance is not mandatory and may well assume that the practice of law requires that some minimum financial responsibility be carried in the event of malpractice. Therefore, a lawyer who does not maintain certain minimum professional liability insurance shall promptly inform a prospective client or client.

Discipline under the rule:

Akron Bar Assn. v. Binger, 139 Ohio St. 3d 186, 10 N.E.3d 710 (2014) (Two RPC violations, including notarizing documents the lawyer did not witness and failure to advise a client that lawyer did not carry malpractice insurance warranted 18-month suspension in light of aggravating factors).

Columbus Bar Assn. v. McCord, 150 Ohio St. 3d 81, 79 N.E.3d 503 (2016) (One-year suspension appropriate for lawyer who, among other violations, failed to notify clients that he did not maintain professional malpractice insurance).

Akron Bar Assn. v. McNerney, 122 Ohio St. 3d 40, 907 N.E.2d 1167 (2009) (Two-year suspension appropriate where lawyer failed to keep accurate trust account records and failed to inform clients that he did not maintain professional liability insurance).

Lorain Cty. Bar Assn. v. Stuart, 135 Ohio St. 3d 117, 984 N.E.2d 1041 (2012) (Public reprimand appropriate where lawyer failed to provide competent representation and notify client that lawyer did not maintain professional liability insurance).

Akron Bar Assn. v. DeLoach, 133 Ohio St. 3d 329, 978 N.E.2d 181(2012) (Public reprimand appropriate where lawyer failed to give clients written notice that she did not maintain professional liability insurance; substantial mitigating factors considered)

Pennsylvania

Pennsylvania Rules of Professional Conduct - Rule 1.4(c)

(c) A lawyer in private practice shall inform a new client in writing if the lawyer does not have professional liability insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year, subject to commercially reasonable deductibles, retention or co-insurance, and shall inform existing clients in writing at any time the lawyer's professional liability insurance drops below either of those amounts or the lawyer's professional liability insurance is terminated. A lawyer shall maintain a record of these disclosures for six years after the termination of the representation of a client.

Comment

...

Disclosures Regarding Insurance

[8] Paragraph (c) does not apply to lawyers in full-time government practice or full-time lawyers employed as in-house counsel and who do not have any private clients.

[9] Lawyers may use the following language in making the disclosures required by this rule:

- (i) No insurance or insurance below required amounts when retained: "Pennsylvania Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer does not have professional liability insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year and if, at any time, a lawyer's professional liability insurance drops below either of those amounts or a lawyer's professional liability insurance coverage is terminated. You are therefore advised that (name of attorney or firm) does not have professional liability insurance coverage of at least \$100,000 per occurrence and \$300,000 in the aggregate per year."
- (ii) Insurance drops below required amounts: "Pennsylvania Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer does not have professional liability insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year and if, at any time, a lawyer's professional liability insurance drops below either of those amounts or a lawyer's professional liability insurance coverage is terminated. You are therefore advised that (name of attorney or firm)'s professional liability insurance dropped below at least \$100,000 per occurrence and \$300,000 in the aggregate per year as of (date)."
- (iii) Insurance terminated: "Pennsylvania Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer does not have professional liability insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year and if, at any time, a lawyer's professional liability insurance drops below either of those amounts or a lawyer's professional liability insurance coverage is terminated. You are

therefore advised that (name of attorney or firm)'s professional liability insurance has been terminated as of (date)."

[10] A lawyer or firm maintaining professional liability insurance coverage in at least the minimum amounts provided in paragraph (c) is not subject to the disclosure obligations mandated by the rule if such coverage is subject to commercially reasonable deductibles, retention or co-insurance. Deductibles, retentions or co-insurance offered, from time to time, in the marketplace for professional liability insurance for the size of firm and coverage limits purchased will be deemed to be commercially reasonable.

South Dakota

South Dakota Rules of Professional Conduct - Rule 1.4(c)

(c) If a lawyer does not have professional liability insurance with limits of at least \$100,000, or if during the course of representation, the insurance policy lapses or is terminated, a lawyer shall promptly disclose to a client by including as a component of the lawyer's letterhead, using the following specific language, either that:

(1) "This lawyer is not covered by professional liability insurance;" or

(2) "This firm is not covered by professional liability insurance."

(d) The required disclosure in 1.4(c) shall be included in every written communication with a client.

(e) This disclosure requirement does not apply to lawyers who are members of the following classes: § 16-18-20.2(1),(3),(4)⁸ and full-time, in-house counsel or government lawyers, who do not represent clients outside their official capacity or in-house employment.

⁸ Attorney licensing --Trust accounting records and procedures. The provisions of this rule apply to all members of the State Bar of South Dakota concerning trust funds received or disbursed by them in the course of their professional practice of law within the State of South Dakota. However, these provisions shall not apply to (1) full-time members of the Judiciary, i.e., Supreme Court Justices, Circuit Court Judges and Magistrate Judges, (2) nonresident attorneys licensed to practice in South Dakota who comply with comparable trust accounting requirements in the state wherein they maintain their office, and (3) non-profit legal services organizations that file a copy of their annual independent audit with the State Bar, (4) non-resident attorneys licensed to practice in South Dakota who have not represented a South Dakota client during the reporting period, or (5) members who have been in an inactive status for the full reporting period. In addition, all lawyers required to disclose the absence of professional liability insurance as required pursuant to Rule 1.4(c) must sign the additional verification and certification of disclosure as reflected at the end of the Certificate of Compliance and Insurance Disclosure form.

ILLINOIS ARTICLE VII. RULES ON ADMISSION AND DISCIPLINE OF ATTORNEYS

PART A. ADMISSION TO THE BAR

Rule 756. Registration and Fees

...

(e) Disclosure of Malpractice Insurance.

(1) Each lawyer, except for those registering pursuant to (a)(2), (a)(3), (a)(5), (a)(6), and (k)(5) of this rule, shall disclose whether the lawyer has malpractice insurance on the date of the registration, and if so, shall disclose the dates of coverage for the policy. If the lawyer does not have malpractice insurance on the date of registration, the lawyer shall state the reason why the lawyer has no such insurance. The reason why the lawyer does not have malpractice insurance shall be confidential. The Administrator may conduct random audits to assure the accuracy of information reported. Each lawyer shall maintain, for a period of seven years from the date the coverage is reported, documentation showing the name of the insurer, the policy number, the amount of coverage and the term of the policy, and shall produce such documentation upon the Administrator's request.

(2) Every other year, beginning with registration for 2018, each lawyer who discloses pursuant to paragraph (e)(1) that he or she does not have malpractice insurance and who is engaged in the private practice of law shall complete a self-assessment of the operation of his or her law practice or shall obtain malpractice insurance and report that fact, as a requirement of registering in the year following. The lawyer shall conduct the self-assessment in an interactive online educational program provided by the Administrator regarding professional responsibility requirements for the operation of a law firm. The self-assessment shall require that the lawyer demonstrate an engagement in learning about those requirements and that the lawyer assess his or her law firm operations based upon those requirements. The self-assessment shall be designed to allow the lawyer to earn four hours of MCLE professional responsibility credit and to provide the lawyer with results of the self-assessment and resources for the lawyer to use to address any issues raised by the self-assessment. All information related to the self-assessment shall be confidential, except for the fact of completion of the self-assessment, whether the information is in the possession of the Administrator or the lawyer. Neither the Administrator nor the lawyer may offer this information into evidence in a disciplinary proceeding. The Administrator may report self-assessment data publicly in the aggregate.

Related Rules

Rule 756. Registration and Fees

(a) Annual Registration Required. Except as hereinafter provided, every attorney admitted to practice law in this state shall register and pay an annual registration fee to the Commission on or before the first day of January. Every out-of-state attorney permitted to appear and provide legal services in a proceeding pursuant to Rule 707 shall register for each year in which the attorney has such an appearance of record in one or more proceedings. Annual registration fees and penalties paid for the year or prior years shall be deemed earned and non-refundable on and after the first day of January. Except as provided below, all fees and penalties shall be

retained as a part of the disciplinary fund. The following schedule shall apply beginning with registration for 2017 and until further order of the Court:

...

(2) An attorney in the Armed Forces of the United States shall be exempt from paying a registration fee until the first day of January following discharge.

(3) No registration fee is required of any attorney during the period he or she is serving in one of the following offices in the judicial branch:

(A) in the office of justice, judge, associate judge or magistrate of a court of the United States of America or the State of Illinois; or

(B) in the office of judicial law clerk, administrative assistant, secretary or assistant secretary to such a justice, judge, associate judge or magistrate, or in any other office included within the Supreme Court budget that assists the Supreme Court in its adjudicative responsibilities, provided that the exemption applies only if the attorney is prohibited by the terms of his or her employment from actively engaging in the practice of law.

...

(5) An attorney may advise the Administrator in writing that he or she desires to assume inactive status and, thereafter, register as an inactive status attorney. The annual registration fee for an inactive status attorney shall be \$121. Upon such registration, the attorney shall be placed upon inactive status and shall no longer be eligible to practice law or hold himself or herself out as being authorized to practice law in this state, except as is provided in paragraph (k) of this rule. An attorney who is on the master roll as an inactive status attorney may advise the Administrator in writing that he or she desires to resume the practice of law, and thereafter register as active upon payment of the registration fee required under this rule and submission of verification from the Director of MCLE that he or she has complied with MCLE requirements as set forth in Rule 790 et seq. If the attorney returns from inactive status after having paid the inactive status fee for the year, the attorney shall pay the difference between the inactive status registration fee and the registration fee required under paragraphs (a)(1) through (a)(3) of this rule. Inactive status under this rule does not include inactive disability status as described in Rules 757 and 758. Any lawyer on inactive disability status is not required to pay an annual fee.

(6) An attorney may advise the Administrator in writing that he or she desires to assume retirement status and, thereafter, register as a retired attorney. Upon such registration, the attorney shall be placed upon retirement status and shall no longer be eligible to practice law or hold himself or herself out as being authorized to practice law in this state, except as is provided in paragraph (k) of this rule. The retired attorney is relieved thereafter from the annual obligation to register and pay the registration fee. A retired attorney may advise the Administrator in writing that he or she desires to register as an active or inactive status lawyer and, thereafter so register upon payment of the fee required for the current year for that registration status, plus the annual registration fee that the attorney would have been required to pay if registered as active for each of the years during which the attorney was on retirement status. If the lawyer seeks to register as active, he or she must also submit, as part of registering, verification from the Director of MCLE of the lawyer's compliance with MCLE requirements as set forth in Rule 790 et seq.

...

(k) Pro Bono Authorization for Inactive and Retired Status Attorneys and Attorneys Admitted in Other States.

...

(5) Annual Registration for Attorneys on Retired Status. Notwithstanding the provisions of Rule 756(a)(6), a retired status attorney who seeks to provide pro bono services under this rule must register on an annual basis, but is not required to pay a registration fee.

...



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 or James J. Grogan, Attorney Registration and Disciplinary Commission at 312.565.2600 or 800.826.8625.)



PMBR SELF-ASSESSMENT COURSE FAQs

Who does the self-assessment course apply to? —

Illinois-licensed attorneys that are representing private clients but who do not have malpractice insurance at the time of registering for 2020 must complete a four-hour interactive, online self-assessment course ("course") regarding the operation of their law firm. This requirement must be met in order to register for 2021.

If you have recently retired from your firm but are still representing at least one private client, then you are subject to this rule.

If you are a government lawyer, a public defender, a prosecutor or corporate in-house counsel, then you are not subject to this requirement unless you represent at least one private client outside the scope of your primary employment.

If you are on Retired or Inactive registration status, then you are not subject to this rule.

Does it cost anything to take the course? —

No. The CLE accredited course is free.

Do I have to get malpractice insurance? —

No. Lawyers that are representing private clients can choose either to take the course or to obtain malpractice insurance.

What if I get malpractice insurance? —

If the lawyer obtains malpractice insurance before the 2021 registration deadline, the lawyer will not be required to take the course.

How often do I have to take the course if I don't get malpractice insurance? —

Lawyers who do not maintain malpractice insurance must complete the course every two years.

Can any lawyer take the course? —

Yes. All lawyers can take the entire course consisting of 8 modules or any of the 8 modules and receive CLE credit.

How long do I have to complete the course? —

The course must be completed by the 2021 registration deadline unless the lawyer obtains malpractice insurance by that time.

What will happen if I don't complete the course? —

A lawyer who has not completed the course or obtained malpractice insurance will not be allowed to register for 2021 and will be removed from the master roll.

How will I know that I've completed the course? —

After completing each of the 8 modules that make up the course, you must complete a short evaluation and submit for credit. Upon doing this for each module, you will be provided with a certificate of completion. Please click [here](#) for instructions on obtaining your certificates of completion.

Our online registration site will also reflect your overall completed status after a one-business day time lag.

If you have completed the entire course (all 8 modules) and the registration process, you will become registered and will be sent an automated email confirming your registration; you will also be sent an updated ID card in approximately 2 weeks.

I've taken all 8 modules in the course, why does my registration profile not reflect my completed status? —

Course data from our CLE host is downloaded once every business day. This can result in a brief time lag before your registration profile is updated. We apologize for the inconvenience.

You may also need to submit credit for one or more of your modules. Please click [here](#) for instructions on submitting your pending credits.

Can I complete the online registration process without taking the self-assessment course?

Yes, you can complete the online registration process and pay your registration fees without taking the course. However, you will not become registered for 2021 until the course has been completed.

Will I get any CLE credit for taking the course?

Yes. Lawyers who participate in the course will earn up to 4 hours of free MCLE credits.

Are the results of any self-assessment public? Will they be discoverable?

No. All information related to a lawyer's self-assessment is confidential, except for the fact of completion of the self-assessment. The ARDC will not be able to access specific self-assessment results for disciplinary proceedings and such results will not be discoverable.

Registration Department



Thu 6/25/2020 8:38 PM

Karen Hallis <karen@karenhallis.com>

RE: [solo-and-small-practice-section] Please reply directly to Gov. Hunter

To Solo and Small Practice Section

As was mentioned before, some of the members here no longer need malpractice insurance because of retirement or a limited practice. Some members here may solely practice law in a volunteer capacity.

The legal community is large and we support one another regardless of the sizes of our practices.

I encounter a lot of people who are represented (or about to be). Some don't understand what lawyers actually do. Conversations about lawyers appear to help them with their anxiety and worry.

I make a lot of referrals and can honestly tell people that it's best to hire a lawyer before months, years (or decades) have passed. I think following the conversations on this listserv helps me to make better referrals.

I wish you all the best with practicing law during this pandemic.
Be well, Karen

Karen L. Hallis, JD, CPC



Thu 6/25/2020 11:34 AM

Elizabeth Rene <rene0373@gmail.com>

Mandatory malpracticeinsurance

To Kim Hunter

Dear Kim,

This responds to your S & SP post.

The issue of mandatory malpractice insurance came up before the BOG already, and we lawyers opposed it. The BOG voted it down. If we are required to have mandatory malpractice insurance, I will have to close my practice. I can't afford to maintain it, especially now under Covid. I have represented several clients pro bono. I'll have to give that up entirely.

There has to be a better way to protect clients than supporting the insurance industry.

Sincerely,

Elizabeth René



Thu 6/25/2020 10:43 AM

Lisa Donaldson <lisadonaldson@seattletrafficlawyer.com>

Re: Forward from Kim Hunter re: Mandatory Malpractice

To Joyce Heritage

Cc Kim Hunter



If there are problems with how this message is displayed, click here to view it in a web browser.

Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

Me too! Every year our bill comes right before Christmas!!! Ouch.



Thu 6/25/2020 7:04 AM

Amanda Stephen <akmstephen@gmail.com>

Mandatory Malpractice Insurance

To Kim Hunter

Hi Kim,

I just want to weigh in on this issue. I am against mandatory malpractice insurance and I believe the disclosures on the WSBA website are sufficient. As a part-time visiting professor at Seattle University School of Law and owner of a small freelance research and writing practice, I find the cost of malpractice insurance to be prohibitive (although I do still have it). In the last few years, I've found it impossible to find part-time policies – the insurance companies do not seem to provide them anymore. Due to the cost of insurance, I have considered shutting down my practice and retiring my license. I think the board should consider how a mandatory provision might affect part-time working mothers who want to keep their license but aren't generating a lot of income from their practice. Or, offer inexpensive part-time policies or exemptions based on the number of billable hours logged per year.

Thank you for all of your hard work,

Amanda Stephen



Wed 6/24/2020 2:07 PM

Karen Hallis <karen@karenhallis.com>

RE: [solo-and-small-practice-section] from Governor Hunter

To Kim Hunter

Cc karen@karenhallis.com

I am an active member of the WA State Bar. I do NOT dispense legal advice and do NOT take legal clients and make a LOT of referrals to actively practicing lawyers.

I maintain my status for a variety of personal reasons.

The WSBA Board of Governors ("The Bpard") cannot make me get malpractice insurance unless they want to first decrease their bar dues, so that paying for their mandated malpractice insurance plus my bar dues amounts to what it now costs me to pay active status bar dues.

IF the Board wants to force ALL lawyers to get mandatory malpractice insurance, there will have to be a waiver so that I can apply for AND receive it.

IF the Board is trying to cover for the fact that law-school-grads-now-lawyers (without have passed a bar exam in WA) may act as attorneys and may not buy malpractice insurance, then the Board has to state so in a transparent fashion.

I am happy to discuss this further and testify if necessary.

I have solid oratory skills and am a passionate fact and expert witness. I have a compelling story and can speak for others who may not be able to do so.

I worked hard to become a lawyer and practice law AND help a lot of people, often without getting paid. The WSBA will NOT take that away from me.

Sincerely, Karen



Wed 6/24/2020 5:25 PM

Heather Young <h_m_young@hotmail.com>

Re: [solo-and-small-practice-section] from Governor Hunter

To: Solo and Small Practice Section

Not to the same levels as contained in the proposal shared by Governor Hunter and I would suggest not high enough while practicing family law.

LLLTs - Washington Supreme Court Admission and Practice Rule 28

Financial Responsibility: Each LLLT shall show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted under APR 28 by:

- A. submitting an individual professional liability insurance policy in the amount of at least \$100,000 per claim and a \$300,000 annual aggregate limit
- B. submitting a professional liability insurance policy of the employer or the parent company of the employer who has agreed to provide coverage for the LLLT's ability to respond in damages in the amount of at least \$100,000 per claim and a \$300,000 annual aggregate limit, or
- C. submitting proof of indemnification by the LLLT's government employer.



Wed 6/24/2020 3:30 PM

julie@juliefowlerlaw.com

RE: [solo-and-small-practice-section] Lots of emails are fine !

To: Kim Hunter

Hi Kim,

I oppose mandatory malpractice insurance.

Julie K. Fowler

Law Office of Julie K. Fowler, P.S.

From: Shannon O'Dell <shannon@fcins.biz>
Sent: Wednesday, June 24, 2020 3:09 PM
To: Kim Hunter <kim@khunterlaw.com>
Subject: RE: from Governor Hunter - re mandatory malpractice

I wrote something for another attorney back in 2018 who had let me peek at the report that was out supporting mandatory malpractice. I'm going to just copy & paste here for you, but that's why it is referencing different limits of insurance and I'm sure different information than might be in whatever report you are looking at now. As an insurance agent doing mostly lawyers malpractice insurance, obviously I feel insurance is a good thing and I encourage everyone to have it. But it is hard for me to support a mandatory system.

The report indicates in Idaho the average premium "was approximately \$1,200." This appears to be for newly issued to solo practitioners, but it is not clear for what level of coverage (per claim and in the aggregate) or for which practice areas.

Is this \$1,200 average based on attorneys getting coverage for the first time or just the first time signing up with Alps (which I understand from our telecon is where this data is coming from)? And if for the first time signing up with Alps, what is the average number of years covered by prior acts? The reason I think this is important is because all carriers give a discounted rate to attorneys with no prior acts coverage (ie – signing up for the first time). I don't have my notes (I'm in Arizona visiting family) but all carriers increase rates for the first 5-8 years of continuous insurance depending on their filing with the State. I believe Alps is 5 years and at the end of that 5 years the premium is just over double of what it was the first year written (so if \$100 the first year it would be like \$225 in year 5). The first year increase is usually the largest percentage increase (average of 25% to 50% the first year – so a \$1,000 premium the first year could be \$1,500 the 2nd year and then \$1,800 the 3rd year, and so on) with decreasing percentages for subsequent years (which is the way all carriers I'm familiar with do it). So depending on what that phrase "newly issued" means, the economic impact might be \$1,200 at first but would be somewhere between \$2,400 & \$3,000 by year 5 to 8 (depending on the carrier) and that's assuming no market changes to the rates (like real estate took a big increase in 2009 due to increased claims) and no changes in the firm (no claims, Bar complaints, changes in practice areas, etc.)

"the report quotes the ABA and ALPS without citation as suggesting the following practice areas have the highest incidence of claims, and therefore I assume, the highest rates for insurance: personal injury, real estate, family law, estate planning, certain (unnamed) corporate practices (patent?), and collection/bankruptcy. Therefore, the factors that determine the rate appear to be experience (years licensed), practice area, and amount of coverage desired."

You are correct – the assumption of cost doesn't tell us what limits were carried. An attorney who carries \$100,000 per claim / \$300,000 aggregate is paying a good percentage less than an attorney carrying \$1M/\$1M. Also, a defense attorney is paying less than an attorney doing a lot of real estate. And so on. Deductibles are also a factor although not as significant. An attorney with a \$5,000 deductible is paying less than one with a \$2,500 deductible assuming limits & practice areas & prior acts are identical), but maybe 10% less.

One thing I didn't see in your memo that might be something to help with your data analysis, the Bar publishes on the website available to the public all attorneys licensed in Washington, whether or not they are in private practice, and whether or not they carry malpractice insurance. And while all attorneys may not provide the information, I know it is asked if they are part of a firm or solo because I can see the firm name for many when I look up an attorney. So if they

are exempting government, corporate in-house, etc. they should be able to look to their very own statistics to find out how many private practice attorneys in Washington State are uninsured.

I agree that solos & small firms have a higher frequency of claims for many factors (I believe the biggest being the lack of being able to ask for specific help when something weird comes up in a case (you don't know what you don't know) & instead having to resort to reaching out the other attorneys with a "hypothetical client" and frequently not being able to go over specific case details). But again, how many solos & small firms are currently uninsured?

I'm with you in that I believe all attorneys should carry malpractice. As I've said in various speeches I've given, I've never met an attorney who graduated law school planning to commit malpractice. But mistakes happen – and many times it is because an attorney doesn't know what they don't know when giving advice and they learn the lesson the hard way when the claim happens. And every attorney I've met got into the law to help people – so when that mistake happens, human nature they want to make it right but usually don't have the financial means to make it right without the insurance. But I've also been selling lawyers malpractice insurance since 1994 through multiple carriers and I realize that sometimes it's cost prohibitive, and even when an attorney retires, the cost of the tail protecting those clients past when the attorney is no longer insured can also be cost prohibitive. For example, I have a client who I've had insured for a number of years. He had a problem client that filed multiple Bar complaints and then filed a lawsuit – all were dismissed. But the insurance company racked up nearly \$35,000 in insurance company defense expenses since 2014. While the lawsuit was pending (the guy appealed everything that was dismissed so it took awhile to get the matter completely closed), his carrier stopped writing solo attorneys and didn't want to keep him on as a client while the claim was continuing and so the only option was in the non-standard market for a premium around \$8,000. Fortunately he had an established firm and was able to absorb the premiums – now that the matter is closed I'm hoping to find a carrier that won't just look at the loss ratio of their premium versus the amount paid on that claim but will look instead that it was a frivolous claim that was ultimately successfully defended and I'm hoping to bring that premium in half. I have other clients like that (although for them they had legitimate claims that happened against them). As we discussed, carriers hate anything patent related and so an attorney who might do some patent work is not only not going to have many carriers competing for their business but is also going to pay a higher premium than say someone doing just a similar amount of trademark work and most certainly more than someone doing the "typical" practice areas like family or criminal or personal injury, etc. I meet someone at the SSP conference who has shopped malpractice insurance but because of his practice areas, the cost is prohibitive at this stage in his career (he's been practicing for years without coverage because of the cost) and the types of services he does (as I recall it included patent work) he does not feel he can increase his rates to his clients to offset and be able to keep those clients or any referrals from those clients despite doing good work for them. As I like to lament, unfortunately we live in a time where legal services, insurance services, etc. are considered a commodity that should be able to be price compared like you would compare the cost of ketchup in the grocery store. For someone to buy ketchup B which is 25% more than ketchup A, there better be something special about it that is easily discerned otherwise people will gravitate to ketchup A for the cost. This is basically what you are experiencing with those who want to use Legal Zoom, etc. People don't realize that there is no such thing as a simple will or a simple divorce – it might seem simple but if you miss something small you've just created a huge & expensive issue that you would have avoided by paying a little bit more to have an attorney handle it.

As for a variation in rates, I have 2 firm files with me that I can reference easily. One did mostly estate/probate/trust/wills and some business, a little real estate, and a little plaintiff's personal injury practicing on a part time basis to build his practice. He did not have prior insurance and his first year premium was about \$1,800 for limits of \$500K/\$1M. The other attorney was a part time attorney (intentionally part time long term) doing all family law with no prior insurance and her first year premium was about \$600 for limits of \$1M/\$1M. Now because one was part time to start out building the practice and the other was part time always, these rates are with different carriers but I think identifies the big swing in rates based on practice areas for 2 attorneys both getting coverage for the first time.

>>

This is new since 2018:

I have a couple of friends who are insured with the Oregon PLF and their cost to increase their limits beyond the mandatory minimum is quite expensive. But they also don't require a tail endorsement when you stop practicing as I recall even though the coverage is still claims made. Additionally, for \$300,000 per claim & aggregate, the cost to Oregon attorneys is \$3,300 per attorney (and I don't believe they charge you anything additional if you have claims – so some attorneys in Washington might see a decrease but I think most would see an increase if Washington's coverage was similarly priced). It also only covers you if your office is located within Oregon. I have several clients who live on the Washington side of the border but are only licensed in Oregon and it is tricky to make a way for them to be covered because the PLF will not cover them. Also, if a firm is based in Washington but has a branch office in Oregon, the attorney(s) working in the branch office are required to be covered by the PLF even though the firm also has coverage for those same services by their policy issued in Washington. So while there are some good things with the PLF system, it also poses some problems for attorneys who do cross border work. But I do understand the nature of wanting to be sure that clients have some "pocket" to pursue in the event of malpractice.

This is a hot topic and so I've opted to not post to the listserv and just to you directly. It is one of those things with no easy answers. I know recently I've had several clients who are working part time on purpose to care for kids or parents due to the "new normal" brought on by this pandemic. Many of them would not be able to afford a mandatory policy. Some are doing volunteer work for the various legal aid organizations and so maintain a very limited part time practice in addition to that work. They also likely wouldn't be able to afford a mandatory policy. Frankly some of my established clients who have had their workflow impacted due to this pandemic are struggling to pay the insurance they have and are having to do payment options and other creative things they've not had to do before. So these are the things I worry about with a mandatory malpractice – who gets left behind? And do the legal aid organizations doing low bono & pro bono work get different rates than private practice? They do now. The idea in principle is a good one – make sure that clients have some minimum level of protection. But as I've said before, the more simple step might be a mandatory disclosure that someone is not insured (as is suggested with this mandatory malpractice proposal) so that a client isn't blindsided if there is an error or perceived error. I'm assuming this proposal also exempts government, corporate in-house, etc. Has the Bar pulled numbers of all the other active attorneys who don't fit into one of those categories to get an accurate percentage of how many are currently not reporting any insurance? Also, is this proposal to be mandatory that they self-report to the Bar? How often do they need to report? For example, with the reporting to the Bar right now that is done in February. But if someone cancels their policy in April, no notification is given to the Bar (and I'm not aware of the Bar mandates attorneys report that mid year). So unless you set up a system like the PLF, how do you verify people are in compliance all year long?

I am happy to discuss this with you by phone or email or whatever if you have any additional questions. My position on this is not around what is better for my business model (the only thing bad for me is setting up a state run system like Oregon but in some ways if there is going to be mandatory insurance that might work better) – I would rather just provide you with information and then the chips will fall where they may and I could be restructuring my own business as so many of my clients have done. I believe Idaho is the only other state with mandatory malpractice and because Alps was already very strong there before mandatory insurance became a thing, my hunch is Alps probably insures most of the attorneys (so while not like the Oregon PLF, the majority are with a single carrier).

Best of luck as the BOG works through this issue. Again, if I can provide any additional information, please do not hesitate to ask. I've been working on lawyers malpractice since 1994 and anything I don't know I have a fabulous network that can help me get you any information.

Shannon O'Dell

Listmates and Governor Hunter:

Didn't this proposal just come up in the last year or two? That proposal was not approved. I oppose mandatory malpractice insurance.

I would not oppose mandatory disclosure to clients whether one is carrying insurance or not, which could easily be made part of the required contents in fee agreements by GPR rule amendment.

These points echo those I made the last time.

1. I agree with the comment that once insurance is mandated, your premiums will rise. There will be no incentive for companies to compete for your business, nor to "customize your insurance so you only pay for what you need." (h/t Liberty Mutual ad).
2. Customization will vanish. Carriers would love it, as underwriting would no longer need to review individual experience and risk profiles. Since the WSBA has had its own endorsed carrier, that carrier has responded to my inquiry twice in recent years (when I asked out of due diligence for a quote) that they could not possibly meet the low premiums I have been paying. Their quote was in each instance at least twice what I have been paying. Sure, I have over 40 years in practice, and that I now practice part-time, with no employees whose acts must also be covered by my policy. These individual facts lead to lower cost. That sort of consideration will, in my view, no longer count if some arbitrary coverage amount is mandated no matter what the facts are for any individual's practice.
3. In general, one buys liability insurance to protect oneself against large claims that could otherwise lead to bankruptcy. If one owns very little but still wants protection and an insurer-provided defense lawyer, then coverage limits at \$100,000/300,000 or even \$250,000/500,000 should be sufficient. If one is wealthy, on the other hand, or has many years of earning potential ahead, then higher limits make sense and are a good buy.
4. Liability insurance is to protect the insured, but ought not provide a tempting deep pocket for marginal or speculative claims. With mandatory coverage, I'd expect even disgruntled, revenge claims where a client simply does not like an outcome, but decides to make a claim anyway in hopes of forcing some sort of settlement. Mandatory insurance would in my view encourage spurious claims.
5. I have been with the same carrier for sufficient years that should I entirely retire, I am entitled to no-premium, free, lifetime tail coverage. If WSBA requires mandatory coverage and my carrier were not among the chosen ones, then I have lost that valuable benefit just as I come into sight of the retirement horizon.

Larry R. Schreiter



Wed 6/24/2020 2:11 PM

Jennifer Coates <jenny@jennycoateslaw.com>

Re: [solo-and-small-practice-section] from Governor Hunter

To Solo and Small Practice Section

Cc Solo and Small Practice Section

Seems like it would be crazy and unfair if it didn't.

Jenny Coates Law, PLLC
Tax and Business Law Attorney
www.jennycoateslaw.com
Bainbridge Island, Washington
tel: 206-780-7934; fax: 206-458-6051



Wed 6/24/2020 2:02 PM

Heather Young <h_m_young@hotmail.com>

RE: [solo-and-small-practice-section] from Governor Hunter

To Solo and Small Practice Section; Kim Hunter

My question is will this requirement, if passed, also apply to LLLTs and LPOs as well.

Heather M. Young
Tuell & Young, P.S.
1457 S. Union Ave.



Wed 6/24/2020 1:55 PM

Jeff Davis <jeff@bellanddavispllc.com>

RE: [solo-and-small-practice-section] from Governor Hunter

To Kim Hunter; 'Solo and Small Practice Section'

I carry insurance, and at far higher levels than the current minimum, in fact I have never seen such low limits. Having said that, I oppose mandatory insurance. As we saw with healthcare, once it becomes mandatory rates skyrocket with no better benefits. Rates continue to go up anyway, and the number of providers decrease. Why give carriers an incentive to significantly increase premiums because they have a captive audience. Further, I agree with the comments that retired, or those who have significantly slowed down and limited their practice should not be required to carry insurance. I assume they are doing things they have years of experience handling.

Jeff Davis



Wed 6/24/2020 1:29 PM

Jeffrey Mirsepasy <Jeffrey@Mirslaw.com>

[solo-and-small-practice-section] Please reply directly to Gov. Hunter

To: Solo and Small Practice Section

I would rather discuss WSBA mandatory insurance than PPP issues for example, which are generic to small business and do not uniquely apply to lawyers.

Jeffrey Mirsepasy



Wed 6/24/2020 12:58 PM

William Buchanan <wmbuchanan_8864@hotmail.com>

RE: from Governor Hunter

To: Kim Hunter

Dear Kim:

Thanks for alerting the membership to this development.

I oppose mandatory malpractice insurance.

Please ask the Board, "What other professions require disclosure on advertising, letterhead and media profiles that the professional does not have malpractice insurance?"

William Buchanan



Wed 6/24/2020 12:39 PM

Alicia Levy <alicia@levy-lawfirm.com>

Re: [solo-and-small-practice-section] from Governor Hunter

To: Solo and Small Practice Section

My malpractice insurance carrier said that within the next 2-3 years no insurance companies in Washington will allow for the minimums to be \$250,000/\$500,000 they will all jump to the next level. I don't necessarily have an opinion on whether it should be mandatory, but I think it's important to find out if this is true, because that cost could be quite a bit more, and could change the discussion some.

Thank you,

Alicia Levy
The Levy Law firm, PLLC
509-432-6881



Wed 6/24/2020 12:37 PM

Karen Kruse <k2@karenkruselaw.com>

RE:[solo-and-small-practice-section] from Governor Hunter

To Solo and Small Practice Section

Me too. And I don't think attorneys who don't carry malpractice are necessarily disclosing that fact (other than the disclosure on the WSBA website in each individual attorney's profile – Has malpractice insurance: Yes/No).

I could be wrong on the disclosure point but I don't recall seeing such a disclosure any where besides the WSBA website.

Karen Kruse



Wed 6/24/2020 12:35 PM

Kari Petrusek <kari@petruseklaw.com>

RE: from Governor Hunter

To Kim Hunter

While I feel that all attorneys should have malpractice insurance, I don't feel that it should be mandatory. Making it mandatory would hurt solo attorneys and even small firm attorneys the hardest. If someone wants to take the chance and practice without insurance, that's their risk to take.

Kari



Kari Petrusek
Attorney at Law
Petrusek Law, PLLC



Wed 6/24/2020 12:26 PM

James Jantos <jantos@jjantos.com>

RE: [solo-and-small-practice-section] Please reply directly to Gov. Hunter

To Solo and Small Practice Section

I am against mandatory malpractice insurance, but I would like to hear what others think since it is a "hot button topic."

James S. Jantos



Wed 6/24/2020 12:17 PM

Josh Moultray <josh@moultray.com>

RE: from Governor Hunter

To Kim Hunter

I strongly support mandatory malpractice. I assume all the bullet points and reasoning are well known so I won't bother repeating them.

I would add that I also support a requirement to maintain insurance for any applicable statute of limitations, with the bar either requiring insurers to include this in the pricing or by paying it out of the lawyer's fund for client protection. I had a case where we had a good claim against an opposing lawyer who dropped his coverage before the claim was ripe, my client didn't have any desire to proceed against a judgment proof defendant.

Thanks,
Josh



Wed 6/24/2020 12:03 PM

VAClifford <vaciffordattorney@comcast.net>

RE: [solo-and-small-practice-section] from Governor Hunter

To Kim Hunter

Kim,

Thanks for asking. I'm ok with this requirement

Virginia Clifford
Law Office of Virginia A. Clifford PLLC
2952 Limited Lane NW Suite A
Olympia, WA 98502



Wed 6/24/2020 12:07 PM

Nathan J. Arnold <nathan@cajlawyers.com>

RE: from Governor Hunter

To Kim Hunter

I am very pro mandatory insurance to protect the public. I am even more for it if we are doing away with the bar exam (which I know is not where we are today, but it is looking that way). In my humble opinion, attorneys/firm's should have to disclose a lack of insurance and/or lack of bar exam passage in all materials to prospective clients.

Nathan J. Arnold
CLOUTIER ARNOLD JACOBOWITZ PLLC
Nathan@CAJlawyers.com
C: 206.799.4221



Wed 6/24/2020 12:02 PM

Jim Haugen <jlthaugen@seattlepatentgroup.com>

RE: from Governor Hunter

To Kim Hunter

Hi Kim,

Since I do intellectual property, and patents in particular, malpractice insurance is quite expensive; expensive enough that I would have to raise my prices. This would probably affect the ability of my primary client base to pay for my services; I deal mainly with individuals and small companies.

My clients do know I do not carry malpractice insurance, and I would probably add that info everywhere. I wish malpractice insurance was more reasonable for IP!

Thanks,
Jim Haugen



Wed 6/24/2020 12:00 PM

Mike Matesky <mike@mateskylaw.com>

RE: [solo-and-small-practice-section] from Governor Hunter

To Kim Hunter; 'Solo and Small Practice Section'

I am against mandatory coverage.

Mike Matesky
Matesky Law PLLC
1001 4th Ave., Suite 3200



Wed 6/24/2020 11:54 AM

Jan Kelly <jan@jankellylaw.com>

Re: [solo-and-small-practice-section] from Governor Hunter

To Kim Hunter

Hi Kim,

For myself, I can't imagine practicing without professional liability insurance, but it is expensive! I can see it being a hardship for pro/low-bono attorneys.



Thu 6/25/2020 6:55 PM

Erin Cheyenne Sperger <erin@legalwellspring.com>

Re: [solo-and-small-practice-section] Please reply directly to Gov. Hunter

To Solo and Small Practice Section

Cc Solo and Small Practice Section

Respectfully, I disagree with Ann. This is the exact purpose of this list serve to discuss issues that directly affect its attorney members.

Personally I want to know my colleagues' thoughts on this monumental issue that will possibly reshape the practice of law and will directly effect every single one of us solo attorneys. And I want the transparency so I can see whether attorneys who are supporting this endeavor have any self interest such as practicing insurance law or represent insurance companies.

There is much more at issue here than just whether an attorney should be required to have malpractice insurance. This is a step away from self regulation and erodes a lawyer's independent decision making.

Why are we revisiting this issue in the midst of a pandemic when solo firms are busy trying to maintain their practice?

I think insurance is a good idea but I don't want to give insurance companies the ability to have any say over how I practice law.

Erin Sperger



Thu 6/25/2020 11:18 AM

Scott Edward Gifford <scott@sgiffordlaw.com>

RE: [solo-and-small-practice-section] from Governor Hunter

To Solo and Small Practice Section

I would love to see the Bar step up and do something like the PLF in Oregon.

Scott Gifford

Scott Gifford Law

Phone: (206) 579-6061

Fax: (206) 420-5389

Email: scott@sgiffordlaw.com



Thu 6/25/2020 10:39 AM

Joyce Heritage <joyce@heritage-law.com>

Re: Forward from Kim Hunter re: Mandatory Malpractice

To Lisa Donaldson; Kim Hunter

 If there are problems with how this message is displayed, click here to view it in a web browser.
Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

Hi-

I buy malpractice insurance but it seems like a scam because so much of our business is traffic and only 20-25% is anything else... seems like they charge a whole bunch extra than required. For Liz & I it is over \$2000!

Joyce



Thu 6/25/2020 9:11 AM

Jeremy Vermilyea <jeremy@vermilyealaw.com>

RE:[solo-and-small-practice-section] from Governor Hunter

To Solo and Small Practice Section

I support the requirement for mandatory malpractice insurance. I'd love to see it set up like Oregon's PLF, but that's probably not practical in the short term.

I would not support exceptions, save for in-house counsel and others similarly situated. With respect to those who are minimally practicing, or have kept their license alive but don't practice at all, the best option is go inactive. My feeling is that the part-timers are the attorneys most at risk for having a malpractice situation precisely because they are not practicing regularly. Their clients need to be protected.

Jeremy Vermilyea

 Best Lawyers



Thu 6/25/2020 12:19 AM

Keith Armstrong, Esq. <Keith@stronginternationallaw.com>

Re: Against mandatory insurance

To: Kim Hunter

 If there are problems with how this message is displayed, click here to view it in a web browser.

Gov. Hunter, I am against mandatory liability insurance. I can see the point, but I am not sure this costs affects minorities, lower earning attorneys more than others. It sounds good, but I think there should be some exceptions for part-time, seniors and those barely earning a living. I plan to be insured this year, but it could be a struggle financially for many firms.

[Keith Armstrong, Esq.](#)

From: D.Bruce Gardiner <bruce@gardinerlaw.com>

Sent: Wednesday, June 24, 2020 8:46 PM

To: Solo and Small Practice Section <solo-and-small-practice-section@list.wsba.org>

Subject: [solo-and-small-practice-section] Mandatory Insurance

This is not a new issue. It last came up in 2018. At that time, the Executive Committee took a stand against mandatory insurance, and submitted the following letter to the BOC:

Solo and Small Practice Section Statement on Mandatory Malpractice Insurance.

Before the Mandatory Insurance Task Force proceeds further in their study of imposing mandatory malpractice insurance on the practicing attorneys of Washington State, it is imperative that they conduct an economic study on the financial impact of mandatory insurance premiums on the members of the Bar.

According to the Washington State Bar Association Diversity & Inclusion Plan, "The Washington State Bar Association is committed to advancing diversity and inclusion within the legal profession." The Mandatory Insurance Plan is directly opposed to the Bar's expressed promotion of diversity.

Let's look at some of the Bar's statistics from the WSBA Membership Study 2012. 10.4% reported an income of below \$25,000, 13% an income of \$25-50,000, 17% an income of \$50-75,000, and 20% an income of \$75-100,000. Collective, over 60% of the Bar members report an income of less than \$100,000, almost 25% reported an income of less than \$50,000.

19% of the Bar are solo practitioners (the number in small firms was not reported). 48% of the respondents working in law firms (as opposed to government, corporate, education, the courts, etc.) were solo practitioners.

12% of the Bar were reported to be nonCaucasian/White, and the median annual estimated income was \$80,000.

9% reported a non-straight sexual orientation, and the median income was \$75,000.

45% were reported to be female, with a median income of \$80,000.

19% were reported as having a disability or impairment. For active practicing attorneys in this category, they reported a median income of \$90,000.

Of these minority groups (among others listed in the report), 31% of the ethnic and racial minorities were in solo practice – half again as high as the overall average. 28% of the sexual orientation minorities were in solo practice – half again as high as the overall average. 38% of the women were identified as solo practitioners – double the overall average. 47% of persons with disabilities and impairments were in solo practice – two and one-half times the overall average.

The study noted, "An analysis of the relationship of diversity to solo practice yielded notable findings. Across the board, members of each of the seven diversity groups in the study identify as solo practitioners at a higher rate than the overall membership. These discrepancies are striking, ranging from a 50 percent difference (sexual orientation) up to a 300 percent difference (military personnel and veterans) in the degree to which they exceed the overall membership average." (WSBA Membership Study 2012 at 108) "The prominence of solo and related forms of practice such as contract attorney and small-firm practice are notable in the bar membership at present. In particular, solo practitioners appear more likely than non-solos to also be members of one or more diversity groups. Older members, persons with disabilities and impairments,

parents and caregivers, women, and military personnel and veterans are all prominently represented among solo practitioners, so to some extent, to advocate for the needs of the solo practitioner is also to advocate for these groups.” (at 123)

The Malpractice Insurance Taskforce Report states that Lawyers who practice in solo or small firms are most likely to be uninsured – approximately 28% of the solo practitioners (at page 3), but nowhere in the report do they identify that solo practitioners also represent a larger group of the lower income attorneys and a larger group of the diversity attorney population.

On point, when reporting the expressed concerns of the Bar membership, nowhere do they list a concern that the mandatory costs of malpractice insurance would work a larger hardship on diversity members than on members as a whole, on solo practitioners of the Bar, and the lower economic status members. This discrimination is contradictory to the stated goals of the Bar on advancing diversity and inclusion within the legal profession and raises another bar to the practice of law.

The letter was signed by our President and sent on behalf of the Section.

Bruce....

Bruce Gardiner



Wed 6/24/2020 3:39 PM

Law Office Of Mitch Greene <speedinginseattle@outlook.com>

RE: from Kim Hunter

To Kim Hunter

Hi Kim,

I agree that mandatory insurance should not be a requirement for the bar to address and I am opposed! I believe it is enough to have it noted on our page and there is a fund already established for it. Please add me to the list.

Sincerely,
Mitch Greene 22114



Wed 6/24/2020 3:23 PM

Setareh Mahmoodi <mahmoodi.setareh@gmail.com>

Re: [solo-and-small-practice-section] Lots of emails are fine !

To Kim Hunter

Hi Kim,

Thank you! You are the best! I really appreciate how involved you are.

I disagree that malpractice insurance should be mandatory. I have malpractice insurance, but I disagree that it should be mandatory and regulated for the same reasons many of my colleagues have already brought up.

Thanks,

Setareh



Wed 6/24/2020 2:48 PM

Talya West <talyagwest@gmail.com>

FW: [solo-and-small-practice-section] from Governor Hunter

To Kim Hunter

I agree with below; I don't think mandatory malpractice is a good idea for new attorneys either. We are already struggling with paying the bills for the first couple years; adding mandatory malpractice insurance premium would be very high load and deterrent for new attorneys.

Thanks,

Kind Regards,

Talya Gonca West
Attorney at Law



Wed 6/24/2020 1:55 PM

William Jeffrey Davis <jeff@bellanddavispllc.com>

RE: [solo-and-small-practice-section] from Governor Hunter

To Solo and Small Practice Section

I carry insurance, and at far higher levels than the current minimum, in fact I have never seen such low limits. Having said that, I oppose mandatory insurance. As we saw with healthcare, once it becomes mandatory rates skyrocket with no better benefits. Rates continue to go up anyway, and the number of providers decrease. Why give carriers an incentive to significantly increase premiums because they have a captive audience. Further, I agree with the comments that retired, or those who have significantly slowed down and limited their practice should not be required to carry insurance. I assume they are doing things they have years of experience handling.

Jeff Davis



Wed 6/24/2020 1:14 PM

Doug Schafer <schafer@pobox.com>

Re: [solo-and-small-practice-section] from Governor Hunter

To Kim Hunter

 Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

I strongly oppose mandatory malpractice insurance. I am now semi-retired, with a limited practice from my home office almost entirely for long-time clients. I have a net worth that would cover any likely malpractice claims, but I am careful to practice only in subjects with which I am familiar. Mandatory malpractice insurance may well cause me to inactivate my license.



Wed 6/24/2020 12:53 PM

Marc Stern <marc@hutzbah.com>

RE:[solo-and-small-practice-section] from Governor Hunter

To Solo and Small Practice Section

There are any number of lawyers who have marginal practices, i.e. Friends, write a will every now and then, and are not in active practice. Requiring them to get malpractice protects no one. There ought to be an exclusion for those who have practiced 40 years of wo, are no longer in active practice and handle marginal cases.

And yes, I have malpractice insurance well in excess of the minimum.



Wed 6/24/2020 12:50 PM

Pam Rohr <phr@trlaw-spokane.com>

RE: [solo-and-small-practice-section] from Governor Hunter

To Kim Hunter

Requiring mandatory malpractice insurance is unconscionable. I have been an attorney for 30 years, have never had a malpractice claim and work in only 3 very limited areas of law.

Forcing me to list that I do not have coverage on my ads, letterhead and media profiles shines a glaring light on what is least important about my practice.

Pamela H. Rohr, Esq.



Wed 6/24/2020 12:49 PM

mlmcfadden@centurytel.net

RE: [solo-and-small-practice-section] from Governor Hunter

To Kim Hunter

I thought there had been a decision last year to NOT require mandatory insurance. And if it's actually "mandatory" then disclosure would not be necessary?

Michele L. McFadden
McFadden Law Office
PO Box 714
Wauna, WA 98395



Wed 6/24/2020 12:35 PM

Lynn Johnson <lynnfamilylaw@gmail.com>

Re: [solo-and-small-practice-section] from Governor Hunter

To Kim Hunter



I support mandatory malpractice insurance.

Lynn



Wed 6/24/2020 12:35 PM

Katrina Brede <kbrede@bracepointlaw.com>

FW: from Governor Hunter

To Kim Hunter

Hi Kim –

Regarding the mandatory malpractice insurance - I am no longer a solo practitioner but I am not far from it and I would say that requiring those limits would almost be a barrier to entry for practice, particularly for one just getting started. I was barely able to swing the policy with lower limits (150k vs. 250k) and it is one factor that pushed me into joining a firm. Forcing the advertising is asking a lawyer to advertise that they're broke and doesn't say much about their competence.

Just something to consider.

Thanks
katrina



Wed 6/24/2020 12:17 PM

Dan Wu <dan@eqlaw.net>

Re: [solo-and-small-practice-section] from Governor Hunter

To Kim Hunter

Hi

As a new attorney insurance is one of the largest yearly expenses I have. I know that protecting the public is important and having some security on my end is also helpful. What I would hope to see is maybe some collective negotiation by the bar association to help lower the cost of insurance.

Dan Wu



Wed 6/24/2020 12:06 PM

Priya Sinha Cloutier <priya@cajlawyers.com>

RE:[solo-and-small-practice-section] from Governor Hunter

To Solo and Small Practice Section

I support protecting the public with mandatory liability insurance.

Priya Sinha Cloutier | Attorney



Wed 6/24/2020 12:02 PM

Deirdre Glynn Levin <info@dglaw.net>

Re: [solo-and-small-practice-section] from Governor Hunter

To Kim Hunter

I am strongly in favor of mandatory coverage. Insurance is a cost of doing business and lawyers are no exception.

Deirdre Glynn Levin, J.D.



Wed 6/24/2020 11:56 AM

James Kim <jkim1216@hotmail.com>

Re: from Governor Hunter

To: Kim Hunter

I don't understand the need to disclose lack of coverage, especially in letterheads and would like to see that requirement removed.

Thank you



Thu 6/18/2020 6:34 PM

Michelle Siebenaler <michelle@siebenalertaw.com>

Re: [solo-and-small-practice-section] from Governor Hunter

To: Solo and Small Practice Section

cc: Solo and Small Practice Section

I am a bit late chiming in, but I do not agree with the decision to forego the Bar Exam requirement. I agree that the Bar Exam format itself may need to be reviewed, but that is a longer term problem to be addressed by a longer term solution. The merits of the Bar Exam itself are not what the Court was considering here (I don't think). As long as the Bar Exam is the standard, and until a different format for testing, apprenticeship, internship etc... is adopted, anyone admitted to practice should have to demonstrate that they can pass the exam. You shouldn't do away with one standard before coming up with a new one.

If I was graduating this year, I would honestly be frustrated. I would not want to feel like there was always an asterisk next to my qualifications... that I was a member of the year that the Bar was not required. Also, I took the Bar in 2003, and I know it has changed a lot since then, but I do feel I learned a lot through the Bar prep process. I do still lean on the basic concepts learned outside my area of practice... at least in the sense that I have enough understanding for me to spot an issue if there is one, and refer the matter that falls outside of my specialty area to another attorney. Legal issues don't exist in silos, and I think it is important to demonstrate some understanding of Contracts, Torts, Civ Pro, etc... no matter what specialty you plan to pursue.

I think offering some complimentary bar prep classes (for those who can show a financial hardship), the option to take the test at a later date if more time is needed to prep, remote testing options, and a temporary limited license to practice for those who already have (or will have) jobs lined up, makes a lot more sense.

All of that being said... since the decision was made... I agree with the sentiment that we need to welcome this class to practice and respect and support them as colleagues.

Michelle R. Siebenaler



Wed 6/17/2020 12:21 PM

John Barton <thebartonlawfirm@gmail.com>

Re: [solo-and-small-practice-section] from Governor Hunter

To Kim Hunter

I think the diploma solution is bad for the applicants who may still be ill-equipped to practice law after law school, bad for clients who will be hurt by incompetent lawyers, and bad for society's faith in the legal system and justice for the reasons stated above. Some argue that the bar exam does not determine whether a lawyer will be a good lawyer. The point of the exam is not, however, to determine whether the attorney will be good at the job. The point is that the attorney has basic competence: the ability (1) to assess facts and apply black-letter law, (2) to make a black-letter legal arguments clearly, (3) to quickly learn basic black-letter law in fields the applicant did not study in law school, and (4) to solidify her/his understanding of the basic black letter law in core areas of the law the s/he did study. There is a lot more to learn, but these are essential basics.

Regarding whether the exam is unfair to minority groups, I do not have an opinion or suggestion because I neither know enough nor have experience addressing that kind of problem. If it is a problem, it must be fixed. The profession is still a very white, male profession. Justice Ginsberg said, "When I'm sometimes asked when will there be enough [women on the Supreme Court] and I say, 'When there are nine,' people are shocked. But there'd been nine men, and nobody's ever raised a question about that." The same could be said for minorities.



Wed 6/17/2020 11:43 AM

Nancy Hawkins <nhawkins@seanet.com>

RE: [solo-and-small-practice-section] from Governor Hunter

To Solo and Small Practice Section

Kim—I assume that this topic will be on the BOG agenda next week. I wonder if someone from the WSC could be asked to present a little more background information beyond the letter from the Dean. Perhaps even answer some of the questions about this topic that are being asked on the list serve. Just a thought.

Nancy

Nancy Hawkins