WASHINGTON STATE
BAR ASSOCIATION

MANDATORY MALPRACTICE INSURANCE TASK FORCE

AGENDA
April 25, 2018
11:30 a.m. to 2:30 p.m.
Conference Call: 1-866-577-9294; Code: 52824#

AGENDA

1. Call to Order and Preliminary Matters
    a. Approval of March 28, 2018 minutes
2. Panel Presentation by Insurance Industry Professionals
    a. Chris L. Newbold, Executive Vice President of ALPS Corporation and ALPS Property and Casualty Company
    b. David S. Weisenberger, Vice President, Healthcare and Professional Liability, James River Insurance Company
    c. Judy Graf, Area Vice President, Account Executive, Arthur J. Gallagher Risk Management Services
    d. Q & A
3. Presentation by Mark Johnson, Attorney at Law, Johnson Flora Sprangers PLLC
4. Presentation by Kevin Bank, Assistant General Counsel and Staff Liaison to Client Protection Fund Board, WSBA
5. Presentation by Thea Jennings on the American Bar Association Profile of Legal Malpractice Claims (2012-2015), ABA Standing Committee on Lawyers' Professional Liability, American Bar Association, September 2016
6. Discussion and Next Steps

MEETING MATERIALS

A. Draft March 28, 2018 minutes (pp. 311-316)

B. Memo from Task Force Chair with Excerpts from *When Lawyers Screw Up: Improving Access to Justice for Legal Malpractice Victims* by Herbert Kritzer and Neil Vidmar, (2018, Univ. of Kansas Press). (pp. 317-331)

C. WSBA Regulatory Services Department PowerPoint Presentation on Member Demographics by Jean McElroy, Chief Regulatory Counsel, WSBA (pp. 332-344)

D. ALPS Property and Casualty Insurance Company Rate Filing – WA – Effective March 2, 2014 (pp. 345-354)

E. Sample Application Form for Lawyers Professional Liability Insurance (pp. 355-362)

F. Sample Real Estate Practice Supplement (pp. 363-367)

G. 2017 Client Protection Fund Annual Report (pp. 368-394)

H. APR 15 Client Protection Fund and APR 15 Client Protection Fund (APR 15) Procedural Regulations (pp. 395-401)

A.
Draft March 28, 2018 Minutes

WASHINGTON STATE
BAR ASSOCIATION

MANDATORY MALPRACTICE INSURANCE TASK FORCE

MEETING MINUTES

March 28, 2018

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

Also present were Doug Ende (WSBA Staff Liaison), Thea Jennings (Office of Disciplinary Counsel Disciplinary Program Administrator), Rachel Konkler (Office of Disciplinary Counsel Legal Administrative Assistant), Jerry Larkin (Attorney Register & Disciplinary Commission Administrator, State Bar of Illinois) (by phone), Gene Leverty (President, State Bar of Nevada), Leslie Levin (Professor, University of Connecticut School of Law) (by phone), Jean McElroy (WSBA Chief Regulatory Counsel), and Sara Niegowski (WSBA Chief Communications and Outreach Officer).

The meeting was called to order at 1:02 p.m.

A. WSBA MEMBER FEEDBACK FOR THE TASK FORCE

There has been no new feedback from the WSBA membership since the Task Force's last meeting in February. The Task Force will continue to generate feedback from the WSBA membership as its work progresses.

B. MINUTES

The minutes of the February 21, 2018 meeting were approved by consensus.

C. RESEARCH AND ANALYSIS BY LESLIE C. LEVIN, PROFESSOR, UNIVERSITY OF CONNECTICUT SCHOOL OF LAW

Leslie C. Levin, Professor at University of Connecticut School of Law, presented her research from her September 2016 Florida Law Review article *Lawyers Going Bare and Clients Going Blind*, which studies uninsured lawyers, who they are, and why they go uninsured. She found that small firm lawyers are more likely to go uninsured; however, not a lot is known about these lawyers and why they choose to go uninsured, as these lawyers often fly "under the radar." She noted that in Washington, based on voluntary demographic information reported by lawyers in 2017 as part of the annual licensing process, approximately 28% of solo

practitioners reported being uninsured. She predicts the number may be higher given that the reporting is voluntary.

As part of her research, Professor Levin surveyed over 200 lawyers in Connecticut (a state with no malpractice insurance disclosure requirements), New Mexico (a state with direct disclosure requirements), and Arizona (a state with indirect disclosure requirements). Her survey concluded that approximately 15% of private practitioners in New Mexico and 19.6% of private practitioners in Arizona go uninsured. She further found that most uninsured lawyers are solo or small firm practitioners, who were more likely to work at home without any support staff. According to those surveyed, the most common reason for not to carrying insurance was cost; in all three surveyed states, insurance costs on average $3,000 per lawyer. Other reasons included philosophical opposition to mandatory insurance, a dislike of insurance companies, and a belief of no risk of liability because of practice area.

Of those surveyed in New Mexico who reported that they did not have insurance and did not wish to purchase insurance, many asserted that they could not obtain insurance at a price they could afford; however, 57.5% of respondents indicated that they agreed or strongly agreed that they could afford counsel to defend them against a malpractice claim. Another 41% indicated they had never applied for malpractice insurance, which suggests some respondents may not have known the true cost of insurance. Professor Levin estimates that the number who may truly be unable to afford insurance is somewhere near 20%.

In her research, Professor Levin further found that the bulk of reported malpractice claims are against solo and small firm practitioners. Specifically, in Missouri, the only state requiring insurers to report claims statistics, 66.4% of malpractice claims were against firms with five or fewer lawyers. Statistics also showed that the mean and median amount paid for claims against solos from 1984-2014 was $52,678 and $24,351, respectively. For firms of two-to-five lawyers, the mean paid was $110,994 and the median paid was $34,034, all of which suggests that annual coverage of $100,000 per occurrence would likely suffice to cover most claims against solo and small firm lawyers.

In jurisdictions without mandatory malpractice insurance, Professor Levin estimates that annual claims frequency rates for solo and small firms are approximately 3.25 to 4.25 claims per 100 lawyers. She notes some evidence suggests that mandatory insurance may affect claims rates (based on review of rates in Oregon and Canada, where malpractice insurance is mandated). Professor Levin reported that in Oregon lawyers are more willing to report a claim since it will not affect their insurance premiums, with claims rates at 12.4 claims per 100 lawyers, on average. In Canada, there were, on average, 10.3 claims per 100 lawyers in Ontario, 12.3 claims per 100 lawyers in British Columbia, and 11.8 claims per 100 lawyers in Alberta.

Professor Levin also researched the effect of malpractice insurance disclosure requirements across the country. Only anecdotal evidence suggests there was an increase in the purchasing of insurance around the time disclosure requirements went into effect because most jurisdictions did not maintain information regarding how many lawyers were insured prior to

those requirements. Consequently, the effect of those initiatives on acquisition of insurance remains in question.

Finally, Professor Levin addressed the question of whether uninsured lawyers are more likely to commit malpractice. She noted that hard data is not available on this issue, though from the evidence available, the uninsured are mostly solo and small firm lawyers who:

- Are more likely to neglect cases (according to discipline statistics);
- Do not have administrative support (60+%);
- Are less likely to belong to specialty bar associations that expose them to best practices; and
- Do not undergo an annual review of their office practices as insured lawyers do when renewing their malpractice insurance.

D. PRESENTATION BY JERRY LARKIN, ATTORNEY REGISTER & DISCIPLINARY COMMISSION ADMINISTRATOR, ILLINOIS STATE BAR

Jerry Larkin, Attorney Register and Disciplinary Commission (ARDC) Administrator for the Illinois State Bar, presented information about proactive management-based regulation (PMBR) in Illinois. PMBR is an alternative approach to lawyer regulation, whereby programs are instituted to promote the ethical practice of law and, as a consequence, avoid the filing of grievances and malpractice claims.

In 2017, Illinois became the first state to adopt PMBR. Mr. Larkin noted that prior to adoption of PMBR in Illinois, Illinois studied PMBR models in other jurisdictions including New South Wales, Australia, and Nova Scotia, Canada. PMBR models typically include the following features:

1. Measures to complement traditional reactive disciplinary processes, usually through the use of self-assessment tools;
2. Education of lawyer/firm management to develop and employ an ethical infrastructure to prevent misconduct and unsatisfactory performance; and
3. Information sharing and collaboration among the lawyer regulator and lawyer/firm.

Prior to adoption, Illinois investigated whether there was a need to implement PMBR in the state. The research revealed that 41% of solo practitioners in Illinois were uninsured and another 77% had no succession plan, statistics that alarmed regulators and practitioners alike.

With the adoption of PMBR, beginning in 2018, Illinois lawyers in private practice who do not have malpractice insurance must complete a four-hour self-assessment online, evaluating their law firm management and business practices. The self-assessment is administered by the ARDC, the Illinois Supreme Court agency that regulates Illinois lawyers. Uninsured lawyers who fail to complete the self-assessment cannot register the next year to renew their license and may be administratively suspended.

The self-assessment is confidential, and also provides free CLE credit. The self-assessment covers the following topics: technology; conflicts; fees and billing; client relations; trust accounting; wellness; civility and professionalism; and diversity and inclusion. Of those lawyers who have completed the self-assessment, a large majority have responded positively to the program. Following the self-assessment, the ARDC provides the lawyer with tools to help improve their practice.

E. PRESENTATION BY GENE LEVERTY, PRESIDENT, STATE BAR OF NEVADA

Gene Leverty, President of the State Bar of Nevada, described a current process initiated by the State Bar of Nevada to investigate and make recommendations regarding mandatory malpractice insurance in Nevada. Like in Washington, Nevada lawyers must report their insurance coverage status annually. As part of its process, Nevada investigated both the Idaho and Oregon models, reviewed the Illinois PBMR model, and looked at forming its own captive insurance company. It further conducted a public focus group, which revealed that the public is generally uninformed about malpractice insurance requirements, or the lack thereof, among lawyers.

As part of its work, in 2017, the State Bar of Nevada sent a survey to those members who reported not having malpractice insurance. Survey results showed that more than 73% of those without insurance were solo practitioners and 15% were small firms of two-to-four lawyers. Nearly 80% were in private practice, and more than 55% of the uninsured lawyers had been in practice for 20 years or more. The top reasons lawyers gave for being uninsured were cost, confidence in their practice, and a belief their practice area did not necessitate coverage. A second survey was sent out regarding perceptions about mandatory malpractice insurance. They received 1,001 responses, including approximately 450 written comments, the majority of which were not favorable.

To uphold its mission to govern the legal profession, to serve its members, and to protect the public interest, the State Bar of Nevada intends to implement mandatory malpractice insurance by 2019. They have drafted a petition which they plan to submit to the Supreme Court of Nevada for approval, with anticipated implementation in January 2019. The proposed rule amendment would require every lawyer who is engaged in private practice and represents clients to attest to having professional liability insurance coverage at a minimum limit of $250,000 per occurrence/$250,000 annual aggregate. The proposed coverage amount is intended to cover not only expenses but also any claims payment.

F. PRESENTATION BY JEAN MCELROY, CHIEF REGULATORY COUNSEL, WASHINGTON STATE BAR ASSOCIATION

Jean McElroy, WSBA Chief Regulatory Counsel, presented an analysis of WSBA's current membership demographic information. She noted that the profession has seen significant and consistent growth since 2004 with 38,540 licensed lawyers in Washington in 2017. In 2017, the median age of licensed Washington lawyers was 50, which is consistent with data from past years. With respect to those lawyers in private practice who reported being uninsured, the

data suggests that as lawyers age, they are more likely to report not having malpractice insurance: with 86.6% of lawyers aged 51-60, 83.5% aged 61-70, and 75.6% aged 71-80 reporting they are insured compared to 90% of lawyers aged 30-40 and 89.4 % of lawyers aged 41-50. The same trend holds true for the number of years in practice. With respect to voluntary demographic information, the data suggests at least 28% of solo practitioners in private practice are uninsured. (Ms. McElroy's PowerPoint presentation relating to member demographic information will be included in the April 25, 2018 Task Force meeting materials.)

Ms. McElroy also discussed the role of WSBA's Regulatory Service Department in overseeing the financial responsibility requirements for Limited license legal technicians (LLLTs) and limited practice officers (LPOs). These licensees are required to demonstrate financial responsibility in order to obtain their license and to renew it annually. LPOs must show that their employer carries errors and omissions insurance or submit an audited financial statement. LLLTs must carry malpractice insurance or be covered by their employer. WSBA offers a plan through ALPS which costs about $600 per year for LLLTs, with a $300,000 aggregate limit. There is currently no similar requirement for lawyers; however, lawyers are surveyed annually about their insurance coverage status. To date, no LLLTs have been administratively suspended for failure to show proof of financial responsibility. Most practitioners elect to go on inactive status until such time as they can submit proof of financial responsibility rather than be subject to administrative suspension.

G. ADJOURNMENT

There being no further business, the meeting adjourned at 4:00 p.m.

B.

Memo from Task Force Chair with Excerpts from *When Lawyers Screw Up: Improving Access to Justice for Legal Malpractice Victims* by Herbert Kritzer and Neil Vidmar, (2018, Univ. of Kansas Press).

SCHOOL OF LAW
UNIVERSITY of WASHINGTON

April 13, 2018

To: Members, WSBA Mandatory Malpractice Insurance Task Force

From: Hugh Spitzer

Re: Excerpts from Kritzer & Vidmar Book on Attorney Malpractice

At our last meeting, Professor Leslie Levin of the University of Connecticut mentioned a new book on lawyer liability insurance by Herbert Kritzer and Neil Vidmar, *When Lawyers Screw Up: Improving Access to Justice for Legal Malpractice Victims* (2018, Univ. of Kansas Press).

I just finished reading that book, and it is well-written and informative. It covers quite a few more topics than are immediately relevant to our committee. However, because our April Task Force meeting focuses on the malpractice insurance industry, I wanted to pass along the attached pages that discuss key aspects of that industry. Also included are a few more pages with statistical charts that I thought Task Force members might find particularly interesting.

When Lawyers Screw Up

IMPROVING ACCESS TO JUSTICE FOR LEGAL MALPRACTICE VICTIMS

Herbert M. Kritzer and Neil Vidmar

University Press of Kansas

Published by the University Press of Kansas (Lawrence, Kansas 66045), which was organized by the Kansas Board of Regents and is operated and funded by Emporia State University, Fort Hays State University, Kansas State University, Pittsburg State University, the University of Kansas, and Wichita State University.

Library of Congress Cataloging-in-Publication Data
Names: Kritzer, Herbert M., 1947– author. | Vidmar, Neil, author.
Title: When lawyers screw up : improving access to justice for legal malpractice victims / Herbert M. Kritzer and Neil Vidmar.
Description: Lawrence [Kansas] : University Press of Kansas, [2018] | Includes index.
Identifiers: LCCN 2017052559 | ISBN 9780700625857 (cloth : alk. paper) | ISBN 9780700625864 (ebook)
Subjects: LCSH: Lawyers—Malpractice—United States. | Attorney and client—United States.
Classification: LCC KF313 .K75 2018 | DDC 347.73/5041—dc23
LC record available at https://lccn.loc.gov/2017052559.

British Library Cataloguing-in-Publication Data is available.

Printed in the United States of America

10 9 8 7 6 5 4 3 2 1

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Wilmer's claim was $838,837.35. Takahashi appealed the decision to the California Court of Appeals based on the trial court's allowing references to his failure to testify. However, the court affirmed the judgment of the lower court.

CONCLUSION

We reemphasize that the cases above, and in Chapter 1, are illustrative rather than representative of all cases. The cases illustrate some of the issues that arise in a professional liability claim brought against a lawyer. Two prominent types of cases not included among the examples are those arising out of wills, estates, and trusts and those arising out of intellectual property matters. Also missing are any of the types of cases in which a law firm is sued not by its (former) client but by parties harmed by actions of a client of the firm; these may involve claims that the firm aided the client in behavior that caused harm. As we will discuss in later chapters, this latter type of case involves what some LPL insurers refer to as the *bad client problem*. These are the kinds of cases that tend to result in the greatest liability because they typically involve significant malfeasance by large corporations.

CHAPTER 3

Preliminary Issues: Insurance, Bases of Claims, Important Legal Issues, and Differences between Medical Professional Liability and Lawyers' Professional Liability

This chapter sets the context for the discussion of lawyers' professional liability (LPL) claims and their outcomes by discussing several important issues that arise regarding those claims. The first issue is insurance. As will be discussed in later chapters, knowledgeable practitioners who prosecute LPL claims want to be sure that there is a source of payment of damages; that source will typically be the lawyer-defendant's professional liability insurance. Rarely will a lawyer experienced in LPL claims take on a case if the defendant is uninsured. Furthermore, as will be explained, there are significant differences in insurance arrangements depending on whether a lawyer or law firm is working in the corporate or personal services sector.

The second issue concerns the bases for LPL claims. Often LPL claims are labeled "legal malpractice," which sounds similar to "medical malpractice." Medical malpractice involves matters of negligence on the part of one or more physicians or a hospital and in some contexts is referred to as medical or clinical negligence.[1] Although many LPL claims reflect negligence on the part of the lawyer-defendant, there are bases for LPL claims that do not involve negligence as it is formally defined in the law. The discussion of the legal bases for LPL claims below spells out the types of claims that occur and the factors that define or distinguish those claims.

The third issue concerns three specific legal problems that can arise in LPL claims: proving causation, statutes of limitations, and the requirement to prove "actual innocence" in claims arising from representation of criminal defendants. Although the first two of these issues can arise in other types of claims, some special challenges can arise in an LPL claim.

The fourth issue is the relationship between civil liability of lawyers and the rules of professional practice administered by regulatory bodies. Although

one might expect there to be a close relationship between these two ways of regulating lawyers, that turns out not to always be the case.

The final section briefly describes major differences between the liability setting of medical professionals compared with that of legal professionals. We include this discussion because of the prominence of litigation regarding medical negligence.

INSURANCE

Requirements for Insurance

In most other major common-law countries, lawyers who serve private clients are required to carry professional liability insurance.[2] Similar requirements exist for legal professionals in most European countries that draw on the civil law tradition.[3] The issue of whether lawyers in the United States who provide legal services to private clients should be required to carry LPL insurance has come up with some regularity. However, as of 2016 only one state, Oregon, requires all private practitioners to carry professional liability insurance, and that insurance is through the Oregon State Bar's Professional Liability Fund (PLF).

In 2016 the required liability coverage provided by Oregon's PLF was $300,000. The PLF provides an additional $50,000 for claims defense, with any costs exceeding $50,000 depleting the liability coverage. In 2016 the $3,500 cost of this coverage was not affected by past claims experience and was uniform for all practitioners.[4] Oregon practitioners may choose to carry insurance in addition to the basic required insurance provided by PLF. That "excess coverage" can be obtained through PLF or on the open insurance market.[5] Unlike most other LPL insurers, PLF does not have a deductible as part of its standard policy.[6] PLF's policies are on a "claims made" basis, the norm for LPL insurance. A "claims made" policy is one that covers any claim made during the term of the policy regardless of when the alleged error or behavior occurred or the damages were incurred.

A survey of the states by the ABA's Center for Professional Responsibility (CPR) published in 2014 showed that 18 states had rejected proposals for mandatory LPL insurance, 2 were studying the issue, and 14 had never considered mandatory insurance; the remaining states either did not respond to the survey or did not provide information regarding LPL insurance.[7] A variety of arguments has been advanced in opposition to requiring lawyers to carry liability insurance:

- There is lack of evidence of large numbers of uncompensated victims of lawyers' malpractice.
- Mandatory insurance would boost insurance rates because low-risk lawyers would be subsidizing high-risk lawyers.
- The increased costs would force many lawyers to increase their fees, making their services less affordable.
- These increased costs would drive substantial numbers of solo practitioners and part-time lawyers out of practice, thus increasing problems of access to legal services.
- There are problems in determining the appropriate level of coverage for different categories of lawyers, leading to problems setting premiums and deductibles.
- Mandatory insurance could encourage frivolous malpractice claims.
- Mandatory insurance would lead to insurance industry regulation of the profession because underwriting decisions would force some lawyers out of practice or force some lawyers to limit their areas of practice.[8]

Although mandatory insurance exists only in Oregon, some other states require lawyers who organize in some form of limited liability entity to carry insurance for that entity.[9] There are various forms for these limited liability structures including a limited liability company (LLC), a professional limited liability company (PLLC), a limited liability partnership (LLP), and a service corporation (SC). One example is in Wisconsin, where the Rules of Professional Conduct (SCR 20:5.7) require attorneys organized as an LLC, an LLP, or an SC to carry professional liability for their firms. The required coverage amount varies depending on the size of firm, starting at $100,000 per claim/$300,000 in aggregate for firms of 1 to 3 lawyers, and increasing to $10 million/$10 million for firms of 51 or more lawyers. We identified nine states with such a requirement, seven imposed by practice rules and two by statute.[10]

Some states require that practitioners disclose in some way whether they are covered by LPL insurance.[11] The first state to create such a requirement was California in 1988.[12] The CPR report for 2011–2013 listed 19 states that have some requirement of this type and noted that 6 states have rejected proposals for such a requirement.[13] The mechanism of these disclosures varies from

state to state. South Dakota has probably the most stringent requirement: a lawyer who does not have professional liability insurance with limits of at least $100,000 must include a statement on the lawyer's letterhead that the lawyer or firm "is not covered by professional liability insurance," and that notice must "be included in every written communication with a client."[14] Other states require that a client be informed of the lack of insurance at the time the lawyer is retained, sometimes as a statement in the retainer agreement. Some states require clients to be notified of any changes in the lawyer's insurance status, whereas others have no such requirement. Still other states require that lawyers report whether they have insurance each year when they renew their licenses to practice; 10 states make this information available on a searchable website, whereas others (e.g., Rhode Island) do not make the information as easily available.[15] According to one report, only 4 percent of practitioners in South Dakota were uninsured,[16] suggesting that the kind of stringent disclosure requirement that exists in South Dakota pushes lawyers to obtain LPL insurance.

Going Bare

The absence of a requirement for LPL insurance in most states raises two questions. First, how frequently do lawyers serving private clients forgo insurance? Second, what reasons do lawyers who do choose to "go bare" give for their decisions not to purchase insurance?

Percentage of Lawyers Who Work without LPL Insurance. Whereas, as noted just above, according to one report only 4 percent of South Dakota practitioners chose to "go bare," nationally a significant number of legal practitioners working solo or in small firms do not purchase LPL insurance. Although there are no national figures for the proportion of private practitioners who choose to work without liability insurance, there is information for several individual states. A survey of Texas lawyers in 2005 found that 36 percent of private practitioners and 63 percent of solo practitioners did not carry such insurance.[17] In California, a demographic survey of the state bar conducted in 2001 found that 18 percent of private practitioners had no LPL insurance.[18] In her study of decisions to forgo LPL insurance, Leslie Levin obtained information from several of the states that require lawyers to report their insurance status. She found that the percentage of private practitioners without insurance in those states ranged from 6 percent in South Dakota to almost 21 percent in Michigan.[19] A

Table 3.1: Percentage of Private Practitioners without LPL Insurance

	Percentage Private Practitioners Uninsured (1)	*Percentage of All Private Practitioners Solo or in Firms of 5 or Fewer*[a] (2)	*Estimated Percentage Small Firm or Solo Uninsured* (3)	*Actual Percentage Solo Uninsured* (4)
South Dakota	6.0	71.1	8.4	
Pennsylvania	6.9	52.2	13.2	
Virginia	10.2	61.3	16.6	
West Virginia	13.5	79.0	17.1	
Washington	14.3	63.4	22.6	
New Mexico	15.3	73.8	20.7	
Illinois	15.7	56.5[b]	25.6[b]	41.1
Colorado	17.0	63.5	26.8	
Minnesota	18.0	53.5	33.6	
California	18.0	61.7	29.2	
Arizona	24.8	61.1	40.6	
Texas	36.0	64.8	55.6	63.0

[a]Clara N. Carson with Jeeyoon Park, *The Lawyer Statistical Report 2005* (Chicago, IL: American Bar Foundation, 2012).

[b]10 or fewer lawyers; James Grogan to Herbert Kritzer, e-mail, August 16, 2016. Carson reports 51.5 percent of Illinois private practitioners in firms of 10 or fewer lawyers in 2005. The percentage shown as uninsured is the actual percentage rather than an estimate.

2012 examination of registration data in Minnesota found that 18 percent of lawyers representing private clients did not report having insurance.[20] Information for 2016 provided by the Attorney Registration & Disciplinary Commission in Illinois showed that among all private practitioners, 15.7 percent were uninsured, but for solo practitioners this figure rose to 41.1 percent.[21] Table 3.1 summarizes all of the information we could find on the percentage of private practitioners forgoing LPL insurance.

With the exceptions of the percentage of solo practitioners in Texas and Illinois, the figures reflect the percentage of all private practitioners without LPL insurance. It seems very unlikely that many firms over some size would go without insurance. If one assumes that all firms with more than five lawyers carry insurance, which is probably close to reality,[22] that would mean virtually all uninsured private practitioners are solo or in firms of five or fewer lawyers.

With this assumption, it is possible to estimate the percentage of lawyers in solo practice or firms of five or fewer lawyers who are uninsured. Column 2 in Table 3.1 reports the percentage of all private practitioners in solo practice or in firms of five or fewer lawyers as of 2005 (the latest figures available). Column 3 combines Columns 1 and 2 to estimate the percentage of small-firm lawyers/solo practitioners who are uninsured. These figures suggest that clients using small-firm lawyers or solo practitioners have a substantial chance of dealing with a lawyer who lacks insurance. The numbers for Texas are particularly striking.

Why Do Lawyers Choose to Forgo LPL Insurance? There are a variety of reasons a lawyer might lack LPL coverage. In one of our interviews, a lawyer who prosecutes legal malpractice cases said he that did not carry LPL insurance because he did not want to have to worry about suing a lawyer covered by the carrier that had his policy. Other lawyers might lack LPL insurance because their record of past claims makes them such a risk that LPL carriers either decline to insure them or demand a premium that is not economical for them.

Levin summarized several small surveys that included lawyers who did not currently have LPL insurance.[23] The surveys provide some insights into decisions to forgo insurance.[24] One group of uninsured lawyers was composed of semiretired practitioners who often performed work only on behalf of family members. Another group comprised lawyers doing exclusively pro bono work. Something less than a quarter of the uninsured lawyers was working fewer than 15 hours per week, although a majority was working at least 30 hours per week. In all the jurisdictions where the surveys were conducted, the cost of a minimum level of coverage ($100,000 per claim up to $300,000 per year) was around $3,000. When asked why they did not have insurance, about 60 percent cited cost: they felt that they could not afford it. However, it was unclear what proportion knew what the cost would be. For some lawyers the issue was not financial but rather more of a philosophical objection to such a requirement. Almost 60 percent of the lawyers responding to one of the surveys reported that if they were required to purchase insurance, they would stop practicing. About the same percentage said they would be able to afford to retain counsel should they be sued by a former client. Many of the respondents, 43 percent, reported that their areas of practice did not expose them to any risk of liability. Very few lawyers reported that they could not obtain insurance because of their past claims experience.[25]

Regardless of why a lawyer might choose to forgo LPL insurance, that decision does have consequences not only for the lawyer but also for the lawyer's clients. As we will show in Chapter 7, a client harmed by the actions of his or her uninsured lawyer will encounter great difficulty in securing experienced representation to pursue a claim against that lawyer. We know of no way to estimate how much harm is caused by uninsured lawyers that goes uncompensated, but statistics on the amounts paid out in claims against solo practitioners who are insured suggest that this harm is in the tens, if not hundreds, of millions of dollars every year.

Structure of LPL Insurance

The markets for lawyers' professional liability insurance differ for large corporate firms and for the smaller firms that serve individuals and small businesses. In both sectors, there is a mix of commercial insurers and mutual insurers, although the nature of the mutual insurers differs greatly between the two sectors, as does the structure of the insurance arrangements.

Insurance for the Personal Services Sector and Other Small Firms. The providers of insurance for solo practitioners and small firms, with the latter defined as firms with no more than 30 lawyers, include 13 mutual insurers affiliated with state bar associations.[26] All of these insurers are members of the National Association of Bar Related Insurance Companies (NABRICO). Although originally started by specific state bars, NABRICO-affiliated companies currently write LPL insurance in 38 of the 50 states.[27] In some states a NABRICO-affiliated insurer writes the bulk of LPL insurance. For example, in 2014 the Missouri Bar Plan Mutual had 71 percent of the market (in terms of number of insureds) for LPL insurance in Missouri.[28] Some of the NABRICO mutuals limit the size of the firm they will insure. Others specifically decline to insure firms practicing in areas in which there is a risk of very substantial damage claims; one such area mentioned in interviews was intellectual property claims.

In addition to the bar-related mutual insurers, several commercial insurers write policies in the solo and small-firm sector. Some of the better-known companies include Travelers, Hartford, CNA, Swiss Re, and Zurich American.[29] A portion of commercial insurance is sold directly to solo practitioners and small law firms with the rest sold through insurance brokers. Insurers come and go in the commercial sector. For example, OneBeacon wrote LPL

insurance in several states but sold off that part of its business in 2014,[30] very soon after being hit with a $34 million judgment for failing to pay a claim in Texas.[31] Some of the commercial companies have different programs or offerings for large and small firms.[32]

LPL policies in this sector start with limits of $100,000 per claim/$300,000 per year and can go up to several million dollars. For example, California Lawyers Mutual offers limits up to $5 million per claim,[33] as does The Hartford's program for small firms (20 or fewer lawyers).[34] Wisconsin Lawyers Mutual writes policies with coverage up to $10 million,[35] as does Minnesota Lawyers Mutual.[36] Some insurers offer special programs with reduced rates for lawyers with less than a certain number of years of practice, part-time practitioners, or those whose practice is limited to a specific area in which risk is low, such as criminal defense.[37] For most policies, the limits include the cost of defense ("defense within limits"), although some insurers include a separate allocation for the cost of defense such that the indemnity limit is not reduced unless the allocation for defense costs is exceeded. Most LPL policies in this sector include a deductible that can range from as low as $1,000 to $50,000 or more, although, as noted previously, the required insurance sold through Oregon's PLF has no deductible. Although the deductible can apply to both indemnity and cost of defense, or only to indemnity ("loss only"), the former is most common.

Premiums for this insurance vary based on a number of factors. We found references to premiums as low as $750 per year.[38] The required insurance offered by PLF has a uniform premium of $3,500 per year with a limit of $300,000 per claim.[39] Premiums generally are tied to the policy limit, the size of the deductible, areas of practice, and claims experience. With the exception of PLF, both mutual and commercial insurers can, and do, decline to cover lawyers based on past claims experience and/or the lawyers' area of practice.

Insurance for this sector is sold much like auto or homeowners insurance. Insurers have a set of standard programs they offer on essentially a take-it-or-leave-it basis. The underwriting process is minimal, meaning that it is based on a small set of factors such as areas of practice, prior claims experience, use of engagement letters, and the like. Levin likens the offerings to what one would find if looking to buy a men's suit "off the rack" in a store. This contrasts sharply with how LPL insurance is written in the large-firm sector, which Levin likens to buying a bespoke suit.[40]

Insurance for Lawyers in the Large-Firm Corporate Sector.[41] As in the small-firm/personal service sector, there is a mix of mutual and commercial insurers offering policies. Attorneys Liability Assurance Society (ALAS) is by far the most prominent insurer. ALAS will only insure firms with at least 35 lawyers.[42] According to its 2014 annual report, ALAS covered almost 58,000 lawyers in 219 law firms around the country.[43] The average ALAS firm has 270 lawyers, and the median firm has in excess of 100 lawyers. For historical reasons, ALAS does not cover the very large firms based in New York or California. There are several much smaller large-firm mutuals: Bar Assurance and Reinsurance Ltd. (BAR), MPC Insurance Ltd., and Attorneys Insurance Mutual Risk Retention Group (AIM). The first of these serves some of the large firms based in New York City, and the other two are heavily oriented toward firms in California.[44] Whereas ALAS underwrites all of its own policies, the other large-firm mutuals are somewhere between policy writers and buying groups that purchase insurance on the commercial market through brokers.

ALAS offers its members policies with per-claim limits starting at $10 million and going as high as $75 million. Premiums are not experience based. Rather, all members of ALAS pay the same rate per lawyer for a policy with a specific limit and a specific "self-insured retention" (SIR). An SIR operates similarly to a deductible with one key difference. The insured must expend that SIR before the insurer steps in and starts to pay; in a contract with a deductible, the norm in the solo/small-firm market, the insurer usually will recoup the deductible from the insured after paying the claim and the defense costs. The per-claim SIR with ALAS ranges from a minimum of $175,000 up to a maximum of $5 million. In 2015, a policy with the lowest claim limit had a premium of $5,075 per lawyer if the SIR was $175,000; the premium declined to $3,128 with a $1 million SIR and to $1,450 with a $5 million SIR. The comparable figures for a policy with a claim limit of $50 million were $9,398, $6,444, and $4,128, respectively; for a policy with the maximum claim limit of $75 million, the figures were $10,664, $7,594, and $5,225, respectively.

Commercial LPL insurance for large firms is typically secured through a broker with expertise in this type of insurance. The most prominent broker is Aon, and a second large broker in the area is Marsh.[45] Because of the potential size of LPL claims that can occur in the corporate sector, most insurers limit the amount of coverage they will provide to typically no more than $10 million per firm in a given year. Because large firms might seek several hundred million

dollars of coverage,[46] brokers assemble multiple sets of "syndicates" to form a "tower" of insurance.[47] For example, assume a firm wants to buy $100 million of coverage. That insurance might be arranged in a tower with three layers. The first $40 million would be covered by a syndicate comprising four insurers each taking on a quarter of the risk, or a "quota share" of $10 million. If a claim arose that resulted in a $20 million loss, each insurer in the syndicate would pay $5 million. The second layer of $30 million would be composed of another syndicate consisting of three insurers, each with $10 million at risk; however, the insurers in this layer would pay nothing unless the loss exceeded $40 million, and then each insurer would pay a proportion of its $10 million coverage. The third layer of the final $30 million would be handled by another syndicate, again with three insurers each with a $10 million quota share. Only if the total loss exceeded $70 million would the insurers in the third syndicate have to pay out anything, and then they would pay out proportionately based on their quota share.

Note that our discussion of syndicates and towers referred to "loss" rather than to "payments." Loss here refers to "incurred loss," which combines any indemnity payment with expenditures on defense. Policies in the sector are normally "defense within limits," meaning that any amount expended on defense reduces the amount available to cover awards or settlements. Some people interviewed for this chapter referred to defense within limits as "declining limits" or even "wasting limits." Importantly, expenditures on defense also count toward an insured's SIR, and in a large claim it is not uncommon for the entire SIR to be expended on defense even if the claim does not result in any payment to the claimant.

BASES OF CLAIMS

Although the term "legal malpractice" is typically used to refer to claims brought against lawyers arising from their professional activities, that term is most closely associated with only one of the legal bases for professional liability claims. There are in fact several ways in which lawyers can face professional liability claims.[48] In this section we discuss four broad bases used in claims against lawyers. Note that the discussion that follows is by necessity highly simplified; the leading treatise on legal malpractice consists of five volumes totaling about six thousand pages.[49] The goal of this discussion is to set the frame for material discussed in the chapters to follow.

Negligence

The first and most common type of claim is one of negligence, a common type of tort claim. The defendant in a tort claim is referred to as the tortfeasor, or more properly during the claim process, the alleged tortfeasor. A negligence claim requires the claimant to prove four elements: the alleged tortfeasor had a duty to the claimant, the alleged tortfeasor breached that duty, the breach of duty actually caused harm to the claimant, and as a result of that harm the claimant suffered damages. We discuss each of these in turn.

Duty. Duty is not an issue in most claims of professional negligence. A lawyer has a duty to his or her client to meet the standards of the profession. The issue of duty arises in two situations. First, there might be questions as to whether a party is a client of the lawyer. Simply consulting a lawyer does not make the party a client. For example, when a potential client approaches a lawyer with a possible tort case, smart lawyers take care to make clear that they are simply declining a case and not providing legal advice regarding the case. A second situation is when the harmed party was not the lawyer's client. This question most commonly arises when someone retains a lawyer to prepare documents, such as a will or a trust, intended to benefit a third party. States vary regarding whether lawyers owe a duty to a third-party beneficiary even when there is no question that the work was intended for that person's benefit.

Breach. Given the presence of a duty, the claimant must prove that the lawyer breached that duty. The usual definition of breach of duty in negligence is that the tortfeasor failed to exercise "reasonable care." That is, the alleged tortfeasor does not function as the absolute insurer against harm, and the tortfeasor is not even required to take every possible measure to avoid harm to parties to whom a duty is owed. In the context of the negligence of professionals, including lawyers, "reasonable care" becomes the "standard of care" a member of the profession is expected to exercise. That is, "a lawyer is negligent only if the lawyer does what no reasonably prudent lawyer could do, or fails to do what every reasonable lawyer must do."[50] This clearly does not mean that a lawyer is negligent if another lawyer would not have done what the alleged tortfeasor did. Certain types of errors, however, clearly breach this standard of care; for example, missing a filing deadline, failing to identify a lien on a title when preparing a title opinion, or failing to inform a client of the tax consequences of a transaction the lawyer is handling on behalf of the client.

Interesting Charts / Data

Regulation (DIFP). The Statistics Section of DIFP publishes a detailed report each year, typically going back 10 years.[16] DIFP generously made the data available for our analysis. One insurer, BPMIC, has been the dominant LPL insurer in Missouri, with a market share exceeding 70 percent in recent years. Typically, only one or two other insurers have had as much as 20 percent of the market.[17] BPMIC has been even more dominant regarding claims reported to DIFP. Over the history of the reporting requirement through March 2015, BPMIC claims constituted 79.4 percent of all claims; on a year-to-year basis, BPMIC's share of claims ranged from a low of 61.2 percent to a high of 93.2 percent.[18]

Since approximately 1981, Florida law has required LPL insurers to report claim-level information to the Florida Office of Insurance Regulation (FLOIR). Through 1997 insurers had to report all claims regardless of whether a payment was made to the claimant; however, starting sometime in 1998, insurers have been required to report only those claims that either involved a payment to the claimant or defense expenses of $5,000 or more. Late in 1994 FLOIR changed the reporting form in a major way, requiring additional information not included on the original form. When we examined the data from the years prior to the form change in 1994, it appeared there might have been some previous changes to the form in the mid-1980s; prior to that time there was little or no published information on the area of practice generating the claim. These various quirks placed limits on the analyses we could conduct using the Florida data.[19]

Limitations of Our Data Sources

It is important to understand the limits of the data sources described above and those that we will describe in later chapters. We have nothing clearly representative of the entire legal profession or the entire universe of LPL claims. However, the general consistency across sources suggests that the portraits we draw of areas are probably broadly accurate regarding the dominant areas of practice producing claims, the types of errors involved in the claims, and the magnitude of the claims. We are confident that our portraits of claims involving solo and small-firm lawyers, and the separate portrait for large (50 or more lawyers) firms, are broadly representative. We are less confident about what the picture looks like for medium-sized firms (11 to 49 lawyers); it probably falls somewhere between what we describe for small firms and for large firms. We

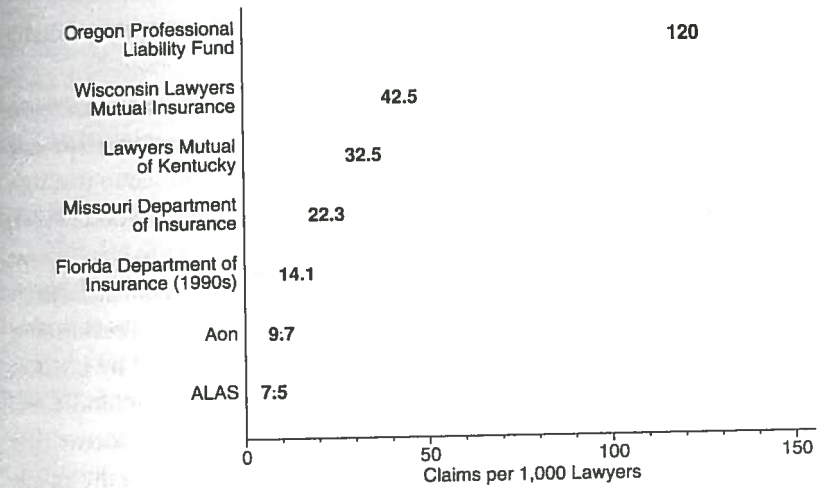


Figure 4.1 Claim Rates

also caution that specific percentages and dollar amounts should be understood as approximations at best.

CLAIM RATES

As discussed above, in an ideal world we would have information on the incidence of legal malpractice to examine the rate at which such incidents matured into claims. As also noted, incidence data have been compiled for hospital-based medical malpractice by reviewing samples of hospital records and identifying the frequency of negligence occurring in that setting.[20] Unfortunately, there is no practical way to review large numbers of files of legal matters because there is no setting that keeps records in a manner similar to hospitals; even if it were possible, those files might not document or otherwise reveal many of the types of errors that would constitute legal malpractice. It is possible, however, to examine the rate of claims filed with insurers on a per capita basis; that is what we do in this section.

Figure 4.1 summarizes the claim rates information we could locate or estimate. The specific sources and the patterns are discussed in what follows. The figure represents all claim rates on a per 1,000 basis.[21] Where rates were available for several years, the figure shows the average of those rates.

per 1,000 lawyers, a figure slightly larger than the numbers reported by ALAS, although the difference probably reflects the fact that Aon included all notices, whereas, in contrast, ALAS restricted its count to "real claims."

The lower figures for ALAS and Aon might be misleading. Although each lawyer in a firm is covered by the firm's liability policy, claims against large firms frequently arise from work by a team of lawyers rather than a single lawyer, as is the case with solo practitioners. This is likely to be the case in most claims against firms with five or fewer lawyers because lawyers in such settings seldom collaborate on individual matters. If one could count all lawyers involved in a matter resulting in a claim, the claim rates for ALAS and Aon might be less different from the claim rates experienced by the insurers of solo practitioners and small firms. If it were possible to obtain a measure of claim rates based on the number of matters handled rather than number of lawyers, it might well be the case that large firms experience as many or more claims per 100 matters handled than do small firms and solo practitioners. Obtaining such a measure would raise a range of issues, most prominently defining what exactly counts as a "matter" when there is ongoing representation involving general counseling and advice.

SOURCES OF CLAIMS

In this section, we consider the areas of practice, the law practice setting, and the characteristics of individual lawyers against whom claims are brought.

Areas of Practice Producing Claims, Including Possible Change over Time

The SCLPL reports have employed consistent categorization of areas of practice that tend to produce claims. Figure 4.2 displays the areas producing at least 8 percent of the claims in one or more of the seven reporting periods.[35] It shows that, except for one report, the top two areas of practice producing claims were real estate and plaintiffs' personal injury (the one exception was the 1990–1995 report, for which our combined category of commercial transactions plus corporate/business organizations surpassed real estate). Although there was variation from one report to another, the overall pattern was generally consistent. Table 4.1 shows average percentages across the seven reports;

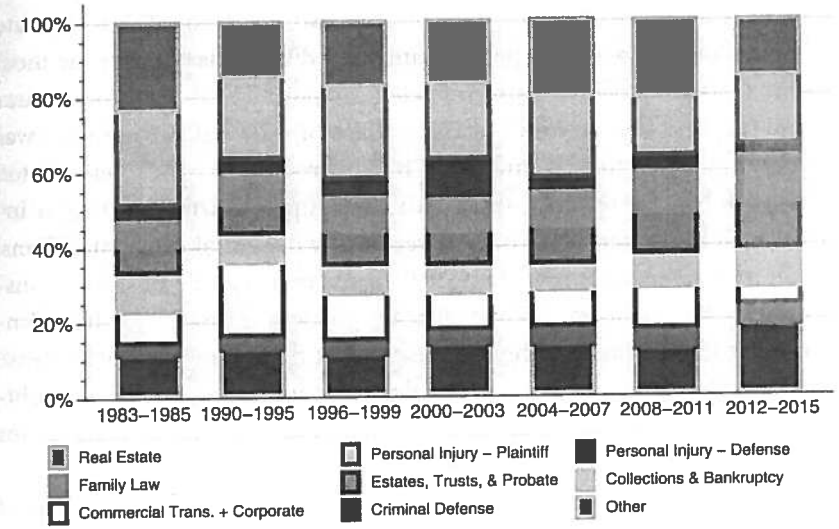


Figure 4.2 Areas of Practice Producing Claims, SCLPL Reports

Table 4.1: Average Percentage of Claims by Area of Practice, SCLPL Reports

Area of Practice	*Average Percentage*
Plaintiff's personal injury	21.0
Real estate	18.0
Commercial transactions or corporate/business organization	11.4
Family law	10.4
Estates, trusts, and probate	9.2
Collections and bankruptcy	8.8
Criminal defense	4.5
Personal injury defense	4.1
All other areas of practice	12.6

on average, almost 40 percent of the claims involve either plaintiffs' personal injury or real estate.

In the reports produced by four of the five NABRICO insurers, the top areas of practice producing claims appear the same as reported in the SCLPL's composite studies: real estate, personal injury litigation (LMICNC lumps all litigation other than criminal and family law together), family law, trusts and estates (T&E), and bankruptcy and collections. For three of the four reports,

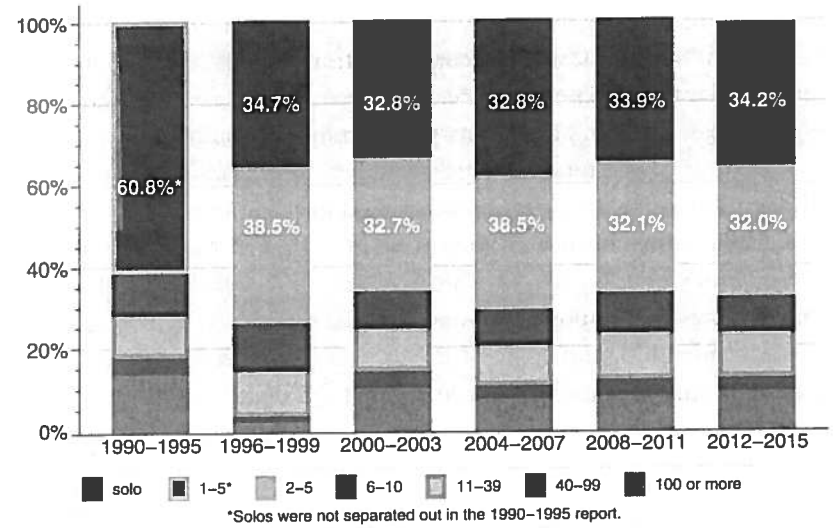


Figure 4.5 Practice Size Producing Claims, SCLPL Reports

5.1 percent from firms with 500 or more lawyers. The variations from report to report do not suggest any trend and most likely reflect differences in which insurers provided data for a given report.

Clearly the bulk of the claims come from solo and small firms. However, it is important to keep in perspective the distribution of practice settings for private practitioners. Based on information provided by the American Bar Foundation's *Lawyer Statistical Reports*, which covered the profession in 1991, 1995, 2000, and 2005,[43] most lawyers in private practice work in solo and small firms. Those reports showed solo practitioners constituting between 45 and 49 percent of lawyers in private practice, lawyers in firms of 2 to 5 comprise 14 to 15 percent of private practitioners, and lawyers in firms of 2 to 10 comprise 20 to 23 percent. Lawyers working in firms of more than 100 lawyers made up 12 to 15 percent of private practitioners. Comparing the claim sources to the distribution of practice settings, claims from large firms were only slightly underrepresented. The group most underrepresented was solo practitioners, whereas the most overrepresented group was small firms with 2 to 10 lawyers, particularly the firms with 2 to 5 lawyers.

Also important is the fact that the SCLPL figures were derived from insurers that voluntarily participated in the data collection, many of which insure mostly solo practitioners and small-firm lawyers. This means that larger firms

might be underrepresented in the SCLPL figures. Because the Missouri DIFI requires all insurers writing legal malpractice policies in Missouri to repor claims, its data avoid the problem of some insurers not being included.[44]

The DIFP's report form uses four categories of practice size: solo, 2–5, 6–30 and more than 30 lawyers. Almost exactly two-thirds (66.4 percent) of th claims involved practices with 5 or fewer lawyers, a figure consistent with th SCLPL figures. In contrast, substantially fewer claims were in the largest firm category: just under 5 percent came from firms of more than 30 lawyers. Ac cording to the 1995, 2000, and 2005 *Lawyer Statistical Reports*, the proportior of Missouri private practitioners in practices of 5 or fewer lawyers was some where between 51.5 and 56.9 percent. The DIFP data show that the largest shar of claims, 40 percent, came from small firms with between 2 and 5 lawyers lawyers working in these settings constituted 16 to 18 percent of private practi tioners. The large-firm categories in the lawyer statistical reports do not matcl the categories used by DIFP; however, it is noteworthy that although those reports showed between 15.3 and 21.5 percent of Missouri private practitioners in firms of more than 50 lawyers, only 4.9 percent of the legal malpractice claims came from firms of more than 30 lawyers. The other underrepresentec group was again solo practitioners, who accounted for between 32.7 and 40.5 percent of private practitioners in Missouri but generated only 26.5 percent of the claims reported to DIFP.

The SCLPL data and the DIFP data show that solo practitioners were quite underrepresented as a source of legal malpractice claims. Exactly why this is the case is not clear. At least part of the underrepresentation might reflect the fact that a disproportionate share of solo practitioners does not obtain LPL insurance and hence would not appear in any reports provided by insurers. This might also reflect that many lawyers in solo practice had small caseloads, perhaps only practicing on a part-time basis. As noted in Chapter 3, a survey in Texas found that almost two-thirds of solo practitioners in that state were uninsured,[45] and data provided by the Illinois Attorney Registration & Disciplinary Commission showed that 41.1 percent of solo practitioners in Illinois were uninsured.

There were differences not only in the claim rates depending on the size of practice, but also in the areas of practice producing claims depending on practice size. Table 4.2 shows the area of practice producing claims for each size practice identified in the Missouri data. The patterns for solo lawyers and those practicing in firms of 2–5 lawyers were similar, with plaintiffs' personal

Table 4.2: Claims by Area of Practice and Practice Size, Missouri Data, 1987–2014

	Firm Size				
Area of Practice	*Solo (%)*	*2–5 (%)*	*6–30 (%)*	*>30 (%)*	*All (%)*
Personal injury, plaintiff	28.4	28.3	19.8	7.9	24.9
Real estate	10.8	9.4	10.3	8.9	10.0
Family law	13.6	11.3	9.0	5.9	11.0
Trusts and estates	12.8	11.6	8.0	8.2	10.7
Collections and bankruptcy	8.7	10.8	16.2	5.6	11.5
Business, commercial, and corporate	8.3	8.9	13.7	17.1	10.5
Securities	0.3	0.5	1.1	10.9	1.1
Personal injury, defendant	1.5	2.8	5.4	20.1	4.0
Criminal defense	5.7	4.2	3.1	2.0	4.2
Other	10.0	12.3	13.2	13.2	12.0
N	1,706	2,578	1,850	303	6,437

injury producing the largest proportion of claims and family law the second largest (leaving aside the "Other" category). In the 6–30 lawyer setting, plaintiffs' personal injury still produced the largest proportion of claims, but the second and third largest categories involved collections/bankruptcy and business/commercial/corporations matters. For firms with more than 30 lawyers the differences were even greater: personal injury defense was the largest source of claims, followed by business/commercial/corporations; securities-related matters were also a noticeable contributor to claims for the larger firms.[46]

The "Bad Client" Problem

The ALAS reports do not provide information on the nature of the problem leading to the claim, but they speak of problems of "client quality." Essentially what the reports appear to be asserting is that one cause of liability claims brought against lawyers relates to the behavior of clients. Lawyers could face liability if they failed to recognize that a client was engaging in illegal or shady behavior, and the lawyer's work somehow facilitated that behavior. There is some evidence that many of the largest claims brought against major law firms arise from client dishonesty. This is part of what some have labeled the "bad client" problem, which also includes clients who are dishonest with their

lawyers. Indeed, some commentators have suggested that bad clients might b the "number one cause of legal malpractice actions."[47]

LPL insurance policies normally cover claims of this type in addition t more traditional types of negligence or contract claims. This means some por tion of LPL claims does not reflect traditional types of errors affecting client (or intended beneficiaries, such as heirs to an estate or beneficiaries to a trust but rather claims by third parties injured because some failing by the lawye allowed the lawyer's client to engage in fraudulent activity. This is particularl a problem for large firms that have found themselves facing liability related t corporate scandals, such as Enron, WorldCom, and the banks involved in th S&L crisis of the 1980s. For 2011 ALAS incurred losses totaling $455 million and 7.3 percent of this amount was attributed solely to problems created by ar "unworthy" client, with another 36.5 percent partly attributable to "unworthy' clients.[48]

A short report by Douglas Richmond, a loss prevention specialist with Aon, provides a further illustration. Richmond looked at large, publicly reported verdicts and settlements in claims brought against lawyers or law firms from the mid-1980s through early 2015. He found 67 cases involving payments or verdicts exceeding $20 million, with the largest verdict and largest settlement each slightly over $100 million. He described 41 of the 67 cases as being entirely a result of "dishonest clients," with another 4 cases partially resulting from "dishonest clients."[49] Richmond identified an additional 70 cases involving payments between $3 million and $20 million, 17 of which involved dishonest clients.[50]

Other Factors Influencing the Volume of Claims

Years of Experience. The DIFP data from Missouri provide information on the number of years the insured lawyer had been in practice at the time of the alleged error, but only three response alternatives were provided: under 4 years, 4 to 10 years, and more than 10 years. The claims were heavily skewed toward the "More-Than-10-Years" category, with 87.5 percent of claims in that category, leaving 10.2 percent in the "4-to-10-Years" category and only 2.3 percent in the "Under-4-Years category.

The reports of WILMIC provide a more detailed breakdown of the proportion of claims by years in practice. From 1986 through 2013, that distribution is:

proceed to trial in New Jersey as in Florida, it is clear that such cases would not stand out regarding the likelihood of trial, although they would certainly be substantially less likely to result in a trial than medical malpractice lawsuits in New Jersey. The figure for Texas is considerably higher, but that largely reflects bench trials: 17 of 22 trials (77 percent) of other professional malpractice cases involved bench trials.

Importantly, as explained previously, the figures shown in Table 6.1 reflect only claims that led to a lawsuit being filed; we have no information on the number of claims resolved prior to a lawsuit being filed. This means that those figures overstate the percentage of *claims* proceeding to trial.[22] However, based on these comparisons, legal malpractice claims that reach suit do not stand out as either overly likely or overly unlikely to be terminated after a trial verdict has been rendered.

OUTCOMES OF LEGAL MALPRACTICE TRIALS

A prominent theory about the outcome of civil trials is that about half of the time the plaintiff should win and about half of the time the defendant should win because the cases that end up going to trial are those where the outcome is most uncertain.[23] One area that stands out prominently as deviating from what has been called the 50-percent rule[24] is medical malpractice, in which studies have consistently shown plaintiff win rates on the order of 20 to 30 percent.[25] What is the pattern for legal malpractice trials? Four sources allow us to look at this question along with the amounts of damages awarded.

Florida Office of Insurance Regulation

As noted previously, the FLOIR data we used in prior chapters provided indicators of whether a claim went to trial. Although the post-1997 data included only claims that resulted in a payment to the claimant or at least $5,000 in claim expenses, it is unlikely that many, if any, legal malpractice claims could be tried with less than $5,000 in defense costs. We identified a total of 190 legal malpractice claims between 1981 and 2010 that appeared to have gone to trial, and plaintiffs prevailed in only 39 (20.5 percent) of these trials.[26] Omitting 9 cases that settled postverdict,[27] the verdicts ranged from $3,345 to more than $4.4 million.[28] The mean and medians were $484,486 and $181,623, respectively.[29]

Table 6.2: Malpractice Trial Outcomes, BJS/NCSC Studies, 1996, 2001, and 2005

	Total Number	*Percent Bench Trials*	*Percent Plaintiff Verdicts*	*Percent of Awards Exceeding $1 Million (nominal)*	*Percent of Awards Exceeding $1 Million (2010$)*
Lawyers	156	38.5	48.7	15.5	15.5
Physicians	1,908	2.0	23.2	37.3	41.3
Dentists	136	5.9	27.9	5.1	7.7
Other	150	12.0	38.8	18.3	21.7

	Mean (2010$)	*Median (2010$)*	*Standard Deviation*	*First Quartile (2010$)*	*Third Quartile (2010$)*
Lawyers	$1,192,028	$108,328	$4,478,354	$27,800	$455,457
Physicians	$2,401,400	$695,000	$5,304,435	$245,398	$2,154,250
Dentists	$166,920	$102,518	$235,620	$26,979	$228,655
Other	$5,301,904	$274,775	$5,301,904	$76,938	$881,582

Bureau of Justice Statistics Civil Verdict Studies

The three studies conducted on behalf of the US Justice Department's Bureau of Justice Statistics (BJS) by the NCSC included a total of 54,494 verdicts from jury or bench trials; 34,613 of these verdicts were from tort trials. The coding of case type made it possible to separate out legal malpractice trials for comparison with medical malpractice trials. Table 6.2 displays a range of statistics for the professional malpractice cases included in the three BJS/NCSC studies.

As noted above, the combined studies included data on a total of 156 trials involving claims of professional malpractice by lawyers. In comparison, the data included 1,908 cases of professional malpractice by physicians, 136 by dentists, and 150 by "other" professionals.[30] Perhaps most striking is the fact that 38.5 percent of legal malpractice trials were conducted without a jury. In contrast, only 2.0 percent of physician malpractice trials were bench trials. The plaintiff prevailed in 48.7 percent of cases involving lawyer-defendants compared with 23.2 percent involving physicians, 27.9 percent involving dentists, and 38.9 percent involving other professionals. In looking at the size of awards in cases where the plaintiff prevailed, the median award in legal malpractice trials was a bit over $100,000 compared with almost $700,000 for awards against physicians; the median award against dentists was slightly

C.
WSBA Regulatory Services Department PowerPoint Presentation on Member Demographics by Jean McElroy, Chief Regulatory Counsel, WSBA

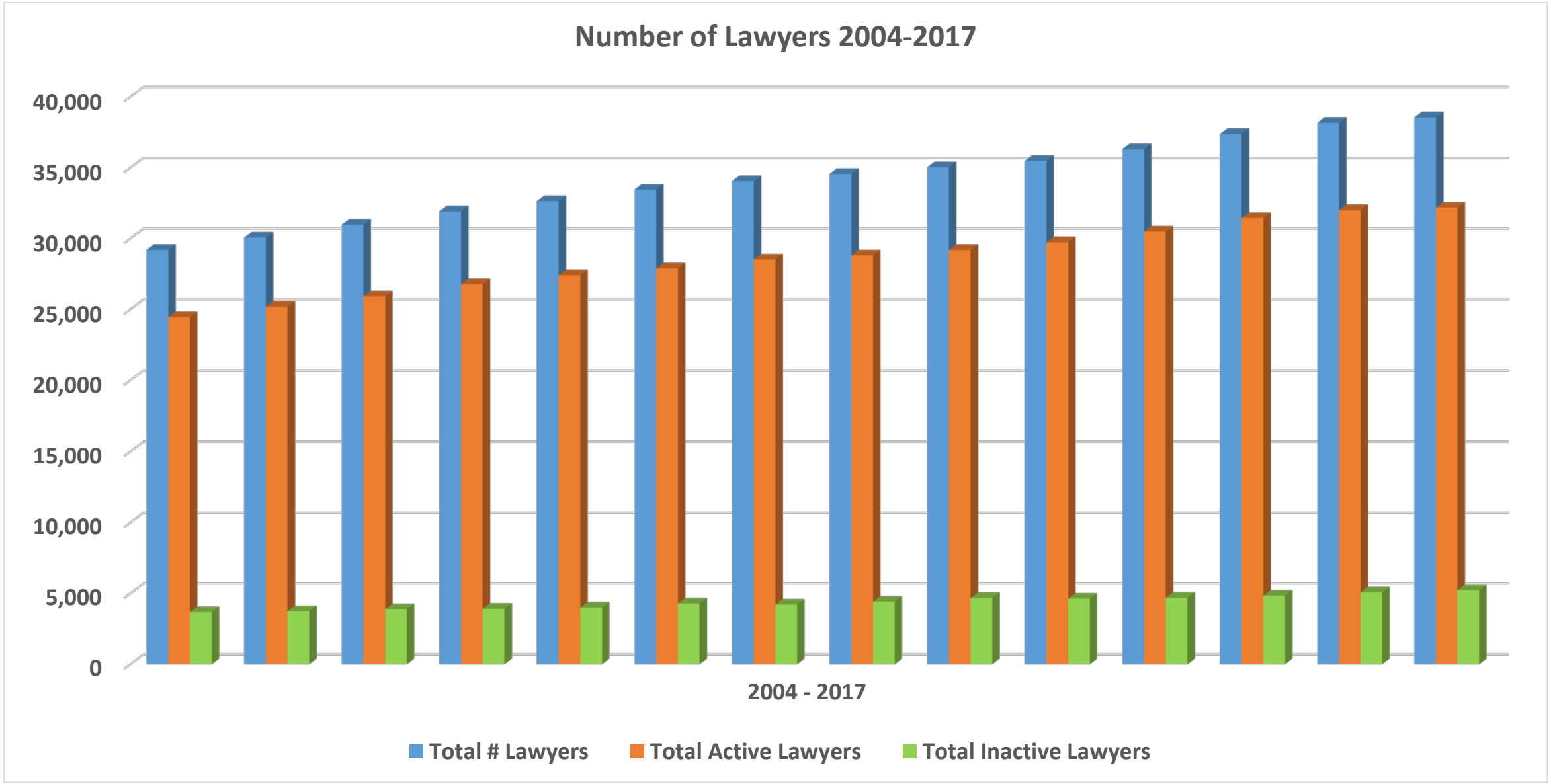
WSBA MEMBERSHIP DEMOGRAPHICS

Jean McElroy, Chief Regulatory Counsel

Regulatory Services Department

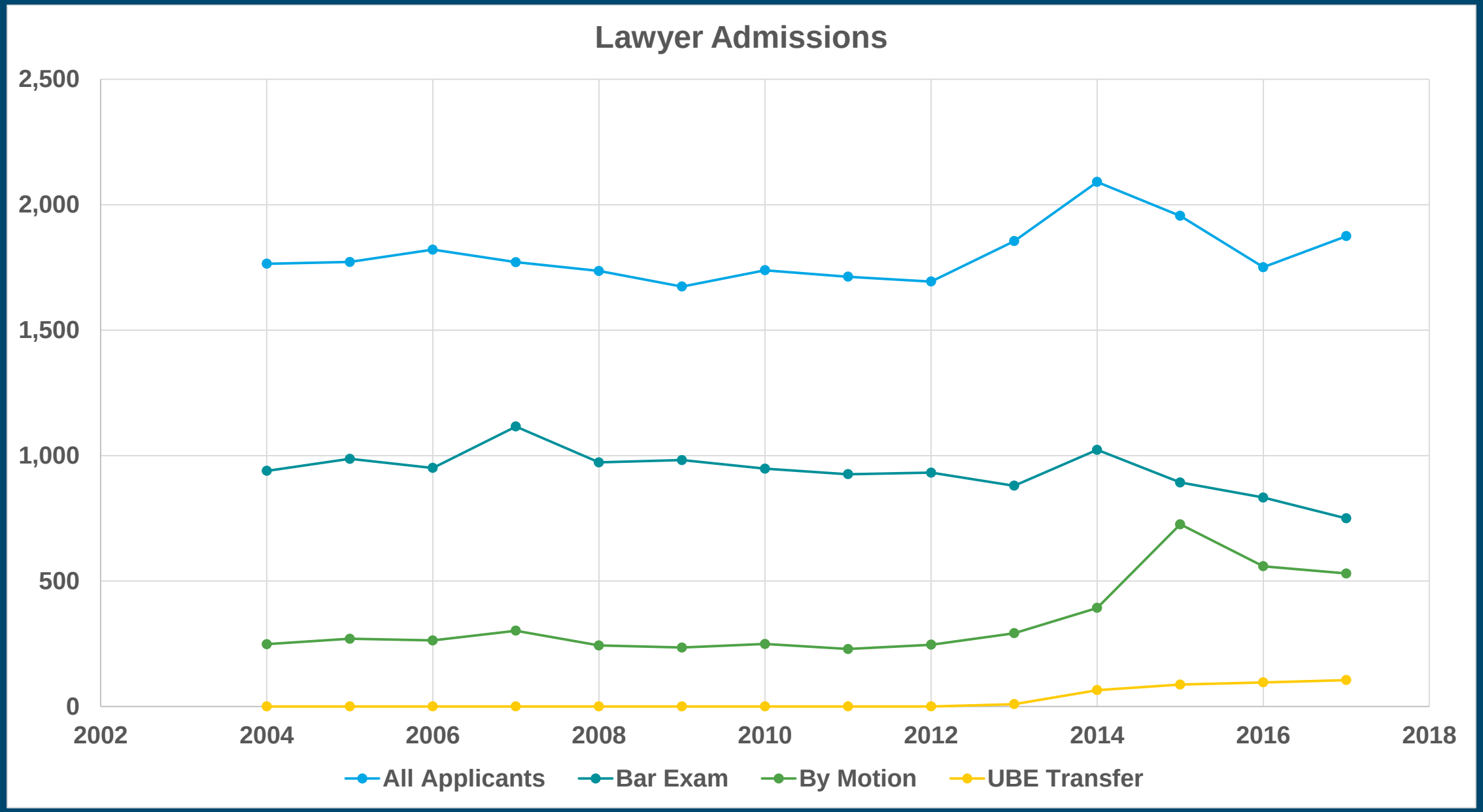
March 28, 2018

Year	Total # of Lawyers	Total Active Lawyers	Total Inactive Lawyers
2004	29,199	24,449	3,671
2005	30,061	25,186	3,740
2006	30,963	25,912	3875
2007	31,912	26,781	3,920
2008	32,635	27,398	4,001
2009	33,444	27,880	4,279
2010	34,034	28,520	4,208
2011	34,554	28,815	4,416
2012	35,023	29,190	4,676
2013	35,477	29,731	4,628
1014	36,296	30,487	4,695
2015	37,373	31,437	4,834
2016	38,162	31,998	5,073
2017	38,540	32,189	5,224


Number of Lawyers 2004-2017
40,000
35,000
30,000
25,000
20,000
15,000
10,000
5,000
0
2004 - 2017
Total # Lawyers
Total Active Lawyers
Total Inactive Lawyers

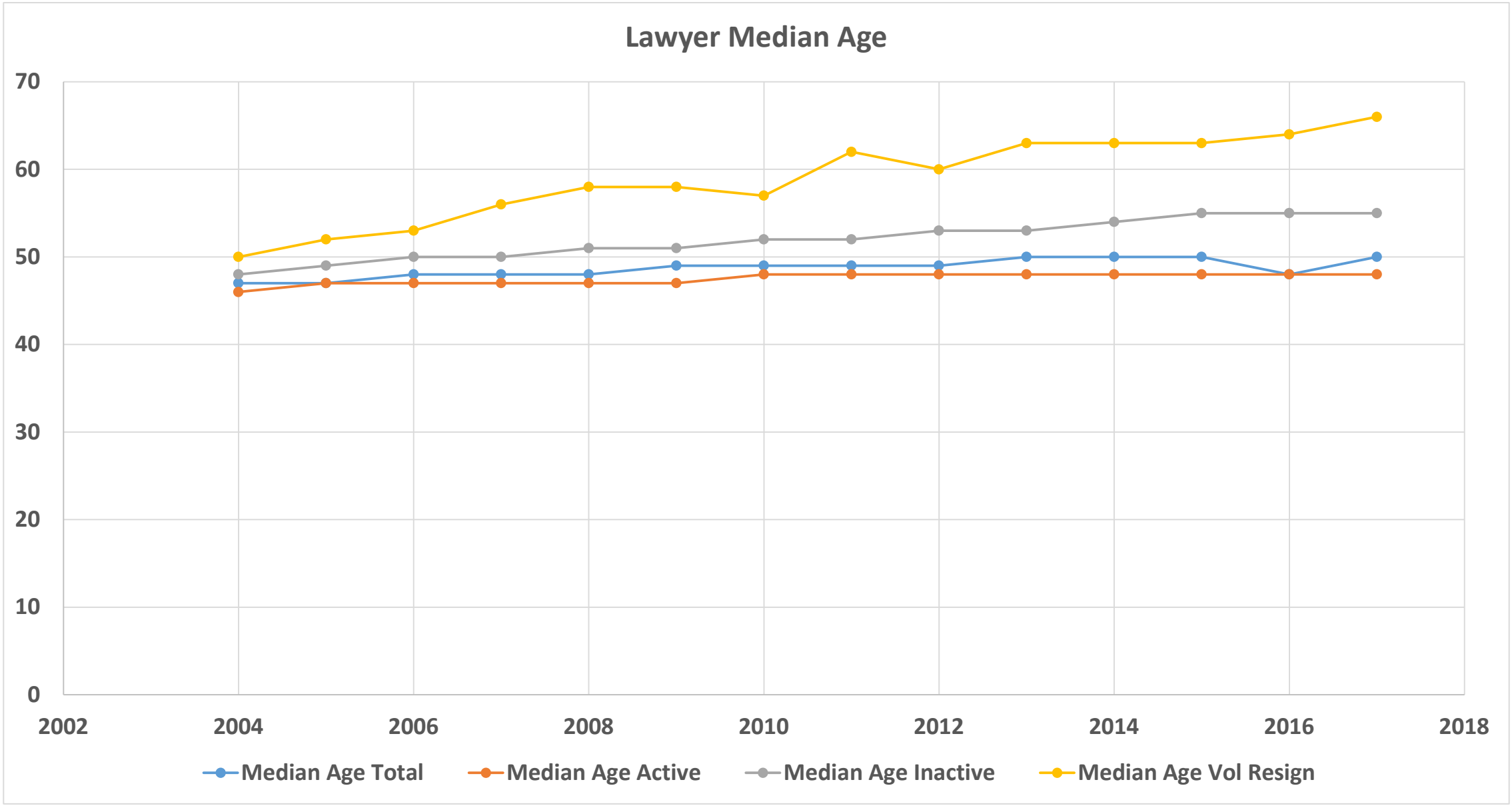
LAWYER ADMISSIONS

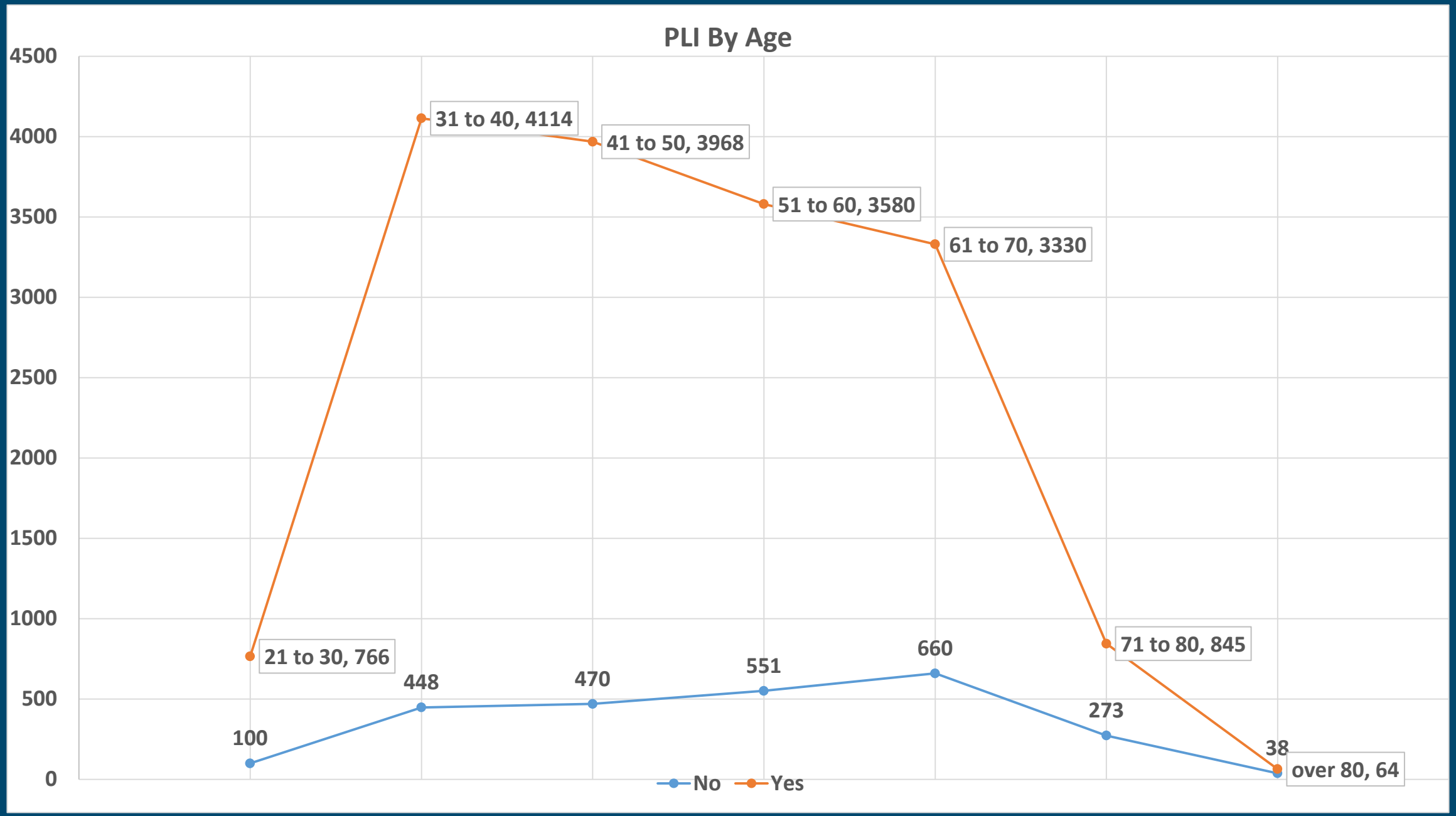
Year	All Applicants	Bar Exam	By Motion	UBE Transfer
2004	1,765	939	248	0
2005	1,772	987	270	0
2006	1,821	951	263	0
2007	1,771	1,116	302	0
2008	1,736	973	243	0
2009	1,674	982	235	0
2010	1,739	948	249	0
2011	1,713	926	229	0
2012	1,694	932	246	0
2013	1,855	880	292	9
1014	2,091	1,023	393	65
2015	1,956	893	726	87
2016	1,751	833	559	96
2017	1,875	750	530	105


Lawyer Admissions
2,500
2,000
1,500
1,000
500
0
2002
2004
2006
2008
2010
2012
2014
2016
2018
All Applicants
Bar Exam
By Motion
UBE Transfer

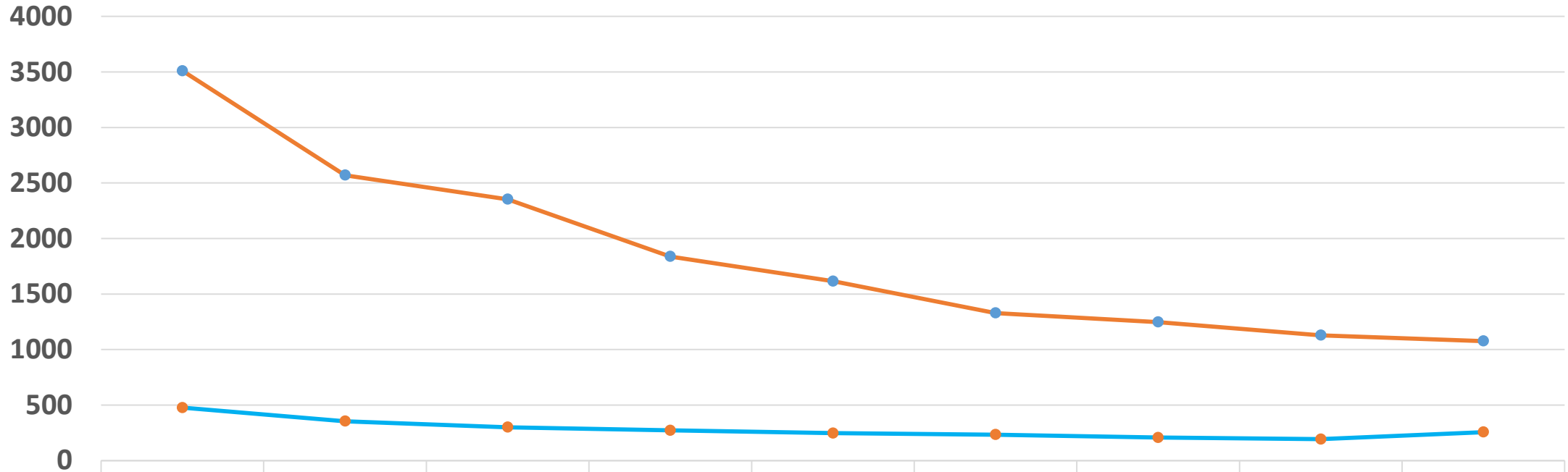
MEDIAN AGE

Year	Median Age Total	Median Age Active	Median Age Inactive	Median Age Vol Resign
2004	47	46	48	50
2005	47	47	49	52
2006	48	47	50	53
2007	48	47	50	56
2008	48	47	51	58
2009	49	47	51	58
2010	49	48	52	57
2011	49	48	52	62
2012	49	48	53	60
2013	50	48	53	63
1014	50	48	54	63
2015	50	48	55	63
2016	48	48	55	64
2017	50	48	55	66

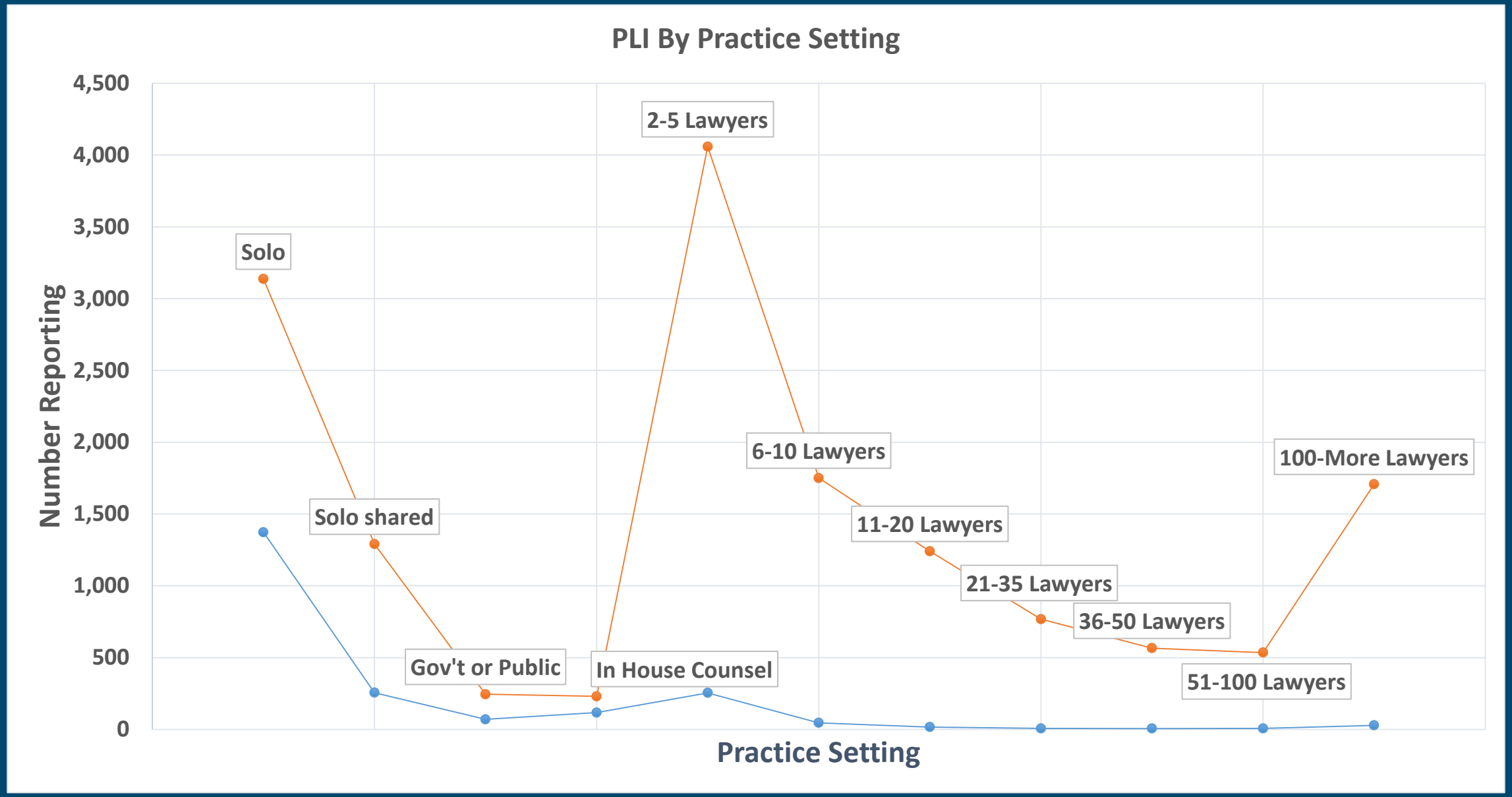

Lawyer Median Age
70
60
50
40
30
20
10
0
2002
2004
2006
2008
2010
2012
2014
2016
2018
Median Age Total
Median Age Active
Median Age Inactive
Median Age Vol Resign

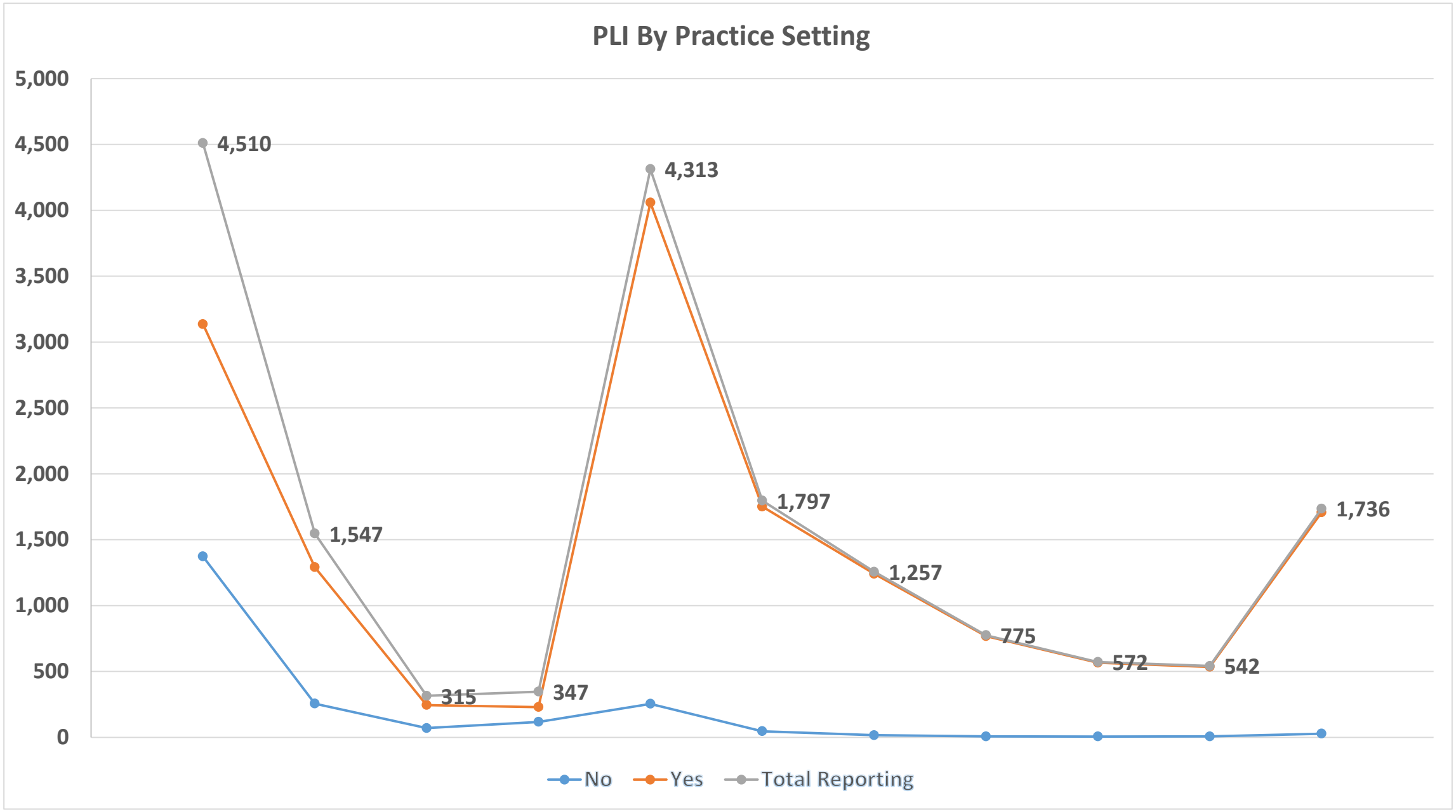

PLI By Age
4500
4000
3500
3000
2500
2000
1500
1000
500
0
31 to 40, 4114
41 to 50, 3968
51 to 60, 3580
61 to 70, 3330
71 to 80, 845
over 80, 64
21 to 30, 766
100
448
470
551
660
273
38
No
Yes

PLI by Years Licensed



	Under 6	6 to 10	11 to 15	16 to 20	21 to 25	26 to 30	31 to 35	36 to 40	41 & over
Yes	3510	2570	2353	1838	1616	1329	1247	1128	1076
No	477	355	300	272	247	233	207	193	256


PLI By Practice Setting
4,500
4,000
3,500
3,000
2,500
2,000
1,500
1,000
500
0
Number Reporting
Solo
Solo shared
Gov't or Public
In House Counsel
2-5 Lawyers
6-10 Lawyers
11-20 Lawyers
21-35 Lawyers
36-50 Lawyers
51-100 Lawyers
100-More Lawyers
Practice Setting


PLI By Practice Setting
5,000
4,500
4,000
3,500
3,000
2,500
2,000
1,500
1,000
500
0
4,510
1,547
315
347
4,313
1,797
1,257
775
572
542
1,736
No
Yes
Total Reporting

AA	
Yes By Practice Area	
Administrative-regulator	748
Agricultural	157
Animal Law	54
Antitrust	148
Appellate	932
Aviation	101
Banking	245
Bankruptcy	748
Business-commercial	3151
Civil Litigation	3747
Civil Rights	585
Collections	428
Communications	70
Constitutional	288
Construction	923
Consumer	444
Contracts	2080
Corporate	1746
Criminal	1910
Debtor-creditor	702
Disability	365
Dispute Resolution	779
Education	209
Elder	690
Employment	1555
Entertainment	151
Environmental	599
Estate Planning-probate	2603
Family	2010
Foreclosure	392
Forfeiture	45
General	1531
Government	392
Guardianships	690
Health	393

AA	
No By Practice Area	
Administrative-regulator	138
Agricultural	19
Animal Law	22
Antitrust	18
Appellate	128
Aviation	9
Banking	37
Bankruptcy	127
Business-commercial	522
Civil Litigation	419
Civil Rights	102
Collections	66
Communications	23
Constitutional	62
Construction	112
Consumer	107
Contracts	480
Corporate	302
Criminal	381
Debtor-creditor	118
Disability	69
Dispute Resolution	173
Education	32
Elder	90
Employment	188
Entertainment	60
Environmental	88
Estate Planning-probate	459
Family	338
Foreclosure	79
Forfeiture	10
General	376
Government	99
Guardianships	81
Health	43

AA	
Yes By Practice Area	
Housing	171
Human Rights	128
Immigration-naturaliza	578
Indian	242
Insurance	1204
Intellectual Property	1029
International	296
Judicial Officer	62
Juvenile	476
Labor	517
Landlord-tenant	933
Land Use	438
Legal Ethics	130
Legal Research-writing	346
Legislation	93
Litigation	3050
Lobbying	52
Malpractice	608
Maritime	201
Military	72
Municipal	448
Non-profit-tax Exempt	310
Not Actively Practicing	47
Oil-gas-energy	99
Patent-trademark-copyr	642
Personal Injury	2661
Real Property	1762
Real Property-land Use	1459
Securities	443
Sports	90
Subrogation	78
Tax	701
Torts	1567
Traffic Offenses	488
Workers Compensation	465

AA	
No By Practice Area	
Housing	24
Human Rights	44
Immigration-naturaliza	183
Indian	56
Insurance	103
Intellectual Property	247
International	109
Judicial Officer	26
Juvenile	63
Labor	57
Landlord-tenant	183
Land Use	88
Legal Ethics	24
Legal Research-writing	104
Legislation	37
Litigation	303
Lobbying	18
Malpractice	60
Maritime	21
Military	25
Municipal	53
Non-profit-tax Exempt	73
Not Actively Practicing	45
Oil-gas-energy	18
Patent-trademark-copyr	159
Personal Injury	332
Real Property	267
Real Property-land Use	227
Securities	71
Sports	22
Subrogation	5
Tax	105
Torts	199
Traffic Offenses	145
Workers Compensation	47

D.

ALPS Property and Casualty Insurance Company Rate Filing – WA – Effective March 2, 2014

ALPS PROPERTY & CASUALTY INSURANCE COMPANY

RATE FILING

FORMULA FOR CALCULATING GROSS WRITTEN PREMIUM

PREMIUM FOR LAWYERS PROFESSIONAL LIABILITY

To Calculate Premium For Each Attorney in Firm:

(1) Base Premium Per Attorney
(2) Prior Acts Coverage Factor
(3) Premium for Coverage Period
(1) x {1.00 + (2)}
(4) Continuing Legal Education Factor
(5) Area of Practice Factor
(6) Limited Practice Factor
(7) Attorney's Individual Premium
(3) x {1.00 + (4) + (5) + (6)}

To Calculate Premium for Firm:

(8) Sum of all Attorneys' Individual Premiums
(9) Firm Claim Profile
(1) x Applicable Claims Surcharge
(10) Initial Firm Premium
(8) + (9)
(11) State Relativity
(12) Adjusted Firm Premium
(10) x (11)
(13) Firm Size Factor
(14) Ratio of Non-Attorneys to Attorneys Factor
(15) RISC Visit Factor
(16) Scheduled Risk Rating
(17) Base Firm Premium @ $100,000/$300,000 limits with a $1,000 deductible
(12) x {1.00 + (13) + (14) + (15) + (16)}
(18) Increased Limit Factor for Coverage Limit up to $5,000,000/ $10,000,000
(19) Deductible Factor
(20) Firm Premium @ Insured Limits
(17) x {(18) - (19)}

Part-time Rating (if applicable):
(20) x 0.50

Basic Coverage Endorsement (if applicable)
(20) x {1.00 - 0.20}

Enhanced Defender Option (if applicable)
(20) + {$130 x total number of chargeable attorneys}

BASE PREMIUM PER ATTORNEY AND MINIMUM POLICY PREMIUMS

Base Premium For Each Attorney:	$1,900
Minimum Annual Policy Premium – Standard Policy:	$ 750
Minimum Annual Policy Premium – Enhanced Defender Option:	$ 870
Minimum Annual Part-Time Policy Premium:	$ 500

Note: Minimum premium applies only to minimum coverage limits of $100,000/$300,000 with a $1,000 deductible. Increased coverage limits will result in higher premium after application of increased limits factors and Deductible Credit/Surcharge Factors.

SURCHARGES AND CREDITS

Prior Acts Coverage

Years of Prior Acts Coverage	Prior Acts Credit		
6 +	0.00		
5	- 0.01	to	- 0.05
4	- 0.06	to	- 0.10
3	- 0.11	to	- 0.15
2	- 0.16	to	- 0.25
1	- 0.26	to	- 0.40
0	- 0.41	to	- 0.50

Note: Linear interpolation based on days between retroactive date and policy inception date.

Continuing Legal Education Credit

For Ethics, Risk Management, Loss Prevention &/or Office Management Seminars Attended (Minimum 3 hours in the last 12 months): - 0.10

Area of Practice Surcharge/Credit

Area of Practice	Percentage of Practice	Credit/Surcharge
Anti-Trust/Trade	All	+0.60
Arbitration/Mediation	All	-0.28
Bankruptcy	All	+0.05
Civil Litigation – Defense	All	-0.28
Civil Litigation – Plaintiff	All	+0.85
Collection Repossession	All	+0.35
Copyright/Trademark	All	+0.75
Corporate/Transactional	All	+0.05
Criminal	All	-0.40
Domestic Relations	All	-0.20
Entertainment/Sports	All	+0.15
Estate/Probate/Wills	All	-0.05
ERISA/Employee Relations	All	+0.18
Gaming/Casino Representation	All	+0.50
Government	All	-0.10
Labor	All	-0.28
Mergers/Acquisitions	All	+0.50
Natural Resources	All	-0.05
Oil/Gas	All	+0. 35
Patents	Less than or equal to 50%	+1.30
Patents	Greater than 50%	+1.00
Real Estate	All	+0.90
Securities Exempt/Bonds	All	+0.05
Securities/Registered Offerings	All	+0.55
Tax	All	+0.20
Workers' Compensation	All	-0.20

Note: AOP Factors are weighted based on each attorney's percentage of area of practice

Limited Practice Credit

Individual attorneys within a law firm who practice less than full-time (i.e., 30 hours a week) are eligible for a Limited Practice Credit. The maximum credit of -0.50 is applied for those who work 15 hours per week or less. Linear interpolation is used to determine the factor to be applied for those attorneys who work between 11 and 29 hours per week.

Prior Claims Surcharge

A claims surcharge is applicable only to a claim for which the total loss and loss adjustment expense paid on the claim exceeds $30,000. Identify the number of surchargeable claims. For each surchargeable claim, determine the applicable surcharge year and identify the applicable surcharge. Prior claims surcharges are cumulative.

Surcharge Year	Surcharge
1	+ 0.50
2	+ 0.40
3	+ 0.30
4	+ 0.20
5	+ 0.10
6+	0.00

State Relativity Factors

Washington – Snohomish, King, Pierce, Thurston & Kitsap Counties	1.00
Washington – Remainder	0.77

Firm Size Credits/Surcharges

Number of Attorneys

Number of Attorneys	Credit/Surcharge
1	+ 0.30
2	+ 0.15
3	+ 0.05
4	0.00
5	- 0.02
6	- 0.10
7	- 0.15
8 - 10	- 0.10
11 - 25	- 0.27
26 - 75	- 0.34
76+	- 0.15

Ratio of Non-Attorneys to Attorneys Surcharge

Ratio	Surcharge
0.00 – 1.00	+ 0.00
1.01 – 2.00	+ 0.15
2.01 – 3.00	+ 0.35
3.01 – 4.00	+ 0.50
4.01+	+ 0.65

Reduce Insureds Susceptibility to Claims (RISC) Visit Credit

ALPS offers a voluntary RISC Visit Program (Reduce Insureds Susceptibility to Claims). Firms participating in the voluntary RISC Visit Program can elect to release their report to the ALPS underwriting department in order to receive a premium credit for the following three years. If the firm voluntarily elects to release the RISC visit report to the ALPS underwriting department, the RISC Visit Credit will be applied if the firm: (i) pays for the voluntary RISC visit; (ii) responds to the report's general recommendations in writing; and (iii) remains claims free during the three year period following the RISC visit. The amount of the RISC Visit Credit is - 0.05 per year. Mandatory RISC visits will not be allowed in the State of Washington.

SCHEDULED RISK RATING

ALPS will consider scheduled debits and credits up to ± 0.25 for the following areas. Application of schedule credit or debit will be documented in the underwriting file.

Debits		Credits	
Sloppy or illegible application: *Incomplete answers or hard to read application*	+0.02	Docket control system *Firm has a system for tracking deadlines* *Note: if there are claims resulting from deadline errors, this credit will not apply.*	-0.05
Office management – general *Application information displays below average office management procedures*	+0.05	Office management - general *Application information displays good office management or provides information showing above average office management procedures*	-0.05
Solo attorney with no back up	+0.02	Full time office manager - *documentation/confirmation that the individual is managing the office full time must be in the file.*	-0.03
Firm does not use letters for engagement, disengagement, non-engagement, etc.	+0.03	Formal system to evaluate performance of practicing lawyers	-0.05
Suits for fees: • With Review Process • With no review process	 +0.03 +0.05	Conflict Avoidance System *Firm has manual or computerized search of a conflicts database to avoid conflicts of interest*	-0.05
No docket control system *Firm does not have a system for tracking deadlines*	+0.05	AOP Practice mix: • Complimentary practice mix • Low risk AOP profile	 -0.03 -0.05
No conflict avoidance system *Firm does not have a manual or computerized search of a conflicts database to avoid conflicts of interest*	+0.05	Reputation *AV rated by Martindale Hubble or provides documentation of above average reputation in the legal community*	-0.03
No communication of changes in firm mid-term. *At renewal, firm informs ALPS of changes mid-term for the first time.*	+0.03	Continued Coverage: • Insured with ALPS- two years • Insured with ALPS –three years • Insured with ALPS – 4 years • Insured with ALPS – 5 or more consecutive years	 -0.02 -0.03 -0.04 -0.05
Absence of clerical staff *If not used, non-application of this debit must be clearly documented if a firm does not have staff.*	+0.05	Continuity of firm: • No changes in firm: • Minimal changes (ie: low turnover) • Long established firm	 -0.05 -0.03 -0.05

Debits	Credits	Debits	Credits
Continuity of firm: • high turnover of staff or attorneys • significant changes in firm structure • significant change in practice profile or office management procedures • Prior acts exposure	 +0.05 +0.05 +0.05 +0.05	Partial practice in a lower-risk state: *Criterion is based on providing a significant amount of professional services in a state that has a lower state relativity than the primary exposure state.*	-0.05
Commercial advertising/website: *ie. Guaranteeing result, over promising results or inferring something contrary to ethical obligations, no disclaimer, lack of maintenance for current information.*	+0.05	Claims free for at least three years	-0.03
Partial practice in a higher-risk state: *Criterion is based on providing a significant amount of professional services in a state that has a higher relativity than the primary exposure state.*	+0.05	Claims free for five or more years	-0.05
Claim frequency: • 2 in the past five years • 3 or more claims in the past five years	 +0.03 +0.05	Certified Legal Administrator(s)	-0.05
Conflict of interest: *Firm or member of the firm has decision making authority in the interests of a client's business.*	+0.05	Concentrated AOP – Specialist: *Firm or majority of attorneys practice more than 50% in one or more Area of Practice*	-0.05
Outside interests: *Firm or member of a firm has a relationship via ownership, director or officer with a client.*	+0.05	Internal Risk Management System: *Firm has documented that it has a formal internal system by which they offer risk management training or education within the legal profession.*	-0.05
AOP Practice mix: • High risk AOP profile • Non-concentrated AOP • Non-concentrated AOP in higher risk AOP (ie: securities, intellectual Property, etc.)	 +0.05 +0.03 +0.05	Documented Attorney Back-up System: *Firm has a procedure for the firm or each attorney so critical dates and work obligations are covered in the event of an attorney's absence.*	-0.02

RATE VARIABLES

Increased Limit Factors

Policy Limits Per Claim/Aggregate Up to $5,000,000/$10,000,000	Factor
100,000/300,000	1.00
250,000/250,000	1.39
250,000/500,000	1.51
500,000/500,000	1.55
500,000/1,000,000	1.68
1,000,000/1,000,000	1.77
1,000,000/2,000,000	1.85
2,000,000/2,000,000	2.16
2,000,000/4,000,000	2.22
3,000,000/3,000,000	2.42
3,000,000/6,000,000	2.47
4,000,000/4,000,000	2.63
4,000,000/8,000,000	2.68
5,000,000/5,000,000	2.81
For Per Claim limits greater than $5,000,000, rating will be determined on an "a" rate basis in accordance with WAC 284-24-070.	

Deductible Credit/Surcharge Factors

Deductible	Indemnity & Defense Costs Surcharge	Indemnity Only Credit/Surcharge (First Dollar Defense Option)
1,000	+ 0.00	- 0.02
2,500	+ 0.04	+ 0.02
5,000	+ 0.06	+ 0.04
10,000	+ 0.14	+ 0.07
25,000	+ 0.31	+ 0.16
50,000	+ 0.49	+ 0.26
100,000*	+ 0.83	N/A
250,000*	+ 1.15	N/A
For Deductibles $100,000 or greater, on policies having Per Claim limits greater than $5,000,000, rating will be determined on an "a" rate basis in accordance with WAC 284-24-070.		

* Denotes that these deductibles are not available on an indemnity only basis. A flat charge of **$250.00** per attorney will be added to cover anticipated expenses on policies issued with these deductibles.

Part-Time Policy Premium Credit

Firm averaging twenty-five (25) hours or less in monthly billing:	-0.50

Basic Coverage Endorsement Credit

Basic Coverage Endorsement Credit (Available only with ALPS Standard Policy Form)	-0.20

Enhanced DefenderOption (Premium Per Attorney)

Lawyers Professional Liability Insurance Policy *With Enhanced Defender Option*	$130.00 per attorney

E.
Sample Application Form for Lawyers Professional Liability Insurance

☐ Evanston Insurance Company
☐ Markel American Insurance Company
☐ Markel Insurance Company

MARKEL®

DESIGNED PROTECTION℠ FOR LAW FIRMS
APPLICATION FOR LAWYERS PROFESSIONAL LIABILITY INSURANCE

NOTICE: THE POLICY FOR WHICH APPLICATION IS MADE APPLIES ONLY TO "CLAIMS" FIRST MADE DURING THE POLICY PERIOD. THE LIMITS OF LIABILITY SHALL BE REDUCED BY "CLAIM EXPENSES" AND "CLAIM EXPENSES" SHALL BE APPLIED AGAINST THE DEDUCTIBLE. PLEASE READ THE POLICY CAREFULLY.

If space is insufficient to answer any question fully, attach a separate sheet.

I. GENERAL INFORMATION

1. (a) Full name of Applicant (if corporation or LLC provide entity name): _____

_____

(b) Principal business premises address: _____
(Street) (County)

_____
(City) (State) (Zip)

(c) Secondary practice locations: _____

_____

(d) Phone Number: _____

(e) Website address: _____ (f) Date established (MM/DD/YYYY): _____

(g) Business is a: [ ] corporation [ ] partnership [ ] sole proprietorship [ ] limited liability partnership (LLP)
[ ] individual [ ] other _____

2. (a) Within the last two years has the Applicant firm, formed, acquired or merged with any other law firm? ..... [ ] Yes [ ] No
If Yes, provide details on a separate sheet.

(b) Are any other law firm formations, acquisitions or mergers being contemplated? ..... [ ] Yes [ ] No
If Yes, provide details on a separate sheet.

II. FINANCIAL AND STAFFING INFORMATION

1. Provide the Applicant's total annual gross revenues for the last three (3) years. If newly established, provide estimated annual gross revenues for the current year.

$_____ last twelve months $_____ 1st prior year $_____ 2nd prior year

2. Provide the names of all lawyers and limited license legal technicians who are presently officers, partners, employed lawyers, of counsels, independent contractors, retired partners or employed limited license legal technicians of the Applicant and complete the information requested for each.

Name of Lawyer; or Limited License Legal Technician* (see question 3. below)	Designation: O - Officer P - Partner E - Employed Lawyer OC - Of Counsel IC – Independent Contractor RP - Retired Partner LT - Limited License Legal Technician*	Hours Worked Per Week**	Year Admitted to Bar; or year licensed as LT*	MM/DD/YY Joined Applicant	Bar Certified Practice Area Specialist? Yes/No

**Required for: Of Counsel, per diem, independent contractor and part time; indicate hours worked on behalf of the Applicant
If more space is needed, attach an additional page.

3. Provide the following for Applicant's staff:

	Number Currently Engaged	Number Who Left the Applicant Last Year
Lawyers		
Limited License Legal Technician or equivalent*		
Paralegals		
Other Employees		

* Limited License Legal Technicians (authorized in Washington State) are not fully licensed lawyers and may not represent clients in court; however, they are licensed to practice and advise or assist clients in certain specified areas of law, as prescribed by State law or regulations.

4. Does the Applicant have a:
   (a) Full-time office administrator? ..... [ ] Yes [ ] No
   (b) Management/Executive Committee? ..... [ ] Yes [ ] No
   If Yes: (i) How many members comprise such committee? _____
   (ii) How often does such committee meet? _____

5. In the past five years, has any lawyer proposed for this coverage served or does any lawyer proposed for this coverage currently serve as director, officer, trustee or partner of or have fiduciary control over any outside entity? ..... [ ] Yes [ ] No
   If Yes, complete a Supplement for Outside Interests.

6. In the past five years, has any lawyer proposed for this coverage held an equity or financial interest in a client or a client's property? .....[ ] Yes [ ] No
If Yes, complete a Supplement for Outside Interests.

7. Is any lawyer proposed for this coverage
   (a) An employee of any organization, entity or governmental body other than Applicant? .....[ ] Yes [ ] No
   If Yes, provide details. _____
   (b) Engaged in any professional/business activities other than the private practice of law? .....[ ] Yes [ ] No
   If Yes, provide details._____

III. PRACTICE AREAS

1. Indicate percentage of time devoted to the following areas of practice:

Area of Practice	*Percentage*	*Area of Practice*	*Percentage*
Administrative		Plaintiff Work	
Admiralty / Marine		Civil Rights / Discrimination	
Antitrust / Trade Regulation		Class Action/Mass Tort†	
Appellate		PI/PD Litigation	
Arbitration / Mediation		Medical Malpractice	
Bankruptcy		Professional Liability	
Business/ Commercial/ Contracts Law		Social Security	
Collections - Commercial debt / credit		Workers Compensation	
Collections - Consumer debt / credit		Other _____	
Communications / FCC		Defense Work	
Construction Law		Class Action/Mass Tort†	
Corporate Law		Insurance†	
Administrative / Record Keeping		Other _____	
Formation		_____	
Mergers & Acquisitions		Real Estate	
Stock Options – Any Involvement		Residential Closings (Answer question III.2.)	
Criminal Law		Commercial Transactions†	
Elder Law / Social Security		Developments†	
Energy / Natural Resources		Foreclosure/Repossession/Loan Workout†	
Entertainment / Sports†		Syndication†	
Environmental Law		Title Work†	
Estate, Trust, Probate, Wills		Securities	
Family / Domestic		Municipal Bonds	
Divorce – Assets under 1 mil		Private Stock Offerings	
Divorce – Assets over 1 mil		Public Stock Offerings	
Other		Litigation Law	
Financial Institutions / Banking		Regulatory Compliance	
Government/Municipal		Tax	
Healthcare		Tax Opinions	
Immigration / Naturalization		Tax Return Preparation	
Intellectual Property		Tax Shelter Related Work	
International Law		Traffic	
Labor Relations – Employees		Tribal Law	
Labor Relations – Management		Utilities	
Other (describe):_____			
		TOTAL (must equal 100%)	100%

† Complete a Supplemental Application for this Area of Practice - See Section VII of this Application for details.

2. If the Applicant law firm has indicated Real Estate practice in question III.1. above and Applicant's Real Estate practice is limited solely to the following:
   - Residential Closings with no single Residential property Sale Price more than $5,000,000; and / or
   - Small Commercial Closings with no single Commercial property Sale Price more than $2,000,000;

   then complete the following:

   (a) Estimate Average Sale Price in each category in the last 24 months:

   Residential $_____ Commercial $_____

   (b) What was the Largest Sale Price in each category in the last 24 months:

   Residential $_____ Commercial $_____

   If the Applicant has indicated Real Estate practice in question III.1., but does not meet the above limitations in this question III. 2., complete and submit a Real Estate Practice Supplement - MALA 1004.

3. Does the Applicant provide any services for any residential Condominium or Homeowners Associations or residential Cooperatives? .....[ ] Yes [ ] No

   If Yes, provide details: _____

IV. BUSINESS PRACTICES

1. **INSOLVENT, BANKRUPT, LIQUIDATION OR RECEIVERSHIP CLIENTS** – Have any of the Applicant's past or present corporate clients become insolvent or bankrupt or gone into liquidation or receivership during the past 5 years? .....[ ] Yes [ ] No

   If Yes, answer the following for each such client:

Client Name	Client Address, City and State	Is/Was Client Publicly Traded? (Yes or No)	Description of Legal Services Provided

2. (a) Has the Applicant filed any suit for collection of fees against any client in the last two (2) years?....[ ] Yes [ ] No

   If Yes, how many? _____

   If Yes, provide the following for each suit for unpaid legal fees. Attach a separate sheet if necessary.

Date Filed	Name of Client	$ Amount Sought	Status/Result

   (b) What steps have been taken by the Applicant to reduce or avoid the necessity of fee collections suits in the future?

3. When evaluating whether a case should be sent for collection, does the Applicant review the file for the purpose of evaluating whether the possibility of a counterclaim alleging malpractice might be filed in response thereto? .....[ ] Yes [ ] No

4. Does the Applicant accept cases where the cause of action arises and is adjudicated outside of the Applicant's local jurisdiction (i.e., in another state)? .....[ ] Yes [ ] No
   If Yes, does the Applicant refer such cases to local counsel? .....[ ] Yes [ ] No

5. Has the Applicant outsourced any work in the last two (2) years, either domestically or out of the country? .....[ ] Yes [ ] No

6. Does the Applicant have any single client or group of related clients which have produced more than 25% of total gross billings during the last 24 months? .....[ ] Yes [ ] No
   If Yes, provide the percentage of gross billings, name of client, business activities of client, and services provided on behalf of client. _____

7 In the last five (5) years, has the Applicant accepted client securities or other forms of compensation in lieu of fees? ..... [ ] Yes [ ] No

If Yes, provide details. _____

8. Does the Applicant share office space with any other lawyer? ..... [ ] Yes [ ] No

If Yes,

(a) Is letterhead shared? ..... [ ] Yes [ ] No

(b) Is any staff shared? ..... [ ] Yes [ ] No

If Yes to above, provide details. _____

V. FIRM MANAGEMENT AND ADMINISTRATION

1. (a) Does the Applicant's docket control system include:

(i) Computer system? ..... [ ] Yes [ ] No

(ii) Dual calendar? ..... [ ] Yes [ ] No

(iii) Immediate entry of all dates? ..... [ ] Yes [ ] No

(iv) Master listings? ..... [ ] Yes [ ] No

(v) Provisions for illness of document administrator? ..... [ ] Yes [ ] No

(vi) Single calendar? ..... [ ] Yes [ ] No

(vii) Tickler system? ..... [ ] Yes [ ] No

(viii) Verification of completion of events? ..... [ ] Yes [ ] No

(b) How frequently are deadlines cross-checked? [ ] Daily [ ] Weekly [ ] Monthly

(c) Does the docket control system produce a daily or weekly calendar? ..... [ ] Yes [ ] No

2. Does the Applicant maintain a system to avoid potential conflicts of interest? ..... [ ] Yes [ ] No

If Yes, check all that apply:

(a) [ ] oral/memory [ ] computer [ ] index file [ ] conflict committee

(b) Indicate the items captured by the system:

[ ] client name [ ] client's principals [ ] client's subsidiaries [ ] opposing party [ ] opposing counsel

[ ] related individuals [ ] predecessor firm conflict information [ ] other. _____

3. Provide the percentage of matters on which the Applicant sends:

(a) An engagement letter when accepting a representation _____%

(b) A non-engagement letter when declining a representation _____%

(c) A disengagement letter when ceasing a representation _____%

4. Does the Applicant have:

(a) A policy prohibiting its attorneys from participating as a partner, officer, or director in any entity other than the Applicant when the Applicant provides legal services? ..... [ ] Yes [ ] No

If No, explain. _____

(b) A formal training program for lawyers joining the firm? ..... [ ] Yes [ ] No

(c) Internal (risk management) audits performed on a regular basis? ..... [ ] Yes [ ] No

(d) Annual audited financial statements produced each year? ..... [ ] Yes [ ] No

5. Does the Applicant have a formal procedure for and actively obtain second factor phone authorizations before releasing any wire transfer instructions? ..... [ ] Yes [ ] No

If No, explain. _____

VI. INSURANCE AND CLAIM HISTORY

1. (a) Limits of Liability: Indicate the limit of liability requested:

Per Claim/Annual Aggregate

[ ] $1,000,000 / $1,000,000 [ ] $3,000,000 / $3,000,000

[ ] $1,000,000 / $2,000,000 [ ] $4,000,000 / $4,000,000

[ ] $2,000,000 / $2,000,000 [ ] $5,000,000 / $5,000,000

(b) Deductible - Indicate the deductible requested:

[ ] $5,000 [ ] $10,000 [ ] $25,000 [ ] $50,000 [ ] higher – specify $ _____

THE COMPANY DOES NOT GUARANTEE TO OFFER ANY OF THE ABOVE LIMITS AND/OR DEDUCTIBLES.

2. List the Lawyers Professional Liability Insurance for the last three (3) years.
If none, check here [ ]

Insurance Company	Limits of Liability	Deductible	Premium	Expiration Dates (MM/DD/YYYY)	Retroactive/ Prior Acts Date††	No. of Lawyers Covered

†† Attach a copy of Applicant's current insurance policy's prior acts endorsement or declarations which states the retroactive date.

3. Has any insurer declined to issue, canceled or nonrenewed any Lawyers Professional Liability Insurance Policy or any similar insurance on behalf of any person(s) or entity(ies) proposed for this insurance? ..... [ ] Yes [ ] No
If Yes, provide details. _____

4. Has any lawyer Applicant, past or present, ever been refused admission to practice, disbarred, suspended, reprimanded, sanctioned, fined, or held in contempt by any court, state or local bar association, administrative agency, or regulatory body? ..... [ ] Yes [ ] No
If Yes, provide complete details on a separate sheet, including a copy of the court's final opinion.

5. Is (Are) any person(s) or entity(ies) proposed for this insurance currently under investigation, or has any disciplinary complaint or grievance been made to any court, bar association, administrative agency or regulatory body in the last five (5) years? ..... [ ] Yes [ ] No
If Yes, provide details on a separate sheet.

6. Has (have) any Professional Liability claim(s) been made against the Applicant or any person or entity proposed for this insurance or any predecessor firm(s) in the past five (5) years? ..... [ ] Yes [ ] No
If Yes, indicate total number of claims. _____
Complete a copy of our Supplemental Claim Form for Lawyers Professional Liability Insurance for each one.

7. After inquiry, is any person or entity proposed for this insurance aware of any fact, act, error, omission, personal injury, incident, circumstance or situation that could result in any claim under the proposed insurance, irrespective of the actual validity of the claim? ..... [ ] Yes [ ] No
If Yes, indicate total number: _____
Complete a copy of our Supplemental Claim Form for Lawyers Professional Liability Insurance for each one.

VII. ADDITIONAL INFORMATION

As part of this Application attach the following:

- A copy of the Applicant's current letterhead for all offices.

† Area of Practice Supplement(s) as noted in Question III.1.:

MALA 1001 Supplement for Wholly Owned Title Agency
MALA 1002 Entertainment/Sports/Media/Content Creation Practice Supplement
MALA 1004 Real Estate Practice Supplement
MALA 1007 Class Action / Mass Tort Supplement
MALA 1008 Insurance Defense Supplement

NOTICE TO THE APPLICANT - PLEASE READ CAREFULLY

NO FACT, CIRCUMSTANCE OR SITUATION INDICATING THE PROBABILITY OF A CLAIM OR ACTION FOR WHICH COVERAGE MAY BE AFFORDED BY THE PROPOSED INSURANCE IS NOW KNOWN BY ANY PERSON(S) OR ENTITY(IES) PROPOSED FOR THIS INSURANCE OTHER THAN THAT WHICH IS DISCLOSED IN THIS APPLICATION. IT IS AGREED BY ALL CONCERNED THAT IF THERE IS KNOWLEDGE OF ANY SUCH FACT, CIRCUMSTANCE OR SITUATION, ANY CLAIM SUBSEQUENTLY EMANATING THEREFROM SHALL BE EXCLUDED FROM COVERAGE UNDER THE PROPOSED INSURANCE.

FOR THE PURPOSE OF THIS APPLICATION, THE UNDERSIGNED AUTHORIZED AGENT OF THE PERSON(S) AND ENTITY(IES) PROPOSED FOR THIS INSURANCE DECLARES THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF, AFTER REASONABLE INQUIRY, THE STATEMENTS IN THIS APPLICATION AND IN ANY ATTACHMENTS, ARE TRUE AND COMPLETE. THE UNDERWRITING MANAGER, COMPANY AND/OR AFFILIATES THEREOF ARE

AUTHORIZED TO MAKE ANY INQUIRY IN CONNECTION WITH THIS APPLICATION. SIGNING THIS APPLICATION DOES NOT BIND THE COMPANY TO PROVIDE OR THE APPLICANT TO PURCHASE THE INSURANCE.

THIS APPLICATION, INFORMATION SUBMITTED WITH THIS APPLICATION AND ALL PREVIOUS APPLICATIONS AND MATERIAL CHANGES THERETO OF WHICH THE UNDERWRITING MANAGER, COMPANY AND/OR AFFILIATES THEREOF RECEIVES NOTICE IS ON FILE WITH THE UNDERWRITING MANAGER, COMPANY AND/OR AFFILIATES THEREOF AND IS CONSIDERED PHYSICALLY ATTACHED TO AND PART OF THE POLICY IF ISSUED. THE UNDERWRITING MANAGER, COMPANY AND/OR AFFILIATES THEREOF WILL HAVE RELIED UPON THIS APPLICATION AND ALL SUCH ATTACHMENTS IN ISSUING THE POLICY.

IF THE INFORMATION IN THIS APPLICATION AND ANY ATTACHMENT MATERIALLY CHANGES BETWEEN THE DATE THIS APPLICATION IS SIGNED AND THE EFFECTIVE DATE OF THE POLICY, THE APPLICANT WILL PROMPTLY NOTIFY THE UNDERWRITING MANAGER, COMPANY AND/OR AFFILIATES THEREOF, WHO MAY MODIFY OR WITHDRAW ANY OUTSTANDING QUOTATION OR AGREEMENT TO BIND COVERAGE.

THE UNDERSIGNED DECLARES THAT THE PERSON(S) AND ENTITY(IES) PROPOSED FOR THIS INSURANCE UNDERSTAND THAT:

(I) THE POLICY FOR WHICH THIS APPLICATION IS MADE APPLIES ONLY TO "CLAIMS" FIRST MADE DURING THE "POLICY PERIOD";

(II) UNLESS AMENDED BY ENDORSEMENT, THE LIMITS OF LIABILITY CONTAINED IN THE POLICY SHALL BE REDUCED, AND MAY BE COMPLETELY EXHAUSTED BY "CLAIM EXPENSES" AND, IN SUCH EVENT, THE COMPANY WILL NOT BE LIABLE FOR "CLAIM EXPENSES" OR THE AMOUNT OF ANY JUDGMENT OR SETTLEMENT TO THE EXTENT THAT SUCH COSTS EXCEED THE LIMITS OF LIABILITY IN THE POLICY; AND

(III) UNLESS AMENDED BY ENDORSEMENT, "CLAIM EXPENSES" SHALL BE APPLIED AGAINST THE "DEDUCTIBLE".

WARRANTY

I/We warrant to the Company, that I/We understand and accept the notice stated above and that the information contained herein is true and that it shall be the basis of the policy and deemed incorporated therein, should the Company evidence its acceptance of this application by issuance of a policy. I/We authorize the release of claim information from any prior insurer to the underwriting manager, Company and/or affiliates thereof.

Note: This application is signed by undersigned authorized agent of the Applicant(s) on behalf of the Applicant(s) and its, owners, partners, directors, officers and employees.

Must be signed by the owner, principal, partner, executive officer or equivalent (within 60 days of the proposed effective date).

Name of Applicant	Title
Signature of Applicant	Date

Notice to Applicants: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects the person to criminal and civil penalties.

F.
Sample Real Estate Practice Supplement

☐ **Evanston Insurance Company**
☐ **Essex Insurance Company**
☐ **Markel American Insurance Company**
☐ **Markel Insurance Company**

DESIGNED PROTECTION℠ FOR LAW FIRMS
REAL ESTATE PRACTICE SUPPLEMENT

Name of Insured or Applicant (law firm): _____

I. General Practice Information:

1. Check any of the following legal services that were provided during the previous 24 months:

TYPE OF LEGAL SERVICES PROVIDED	Commercial	Residential	TYPE OF LEGAL SERVICES PROVIDED	Any
Purchase and Sale	[ ]	[ ]	Landlord / Tenant Proceedings or Litigation	[ ]
Property Valuation Services or Litigation	[ ]	[ ]	Construction Work and Mechanic Liens	[ ]
Leasing / Rental	[ ]	[ ]	Tax Opinions	[ ]
Mortgage and Loan Documentation	[ ]	[ ]		
Loan Workouts or Modifications	[ ]	[ ]	Land Use / Zoning	[ ]
Subprime Mortgage Transactions or Litigation	[ ]	[ ]	Land Development or Litigation	[ ]
Foreclosure Proceedings or Litigation	[ ]	[ ]	Eminent Domain Proceedings or Litigation	[ ]
Short Sale Proceedings or Litigation	[ ]	[ ]	Water Rights or Litigation	[ ]
			Mineral / Oil / Gas Rights or Litigation	[ ]
Title Insurance Policy Issuance	[ ]	[ ]	Environmental Proceedings or Litigation	[ ]
Abstracting Services	[ ]	[ ]		
Title Opinion	[ ]	[ ]	Condominiums / Cooperatives	[ ]
Escrow Agent	[ ]	[ ]	Homeowners Associations	[ ]
UCC Search/ Lien validity/priority	[ ]	[ ]		
Other (describe):				

2. Purchase and Sale Size

Estimate Average Transaction Size:	Current Year	Previous 12 Months
Residential	$_____	$_____
Commercial	$_____	$_____

3. What was the largest value Real Estate Transaction in each category in the last 24 months?
   Residential $_____ Commercial $_____

4. For any active Real Estate Development(s) and any Development(s) for which the Applicant's legal services concluded within the previous 3 years, complete page 4 of this Supplement. If none, check here: [ ]

5. For all the real estate transactions you performed during the previous 24 months, please provide the percentage of properties that were located within the following distances (by radius) from your office:

   _____% within 50 miles; _____% more than 50 miles but less than 100 miles; _____% more than 100 miles.

6. How many staff are engaged in the Applicant firm's real estate practice? And, what are the average number of years of Real Estate Law experience for each group?

	# Staff	Ave Years		# Staff	Ave Years
Partners/Officers			Paralegals		
Employed Lawyers			Other Non-lawyer Employees		

7. Provide the name of the attorney that is your firm's real estate practice leader: _____

II. Title Work

1. Does the firm obtain written documentation of professional liability insurance from all subcontracted sources of title searches? [ ] Yes [ ] No
2. For each title opinion, does your firm verify the legal description of the property? [ ] Yes [ ] No
3. As a quality control measure, does the firm require a title search as documentation to verify that all legal descriptions, filings and/or other requirements are completed and accurate prior to concluding any transaction? [ ] Yes [ ] No
4. Does anyone affiliated with the firm maintain any equity interest in a Title Agency? [ ] Yes [ ] No
   a. If yes, please specify the percentage of equity interest and/or ownership: _____%
   b. Does the Title Agency have separate Title Agency Professional Liability Coverage? [ ] Yes [ ] No
      If Yes, what are the limits of liability? $_____/$_____each claim/aggregate
   c. If this Title Agency is wholly owned by the Insured / Applicant law firm and coverage is desired under the law firm's Professional Liability policy, please also complete Supplement for Wholly Owned Title Agency – form MALA 1001 02 16.

III. Environmental Real Estate

1. Does the firm research and provide an analysis of potential environmental risks before determining central terms, conditions and price of a real estate transaction? [ ] Yes [ ] No
2. Does the firm advise clients in writing to seek independent professional evaluations of apparent environmental exposures? [ ] Yes [ ] No

IV. Real Estate

1. a. In the last 5 years, has anyone in the firm provided services to clients who form, manage or organize group investment syndications (e.g. limited partnerships, general partnerships, real estate investment trust corporations) for the purpose of investing in real property? [ ] Yes [ ] No

   If Yes, describe services rendered and identify the clients receiving these services:

   _____

   _____

   _____

   _____

   _____

   _____

   b. In the past 5 years, has anyone in the firm solicited or sought investors in real estate mortgages or similar real-estate-based investments? [ ] Yes [ ] No

   If Yes, describe the services provided and identify the clients receiving these services:

   _____

   _____

   _____

2. Does anyone in the firm hold a real estate agent or broker license? .....[ ] Yes [ ] No

If Yes, list the attorney's name and type of license:

Attorney's Name	Type of real estate License

3. Has the firm ever represented more than one party in a Real Estate transaction? .....[ ] Yes [ ] No

If Yes, how often has this happened? _____

If Yes, when the firm does represent more than one party, do you disclose all such other parties by name to all the parties the firm represents in the transaction and do you have all such parties acknowledge by signing and dating the written disclosure? .....[ ] Yes [ ] No

4. Please name your 5 largest clients for Real Estate practice services:

Client name: Client location:

_____

_____

_____

_____

_____

5. If your firm has been involved in foreclosure work in the last 5 years, please answer the following:

   a. If your firm represented a bank, did you order a title search prior to filing a foreclosure action? .....[ ] Yes [ ] No

   b. If any new lien holders were identified in the initial title search, was the title search updated after the filing and was the foreclosure complaint amended accordingly? .....[ ] Yes [ ] No

6. For all foreclosure work performed by your firm in the last 5 years, have any of your firm's foreclosures been in, or are currently in, litigation? .....[ ] Yes [ ] No

   If Yes, please provide details: _____

   _____

   _____

Signing this Supplement does not bind the Company to provide or the Applicant to purchase the insurance.

It is understood that information submitted herein becomes a part of our application for insurance and is subject to the same declarations, representations and conditions.

Must be signed by director, executive officer, partner or equivalent within 60 days of the proposed effective date.

_____ _____

Name of Applicant Title

_____ _____

Signature of Applicant Date

***MUST BE SIGNED BY A MEMBER OF THE FIRM'S MANAGEMENT COMMITTEE OR GOVERNING BODY.**

REAL ESTATE DEVELOPMENT SUMMARY

Development	Legal Services Provided by Applicant	Nature and Location	Client Name	Acquisition Value	Condition of Property	Description of Property	Expected Value at Completion	Source(s) of Capital for Development

Complete additional copies of this page, if necessary.

G.
2017 Client Protection Fund Annual Report

CLIENT PROTECTION FUND

Trustees' Annual Report: Fiscal Year 2017

LAWYERS' INDEMNITY FUND EST. 1960 • CLIENT PROTECTION FUND EST. 1994

WASHINGTON STATE BAR ASSOCIATION
1325 Fourth Avenue, Suite 600, Seattle, WA 98101-2539
206-727-8200

PURPOSE OF THE CLIENT PROTECTION FUND

"The purpose of this rule is to create a Client Protection Fund, to be maintained and administered as a trust by the Washington State Bar Association (WSBA), in order to promote public confidence in the administration of justice and the integrity of the legal profession. […] Funds accruing and appropriated to the Fund may be used for the purpose of relieving or mitigating a pecuniary loss sustained by any person by reason of the dishonesty of, or failure to account for money or property entrusted to, any member of the WSBA as a result of or directly related to the member's practice of law (as defined in GR 24), or while acting as a fiduciary in a matter directly related to the member's practice of law. Such funds may also, through the Fund, be used to relieve or mitigate like losses sustained by persons by reason of similar acts of an individual who was at one time a member of the WSBA but who was at the time of the act complained of under a court ordered suspension."

Admission and Practice Rules 15(a) and (b).

WASHINGTON STATE BAR ASSOCIATION
CLIENT PROTECTION FUND, FISCAL YEAR 2017

FY 2017 TRUSTEES	
Bradford Furlong, President	Mt. Vernon
William Pickett, President-elect	Yakima
Jill Karmy	Ridgefield
Keith Black	Gig Harbor
Dan Bridges	Seattle
Mario Cava	Seattle
Daniel Clark	Yakima
Ann Danieli	Seattle
Sean M. Davis	Tacoma
James Doane	Issaquah
Angela Hayes, CPF Board Liaison	Spokane
Andrea Jarmon	Tacoma
Rajeev Majumdar	Blaine
Christina Meserve	Olympia
Athan Papailiou	Seattle
Kim Risenmay	Redmond

FY 2017 CLIENT PROTECTION FUND BOARD	
Chach Duarte White, Chair	Mercer Island
Efrem Krisher	Bellevue
Pamela Anderson	Olympia
Tracy Flood	Port Orchard
Beverly Fogle	Vancouver
Kathryn Herrmann	Tacoma
Matthew Honeywell	Seattle
Carol Hunter	Spokane
Rich Meyer	Bothell
Gloria Ochoa-Bruck	Spokane
Daniel Rogers	Shoreline
Carrie Umland	University Place
Allen Unzelman	Chehalis

WSBA STAFF TO THE CPF BOARD	
Kevin Bank	Assistant General Counsel; CPF Liaison/Secretary
Brenda Jackson	CPF Analyst

WASHINGTON STATE BAR ASSOCIATION
CLIENT PROTECTION FUND, FISCAL YEAR 2017

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APPENDIX

I. HISTORY AND ESTABLISHMENT OF THE CLIENT PROTECTION FUND

Washington is fortunate to have a history of maintaining a stable, well-funded Client Protection Fund (CPF) that is strongly supported by the Washington Supreme Court and the Washington State Bar Association. Washington was one of the first states to establish what was then called a Lawyers' Indemnity Fund in 1960. Since that time, the lawyers of this state have compensated victims of the few dishonest lawyers who have misappropriated or failed to account for client funds or property.

The current CPF was established by the Washington Supreme Court in 1994 at the request of the WSBA by the adoption of Rule 15 of the Admission to Practice Rules (APR), now called the Admission and Practice Rules. Prior to the adoption of that rule, the WSBA had voluntarily maintained a clients' security or indemnity fund out of the Bar's general fund. Similar funds are maintained in every jurisdiction in the United States, as well as Canada, Australia, New Zealand, and other countries.

The CPF helps accomplish important concerns shared by our Court and WSBA members – client protection, public confidence in the administration of justice, and maintaining the integrity of the legal profession. Under APR 15, CPF payments are gifts, not entitlements. A $30 annual assessment from lawyers licensed in Washington finances all CPF gifts; no public funds are involved. Currently, all WSBA members on active status, all lawyers with *pro hac vice* admissions, in-house counsel lawyers, house counsel, and foreign law consultants make these contributions. The following chart shows the experience of the past 10 years as the WSBA membership has increased.

Client Protection Fund Applications 2007-2017

Fiscal Year	# Of Lawyers	# Of Lawyers With Approved Applications	# Of Applications Received	# Of Applications Approved[1]	Gifts Approved
2007	27,761	16	69	34	$539,789
2008	27,786	18	125	43[2]	$899,672
2009	27,819	13	80	33	$449,050
2010	28,534	23	161	78	$554,270
2011	28,676	15	179	72[3]	$1,002,683
2012	29,184	17	137	39	$378,574
2013	29,682	18	130	45	$423,508
2014	31,495	14	141	44	$337,160
2015	31,335	20	79	59[4]	$495,218
2016	32,969	16	56	44	$253,228
2017	33,357	19	72	47	$439,273

[1] Multiple applications concerning a single lawyer may have been approved in more than one fiscal year.
[2] One lawyer was responsible for 24 approved applications totaling $695,409 in 2008.
[3] One lawyer was responsible for 25 approved applications totaling $1,092,222 in 2011; payments were prorated.
[4] One lawyer was responsible for 27 approved applications.

II. FUND PROCEDURES

The CPF is governed by Admission and Practice Rule (APR) 15 and Procedural Rules adopted by the Board of Governors and approved by the Supreme Court. These can be found at:
http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=APR&ruleid=gaapr15
http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=APR&ruleid=gaapr15p

Administration: The members of the Board of Governors of the WSBA serve during their terms of office as Trustees for the CPF. The Trustees appoint and oversee the CPF Board, comprised of 11 lawyers and 2 community representatives. This Board is authorized to consider all CPF claims, make CPF reports and recommendations to the Trustees, submit an annual report on Board activities to the Trustees, and make such other reports and publicize Board activities as the Court or the Trustees may deem advisable. Two WSBA staff members help Board members ensure the smooth functioning of the Board's work: WSBA Client Protection Fund Analyst Brenda Jackson performs a wide variety of tasks to help members of the public and the Board in the processing and analyzing of CPF claims. WSBA Assistant General Counsel Kevin Bank acts as WSBA staff liaison to the Board, provides legal advice to the Board and also serves as Secretary to the Board.

Application: Anyone who files a grievance with the WSBA that alleges a dishonest taking of, or failure to account for, funds or property by a Washington lawyer, in connection with that lawyer's practice of law, can receive an application form for the CPF. An applicant to the Fund must also file a disciplinary grievance against the lawyer with the Office of Disciplinary Counsel, unless the lawyer is disbarred or deceased. Because most applications involve lawyers who are the subject of disciplinary grievances and proceedings, action on Fund applications normally awaits resolution of the disciplinary process.[5] This means that some applicants wait years for the discipline process to be complete before the Fund Board reviews their application.

Eligibility: In order to be eligible for payment, an applicant must show by a clear preponderance of the evidence that he or she has suffered a loss of money or property through the dishonest acts of, or failure to account by, a Washington lawyer. Dishonesty includes, in addition to theft, embezzlement, and conversion, the refusal to return unearned fees as required by Rule 1.16 of the Rules of Professional Conduct.

[5] Fund Rule 6(h). In addition, Rule 3.4(i) of the Rules for Enforcement of Lawyer Conduct provides that otherwise confidential information obtained during the course of a disciplinary investigation may be released to the Client Protection Fund concerning applications pending before it. Such information is to be treated as confidential by the Fund Board and Trustees.

The Fund is not available to compensate for lawyer malpractice or professional negligence. It also cannot compensate for loan, investment, or other business transactions unrelated to the lawyer's practice of law.

When an application is received, it is initially reviewed to determine whether it appears eligible for recovery from the Fund. If the application is ineligible on its face, the applicant is advised of the reasons for its ineligibility. If the application passes the initial intake process and appears potentially eligible for payment, Fund staff investigates the application. When the application is ripe for consideration by the Board, a report and recommendation is prepared by Fund staff.

Board and Trustee Review: On applications for less than $25,000, or where the recommendation for payment is less than $25,000, the Board's decision is final. Board recommendations on applications where the applicant seeks more than $25,000, or where the Board recommends payment of more than $25,000, are reviewed by the Trustees.

The maximum gift amount was increased from $75,000 to $150,000, as of October 1, 2016. There is no limit on the aggregate amount that may be paid on claims regarding a single lawyer. Any payments from the Fund are gifts and are at the sole discretion of the Fund Board and Trustees.

Attorney Fees: Lawyers may not charge a fee for assisting with an application to the Fund, except with the consent and approval of the Trustees.

Assignment of Rights and Restitution: As part of accepting a gift from the Fund, applicants are required to sign a subrogation agreement for the amount of the gift. The Fund attempts to recover its payments from the lawyers or former lawyers on whose behalf gifts are made, when possible; however, recovery is generally successful only when it is a condition of a criminal sentencing, or when a lawyer petitions for reinstatement to the Bar after disbarment.[6] To date, the Fund (and its predecessors) has recovered approximately $381,382.

Difficult Claims: One of the more difficult claim areas for the Board and Trustees involves fees paid to a lawyer for which questionable service was performed. Because the Fund Board is not in a position to evaluate the quality of services provided, or to determine whether the fee charged was reasonable, the Board and Trustees have historically applied a "bright line" one paper rule: if the lawyer produced even one document on behalf of the client, or spent any time at all on the client, the application is generally denied as a fee dispute. (The denial may also include other bases, such as malpractice or negligence.) However, where it appears that there is a pattern of conduct which establishes that a lawyer knew or should have known at the time the lawyer accepted fees from a client that the lawyer would be unable to perform the service for which he or she was employed, or the lawyer simply performs no service of value to the client, and does not return unearned fees, the Board has concluded that such conduct may

[6] Admission to Practice Rule 25.1(d) provides that no disbarred lawyer may petition for reinstatement until amounts paid by the Fund to indemnify against losses caused by the conduct of the disbarred lawyer have been repaid to the Fund, or a payment agreement has been reached.

be either dishonesty or failure to account within the context of the purposes of the Fund, and will consider such applications. Similarly, if a lawyer withdraws from representing a client or abandons a client's case without refunding any unearned fee, the Board may conclude that the lawyer has engaged in dishonest conduct or has failed to account for client funds.

Another difficult claim area is those applications concerning loans or investments made to or through lawyers. In instances where there is an existing client/attorney relationship through which the lawyer learns of his or her client's financial information, persuades the client to loan money or to invest with the lawyer without complying with the disclosure and other requirements of RPC 1.8,[7] and does not return the client's funds as agreed, the Board may consider that to constitute a dishonest act for purposes of the Fund.

[7] In relevant part, RPC 1.8 provides:

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, expect as permitted or required by these Rules.

III. FINANCES

The Fund is financed by an assessment as described above. The Fund is maintained as a trust, separate from other funds of the WSBA. In addition, interest on those funds accrues to the Fund, and any restitution paid by lawyers is added to the Fund balance. The Fund is self-sustaining; administrative costs of the Fund, such as Board expenses and Bar staff support, are paid from the Fund.

	Fund beginning balance[8]	Fund revenues received	Board expenses and overhead[9]	Restitution received	Gifts recognized for payment
FY 2012 Pending applications at start of fiscal year: **$2,421,848**	$261,318	$893,487	$27,654	$5,942	$326,800
FY 2013 Pending applications at start of fiscal year: **$1,615,062**	$791,399	$914,547	$72,430	$10,674	$416,870
FY 2014 Pending applications at start of fiscal year: **$1,814,266**	$1,213,602	$949,965	$70,196	$3,668	$339,161
FY 2015 Pending applications at start of fiscal year: **$1,229,864**	$1,746,010	$990,037	$90,315	$3,703	$490,357
FY 2016 Pending applications at start of fiscal year: **$13,203,653**	$2,144,289	$1,001,198	$129,553	$2,970	371,452[10]
FY 2017 Pending applications at start of fiscal year: **$1,463,914**	$2,646,222	$1,024,954	$113,672	$3,709	$318,584

[8] It is important for the Fund to maintain a sufficient balance to meet anticipated future needs. It is impossible to predict from year to year how many meritorious claims will be made by injured applicants.

[9] Board expenses and overhead include WSBA staff time to administer the Fund, including processing of applications, helping members of the public, investigating claims, and making recommendations to the Board. Expenses and overhead have increased since 2012 as more resources have been allocated to eliminate backlogs, update systems, and improve processes, which have resulted in claims being resolved more efficiently and expeditiously.

[10] The amount of gifts recognized in the FY 2016 financial statements are overstated by $115,000 due to a duplicate recording of approved gifts. This was corrected in 2017 and explains the substantial difference between the amounts listed for FY 2016 and FY 2017 under this column as compared with the "Gifts Approved" column on page 2.

IV. BOARD AND TRUSTEE MEETINGS AND ACTIVITIES

Fund Board: The Client Protection Fund Board met four times this past fiscal year: November 8, 2016; February 13, 2017; May 2, 2017; and August 7, 2017. The Board considered 97 applications to the Fund involving 50 lawyers, and approved 47 applications involving 19 lawyers.

Fund Trustees: The Trustees reviewed the Board's recommendations on applications for more than $25,000, or for payment of more than $25,000, and approved the 2017 Annual Report for submission to the Supreme Court pursuant to APR 15(g).

Other Activities: Effective January 26, 2017, the WSBA Bylaws were amended to define WSBA members as (1) lawyers licensed to practice law, (2) limited license legal technicians (LLLTs) and (3) limited practice officers (LPOs). In accordance with these Bylaw amendments, the Supreme Court adopted amendments to APR 15 that became effective on September 1, 2017. The Fund was renamed the "Client Protection Fund," and APR 15 was amended to provide that the Fund may be used for relieving or mitigating losses caused by lawyers, LLLTs and LPOs. The amendments also clarify that LLLTs and LPOs are eligible to serve on the Client Protection Fund Board. The APR provision regarding assessments to the fund was amended to state that the Trustees may recommend to the Supreme Court that LLLTs and LPOs be ordered to pay an annual assessment to the Fund. In the fall of 2017, the Board of Governors, as Trustees of the Fund, initiated a process for gathering input from the WSBA membership as to the whether it should ask the Washington Supreme Court to assess all active LLLTs and LPOs an amount to assist in funding the Fund, and if so, what the amount of the assessment should be.

Public Information: The Client Protection Fund maintains a website at *http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Client-Protection-Fund* that provides information about the Fund, its procedures, and an application form that can be downloaded. The Fund information is also available in Spanish, but applications and materials must be submitted in English.

V. APPLICATIONS AND PAYMENTS

At the beginning of FY 2017, there were 83 pending applications to the Fund. During FY 2017, 72 additional applications were received. The Board and Trustees acted on 97 applications concerning 50 lawyers and approved 47 applications concerning 19 lawyers. The total amount in approved payments is $439,273. A summary of Board and Trustee actions is shown below.

Applications Pending as of October 1, 2017	**83**[11]
Applications Received During FY 2017	**72**
Applications Acted Upon by Board and Trustees	**97**
Applications Carried Over to FY 2018	**58**

Applications Approved for Payment in FY 2017	**47**
Applications approved for payment arose from the lawyer's dishonest acts such as theft or conversion, failure to return or account for unearned legal fees, and investments or loans with lawyers.	

Applications Denied in FY 2017	**50**
Applications were denied for reasons such as fee disputes, no evidence of dishonesty, alleged malpractice, restitution already paid in full, no attorney client relationship, and other reasons.	

[11] Applications received or pending are still in investigation, not yet ripe, or temporarily stayed. All approved applications receive initial payments of up to $5,000, with the balance reserved for possible proration against 75% of the Fund balance at fiscal year-end.

APPROVED APPLICATIONS

ATTORNEY	Number of Applications Approved	Dollar Amount of Applications Approved	Page Number
Callow, Edward, WSBA #41966	1	$7,867	10
Einhorn, Eric, WSBA #18890	1	$3,000	10
Elkin, Craig, WSBA #14608	1	$6,200	10
Gainer, Michael, WSBA #20219	3	$157,000	10
Harms, Todd, WSBA #31104	1	$1,400	11
Harrison, Max, WSBA #12243	1	$10,000	11
Harrison, Mitch, WSBA #43040	15	$39,080	12
Jacob, Jany, WSBA #30722	1	$6,978	15
Little, Brenda, WSBA #17688	15	$17,700	15
Morriss, Roy Earl, WSBA # 34969	2	$6,000	17
Mosley, Kirk, WSBA #29683	1	$2,515	17
Neal, Christopher, WSBA #33339	1	$6,000	17
Nwizubo, Martin, WSBA #27883	1	$1,000	18
Reed, David, WSBA #24663	2	$47,923	18
Schneider, Mark, WSBA #20106	1	$58,700	19
Terry, Leslie Clay, WSBA #8593	4	$52,542	19
Tran, Khanh, WSBA #30538	1	$5,368	20
Whitney, Sarah, WSBA #35479	1	$2,500	20
Witchley, Steven, WSBA #20106	1	$7,500	21
	TOTAL:	$439,273	

The following summarizes the gifts and recommendations made by the Fund Board:

Callow, Edward, #41966 – DISBARRED

Applicant 17-042 – Decision: $7,867.06 Approved

In August 2010, Applicant hired Callow to represent her in a personal injury matter on a one-third contingent fee basis. Applicant filed an insurance claim with her insurance company for her injuries. Callow obtained a settlement in the amount of $11,800 and, and earned his $3,932.94 his contingent fee. However, Callow did not pay the Applicant the settlement balance of $7,867.06. The Fund approved payment of $7,867.06.

Einhorn, Eric, #18890 - DISBARRED

Applicant 15-031 – Decision: $3,000 Approved

In May 2014, Applicant hired Einhorn to represent her in a matter concerning an unresolved issue from a dissolution. Applicant's father paid Einhorn an advance payment of $3,000. Einhorn told Applicant that he would refund any unearned fees. After accepting the payment, Einhorn failed to perform any work or to respond to Applicant's requests for status updates. Applicant never received a refund. Einhorn was found to have converted the advance payment for his own personal use. The Fund approved payment of $3,000.

Elkins, Craig, #14608 - ACTIVE

Applicant 17-039 – Decision: $6,200 Approved

In March 2014, Applicants hired Elkins to represent them in a lawsuit against their mortgage lender. Applicants paid Elkins $6,200 and agreed to pay an additional 10% contingent fee based on any reduction in their loan payments. As the months progressed, Applicants sent documents and requests for status updates with no response. On several occasions, Elkins told Applicants that he would review their file and get back to them on the status, which he did not. The lawsuit was never filed. Applicants terminated Elkins' representation, requested a refund of the unearned fee, and a bill statement. Elkins continued to ignore their requests. The Fund approved payment of $6,200.

Gainer, Michael, #20219 – RESIGNED IN LIEU OF DISCIPLINE

Applicant 16-025 – Decision: $150,000 Approved

In January 2011, Applicant hired Gainer to assist her with the probate of her father's estate. Applicant paid Gainer $2,000 in advance fees. Gainer performed work to commence the deceased's probate, but did not file further pleadings. In February 2012, Gainer received $81,747 in settlement proceeds from a lawsuit filed by other lawyers on behalf of Applicant's deceased

father. Gainer disbursed $40,000 to Applicant, which left a balance of $41,747 in his trust account. Gainer converted the balance for his own personal use, without Applicant's knowledge. While the probate was pending, Gainer received an additional $203,903.19 in proceeds from the sale of the family home, which he also converted. Gainer did not perform any other work to complete the probate. In April 2015, Gainer confessed to have stolen the funds from the estate. In total, Gainer converted $245,150. The Fund Board recommended, and the Board of Governors approved, payment of the maximum gift limit of $150,000.

Applicant 17-019 – Decision: $5,000 Approved

In September 2014, Applicant hired Gainer to represent her in a dissolution matter, paying him $5,000. In the dissolution proceeding, Applicant's husband was ordered to pay attorney's fees to Gainer. Gainer told Applicant she would receive a refund of the $5,000 in fees she had paid him earlier when he received the funds from her husband's attorney. When Gainer received the funds, he cashed the check and failed to disburse the refund to Applicant. The Fund approved payment of $5,000.

Applicant 17-025 – Decision: $2,000 Approved

In September 2014, Applicants hired Gainer to assist them in a dissolution matter, paying him $2,000. Gainer did not perform any work on the matter and did not communicate with the Applicants. The Fund approved payment of $2,000.

HARMS, TODD, #31104 – SUSPENDED

Applicant #16-036 – Decision: $1,400 Approved

In March 2014, Applicant hired Harms to represent him in a criminal matter paying Harms a flat fee of $1,400. Harms did not perform any work and Applicant was unable to contact him. Applicant never received a refund of the unearned fee. The Fund Board approved payment of $1,400.

HARRISON, MAX, #12243 – VOLUNTARILY RESIGNED/DECEASED

Applicant 16-043 – Decision: $10,000 Approved

In October 2014, Applicant hired Harrison to represent him in a criminal matter, paying Harrison $10,000. Thereafter, and until Harrison's death a few months later, Applicant's court hearings were continued. Applicant hired new counsel who found that Harrison did not perform any substantive work in the case prior to his death. The Fund Board approved payment of $10,000.

Harrison, Mitch, #43040 – RESIGNED IN LIEU OF DISCIPLINE

Applicant 16-047 – Decision: $8,000 Approved

In April 2015, Applicant hired Harrison to represent her in a criminal matter, paying a flat fee of $8,000. Applicant received a letter from Harrison informing her that the case was progressing as expected. Applicant learned later that this was false and that Harrison had not performed any work. Applicant terminated Harrison's representation. Harrison agreed to withdraw from the case and to issue a full refund. Applicant never received the refund and Harrison did not withdraw from her case. The Fund Board approved payment of $8,000.

Applicant 16-048 – Decision: $1,000 Approved

In November 2014, Applicant hired Harrison to represent her in a criminal matter, paying a flat fee of $1,000 to file a motion with the Court of Appeals. Applicant's mother sent letters to Harrison on several occasions to request status updates, with no response. Harrison never performed any work. Harrison's representation was terminated and a full refund was requested, but none was received. The Fund Board approved payment of $1,000.

Applicant 16-052 – Decision: $3,280 Approved

In April 2013, Applicant hired Harrison to represent him in what he thought were two separate matters, paying $8,000 with the first "agreement for legal services." In April 2014, Applicant then entered into a second "agreement for legal services," which required a flat fee of $10,000. Applicant paid a $3,000 down-payment toward the $10,000 fee, with the remaining $7,000 contingent upon the outcome of a lawsuit against Applicant's former lawyer. Applicant did not realize that the first contract covered the same services identified in the second contract, and that Harrison was not entitled to additional fees. In June 2014, Applicant entered into a third "agreement for legal service" paying a flat fee of $280. Harrison did not perform any work on the third contract. The Fund Board approved payment of $3,280.

Applicant 16-056 – Decision: $4,000 Approved

In April 2014, Applicant hired Harrison to represent her in a criminal matter paying him a flat fee of $4,000. Harrison did not perform any work on Applicant's behalf. The Fund Board approved payment of $4,000.

Applicant 17-002 – Decision: $4,150 Approved

In October 2014, Applicant hired Harrison to represent her in a criminal matter paying him a flat fee of $4,150. Applicant regularly communicated with Harrison for several years. During this time Harrison repeatedly gave Applicant assurances that the case was progressing as expected. Applicant discovered later that Harrison had not prepared or filed any documents on her behalf. Harrison did not perform any substantive work on behalf of Applicant. The Fund Board approved payment of $4,150.

Applicant 17-003 – Decision: $750 Approved

In February 2016, Applicant hired Harrison to represent him in a criminal matter, paying a flat fee of $750. Harrison assured Applicant that he would be able to complete the work and that the process would take "about a month" to get the necessary documentation in order to present to the prosecutor. Applicant later contacted Harrison to get an update on his case and was told the case was being worked on. After this conversation, Applicant made numerous unsuccessful attempts to communicate with Harrison via email and telephone. Harrison did not perform any work on behalf of Applicant. The Fund Board approved payment of $750.

Applicant 17-008 – Decision: $1,250 Approved

In April 2016, Applicant hired Harrison to perform legal work on two criminal matters, paying $1,250 for Harrison to begin the work. Harrison failed to perform any work. The Fund Board approved payment of $1,250.

Applicant 17-011 – Decision: $500 Approved

In March 2016, Applicant hired Harrison to represent him in a criminal matter, paying a flat fee of $500. A few weeks later, Applicant called Harrison to make sure he was on track to meet a deadline. Harrison assured Applicant that he was progressing well and would be able to meet the deadline. Subsequently, Applicant made repeated unsuccessful attempts to get a copy of the record in his case from Harrison. Harrison later admitted that he failed to meet the deadline as promised because "he had lost his license, and that he was broke." Weeks later it was discovered that Harrison had closed his law office. Harrison did not perform any work and did not refund the unearned fee. The Fund Board approved payment of $500.

Applicant 17-012 – Decision: $7,400 Approved

In February 2015, Applicant hired Harrison to help him in a criminal matter, paying a flat fee of $7,000. Harrison filed a notice of appearance, but later failed to communicate effectively with Applicant. Applicant made repeated unsuccessful attempts to get into contact with Harrison. Harrison eventually contacted Applicant to reassure him that his case would be handled as agreed. Harrison later told Applicant that his law practice was experiencing financial difficulties but still continued to provide Applicant with assurances. A few months later, Harrison solicited an additional $400 payment. Applicant discovered later that Harrison had abandoned his law practice and had never performed any of the work he claimed he was doing on Applicant's behalf. The Fund Board approved payment of $7,400.

Applicant 17-013 – Decision: $750 Approved

In March 2016, Applicant hired Harrison to represent her in a criminal matter, paying a flat fee of $750. Harrison told Applicant that it would only take a few months to handle the matter. Harrison ceased communicating with Applicant after he received the fee. Applicant made repeated unsuccessful attempts to communicate with Harrison. Applicant later discovered that Harrison did not perform any work and his law license had been suspended. The Fund Board approved payment of $750.

Applicant 17-029 – Decision: $1,500 Approved

In March 2016, Applicant hired Harrison to represent her in a criminal matter, paying a flat fee of $1,500. After Harrison received the payment, he told Applicant that he was going to begin working on the case. Applicant never heard from Harrison again. Applicant attempted to contact Harrison on numerous occasions with no response. Later, Applicant learned that Harrison's law license had been suspended. Harrison never performed any work and did not return the unearned fee. The Fund Board approved payment of $1,500.

Applicant 17-034 – Decision: $500 Approved

In February 2016, Applicant hired Harrison to represent him in a criminal matter, paying $500 to conduct an initial review of the case to determine what further action was appropriate for the case. Applicant contacted Harrison several weeks later for an update on the case. Harrison assured Applicant that a review would be completed within a week. Applicant met with Harrison to follow-up and was again promised that the review would be completed by the following week. As months passed without any updates from Harrison, Applicant made a trip to Harrison's law office, which Applicant found to be closed. Harrison did not perform the review and did not refund the unearned fee. The Fund Board approved payment of $500.

Applicant 17-037 – Decision: $3,000 Approved

In July 2015, Applicant hired Harrison to conduct a case review in a criminal matter, paying a total of $3,000. Harrison became difficult to contact. Harrison made contact with Applicant's mother and assured her that he was working on the case. Applicant asked Harrison to produce documentation relating to the case and to provide proof of how the case was progressing, Harrison did not respond. Applicant lost faith in Harrison and terminated his representation. Harrison did not perform any work and did not return the unearned fee. The Fund Board approved payment of $3,000.

Applicant 17-051 – Decision: $3,000 Approved

In April 2016, Applicants' parents hired Harrison to represent their two sons in a criminal matter, paying $3,000. Thereafter, Harrison failed to communicate with the Applicants and their parents. Harrison kept the unearned fee without performing any work. The Fund Board approved payment of $3,000.

Jacob, Jany, #30722 – DISBARRED

Applicant 15-055 – Decision: $6,978 Approved

In 2008, Applicant hired Jacob to represent her in an immigration matter, paying her $6,978. Jacob never performed any work. Applicant terminated Jacob's representation and hired new counsel who confirmed that Jacob had performed no substantive work on the matter. The Fund Board approved payment of $6,978.

Little, Brenda, #17688 – DISABILITY INACTIVE

Applicant 09-068 – Decision: $3,000 Approved

In July 2007, Applicant hired Little to represent him on a contingent fee basis in a litigation matter. Applicant gave Little $3,000 to deposit into her trust account for potential costs. Applicant became unhappy with Little's approach to the representation, terminated her representation, and hired another attorney. Applicant obtained his file from Little. There was no evidence that Little had incurred any costs. Little never returned any unused funds. The Fund Board approved payment of $3,000.

Applicant 10-049 – Decision: $1,500 Approved

In May 2007, Applicant hired Little to represent her in an employment dispute. Little required an "advance fee" of $2,000, which Little did not deposit into her trust account. Little's hourly rate was $250. Little faxed a representation letter to Applicant's employer and spoke to Applicant briefly over the phone. A few weeks later Applicant was cleared to return to work and told Little not to perform any further work. Applicant requested a refund of unearned fees. Little performed no more than two hours of work. The Fund Board approved payment of $1,500.

Applicant 10-091 – Decision: $2,770 Approved

In July 2007, Applicant hired Little to represent him on a contingent fee basis in a litigation matter. Applicant paid Little an "advance investigation fee" of $3,000 for the investigation of whether filing a lawsuit would be warranted. According to an audit of Little's trust account, Little converted most of Applicant's funds by using them for work on another case and converting funds for her own personal use. She did pay the $230 fee to file the lawsuit in the Applicant's matter, but did not use the remaining funds to investigate his case. Applicant ultimately terminated Little's representation. Applicant made several attempts to contact Little with no return response. The Fund Board approved payment of $2,770.

Applicant 10-188 – Decision: $2,000 Approved

In May 2010, Applicants hired Little to help them settle an issue involving their minor son. The Applicants paid a flat fee of $2,000. Little promised that she would contact the opposing party and request a hearing. Little did not perform the work as she promised. Applicants terminated her representation and hired a new attorney. Little did not return the unearned fee. Applicants later discovered that Little was suspended from practicing law when they hired her. The Fund Board approved payment of $2,000.

Applicant 11-009 – Decision: $1,200 Approved

In June 2010, Applicants had a consultation appointment with Little to discuss a dispute with a school, in a matter concerning their daughter. Applicants paid Little a flat fee of $1,200. Little failed to keep appointments and did not perform any work. The Fund Board approved payment of $1,200.

Applicant 11-010 – Decision: $3,000 Approved

In June 2009, Applicant hired Little to represent him in a lawsuit against his employer, paying her $3,000. Thereafter, it became difficult for Applicant to contact Little. Applicant later discovered that Little was suspended from the practice of law when he hired her. In July 2009, Little was reinstated to practice law. Little filed a notice of appearance and asked for a filing fee of $350, when it actually cost $240. Other than filing a notice of appearance and writing a letter to Applicant's employer, Little did not perform any work. The Fund Board approved payment of $3,000.

Applicant 11-029 – Decision: $1,000 Approved

In April 2010, Applicant hired Little to represent him in a lawsuit on a contingent fee basis. Little also required a "retainer" payment of $2,000 even though the matter was contingent. At Applicant's second meeting with Little, he paid her $1,000 of the "retainer" payment and never received a receipt. He met with Little two times for 15-25 minutes. Applicant prepared a demand letter to submit to the opposing party, and Little made edits and sent the letter back to Applicant for approval. Thereafter, Applicant was not able to make contact with Little. Little never sent the letter to the opposing party and never filed the lawsuit. The Fund Board approved payment of $1,000.

Applicant 11-209 – Decision: $3,000 Approved

In June 2008, Applicant hired Little to represent her in a lawsuit against her employer. Applicant met with Little once at her office, paying her $3,000. Little communicated with Applicant a few times over the phone and in email, but became difficult to contact thereafter. Little did not file anything on Applicants case, provide any services, and did not refund the unearned fee. The Fund Board approved payment of $3,000.

Morriss, Roy Earl, #34969 – RESIGNED IN LIEU OF DISCIPLINE

Applicant 16-022 – Decision: $1,000 Approved

In December 2014, Applicant hired Morriss to handle a property dispute and paid him $1,000. Once the payment was made, Morriss failed to communicate with Applicant. Applicant tried for months to contact Morriss but was unsuccessful. There was no evidence that Morriss performed any work for the Applicant. The Fund Board approved payment of $1,000.

Applicant 16-029 – Decision: $5,000 Approved

In August, 2013, Applicant hired Morriss to resolve a property dispute with his neighbors paying an advance fee deposit of $750, with an hourly rate of $200. Morriss filed a complaint in Snohomish County Superior Court on behalf of Applicant. Morriss continued to perform work on the case and Applicant continued to pay for the services rendered. A few months prior to the trial date, Morriss asked Applicant to pay him an additional $5,000 for the trial. Thereafter, Morriss disappeared. Applicant called the Snohomish County clerk before trial to report that he had been unable to contact Morriss. The clerk told Applicant that Morriss had been suspended from the practice of law for failure to pay his license fees. Applicant did not hear from Morriss again and never received a refund of the unearned $5,000 payment. The Fund Board approved payment of $5,000.

Mosley, Kirk, #29683 – DISBARRED

Applicant 16-033 – Decision: $2,515.26 Approved

In 2008, Applicant hired Mosley to represent him in a personal injury matter on a one-third contingent fee basis. Mosley obtained a settlement in the amount of $8,500. Mosley was entitled to $2,833.33 for his contingent fee, which left a balance of $5,666.67 to pay Applicant's medical bills and to disburse to Applicant. Mosley paid a $428 medical bill, disbursed $2,723.41 to Applicant, but failed to pay other medical bills. An audit of Mosley's trust account found that Mosely had converted $2,515.26 of the settlement proceeds. The Fund Board approved payment of $2,515.26.

Neal, Christopher, #33339 – SUSPENDED

Applicant 15-033 – Decision: $6,000 Approved

In 2009, Applicant hired Neal to represent him to resolve a debt with the Internal Revenue Service (IRS). Applicant wanted to set money aside for an IRS settlement payment and wanted Neal to handle the negotiations. Neal told Applicant to deposit the funds into his trust account. Applicant deposited $36,000 with Neal. Later, Neal told Applicant that he had paid the IRS from the trust account to satisfy a demand payment of $30,000. In fact, Neal did not pay the IRS and used some of the funds for other client matters. Neal returned $30,000 to Applicant, but never returned the remaining balance of $6,000. The Fund approved payment of $6,000.

Nwizubo, Martin, #27883 – DISABILITY INACTIVE

Applicant 15-071 – Decision: $1,000 Approved

In February 2015, Applicant hired Nwizubo to represent him in an immigration matter, paying $1,000. When Applicant went to deliver documents to Nwizubo's office, the office was closed. Nwizubo's wife informed Applicant that Nwizubo was no longer able to practice law. Applicant later learned that Nwizubo had been transferred to disability inactive status. Nwizubo was not able to perform any work on Applicant's matter before his change in status. The Fund Board approved payment of $1,000.

Reed, David, #24663 – DISABILITY INACTIVE

Applicant 16-034 – Decision: $25,150 Approved

In April 2011, Applicants hired Reed to represent them on an insurance claim for a lost or stolen diamond engagement ring. Applicants paid Reed a flat fee of $1,000. Reed obtained a settlement from the Applicants' insurance company in amount of $25,150. The insurance company issued the check payable to Reed's law firm and the Applicants. Reed fraudulently endorsed the check, signing the Applicants' names with a "POA" (power of attorney) notation. Reed did not have a POA authorizing him to endorse on the Applicants' behalf. Reed deposited the funds into his trust account and later converted all of the funds for his own use. Reed never disbursed any of the settlement to the Applicants. The Fund Board approved a payment of $25,150.

Applicant 17-049 – Decision: $22,773 Approved

In 2010, Reed assumed representation of Applicant in personal injury matters on a contingent fee basis. The contingent fee was for 33.33% if the case settled; 40% if settled or negotiated within 45 days of a trial date or if trial was held, and 50% of any amount recovered in the event of an appeal following trial or arbitration. Reed settled one of Applicant's matters within 45 days of the trial date for $25,000. Reed earned the 40% contingent fee and a reimbursement of expenses of $1,026.56. Reed told Applicant he would retain $12,000 to pursue the outstanding claims and that she would receive the remaining $13,000. Reed deposited the $25,000 into his trust account and later made nine transfers totaling $20,983.33 to his operating account. Reed disbursed $1,200 to Applicant, which was the only disbursement she received from the settlement. Reed then informed Applicant that he had received an additional settlement for $10,000 in Applicant's other matter. Applicant never received any of the proceeds of the $10,000 settlement. In Reed's discipline matter, prior to stipulating to disability inactive, he stipulated to a disciplinary suspension and agreed to pay restitution to Applicant in the amount of $22,773. Reed did not pay the restitution. The Fund Board approved payment of $22,773.

Schneider, Mark, # 20106 – DISBARRED

Applicant 15-014 – Decision: $58,700 Approved

In 2007, Applicant hired Schneider to represent him in an Under Insured Motorist (UIM) claim on a contingent fee basis. Schneider settled the claim for $100,000 and requested that the funds be mailed to his office. Schneider received the check and told Applicant that he had deposited the funds in trust. Schneider also told Applicant it would be best to keep the funds in trust while other obligations, including medical liens on the settlement, were resolved. Schneider failed to make the payments to the medical providers, and did not provide Applicant with his portion of the settlement proceeds. Starting in 2012, Applicant made several attempts to contact Schneider to inquire about the funds, but received evasive answers back via email. Later, Applicant discovered that Schneider had been disbarred in 2010 and not told Applicant. Because Schneider earned his 1/3 contingent fee and the lien holders wrote off losses for Applicant's medical treatment, the Fund Board recommended a gift of $58,700. The BOG approved the recommendation.

Terry, Leslie Clay, #8593 – DECEASED

Applicant 14-135 – Decision: $7,999.20 Approved

Applicant hired Terry to represent her in a personal injury matter arising from an automobile accident. In August 2013, Terry told Applicant that her case had "closed" and that the insurance company had agreed to a payment of $12,000. Terry never paid Applicant her portion of the settlement. An audit of Terry's trust account showed that Terry had deposited a check for $12,000 in his trust account from the insurance company on behalf of Applicant in August 2013, but made no disbursements to Applicant or others from the settlement. Although Terry earned his 1/3 contingency fee, Terry converted the Applicant's portion of the settlement funds for his own use prior to his death in 2016. The Fund Board approved a gift of $7,999.20.

Applicant 14-140 – Decision: $10,000 Approved

In July 2013, Applicant hired Terry to represent him on an appeal of a summary judgment ruling in an estate matter. Applicant paid Terry $10,000 to handle the appeal. Terry did not comply with court deadlines, made false representations to Applicant as to the status, and never completed the appeal, resulting in its dismissal by the Court. The Fund Board approved a gift of $10,000.

Applicant 15-009 – Decision: $6,000 Approved

In May 2013, Terry consulted with Applicant regarding a contractual dispute with an energy company she had invested in. Terry conveyed confidence that Applicant had a strong case and encouraged her to file suit. Based on this information, Applicant hired Terry, paying him $6,700 to handle the lawsuit. Terry failed to perform any substantive

work on the matter. No documents were prepared or filed. Terry promised to issue Applicant a refund of $4,000 prior to his death but never did so. The Fund Board approved a gift of $6,000.

Applicant 15-010 – Decision: $28,542.67 Approved

Applicant hired Terry to represent her against a pharmaceutical company alleging that a drug she had taken had caused her injuries. They mutually agreed on a contingent fee, but it was never reduced to writing. Terry obtained a $49,000 settlement from the defendant, paid in two installments in November and December 2012. By January 13, 2013, Terry had withdrawn almost all of the settlement funds for his own use; Applicant had received no funds. During this period, there were discussions between Applicant and Terry regarding disbursal of her funds but Terry never paid Applicant anything, claiming Applicant's share of the settlement had been used for costs and expenses. In the discipline investigation, the Office of Disciplinary Counsel (ODC) reviewed Terry's claimed costs and expenses, and found many of them to be greatly exaggerated. ODC determined that the true expenses were $6,686 that Terry's contingent fee should be calculated on the net recovery (1/3 of $42,814) and that Applicant should have received $28,542.67 from the settlement. Terry converted Applicant's share of the settlement funds for his own use prior to his death. The Fund Board recommended, and the BOG approved, a gift of $28,542.67.

Tran, Khanh Cong, #30538 - DISBARRED

Applicant 16-013 – Decision: $5,368.28 Approved

Applicant hired Tran to represent him in a personal injury matter on a one-third contingent fee basis of the net recovery after all medical expenses were deducted, or 40% of the net recovery after the case entered into litigation. Tran obtained a settlement in the amount of $15,000, after the case had entered into litigation. Tran deposited the settlement into his trust account and deducted a total of $6,746.10 for medical bills and costs and $3,301.56 for attorney's fees, and then disbursed $4,952.34 to Applicant. Tran did not pay the medical bills. Tran agreed to pay a restitution amount of $5,368.28 in his Stipulation to Disbarment but did not do so. The Fund Board approved payment of $5,368.28.

Whitney, Sarah, #35479 - DISBARRED

Applicant 16-040 – Decision: $2,500 Approved

In March 2015, Applicant hired Whitney to represent her on two separate matters. Applicant paid $625 for the first matter and $1,875 for the second matter. Whitney did not perform any work in the first matter. Whitney went to a court hearing with the Applicant on the second matter, but did not formally appear or intervene on Applicant's behalf and performed no other work. Thereafter, Applicant was unable to contact Whitney. Whitney did not earn the $2,500 fee. The Fund Board approved payment of $2,500.

Witchley, Steven, #20106 – RESIGNED IN LIEU OF DISCIPLINE

Applicant 16-007 – Decision: $7,500 Approved

In February 2012, Applicant hired Witchley to represent him in a criminal matter for a fee of $7,500. Applicant gave Witchley a petition he had already drafted. Witchley agreed to rewrite the petition in the proper format and to file it with the court. Thereafter, Applicant was unable to communicate with Witchley. Witchley failed to return phone calls, to keep scheduled telephone meetings, and to respond to Applicant's letters. Witchley did not file the petition and did not refund the unearned fee. The Fund Board approved payment of $7,500.

APPENDIX – Fund Balance Sheet

Statement of Financial Position

ASSETS	Audited As of September 30, 2017
Wells Fargo Checking Account	$1,420,319
Accrued Interest Receivable	2,156
Wells Fargo Money Market	2,240,414
Wells Fargo Investments	-
Morgan Stanley Money Market	102,824
TOTAL ASSETS	**$3,765,713**
LIABILITIES AND NET ASSETS	
Approved gifts to injured clients payable	409,411
Liability to WSBA general fund	114,003
Net Assets	3,242,300
TOTAL LIABILITIES AND NET ASSETS	**$3,765,713**

Statement of Activities

REVENUE	Audited As of September 30, 2017
Restitution	$3,709
Member Assessment	1,005,233
Interest	19,722
TOTAL REVENUE	**$1,028,663**
EXPENSES	
Gifts to Injured Clients	$318,584
CPF Board	1,510
Misc.	331
Indirect (overhead)	112,162
TOTAL EXPENSE	**$432,586**
Net Income (Expense)	$596,077

Statement of Changes in Net Assets

Balance at September 30, 2016	$2,646,222
Net Income for the 12 months end September 30, 2017	596,077
Balance at September 30, 2017	$3,242,299

H.
APR 15 Client Protection Fund and APR 15 Client Protection Fund (APR 15) Procedural Regulations

APR 15
CLIENT PROTECTION FUND

(a) Purpose. The purpose of this rule is to create a Client Protection Fund (the Fund), to be maintained and administered as a trust by the Bar, in order to promote public confidence in the administration of justice and the integrity of the legal profession.

(b) Establishment. The Fund shall be established and funded through assessments ordered by the Supreme Court to be paid by members and other licensees to the Bar.

(1) The Board of Governors shall act as Trustees for the Fund.

(2) The Board of Governors shall appoint a Client Protection Board to help administer the Fund pursuant to these rules. The Client Protection Board shall consist of 11 lawyers, LLLTs, or LPOs and two community representatives who are not licensed to practice law, who shall be appointed to serve staggered three-year terms.

(3) Funds accruing and appropriated to the Fund may be used for the purpose of relieving or mitigating a pecuniary loss sustained by any person by reason of the dishonesty of, or failure to account for money or property entrusted to, any lawyer, LLLT, or LPO of the Bar as a result of or directly related to the lawyer's, LLLT's, or LPO's practice of law, or while acting as a fiduciary in a matter directly related to the lawyer, LLLT's, or LPO's practice of law. Such funds may also, through the Fund, be used to relieve or mitigate like losses sustained by persons by reason of similar acts of an individual who was at one time admitted to the practice of law in Washington as a lawyer, LLLT, or LPO but who was at the time of the act complained of under a court ordered suspension.

(4) The Fund shall not be used for the purpose of relieving any pecuniary loss resulting from a lawyer's, LLLT's, or LPO's negligent performance of services or for acts performed after a lawyer, LLLT, or LPO is disbarred or revoked.

(5) Payments from the Fund shall be considered gifts to the recipients and shall not be considered entitlements.

(c) Funding. The Supreme Court may by order provide for funding by assessment of lawyers, LLLTs, and LPOs in amounts determined by the court upon the recommendation of the Board of Governors.

(d) Enforcement. Failure to pay any fee assessed by the Supreme Court in the manner and by date specified by the Bar shall be a cause for suspension from practice until payment has been made.

(e) Restitution. A lawyer, LLLT, or LPO whose conduct results in payment to an applicant shall be liable to the Fund for restitution.

(1) A lawyer, LLLT, or LPO on Active status must pay restitution to the Fund in full within 30 days of final payment by the Fund to an applicant unless the lawyer, LLLT, or LPO enters into a periodic payment plan with Bar counsel assigned to the Client Protection Board.

(2) Lawyers, LLLTs, or LPOs on disciplinary or administrative suspension; disbarred or revoked lawyers, LLLTs, or LPOs; and lawyers, LLLTs, or LPOs on any status other than disability inactive must pay restitution to the Fund in full prior to returning to Active status, unless the attorney enters into a periodic payment plan with Bar counsel assigned to the Client Protection Board.

(3) A lawyer, LLLT, or LPO who returns from disability inactive status as to whom an award has been made shall be required to pay restitution if and as provided in Procedural Regulation 6(I).

(4) Restitution not paid within 30 days of final payment by the Fund to an applicant shall accrue interest at the maximum rate permitted under RCW 19.52.050.

(5) Bar counsel assigned to the Client Protection Board may, in his or her sole discretion, enter into an agreement with a lawyer, LLLT, or LPO for a reasonable periodic payment plan if the lawyer, LLLT, or LPO demonstrates in writing the present inability to pay assessed costs and expenses.

(A) Any payment plan entered into under this rule must provide for interest at the maximum rate permitted under RCW 19.52.050.

(B) A lawyer, LLLT, or LPO may ask the Client Protection Board to review an adverse determination by Bar counsel regarding specific conditions for a periodic payment plan. The Chair of the Client Protection Board directs the procedure for Client Protection Board review, and the Client Protection Board's decision is not subject to further review.

(6) A lawyer's, LLLT's, or LPO's failure to comply with an approved periodic payment plan or to otherwise pay restitution due under this Rule may be grounds for denial of status change or for discipline.

(f) Administration. The Bar shall maintain and administer the Fund in a manner consistent with these rules and Regulations.

(g) Subpoenas. A lawyer member of the Client Protection Board, or Bar Counsel assigned to the Client Protection Board, shall have the power to issue subpoenas to compel the attendance of the lawyer, LLLT, or LPO being investigated or of a witness, or the production of books, or documents, or other evidence, at the taking of a deposition. A subpoena issued pursuant to this rule shall indicate on its face that the subpoena is issued in connection with an investigation under this rule. Subpoenas shall be served in the same manner as in civil cases in the superior court.

(h) Reports. The Bar shall file with the Supreme Court a full report on the activities and finances of the Fund at least annually and may make other reports to the court as necessary.

(i) Communications to the Bar. Communications to the Bar, Board of Governors (Trustees), Client Protection Board, Bar staff, or any other individual acting under the authority of these rules, are absolutely privileged, and no lawsuit predicated thereon may be instituted against any applicant or other person providing information.

[Adopted effective September 1, 1994; amended effective October 1, 2002; January 2, 2008; January 13, 2009; December 1, 2009; January 1, 2014; September 1, 2017.]

APR 15
CLIENT PROTECTION FUND (APR 15) PROCEDURAL REGULATIONS

REGULATION 1. PURPOSE

(a) The purpose of these regulations is to establish procedures pursuant to Rule 15 of the Admission and Practice Rules, to maintain and administer a Client Protection Fund established as a trust by the Bar, in order to promote public confidence in the administration of justice and the integrity of the legal profession.

(b) Funds accruing and appropriated to the Fund may be used for the purpose of relieving or mitigating a pecuniary loss sustained by any person by reason of the dishonesty of, or failure to account for money or property entrusted to, any lawyer, LLLT, or LPO of the Bar as a result of or directly related to the lawyer's, LLLT's, or LPO's practice of law, or while acting as a fiduciary in a matter directly related to the lawyer's, LLLT's, or LPO's practice of law. Such funds may also, through the Fund, be used to relieve or mitigate like losses sustained by persons by reason of similar acts of an individual who was at one time a lawyer, LLLT, or LPO of the Bar but who was at the time of the act complained of under a court ordered suspension.

(c) The Fund shall not be used for the purpose of relieving any pecuniary loss resulting from a lawyer's, LLLT's, or LPO's negligent performance of services.

REGULATION 2. ESTABLISHMENT OF THE FUND

(a) Trustees. Pursuant to APR 15, the members of the Board of Governors will serve during their terms of office as Trustees (Trustees) for the Fund to hold funds assessed by the Supreme Court for the purposes of the Fund. The Bar President will serve as President of the Trustees.

(b) Funding. The Trustees may recommend to the Supreme Court that it order an annual assessment of all active lawyers, LLLTs, or LPOs of the Bar in an amount recommended by the Trustees to be held by them in trust for the purposes of the Fund.

(c) Enforcement. Any active lawyer, LLLT, or LPO failing to pay any annual assessment on or before the date set for payment by the Supreme Court shall, be ordered suspended from the practice of law in accordance with APR 17 and the Bar's Bylaws until the assessment is paid.

REGULATION 3. CLIENT PROTECTION BOARD

(a) Membership. The Client Protection Board shall consist of 11 lawyers, LLLTs, or LPOs and 2 community representatives who are not licensed to practice law, appointed by the Trustees for terms not exceeding three years each.

(b) Vacancies. Vacancies on the Client Protection Board shall be filled by appointment of the Trustees.

(c) Officers. The Trustees shall appoint a chairperson of the Client Protection Board for a term of one year or until a successor is appointed. The secretary of the Client Protection Board shall be a staff member of the Bar assigned to the Client Protection Board by the Executive Director of the Bar.

(d) Meetings. The Client Protection Board shall meet not less than once per year upon call of the chairperson, or at the request of the staff member of the Bar, who shall not be entitled to vote on Client Protection Board matters.

(e) Quorum. A majority of the Client Protection Board members, excluding the secretary, shall constitute a quorum.

(f) Record of Meetings. The secretary shall maintain minutes of the Client Protection Board deliberations and recommendations.

(g) Authority and Duties of Client Protection Board. The Client Protection Board shall have the power and authority to:

(1) Consider claims for reimbursement of pecuniary loss and make a report and recommendation regarding payment or nonpayment on any claim to the Trustees.

(2) Provide a full report of its activities annually to the Supreme Court and the Trustees and to make other reports and to publicize its activities as the Court or Trustees may deem advisable.

(h) Conflict of Interest.

(1) A Client Protection Board member who has or has had a lawyer/client relationship or financial relationship with an applicant or lawyer, LLLT, or LPO who is the subject of an application shall not participate in the investigation or deliberation of an application involving that applicant or lawyer, LLLT, or LPO.

(2) A Client Protection Board member with a past or present relationship, other than that as provided in section (1), with an applicant or lawyer, LLLT, or LPO who is the subject of an application, shall disclose such relationship to the Client Protection Board and, if the Client Protection Board deems it appropriate, that member shall not participate in any action relating to that application.

REGULATION 4. APPLICATIONS FOR PAYMENT

(a) Applications. All applications for payment through the Client Protection Fund shall be made by submitting to the Bar an application in such form and manner as determined by the Bar, and shall include all information requested on the form.

(b) Disciplinary Grievances. Before an application for payment from the Fund will be considered, the applicant must also file a disciplinary grievance with the Office of Disciplinary Counsel, unless the lawyer, LLLT, or LPO is disbarred, revoked, or deceased, or unless the Client Protection Board in its discretion finds that no disciplinary grievance is required.

(c) Information about the Fund. The application and information about the Fund shall be published on the Bar's public website and provided to any person on request.

REGULATION 5. ELIGIBLE CLAIMS

(a) Eligibility. To be eligible for payment from the Fund, the loss must be caused by the dishonest conduct of a lawyer, LLLT, or LPO or the failure to account for money or property entrusted to a lawyer, LLLT, or LPO as a result of or directly related to the lawyer's, LLLT's, or LPO's practice of law. The loss must also have arisen out of and by reason of a client-lawyer relationship or a fiduciary relationship in a matter directly related to the lawyer's, LLLT's, or LPO's practice of law.

(b) Time Limitations. Any application must be made within three years from the date on which discovery of the loss was made or reasonably should have been made by the applicant, and in no event more than three years from the date the lawyer, LLLT, or LPO dies, is disbarred or revoked, is disciplined for misappropriation of funds, or is criminally convicted for matters relating to the applicant's loss, provided that the Client Protection Board or Trustees in their discretion may waive any limitations period for excusable neglect or other good cause.

(c) Dishonest Conduct. As used in these rules and regulations, "dishonest conduct" or "dishonesty" means wrongful acts committed by a lawyer, LLLT, or LPO in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other thing of value, including but not limited to refusal to refund unearned fees or expenses as required by the Rules of Professional Conduct.

(d) Excluded Losses. Except as provided by Section E of this Regulation, the following losses shall not be reimbursable:

(1) Losses incurred by related persons, law partners and associate lawyers, LLLTs, or LPOs of the lawyer, LLLT, or LPO causing the loss. For purposes of these Rules and Regulations, "related persons" includes a spouse, domestic partner, child, grandchild, parent, grandparent, sibling, or other relative or individual with whom the lawyer, LLLT, or LPO maintains a close, familial relationship;

(2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety, or insurer is subrogated, to the extent of that subrogated interest;

(3) Losses incurred by any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;

(4) Losses incurred by any business entity controlled by the lawyer, LLLT, or LPO or any person or entity described in Regulation 5 (D)(1), (2) o r (3);

(5) Losses incurred by an assignee, lienholder, or creditor of the applicant or lawyer, LLLT, or LPO unless application has been made by the client or beneficiary or the client or beneficiary has authorized such reimbursement;

(6) Losses incurred by any governmental entity or agency;

(7) Losses arising from business or personal investments not arising in the course of or arising out of the client-lawyer or client-LLLT relationship, or the provision of LPO services;

(8) Consequential damages, such as lost interest, or attorney's fees or other costs incurred in seeking recovery of a loss.

(e) Special and Unusual Circumstances. In cases of special and unusual circumstances, the Client Protection Board may, in its discretion, consider an application which would otherwise be excluded by reason of the procedural requirements of these rules and regulations.

(f) Unjust Enrichment. In cases where it appears that there will be unjust enrichment, or that the applicant contributed to the loss, the Client Protection Board may, in its discretion, recommend the denial of the application. No rule should be interpreted as to provide a financial windfall to a claimant from the Fund.

(g) Investment Victims. When considering gifts to claimants who were victimized after investing with a lawyer, LLLT, or LPO the Client Protection Board may consider such factors as the sophistication of the investor, the length of the relationship with the lawyer, LLLT, or LPO, and whether the investor was aware that the lawyer, LLLT, or LPO had partners who were not lawyers, LLLTs, or LPOs.

(i) Exhaustion of Remedies. The Client Protection Board may consider whether an applicant has made reasonable attempts to seek reimbursement of a loss before taking action on an application. This may include, but is not limited to, the following:

(1) Filing a claim with an appropriate insurance carrier;

(2) Filing a claim on a bond, when appropriate;

(3) Filing a claim with any and all banks which honored a financial instrument with a forged endorsement;

(4) As a prelude to possible suit under part (5) below, demanding payment from any business associate or employer who may be liable for the actions of the dishonest lawyer, LLLT, or LPO; or

(5) Commencing appropriate legal action against the lawyer, LLLT, or LPO or against any other party or entity who may be liable for the applicant's loss.

REGULATION 6. PROCEDURES

(a) Ineligibility. Whenever it appears that an application is not eligible for reimbursement pursuant to Rule 5, the applicant shall be advised of the reasons why the application may not be eligible for reimbursement.

(b) Investigation and Report. The Bar staff member assigned to the Client Protection Board shall conduct an investigation regarding any application. The investigation may be coordinated with any disciplinary investigation regarding the lawyer, LLLT, or LPO. The staff member shall report to the Client Protection Board and make a recommendation to the Client Protection Board.

(c) Notification of Lawyer, LLLT, or LPO. The lawyer, LLLT, or LPO or his or her representative, regarding whom an application is made shall be notified of the application and provided a copy of it, and shall be requested to respond within 20 days. If the lawyer's, LLLT's, or LPO's address of record on file with the Bar is not current, then a copy of the application should be sent to the lawyer, LLLT, or LPO at any other address on file with the Bar. A copy of these Rules and Regulations shall be provided to the lawyer, LLLT, or LPO or representative.

(d) Withdrawal of Application/Restitution. If, during the investigation of an application, the Applicant withdraws the Application or the Applicant receives full restitution of the amount stated in the Application, the Applicant and the lawyer, LLLT, or LPO shall be advised that the file will be closed without further action.

(e) Testimony. The Client Protection Board may request that testimony be presented to complete the record. Upon request, the lawyer, LLLT, or LPO or applicant, or their representatives, may be given an opportunity to be heard at the discretion of the Client Protection Board.

(f) Finding of Dishonest Conduct. The Client Protection Board may make a finding of dishonest conduct for purposes of considering an application. Such a determination is not a finding of dishonest conduct for purposes of professional discipline.

(g) Evidence and Burden of Proof. Consideration of an application need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence commonly accepted by reasonably prudent persons in the conduct of their affairs. The applicant shall have the burden of establishing eligibility for reimbursement by a clear preponderance of the evidence.

(h) Pending Disciplinary Proceedings. Unless the Trustees otherwise direct, no application shall be acted upon during the pendency of a disciplinary proceeding or investigation involving the same act or conduct that is alleged in the claim.

(i) Deferred Disciplinary Proceedings; Lawyer, LLLT, or LPO on Disability Inactive Status.

(1) If an application relates to a lawyer, LLLT, or LPO on disability inactive status, and/or a disciplinary proceeding or investigation is deferred due to a lawyer's, LLLT's, or LPO's transfer to disability inactive status, the Client Protection Board may act on the application when received or may defer processing the application for up to three years if the lawyer, LLLT, or LPO remains on disability inactive status.

(2) A lawyer, LLLT, or LPO on disability inactive status seeking to return to Active status may, while pursuing reinstatement pursuant to the Rules for Enforcement of Conduct or other applicable discipline rules, request that the lawyer's, LLLT's, or LPO's obligation to make restitution for any applications approved while the lawyer, LLLT, or LPO was on disability inactive status be reviewed.

(A) If the request for review is based in, whole or in part on the merits of the application(s), the lawyer, LLLT, or, LPO may request the Client Protection Board review and reconsider any such applications. The Client Protection Board's decision on review shall be reported to the Trustees, which shall have sole authority for the final decision. If the Trustees determine that the application(s) should not have been approved, the lawyer, LLLT, or LPO will not be responsible for restitution and the applicant(s) shall not be required to repay the Fund. If the Trustees determine that the applications were appropriately granted and the lawyer, LLLT, or LPO is responsible for restitution, the rules regarding restitution shall apply.

(B) If the lawyer, LLLT, or LPO does not contest the merits of the applications but simply wants to request that restitution be waived, the request shall be submitted to Bar Counsel for the Fund, who shall submit the request to the Trustees together with Bar Counsel's recommendation. The decision of the Trustees shall be final and is not subject to appeal.

(j) Public Participation. Public participation at Client Protection Board meetings shall be permitted only by prior permission granted by the Client Protection Board chairperson.

(k) Client Protection Board Action.

(1) Actions of the Client Protection Board Which Are Final Decisions. A decision by the Client Protection Board on an application for payment of $25,000 or less-whether such decision be to make payment, to deny payment, to defer consideration, or for any action other than payment of more than $25,000- shall be final and without right of appeal to the Trustees.

(2) Actions of the Client Protection Board Which Are Recommendations to the Trustees. A decision by the Client Protection Board (a) on an application for more than $25,000, or (b) involving a payment of more than $25,000 (regardless of the amount stated in the application), is not final and is a recommendation to the Trustees which shall have sole authority for final decisions in such cases.

REGULATION 7. ADJUDICATION BY TRUSTEES

(a) A recommendation by the Client Protection Board (a) concerning applications for more than $25,000, or (b) that payments of more than $25,000 be made to applicants regarding any one lawyer, LLLT, or LPO shall be reported to the Trustees which may, in its discretion, adopt, modify, disapprove or take any other appropriate action on the Client Protection Board's recommendation.

(b) A decision of the Trustees shall be final and there shall be no right of appeal from that decision.

REGULATION 8. NOTIFICATION OF APPLICANT AND LAWYER, LLLT, OR LPO

Both the applicant and the lawyer, LLLT, or LPO who is the subject of an application shall be advised of any decision of the Client Protection Board or the Trustees.

REGULATION 9. LIMITATIONS ON REIMBURSEMENT

(a) The Trustees may, at their discretion, set limitations on the amount of reimbursement.

(b) The maximum allowable amount of a gift is $150,000. There is no limit on the number of gifts that can be made to reimburse clients for the wrongful acts of any one lawyer, LLLT, or LPO.

(c) Applications approved for $5,000 or less shall be paid in full upon approval by the Client Protection Board (and the Trustees, if required under these Rules and Regulations). Applications approved for more than $5,000 shall be paid $5,000 upon approval by the Client Protection Board (and the Trustees, if required under these Rules and Regulations); payment of the remaining balance approved shall be deferred until fiscal year end and shall be subject to any proration which may be approved by the Trustees.

(d) At the last meeting of the Trustees for each fiscal year, the Client Protection Board shall report the total outstanding balance on approved gifts and shall recommend whether the outstanding balance should be paid in full or prorated. When approved gifts are prorated, the prorated payment shall reflect the total amount of the gift, less the initial $5,000 payment made upon approval by the Client Protection Board. By way of illustration:

Example 1: The application is for an amount in excess of $150,000. The Client Protection Board recommends and the Board of Governors, as Trustees, approves a gift in the maximum allowable amount of $150,000. $5,000 is paid upon approval by the Trustees. At fiscal year end, the Client Protection Board recommends and the Board of Governors, as Trustees, approves using a prorating formula that would result in applicants receiving 20% of their unpaid gifts. 20% of $145,000 is $29,000, so a second payment of $29,000 is issued to the applicant.

Example 2: In the same fiscal year another applicant applies for and receives a gift in the amount of $7,500. $5,000 is paid upon approval. At fiscal year's end, a second payment is issued for $500.

REGULATION 10. NO LEGAL RIGHT TO PAYMENT

Any and all payments made to applicants in connection with the Client Protection Fund are gratuitous and are at the sole discretion of the Trustees.

RULE 11. RESTITUTION AND SUBROGATION

(a) Restitution. A lawyer, LLLT, or LPO whose conduct results in payment to an applicant shall be liable to the Fund for restitution, and the Trustees may bring such action as they deem advisable to enforce restitution.

(b) Subrogation. As a condition of payment, an applicant shall be required to provide the Fund with a pro tanto transfer of the applicant's rights against the lawyer, LLLT, or LPO, the lawyer's, LLLT's, or LPO's legal representative, estate or assigns; and of the claimant's rights against any third party or entity who may be liable for the applicant's loss. Failure to return a signed subrogation agreement to the Fund within three years of approval of the application will result in revocation of that approval.

(c) Action to Enforce Restitution. In the event the Trustees commence a judicial action to enforce restitution, they shall advise the applicant who may then join in the action to recover any unreimbursed losses. If the applicant commences such an action against the lawyer, LLLT, or LPO or another entity who may be liable for the loss, the applicant shall notify the Fund who may join in the action.

(d) Duty to Cooperate. As a condition of payment, the applicant shall be required to cooperate in all efforts that the Fund undertakes to achieve restitution.

REGULATION 12. COMPENSATION FOR REPRESENTING APPLICANTS

No lawyer shall charge or accept any payment for prosecuting an application on behalf of an applicant, unless such charge or payment has been approved by the Trustees.

REGULATION 13. CONFIDENTIALITY

(a) Matters Which Are Public. On approved applications, the facts and circumstances which generated the loss, the Client Protection Board's recommendations to the Trustees with respect to payment of a claim, the amount of claim, the amount of loss as determined by the Client Protection Board, the name of the lawyer, LLLT, or LPO causing the loss, and the amount of payment authorized and made, shall be public.

(b) Matters Which Are Not Public. The Client Protection Board's file, including the application and response, supporting documentation, and staff investigative report, and deliberations of any application; the name of the applicant, unless the applicant consents; and the name of the lawyer, LLLT, or LPO unless the lawyer, LLLT, or LPO consents or unless the lawyer's, LLLT's, or LPO's name is made public pursuant to these rules and regulations, shall not be public.

REGULATION 14. NOTICE OF ACTIONS

Notice of approval of an application to the Fund may be published in the official publication of the Bar and elsewhere at the direction of the Client Protection Board or Trustees. Notice may also be posted electronically on any web site maintained by the Bar. If the lawyer, LLLT, or LPO has made full restitution to the Fund, any notice posted electronically by the Bar may, at the request of the lawyer, LLLT, or LPO be removed.

REGULATION 15. AMENDMENTS

These Rules and Regulations may be amended, altered or repealed on the recommendation of the Client Protection Board by a vote of the Trustees, with the approval of the Supreme Court.

(Adopted by the Washington Supreme Court July 18, 1995; amended February 11, 1997; May 6, 1999; October 5, 2001; December 2, 2004; September 1, 2006; November 2, 2006, September 1, 2008; January 13, 2009; December 1, 2009; September 1, 2012; January 1, 2014; September 1, 2017.)