Comments Submitted to the Task Force

Inbox

Let us hear from you! We welcome letters to the editor on issues presented in the magazine. Email letters to nwlawyer@wsba.org. NWLawyer *reserves the right to edit letters.* NWLawyer *does not print anonymous letters, or more than one submission per month from the same contributor.*

MANDATORY MALPRACTICE INSURANCE

I just read the article in the September issue of *NWLawyer* about mandatory insurance ["WSBA Board of Governors Explores Mandatory Malpractice Insurance"] and, as a result, I am sending in my first comment in 25 years of practicing law in Washington. Our small office has always maintained insurance for our speeding ticket/DUI practice. We pay $750 for each attorney for $250,000 per claim/$500,000 aggregate of coverage. I hope that you consider small firms such as ours as you continue your investigation. Oregon's apparent one-size-fits-all $3,500 per lawyer assessment is ridiculous and bears no relation to the true cost of insuring a small firm like ours. Should you adopt a similar requirement, you would be creating an unnecessary financial burden for many small firms.

$3,500 for each lawyer? $7,000 for what currently costs us $1,500? What an outrage that would be.

Valerie Shuman, Tacoma

I searched diligently and filled out numerous applications, but I reached the conclusion that there is no market for malpractice coverage for transactional securities lawyers in solo practice. It appears that from the insurer's perspective, the underwriting costs exceed the expected profits at anything other than prohibitive rates. The last time I looked into this (and that was a number of years ago), every insurer I contacted refused to give me an offer at any price.

I'd like to note that I was trained in my practice area at Sullivan & Cromwell in New York, am 61 years old, and have never had a claim made against me. I also have impeccable academic credentials, which include an MBA equivalent from MIT.

If Washington decides on mandatory insurance, I would favor a professional liability fund. I fear that otherwise my license to practice in Washington would be worthless.

John A. Myer, Seattle

I am writing in response to the article "WSBA Board of Governors Explores Mandatory Malpractice Insurance" in the September 2017 issue of *NW Lawyer*.

As an attorney licensed to practice in both Oregon and Washington, I have had the opportunity to compare the professional liability insurance requirements of both states— disclosure in Washington and mandatory coverage in Oregon. I do not support mandatory coverage as it provides a questionable value at substantial cost while reducing the availability of legal services, particularly for moderate income citizens.

The first question to ask is "How much benefit does mandatory coverage actually provide to the average client?" I do not have the statistics but I encourage the Board to obtain this information before passing an expensive "feel good" measure. Although there are certainly horror stories out there about bad lawyers and the damage they cause, I question the value that mandatory coverage would provide to those clients when considered in the context of the aggregate cost and the thousands of clients who receive professional legal representation from lawyers with and lawyers without professional liability coverage.

The second question is "How would mandatory coverage affect low and moderate income citizens who need legal representation?" The difficulty finding pro bono coverage for low-income clients is well known, although there are programs that provide professional liability coverage to enable this important work to be done. From my experience, the great bulk of under-represented citizens are moderate income people who cannot afford an attorney yet do not qualify for pro bono representation.

In addition to my income-producing work, I have represented Washington citizens needing assistance with no-contact orders, a homeowner whose property was eroding due to the failure of a city to properly maintain a storm run-off system, individuals who were presented with scam damage reports by rental car companies, and others who had damaged credit reports due to fraudulent use of their identity. I may soon retire from my "day job" but hope to keep providing this type of unpaid service to moderate-income individuals. I am saving for retirement and certainly am not in the position to divert funds to pay for professional liability coverage. If coverage becomes mandatory, I fear I will be required to become an inactive member of the bar and will no longer be able to serve this under-represented group. I am sure there are many other attorneys in the same situation.

Bill Murphy, Vancouver, WA

PROFILING

Some WSBA members have fallen into the quagmire of lecturing about "white privilege" ("Inbox," SEP *NWLawyer*). However, it is unclear from their statements what white persons are supposed to do to atone for the total happenstance of being born white . . . pay reparations, take sensitivity classes, forfeit their law degree to a person of a different race?

No one should be denigrated for the color of their skin, including whites. White privilege is just another imaginary problem being conjured up by some leaders of the WSBA.

Certainly we all owe a duty of politeness and decency to every

Column1	Name of Member	Date Received	Theme	Position
1	Martin Lovinger	5/30/2017	Retired/Semi-retired/Planning to retire	Not indicated/unclear
2	Richard L. Peterson	9/11/2017	Retired/Semi-retired/Planning to retire	Not indicated/unclear
3	Valerie Shuman	9/12/2017	Cost	Not indicated/unclear
4	John A. Myer	9/12/2017	Uninsurable	Not indicated/unclear
5	Suzanne K. Pierce	9/14/2017	Other	In favor
6	Leland L. Bull Jr.	9/20/2017	Cost; retired/semi-retired/planning to retire	In opposition
7	Terry Rhodes	9/25/2017	Cost; retired/semi-retired/planning to retire; pro bono	In opposition
8	Bill Murphy	10/4/2017	Cost; retired/semi-retired/planning to retire; pro bono	In opposition
9	Tom Pacher	10/12/2017	Cost; Idea for exemption	In opposition
10	Dale A. Magnuson	10/14/2017	Retired/Semi-retired/Planning to retire	In opposition
11	Jerry B. Edmonds	10/17/2017	Reputation of profession	In favor
12	Roger Greene	10/25/2017	Idea for exemption	Not indicated/unclear
13	Esther Larsen	11/2/2017	Cost	In opposition
14	Craig Walker	11/8/2017	Public protection	In favor
15	Tom Youngjohn	11/8/2017	Cost	In opposition
16	Shawn Alexander	11/9/2017	Cost	In opposition
17	Bill Robinson	11/9/2017	Cost	In opposition
18	Mary V. White	11/9/2017	Cost; other	Not indicated/unclear
19	Barnaby Zall	11/9/2017	Cost; retired/semi-retired/planning to retire; pro bono	In opposition
20	Gerald Steel	11/14/2017	Other	Not indicated/unclear
21	Cris Anderson	11/14/2017	Reputation of profession	In favor
22	Mike DeWitt	11/14/2017	Cost	Not indicated/unclear
23	Richelle Little	11/15/2017	Other	Not indicated/unclear
24	Morgan Gabse	11/15/2017	Not engaged in private practice of law	Not indicated/unclear
25	John Groseclose	11/16/2017	Other	Not indicated/unclear
26	Joni M. Derifield	11/16/2017	Cost	In opposition
27	David D. Cullen	11/17/2017	Needs more information	In opposition
28	Merry A. Kogut	11/17/2017	Not engaged in private practice of law	In opposition
29	Craig Larsen	11/18/2017	Cost	In opposition
30	Ken Masters	11/19/2017	Public protection	In favor
31	Paul Kelly	11/21/2017	Cost; Idea for exemption	Not indicated/unclear
32	Paul Edmonson	11/22/2017	Other	Not indicated/unclear
33	J. Eric Gustafson	11/22/2017	Public protection	In favor
34	John and Marjorie Gray	11/26/2017	Retired/Semi-retired/Planning to retire	In opposition
35	Randy Brook	11/28/2017	Retired/Semi-retired/Planning to retire; pro bono	Not indicated/unclear
36	Tom Dreiling	11/28/2017	Other	In opposition
37	Anonymous	11/28/2017	Cost	In opposition
38	Janette Keiser	11/29/2017	Idea for exemption	In opposition
39	John Panesko	11/28/2017	Other	In opposition
40	Bill Murphy	11/29/2017	Duplicate comment (not counted twice in stats)	duplicate (not counted twice)
41	Edward Dunkerly	11/29/2017	Cost	In opposition
42	Patric S. Smith	11/29/2017	Not engaged in private practice of law	In opposition
43	Gregory J. Wall	11/30/2017	Other	In opposition
44	Anita D. Raddatz	12/3/2017	Other	Not indicated/unclear
45	Paul Makjut	12/3/2017	Retired/Semi-retired/Planning to retire; pro bono	Not indicated/unclear
46	Deborah St. Sing	11/4/2017	Cost; retired/semi-retired/planning to retire	Not indicated/unclear
47	Rani K. Sampson	12/7/2017	pro bono	In opposition
48	Kary Krismer	12/7/2017	Not engaged in private practice of law	Not indicated/unclear
49	Denise Ciebien	12/11/2017	Retired/semi-retired/planning to retire	Not indicated/unclear
50	Darcia C. Tudor	12/11/2017	Other	Not indicated/unclear
51	Vicki Lee Ann Parker	12/14/2017	Needs more information	Not indicated/unclear
52	Leonard Weiner	12/13/2017	Idea for exemption	Not indicated/unclear
53	Nadel Barrett	1/3/2018	Cost; not engaged in private practice of law	In opposition
54	Emily Martin	1/9/2018	Not engaged in private practice of law	In opposition
55	Laura E. King	1/9/2018	Duplicate (not counted twice in stats)	duplicate (not counted twice)
56	Laura E. King	1/18/2018	Uninsurable	In opposition
57	Jackie Cyphers	1/21/2018	Retired/semi-retired/planning to retire	Not indicated/unclear
58	Philip Friberg	2/14/2018	Retired/semi-retired/planning to retire	In opposition
59	Merry A. Kogut	4/26/2018	Not engaged in private practice of law	In opposition
60	Alexis Merritt	5/9/2018	Not engaged in private practice of law	Not indicated/unclear
61	Paul Makjut	5/9/2018	Retired/Semi-retired/Planning to retire; pro bono	Not indicated/unclear
62	Stan Sastry	5/9/2018	Cost	In opposition
63	Steve Cook	5/10/2018	pro bono	In opposition
64	Kate M. Hawe	5/10/2018	Cost	Not indicated/unclear
65	Paul Treyz	5/11/2018	pro bono	In opposition
66	Tyler B. Wilson	5/16/2018	Other	Not indicated/unclear
67	Inez Petersen	5/17/2018	Other	In opposition
68	Philip Friberg	5/20/2018	Retired/Semi-retired/Planning to retire; idea for exemption	Not indicated/unclear
69	Inez Petersen	6/25/2018	Other	In opposition
70	Angus Lee	7/30/2018	Cost; other	Not indicated/unclear
71	Traci M. Goodwin	8/2/2018	Idea for exemption	In favor
72	Ronnie Rae	8/2/2018	Idea for exemption	Not indicated/unclear
73	D. Neil Olson	8/2/2018	Cost	In opposition
74	Steven Pand	8/2/2018	pro bono	In opposition
75	Mary Jane Swenson	8/2/2018	Not engaged in private practice of law	Not indicated/unclear

76	Paul McIlrath	8/2/2018 pro bono;other	In opposition
77	Ed Huneke	8/2/2018 pro bono; idea for exemption	Not indicated/unclear
78	Tyson Soptich	8/2/2018 Cost; pro bono	In opposition
79	Jeffery Oster	8/2/2018 Uninsurable	In opposition
80	Jeff Bean	8/2/2018 Idea for exemption	In opposition
81	A. Stevens Quigley	8/2/2018 Idea for exemption	Not indicated/unclear
82	Bob Baird-Levine	8/2/2018 Cost	In opposition
83	Beth H.	8/2/2018 Not engaged in private practice of law; cost; idea for exemption	Not indicated/unclear
84	Michael R. Jones	8/2/2018 Uninsurable; cost	Not indicated/unclear
85	Larry R. Schreiter	8/2/2018 Cost	In opposition
86	Tom Pacher	8/2/2018 Not engaged in private practice of law; other	In opposition
87	Ronald Kessler	8/2/2018 Retired/Semi-retired/Planning to retire; idea for exemption	Not indicated/unclear
88	Lisa DeFors	8/2/2018 Not engaged in private practice of law	Not indicated/unclear
89	Heidi Kay Walter	8/2/2018 Other	In opposition
90	Ralph Stemp	8/2/2018 Other	Not indicated/unclear
91	Roger Hawkes	8/2/2018 Other	In opposition
92	Robert Cromwell	8/2/2018 Not engaged in private practice of law; idea for exemption	Not indicated/unclear
93	Marke Schnackenberg	8/2/2018 Other	In opposition
94	JD Bristol	8/2/2018 Cost	In opposition
95	JC Lundberg	8/2/2018 Idea for exemption; other	Not indicated/unclear
96	Clifford Allo	8/2/2018 Cost; not engaged in private practice of law; idea for exemption	Not indicated/unclear
97	Janna Lewis	8/2/2018 Idea for exemption	Not indicated/unclear
98	Ron Santi	8/2/2018 Not engaged in private practice of law	Not indicated/unclear
99	Rodney Waldbaum	8/2/2018 Retired/semi-retired/planning to retire	Not indicated/unclear
100	Patrick Burns	8/2/2018 Not engaged in private practice of law	Not indicated/unclear
101	David Liscow	8/2/2018 Retired/semi-retired/planning to retire	Not indicated/unclear
102	Donald Graham	8/2/2018 Other	In opposition
103	Mark Hannibal	8/2/2018 Idea for exemption; public protection	In favor
104	Dennis Smith	8/2/2018 Idea for exemption; not engaged in private practice of law	Not indicated/unclear
105	Tawnya Tangel	8/2/2018 Not engaged in private practice of law	Not indicated/unclear
106	Robyn	8/2/2018 Other	Not indicated/unclear
107	Richard J. Glein Sr.	8/2/2018 Idea for exemption	Not indicated/unclear
108	No name given	8/2/2018 Other	Not indicated/unclear
109	Ross Farr	8/2/2018 Not engaged in private practice of law	Not indicated/unclear
110	Richard Peyser	8/2/2018 Not engaged in private practice of law; idea for exemption	Not indicated/unclear
111	Bloor Redding	8/2/2018 Other	Not indicated/unclear
112	Jeff H. Capell	8/3/2018 Idea for exemption	Not indicated/unclear
113	JA Bledsoe	8/3/2018 Idea for exemption	Not indicated/unclear
114	Michael D. Calligan	8/3/2018 Idea for exemption	Not indicated/unclear
115	Dave Freeburg	8/3/2018 Idea for exemption	In favor
116	Richard J. Davis	8/3/2018 Idea for exemption	Not indicated/unclear
117	Kyle Johnson	8/3/2018 Other	In opposition
118	Oliver Spencer	8/3/2018 Cost	Not indicated/unclear
119	David Burke	8/3/2018 Idea for exemption; retired/semi-retired/planning to retire	Not indicated/unclear
120	Glenn Slate	8/3/2018 Other	In opposition
121	Kate M. Hawe	8/3/2018 Other	Not indicated/unclear
122	Ken Dehn	8/3/2018 Other	Not indicated/unclear
123	Bob Pia	8/4/2018 Other	Not indicated/unclear
124	Paul Makjut	8/4/2018 pro bono; idea for exemption	In favor
125	R. Alan Burnett	8/6/2018 Other	In opposition
126	John Panesko	8/6/2018 Idea for exemption	Not indicated/unclear
127	Erik G. Marks	8/6/2018 Other; idea for exemption	In opposition
128	Summer Stahl	8/6/2018 Idea for exemption	Not indicated/unclear
129	Matthew J. Bean	8/7/2018 Other	Not indicated/unclear
130	Stephen F. Cook	8/7/2018 Idea for exemption; pro bono	In favor
131	Bill Zook	8/8/2018 Idea for exemption; not engaged in private practice of law	Not indicated/unclear
132	Merry A. Kogut	8/8/2018 Retired/semi-retired/planning to retire	In opposition
133	Adam Dockstader	8/9/2018 Other	Not indicated/unclear
134	Craig Larsen	8/11/2018 Cost	In opposition
135	Susan Barley	8/13/2018 Idea for exemption	Not indicated/unclear
136	Sherliee M. Luedtke	8/15/2018 Not engaged in private practice of law; idea for exemption	Not indicated/unclear
137	Raymond Takashi Swenson	8/16/2018 Idea for exemption	Not indicated/unclear
138	Brian Dano	8/17/2018 Other	In favor
139	John M. Gray	8/17/2018 Idea for exemption	In favor
140	Leslie Ann Budewitz	8/17/2018 Idea for exemption	Not indicated/unclear
141	Charles Bates	8/26/2018 Idea for exemption; retired/semi-retired/planning to retire	Not indicated/unclear
142	Thomas Hoffman	8/27/2018 Idea for exemption	Not indicated/unclear
143	Douglas B. Klunder	8/27/2018 pro bono	Not indicated/unclear
144	Adam Yanasak	8/27/2018 Other	In opposition
145	Kathleen T. Petrich	8/29/2018 Idea for exemption; retired/semi-retired/planning to retire	In favor
146	Ryan K. Brown	8/30/2018 Idea for exemption	Not indicated/unclear
147	Daniel M. Schafer	9/3/2018 Idea for exemption	Not indicated/unclear
148	Eric S. Chavez	9/5/2018 Other	In opposition
149	Joe Quaintance	9/7/2018 Idea for exemption	Not indicated/unclear

No.	Name	Date	Comment category	Position
150	Joe Quaintance	9/7/2018	Duplicate comment (not counted twice in stats)	duplicate (not counted twice)
151	Cindy Smith	9/7/2018	Idea for exemption	Not indicated/unclear
152	Katrina Glogowski	9/10/2018	Uninsurable	In favor
153	Carrie Benson	9/11/2018	Cost;other	Not indicated/unclear
154	Jerry W. Hall	9/15/2018	Retired/Semi-retired/Planning to retire; idea for exemption	Not indicated/unclear
155	Kate White Tudor	9/15/2018	Not engaged in private practice of law; idea for exemption	Not indicated/unclear
156	Carleton B. Waldrop	9/16/2018	Other	In opposition
157	Britt L. Tinglum	9/17/2018	Retired/semi-retired/planning to retire	In opposition
158	Adella Wright	9/17/2018	Not engaged in private practice of law	Not indicated/unclear
159	Richard H. Holmquist	9/17/2018	Retired/semi-retired/planning to retire	In opposition
160	Robert S. Phed	9/17/2018	Other	In opposition
161	Nancy Beth Combs	9/17/2018	Other	In opposition
162	Evan E. Inslee	9/17/2018	pro bono; idea for exemption	Not indicated/unclear
163	Robert C. Scanlon	9/17/2018	Cost	Not indicated/unclear
164	Judith Maier	9/17/2018	Cost	In opposition
165	Katherine Krueger	9/18/2018	Idea for exemption; retired/semi-retired/Planning to retire; cost	Not indicated/unclear
166	Joe Breed	9/18/2018	Idea for exemption; other	Not indicated/unclear
167	Hilary Madsen	9/18/2018	Public protection	Not indicated/unclear
168	Gail Toraason McGaffick	9/19/2018	Not engaged in private practice of law	In opposition
169	Jennifer Wright Tucker	9/19/2018	Not engaged in private practice of law; cost; idea for exemption	In opposition
170	Gregory Lyle	9/19/2018	Idea for exemption	Not indicated/unclear
171	Stan Sastry	9/19/2018	Duplicate comment (not counted twice in stats)	duplicate (not counted twice)
172	Lisa Scott	9/20/2018	Other	In opposition
173	Angel Laterell	9/20/2018	Cost	Not indicated/unclear
174	Thomas A. Lerner	9/20/2018	Other	Not indicated/unclear
175	Jorgen Bader	9/20/2018	Pro bono; cost	In opposition
176	Mark de Regt	9/21/2018	Cost; public protection	In favor
177	Joseph F. Valente	9/23/2018	Cost; Idea for exemption; pro bono	Not indicated/unclear
178	Ron Heley	9/24/2018	Idea for exemption; not engaged in private practice of law	Not indicated/unclear
179	Patrick S. Brady	9/24/2018	Retired/semi-retired/planning to retire; not engaged in private practice of law; idea for exemption	Not indicated/unclear
180	Laura Umetsu	9/24/2018	pro bono; idea for exemption	Not indicated/unclear
181	Mike Warren	9/25/2018	Retired/Semi-retired/Planning to retire; idea for exemption	Not indicated/unclear
182	Katherine Krueger	9/26/2018	Cost	not indicated/unclear
183	Mark R. Beatty	9/27/2018	Other	In opposition
184	John A. Myer	9/27/2018	Uninsurable	Not indicated/unclear
185	Brian E. Lewis	9/27/2018	Idea for exemption	not indicated/unclear
186	Bruce T. Clark	10/1/2018	Public protection	In favor
187	Laurance L. Mancuso	10/1/2018	Idea for exemption	Not indicated/unclear
188	Richard L. Peterson	10/3/2018	Idea for exemption;retired/semi-retired/planning to retire	Not indicated/unclear
189	Sharon Powell	10/3/2018	Other	Not indicated/unclear
190	Stephen Kirby	10/3/2018	Other	Not indicated/unclear
191	Roy M. Martin	10/3/2018	Other	In favor
192	Stan Kanarowski	10/3/2018	Idea for exemption	Not indicated/unclear
193	Patricia Char	10/3/2018	Cost; pro bono; idea for exemption	Not indicated/unclear
194	Tyson Soptich	10/3/2018	Duplicate comment (not counted twice in stats)	duplicate (not counted twice)
195	Michael C. Miller	10/3/2018	Other	Not indicated/unclear
196	Helen Nowlin	10/3/2018	Cost	Not indicated/unclear
197	Kevin Carlisle	10/3/2018	Not engaged in private practice of law	Not indicated/unclear
198	Regina Paulose	10/4/2018	Pro bono; other	Not indicated/unclear
199	Kyler Danielson	10/4/2018	Idea for exemption	In favor
200	Margaret Felts	10/4/2018	Pro bono	Not indicated/unclear
201	Dennis Potter	10/4/2018	Other	Not indicated/unclear
202	Don M. Gulliford	10/4/2018	Needs more information	In opposition
203	Gregory J. Wall	10/4/2018	Other	Not indicated/unclear
204	Anthony W. Carter	10/4/2018	Not engaged in privated practice of law	Not indicated/unclear
205	James Schroeder	10/4/2018	Uninsurable	Not indicated/unclear
206	Rebecca L. Hillyer	10/4/2018	Not engaged in private practice of law; idea for exemption; public protection	In favor
207	Robert Stein	10/4/2018	Idea for exemption	Not indicated/unclear
208	Killian King	10/4/2018	Not engaged in private practice of law	Not indicated/unclear
209	Nathan Brown	10/4/2018	Cost; idea for exemption	Not indicated/unclear
210	John Edison	10/4/2018	Not engaged in private practice of law	Not indicated/unclear
211	Rosemary Irvin	10/4/2018	Other	Not indicated/unclear
212	Tomis Dimopoulos	10/4/2018	Cost; idea for exemption	In opposition
213	Pamela H. Rohr	10/4/2018	Other	Not indicated/unclear
214	Mark Didrickson	10/4/2018	Needs more information	Not indicated/unclear
215	Robert L. Israel	10/4/2018	Cost; Retired/Semi-retired/Planning to retire	Not indicated/unclear
216	David J. Soma	10/4/2018	pro bono; idea for exemption; retired/semi-retired/plannng to Retire	Not indicated/unclear
217	Joe Quinn	10/4/2018	Idea for exemption	Not indicated/unclear
218	Ata Arjomand	10/4/2018	Cost	Not indicated/unclear
219	Farjam Majd	10/4/2018	Cost	Not indicated/unclear
220	Faith Ireland	10/4/2018	Idea for exemption	Not indicated/unclear

221	Laura Connor	10/4/2018	Cost	Not indicated/unclear
222	Daniel Haverty	10/4/2018	Not engaged in private practice of law; idea for exemption	not indicated/unclear
223	Pamela K. Rodriguez	10/4/2018	Cost	In opposition
224	Jonathan Everett	10/4/2018	Retired/semi-retired/planning to retire; pro bono	In opposition
225	James B. Kirk	10/4/2018	Not engaged in private practice of law; cost; other	Not indicated/unclear
226	James B. Kirk	10/4/2018	Other	Not indicated/unclear
227	Madeline Dabney	10/4/2018	Retired/semi-retired/planning to retire; pro bono	Not indicated/unclear
228	Andrew Phillips	10/4/2018	Other	Not indicated/unclear
229	Gregory E. Gladnick	10/4/2018	Other	Not indicated/unclear
230	Charles Alailima	10/4/2018	Pro bono	Not indicated/unclear
231	Joel S. Wight	10/4/2018	Idea for exemption	Not indicated/unclear
232	Robert Stevenson	10/4/2018	Other	In opposition
233	Joe Quaintance	10/4/2018	Retired/semi-retired/planning to retire	Not indicated/unclear
234	Toni E. Moore	10/4/2018	pro bono; idea for exemption	Not indicated/unclear
235	Robert A. Lipson	10/4/2018	Cost; retired/Semi-retired/Planning to retire	Not indicated/unclear
236	Dianna Timm Dryden	10/4/2018	Other	In opposition
237	Toby Thaler	10/4/2018	Idea for exemption	Not indicated/unclear
238	Douglas K. Smith	10/4/2018	Not engaged in private practice of law; idea for exemption	In favor
239	Wendy Ferrell	10/4/2018	Other; cost	In opposition
240	Paul H. Keister	10/4/2018	Other	Not indicated/unclear
241	Marke Schnackenberg	10/4/2018	Cost	Not indicated/unclear
242	Rodney J. Waldbaum	10/4/2018	Not engaged in private practice of law; Retired/Semi-retired/Planning to Retire	Not indicated/unclear
243	Diego J. Vargas	10/4/2018	Other; idea for exemption	Not indicated/unclear
244	Jason Hatch	10/4/2018	Other	In opposition
245	Beth Wehrkamp	10/4/2018	Other	Not indicated/unclear
246	Yukiko Stave	10/4/2018	Idea for exemption; other	In opposition
247	Inez Petersen	10/4/2018	Other	In opposition
248	Mark Edwin Johnson	10/5/2018	Retired/semi-retired/planning to retire	Not indicated/unclear
249	Jessica McKeegan Jensen	10/5/2018	Idea for exemption; cost	In opposition
250	John Goodall	10/5/2018	Needs more information	Not indicated/unclear
251	Vicki Lee Anne Parker	10/5/2018	Cost; other	Not indicated/unclear
252	Victoria Redlin	10/5/2018	Not engaged in private practice of law; idea for exemption	Not indicated/unclear
253	Ivan L. Gorne	10/5/2018	Idea for exemption; other	In opposition
254	Ron Santi	10/5/2018	Retired/Semi-retired/Planning to retire; idea for exemption; not engaged in private practice of law	Not indicated/unclear
255	James Leggett	10/5/2018	Other	Not indicated/unclear
256	John Jacobson	10/5/2018	Idea for exemption	In favor
257	Richard Greiner	10/5/2018	Other	Not indicated/unclear
258	D. Michael Hatch	10/5/2018	Cost; pro bono	Not indicated/unclear
259	Bruce S. Echigoshima	10/5/2018	Idea for exemption	Not indicated/unclear
260	Gerald W. Grimes	10/5/2018	Cost	Not indicated/unclear
261	Richard J. Davis	10/5/2018	Other	In opposition
262	Hollybeth Hakes	10/5/2018	Not engaged in private practice of law; cost	Not indicated/unclear
263	Robert Russell	10/5/2018	Pro bono	In opposition
264	Bambi Lin Litchman	10/5/2018	Cost	Not indicated/unclear
265	Gregory W. Hogan	10/5/2018	Idea for exemption	Not indicated/unclear
266	Brad Mellotte	10/5/2018	Public protection	In favor
267	Kevin Halverson	10/5/2018	Not engaged in private practice of law; cost	In opposition
268	Douglas S. Tingvall	10/5/2018	Cost	In opposition
269	Jay Nuxoll	10/5/2018	Cost	Not indicated/unclear
270	Heather Kelly	10/5/2018	Idea for exemption	Not indicated/unclear
271	John F. Bury	10/5/2018	Cost	Not indicated/unclear
272	Lara Lavi	10/5/2018	Cost	Not indicated/unclear
273	Bruce Ian Feldman	10/5/2018	Retired/Semi-retired/Planning to retire; idea for exemption	In opposition
274	Ed Sterner	10/5/2018	Other	Not indicated/unclear
275	Lori J. Guevara	10/5/2018	Retired/semi-retired/planning to retire; cost	In opposition
276	Caroline Edmiston	10/5/2018	Retired/semi-retired/planning to retire; pro bono	In opposition
277	Dawn Monroe	10/5/2018	Retired/semi-retired/planning to retire	Not indicated/unclear
278	Kate M. Hawe	10/5/2018	Other	Not indicated/unclear
279	Barbara Harnsich	10/5/2018	Retired/semi-retired/planning to retire	Not indicated/unclear
280	Michael Little	10/5/2018	Not engaged in private practice of law	In opposition
281	Robert Hayes	10/7/2018	Not engaged in private practice of law; Other	Not indicated/unclear
282	Douglas B. Greenswag	10/7/2018	Retired/Semi-retired/Planning on to retire	Not indicated/unclear
283	Brad Gibson	10/7/2018	Retired/Semi-retired/Planning to retire; idea for exemption	Not indicated/unclear
284	Inez Petersen	10/7/2018	Pro bono; needs more information; other	In opposition
285	Laura Macey Voss	10/7/2018	Cost	Not indicated/unclear
286	Christine W. Keating	10/7/2018	Not engaged in private practice of law; idea for exemption	In favor
287	John Goodall	10/8/2018	Other	Not indicated/unclear
288	Paul Kelly	10/8/2018	Idea for exemption	Not indicated/unclear
289	Carol L. La Verne	10/8/2018	Retired/semi-retired/planning to retire	In opposition
290	Gary Hersey	10/8/2018	Not engaged in private practice of law; idea for exemption	In opposition
291	Thomas More Kelleher	10/8/2018	Retired/Semi-retired/Planning to retire; cost	Not indicated/unclear
292	Autumn Liner-Sanders	10/8/2018	Uninsurable	Not indicated/unclear
293	Rockie Hansen	10/8/2018	Other; idea for exemption	Not indicated/unclear
294	Jeffrey J. Duggan	10/8/2018	Idea for exemption	Not indicated/unclear

295	Patrick Tornsey	10/9/2018	Cost	Not indicated/unclear
296	Ronald W. Atwood	10/9/2018	Other	In favor
297	Brian Suzuki	10/9/2018	Not engaged in private practice of law; cost	Not indicated/unclear
298	Shawn Alexander	10/9/2018	Cost	In opposition
299	Lisa E. Brewer	10/9/2018	Cost; other	In opposition
300	Lisa F. Moore	10/10/2018	Cost; other	In opposition
301	Donna Beatty	10/10/2018	Other	not indicated/unclear
302	Lisa Allison	10/10/2018	Idea for exemption; not engaged in private practice of law	Not indicated/unclear
303	Matthew G. Simunds	10/10/2018	Other; Cost	In opposition
304	Meliha Babic	10/10/2018	Cost	In opposition
305	Katherine Krueger	10/10/2018	Other	Not indicated/unclear
306	Saphronia Young	10/10/2018	Public protection	In favor
307	Patricia Michl	10/10/2018	Other	In opposition
308	Chapin E. "Shea" Wilson	10/10/2018	Other	Not indicated/unclear
309	Alexandra Molina	10/10/2018	Cost	In opposition
310	Matthew D. Hardin	10/10/2018	Other	In opposition
311	Michael C. Miller	10/10/2018	Idea for exemption; cost	In opposition
312	Gail M. Ragen	10/11/2018	Other	In opposition
313	Kenneth J. Pedersen	10/11/2018	Other	Not indicated/unclear
314	Thomas B. Nast	10/11/2018	Idea for exemption; cost; pro bono	In opposition
315	Barnaby Zall	10/11/2018	Pro bono; other	Not indicated/unclear
316	Cheryl C. Mitchell	10/12/2018	Cost; pro bono	Not indicated/unclear
317	Jay Harris	10/12/2018	Other	Not indicated/unclear
318	Inez Petersen	10/12/2018	Cost; pro bono; other	In opposition
319	Walton L. Dabney	10/12/2018	Idea for exemption	Not indicated/unclear
320	Tonya Gisselberg	10/14/2018	Cost	In opposition
321	Thomas M.A. Castagna	10/15/2018	Cost; other	In opposition
322	Carol Nottenburg	10/15/2018	Cost; retired/semi-retired/planning to retire	not indicated/unclear
323	Michael Cherry	10/16/2018	Other	Not indicated/unclear

From:	Paula Littlewood
To:	Doug Ende; Kim Risenmay (kim@risenmaylaw.com)
Cc:	Ann Holmes; Doug Ende; Frances Dujon-Reynolds; Jean McElroy; Terra Nevitt; Robin Haynes; Brad Furlong (brad.wsba@furlongbutler.com); Bill Hyslop; Jill Karmy; Ann Danieli ([redacted])
Subject:	FW: Mandatory malpractice isurance
Date:	Tuesday, May 30, 2017 10:29:23 PM
Attachments:	Untitled Untitled

FYI – in response to Chris's district update.

Thanks,
Paula

From: Chris Meserve [mailto:meservebog@yahoo.com]
Sent: Tuesday, May 30, 2017 8:20 PM
To: Paula Littlewood
Subject: Fw: Mandatory malpractice isurance

Sent from Yahoo Mail. Get the app

On Tuesday, May 30, 2017 6:26 PM, "lovinger@juno.com" <lovinger@juno.com> wrote:

Dear Christine,

Thank you for your warning about the proposal to make the purchase of malpractice insurance mandatory.

I am one of the people you mentioned in your summary that are in active status but have no private clients. That status allows me to occasionally pick up a contract from the Legislature of the state for brief employment, usually on an emergency basis. While I am mostly retired, I enjoy being able to help out in an emergency and put my skills and many years of experience to good public purpose. If I am forced to purchase malpractice insurance, I will have to switch to inactive and the state and its taxpayers will lose a valuable, and inexpensive resource.

I know that I am not the only attorney in this situation and hope that we, as full WSBA dues paying members, will be considered when this issue arises again.

Thank you for your time and service,

Martin Lovinger

From:	Paula Littlewood
To:	Doug Ende
Subject:	FW: [Possible Spam] WSBA Contact Submission
Date:	Monday, September 11, 2017 11:14:30 PM
Importance:	Low

Can you please be the repository for now of this feedback?

Thanks,
Paula

From: Questions
Sent: Monday, September 11, 2017 9:25 AM
To: Paula Littlewood
Cc: Jean McElroy
Subject: FW: [Possible Spam] WSBA Contact Submission
Importance: Low

Feedback.

Kris McCord | Service Center Representative
Washington State Bar Association | 800.945.9722 | krism@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

From: [redacted] [mailto:[redacted]]
Sent: Monday, September 11, 2017 7:26 AM
To: Questions
Subject: [Possible Spam] WSBA Contact Submission
Importance: Low

email: [redacted] Topic: 1. Licensing Message: I am writing about the Sept. 2017 article regarding mandatory malpractice insurance. I am retired. I am still an active member of the bar. When I practiced I always had insurance. Since I am not practicing I don't have insurance, but I am associated with an attorney who is insured on four personal injury cases. I hope to have future associations, and do not want to pay for insurance because I no longer practice. If you require insurance, I request that you provide an exception for retired attorneys who associate with insured attorneys on injury cases. Thank you. Richard L. Peterson, Bar # 5311

From:	Jennifer Olegario
To:	Doug Ende
Subject:	FW: September Malpractice Insurance Article
Date:	Tuesday, September 12, 2017 10:52:27 AM
Attachments:	image001.png

FYI

Jennifer Olegario | Communication Strategies Manager
Washington State Bar Association | 206.727.8212 | jennifero@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please contact adamr@wsba.org.

From: NWLawyer
Sent: Tuesday, September 12, 2017 10:40 AM
To: Margaret Morgan; Jennifer Olegario
Cc: Terri Sharp
Subject: FW: September Malpractice Insurance Article

FYI, feedback on the mandatory malpractice insurance article. I will save in the "Letters to the Editor" folder in the NWL inbox. I'll also start a file for the November inbox.

Jodie Warren | **Copy Editor/Communications Specialist (temp)**
Washington State Bar Association | 206.727.5932 | carolynw@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101| www.wsba.org
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From: Valerie Shuman [mailto:vshuman@harbornet.com]
Sent: Tuesday, September 12, 2017 10:27 AM
To: NWLawyer
Subject: Re: September Malpractice Insurance Article

I just read the September article about mandatory insurance and, as a result, I am sending in my first comment in 25 years of practicing law in Washington. Our small office has always maintained insurance for our speeding ticket/DUI practice. We pay $750 for each attorney for $250,000 per claim/$500,000 aggregate of coverage. I hope that you consider small firms such are ours as you continue your investigation. Oregon's apparent one-size-fits-all $3500 per lawyer assessment is ridiculous and bears no relation to the true cost of insuring a small firm like ours. Should you adopt a similar requirement, you would be creating an unnecessary financial burden for many small firms.

$3500 for each lawyer? $7000 for what currently costs us $1500? What an outrage that would be.

Valerie Shuman, Tacoma

Valerie Shuman
Attorney at Law
(253) 227-7855
vshuman@harbornet.com
www.shumanlawoffice.net

From:	Jennifer Olegario
To:	Doug Ende
Subject:	FW: Mandatory Malpractice Insurance
Date:	Tuesday, September 12, 2017 12:32:06 PM
Attachments:	image001.png

More feedback.

Jennifer Olegario | Communication Strategies Manager
Washington State Bar Association | 206.727.8212 | jennifero@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
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From: NWLawyer
Sent: Tuesday, September 12, 2017 12:27 PM
To: Jennifer Olegario; Margaret Morgan
Subject: FW: Mandatory Malpractice Insurance

More feedback on the malpractice insurance article.

From: John Myer [mailto:john@myercorplaw.com]
Sent: Tuesday, September 12, 2017 12:17 PM
To: NWLawyer
Subject: Mandatory Malpractice Insurance

Ladies and Gentlemen,

I searched diligently and filled out numerous applications, but I reached the conclusion that there is no market for malpractice coverage for transactional securities lawyers in solo practice. It appears that from the insurer's perspective, the underwriting costs exceed the expected profits at anything other than prohibitive rates. The last time I looked into this (and that was a number of years ago), every insurer I contacted refused to give make an offer at any price.

I'd like to note that I was trained in my practice area at Sullivan & Cromwell in New York, am 61 years old, and have never had a claim made against me. I also have impeccable academic credentials, which include an MBA equivalent from MIT.

If Washington decides on mandatory insurance, I would favor a professional liability fund. I fear that otherwise my license to practice in Washington would be worthless.

Regards,

John A. Myer

2101 Fourth Avenue, Suite 1900
Seattle, WA 98121-2315

www.MyerCorpLaw.com

206.651.5563

This email and any attached files are confidential and may be the subject of attorney-client privilege. If you have received this email in error, please delete it and notify me immediately.

From:	Paula Littlewood
To:	Doug Ende
Subject:	FW: Feedback regarding proposed mandatory malpractice system for Washington attorneys - for Sept 28-29 Board of Governors meeting
Date:	Thursday, September 14, 2017 10:58:01 PM
Attachments:	image001.png

Another to keep in the repository….

Thanks,
Paula

From: JAMES K DOANE [mailto:jamesdoane@me.com]
Sent: Thursday, September 14, 2017 3:06 PM
To: Paula Littlewood; Brad Furlong; Margaret Shane; William Hyslop; William Pickett (bill@wdpickett-law.com)
Subject: Fwd: Feedback regarding proposed mandatory malpractice system for Washington attorneys - for Sept 28-29 Board of Governors meeting

James Doane

Begin forwarded message:

> **From:** JAMES K DOANE <jamesdoane@me.com>
> **Date:** September 14, 2017 3:04:54 PM
> **To:** "Pierce, Suzanne K." <spierce@davisrothwell.com>
> **Subject: Re: Feedback regarding proposed mandatory malpractice system for Washington attorneys - for Sept 28-29 Board of Governors meeting**
>
> Suzanne,
>
> Thank you for your thorough and well considered comments on this important matter. I am also heartened that you are willing to volunteer. I will pass your comments and willingness to serve to Paula Littlewood so that she can direct it to the appropriate person when they recruit for a task force.
>
> The BOG will take action on creation (or not) of the charter at the next BOG meeting, week after next, as you know. Please visit the WSBA website late next week for agenda updates. If you are able to come in person or call in to share your views with the BOG then, that would be great too--especially if it is before we vote!
>
> I will certainly vote, informed by your views.
>
> Cheers,
> James Doane
>
> On Sep 14, 2017, at 01:44 PM, "Pierce, Suzanne K." <spierce@davisrothwell.com> wrote:
>
> > Jim,

I was not yet in practice when the Board and Bar last considered creating a mandatory malpractice system. But in my current role I have a variety of experiences relevant to the discussion:

1. I am licensed in Washington and have practiced for over 20 years as a solo, in a small firm, in medium and large firms, and as municipal counsel. I understand the concern about cost of insurance relative to business size.

2. My firm has offices in both Oregon and Washington, with lawyers licensed in both states. I see the comparative result of the two bars' insurance systems on the number of ethics and malpractice complaints, member satisfaction and public perception of the bar.

3. My practice includes professional malpractice defense as well as litigation defense. I have observed with concern the inequities resulting from underinsured parties.

4. My firm performs a significant amount of repair, defense and coverage work for the Oregon State Bar's Professional Liability Fund. I defend lawyers who are dually licensed in Oregon and Washington, whose malpractice coverage is provided via the PLF, and who are the subject of malpractice claims by former clients. I also defend claims by persons suing both my attorney client *and* the attorney's former client.

Based on this experience, **I strongly support WSBA's adoption of a Professional Liability Fund** and administration like Oregon's. A "single-payor system" of liability insurance encourages proactivity, early intervention and loss prevention in reducing the number and cost of claims – as well as in aiding payment of those claims. The article in the September WSBA magazine mentions (page 26, left-hand column) the loss-prevention services offered by the PLF including legal education, practice management programs (*e.g.*, establishing a business or winding down one; mentoring), and free personal counseling for the life of a crisis by in-house, lawyer-savvy counselors (akin to but much broader than WSBA's EAP-like Lawyers Assistance Program). In my experience, these are amazingly effective at helping lawyers avoid malpractice in the first place, aiding in early intervention solutions (because of the ease of obtaining defense counsel and other services) and reducing both bar complaints and claim costs.

I do question whether a member referendum can be successful at instituting such a program. While our mission is, in part, to protect the public, perhaps the Washington legislature can do so with more focus (*i.e.*, without becoming distracted by insurance

premium expense).

I would welcome the opportunity to discuss these issues further, including assisting a Mandatory Malpractice Insurance Task Force if I am invited to do so.

No communication from a lawyer would be complete withut some fine print, and here is mine: the opinions expresssed in this message are mine, and do not necessary represent those of my firm, its shareholders or employees.

Suzanne K. Pierce
ATTORNEY IN WASHINGTON

Direct (206) 900-9331

Assistant Kris Patten: (206) 900-9328, kpatten@davisrothwell.com

Main (206) 622-2295 **Fax** (206) 340-0724

520 Pike St, Suite 2500, Seattle, WA 98101

From:	Brad Furlong
To:	Lee Bull
Cc:	Andea Jarmon (andrea@jarmonlawgroup.com); Anegla Hayes; Ann Danieli; Athan Papailiou; Christina Meserve (MeserveBOG@yahoo.com); Dan Bridges (danBOG@mcbdlaw.com); Dan Clark (DanClarkBOG@yahoo.com); G. Kim Risenmay; James Doane; Jill Karmy (jillkarmy@karmylaw.com); Keith Black; Mario Cava; Rajeev Majumdar (rajeev@northwhatcomlaw.com); Ann Holmes; Doug Ende; Frances Dujon-Reynolds; Jean McElroy; Margaret Shane; Paula Littlewood; Sean Davis; Terra Nevitt
Subject:	RE: Statement in opposition to the Board''s intention to required malpractice insurance as a condition of active membership in WSBA
Date:	Wednesday, September 20, 2017 5:15:25 PM

Thank you, Mr. Bull for your statement. The Board of Governors is not ready to consider reach a decision concerning mandatory malpractice. Next week the Board of Governors will consider a charter for a committee to look into mandatory malpractice. You might want to check the WSBA web site early next week to see the charter, and, if you wish offer any further comments..

I am sharing your statement with the entire BOG and WSBA executive staff. Should the BOG chose to look into mandatory malpractice insurance, I hope you engage with the Board and share your thoughts.

Again, many thanks for your message.

Bradford E. Furlong, President
Washington State Bar Association

825 Cleveland Avenue I Mount Vernon, Washington 98273 I 360.336.6508 voice I 360.336.3318 facsimile

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---

From: Lee Bull [mailto:leeguns@hotmail.com]
Sent: Wednesday, September 20, 2017 4:18 PM
To: Brad Furlong
Subject: Statement in opposition to the Board's intention to required malpractice insurance as a condition of active mmebership in WSBA

To the officers and board members of WSBA -

My name is Leland L. Bull, Jr., WSBA #9821, admitted to practice in, and a WSBA member since, 1967. I spent 29 years in active practice in the bankruptcy courts of this state from the time of my return to Seattle in 1985, after 18 years of teaching at Law Faculties in North Dakota, Georgia and Michigan, and active practice as a member of the Bar Associations of both Georgia and Michigan, in the latter state, as a senior associate specializing in bankruptcy

law with the Dykema firm in Detroit, at the time the largest in Michigan. From 1985 to 1991, I was a partner in a two man bankruptcy boutique in Seattle, and from 1992, I was a sole practitioner specializing in bankruptcy, until closing my office in January 2015. I have remained since that time an active member of WSBA and hope to renew my active membership in 2018; today that is in doubt, as the Board appears poised to require malpractice insurance as a condition of active membership. I have retained my membership in order to have a voice in the affairs of WSBA and also because, as a lawyer and legal educator for 50 years, bar membership is a part of my personality and my psyche, just as it is for many of the members of the bar who have reached the 50 year mark or more but no longer maintain an office. There are, I would guess, as a result of attending the Senior Lawyers annual seminars sponsored byWSBA's senior lawyers section, at least several hundred of us who maintain active membership but earn essentially nothing from practice. We do this at the cost of about $400 per year. Membership is worth that to us. But give consideration to the cost of malpractice insurance to those of us in that position. Between 2009 and 2014, all years in which I was conducting a limited, part time practice, my malpractice policies cost me between $2100 and $2400 annually (my insurer did give me a small break due to age and reduced practice volume). Even obtaining malpractice insurance at a reasonable rate after giving it up and taking the free tail most insurers offer is questionable.

If you now mandate malpractice insurance as a condition of active membership, the cost of membership will rise to over $2500 per year for us senior citizens. That is not feasible for the retired or essentially retired attorney; the WSBA will therefore lose many older members and hence, it will lose experience, expertise, and wise counsel, as well as thousands of dollars of membership revenue.

I ask each of you to give some consideration to the predicament you will cause for the people in my position before you pass a blanket rule which in effect will end our relationship with the WSBA.

Leland L. Bull, Jr., WSBA #9821

PS: I would appreciate that you would share this e-mail with your colleagues on the Board, Messrs. Clark and Cava, who do not list an e-mail address for their constituents to reach them.

From:	Paula Littlewood
To:	Doug Ende
Cc:	Margaret Shane
Subject:	FW: WSBA proposed insurance
Date:	Tuesday, September 26, 2017 12:00:51 AM
Attachments:	image001.png

FYI

Thanks,
Paula

From: Brad Furlong [mailto:brad.wsba@furlongbutler.com]
Sent: Monday, September 25, 2017 10:02 PM
To: Margaret Shane; Paula Littlewood
Cc: G. Kim Risenmay
Subject: FW: WSBA proposed insurance

Thanks, Kim. Paula/Margaret are collecting input for the committee's consideration.

Bradford E. Furlong, President
Washington State Bar Association

FURLONG ◆ BUTLER
ATTORNEYS
825 Cleveland Avenue I Mount Vernon, Washington 98273 I 360.336.6508 voice I 360.336.3318 facsimile

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From: G. Kim Risenmay [mailto:kim@risenmaylaw.com]
Sent: Monday, September 25, 2017 9:44 PM
To: 'T Rhodes'
Cc: Brad Furlong
Subject: RE: WSBA proposed insurance

Dear Mr. Rhodes,

Thank you for your thoughtful message. I will share it with the other Governors and the members of the task force who will be assigned to consider this issue, so they can have the benefit of your perspective.

Kim Risenmay
WSBA Governor, District 1

G. Kim Risenmay | Attorney at Law
The **Risenmay Law Firm** PLLC |10103 167th Place NE | Redmond, WA 98052-3125
Direct: (425) 285-9305 | Mobile: (206) 306-3918
kim@risenmaylaw.com | www.risenmaylaw.com

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From: T Rhodes [mailto:[redacted]]
Sent: Monday, September 25, 2017 1:42 PM
To: kim@risenmaylaw.com
Subject: WSBA proposed insurance

Dear Governor Risenmay,

My name is Terry Rhodes and I have been member of the bar for 36 years. The purpose of this email is to detail the reasons why I oppose the WSBA''s interest in making insurance mandatory for attorneys.

1. We are already forced to pay each year into the bar's fund that pays claims made against attorneys. I recognize it does not compensate all who have claims but I am not my brother's keeper and it was a bad idea.

2. Many of the most experienced attorneys who do pro bono work will resign. There are many attorneys such as myself who are now semi retired and do not practice full time but instead use our active status to help people at little or no charge on cases that have very limited liability. We can also well afford to pay any claims that could result. If we are forced to buy insurance, probably the majority, including myself will immediately resign from the bar and stop practicing law for all the people who come to us. Once these attorneys resign they will not even be able to answer anyone's legal question, simple or not, even on a pro bono basis for those who can't pay as it would be the unauthorized practice of law.

3. Forcing attorneys to buy insurance is not what it seems. Attorney's' policies are on a claims made basis and if the bar wants to have insurance for cases then they want insurance to run until the statute of limitations period runs out too. You will note that this means an attorney who practices for one year will be forced to buy insurance for at least 3 years and probably 6 years after that year. Many older attorneys who are trying to decide when to stop practicing may decide to just quit when this comes into effect rather than agree to pay for insurance for 6 extra years as the price to continue practicing for a while longer. It can be the straw that

breaks the camel's back. Without this further overstepping by the bar those attorneys might continue for many years serving the public at very affordable prices or for free with their wealth of knowledge.

It does sound nice that all attorneys would have insurance. That's probably why the bar is considering it. It would be nice if everything was always funded by the attorneys. Just come up with whatever sounds good and have the attorneys pay for it or have to do it. That seems the basis upon which the bar has been operating. But all the needless burdens that the bar continues to place on attorneys (with no consideration on how they affect the attorneys) have more of an effect on more senior attorneys who do not have to practice law anymore but who like using their knowledge and experience to help people. And that will have costs for the public, instantly.

It would be an embarrassment to the WSBA if I have to tell these needy people that the WSBA has decided that for me to answer your very simple legal question for free I would have to pay for insurance for this year and 6 more years.

Respectfully,

Terry Rhodes
11945

From: NWLawyer
To: Margaret Morgan
Cc: Doug Ende
Subject: FW: Mandatory Malpractice Insurance
Date: Wednesday, October 04, 2017 3:32:03 PM

Hello,

We received a letter to the editor regarding mandatory malpractice insurance.

Best,
Camille

Camille Still | Temporary Project Coordinator
Washington State Bar Association | 206.733.5996 | camilles@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please contact adamr@wsba.org.

From: wjm wmurphylaw.com [mailto:wjm@wmurphylaw.com]
Sent: Wednesday, October 4, 2017 3:12 PM
To: NWLawyer <NWLawyer@wsba.org>
Subject: Mandatory Malpractice Insurance

I am writing in response to the article *WSBA Board of Governors Explores Mandatory Malpractice Insurance* article in the September 2017 issue of *NW Lawyer*.

As an attorney licensed to practice in both Oregon and Washington, I have had the opportunity to compare the professional liability insurance requirements of both states - disclosure in Washington and mandatory coverage in Oregon. I do not support mandatory coverage as it provides a questionable value at substantial cost while reducing the availability of legal services, particularly for moderate income citizens.

The first question to ask is "How much benefit does mandatory coverage actually provide to the average client?" I do not have the statistics but I encourage the Board to obtain this information before passing an expensive "feel good" measure. Although there are certainly horror stories out there about bad lawyers and the damage they cause, I question the value that mandatory coverage would provide to those clients when considered in the context of the aggregate cost and the thousands of clients who receive professional legal representation from lawyers with and lawyers without professional liability coverage.

The second question is "How would mandatory coverage affect low and moderate income citizens who need legal representation?" The difficulty finding *pro bono* coverage for low income clients is well known although there are programs that provide professional liability coverage to enable this important work to be done. From my experience, the great bulk of

under-represented citizens are moderate income people who cannot afford an attorney yet do not qualify for *pro bono* representation.

In addition to my income producing work, I have represented Washington citizens needing assistance with no-contact orders, a homeowner whose property was eroding due to the failure of a city to properly maintain a storm run-off system, individuals who were presented with scam damage reports by rental car companies, and others who had damaged credit reports due to fraudulent use of their identity. I may soon retire from my "day job" but hope to keep providing this type of unpaid service to moderate income individuals. I am saving for retirement and certainly not in the position to divert funds to pay for professional liability coverage. If coverage becomes mandatory, I fear I will be required to become an inactive member of the bar and will no longer be able to serve this under-represented group. I am sure there are many other attorneys in the same situation.

Bill Murphy
WSBA No. 19002
Vancouver, WA

Rachel Konkler

From: Mandatory Malpractice Insurance Task Force
Subject: RE: An Update From WSBA Board Governor Rajeev D. Majumdar

From: Tom [mailto:[redacted]]
Sent: Thursday, October 12, 2017 11:27 PM
To: email
Subject: Re: An Update From WSBA Board Governor Rajeev D. Majumdar

I want to thank and congratulate you on continuing such informative news reports as a member of the BOG. It really is nice to have someone giving us a look under the hood rather than just telling us the car needs repairs and how much it will cost.

The mandatory insurance thing is weighing on me for a few reasons. One is, the WSBA has hinted about possibly making insurance mandatory for active practitioners. I've mentioned this before, but don't expect you to recall, so I'll say that I'm physically disabled but maintain my active status because I'm hopeful doctors can one day cure enough of what ails me to allow me to return to practice. That, plus the hassle, time and cost of getting re-activated, and the cost of going inactive being a whopping $200 (for what, I can only imagine), I'm still hanging in there. I am requesting that if insurance becomes mandatory it is made clear that attorneys who are at "active" status but not actually practicing not be required to maintain insurance. I don't know what I'd insure if I had to obtain it, but I'm sure some insurance company would soon price me flat-out into "inactive" status, even though my client pool is zero.

As for whether insurance becomes mandatory, having had the experience of being broke and needing to set up my own office, I have to say (I want to shout) that mandatory insurance is a business killer. Mandatory insurance will likely force attorneys who are trying to set up a new practice into either a lot more debt or bankruptcy. It's an idea that is filled with good intentions, yet fraught with problems that will counter those good intentions. When the attorney goes bankrupt, hasn't been able to pay the last 1-2 installments on insurance, etc., won't the WSBA still be getting compensation requests from aggrieved clients and former clients, like it does now? Then I suspect we'll also see a startling increase of attorneys, probably with a disproportionate amount having freshly minted bar cards, being brought in for disciplinary hearings for letting their insurance (which they couldn't afford) lapse. Is the WSBA going to increase disciplinary staff and resources for this? I don't see what other teeth the rules could have but to sanction attorneys who commit the horrendous sin of being poor. That's a terrible idea. Plus, I would imagine that a bank might be more hesitant to give us older attorneys a loan for a new solo practice as it would someone younger, which raises another set of issues.

And what of someone, say an older attorney or a single parent trying to juggle time and money, carrying a light caseload and yet still saddled with insurance requirements? Last time I paid for malpractice insurance, and every time before that, they asked what areas of law I practiced, not how many clients, and the areas of practice largely determine your cost. Also, the WSBA can't really govern someone who isn't licensed. Let's say someone commits all sorts of malpractice or even crimes against clients, gets disbarred or resigns...I don't see how the WSBA can require that former attorneys maintain post-practice coverage. Last I checked, insurance companies stopped coverage for the last year you practice and paid, not the three years (statute of limitations, with some narrow exceptions), and the funds that I've seen paid out from the protection fund seem to be most often paid for former clients of disbarred/resigned attorneys. Plus, attorneys who

simply cannot or just don't pay for continuing coverage will also leave potential victims exposed, and they will also likely be making applications for restitution to the WSBA. So requiring mandatory insurance won't really help those victims at all, will it? Mandatory insurance will protect very few and cost a lot.

Finally, as the interest from IOLTA accounts dropped to a point where it became useless long ago, the WSBA has been imposing an extra fee on attorneys each year to keep the fund going in order to compensate the victims of a few attorneys' misfeasance and malfeasance. I don't have a problem with paying a reasonable amount for that each year; I'm sure the people and entities the WSBA compensates each year deserve it, and frankly, all attorneys in the state enjoy the absence of some horrifying story by the "Seattle Times" or someone else about how attorneys as a group have left victims of their former colleagues in the lurch. However, if insurance is made mandatory, I'd expect the WSBA would no longer need to assess attorneys that yearly fee. I doubt my expectations will be met in this regards, but I don't think it would be fair to require insurance and continue to require attorneys to pay into a fund for uninsured losses. Just my $.02.

Thanks again for your good work.

Tom Pacher
Attorney at Law (still)
WSBA #18273

P.S. If you're still reading, I commend you. One thing that has long bugged me about status on the bar directory, last I checked, when an attorney retires, the WSBA shows that person as having resigned. That could look like the attorney was in trouble and had to bail. I'd like to see a "retired" status option, if it isn't already available. Perhaps I'm just more sensitive to this as I keep seeing doctors, and they can't fix my back, digestive system and about seven other problems.

// DALE A. MAGNESON
-ATTORNEY AT LAW-

P.O. BOX 659 SILVERDALE, WASHINGTON 98383 (360) 649-1237

RECEIVED
OCT 16 2017
WASHINGTON STATE BAR ASSOCIATION
OFFICE OF THE EXECUTIVE DIRECTOR

October 14, 2017

WSBA Board of Governors
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Re: Mandatory Malpractice Insurance

Dear Board:

In November of last year, after twenty-eight years of practice and having carried malpractice insurance for the entire time without a single cent expended by my insurers, and having obtained an expensive "tail" to cover my entire time in practice, I closed my office. Seven days later, my son died unexpectedly in Germany. He died intestate and without issue. Other than probating an estate that will go entirely to my son's mother and me, I am not practicing law. My wife and I have been married for over 44 years. I share this information for obvious reasons: 1) the privilege of practicing law should not be placed in a "one size fits all" blanket requirement; 2) there are occasions where practicing law will not endanger the public; 3) there should be few restrictions for licensed attorneys in helping family members or close friends; 4) an active licensee who is not actively practicing should not lose the license simply because of lack of insurance.

I view my active license to practice as a very valuable property and it should not be lost for simply not currently carrying insurance. While I may be in denial that I am "retired," I prefer to keep my options open and retain the benefit of having this valuable privilege for potential future employers to consider.

Finally, I have some questions and concerns of my own: 1) Is this a solution seeking a problem? I mean really, of all the law practiced annually, how much damage is actually done to the public? And isn't that damage also paid in part by members of the Bar by way of an annual assessment? Isn't the Bar really seeking to indemnify every single consumer from injury? What other profession does that or even considers it? 2) If the Bar is concerned about attorneys who do not carry insurance, shouldn't the Bar do a better job of informing the public?

Finally, it looks more to me like the Bar wishes to take a paternalistic view of the public. We live in the 21st century. While there may be some few individuals who are less educated, the state pays to educate every citizen. While protecting the public should be a concern for the Bar, the public at large is very much aware of the need for caution in choosing any professional.

Very truly yours

Dale A. Magneson
Attorney at Law and Counselor at Law

From:	Paula Littlewood
To:	Margaret Shane
Cc:	Doug Ende
Subject:	RE: Mandatory E&O ins for lawyers.
Date:	Tuesday, October 17, 2017 5:05:02 PM
Attachments:	image002.png

Thanks,
Paula

From: Margaret Shane
Sent: Tuesday, October 17, 2017 4:56 PM
To: Paula Littlewood
Subject: FW: Mandatory E&O ins for lawyers.

____

Margaret Shane | Executive Assistant
Washington State Bar Association | 206.727.8244 | cell 206-727.8316 | margarets@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

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From: Brad Furlong [mailto:brad.wsba@furlongbutler.com]
Sent: Tuesday, October 17, 2017 4:32 PM
To: Margaret Shane
Subject: FW: Mandatory E&O ins for lawyers.

More for the committee/BOG top ponder.

Bradford E. Furlong, President
Washington State Bar Association

FURLONG ❖ BUTLER
ATTORNEYS

825 Cleveland Avenue l Mount Vernon, Washington 98273 l 360.336.6508 voice l 360.336.3318 facsimile

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From: Edmonds, Jerry [mailto:jedmonds@williamskastner.com]

Sent: Tuesday, October 17, 2017 4:12 PM
To: Brad Furlong
Subject: Mandatory E&O ins for lawyers.

WSBA President Furlong: I speak for myself, not my firm. I strongly support required insurance financial responsibility for practicing lawyers. I was part of the committee which undertook consideration of this subject in the 1980s. It was not rejected by the bar – nor was it adopted. Financial responsibility is required for driving automobiles. Practicing law has very significant potential financial consequences for clients. Licensed securities practitioners must have insurance. The reputation of the profession is undermined by financially irresponsible practitioners. I have not listed all the reasons but these are some of them. I hope this will be considered very carefully by the bar. I will work if asked w others who support this idea.

Jerry B. Edmonds
Williams Kastner | Attorney at Law
601 Union Street, Suite 4100
Seattle, WA 98101-2380
P: 206-628-6639 | M: 206-715-4165
www.williamskastner.com | Bio | V-Card

WASHINGTON OREGON ALASKA

From:	Brad Furlong
To:	Roger Greene
Cc:	Doug Ende; Margaret Shane
Subject:	RE: Mandatory malpractice
Date:	Wednesday, October 25, 2017 1:05:08 PM
Attachments:	image001.png

Thank you, Roger. Your concern is certainly valid and will be considered. I am adding your email to other comments to be considered by the work group and, eventually, the BOG.

Best wishes.

Bradford E. Furlong, President
Washington State Bar Association

FURLONG ◆ BUTLER
ATTORNEYS
825 Cleveland Avenue I Mount Vernon, Washington 98273 I 360.336.6508 voice I 360.336.3318 facsimile

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From: Roger Greene [mailto:]
Sent: Wednesday, October 25, 2017 10:43 AM
To: Brad Furlong
Subject: Mandatory malpractice

Brad

I just wanted to respond for your request for comments on mandatory malpractice insurance in Washington.

I maintain my license as an attorney. The only work I do is for a corporation that I own 100%. I may make a mistake. But my corporation is unlikely to sue me. And if it does, I suspect the insurance carrier will not come to my defense. So if you require all attorneys to carry insurance, I will have to throw $3000 down the drain for nothing, or give up my license.

I understand your concerns for typical situations, but I would encourage you to permit waivers where common sense would demonstrate that the insurance is a waste of money.

Roger Greene

Rachel Konkler

From: Mandatory Malpractice Insurance Task Force
Subject: RE: Mandatory Malpractice Insurance

From: Larsen, Esther [mailto:ELARSEN@spokanecounty.org]
Sent: Thursday, November 02, 2017 10:25 AM
To: Angela Hayes <ahayes@AIIN.COM>
Subject: Mandatory Malpractice Insurance

Hello, Angela.

I read your email with the update on mandatory malpractice insurance and have the following comments.

I understand that currently as a member of the Washington State Bar Association and an employee of Spokane County I am not required to have malpractice insurance because I do not have a private practice that involves private clients and client funds. I have been informed by the Spokane County Prosecuting Attorney's Office that I am covered via the Washington Association of Counties Risk Pool for all work I perform on behalf of Spokane County.

For more than fifteen years: I have not performed legal services for any entity or person for payment; I have not received or handled any client funds; I have performed pro bono work through organizations that provide insurance and/or some other form of liability protection for its pro bono attorneys; and I have also been appointed to perform fiduciary duties for my family's estate and trust in jurisdictions other than the state of Washington and have complied with the appointments in regard to whether or not I must maintain a bond.

Several years ago I researched obtaining my own insurance; however, the cost with a "tail" was prohibitive.

Requiring me to pay for and maintain mandatory malpractice insurance as a condition to continue to be a licensed attorney in Washington state would create a financial burden, would eliminate my ability to provide pro bono services, and would be inconsistent with reality in that I have no private clients.

Thank you for your consideration of my comments, Esther.

Esther Larsen
Spokane County Sheriff's Office
Administration: Grants and Contracts

Public Safety Building, 1st Floor
1100 West Mallon Avenue
Spokane, Washington 99260-0300
Phone: (509) 477-5709; FAX: (509) 477-5731
elarsen@spokanecounty.org

Work days: Monday – Thursday

I

From:	Karol Melde on behalf of Craig Walker
To:	Mandatory Malpractice Insurance Task Force
Cc:	Craig Walker; Karol Melde
Subject:	Malpractice Insurance
Date:	Wednesday, November 08, 2017 10:39:12 AM

Dear Task Force:

I am in favor of mandatory malpractice insurance. The public is often unaware that negligence of their employed professionals is not covered by insurance. More importantly, most practitioners who do not have insurance are likely to be the sole practitioner who could not fund the price of a mistake. It does place a burden upon practitioners and certainly there ought to be some base level products which can be developed and are available at a price that can be afforded. Even high deductible plans would be a better option than no coverage at all.

Thank you for requesting input on this matter.

Craig Walker

Walker Heye Meehan & Eisinger, PLLC - Attorneys
1333 Columbia Park Trail, Suite 220
Richland, WA 99352
P 509.735.4444 / F 509.735.7140

Rachel Konkler

From: Mandatory Malpractice Insurance Task Force
Subject: RE: A letter to the editor

From: Tom Youngjohn [mailto:VISA_IMMIGRATION_LAW@msn.com]
Sent: Wednesday, November 8, 2017 4:44 PM
To: NWLawyer <NWLawyer@wsba.org>
Subject: A letter to the editor

Mandatory malpractice insurance is arguably an unconstitutional infringement on my liberty. We'll see. I've limited my practice to immigration law, which is a federal domain with its own ethics rules, and I'm tempted to take this up, extra tempted if y'all matriarchal do-gooders bring on a one-size-fits-all model, like Spandex, driving me out of business. Y'all would call most of my practice "low bono." My income and costs are certainly both low. Perhaps I could afford to pay for private insurance, though what business of that is yours I have no idea. I haven't had malpractice insurance in 20 years. Haven't had a claim. "Mandatory" reminds me of Obama Care. Well, like Obama Care y'all do-gooders could have a "buy out" penalty to go with any one-size-fits-all model, say $1,500. That would reduce my desire to fight in federal court, and allow me to continue with my mainly low bono practice. In other words I could probably afford that penalty. Crazy. I thought providing low bono representation was an actual goal. But that's right, I live on the Left Coast, and the Left Coast believes in more regulation. Scary. This is an existential issue for a low budget Indiana boy like myself. What the heck did I do to y'all? Reduce your Bar license fees? Well, y'all stole them right back, so you can't complain.

Tom Youngjohn, Attorney at Law
All American Immigration
1648 South 310th St., Ste. 2
Federal Way, WA 98003
www.AllAmericanImmigration.com
Phone: 253-880-9268
Fax: 253-946-0665

AN INTERVIEW (unsolicited): http://businessinnovatorsmagazine.com/tom-youngjohn-immigration-attorney-seattle-washington/

CERTIFIED QUALIFIED TO BE A
UNITED STATES IMMIGRATION JUDGE
IN 2012, 2013, 2014 & 2016 BY THE EXECUTIVE
OFFICE FOR IMMIGRATION REVIEW

Better Business Bureau Accredited Business since 2003
Rating: A+

Member of the **American Immigration Lawyers Association** since 1998

Celebrated **Ninth Circuit Court of Appeals** Published Decision *link*

(Oral Argument)

Intro video to All American Immigration: https://youtu.be/UdYsRugBwsQ

Tom Youngjohn is the only immigration attorney he knows of who has won nine US Immigration Court cases in a row.

From:	Shawn Alexander
To:	Mandatory Malpractice Insurance Task Force
Subject:	Re mandatory insurance
Date:	Thursday, November 09, 2017 12:49:31 PM

As a rural lawyer on Orcas Island, any added costs will come at a cost to my clients. Most of my clients cannot afford what little I charge now, and mandatory insurance will further reduce rural citizen's access to the legal system. I am opposed to a mandatory system and if the premiums are what they were last time l checked, I would have to restrict my practice to clients that are well funded and end representation of my reduced fee and pro bono clients.

I am sure the insurance industry will lobby for this measure. The Bar should not be swayed that this proposal will help the public, while the insurance companies collect premiums and deny and reduce claims, as they do in all other forms of insurance. Perhaps a bonding system would be better. With set costs and the Bar holding the bonds.

Thank you
Shawn Alexander

From:	Bill Robinson
To:	Mandatory Malpractice Insurance Task Force
Cc:	Sanjay Walvekar; rajeev@northwhatcomlaw.com
Subject:	Opposed to mandatory insurance
Date:	Thursday, November 09, 2017 1:03:04 PM

I am writing to oppose mandatory malpractice insurance for generally the same reasons as advanced in the three letters to the editor in the November NWLawyer. As a sole practitioner with no specialized coverages, and no claims in 44 years, I pay $3178 a year. As I think about winding down my practice, while continuing to provide professional services to a few long-time clients and the community, I want the opportunity to not have to choose between paying proportionately higher costs of insurance and serving clients.

Bill Robinson
Bar #5429

William T. Robinson PLLC | 685 Spring Street #133 | Friday Harbor WA 98250-8058 | Tel: +1(206) 399-6474 | Fax: +1(206) 770-6530 | Email: | wtr@wtrobinson.com | www.wtrobinson.com

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From: Mary White
To: Mandatory Malpractice Insurance Task Force
Subject: mandatory malpractice insurance task force input
Date: Thursday, November 09, 2017 1:16:51 PM

Hello:

I have been admitted to the WSBA since 1994, under the names Mary V. White, Mary V. Ortega and Mary V. White-Ortega, WSBA 23900. I am also admitted in District Court, W. District of WA; U.S. Supreme Court; and Suquamish Tribal Court. I am presently an AAG in Wenatchee.

Most of my career I have been in public service/ government sector work (public defender with A.C.A., and now with the AGO) and I have not had to worry about insurance. However, for two separate periods, I had a solo practice; I maintained an IOLTA account, etc. I also spent about 5 years total working for other firms—one large (Helsell Fetterman), two very small (Tipp Mitchell LLC and Law Office of Gilbert H. Levy) . These private firms insured me, to the best of my recollection but I at that at the time, I did not even *think* about that question – I'd say that I "assumed" they were covering me. This may illustrate an existing problem that makes newly minted attorneys and their clients vulnerable, although I bet if an attorney with a small firm was sued and had no coverage, there would be a good chance of prevailing against their "employer/firm" unless there were disclaimers plastered everywhere… I've never really had the impression that it's "*lassiez faire*," for clients – doubts are resolved in their favor, not in the attorney's favor.

I guess if you had asked me back then whether my firm provided me with malpractice coverage I'd say, "well, I assume they must have an insurance policy of some kind and I must be on it…!" During my two periods of solo practice, I managed to buy myself a cheap, basic policy. There did not seem to be a ton of options, but I recall that one was WSBA associated, somehow? The first time around, I held a defense contract with a municipality which required me to prove I had insurance as a condition of the contract. That probably contributed to my awareness of the issue.

My opinion about whether malpractice insurance should be mandatory?

First off- I sort of thought it already was! Clearly not. However if it is made mandatory, it may be a harder for young / new attorneys to enter the market on a shoestring, and we have a need for those attorneys! Would the sliding scale/ low income program that developed in the last 5-10 years, for example, find a way to assist attorneys meet these costs as they serve clients who are paying like $25.00/ hour?! And how do you keep the market from gouging us? I assume that the real costs of a policy must be related to practice area, years of experience, size of firm, geographic location of practice, etc. If you were new, but worked in an area with traditionally high premiums, or in a big city, it could be prohibitive. Would Bar complaints be reviewed to possibly bump up premiums, even if they did not result in determinations that appear to show malfeasance or actual losses to clients? What about Yelp reviews? What would legal technicians pay? Would the Bar (or we) have to spend money to advertise to the public that we are covered, and how they can check? I know some attorneys who have been hounded by baseless mean bar complaints for years- the emotional toll is so, SO unfair. Others I see regularly dis-serving their clients and the public and laying waste to our profession ethically, and socially, slip past unscathed. I wonder how this issue plays into the

"complaints" arena, generally.

I am also torn by this issue because I see it as ripe for exploitation; as pulling one more lynchpin out of our professional ability to practice law in a civilized, hopeful, intelligently trusting, respectful, careful manner. Bar complaints, disciplines and censures/ reprimands are very powerful – they really remind us to practice carefully. We don't need to increase our expenses needlessly, pumping up costs for all clients, unless there is a clearly demonstrated GAP – are there many people being demonstrably, fiscally harmed by the lack of such insurance? Are there many civil legal findings, awards and judgements laid against attorneys for malpractice, where there is no policy or other source of $$ to make the claimant/ petitioner whole? The existing fund that is sometimes used to make whole those people who were ripped off—is it drained or insufficient? Does that not come from our dues or IOLTA in part? I suppose we cannot become "self insured" because that would incentivize bad behavior by the worst actors, relying on the collective safety net to make good on their wrongs.

This is really a complex question. We are largely self regulated, but if i am not mistaken we have taken voluntary baby steps away from that situation. I recently participated in a case where a widow has likely lost her pension due to an error on an appeal filing deadline by a young attorney. It is excruciating to see—I am sure that the only way she is likely to recover is in fact, a malpractice claim. In the case I have in mind, I believe there is an adequate policy in place and she'll likely be made whole, or better.

I am happy to participate in these discussions further.

Best,

Mary V White
WSBA 23900
104 Cascade Place
Cashmere WA 98815

--
mvw

From:	Barnaby Zall
To:	Mandatory Malpractice Insurance Task Force
Subject:	How Mandatory Malpractice Insurance Would Affect Me and My Firm
Date:	Thursday, November 09, 2017 5:32:23 PM

Effect: I would close my firm and end my 34 years as a lawyer. I'm already mostly-retired, and aside from a few paying clients, spend my time in pro bono, public education or volunteer projects. Adding the $3,000 likely malpractice insurance premium (my actual malpractice insurance premiums in prior years were higher) would be the straw that breaks the camel's back.

In 34 years of practice, I have only once had to file a possible malpractice claim notice with my insurance company. No actual claim, since it was only a possible claim based on a claim filed against another lawyer whose appeal I took on. But that notice triggered a five-year additional filing requirement and premium increase, and ratcheted up the tension with my partner who handled the insurance premiums for the firm.

My former malpractice insurance carrier had us attend a malpractice prevention seminar every two years (for which we paid handsomely in addition to our premiums). I was educated in great detail on the causes of malpractice claims and the practice tips on how to avoid them. I generally follow the tips on how to avoid claims, and I do not practice in any of the areas which generate malpractice claims. I draft and file briefs in the U.S. Supreme Court (two in 2017, both pro bono in First Amendment cases for two tax-exempt organizations), as I have done on a paying basis for decades, and I provide pro bono and paid assistance to tax-exempt organizations and advocacy organizations, and am regarded as expert and current in that field.

Thus, any mandatory malpractice insurance requirement would not be a benefit to me at all. It would only reduce the costs to those lawyers who actually generate the claims, and raise my own expenses. It would do nothing for the public generally, except reduce the pro bono and public education efforts I provide for free.

If you want to do something effective to reduce malpractice, rather than generate fees for insurers and those who defend and file claims, you might consider adding malpractice prevention seminars to the WSBA's "box lunch" or similar CLE sessions. If you want to help those who have suffered malpractice (and the vast majority of lawyers do not commit malpractice), you should concentrate on those few practice areas where the claims are generated. These statistics are well-studied and easily discovered, and partnering with insurance companies can drive down the incidence of malpractice -- a win-win situation for all at virtually no cost.

Further, you might consider a "trigger" for mandatory coverage, such as two or three separate prior claims adjudicated and found to be valid and compensable (not just settled or carrier-paid costs). A successful ballot initiative I drafted in Florida had such a trigger for those few physicians who actually commit medical malpractice. http://dos.elections.myflorida.com/initiatives/fulltext/pdf/35169-8.pdf. The Florida Supreme Court did not like the concept, but it was a valid law for its purpose; it is now Art. X, Section 26 of the Florida Constitution. You might also consider a simple public disclosure law, which would give consumers information about lawyers who have been found to have committed malpractice. See Art. X, Section 25 of the Florida Constitution (which I

also drafted as a ballot initiative), but would have to be re-written in the context of legal services.

I strongly recommend against a simple mandate to have malpractice coverage. It would not fulfill any of the three parts of the WSBA mission: serving the public and bar; ensure the integrity of the profession; and champion justice.

Barnaby Zall
Law Office of Barnaby Zall
685 Spring St. #314
Friday Harbor, WA 98250
360-378-6600

From: Gerald Steel
To: Mandatory Malpractice Insurance Task Force
Subject: Let the issue be decided by a vote of the members without insurance
Date: Tuesday, November 14, 2017 6:27:08 PM

It would be unfair for those with insurance to force those without insurance to buy insurance. So the only fair solution is a member referendum with only lawyers without insurance voting whether insurance should be mandatory.

Gerald Steel PE
Attorney at Law
7303 Young Rd. NW
Olympia WA 98502
360.867.1166

From: Cris Anderson
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice input...
Date: Tuesday, November 14, 2017 6:55:23 PM

Hello and thank you for the opportunity to provide input. While I am basically retired and not "practicing law", here's what weighs on my mind:

1) I believe it a mandatory requirement if lawyers are to make any headway in the battle to save our image. I don't understand - at all - why it's not mandatory. There will need to be some exceptions though for lawyers who are still "active" but not practicing, like myself. There should be no other exceptions, period.

2) the amount needs to be large - not a paltry 1 mil. It needs to be substantial.

3) More than "malpractice", mandatory fidelity insurance/bonding is needed. Again, not paltry, but 10 mil should cover trust account violations. Maybe require say 2 to 3 times the maximum trust account balance during a calendar year. Malpractice does nothing for "intentional" actions.

Give these some teeth and possibly we might earn back our reputations with the public.

Cris Anderson
WSBA 8228

From: Mike DeWitt
To: Mandatory Malpractice Insurance Task Force
Subject: My thoughts on mandatory malpractice
Date: Tuesday, November 14, 2017 7:48:02 PM

Something about the concept of making it mandatory bothers me. This may be ironic, given that I have always had malpractice insurance and always will - it is mandatory in my mind. But that does not mean it should be mandatory for everyone. There are a lot of new lawyers and solo practitioners with small (maybe even part time) practices that may not be able to afford it. Take my wife, for example - a licensed attorney in the state of Washington but one who has not practiced law in several years (since the birth of our first child). It is hard enough having to pay her bar dues and section membership fee every year, but to add malpractice insurance on top of that would be unreasonable, in my opinion. I think there are a lot of small firms and solo's who would be adversely affected by making it mandatory. I also wonder what that would do to rates - insurers may not have to be as competitively priced if they know we are required to purchase it.

These are the thoughts off the top of my head. Of course, I have not heard the evidence as to why this is a good or bad idea. I reserve the right to be persuaded either way.

Thank you for soliciting input - Mike DeWitt, WSBA No. 31687

--

DeWitt Law, PLLC
1226 State Avenue N.E.
Olympia, Washington 98506
(360) 701-0864

From: Richelle Little
To: Mandatory Malpractice Insurance Task Force
Subject: Request for comments
Date: Wednesday, November 15, 2017 11:54:22 AM

Dear Task Force Members:

I do not know how mandatory malpractice insurance would affect me, my firm, or my clients. I am a solo practitioner, and I do carry insurance. I wonder if making insurance mandatory, thus adding more attorneys to the pool, would make the price of insurance more affordable? This is a question I think the task force should research, and provide an answer to the members. If making insurance mandatory will lower the cost of insurance, more attorneys who already carry insurance may support this idea.

Olympia Estate Law
Richelle Little Law and Mediation PLLC
phone: 360.358.3230
richelle@olympiaestatelaw.com
PLEASE NOTE NEW LOCATION!
2401 Bristol Court SW, Suite C-102
Olympia, WA 98502

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Rachel Konkler

From: Mandatory Malpractice Insurance Task Force
Subject: RE: Information regarding this week's BOG Meeting

From: Morgan Gabse [mailto:Morgan@GabseLaw.com]
Sent: Wednesday, November 15, 2017 2:14 PM
To: Paris Eriksen
Subject: RE: Information regarding this week's BOG Meeting

Hi Paris,

I'm not sure where I can send this comment as an individual member of the Bar. It's related to the Mandatory Malpractice Task Force. I'd like, at the very least, the roster to include a member of the Bar that is a non-practicing member (someone who maintains their license and membership but is in a non-practicing role within their employer). The potential of this mandate could preclude my membership in the Bar altogether, which is very concerning to me. I hope that potential is concerning to the BOG and Bar, as well. I'm aware of a small but significant number of members of the Bar that maintain their license but are employed in non-practicing roles (contract management, privacy, compliance, human resources, executive, etc). I do hope this is taken into consideration as this Task Force moves forward.

Thank you,
~Morgan

--
Morgan Gabse, Esq.
http://www.linkedin.com/in/mmgabse

From: John Groseclose
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory insurance
Date: Thursday, November 16, 2017 12:39:02 PM

I have a small firm. We employ 5 attorneys and have 3 others that work with our firm as of counsel. In general, it would appear to me to be possible to practice as a lawyer and not really screw something up of significance that would trigger an insurance claim.

However, in my years of practice I have encountered attorneys that have messed up and have elected to not have any insurance.

It would appear that insurance is an added expense.
It would appear that the same group of people that do not buy insurance are the same sort of people that cannot pay a claim if they do something wrong.
As a small business owner I am tired of paying various expenses and bills that increase overhead for my business. I like having a choice.

But, as a practicing attorney, there is a lot to be said about making insurance mandatory.

My feelings about it being a customer service issue sorta override my preference to make everyone have insurance. The WSBA has a spot that tells consumers whether there is or is not insurance and I think of it as a consumer preference issue. I would not alter the current practice. However, I also will not have heartburn if it were to be mandatory.

JOHN GROSECLOSE
Attorney at Law

GSJONES LAW GROUP, P.S.
1155 Bethel Avenue
Port Orchard, WA 98366
Tel: (360) 876-9221
Fax: (360) 876-5097

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From: Derifield Law Office
To: Mandatory Malpractice Insurance Task Force
Subject: Feedback
Date: Thursday, November 16, 2017 3:00:19 PM

I would like to provide input in opposition to the mandatory malpractice insurance proposal.

I practice Social Security disability law, which is a practice that is meaningful but not lucrative. I am quite concerned about my ability to afford malpractice insurance. I cannot simply raise my rates to cover the additional overhead for my solo practice. My clients are poor people and my rates are set by the government. I am sure many other lawyers are in a similar situation. If insurance is required, this has a disproportionate affect on solo and small firms whose budgets are tight, on new lawyers, and on lawyers who have chosen their area of practice because of the good it does for the community rather than lining their own pockets.

If malpractice insurance is ultimately made a requirement, I strongly encourage the bar to provide exceptions.

Thank you.

Joni M. Derifield
Derifield Law Office, P.S.
Phone: (206) 226-6891
Toll-Free: (877) 400-0581
Fax: (206) 209-2100
PO Box 1459, Poulsbo, WA 98370

From: attorneycullen@comcast.net
To: Mandatory Malpractice Insurance Task Force
Date: Friday, November 17, 2017 1:16:10 PM

I recommend that the bar not adopt a mandatory malpractice insurance requirement.

First of all, the vast majority of responsible lawyers no doubt already make sure to have coverage at all times. The uninsured percentage of practicing lawyers who do not must be very small, and there may be differing reasons why, depending on individual circumstances. Without some studies or more detailed information, it is difficult to assess the sudden call for such a requirement.

Secondly, there is the real possibility that a captive membership will then allow insurance companies to reduce competition and raise rates across the board, and even constrict coverage based on the wording of an ethical rule we haven't yet seen. In fact, RPC 1.0A(e) which of course applies to individual lawyers, and should also apply to the governing leadership of the association where such a major policy change is being put forth, provides that, "informed consent denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."

Is there an open source the membership can be directed to where such adequate information and explanation is currently available? Perhaps then we would have a better and fairer process by which to make an assessment of the proposal.

David D. Cullen
Attorney & Counselor
West Hills Office Park, Building 11
1800 Cooper Point Road, S.W.
Olympia, Washington 98502

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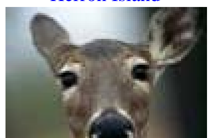
From: Merry A. Kogut
To: Mandatory Malpractice Insurance Task Force
Subject: Against mandatory malpractice insurance
Date: Friday, November 17, 2017 2:48:37 PM

I am a licensed attorney but have not practiced in several years. I keep up my payments and my CLE's. I have no need for malpractice insurance because I don't have any clients. If you make insurance malpractice I will be forced to go to Emeritus or Inactive status. I know other attorneys who are also licensed but not practicing.

I am AGAINST mandatory insurance. If someone is responsible enough to be an attorney, he or she is responsible enough to buy malpractice insurance and/or self-insure.

Respectfully,
Merry A. Kogut
16153

Merry A. Kogut, Attorney at Law
Trustee, Merry A. Kogut Revocable Living Trust
22415 So. Herron Blvd. KpN
Herron Island



Lakebay, WA 98349-8143
Landline: 253.265.0060
Cell/Text: 253.884.8484
Email: merryakogut@gmail.com

From:	clarsen@nwi.net
To:	Mandatory Malpractice Insurance Task Force
Subject:	Opposition to Mandatory Liability Insurance
Date:	Saturday, November 18, 2017 12:22:57 PM

I write today to register my opposition to requiring malpractice insurance overage for Washington attorneys.

From 1991 through 2003, I practiced full-time as an attorney in Washington. I started as an associate and ultimately owned the firm when I closed it in 2003 to take a full-time non-law job. Since that time, I have maintained my license and continued to practice law at a much reduced pace.

I went to law school to help people. Retaining my license has allowed me to do that pro bono or on a reduced fee basis. My typical client is a family member, friend, or former client. I do occasionally represent clients with whom I have no pre-existing relationship. I have a low overhead business model for my very limited practice. I work from my home with no staff support and no malpractice insurance. Because of this model, I am able to offer flat fees for much of my work where my effective hourly rate typically is below $100 an hour. For the handful of cases that I undertake on an hourly basis, my hourly rate is $175.00, far below market rate in Chelan County.

I do not intend to return to the full-time practice of law. This proposed malpractice insurance requirement threatens my ability to assist people with legal matters, which is why I chose to go to law school, and provide needed legal services to low and moderate income people.

I appreciate your consideration of this issue and my opinion regarding mandatory malpractice insurance.

Craig Larsen
Attorney at Law
509-421-2116

From:	Ken Masters
To:	Mandatory Malpractice Insurance Task Force
Subject:	Please say yes to mandatory malpractice insurance
Date:	Sunday, November 19, 2017 5:09:00 PM
Attachments:	image003.png

Everyone makes mistakes.

That is why we have mandatory car insurance. Representing clients – having their lives, their families, their freedom, their livelihoods, their property, etc. in our hands – is certainly as subject to risk as getting behind the wheel of a car. Insurance should be mandatory.

It is our duty to protect our clients. Malpractice insurance is simply a part of that duty.

Thanks for your consideration.

Best,

Ken Masters **241 Madison Ave. No. Bainbridge Island, WA 98110 206-780-5033 www.appeal-law.com**

MASTERS LAW GROUP PLLC

From: Kelly, Paul (DSHS/DCS)
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Tuesday, November 21, 2017 10:16:08 AM

I am wondering if you expect there to be an exception for those who are government attorneys? As a Washington State Division of Child "Claims Officer", I am required to hold an active WSBA license. Though my employer (DSHS) has provided annual CLE refresher training, they do not pay my bar dues. And at a fixed salary in the low $70K range, requiring me to also carry mandatory malpractice insurance to be a WSBA active member would be a real financial burden.

From:	Paul Edmondson
To:	Mandatory Malpractice Insurance Task Force
Subject:	mandatory insurance
Date:	Wednesday, November 22, 2017 11:26:16 AM

Has there been a study of uncollected judgments against attorneys?

Sent from Mail for Windows 10

From: Eric Gustafson
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice insurance
Date: Wednesday, November 22, 2017 12:07:03 PM

Yes! The only people I've ever run into who tell me that they don't carry it are those who should. They're the ones we find most likely committing malpractice or acting inappropriately.

My 2 cents.
Eric

J. Eric Gustafson (egustafson@lyon-law.com)
Lyon Weigand & Gustafson PS, Attorneys at Law
Certified Elder Law Attorney *
Adoption Attorney*
AV-Rated Attorney*
All Postal Mail: PO Box 1689 Yakima WA 98907
Offices: 222 N. 3rd St. Yakima WA 98901 &
154 Treasure Cove Ln. Manzanita OR 97130
Office: (509) 248-7220
Fax: (509) 575-1883

*Elder Law Certification occurs through the auspices of the National Elder Law Foundation (National Academy of Elder Law Attorneys) under approved criteria and examination procedures of the American Bar Association.

*Adoption Attorney reflects election as a Fellow of the American Academy of Adoption Attorneys, an invitation based organization of 300+ attorneys nationwide, under its criteria of experience, ethics and peer recommendation.

*AV-Rated Attorney (AV is the rating awarded by the national reference source, Martindale-Hubbell Law Directory, and identifies a lawyer by peer-review with the highest legal ability, expertise, experience, integrity and overall professional experience).

Washington's Supreme Court has not yet developed or recognized a credentialing process for specialties, and certification/fellowship/M-H rating is not required to practice law in this state.

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From:	John Gray
To:	Mandatory Malpractice Insurance Task Force
Cc:	"John Gray"; "Gray Marjorie"
Subject:	Comment on Proposed Mandatory Malpractice Insurance Proposal
Date:	Sunday, November 26, 2017 3:19:18 PM

Hello:

The purpose of this email is to comment on the proposed mandatory malpractice insurance proposal.

My wife and I are retired lawyers. We want to continue in active status with the WSBA. Speaking for myself, one reason is that I volunteer with the Thurston County Volunteer Legal Services program and need to be on active status to do so. I realize I could switch to Emeritus, but I don't want to be restricted by its provisions. I am covered by the TCVLS's malpractice coverage when I serve as a volunteer lawyer. For a second reason, I may choose to resume active practice of law with an existing firm or organization and I want to be able to do so without waiting to switch from inactive to active status.

My wife, Marjorie, retired from her position as a Review Judge for DSHS at the end of January 2017. She decided then to convert from judicial status to active membership in the bar. She values her bar membership and she took the training (March 16 and 17, 2017) required to go active. She has not practiced, but continues to keep her CLEs in order to have this option available to her.

If the WSBA is proposing to make the payment of an amount for mandatory malpractice insurance as a condition to maintaining active status as a member, we oppose it, because it would require us to pay for coverage we do not need and would benefit no one else. The requirement for mandatory malpractice insurance has its positive arguments, but it does not take into account those who are not engaged in the private practice of law.

Perhaps the solution is to require coverage if a lawyer actually engages in the practice of law and is not otherwise covered by a malpractice insurance policy.

John M. Gray (WSBA # 7529)
5021 Laura St. S.E.
Olympia, WA 98501
(360) 754-0757 (landline)
(360) 789-3208 (cell)

Marjorie Gray (WSBA # 9607)
5021 Laura St. S.E.
Olympia, WA 98501
(360) 754-0757 (landline)
(360) 789-3190

From: Randy Brook
To: Mandatory Malpractice Insurance Task Force
Subject: comments from a retired attorney
Date: Tuesday, November 28, 2017 7:11:24 AM

Greetings,

I am currently out of the country. For that reason, rather than calling, I am emailing a few brief comments. Bottom line: I would retire from WSBA if I were forced to carry malpractice insurance for which I have no need.

I was admitted to the WA Bar in 1973. I spent my entire career in Seattle as a US government litigator, appearing in federal district and bankruptcy courts around the country. I retired in 2008. I live on my pension in Twisp, WA.

Since retirement, I have maintained my full membership in WSBA. I have not represented individual clients in any significant way. For this reason, I have not sought malpractice insurance. To the extent I have done any legal work, it has always been *pro bono.* In part, this has simply been to advise friends and neighbors about legal issues, always distinguishing situations where they should hire an attorney in active practice.

On occasion, I have helped someone with an "attorney letter." This has mostly been in cases where they were unfairly or unlawfully being pursued by debt collectors. Even at this minimal level, I have always disclosed that I do not carry malpractice insurance.

The other part of my *pro bono* work has been to prepare *amicus curiae* appellate briefs for various non-profit organizations. I generally have had an attorney in active practice review my briefs before filing.

If I were forced to retire from WSBA to avoid the burden of paying for insurance, I would have two choices. The simplest would be to refuse all further requests for *pro bono* assistance with *amicus* briefs. The second would be to ask some other attorney to put his or her name to a brief I authored, without my signature appearing. Neither choice would be desirable or beneficial, in my opinion.

I know of other, essentially retired attorneys who are in a similar situation to mine. I sincerely hope you will take our situation into account. I will be back in the US around December 17. I would be happy to discuss this further by phone if that appears useful.

Yours truly,
Randy Brook
Bar # 4869

From: tom@tdlaw.net
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory insurance
Date: Tuesday, November 28, 2017 9:43:28 AM

Just a few thoughts for the task force:

I actively practiced law in Seattle from 1972 through 2014. I was covered by malpractice insurance all of that time. I remain licensed but only to conclude paying clients from the Dow Settlement Fund which will hopefully conclude in late 2019. I have never been sued for malpractice. The likelihood I will commit malpractice disbursing the remaining payments to these clients is extremely low. I have discontinued my coverage and suggest your task force not recommend mandatory insurance for all private practitioners.

I was a member, and then the chair, of the WSBA fund for client protection board. Of course, that board did not reimburse people for malpractice. However, my strong feeling was that there are very few practitioners who defrauded clients and only a few more likely to have committed malpractice.

When the task force reviews "statistics" about the frequency of malpractice claims against already insured versus not insured practitioners, please consider the source of the information. I would expect that prospective insurers are likely the only source of information that would indicate mandatory coverage is needed.

In short, I doubt that mandatory coverage by all private practitioners is necessary and I would seriously question statistics indicating the contrary.

Thank you for considering my input.

Tom Dreiling
WSBA #4794

Sent from Mail for Windows 10

From: Extra
To: Mandatory Malpractice Insurance Task Force
Subject: Negative Impact of Mandatory Malpractice Insurance
Date: Tuesday, November 28, 2017 5:45:31 PM

I am choosing to submit this comment anonymously for some reason.

I have been in practice about 27 years, the first 14 of those with a strong insurance defense firm involved in federal and state trials of all kinds around the state. Since then I have been in solo practice. Over time my solo practice became designed to allow me to do more non-legal community work with schools, quasi-legal agency work for artists, and also serve my clients. In other words, my law practice has been for several years part-time and non-lucrative to say the least.

I purchased malpractice insurance in the early years of my solo practice. I have never had anything close to a claim in my career. It has been many years since I have been able to afford a malpractice policy for my solo practice. I lieu of a policy, I have always considered some of my investment funds to be a "self-insurance" fund, in case of a claim.

Here's the point: my practice resembles that of many lawyers, part-time, paying a few bills around home, but allowing us to have an impact on our community as lawyers. In my case, I take on business, commercial, and injury work for immigrant families of many nationalities, and others who come to me because they cannot afford other attorneys. I get them results, and I don't get rich off them while doing it.

They cannot afford attorneys, and I cannot afford malpractice insurance.

You can see the cycle. It is important to me to be able to keep serving my clients and to be able to call myself a lawyer. Mandatory malpractice insurance would probably wipe out that dream.

Please let me know if you need more information.

From: Janette Keiser
To: Mandatory Malpractice Insurance Task Force
Subject: comments on mandatory insurance
Date: Tuesday, November 28, 2017 7:08:13 PM

Hello.

I am a member in good standing of the Washington Bar. I do not believe mandatory professional liability insurance is necessary. I would like to see some data about people who suffer damages from an incompetent attorney and are unable to recover because of the lack of insurance.

But, if you do decide do this, I offer another perspective. In addition to being a lawyer, I am a licensed professional engineer. My practice consists primarily of engineering, not the traditional practice of law. I use my legal background to review contracts, understand legislation that affects my business, resolve construction disputes, etc. I do not, in the regular course of my business, represent traditional legal clients and I never go to court! However, I want to maintain my bar membership because I worked hard for it. Further, I do not want to be precluded from practicing law.

I pay about $3000 a year for professional liability insurance as an engineer. I would hate to have to buy more professional liability insurance as an attorney. If you do require mandatory insurance for attorneys, please include some provision for non-traditional lawyers like me; that is, people who are members of the Bar, but who are not necessarily actively representing legal clients.

With best regards,

Janette Keiser
Bar Membership # 18387

Janette ("Jan") Keiser, PE, JD
J. Keiser & Associates LLC
15715 Virginia Pt. Rd
Poulsbo, WA 98370

Cell – 206-714-8955
www.keisergroup.com

From:	[redacted]
To:	Mandatory Malpractice Insurance Task Force
Cc:	Kyle.s@bullivant.com
Subject:	Malpractice Ins. - Keep Optional
Date:	Wednesday, November 29, 2017 8:59:32 AM

Friends:

It takes two things for a malpractice suit: 1) A mistake, which we all will make, and 2) An angry client, which we all can prevent. For the few times I've made legal mistakes, I've admitted them, fixed them, and made the client better than whole again. In my 45 years, I've never had an angry client, thus I've never had a malpractice suit. I'm sympathetic with your concern about (usually younger) lawyers who are sloppy, inattentive, or even disrespectful of their clients. You want to force me into an insurance pool with those lousy lawyers? Have you lost your mind?

1. My first recommendation is that you leave us alone. There's a risk to go without malpractice insurance, but there's a risk to cross the street to get to our office. We are adults capable of accepting each risk we each deem acceptable, based on our type of law practice as it changes from time to time. You can't possibly make one rule to fit all of us, better than we each do for ourselves.

2. My second recommendation, if you insist on treating us all like incompetent children, is to set up different pools:
- Lawyers who have had a malpractice claim in the past 5 years.
- Lawyers who haven't had a malpractice claim in 5 years.
- Lawyers who haven't had a malpractice claim in 10 years.
- Lawyers who haven't had a malpractice claim in 20 years.
- Lawyers who haven't had a malpractice claim in 30 years.
- Lawyers who haven't had a malpractice claim in 40 years.
- Lawyers who haven't had a malpractice claim in 50 years.

Leave us with the incentive to make injured clients better than whole again, without a malpractice suit. Leave us with the incentive to stay "clean" as many decades as we can. Otherwise a great cause to keep clients happy will be lost, to the detriment of all lawyers.

- John Panesko, #5898
Chehalis, WA

From: wjm wmurphylaw.com
To: Mandatory Malpractice Insurance Task Force
Subject: Comments re Mandatory Insurance
Date: Wednesday, November 29, 2017 10:33:17 AM

As an attorney licensed to practice in both Oregon and Washington, I have had the opportunity to compare the professional liability insurance requirements of both states - disclosure in Washington and mandatory coverage in Oregon. I do not support mandatory coverage as it provides a questionable value at substantial cost while reducing the availability of legal services, particularly for moderate income citizens.

The first question to ask is "How much benefit does mandatory coverage actually provide to the average client?" I do not have the statistics but I encourage the Board to obtain this information before passing an expensive "feel good" measure. Although there are certainly horror stories out there about bad lawyers and the damage they cause, I question the value that mandatory coverage would provide to those clients when considered in the context of the aggregate cost and the thousands of clients who receive professional legal representation from lawyers with and lawyers without professional liability coverage.

The second question is "How would mandatory coverage affect low and moderate income citizens who need legal representation?" The difficulty finding *pro bono* coverage for low income clients is well known although there are programs that provide professional liability coverage to enable this important work to be done. From my experience, the great bulk of under-represented citizens are moderate income people who cannot afford an attorney yet do not qualify for *pro bono* representation.

In addition to my income producing work, I have represented Washington citizens needing assistance with no-contact orders, a homeowner whose property was eroding due to the failure of a city to properly maintain a storm run-off system, individuals who were presented with scam damage reports by rental car companies, and others who had damaged credit reports due to fraudulent use of their identity. I may soon retire from my "day job" but hope to keep providing this type of unpaid service to moderate income individuals. I am saving for retirement and certainly not in the position to divert funds to pay for professional liability coverage. If coverage becomes mandatory, I fear I will be required to become an inactive member of the bar and will no longer be able to serve this under-represented group. I am sure there are many other attorneys in the same situation.

Bill Murphy

WSBA No. 19002

Vancouver, WA

From:	Edward Dunkerly
To:	Mandatory Malpractice Insurance Task Force
Subject:	No MANDATORY MALPRACTICE INSURANCE
Date:	Wednesday, November 29, 2017 11:08:25 AM

This will certainly result in an increase of rates in Washington. I pay less than $1,500 per year now (it should be less given that my practice is 100% criminal defense) and do not want to end up with higher rates.

--

Edward LeRoy Dunkerly
Attorney at Law
WSBA# 8727
OSB# 92287
500 W. 8th Street Suite 55
Vancouver WA 98660
360 607-9243

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From: Patric Smith
To: Mandatory Malpractice Insurance Task Force
Cc: Daniel Clark
Subject: Mandatory Malpractice Insurance
Date: Wednesday, November 29, 2017 12:45:39 PM

TO: WSBA

I oppose Mandatory Malpractice Insurance being required of government lawyers.

While I was in the private sector, my firm paid for insurance. As a government lawyer, I don't need it, and the government isn't going to pay for it. I do not want to be required to take money from my family and give it to insurance which has no value to me, and which may be able to charge inflated premiums because purchasing the insurance, regardless of unreasonable pricing, is made mandatory.

"NO" unless insurance remains optional for attorney who do not represent private citizens.

Patric S. Smith
WSBA #15036

From: Gregory Wall
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Insurance
Date: Thursday, November 30, 2017 4:41:10 PM

Dear Task Force Members:

I am such an old guy that I was around when this idea was first floated. This was about the same time as Oregon went to their system. I served on the Committee handling liability insurance.

I opposed the plan then, and I do now.

1. Its one size fits all. It bears no real resemblance to risk management. I realize you could add claim surcharges, etc, but its not really a substitute for a real policy based on types of practice, years of practice and claim history.

2. This plan is much more like the Client Trust Fund for reimbursing clients cheated out of money than a real insurance program. If we adopt this, then every member of the bar, and that includes lawyers in public employment, corporate attorneys and others who don't really need malpractice insurance, should be required to pay. We are creating a fund to pay clients who suffer from malpractice and all members of the bar should participate.

3. We will still have to buy insurance to supplement this. Oregon's policy provides something like $250,000 in coverage. My clients, who are large insurance companies, require me to have at least a million dollars in coverage. I carry two million. That means I, and virtually everyone else with a successful practice, will have to buy supplemental insurance.

4. I have seen no proof that there is a demonstrated need for this. I saw something about 20% of Washington lawyers being uninsured. What is the source of that number? Does it include lawyers who don't need insurance, like those in public employment and large corporations. For example, the ever growing number of in-house insurance defense lawyers are indemnified by their companies and they are not permitted to do outside legal work. They don't need insurance, and most, if not all, don't carry it.

5. I know the BOG loves to get that warm and fuzzy feeling when they talk about protecting and serving the public, but maybe they should have a factual basis for acting and, for once, look to the good of the members who are paying dues.

6. This requires the WSBA to get into the insurance business. We don't know how to do that, and it is likely to be an expensive learning process. Its much more efficient and cost effective to allow members to buy on the private market.

7. It will be a significant and undue burden on young lawyers starting out. It also has the potential for economic disbarment of lawyers, which is grossly unfair.

8. If it can be demonstrated that there is a real need for this, using facts rather than assumptions, the problem can be solved by changing the RPC's to require insurance or some other method of paying claims, such as a hold harmless letter from an employer.

9. Unless you want the fund to go broke, certain practice areas will have to be excluded, particularly Securities, Intellectual Property and other areas where the size of the risk is enormous. If you leave those in, the cost of the defense of these claims will bankrupt the fund in short order.

9. Remember that the policy limit does not determine the amount of the expense to the Bar. Insurance provides indemnity and a defense. The defense can cost more than the policy limits in many cases. See point 8.

10. Will the policies have a consent clause? If members don't have a veto power over settlement, their reputation could be damaged.

This was a bad idea in 1980 and its still a bad idea. I would urge the Task Force to recommend rejection, or alt least defer it until we can get some facts justifying the need for this.

Gregory J. Wall
Law Office of Gregory J. Wall, PLLC
gregwall@gjwlaw.com
104 Tremont Street
Suite 200
Port Orchard, WA 98366
(360) 876-1214

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From:	Raddatz, Anita D CIV USARMY ECC (US)
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Malpractice Insurance
Date:	Sunday, December 03, 2017 12:16:44 AM

Sir/Ma'am,

I assume this would not apply to US Government attorneys, correct? I don't like the use of the term, "mandatory."

Thanks!

v/r,
Anita

Anita D. Raddatz
Legal Counsel
408th Contracting Support Brigade
Regional Contracting Center - Kuwait
APO AE 09366
DSN 318.430.7439
Mobile +965.9789.7613
Commercial +965.2221.6340 or 6334 -- after the recording, enter 430.7439
anita.d.raddatz.civ@mail.mil

Work week Sunday through Thursday -- Friday and Saturday off

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-----Original Message-----
From: Washington State Bar Association [mailto:questions@wsba.org]
Sent: Friday, December 1, 2017 12:50 PM
To: Raddatz, Anita D CIV USARMY ECC (US) <anita.d.raddatz.civ@mail.mil>
Subject: [Non-DoD Source] An Update from WSBA Governor Rajeev Majumdar

...

Mandatory Malpractice Insurance Task Force. The roster for the Mandatory Malpractice Insurance Task Force was approved. While it doesn’t look like any of the District 2 nominations were placed on the task force, I can assure all of you that all of the governors have been hearing similar concerns about lawyers who want to keep their active status but not represent clients and the cost of insurance. This task force will examine every angle and be open to feedback from the members. Please submit your questions and feedback to insurancetaskforce@wsba.org [Caution-mailto:insurancetaskforce@wsba.org] .

...

Happy Holidays & Merry Christmas,

Rajeev D. Majumdar
rajeev@northwhatcomlaw.com [Caution-mailto:rajeev@northwhatcomlaw.com]
(360) 332-7000
FAX: (360) 332-6677

The agenda and materials from this Board of Governors meeting, as well as past meetings, are online [Caution-http://www.wsba.org/About-WSBA/Governance/Meeting-Minutes-and-Agendas] . Please do not hesitate to contact me or any of the other board members with any questions or concerns you may have.

CONTACT INFORMATION: Rajeev Majumdar, rajeev@northwhatcomlaw.com [Caution-mailto:rajeev@northwhatcomlaw.com]

WSBA seal
Caution-http://www.wsba.org/

Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539 | Map [Caution-https://drive.google.com/open?id=13O5hyALvjds_3nqAyL5zwSevXVY&usp=sharing]
Toll-free: 800-945-WSBA (9722)
Local: 206-443-WSBA (9722)

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Official WSBA communication
All members will receive the following email, which is considered official:
• Licensing and licensing-related materials
• Information about the non-CLE work and activities of the sections to which the member belongs
• Mandatory Continuing Legal Education (MCLE) reporting-related notifications
• Election materials (Board of Governors)
• Selected Executive Director and Board of Governors communications

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From: Paul Majkut
To: Mandatory Malpractice Insurance Task Force
Subject: I hope you will not require insurance for pro bono attorneys. Paul Majkut
Date: Sunday, December 03, 2017 9:06:07 PM

I hope you will not require insurance for pro bono attorneys. I am retired. I advise the Coalition of Oregon Land Trusts which has a Washington state member, the Columbia Land Trust. COLT has bought an insurance policy that covers me but may not meet the requirements you may set for private attorneys. Thank you. Paul Majkut

From:	Sherry Lindner
To:	Sanjay Walvekar; Mandatory Malpractice Insurance Task Force
Cc:	Sara Niegowski; Jennifer Olegario
Subject:	RE: Mandatory malpractice insurance and referendum policy
Date:	Monday, December 04, 2017 9:15:06 AM

Yes, thanks for forwarding the inquiry.

Sherry Lindner | Paralegal | Office of General Counsel
Washington State Bar Association |**T** 206.733.5941|**F** 206.727.8314| sherryl@wsba.org
1325 Fourth Avenue, Suite 600|Seattle, WA 98101-2539

From: Sanjay Walvekar
Sent: Monday, December 04, 2017 9:13 AM
To: Mandatory Malpractice Insurance Task Force; Sherry Lindner
Cc: Sara Niegowski; Jennifer Olegario
Subject: FW: Mandatory malpractice insurance and referendum policy

FYI. Sherry – are you able to respond to her questions on referendum policy?

Thanks!
Sanjay

From: Deborah St Sing [mailto:stsinglaw@gmail.com]
Sent: Monday, December 4, 2017 8:32 AM
To: Sanjay Walvekar <Sanjayw@wsba.org>
Subject: Mandatory malpractice insurance and referendum policy

WSBA,

Currently, I am not practicing but rather work part-time as a hearing officer for a local housing authority. Thus, I do not represent clients, have no need for insurance and do not carry insurance.

As I am semiretired, my gross income from my 1099 work is minimal. Last year the gross was 5,000.00 and this year it approximately $9,000.00. I would not be able to afford insurance if that is the price for maintaining my license. Being a member of the Bar is a requisite for my part-time work. Of course I am still paying the full bar dues.

I assume that only practitioners and not all members would be required to carry insurance. If that is not the case then I oppose the imposition of mandatory insurance.

Referendum Policy

Why is the board considering changes? Will the change make it more difficult for members to change policy with a referendum? Are the changes aimed at members trying to reduce dues?

--
Deborah A. St. Sing
Attorney at Law
PO Box 7264

Olympia, WA 98507
[REDACTED]

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From:	Rani Sampson
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory malpractice insurance
Date:	Thursday, December 07, 2017 7:13:03 AM

I am opposed to mandatory malpractice insurance.

Mandatory malpractice insurance would have caused me to resign from the WSBA and seek a different career when the 2008 recession hit. I'm now established in my career and give LOTS of pro-bono assistance. When I retire from active practice, I would like to provide pro-bono services for low-income people. I won't do that if I'm forced to carry mandatory insurance.

Mandatory insurance would harm the public because some lawyers would leave the profession.

Rani K. Sampson
Overcast Law Offices, PS | Attorney | 23 S. Wenatchee Ave. Suite 320 | Wenatchee, WA 98801 | 509.663.5588

From:	Kary Krismer
To:	Mandatory Malpractice Insurance Task Force
Subject:	Comments About Mandatory Malpractice Insurance
Date:	Thursday, December 07, 2017 4:14:13 PM

Here is my input on the topic of mandatory malpractice insurance. I don't have a problem with the idea in general, but I do believe there should be a lot of thought put into forming exceptions.

I happen to be licensed as both an attorney and a real estate broker, as are a surprising number of other attorneys. I do not actively practice law other than filling in standardized documents and explaining their effect. If I did obtain malpractice insurance the company would exclude any of my activities that pertained to my actions as a real estate broker, so there would be little point to getting insurance—something I've looked into. (I would also note that is probably true of the attorney/brokers who are more actively practicing real estate law—there the existence of insurance could be illusory if the representation was primarily as a broker and not as a real estate attorney).

Based on my situation, and probably countless other similar type situations where actively licensed attorneys are not actively practicing, I would suggest an exception for people who are actively licensed but not actively practicing law. That itself might require some careful drafting as technically a lot of the work of a real estate broker is technically the practice of law.

I would also suggest an exception which would expressly apply to those who generally do practice law, but are in between jobs. It should be clear that those attorneys are not violating any new rule.

If you don't create such exceptions, or maybe even if you do, you could create a status that allows licensed attorneys to go to an inactive status with an ability to come back at any time to active as long as they maintained CLE requirements the entire time they are inactive. Attorneys not actively practicing should not be required to pay malpractice insurance just to maintain their ability to practice law at a later date.

Kary L. Krismer
Managing Broker
John L. Scott/KMS Renton
206 723-2148 (direct)
425 272-2734 (fax direct)
425 227-5224 (fax office)

Our Facebook Page: Kary and China

From: Denise C
To: Mandatory Malpractice Insurance Task Force
Subject: Malpractice Requirement Possible?
Date: Monday, December 11, 2017 9:26:41 AM

To Whom it May Concern:

I currently have malpractice insurance because I prefer to have it and because I must have it for my LLC in Wisconsin. However, I am moving to Canada later in 2018 and winding down my LLC some time in the next 12 months and putting my Utah and Wisconsin bar licenses on "inactive" status in the next while and do not plan to have malpractice insurance other than any tail I need to buy.

I plan to keep my WSBA active because you have the best association, esp. with the Legal Lunchbox program which allows me to stay up on CLE for free and conveniently. Also, this is the association with the best customer service.

I do NOT plan to practice law, but want to know if WSBA will requires me to have malpractice insurance to remain an active member? If so, is there some plan that I can buy through the WSBA for my unique situation given that I won't be practicing law?

Sincerely,

Denise Ciebien
(435) 770-0485 mobile, for texts & calls, but if the calls do not go through, then...
(715) 795-3798 landline
WSBA #24372
Utah #13046
WI #1099706

Ciebien Law Office, LLC

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From: Darcia Tudor
To: Sherry Lindner
Subject: Referendum Process
Date: Monday, December 11, 2017 11:59:05 AM

I am more concerned about why— we cannot get health insurance as a group. What I need most is the buying power of a large organization to reduce my health insurance costs.
With Warmest Regards,

Darcia C. Tudor, JD, LMHC, CWM

www.darciatudor.com
T~206.547.3166/ F~425.576.7411
Office Location:
5400 Carillon Point
Kirkland, WA 98033
Mailing Address:
6619 132nd Ave. NE
PO Box 228
Kirkland, WA 98033

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Rachel Konkler

From: Mandatory Malpractice Insurance Task Force
Subject: RE: LLLT

From: [REDACTED] [[REDACTED]]
Sent: Thursday, December 14, 2017 11:04 AM
To: Bobby Henry
Subject: LLLT

Actually, the Supreme Court should re-evaluate their creation of this group. These individuals set up as equal to lawyers (witness listing them in the directory of lawyers) and, yet, it appears that this may not be a "profession" for them. Check the numbers of this limited practice individuals for % of those removed or resigning.

Also, the Court and the Bar need hard data regarding attorneys not carrying malpractice insurance. How many are solo practitioners? How many are females? How many years of practice do they have? How many malpractice and/or ethics complaints have been registered against these attorneys? What is the income after expenses of these attorneys? How many practice from their homes or low-rent locations? All of this information needs to be compared to those who carry malpractice insurance. Can any conclusions be reached regarding this?

Vicki Lee Anne Parker,
Attorney at Law

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Rachel Konkler

From: [redacted]
Sent: Thursday, December 14, 2017 11:12 AM
To: Bobby Henry
Subject: Mandatory Malpractice

Also, an analysis should also review those who are rural practitioners separating rural Eastern WA and Western WA

Vicki Lee Anne Parker,
Attorney at Law

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From: [redacted]
To: Rachel Konkler
Subject: Re: Your Comments re Mandatory Malpractice Insurance
Date: Friday, December 15, 2017 9:25:24 AM
Attachments: image001.png

I do hope they will be circumspect about this task and undertake careful examination of the factors mentioned previously.

Vicki Lee Anne Parker,
Attorney at Law

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Leonard Weiner Law, PLLC
Attorneys and Counselors at Law
5599 San Felipe, Suite 900, Houston, TX 77056
Phone (713) 624-4294 / National (800) 458-2331 / Fax (713) 583-1380

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Leonard Weiner, JD, CPA, MBA, AEP®
Certified in Tax Law and in Estate Planning & Probate
Law by the Texas Board of Legal Specialization;
Certified in Elder Law by the National Elder Law Foundation
Direct Line (713) 624-4296
LWeiner@LWeinerLaw.com

Jessica C. Estrada, JD
Direct Line (713) 624-4298
JEstrada@LWeinerLaw.com

December 13, 2017

Washington State Bar
1325 Fourth Avenue, Suite 600
Seattle, WA 98101

Re: Task Force regarding Mandatory Malpractice Insurance

Dear Sir or Madam:

I am an attorney licensed in the state of Washington and currently living and working in Texas.

If a mandatory malpractice insurance requirement is implemented, I recommend and request that there be no malpractice insurance requirement for attorneys who do not have an office in Washington.

My understanding is that Oregon's State Bar has a Professional Liability Fund ("PLF") for its attorneys but PLF applies <u>only if</u> the individual attorney engages in the private practice of law in Oregon and maintains his or her principal office in Oregon. See ORS 9.080(2)(a) and (c) and PLF Policy 3.180. See the photocopy enclosed.

A requirement to maintain malpractice insurance in a state in which an attorney does not practice would be a burden to many attorneys who, like me, practice in another state.

I would be happy to speak with members of the Task Force if they wish to speak with me regarding this issue. My office phone number is 713-624-4294. Thank you.

Very truly,

Leonard Weiner

#219907

Exemptions from Coverage

- Principal Office Outside of Oregon

The Professional Liability Fund prepares assessment notices for all attorneys who maintain "active" membership status with the Oregon State Bar. However, **PLF coverage is applicable only if the individual attorney maintains his or her principal office in Oregon and engages in the private practice of law. You are not required or eligible to participate in PLF coverage if you maintain your principal office outside of Oregon**. ORS 9.080(2)(a) and (c) and PLF Policy 3.180.

Oregon attorneys who passed the Oregon bar exam and whose principal office is outside Oregon are not required to carry malpractice coverage with the PLF or otherwise. However, to protect yourself and your clients, you should obtain commercial malpractice coverage from carriers in the state where you maintain your principal office. The PLF will not cover you for claims arising from your acts, errors, or omissions that occur when your principal office is outside of Oregon (even if you have erroneously paid for PLF coverage).

As long as you maintain your principal office outside the state of Oregon, you must request an exemption from the Professional Liability Fund assessment each year.

COVERAGE LIMIT:

FOR In-State Attorneys required to have PLF the Limit of Coverage for the Coverage Period of this Plan is $300,000.

From:	Nadel Barrett
To:	Mandatory Malpractice Insurance Task Force
Date:	Wednesday, January 03, 2018 9:51:23 PM

Please don't make malpractice insurance mandatory.

I've had nothing but practical and financial barriers to overcome to practice law. This would be one more. I can't afford malpractice insurance so I can't volunteer for the moderate means program. I'm not employed as an attorney, so any use of my license is done part-time or less but there's no fee option for "part-time practice," just the nearly $500 fee! I have student loans to manage, and a growing family. I couldn't handle the fees for my license if malpractice insurance was mandatory.

Nadel

From: Emily Martin
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory malpractice
Date: Tuesday, January 09, 2018 12:36:49 PM

As a licensed attorney who works for the government in a job where I am not required to have a licenses, maintaining my bar status is already a huge optional expense I maintain because I believe is mutually beneficial for myself and the legal community. I'm very active at the local, state and national level. My work does not reimburse any of these many expenses. I have no use for the insurance, and so the extra expense would be unjust and unwise

Sent from my iPhone

From: Laura King
To: Mandatory Malpractice Insurance Task Force
Subject: Request for more information
Date: Tuesday, January 09, 2018 2:49:03 PM

Hello,

I am interested in learning more about this task force and possibly contributing to the discourse.

I look forward to hearing from you.

Regards,

--

Laura E. King
Ad Hoc | Legal Group, PLLC

1037 NE 65th St. # 80315
Seattle, WA 98115
206.395.5182 (Direct)
adhoclegalgroup.com

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From:	Laura King
To:	Mandatory Malpractice Insurance Task Force
Subject:	Re: Automatic reply: Request for more information
Date:	Thursday, January 18, 2018 8:54:49 AM

To the Mandatory Malpractice Insurance Task Force:

As a newer lawyer and military spouse to an active duty serviceman, **I am opposed to this measure**.

Malpractice insurance is not always available to me. I have been in a two-year process of attempting to obtain malpractice insurance and have run into roadblock after roadblock. Because of the different states I'm licensed in (or have been), most insurers will not even write me a policy because they themselves are not licensed in that combination of states. In fact, I went inactive in a state just to overcome one roadblock to obtaining insurance even though I only recently obtained a license there. Please do not discount this problem merely because I'm a military spouse. People become licensed in multiple jurisdictions for many reasons.

Secondly, until insurance catches up to the current legal market, the insurance market is far too rigid to impose upon those of us with innovative practices. This is my second roadblock to obtaining insurance. Most insurers would not even take the time to write a policy because of my innovative practice type. This requirement would stifle innovation in the legal market in Washington.

If the problem is malpractice, address malpractice. Please do not impose another barrier on launching a law practice. Alternatively, provide more support for the ethical practice of law, and, if intervention is required, help the insurance market catch up to the needs of the legal community by updating their archaic and ill-adapted underwriting system.

Thank you,

Laura E. King

Sent from mobile device

On Jan 9, 2018, at 4:49 PM, Mandatory Malpractice Insurance Task Force <insurancetaskforce@wsba.org> wrote:

> Thank you for submitting your comments to the Mandatory Malpractice Insurance Task Force for its consideration. To learn more information about the work and progress of the Task Force, visit the Task Force webpage<https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/mandatory-malpractice-insurance-task-force>.

From: [redacted]
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Sunday, January 21, 2018 4:05:47 PM

I was admitted to the Washington Bar in 1977. I have maintained malpractice insurance for many many years. I do not have an objection in principal to mandatory malpractice insurance. But I have two concerns with imposition of mandatory malpractice insurance. The first is the cost and the coverage. If the mandatory coverage will increase the premiums that I currently pay or the coverage and deductible that I can now choose for myself, I have no interest in having coverage imposed on me.

My second concern and my major concern is any mandatory malpractice insurance that would require me to change my current insurance carrier. I expect to retire in the next 2 to 5 years. When I changed insurance carriers in 2013 because Zurich substantially increased their rates, I was very careful to check on tail policy of the new insurance carrier. The new carrier, Hanover, had a free unlimited retirement tail that would be applicable after 3 consecutive years of coverage.

There are many of us who will retire in the next few years. Planning for a malpractice tail is part of anyone's retirement package. One of the options that I have read about mandatory malpractice insurance would include forcing us to have malpractice insurance through a particular insurance company chosen by the bar.

I do not want to be forced to change my malpractice carrier. I do not want to be forced to retire before I am ready because the Bar has instituted a mandatory malpractice requirement and I have to retired in order to obtain the retirement tail from my current insurance carrier that I have already earned and planned on.

Any plan for mandatory malpractice insurance needs to resolve the issue of retirement tails for those of us planning to retire in the next few years.

Jackie Cyphers
Jeannette A. Cyphers, Attorney at Law   WSBA #7252
P. O. Box 908
Edmonds, WA 98020-0908
425-776-5887
fax 425-640-0814

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From: Philip Friberg
To: Mandatory Malpractice Insurance Task Force
Cc: Philip Friberg
Subject: Mandatory Malpractice Insurance for Attorneys who remain licensed, active, but who do not practice or have any clients.
Date: Wednesday, February 14, 2018 12:24:27 PM

Hi,

My name is Philip Friberg, WSBA 5987.
My request is there be No Mandatory Malpractice Insurance for an attorney who still has an active license, but who is not practicing law and had no clients.

My situation is that I began practicing law in 1975.
I retired several years ago and am not doing any legal work..
I am keeping my license active and wish to do so until I have been "licensed as active" until 50 years of "practice".
I do not have any clients, nor do I ever given any advice, even if I know the answer. I do not want any way for someone to claim that I am acting as their attorney.
I always tell people to go to an active practicing attorney.
If circumstances would change financially, I may choose to go back into part-time practice.
I do not wish to have to pay for "mandatory malpractice insurance" unless I have clients and begin practicing again.
I do not wish to go inactive.
I enjoy taking CLE and keeping up in my areas of interest.
I would appreciate that my input could be given to the committee if there is one.

Thank You for your assistance.

Phil Friberg
WSBA 5987

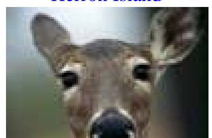
From: Merry A. Kogut
To: Mandatory Malpractice Insurance Task Force
Subject: Comments
Date: Thursday, April 26, 2018 1:46:17 PM

I am a licensed attorney but I have not practiced law in over five years. I am against mandatory malpractice insurance because I'd be forced to either purchase unneeded insurance or switch to inactive status. I do not wish to switch to inactive status because I want to retain the option to practice law again in the future without having to jump through unnecessary hoops. I am on Social Security Disability and cannot afford malpractice insurance, especially considering that I am not practicing law.

Thank you for listening.

Merry A. Kogut
16153

Merry A. Kogut, Attorney at Law
Trustee, Merry A. Kogut Revocable Living Trust
22415 So. Herron Blvd. NW
Herron Island



Lakebay, WA 98349-8143
Landline: 253.265.0060
Cell/Text: 253.884.8484
Email: merryakogut@gmail.com

From: Alexis Merritt
To: Mandatory Malpractice Insurance Task Force
Subject: Opinion of a Stay at Home Mom WSBA Member
Date: Wednesday, May 09, 2018 3:18:14 PM

Hi,

I'm not sure if this is the best forum to provide an opinion. However, I do want to let someone know that I am very concerned about this mandatory malpractice idea. I am currently a stay at home mom to a toddler and a baby on the way. We have moved out of state to be near our families during these early childhood years. I have still kept my WSBA license active and pay my dues on time every year. It is a huge financial burden to do this, but I do it because the effort to attend and excel in Law School and then to pass the Bar Exam on the first try was a huge personal and family accomplishment. We incurred numerous financial, family, and mental stresses in order to do this. I have not gone inactive because the guidance by WSBA currently indicates that I will need to submit a whole new application for review when I am ready to come back, and based on the length of inactivity, may be required to retake the bar exam! This is all while still paying a very large yearly fee to be inactive.

After all the sacrifices my family and I made to help me achieve success, I do not want to take any steps backwards in my career potential. Plus, we may not always live out of state, or I may return to work for the federal government someday.

So please make sure the wording for this "mandatory malpractice insurance" is not hinged on whether a WSBA member is registered as "inactive." There are very valid and normal reasons, especially for women taking time out to raise kids, why we would choose to keep paying the high cost of staying active, but would be very burdened in having to pay even more money for malpractice insurance we would never need.

Best Regards,

Alexis Merritt

From:	Paul Majkut
To:	Mandatory Malpractice Insurance Task Force
Subject:	retired pro bono attorney
Date:	Wednesday, May 09, 2018 11:16:26 PM

I hope that your taskforce will not recommend mandatory malpractice insurance for retired attorneys who provide pro bono legal advice to environmental groups like the Columbia Land Trust in Vancouver Wa. The Coalition of Oregon Land Trusts, of which CLT is a member, provides me malpractice insurance it has obtained at a much reduced rate. I only have to pay my bar dues and get 45 hrs of CLE every 3 years to be able to advise them. Paul Majkut Wash Bar #6523

From: Stan Sastry [mailto:stan_sastry@frontier.com]
Sent: Wednesday, May 09, 2018 11:35 PM
To: Hugh D. Spitzer
Subject: Re: Mandatory Malpractice insurance

Mr. Hugh D. Spitzer,
As chair of the Mandatory Malpractice Insurance Task Force, I am writing this letter/e-mail regarding the WSBA potentially going in the direction of requiring mandatory malpractice insurance as a part of the licensing process for lawyers.

I am extremely concerned that WSBA will ultimately require all active lawyers to carry malpractice insurance. Although things are at an early stage of discussion, my hunch is that ultimately the WSBA will require malpractice insurance. Based on this premise, I am writing you this e-mail.

I am giving you my perspective based on my situation. I am a Patent Attorney in private solo practice for more than 10 years. I practice exclusively before the United States Patent and Trademark Office. I do not currently practice law in the Courts of the State of Washington. I have no clients that require me to use the laws in the State of Washington. I only deal with the United States Patent and Trademark Office. Thus my practice has no component that deals with State of Washington laws. My admission to practice before the United States Patent and Trademark Office <u>DOES NOT</u> require me to have malpractice insurance. I am not required to have malpractice insurance to do my legal work. Thus I do not carry malpractice insurance.

If the WSBA mandates that I carry malpractice insurance, it will be a devastating blow to my law practice. This is because the cost of carrying malpractice insurance for patent practice is prohibitively expensive ($5000-$10,000 per annum). Some insurance carriers will not even insure me, because I am a Patent lawyer. Thus to lump me with other higher-risk practitioners in areas such as criminal defense, personal injury etc., is unfair.

I do not believe there is a crisis of confidence among the public for patent lawyers committing malpractice in order for the WSBA to require me to buy insurance. It is not possible to pass on the costs of having insurance to clients, given the fact that there is already a public perception that lawyers are expensive and that the public at large has a negative view of lawyers in general.

The WSBA should conduct a referendum of its lawyer members on the issue of mandatory malpractice insurance before it mandates that we carry malpractice insurance.

In conclusion, I oppose mandatory malpractice insurance because I will probably be forced out of practice if the WSBA requires me to carry malpractice insurance. I consider myself as

promoting business and economic activity because I protect my clients' novel ideas and help them start businesses with their innovations. My business is directly helpful to the economy of the State of Washington. To force me out of business by requiring me to carry malpractice insurance for an imaginary risk is unfair action by WSBA.

Sincerely,

Stanley Sastry
Attorney at Law
The Law Office of Stan Sastry PLLC
http://stansiplaw.com/
16708 Bothell-Everett Highway, Suite 104
Mill Creek, WA 98012

Phone/FAX 425-357-6241

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From: Steve Cook
To: Paul Majkut; Mandatory Malpractice Insurance Task Force
Subject: RE: retired pro bono attorney
Date: Thursday, May 10, 2018 11:27:22 AM

I am the General Counsel for Columbia Land Trust, and I'd like to second the comments from Paul Majkut, below.

We are a non-profit, private land conservation organization that works in both Washington and Oregon. We need a lot of legal work in Washington--much more than I am able to handle myself. We receive invaluable assistance from pro bono attorneys, including retired pro bono attorneys such as Mr. Majkut, who do not have their own malpractice insurance. Fortunately, we have access to malpractice insurance coverage for that work through the pro bono program of the Coalition of Oregon Land Trusts.

I would be happy to provide you with more information regarding the Coalition of Oregon Land Trusts pro bono program, and I can put you in contact with COLT so you can receive information directly. Here's the short version. Since we work in both Oregon and Washington, we belong to COLT as well as a similar organization in Washington State. COLT established an innovative program through which attorneys can volunteer to provide pro bono legal services to COLT member land trusts, and if they do, COLT has a malpractice insurance policy that covers that work. Since we and some other COLT members work in both states, the COLT program and malpractice coverage extends to work pro bono attorneys such as Mr. Majkut perform for COLT member land trusts in Washington as well as in Oregon.

If the Washington State Bar were to require malpractice insurance for retired attorneys who provide pro bono legal advice to nonprofits like Columbia Land Trust, those nonprofits would lose an extremely valuable source of pro bono legal work which allows those nonprofits to make their dollars go further, in terms of performing mission work, because they don't have to pay legal fees for some projects.

- Providing an exception where a pro bono attorney is able to access malpractice insurance through a program like COLT's would be one solution. But it would still deny those nonprofits who do not have access to a program like COLT's, including all Washington land trusts that do not also work in Oregon, access to pro bono services from attorneys without malpractice insurance, such as retired attorneys.
- So, another solution would be to exempt from mandatory coverage attorneys doing only pro bono work for nonprofits, possibly subject to some hour limit.
- The best solution would be to establish a special malpractice insurance program solely for retired attorneys proving pro bono work to nonprofits on a part-time basis. Ideally, such a program would be funded by the bar, or charitable donations. Alternatively, a mechanism that allowed for pro rated premiums for those working limited hours might make it possible for some retired attorneys to buy such malpractice coverage, or for the charities for whom they work to pay for such malpractice coverage.

Steve Cook WSBA #45687

Stephen F. Cook | Deputy Director and General Counsel

Columbia Land Trust
850 Officers' Row | Vancouver, WA 98661
{360} 213.1208 | | scook@columbialandtrust.org
Also in Astoria | Portland | Hood River
www.columbialandtrust.org

From: Paul Majkut [[redacted]]
Sent: Wednesday, May 09, 2018 11:16 PM
To: insurancetaskforce@wsba.org

Subject: retired pro bono attorney

I hope that your taskforce will not recommend mandatory malpractice insurance for retired attorneys who provide pro bono legal advice to environmental groups like the Columbia Land Trust in Vancouver Wa. The Coalition of Oregon Land Trusts, of which CLT is a member, provides me malpractice insurance it has obtained at a much reduced rate. I only have to pay my bar dues and get 45 hrs of CLE every 3 years to be able to advise them. Paul Majkut Wash Bar #6523

From: Three Pines Law
To: Mandatory Malpractice Insurance Task Force
Subject: Staying Informed?
Date: Thursday, May 10, 2018 1:55:05 PM

Hello:

I just studied the malpractice insurance task force meeting minutes provided on a WSBA email announcement. This is a topic I am very interested in because I am now an Oregon resident, required to pay malpractice insurance. This has been a hardship since I am a solo practitioner with no client base yet (precluded from practicing in Oregon *or* Washington until a member of the Oregon Bar, which took the better part of a year to establish). Having to pay insurance in two states is concerning.

I am wondering what is the best way to ensure I see updates from the task force and am notified of all opportunities to comment? I have missed several articles or updates for some reason, and didn't realize there had been a comment period although I have been trying to keep an eye out for information.

Thank you,
Kate Hawe

Kate M. Hawe
Owner
Three Pines Law & Consulting Group, Inc.
206.909.4642
threepineslaw@gmail.com
Providing legal and regulatory consulting services to the natural resources client
Licensed attorney in Washington State

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From: g m
To: Mandatory Malpractice Insurance Task Force
Subject: My opinion re manditory insurance
Date: Friday, May 11, 2018 4:10:47 PM

Here is my opinion regarding mandatory insurance. I am against any draconian mandatory insurance requirement for all active members for the following reason: As a retired judge for the past fifteen years, I have opted to remain an active member of WSBA in order to give free legal consulting to my own family members, and to those who need legal help but who are unable to afford it . If the Bar decides to make insurance mandatory for all active members, including lawyers like myself who do not accept or handle client funds, it would have a chilling effect on pro bono services throughout the State of Washington. Respectfully submitted, Paul Treyz, WSBA #16642

From: tyler@wilsonlaw.pro [mailto:tyler@wilsonlaw.pro]
Sent: Wednesday, May 16, 2018 12:57 PM
To: Hugh D. Spitzer
Cc: tyler@wilsonlaw.pro
Subject: concerns about mandatory malpractice Insurance

Dear Professor Spitzer,

As a legal practitioner licensed in the State of Washington I have been monitoring the Washington State Bar Association's ("WSBA") inquiry into mandating professional malpractice insurance for Washington lawyers. I am also licensed in the State of Idaho, which recently implemented mandatory malpractice insurance for active attorneys. The purpose of my email is to highlight a number of issues with malpractice insurance from the perspective of someone (me) who has been sued for malpractice (albeit, maliciously) in the past while being covered by malpractice insurance provided by ALPS. Here are a number of issues that I dealt with or lessons I learned that I believe the Task Force should be aware of:

1. A claim of malpractice can be used by opposing litigation counsel (either as an initial claim or counter-claim) in an attorney dispute to draw an insurance carrier into a matter to force a settlement by making a policy limits demand, thus providing the claimant with a potential windfall whether or not merited.

2. Insurance carriers manage their risk of loss and that risk of loss is without regard to the merits of the attorney's position. If an attorney has a policy that is not conducive to the litigation process and a potential pay out (i.e. a small policy), the carrier will settle the matter upon receiving a policy limits demand from opposing counsel.

3. Malpractice insurance does not exist so that an attorney can have an opportunity to disprove claims of malpractice or defend his/her reputation.

4. A carrier will take the position that their role is limited to eliminating the malpractice claim; nothing more.

5. The amount of coverage an attorney carries directly correlates to the carrier's negotiating power in a settlement and the carrier's decision to settle a matter or continue with litigation.

I don't have the figures, but I would suspect very few malpractice claims are fully litigated.

6. Attorneys with malpractice insurance can be targets for malicious claims from disgruntled clients or those dealing with financial difficulties.

7. An attorney has little control over the malpractice settlement process. If an attorney refuses to settle a matter the carrier will require signed documentation to the effect that if litigation continues and it exceeds policy defense costs will be the personal obligation of the attorney, as will any settlement or judgment – this is prohibitive to continuing.

8. Insurance carriers will require a lawyer to sign a Reservation of Rights Agreement ("RRA"), which protects the carrier from the attorney in the event the attorney takes a course of action contrary to the carrier. These are essentially contracts of adhesion, but you waive that claim in the RRA.

9. Coverage limits less than $1,000,000 per occurrence/claim are **worthless**. I've personally had an insurance carrier representative tell me that if I had a larger policy they would have fully litigated the malpractice claim that was brought against me. Instead, they settled and I was later dropped from coverage.

10. If a lawyer experiences a claim (valid or not) the annual cost of malpractice insurance goes up approximately 10X. Before ALPS dropped me my annual premiums were approximately $3,500/year, my options after I had a "loss run" exceeded $30,000 per year.

I'll leave you with my story of being sued for malpractice (all of this is in the public record) – it was from this experience that I learned the above stated lessons:

In 2011 I left the firm I was working for and started my own practice. I landed a client that operated a commercial real estate backed hard money lending business. The business was backed by passive limited partners who invested capital privately. Over the course of a couple years the client and I had a good working relationship. I prepared their private placement memorandum and drafted commercial loan documentation, but did not assist with due diligence or business operations. In early spring of 2014 the client's CPA informed me that funds were being transferred in an out of an entity that was dormant and it appeared new client investments were being used to pay returns to older investors and they were concerned about the legality of this. I investigated and uncovered what I believed to be an extensive ponzi-like scheme. I drafted a letter to the client detailing my findings and advised that I would no longer be representing the client. Upon terminating my engagement the client asked me if I was covered by malpractice insurance to which I answered affirmatively – boy was that a mistake! A month after I withdrew I received a demand letter for the client's losses – approximately $5.6 million at that time. In the letter the client specifically made a demand to my malpractice carrier and put them on notice. Litigation commenced. At the time I had $500,000 in coverage, of which $250,000 could be used defense costs – I mistakenly thought this was enough coverage. During the course of litigation the client amended the complaint and increased its claim for loss twice with the total loss claim exceeding $15 million dollars. After a year and half of litigation, despite clear facts in my favor and a strong testimony by an expert witness

that I had exceeded the standard of practice, my carrier informed me that their financial risk of loss and exposure was too high regardless of my position in the suit and they settled the matter upon receiving a policy limits demand from opposing counsel. I later learned that the former client had sued his last four lawyers for malpractice and used malpractice claims as a litigation and business technique. I was the sucker.

I leave you and the Task Force with a compound question: Why do you think insurance carriers are so supportive of mandatory malpractice insurance and does malpractice insurance primarily benefit a harmed client or the insurance carrier?

I would be happy to provide further insight if you would like. Thank you for your time.

Best Regards,

Tyler B. Wilson, Esq.

Wilson Law Group, PLLC

3325 Burke Ave. N.

Suite 423

Seattle, WA 98103

(509) 953-3059

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From:	NWLawyer
To:	Doug Ende; Thea Jennings
Subject:	FW: Letter to Editor - Mandatory Prof Liab Insurance
Date:	Thursday, May 17, 2018 11:32:19 AM

From: Inez "Ine" Petersen [mailto:inezpetersenjd@gmail.com]
Sent: Wednesday, May 09, 2018 3:51 PM
To: NWLawyer <NWLawyer@wsba.org>
Subject: Letter to Editor - Mandatory Prof Liab Insurance

Regarding the Mandatory Malpractice Insurance Task Force, how can the WSBA get accurate feedback when it is only considering "potential models for mandatory insurance" and none against? The "first and foremost" model, in my view, is status quo--not making insurance mandatory at all. Who is benefited by forced insurance anyway? Certainly not the 85% of the members who already carry professional liability insurance. Members--the ones the WSBA is supposed to be serving "first and foremost." Even if the WSBA arranges for a significant savings, that is still not a reason to make insurance mandatory. I recommend this task force be disbanded to help reduce mission creep at the WSBA. Mission creep--the only reasonable explanation for a 40% increase in dues this year--an increase which allowed no voice of dissent . . . or assent for that matter.

Inez Petersen
WSBA #46213
cell 425-255-5543

From: Philip Friberg
To: Mandatory Malpractice Insurance Task Force
Cc: Philip Friberg
Subject: Mandatory Malpractice Insurance
Date: Sunday, May 20, 2018 12:35:52 PM

Hi to Each Member of The Committee:

1. I have emailed once before regarding a class of attorneys who are "RETIRED, not practicing at all" attorneys who want to keep their license active, take CLE's and keep up on the law. I am doing this as a "financial backup plan" for my retirement. If I had to, I would reenter the active practice of law and obtain Malpractice Insurance. I maintained Malpractice Insurance and obtained a Tail Policy upon leaving, retiring from active practice several years ago. I had practiced since 1975 and had been covered by Malpractice Insurance at all times except for about 1 year in 1977-78. From then on, I always carried Malpractice Insurance.
2. I would like to have your committee recommend an Exemption of attorneys who are keeping an active license, but who are not practicing. An attorney's oath to such should be sufficient to prove that.
3. If you wanted to add some restrictions to that idea, perhaps only grant it to attorneys who had practiced more than 20 (30 or 40) years and would swear they are not actively practicing.
4. It would be a undue and unfair burden to my retirement to have to pay for mandatory insurance.
5. I turn down doing even simple wills or casual advice asked by friends or relatives.
6. I would appreciate a reply from someone on the committee that this "exemption" for non-practicing attorneys, retired, but wish to maintain an active license is being considered.
7. I looked into the option to put my license "on hold", but choose keeping it ongoing to be much simpler and I enjoy taking CLE classes.
8. I wish to attend "the 50 year celebration" for folks who have been attorneys for 50 years.
9. So far, I have never had a malpractice claim, and maybe that could be another "exemption consideration"?

Thank You very much for considering my "Exemption Request".

I would appreciate hearing from someone that you are considering my request.

Sincerely,

Philip E. Friberg
WSBA 5987

From:	Hugh D. Spitzer
To:	[redacted]
Cc:	Doug Ende; Thea Jennings
Subject:	Your Recent Comments
Date:	Saturday, June 23, 2018 6:15:03 AM

Dear Mr. Friberg,

I chair the WSBA's Mandatory Malpractice Insurance Taskforce, and I just read your May 20 email with comments on the concept of requiring professional liability insurance. Toward the end of your note, you asked that someone at the Taskforce get back to you to let you know if we are considering your suggestion that there be an exemption for lawyers who choose to maintain their licenses but declare that they are not practicing law. That exemption idea is definitely on the list.

I'm assuming that the reason you choose to remain "active" is the hassle of being inactive but later returning to active status. I just reviewed the rules on that, and it does appear to be somewhat complicated. (https://www.wsba.org/docs/default-source/licensing/status-changes/facts-to-active-from-inactive.pdf?sfvrsn=a6ae3af1_2).

In any event, while I don't know where the Taskforce will land with respect to your suggestion, it's definitely on the list.

Hugh

Hugh Spitzer
Professor of Law (Acting)
University of Washington School of Law
Box 353020
Seattle, WA 98195-3020
206-685-1635
206-790-1996 (cell)
Papers on SSRN: http://ssrn.com/author=1514923

From: Hugh D. Spitzer
Sent: Saturday, June 23, 2018 6:23 AM
To: 'inezpetersenjd@gmail.com' <inezpetersenjd@gmail.com>
Subject: WSBA Malpractice Insurance Taskforce

Dear Ms. Petersen,

I chair the WSBA's Mandatory Malpractice insurance Taskforce, and I just read your May 9 comment letter that you sent to NWLawyer. (I read every comment we receive.) I want to assure you that the Taskforce is definitely considering the "do-nothing" option, and has from the beginning. But based on the Taskforce's most recent meeting, I'm pretty sure that we won't make a "do-nothing" recommendation. AT the same time, we have worked hard to base any recommendation on hard facts rather than concerns in the "feel-good" category.

There is one thought in your email that I would like to engage on: your suggestion that the WSBA exists "first and foremost" to serve the state's lawyers. When you look at the WSBA's mission statement (https://www.wsba.org/about-wsba/who-we-are) you'll see that "The mission of the Washington State Bar Association is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice." That directive, which our State Supreme Court has underscored, is driving our Taskforce work. The WSBA definitely serves lawyers. But you'll note that serving the public is placed ahead of serving lawyers in that sentence. ☺

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Hugh Spitzer
Professor of Law (Acting)
University of Washington School of Law
Box 353020
Seattle, WA 98195-3020
206-685-1635
206-790-1996 (cell)
Papers on SSRN: http://ssrn.com/author=1514923

Starfish Law PLLC
Inez PETERSEN, WSBA #46213

1166 Edel Ct., Enumclaw, WA 98022-2137
Telno 425-255-5543 InezPetersenJD@gmail.com
http://StarfishLaw.com

June 25, 2018

Dear Prof. Spitzer:

Thank you for asking for my opinion. Most of my 30 years at Boeing were spent as a lead computer programmer. I am used to thinking creatively and speaking frankly--no reason to change now.

Mission statement of WSBA

I believe the mission statement for the WSBA is wrong.

"Serve the public" should come AFTER "the members of the Bar." We're the ones serving the public, we need the WSBA to serve and support us--to facilitate our serving the public.

The WSBA is a non profit organization registered under the laws of the State of Washington:
https://www.sos.wa.gov/corps/business.aspx?ubi=604158177

WSBA was probably formed under RCW 24.03 but possibly RCW 24.06. Both have loyalty provisions in them.

Mission statement of your taskforce

I also believe the mission statement for your taskforce is wrong. The 85% who DO have insurance (statistic from NW Lawyer) do not need your taskforce; and your mission regarding the 15% who do NOT have insurance is to figure out why and remove that obstacle. This has nothing to do with mandatory insurance! I would surprised if I do not speak for the majority of WSBA members regarding these two points.

First and foremost question

But we'll never know if I am right because WSBA leadership does not support a bar-wide LISTSERV (or equivalent) which would enable attorneys to freely communicate with one another. NW Sidebar does not meet this need, nor do the LISTSERVs which individual sections may have.

So did the taskforce find out why the 15% do not have insurance? This would be the first and foremost question.

What do the stats indicate?

As reported by this webpage, https://www.wsba.org/docs/default-source/licensing/membership-info-data/countdemo_20180601.pdf?sfvrsn=ae6c3ef1_30, there are:

Active lawyers = 25,930 and solos = 7,689
85% of 25,930 = 22,041 attorneys have legal malpractice insurance
15% of 25,930 = 3,889 est do not have insurance
15% of 7,689 = 1,153 est do not have insurance
Attorneys who did not bother to respond = 10,343
10,343/25,930 = apparently 40% have given up on the WSBA and didn't even respond
And another 40% have employers who pay their insurance (gov't/public sector, in house counsel, large law firms)

Do these stats support the need for mandatory malpractice insurance? I don't think so.

Nor do I believe that the State Supreme Court is driving your taskforce. State Supreme Court Justices are too busy to contribute to the mission creep at the WSBA. Ideas like mandatory malpractice insurance probably come from WSBA leadership and are funneled upward to the Supreme Court, just like what occurred with the 40% dues increase and snuffing the members' right to referendum contained in the Bylaws.

The LLLT program probably arose in the same way--not because there was a shortage of Family Law attorneys but because the WSBA leadership wanted to be first in the nation to adopt such a program. Could the real motivation behind mandatory malpractice insurance be that WSBA leadership wants Washington to be among the first group of states to make such insurance mandatory? "Leading edge" doesn't necessarily mean "best for WSBA members."

Thinking faulty from originator of the bad idea

This ABA article talks about mandatory malpractice insurance: https://www.americanbar.org/groups/bar_services/publications/bar_leader/2003_04/2804/malpractice.html

Quoting from this article, " “We require liability insurance for everyone who has a license and drives a car, and a car can do a lot of damage,” . . . “Why can’t we see our way for attorneys to have liability insurance?"

The driver's license analogy is inappropriate because drivers don't have the equivalent of RPCs, ELCs, or the Attorney's Oath to govern their behavior.

If cost is the major issue for some of the 15% who do NOT have insurance, they may be forced to quit practicing law which could result in reduced *pro bono* hours.

If cost is a major issue for some of the 85% who DO have insurance, they also may be forced to cut back on *pro bono* hours to generate income to pay for the mandatory insurance.

Cost of mandatory malpractice insurance

Are we to believe that if insurance becomes mandatory, it will be cheaper? It sure didn't work that way for my Plan D prescription meds and my regular medical insurance coverage. See this article from Forbes entitled "Yes, It Was The Affordable Care Act That Increased Premiums" at this URL:
https://www.forbes.com/sites/theapothecary/2017/03/22/yes-it-was-the-affordable-care-act-that-increased-premiums/#5ee6af6a11d2

How is the taskforce going to protect attorneys from this very phenomenon? Attorneys subjected to mandatory insurance would be ripe for exploitation as a "captive audience."

How to "sweeten the pot"

I look at mandatory insurance as an unfunded mandate. And if the WSBA were truly supporting attorneys, it could provide relief in a variety of ways other than burdening attorneys with mandatory insurance.

How about a rebate on bar dues for those attorneys who voluntarily purchase insurance?

How about forming a pool for the 15% so that they can get insurance at a REASONABLE COST? I could find no carrier except Zurich which would cover a solo attorney. Even the carrier promoted by the WSBA website doesn't ensure solo practitioners.

Zurich also raises its rates automatically each year and having no claims does not matter. Car insurance doesn't work that way.

If the WSBA could form a pool which would provide reasonably priced insurance for solo attorneys, or any attorney for that matter, which does not increase each year based on years of practice, that would be value added to members.

I have had insurance since Day One, but it is getting so expensive, I am actually considering not buying it next year. I made $357 being a lawyer on my last income tax return. Because I am retired and am a second-career attorney, I work *pro bono* for people who would otherwise fall through the crack for lack of money to pay for legal help. I could be one of the attorneys forced to give up my bar card because of mandatory insurance. My insurance cost $1800 for 2018.

IOLTA slush fund

IOLTA makes buckets of money as shown here:
https://legalfoundation.org/wp-content/uploads/2017/05/GR2017.final_.pdf

This webpage indicates that staff and administrative costs run in the $1.5 million range.

Some IOLTA funds could be directed toward helping lawyers pay for malpractice insurance, perhaps pro-rated by how many *pro bono* hours the attorney worked each year.

Some IOLTA funds could be directed toward paying uncollectable judgments resulting from legal malpractice. Apparently the Client Protection Fund is not adequately meeting this need. https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/client-protection-fund

Another referendum could be on horizon

I believe there is a possibility of another referendum to eliminate mandatory insurance. WSBA leadership would have to ignore the Bylaws again to quash it; and that would decrease their popularity even more.

That huge 40% dues increase is yet another reason why mandatory insurance may not be appreciated by a majority of WSBA members.

Political agenda

And just a thought upon closing, how much of our WSBA dues is being spent on political agendas of WSBA leadership as opposed to the wishes of the majority of WSBA members? In the coming days, court decisions may affect the relationship between WSBA leadership and WSBA members and their dues. It will be interesting to see how things shake out.

For example, if dues can't be used to support political agendas without an attorney "opting in," WSBA leadership may find themselves out of step with the desires of the majority.

Right now, WSBA leadership does not know what its members support. Governors distribute newsletters prepared by WSBA leadership, and there is no functional communication between members and "WSBA Central."

Two remaining questions

And a basic legal question--how political can a non profit get?

What other professions require mandatory malpractice insurance?

Summary

In summary, if the WSBA can form a pool which results in lower insurance rates, with no annual increases based simply on years of practice, I would support the formation of such a pool, but I would not support making insurance mandatory under any circumstances.

What is the real justification for this anyway? So what if approximately 3,800 out of 26,000 attorneys don't have insurance? Does that really justify making insurance mandatory?

Back in my Boeing days, besides "Better, Faster, Cheaper" as a guiding principle, in problem solving meetings, we would keep asking "So what?" until we exposed the root cause of a problem. It also exposed when there was no problem because it put the facts into perspective. That is why I asked "So what if 3,800 out of 26,000 attorneys don't have insurance?"

Respectfully yours,

Inez Petersen

WSBA #46213
Starfish Law PLLC
1166 Edel Ct, Enumclaw WA 98022
Cell 425-255-5543
Email InezPetersenJD@gmail.com
Website http://StarfishLaw.com

WSBA Malpractice Insurance Taskforce

1 message

Hugh D. Spitzer <spith@uw.edu> Sat, Jun 23, 2018 at 6:22 AM
To: "inezpetersenjd@gmail.com" <inezpetersenjd@gmail.com>

Dear Ms. Petersen,

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There is one thought in your email that I would like to engage on: your suggestion that the WSBA exists "first and foremost" to serve the state's lawyers. When you look at the WSBA's mission statement (https://www.wsba.org/about-wsba/who-we-are) you'll see that "The mission of the Washington State Bar Association is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice." That directive, which our State Supreme Court has underscored, is driving our Taskforce work. The WSBA definitely serves lawyers. But you'll note that serving the public is placed ahead of serving lawyers in that sentence. ☺

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Hugh Spitzer

Professor of Law (Acting)

University of Washington School of Law

Box 353020

Seattle, WA 98195-3020

206-685-1635

206-790-1996 (cell)

Papers on SSRN: http://ssrn.com/author=1514923

From: Hugh D. Spitzer
Sent: Monday, June 25, 2018 6:59 AM
To: 'Inez "Ine" Petersen' <inezpetersenjd@gmail.com>
Subject: RE: WSBA Malpractice Insurance Taskforce

Ine,

Thanks for your additional thoughts. I'll pass them along to the Taskforce.

Although the WSBA was created as a nonprofit entity, the Bar Act declares it to be an agency of the State. Court rules make it clear that the WSBA is under the jurisdiction of the State Supreme Court.

As you may be aware from a recent letter from the WSBA president and from discussion in NWLawyer, there is some discussion of whether the organization should be split in two, with many of the lawyer-serving functions spun off to a voluntary nonprofit corporation, and the regulatory and public-focused functions kept with a state agency under the jurisdiction of the Court. This might not be a bad idea, but that's obviously a different topic than the Taskforce is entrusted with.

Hugh

From: Inez "Ine" Petersen <inezpetersenjd@gmail.com>
Sent: Monday, June 25, 2018 12:56 AM
To: Hugh D. Spitzer <spith@uw.edu>
Subject: Re: WSBA Malpractice Insurance Taskforce

Please see enclosed letter.

On Sat, Jun 23, 2018 at 6:22 AM, Hugh D. Spitzer <spith@uw.edu> wrote:

> Dear Ms. Petersen,
>
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University of Washington School of Law

Box 353020

Seattle, WA 98195-3020

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206-790-1996 (cell)

Papers on SSRN: http://ssrn.com/author=1514923

From: Hugh D. Spitzer
To: Angus Lee
Cc: PJ Grabicki; Dan Bridges (DanBOG@mcbdlaw.com); Rajeev Majumdar; Thea Jennings; Rachel Konkler; Doug Ende
Subject: RE: Malpractice Insurane
Date: Tuesday, July 31, 2018 7:28:34 AM

Dear Mr. Lee,

The idea you have suggested is the approach that South Dakota uses. It appears to have been pretty effective in reducing the number of uninsured lawyers in that state. It's hard to tell how well it would work here. The downside that our task force identified was that there are still consumers of legal services in South Dakota being represented by attorneys who don't cover professional liability insurance.

The approach we have tentatively thought would work best is the one that Idaho just adopted—required insurance, purchased on the open market. Idaho has pretty low mandatory levels: $100K/$300K. Apparently no lawyer in Idaho has been unable to find a plan, and the premiums for newly-insured solo and small firm lawyers are quite low.

We'll have more information on the task force's interim report in the August NW Lawyer.

I'll pass your comments on to the entire task force.

Hugh

Hugh Spitzer
Professor of Law
University of Washington School of Law
Box 353020
Seattle, WA 98195-3020
206-685-1635
206-790-1996 (cell)
Papers on SSRN: http://ssrn.com/author=1514923

From: Rajeev Majumdar <rajeev@northwhatcomlaw.com>
Sent: Monday, July 30, 2018 5:56 PM
To: Angus Lee <angus@angusleelaw.com>
Cc: Hugh D. Spitzer <spith@uw.edu>; PJ Grabicki <pjg@randalldanskin.com>; Dan Bridges (DanBOG@mcbdlaw.com) <danbog@mcbdlaw.com>
Subject: RE: Malpractice Insurane

Dear Angus,

Thank you! I think you describe something which some other states have used. I am forwarding on your suggestions to Hugh Spitzer the Chair of the task force, and P.J. Grabicki and Dan Bridges the governors (or soon to be governors) on the task force as well.

Warmly,

Rajeev D. Majumdar, President Elect
Washington State Bar Association
(360) 332-7000
FAX: (360) 332-6677

From: Angus Lee [mailto:angus@anguslеelaw.com]
Sent: Monday, July 30, 2018 6:39 AM
To: Rajeev Majumdar
Subject: Malpractice Insurane

President-elect:

Just a thought on the malpractice insurance issue. As you know, many are against forced entry into a market they see as unnecessary and cost wasting. No doubt you have heard from semi-retired members who only do public interest charity work or help out friends, who would give up their license before paying for coverage.

Why not just make it an RPC that any lawyer practicing without insurance must give written notice to the client that they are not covered by malpractice insurance?

Those of us who practice in criminal defense often use a "fixed fee" agreements that the RPCs already require be in writing and provide certain notices to the client.

I don't think anyone could object to being required to provide a truthful notice to clients. This notice would let the client decide if the lack of insurance is an issue but they would never be surprised.

Many client's would balk at being represented after at such notice, meaning the market would incentivize the uninsured lawyer to seek out coverage when and if necessary.

This approach respects the freedom of individual lawyers not to insure if they so choose. It is an easy first step. If it does not work, the mandatory insurance rule could be readdressed.

Angus Lee Law Firm, PLLC
www.AngusLeeLaw.com
MAIL: 9105A NE HWY 99 STE 200, Vancouver WA 98665
Phone: 360.635.6464
Fax: 888.509.8268

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From: Goodwin, Traci
To: Mandatory Malpractice Insurance Task Force
Subject: proposed mandatory malpractice insurance
Date: Thursday, August 02, 2018 11:42:01 AM

Dear Sir or Madam – As a member of the bar since 1985, I believe that mandatory malpractice insurance is generally a good idea for many members. However, I think there should be specific exemptions for government attorneys, such as myself, and for other specific groups. Some of the other groups who should be exempt are in-house counsel, attorneys on disability leave, and honorary members. Thank you for considering my comments. Yours truly, Traci Goodwin

Traci M. Goodwin
Senior Port Counsel
(206) 787-3702

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From: Ronnie Rae
To: Mandatory Malpractice Insurance Task Force
Subject: Question
Date: Thursday, August 02, 2018 11:43:29 AM

Good morning,

I have reviewed the latest WSBA Mandatory Insurance bulletin. Will this require individuals who maintain a license but do not practice to have insurance?

Ronnie Rae
34606

From:	Hugh D. Spitzer
To:	[redacted]
Cc:	Rachel Konkler; Doug Ende; Thea Jennings
Subject:	FW: Question
Date:	Monday, August 13, 2018 2:28:07 PM

Hi,

I'm chairing the WSBA's Mandatory Malpractice Insurance Task Force. We recently made tentative interim recommendations to the WSBA Board of Governors, but we're working hard on the details of what we'll recommend. One of the specific topics we discussed at our last meeting is whether we should suggest an exemption for licensed lawyers who sign a declaration that they are not engaged in any practice of law. We have become aware of a number of attorneys who maintain their full licenses even though they don't practice. They do this either because they think they might go BACK into practice and don't want some of the burdens associated with moving from "inactive" to "active" status, or because they have retired but they expect to maintain their active status until they have hit the 50-year mark. I don't know what our final recommendation will be, but this issue is definitely on the agenda.

We have passed your question (and my answer) on to the entire Task Force.

Hugh Spitzer
Professor of Law
University of Washington School of Law
Box 353020
Seattle, WA 98195-3020
206-685-1635
206-790-1996 (cell)
Papers on SSRN: http://ssrn.com/author=1514923

-----Original Message-----
From: Ronnie Rae [redacted]
Sent: Thursday, August 02, 2018 11:43 AM
To: Mandatory Malpractice Insurance Task Force
Subject: Question

Good morning,

I have reviewed the latest WSBA Mandatory Insurance bulletin. Will this require individuals who maintain a license but do not practice to have insurance?

Ronnie Rae
34606

From:	O
To:	Mandatory Malpractice Insurance Task Force
Subject:	Comment on proposed mandatory malpractice insurance
Date:	Thursday, August 02, 2018 11:46:40 AM

Hello - I object to the new proposed mandatory insurance requirement.
I work for a corporation and already think the annual license fee is much too high.
Requiring lawyers to pay more is ridiculous. You should focus on LOWERING attorney fees and costs, not increasing them!
Sincerely,
D. Neil Olson
WSBA # 27759

From: Pand,Steven
To: Mandatory Malpractice Insurance Task Force
Subject: Pro Bono
Date: Thursday, August 02, 2018 11:46:59 AM

As an in-house attorney, a requirement that I carry malpractice insurance makes little or no sense. Similarly, I would be unable to provide pro bono service if it was mandated that I obtain malpractice insurance simply to volunteer my services without charge.

I find it highly unlikely that if my employer were to carry malpractice insurance they would allow me to continue to do pro bono work.

If you want to kill pro bono, pass mandatory insurance.

Steven Pand

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From:	Jane Swenson
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory insurance
Date:	Thursday, August 02, 2018 11:50:58 AM

Please take into consideration my situation. I am licensed, but I do not take cases. I teach Criminal Justice full-time at Green River College. It would not make sense or be fair to require me to pay for insurance. There are others in my same position. Thank you,
Mary Jane Swenson, #23443

Sent from my iPhone

From: Paul McIlrath
To: Mandatory Malpractice Insurance Task Force
Subject: Opposition to Mandatory Malpractice insurance
Date: Thursday, August 02, 2018 11:53:22 AM

I am opposed to requiring mandatory malpractice insurance. I believe that such a requirement will reduce the access to justice for under-served populations because it will discourage retired members of the bar from providing pro-bono services. I am soon to retire, and if not practicing other than providing pro-bono legal services, I will not want to have to pay for malpractice insurance.

I also believe that there are sufficient safeguards in place to protect the public. The current system utilized in most jurisdictions in this country, allows an injured claimant the right to sue for malpractice. The risk of losing ones savings, home and business is usually enough to encourage private practicaners to obtain malpractice insurance.

I also believe that there has to be an element of caveat emptor involved. The public must use

care in dealings with all professionals--whether they be doctors, accountants, financial advisers or attorneys. If services are not being provided in a competent way the consumer has an obligation to discontinue or report. Indeed, isn't this one of the important duties of our Bar Association, to investigate complaints against members and to take appropriate actions to address problems? I believe that relying on mandatory private malpractice insurance will do the opposite of what you may think it will achieve--rather than benefit the public, it will penalize them but limiting their access to justice.

I urge you to NOT recommend mandatory malpractice insurance.

Paul McIlrath
WSBA 16376

From: [redacted]
To: Mandatory Malpractice Insurance Task Force
Subject: Exemption for mandatory malpractice insurance
Date: Thursday, August 02, 2018 11:53:56 AM

WSBA Board,
On your considerations of a new rule to make Malpractice Insurance a mandatory term, from my 53 years of practice and the last 46 in Family Law, one of my aims in life is to deal with reality. For six years I have been retired and moved from my Seattle office and friends back to my childhood town, Spokane, and I have kept my license active, BUT I only have done and taken fee-free cases/clients, doing everything pro bono and this is mostly family-law work, so I don't need malpractice insurance, and I provide a lot of good, useful, and free advice to people, mostly employees of this retirement home in which I now live. So for active lawyers who do everything "pro bono" and no income, they/we should not be required to pay the cost of having that insurance. Require insurance and you will knock out pro bono service to society which will make lawyers have a new great reputation for being in this practice only for money, costs to clients, especially those who cannot afford it. So make pro bono practice an exclusion for the requirement.
Ed Huneke, WSBA #565

From:	Tyson Soptich
To:	Mandatory Malpractice Insurance Task Force
Subject:	Fw: July Board of Governors Meeting Digest
Date:	Thursday, August 02, 2018 11:55:51 AM

Per the below, I understand WSBA is moving to require malpractice insurance of all bar members. I urge you to abandon this requirement, as it adds unnecessary costs and barriers to the practice of law, and may conflict with or be duplicative of other risk mitigation strategies attorneys have already adopted. Furthermore, this policy would have unintended consequences, such as dissuading in-house private company attorneys like myself from practicing in any additional part-time capacity, such as providing pro-bono or otherwise heavily discounted counsel to those without access to legal services.

Respectfully submitted,

Tyson Soptich

From: Washington State Bar Association <noreply@wsba.org>
Sent: Thursday, August 2, 2018 11:33 AM
To: [redacted]
Subject: July Board of Governors Meeting Digest

Washington State Bar Association

WSBA Home

wsba.informz.net

The Washington State Bar Association's home on the Internet. Our newly redesigned site offers information on becoming a licensed legal professional in Washington and member benefits.

A summary of the Board of Governors meeting July 27-28 in Vancouver, WA

Top Takeaways

1. Insurance? Members of the Mandatory Malpractice Insurance Task Force said in an interim report that they are likely to recommend malpractice insurance as a condition of licensing for all active lawyers, with to-be-determined exemptions. Before the final report is due in January, they want YOUR feedback, especially about specific details like exemptions and minimum coverage levels. More info below.
2. Insurance! WSBA has the green light to set up a private health-insurance exchange to provide another option for members across the state. More info below.
3. The board took a first look at WSBA's draft 2019 budget, which will be on the agenda for action in

September. Subject to Washington Supreme Court review, all license types will have the same active member license fee—$453—next year. More info below.

4. Rules, rules, rules: Various WSBA entities have recommended amendments and additions to the Rules of Professional Conduct, Superior Court Civil Rules, Criminal Rules for Courts of Limited Jurisdiction, and Superior Court Criminal Rules. More info below.
5. We're honoring a fantastic group of legal luminaries in September—get your tickets now for the Sept. 27 annual APEX Awards dinner. You're sure to leave inspired.

Meeting Recap

- **Local Hero Awards:** WSBA President Bill Pickett presented Local Hero Awards to Lisa Lowe (nominated by the Clark County Bar Association) and David Nelson (nominated by the Cowlitz-Wahkiakum Bar Association) for their outstanding legal and community service.
- **Mandatory Malpractice Insurance.** The Mandatory Malpractice Insurance Task Force issued an interim report with a tentative conclusion that malpractice insurance should be mandated for Washington-licensed lawyers, with specified exemptions (in Oregon, for example, exempted groups include government attorneys, in-house private-company attorneys, and others). The task force's preference thus far is to mandate a minimum level of coverage, purchased through the open marketplace. Before its final report is due in January, the task force will focus on details (what exemptions? what minimums?) for rule drafting. Members are encouraged to read the interim report and provide comments to insurancetaskforce@wsba.org. Please note: Limited License Legal Technicians and Limited Practice Officers are already obligated to show proof of financial responsibility, which is typically established by certifying malpractice insurance coverage.
- **Member Health-Insurance Pool**. With rising health-care costs and uncertainty about the Affordable Care Act, members have been reaching out to WSBA over the past year asking what we can do to provide health insurance. In response, we've explored the insurance landscape and talked to members, other bars, insurance experts and officials, and various providers. Our research indicates the best potential to offer WSBA members another insurance option with competitive rates is through a private exchange. We will soon partner with Member Benefits, Inc., a company that creates private exchanges for associations such as the State Bar of Texas and the Florida Bar. We will let all members know when that benefit is available.
- **Budget and Audit Committee Recommendations**. The Budget and Audit Committee presented WSBA's draft 2019 budget for consideration to the board, which will take action on it in September. The draft budget maintains programs and services to fulfill our regulatory responsibilities, serve and protect the public, and support members to be successful in the practice of law. The budget is built on previously set lawyer-license fees of $453. As part of the budget-building process, the board approved:

- A new Continuing Legal Education (CLE) revenue-sharing model with sections. Section leaders widely expressed support for this new model.
- License fees for Limited Practice Officers (LPOs) and Limited License Legal Technicians (LPOs): After debate, both active-member fees were set at $453 for 2019 (the Budget and Audit Committee came with a recommendation of $200). The board also recommends that LLLTs and LPOs pay a $30 Client Protection Fund assessment, which would need to be specifically ordered by the Washington Supreme Court. The majority of governors decided that, as WSBA members with full access to benefits and services, LPOs and LLLTs should have the same license fees as lawyers. The Washington Supreme Court will review these fees for reasonableness.
- The Law Clerk program annual fee: After remaining at $1,500 for 20 years, the fee will increase to $2,000 next year.

- **Free Legal Research Tool for Members.** WSBA currently contracts with Casemaker to provide members with a free legal-research platform. WSBA recently launched a request for proposal and has been exploring whether to remain with Casemaker, switch to Fastcase, or offer both. To evaluate members' preference, WSBA conducted a member-wide survey with demo links, in-person usability tests, and virtual focus groups. Governors discussed the pros and cons of choosing one platform over another or even offering both. WSBA will be maintaining Casemaker and continuing to explore whether to add Fastcase as an additional member benefit.
- **Rule Recommendations from the Civil Litigation Rules Drafting Task Force:** This task force was chartered in 2016 to suggest rules necessary to implement the board's previous task force that recommended various changes to address the escalating cost of civil litigation. The recommended amendments and additions to the Superior Court Civil Rules (CR)—including 1, 3.1, 11, 16, 26, 37, 53.5, and 77—focus on the principle of cooperation and require and/or encourage cost-efficient procedures. (The full amendments are in the board materials starting on page 215.)The board will take action in September to approve the recommended amendments for submission to the Washington Supreme Court.
- **Recommendations from the Court Rules and Procedures Committee.** As part of the Washington Supreme Court's review cycle to bring rules up to date with current law, the Court Rules and Procedures Committee has proposed amendments to Superior Court Criminal Rules (CrR) 1.3, 3.4, and 4.4; Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) 4.2, 4.4, and 7.3; and Civil Rule (CR) 30. (The full amendments are in the board materials starting on page 323). The board will take action in September to approve the recommended amendments for submission to the Washington Supreme Court.
- **Amendments to RPCs Concerning Marijuana-Related Conduct.** As recommended by the Committee on Professional Ethics (CPE), the board approved for submission to the Washington Supreme Court amendments to comments to the Rules of Professional Conduct (RPC) to continue to allow Washington lawyers to assist those participating in the marijuana industry. These changes were in response to new federal enforcement priorities regarding marijuana; they remove contingency language in Comment [18] to RPC 1.2 regarding federal enforcement priorities and add Comment [8] to RPC 8.4 to clarify that a lawyer's conduct in counseling a client regarding marijuana law would not establish a basis for disciplinary action under the rule (The full amendments are in the board materials starting on page 166.)
- **Proposed Bylaw Amendment Regarding Endorsing Candidates.** WSBA bylaws currently prohibit governors, WSBA officers, and the executive director from publicly supporting or opposing candidates in an election for public office in Washington state if being an attorney is a prerequisite for office. Governors considered a proposed amendment that would extend the endorsement prohibition to any position on the Board of Governors. This amendment will be on the September agenda for action.
- **Updates from other board entities:**
  - Addition of New Governors Work Group: This group met for the first time in July with a second meeting scheduled for Aug. 14. All materials are online. The group will make a recommendation to the board in September about a proposal to eliminate three yet-to-be-seated governors (two public members, one LLLT or LPO) and to allow LLLTs and LPOs to run in open governor elections in congressional districts.
  - Member Engagement Work Group: The board approved the charter and roster for a new work group to explore how to best engage members and facilitate two-way understanding.

• **Selection of 2018-2019 WSBA Treasurer.** Congratulations to Governor Dan Bridges, whom the board selected as its incoming Treasurer. Kudos and appreciation to outgoing Treasurer Governor Kim Risenmay.
• **Working Retreat:** The board held its annual retreat before the meeting on Thursday, July 26. Governors focused on communication and relationships.
• **Conversation with the Washington New and Young Lawyers Committee (WYLC).** WYLC Chair Mike Moceri and Chair-Elect Kim Sandher asked for WSBA to partner on solutions such as access to an affordable health-care exchange and reducing debt load/promoting public-service loan forgiveness for those coming out of law school.

The agenda and materials from this Board of Governors meeting, as well as past meetings, are online. The next regular meeting is September 27-28 in Seattle. The Board of Governors is WSBA's governing body charged with determining general policies of the Bar and approving its annual budget.

WSBA seal

Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539 | Map
Toll-free: 800-945-9722
Local: 206-443-9722

Official WSBA communication
All members will receive the following email, which is considered official:

- Licensing and licensing-related materials
- Information about the non-CLE work and activities of the sections to which the member belongs
- Mandatory Continuing Legal Education (MCLE) reporting-related notifications
- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications

From: Jeff Oster
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice
Date: Thursday, August 02, 2018 12:08:25 PM

Dear Task Force Members:
I read that you are recommending mandatory malpractice insurance for all WA attorneys with limited exceptions. While I understand the public policy reasons for this decision, it unfortunately demonstrates a lack of knowledge of how some (likely a small minority) of WA attorneys practice and how legal malpractice insurance from private insurance providers is available or is not available.

My situation (I do not carry malpractice insurance and never had a claim) is an example. I'm an IP attorney, also licensed at the US Patent and Trademark Office. Therefore, the insurance carriers (and I've investigated this and tried to obtain reasonable coverage) put me into a category of providing patent prosecution services. But that is a tiny fraction of my practice. And to obtain coverage, I would need to build up a massive infrastructure and overhead to comply with insurance mandatory requirements. While that infrastructure would be needed if my practice were 90%+ patent prosecution, it isn't. Instead, my LLC works in-house for selected company clients for payment (50% time) in California and starting up new companies were I am not paid but have founders equity for international life science development companies. I also take on many projects to practice in front of the European Patent Office Opposition Division (the part addressing challenges to the validity of issued or granted patents) as I have dual (US and German) citizenship and the PTAB (Patent Trial and Appeal Board) in the US where I challenge patent validity or defend third party patent validity challenges. One example is the Zebala patent where I defended a third party validity challenge (at the predecessor Board at the USPTO) as part of a contingent team representing Syntrix, a WA company. That resulted in a patent infringement lawsuit where we won a $115Mil patent infringement judgment, believed to be the largest in WA State history. I also just successfully defended an IPR (inter parties review) challenge filed at the PTAB to challenge the validity of a patent owned by The Scripps Research Institute in La Jolla, CA where the inventor later won a Nobel Prize. I could not obtain any malpractice insurance for this activity because there are no policies that address this kind of practice because it is sort of litigation and sort of patent prosecution. I am one of very few attorneys in the US who do this kind of practice who are not part of large, national or international law firms. Therefore, no policies exist for me.

Accordingly, please consider that private insurance carriers do not have policies that address fairly non-traditional practices like mine. Square pegs do not fit into round holes.

Jeffrey Oster
WSBA# 17,709

Sent from Mail for Windows 10

From: jeff@beyondthecourthouse.com on behalf of Jeff Bean
To: Mandatory Malpractice Insurance Task Force
Subject: Feedback re Mandatory Malpractice Insurance
Date: Thursday, August 02, 2018 12:09:04 PM

When considering whether to recommend that proof of malpractice insurance should be mandatory, please remember that not all active WSBA members are always practicing law.

I currently provide only mediation services. Per the RPCs, mediation is not the practice of law, but a "law related service." I carry insurance appropriate to my current mediation practice. It is much less expensive than legal malpractice insurance.

If I were required to carry legal malpractice insurance, not only would it be useless to me, but also the premiums would be a windfall to some insurer who would know they would never have a claim.

Jeff Bean
The Bean Law Firm PLLC
www.beanlawfirm.com
Seattle 206 794 5585

From: A. Stevens Quigley
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Thursday, August 02, 2018 12:20:21 PM

Task Force Members ~

I am a sole practitioner and an older member of the bar. I have always carried malpractice insurance.

I am approaching the day when I will no longer be practicing law. Once I stop practicing, I would prefer to continue being a member of the bar. Being a member of the bar provides personal satisfaction. If I am not generating revenue, it would be very hard to justify paying sizeable insurance premiums. So, I would favor an exemption for those who are legitimately not practicing law or who are retired.

The interim report seems to be somewhat harsh on sole practitioners and small firms. Perhaps, it is well-deserved. I suspect, though, that a goodly percentage of attorneys are sole practitioners or in small firms. It would stand to reason that attorneys who are sole practitioners or in small firms have a goodly portion of claims against them. Possibly the task force has done so, but I think it would be helpful for the tax force to make sure it is dealing with statistically relevant numbers.

Thank you for your service. Best regards.

~ A. Stevens Quigley

From: Bob Baird-Levine
To: Mandatory Malpractice Insurance Task Force
Subject: input
Date: Thursday, August 02, 2018 12:29:48 PM

Please do not mandate malpractice insurance as a condition of licensing. I have insurance,but I can afford it as a solo, because I have practiced a long time. We need other solos and do not need cost barriers to this type of practice. The clients can always sue attorneys, and we are well advised to get malpractice insurance accordingly, but you do not need to drive costs up for new entrants to solo practice and thereby limit access to law services for moderate income civil litigants further. If you tax a thing, you get less of it. My two cents.

Bob

Bob Baird-Levine, Attorney at Law
103 E. Holly St. Ste. 415
Bellingham, WA 98225
360-920-7839 voice or text
bbairdlevinelaw@gmail.com

From: [redacted]
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory insurance
Date: Thursday, August 02, 2018 12:37:59 PM

Hello,

I wanted to provide some feedback on the proposal to make liability insurance mandatory for all active lawyers. I am an active member of the bar but do not currently practice at all and thus have no clients. I am a government employee but not in my capacity as a lawyer. I feel strongly that this would be an extreme financial burden for anyone like me or anyone in under-paid public sector work (which pays significantly less than private sector). I stand against this proposal.

Oregon has a very different set up with insurance which cannot or could not be easily duplicated in Washington. If the proposal goes through, I would highly recommend making exceptions for public employees and those who are not actively practicing but maintain active status.

If insurance becomes required for me I would be forced to become inactive which would limit future job opportunities and be less dues for the WSBA. Thank you for your time and consideration.

Beth H., member WSBA

Sent from my T-Mobile 4G LTE Device

From: [redacted]
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Insurance
Date: Thursday, August 02, 2018 12:39:30 PM

This is a conundrum for dual licnesed attorney and CPAs. CPA E & O insurers don't issue policies if you are both. E & O carries for law practices excludes any accounting work but provides coverage with that exclusion but it is an empty promise. The clients when I do both won't be covered although my defense costs could be. The costs of running two separate practices and having two insurance policies does not provide better client protection and only will increase costs of legal services which goes against access to justice for all.

There is one company through an association that offers dual coverage through Lloyds of London and it is not cheap.

If you are truly wanting to increase the costs to the practice and the clients then set up a self-insurance fund through the bar that covers all acts but limits the amount of a claim so that the fund can remain solvent. Attorneys can then elect separate coverage if they so decide to do so..

Michael R. Jones, PLLC
Michael R. Jones
Off. (208) 385-7400
Cell (208)863-7787

From: Larry Schreiter
To: Mandatory Malpractice Insurance Task Force
Subject: Comment for Task Force
Date: Thursday, August 02, 2018 12:41:50 PM

Dear task force members:

I have been in private practice since 1981, and I have always been covered by professional liability insurance. While I support the idea that attorneys should bear professional responsibility and take it seriously, **I strongly oppose making it mandatory as a condition for licensing.**

I take this position because of a basic economic fact: once something is mandatory for every affected person in a given market, then one will see without doubt a significant increase in the already high cost of such insurance.

Insurers will have a large increase in the numbers of lawyers they will have to retain to handle defense of claims.

Insurers will need to increase their staff in order to provide and service a large increase in the number of policy holders.

The costs of all that will fall on the insureds, and even merely setting relatively low threshold limits of coverage to comply will not solve this problem:

I had the experience a few years ago of losing my excellent coverage (I had had the same carrier for a number of years) because the *broker* (not the carrier, and not I) simply decided *its* clients had to have a certain much higher level of coverage, or else they non-renewed you. The new level was out of reach for me as a sole practitioner, and was totally arbitrary and unnecessary – it just boosted earnings for the brokerage.

I was forced in just a few weeks to scramble and find a new carrier, or else suffer a gap in coverage. I was thus forced to begin all over again with a new carrier, a new retroactive date, and to undergo anew the unavoidable 30% to 40% increases in premiums each of the renewal years until reaching the fourth year of the new policy.

Mandating coverage will be easily absorbed by large firms, but the large percentage of lawyers in Washington who practice in solo settings or small firms will be disproportionately and adversely affected.

I oppose mandatory insurance as a condition to licensing.

Thank you.

Larry R. Schreiter
Attorney at Law

1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
Ph. 206-357-8480
email: larry@schreiterlaw.com

Mailing address:
Larry R. Schreiter
PO Box 2314
Issaquah, WA 98027

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From: Tom
To: Mandatory Malpractice Insurance Task Force
Subject: One last plea to stop mandatory insurance.
Date: Thursday, August 02, 2018 12:45:13 PM

I have not been able to practice law for the past handful of years because of a series of cascading health problems that followed in infection of the H1N1 flu (aka swine flu, and related to the deadly Spanish flu from a century ago). That flu bug hit me before a vaccine was available to the public. I am sure there is no shortage of other attorneys who have physical disabilities due to many other reasons, and some may be hoping to return to practice once healthy again. For those like me, who still hope at a relatively young age, to hopefully get enough relief from the medical community that I can still practice again one day, mandatory insurance will severely hamper that chance. I've kept my CLE credits current, pay my dues every year, I keep up on the new court rules and appellate cases, and as I approach my 30th anniversary as an actively-licensed attorney in this state, mandatory insurance will, absent an exemption, force me to inactive status or to resign.

I read in your report that "retired" attorneys would be exempt, but it is not clear whether an attorney who is actively licensed and not actively practicing would be considered "retired". The first time someone suggested to me that I was "retired", I admit I bristled a bit at the appellation. I am battling medical maladies which can be cured for some people, and there are new treatments and medications coming on to the market on a fairly regular basis. However, absent an exemption from mandatory insurance, the WSBA will only get $200 from me each year unless I just resign, in which case it gets nothing. That includes no contribution to the fund the WSBA maintains to pay for victims of underinsured attorneys who harm clients. Furthermore, it will delay and discourage disabled attorneys from re-entering the workforce if their health improves. The process for reinstatement from inactive status can include taking the bar exam, meaning reinstatement could take a year or more.

Mandatory insurance would also prevent similarly-situated attorneys, attorneys who want to practice part-time either because they are nearing full retirement or are stay-at-home parents who want or need to maintain a small practice from performing part-time work. One may assert that insurance companies would adjust rates accordingly, but as someone who has worked as a solo as well as the head of a small firm, I can assure you that insurance companies do not always behave in ways that are entirely predictable. Furthermore, any attorney who wants to enter the workforce, including newly-graduated attorneys, will find it prohibitively expensive to "hang out their own shingle" as the saying goes.

So, while I appreciate that the idea behind mandatory insurance is well-intentioned, but the WSBA may well see people who are temporarily out of active practice in Washington going inactive or simply resigning. Those who might be able to occasionally help a client or small number of clients will be prohibited. And most problematically, in my opinion, the idea of

mandatory insurance will have the greatest impact on parents, younger attorneys, older attorneys, and attorneys with disabilities. I can just see the lawsuits coming now, with the WSBA bearing the costs, meaning it will have to penalize the attorneys it serves to make up the difference. It is a potentially dreadful cure for an illness that might not otherwise kill the patient. If the rule is passed and I have to maintain insurance just to keep my license active, I can tell you that at the very least, this is one attorney whose annual check to the WSBA each year will get much smaller.

Thank you for your time and attention to this matter.

--tom pacher
WSBA #18273

From: Ronald Kessler
To: Mandatory Malpractice Insurance Task Force
Subject: Exemption
Date: Thursday, August 02, 2018 12:47:13 PM

I'm a retired judge. I have re-joined the WSBA but have no clients. I sit a few days a month as a judge *pro tempore* in various courts. I suggest that the definition of "retired attorney" include someone in my position.

If I do decide to represent a relative or friend it will be at no fee. Perhaps "*pro bono*" can be defined to include such.

Ronald Kessler
4958

From: Lisa DeFors
To: Mandatory Malpractice Insurance Task Force
Subject: Insurance Taskforce Report Comments
Date: Thursday, August 02, 2018 12:47:46 PM
Attachments: image003.png

Dear members of the WSBA Insurance Taskforce,
Thank you for publishing your report in the July BOG Meeting email. One quick little typo to note:

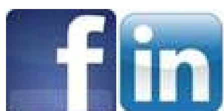
> 9. According to an ABA study, 89.1% of national malpractice claims are resolved for less than $100,000 (including claims payments and expenses). 95.2% of malpractice claims are resolved for less than $250,000. ALPS reports that based on its experience, over the past 10 years in Washington State, about half of all its claims were resolved without payment, and 97% of its closed claims were resolved for less than $250,000, including defense costs; where payments were made, its average loss payment was $60,0000, and average loss expenses were about $20,000.

Also, on the exceptions item: I am not in private practice. Rather, I work for an out of state bank (Montana) in their Compliance Department (and reside in Montana as well). I do not carry malpractice insurance for that reason. However, I pay my dues so as to continue having the priviledge of being licensed. If I were forced to obtain malpractice insurance, I would definitely revisit my licensing decision. I would encourage your taskforce to review the many ways in which lawyers work before putting this type of requirement into effect. It looks like you've already done some great research into the small firm and solo practitioner area. If that is where the bulk of the issues reside, maybe that is where the focus should be? I look forward to following the progression of thought on this issue.

-LaRissa (Lisa) DeFors
WSBA # 39080

Lisa DeFors, JD
AVP Mortgage Compliance Officer

Opportunity Mortgage | Missoula Downtown Branch
A Division of Opportunity Bank of Montana
200 N. Higgins Ave., Missoula, MT 59802
Direct: (406) 542-7513 | Fax: (406) 543-0803
LDeFors@oppbank.com



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From:	Heidi Kay Walter
To:	Mandatory Malpractice Insurance Task Force
Cc:	Charlie Brown
Subject:	mandatory malpractice insurance
Date:	Thursday, August 02, 2018 12:51:27 PM

Good afternoon Task Force Committee.
Thank you for taking on the difficult task of considering mandatory Malpractice Insurance. We share anl interest in protecting the public from unscrupulous and damaging conduct. I do not believe a blanket mandatory insurance requirement is appropriate. I will add my name to the list of existing comments provided in your July 10th report. I especially agree with "Expressed Concerns" items 3,4, and 15.

I note that concerns about "retired/retiring" attorneys would apply to others with other reasons for not presently actively practicing full-time – family caregivers, attorneys using skills in related fields but not offering insurable legal advice (eg corporate/non-profit executives, attorneys working as legal assistants/clerks, document reviewers, government affairs). My personal experiences include not practicing while I cared for an aging parent, providing pro bono services with malpractice coverage by the agency, and now working in government affairs. I would no longer be able to provide the pro bono services nor incidental assistance, should these licensing rules change.

Attorneys have an interest in maintaining our legal knowledge and licensure, without needing to pay to cover claims that cannot be made against us. Requiring attorneys to procure insurance against an activity that would not be covered would impose an undue burden on our work. I do not believe we would ever be successful in enumerating the best exemptions. Our legal skills and knowledge transcend malpractice-claim services.

I appreciate your consideration.

Thank you,
Heidi

Heidi Kay Walter
WSBA 43678
206.412.8986

From: Sara Niegowski
To: Mandatory Malpractice Insurance Task Force
Subject: Fwd: comment on Interim Report
Date: Thursday, August 02, 2018 12:59:07 PM

—Sara Niegowski

Begin forwarded message:

> **From:** Questions <Question@wsba.org>
> **Date:** August 2, 2018 at 12:28:37 PM PDT
> **To:** Sara Niegowski <Saran@wsba.org>
> **Cc:** Margaret Shane <Margarets@wsba.org>
> **Subject: FW: comment on Interim Report**
>
> A query-?
>
> Kris McCord | Service Center Representative
> Washington State Bar Association | 800.945.9722 | krism@wsba.org
> 1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
>
> **From:** Ralph Stemp [mailto:[redacted]]
> **Sent:** Thursday, August 02, 2018 12:24 PM
> **To:** Questions
> **Subject:** comment on Interim Report
>
> Please pass on to the Malpractice Task Force.
>
> I read the Interim Report. It showed a lot of good research. But, it never really stated the size of the Washington problem. How many Washington clients are hurt by not having their claims remedied by the offending attorney? Perhaps it is hard to find that data but, to me, it is unacceptable to simply guess at that critical matter and move on to pose elaborate Solutions.
>
> Without the above data I think the Malpractice idea is susceptible to the charge that it is a fine Solution in search of a Problem.
>
> --
> Ralph Stemp

From: Roger Hawkes
To: Mandatory Malpractice Insurance Task Force
Subject: mandatory insurance
Date: Thursday, August 02, 2018 1:26:48 PM

I disfavor any requirement that malpractice insurance be mandatory. There is no justification for the Bar actively promoting the well being of insurance companies and brokers. Any customers concerned about that issue can inquire; and any deceit by a Bar member about whether there is coverage would be punishable by the Bar and the customers. The folks who profit from insurance are usually the ones promoting it and providing the 'parade of horribles' evidence that persuades governors to require insurance. And there is literally no way of fairly pricing such insurance; the variety of scopes and volumes of practice and skill levels is huge.

PLEASE NOTICE OUR NEW ADDRESS BELOW, ACROSS THE STREET ALMOST FROM OUR PRIOR ADDRESS; OTHER CONTACT INFO REMAINS THE SAME

Roger Hawkes, WSBA 5173
19944 Ballinger Way NE
Suite 100
Shoreline, WA 98155
www.hawkeslawfirm.com
206 367 5000 voice
206 367 4005 fax

From: [redacted]
To: Mandatory Malpractice Insurance Task Force
Subject: Mand Malp Ins. - comment
Date: Thursday, August 02, 2018 1:32:02 PM

As an attorney who was primarily in government service as an attorney, and have not actively practiced law for the last eleven years, I want to convey my strong support for an exemption for attorneys "licensed but not actively practicing".

Your report articulates no rational basis for imposing an insurance condition on those who cannot, as a matter of law or fact, create such liabilities.

I encourage the Bar to appropriately tailor the regulation contemplated to the risk to the public, namely, those actively practicing law.

Failure to do so is likely to generate unproductive litigation without enhancing the protection the public deserves.

Yours,

Robert Cromwell

Sent from XFINITY Connect Mobile App

From: Marke Schnackenberg
To: Mandatory Malpractice Insurance Task Force
Cc: schnackenberg Marke
Subject: mandatory malpractice insurance
Date: Thursday, August 02, 2018 1:35:24 PM

Dear Task Force,

As a solo practitioner of over twenty years without a single bar or insurance type claim or complaint made against me and as an attorney who endeavors to truly keep my representation costs affordable for my clients, I object to the proposed license requirement for attorney malpractice insurance.

Truly is there hard data that shows that there were several persons in our state who were left without legal recourse against their attorney because said attorney possessed no liability insurance?

And, if they're were only a few, is it just and fair to require an entire group of persons to be insured, especially when it is already public knowledge via the bar records whether an attorney possesses insurance?

Lastly, if the Force deems the information concerning whether an attorney does or does not possess insurance difficult for the average, potential client to discover, why not require a disclosure to be made to the client at the time of service engagement instead of using a broad brush approach to deal with the attorney malpractice insurance situation?

Sincerely,

Marke Schnackenberg
Admitted May 1995

From:	jdb@wapractice.com
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory MPI?
Date:	Thursday, August 02, 2018 1:49:33 PM

Folks,

I am happily insured, but mandating malpractice insurance is a bad idea.

Every single time insurance becomes mandatory, rates are increased.

Proponents of insurance always make the argument that requiring insurance will *lower* rates for everyone for a variety of reasons - and that's never the outcome.

Requiring insurance - like any other good or service - only increases prices overall, because consumers no longer have a choice of whether to buy or not. We will all pay the increased premiums or we will not be practicing law.

JD Bristol
Legal Counsel
1604 Hewitt Ave., Ste. 305
Everett, Washington 98201
(T) 425-257-1133
(F) 253-276-4005

Member-
Washington Legal Services, PLLC
a private law firm
P.O. Box 2400
Snohomish, WA 98291

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From:	J.C. Lundberg
To:	Mandatory Malpractice Insurance Task Force
Subject:	Proposed Mandatory Insurance
Date:	Thursday, August 02, 2018 1:50:08 PM

To Whom It May Concern:

I write to express two comments on the recent report about mandatory malpractice insurance coverage.

1) Recommend the addition of "admitted but not practicing" to the list of exempted categories. As I consider the future of my career, I can see working outside of legal practice but would remain an active member of the bar. A requirement to carry unused insurance would represent a substantial economic burden for people in that situation, myself potentially included.

2) Recommend resources for small-scope plans for members interested in limited legal practice. When I first joined the bar and was working for a non-profit, and WSBA was actively seeking attorneys to provide assistance to clients as part of the moderate means program. I would've loved to take on a moderate means client or two to increase my knowledge base and make some extra money but the difficulty of securing affordable insurance for a practice of just a few clients was substantial (the thought of not maintaining insurance never occurred to me).

Respectfully,
J.C. Lundberg

From: Clifford Allo
To: Mandatory Malpractice Insurance Task Force
Subject: Attorneys Without Paying Clients
Date: Thursday, August 02, 2018 1:55:36 PM

I applaud the effort to protect clients that are injured by malpractice in fee-based arrangements. If one expects to be paid for a service, one should not regard a duty to insure the service as onerous.

I am less sure — and obviously conflicted — whether unpaid services should carry the same burden. I have had neither a traditional client nor insurance for about a decade and have no plans to take on any traditional clients. I do my CLE and pay my dues "just in case" where the unexpected might include a matter too interesting to ignore or in case my wife was unable to continue her practice. In either of these instances, I would obtain adequate coverage whether required or not.

A few, non-exhaustive categories:

1. Unpaid advisor/participant in an organization.

I am part of a Legislative District Partisan Party Organization. At times it may be difficult to distinguish my contributions to internal discussions as legal advice versus tactical assessments. I would hope my license wouldn't require me to carry insurance.

2. Unpaid agent for a bi-county duplicate bridge organization that is also a nonprofit corporation in Washington. While no longer an officer or board member, when I was a board member, I wrote the current by-laws to bring the by-laws into compliance with Washington's statutes and have annually filed the 990N report to the IRS for the organization since I brought them into compliance with IRS reporting requirements. I am also listed with the State as their registered agent for service of process. I fear that if this bundle of services — historic and continuing — required insurance coverage, I would be compelled to step back and they would quickly fall out of compliance with both the IRS and the Washington Secretary of State.

3. Service to client under the roof of a non-profit organization. Current rules and practices appear to be adequate should I decide to offer assistance in this arena and the Task Force appears to be concerned not to disrupt what is currently satisfactory.

4. A friend or family member asks for help and I agree to take the matter on at no cost. Now, there is an attorney client relationship, but I am not being paid. Would the Task Force support an exception for situations like this in which there were a written agreement defining the representation and the client's waiver of any right to pursue any deficiency in the unpaid services?

5. I do nothing at all with my license other than check the monthly journal, my mail, and my email to be sure no new duties or responsibilities have been imposed.

6. A friend asks for advice or low-level assistance. This is the difficult case. Street-corner/cocktail party consultation is part of life. I have heard Prof. Strait caution us that the "client's" impression of the relationship may well have more weight than mine. I have not had this problem in fact — to my knowledge — and am unsure I can successfully avoid some risk and retain a friend. If I had coverage, the problem might well be resolved, but it doesn't seem like a sufficient reason to require coverage in case I am insufficiently artful in navigating the gap between off-putting distance and liability-supporting conversation.

I think you can see why I believe there are some situations in which unpaid services should be exempt from an insurance requirement and I acknowledge the Task Force has already addressed some of them. If the Task Force now and the Bar and Supreme Court eventually cannot exempt situations 1. and 2. a small segment of the public will be harmed. Neither organization has another, internal resource, and neither has the monetary resources to hire paid counsel. Situation 6. is more interesting as a policy question and I believe I could both live with either decision and also defend either decision so long as the rationale from the Bar were coherrent. Number 4. may well be usefull

grist for CLE every three years for each of us. Really clear guidance on how far we can go in a conversation will always be helpful. I lean toward no liability with neither a written agreement for representation nor payment, but that's an opinion rather than an argument. #5 brings to mind an adage about sleeping dogs but reasonable minds could differ in it applicability.

The bottom line for me — in form a solo practitioner but willingly without clients — is that if insurance becomes a requirement to keep my license whether or not I am providing paid services, I'll yield my license and the WSBA will have that much less revenue wbut no savings on expenditures other than postage and printing for one member.

Thank your efforts to protect the public.

Clifford David Allo
WSBA #23595

From:	Janna Lewis
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Malpractice Insurance Comment
Date:	Thursday, August 02, 2018 2:05:45 PM

Hi All:

I am an attorney who works in government. However, I don't represent any entity in particular. While I advocate that you exempt government attorneys for mandatory malpractice insurance requirements, I would ask that you consider clear language that to include lawyers who work for government who may not be engaged in the practice of law for that government or any other client.

At this time, I pay full bar dues so that if I decide to change the direction of my career, my license will be up to date. If I were to be required to purchase mandatory malpractice insurance, I would likely change my license status to inactive for a couple of reasons. First, because my job does not require me to be a licensed attorney, my employer does not cover my bar dues or any related fees related to my being an attorney. Second, it is unlikely that this is an expense attorneys in my position can afford to pay.

I hope you consider this comment in your decisions of what to recommend regarding this topic.

Sincerely,

Janna Lewis

WA #35393

From:	Ron Santi
To:	Mandatory Malpractice Insurance Task Force
Subject:	Hopefully exemptions for insurance will be copious and sensible.
Date:	Thursday, August 02, 2018 2:21:49 PM

For me who is not engaged in active practice but who writes limited landlord-tenant correspondence in the management of family real estate holdings, and chooses to keep my license current, it is becoming increasingly onerous with the escalating dues and now insurance. So please be generous with exemptions for those of us who simply want to die with our licenses active, but who are not representing outside parties. Thanks.
--Ron Santi

From: Rodney Waldbaum
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Thursday, August 02, 2018 2:27:34 PM

After more than 46 years at the same law firm and being 72, I retired. However I still pay active Bar dues so that I can be honored after 50 years of membership. I should not be required to pay for malpractice insurance and I should be allowed to go on inactive Bar status and still be honored after 50 years.

Sent from my iPhone

From: Patrick Burns
To: Mandatory Malpractice Insurance Task Force
Date: Thursday, August 02, 2018 2:45:02 PM

Hello,

I am a retired judge. I do not practice law in any way, shape or form. I don't even advise relatives how to handle a traffic ticket. What I do though is I act as a judge pro tem in various courts. Under the rules I am required to be a member of the bar in good standing.

I do not carry malpractice insurance because all of my actions are covered by the concept of judicial immunity. I perused the report and it is not clear whether I would be required to to carry malpractice insurance. I agree that the concept of universal malpractice insurance makes sense but it seems unfair to require someone to carry malpractice insurance who doesn't practice the law at all.

Thank you,
Patrick Burns
#8390

From: David Liscow
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice insurance
Date: Thursday, August 02, 2018 2:49:52 PM

I am licensed but do not actively practice. I am in the Property Management business and the only legal work I do is the rare eviction, and I have not done one of those for 4+ years. Having to buy malpractice insurance would present a financial burden and would mean that in lieu getting insurance, I would need to no longer practice even though my practice of law is extremely limited as stated above. I am 62 years old and with the limited amount of legal work I do, I would consider myself semi-retired from the practice of law and I hope one of the exemptions would be for semi-retired attorneys.

David Liscow

Bar # 27543

From:	Donald H Graham
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory malpractice insurance - oppose
Date:	Thursday, August 02, 2018 3:04:10 PM

I am submitting comments after reading the report of the task force studying mandatory malpractice insurance:

First, the basic premise that lawyers make mistakes and therefore should pay clients for them is not true. The standard is that lawyers are liable for damages caused for acts that are "malpractice", that is falling below the standard set by those actions of attorneys with similar skill and learning in similar circumstances. By requiring insurance and informing the public that it is to cover lawyer misakes will likely increase the erroneous expectation that lawyers must financially guarantee all their work.

Historically, insurance was a resource to protect the owner of the policy not the plaintiff suing the owner. The Bar's version seems to be that insurance is to protect the public (as if lawyers owe the public some kind of private charitable fund). Where is the history for that. The report cites the fact the hospitals require doctors to carry insurance. Surely, hospitals require it because they want doctors' insurance companies to protect the hospital, not the public!

Next, clients should be expected to use common sense and perform reasonable inquiry when selecting a lawyer. California and other states require lawyers to notify clients if they do not have insurance. That should be enough. There is no need to create a private compensation fund for clients (and,as noted in the report, their plaintiff lawyers!) to draw upon when they have not inquired and made an informed decision. The Bar presumes that people with limited means or in need of a lawyer are stupid and cannot take care of themselves.

Mandatory insurance will increase costs to clients, making law even less affordable and accessible.

Only 8% of the respodents supported the need for mandated insurance. How can the committee reach a conclusion that insurance is needed when the members are overwhelmingly unsupportive?

If insurance companies know such insurance is required, and a lawyer cannot say "no" to all the companies, then prices could actually increase.

Exemptions for corporate lawyers would be rediculous. If required, the Bar should at least have companies buy malpractice insurance and certify for all their lawyers. Many companies do not carry malpractice insurance although they do carry general liability.

If less than 20% of the lawyers are uninsured, the Bar should just deal with them and talk them into it individually.

Incidentally, I have always carried malpractice insurance.

Donald Graham
22554

From: Mark Hannibal
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Thursday, August 02, 2018 3:59:49 PM

I am a retired criminal defense attorney who is now a government attorney providing advice to the US Coast Guard Auxiliary. In that capacity, I am exempted from carrying malpractice insurance and believe it appropriate to create this special exemption as is done in Oregon. I feel the purpose of the malpractice insurance is to protect the public and I do not serve in that capacity. I do, however, believe it important for those engaged in private practice to carry malpractice insurance. Thank you.

From: Dennis Smith
To: Mandatory Malpractice Insurance Task Force
Subject: Proposed Exemption
Date: Thursday, August 02, 2018 4:03:22 PM

Dear Task Force Members:

I write to propose an exemption of any rule adopted regarding mandatory malpractice insurance.

I practiced law in Seattle from 1974 through late 2010. Since that time I have been self-employed as an expert witness. In my tax returns my employment is listed as "legal consultant". I am retained in civil cases and typically testify concerning insurance claims handling.

I have maintained my license in active status (bar no. 5822). Being admitted is helpful to me in both admissibility and credibility.

I do not practice and in cases where I am retained I expressly state that I am not acting in the capacity as an attorney and do not represent anyone involved in the dispute.

It would make no sense for me or any similarly situated witness to have malpractice insurance since that coverage is predicated on some type of "practice". The public interest would not be served since I don't represent anyone in the capacity of an attorney.

I would be pleased to discuss this further if and when the task force felt it helpful.

Regards,

Dennis Smith

From: Tawnya Eller
To: Mandatory Malpractice Insurance Task Force
Subject: Malpractice insurance
Date: Thursday, August 02, 2018 4:04:57 PM

Hi,

My name is Tawnya Tangel and I would like you to consider attorneys in similar circumstances as me. I was a prosecuting attorneys for 6 years. For the past 15 years, I have been a school counselor. However, I stay active with my license because at some point(after my kids graduate from High School) I hope to return to law. Additionally, I stay active because WSBA has stipulations about being "inactive" that make it difficult to become active again (unlike Oregon, where I am also licensed). I do not practice law right now, but stay current in CLE's. I already pay out-of-pocket for bar dues and CLE's (I.e. my work doesn't pay for them). So, the thought of paying for malpractice insurance when I am not practicing law is overwhelming on my teacher salary. Please consider not penalizing attorneys who choose not to actively practice, but want to stay current.

Thank you. If you have any questions about this request, please let me know.

Tawnya Tangel
#27143

From: Robyn S
To: Mandatory Malpractice Insurance Task Force
Subject: Feedback regarding insurance requirement
Date: Thursday, August 02, 2018 4:14:49 PM

Hello Taskforce:

I would like to give you my story/feedback regarding the proposed mandatory insurance.

I am a WA licensed attorney who lives in another state, however, I did the same type of work in WA for a short time as well.

I use my license for document review work*, when there is work to be had,* as a short-term contract worker. When I work as a document review attorney for firms or agencies they will cover the insurance for while I am working for them. Projects can be as short as a couple hours or days; I am currently on a three-month project.

When I am not working as a document review attorney, I am not using my license. In the past couple of years, I have done document review for a couple of months out of the year and worked in a non-legal capacity for the rest of the year.

Here are some questions I hope your taskforce will consider when deciding on whether to impose a requirement and if so, how to carve out exceptions:

1. As a contract attorney, will a person be considered an in-house private-counsel?
2. What happens during the interim when a contract attorney does not have work?
3. Will a licensed attorney be required to get insurance while they are not working in a non-legal capacity?
4. How do you show proof that although you have an active membership in the bar you are not working in a legal capacity requiring malpractice insurance?
5. When a member is active but is not practicing what level of insurance is required? 5.1. Would the rates be so high that a person would just put their membership in inactive status until they are able to find legal employment? Consider the individual who has to pay extra fees to change status and possibly lose an offer of employment because the employer is looking for someone with an active license or is unwilling to wait the time required to change status.
6. What would you require of the unemployed attorney, who is looking for work with no success, but must keep their membership active in order to get a job? Will they be penalized? Lose their license?
7. Creates a new hurdle/ cycle - must have an active license to get a job, active license requires insurance, insurance requires money, need a job to get money.

Thank you for serving on the task force and I hope you consider my story/ feedback and related questions.
Robyn

From:	Rick Glein
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Malpractice Insurance
Date:	Thursday, August 02, 2018 4:52:21 PM

Please exempt government attorneys.

Thank you,
Richard J. Glein, Jr

Sent from Rick's
iPhone

From: attypaul@qwestoffice.net
To: Mandatory Malpractice Insurance Task Force
Subject: Insurance
Date: Thursday, August 02, 2018 6:16:35 PM

The WSBA membership should vote on the proposal
for mandatory insurance.

From: Ross Farr
To: Mandatory Malpractice Insurance Task Force
Subject: mandatory malpractice insurance
Date: Thursday, August 02, 2018 6:22:11 PM

Hello,

How would the recommended insurance requirement impact someone like me, who plans to maintain my law license but does not plan to actively practice law now or in the immediate future, while I pursue another professional career? I do not plan to relinquish my WSBA membership, in case I want to practice law again in some form in the future. However, for the time being, I do not plan to practice law. I will purchase insurance if that changes.

Ross Farr

From: Richard Peyser
To: Mandatory Malpractice Insurance Task Force
Subject: malpractice insurance
Date: Thursday, August 02, 2018 8:12:21 PM

I am a retired lawyer but maintain my active practice license so as to be able to return to the practice if I want to or need to in the future. I see that you are considering requiring malpractice insurance for all active lawyers. I would object to that requirement because I do not practice at all but keep the license to be able to practice in the future.

The bar association would be hurting itself also, because many attorneys who are in situations like myself would give up their active licenses and the bar would lose those active license dues.

Please consider exempting those retired attorneys who are not actively practicing but desiring to keep their licenses to use if need be in the future.

From:	Bloor Redding
To:	Mandatory Malpractice Insurance Task Force
Subject:	The process of retirement
Date:	Thursday, August 02, 2018 11:53:52 PM

Dear Task Force:

I have just finished reading your July 10th task force report.

I agree that your next task, creating definitions, is critical.

My Background

I am one of those folks who worked in-house for my career in the area of Intellectual Property. I retired from that job 10 years ago and taught Business Law at my local university campus which valued having a WA attorney lecturer, rather than a lay lecturer. In the distant past, I have done some consulting for corporations under the direction of other in-house counsel. I didn't take non-attorney clients. I am marked 'Active' and I do not carry malpractice insurance. I do not feel I present a particular malpractice risk, but I understand the task force feels otherwise. When I explored malpractice insurance for an occasional patent assignment, it was especially expensive.

Having never practiced family, immigration, or government entitlement law, I don't feel I would be very competent at typical ProBono tasks. Education has been my best alternative for community service; remaining an attorney offers considerable credibility in those efforts. In addition to my lecturing, I have worked with organizations like SCORE to provide legal education to small business, and taught high school and college students about patents.

However with no revenue to support a fairly large malpractice premium, I would likely be compelled to "retire" or drop my WSBA membership and cease the educational work.

My Questions

Interestingly, the WSBA and other bars don't seem to have a "retire" status. Rather, they have a "voluntary resignation" process and an "inactive" status that permits return to "active" status through some process. Some states, not WA, exempt "active" attorneys at a fairly old age (70+) from CLE. WA has an Honorary Status, which is not active, but only applies to very senior attorneys, over 50 yrs of practice.

So I would appreciate it if your task force was clear on what "retirement" looks like. Is that "active", to "inactive", to "voluntary resignation" or is it something else.

As the task force is well aware, the practice of law is quite broad these days, from in-house specialized attorneys to solo practitioners who do only limited representation transactions. From my retired in-house perspective, it would be helpful if:

1. Your definitions provide a clear path from full time practice through a partial retirement to a retirement status.
2. When you add other statuses, your definitions should address the CLE requirements for those statuses, too.
3. Are there multiple "retire" or "inactive" statuses; one if you always practiced in one of the exception areas and one requiring a tail policy?
4. What happens when you leave a "exempted practice" - must you go "inactive" to prevent

being forced into the malpractice regime until you find your next job. What happens if you only did outsourced work (always worked at the direction of another attorney) after you left the exempted practice? (See retirement work comments below)
5. What happens if you take a leave from an exempted practice to take care of a family member? Do you go "inactive" to avoid the malpractice insurance requirements until you return.
6. If you leave a law firm and go in-house, does the malpractice requirement end, or must you purchase a tail policy? Is it different if your firm was solo?
7. If most of the risks are to the public, should work for other attorneys be one of the exemptions? Many retired attorneys do work for their former employers on an occasional or overflow basis. Perhaps the "active" status could be defined as holding yourself out to the public in the practice of law.
8. How does the malpractice coverage overlap with other states which do not have malpractice coverage requirements? (I'm a member of another bar which does not have a malpractice insurance requirement.)

Thank you for your consideration.

Bloor Redding
bloor@reddingip.com

From: Capell, Jeff
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Insurance
Date: Friday, August 03, 2018 7:06:24 AM

Please do keep government lawyers and judges exempt. Requiring them to carry malpractice insurance would serve no purpose, which it seems you have already ascertained. Thank you.

Jeff H. Capell
Hearing Examiner
City of Tacoma
(253) 591-5195

From: [redacted]
To: Mandatory Malpractice Insurance Task Force
Subject: Malpractice Insurance
Date: Friday, August 03, 2018 7:20:00 AM

Exemptions

Lawyers with no clients.
Retired lawyers.
Lawyers who do not practice law.
Government lawyers.
Lawyers who Pro Tem only.

JABledsoe 28356

Sent from my iPad

From:	Michael Calligan
To:	Mandatory Malpractice Insurance Task Force
Subject:	Comments on Mandatory Insurance Interim Report
Date:	Friday, August 03, 2018 7:25:26 AM

I have read the report and have the following question/comment based solely on my situation.

I "retired" and moved from Washington to Florida almost four years ago. I have two daughters who live in Sammamish with their husbands and children. I visit them every summer. I have in the past helped them with pro bono legal services, and would like to be able to do so if the occasion ever arises.

The report references various categories of lawyers who could be exempt from the proposal that all have insurance, including "retired". My hope is that, if "retired" is to be an exempt class, it is defined so as to include those in my position.

Thank you for your consideration.

Michael D. Calligan

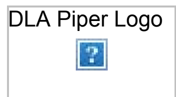
From: Freeburg, David
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Friday, August 03, 2018 9:33:44 AM

In response to a request for member feedback, I am writing to share that I strongly support a mandatory malpractice requirement as a condition of attorney licensing for practicing attorneys representing clients for profit. Malpractice insurance exists to protect our clients (not just attorneys). In my opinion, those attorneys most likely to avoid paying for malpractice insurance are probably among those most likely to need it.

However, alternative arrangements should be available for unemployed attorneys (including new graduates still looking for work), those in nonprofit or public sectors, and others who are not actively representing clients.

Dave Freeburg

T +1 206.839.4811
F +1 206.494.1811
E david.freeburg@dlapiper.com



DLA Piper LLP (US)
701 Fifth Avenue, Suite 6900
Seattle, Washington 98104-7044
United States
www.dlapiper.com

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From: Rich Davis
To: Mandatory Malpractice Insurance Task Force
Subject: Effect of Mandatory Insurance on WSBA Revenues
Date: Friday, August 03, 2018 10:29:42 AM

Dear Task Force:

I am retired from a career in engineering, but have maintained my license to practice law in this state since 1982. My only legal practice currently and in recent years is as a part-time arbitrator, work for which I receive a very small stipend, $100 per case. This is essentially volunteer work.

I propose the inclusion of additional provisions in your proposal:

1. Exempt attorneys whose sole practice includes part time arbitration, as well as full time.
2. Change the bar rules to allow return to active practice from inactive so that the attorney has the right to return to active practice without requiring consent of the WSBA. This change would allow members to eliminate insurance and CLE expenses during periods of extended travel, health recuperation or otherwise when we know we will not practice law. It also preserves the revenues of the WSBA during extended periods of non-practice, and maintains disciplinary authority over us in the event of an ethics violation.

With mandatory insurance that applies to me, I will resign from the WSBA. If many of us do likewise, the loss of revenue to the WSBA will be significant.

Richard J. Davis, P.E.
WSBA 12481

From:	Kyle Johnson
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory malpractice comments
Date:	Friday, August 03, 2018 11:26:47 AM

You might want to consider the following problems.
1). Not everyone who is licensed may be able to obtain such insurance. The insurance carrier may require full-time practice or an established office.
Part time or retired attorneys or those with a limited low or nonexistent liability practice may suffer the consequence. Or an attorney may have engaged in misconduct such that malpractice insurance is unavailable but the attorney still retains a license to practice.
2). As an Atty with 52 years in practice without a claim since I was admitted to the bar, are you really going to disbar me if I don't have malpractice insurance?
3). it might be a lot smarter to just get rid of the victims compensation fund. I have never understood why I have to be responsible in anyway for another attorney's screwup. It is pretty much of a joke.
4). This has all the earmarks of another big law firm big law move to force clients from attorneys without malpractice insurance into their clutches and justify higher fees in the process.
5). it would be a lot simpler and less regulatory to simply require Attorneys to disclose whether or not they have malpractice insurance. The client could then make the decision.
6). What about exemptions for mediators and arbitrators?
7). Worst of all is the prospect of delivering the bar into the hands of a few insurance carriers. Have you geniuses given that any real thought?

Please confirm receipt.

Sent from my iPad

Kyle Johnson
Mediation & Arbitration
600 University Street
Suite 2100
Seattle, WA 98101-4161
206-604-3810

www.kylejohnson4adr.com

From: Oliver Spencer
To: Mandatory Malpractice Insurance Task Force
Subject: Forward Regarding Mandatory Malpractice Insurance
Date: Friday, August 03, 2018 1:25:47 PM

Hello WSBA Insurance Taskforce:
I am forwarding to you comments I e-mailed to my then WSBA Governor, Ann Danieli, regarding proposed mandatory malpractice insurance back on September 8, 2017 (see below). The margins for solo practitioners are very thin, and again requiring malpractice insurance at market rates will be cost prohibitive for some members of the Bar Association. This is a consideration that must be weighed against the need for client protection and the benefits to the insurance industry.

Sincerely,
Oliver Spencer
Counselor At Law

Re: Proposal Regarding Mandatory Malpractice Insurance
Sunday, September 10, 2017 8:27 PM

From:
"Ann Danieli" <DanieliLaw@aol.com>
To:
"Oliver Spencer" < >
Raw Message Printable View
1 Files
13KB

PDF
PastedGraphic-1.pdf
13KB
Save

Thank you Oliver for jumping in early on this issue and providing very good comments.
This is my last month on the Board.
I will forward your email to my replacement Paul Swegel & to Kim Risenmay who has been studying this issue.
We are in the early stages here and there is a long road ahead for those considering this massive issue. Please stay in touch.

Ann Danieli, Governor,
District Seventh North
WASHINGTON STATE BAR ASSOCIATION
3518 Fremont Avenue North, 299
Seattle, WA 98103
(206) 919-3667
DanieliLaw@aol.com

Sent from my iPhone

On Sep 8, 2017, at 12:21 PM, Oliver Spencer <[redacted]> wrote:

Hello Ms. Danieli:
I am a solo practitioner. I absolutely agree with the majority of the WSBA in terms of the need for providing client financial protections through malpractice insurance, but the obvious reason that many solos do not have malpractice insurance is cost. The only way I would ever support mandatory malpractice insurance is if the cost of the insurance was substantially below what private insurance carriers typically charge in the free market. Otherwise, mandatory malpractice insurance is simply another financial barrier for a significant percentage of the Bar to continue practicing. Many younger and poorer attorneys will not be able to afford it.

One of the advantages of solo practitioners and small firms is that we serve clients that many larger firms will not serve. For example, I represent tenants in landlord-tenant disputes (in addition to landlords), which is not a particularly financially lucrative area of my practice. Much tenant representation is pro bono. The limited license legal technicians may address some of the ongoing need for tenant representation, but there are not even close to enough of these folks to address the overall needs of unrepresented tenants.

Mandatory malpractice insurance will drive some people from the practice of law. Poorer attorneys should not be penalized for being poor and the clients they serve should not be penalized (in terms of not having much access to legal services without the services of poorer attorneys willing to serve them). Clearly those with more resources are driving most of the decisions of the WSBA. These will be the unfortunate results of requiring mandatory malpractice insurance that is not very inexpensive and substantially below the current prevailing rates for attorney insurance consumers.

Thank you for your time. It is greatly appreciated.

Sincerely,
Oliver Spencer
Counselor At Law

From: [redacted]
To: Mandatory Malpractice Insurance Task Force
Subject: mandatory insurnce
Date: Friday, August 03, 2018 1:39:28 PM

Dear Task Force:

If you proceed with the idea of mandatory insurance, you need an exemption for people such as myself. I am currently a member of the WSBA, but I am essentially retired. I handle a few pro bono matters now and again, but my practice is extremely limited. It would not be cost effective for me to have to purchase insurance. I currently do not have insurance, because I carefully choose the matters that I handle. If I were forced to purchase insurance, I would no longer be a practicing member of the bar.

Sincerely,

David Burke
WSBA 16163

From: Glenn Slate
To: Mandatory Malpractice Insurance Task Force
Subject: Comment on mandatory insurance
Date: Friday, August 03, 2018 4:24:56 PM

As a member of the Oregon bar who worked for close to a decade as in-house counsel for a Portland tech company, and who was subject to a similar rule, let me speak out against proposed mandatory malpractice insurance.

There were many times when I would have been able to help a friend or coworker handle a simple legal issue, but was prevented because as in-house counsel I did not maintain malpractice insurance. Often the amount at issue was less than my malpractice costs would have been. But the person still needed legal help.
We are so concerned with access to justice that we allow LLLTs to help people access the courts, without ever attending law school or passed the bar. It then seems counterproductive to required trained attorneys to refrain from any practice of law unless they are maintaining malpractice insurance.

A litigant of modest means should be free to choose between an LLLT with insurance or an uninsured attorney.

Glenn Slate
Attorney | Heritage Family law
11105 NE 14th St., Suite 101 | Vancouver, WA 98684
E: glenn@heritagefamilylaw.com | **P**: 360-450-2372

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From: Three Pines Law
To: Mandatory Malpractice Insurance Task Force
Subject: Process Request - Notice & Comment
Date: Friday, August 03, 2018 5:13:39 PM

Hello:

I have skimmed the task force interim report and plan to review it more closely before commenting, but it surprises me that you have only received 69 comments on the matter of mandatory insurance. I have asked a few colleagues if they were aware of this proposal, and all said they were not. Further inquiry indicated they do not read bar emails unless the subject line intrigues them, and most have little time to read the bar's magazine (similarly, I only opened the very generic email received today because I have been aware of this issue, and hunt for updates; the subject line of a "digest" would normally dissuade me from the time needed to read the email).

Additionally, the email I opened today, including the interim report itself, made no mention of a timeframe to submit comments prior to the January 2019 final report completion date.

I would like to suggest the task force send members an email dedicated only to this topic; not included with many other topic summaries, which often get put into the "I'll read this if I have time" category (i.e., "Board of Governor's Meeting Digest"). The issue of requiring more financial resources from solo practitioners - the key target group - is *significant*, and warrants a concerted effort to reach these specific bar members. *An email with a subject line asking for comments on proposed mandatory malpractice insurance will garner attention.*

I would also like to propose a deadline be established to provide comments. Deadlines get interested parties organized to respond and, ideally, to respond thoughtfully. Further, a deadline will provide the task force with an accountable date for comment consideration in time to collate and consider the comments for the final report. A specified request for comment with a specified comment period has a proven record of proper notification and process, which is the standard protocol for proposed federal actions and rulemaking, for example.

I strongly encourage the bar to follow this federal example, and reach out to bar members in a targeted manner on this very important membership change. An email takes little time to format and send to an established mailing list; the notification benefit will far outweigh this administrative effort. For some of us, this rule could mean the end of our practice.

Thank you for considering this request,
Kate M. Hawe

Kate M. Hawe
Owner
Three Pines Law & Consulting Group, Inc.
206.909.4642
threepineslaw@gmail.com
Providing legal and regulatory consulting services to the natural resources client
Licensed attorney in Washington State and Oregon State

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From: Kenneth Dehn
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance Proposal
Date: Friday, August 03, 2018 5:44:06 PM

I am writing to express my concern about the proposal to require nearly all Washington attorneys to purchase coverage that is expensive and in some cases unnecessary. Just to be clear, I have malpractice insurance, but I think the ridged, "one size fits all" approach of the task force will unnecessarily force many solos out of the profession. I think the July 10th report reflects a bias toward large and medium-sized firms that can easily afford the coverage, and against solos who, like me, have never had a complaint or a claim against them. To me, the report smacks of elitism.

I think the recommendation that "policies should not be permitted that exclude attorney acts prior to the current year" is a real problem, and I'm surprised that there is no analysis in the report to support it. Whatever the cost of a new policy, prior acts coverage will double it for any lawyer who has been practicing for five or six years, so that the $1,200 average premium figure is not very representative. Lawyers should be able to decide for themselves whether to forego prior acts coverage if they have had a period of doing little or no legal work for whatever reason. Maybe the underwriters at the insurance company will figure the period of relative inactivity into the premium quote, or maybe they won't.

The statement in the report that "uninsured lawyers pose a distinct risk to their clients and themselves" reflects a paternalistic attitude that completely dismisses the ability of a lawyer to make a reasoned, sound decision that in some situations going without coverage (at least temporarily) may make sense, or that going without prior acts coverage may make sense. Does the task force really believe it can foresee all the possible situations and say that insurance is needed in all of them? Likewise, I think the task force is dismissing the ability of smart, sophisticated clients to make an informed decision to choose to use a lawyer who has no malpractice coverage. In some situations, that may be completely reasonable. Clients ought to be free to choose the lawyer they want.

Here are some examples of situations in which I think a lawyer could reasonably decide to forgo coverage, or to forego prior acts coverage:

1. The lawyer primarily works in-house or for the government, but does small legal projects on the side for family and friends;

2. The lawyer primarily works as a non-lawyer, but does small legal projects on the side for family and friends;

3. The lawyer takes a long sabbatical;

4. The lawyer has a period of little or no activity due to the need to care for a sick family member;

5. The lawyer has a period of needing to work drastically reduced hours due to his or her own temporary health condition;

6. The lawyer has a period of little or no activity due to transitioning from working in-house or for the government to working in private practice; and

7. The lawyer is semi-retired and only does occasional legal work for family, friends and a few long-time clients.

I hope the task force will reconsider this proposal. Unless the rule can be crafted so that no attorneys will be unjustly priced out of the practice of law, it should be rejected. The fact that large and medium-sized firms in other states have succeeded in shutting out a large portion of their state's solo attorneys does not mean it is the right thing to do here in Washington.

Respectfully,

Ken Dehn

Dehn Law Office, PLLC

(206) 484-9790

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From:	Robert Pia
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Malpractice Insurance - Comments
Date:	Saturday, August 04, 2018 11:11:12 AM

I read the interim report. I am a sole practitioner in San Francisco, CA. I have been licensed in CA for approximately 34 years, in WA for approximately 8 years. I have always been well insured for the risks posed by my relatively small practice ($1MM /$1MM in years past and $500K / $1MM now).

I have maintained coverage with the same A-rated carrier for over 20 years. The carrier does not permit sole practitioners to have a deductible in excess of $5K. The first $50K of defense costs do not count against coverage limits. Also, my carrier provides lifetime tail coverage at no charge for attorneys who retire after three consecutive years of active coverage.

My carrier also provides CLE units at no charge with enough units annually to satisfy the CA 3-year requirement. The annual insurance premium is very affordable for me, but I have never had a claim.

My thoughts:

- I have had only one case in WA in 8 years. If that is all the WA work I ever have, I probably would still continue to pay dues for an active WA license and keep up with the 45-unit WA CLE requirement every three years. However, if WA were to adopt insurance requirements not met my current policy (such as a single mandatory or captive insurance provider without exception for non-WA based attorneys), I would change my WA license status to inactive.

- My sense is some of the greatest damage done to the public is by attorneys who get into trouble, whether ethical, emotional, substance abuse, or serious health conditions. In these cases I expect there are numerous scenarios in which the attorneys stop paying for insurance. The attorneys are therefore no longer covered in a "claims-made" insurance environment, and the claims do not surface until *after* coverage ceases. The public is largely unprotected in these scenarios anyway, even if the attorney who gets in trouble had insurance while his/her license was active. A mandatory insurance

requirement would not likely solve this problem, for the most part.

- The large low-income segment of the public is under-served by the legal profession as it is. A mandatory insurance requirement would likely exacerbate this problem. A WA family lawyer (sole practitioner) who is a very close friend has taken clients with marginal ability to pay for years. He is uninsured. His bills often go unpaid. He never sues to collect fees. He has zero malpractice claims. He is disabled, effectively limiting his practice to part-time. Mandatory insurance would terminate his practice of law. The people he helps, in many cases, would otherwise be *in pro per*, which does <u>not</u> help them or the courts.

- In a free market, would it not be better to require uninsured lawyers to obtain a separate written, disclosure and acknowledgment of that fact signed by the client at the outset of the attorney-client relationship? The WSBA could provide a mandatory form with mandatory disclosure language. The WSBA could also establish a website for uninsured lawyers to upload the executed disclosure forms in .pdf format according to state bar number on a periodic basis or otherwise certify no new clients represented in the period. Failure to comply would automatically result in administrative suspension.

- Are there not areas of practice that would be suitable for exemption, particularly where the risk of merit-less malpractice claims is high and the harm caused by malpractice would seldom be meaningfully compensated with money? Criminal defense practice comes to mind.

- Conversely, instead of a sweeping requirement of mandatory insurance for all, would it not make sense in terms of protecting the public to mandate insurance for those areas of practice with the highest incidents of malpractice claims - *i.e.,* personal injury, real estate, estate planning, certain corporate practices, and collection/bankruptcy? I would *exclude* family law as to child custody, adoption, domestic violence, dependency court, and low asset /property value divorce cases.

- If the WSBA were to require mandatory insurance, should it not also assume the obligation to provide a bar-sponsored alternative insurance plan option with the minimal required coverage limits? Should an attorney lose his / her livelihood because he or she is not insurable in the private marketplace?

Bob Pia
Direct: 415-743-2898
Voice Mail: 415-249-3890
Cell: 415-308-3440
Fax: 720-367-0521

http://www.martindale.com/Robert-Joseph-Pia/241614-lawyer.htm

From:	Paul Majkut
To:	Mandatory Malpractice Insurance Task Force; Steve Cook; Nancy Duhnkrack; Kelley Beamer; Mike Running
Subject:	Mandatory Malpractice Insurance Task Force Interim Report
Date:	Saturday, August 04, 2018 9:41:15 PM

Your taskforce recommends "Malpractice insurance should be mandated for Washington-licensed lawyers, with certain exemptions," including for "attorneys providing services through nonprofit entities, including pro bono services." I heartily endorse this exemption as I currently advise land trusts in Oregon and Washington through the Coalition of Oregon Land Trusts. The Coalition provides me malpractice insurance it has obtained at a much reduced rate.

I have an additional request. By mandating such insurance for "Washington-licensed lawyers," the task force may be requiring such insurance for active and inactive members of the Bar. In Oregon inactive members of the Bar may provide legal advice through Bar approved pro bono programs without providing their own malpractice insurance. Those programs provide malpractice insurance for participants. Please exempt from mandatory malpractice insurance inactive members of the Washington Bar providing services through nonprofit entities, including pro bono services. This will encourage more retired attorneys like me to provide such services because we will not have to pay full time bar dues and attend 45 hrs of CLE every 3 years to be able to advise them. Thank you. Paul Majkut OSBar #872900 Wash Bar #6523 OSBar #872900

From: [redacted]
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory or not?
Date: Monday, August 06, 2018 9:53:59 AM

Friends:

My father (a 50+ year lawyer) advised that it takes two things for a malpractice suit: 1) A serious mistake by a lawyer, and 1) An unhappy client. Careful practice may prevent the first, but any lawyer can prevent the second by making the client better than whole again once a mistake is discovered.

In 45 years I've never had (or needed) malpractice insurance because I'm very careful in my work and I have the resources to make my clients better than whole if I do make a mistake. In my opinion, I'm doing it the right way. Your task is to deal with the lawyers who do it the wrong way. It is totally backwards to punish those who do the right thing (by making them add malpractice insurance) in order to reward those who do the wrong thing (giving them pooled resources to pay for their sloppy work).

Recommendation: Reward those with no claims for 20+ years (or whatever) with an exemption from insurance. Maybe even have two tiers within the lower years to encourage no claims. Use the carrot rather than the stick.

- John Panesko
Chehalis, WA #5898

From:	Erik Marks
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory malpractice coverage
Date:	Monday, August 06, 2018 12:24:48 PM

Hello,

I am writing to comment on the proposal to require malpractice coverage for lawyers. Thank you for your work on the issue, and for preparing and sharing the Report. I want to express my opposition to the proposed mandatory coverage.

About Me. I have been a business and transactional real estate attorney in Seattle since graduating from law school in 1993. I concurrently engage in other professional pursuits, including real estate investment, real estate brokerage and social enterprise entrepreneur. In the past 5 years my legal work has ranged from 10% of my professional time in some years, to 90% in others.

Personal Perspective. I do not carry malpractice insurance because the premium rate is too high compared to the risk-mitigation - for me. As indicated in your report, half of all malpractice claims are resolved without payment (and thus the median payment is $0), 95% of malpractice claims are resolved for less than $250,000, and the average loss payment is $60,000. With these statistics in hand, I would prefer to bear the risk of my own error, rather than buying insurance coverage against that risk.

Why is this true for me in particular? My clients have generally been with me a long time, and are my friends. This reduces the risk of claims. I decline work for complete strangers, unless there is a reliable referral source. I practice only in areas I know well. My practice is not full time, so the number of legal tasks I perform in a year is lower than a typical lawyer (and thus lower than the number used in the pricing model employed by the insurance companies).

Professional Impacts. Lawyers are already the most dissatisfied profession. Requiring lawyers that do not wish to carry insurance (for whatever reason) to carry it, will create even more discontent among the ranks. It will reduce income, increase administrative burden, and increase resentment toward the WSBA as a nanny organization.

Is there really a problem? The report says that the mandatory insurance is necessary to protect the public. But the report is VERY light on proof that the public is actually harmed by making insurance discretionary. The strongest statement seems to be, " Malpractice plaintiffs' lawyers report numerous instances of worthy claims that they must reject for representation because the defendant lawyer is uninsured, making a recovery much less likely." "Numerous instances"?????? That is not a persuasive statistic. How many instances? Were the instances independently determined to be "worthy"? Did the lawyers actually not take the case because the ease of settlement is not in the plaintiff-lawyers' favor when there is no insurance? Was consideration given to the fact that malpractice plaintiff's lawyers are incentivized to over-report statistics like this, so as to encourage mandatory insurance, and thus grow their business.

And what was the outcome of them not taking the case? Just because they don't take the case

means nothing. I would want to know whether the alleged victim was adversely affected in a manner that taken with other similarly situated persons resulted in a detriment to society. The mere presence of a negative outcome is not persuasive. All negative outcomes do not need to be regulated. For example, sunburns on children are known to cause cancer; but we don't have, and shouldn't have, regulations requiring parents to apply sunscreen.

What about Offsetting Considerations? The report does not make any inquiry at all into the question of whether the absence of insurance may create social good. For example, it seems patently obvious that one who is not insured will be more careful in their work. And that the absence of insurance will result in lower rates. And that requiring someone who does not want to carry insurance, to carry it, will increase conflict, discontent and strife within the practice. Finally, facilitating part-time practice by attorneys who are older, or who have other professional obligations (as do I), increases the supply of skilled practitioners in the arena, and thus increases the provision of quality legal services to the public.

Flawed Statistical Analyses.

- Findings #3 and 5. These findings report a correlation between absence of insurance among solo and small practitioners, and the prevalence of malpractice claims among such practitioners. But, what if the claims are being made much more frequently against the insured solo and small practitioners, rather than the uninsured ones?????? That would yield the opposite conclusion! Thus Findings #3 and 5 are not persuasive.
- Finding 4 is that the majority of malpractice claims, and the majority of malpractice payments, are made with respect to lawyers in firms with 1-5 lawyers. The report fails to mention that 63% of the lawyers in the US private practice, work in firms with 1-5 lawyers. And so the report is inconclusive as to whether the prevalence and/or value of malpractice claims is greater or lower in small firms.

Holy Cow - Only 8% of the Members Indicated Support Mandatory Insurance! It's right there in the report at page 7. It's just reported as a fact. No analysis. No examination of whether this absence of support should raise questions about the proposal to require mandatory insurance.

The Task Force Composition? How was the composition of the Task Force determined? The Report does not say. I would think this to be an essential aspect of the report. Were these people who volunteered? How many members of the committee practiced law in a small firm environment without malpractice insurance?

CONCLUSION: It appears to me from reading the Report that a Task Force was gathered, comprised of persons who in the vast majority believed malpractice insurance should be required, and then they set out to find support and write a report supporting that Conclusion. Now I will be the first to admit that I may be entirely wrong in that conclusion. But right or wrong, I am disappointed that the Report is of a character that would leave me feeling that way.

____

SPECIFIC INPUT:

1. No action should be taken until statistically-valid work can be done to analyze the benefits and burdens of requiring malpractice insurance.
2. The mechanism by which the Task Force was populated should be in the Report.
3. The Report should dedicate space to discussion and analysis of the mere 8% support expressed by WSBA Members; and the 47% opposition. And inquiry should be made ensure that the 47% statistic is accurate; in particular, it must be ensured that classification (as neutral, pro or con) of the comments received is performed by a disinterested party (likely someone not on the Task Force).
4. Consideration should be given to part-time attorneys. For an attorney who works 500 hours a year, insurance is unreasonably burdensome. This will generally affect the partially-retired attorney, and the (generally female) attorney who practices part time while raising children, resulting in terribly detrimental effects on the quality of life for both. [I guess this also raises the specter of the proposal resulting in an undesirable, and possibly proscribed, adverse impact on the class of female attorneys.]
    - My specific proposal for consideration to address this issue is to allow an exemption for attorneys who reasonably anticipate generating less than X% of their income from the practice of law during the year in question. I would offer that 35% would be a good number to use in that regard.

I hope this email is helpful and will result in deeper analysis of the need for the proposed requirement, and its possibly detrimental effects.

--
Erik G Marks
Attorney at Law
2255 Harbor Ave SW
Suite 203
Seattle, WA 98126

office: 206-264-4598
cell: 206-612-8653

erik@egmrealestate.com

From:	Alan Burnett
To:	bill@wdpickett-law.com; Dan@mcbdlaw.com; athan.papailiou@pacificalawgroup.com; jkang@smithfreed.com; rajeev@northwhatcomlaw.co; whyslop@lukins.com; Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Malpractice Insurance
Date:	Monday, August 06, 2018 9:37:51 AM

Hello Bill, Dan, Athon, Jean, Rajeev, and Bill,

I would like to add my input to your consideration of mandatory malpractice insurance. I have intentionally not carried insurance for my solo patent attorney practice. Why? In part because about 15 years ago some partner at Fish and Richardson failed to file a patent application in Europe, and the resulting malpractice award was $30M. Overnight, that raised the malpractice insurance rates for patent attorneys by an order of magnitude or more. Although I haven't checked recently, the minimum coverage levels that are suggested in the interim report (e.g., $100K/$300K, $250K/$250K, $250K/$500K, or $500K/$500K) are likely not available to me. Although malpractice claims against patent attorneys are rare, the typical cost of defending a claim is significantly more than in other areas of practice, resulting in substantially higher premiums.

I have one primary client (Intel) and recently brought on some other work from a top-5 (in the world) company. Another portion of the work I do is not (technically) legal work. There is zero chance that any of my clients are going to sue me for malpractice, but that doesn't matter to the insurance underwriter. I do some pro-bono work, but not in a legal capacity (no attorney-client relationship is established – rather, I merely provide advice to people who might contact me, and to friends and family).

Forcing someone like myself to carry malpractice insurance purchased on the private market is going to add a substantial expense without providing any benefit to the legal profession within Washington state (at large).

Regards,

R. Alan Burnett
Law Office of R. Alan Burnett
4108 131st Ave SE
Bellevue, WA 98006
425 417-4729

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From:	Dan Bridges
To:	Alan Burnett; bill@wdpickett-law.com; athan.papailiou@pacificalawgroup.com; jkang@smithfreed.com; rajeev@northwhatcomlaw.co; whyslop@lukins.com; Mandatory Malpractice Insurance Task Force
Cc:	Hugh Spitzer (spith@uw.edu)
Subject:	RE: Mandatory Malpractice Insurance
Date:	Monday, August 06, 2018 11:22:45 AM

Hello Alan:

I wanted to respond, not too substantively as I don't "speak" for WSBA or the task force on this issue, but to thank you for taking the time provide your input. It is greatly appreciated.

I think I can fairly report that the task force has been consulting with various insurance industry representatives (largely ALPS) and I will ask them how a liability carrier would address someone who only practices in as specialized of a field as yours. I understand your point that $300k would not make a dent in a material patent malpractice case. But what I am curious about, reading your email, is whether a carrier would even write a $300k policy for you.

I am copying in Hugh Spitzer, our taskforce chair, so he may have this on his radar as well.

Dan

Dan'L W. Bridges
3131 Western Avenue
Suite #410
Seattle WA. 98121
Phone: 425-462-4000
Fax: 425-637-9638

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From: Alan Burnett [mailto:alan@patentlylegal.com]
Sent: Monday, August 06, 2018 9:38 AM
To: bill@wdpickett-law.com; Dan Bridges; athan.papailiou@pacificalawgroup.com; jkang@smithfreed.com; rajeev@northwhatcomlaw.co; whyslop@lukins.com; insurancetaskforce@wsba.org
Subject: Mandatory Malpractice Insurance

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From:	Alan Burnett
To:	"Dan Bridges"; bill@wdpickett-law.com; athan.papailiou@pacificalawgroup.com; jkang@smithfreed.com; rajeev@northwhatcomlaw.co; whyslop@lukins.com; Mandatory Malpractice Insurance Task Force
Cc:	"Hugh Spitzer"
Subject:	RE: Mandatory Malpractice Insurance
Date:	Monday, August 06, 2018 1:26:24 PM

Hello Dan,

Thank you for responding. WRT to a $300K policy being available, I do not believe it is likely I could get such a policy, and that is a problem with having mandatory insurance requirement for attorneys in specialty fields. Worse yet, for me, is I also am involved with a significant amount of patent prosecution in foreign jurisdictions, and there have been some malpractice cases where even if the screw-up was by the foreign associate, the US counsel was found liable. I think for Intel my exposure is less since there is a separate attorney-client relationship with the foreign associates (I am assigned to the matters, but I don't actually have a legal engagement with most of the foreign associates). However, this exposure raises a huge red flag with the insurance underwriters (unfortunately).

I haven't checked for what is available for many years, and things may have changed, so I plan on getting some quotes for malpractice coverage in the next few weeks. Is there a resource the WSBA has relating to insurance industry representatives?

I am fairly isolated with my type of practice, and I don't know how much this applies to other areas of law, but there is a general view in the patent attorney community that large clients fire you and small clients sue. To a significant degree, this is because large clients are usually sophisticated when it to patents, and they know how difficult (and random) patent prosecution can be.

Regards,

Alan

From: Dan Bridges [mailto:dan@mcbdlaw.com]
Sent: Monday, August 6, 2018 11:23 AM
To: Alan Burnett <alan@patentlylegal.com>; bill@wdpickett-law.com; athan.papailiou@pacificalawgroup.com; jkang@smithfreed.com; rajeev@northwhatcomlaw.co; whyslop@lukins.com; insurancetaskforce@wsba.org
Cc: Hugh Spitzer (spith@uw.edu) <spith@uw.edu>
Subject: RE: Mandatory Malpractice Insurance

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Dan

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R. Alan Burnett
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From: Summer Stahl
To: Mandatory Malpractice Insurance Task Force
Subject: mandatory insurance
Date: Monday, August 06, 2018 3:30:20 PM

I propose that an exemption to mandatory malpractice insurance include General Counsel for a business.

I serve as General Counsel for this company. I do not have private clients (other than my immediate family and that is pretty generic – yes, you need to follow the rules or no, I can't help you with an issue in another state but I'll help you find an attorney there)

If my boss decides that he doesn't want to have malpractice insurance on me then you are forcing him to do so, or possibly not having me on the payroll. It is not an operating cost of my practice, it is making the client pay directly for the insurance. It is also "babysitting" for a business and an owner who are presumably competent to make risk decisions. Mandatory insurance for a General Counsel would imply that the owner is not sufficiently capable of making that decision and needs the WSBA to take care of his/her business decisions.

Thanks for your time.

Summer Stahl
General Counsel
Stevens County Title Company
280 S. Oak Street / P O Box 349
Colville, WA 99114
509-684-4589 ext 114
Fax 509-684-5448

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From: Matt Bean
To: Mandatory Malpractice Insurance Task Force
Subject: mandatory insurance issue
Date: Tuesday, August 07, 2018 1:51:09 PM

If WSBA is considering mandatory insurance to protect the public, then it must use its leverage to try to require "Occurrence" coverage rather than "Claims Made" insurance. As I'm sure you are all aware, the problem with attorney malpractice insurance is that if an attorney doesn't immediately report a "possible" claim, the insurance company can deny the claim because the insured attorney failed to report as the policy required. Attorneys have an incentive not to report a possible breach because if the client never makes a claim, the consequence to reporting might be that the attorney loses malpractice insurance or the attorney's rates go up.

Insurance companies claim that they can offer lower priced policies, but the reason that they are lower priced is because they can effectively deny coverage. This doesn't help either the attorney or the injured public.

Coverage should be for the actual period that the malpractice occurred, just like car insurance.

This happened to a client of mine:

Client hired an New York lawyer to bring a wage claim for work she did for a Washington company in NY. The client had an arbitration clause, but the attorney decided to challenge the clause in New York. After 4 years, the New York courts ordered arbitration. When the case was then submitted to arbitration in Washington, the Washington arbitrator ruled that the statute of limitations had passed, because arbitration wasn't demanded within the 3 year statute of limitations. The Arbitrator then awarded attorney's fees against my client in the amount of $400,000 her former employer's attorney's fees for the NY appeal.

When my client made a claim to her NY attorney's malpractice carrier, the carrier denied coverage because when she applied for malpractice insurance--she didn't disclose that there was a possible claim when clearly there was a possible claim. Client couldn't make a claim to the NY attorney's insurance carrier when the malpractice occurred because the claim wasn't presented during the term of the policy. Thus, an attorney who undisputedly engaged in malpractice, and had $1,000,000 in insurance coverage at all times, didn't have insurance coverage.

Any insurance policy that depends on an attorney presenting a claim during the policy period cannot ensure the protection of the public. You would also do a service to attorneys in WA to help them protect themselves from the temptation not to report a potential claim that may or may not amount to anything in the future.

I strongly urge the Bar to require Occurrence coverage if it is going to require coverage.

Matthew J. Bean

Bean Law Group
2200 Sixth Avenue, Suite 500
Seattle, WA 98121
206.522.0618
206.524.3751 fax

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From: Steve Cook
To: Paul Majkut; Mandatory Malpractice Insurance Task Force; Nancy Duhnkrack; Kelley Beamer; Mike Running
Subject: RE: Mandatory Malpractice Insurance Task Force Interim Report
Date: Tuesday, August 07, 2018 1:56:13 PM
Attachments: image001.png
image002.png
image003.png
image004.png

I wholeheartedly concur in Mr. Majkut's comments.

At Columbia Land Trust we benefit greatly from pro bono services provided by both retired (inactive) and active bar members in both Washington and Oregon. Rules that facilitate that pro bono work for non-profits like ours help us stretch scarce dollars to better accomplish our mission work.

Steve Cook, Wash Bar #45687

Stephen F. Cook | Deputy Director & General Counsel

Columbia Land Trust
850 Officers' Row | Vancouver, WA 98661
Direct: (360) 213-1208 | Main: (360) 696-0131
Also in Astoria | Portland | Hood River
www.columbialandtrust.org

From: Paul Majkut [mailto:paulsmajkut@gmail.com]
Sent: Saturday, August 4, 2018 9:41 PM
To: insurancetaskforce@wsba.org; Steve Cook <SCook@columbialandtrust.org>; Nancy Duhnkrack <nduhnkrack@gmail.com>; Kelley Beamer <kelley@oregonlandtrusts.org>; Mike Running <mike@oregonlandtrusts.org>
Subject: Mandatory Malpractice Insurance Task Force Interim Report

Your taskforce recommends "Malpractice insurance should be mandated for Washington-licensed lawyers, with certain exemptions," including for "attorneys providing services through nonprofit entities, including pro bono services." I heartily endorse this exemption as I currently advise land trusts in Oregon and Washington through the Coalition of Oregon Land Trusts. The Coalition provides me malpractice insurance it has obtained at a much reduced rate.

I have an additional request. By mandating such insurance for "Washington-licensed lawyers," the task force may be requiring such insurance for active and inactive members of the Bar. In Oregon inactive members of the Bar may provide legal advice through Bar approved pro bono programs without providing their own malpractice insurance. Those programs provide malpractice insurance for participants. Please exempt from mandatory malpractice insurance inactive members of the Washington Bar providing services through nonprofit entities, including pro bono services. This will encourage more retired attorneys like me to provide such services because we will not have to pay full time bar

dues and attend 45 hrs of CLE every 3 years to be able to advise them. Thank you. Paul Majkut OSBar #872900 Wash Bar #6523 OSBar #872900

From: Bill Zook
To: Mandatory Malpractice Insurance Task Force
Subject: Comments in Response to 7/10/2018 Interim Report to BOG
Date: Wednesday, August 08, 2018 11:01:04 AM

Ladies and Gentlemen:

Even though for many reasons I continue to be a member of the WSBA, I have not practiced law in over two decades. If a mandatory malpractice insurance program is implemented, I would hope that WSBA members in my situation would be exempt from being required to obtain coverage.

J. William (Bill) Zook, Jr.
Principal
Evergreen Planned Giving, LLC

4500 9th Avenue NE, Suite 300
Seattle, Washington 98105-4762
Phone: 206-632-3912
Fax: 206-829-2401
E-mail: bill@evergreenpg.com
Web: www.evergreenpg.com

From: Merry Kogut
To: Mandatory Malpractice Insurance Task Force
Cc: Sheila Mengert
Subject: Interim Report
Date: Wednesday, August 08, 2018 5:33:21 PM

I am a licensed attorney who is retired and has not practiced for over five years. I want to maintain my licensed status, but will not be able to do so if you require mandatory malpractice insurance. Obviously, I'm not in need of insurance if I'm not practicing. I am very angry and upset that you are planning to make insurance mandatory. Please reconsider, or provide the ability to opt out under circumstances such as mine.

I DO NOT want to go "inactive." There is always an off-chance that I will want to use my license to help out a friend in need.

Sincerely,
Merry A. Kogut 16153

From: Merry A. Kogut

From: Questions
To: Rachel Konkler
Subject: FW: Mandatory Malpractice Insurance Initiative
Date: Friday, August 10, 2018 8:17:00 AM

Thanks
Matt

Matt Muzio | Service Center Representative
Washington State Bar Association | 1-800-945-9722 | mattm@wsba.og
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
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-----Original Message-----
From: Adam Dockstader [mailto:adam.dockstader@iafflocal1488.org]
Sent: Thursday, August 09, 2018 11:51 PM
To: Questions
Cc: Adam Dockstader
Subject: Mandatory Malpractice Insurance Initiative

To the WSBA,

I recently heard from a friend that the bar is considering mandatory malpractice insurance. This is very disappointing, and I'm concerned many members are not aware of this initiative. I have not seen one email notification specific to this topic; you must be burying it in other news. Not good.

Proposed rules imposing fees on business owners should be noticed with considerable specification. Have you have received few comments compared to the number of bar members? If so, this is a good indication that sufficient notice has not been given.

When are comments due before a decision is made?

Please forward these questions/concerns to the appropriate person/department at the WSBA.

And I look forward to hearing back soon.

Adam Dockstader
WSBA No. 27872

From: [redacted]
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Saturday, August 11, 2018 6:38:12 PM

I am opposed to a mandatory malpractice insurance requirement for all active Washington State attorneys.

I have practiced law in Washington for 27 years, 11 full-time and 16 years on an occasional basis as I have had non-law full-time jobs during that time. I have never been found to have committed malpractice nor have I ever been subject to discipline by the WSBA.

I became a lawyer to help people. This rule could threaten my ability to do that. My clients now are friends, relatives, past clients and sometimes new clients.

The Bar likes to talk about providing access to legal services to low and middle income people. These are usually the people I serve. I charge for my services on a sliding scale. This rule will limit access to these folks even more as people like me take a hard look at whether it is worth continuing to have an active license.

Craig Larsen
Attorney at Law
509-421-2116

From: Susan Barley
To: Mandatory Malpractice Insurance Task Force
Subject: comment: Mandatory Malpractice Insurance
Date: Monday, August 13, 2018 2:12:57 PM

Task Force: As a 35 year veteran of legal practice is WA, I express my concern about a possible requirement for malpractice insurance.

I have spent the past 23 years providing special project legal services as a contractor to local companies. I augment inhouse capabilities: replacing an attorney on leave or providing extra manpower for a specific project or period of time where the existing inhouse capacity needs support. This function is as an inhouse lawyer, not an outside attorney (either solo or in a practice). These companies do not want to hire outside lawyers, are not bargaining for outside lawyer services and acknowledge that I do not have malpractice insurance. They are fully capable of understanding the risks and benefits and protecting their interests. Indeed, I would not accept work where these distinctions were not acknowledged and confirmed. Companies are eager to find experienced resources to augment inhouse capability when needed and appreciate the ability to flex up and down as appropriate.

A requirement that I have malpractice insurance would negatively affect this flexible work alternative. I started this practice after my second child, when I left my GC role to have more work/life balance. I believe an insurance requirement for lawyers in my position runs the risk of disproportionately negatively affecting women.

As important, insurance would not benefit the companies with whom I work: they do not want malpractice insurance protection and indeed, they would pay more for my services, if they were available at all.

Finally, malpractice insurance is not inexpensive in general, and certainly not for reasonable coverage. Most (at least older) lawyers are going to want more than minimal coverage (most of us are not risk takers); $300,000 for example is ridiculous. As I believe coverage can incent lawsuits, I would need extensive coverage (millions) at this point in my life. It is difficult to get in sufficient amounts at a reasonable cost. Also, advice on financings and IP licensing trigger supplements and supplemental expense, although these activities are routinely handled by inhouse lawyers.

In conclusion, I recommend that if there is a requirement for licensed lawyers to have malpractice insurance, that the exceptions include inward (not outward)-facing contract lawyers as well as inhouse/government lawyers. A blanket requirement for all contract lawyers to have insurance would, in my opinion, eliminate many if not all opportunities for “inhouse” contract work.

Thank you.

Susan Barley
Susanbarley27@gmail.com

From: sheri luedtke <[redacted]>
Sent: Wednesday, August 15, 2018 8:56 AM
To: Mandatory Malpractice Insurance Task Force
Cc: LuedtkeLaw@outlook.com
Subject: Mandatory Malpractice Insurance

Dear WSBA Task Force,
I am writing to speak against requiring mandatory malpractice insurance for active members of WSBA who are not actively engaged in client-based practice of Law. I "retired" several years ago yet I continue to pay my full dues and maintain my CLE requirements. If I were able to return to actively representing clients, I certainly would obtain and maintain malpractice insurance as I did from 1981 - 2014.
Failure to permit an exemption for WSBA members similarly situated would force members to spend valuable resources if malpractice coverage is even available for an actively licensed attorney not practicing law. I pay my dues out of my commitment to our profession and desire to support the WSBA despite earning one cent in fees. I wonder if I could even obtain malpractice insurance. I have no office, no clients, no income from the practice of law. There is absolutely no reason for me to carry malpractice insurance in order to continue my membership in the WSBA, which has been my honor since 1981. Like doctors who retire from their profession, lawyers don't stop being lawyers just because they no longer represent clients.

Sincerely,
Sherilee M. Luedtke
WSBA #11891

Sent from my iPad

From: Swenson, Raymond T <Raymond_T_Swenson@rl.gov>
Sent: Thursday, August 16, 2018 5:37 PM
To: Mandatory Malpractice Insurance Task Force; danclarkboard@yahoo.com
Cc: Swenson, Raymond T
Subject: Mandatory Malpractice Insurance

I have practiced law for 40 years. For four years I belonged to national law firms, which took care of professional liability for us. During fifteen years of work in the Air Force JAG Corps, I was exempted by statute from professional liability. For the past 21 years I have served as corporate counsel, with a single client who is also my employer.

I am planning to retire from my current employment next year, but have been considering the possibility of working part time on a consulting basis for my current employer and for other companies in our particular industry, where I am known. These clients are people who know me and my professional abilities, and have their own in-house counsel who must weigh the advice I give before they implement it. They are free to consult other counsel about the same questions. Just as I have with my current client, I would not be guaranteeing outcomes, but identifying options and assessing risks. It seems very unlikely to me that any of these clients could ever make a malpractice claim against me, or would want to. For that reason, purchasing and maintaining malpractice insurance looks like an unnecessary expense, especially if it is not priced in relation to the actual risk for my practice (effectively zero) and the revenues I earn from this work. I don't want to be subsidizing the coverage for attorneys who have higher risk practices, when I get no benefit from their work. Forcing me to carry malpractice insurance could become a self-fulfilling prophecy, with a client who would not otherwise file a claim, simply doing so because he knows the fund is available, and the harassment value of a claim would force a payment.

In general, I believe the purchase of malpractice insurance should be based on the attorney's evaluation of risk, rather than being mandated. Even if a mandatory requirement of some kind were instituted, I believe that an exception should be made for attorneys who (1) intentionally work part time (e.g. less than 1,000 hours per year), or (2) serve only business and institutional clients who manage the liability from their own decisions and do not need to sue outside counsel to protect themselves from risk, or (3) have significant expertise and experience in their fields, such that only another expert practitioner would be qualified to assert that their advice was outside the scope of reasonableness.

A rule that exempts attorneys who intentionally limit their billable hours can support attorneys who have other income (such as retirement income or a working spouse) and need to devote much of their time to other matters, such as raising small children, caring for a disabled spouse, dealing with their own physical limitations, pursuing other opportunities (such as teaching, community volunteering, pro bono service, managing a [non-attorney] small business, writing professionally, attending graduate school, or transitioning into a new, non-attorney career). These activities are beneficial to society, and should not be impeded by a financial burden that the attorney does not judge to be necessary.

Raymond Takashi Swenson
Senior Counsel
WSBA # 27844

CH2M HILL Plateau Remediation Company
Richland, Washington
509-376-3511 Office
509-713-0966 Smartphone
509-376-0334 Fax
Raymond_T_Swenson@rl.gov

From: Brian Dano <bricyn@danolawfirm.com>
Sent: Friday, August 17, 2018 9:46 AM
To: Mandatory Malpractice Insurance Task Force
Cc: Danclarkboard@yahoo.com
Subject: Mandatory Malpractice Insurance

Importance: Low

To Whom It May Concern

I am strongly in favor of mandatory malpractice insurance as a condition of licensing, which I assume includes relicensing. Thanks,

Brian Dano

100 E. Broadway
P.O. Box 1159
Moses Lake, WA 98837
Ph: 509-765-9285
Fax: 509-766-0087
email: bricyn@danolawfirm.com

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From: John Gray <john.m.gray@comcast.net>
Sent: Friday, August 17, 2018 10:48 AM
To: Mandatory Malpractice Insurance Task Force
Cc: 'John Gray'; 'Margie Gray'
Subject: Comment on the Interim Report
Attachments: Comment on the interim report 081718.docx

Hello:

My comment is in the attached Word document. Thank you for considering it.

John M. Gray
5021 Laura St. S.E.
Olympia, WA 98501
(360) 754-0757 (landline)
(360) 789-3208 (cell)

The WSBA report of the July BOG meeting suggested that members contact this group to comment on the interim report. I have read that interim report.

Overall, I agree with the direction taken by the Task Force: attorneys engaged in the practice of law should carry malpractice insurance.

I call your attention to page 10 of the interim report where the Task Force says it has tentatively concluded it should report the following program to the BOG. The fifth item contains suggested exemptions from the general rule of mandatory coverage. My wife and I fall into two of those exemptions: (1) attorneys providing services through non-profit entities, including pro bono services, and (2) retired attorneys.

On behalf of my wife (WSBA # 9607) and myself (WSBA # 7529), we encourage you to recommend at least those two exemptions to the BOG to become part of the WSBA's adopted policy on mandatory malpractice insurance coverage. We both wish to continue our active status on our licenses. We are retired. We provide pro bono services through the Thurston County Volunteer Legal Services program, which provides malpractice insurance for our volunteer work there. If either of us decide to re-enter the active practice of law, we will obtain legal malpractice insurance.

Thank you for considering this comment.

John M. Gray

From:	leslie@lesliebudewitz.com
Sent:	Friday, August 17, 2018 11:16 AM
To:	Mandatory Malpractice Insurance Task Force
Subject:	recommendations re mandatory insurance -- out-of-state members

Dear Task Force Members:

Thank you for your hard work analyzing the issues related to malpractice insurance and creating recommendations.

Although I do believe that most lawyers in private practice should be insured, I'm writing to suggest a specific exemption for those of us who, while still licensed in Washington, do not maintain an active practice in Washington and either practice in a state without a mandatory insurance requirement or maintain a practice in another state that, while private, does not fit the usual categories and require insurance. As an example, I was admitted in 1984 and returned to my home state of Montana in 1993. Until late last year, I was employed by another lawyer maintaining a private practice and was fully insured. That lawyer retired. Now on my own, I handle appellate mediations and serve as local counsel for an out-of-state firm defending litigation in Montana; neither situation requires insurance, Montana does not mandate it, and I do not maintain it. Requiring someone like me to be insured in Washington would serve no purpose and do nothing to protect Washington residents; the expense would probably force me to give up my Washington license or move to inactive status.

I hope you'll consider the circumstances of out-of-state members in making your final recommendations.

My thanks –

Leslie

Leslie Ann Budewitz
P.O. Box 1001
Bigfork MT 59911
406-212-1813
leslie@lesliebudewitz.com

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From: Charley Bates <cbates.sers@mindspring.com>
Sent: Sunday, August 26, 2018 5:02 PM
To: Mandatory Malpractice Insurance Task Force
Subject: Comments on Interim Report

Dear Mandatory Malpractice Insurance Task Force:

Thank you for this opportunity to provide feedback to your Interim Report on mandatory malpractice insurance for Washington state lawyers, and kudos for all your hard work on this project.

I am an attorney (#19819) who recently retired from professional compensated work. My career courtroom practice was extremely limited. Instead, during my professional career I performed a combination of work in the human resources field [e.g. Director of Human Resources for Royal Seafoods, Inc.], corporate legal work [e.g. U.S. Corporate Secretary for TransAlta USA Inc.], and legal work at a state government judicial agency [e.g. Public Records Officer & Risk Management Coordinator for the Washington State Administrative Office of the Courts]. Because of this combination of professional work in which I did not function as an attorney, corporate legal work, and state government legal work, I have never had the need for legal malpractice insurance. Now that I am retired, I do not have the current need for malpractice insurance [I do not anticipate practicing before a court, at least other than perhaps in a pro bono situation working under the auspices of a non-profit].

I do, however, for a variety of reasons, wish to maintain my law license and maintain my membership in the WSBA. What I am advocating is that one of the exceptions to the mandatory malpractice requirement is for those in my situation: (1) Retired from actively practicing law, (2) No anticipation of performing any legal work in private practice, (3) Yet still wish to maintain their license and participate in WSBA membership, though (4) maintain the ability to return to practice in the future if desiring to do so.

Naturally, the WSBA should consider the potential (perhaps unanticipated) negative consequences of required attorneys who are retired or essentially retired to spend their limited funds in retirement for malpractice insurance: If that cost becomes too expensive to continue paying, then the retired person's choice may be to formally move to non-license status, depriving the WSBA of the membership fees of individuals in the same or substantially similar situations.

Thank you,

Charles Bates

#19819

400 Washington Avenue; #400

Bremerton, WA 98337

cbates.sers@mindspring.com

360-259-4799 (C)

From: Thomas Hoffmann <thoffmann@hoffmanns.com>
Sent: Monday, August 27, 2018 5:54 AM
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance - Hoffmann WSBA 31533

Mandatory Malpractice Insurance Task Force,

I am late to your discussion, which is my fault.

If I am required to carry malpractice insurance, it will sadly end my legal career.

I have read the proposed exemptions as follow:

> The Task Force then drafted a tentative list of exemptions to consider for inclusion in its proposed mandatory malpractice insurance recommendation. The list, with prefacing language, is set forth below: If you carry an active license to practice law in Washington, you must carry the mandated insurance coverage unless one of the following exemptions apply, if done exclusively: 544 Page 3 • Employed as a government attorney, judge, administrative law judge, or hearing officer • Employed by a business entity or nonprofit • Employed by a public defender office • Employed as a mediator or arbitrator • Not providing any legal services, whether or not for compensation

I am 78 years old and have been practicing law for over 50 years. My practice has been and is limited to trademark law. I have never been a litigator. I have never had a malpractice claim.

I have taught trademark law at the University of Washington Law School, among other law schools, and practiced with the Seattle Office of DLA Piper, among other firms. I am a former employee of the United States Patent and Trademark Office.

I have been retired for over 10 years but continue to practice before the United States Patent and Trademark Office for family and friends. To represent parties before the Trademark Office I must be a licensed attorney and a member of a state bar association.

This is my way of staying mentally alert, rather than doing crossword and Sudoku puzzles.

As a member of the WSBA, I pay annual dues and pay to obtain CLE courses, none of which relate to trademark law, and credits. The additional costs of malpractice insurance will push beyond the expenses I am prepared to bear to maintain my limited trademark practice.

Please consider an exemption from mandatory malpractice insurance that would include me.

Thank you,

Tom

Thomas J Hoffmann
Member of the Bar of the State of Washington

thoffmann@hoffmanns.com

Office: 740-427-3740
Cell: 740-398-9108

From: Doug Klunder <[redacted]>
Sent: Monday, August 27, 2018 2:15 PM
To: Mandatory Malpractice Insurance Task Force
Subject: Exemption from mandatory malpractice insurance

Dear Members of the Mandatory Malpractice Insurance Task Force,

I am one of those 14% of Washington lawyers who consistently report being uninsured. I have consciously decided against malpractice insurance, simply because I do not believe it is meaningful for my limited form of practice. From the day I obtained my bar license roughly (and even before, as a Rule 9 intern), my entire "practice" has been in the form of volunteer pro bono work for the ACLU of Washington Foundation (ACLU), primarily writing appellate amicus briefs. I believe this has provided valuable resources not just to the ACLU, but to the broader public, by allowing our courts to more fully understand implications of major cases before them, resulting in better informed opinions. I don't doubt that there are other Washington lawyers in similar situations, limiting their practice to the pro bono representation of nonprofit organizations. I therefore strongly urge you to consider lawyers in such situations, and make sure we are exempt from an insurance requirement. Such a requirement would not serve to actually protect any members of the public, but could instead harm the public. I know that if I were required to carry malpractice insurance, with premiums of $1000/year or more, I would have to seriously reconsider whether I wished to continue this public service, and suspect others in my situation would face similar difficult decisions.

I have not seriously considered the question of mandatory malpractice insurance for lawyers who actually have a practice and members of the public as clients, and therefore I have no position one way or the other on that.

Thank you for your consideration.

Douglas B. Klunder
WSBA #32987

From: AJ Yanasak <[redacted]>
Sent: Monday, August 27, 2018 2:45 PM
To: Mandatory Malpractice Insurance Task Force
Cc: rajeev@northwhatcomlaw.com; carla@higginsonbeyer.com
Subject: WSBA - mandatory malpractice insurance

Dear Task Force,

I just received and reviewed your interim report on Mandatory Malpractice Insurance and want to offer the following comments.

While I would generally agree that being insured is a good idea and a best practice, I would strongly oppose the WSBA implementing a rule making it mandatory. Such a rule would essentially make malpractice insurance an additional requirement to the practice of law in Washington and, I believe, it would decrease the number of legal providers available to the community and increase the public's cost of access to these providers.

I am a government lawyer and I have almost always either practiced as a government employee, or for a firm that paid insurance premiums for me. I have never had personal malpractice insurance. Nevertheless, over the years I have frequently assisted friends and family members with various legal issues. Frequently I have done this on my own, at no cost or charging only a very minimal fee to cover expenses. These are not necessarily individuals who are indigent or who would qualify for "moderate means" programs, but they still have legal needs and I am a willing provider. But...if I were required to have malpractice insurance in order to do this on the rare occasions that opportunities present then I would simply not do it, and these family and friends would either choose to go without legal representation or they would have to pay much more than they would have otherwise.

It would not be worth my time or money to pay malpractice premiums just so I could represent friends or family members once or twice a year when these matters arise. I would hate to live in a world where I would not be able to use my legal training, personal and professional judgment, and law license to choose to help people with their legal needs without having to go through some sort of "public interest" or "pro bono" agency.

If the public needs protection from bad lawyers, the better solution would be to better regulate the quality of people who are going to law school and getting law licenses.

If the public needs protection from their own inability to decide for themselves who they want to act as their lawyer then a better solution would be to impose stricter requirements for attorneys to disclose their uninsured status.

If the bar wants to make malpractice insurance a requirement to the practice of law then the WSBA should be the insurer and should recover premiums through license fees and other funding sources that have previously been used for compensating uncovered malpractice.

Requiring all small and solo practitioners to obtain insurance will drive some lawyers out of practice, thereby further decreasing access through a fewer number of practitioners and raising the costs/fees for those who do

remain. Going solo is hard enough, this would just be one more barrier that would make it tougher to impossible.

Mandatory malpractice insurance for WSBA members is a solution in search of a problem. Many lawyers already view the WSBA as a Seattle-centric organization that is out of touch with its members and that does not serve or care about the interests of its members. Mandatory insurance is an issue that proves this viewpoint to be true and that will further alienate many practicing attorneys who are already disaffected.

Please reconsider the impact on lawyers who are not retired and who practice less than half-time or only rarely but who still want to be able to occasionally use their legal knowledge and skills to help the people they know in times of trouble.

Thanks,

Adam Yanasak
WSBA #35506

From: Kathleen Petrich <kpetrichattorney@gmail.com>
Sent: Wednesday, August 29, 2018 10:09 AM
To: Mandatory Malpractice Insurance Task Force
Cc: carla@higginsonbeyer.com
Subject: Comments on mandatory malpractice insurance

Importance: Low

Dear WSBA Insurance Task Force Board and Gov. Carla Higginson:

I am commenting on the your interim report pertaining to mandatory malpractice insurance. I agree in theory that practicing lawyers, with specified exceptions, shall have malpractice insurance for the concerns that you identified in your interim report. For all times of my many years of private practice as a lawyer in Seattle, I did have malpractice insurance.

At the end of April 2017, I retired from private practice in Seattle and subsequently moved to Whidbey Island. I have not practiced as an attorney since my retirement. Yet I continue to maintain my license (and CLE requirements). Why? My answer is two fold: (1) I am currently on the pro tem judge roster in Island County District and Municipal Courts and (2) I leave open the possibility of practicing as an attorney again.

With regard to pro tem judge opportunities, I completed the in person pro tem judge training at the WSBA offices last week and hope that I may be considered for assisting in that capacity (I am open to rural counties —including east of the mountains). For that reason alone I would need to keep my bar membership active but would not need malpractice insurance as an advocate for a particular client.

With regard to keeping open the possibility of practice again, I'm sure you are all aware that there is a shortage of qualified lawyers in rural areas. I also leave open the opportunity to provide pro bono legal services. And it is much easier to keep a license active than to let it go inactive and reactive it in the future. If I were to practice again as a private attorney, I would either obtain malpractice insurance or be covered under an employer policy.

For these reasons, I would request that any specified exception to the mandatory malpractice insurance include my particular retired status where I am not currently practicing as an advocate but (currently) only in a pro tem (judiciary) role.

If you have any questions or would like follow-up commentary, please feel free to reach me at the contact information below. Thank you for your consideration.

Kathleen T. Petrich
Retired Attorney
PO Box 429
Langley, WA 98260
T: 206.579.0815 (cell/text)
kpetrichattorney@gmail.com

From: Ryan Brown <Ryan.Brown@co.benton.wa.us>
Sent: Thursday, August 30, 2018 4:03 PM
To: Mandatory Malpractice Insurance Task Force
Subject: Proposal to Require Malpractice Insurance

Hello,

I am only generally familiar with the idea being considered by the Bar Association to require members to carry malpractice insurance. While I do not have any comments on this time about the general concept, I do have strong feelings about the need for an exemption if such a proposal is passed.

As a government attorney, I believe malpractice insurance would be a waste of resources for me. I would hope that if this moves forward, our Bar would exempt attorneys in the public sector from any such requirement. I understand Oregon does that.

Ryan K. Brown
Chief Deputy Pros. Attorney, Civil
Benton Co. Pros. Attorney's Office
WSBA #18937
Phone: (509) 735-3591
Fax: (509) 222-3705

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From: Daniel Schafer <[redacted]>
Sent: Monday, September 3, 2018 12:40 PM
To: Mandatory Malpractice Insurance Task Force
Subject: Comments on Mandatory Malpractice Insurance

Dear Task Force Members,

I am an active attorney licensed in two states with membership in the WSBA. However I have never represented a client in Washington. Please consider a malpractice insurance exemption for attorneys who are not providing services to clients in Washington.

I primarily represent low to moderate income clients in debt claims defense. Even with reduced fees and payment plans I take losses of several thousands of dollars every year when clients stop paying me. I currently do not have malpractice insurance and have not needed it. When I move my practice to Washington, if I am forced to buy malpractice insurance it is likely I will not practice in the same area. Based on what I have read about opening up the consumer law area to LLLT's because of a lack of legal representation in this area I would think the WSBA would want to encourage attorneys to work in this area, not leave it.

Thank you for your consideration.

Daniel M. Schafer
Daniel M. Schafer Law Firm, PLLC
1140 Creek Knoll
San Antonio, TX 78253
210.474.6950
210.247.6144-fax

From: Eric Chavez <eric@mixsanders.com>
Sent: Wednesday, September 5, 2018 12:38 PM
To: Mandatory Malpractice Insurance Task Force
Subject: Opposition to Mandatory Malpractice Coverage

Dear Committee Members,

I write to express my objection to the proposal to mandate malpractice coverage in Washington. I reviewed your preliminary findings, and was abhorred to see no mention of the potential impact on minority members of the bar. Many of us, coming from economically disadvantaged families, exit law school with mountains of debt only to find that legal jobs are scarce. As automation will continue to eliminate many document review and entry-level attorney positions in the coming decade, this trend will accelerate. Opening a solo practice will increasingly become the only option for many of us. As any attorney should know, starting a solo practice is a difficult and expensive task. Requiring mandatory insurance, will only add to that difficulty and expense, especially once a captive market is created. This may even may even lead to otherwise qualified, good minority attorneys, leaving the profession.

The WSBA has a responsibility to protect the public. It also has a responsibility to protect its members, especially its minority members.

--
Eric S. Chavez
Mix Sanders Thompson, PLLC
1420 Fifth Avenue, Suite 2200
Seattle, WA 98101

tel: 206.521.5989 / 206.981.5648 (direct)
fax: 888.521.5980
web: mixsanders.com

From:	Joe Quaintance
To:	Mandatory Malpractice Insurance Task Force; Joe Quaintance
Subject:	Exemption for retired attorney serving as pro tem judicial officer
Date:	Friday, September 07, 2018 3:04:47 PM

A specific exemption from mandatory insurance coverage should be allowed for retired attorneys who serve as commissioner pro tempore in Superior Court.

I am over the age of 65 and semi-retired. Occasionally I serve as a Commissioner Pro Tempore at the request of the Superior Court. I am not a full time employee of the Court and I am paid as an independent contractor. I understand I enjoy judicial immunity when I serve as Commissioner Pro Tem. I earn less than $10,000 / year for my service.

An exemption from insurance coverage should be allowed for retired attorneys who serve as commissioner pro tempore in Superior Court.

From: Joe Quaintance
To: Mandatory Malpractice Insurance Task Force; Joe Quaintance
Subject: Exemption for retired attorney serving as pro tem judicial officer
Date: Friday, September 07, 2018 3:13:02 PM

A specific exemption from mandatory insurance coverage should be allowed for retired attorneys who serve as commissioner pro tempore in Superior Court.

I am over the age of 65 and semi-retired. Occasionally I serve as a Commissioner Pro Tempore at the request of the Superior Court. I am not a full time employee of the Court and I am paid as an independent contractor. I understand I enjoy judicial immunity when I serve as Commissioner Pro Tem. I earn less than $10,000 / year for my service.

An exemption from insurance coverage should be allowed for retired attorneys who serve as commissioner pro tempore in Superior Court.

Joe Quaintance
WSBN 8177
253.327.1825

From:	Cindy Smith
To:	Mandatory Malpractice Insurance Task Force
Subject:	Re: Comment from the Northwest Tribal Court Judges Association
Date:	Friday, September 07, 2018 5:55:03 PM
Attachments:	Letter Regarding Mandatory Malpractice Insurance.pdf

Dear Mandatory Malpractice Insurance Task Force Members,

Attached please find a letter from the Northwest Tribal Court Judges Association regarding including tribal court judges as persons who would be exempt from the mandatory malpractice insurance requirements.

Should you have questions or wish further input, please do not hesitate to contact me.

Sincerely,

Cindy K Smith, Chief Judge
Suquamish Tribal Court
Chambers (360)394-8524

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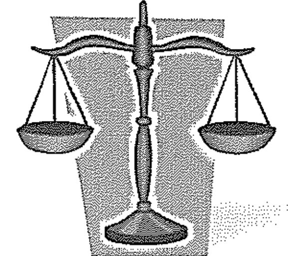

Northwest Tribal Court Judges Association

PO Box 138, Lynden WA 98264 Email: csmith@suquamish.nsn.us

Hon. Cindy Smith	Hon. Lisa Dickinson	Hon. Juliana Repp	Hon. Randy Doucet	Hon. Jane Smith	Hon. Lauren King
President	Vice-President	Secretary	Treasurer	Board Member	Board Member

September 12, 2018

Mandatory Malpractice Insurance Task Force
Washington State Bar Association
insurancetaskforce@wsba.org

RE: Tribal Court Judge Exemption

Dear Mandatory Malpractice Insurance Task Force:

During the August 2018 board meeting of the Northwest Tribal Court Judges Association, the Board discussed the Mandatory Malpractice Insurance Task Force's interim report. One of the Task Force's tentative conclusions is that judges should be exempt from the mandatory requirement to obtain malpractice insurance.

The NWTCJA Board, on behalf of its Washington members that are also members of the Washington State Bar Association, requests that the Task Force include tribal court judges in the definition of judges exempted from mandatory malpractice insurance. Tribal court judges serve in both full-time and part-time positions. Some tribal court judges may not serve full-time for one tribe, but serve as part-time judges for multiple tribal courts. Others may serve part-time for one tribe only. In any case, whether serving full-time for one tribe, part-time for multiple tribes, or simply part-time for one tribe, some of our members are serving exclusively as tribal judges, and are not engaged in private practice.

Our request is that if a person is serving as a tribal court judge whether full-time or part-time, and is not engaged in a private practice of any kind, that these judges be included in the definition of judges that are exempt from the mandatory requirement to obtain malpractice insurance.

If we can provide any additional information, please feel free to contact me.

Sincerely,

Cindy Smith
President NWTCJA

From:	Hugh D. Spitzer
To:	Katrina Glogowski; rajeev@northwhatcomlaw.com
Cc:	Thea Jennings; Rachel Konkler; Doug Ende
Subject:	Re: WSBA Mandatory Malpractice Insurance Task Force
Date:	Monday, September 10, 2018 5:20:07 PM

Thanks so much for your thoughts on this. I will pass this on to everyone on the Task Force. We are working with Alps, the WSBA's collaborating provider, to be able to deliver insurance to everyone (hopefully!). So far, no one in Idaho has been unable to get coverage since it was mandated this year. We looked carefully at the Oregon model, which is excellent. But it IS expensive. We'll have a final report by next January.

Hugh

Hugh Spitzer
UW School of Law

From: Katrina Glogowski <Katrina@allegiantlawgroup.com>
Sent: Monday, September 10, 2018 1:37:06 PM
To: Hugh D. Spitzer; rajeev@northwhatcomlaw.com
Subject: WSBA Mandatory Malpractice Insurance Task Force

If WSBA mandates insurance coverage (advisable), then WSBA needs to guarantee that members can actually purchase the insurance. I represent financial institutions in several states with a home base in Washington—most insurers will not even process my application. This past year I had only one insurer even give me an offer of coverage.

I practice law in Oregon as well (Idaho and Alaska too!). I am not eligible for PLF coverage since my office is not located in Oregon. However, if WSBA mandates coverage, then the Oregon model is the way to go to guarantee that every member can actually obtain the insurance that we are going to be required to carry.

If cost is the issue (as apparent from the report), then have a sliding scale for the WSBA insurance: $1200 first years, $2400 for years 3-5, and $3500 thereafter. Oregon has exemptions (right on the form for government employees, out of staters, etc.) as well as a payment plan (right on the form) if cost is an issue. The PLF offers excess coverage if that is desired as well.

I have also found that the PLF also provides consistency in that every single attorney knows the process, knows who to contact and knows what comes next. I have personal experience with carriers that go out of business or refuse to renew in Washington which creates its own set of issues.

However, if WSBA mandates coverage, the WSBA will also have to guarantee insurers will provide that coverage no matter the history, practice area (subject matter), practice area (geography) and volume of practice.

If you have questions, I will be more than happy to provide additional information as I am sure that I

am not alone in having difficulties obtaining coverage given my practice area, breadth of practice and volume of practice.

Katrina Glogowski, WSBA 27483

From:	Carrie Benson
To:	Mandatory Malpractice Insurance Task Force
Subject:	Fwd: July Board of Governors Meeting Digest
Date:	Tuesday, September 11, 2018 9:40:05 AM

Hi. I wanted to provide a comment to the Mandatory Malpractice Insurance Task Force. I haven't researched the work being done so perhaps you've already considered this point.

I am a very part time attorney. I was originally admitted to Minnesota in 1997 and relocated to Washington State in 2008. In between having children I have practiced law from my home office. I was an in-house attorney in Minnesota and my current legal work is split about 50/50 with half being paid work as essentially an extension of a large corporate law department, for whom I mostly do commercial contracts under the direction of one of their attorneys. I also have a non-profit practice with most of that work unpaid. I generally bill under $30,000 of work a year.

In the past I've had significant challenges obtaining insurance. Many carriers simply refused to cover me, because year to year my paid work often comes through one client (either my current client or another client), and so under their requirements they felt I should fall under the client's policy. But of course my clients do not see it that way. One of my client's does require their attorneys to carry insurance, and that year in particular it took me months to find a carrier. It was quite stressful to think I might have to turn down the opportunity for paid work because no carrier would insure me.

The work I'm doing is EXTREMELY low risk from a malpractice perspective. I do not do any courtroom work and most of my paid work is under another attorney's direction. In recognition of this I did not choose to carry insurance when I first started out as a solo. Also, given what I bring home, the expense is quite high. It pains me to write a check for $1,300 every year for my coverage, when that might be an entire month's income.

I do now carry a policy but every year I wonder if I'll be dropped again.

So, I think it's very important that you consider that a once-size-fits-all approach will alienate at least a portion of your constituents, and I would suspect disproportionately that will affect women attorneys who have stepped back from their careers due to family obligations. It's important to me personally that I've been able to continue working as a lawyer and contributing to the profession while living in a rural community and raising my children. My local nonprofit clients are so grateful for my services and they are getting a heck of a bargain with a 20+ year attorney who used to have a senior in-house corporate position. And I'm really not concerned that my insurance carrier will find themselves defending a claim in my work helping our local youth soccer nonprofit reinstate their corporation and apply for tax-exempt status (what I'm working on today).

Thank you,
Carrie Benson

Law Offices of
Carrie L. Benson, PLLC

(509) 493-2190 office
(612) 743-9118 mobile
carriebenson@mac.com
Licensed in WA; inactive in MN and OR

Begin forwarded message:

From: Washington State Bar Association <noreply@wsba.org>
Subject: July Board of Governors Meeting Digest
Date: August 2, 2018 at 11:33:56 AM PDT
To: [redacted]
Reply-To: noreply@wsba.org

Washington State Bar Association

A summary of the Board of Governors meeting July 27-28 in Vancouver, WA

Top Takeaways

1. Insurance? Members of the Mandatory Malpractice Insurance Task Force said in an interim reportthat they are likely to recommend malpractice insurance as a condition of licensing for all active lawyers, with to-be-determined exemptions. Before the final report is due in January, they want YOUR feedback, especially about specific details like exemptions and minimum coverage levels. More info below.

2. Insurance! WSBA has the green light to set up a private health-insurance exchange to provide another option for members across the state. More info below.

3. The board took a first look at WSBA's draft 2019 budget, which will be on the agenda for action in September. Subject to Washington Supreme Court review, all license types will have the same active member license fee—$453—next year. More info below.

4. Rules, rules, rules: Various WSBA entities have recommended amendments and additions to the Rules of Professional Conduct, Superior Court Civil Rules, Criminal Rules for Courts of Limited Jurisdiction, and Superior Court Criminal Rules. More info below.

5. We're honoring a fantastic group of legal luminaries in September—get your tickets now for the Sept. 27 annual APEX Awards dinner. You're sure to leave inspired.

Meeting Recap

• **Local Hero Awards:** WSBA President Bill Pickett presented Local Hero Awards to Lisa Lowe(nominated by the Clark County Bar Association) and David Nelson (nominated by the Cowlitz-Wahkiakum Bar Association) for their outstanding legal and community service.

• **Mandatory Malpractice Insurance.** The Mandatory Malpractice Insurance Task Force issued an interim report with a tentative conclusion that malpractice insurance should be mandated for Washington-licensed lawyers, with specified exemptions (in Oregon, for example, exempted groups include government attorneys, in-house private-company attorneys, and others). The task force's preference thus far is to mandate a minimum level of coverage, purchased through the open marketplace. Before its final report is due in January, the task force will focus on details (what exemptions? what minimums?) for rule drafting. Members are encouraged to read the interim

report and provide comments to insurancetaskforce@wsba.org. Please note: Limited License Legal Technicians and Limited Practice Officers are already obligated to show proof of financial responsibility, which is typically established by certifying malpractice insurance coverage.

• **Member Health-Insurance Pool**. With rising health-care costs and uncertainty about the Affordable Care Act, members have been reaching out to WSBA over the past year asking what we can do to provide health insurance. In response, we've explored the insurance landscape and talked to members, other bars, insurance experts and officials, and various providers. Our research indicates the best potential to offer WSBA members another insurance option with competitive rates is through a private exchange. We will soon partner with Member Benefits, Inc., a company that creates private exchanges for associations such as the State Bar of Texas and the Florida Bar. We will let all members know when that benefit is available.

• **Budget and Audit Committee Recommendations**. The Budget and Audit Committee presented WSBA's draft 2019 budget for consideration to the board, which will take action on it in September. The draft budget maintains programs and services to fulfill our regulatory responsibilities, serve and protect the public, and support members to be successful in the practice of law. The budget is built on previously set lawyer-license fees of $453. As part of the budget-building process, the board approved:
- A new Continuing Legal Education (CLE) revenue-sharing model with sections. Section leaders widely expressed support for this new model.
- License fees for Limited Practice Officers (LPOs) and Limited License Legal Technicians (LPOs): After debate, both active-member fees were set at $453 for 2019 (the Budget and Audit Committee came with a recommendation of $200). The board also recommends that LLLTs and LPOs pay a $30 Client Protection Fund assessment, which would need to be specifically ordered by the Washington Supreme Court. The majority of governors decided that, as WSBA members with full access to benefits and services, LPOs and LLLTs should have the same license fees as lawyers. The Washington Supreme Court will review these fees for reasonableness.
- The Law Clerk program annual fee: After remaining at $1,500 for 20 years, the fee will increase to $2,000 next year.

• **Free Legal Research Tool for Members.** WSBA currently contracts with Casemaker to provide members with a free legal-research platform. WSBA recently launched a request for proposal and has been exploring whether to remain with Casemaker, switch to Fastcase, or offer both. To evaluate members' preference, WSBA conducted a member-wide survey with demo links, in-person usability tests, and virtual focus groups. Governors discussed the pros and cons of choosing one platform over another or even offering both. WSBA will be maintaining Casemaker and continuing to explore whether to add Fastcase as an additional member benefit.

• **Rule Recommendations from the Civil Litigation Rules Drafting Task Force:** This task force was chartered in 2016 to suggest rules necessary to implement the board's previous task force that recommended various changes to address the escalating cost of civil litigation. The recommended amendments and additions to the Superior Court Civil Rules (CR)—including 1, 3.1, 11, 16, 26, 37, 53.5, and 77—focus on the principle of cooperation and require and/or encourage cost-efficient procedures. (The full amendments are in the board materials starting on page 215.)The board will take action in September to approve the recommended amendments for submission to the Washington Supreme Court.

• **Recommendations from the Court Rules and Procedures Committee.** As part of the Washington Supreme Court's review cycle to bring rules up to date with current law, the Court Rules and Procedures Committee has proposed amendments to Superior Court Criminal Rules (CrR) 1.3, 3.4, and 4.4; Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) 4.2, 4.4, and 7.3; and Civil Rule (CR) 30. (The full amendments are in the board materials starting on page 323). The board will take action in September to approve the recommended amendments for submission to the Washington Supreme Court.

• **Amendments to RPCs Concerning Marijuana-Related Conduct.** As recommended by the Committee on Professional Ethics (CPE), the board approved for submission to the Washington Supreme Court amendments to comments to the Rules of Professional Conduct (RPC) to continue to allow Washington lawyers to assist those participating in the marijuana industry. These changes were in response to new federal enforcement priorities regarding marijuana; they remove contingency language in Comment [18] to RPC 1.2 regarding federal enforcement priorities and add Comment [8] to RPC 8.4 to clarify that a lawyer's conduct in counseling a client regarding marijuana law would not establish a basis for disciplinary action under the rule (The full amendments are in the board materials starting on page 166.)

• **Proposed Bylaw Amendment Regarding Endorsing Candidates.** WSBA bylaws currently prohibit governors, WSBA officers, and the executive director from publicly supporting or opposing candidates in an election for public office in Washington state if being an attorney is a prerequisite for office. Governors considered a proposed amendment that would extend the endorsement prohibition to any position on the Board of Governors. This amendment will be on the September agenda for action.

• **Updates from other board entities:**
o Addition of New Governors Work Group: This group met for the first time in July with a second meeting scheduled for Aug. 14. All materials are online. The group will make a recommendation to the board in September about a proposal to eliminate three yet-to-be-seated governors (two public members, one LLLT or LPO) and to allow LLLTs and LPOs to run in open governor elections in congressional districts.
o Member Engagement Work Group: The board approved the charter and roster for a new work group to explore how to best engage members and facilitate two-way understanding.

• **Selection of 2018-2019 WSBA Treasurer.** Congratulations to Governor Dan Bridges, whom the board selected as its incoming Treasurer. Kudos and appreciation to outgoing Treasurer Governor Kim Risenmay.

• **Working Retreat:** The board held its annual retreat before the meeting on Thursday, July 26. Governors focused on communication and relationships.

• **Conversation with the Washington New and Young Lawyers Committee (WYLC).** WYLC Chair Mike Moceri and Chair-Elect Kim Sandher asked for WSBA to partner on solutions such as access to an affordable health-care exchange and reducing debt load/promoting public-service loan forgiveness for those coming out of law school.

The agenda and materials from this Board of Governors meeting, as well as past meetings, are online. The next regular meeting is September 27-28 in Seattle. The Board of Governors is

WSBA's governing body charged with determining general policies of the Bar and approving its annual budget.

WSBA seal

Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539 | Map
Toll-free: 800-945-9722
Local: 206-443-9722

Official WSBA communication
All members will receive the following email, which is considered official:

- Licensing and licensing-related materials
- Information about the non-CLE work and activities of the sections to which the member belongs
- Mandatory Continuing Legal Education (MCLE) reporting-related notifications
- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications

From:	Jerry Hall
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Malpractice Insurance
Date:	Saturday, September 15, 2018 2:02:09 PM

Dear Task Force Members

I have been in private practice in the State of Washington since 1973. Approximately three years ago, I decided to become semi-retired and limit my practice to serving as a Settlement Guardian ad Litem on cases involving minors and incapacitated persons. I am recommended by both Plaintiff and Defense attorneys and appointed by the judge to review settlements, discuss with the parents or guardians as to the reasonableness of the settlement and write a report to the court. My liability exposure on this process is Zero as the final decision rests with the court. I currently work out of my home to keep the overhead down. If I were required to maintain malpractice insurance for such limited activity, I do not believe I would be able to maintain my practice, such as it is. I would ask that you consider an exemption for attorneys in my position. Thank you for considering my request. Jerry W. Hall Bar # 5903

From:	Kate White Tudor
To:	Mandatory Malpractice Insurance Task Force
Subject:	Comment on malpractice insurance study
Date:	Saturday, September 15, 2018 2:14:29 PM

Dear Insurance Task Force Members,

I read the recently published article in the NW Lawyer with interest and concern. I have an active bar license, but I do not practice law in Washington State. I own my own lobbying firm, and I advocate for my clients to the Washington State legislature and administrative agencies in their processes for making laws, rules, and policies. Over half (I don't actually know how many) of lobbyists do not hold law degrees. Lobbying is not a state-regulated profession (aside from required financial disclosures). I am careful in not practicing law for my clients—I have practiced in the past (in Texas), and I have built a network of attorneys I refer to through my membership with the Washington State Society of Health Law Attorneys as well as folks I've met while teaching as adjunct faculty at Seattle U law school.

I hope the bar ultimately provides an exception for mandatory malpractice that includes people who are not engaged in the practice of law.

If the bar were to require malpractice insurance and did not provide an exemption for lobbyists who do not practice law, I would drop my bar license. It only provides value to me as a marker of competence, and my business is solid enough at this point I do not need it. This might also take me out of the pool of eligible attorneys for pro bono work and teaching, but I don't do enough of either for it to be worth carrying malpractice insurance (which isn't required to do either of those things either).

I know lobbyists are an invisible tiny minority of bar members (I have never seen a CLE that was professionally relevant to me), and I have considered long and hard in paying my bar dues whether there is anything about being licensed that makes sense for me. I have continued to remain licensed for eleven years of my lobbying work, starting as risk mitigation in case I had to fall back to practicing law. But I love what I do, I don't plan to change, and a malpractice requirement might just make it a clearer choice to let my license go.

Thanks for the opportunity to comment.

Best wishes,

Kate

Kate White Tudor, J.D.
Advocacy—Strategy—Policy
360-402-1272
kate@whitetudor.com

From: C.B. & ███ Waldrop
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Sunday, September 16, 2018 7:06:13 PM

In my opinion, mandatory malpractice insurance is unnecessary. Based on experience in the industry, the WSBA should only advise members of the bar what limits of exposure they should be prepared to cover, however they choose to do it. Also, I agree that non-practicing members of the bar need not insure.

Carleton B. Waldrop
Clarkston, WA
WSBA # 3961

From: Britt Tinglum
To: Mandatory Malpractice Insurance Task Force
Cc: Britt Tinglum
Subject: Mandatory Malpractice Insurance
Date: Monday, September 17, 2018 8:22:15 AM

Hello -

I've been an attorney in WA for 30 years. I was lucky to be able to retire from active practice when I turned 55 yrs. old. I am a proud member of the WSBA and keep my license active. I enjoy most of the continuing legal education seminars I attend and often attend those geared towards senior attorneys.

I was disheartened to read that the WSBA is considering mandatory malpractice insurance for all. I'm sure the insurance industry has been able to paint a horror story picture of the dangers of not mandating this program. Please remember that such numbers can be manipulated and without an opposing view from a neutral expert the WSBA could easily be swayed by padded statistics.

In addition, the WSBA should think hard about unintended consequences of such a paternalistic program. Is the WSBA prepared to regulate and administer an insurance program that, because it is required, could price-gouge small firms and solo practice attorneys? I expect the insurance industry is promising it will be fair, but history has shown that for-profit insurance companies will take advantage of any such mandatory program. And it's not just price - insurance companies could make low-cost insurance requirements so onerous to fulfill that almost no one is eligible. Such practices are rife in both the auto and home insurance industries. Is the WSBA really equipped and ready to monitor and regulate such practices? That will take extra employees (with the correct expertise) and will likely require an increase in WSBA dues to cover.

Baby boomer attorneys like myself are retiring, but remaining active WSBA members for a myriad of reasons - a potential return to practice, pride of profession, etc. I know that I will retire my license if this program is activated. I'm sure I am one of many.

Sincerely,
Britt L. Tinglum
#19090

From: Adella Wright
To: Mandatory Malpractice Insurance Task Force
Subject: Comment on Mandatory Insurance
Date: Monday, September 17, 2018 9:11:46 AM

I follow your meetings with some trepidation, as a (mostly) stay and home mom whose future may be very impacted by your decisions. When my daughter was born, I was able ot work with her for some months before it became too challenging. At the time, I sadly converted my status to inactive, thinking that I would be unlikely to practice law at that time. It was very disappointing to do so, as it also interfered with the small volunteer work that I had been able to do.

When my daughter became old enough for preschool, I began to consider looking for work again. I was alerted to an ideal job. Unfortunately, the red tape involved in converting to active was sufficient for me to lose that opportunity.

I am now an "active" attorney, although I am not practicing. Given the costs of childcare, it remains very difficult to engage in a full or part time practice. Employment opportunities at this juncture are not plentiful. I do volunteer. When I do, it is through organizations who carry their own insurance under which I would be covered. I still keep myself available for job opportunities as they arise and it's largely for these reasons - volunteering and availability - that I prefer to retain my active status. I know I have provided valuable services to the community by using my law license. I also know that my time as an inactive attorney has impacted my employability and marketability more than I'd anticipated before having my daughter. Volunteering at least helps me keep some skills for a future where I return to work. I would never want to work without some malpractice insurance covering my work, but I do not at this point.

I do not think i could afford the extra insurance requirements in this place and it would break my heart to turn my back on the legal profession as a future career. I know there is discussion of potential exceptions, but I do not see my situation addressed.

Best wishes as you undertake this gargantuan task.

Adella Wright

From:	Dick Holmquist
To:	Mandatory Malpractice Insurance Task Force
Subject:	Comment: Mandatory Professional Insurance Proposal
Date:	Monday, September 17, 2018 10:49:45 AM

To the WSBA Insurance Task Force:

I am an active status attorney member of the Washington State Bar Association to which I was admitted in September 1969. Having retired from active law practice in 2003, I have nonetheless maintained my active Bar membership for this past 49 years by continuing to attend CLE presentations (both live and via the internet), by conforming to all the various requirements imposed by the Bar Association upon its active members, and by paying the required fees for active status members. Even though I have not practiced actively since 2003, for a host of personal reasons I have wished to maintain my full licensure status.

Now I read about the proposal for the Washington bar to become one of the tiny number of states where mandatory insurance is imposed, a result doubtless to desired by the insurance industry in this state. Apart from the fact that I am opposed on principle to this absurd experimentation by our state's bar with a disruptive measure more than 45 states have yet to adopt, I simply want to point out that adoption of such a costly requirement and imposing it on persons such as me who wish to maintain their active status bar membership even though not engaged in the active practice of law would most certainly drive us out of the Washington State Bar Association altogether.

As a 49-year active status member of the WSBA, I strongly oppose adoption of any such experimental mandatory insurance requirement by the Washington State Bar Association.

Sincerely,

Richard H. Holmquist
1200 6th Avenue North #4
Seattle WA 98109
WSBA #2465

From: Robert Phed
To: Mandatory Malpractice Insurance Task Force
Subject: Objection to mandatory insurance
Date: Monday, September 17, 2018 11:20:00 AM

Objections:

Unclear how the Oregon PLF would be applied to satisfy the WA mandatory requirement or is the WA mandatory requirement would be in addition to the coverage already offered by another State's bar mandatory insurance plan (OR PLF)?

Do not go with the Oregon model. It is patently unfair as the oft maligned solo and small firm practitioners subsidize the insurance coverages for the big guns. I don't think it is fair for me to pay the same amount of insurance as the guy whose cases are valued at 1M or more, while mine are $50K at best.

The WSBA is creating a problem where there were none. Just another reason to overgovern.

My WSBA # 42399.

Robert S. Phed
Attorney at Law
1001 SW 5th Ave, Ste 1220
Portland OR 97204

Phone: (503) 796-PHED (7433)
Phone: (360) 993-5804 (Vancouver, WA local)
Fax: (503) 796-5154
www.phedlaw.com

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From: Nancy Combs
To: Mandatory Malpractice Insurance Task Force
Subject: Opposition to mandatory malpractice insurance
Date: Monday, September 17, 2018 1:47:00 PM

Dear Insurance Task Force members:

I am a solo practitioner handling exclusively federal Social Security Disability law in California with a Washington State license. I have been practicing law for 27 years, 8 of those years handling SSDI claims. I have never had a malpractice claim against me. While I have no statistics to back it up, I suspect the insurance loss record for SSDI malpractice claims is low given the fact that Social Security benefits are limited.

Nevertheless, when I applied for malpractice insurance last year I was put in a "high risk" pool because I practice in a different state from where I am licensed. I was quoted a premium of $6,000, an expense that would put me out of business should I be required to pay it, given the high cost of living in the San Francisco Bay Area. Attorney fees are limited by federal rule so I am unable to raise my rates to accommodate the high cost of malpractice insurance.

Should the task force institute mandatory malpractice insurance, I will be forced to surrender my Washington bar license. I urge the task force to reconsider its position.

Respectfully,

Nancy Beth Combs
WA bar #42181
Social Security Disability Attorney
149 W. Richmond Avenue #303
Richmond, CA 94801

206-931-5477 (cell)
510-730-3082 (office)
510-787-2762 (fax)

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From: Evan Inslee
To: Mandatory Malpractice Insurance Task Force
Subject: Exceptions to mandatory inurance
Date: Monday, September 17, 2018 2:21:52 PM

Dear Sirs/Madam:

As probably the longest practicing attorney in the WSBA,(since 1956), I do continue a limited practice. It is limited to (1) representing members of the military pro bono pursuant to the American Bar Association Assistance to the Military program. 90% of the work is in domestic areas; (2) pro bono services to members of my church to whom I may be referred who have a variety of legal needs ranging from social security issues to boundary disputes (3) services for fee that do not require any court filings or court appearances. If an estimated $3,000 annually is required for malpractice coverage I will have to stop all services.

I can see the need for a mandatory insurance program for practitioners, even though in 62 years of practice I have never been sued for malpractice. My request is that either an exemption be made for coverage for services of a charitable nature to low income and military personnel or that as a condition of providing coverage insurance carriers must make available low cost coverage with low limits to cover attorneys providing charitable or military pro bono assistance. Thank you.

Evan E Inslee
253 677 9989
3728 196th Ave Ct E
Lake Tapps, WA 98391-9029

From: Pam -
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Monday, September 17, 2018 3:34:34 PM
Attachments: Ltr to WSBA Insurance Task Force .pdf

Gentlemen,

Attached please find correspondence from attorney Robert C. Scanlon in response to the invitation contained in the present edition of NW Lawyer regarding mandatory malpractice insurance.

Sincerely,
Pam Ryan, Legal Assistant to
Robert C. Scanlon

LAW OFFICES
DELLWO, ROBERTS & SCANLON
A PROFESSIONAL SERVICE CORPORATION
1124 WEST RIVERSIDE AVENUE, SUITE #310
SPOKANE, WASHINGTON 99201-1109
TELEPHONE (509) 624-4291
FAX (509) 456-6810

ROBERT J. ROBERTS
(1952-1993)
ROBERT D. DELLWO
(1917-2015)

ROBERT C. SCANLON

Kathleen M. Scanlon
Administrative Assistant

September 17, 2018

SENT VIA E-MAIL TO: insurancetaskforce@wsba.org

Gentlemen:

This letter is in response to the invitation contained in the present edition of NW LAWYER on the subject of mandatory malpractice insurance.

To begin, I have been in practice for more than 41 years. I have always maintained malpractice insurance and it is my intention to do so in the future.

However, the statement:

> At this point, the Task Force favors mandatory malpractice insurance through a free-market model (allowing lawyers to purchase insurance from any provider they wish) as a condition of licensing.

Basically, puts the bar association at the mercy of the insurance industry.

I recognize that this is probably not an issue for a larger firm but I am a solo practitioner. I practice in the area of collections.

At my last insurance renewal one carrier refused to quote a premium simply because of my area of practice. My insurance broker has also pointed out to me that a number of carriers are "leaving the market".

The bar cannot provide assurance that a remaining carrier or carriers may simply chose to increase their premiums by 20 to 25%.

If that were to occur and malpractice insurance simply became prohibitive what would be the result? Would I be suspended?

If the bar association cannot control the cost of insurance premium, then I believe there should be a "out" for a practitioner who simply cannot afford malpractice insurance because the carriers simply chose to "jack up the rates" because attorneys "have no choice".

Very truly yours,

Robert C. Scanlon
Attorney at Law

RCS/pcr

From: Judith A. Maier
To: Mandatory Malpractice Insurance Task Force
Subject: No
Date: Monday, September 17, 2018 5:00:39 PM

In a word, mandatory malpractice insurance should **not** be required. Primarily, I teach. Occasionally, I assist small business owners with deciphering contracts or wording contracts, a task for which I have many years of experience. But the income I derive from this is nominal. To require that I spend $3,000 or more for insurance when I do not receive anywhere near that amount for the services I render will force me to simply stop helping people – often those who can least afford it. This is an imprudent idea particularly when we are facing a severe access to legal representation situation throughout the state. All this would do is to compound it by forcing more attorneys to stop assisting.

Judith Maier

From: chicago1@centurytel.net
To: Mandatory Malpractice Insurance Task Force
Subject: comments on Task Force re malpractice insurance
Date: Tuesday, September 18, 2018 8:34:08 AM

Thank you for the opportunity to comment and for the explanatory article in *NW Lawyer* of August, 2018. I see you are considering keeping a no-insurance-required status for retirees who do not practice law and I urge you to adopt this idea, and here are some reasons why.

Some prior practices don't even lend themselves to taking on the rare client. You seem to suggest that some retirees are going to sneak in a client! And so make them pay. (See my last paragraph on that.) Not all retirees ever practiced law for the public and not all have the resources or skill set to even consider it now, since mayhap, they were government attorneys beforehand doing highly specialized practices requiring a stable of technical support? For example, those who did environmental law (me) for industry or government? Like tax law, environmental law has a ginormous body of regulations and most who do it, work with engineers, chemists, biologist, etc. It is not a small shop type of law. Such attorneys are highly unlikely to start taking private clients. But they might want to lend their broad knowledge to salmon groups, or a local bar that does not generally need to know federal administrative law, in the form of a lecture to other attorneys who usually just do family or criminal law. As I do and have done. So by treating us all as fungible, you are not recognizing some attorneys would never go into private practice. Even after retirement.

What we can do, but it is not practicing law—but still nice to say we are a bar member: I am retired as of 4/28/2017 from being an in-house attorney embedded in the Natural Resources Department of the Quileute Tribe (La Push), for the prior 20 years. I still live in Forks and am active now as a volunteer on about 7 different Natural Resources Committees and they value my legal training. I may give a PPT talk soon to them (except for the federal marine sanctuary one) on the WA Open Meetings Act, because the issues keep coming up. I am also a member of the Clallam County Bar and about two months after retiring, gave a presentation on the *Hirst* decision to that group and to the North Pacific Coast Lead Entity and Coastal Salmon Partnership (salmon restoration groups). While still working at Quileute, I gave a talk on the culvert case (*U.S. v Washington,* subproceeding 2001-1*)* to these groups. They were gratefully received as these decisions touch on all who own property and pay taxes; but they don't read these cases, as they are not in their usual arena of experience. In the Coast Salmon Foundation, I review their contracts *in my capacity as a Board Member*. They have insurance for Board Members and I guess I could do this without a license just in my capacity as a Board Member—all the board members can review the foundation contracts--but it seems desirable for them, to know I have more background in doing this. FYI, this is an uncompensated position.

But I am not in private practice and never was. Even beforehand in Texas and Illinois, I was embedded in corporate legal departments and briefly (two years) in City of Houston's Public Works . The only time I ever served clients in the usual attorney way was when I was a student at Northwestern University's Law School—three years in their Legal Clinic. It is really not something I can do. *Don't have the expertise or training to open up a practice, however rare, and have no intention of doing it.* Example: Clallam -Jefferson Pro Bono Attorneys keep wanting me to help advise poverty clients at their periodic public gatherings and I keep refusing, since I don't know

these areas of law and really cannot be of help. I am not going to posture or assume some kind of knowledge I don't have.

Money issue: Please know, those who work inside small governments like remote tribes (me) don't have pensions, just what we can sock away in a 401k from a non-competitive salary, because we loved the work. But it does not exactly create a client base! And when we leave, a new person takes our places. In the article, you say everyone can find $3000 to pay for the insurance. *Not so*. And even the dues and CLEs are a financial challenge now. I have to tell you after 20 lean years at Quileute and only small savings and only Social Security (no pensions, just that 401k; and I was the victim of "being over 50, layoffs" in Texas and ate the savings before finding work with the tribe), *it is a tough decision to even keep up dues and CLE costs*. Nevertheless, *I want to*, but for you to make me buy malpractice insurance would be the financial straw that breaks this broke camel's back! I think it would tip the financial scales. I will have lost my hard-earned honors and respect if I cannot say I am attorney, but I do need to watch every penny. Already I am dipping into savings for some matters. Scary. (Do you folks realize what Medicare and associated Supplemental and Dental insurance cost outside the workplace? Huge.)

Recommendations: I really still want to say that I am an attorney and contribute with that hat on, to various forums. It gives street cred. And by jingo, I have earned it! What if you rule that those who have retired and are not engaged in private practice do not have to pay malpractice insurance, but set some guidelines for what constitutes practice, and make it clear they will be brought before WSBA and either suspended, censored, or have license revoked if they violate this? And/or-- assuming it was without malice aforethought, have a provision for them to reinstate if by some miracle someone wants to give an ageing attorney a job, and if by some miracle that aged body is up to it still. (I retired because my health was deteriorating and the 60-hour weeks had become too difficult.)

Thank you for considering the foregoing.

Katherine Krueger, WSBA 25818
790 J Street, PO Box 1607, Forks, WA 98331
(360) 374-4311, cell (360) 640-0762

From: Joseph R Breed
To: Mandatory Malpractice Insurance Task Force
Subject: Comment on Mandatory Malpractice Insurance
Date: Tuesday, September 18, 2018 9:43:38 AM

I am a retired in-house lawyer who serves as legal advisor to the board of the family-owned parent company of my former employer. That board is my only client. Exempting only in-house counsel of private company lawyers from mandatory malpractice insurance would not cover me. I don't know what the cost would be for the insurance, but I suspect it would make it uneconomic for me to continue to serve as legal advisor to the board. I feel relatively certain that the family board would waive a requirement that I have malpractice insurance if that were an acceptable alternative.

Joe Breed

From:	Hugh D. Spitzer
To:	Hillary Madsen
Cc:	Thea Jennings; Rachel Konkler; Doug Ende
Subject:	RE: Malpractice insurance comment?
Date:	Tuesday, September 18, 2018 4:12:22 PM

Hilary,

First, your comment is received! (And as you see, I'm cc'ing the relevant folks at the WSBA. Everyone on our Mandatory Malpractice Insurance Task Force will get a copy.)

Second, we have heard this comment before, and it's helpful to hear it from you. Your clients are in a different context.

Third, watch for an announcement within the next couple of weeks of an in-person+on-line forum that our Task Force will be holding next month, to get testimony from interested WSBA members.

Hugh

Hugh Spitzer
Professor of Law
University of Washington School of Law
Box 353020
Seattle, WA 98195-3020
206-685-1635
206-790-1996 (cell)
Papers on SSRN: http://ssrn.com/author=1514923

From: Hillary Madsen <Hillary.Madsen@ColumbiaLegal.org>
Sent: Tuesday, September 18, 2018 4:03 PM
To: Hugh D. Spitzer <spith@uw.edu>
Subject: Malpractice insurance comment?

Dear Dr. Spitzer,

How can I submit an official comment about malpractice insurance?

At the institutions project, we have received complaints from prisoners with credible claims of attorney malfeasance who (practically speaking) cannot sue their attorney because he is uninsured. These prisoners are often ineligible for the client-protection fund because of lack of documentation or because the fund would characterize the attorney's actions as malpractice. As a self-regulating body, we have a responsibility to try to put people harmed by attorneys back in their original

position. This responsibility is heightened in the context of prisoners who have lost their personal freedom.

I would be surprised if other civil legal services organizations have not heard similar complaints – has outreach been made into the nonprofit world?

Thank you,
Hillary

Hillary Madsen, Staff Attorney
Pronouns: she, her, hers
Columbia Legal Services
Institutions Project
101 Yesler Way, #300 | Seattle, WA 98104
Seattle office: (206) 464-1122 x147
hillary.madsen@columbialegal.org | www.columbialegal.org
Sign up for newsletters and updates.

Join us for an evening of hope and inspiration
October 17, 2018 | 5:00 pm | Impact Hub Seattle

TICKETS

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From: Gail McGaffick
To: Mandatory Malpractice Insurance Task Force
Subject: comments on mandatory insurance
Date: Wednesday, September 19, 2018 1:55:54 PM

Hello WSBA Task Force,

I found it informative to read the NW Lawyer article on the subject of mandatory malpractice. Thank you for writing it.

As someone who works in the legislative arena, I thought it was interesting that WSBA is looking to adopt a policy that other countries use. But, in the United States, only two states currently require mandatory insurance. Legislation based on a two state trend very rarely succeeds in the state Legislature. The fact that your Task Force appears to be headed in that direction is indicative of the fact that in Washington State bar membership is mandatory.

I am someone who is a non-practicing attorney, but who still wants—so far—to maintain my license. I will admit that I thought about it again this summer, as I paid $750 for only ½ of CLE webinars that I will need in order to report in 2019-- on topics totally unrelated to the work I do. Although I will admit getting ethics credits is always a good idea, regardless of where you work, because all attorneys—in private practice or not—are held to the same ethical standards.

Bottom line, if you require me to obtain malpractice insurance as a non-practicing attorney, I will terminate my WSBA membership. I don't need a WSBA membership to do what I do—but I like having it. The reality is that the cost is already too high with bar dues, and CLEs—even on sale. In California, where I maintain an inactive membership—it's now free since I turned 70. I like their thinking!

So, please—do not create more disincentives for me to maintain my WSBA membership. I've been a member for 45 years, and I was hoping to make it to 50.

Thank you for listening.

Gail

Gail Toraason McGaffick

360-481-3818

From: Jennifer Tucker
To: Mandatory Malpractice Insurance Task Force
Subject: comments on malpractice insurance proposal
Date: Wednesday, September 19, 2018 2:52:26 PM

>
> Dear committee,
>
> I recently read you're article on the proposal for mandatory malpractice insurance and your request for comments. I am against this proposal. I am a stay at home parent. I do not currently practice law, but I keep my license active in case financial circumstances ever require me to return to work. I have avoided going on inactive status because the requirements to return to active status have become onerous. In particular the requirement that a special course be taken after six years and that the bar exam be retaken if you are on inactive status for more than 10 years. Instead, I complete my regular MCLE requirements in order to keep an active license. If you are going to require malpractice insurance, that would simply be too expensive for someone like myself to pay when I am not generating any income, let alone income from practicing law. It should be sufficient for folks such as myself to attest that we have an active license, but are not currently practicing, and to obtain a waiver from the malpractice requirement. I see this proposal for mandatory malpractice insurance as particularly detrimental to women attorneys who choose to take time off from their careers to be with their children.
>
> Thank you for asking for input,
>
> Jennifer Wright Tucker
>

From: Gregory
To: Mandatory Malpractice Insurance Task Force; spith@uw.edu; john.bachofner@jordanramis.com; stan_bastian@waed.uscourts.gov; dan@mcbdlaw.com; christy@myllt.com; gretchen@halehana.com; pjg@randalldanskin.com; pl.isaki@comcast.net; mark@johnsonflora.com; rkarl@SIGinsures.com; kara@appeal-law.com; evanm@jdsawlaw.com; spierce@davisrothwell.com; pinkhamb@seattleu.edu; tstartzel@ks-lawyers.com; anniey@atg.wa.gov; Doug Ende; Thea Jennings; Rachel Konkler; NWLawyer
Subject: Mandatory malpractice insurance comments
Date: Wednesday, September 19, 2018 4:48:58 PM

Dear Mandatory Malpractice Insurance Task Force members,

Since the purpose of investigating mandatory malpractice is to protect the public, then all options that do so should be investigated, including mandatory financial responsibility, which does not appear on the list of Task Force "possibilities considered".

An attorney who certifies that he or she has a net worth excluding personal residence in excess of $2 million (or higher) should not be forced to purchase malpractice insurance. This would avoid the forced contribution to insurance company overhead and profit that insurance premiums require. Mandatory financial responsibility through either insurance *or* net worth would also protect personal liberty by preventing forced engagement with the insurance industry, while fully protecting the public.

I am worried about the burden that mandatory malpractice insurance would place on semi-retired attorneys or attorneys with a very limited practice. Exempting attorneys with gross receipts of less than $50,000 per year would remove an onerous burden on the attorney, but not necessarily protect the public. Mandatory financial responsibility would allow the cost of insurance burden to be lifted while protecting the public. If mandatory malpractice insurance is required without a financial responsibility alternative, there should however be a *de minimis* exception to avoid undue burden on some attorneys.

The idea that insurance is necessary because insurance companies will settle, when an attorney might not, could further assault the rights of attorneys. To avoid this, the Bar Association should require a "consent to settle" clause in all malpractice insurance so the insurance company cannot settle without the consent of the attorney. In addition, to protect the public the Bar Association should require that all malpractice policies not be wasting, that is defense costs should not reduce the limit of coverage.

Respectfully,

Gregory Lyle
WSBA #7692

From: Gregory <[redacted]>
Sent: Thursday, September 20, 2018 5:02 PM
To: Hugh D. Spitzer
Cc: john.bachofner@jordanramis.com; stan_bastian@waed.uscourts.gov; dan@mcbdlaw.com; christy@mylllt.com; gretchen@halehana.com; pjg@randalldanskin.com; pl.isaki@comcast.net; mark@johnsonflora.com; rkarl@SIGinsures.com; kara@appeal-law.com; evanm@jdsawlaw.com; spierce@davisrothwell.com; pinkhamb@seattleu.edu; tstartzel@ks-lawyers.com; anniey@atg.wa.gov; Doug Ende; Thea Jennings; Rachel Konkler
Subject: Re: Mandatory malpractice insurance comments

Hugh,

Thanks for your response. A letter of credit still requires use of an insurance company or a bank, but is preferable to mandatory insurance because it does not force insurance company involvement in an attorney's defense. In any event, an attorney should be able to attest to a net worth exclusive of personal residence well in excess of the base insurance requirement, and not be required to purchase insurance. The Bar Association should not presume improper behavior by its members; failure to produce assets that have been attested to would be grounds for disbarment. That should be enough.

Greg

On 9/19/18 5:12 PM, Hugh D. Spitzer wrote:

> Dear Mr. Lyle,
>
> Thanks for these thoughts. We have discussed some potential alternatives to insurance, such as posting a letter of credit. But the cost of that is roughly the same as insurance. The attorney malpractice attorneys we have spoken with have pointed out that there are definitely instances where lawyers appear to have assets, but either hide them or file for bankruptcy (or both). But this is definitely an issue we're continuing to wrestle with. We're also discussing the extent to which a mandatory malpractice rule should dictate policy terms.
>
> Hugh
>
> Hugh Spitzer
> Professor of Law
> University of Washington School of Law
> Box 353020
> Seattle, WA 98195-3020
> 206-685-1635
> 206-790-1996 (cell)
> Papers on SSRN: http://ssrn.com/author=1514923
>
> ---
>
> **From:** Gregory <[redacted]>
> **Sent:** Wednesday, September 19, 2018 4:49 PM

To: insurancetaskforce@wsba.org; Hugh D. Spitzer <spith@uw.edu>; john.bachofner@jordanramis.com; stan_bastian@waed.uscourts.gov; dan@mcbdlaw.com; christy@mylllt.com; gretchen@halehana.com; pjg@randalldanskin.com; pl.isaki@comcast.net; mark@johnsonflora.com; rkarl@SIGinsures.com; kara@appeal-law.com; evanm@jdsawlaw.com; spierce@davisrothwell.com; pinkhamb@seattleu.edu; tstartzel@ks-lawyers.com; anniey@atg.wa.gov; douge@wsba.org; theaj@wsba.org; rachelk@wsba.org; nwlawyer@wsba.org
Subject: Mandatory malpractice insurance comments

Dear Mandatory Malpractice Insurance Task Force members,

Since the purpose of investigating mandatory malpractice is to protect the public, then all options that do so should be investigated, including mandatory financial responsibility, which does not appear on the list of Task Force "possibilities considered".

An attorney who certifies that he or she has a net worth excluding personal residence in excess of $2 million (or higher) should not be forced to purchase malpractice insurance. This would avoid the forced contribution to insurance company overhead and profit that insurance premiums require. Mandatory financial responsibility through either insurance *or* net worth would also protect personal liberty by preventing forced engagement with the insurance industry, while fully protecting the public.

I am worried about the burden that mandatory malpractice insurance would place on semi-retired attorneys or attorneys with a very limited practice. Exempting attorneys with gross receipts of less than $50,000 per year would remove an onerous burden on the attorney, but not necessarily protect the public. Mandatory financial responsibility would allow the cost of insurance burden to be lifted while protecting the public. If mandatory malpractice insurance is required without a financial responsibility alternative, there should however be a *de minimis* exception to avoid undue burden on some attorneys.

The idea that insurance is necessary because insurance companies will settle, when an attorney might not, could further assault the rights of attorneys. To avoid this, the Bar Association should require a "consent to settle" clause in all malpractice insurance so the insurance company cannot settle without the consent of the attorney. In addition, to protect the public the Bar Association should require that all malpractice policies not be wasting, that is defense costs should not reduce the limit of coverage.

Respectfully,

Gregory Lyle
WSBA #7692

From:	Stan Sastry
To:	Mandatory Malpractice Insurance Task Force
Cc:	mikech@lexquiro.com
Subject:	Re: Mandatory Malpractice in
Date:	Wednesday, September 19, 2018 7:05:29 PM

To whom it may concern:

I oppose the imposition of Mandatory Malpractice insurance for reasons of excessive financial hardship.

I am a solo practitioner practicing exclusively patents, trademarks and copyright. I do not practice under Washington laws. My practice is exclusively before the United States Patent and Trademark Office and sometimes before the United States Copyright Office. As such, my clientele is very niche. My yearly revenues cannot support buying malpractice insurance, which would cost anywhere between $1500-$3000. It would be a great financial hardship for me to buy malpractice insurance for my low risk practice. Frankly, I do not see a need to have malpractice insurance because of my niche practice.

Over the years the WSBA has been touting the need to make legal services more affordable to the public at a low cost. The imposition of mandatory malpractice insurance flies in the face of that mission of the WSBA because solo practitioners have to raise their fees to cover the cost of buying malpractice insurance. Thus imposition of mandatory malpractice insurance is counter to that stated mission of the WSBA.

The WSBA's need for imposing mandatory malpractice insurance appears to be driven by extraneous factors. For instance, Mandatory Malpractice Insurance Task Force Interim Report to Board of Governors July 10, 2018 says on page 5: "16. Virtually all physicians carry malpractice insurance because it is widely required by hospitals as a condition of admitting privileges." implying that all lawyers should also carry malpractice insurance. This is flawed reasoning. Firstly, doctors carry high risk because they directly deal with human life and limb issues. Lawyer malpractice generally does not result in direct loss of human life or limb. Lawyer malpractice is related to loss of property or monetary damages to clients (or rarely imprisonment in the criminal context). Secondly, doctors make a lot more money than lawyers in general. Hence doctors can afford malpractice insurance. Frequently, doctor's malpractice insurance is covered by the hospital or healthcare agency they work for. The average lawyer in private practice (not counting the big firm lawyer) makes less money than a public school teacher or a construction worker. Moreover, it appears to me that only lawyers seem to want to compare themselves with doctors (so they can feel better and important). Ironically, I never heard a doctor comparing himself/herself to a lawyer. The public has a low opinion of lawyers (witness the brutal lawyer jokes) when compared to doctors because the public perceives the lawyer as less important than the doctor. Public perception of lawyers is not going to enhance just because lawyers are mandated to carry malpractice insurance.

All in all, I don’t believe imposing mandatory malpractice insurance is going to make the legal professional services more accessible or affordable to the public. Actually, it may have the opposite effect because it will drive up the cost of doing business for many lawyers.

Imposing mandatory malpractice insurance is only a back door way of recovering money from bad lawyers. This does not mean that good lawyers have to pay the price for the actions of a few bad lawyers. I hope the WSBA sees the error of its ways and refrains from imposing mandatory malpractice insurance.

Stanley Sastry
WSBA # 36391

From:	Lisa Scott
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Malpractice Insurance - Opposed
Date:	Thursday, September 20, 2018 3:49:25 PM

Dear Task Force:

I am opposed to a new rule requiring all WA lawyers to be insured for malpractice. Since 85 per cent of private practice attorneys are currently insured, where is the problem? This rule would add another layer of micro-management and bureaucracy to the practice of law in this state. I am currently insured and intend to maintain insurance, but it was several years into my practice before I got insurance, after my practice grew, and it was reasonably affordable. I suspect most of the attorneys without insurance are newer attorneys who will eventually get insurance.

I would also ask, who is driving this proposal? My guess is insurance companies who want more business, and plaintiffs' attorneys who practice in this area and would like insurance coverage available for more claims. This proposal seems to assume the worst about attorneys: that we will all eventually be sued and must have insurance to cover the potential claims.

There is not a strong enough justification to impose a mandatory requirement on all attorneys for something that should be left up to the individual to decide if and when it is right for them. The current notification on the bar website gives potential clients the information on which attorneys are or are not insured. The clients can continue to use this information to decide who they want to hire.

Thanks for your consideration.

Lisa Scott
Bellevue, WA
WSBA # 17304

From: Angel Latterell
To: Mandatory Malpractice Insurance Task Force
Subject: malpractice insurance discussion
Date: Thursday, September 20, 2018 5:32:51 PM

Hi there,

I just wanted to put my comment out there. As an individual who practices law low bono and as not my primary job I would find required malpractice insurance to be a burden. It is a good year when I pull in enough for the premium, I know because I've applied multiple times and every quote I've ever been given, even when the work I do is very low risk is $3000 for the year. I may make more than that this year, but at the end of the day I would just stop practicing law. As it already costs me money to keep practicing and use my license so I can volunteer.

My paid legal practice helps regular people who just have one off questions, tenants, landlords, small business owners, small claims court consults. And it basically pays for the expenses I have to keep my license. Nothing I do is high risk, and if it is I use my discernment and say no. However, because my area of law involves real estate (primarily low bono landlord/tenant advice) I am told I practice in a high risk area.

Those of us who do low bono, who do not practice law 100% of the time, who are doing low risk things, should be taken into consideration with this type of a mandate. Perhaps there need to be different types of policies available. Or perhaps you keep the rules as is and don't mandate insurance.

--
"Poetry has the power to connect, illuminate and elevate humanity, society and even the cosmos." ~ Daisaku Ikeda

Check out my blog! *Travels with Paprika Angel*
www.paprikaangel.com

From: Tom Lerner
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory malpractice
Date: Thursday, September 20, 2018 5:44:36 PM

I previously served on the WSBA Client Protection Fund Board, at a time when we urged the Board of Governors to increase the mandatory assessment to cover the higher dollar value of claims, even though the volume of claims being paid was not increasing. If mandatory malpractice coverage was in place, my expectation would be that many claims that were properly before the Fund could also be framed as claims that would be paid by a malpractice carrier. After all, stealing client funds is a departure from the standard of care required of attorneys. Thus, for those worried about the costs of insurance, consider whether their annual bar dues might actually go down. Claims against uninsured lawyers ultimately cost all of us in some form or fashion.

Thomas A. Lerner
Attorney
Stokes Lawrence, P.S.
1420 Fifth Avenue, Suite 3000 | Seattle, WA 98101-2393
direct: 206.892.2147 | cell: 206.390.0470
Tom.Lerner@stokeslaw.com | stokeslaw.com
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Jorgen Bader
6536 – 29th Ave. N.E.
Seattle, WA 98115

September 17, 2018

Mandatory Insurance Task Force
c/o WSBA 1325 – 4th Ave. # 600
Seattle, WA 98101- 2529

RE: Mandatory Malpractice Insurance
For members of the Bar

Dear Task Force members:

Mandatory Malpractice Insurance for all members of the Washington State Bar is a bad idea, even if it excepts government and in-house lawyers who work solely for their full-time employer as client.

It will drive volunteer lawyers, who are mostly retired, to cease their service. I retired over twenty years ago and still keep my license in order to serve on various non-corporations as a counselor. I have held offices and was a member of the board of directors of over a half-dozen non-profit organizations, and I still serve as such on three. I gave and give legal advice, review documents, draft letters, interpret ambiguous passages in regulations, circulars, handbooks and the like. I've have never taken any money or even reimbursement of expenses. If I am required to buy malpractice insurance, I will resign my license and quit serving for free. There are others whose services are gratis (or almost so) for friends and family. The cost of insurance will prompt them to drop their pro bono activities too.

It will increase the costs of practicing law and thereby increase fees charged by many sole practitioners and small firms. Many of them will pass on the substantial added costs of insurance premiums (and the ancillary paper work) to the clients. Larger corporations usually go to the bigger full-serve firms that already have insurance coverage. The net result will be an increase in fees to individual, family and small business clients.

It introduces a third party into the lawyer-client relationship. Currently, a disgruntled client deals directly with his or her lawyer in resolving a dispute. The lawyer has a wide range of flexibility in resolving the dispute and to preserve his or her reputation, an incentive to settle the matter promptly to the satisfaction of both. Mandatory insurance makes the insurance carrier a party.. The presence of insurance may distort cases and increase the work involved. The self-interest of the carrier the insured often differ as can be seen in the volume of "bad faith" cases

By stripping single lawyers and small firms of the ability to just say "No". the requirement would shift the bargaining power between lawyers and insurance companies. The ability to withdraw gives the buyer leverage to keep premiums to reasonable levels. If lawyers lose that ability, the insurance companies can act like members of a cartel in sort of a "gentleman's competition" confident that the lawyer has to choose one or the other of the cartel. While now there may be seven companies, a few years ago there were only two or three. A true competitive market requires that buyers have the ability to walk away

There are less expensive methods to protect a client from loss from lawyer misconduct, e.g. if inadequate, increase the client indemnity fund.

The Bar needs to solicit the opinion of the membership by presenting both sides through advocacy by people who believe in their cause. The article in the NW Lawyer states the opposition in a pro forma manner. Its bias is shown by its final paragraph:

> "Ultimately the question the WSBA faces comes down to who should bear the risk of loss when a lawyer makes a mistake the lawyer or the public? It's time for Washington lawyers to answer that question."

That rhetorical question in the article has no more objectivity than this one:

> "Ultimately the question the WSBA faces down to should the Bar Association become a shill for malpractice insurance companies?"

The Bar Association answered that question when it set up the Client Indemnity Fund. . The courts also answered that question through its decision in cases by applying tort principles that make lawyers responsible for malpractice.

The focus ought to be on whether invoking insurance companies really overwhelming benefits to the public in light of its many drawbacks, such as reducing volunteer lawyer services, by raising costs to lawyers and their fees, by complicating dispute resolution, fees, etc.

The tone of the article and its final question broadcasts its bias and gives the impression that the Task Force is just going through the motion of soliciting comment for sake of appearance. To overcome that, open the NW Lawyer to genuine opponents and let the bar membership vote.

Yours truly

Jorgen Bader

Jorgen Bader

From: Mark de Regt
To: Mandatory Malpractice Insurance Task Force
Subject: My Input on Mandating Malpractice Insurance
Date: Friday, September 21, 2018 11:38:43 AM

Hi,

In the interest of full and fair disclosure, I want to say that I am not a fan of mandatory bar association membership; I don't feel that I receive fair value for the high dues (and I'm also admitted to practice law in NY and CT, which don't require that I join the state bar association, so I have had decades of comparison).

Included in that opinion is the fact that I generally find the WSBA's "NWLawyer" completely uninteresting, with a modest entertainment value, occasionally, from reading the absurd letters from curmudgeons who hate anything being done differently than it used to be (and I say that in full knowledge of my exalted status as a curmudgeon).

With that out of the way, I am now ready to comment on whether malpractice insurance should be mandatory.

Of course it should be!

There is no rational justification for allowing lawyers to practice without insurance. The cost of insurance is modest, and the benefits are huge, both to the lawyer (less worry about losing everything for one mistake) and the public (some sense that there's something backing up that lawyer).

As a mostly-retired lawyer, who sometimes goes weeks at a time without doing any legal work, I certainly understand the concerns that paying for malpractice can swamp what little a mostly-retired makes from his/her practice. But, in the context of $3000 per year, we're not talking about real money (my wife is an obstetrician; they pay real money for malpractice insurance).

But the model does matter, in my opinion.

For my most recent renewal a few weeks ago, I paid $3590. And for that, I have $1 million/$2 million, with a $5000 deductible. I am extremely risk averse, so I like the high limits; I practice for the fun of it now, not for the money, and I don't want to lose my house if I make a mistake. The Oregon plan costs as much as I pay, and gives much less coverage; I would not be happy with that.

If one doesn't want to pay, or cannot afford to pay, $3500 per year for good coverage, I question whether that person should be practicing law. Really.

The one concern I would have about mandating coverage is worry about whether the insurance industry would take advantage of that by jacking up rates. It would annoy me (to put it mildly) if my insurance went up significantly (or the coverage dropped significantly) because of mandating coverage.

But, fundamentally, we all should have insurance.

Mark de Regt
WSBA 26445

From: Joseph Valente
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Insurance
Date: Sunday, September 23, 2018 5:51:35 PM

Dear staff:

I understand that the public needs to be protected from deadbeat lawyers who say they can't afford insurance. However, there may be unintended results if the issue is not handled carefully. I retired after 27+ years as a Superior Court Commissioner in Spokane. I still work some each month as a pro tem. While the pay is insignificant, it is good for me and a service to the court. I have also provided legal counsel to residents at the Union Gospel Mission. From time to time I will help a low income family pro bono. For example, I processed a probate for the surviving family of a low income veteran who died of cancer. I was able to get medical providers to drop significant claims against the estate. I have also helped a victim of domestic violence obtain protection for herself and her child. It would be a shame to surrender my license to avoid having to pay insurance that is unnecessary. I have liquid assets more than ten times what appears to be the proposed policy minimum. I am not a deadbeat. A damaged client would be better off going against my investment portfolio than a skimpy policy. I wonder if a lawyer could be exempted if they were able to document sufficiently deep pockets such that a client would not be left without any recovery. Perhaps there could be a form of self-insurance. Some funds could be set aside for recovery purposes. I still have the ability to help people with the skills I have acquired. However, I don't know that I would pay $3,000 for the privilege of helping people.

Joseph F. Valente
WSBA #6119

From: Ron Heley
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Monday, September 24, 2018 9:26:46 AM

Hello,

I'm reaching out to emphasize how critical an exemption is for non-practicing attorneys who maintain our licenses. Please allow this exemption because otherwise it places a burden on my household which would be quite severe.

I worked very hard for my JD and to pass the bar. Currently however I have a job that I very much enjoy but it does not necessitate bar passage.

Therefore purchasing malpractice insurance would be a great expense where neither I nor the public would see a benefit. And giving up my ability to practice deprives me of a fallback position should my employment change or I decide on a new career.

Sacrificing my ability to pass the bar to avoid an oppressive insurance payment for a service I do not provide would be a very painful circumstance. I trust that the board can recognize this.

Please keep those of us in mind who do not practice law but may do so someday. Making us pay mandatory malpractice insurance would be onerous and burdensome. Thank you for your time.

Sincerely,

Ron Heley
WSBA #51296

From:	PATRICK/ MARY BRADY
To:	Mandatory Malpractice Insurance Task Force
Subject:	Comment re Mandatory Malpractice Insurance
Date:	Monday, September 24, 2018 11:53:09 AM

TO: MANDATORY MALPRACTICE INSURANCE TASK FORCE

RE: COMMENT ON EXEMPTION FOR RETIRED/ACTIVE LICENSED BUT NOT ACTIVELY PRACTICING

In December 2017 I retired from private practice with Forsberg & Umlauf. I am not practicing law at all. I maintain my licensed status as active (full CLE load) as opposed to inactive because of some future possibility that I might return to practice on a temporary, part-time basis with Forsberg & Umlauf. This is a possibility only, with no specific plans to do so at any specific time. If I did return to such practice, I would expect to be covered under the firm's insurance. I am maintaining active status to avoid having to take the steps from inactive to active status in the possible future event of my return to such practice on a part-time, temporary basis.

I am a retiree who maintains an active license but does not practice law. I request and recommend an exemption for attorneys in this circumstance. I join in the comments in items 8 and 11 on page 6 of the Mandatory Malpractice Insurance Task Force Interim Report to Board of Governors July 10, 2018.

Sincerely,

Patrick S. Brady WSBA # 11691

11203 29th Ave SW

Seattle WA 98146

206 246 1603

From:	Laura Umetsu
To:	Mandatory Malpractice Insurance Task Force
Subject:	Concern about continuing pro-bono DVPO practice with mandatory insurance
Date:	Monday, September 24, 2018 5:17:14 PM

To whom it may concern,

I am a solo practitioner in the state of Washington. Over the last two years, my practice has narrowed to focus almost entirely on assisting pro-bono and VERY low bono clients who were victims of domestic violence.

I am writing to you in response to the recent article in NW Lawyer regarding the proposition that all attorneys be required to carry malpractice insurance. If this requirement were to come to fruition, then I am highly concerned that my practice will no longer be able to provide the up to hundreds of hours of pro-bono assistance that I have been able to offer in the past. I would have to shift my organizational model to no longer offer free consultations to vulnerable individuals desperate for assistance.

As you are probably aware, domestic violence protection order petitioners are not entitled to state sponsored representation by an attorney. Such a requirement may push me out of practice. I therefore urge you to reconsider and if you do create such a requirement, to allow for an exception for individuals who devote a minimum number of hours per year to assisting vulnerable individuals free of charge.

I look forward to hearing back from you soon.

Laura Umetsu
Attorney at Law
Ph: 206-949-2453
Fax: 206-212-8602
4130 University Way NE
Seattle, WA 98105
www.lauraumetsu.com

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From: Mike Warren
To: Mandatory Malpractice Insurance Task Force
Subject: Comment on mandatory malpractice insurance
Date: Tuesday, September 25, 2018 2:40:06 PM

Task Force:

I practiced law for 34 years, before retiring on May 31, 2017. I was full insured for malpractice during the entire time I practiced, and have secured a tail to cover all acts prior to retirement. It is my preference not to go on inactive status with my bar membership, but at the same time I have no intent to resume the practice of law.

I would hope that if the bar association implements a mandatory malpractice rule, something I would generally support, that it exempts attorneys whom desire to retain an active license, but are not actively engaged in the practice of law.

Mike Warren
WSBA #14177

From:	chicago1@centurytel.net
To:	Mandatory Malpractice Insurance Task Force
Subject:	FW: MORE comments on Task Force re malpractice insurance
Date:	Wednesday, September 26, 2018 11:23:52 AM

Folks, I had an additional thought today. I sure hope you resolve your position before I pay dues in December or January, or at least make the ruling applicable as of 2020, as bar costs are already are quite a bite from my Social Security check. I am retired without a pension (worked for small tribe), just meager 401k, and would sure hate to pay those dues if you don't intend to waive non-practicing retirees from malpractice insurance requirements. Please be timely on this or agree to refund dues if we get caught in the middle! You may not realize Medicare costs can run some $6000 a year if you add in medication costs beyond D, and SS goes only so far. If I keep paying dues and do CLE over three years, that extra $3000/yr for insurance becomes insurmountable and I don't want to renew first and have you make me pay later, and then be stuck with the dues fees! Thanks for your attention to this concern.

Katherine Krueger
25818
Forks, WA

From: chicago1@centurytel.net <chicago1@centurytel.net>
Sent: Tuesday, September 18, 2018 8:34 AM
To: 'insurancetaskforce@wsba.org' <insurancetaskforce@wsba.org>
Subject: comments on Task Force re malpractice insurance

Thank you for the opportunity to comment and for the explanatory article in *NW Lawyer* of August, 2018. I see you are considering keeping a no-insurance-required status for retirees who do not practice law and I urge you to adopt this idea, and here are some reasons why.

Some prior practices don't even lend themselves to taking on the rare client. You seem to suggest that some retirees are going to sneak in a client! And so make them pay. (See my last paragraph on that.) Not all retirees ever practiced law for the public and not all have the resources or skill set to even consider it now, since mayhap, they were government attorneys beforehand doing highly specialized practices requiring a stable of technical support? For example, those who did environmental law (me) for industry or government? Like tax law, environmental law has a ginormous body of regulations and most who do it, work with engineers, chemists, biologist, etc. It is not a small shop type of law. Such attorneys are highly unlikely to start taking private clients. But they might want to lend their broad knowledge to salmon groups, or a local bar that does not generally need to know federal administrative law, in the form of a lecture to other attorneys who usually just do family or criminal law. As I do and have done. So by treating us all as fungible, you are not recognizing some attorneys would never go into private practice. Even after retirement.

What we can do, but it is not practicing law—but still nice to say we are a bar member: I am retired as of 4/28/2017 from being an in-house attorney embedded in the Natural Resources Department of the Quileute Tribe (La Push), for the prior 20 years. I still live in Forks and am active now as a volunteer on about 7 different Natural Resources Committees and they value my legal

training. I may give a PPT talk soon to them (except for the federal marine sanctuary one) on the WA Open Meetings Act, because the issues keep coming up. I am also a member of the Clallam County Bar and about two months after retiring, gave a presentation on the *Hirst* decision to that group and to the North Pacific Coast Lead Entity and Coastal Salmon Partnership (salmon restoration groups). While still working at Quileute, I gave a talk on the culvert case (*U.S. v Washington,* subproceeding 2001-1*)* to these groups. They were gratefully received as these decisions touch on all who own property and pay taxes; but they don't read these cases, as they are not in their usual arena of experience. In the Coast Salmon Foundation, I review their contracts *in my capacity as a Board Member*. They have insurance for Board Members and I guess I could do this without a license just in my capacity as a Board Member—all the board members can review the foundation contracts--but it seems desirable for them, to know I have more background in doing this. FYI, this is an uncompensated position.

But I am not in private practice and never was. Even beforehand in Texas and Illinois, I was embedded in corporate legal departments and briefly (two years) in City of Houston's Public Works . The only time I ever served clients in the usual attorney way was when I was a student at Northwestern University's Law School—three years in their Legal Clinic. It is really not something I can do. *Don't have the expertise or training to open up a practice, however rare, and have no intention of doing it.* Example: Clallam -Jefferson Pro Bono Attorneys keep wanting me to help advise poverty clients at their periodic public gatherings and I keep refusing, since I don't know these areas of law and really cannot be of help. I am not going to posture or assume some kind of knowledge I don't have.

Money issue: Please know, those who work inside small governments like remote tribes (me) don't have pensions, just what we can sock away in a 401k from a non-competitive salary, because we loved the work. But it does not exactly create a client base! And when we leave, a new person takes our places. In the article, you say everyone can find $3000 to pay for the insurance. *Not so*. And even the dues and CLEs are a financial challenge now. I have to tell you after 20 lean years at Quileute and only small savings and only Social Security (no pensions, just that 401k; and I was the victim of "being over 50, layoffs" in Texas and ate the savings before finding work with the tribe), *it is a tough decision to even keep up dues and CLE costs*. Nevertheless, *I want to*, but for you to make me buy malpractice insurance would be the financial straw that breaks this broke camel's back! I think it would tip the financial scales. I will have lost my hard-earned honors and respect if I cannot say I am attorney, but I do need to watch every penny. Already I am dipping into savings for some matters. Scary. (Do you folks realize what Medicare and associated Supplemental and Dental insurance cost outside the workplace? Huge.)

Recommendations: I really still want to say that I am an attorney and contribute with that hat on, to various forums. It gives street cred. And by jingo, I have earned it! What if you rule that those who have retired and are not engaged in private practice do not have to pay malpractice insurance, but set some guidelines for what constitutes practice, and make it clear they will be brought before WSBA and either suspended, censored, or have license revoked if they violate this? And/or--assuming it was without malice aforethought, have a provision for them to reinstate if by some miracle someone wants to give an ageing attorney a job, and if by some miracle that aged body is up to it still. (I retired because my health was deteriorating and the 60-hour weeks had become too

difficult.)

Thank you for considering the foregoing.

Katherine Krueger, WSBA 25818
790 J Street, PO Box 1607, Forks, WA 98331
(360) 374-4311, cell [redacted]

From:	Mark Beatty
To:	Mandatory Malpractice Insurance Task Force
Cc:	"John A. Myer (john@myercorplaw.com)"; JAMES K DOANE; "Paul Swegle"
Subject:	Comment Letter on Mandatory Insurance Proposal
Date:	Thursday, September 27, 2018 9:34:16 AM
Attachments:	Letter re Mandatory Insurance - Final.pdf

On behalf of John A. Myer and myself, I respectfully submit the attached materials.

Mark

10900 N.E. 4th Street
Suite 1850
Bellevue, WA 98004
Office: 425.990.4026
Mobile: 425.922.5494
www.markbeatty.law

LAW OFFICE OF

MARK R. BEATTY

OFFICE 425.990.4026 MOBILE 425.922.5494 E-MAIL mark@markbeatty.law

September 27, 2018

Via Email (to insurancetaskforce@wsba.org)

Mandatory Malpractice Insurance Task Force
Washington State Bar Association

Re: Proposed Mandatory Malpractice Insurance

Ladies and Gentlemen:

I am submitting this letter on behalf of myself and John A. Myer, Myer Law PLLC, Seattle. Accompanying this letter are additional materials provided by John that expand on the concerns expressed in this letter.

The article in the August 2018 NW Lawyer stated that the Task Force has indicated to the Board of Governors that they "are likely to recommend malpractice insurance as a condition of licensing...." (page 47).

We believe the Task Force is making certain assumptions that are flawed:

- Malpractice insurance is always available
- Malpractice insurance is always available at a fair and reasonable price

In addition, the Task Force's tentative conclusions fail to recognize important distinctions between law practices, while at the same time ignoring the significant and adverse financial impacts on clients caused by the proposed mandatory malpractice requirement, as discussed below.

Background Information

Each of John and I are solo practitioners who practice transactional (not litigation) securities law – i.e., we provide advice to clients on the requirements of securities laws, including federal laws such as the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Advisers Act of 1940, and the Investment Company Act of 1940, and the various amendments to those acts, such as Sarbanes Oxley, Dodd Frank and the JOBS Act. In addition, our practices encompass the requirements of the Securities Act of Washington and the applicable

regulations under federal and state law. On behalf of our clients, we file documents and notices with the U.S. Securities & Exchange Commission and the Washington state Securities Division, as required under those laws and regulations.

John and I both gained our knowledge and experience while working at large, sophisticated law firms, White & Case (Miami), Paul Weiss (London) and Sullivan & Cromwell (New York and Frankfurt) in the case of John, and Lane Powell (Seattle), Bronstein Zeidman and Schomer (Washington, D.C.) and Preston Gates & Ellis (Seattle) – now K&L/Gates (10 years as a partner) for me. For various reasons, we each chose to leave those law firms to practice as solo practitioners.

Unavailability of Insurance; Pricing

While I now have malpractice insurance, that was not always the case, especially when I began my solo practice: I was rejected by the insurance company to which I submitted my application (I do not recall the name), despite a "clean" record with no history of client complaints, lawsuits or complaints to the bar associations of which I was a member. Similarly, John initially had malpractice insurance after becoming a solo practitioner but after two years the policy was canceled and not renewed – no explanation was given but no claims had been made on the policy. The only ostensible reason for these denials of coverage was that we each practiced securities law as a solo practitioner. We believe insurers perceive a securities law practice as a high risk practice, no doubt due to statutory and implied private rights of action granted to investors under the securities laws and the potentially large sums involved in securities transactions.

The Interim Report acknowledges that Oregon's current system arose because of the difficulty attorneys had in getting coverage. Given that history and our personal experience in getting coverage, we do not understand how the WSBA can mandate a requirement that attorneys purchase a product from an industry over which it has no authority. Further, how does the Task Force propose to assure lawyers that insurance is in fact available at affordable rates (and how is affordability determined)? We are concerned that the premiums may preclude an attorney from practicing law, despite being a competent attorney (as the Interim Report notes, no attorney is immune from mistakes). Finally, many of the Interim Report's conclusions are qualified by "should" (e.g., coverage should be continuing, policies should not be permitted to exclude attorney acts....). While the insurance industry may be willing to offer policies with those provisions, there is little doubt that those provisions will come at the cost of higher premiums, which adds to our concerns.

Adverse Impact on Clients

Although many small law firms may carry malpractice insurance, in our experience, those policies exclude securities law claims or claims involving publicly-traded securities, primarily because of the additional costs associated with those policies. As a result, mandating malpractice insurance will likely have the effect of causing securities lawyers to practice law with a larger firm. In our experience, hourly

rates and total legal bills from larger law firms are often double or triple the fees that John and I charge for the same legal work – for what our clients regard as comparable quality.

The effect of mandating malpractice insurance is to increase substantially the fees paid by our clients – has the Task Force obtained any input from that segment of the public? Has the Task Force asked the public if the presence or absence of malpractice insurance is even a factor when a client selects a lawyer? We are happy to provide client contact information so that the Task Force can obtain that information.

Our clients select us because they have confidence in our knowledge and expertise, not because we carry malpractice insurance.

Effect and Legal Basis of the Mandate

If the WSBA were to adopt the mandated insurance requirement without providing any avenue for obtaining the insurance if it were not available, or not available at a reasonable cost, is the WSBA prepared to disbar the attorney? We think the effect of such actions would be anti-competitive or a restraint of trade. See North Carolina State Board of Dental Examiners v. Federal Trade Commission, 574 U.S. ___ (2015) (nonsovereign actor controlled by active market participants enjoy immunity only if "the challenged restraint... [is] clearly articulated and affirmatively expressed as state policy,' and ... "the policy ... [is] actively supervised by the State.'")

Further, while we have not attempted to research the issue, we note that the Task Force's Interim Report states that the Task Force participants "stressed that the WSBA has a duty to protect the public and maintain the integrity of the profession." We note that such a standard is absent from the State Bar Act, 2 RCW Ch. 48. That Act authorizes the board of governors to fix qualifications, requirements and procedures for admission to the practice of law, and to investigate, prosecute and hear all causes involving discipline, disbarment, suspension or reinstatement of members practicing law. Does the board of governors have authority to require mandatory malpractice insurance? The requirement, essentially, imposes a minimum financial standard that attorneys must satisfy prior to practicing law. Such a requirement would seem unrelated to an attorney's qualifications under the ordinary meaning of that term and may raise issues under Board of Dental Examiners.

Questions on the Task Force Composition

The introduction to the Task Force's Interim Report describes its 18 members as attorneys, a federal judge, an LLLT, industry professionals and members of the public.

We do not know the members of the Task Force, although they were listed in the Interim Report. Since, as the report notes, lawyers who practice in solo or small firms are most likely to be uninsured, were any of the members of the Task Force members of solo or small firms? Were any of the members of the Task Force uninsured? Were any of the attorneys on the Task Force attorneys whose practice includes

suing attorneys for malpractice? Does the industry professional listed have a conflict of interest if the Task Force concludes insurance should be mandated?

Conclusion

We are concerned that the Task Force will propose a mandatory insurance requirement that has far reaching (and over reaching) implications, where the implications and consequences are glossed over and not adequately addressed. The Task Force seems to paint with a very broad brush that is likely to adversely impact many highly qualified attorneys and their clients.

Respectfully submitted,

Mark R. Beatty

Attachments
Cc: John A. Myer, Myer Law PLLC
James Doane, Board of Governors
Paul Swegle, Board of Governors

2101 Fourth Avenue, Suite 1900, Seattle, WA 98121 T 206.651.5563 F 206.922.5516 john@myercorplaw.com

Attachment A

I, John A. Myer, worked with Mark R. Beatty, the author of the letter dated September 27, 2018 to the Mandatory Malpractice Insurance Task Force of the Washington State Bar Association. Mark and I agreed that I would add additional materials to his letter in the form of these attachments.

On September 12, 2017, I sent an email to NW Lawyer Magazine regarding the proposal on mandatory professional liability insurance for Washington lawyers. The editors published my email in the November 2017 edition of the magazine. I've included a copy of the page of the magazine on which my email was reprinted as Attachment B to this letter.

I would like to take the opportunity to add some background information to my original email. I launched Myer Law PLLC on September 1, 2009. I contacted Mainstreet Legal Malpractice Insurance, a broker (http://www.mainstreetlawyersinsurance.com/) and they obtained coverage for me. I was covered by Professionals Direct Insurance Company for two years. As of September 1, 2011, Professionals Direct declined to renew my coverage. I had made no claims against the policy. Further, I have never had an action filed against me for professional malpractice or been the subject of a bar complaint. My practice and background are described at: http://www.myercorplaw.com/home/

In the months prior to September 2011, I filed applications with Zurich Insurance (https://www.zurichna.com/en/prodsols/zpm/professional/lawyers) and with Synergy Professional Associates (http://www.synergy-ins.com/about.aspx), a broker. I filed the application with Zurich because they had covered me in 2003 and 2004 when I was a partner at Friedbauer & Myer LLC in Miami, Florida. I filed the application with Synergy because the sales agent there assured me that they could find a carrier who would underwrite my practice.

Zurich declined to bid. Synergy was unable to find a carrier that would bid. In addition, Mainstreet Legal Malpractice Insurance was unable to find a carrier to replace Professionals Direct Insurance Company. Thereafter I spoke with numerous sales agents all of whom urged me to apply but none of whom were able to describe a realistic path forward. I have practiced without insurance to this day.

Submitted September 27, 2018

John A. Myer

Inbox

Attachment B

Let us hear from you! We welcome letters to the editor on issues presented in the magazine. Email letters to nwlawyer@wsba.org. NWLawyer reserves the right to edit letters. NWLawyer does not print anonymous letters, or more than one submission per month from the same contributor.

MANDATORY MALPRACTICE INSURANCE

I just read the article in the September issue of *NWLawyer* about mandatory insurance ["WSBA Board of Governors Explores Mandatory Malpractice Insurance"] and, as a result, I am sending in my first comment in 25 years of practicing law in Washington. Our small office has always maintained insurance for our speeding ticket/DUI practice. We pay $750 for each attorney for $250,000 per claim/$500,000 aggregate of coverage. I hope that you consider small firms such as ours as you continue your investigation. Oregon's apparent one-size-fits-all $3,500 per lawyer assessment is ridiculous and bears no relation to the true cost of insuring a small firm like ours. Should you adopt a similar requirement, you would be creating an unnecessary financial burden for many small firms.

$3,500 for each lawyer? $7,000 for what currently costs us $1,500? What an outrage that would be.

Valerie Shuman, Tacoma

I searched diligently and filled out numerous applications, but I reached the conclusion that there is no market for malpractice coverage for transactional securities lawyers in solo practice. It appears that from the insurer's perspective, the underwriting costs exceed the expected profits at anything other than prohibitive rates. The last time I looked into this (and that was a number of years ago), every insurer I contacted refused to give me an offer at any price.

I'd like to note that I was trained in my practice area at Sullivan & Cromwell in New York, am 61 years old, and have never had a claim made against me. I also have impeccable academic credentials, which include an MBA equivalent from MIT.

If Washington decides on mandatory insurance, I would favor a professional liability fund. I fear that otherwise my license to practice in Washington would be worthless.

John A. Myer, Seattle

I am writing in response to the article "WSBA Board of Governors Explores Mandatory Malpractice Insurance" in the September 2017 issue of *NW Lawyer*.

As an attorney licensed to practice in both Oregon and Washington, I have had the opportunity to compare the professional liability insurance requirements of both states— disclosure in Washington and mandatory coverage in Oregon. I do not support mandatory coverage as it provides a questionable value at substantial cost while reducing the availability of legal services, particularly for moderate income citizens.

The first question to ask is "How much benefit does mandatory coverage actually provide to the average client?" I do not have the statistics but I encourage the Board to obtain this information before passing an expensive "feel good" measure. Although there are certainly horror stories out there about bad lawyers and the damage they cause, I question the value that mandatory coverage would provide to those clients when considered in the context of the aggregate cost and the thousands of clients who receive professional legal representation from lawyers with and lawyers without professional liability coverage.

The second question is "How would mandatory coverage affect low and moderate income citizens who need legal representation?" The difficulty finding pro bono coverage for low-income clients is well known, although there are programs that provide professional liability coverage to enable this important work to be done. From my experience, the great bulk of under-represented citizens are moderate income people who cannot afford an attorney yet do not qualify for pro bono representation.

In addition to my income-producing work, I have represented Washington citizens needing assistance with no-contact orders, a homeowner whose property was eroding due to the failure of a city to properly maintain a storm run-off system, individuals who were presented with scam damage reports by rental car companies, and others who had damaged credit reports due to fraudulent use of their identity. I may soon retire from my "day job" but hope to keep providing this type of unpaid service to moderate-income individuals. I am saving for retirement and certainly am not in the position to divert funds to pay for professional liability coverage. If coverage becomes mandatory, I fear I will be required to become an inactive member of the bar and will no longer be able to serve this under-represented group. I am sure there are many other attorneys in the same situation.

Bill Murphy, Vancouver, WA

PROFILING

Some WSBA members have fallen into the quagmire of lecturing about "white privilege" ("Inbox," SEP *NWLawyer*). However, it is unclear from their statements what white persons are supposed to do to atone for the total happenstance of being born white . . . pay reparations, take sensitivity classes, forfeit their law degree to a person of a different race?

No one should be denigrated for the color of their skin, including whites. White privilege is just another imaginary problem being conjured up by some leaders of the WSBA.

Certainly we all owe a duty of politeness and decency to every

From:	Brian Lewis
To:	Mandatory Malpractice Insurance Task Force
Cc:	Mark Beatty; John Myer; Paul S; Mr.James K.Doane
Subject:	WSBA Mandatory Malpractice Insurance Requirement
Date:	Thursday, September 27, 2018 11:31:33 AM

Our firm would like to take this opportunity to support and expand on the positions expressed by Mark Beatty and John Myer regarding the challenge boutique firms face in securing malpractice insurance at a reasonable price, if at all.

Our firm emphasizes practice in transactional entertainment, which is an area that insurance carriers are loathe to cover at any price, much less a reasonable price. Furthermore, as one of Washington's oldest virtual firms, Rosen Lewis has had our insurance cancelled simply because we are a virtual firm. This is true despite that we have been a virtual firm for 14 years, that each of our partners has over 25 years of experience, and that neither of us have had a single insurance claim ever.

Washington is thin on highly qualified attorneys practicing in the entertainment area. The mandatory insurance requirement works to the enormous detriment of businesses and entertainers seeking counsel in this area. The costs of insurance are borne by clients, and attorneys with valuable experience are pushed out of practice by this requirement. This requirement creates a market with fewer qualified attorneys operating at higher cost to the consumer. As a seasoned lawyer with a sterling track record, it is clear that we have learned to avoid errors and conflicts that might necessitate coverage, and neither we nor our clients gain any functional benefit from the mandatory malpractice insurance requirement. For us and firms like us, the benefit of this requirement lies solely in the pocket of the insurance companies.

We therefore propose that small and solo firms with attorneys having an average of fifteen or more years of experience and no insurance claims be granted an exemption to the insurance requirements.

Thank you for considering our situation.

Kindly,

Brian E. Lewis
Managing Partner
Rosen Lewis, PLLC
120 Lakeside Avenue, Suite 100
Seattle, WA 98122
Ph./F. 206.204.9660
blewis@rosenlewis.com

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Please consider the environment before printing this email.

From:	Bruce Clark
To:	Mandatory Malpractice Insurance Task Force
Subject:	mandatory insurance?
Date:	Monday, October 01, 2018 3:42:53 PM

I vote yes. I appreciate the cost burden to solo practitioners, or small firms, like my own, but I don't think that counterbalances the wisdom of mandated insurance. We require drivers to have insurance as a cost of that activity because we recognize the inevitable harm that some will cause. I have worked on both the D and P sides. I know that, generally, for persons who suffer harm at the hands of anther one of the great frustrations to justice is a simple lack of insurance. Lawyers can talk (and do) endlessly about professionalism, but it won't solve some lawyer caused problems, insurance can.

I like the OR model. Lawyers ought not practice on clients with the latter suffering the loss for the former's negligence. Let's build a real backstop into the professional for when things go awry. If there should be some opt out mechanism around lawyers who are mostly retired, do only pro bono or the like, consider that. But the notion that insurance presents a real bar to a legal practice, well, that's not a compelling argument.

Thanks for soliciting input.

Regards,
Bruce

Bruce T. Clark, Esq.
MARLER CLARK
THE FOOD SAFETY LAW FIRM
1012 1st Avenue, Floor 5
Seattle, WA 98104-1008
Direct Line: (206) 346-1891
Main Line: (206) 346-1888
Toll Free: (800) 884-9840, ext. 1891
Main Facsimile: (206) 346-1898
Email: bclark@marlerclark.com
Website: www.marlerclark.com

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Please only print this email if necessary. Thank you!

From: larry mancuso
To: Mandatory Malpractice Insurance Task Force
Subject: mandatory malpractice insurance comments
Date: Monday, October 01, 2018 6:59:34 PM

I don't mind the idea of mandatory malpractice insurance. But please hear me out. I have been a WSBA member since 1988. I moved to Florida in 1994 and have not had a Washington State client since 1994 and do not intend to as long as I remain in Florida. I do have Florida malpractice coverage with the firm I work for in Florida. But I do not and the firm does not represent Washington State clients and thus there is no need for Washington State coverage. I kept up my Washington membership for many years now hoping to return to Washington. Should I return and practice law using my Washington license or should I use my Washington license to represent any client I promise to take out Washington malpractice insurance. So please carve out an exception for out of state members who do not represent Washington State clients. Thanks for listening. Laurance L. Mancuso. 18103.

From: Dicks Gmail
To: Thea Jennings
Subject: Mandatory malpractice insurance
Date: Wednesday, October 03, 2018 11:10:11 AM

Dear Task Force:
I am commenting on the August, 2018 article, "Should Malpractice Insurance Be Mandatory For all Washington Lawyers?".
I am retired. I have been a member of the bar since 1973. I am current on my CLE's. When I practiced, I always had insurance. Since I am not practicing, I don't have insurance, but I associate with attorneys who are insured on personal injury cases. I want to continue to associate with active licensed attorneys.
If you require insurance, I request that you provide an exception for retired attorneys who associate with insured attorneys on injury cases.
Thank you. Richard L. Peterson, Bar #5311

PS. To Thea Jennings. Itried to send this email to the address in the article to"insurancetaskforce@wsba.org." and was told the address was no good. I then called the bar, and talked to Matt who gave me your address. Please let me know when the bar committee receives my comment.

Sent from my iPadhh

From: Patrick Mead
To: sharon@sharonpowell.com
Cc: Eric McDonald; Mandatory Malpractice Insurance Task Force
Subject: RE: [section-leaders] Mandatory Malpractice Insurance
Date: Wednesday, October 03, 2018 11:24:15 AM
Attachments: image001.png

Sharon,

That is a great question, but it is a question for which I do not have the answer. By copy of this email, I am forwarding your question to the task force, which will hopefully reply to you with a definitive answer that can be shared with the full membership of the Legal Assistance to Military Personnel Section.

Best wishes,

Pat

Patrick Mead | Sections Program Specialist
Washington State Bar Association | ☎ **206.733.5921** | **F** 206.727.8324 | patrickm@wsba.org | sections@wsba.org
1325 Fourth Avenue #600 | Seattle, WA 98101-2539 | www.wsba.org

The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please contact sections@wsba.org.

From: sharon@sharonpowell.com <sharon@sharonpowell.com>
Sent: Wednesday, October 3, 2018 11:14 AM
To: Patrick Mead <Patrickm@wsba.org>
Cc: Eric McDonald <eric.mcdonald@q.com>
Subject: RE: [section-leaders] Mandatory Malpractice Insurance

Hi Patrick,

I am wondering how the new mandatory malpractice requirements will impact military attorneys in the state. Most work at military installations only helping individuals through one of the legal assistance offices, but sometimes family members and not service members are being helped. An additional factor is that many military attorneys do not hold Washington State bar licenses.

Would you be able to provide us with insights that we can pass along to military

attorneys?

Thank you,
Sharon

From: Pat Mead <Patrickm@wsba.orgsection-leaders@list.wsba.org>
Sent: Wednesday, October 3, 2018 10:37 AM
To: WSBA Section Leaders <section-leaders@list.wsba.org>
Cc: Sara Niegowski <Saran@wsba.org>; Eleen Trang <Eleent@wsba.org>; Terra Nevitt <terran@wsba.org>
Subject: [section-leaders] Mandatory Malpractice Insurance

Dear Section Leaders,

Hopefully you have been receiving all of WSBA's updates about the Mandatory Malpractice Insurance Task Force. The task force issued an interim report in July with a tentative conclusion that malpractice insurance should be mandated for Washington-licensed lawyers, with specified exemptions and minimum coverage levels. Because you no doubt have members who will be impacted by such a recommendation, I want to ask you to pass along some information and resources to anyone who might be interested.

The task force wants to gather as much feedback as possible before its final report is due in January. There will be an **open forum** for members to speak directly to task force members from 2-3 p.m. Tuesday, Oct. 16, at the WSBA Conference Center (telephone participation will be available). Comments and questions for the task force can also be directed to insurancetaskforce@wsba.org and will be provided to the entire task force.

Here are some good resources to learn more about the process and recommendation:

- Mandatory Malpractice Task Force informational brochure
- Task force website
- Interim report

Please let me know if you would like printed copies of the informational brochure, and I will get those to you right away. Thank you!

Pat Mead

Patrick Mead | **Sections Program Specialist**
Washington State Bar Association | ☎ **206.733.5921** | **F** 206.727.8324 | patrickm@wsba.org | sections@wsba.org
1325 Fourth Avenue #600 | Seattle, WA 98101-2539 | www.wsba.org
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You are currently subscribed to section-leaders as: sharon@sharonpowell.com. If you wish to unsubscribe, please contact the WSBA List Administrator.

From: Hugh D. Spitzer <spith@uw.edu>
Sent: Wednesday, October 10, 2018 8:25 PM
To: sharon@sharonpowell.com; Patrick Mead; eric.mcdonald@q.com
Cc: Rachel Konkler; Thea Jennings; Doug Ende; Todd R. Startzel
Subject: Malpractice Insurance and Military Attorneys

Follow Up Flag: Follow up
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Categories: Comments

Dear Sharon, Eric & Patrick,

This question from Sharon has found its way to me because I am chairing the WSBA's Task Force on Mandatory Malpractice Insurance. We haven't had this issue posed to us, but we'll definitely take a very close look. I *think* I know what the answer is, but perhaps Sharon can help us out.

The Task Force has tentatively worked up a group of potential exemptions from the requirement—which would be malpractice insurance required for *lawyers in private practice*. One exemption would cover government lawyers—essentially because they are not in the private practice of law. So…Sharon…even though JAGs are providing civil legal services to military personnel, aren't those lawyers on federal government salaries? (By the way, I expect that the Task Force will propose an exemption for lawyers employed by private non-profit legal services organizations that carry insurance for those lawyers. But that's different, because they are private legal services providers. In the instance of military attorneys providing civil legal services, if the client has a malpractice complaint, wouldn't that be handled by the Federal Tort Claims Act? Or perhaps the system is different in the military, and the service members don't have any claim at all. In any event, my hunch is that it is handled internally within the federal government and the particular military service—so mandatory insurance would be inapposite (and wouldn't apply because we're talking about government lawyers). But please correct me if I'm wrong in any of these assumptions.

Next, my recollection is that there's a special RPC to the effect that military lawyers serving military clients in Washington don't have to be licensed in Washington State. So for the non-Washington licensed military lawyers, the malpractice insurance requirement (which would be a licensing requirement) wouldn't apply at all.

Any and all recipients of this email are welcome to chime in to help out the analysis!

Thanks.

Hugh

Hugh Spitzer
Professor of Law
University of Washington
spith@uw.edu
206-685-1635

From: sharon@sharonpowell.com <sharon@sharonpowell.com>
Sent: Wednesday, October 3, 2018 11:14 AM
To: Patrick Mead <Patrickm@wsba.org>
Cc: Eric McDonald <eric.mcdonald@q.com>
Subject: RE: [section-leaders] Mandatory Malpractice Insurance

Hi Patrick,

I am wondering how the new mandatory malpractice requirements will impact military attorneys in the state. Most work at military installations only helping individuals through one of the legal assistance offices, but sometimes family members and not service members are being helped. An additional factor is that many military attorneys do not hold Washington State bar licenses.

Would you be able to provide us with insights that we can pass along to military attorneys?

Thank you,
Sharon

From:	sharon@sharonpowell.com
To:	Doug Ende; "Hugh D. Spitzer"; Patrick Mead; eric.mcdonald@q.com
Cc:	Rachel Konkler; Thea Jennings; "Todd R. Startzel"
Subject:	RE: Malpractice Insurance and Military Attorneys
Date:	Friday, October 12, 2018 1:24:00 PM
Attachments:	image002.png image003.png

Thank you so much, Doug, for your great explanation! There are a lot of military attorneys who prepare divorce documents, wills, etc. for filing in Washington state so it is good to know if they perform those duties in their capacity as government attorneys they will not be required to have malpractice insurance. That is wonderful news.

Regards,
Sharon Powell

SHARON R. POWELL
WSBA LAMP, IMMDIATE PAST CHAIR

Sharon Powell, PLLC
22525 SE 64th Place
Suite 2026
Issaquah, WA 98027
Phone: 425-736-4893
Fax: 425-557-3605

From: Doug Ende <douge@wsba.org>
Sent: Thursday, October 11, 2018 2:16 PM
To: 'Hugh D. Spitzer' <spith@uw.edu>; sharon@sharonpowell.com; Patrick Mead <Patrickm@wsba.org>; eric.mcdonald@q.com
Cc: Rachel Konkler <rachelk@wsba.org>; Thea Jennings <theaa@wsba.org>; Todd R. Startzel <tstartzel@ks-lawyers.com>
Subject: RE: Malpractice Insurance and Military Attorneys

I agree with your preliminary reaction, Hugh. It seems to me that in all cases military lawyers would not be subject to a malpractice insurance requirement under the approach being contemplated by the Task Force.

- Military lawyers in Washington but not licensed here (practicing here under the multijurisdictional practice provisions of RPC 5.5(d)(2)) would not have active Washington licenses and therefore would not be covered under such a requirement
- Military lawyers licensed in Washington would come within the expected exemption for government lawyers. I spoke to a lawyer at Oregon's Professional Liability Fund, which as you know has an exemption for lawyers employed as government attorneys, and the PLF treats

military lawyers licensed in Oregon as exempt under that provision.

Douglas J. Ende | Chief Disciplinary Counsel | Office of Disciplinary Counsel
Washington State Bar Association | ☎ 206.733.5917 | douge@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
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From: Hugh D. Spitzer [mailto:spith@uw.edu]
Sent: Wednesday, October 10, 2018 8:25 PM
To: sharon@sharonpowell.com; Patrick Mead <Patrickm@wsba.org>; eric.mcdonald@q.com
Cc: Rachel Konkler <rachelk@wsba.org>; Thea Jennings <theaa@wsba.org>; Doug Ende <douge@wsba.org>; Todd R. Startzel <tstartzel@ks-lawyers.com>
Subject: Malpractice Insurance and Military Attorneys

Dear Sharon, Eric & Patrick,

This question from Sharon has found its way to me because I am chairing the WSBA's Task Force on Mandatory Malpractice Insurance. We haven't had this issue posed to us, but we'll definitely take a very close look. I *think* I know what the answer is, but perhaps Sharon can help us out.

The Task Force has tentatively worked up a group of potential exemptions from the requirement—which would be malpractice insurance required for *lawyers in private practice*. One exemption would cover government lawyers—essentially because they are not in the private practice of law. So…Sharon…even though JAGs are providing civil legal services to military personnel, aren't those lawyers on federal government salaries? (By the way, I expect that the Task Force will propose an exemption for lawyers employed by private non-profit legal services organizations that carry insurance for those lawyers. But that's different, because they are private legal services providers. In the instance of military attorneys providing civil legal services, if the client has a malpractice complaint, wouldn't that be handled by the Federal Tort Claims Act? Or perhaps the system is different in the military, and the service members don't have any claim at all. In any event, my hunch is that it is handled internally within the federal government and the particular military service—so mandatory insurance would be inapposite (and wouldn't apply because we're talking about government lawyers). But please correct me if I'm wrong in any of these assumptions.

Next, my recollection is that there's a special RPC to the effect that military lawyers serving military clients in Washington don't have to be licensed in Washington State. So for the non-

Washington licensed military lawyers, the malpractice insurance requirement (which would be a licensing requirement) wouldn't apply at all.

Any and all recipients of this email are welcome to chime in to help out the analysis!

Thanks.

Hugh

Hugh Spitzer
Professor of Law
University of Washington
spith@uw.edu
206-685-1635

From: sharon@sharonpowell.com <sharon@sharonpowell.com>
Sent: Wednesday, October 3, 2018 11:14 AM
To: Patrick Mead <Patrickm@wsba.org>
Cc: Eric McDonald <eric.mcdonald@q.com>
Subject: RE: [section-leaders] Mandatory Malpractice Insurance

Hi Patrick,

I am wondering how the new mandatory malpractice requirements will impact military attorneys in the state. Most work at military installations only helping individuals through one of the legal assistance offices, but sometimes family members and not service members are being helped. An additional factor is that many military attorneys do not hold Washington State bar licenses.

Would you be able to provide us with insights that we can pass along to military attorneys?

Thank you,
Sharon

From: Steve Kirby
To: Mandatory Malpractice Insurance Task Force
Subject: Feedback - Missing an option - Public Mandatory with rates based on practice character - Best Option
Date: Wednesday, October 03, 2018 12:50:12 PM

Task Force,

I am a solo attorney working out of Spokane Washington and I wanted to suggest that the Task Force consider a solution that is not listed in the interim report:

Option 5.5 - Single payer model based on practice character.

I lean toward a single-payer because it removes the profit motive of insurers. The WSBA would have the same costs to operate an insurance company as a for-profit company and would not 'pad' the costs to reach 10-20% profitability. I also expect economies of scale if there is a single provider for the entire state. The cost to run such an agency, private or under the WSBA, is the same. As both an attorney, as well as a potential client, I do not see the downside. Single-payer also makes things simple since everyone knows where to go if there a problem.

The argument that a single payer has to allocate risk across all attorney's equally, resulting in high rates for some low-risk attorneys, is based on the Oregon Model, but there is no need for us to follow that model. The same calculations that private, free-market, insurance companies make to calculate insurance premiums can be applied to a single payer model resulting in a similar premium, minus the profit overhead. Just like free-market insurance, high-dollar litigation attorneys and real estate attorneys would pay more than a newly minted solo attorney. If a single-payer insurance provider calculates rates based on the same risk profile as a private company what are the downside of going single-payer? I have not read any arguments in the report for not going with a single payer other than those that flow directly from premiums based on 'risk' as opposed to a 'flat' premium.

Another, intriguing, benefit of having the insurance "in-house" is that ability to monitor attorney discipline. Currently, if a claim is filed against an attorney the WSBA does not know. A malpracticing attorney could, in theory, just pay the claim and the WSBA would never know of the malpractice. If the insurance claims are managed by the WSBA all claims would be available for the WSBA to review. This would allow the WSBA to, proactively, coach attorneys that may be getting an excessive number of claims. Even more, if there is an area of the law resulting in a excessive number of claims, the WSBA can look to improve education or perform rule-making to resolve or improve those areas. These options are lost in a private/ free-market for insurance.

Summarized another way, a single payer model based on practice character, seem to take the best of both task forces options 5 (Free-market mandatory insurance) and 6 (professional liability fund).

I feel strongly that a single-payer, mandatory, insurance program, with rates calculated the same way private insurance calculates rates would the best solution for both attorneys and clients. There would be start-up costs,

but I would expect those to be repaid rapidly through on-going operations and there are many funding options, such as bonds, that would cost less than the 10-20% premium private insurances providers charge. There is also an income stream, through investments, from the retained money held to pay future claims. I hope the Task Force will at least consider it as an option.

On a related note, based on my read of the interim report, the private model, option 5, is being set-up to be the winner. Someone is taking a lot of time to make that option look persuasive. That is my perception based on the bullet points.

I very much appreciate your work on this issue. It's not an easy issue and there are many competing interests spending money and time to persuade you to reach a solution that benefits them as opposed to the whole state. When looking at the competing interests I would ask that the Task Force look for the benefit of the greatest number of individuals in our state.

If you have any questions please do not hesitate to reach out.

Thank you,

/s/

Stephen Kirby
Kirby Law Office, PLLC
1312 N. Monroe St.
Spokane, WA 99202
(509) 795 4863
kirby@kirbylawoffice.com

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From: Roy Martin
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Insurance
Date: Wednesday, October 03, 2018 5:14:36 PM

To Whom it May Concern,

I'm writing to express my opinion that mandatory insurance is a good idea so long as practitioners can continue to purchase policies on the open market. I would object to Oregon's system under which attorneys are required to purchase a standard policy offered by the Bar. I think it's reasonable to set mandatory policy limits so long as those numbers are reasonable. No solo should be operating without $100,000 coverage so that's probably a good requirement.

Perhaps there could be an option for attorneys to establish a bond or account to cover client losses in the event of malpractice, but that sum should be the same threshold and should not be available to cover the attorney's costs of defense. It should be there just to make sure clients are indemnified.

I might have a different opinion on this issue if I believed mandatory insurance were likely to raise premiums for those of us who currently carry insurance. I see no reason why this should be the case (presuming of course that insurance companies have not found a way to collude with one another). Given the ineffectiveness of so much of government regulatory oversight these days, I suppose we shouldn't rule out that possibility.

Roy N. Martin, Attorney at Law
119 N. Commercial Street, Suite 910
Bellingham, Washington 98225
(360) 746-0400
www.creativedivorce.com
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From: Stan Kanarowski
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Insurance
Date: Wednesday, October 03, 2018 5:23:26 PM

I ask to be exempt. I am a senior attorney who has served as a protem district court judge when needed. Otherwise I provide assistance to old clients, but don't take new clients. I would prefer to keep my license. Stan Kanarowski WSBA 21038. Thanks

Sent from my iPhone

From: Pat Char
To: Mandatory Malpractice Insurance Task Force
Subject: Exceptions for mandatory malpractice insurance
Date: Wednesday, October 03, 2018 6:18:16 PM

To whom it may concern: I have no comments on whether malpractice insurance should be required in general. My comments relate to exceptions, in the event that malpractice insurance becomes mandatory. There should be a procedure to obtain an exception to mandatory insurance. In my case, I practiced actively for 39 years with private firms (Bogle & Gates, Garvey Schubert, and K&L Gates). Since retirement from private practice in 2016, I have kept an active bar license, although I have not earned a cent from the practice of law. I have been volunteering with organizations that have coverage for volunteers, e.g. KCBA. When private individuals have asked legal questions, I have referred them to other attorneys in my former firm or to other individuals (telling them that I am not in private practice because of a lack of insurance). I am aware of a status that permits attorneys to retain a license for pro bono work, but to date, I have not elected that status and, instead, have been paying full dues. A requirement that I obtain and pay for malpractice insurance -- on top of the cost of dues and the cost of maintaining CLE credits) would be financially prohibitive. I hope that I will not be forced to give up my bar license because of that possible extra cost. That result would limit options for the future, in the unlikely event that circumstances change and I must return to work. Also, that could hinder my ability to work on different pro bono organizations over time. I hope that whatever rule is adopted allows for some exceptions.

Best regards,
Patricia Char
WSBA #7598

From: Tyson Soptich
To: Mandatory Malpractice Insurance Task Force
Subject: Re: July Board of Governors Meeting Digest
Date: Wednesday, October 03, 2018 7:30:20 PM

To whom it may concern:

I won't be able to attend the upcoming public comment meeting you've called. I do wish to reiterate my below comment, however, and ask that you kindly acknowledge receipt and consideration of the same.

To recap, I see this proposal as an unnecessary barrier to the practice of cost-effective legal services. While borne of seemingly good intentions, it will result in fewer attorneys being willing to serve historically underserved and disadvantaged communities. I urge you to consider abandoning this requirement altogether, or imposing a minimum private practice revenue threshold of $100k or more.

Thank you,

Tyson Soptich

From: Tyson Soptich
Sent: Thursday, August 2, 2018 11:55 AM
To: insurancetaskforce@wsba.org
Subject: Fw: July Board of Governors Meeting Digest

Per the below, I understand WSBA is moving to require malpractice insurance of all bar members. I urge you to abandon this requirement, as it adds unnecessary costs and barriers to the practice of law, and may conflict with or be duplicative of other risk mitigation strategies attorneys have already adopted. Furthermore, this policy would have unintended consequences, such as dissuading in-house private company attorneys like myself from practicing in any additional part-time capacity, such as providing pro-bono or otherwise heavily discounted counsel to those without access to legal services.

Respectfully submitted,

Tyson Soptich

From: Washington State Bar Association <noreply@wsba.org>
Sent: Thursday, August 2, 2018 11:33 AM
To: soptich2@hotmail.com
Subject: July Board of Governors Meeting Digest

Washington State Bar Association

WSBA Home

wsba.informz.net

The Washington State Bar Association's home on the Internet. Our newly redesigned site offers information on becoming a licensed legal professional in Washington and member benefits.

A summary of the Board of Governors meeting July 27-28 in Vancouver, WA

Top Takeaways

1. Insurance? Members of the Mandatory Malpractice Insurance Task Force said in an interim report that they are likely to recommend malpractice insurance as a condition of licensing for all active lawyers, with to-be-determined exemptions. Before the final report is due in January, they want YOUR feedback, especially about specific details like exemptions and minimum coverage levels. More info below.
2. Insurance! WSBA has the green light to set up a private health-insurance exchange to provide another option for members across the state. More info below.
3. The board took a first look at WSBA's draft 2019 budget, which will be on the agenda for action in September. Subject to Washington Supreme Court review, all license types will have the same active member license fee—$453—next year. More info below.
4. Rules, rules, rules: Various WSBA entities have recommended amendments and additions to the Rules of Professional Conduct, Superior Court Civil Rules, Criminal Rules for Courts of Limited Jurisdiction, and Superior Court Criminal Rules. More info below.
5. We're honoring a fantastic group of legal luminaries in September—get your tickets now for the Sept. 27 annual APEX Awards dinner. You're sure to leave inspired.

Meeting Recap

- **Local Hero Awards:** WSBA President Bill Pickett presented Local Hero Awards to Lisa Lowe (nominated by the Clark County Bar Association) and David Nelson (nominated by the Cowlitz-Wahkiakum Bar Association) for their outstanding legal and community service.
- **Mandatory Malpractice Insurance.** The Mandatory Malpractice Insurance Task Force issued an interim report with a tentative conclusion that malpractice insurance should be mandated for Washington-licensed lawyers, with specified exemptions (in Oregon, for example, exempted groups include government attorneys, in-house private-company attorneys, and others). The task force's preference thus far is to mandate a minimum level of coverage, purchased through the open marketplace. Before its final report is due in January, the task force will focus on details (what exemptions? what minimums?) for rule drafting. Members are encouraged to read the interim report and provide comments to insurancetaskforce@wsba.org. Please note: Limited License Legal Technicians and Limited Practice Officers are already obligated to show proof of financial responsibility, which is typically established by certifying malpractice insurance coverage.
- **Member Health-Insurance Pool**. With rising health-care costs and uncertainty about the Affordable Care Act, members have been reaching out to WSBA over the past year asking what we can do to provide health insurance. In response, we've explored the insurance landscape and talked to members, other bars, insurance experts and officials, and various providers. Our research indicates the best potential to offer WSBA members another insurance option with competitive

rates is through a private exchange. We will soon partner with Member Benefits, Inc., a company that creates private exchanges for associations such as the State Bar of Texas and the Florida Bar. We will let all members know when that benefit is available.

- **Budget and Audit Committee Recommendations**. The Budget and Audit Committee presented WSBA's draft 2019 budget for consideration to the board, which will take action on it in September. The draft budget maintains programs and services to fulfill our regulatory responsibilities, serve and protect the public, and support members to be successful in the practice of law. The budget is built on previously set lawyer-license fees of $453. As part of the budget-building process, the board approved:

- A new Continuing Legal Education (CLE) revenue-sharing model with sections. Section leaders widely expressed support for this new model.
- License fees for Limited Practice Officers (LPOs) and Limited License Legal Technicians (LPOs): After debate, both active-member fees were set at $453 for 2019 (the Budget and Audit Committee came with a recommendation of $200). The board also recommends that LLLTs and LPOs pay a $30 Client Protection Fund assessment, which would need to be specifically ordered by the Washington Supreme Court. The majority of governors decided that, as WSBA members with full access to benefits and services, LPOs and LLLTs should have the same license fees as lawyers. The Washington Supreme Court will review these fees for reasonableness.
- The Law Clerk program annual fee: After remaining at $1,500 for 20 years, the fee will increase to $2,000 next year.

- **Free Legal Research Tool for Members.** WSBA currently contracts with Casemaker to provide members with a free legal-research platform. WSBA recently launched a request for proposal and has been exploring whether to remain with Casemaker, switch to Fastcase, or offer both. To evaluate members' preference, WSBA conducted a member-wide survey with demo links, in-person usability tests, and virtual focus groups. Governors discussed the pros and cons of choosing one platform over another or even offering both. WSBA will be maintaining Casemaker and continuing to explore whether to add Fastcase as an additional member benefit.
- **Rule Recommendations from the Civil Litigation Rules Drafting Task Force:** This task force was chartered in 2016 to suggest rules necessary to implement the board's previous task force that recommended various changes to address the escalating cost of civil litigation. The recommended amendments and additions to the Superior Court Civil Rules (CR)—including 1, 3.1, 11, 16, 26, 37, 53.5, and 77—focus on the principle of cooperation and require and/or encourage cost-efficient procedures. (The full amendments are in the board materials starting on page 215.)The board will take action in September to approve the recommended amendments for submission to the Washington Supreme Court.
- **Recommendations from the Court Rules and Procedures Committee.** As part of the Washington Supreme Court's review cycle to bring rules up to date with current law, the Court Rules and Procedures Committee has proposed amendments to Superior Court Criminal Rules (CrR) 1.3, 3.4, and 4.4; Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) 4.2, 4.4, and 7.3; and Civil Rule (CR) 30. (The full amendments are in the board materials starting on page 323). The board will take action in September to approve the recommended amendments for submission to the Washington Supreme Court.
- **Amendments to RPCs Concerning Marijuana-Related Conduct.** As recommended by the Committee on Professional Ethics (CPE), the board approved for submission to the Washington Supreme Court amendments to comments to the Rules of Professional Conduct (RPC) to continue to allow Washington lawyers to assist those participating in the marijuana industry. These changes

were in response to new federal enforcement priorities regarding marijuana; they remove contingency language in Comment [18] to RPC 1.2 regarding federal enforcement priorities and add Comment [8] to RPC 8.4 to clarify that a lawyer's conduct in counseling a client regarding marijuana law would not establish a basis for disciplinary action under the rule (The full amendments are in the board materials starting on page 166.)

• **Proposed Bylaw Amendment Regarding Endorsing Candidates.** WSBA bylaws currently prohibit governors, WSBA officers, and the executive director from publicly supporting or opposing candidates in an election for public office in Washington state if being an attorney is a prerequisite for office. Governors considered a proposed amendment that would extend the endorsement prohibition to any position on the Board of Governors. This amendment will be on the September agenda for action.

• **Updates from other board entities:**

o Addition of New Governors Work Group: This group met for the first time in July with a second meeting scheduled for Aug. 14. All materials are online. The group will make a recommendation to the board in September about a proposal to eliminate three yet-to-be-seated governors (two public members, one LLLT or LPO) and to allow LLLTs and LPOs to run in open governor elections in congressional districts.

o Member Engagement Work Group: The board approved the charter and roster for a new work group to explore how to best engage members and facilitate two-way understanding.

• **Selection of 2018-2019 WSBA Treasurer.** Congratulations to Governor Dan Bridges, whom the board selected as its incoming Treasurer. Kudos and appreciation to outgoing Treasurer Governor Kim Risenmay.

• **Working Retreat:** The board held its annual retreat before the meeting on Thursday, July 26. Governors focused on communication and relationships.

• **Conversation with the Washington New and Young Lawyers Committee (WYLC).** WYLC Chair Mike Moceri and Chair-Elect Kim Sandher asked for WSBA to partner on solutions such as access to an affordable health-care exchange and reducing debt load/promoting public-service loan forgiveness for those coming out of law school.

The agenda and materials from this Board of Governors meeting, as well as past meetings, are online. The next regular meeting is September 27-28 in Seattle. The Board of Governors is WSBA's governing body charged with determining general policies of the Bar and approving its annual budget.

WSBA seal

Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539 | Map
Toll-free: 800-945-9722
Local: 206-443-9722

Official WSBA communication
All members will receive the following email, which is considered official:

- Licensing and licensing-related materials
- Information about the non-CLE work and activities of the sections to which the member belongs
- Mandatory Continuing Legal Education (MCLE) reporting-related notifications
- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications

From:	Michael Miller
To:	Mandatory Malpractice Insurance Task Force
Subject:	Exceptions to the Rule
Date:	Wednesday, October 03, 2018 7:48:37 PM

Greetings,

I am a licensed Washington Attorney with my solo practice based in Colorado. I'd like to know what exceptions are being considered given my practice location and the limited scope of my practice (namely, trademark and copyright law).

This rule would no doubt have a significant impact on my business given the likelihood of having to pay for such fees in a low-risk environment. I'd like to comment more after proper due diligence but for now these concerns suffice.

Thanks in advance for getting back to me. Have a nice day.

Cheers,

Michael C Miller, esq.

Sent from my iPhone

From:	Helen N
To:	Mandatory Malpractice Insurance Task Force; Helen N
Subject:	Comment to be added to the record re: possible mandate about insurance for practicing attorneys
Date:	Wednesday, October 03, 2018 8:09:27 PM

Greetings, I passed the bar exam or learned I had passed in May, 2008 at the time when the general economy was in full retraction and competing against too many attorneys. I attempted to find work in law firms and government agencies to no avail. It appeared quite hopeless. What is a budding or newly minted attorney who has very few strings in the legal profession to do? It is darn near impossible to afford both the bar dues and malpractice insurance, too with an uncertain income. I couldn't. I had to make a decision. Try to make some income or simply lapse all the hard work I have done to get the law license. The later wasn't an option with oodles of student loan debt.

Simply put, mandating insurance will have a negative impact in several important ways. It will favor the already well to do individuals who don't have to make a "what if" decision. Those types don't deserve the greater opportunities and in a capitalistic economic system, not a caste, we generally still agree upward possibilities up the socio-economic latter is possible for all.

To mandate insurance will disfavor those who work very hard to get their educations but are not born with a silver spoon in their mouths and makes the decision about who will practice law a decision for the private insurance companies to make (charging whatever they like without any checks or balances). I would encourage the bar association in the state of Washington or any state to consider these things, since I still feel all people deserve the opportunity to move forward who make such substantial effort to acquire the means to gain those opportunities (debt, time and use of intellect). If insurance is required someday then it should be a pooled insurance fund that the amount to be paid for insurance coverage set, qualified guaranteed and standardized, not beyond the means of most who desire to work in the legal profession.

Helen Nowlin, Attorney & Educator
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From:	Helen N
To:	Mandatory Malpractice Insurance Task Force
Subject:	Re: Comment to be added to the record re: possible mandate about insurance for practicing attorneys
Date:	Wednesday, October 03, 2018 8:15:12 PM

*ladder....

Helen Nowlin, Attorney and Educator
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From: Helen N <[redacted]>
Sent: Wednesday, October 3, 2018 8:09 PM
To: insurancetaskforce@wsba.org; Helen N
Subject: Comment to be added to the record re: possible mandate about insurance for practicing attorneys

Greetings, I passed the bar exam or learned I had passed in May, 2008 at the time when the general economy was in full retraction and competing against too many attorneys. I attempted to find work in law firms and government agencies to no avail. It appeared quite hopeless. What is a budding or newly minted attorney who has very few strings in the legal profession to do? It is darn near impossible to afford both the bar dues and malpractice insurance, too with an uncertain income. I couldn't. I had to make a decision. Try to make some income or simply lapse all the hard work I have done to get the law license. The later wasn't an option with oodles of student loan debt.

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without any checks or balances). I would encourage the bar association in the state of Washington or any state to consider these things, since I still feel all people deserve the opportunity to move forward who make such substantial effort to acquire the means to gain those opportunities (debt, time and use of intellect). If insurance is required someday then it should be a pooled insurance fund that the amount to be paid for insurance coverage set, qualified guaranteed and standardized, not beyond the means of most who desire to work in the legal profession.

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From: Kevin Carlisle
To: Mandatory Malpractice Insurance Task Force
Subject: Concern
Date: Wednesday, October 03, 2018 8:41:52 PM

I am licensed and I pay my dues and .eet CLE obligations but I do not practice. Qty qqq

From: Kevin Carlisle
To: Mandatory Malpractice Insurance Task Force
Subject: Concern
Date: Wednesday, October 03, 2018 9:08:16 PM

I do not practice law but I do pay my dues and I fulfill my CLE requirements. I value this connection and identity with the Bar. Please do not impose the obligation of malpractice insurance on those of us who do not practice law, but still want to maintain our Bar license. We worked hard for Bar membership and it is a very important part of who we are. Thank you.

Sincerely,

Kevin L. Carlisle
WSBA #17103

From: Reg P
To: Mandatory Malpractice Insurance Task Force
Subject: Pro Bono
Date: Thursday, October 04, 2018 6:51:35 AM

Dear Task Force members,

I am a licensed attorney in Washington. I wanted to see if you all low income possibilities or significant reductions for those of us that are doing pro bono work mainly. I do e-discovery as my main job in order to meet my bills. I see no reason why I need malpractice for that as the carriers I work with have their own malpractice insurance.

I am also not sure that we should be encouraging the use of insurance so that clients can sue lawyers when they are not happy with the result. A lawyer, like a doctor can never guarantee a result. I fear that making this mandatory opens the floodgates to people just wanting to sue attorneys to collect on their malpractice insurance.

Also, I believe that you need to have a wide variety of people instead of supporting one company. That is not fair to choice in this entire matter.

Finally, I would highly recommend the WSBA consider this for those of us who do pro bono work but do not fit in the traditional conceptions of law firm attorneys. I would suggest that the WSBA have an optional malpractice insurance coverage that can be paid once a year that is collected as part of the dues. That way you can just have people pay the deductible into whatever you all are already using (if you have it) and just cover more people or whatever. Either way, I am not "fluent" in insurance matters, but I think you get the idea of what I am trying to suggest here. The WSBA should be able to offer it as part of a service, however, giving attorneys a choice in the level or type that they need.

Sincerely,
Regina Paulose
Chair-elect WPTL

--

A CONTRARIO
blog: http://acontrarioicl.com
On twitter: @acontrarioicl

From:	Kyler Danielson
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Insurance
Date:	Thursday, October 04, 2018 9:35:25 AM

Task Force:

Thank you for your time and efforts in considering the important issue of whether attorneys should maintain malpractice insurance. I agree that attorneys in private practice should have malpractice insurance to protect themselves and their clients. However, this rule should provide exemptions.

Most importantly: Non-practicing attorneys should not be required to maintain such insurance. Malpractice insurance is an unnecessary expense for nonpracticing attorneys because they are not practicing law. Once they return to the practice of law, they should be required to obtain malpractice insurance. However, nonpracticing attorneys are not a risk to the public or to clients, because they do not have clients. I am currently a nonpracticing attorney. Someone in my position should not be required to pay this unnecessary expense.

Please take the following thoughts into consideration as well:

- Attorneys on leave from their practice should not be required to maintain malpractice insurance because, likewise, they are not engaged in the practice of law. This exemption should include any type of leave or break from the practice of law -- pregnancy/paternity leave, disability leave, or taking personal time for other reasons.
- The requirement should consider whether an attorney has a particular hardship or inability to pay. If a person has a limited practice or works a part-time schedule, then the bar should either provide grants to assist in paying for their malpractice insurance or should exempt them (subject to a demonstration that the person is unable to pay.)
- The requirement should provide a process for attorneys to seek an exemption based on personal circumstances, so that attorneys seek an exemption for reasons that are specific to that individual.
- Retirement should not be a specifically-included exemption because retired attorneys create even more risk to their clients. Once outside of practice, retired attorneys likely would not have the same motivation to stay up to date with changes in the law or to obtain new information about legal rules, relevant case law, and changes to technologies for accessing case law. This creates a greater risk to the public and clients if they do not maintain malpractice insurance.
- I agree with the task force's decision that for the government or nonprofit entities would not be required to maintain malpractice insurance. Please maintain this exemption.

Thank you again for your time and consideration,

Kyler Danielson

From:	Margaret felts
To:	Mandatory Malpractice Insurance Task Force
Subject:	comment re mandatory malpractice insurance
Date:	Thursday, October 04, 2018 10:20:23 AM

I am registered in Washington, but due to family decisions, find myself living in California. Here, my primary income comes from serving as an Expert Witness in utility regulatory cases (pipeline and power plant incidents). Meanwhile, I am certified with the VA to represent Veterans who need to file or appeal disability claims. While there is a long-shot opportunity to receive income from an appeal, generally most of my work with veterans is assisting with primary claims, pro-bono. As a result, carrying malpractice insurance for the legal work I perform would represent a significant, unrecoverable expense. I am in a position to provide pro-bono services because I am older (67) and have an alternative source of income. There probably are not many lawyers in Washington who find themselves in this situation, but as baby-boomers retire from law practices, they might find that they can contribute a bit of their expertise and time to pro-bono services. I hope you will give this situation some consideration during your deliberations.

Margaret Felts

From:	Sue Strachan
To:	Mandatory Malpractice Insurance Task Force
Subject:	FW: Mandatory Malpractie Insuruance info not available
Date:	Thursday, October 04, 2018 12:50:14 PM
Attachments:	Mal Practice info not available.docx
Importance:	High

From: Dennis L. Potter [mailto:dennis@potter-sybor.com]
Sent: Thursday, October 4, 2018 12:43 PM
To: Sue Strachan <susanst@wsba.org>; Adam Ray <adamr@wsba.org>
Cc: Evelyn Sybor Law <evesyborlaw@zipcon.net>
Subject: Re: Mandatory Malpractie Insuruance info not available
Importance: High

I attempted to find the info on the bar website and got the response that it could not be found as indicated in the attached screenshots. I received a pdf file (http://files.constantcontact.com/28d16a55201/b645576c-4526-4fc4-a1af-122b2ac21cfd.pdf) that has apparent links that are inaopperative (also attached) noneof the links are active including the email addresses.

The information I have seems to indicate the Task forces' recommendations are based on a less than 20% share of responses from the membership. WSBA cost are already excessive and support interests not germane to normal practice of law. I have practiced for 20 years without insurance in a small community oriented practice. The key to being successful is in vetting the cases and the client that one takes on.

Those that are more inclined to favor volume over substance and income over quality of claim are the ones that need insurance. They will find that out on their own in short order. Mal practice insurance does not screen a lawyer from liability it merely puts another law firm between the lawyer and the client that is a predator litigator.

Why don't you interview the clients that had to sue for mal practice and hire an attorney to bring the claim. Look at the attorneys that prosecute malpractice claims . . I know from experience that many such claims are rejected and the so called protected client is left at the mercy of the insurance law firm defending the claim.

Requiring malpractice insurance goes beyond the scope of limits on a required membership bar organization and protection of clients(s) losses is inadequate at best and often adds insult to injury.

Dennis Potter

POTTER-SYBOR PLLC

Attorneys at Law
Roosevelt Law Center
11320 Roosevelt Way NE
Seattle, WA 98125
206 787-1400, fax: 787-1414

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From: Don Gulliford
To: Mandatory Malpractice Insurance Task Force
Subject: mandatory insurance??
Date: Thursday, October 04, 2018 12:52:08 PM

10/4/2018 Dear Task Force: My input concerns acting as Mandatory Arbitrator for State Admin Office
of Courts and the counties that have MAR.
Question: Since that is all I do, would mandatory insurance be required? I would think not. Thanks for any thoughts...Don M. Gulliford WSBA 1825

From:	Gregory J Wall
To:	Mandatory Malpractice Insurance Task Force
Subject:	Proposed Mandatory insurance
Date:	Thursday, October 04, 2018 2:18:36 PM

Dear Committee Members

I oppose the creation of an Insuance company or fund to provide insurance. The private market is more than adequate. If the BOG wants to make insurance mandatory, members can buy int on the open market. You are required to have liability insurance on your vehicle in this state, but the State of Washington did not set up its own insurance company for this purpose. The private market works well.

If we are going to increase the financial burden on members in a significant way, it should be by a vote of the members of the Association, not by unilateral action by the BOG.

Gregory J. Wall
Law Office of Gregory J. Wall, PLLC
gregwall@gjwlaw.com
817 Sidney Avenue
Port Orchard, WA 98366
(360) 876-1214

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From:	Carter, Anthony (DFI)
To:	Mandatory Malpractice Insurance Task Force
Subject:	Government Employee Exemption
Date:	Thursday, October 04, 2018 4:55:17 PM

Thank you for the follow-up contact.
I reviewed the preliminary report when it was published a noted the task force is considering an exemption for Government attorneys.
Not surprisingly, as a 33-year state employee I support the exemption.

Sincerely,

Anthony W. Carter, Esq.
Senior Legal Examiner
Department of Financial Institutions
P.O. Box 41200
Olympia, Washington 98504-1200
Office: 360-725-7842
Mobile: 360-890-2124
Fax: 360-596-3868
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Please print only if necessary

Dictum Meum Pactum

From: James Schroeder
To: Mandatory Malpractice Insurance Task Force
Subject: Feedback for consideration
Date: Thursday, October 04, 2018 5:02:27 PM

Dear Task Force commission,

Please note that the traditional providers of legal malpractice insurance refuse to provide insurance to solo patent attorney practitioners. Making malpractice insurance mandatory without providing legitimate insurance options for patent attorney practitioners will effectively destroy solo patent attorney practice in Washington State. Making malpractice insurance mandatory will as a result deprive the local community from lower cost/high value patent legal services solo practitioners are presently able to offer. It would be an injustice to solo patent practitioners to mandate malpractice insurance.

Regards,

James Schroeder

From:	Rebecca Hillyer
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Malpractice Insurance
Date:	Thursday, October 04, 2018 5:03:42 PM

Greetings: While I am licensed to practice law in the State of Washington, I have on only 3 occasions actually practiced law in your State. I have done nearly all my work in Oregon where I have also been licensed for many years. Oregon has had a Mandatory Malpractice Insurance State and I believe it has been the case since I became a lawyer in Oregon, 1985, and I always thought it was an excellent idea because of the protections it gives clients.

Currently, I am general counsel for a public college is Salem, Oregon and I am exempt from Oregon Mandatory Malpractice Insurance, since my only client is an public entity. It is my understanding that I would also be exempt from Washington Mandatory Malpractice Insurance under the rules your are currently contemplating. Exempting attorneys like me makes sense since I am not dealing with Washington citizens legal matters and putting them, their financial well being, at risk if I committed malpractice their case.   If I am exempt, than I support Mandatory Malpractice Insurance, not because I will not have to pay, but because it makes sense to protect the public.

Rebecca L. Hillyer, JD
General Counsel
Chemeketa Community College
4000 Lancaster Dr. NE
Salem, Oregon 97309-7070
503.399.8677

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From:	Robert Stein
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Insurance
Date:	Thursday, October 04, 2018 5:05:45 PM

Task Force Members:

As a WSBA member who is retired except for acting as an arbitrator, I agree with the proposal to exempt full time arbitrators from the insurance requirement. Without such an exemption, it would not be worth it (from a revenue versus expenses standpoint) to continue this work. Thank you.

Robert Stein
WSBA 11193

Sent from Mail for Windows 10

From: Killian King
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Coverage
Date: Thursday, October 04, 2018 5:06:27 PM

Please point me to the list of reasons why someone would be exempt from coverage under the new rules?
I have maintained my active bar status since 1996 when I passed the bar exam, even though I do not represent clients, nor live in the state of Washington. Are you trying to get us to become inactive?

This is really annoying.

Regards,
Killian King
wsba# 26347

From: Nathan Brown
To: Mandatory Malpractice Insurance Task Force
Subject: Patent Insurance
Date: Thursday, October 04, 2018 5:07:51 PM

Currently Patent malpractice insurance is at least 4 times the cost of typical malpractice insurance. I would be unable to offer LOW BONO intellectual property legal work to clients if malpractice insurance was mandatory. No one would be able to do that.

Please consider an exception for LOW BONO work in these high rate malpractice insurance legal fields.

--

Nathan Brown
Attorney at Law

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Website- Brown Patent Law
Facebook- Brown Patent Law
Twitter- @PatentlyCurious
Instagram- Brown Patent Law
Avvo- Nathan Brown
Tumblr- Brown Patent Law

From: John Edison
To: Mandatory Malpractice Insurance Task Force
Subject: Insurance
Date: Thursday, October 04, 2018 5:10:45 PM

WSBA: I am a member of the WSBA, but not actively practicing law. I do not feel I should be required to carry insurance.
John Edison Bar# 8889

From: ROSEMARY IRVIN
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Thursday, October 04, 2018 5:14:06 PM

Dear Task Force,

I am a 67-year-old attorney who is maintaining my license but practice nominally.

I am keeping my CLE's up-to-date by attending the WSBA's legal lunch box series and occasional outside CLEs and paying fees. I am keeping my license in order to do minor legal work and in case I need to go back to practice for financial reasons.

Requiring me to have mandatory insurance would mean that I would have to surrender my license and give up the option of ever practicing law. I would no longer be eligible to attend the legal lunch box series or attend a CLE for credit. It would be very difficult to catch up with CLEs if I chose to be inactive and later decided to practice - the practice of law is evolving very quickly.

Please allow me and those who are similarly situated some latitude if you decide to make medical malpractice insurance mandatory.

Sincerely,

Rosemary Irvin, Esq.
WSBA #8137

Sent from my iPad

From:	Tolis Dimopoulos
To:	Mandatory Malpractice Insurance Task Force
Subject:	Comments regarding mandatory malpractice insurance
Date:	Thursday, October 04, 2018 5:14:41 PM

Dear Members of the Mandatory Malpractice Task Force:

I am writing to express my concern with the current plan to move ahead with mandatory malpractice insurance in Washington. I am a solo practitioner serving technology startups and entrepreneurs. I have been working with technology clients for the last 10 years and absolutely love it. Unfortunately, there just isn't enough money to go around and one of the necessary concessions I have had to make in order to continue working with my clients is professional liability insurance.

I work with price conscience clients that opt to work with me knowing that my rates are more reasonable than those of my colleagues in larger firms. My clients typically do not have a lot of resources to spend on legal expenses to launch their businesses, so any increase in my costs means an increase in their costs. Mandating that I purchase professional liability insurance will mean that I have to increase my rates which will make it more difficult for my clients to continue to work with me.

Mandating that lawyers like me purchase professional liability insurance -- I have never had a single complaint filed against me, by the way -- will mean fewer options for my clients and/or increased legal costs. That doesn't help me or other lawyers which are already viewed very unfavorably in the technology ecosystem.

I would strongly urge the task force to not move ahead with mandating professional malpractice insurance or to create some sort of exemption for attorneys who, like me, have never had a complaint filed against them.

I very much appreciate your time and consideration and would welcome talking further with you should you believe I can assist in any way.

Warmest Regards,
Tolis Dimopoulos

--
Tolis Dimopoulos | Managing Attorney

Sophos Law Firm, PLLC
www.sophoslaw.com

206.356.3113
tolis@sophoslaw.com

From: Pam Rohr
To: Mandatory Malpractice Insurance Task Force
Subject: Malpractice Insurance
Date: Thursday, October 04, 2018 5:15:03 PM

I have spent a great deal of time responding to the WSBA and the Board of Governors on a series of issues.

Each time my opinion was ignored and the WSBA or BOG did whatever they wanted to do, as I am sure will happen again. Only this time, I am not wasting my own time.

Pamela H. Rohr, Esq.

TRUNKENBOLZ | ROHR PLLC
P.O. Box 14033
Spokane, WA 99214
(509) 928-4100
phr@trlaw-spokane.com
www.SpokaneLegalEagle.com

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From: Mark Didrickson
To: Mandatory Malpractice Insurance Task Force
Subject: Jurisdiction
Date: Thursday, October 04, 2018 5:15:44 PM

Hello.

99% of my practice is in two areas: Family Law and Social Security Disability. Family Law is totally state practice and Social Security disability is totally federal practice. Would the WSBA's mandatory liability insurance requirement apply to my entire practice, or only to the practice of law in the WSBA's jurisdiction (family law)?

Mark Didrickson

From: Risrael@verizon.net
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Thursday, October 04, 2018 5:19:50 PM

Always had it for 46 years of active practice with my law firm .
Now retired and not practicing but have been keeping license active and doing CLE "just in case" I should ever desire to return to active practice. I pay Bar Dues but if you require me to buy insurance as well though I am not representing clients and not earning money I will be forced to just let my license lapse. Unless there is an exception for my situation that hardly seems like a fair or just result given the years of study, passing the Bar and continuing CLE.
By the way, never had a malpractice claim so a lot of premiums only served to enrich the insurers or kept the premiums lower for those who did.
Just saying......

Robert L Israel
Bar # 1497 (1969)

P.S. If you make it a requirement for me and others like me do so before I have to pay my Bar Dues next February.

From:	David Soma
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Malpractice Insurance
Date:	Thursday, October 04, 2018 5:21:32 PM

Dear task Force Members,

A portion of my concern has already been expressed. Retired, semi-retired and no-practicing members of the Bar. And although I am certain the Task Force has already considered the issue, I thought it reasonable to mention it.

My concern is for members, myself included, who do not practice but from time to time do pro bono work for agencies that provide malpractice insurance for the pro bono work. It would appear reasonable to include an exemption for non-practicing members who periodically do pro bono work for agencies that provide coverage.

Thank you,

V/r

Dave

David J. Soma, Ph.D., J.D.
COL, U.S. Army (Ret)
Bar # 11708

From:	Fire law
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Malpractice Insurance
Date:	Thursday, October 04, 2018 5:24:12 PM

WSBA: My practice with my son (Quinn & Quinn, P.S.) is 95% comprised of advising municipal corporations (fire districts). We feel indistinguishable from lawyers employed by cities or counties. Why not create a process for petitioning the WSBA for an exemption in such cases? Joe Quinn

PS: I have practiced 42 years without any claims.
Sent from my iPhone

From: Ata Arjomand
To: Mandatory Malpractice Insurance Task Force
Subject: Fw: Mandatory Malpractice Insurance Task Force information and open forum Oct. 16
Date: Thursday, October 04, 2018 5:25:13 PM

Dear colleagues,

I make it very short. The insurance for patent practitioners is not affordable. In any other field or even if practicing in multiple fields, the insurance premium may be about $2000, but if you write even one patent a year, the minimum premium will be $12000. And the more patents we write the higher will the premium be. This is why in our office we have never been able to afford it. This is a serious matter for us and we hope you consider it in your decision making process.

Regards,

ATA ARJOMAND, PH.D., P.E.
Attorney at Law
Arjomand Law Group, PLLC
335 Front Street South
Issaquah, WA 98027, USA
Tel: 425-445-4500
www.ArjomandLawGroup.com

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----- Forwarded Message -----
From: Washington State Bar Association <noreply@wsba.org>
To: ata@arjomandlawgroup.com
Sent: Thursday, October 4, 2018 4:49 PM
Subject: Mandatory Malpractice Insurance Task Force information and open forum Oct. 16

Washington State Bar Association

Have you heard? The Mandatory Malpractice Insurance Task Force issued an interim report in July with a tentative conclusion that malpractice insurance should be mandated for Washington-licensed lawyers, with specified exemptions and minimum coverage levels. We are reaching out directly to you because you are registered with WSBA as not currently having professional liability insurance,

and we want to make sure you are aware of the process and are able to provide feedback.

Background
The Washington State Bar Association Board of Governors formed the task force in September 2017 to collect input and examine current mandatory malpractice insurance systems in other jurisdictions. The task force will use this information to determine whether to recommend mandatory malpractice insurance as a requirement for licensing. Task force members expect to make a final recommendation to the Board of Governors in January 2019.

More information
• Mandatory Malpractice Task Force informational brochure
• Task force website
• Interim report

Provide feedback
• Open forum: All WSBA members are invited to provide feedback directly to task force members from 2-3 p.m. on Tuesday, Oct. 16, at the WSBA Conference Center (telephone participation will be available).
• Comments and questions can be directed to insurancetaskforce@wsba.org and will be provided to the entire task force.

Task-force members want to hear from you so their final report is responsive to members' concerns and expertise. Thank you.

WSBA seal

Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539 | Map
Toll-free: 800-945-9722
Local: 206-443-9722

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All members will receive the following email, which is considered official:

- Licensing and licensing-related materials
- Information about the non-CLE work and activities of the sections to which the member belongs
- Mandatory Continuing Legal Education (MCLE) reporting-related notifications
- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications

From:	farjam@ArjomandLawGroup.com
To:	Mandatory Malpractice Insurance Task Force
Cc:	farjam@arjomandlawgroup.com
Subject:	WSBA - Mandatory Malpractice Insurance - Comments
Date:	Thursday, October 04, 2018 5:25:30 PM

Dear Insurance Task Force,

Thank you for contacting me regarding malpractice insurance. Malpractice insurance is a good protection to have and I have no quarrel with the concept. However, for some practice areas, like IP and especially patents, it is simply not affordable for small lawfirms like ours.

Our practice revolves around IP, in general, and patents, in particular. We have attempted several times to find suitable and affordable insurance but could not. In my search, I realized that the malpractice insurance for patent practitioners is based on the number of patents you have drafted in the past. This is because the more patents you have drafted the more likely you are to be sued for malpractice at some point in the future, and hence, the more expensive is your insurance premium. So, my insurance situation becomes worse with accumulation of patents in my practice.

If affordable insurance is subsidized or mandated to insurance providers, for example, based on firm size or income, then mandating insurance for licensing may become fairer and more practical, otherwise, many solo practitioners may have to exit the field due to insurance costs.

-Best regards,

FARJAM MAJD
Attorney at Law
Arjomand Law Group, PLLC
335 Front Street S., Issaquah, WA 98027, USA
Office: 425-392-2050; Mobile: 425-9999-475
farjam@ArjomandLawGroup.com; www.ArjomandLawGroup.com

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From: Faith Ireland
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice
Date: Thursday, October 04, 2018 5:31:52 PM

I hope you will make an exception for lawyers who do not represent individuals or corporations. I only do mediation and arbitration and consult to lawyers who have cases on appeal. The only people for whom I may do work are represented by lawyers.

--

Faith Ireland

Justice Washington Supreme Court (Ret.)

"Just Results"Arbitration Mediation and Consulting

7340 Bowlyn Pl. S Seattle, WA 98118   206-383-2478
email: faith@faith-ireland.com
web: www.faith-ireland.com

From:	LAURA CONNOR
To:	Mandatory Malpractice Insurance Task Force
Subject:	Semi-retirement
Date:	Thursday, October 04, 2018 5:38:51 PM

Dear Taskforce Members:

I am 72 years old and recently underwent chemotherapy for cancer. I appear to have recovered and feel well. I have never had a malpractice claim during my entire career. I had one bar complaint that was dismissed as specious. I did graduate work in tax after law school. My late husband, George Klawitter, was an attorney, and he and I practiced together. When he developed Alzheimer's in his mid sixties, I cut our practice back to almost nothing so that I could care for him. His disease lasted for at least 15 years. When my malpractice insurance premiums reached $4,000 a year I decided not to renew my policy. My practice consisted mainly of estate planning and probate, although we both did some litigation. Now I just have a small practice doing limited estate planning and probate. I remember George saying that doing the probates for our large estate planning clientele would make for a nice retirement income. My income from my practice is limited and paying malpractice premiums would be prohibitively expensive. I believe I do a genuine service for my clients, having both extensive experience and good qualifications for my practice. I try to keep my fees at an affordable level. A number of my clients have been with me for decades. I believe that requiring me to buy malpractice insurance may well force me out of the practice of law.

George and I never viewed our legal practice as merely a business. I remember his signing over all of a $100, 000 check to a client who owed us $20,000. He said the client's business would fail without that money. It failed anyway but George had done his best. His clients loved him but he never became rich. We did buy long term care insurance, never bought a second home, almost never bought new cars and lived relatively simply. Nevertheless, his care was expensive. That and the downturns in the stock market have left me with a home, a small pension and social security. I supplement that with income from Airbnb and my limited practice. Add malpractice insurance to high property taxes and my life may become very constricted indeed. Please pause and give a thought to us wrinklies.

Laura Connor

10616

From: Daniel Haverty
To: Mandatory Malpractice Insurance Task Force
Subject: Comment on the Mandatory Malpractice Insurance Task Force
Date: Thursday, October 04, 2018 5:40:55 PM

Hello,

Although my license is active, I am not presently practicing and live/work overseas. If I were to practice in the foreseeable future, it would be overseas either legal volunteering in southeast Asia, obtaining certification/license in Australia/Canada or working for an international organization like the UNHCR or Red Cross.

I think the mandatory malpractice should be limited to those specifically practicing in WA. I would like to see specific exceptions that exclude those not actively practicing and for those practicing overseas. I would hope the overseas exception be broad to include those that are licensed overseas, those working in that volunteer/NGO/nonprofit capacity as I will be doing that does not require certification in that country and for those working under international organizations (i.e. UN, Red Cross, etc).

For those working/living overseas, the added insurance cost on top of visas and other licensing would be detrimental, particularly given exchange rates. The $3,500 quoted for Oregon annual is roughly $5,000 NZD which is nearly 10th of my middle class income and as much as I pay in rent per year.

Lastly, I think it is very important the Task Force clearly articulate a purpose statement especially when advising one exceptions. I can hardly imagine a purpose for which my recommended exceptions would not be contrary to the purpose of this task force.

Kind Regards,

Daniel Haverty

From: Pamela Rodriguez
To: Mandatory Malpractice Insurance Task Force
Cc: Pamela Rodriguez
Subject: Mandatory malpractice insurance
Date: Thursday, October 04, 2018 5:41:10 PM

As a sole practitioner, I am just a small operation. I don't have insurance because it was so expensive that I could not afford it. I am afraid if the task force makes it mandatory, the cost may be prohibitive and may cause me to lose my license due to not being able to afford it. If I lose my license then I loose my house and car since my husband is disabled and on a fixed income. Without my income, I would not be able to continue to make my mortgage and car payments, college payments for my daughters nor provide food etc for my family. I request the taskforce not make malpractice insurance mandatory.

In the alternative, if the task force does make malpractice mandatory, I request the cost be controlled so that us little people aren't forced to pay hundreds nor thousands per month to maintain it. It should be equal to the size of the office. I am the only one who works at my office so I should have a small monthly payment.

If any further information is needed from me please do not hesitate to contact me. Thank you for your consideration.

*****please note my email address has changed*****
*****tenga en cuenta que mi direccion de correo electronico ha cambiado*****

Pamela K. Rodriguez
Attorney at Law
Solier Law Offices, P.S.
14705 Meridian E.
Puyallup, WA 98375
pamela@solierlaw.com
Office 253-864-3593
Fax 253-864-3594

From: Jonathan Everett
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory malpractice insurance
Date: Thursday, October 04, 2018 5:42:41 PM

Ladies and Gentlemen,

I am 68 years old and have largely retired from the practice of law, except for pro bono work through Thurston County Volunteer Legal Services, which carries malpractice insurance covering its volunteer attorneys

Other than that, I have only long-standing client in Washington for whom I do paid legal services and one more in Pennsylvania for whom I do occasional work. The work in both cases relates to contracts and financing, which has been my area of practice for 37 years in Washington as well as other jurisdictions. In my estimation, the chances of a malpractice claim relating to either client is very slim and if it were made, I could pay any valid claim from my personal resources. That is why I do not carry malpractice insurance now.

If I were forced to buy malpractice insurance, I would probably cease representing both of these clients, since the cost and trouble of getting the insurance would outweigh the fees I earn. I am sure this would displease both clients, since they rely on my long experience and knowledge of their affairs. Of course I would withdraw in a manner that complies with the Rules of Professional Conduct.

If the new requirement included a provision requiring me to carry malpractice insurance to do pro bono work through Thurston County Volunteer Legal Services, I would probably withdraw from that work also.

Obviously I am opposed to any new requirement that would require me to purchase malpractice insurance.

Sincerely yours,

Jonathan Everett
Bar No. 43792

From: James Kirk
To: Mandatory Malpractice Insurance Task Force
Subject: Mandates & Exemptions
Date: Thursday, October 04, 2018 5:43:42 PM

What about licensed and not practicing, such as in search of work or working but not as an attorney? Some categories are not captured in the Oregon model. I agree that it seems insane to be representing clients without any coverage with by an insurance provider, hosting agency, or public sector work but there are a number of situations where it would be either unnecessary or pose a significant burden to carry malpractice insurance for the sole purpose of complying with the requirement. I can think of a number of situations where an attorney would be in a problem category - new and seeking employment, between firms, working in a non-attorney position for an indeterminate period such as being a reporter for a few years with plans to return. The obligation to maintain the CLE training and licensing is a significant one. Yet, the prospect of giving up hundreds of thousands of dollars in education because of a lapse motivates many non-practicing attorneys to maintain their license despite uncertainty around the prospect of beginning to, or returning to legal practice.

Does the task Force take this issue seriously? I know I fall into a category where I want to maintain my license even if I do not find work as an attorney for the foreseeable future.

JBK

--
James B. Kirk (Ben) Esq.
C - 206-774-8605
JD & MBA
https://www.linkedin.com/in/JBenKirk

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From:	James Kirk
To:	Mandatory Malpractice Insurance Task Force
Subject:	Added comment
Date:	Thursday, October 04, 2018 5:51:09 PM

It's like having a driver's license -a privilege, yet not required to carry insurance to have the license - must carry insurance if one actually drives, but not to have or maintain the privilege to drive.--

James B. Kirk (Ben) Esq.
C - 206-774-8605
JD & MBA
https://www.linkedin.com/in/JBenKirk

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From: Madeleine Dabney
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Thursday, October 04, 2018 5:50:14 PM

Dear Sirs:

I am retired, on fixed income, and only do pro bono work-although I do hundreds of hours of pro bono work every year. However, hundreds of hours, at $0 per hour, is still $0. If I was required to also get malpractice insurance, I could no longer afford to do the pro bono work.

Sent from my iPad

From:	Andrew Phillips
To:	Mandatory Malpractice Insurance Task Force
Subject:	Insurance requirement?
Date:	Thursday, October 04, 2018 6:04:31 PM

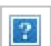
Task force members,
What are the number of claims that require non-insured attornies to pay? And for those without insurance that have claims, how much money damages are going unpaid. The cost benefit for having required insurance needs to be worth it.

Requiring anyone to carry insurance has the makings of lining the pockets of those who take the premiums. If the risk does not outweigh the cost, then it should not be required. Can someone provide the numbers? What is the actually damage being suffered by the public? There needs to be a demonstratively damage, not a fictitious "what if" scenario. I personally have not heard of an attorney being sued for malpractice, losing, and then not paying. If I run a firm that just does low income/pro bono work, why should I be required to go out of pocket to pay for insurance? My risk of suit is low to non existent.

V/r,
Andrew Phillips
Bar #50848
--

Andrew Phillips

Attorney at Law
Master of Accountancy - LL.M. in Tax
APhillips Law, P.S.
p: (360) 602-1406 or (208) 991-9273
w: www.aphillipslaw.com e: andrew@aphillipslaw.com



From:	Gregory Gladnick
To:	Mandatory Malpractice Insurance Task Force
Subject:	33 years no insurance, no disputes with clients, no lawsuits or claims
Date:	Thursday, October 04, 2018 6:05:52 PM

Ask me how I do it.

Gregory E. Gladnick
Attorney At Law
12055 15th Avenue NE
Seattle, WA 98125
Telephone: (206) 789-3662
E-Mail Address: gladnicklaw@gmail.com

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From: Charles Alailima
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Thursday, October 04, 2018 6:43:40 PM

I do not represent clients before the courts in Washington State as my practice is focused in American Samoa. I keep my Washington State license active to provide some pro-bono help to Samoans in Washington State but I refer to more active Washington lawyers if any case requires in-depth attention. That pro-bono help to the Samoan community in Washington often leads to paid representation of some Washington State residents or their families in American Samoa before the courts in American Samoa.

Even the minimal malpractice premiums quoted for Washington lawyers in my group is not affordable for me under the circumstances and I would immediately have to go inactive which would mean I cannot provide pro-bono assistance to people in Washington.

Sent from Mail for Windows 10

From: Joel Wight
To: Mandatory Malpractice Insurance Task Force
Subject: Comments of Joel S. Wight
Date: Thursday, October 04, 2018 6:50:00 PM

I am 75 years old and an attorney licensed to practice with "active" status in Washington State and in California (I am also licensed to practice in the District of Columbia but am on "inactive" status). After a year clerking for a federal appellate judge on the Eighth Circuit (1972-1973), I spent 26 of the next 30 years working on the legal or contracts staffs of GE, Exxon and Boeing (from 1976-1979, I was an associate attorney with the law firm of Lowenstein, Newman, Reis and Axelrad in Washington, D.C.). At the end of 2003, I retired from Boeing and in March 2004 began representing The Red Hat Society, Inc. (a women's social organization which is a Nevada for-profit company with its principal place of business in Fullerton, California) as an independent legal consultant on approximately a half-time basis. I moved back to Washington State from Los Angeles at the end of 2006, and have continued to represent the Red Hat Society from my home on Whidbey Island (currently 15 hours a month). I have never purchased malpractice insurance (but believe I was covered by the law firm's insurance when I was in private practice in Washington D.C.). I do not hold myself out as an attorney in private practice, but did negotiate a successful settlement of a commercial dispute for a Washington resident some years ago when approached to do so. I have opined on legal matters to three non-profit boards when requested to do so.

As I read the draft committee report on mandatory malpractice insurance, I believe my legal representation activities in Washington State would be exempt from any required insurance based on one or more exemptions being considered. If mandatory insurance is adopted, I would hope the exemptions being considered would be also. I think it is very important for an attorney in Washington to be able to understand clearly whether any representation activity s/he may consider undertaking requires mandatory insurance.

Sincerely,

Joel S. Wight

Sent from my iPhone

From:	Robert Stevenson
To:	Mandatory Malpractice Insurance Task Force
Subject:	WASHINGTON LAWYERS MANDATORY MALPRACTICE INSURANCE
Date:	Thursday, October 04, 2018 6:55:52 PM
Importance:	Low

THIS IS BOB STEVENSON. I HAVE PRACTICED LAW IN SEATTLE FOR 68 YEARS AND AM STILL PRACTICING AT A SUBSTANTIALLY REDUCED RATE AT THIS TIME.

I HAVE, FOR THE BETTER PART OF MY PRACTICE CARRIED MALPRACTICE INSURANCE FOR MANY YEARS. I STILL DON'T BELIEVE THIS IS NECESSARY ON A MANDATORY BASIS. IT SHOULD BE ENTIRELY UP TO THE INDIVIDUAL LAWYER TO DECIDE WHETHER HE OR SHE NEEDS TO COVER THEIR PRACTICE WITH THE INSURANCE. THE COVERAGE IS VERY EXPENSIVE AND THERE ARE ALREADY ENOUGH LEGAL EXPENSES TO PLAQUE THE AVERAGE ATTORNEY NOW.

MANDATORY INSURANCE SHOULD NOT BE FORCED ON US BY THE BAR ASSOCIATION OR THE COURT.

BOB STEVENSON WSBA 519

From:	Joe Quaintance
To:	Mandatory Malpractice Insurance Task Force
Subject:	Opposition to mandatory insurance
Date:	Thursday, October 04, 2018 6:58:48 PM

I am 67 years old and semi-retired. I occasionally sit as a pro tem commissioner in Pierce County Superior Court. A specific exemption should be stated that retired attorneys and judges who pro tem are not required to carry insurance.

Upon request I sometimes draft a will or perform a probate for a family member or friend. My retainer form discloses that I do not carry insurance (I disagree with the report's unsupported conclusion that members of the public are incapable of making their own determination whether insurance coverage for their attorney is necessary).

In 42 years of solo practice no malpractice or bar complaint was ever brought against me. In my opinion there are many sole practitioners similarly situated.

I earn less than $10,000 / year for these services. If I am required to carry insurance, I see no reason to continue my bar membership.

Joe Quaintance
253.327.1825

From: Toni E. Moore
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Thursday, October 04, 2018 7:19:11 PM

Dear Ladies and Gentlemen:

I received a notification of your proceedings from the Washington State Bar Association and am writing to comment thereon.

I hope that if the task force decides to recommend mandatory malpractice insurance it will create an exemption for attorneys who only represent clients on a pro bono basis. I do not live in Washington State and am only a member of its bar so that I can assist my nonagenarian mother and aunt in their occasional controversies with their respective condominium associations. While most of these matters are relatively minor in nature, neither my mother nor aunt would be able to afford to retain an attorney to assist them. Being able to offer them legal assistance is the sole reason I maintain a license in Washington.

Malpractice insurance, coupled with the WSBA membership fees would be prohibitive for me, but my not being licensed to practice in Washington would deprive them of an advocate. I don't imagine there are many but there must be other attorneys who are similarly situated. Please consider recommending an exemption for us.

Thank you for your consideration.

Very truly yours,
Toni E. Moore

From:	Bob Lipson and [redacted]
To:	Mandatory Malpractice Insurance Task Force
Subject:	response to the WSBA"s request for input regarding required malpractice insurance
Date:	Thursday, October 04, 2018 7:27:54 PM

Dear Insurance Task Force,

I am retired from the practice of law and have been for several years. I maintain my license to practice out of affection for the profession. Occasionally, I respond to a friend's request for legal information or do something for a charity. I never charge for this help. If mandatory malpractice insurance is required for me to keep my license, then I will no longer it.

I also predict, notwithstanding arguments to the contrary in the bar magazine this month, that mandatory malpractice insurance will result in fewer practitioners in poor and rural areas. It will be the inevitable result of increased costs and increased barriers to entry. The result will be less access to justice, not more.

In what I have read on the issue, I have yet to see hard data quantifying the number and kind of malpractice cases that would have been brought, but were not, because of the lack of insurance. How big is the problem you are attempting to rectify, and does it outweigh the detriment the supposed cure will cause?

Yours,

Robert A. Lipson
#11889

From:	Dianna Dryden
To:	Mandatory Malpractice Insurance Task Force
Subject:	mandatory insurance
Date:	Thursday, October 04, 2018 7:28:42 PM

I am against it. I am age 70 and only practice very part time. I will not continue if I all forced to get insurance.
Dianna Timm Dryden

From: Toby Thaler
To: Mandatory Malpractice Insurance Task Force
Subject: Proposed mandatory insurance coverage
Date: Thursday, October 04, 2018 7:57:07 PM

I have been a member of the Washington Bar since 1978, WSBA #8318.

My entire legal career has been dedicated to the public interest and representation of those not able to obtain counsel from the private bar, generally in the arena of natural resource management. In the course of my 40 years as a lawyer, I have represented numerous Native American entities and individuals, was the first staff attorney at the Washington Environmental Council, and worked as a staff attorney at the Washington Forest Law Center. In between such pursuits, I have also served as pro bono (or nearly so, or very reduced rate) counsel for various environmental from around the state and neighborhood groups in Seattle.

Aside from my time as staff attorney with non profits, legal services entities as well as WEC and WFLC, representation of individual clients in matters involving significant risk of exposure due possible malpractice has been rare. For the past few years, it is unusual for me to make income from attorney fees that are more than the annual bar dues I pay to maintain active status. On top of the money I spend on CLE seminars. Most of my earned income is from related policy work for non-profits.

I am now 68 and even less inclined to take private clients than in prior years. However, I desire to maintain my active status as a member of the bar so that I may continue to be a representative in legal proceedings for public interest groups and the occasional individual with issues I am competent to handle (e.g., SEPA appeals, forest practices permit administrative appeals). An imposition of a mandatory insurance requirement would be an extraordinary burden.

I have reviewed your July 10, 2018 report to the Board of Governors, and wish to provide feedback on one paragraph, on page 10:

- Several categories of attorneys should be exempt. In Oregon, for example, exempt groups include, among others: government attorneys, in-house private company lawyers, attorneys providing services through nonprofit entities, including pro bono services, retired attorneys, full-time arbitrators, and judges and law clerks.

Should the Board wish to consider adoption of a mandatory coverage requirement, I strongly suggest the public interest need for specific provisions that implement exemptions for the underlined categories. As one of the (possibly) more prominent unaffiliated public interest environmental attorneys in the area, I am happy to make myself available to work with you and others to develop specific language to implement a public interest exemption should the Board decide to proceed.

Thank you for your consideration,

--
Toby Thaler
PO Box 1188

Seattle, WA 98111-1188
206 697-4043

From: Doug Smith
To: Mandatory Malpractice Insurance Task Force
Subject: Comments regarding compulsory malpractice coverage
Date: Thursday, October 04, 2018 8:07:23 PM

Dear Members of the Compulsory Malpractice Committee:

I agree that actively practicing attorneys representing private clients should be required to carry malpractice coverage. However, I am concerned about those who, like me,could be caught up in that net even though I do not actively practice law.

I chose to leave law practice about 20 years ago but have maintained my license since then. I have a number of reasons for that decision, to include the possibility that, upon my eventual retirement from my second career, I might want to volunteer legal services to a charitable organization or perhaps work as an attorney part time for a local prosecutor's office or a law firm. It would be unreasonable to require me to carry malpractice insurance when I do not practice law at all, but hold and maintain my license for personal reasons.

Also, the Committee should keep in mind that it costs money to stop having malpractice insurance once it is started. Twenty years ago, it cost me $7500 to purchase a "tail" to my last claims made policy, just to quit practicing. Had I not done so, I would have been uninsured for past negligence since it would not be covered in the absence of a current claims made policy. I point this out because, if insurance is mandatory, an "exit tax" is being imposed upon the lawyer's retirement. The cost may be significant – it wasn't cheap 20 years ago.

Thank you for considering this message.

Sincerely,

Douglas K. Smith, WSBA 6560

From: Wendy Ferrell
To: Mandatory Malpractice Insurance Task Force
Subject: NO mandatory malpractice insurance
Date: Thursday, October 04, 2018 8:25:55 PM

To Whom it May Concern:

I am an attorney licensed to practice law in Washington State. I pay hundreds of dollars to keep my license active every single year, but I am currently not able to use my license. I am a stay-at-home mother, and a caregiver to my own elderly mom. I keep my license current in the hopes that I will be able to practice law again one day.

I CANNOT afford to pay mandatory malpractice insurance. If you require this, you are negatively affecting all stay-at-home mothers or caregivers who are also lawyers. I am sure there are other groups affected as well, but I consider this to be onerous. You will drive women OUT OF THE PRACTICE OF LAW. The Washington State Bar Association is nothing but a "Good Ol' Boys Club".

Please DO NOT force this on us. This is ANTI-WOMAN. Do you want the WSBA to move in this direction in our current political #metoo climate? Get your hands out of my wallet, or give me and other women a viable option to take some time off to care for our families.

Sincerely,
Wendy Ferrell
#33441

From: paulkeister2@aol.com
To: Mandatory Malpractice Insurance Task Force
Subject: Mal practice insurance
Date: Thursday, October 04, 2018 8:42:11 PM

Ive been without it for 27 years, knock on wood!

From:	Marke Schnackenberg
To:	Mandatory Malpractice Insurance Task Force
Subject:	malpractice insurance
Date:	Thursday, October 04, 2018 8:45:43 PM

Dear WSBA,

If your body mandates malpractice insurance for solo criminal defense attorneys, then would you please take steps to mitigate the costs to be borne by the solo practitioners?

Sincerely,

Marke Schnackenberg
Solo Criminal Defense Practitioner

From: Rodney Waldbaum
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Insurance
Date: Thursday, October 04, 2018 8:55:26 PM

After more than 46 years of law practice with the same firm, I retired last year at age 72. I have only kept my active membership alive because I was told that if I went inactive I would no longer be honored for 50 years of practice in 2021, and receive free membership thereafter. I cannot practice law or I would lose my malpractice insurance rail. As I do not practice as a lawyer, I do not feel I should have to pay for current malpractice insurance. I feel those who have actively practice for at least 40 years should be allowed free WSBA membership.

Rodney J. Waldbaum

Sent from my iPhone

From: Diego J. Vargas
To: Mandatory Malpractice Insurance Task Force
Subject: Comments on Mandatory Malpractice Insurance
Date: Thursday, October 04, 2018 9:14:37 PM

Dear Esteemed Committee Members:

Thank you for allowing me the opportunity to address the proposed mandatory malpractice insurance rules. I am a solo practitioner who focuses his practice on criminal defense. For many years I carried malpractice insurance. The cost was approximately $2,000.00 a year. Then I read the Washington State Supreme Court's decision in *Ang v. Martin*, 154 Wash.2d 477, 114 P. 3d 637 (2005), which states:

> "We are asked to determine whether plaintiffs in a malpractice action against their former criminal defense attorneys were properly required to prove by a preponderance of the evidence that they were actually innocent of the underlying criminal charges. The Court of Appeals concluded that, as an element of their negligence claim, plaintiffs were required "to prove innocence in fact and not merely to present evidence of the government's inability to prove guilt." Ang v. Martin, 118 Wash.App. 553, 558, 76 P.3d 787 (2003). We affirm the Court of Appeals."
>
> *Ang v. Martin*, 154 Wash.2d 477, 114 P. 3d 637, at 638 (2005).

I humbly ask you, why would a person who limits his or her practice to criminal defense be required to maintain malpractice insurance? There is no public policy reason to mandate coverage for such practitioners.

I hope you take this comment under consideration. I also hope you take the time to actually respond to my concern and articulate a public policy rationale addressing why individuals who limit their practice to criminal defense should be required to maintain malpractice insurance.

I thank you in advance for your time and consideration.

Sincerely,

Diego J. Vargas
The Vargas Law Firm, PLLC

3326 160th Avenue SE, Suite 215
Bellevue, WA 98008
(425) 531-1676 (Phone)
(425) 310-8130 (Fax)
dvargas@djvlaw.com

From: jason hatch
To: Mandatory Malpractice Insurance Task Force
Date: Thursday, October 04, 2018 10:20:41 PM

ZERO CHANCE!
You are not forcing me into paying for anything based upon the fact that as a solo practitioner you feel you can treat me to some form of group punishment that I am individually undeserving of. Looks to me like you are asking for 28% of solo practitioner's to sue the WSBA, which is a stupid, and naive idea.
All the best.
Jason Hatch 317989

From: Beth Wehrkamp
To: Mandatory Malpractice Insurance Task Force
Subject: Comment
Date: Thursday, October 04, 2018 10:22:23 PM

It is a great move ... for insurance companies who do everything to avoid coverage when something happens to trigger coverage.

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From:	yukiko.stave@stavelaw.com
To:	Dan BOG; Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Malpractice Insurance Member Comment (was:RE: [FWD: An update from WSBA President Brad Furlong])
Date:	Thursday, October 04, 2018 10:35:42 PM
Importance:	Low

Hello District Governor and Task Force,

In response to Sep 2018 NW Lawyer's solicitation of comments, I am writing to express my opposition to mandatory malpractice insurance. I support a plan "implement more extensive malpractice insurance disclosure requirements" as stated in page 35.

Most of legitimate referral programs such as King County Bar Association Lawyer Referral Program require lawyers have malpractice insurance as a condition to be listed on the panel. Prospective clients are encouraged to use those legitimate referral programs for insured lawyers.

Retired lawyers may have assets to afford it even if their income is low. But young lawyers who are fresh out of law school unlikely have. I've read in NW Lawyer that some new law graduates are struggling to find a job. They should be able to practice law as a self-employed lawyer right after graduating from law school. That helps the public. This mandatory malpractice plan is discouraging the poor to practice law, which is financial inequality. I personally had to give up to be listed on one of panels that requires very high amount of coverage.

If this mandatory insurance is implemented, I request income-based exemption. Some solo lawyers don't even have health insurance for their own health. It's too harsh for them having to pay for liability insurance for others when they are not even taking care of themselves.

Sincerely,

Yukiko Stave, Attorney at Law
Stave Law Office, PLLC
14900 Interurban Ave. S. Ste. 271
Tukwila, WA 98168
253.941.3484 **New!**
yukiko.stave@stavelaw.com
www.stavelaw.com

-------- Original Message --------
Subject: RE: [FWD: An update from WSBA President Brad Furlong]
From: Dan BOG <danbog@mcbdlaw.com>
Date: Fri, October 13, 2017 12:05 pm
To: "yukiko.stave@stavelaw.com" <yukiko.stave@stavelaw.com>

Hello Mr. Stave.

Thank you for your email.

I will certainly pass your input onto the Board.

If you don't mind me asking, if you would help me understand why you oppose mandatory malpractice insurance that would perhaps carry more weight. Also, I have found that while initially a few members has told me they oppose the concept, once they explain their concern that is often something we are trying to address in order to make mandatory insurance something even they could get behind.

Any input you can provide would be greatly appreciated.

Thank you again for taking time to participate.

Dan

Dan'L W. Bridges
3131 Western Avenue
Suite #410
Seattle WA. 98121
Phone: 425-462-4000
Fax: 425-637-9638

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From: yukiko.stave@stavelaw.com [mailto:yukiko.stave@stavelaw.com]
Sent: Thursday, October 12, 2017 11:16 PM
To: Dan Bridges
Subject: [FWD: An update from WSBA President Brad Furlong]

Mr. Dan Bridges, WSBA Governor District 9,

In response to WSBA's solicitation on the issue of mandatory malpractice insurance as shown in NW Lawyer September 2017, I express my position. I oppose to mandatory malpractice insurance. I support to strengthen the publication of members' liability insurance disclosure to the public.

Sincerely,

Yukiko Stave, Attorney at Law
Stave Law Office, PLLC
14900 Interurban Ave. S. Ste. 271
Tukwila, WA 98168
253.941.3484 *New!*
yukiko.stave@stavelaw.com
www.stavelaw.com

> -------- Original Message --------
> Subject: An update from WSBA President Brad Furlong

From: "WSBA" <email@wsba.org>
Date: Thu, October 12, 2017 4:42 pm
To: Yukiko Stave <yukiko.stave@stavelaw.com>

An update from WSBA President Brad Furlong

The WSBA Board of Governors held its final meeting of the fiscal year on September 28-29 in Seattle. The two-day September meeting is punctuated with the APEX Awards Dinner, where numerous awards are presented to legal community luminaries. Videos of the award recipients can be found here. Below is a recap of the meeting. A full agenda can be found here.

Election of 2017-2018 At-Large (New and Young Lawyers) Governor

With former At-Large Governor Sean Davis moving to the General Counsel position at the WSBA, the board considered three candidates nominated by the Washington Young Lawyers Committee (WYLC) for the At-Large (New and Young Lawyers) Governor seat. After discussing the candidates' qualifications, the board elected Jean Y. Kang of Seattle to the seat for a term to start immediately. Jean will serve the remainder of Sean Davis' term (ending in September 2018). Jean is a litigation associate at Smith Freed & Eberhard in Seattle. She has focused the majority of her practice on civil litigation, specifically insurance defense/coverage and personal injury cases. Prior to civil work, Jean served as a criminal deputy prosecuting attorney in Cowlitz County and King County. She was sworn in at the meeting by Pierce County Superior Court Judge Susan Serko so she could take her seat at the table immediately following the vote. Congratulations to Governor Kang and welcome! (See public materials beginning at page 19.)

Appointment of Members to the Washington State Bar Foundation Board of Trustees

Each year, the Washington State Bar Foundation conducts its annual meeting as part of the last Board of Governors' meeting of the fiscal year. At this meeting, the Board of Governors, convened as the members of the Foundation, appoint trustees to the Foundation Board. The Board of Governors approved a slate of candidates that includes appointing James W. Armstrong, Jr. for an extra year, who is anticipated to serve as president; appointing Valerie Holder to complete the remainder of a vacating Trustee's term; appointing Kinnon Williams to a three-year term; and appointing Jabu Diagana as Student Trustee, for a term to conclude upon graduation from law school. Congratulations, new and returning Trustees! (See public materials beginning at page 55.)

Approval of Proposed Mandatory Malpractice Insurance Task Force Charter

In 2016, the board convened a Mandatory Malpractice Insurance Work Group to gather information about jurisdictions that require lawyers to have professional liability insurance and the systems used to implement such requirements. At the May 2017 board meeting, the board asked the Executive Committee to consider creation of a Task Force to evaluate whether to recommend adoption of a mandatory malpractice insurance requirement for lawyers in Washington. The Executive Committee recommended formation of such a Task Force under the WSBA Bylaws and submitted a proposed charter, which was approved by the board.

The charter directs the Task Force to: (1) solicit and collect input from WSBA members and others about whether to recommend a system of mandatory malpractice insurance for lawyers in Washington state; (2) review information gathered by the Work Group and gather any additional information needed; (3) consider materials regarding mandatory malpractice insurance systems used in the U.S. and elsewhere; (4) determine whether to recommend adoption of a mandatory malpractice insurance requirement in Washington; (5) if a regulatory requirement is recommended, determine the best model for such a system; and (6) submit a final report to the board including, as appropriate, draft rules to implement a system of

mandatory malpractice insurance for Washington lawyers, including any minority report(s). Per the charter, the Task Force membership shall consist of a WSBA member serving as chair; three current or former members or officers of the board; no fewer than 10 at-large members of the WSBA; a full-time judge; an individual with professional experience in the insurance/risk management industry; and two community representatives who are not licensed to practice law. The Task Force will begin meeting no more than six weeks after appointments are completed and submit a final report to the Board no later than the January 2019 board meeting, unless the timeline for completion is extended by the board. (See public materials beginning at page 69.)

Proposed WSBA Bylaw Amendment re Vacant Immediate Past-President Seat

The board heard from WSBA General Counsel Sean Davis regarding a proposed amendment to the WSBA Bylaws dealing with Immediate Past-President vacancies. Under the current WSBA Bylaws, if the Immediate Past-President is disqualified, removed, or resigns, the office remains vacant until the close of the term of the then-current President. The Bylaws do not address what happens if the office is vacant for another reason. Such an "other" vacancy may occur, for example, if the WSBA President resigns or is removed prior to the end of his or her term, leaving no one to become the Immediate Past-President in the next term. The proposed amendment addresses this type of situation by allowing the current Immediate Past-President to serve another year; in the event the Immediate Past-President does not want to serve another term, the President, with board approval, can appoint an individual to serve as Immediate Past-President for the term that would otherwise be vacant. The board voted on this proposed amendment at a special board meeting on October 3. (See public materials beginning at page 75.)

Annual Discussion with Deans of Washington State Law Schools

The board held its annual discussion with the deans of our state's three law schools. Participating in this discussion were Dean Annette Clark from Seattle University, Dean Jane Korn from Gonzaga University, and Interim Dean Anita Krug from the University of Washington. The three law school deans shared several common priorities, including mentorship, recruitment and scholarships, diversity, and education related to technology and business practices. The governors asked the deans whether the WSBA can or should be doing more to help law schools match graduates to marketplace employment. The deans responded that increased mentorship and connecting students with lawyers in different areas of the practice spectrum would be helpful. Other topics included the cost of legal education and law school tuition; the need for experiential learning in law schools; preparing students for the changing practice of law, including incorporating technology and innovation in coursework; and helping students transition from law school to practice. The board invited the deans to continue the discussion and the deans suggested a board site visit to the law schools. Thank you, Dean Clark, Dean Korn, and Interim Dean Krug, for your time and valuable input!

Orientation on WSBA Diversity and Inclusion Philosophy and Plan

The board participated in an orientation to the WSBA Diversity and Inclusion Philosophy and Plan facilitated by Joy Williams, WSBA Diversity and Public Service Programs Manager, and Robin Nussbaum, WSBA Inclusion and Equity Specialist. The Diversity and Inclusion Plan is intended to outline WSBA's next steps and long-term priorities. The Plan's objectives work toward the goals of creating conditions to promote the retention of attorneys from historically marginalized and underrepresented backgrounds, increasing their participation within the profession, and creating opportunities for leadership within WSBA.

The orientation focused on the "Inside-Out" philosophy of doing the work to make sure WSBA itself (staff and volunteers) is diverse, inclusive, and equitable in order to lead by example and provide tools and resources to the legal community. Key concepts were also covered such as inclusiveness (beyond diversity), the difference between equality and equity, the effect of unconscious bias on our decision-making, and the nature of oppression as institutional and

systemic. Finally, the presentation covered allyship, interrupting bias, and how to recover when you make a mistake. (See public materials beginning at page 80.)

Council on Public Defense (CPD) Proposed Performance Guidelines for Juvenile Offense Representation

The WSBA Council on Public Defense (CPD) presented on first reading a request for the Board of Governors to submit *Performance Guidelines for Juvenile Offense Representation* to the Washington Supreme Court with a recommendation that the court include them in the Standards for Indigent Defense, as was done previously, with the adult Performance Guidelines for Criminal Defense Representation. The board heard a presentation from Eileen Farley, CPD Chair; Daryl Rodrigues, CPD Vice-Chair; and Kimberly Ambrose, CPD Member, who answered questions from the board and members. The board will seek feedback from the membership on these proposed guidelines and take action at the next board meeting in November, so please share any thoughts you have on the proposed Guidelines. Comments on the CPD's proposed Guidelines on Juvenile Offense Representation can go to Bonnie@wsba.org. (See late materials beginning at page 2.)

Council on Public Defense (CPD) re Rules for Appeal of Decisions of Court of Limited Jurisdiction (RALJ) 9.3

The board approved the Council on Public Defense communicating its support to the Washington Supreme Court of proposed amendments to Rule for Appeal of Decisions of Courts of Limited Jurisdiction ("RALJ") 9.3. The proposed amendments concern awarding appellate costs for appeals and would require consideration of the defendant's ability to pay and the presumption of indigence throughout the appeal. The board heard from Eileen Farley, CPD Chair; Daryl Rodrigues, CPD Vice-Chair; Kimberly Ambrose, CPD Member; and Nick Allen, CPD Member and Member of CPD's Legal Financial Obligation Subcommittee. (See public materials beginning at page 369.)

Final WSBA FY2018 Budget

District 1 Governor and Treasurer-elect Kim Risenmay and WSBA Chief Operations Officer Ann Holmes presented the Final Draft FY2018 Budget, which reflects the cost of board-directed programs, services, and operations. The Final Draft Budget includes General Fund Revenue of $18,913,199 and an anticipated drawdown of reserves with expenses of $19,514,890. Based on efficiencies and savings seen at the end of FY16 and projected through FY17, and the budget presented, General Fund reserves will not fall below the $2 million level at the end of FY18, consistent with board policy. The board approved this Final Draft Budget, which was unanimously recommended by the WSBA Budget and Audit Committee. (See public materials beginning at page 90.)

Treasurer Risenmay noted that WSBA received salary survey information showing that compensation levels fall well below midpoint for the market for several positions, which may require an adjustment to the budget in the coming year.

Proposed Formation of Cannabis Law Section

In June 2017, WSBA staff received a request from a group of WSBA members ("formation group") to form a Cannabis Law Section. The guidelines for forming a section are set forth in the WSBA Bylaws and require a petition to include the contemplated purpose of the section, the proposed bylaws of the section, the names of any proposed committees of the section, a proposed budget of the section for the first two years of its operation, a list of Bar members who have signed a petition supporting the creation of the section, and a statement of the need for the proposed section. All of these requirements were met in a timely manner and WSBA staff received no feedback from section leaders either in support of or in opposition to the formation of this section.

The board heard brief remarks regarding the formation of this section from Joshua Ashby and Sativa Rasmussen, formation group members, and WSBA Sections Program Manager Paris Eriksen, who answered questions from the governors. The board will vote on this proposed formation at the next board meeting in November. (See public materials beginning at page 164.)

WSBA Statement Denouncing Recent Acts of Violence and a Reaffirmation of Equity and Inclusion Principles

The WSBA received a request from 11 Washington Minority Bar Associations for the WSBA to join their statement addressing the recent events in Charlottesville. In light of the constraints of GR 12.2, the Board Executive Committee considered drafting and adopting the WSBA's own statement instead of signing on as requested. The board voted to adopt the draft statement as written. This statement will be posted on the WSBA website and circulated to the Minority Bar Associations and the legal community at large. (See public materials beginning at page 205.)

Follow-up from July Retreat re 2017-2018 BOG Priorities

The board held a discussion regarding 2017-2018 board priorities facilitated by information from the discussions at the July 2017 board retreat at Alderbrook. Topics included the court system, member engagement and ambassadorship, entity regulation, retention/diversity/inclusion and cultural competence, and member benefits. A generative discussion on entity regulation will occur at the November board meeting. (See public materials beginning at page 208.)

Proposed Amendments to Article XI Sections re Legislative Activity

The board approved an amendment to XI(F) of the WSBA Bylaws regarding legislative activity to support sections taking action effectively and efficiently throughout the legislative process. The amendment adds language to Article XI allowing section executive committees more flexibility and timeliness in taking action on legislative matters, especially in responding to legislators' direct requests for feedback. (See public materials beginning at page 245.)

Mandatory Continuing Legal Education (MCLE) Board Recommendation to Coordinate Fees

Effective Sept. 1, 2017, the Washington Supreme Court amended its Admission and Practice Rules (APR) that relate to LPO and LLLT mandatory continuing legal education (MCLE). Continuing legal education for LPOs and LLLTs is now governed by APR 11; in addition, the MCLE rules for lawyers, LPOs, and LLLTs are now, with a few exceptions, the same. Pursuant to APR 11, the MCLE Board determined and adjusted fees to defray the reasonably necessary costs of administering the MCLE rules. The MCLE Board proposed a fee structure to the Board of Governors to provide for assessment of the same fees for all MCLE activities regardless of the license type or the intended audience. The board approved these new sponsor fees for MCLE courses for LPOs and LLLTs. (See public materials beginning at page 297.)

Legislative Work Group Recommendations

The board discussed the recommendations of the WSBA Legislative Work Group, which recommended reducing the size of the Legislative Committee and having it meet ad hoc when legislative proposals from WSBA sections need to be vetted. The board heard from District 3 Governor-elect Kyle Sciuchetti, current chair of the WSBA Legislative Committee, regarding committee member concerns and concerns that mandated deadlines would prevent the committee from taking action on relevant legislation. The board also heard from Phil Brady, Work Group Chair and former District 10 governor, regarding the history of these recommendations and the Work Group's process.

The board voted to adopt the Work Group recommendations with amendments keeping the Legislative Committee a standing committee of nine members and allowing the Committee chair the opportunity to accept a proposal outside of the mandated deadlines, provided that the chair is satisfied that there is sufficient time to vet the bills and that the chair's action will be in consultation with the WSBA Legislative Affairs Manager. (See public materials beginning at page 367.)

Discipline Advisory Round Table (DART) Annual Report and Suggested Amendments to Charter

The board voted to amend the DART Charter to make the DART an ongoing entity that includes positions for LLLT and LPO representatives, sets term limits for appointed members, and provides current members with a one-year extension. (See public materials beginning at

page 372.)

If you have questions, concerns, or comments, don’t hesitate to contact me at brad.wsba@furlongbutler.com.

Brad Furlong
WSBA President

To receive limited messages
Please send an email to email@wsba.org with “limited” in the subject line.
In the body of the email, please specify how you would like your email limited (see below).

To opt out of CLE information
Please indicate by option number your choice from the two options below:
• Option 1 — I would like to opt out of receiving ANY CLE information, including WSBA CLE and non-WSBA CLE providers.
• Option 2 — I would like to receive ONLY section-sponsored CLE information for sections to which I belong.

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Please indicate by adding “opt out of non-CLE information” in the body of your email.

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If you do not want your email address published in the online Lawyer Directory, please send an email to email@wsba.org with “unpublished” in the subject line.

Official WSBA communication
All members will receive the following email, which is considered official:
• Licensing and licensing-related materials
• Information about the non-CLE work and activities of the sections to which the member belongs
• Mandatory Continuing Legal Education (MCLE) reporting-related notifications
• Election materials (Board of Governors)
• Selected Executive Director and Board of Governors communications

From: Paula Littlewood
Sent: Thursday, October 4, 2018 3:22 PM
To: Doug Ende
Subject: FW: BOG Meeting Digest and common sense

FYI

Thanks,
Paula

From: Inez "Ine" Petersen [mailto:inezpetersenjd@gmail.com]
Sent: Thursday, October 04, 2018 1:23 PM
To: Bill Pickett
Cc: Paula Littlewood
Subject: Re: BOG Meeting Digest and common sense

Bill,

I appreciate your response, but I have made my views known multiple times. Those views should have been passed on to the task force, not thrown away. It is the "enormous amount of time" you mention that causes me to question their objectivity.

I do want to look at all the options the task force considered and what their findings pro and con were regarding each. I will be surprised if the documentation is in that format.

The fact that 85% of us already carry insurance means to me that they were working a non-problem from the get-go.

- Were they able to identify any victims of the 15% who didn't have insurance?
- And once having identified them, did they quantity the financial loss?
- And did they fall prey to the mind control of the Delphi Technique?

I saw the Delphi Technque at work just recently regarding PSE's outreach regarding the eastside corridor. It was pitiful to see the

sheep think they were actually influencing direction when, in fact, they were being carefully manipulated to arrive at the answer the leaders wanted. Renton used the same technique regarding its Highlands redevelopment.

Anyway, I must return to family matters right now. My mother just passed away.

Sincerely,
Inez

On Thu, Oct 4, 2018 at 12:57 PM Bill Pickett <Bill@wdpickett-law.com> wrote:

> Hi Inez,
>
> I encourage you to share your concerns with the entire task force. As you know they have volunteered an enormous amount of time on this project already. I know for certain that they are committed to listening to member questions and/or concerns. I have no doubt that the task force would be willing to speak with you regarding any concern(s) that you have. I think it would be wonderful if you would be willing to take some time from your busy schedule to address this at the open forum that Paula mentioned below.
>
> As always, your willingness to contribute to this important discussion is appreciated.
>
> Peace,
>
> Bill
>
> **Bill Pickett**
>
> Trial Lawyer

The Pickett Law Firm

917 Triple Crown Way, Suite 100

Yakima, WA. 98908

Phone: 509-972-1825

Fax: 509-972-1826

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From: Inez "Ine" Petersen [mailto:inezpetersenjd@gmail.com]
Sent: Thursday, October 04, 2018 12:31 PM
To: Paula Littlewood <PaulaL@wsba.org>
Cc: Bill Pickett <Bill@wdpickett-law.com>
Subject: Re: BOG Meeting Digest and common sense

Paula,

With technology being what it is today, busy attorneys should have a better process than a short time window to respond. The entire membership should be able to vote electronically on this matter.

I also do not believe that the people on the task force are open minded on the subject. They have been going down the mandatory insurance road for a long time without deviating course; and that investment could make them inappropriately biased.

I have seen the Delphi Technique at work multiple times during my 30 plus years in the business world. Could that technique have been used to manipulate the progression of the task force's meetings?

Sincerely,

Inez

On Thu, Oct 4, 2018 at 12:10 PM Paula Littlewood <PaulaL@wsba.org> wrote:

Thanks, Inez.

I believe that is why the Mandatory Malpractice Insurance Task Force is holding an open forum for members on October 16th from 2:00 p.m. to 3:00 p.m. People can attend in person or via phone.

Please let me know if you need more information on how to attend and/or provide feedback to the Task Force.

Thanks,

Paula

From: Inez "Ine" Petersen [mailto:inezpetersenjd@gmail.com]
Sent: Thursday, October 04, 2018 12:02 PM
To: Paula Littlewood
Cc: Bill Pickett
Subject: Re: BOG Meeting Digest and common sense

Paula,

You don't see the disconnect between the WSBA "head office" and the "members" that I do--and who knows how many other attorneys in the State of Washington agree with me? I wish I knew--I wish you knew.

Forcing mandatory insurance on members without a buy-in of the majority is just plain wrong.

It is wrong because it is such a drastic change in the demands of our membership that it should require our buy-in.

Inez

On Thu, Oct 4, 2018 at 11:00 AM Paula Littlewood <PaulaL@wsba.org> wrote:

Thanks, Inez. Just to clarify – it is the Washington Supreme Court that put a stop to any changes to the bylaws, not WSBA. Also, mandatory insurance would not require a bylaw change – it would occur through a court rule change.

Let me know if you would like to update your letter to the editor based on these clarifications.

Thanks!

Paula

From: Inez "Ine" Petersen [mailto:inezpetersenjd@gmail.com]
Sent: Thursday, October 04, 2018 10:42 AM
To: Paula Littlewood; Bill Pickett
Subject: Fwd: BOG Meeting Digest and common sense

Would you please consider the email below as a LETTER TO THE EDITOR?

Thanks,

Inez Petersen, WSBA #46213

425-255-5543

---------- Forwarded message ---------
From: **Inez "Ine" Petersen** <inezpetersenjd@gmail.com>
Date: Thu, Oct 4, 2018 at 10:39 AM
Subject: BOG Meeting Digest and common sense
To: Paula Littlewood <paulal@wsba.org>, Bill Pickett <bill@wdpickett-law.com>

Dear Paula and Bill:

I can't be the only one who read the BOG Digest and wondered how the WSBA can put a stop to any changes to the Bylaws but forge ahead with requiring mandatory liability insurance.

Aside from the fact that the latter is an action to fix a problem that doesn't exist, doing the former without applying the same "stop work" logic to the latter defies common sense.

Sincerely,

Inez

From: Mark Johnson
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Insurance
Date: Friday, October 05, 2018 12:13:35 AM

Task Force: I have been an active member of the WSBA since 1973. I had malpractice insurance through my firm, Lane Powell PC, up until I retired in 2015. I do not currently provide legal advice to any one, but I do complete my CLE requirements each year and I maintain my active license. If you mandate mandatory insurance for all licensed attorneys, you will force me to give up my active license to practice. Even though I do not currently practice and do not have insurance, I retain the right to again purchase insurance and resume practice as long as I maintain my current license. Forcing me to give up my license seems to me to be imposing a penalty on me with no real purpose. I have never been the subject of any disciplinary proceeding by the Bar and I do not appreciate the prospect of being forced to give up my license to practice which was difficult to obtain and which I do not wish to lose. Please retain the current exception from the need to purchase insurance for attorneys such as myself who are not currently practicing. Thank you for your consideration.

Mark Edwin Johnson WSBA # 5213

From: Jessica McKeegan Jensen
To: Mandatory Malpractice Insurance Task Force
Subject: Comments on Mandatory Insurance
Date: Friday, October 05, 2018 1:06:13 AM

Hello,

These are my comments on the proposed mandatory insurance requirements.

NO mandatory insurance. Mandatory insurance is a barrier to entry for attorneys when starting a practice (a/k/a "hanging out a shingle"). Most attorneys in their first few years of solo practice have little risk because they typically 1) don't start with a large client base, 2) don't start taking complex cases immediately, and 3) have more control over their firm's cases because they are generally doing everything themselves until they have sufficient workload and funds to hire staff and grow.

In my own firm, I had no insurance for my first five years of practice. I was careful about the cases I took and was able to oversee everything because I had fewer clients and staff. My risk was low. I didn't need insurance. As my practice and staff grew, I took on more complex work and added a partner. It was time to obtain insurance.

Solo and small firms provide the majority of legal services to Washington citizens and small businesses. Starting a practice requires a significant investment of money. Another few hundred dollars a month for insurance IS a big deal in the early years of starting your own practice – especially for those saddled with staggering student loan debt.

If you decide to require mandatory insurance, solo attorneys for the first 5 years of practice and those firms grossing less than $500,000 per year should be exempted. Many attorneys (parents with young children and those heading into retirement) maintain a part-time practice. Baby boomer lawyers are retiring and law schools have fewer graduates. Providing access to legal services is especially challenging in rural and less populated communities. "Main Street" lawyers provide a vital service to our communities. We need to

encourage lawyers to enter private practice and not make it more difficult for an attorney to strike out on his or her own.

Insurance rates are more likely to increase (than decrease with competition as suggested) because the free market is greedy. Once insurance is <u>required</u>, we are hosed – we WILL be gouged because we can be. An attorney or firm who has a claim is at a greater disadvantage. Whether valid or not, that attorney will likely pay higher premiums and could be in the position of being uninsurable and therefore unable to continue a practice. Attorneys are already personally liable for their professional negligence. Most of us will want to carry insurance when we perceive we have sufficient risk that we should be covered for our own protection and the protection of our clients. If you require insurance, there needs to be a mechanism where attorneys can be guaranteed coverage so they don't lose their business or their livelihood.

As with general liability insurance and personal injury claims, we can expect there will be an increase in claims against attorneys once it's known that attorneys are required to have insurance. Look at what has happened with doctors. Increased claims will cause insurance rates to increase and will also cause the cost of services to increase because we will need to practice even more defensively. I can't help but think that the insurance companies are the ones who make out here. If insurance will be required, keep the limits modest or commensurate with gross income or the actual risk involved. The risk of error in a multi-million dollar merger or acquisition is obviously higher than preparing an estate plan for someone with $1,000,000 in assets.

My firm's insurance premium is $7,000 this year for 4 attorneys – almost $600/month! Mandatory health care almost doubled our health plan costs. Why should expect professional liability coverage to be any different?

Just because other states require mandatory insurance doesn't mean we should also. It's a bad idea. BTW, I'm a moderate liberal.

Thank you.

Jessica McKeegan Jensen
Attorney at Law
JESSICA JENSEN LAW PS
Attorneys for the Business of Life
2604 12th Court SW, Suite B
Olympia, WA 98502
Telephone 360-705-1335 Ext. 105
Fax 360-570-2038
www.jessicajensenlaw.com

From:	john goodall
To:	Mandatory Malpractice Insurance Task Force
Subject:	Re Mandatory insurance
Date:	Friday, October 05, 2018 2:06:55 AM

Notably absent from all I have read on this subject is any evidence at all that it is necessary.
IE, do you have any statistics showing that there has been any significant problem with clients being unable to collect on attorney malpractice claims?
There are also no related statistics from any of the states that have imposed mandatory insurance.
Why not?
If it's not broke, why fix it?

There is plenty of of speculation in the article by Laura Levin, but no supporting facts.
And she only mentions ONE single case of an attorney malpractice case that a plaintiff was unable to collect.
I also note that this article is not from a practicing attorney, but from an ivory tower academic who perhaps has never practiced law?
Blithely saying that the cost of insurance is 'only an additional billing of $10 a day' reveals a profound lack of business experience.
An additional '$10 billing' does not equate to $10 in profit in any business.
And $3500 a year is a heavy burden on a young lawyer who is starting out ins solo practice with no clients to bill that extra "$10 a day".
Throw in bar dues and the cost of CLE's and he's starting out at least $5000 in the hole for the first year.

There are many lawyers in that same position.
For example, In the mid 80's I advertised at the U of W School of Law for a law student who could help me with some work I was doing and offered $10 an hour.
I received over half a dozen replies from Attorneys who were willing to work for $10 an hour. I'm sure the rate has changed by now , but there are still many attorneys who do not have all the work they need

Ms. Levin also speculates that we need mandatory insurance because

lawyers would be inclined to fight such claims?
We all know that the insurance industry is well known to fight and obstruct claims brought against it.
The proposal will be a windfall of hundreds of millions of dollars for the insurance industry.
Why cant our Bar Association come up with a cooperative self insurance program?
And why is it so costly?
Three thousand a year is far more than we pay to insure either our houses or to cover our personal injury liability for driving, which is a far more dangerous activity than the practice of law.

As for myself, I live in France and currently earn no money from the practice of law in the state of Washington.
I pay my bar dues and I take my CLE's , but I am not engaged in the active practice of law.
If I am obligated to buy malpractice insurance I must chose between maintaining the law license I struggled long and hard to earn or maintaining my limited standard of living.

I can certainly understand the Bar Association taking a look at this subject, but sholln't there be at least an attempt to determine that it is necessary in order to correct an ongoing problem?
Should that not be the first priority?
It appears to me that the Bar is making conclusions without any supporting facts.
John Goodall
#6152

From: Hugh D. Spitzer <spith@uw.edu>
Sent: Friday, October 5, 2018 3:36 PM
To: vlaparker@aol.com; pl.isaki@comcast.net
Cc: Thea Jennings; Rachel Konkler
Subject: Re: WSBA Mandatory Insurance

Thanks for taking the time to write this thoughtful letter. It is a difficult topic, and we' Pass this along to the entire task force.

I was also 11 when I decided to be a lawyer, and I worked my way through law school without outside help. It WAS less expensive back then!

From: vlaparker@aol.com <vlaparker@aol.com>
Sent: Friday, October 5, 2018 11:24:46 AM
To: pl.isaki@comcast.net; Hugh D. Spitzer
Subject: WSBA Mandatory Insurance

Dear Ms. Isaki and Professor Spitzer,

I see that Professor Spitzer was admitted in 1974 and Ms. Isaki was admitted to practice in 1977. I was admitted in 1976.

My decision to become an attorney was made at the age of 11. I did. I paid for my schooling. I had student loans and paid them off.
My purpose in becoming an attorney was to help people. I have done that.

My practice is tiny as it has been throughout 40 years of private practice. I earn very little. Most years, I am barely in the black and some in the red. I don't believe I have ever made more than $10,000 in any year. Nonetheless, I have helped many, many people throughout the years and have worked nearly full-time much of the time.

Why was my practice so small? Why practice from a home office? There are many reasons. I raised my children. There was tremendous financial restrictions because of this decision made for my sons. I was barely able to pay bar dues and CLE costs. Any additional requirements would have required me to cease practice. Is this really the way it should be?

I don't know what Ms. Isaki's experience was. I do know that other women attorneys did not know what to make of me. We work so hard to become attorneys and then to greatly reduce practice for children was beyond their comprehension.

There is good reason solo practitioners have a problem with an additional required expense. This should not be dismissed as some kind of selfish view but recognized for what it is -- it is difficult but serves a tremendous need for the public particularly in rural areas.

It was so interesting to see that solo and attorneys in small firms were noted to have the most ethics complaints filed against them. There is a factor involved which is ignored. Those in large firms have help for attorneys in trouble and are able to intercede with the Bar and pay off clients before complaints are made to the Bar. It is the same reason attorneys in big firms do not bear the costs of CLE's. The firms are permitted to conduct in-house courses. No cost to the attorney and a tax deduction for the firm. Basically, money talks.

I was a government attorney prior to children. It was lovely. A regular paycheck, bar dues and CLEs paid for, etc. But I had a different calling. I had children and clients and needed to accommodate both. Incidentally, one of my sons is an aerodynamicist (honors grad B.S. and M.S. from U.W.) and my other son is an attorney in a large, international firm anticipating admission to the patent bar (B.A., M.S, and J.D from UW honors grad; Order of Coif). My clients are happy. My children are happy.

My service to WSBA includes serving years as a disciplinary hearing officer, years on the Rules of Professional Conduct Committee, years on the Judicial Recommendations committee. I currently serve on the ABA judicial ethics committee. I have never had a complaint against me.

These accomplishments would not have occurred if the costs had been increased.

It seems as though there should be a way to accommodate parents who put their children first rather than lose the ability to practice. Further, perhaps, mandatory insurance should not be required or at least should not be required until a person earns a minimum amount and students loans are paid.

Honestly, this is sad.

Vicki Lee Anne Parker,
Attorney at Law

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From: Victoria Redlin
To: Mandatory Malpractice Insurance Task Force
Subject: Insurance Taskforce
Date: Friday, October 05, 2018 7:47:39 AM

RE: Mandatory Malpractice Insurance

Dear Sir or Madam,

I have been a member of the Washington state bar since 1987. I have had an active license. However, even though I have an active license, I have not practiced law for the past approximately 16 years. I worked in commercial property management those years. Now I own that property management business.

Do you anticipate an exception for an attorney in my position?

Thank you.

Victoria Redlin

WSBA 16971

From: Ivan Gorne
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Friday, October 05, 2018 7:54:39 AM

I object, and trust that when I review the proposal I will see a total exemption for attorneys like myself who have spent most of their careers as either government lawyers, business or educational leaders who happened to select a law degree, rather than some other Ph.D they felt would not serve them as well. Yet, we chose law school and the law because we respect the rule of law and maintain our license for a whole variety of reasons, including helping others just by using our knowledge and thinking process to offer reasonable courses of action to solve problems; or to encourage others that there are options to help them protect themselves from all realm of interference with their lives. For me, my continuing license helps me feel and stay connected to the law and the profession, though I do not currently serve clients and therefore have no need for malpractice insurance.

Secondly, I believe the matter of insurance for errors and omissions should not be mandated. Unwise, of course, to engage in the full practice of law without protecting agains risk, but still a matter of personal and professional choice. All levels of government require actions of citizens that are intended to do good, but are implemented for reasons other than that noble intent. And I have found the WSBA in recent years moving into causes well beyond what legal professionals require from a professional organization.

If the rule of law in our society is to protect our freedom and individual right to govern our own lives and professional practice, why take this right away from us? Who are you trying to protect? Don't say "you," because I am quite capable of protecting myself.

Sincerely and respectfully yours,

Ivan L. Gorne, J.D.
WSBA 18,045

From: Ron Santi
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory insurance
Date: Friday, October 05, 2018 8:22:00 AM

Hello,

I wrote previously but am again wishing to explain what a hardship mandatory insurance will be for those of us who are semi retired with a rather modest income and who are not in the active practice of law with the public. As in house counsel for my family's real estate investment my only legal work is a rare letter to a tenant to pay or vacate. I've not had any complaints in 39 years and hope to die with my license active. Any new insurance cost would be a hardship and fundamentally unfair to those of us on the margins. Perhaps a bar pool of insurance for a nominal cost for minimum coverage would work while not forcing those like me to give up my license. Or exemptions for those who are not engaged in practice. Anything more than a token cost would be unfair, unnecessary and prohibitive. Mandatory enrichment of the insurance carriers is not in the best interest of membership or the public.

--Ron Santi
#8817

From: James Leggett
To: Mandatory Malpractice Insurance Task Force
Subject: insurance mandate
Date: Friday, October 05, 2018 8:29:32 AM

Great idea. Just think of the money the BAR will save by eliminating the disciplinary counsel department and out sourcing it to insurance companies.

From: John Jacobson
To: Mandatory Malpractice Insurance Task Force
Subject: Feedback
Date: Friday, October 05, 2018 8:35:44 AM

When I practiced as a solo-practitioner I maintained malpractice insurance because it was the right business decision to make. When I closed my practice and went in-house I no longer carried insurance.

I would now classify myself as an unemployed lawyer looking for my next opportunity. I maintain my license out of necessity for when the next opportunity becomes available.

I occasionally take on minor, low risk matters for friends and relatives. I also appear on behalf of other lawyers for motions when they are unavailable.

The principle of mandatory malpractice insurance is a good idea. My concern is for members that are in-between jobs, or new lawyers that pass the bar exam without a job offer, and their ability to maintain a license while finding a job.

I think the exceptions to the requirements should be broadly drafted to allow for such exemptions.

John Jacobson

From:	Rich Greiner
To:	Mandatory Malpractice Insurance Task Force
Subject:	Why I don't carry E & O
Date:	Friday, October 05, 2018 8:40:57 AM

This issue sounds like it is already settled. However, please consider this perspective. I have solo-practiced for 35 years and intentionally do not carry malpractice insurance because I have been sued for malpractice two separate times, both by non-clients. I was scattergunned into an underlying case. In each case my defense counsel stated that I would not have been sued if I did not have insurance. Plaintiffs attorneys We're only trying to get to the insurance. My Liability in both cases was very thin and each case was settled for less than anticipated defense costs. However, my malpractice premiums went up three fold.

When I did not have insurance I was not sued. When I did have insurance I was sued twice. Causes one to ponder the Efficiency of the mandate. In my opinion, The mandate only serves to benefit Malpractice attorneys and insurance carriers.

You might consider requiring malpractice insurance mandatory for clients only an optional for non-clients.

Richard Greiner. WSBA 13230

Sent from my iPad

From:	Michael Hatch
To:	Mandatory Malpractice Insurance Task Force
Subject:	Unaffordability a bar to practice
Date:	Friday, October 05, 2018 8:45:55 AM

I am a 72-year-old practicing lawyer. My primary income is social security; I provide a great deal of pro bono services within my community, including free legal services for our local volunteer hospice, and elders. I have priced malpractice insurance, I cannot afford it. If it is mandated, I will be forced to discontinue providing the services I presently offer. The local pro bono office offers very, very little legal representation to the community. By barring me from practicing law, you will further marginalize the population I serve.

D. Michael Hatch
WSB 40410

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From:	Echigoshima, Bruce
To:	Mandatory Malpractice Insurance Task Force
Subject:	Malpractice
Date:	Friday, October 05, 2018 9:01:30 AM
Attachments:	{EXTERNAL} Mandatory Malpractice Insurance Task Force information and open forum Oct. 16.msg

I would suggest that this requirement mirror the requirement for IOLTA accounts. That is to say for those not actively engaged in the practice of law or those who are working as in-house counsel should be exempt until their status changes.

Bruce S. Echigoshima
Vice President
Liberty Mutual Surety Claims
(206) 473-3349

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From: Gerald Grimes
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Insurance
Date: Friday, October 05, 2018 9:10:42 AM

The requirement with the added administrative expense would cause my practice to shut down. My practice is limited to transactional matters such as Wills, Powers of attorney, Trusts, Probates and Guardianships. I believe that the extra time I put into insuring against any claims eliminates my need for malpractice insurance. After 54 years o practice with no claims made I am comfortable doing without insurance.

--

Gerald W. Grimes, Esq.
360.461.7194 FAX: 360.683.7542
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From:	Rich Davis
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Insurance for WSBA Members
Date:	Friday, October 05, 2018 9:20:08 AM

Task Force Members -

I am opposed to mandatory insurance. The recent article by Leslie Levin in the August issue of NW Lawyer removed all doubt. For example:

- Arguments in favor of insurance were justified and supported. All arguments against mandatory insurance were shown to be weak , inapplicable or both. It is clear that this was an advocacy article, not a balanced or neutral analysis and perspective. Publishing the article was an insult to us, a poor decision.
- The public is protected by the WSBA online directory that discloses whether we carry insurance or not. To argue otherwise, as the Ms. Levin did, supports the notion that the public is ignorant. I do not accept that proposition.

I have been a member of the WSBA since 1982. I only perform voluntary arbitrations and receive a small stipend for the work. Yes, I can afford to pay for insurance from my other resources, but not from the modest income I receive for my arbitration services. A mandatory insurance requirement will cause me to quit arbitrating and resign from the WSBA. I never worked as a lawyer full time, but practiced engineering. I did perform some legal work at times since 1982, but would not have done so had a mandatory insurance requirement been in place. Have you calculated the loss in dues to the WSBA by those of us who are nearing the end of our working careers or work in other fields but practice occasionally? I imagine there are enough of us to affect the revenues of the association significantly.

I agree you have a duty to the public, and you have done a great job of fulfilling those duties through discipline, IOLTA, etc. For example, the number of lawyers disciplined far exceeds the number of engineers disciplined by DOL. I would be surprised if any other profession is subject to stricter discipline than lawyers in Washington.

Nonetheless, it is warranted to have some consideration for the solo and small firm practitioners who are trying to collect hourly fees that are perhaps ten times higher than the wages of some of their clients. Consideration for members, contrary to Ms. Levins arguments, do not necessarily conflict with the notion of protecting the public. In short, mandatory insurance is at odds with your work on "access to justice." The ability for individual working people to find excellent defense and civil law practitioners will drop even further if liability insurance is required.

The best outcome for the WSBA membership would be for the licensing function to be removed from other association activities. Recent work by the WSBA confirms that the bar association is incapable of the moderation and political neutrality needed to justify a combined bar association.

Rich

Richard J. Davis, P.E.
Littlerock WA

From: Hollybeth Hakes
To: Mandatory Malpractice Insurance Task Force
Subject: Feedback on insurance consideration
Date: Friday, October 05, 2018 9:20:52 AM

I am a licensed attorney in Washington without malpractice insurance. I have been staying home with my children and not taking on clients. The cost of keeping my license current and taking CLE's is high enough without the added expense of paying for malpractice insurance when I have no clients. Please take in to consideration those of us who choose to be stay-at-home parents without clients and the already high expenses we must pay to do so. I fully expect to obtain malpractice insurance when I return to work, but not everyone who is licensed is working.

Sincerely,

Hollybeth Hakes

From: Bob Russell
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Friday, October 05, 2018 9:27:30 AM

I am a member of the WSBA (#34674), and have been an attorney since 1975 (active in California 1975-2004). I am retired, but continue to maintain my license, pay bar dues, and complete my CLE requirements because I want to be able to provide pro bono services within my community. I am currently involved in two ongoing pro bono legal guidance as part of a team , and I occasionally provide direct client services - both real estate/insurance advice and litigation advice - to friends and acquaintances, without charge.

There is no way that I could continue to provide such pro bono services if I am required to pay the cost of malpractice insurance. As noted, I am retired and living on social security and retirement savings. None of the people or groups for whom I have provided free legal services over the last several years have any desire or need for malpractice coverage for my services.

I am therefore strongly opposed to mandatory malpractice insurance for pro bono services.

Robert Russell
WSBA #34674

From: [redacted]
To: Mandatory Malpractice Insurance Task Force
Subject: mandatory insurance, exemptions, when would program be mandatory
Date: Friday, October 05, 2018 9:36:10 AM

Hello,

Can you tell me definitively what the exemptions will be?

If mandatory insurance becomes required, will it take effect immediately for the year of 2019? Is there a ballpark number for the cost of the insurance?

I am 60 years old, and primarily simply handle business matters for my 93 year old father's complicated business matters, and provide counsel as needed.

The cost of mandatory insurance may propel me into having to make a decision to give up my license.

Thanks very much,

Bambi Lin Litchman
WSBA 28761
Tacoma, WA

From: Hugh D. Spitzer <spith@uw.edu>
Sent: Monday, October 15, 2018 12:19 PM
To: [redacted]
Cc: Rachel Konkler; Doug Ende; Thea Jennings
Subject: FW: Questions
Attachments: mandatory insurance, exemptions, when would program be mandatory

Dear Ms. Litchman,

I'm chairing the WSBA's Mandatory Malpractice Insurance Task Force. We are currently working on the issue of exemptions, and we won't have a final recommended list for a couple of months. Then we'll send a complete report to the Board of Governors (by January). I expect that the BOG will spend a fair amount of time considering our recommendations, and then, if they choose forward some, all, or none of our suggestions to the State Supreme Court.

I would be very surprised if *anything*, if adopted, went into effect prior to 2020.

(And, I will forward your comment to the entire Task Force.)

Hugh

Hugh Spitzer
Professor of Law
University of Washington School of Law
Box 353020
Seattle, WA 98195-3020
206-685-1635
206-790-1996 (cell)
Papers on SSRN: http://ssrn.com/author=1514923

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Thanks very much,

Bambi Lin Litchman
WSBA 28761
Tacoma, WA

From: Gregory Hogan
To: Mandatory Malpractice Insurance Task Force
Subject: Exempt Out of State Attorneys
Date: Friday, October 05, 2018 9:38:36 AM

Another exemption from mandatory insurance should be for licensed Washington attorneys that do not practice law in the State of Washington. No Washington residents are helped or harmed by requiring out of state attorneys to carry mandatory insurance. Moreover, I wonder if this push for reform by the taskforce is legitimate in light of the Washington Supreme Court's recent order suspending all WSBA reforms.

Gregory W. Hogan (WSBA # 19426)
P.O. Box 14387
Scottsdale, AZ 85267-4387

From:	brad mellotte
To:	Mandatory Malpractice Insurance Task Force
Cc:	Brad Mellotte
Date:	Friday, October 05, 2018 9:50:02 AM

Malpractice insurance must be mandatory. I abhor paying for the client protection of irresponsible lawyers that do not carry malpractice insurance through my increased bar dues. I have always felt this way. I believe the Bar Association should be making sure we protect our clients as the proposed rule summary suggests; not making sure legal service consumers are protected. Leave consumer protection to the Attorney General, and allow us to keep our fees as low as possible. If we do not we will someday be faced with state governance, instead of self governance—it is the growing number of our members who feel this way that will ultimately decide this issue.

I do have a retirement tail policy. I am retired but remain on active status. Therefore, I continue to be insured as I have been since I became an attorney over 30 years ago. I will adjust my malpractice insurance information with the Bar Association if this is necessary. I do not know how that was left out, if it in fact is.

From: Kevin Halverson
To: Mandatory Malpractice Insurance Task Force
Subject: No mandatory insurance please
Date: Friday, October 05, 2018 10:08:03 AM

Simple no vote here. I'm a solo practitioner that does very little attorney work, as my day job is now business/nonpracticing. The additional costs of insurance just wouldn't make sense for the type of legal work I continue to do on the side for startup businesses. Beyond the simple economics of my small practice, I think there is a lot gained by the association if lawyers that are primarily in non-attorney professional roles are able maintain their standing without carrying insurance.

If these additional costs are added, I think it would be reasonable to push for reductions in membership fees to offset. Members have been receptive in the past to proposals to decrease membership fees.

Thanks for providing the opportunity to be heard. I hope WSBA comes to the conclusion that this risk is best evaluated case by case by members, and not mandated by the association.

Very best regards,

Kevin Halverson

From:	Doug Tingvall
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory insurance
Date:	Friday, October 05, 2018 10:11:10 AM

Dear Task Force:

Thank you for your work on this important issue.

I have been practicing since 1982. My practice emphasizes real estate brokerage law and a majority of my clients are residential real estate brokers. I am a sole practitioner working from home. Needless to say, I have a small practice with low overhead and modest income.

I carried professional liability insurance for many years at a cost of about $105 per month. Then, during the recession, the carrier raised my premium from $105 to $540 per month, even though I had had no claims. Carriers were panicking about real estate practice, even though I don't handle foreclosures, syndications or other high risk activities. I could not afford the higher premium, so I discontinued liability insurance. I have not sought a quote recently, but based on what I have heard, premiums are still high in the real estate field.

Therefore, I speak against mandatory insurance, unless there is an exemption for sole practitioners or small firms. I have no objection to affirmative disclosure of "no insurance" to prospective clients.

Regards,

Douglas S. Tingvall
Attorney at Law
8310 154th Ave SE
Newcastle WA 98059-9222
425-255-9500/Fax 255-9964
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From:	jay nuxoll
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Malpractice Insurance Taskforce Information and Open Forum Oct 16
Date:	Friday, October 05, 2018 11:36:57 AM
Attachments:	Scan_20181005.pdf

In 1961 and during the World's Fair I was an insurance adjuster for Farmers Insurance Group. In September 1962 I entered the University of Washington School of Law. I have now been practicing in this state for more than 53 years. For the last five I have been providing service mainly, in fact almost exclusively, for those who cannot afford to pay at all. But I have never practiced law solely as a business with intent to become rich, my desire has always been to serve others who for the most part in need and down and out. I hope to continue practice in that manner.

But I have a vivid recollection of the consequences of making insurance mandatory for car drivers. I was still an adjustor at that time. I personally observed and was able to tally the difference in both the amounts of awards on claims on which suits were brought as well as the cost of the insurance premiums. Both increased exponentially. Before the mandatory insurance requirement juries on motor accident suits remained cautious and realistic in their awards because they were unsure whether or not there would be coverage for a judgment. Because of that not only jury awards but also settlements remained somewhat reasonable. Once those awards and settlements went up premiums had to go up accordingly.

Before the mandatory requirement those without insurance, of course, had to pay for their own mistakes. But drivers who wanted to be insured could obtain it for themselves at reasonable cost. At the present time insurance is not astronomical for lawyers and it makes very good sense to have it. But if insurance becomes mandatory, claimants and juries will know there is at least some minimum coverage, and the claim costs will be higher for insurance companies. Consequently, all lawyers purchasing insurance can expect much (I mean much) higher premiums. Insurance must remain an option lawyers can choose at a reasonable price. Mandatory insurance will put premium costs beyond reason for me and no one would dare to continue practice without it.

JAY NUXOLL, LAWYER
Washington State Bar No. 3506
13843 SE 10th Street
Bellevue, WA 98005-3717
Phone or FAX (425) 641-2600
jay@nuxoll.org

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From: Heather Kelly
To: Mandatory Malpractice Insurance Task Force
Subject: Concerns about mandatory malpractice insurance
Date: Friday, October 05, 2018 12:23:00 PM

To the Members of the Task Force:

I wanted to share my concerns about mandated malpractice insurance. I am a solo criminal defense practitioner. I am licensed and enjoy active status in both Washington and California. I work remotely as a research and writing associate for attorneys in the Bay Area. I do not have any of my own clients.

Although my practice is exclusively California-based, I maintain active status in Washington to support the Bar and so that I can volunteer as an attorney. For example, I am newly appointed as an Issue Chair for the Washington State League of Women Voters, meaning that I will be tracking legislation and likely testifying in the upcoming legislative session. I have also added my name to ACLU volunteer attorney contact lists for those facing immigration issues, although I have not worked with them yet.

Requiring me to purchase malpractice would deter me from remaining actively licensed here since I am not using my license to make a living. Additionally, as the Task Force is aware, California is also exploring the possibility of requiring malpractice insurance. If that requirement is imposed and applies to me, I will need to purchase a policy. Perhaps that policy would cover my in Washington State as well, but to the extent I would need two separate policies that would be cost prohibitive for me and I would forego my active status in Washington.

I ask that the Task Force consider waiving this requirement for attorneys who practice primarily out of state. Alternatively, I ask that you waive the requirement for attorneys who are inactive. I also request that the Task Force explore ways of allowing attorneys with coverage in another state to expand that coverage to Washington at little to no net cost, perhaps by reducing their bar fees to offset any increase in policy rate.

Thank you for taking the time to listen.

Best,
Heather Kelly

From: John Bury
To: Mandatory Malpractice Insurance Task Force
Subject: mostly retired
Date: Friday, October 05, 2018 12:35:31 PM

Board
I am almost 70 years old. do a smattering of real estate documents from home. Annual income less than $5K. Given the costs of mandatory CLE
insurance cost is prohibitive.
A complicated premium could be based on field of practice and hours per year.In real estate practice the malpractice damages are ameliorated by the fact that the real estate as an asset still remains in title. Assuming title insurance.
Of course, failure to require title insurance might be negligence.
respectfully
John F Bury
WSBA 4949

From: Lara Lavi
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Insurance
Date: Friday, October 05, 2018 1:13:54 PM

Dear Task Force

I am concerned that the Bar Association is going to require lawyers in WA to have mal practice insurance. A small amount of my practice is with third party clients. I am also in house counsel for several clients - contracted from my firm.

The cost of mal practice insurance is very high. I only do transactional work - no criminal or litigation work. At this time it would be very difficult for me to secure mal practice insurance unless it was highly affordable.

please advise

thanks

Lara

WSBA 17561

LARA LAVI, ESQ.
Managing Partner, Media Law Group

Mobile: 206.551.9847
Email: Lara@medialawgroup net
Web: http://www medialawgroup net/

Find me on LinkedIn

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From:	BruceIanFeldman
To:	Mandatory Malpractice Insurance Task Force
Subject:	Opposition to Mandatory Malpractice Insurance
Date:	Friday, October 05, 2018 2:26:21 PM

Gentlepersons:

October 05, 2018

I am certainly opposed to Mandatory Malpractice Insurance here in the State of Washington. I am a 67 year old attorney, with active attorney status in California and Washington. I do not maintain a law office in either state, do not maintain an attorney trust account in either state, nor do I maintain an active client list anywhere. I am completely retired in practice, but enjoy maintaining the active status of being an attorney. It goes without saying that it took significant work, effort and expense to obtain and maintain active attorney status. In my opinion, I still perform a valuable public service when I am able to listen to the occasional person who might seek out my advice and opinion on potential legal concerns they might be experiencing. I regularly refer these individuals to other attorneys or the Clark County Bar Referral service. I am very careful with any discussion that suggests an expiring statute of limitations. I do not take funds from any client, nor do I enter a formal attorney/client relationship for the purpose of resolving a legal issue. I listen and try to help by directing them to the proper source for more extensive consideration of their matters. It would be sad to me to switch to informal status, where I could no longer be legally helpful. It would not be prudent for me to spend many thousands of dollars for malpractice insurance when I have zero dollars coming in from a legal practice and I am taking no steps to represent clients beyond a referral to another legal representative.

It seems like the handwriting is on the wall that mandatory malpractice insurance will come to Washington State. I would only hope that an exemption/exception might come along with it to allow retired attorneys not to wither away without continuing to guide others. Perhaps the bar could consider providing a very minimal and inexpensive malpractice coverage for individuals in the same circumstances as yours truly. I do not feel exposed to any malpractice in the few annual contacts I have with people involving legal matters. I do not believe attorneys like me pose risk of harm or damage to the public which in any way would require financial recompense.

Thank you in advance for considering my thoughts on this matter.

Very truly yours,

Bruce Ian Feldman
WSBA 22513
bifjd75@q.com
(360) 666-1381

From: Edwin Sterner
To: Mandatory Malpractice Insurance Task Force
Subject: One size does not fit all
Date: Friday, October 05, 2018 5:30:29 PM

My practice is restricted to serving as part time in-house counsel to three companies. Although I rent by the hour and am not an employee of any of them, they appreciate the rates I charge and as part of the arrangement they agree to treat me in effect as an employee and agree that they will not sue me or attempt to collect damages from me for mere negligence/mal-practice. In fact, absent intentional malfeasance, they indemnify me against claims related to my work for them.

They are quite aware that I do not carry additional mal-practice insurance and are happy for that since they know I'd just pass the cost on to them.

The "brochure" mentions that attorneys have reported "meritorious" cases dropped when it is learned that the attorney does not have insurance. I would note that the report does not provide any statistical data re this alleged dropping of meritorious cases due to lack of insurance and this reason for requiring insurance seems to be purely anecdotal.

How many people with truly meritorious claims (and did the task force actually check the facts of these "meritorious" cases to see just how meritorious?) against attorneys do not bother to sue? I doubt very many.

Frankly, insurance is a double edged sword. It is in some ways an litigation magnet since insurance companies are in the "do the math" business and will often settle cases with little merit just to get rid of them. So REQUIRING attorneys to carry insurance is requiring them to purchase this litigation magnet. **The fact that 89% of claims are settled for less than $100k is likely an indicator of that. If those are really justified claims, there would be very few attorneys who could not find a way to fund payment of such a claim without insurance, so the "fact" that people choose not to sue when the learn that the attorney does not have insurance is likely largely driven by the merits of their claims not being that strong** and they know they do not have an easy target (i.e. the insurance company) with a deep pocket to negotiate settlement with but will, instead, likely have to actually subject the claim to a decision by an independent evaluator of the claim (judge, jury, arbitrators) rather than to settlement with the insurance company's representative.

So long as the client is aware that the attorney they are retaining does not carry such insurance and still chooses to use that attorney, that should be the privilege of both the client and the attorney.

In lieu of mandatory insurance, a provision saying that any attorney who does not have insurance must disclose that in writing to the client and have the client sign that disclosure might be appropriate.

One size (in this case mandatory insurance) does not fit all and for many clients would be a waste of money since they are not interested in such insurance and do not want to pay for it (as indicated by the pie chart re claims by areas of practice where none of the areas worth putting in color are in the practice of commercial/business law).

Ed Sterner
WSBA #9420

From:	Lori Guevara
To:	Mandatory Malpractice Insurance Task Force
Subject:	Open Forum Question
Date:	Friday, October 05, 2018 4:57:06 PM
Attachments:	image001.png

Hi, I am semi-retired from the private practice of law because I work full time for Tulalip Tribes.

I occasionally accept private cases based on compelling underlying facts. I do not have more than two active private cases at a time.

Forcing a part-time private practitioner like myself to carry legal malpractice insurance would make my private overhead expenses too high and I would have to stop taking private cases.

This would be a shame because I enjoy my private practice and my private cases involve clients in need. For example, I have a 92-year-old client who I visit in her home after hours to discuss her case.

I pride myself on going the extra mile for my clients and I feel my purpose is to help people in need. If I have to stop accepting private cases, I do not believe my clients will be able to find another as dedicated to their needs as I am. My clients are usually people of color who are disadvantaged in many ways.

I am asking that you not require WSBA members to maintain legal malpractice insurance. Thank you for your time. Lori Guevara WSBA 28732

Lori J. Guevara, J.D., L.L.M.

Victim Advocate Attorney | Tulalip Office of Civil Legal Aid

6332 31st Avenue NE

Tulalip, WA 98271

(360) 716-4516 (Desk)

(360) 547-3583 (Cell)

(360) 716-0311 (Fax)

Email lguevara@tulaliptribes-nsn.gov

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and then destroy all copies of the message and attachments, if any. Thank you.

From: Caroline Edmiston
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory insurance
Date: Friday, October 05, 2018 7:14:19 PM

I hope this does not become mandatory. I am retired but like to keep my license so that I may do some pro bono work. If you make it mandatory I will cease my license.

Stop trying to control everything!

Caroline Edmiston

From: Dawn Monroe
To: Mandatory Malpractice Insurance Task Force
Subject: Opinion
Date: Friday, October 05, 2018 7:38:37 PM

I am fully licensed but retired. I am not ready give up my active status just because I worked so hard to get it. But I am not practicing law-- so why would I have to have malpractice insurance???

From: Three Pines Law
To: Mandatory Malpractice Insurance Task Force
Subject: Thank You!
Date: Saturday, October 06, 2018 12:41:09 PM

Hello Task Force:

I wanted to thank you for considering my comments (and possibly comments from others) to provide targeted communication and notice about the proposed liability insurance requirement. I was happy to see a directed email in my inbox with a clear subject matter, as well as the upcoming forum.

Good work!

Kate Hawe

Kate M. Hawe
Owner
Three Pines Law & Consulting Group, Inc.
206.909.4642
threepineslaw@gmail.com
Providing legal and regulatory consulting services to the natural resources client
Licensed attorney in Washington State and Oregon State

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From: Barbara Harnisch
To: Mandatory Malpractice Insurance Task Force
Subject: Question about Mandatory Malpractice Insurance
Date: Saturday, October 06, 2018 9:46:17 PM

Would the "retired" exemption require a licensing status to be "inactive"? There are those of us whose practice is in hiatus but whose status is "active."

Thank you for your kind attention.

13775

From: Michael Little
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Insurance
Date: Sunday, October 07, 2018 12:02:38 AM

I maintain a current license but am not practicing law. I do not intend to pay for insurance unless I reopen a practice. I would assume that I will be excluded from this requirement, otherwise I will resign my license, save my money, and have a nice day.

Sent from my iPhone Mike Little

From: Robert L Hayes
To: Mandatory Malpractice Insurance Task Force
Subject: BAR MEMBER QUESTION
Date: Sunday, October 07, 2018 4:09:05 AM

I am currently licensed as an attorney in the State of Washington but I am not actively practicing law. What is the exemption and limits to this malpractice insurance requirement. Robert Hayes WSBA# 21239.

rlh2722206@aol.com

From: Douglas Greenswag
To: Mandatory Malpractice Insurance Task Force
Cc: Douglas Greenswag
Subject: Commentary on Malpractice Insurance Interim Report
Date: Sunday, October 07, 2018 8:17:14 AM

To the Committee:

Thank you for your email of October 4th. For your information, my WSBA bar number is 37506. I retired from practice at K&L Gates in December, 2017. In connection with my retirement I was given written confirmation that I would continue to be covered by the firm's malpractice insurance for any issues that arose while I was with the firm ("tail coverage").

I see from the Interim Report that you are proposing to exempt retired attorneys from the requirement of mandatory insurance coverage. I certainly agree with that approach. I do have a question about how the term "retired" is or will be defined. I am not in any way engaged in the practice of law and have no present intention of doing so. I have, however, completed enough CLE courses so that I can report compliance with that requirement when I am next obligated to do so by the end of 2019. I made sure I got my CLE requirements out of the way for my current reporting period so that if I decided to return to the practice of law I could do so without any impediments. I believe that the term "retired" should be defined in such a way that I would not be compelled to obtain malpractice coverage simply because I retain the option of returning to the practice of law; especially in view of the fact that I have tail coverage from my former firm (which is something you may want to think about if you have not done so). The term "retired" could, for example, be defined to focus on an whether an individual is actually engaged in the practice of law, regardless of whether he or she has met the other licensing requirements. I would, of course, obtain insurance coverage if I did choose to practice law again, whether or not such insurance is required, because I think that is just good sense.

Thank you for your consideration.

Douglas B. Greenswag
douglas.greenswag@gmail.com

From: Brad Gibson
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Sunday, October 07, 2018 10:54:13 AM

Hello,

I am an active-licensed, although retired, WA attorney. While not actively practicing, I maintain my active license status in the event that I choose to return to work. I think that it is only fair that an exemption be provided for attorneys with active licenses who are not currently practicing. I retired in 2010, and have spend considerable funds maintaining my license, including CLE attendance. I pose zero risk to the public unless I return to practice. It is only reasonable to provide an exemption to attorneys in my practice category.

Thank you,

Brad Gibson, Seattle, WA
WSBA #28170

From:	Inez "Ine" Petersen
To:	Mandatory Malpractice Insurance Task Force
Cc:	Bill Pickett
Subject:	Inez Petersen"s Response to Interim Report re Mandatory Insurance
Date:	Sunday, October 07, 2018 2:32:42 PM

PREFACE

I believe that there is something seriously "broken" in the WSBA.

In the realm of "brokenness" is the State Supreme Court's letter telling members that WSBA leadership is to be treated with respect, that the WSBA must be a safe and healthy environment in which to work, and that there must be policies developed to deal with "harassment and retaliation to cover all possible interactions by persons involved in Bar activities and Bar governance."

My first thought was that this was prompted by WSBA leadership to silence the attorneys who wanted to present to the BOG initiatives that would limit the term of the executive director and immediately replace the current director who has been in that position for over a decade and earns almost a quarter of a million dollars annually.

It seems incongruous to stop discussion on member-generated initiatives and changes to Bylaws **BUT MOVE AHEAD WITH MANDATORY INSURANCE.**

If there were a need for policies to deal with "harassment and retaliation to cover all possible interactions by persons involved in Bar activities and Bar governance," that need should have been transmitted by the governors because governors are the ones who are in charge of managing the WSBA--or should be. Governors, in turn, should be marching to the tune of the majority of the members.

Requiring such policies does nothing to protect members from overreaching by its leadership and does everything to protect and perpetuate such overreaching.

And I say that as a member who is still stinging from the 40% increase in dues where WSBA leaders trampled right over the Bylaws. Members were led to believe that this trampling was mandated by the State Supreme Court.

WITH TECHNOLOGY BEING WHAT IT IS TODAY, lawyers should be

able to comment and vote on mandatory insurance in a way that least impacts their busy schedules. The BOG should want to know what the general consensus is among members regarding mandatory insurance.

Attorneys ought to have been able to **FREELY COMMUNICATE WITH EACH OTHER** regarding mandatory insurance. If a **GENERAL MEMBERSHIP BLOG** existed, then members could freely share their thoughts with each other without approval of WSBA staff as is the case with *NW Sidebar*.

Such transparency would make is easy for members to communicate with each other and would make it harder for WSBA leadership to independently forge ahead, for example, with dues increases and to stop member-initiated voting and member-initiated changes to Bylaws.

Perhaps there is hope in *Janus* to provide some relief.

IN THE REALM OF "BROKENNESS"

In the realm of "brokenness," I find the idea that it is necessary to make professional liability insurance mandatory.

The Interim Report states that the "Task Force is focusing on the risk of injury to the public that arises from uninsured lawyers." And later in the Interim Report the number of uninsured attorneys is stated as 14%. (And I question that 14% below.)

BUT WHERE ARE THE STATISTICS THAT INDICATE TO WHAT EXTENT WASHINGTON'S UNINSURED LAWYERS HAVE ACTUALLY INJURED THEIR CLIENTS?

Without this basic statistic, the Task Force cannot be sure that the 14% (see comments below) of attorneys who carry no insurance constitute **A PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY.**

I QUESTION THE USE OF 14% AS REPRESENTING THE NUMBER OF UNINSURED ATTORNEYS. Para 2 on Page 3 indicated that the 14% was computed AFTER 39% of licensed attorneys were **EXCLUDED.** These attorneys were excluded because they work for an employer who provides malpractice insurance. **BUT excluding these attorneys also increases the percentage which misleads the reader as to the true prevalence of**

uninsured practitioners.

It is more appropriate to compute a percent based upon the number of uninsured practitioners / total active practitioners. Did readers catch this? Did Task Force members? I believe this is an example of the **DELPHI TECHNIQUE** being used to "herd" Task Force members to consensus.

My 30 years at Boeing exposed me to the **DELPHI TECHNIQUE,** as well as working as a grass roots activist to fight a Declaration of Blight which was part of the city's planned redevelopment of the Renton Highlands.

I would need a complete and accurate accounting of the number of uninsured practitioners compared to the total number of active practitioners; this would be basic in determining whether there really is a **PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY.** "Significant enough" is the operative term.

The Task Force indicated this is "**a small percentage of Washington attorneys**" on one page and on another page indicated that "Malpractice plaintiffs' lawyers report **numerous instances** of worthy claims that they must reject for representation because the defendant lawyer is uninsured . . ."

Complete and accurate facts and data about these claimed "numerous instances" would be basic in determining whether there really is a **PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY.**

I do not see that the Task Force has compiled the basic statistics needed to judge **THE TRUE SCOPE OF THE PROBLEM.**

Without understanding the true scope of the problem, it is not possible to determine whether there really is a **PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY.**

The Task Force assumes that ALL attorneys who do not carry insurance do not have the financial resources to make their clients whole. **DID THE TASK FORCE GATHER ANY STATISTICS REGARDING WHAT PORTION OF THE ~~14%~~ UNINSURED IS ABLE TO SELF INSURE?** Lack of funds may not be the only reason an attorney carries no malpractice insurance.

The Interim Report states "A license to practice law is a privilege." I do not agree. We earned the right to practice law in the same way doctors earn the right to practice medicine.

I resented and still resent the "boot on my neck" after I had passed the bar exam. My HIPPA rights were even violated by the WSBA during the process to obtain my bar card. There needs to be a total "reset" at the WSBA; possibly a voluntary bar association will help.

The Interim Report states that "The Task Force members expressed that malpractice insurance (or lack thereof) has a <u>significant impact</u> on clients . . ." **DOES THE TASK FORCE HAVE ANY STATISTICS TO QUANTIFY ACTUAL FINANCIAL IMPACTS TO CLIENTS OF THE ~~14%~~ UNINSURED?**

The Interim Report mentioned the "useful technical assistance" received from ALPS which is the WSBA's endorsed professional liability insurance provider. ALPS won't cover solo attorneys. Based on this fact alone, the WSBA should not have made ALPS its preferred carrier. A carrier that also insures solos should have been selected.

WHAT IS THE NUMBER OF THE ~~14%~~ UNINSURED ATTORNEYS WHICH FALL IN THE SOLO CATEGORY?

The Interim Report states that 28% of solo practitioners do not carry insurance. But the Interim Report fails to indicate the total number of solos. **ISN'T THE 28% STATISTIC MISLEADING? JUST LIKE THE 14% is misleading . . .**

This skewed manner of presenting statistics is the way the **DELPHI TECHNIQUE** manipulates consensus. Without the total number of solos, 28% is without context and is, therefore, misleading.

The Interim Report states that "If the Board of Governors desires further information on the specifics of the Task Force's work, the Board is encouraged to review the Task Force's detailed meeting minutes . . . " **ISN'T THE TASK FORCE SUBSERVIENT TO THE BOG?**

The Task Force should be reporting to the BOG routinely--the Task Force works for the BOG, just like the executive director and her staff should be working for the BOG, not the other way around.

From the Interim Report, it appears that the Task Force gave considerable weight to the opinions of a law professor's article--not a local professor, no actual legal experience, and based on claims that have no relationship <u>to claims</u>

filed against Washington's uninsured lawyers (half of the claims which ALPS indicates are closed without payment). **HOW RELEVANT IS THE OPINION OF THIS OUT-OF-STATE LAW PROFESSOR?**

In fact, I would briefly consider information from out of state and then dismiss it because it does not directly relate to the percent of uninsured Washington lawyers who had malpractice claims. (I hearken back to my prior comments about the 14% being inaccurate to inform me of the number of uninsured attorneys OR the number of that number who lose a malpractice claim.)

The Interim Report stated that "Solo and small firm practitioners represent a **disproportionate share of the malpractice claims**."

AS IT DID TO COMPUTE THE 14%, DID THE TASK FORCE USE SKEWED NUMBERS TO COMPUTE "A DISPROPORTIONATE SHARE OF MALPRACTICE CLAIMS"?

DID THE TASK FORCE CONSIDER THAT SOLO ATTORNEYS OFTEN TAKE THE HARD CASES WHICH LARGER FIRMS REFUSE TO HANDLE?

I ask this latter question because I am an insured solo attorney; and all my cases are those which other law firms would not "touch with a ten-foot pole." This phenomenon could account for the claimed disproportionate share of malpractice claims among the ~~14%~~ uninsured attorneys.

The Interim Report stated "Most attorney misconduct grievances and disciplinary actions involve solo and small firm practitioners." **DID THE TASK FORCE JUXTAPOSE THIS AGAINST THE FACT THAT A HUGE MAJORITY OF MISCONDUCT GRIEVANCES ARE BASELESS AND RESULT IN NO DISCIPLINARY ACTION?**

Para 7 on Page 4 of the Interim Report stated "Malpractice plaintiffs' lawyers report **numerous instances of worthy claims** that they must reject because the defendant lawyer is uninsured, making a recovery much less likely."

DOESN'T THIS WRONGFULLY ASSUME THAT RECOVERY IS "A GIVEN" IF THE DEFENDANT ATTORNEY HAS MALPRACTICE INSURANCE? (Carriers may chose to pay off a plaintiff even if the defendant attorney is innocent; and this has the potential to skew statistics about the efficacy of mandatory insurance.)

DOESN'T THIS ALSO OVERLOOK THE FACT THAT REJECTED CLAIMS IF CARRIED FORTH WOULD BE SUBJECT TO THE 50% DISMISSAL RATE CLAIMED BY ALPS' STATISTICS?

HOW MANY "WORTHY" VERSES "UNWORTHY" CLAIMS WERE THERE?

COULD THE MANDATORY INSURANCE IDEA HAVE COME FROM MALPRACTICE ATTORNEYS WHO SEEK TO MAKE THEIR PRACTICES MORE LUCRATIVE? Most of our federal laws come from lobbyists in Washington, D. C., why can I not assume the same occurs locally?

The Interim Report stated "Over the last five years, WSBA Client Protection Fund application statistics indicate that 11% of the applications were denied because they described instances of malpractice rather than theft or dishonest conduct." **DID THE TASK FORCE CONSIDER RECOMMENDING THE EXPANSION OF THE WSBA CLIENT PROTECTION FUND TO INCLUDE MALPRACTICE BY NON-INSURED ATTORNEYS?**

If the Task Force had accurate statistics regarding the occurrence of uninsured defendant attorneys losing malpractice cases, then they could judge whether expanding the Client Protection Fund is a reasonable alternative to mandatory malpractice insurance.

Paragraph 9 on Page 4 of the Interim Report is another example of slanting statistics to give readers the impression that the problem is bigger than it really is. If 89.1% of national malpractice claims were resolved for less than $100,000, then 10.9% of national malpractice claims were resolved for $100,000 or more.

But it is this statement in this paragraph that deserves more attention: "**ALPS reports that based on its experience, over the past 10 years in Washington State, about half of all its claims were resolved without payment . . . the average loss payment was $60,000, and average loss expenses were about $20,000**."

If 14% is accurate **(BUT IT ISN'T)** to quantify the number of uninsured attorneys and 32,000 is accurate to quantify the number of total active attorneys, then there are approximately 4,500**(?)** uninsured attorneys in the State of Washington. The 4,500 is overstated.

The 14% is overstated because, as I explained earlier, the Task Force excluded

39% of the active attorneys before computing this percent. If readers and Task Force members want to know an accurate percent of active attorneys who are uninsured, then the 39% the Task Force excluded needs to be put back into the equation. That is the only way to determine whether there really is a **PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY.**

USING AN ACCURATE NUMBER OF UNINSURED ATTORNEYS, HOW MANY ARE SOLO?

HOW MANY OF THE ACCURATE NUMBER OF UNINSURED ATTORNEYS ARE ESTIMATED TO HAVE CLAIMS?

AND WHAT IS THE ESTIMATED NUMBER OF CLAIMS, CONSIDERING THE ALPS's 50% OF NO CLAIM BEING AWARDED?

Regarding Para 15 on Page 5, rather than requiring attorneys to "demonstrate financial responsibility," remove that requirement from LLLT/LPOs. We suffer from the tyranny of too many rules already.

Regarding Para 16 on Page 5, the AMA and the ADA do not require their members to carry malpractice insurance, and neither should the WSBA.

Regarding Para 18 on Page 5, if the premium of forced malpractice insurance is $3,500, **THAT IS TWICE WHAT I PAY NOW AS A SOLO PRACTITIONER.** I handle almost 100% *pro bono* cases. I would have to quit being a lawyer or abandon my *pro bono* clients who desperately need legal help. I'm sure that no public sector agency which provides malpractice insurance would hire a soon-to-be 74 year old women who has only been practicing law since Aug 2013.

HAS THE TASK FORCE GIVEN ADEQUATE CONSIDERATION TO HOW MANY *PRO BONO* ATTORNEYS WILL HAVE TO CUT BACK PRO BONO HOURS IN ORDER TO EARN MONEY TO PAY FOR THEIR MANDATORY MALPRACTICE INSURANCE?

ARE THOSE ATTORNEYS WORTH "THROWING TO THE CURB" CONSIDERING THE TRUE EXTENT OF THE PROBLEM OF UNINSURED DEFENDANT ATTORNEYS WHO LOSE MALPRACTICE CLAIMS?

DOES THE TASK FORCE BELIEVE THAT WE ATTORNEYS WILL NOT BECOME VICTIMS OF "FINANCIAL BLACK MAIL" BY THE EVER INCREASING COST OF INSURANCE WHEN PROVIDERS KNOW INSURANCE IS MANDATORY?

AND ABOUT THAT FREE MARKET MODEL mentioned on the first page of the Interim Report, I doubt there will be one. I searched and searched, and Zurich was the only company that would issue a policy to a new solo attorney. In my personal experience, the Task Force's free market is a myth.

Insurance companies are not known for being benevolent, **SO WHAT FACTS AND DATA LEAD THE TASK FORCE TO BELIEVE THAT MANDATORY INSURANCE WILL PAY IN THE VERY FEW CASES WHERE AN UNINSURED ATTORNEY LOSES A MALPRACTICE CASE?**

Task Force should have an accurate estimate of the number of "the very few cases," because that is the **PRIME STATISTIC** that could justify mandatory insurance. However, I believe such a statistic would prove there is **NOT A PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY.**

WE HAVE THE RULES OF PROFESSIONAL CONDUCT TO GOVERN US. The WSBA can use it *sua sponte* to discipline judgment-proof attorneys who do not prevail in malpractice cases. This will send a message quickly to the uninsured attorneys who engage in "sloppy practice."

The Task Force may be thinking that it is **NO BIG DEAL** to require mandatory insurance because 86% of attorneys already buy insurance. But it is **A BIG DEAL** to me.

I have purchased insurance from Day One. Having the cost go up because of the "social justice" mindset of the Task Force will hurt my *pro bono* practice which is 99% of everything I do. (I don't report my *pro bono* hours because I object to self-serving back slapping.)

CLOSING COMMENTS

Insurance companies fight "tooth and nail" not to pay claims. Why does the Task Force think this will change just because a small undetermined number of attorneys will be forced to buy insurance next year?

I believe that the WSBA is a business entity which owes its first loyalty to its members. Giving first priority to the public subjugates the loyalty which members should receive. Through loyalty to its members, the WSBA serves the public.

The goal of the Task Force from the first page of the Interim Report is **to eliminate** "**the risk of injury to the public that arises from uninsured lawyers.**"

To state it another way, the goal of the Task Force is **to eliminate "the possibility that even one attorney is judgment proof.**"

In my view, neither way of stating the goal of the Task Force is reasonable or practical.

AND ABOUT THAT DUTY TO PROTECT THE PUBLIC . . . Why is a prevailing client in a malpractice lawsuit against a judgment-proof attorney any more important "to protect" than a prevailing plaintiff in a non-malpractice lawsuit who cannot collect his judgment?

I believe that the Task Force will NOT be changing its mind based on my comments or anyone else's; BUT I hope I am wrong.

I believe social justice programs can be carried too far; and mandatory insurance to cover the percent of the uninsured that may lose a malpractice case is just such a social program.

Resources of members are finite, and the WSBA leadership should not call upon all its members everywhere to support every worthy cause. Priorities must be set.

As you can tell, I am vehemently opposed to mandatory insurance.

I also vehemently support a voluntary bar association to stop the mission creep and increasing dues currently plaguing WSBA members AND to stop the use of the State Supreme Court to keep WSBA employees in control of the BOG.

I have always been an independent thinker--I cannot stop now.

Sincerely,

Inez PETERSEN, WSBA #46213

Enumclaw, WA

From: Laura Voss
To: Mandatory Malpractice Insurance Task Force; M VOSS
Subject: Malpractice insurance
Date: Sunday, October 07, 2018 5:46:55 PM

Hello members of this task force,

I am licensed in Washington State, as well as Colorado and Wyoming. I currently reside in Wyoming. I maintain my licenses by paying dues annually and participating in continuing legal education. I am a member of 3 LLCs along with my husband, also a licensed attorney. We are the only members of these LLCs. I am not representing clients at this time so I have no reason to need malpractice insurance. I do deal with legal issues in regard to the LLCs as well as landlord/tenant matters in Wyoming. I was involved in a personal legal matter that lasted approximately 12 years and went up and down to the Wyoming Supreme Court several times in regard to a parcel of landlocked property. I am now an empty nester as my children are in college and one may end up in Washington State. I do wish to maintain active status in the event I return to full or part-time employment or even volunteering. I already pay significant sums annually to maintain my licenses. Adding more cost would most likely move me to become inactive or to surrender my license. That would be a very very sad day for me as I have maintained these licenses since the 1990's, this one since 1989, I believe. Thank you for your consideration, sincerely, Laura Macey Voss, Bar # 18983

From: Christine Keating
To: Mandatory Malpractice Insurance Task Force
Subject: Malpractice Insurance Taskforce
Date: Sunday, October 07, 2018 11:42:36 PM

To Whom It May Concern:

I am writing to express concern over the recent recommendations by the taskforce assembled to address malpractice insurance. While I applaud the goal of the taskforce and believe that, in general, licensed attorneys should be insured, I would like to address one of the exceptions being considered to the rule.

I have been a licensed lawyer in Washington since 2000 and until May of this year I worked for the King County Prosecutor's Office. In that capacity as a government lawyer, malpractice insurance was not required and would not be (as I understand it) under the new rules. However, when I left the KCPAO in May, I opened my own business and purchased another, neither of which even remotely involve the practice of law (The Heartful Parent and Savvy Parents Safe Kids). Thus, although I still maintain a current license, I do not provide legal assistance or advice in any respect. I know I am not alone in this position. There are surely numerous licensed lawyers like me who are not actively practicing law in any way, but who do not want to let their license lapse.

For this reason, I would ask that the committee consider including an exception to the rule that allows for non-practicing lawyers to obtain a waiver or exemption to the rule.

Aside from that, I wholeheartedly support the goals and recommendations of the committee. Should you have any questions or would like to discuss this in more depth, please do not hesitate to contact me.

Many thanks,
Christine W. Keating, WSBA #30821

From: john goodall
To: Mandatory Malpractice Insurance Task Force
Subject: Comment
Date: Monday, October 08, 2018 6:23:19 AM

Mandatory malpractice insurance penalizes all conscientious attorneys who do not commit malpractice.
And it penalizes them during a thirty year career to the tune of over $100,000,
which would equate to a lot of malpractice damages.
I guess the upside is that there would be less need to be so conscientious? After all, we're insured.
j goodall

From: Kelly, Paul (DSHS/DCS)
To: Mandatory Malpractice Insurance Task Force
Subject: Government Attorneys
Date: Monday, October 08, 2018 6:39:34 AM

I received your email that I have been flagged as not having malpractice insurance. From what I have seen, everything to date recognizes there should be an exception for government lawyers. I am working as a "Claims Officer" for DSHS. Though I am required to be licensed by the WSBA to be in my job, I am paid very little. In addition, I must pay my own bar dues each year. So not only am I a government lawyer (like Prosecutors, etc), I am paid only about 2/3 of what they are paid. So I implore you to make sure there is an exception for government lawyers in any final requirements.

From: Carol La Verne
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Monday, October 08, 2018 8:32:55 AM

I am retired. I maintain an active license to practice in the event that I have the opportunity to volunteer my services or perhaps return to work part-time. If I am required to obtain malpractice insurance I will have to surrender my license. I notice the interim report mentions that Oregon exempts retired attorneys. If the WSBA does decide on mandatory malpractice insurance, I hope it will also exempt retirees.

I do not think the WSBA should require mandatory malpractice insurance. The organization claims to represent attorneys, but it also disciplines them. Now it wants to protect the public from them. In some arenas that might be referred to as a power grab. I suggest it is not the purpose of the WSBA to fix all of the problems related to the practice of law.

The task force has asked for member comments. It has been my observation that in other areas, such as bar dues, the opinion of WSBA members has been largely ignored. However, I offer the above in the hope it will be considered.

I tried to view the task force's informational brochure on the WSBA website, but the page is not there.

Carol L. La Verne
WSBA # 19229

From:	Gary Hersey
To:	Mandatory Malpractice Insurance Task Force
Cc:	DanClarkBog@yahoo.com
Subject:	Opposition to mandatory malpractice insurance
Date:	Monday, October 08, 2018 10:35:54 AM

Good morning,

I work for the Yakima County Prosecuting Attorney's Office as a Deputy Prosecuting Attorney. I am proud to serve my community every day.

I am writing to you to express my opposition to the proposed rule requiring mandatory malpractice insurance for all WSBA attorneys. After careful consideration of this issue, I believe this rule should only extend to private practice attorneys. I do not see any benefit to the community to require malpractice insurance for those attorneys who do not provide direct representation to clients. Government attorneys, DPAs, law clerks and others similarly situated simply do not need this type of insurance. Imposing a requirement to obtain insurance would not only be unnecessary, but it would be an untenable financial burden on a group of attorneys who are generally underpaid and have significant student loan debt as well.

If the board votes in favor of the proposed rule, I would urge you to consider adopting a similar rule employed by South Dakota, requiring explicit notice to clients regarding malpractice insurance.

Thank you for your consideration,

Gary Hersey
Deputy Prosecuting Attorney
Yakima County Prosecuting Attorney's Office
128 N. Second Street
Yakima, WA 98901
Phone: 509-574-1286
Fax: 509-574-1245
gary.hersey@co.yakima.wa.us

From: Thomas More Kelleher
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance
Date: Monday, October 08, 2018 11:52:12 AM

To whom it may concern:

I will be 73 years old next month. I have been retired for around 6 or 7 years, and I have ceased carrying insurance. I supplement my income by being on the list as a Pro tem judge in the Spokane County District Court system, and have been so for many years. In order to do this Pro tem work, I am required to remain current as a member in good standing in the WSBA. Over the past number of years I have averaged about $4,000.00 to $5,000.00 a year as a Pro tem judge. That income basically pays my car payment and auto insurance.

I cannot imagine ever being sued working as a Pro tem judge, unless perhaps I were to hit someone. But that would not happen and certainly it would not be a professional liability claim.

I have never been sued for professional malpractice and I have never anticipated ever being sued. I do maintain an IOLTA account, but all I have in it are funds that I have not been able to trace the clients or to whom are entitled to the funds, from over 30 years of practicing in Washington. My honest opinion is that most, if not all, are funds that are owed to me, but I would not do anything to use those funds. The account has remained a few dollars under $200.00 for many years. Some years ago I was able to trace where $50.00 was owed to a client and I immediately sent the money to him. It surprised him and he immediately called me and told me that I should have just kept it. I informed him that would never happen.

If I were still accepting clients where trails or long complicated matters were anticipated, I would have kept up my insurance coverage. To the contrary, I have turned down many people requesting my help in personal injury cases and I tell them that I am no longer accepting cases and that I have no staff to handle such matters; and, usually give them some names they may consider contacting, if they wish.

I have had friends ask me to do a simple will, community property agreement or a statutory health care directive. I have done very few of them, and it is never on a day to day basis. Many times I charge nothing. Sometimes I accept very little money, because many times my friends feel more comfortable asking me do the work. I will not do any trust work. Also, I have accepted a few very simple probate estates after determining that they will involved mainly filing some court documents and quick closure. I have no current probate estates opened and it has probably been around two years or so since I have had an opened probate file. As far as my income this year from sources other than the District Court Pro tem income, it would probably be in the $300.00 range.

If it means that I must stop accepting money doing anything, other than the Pro tem work, I would gladly do it. It would be a hardship for me to have to pay a professional liability premium.

Thank you for your consideration,

Sincerely,
Thomas More Kelleher WSBA # 12456

From: autumn liner-sanders
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory malpractice insurance
Date: Monday, October 08, 2018 4:30:10 PM

If you're going to make it mandatory for an attorney to have it then you must make it available and affordable as well.
I work for a tribe. My position does not answer to the tribe's law office but rather my client if you will is a non lawyer department director. For this reason the law office will not include my position or any other attorney position who does not report to them directly onto the law office insurance.
I have tried to find insurance on my own for myself but given my position have found that either 1) the insurance company does not understand the position of the law office or 2) the insurance company has unilaterally decided not to insure Any attorney who is working for a tribe due to the idea of sovereign immunity.
The tribe uses an annual renewable contract to secure attorney services, included in my contract is an agreement to provide the financial resources necessary to insure (if I am able to find adequate insurance) and/or defend me from any malpractice lawsuit.

Feel free to contact me should you have any more questions. But just like mandatory health insurance- there needs to be actually available and affordable insurance. It's also not too much to ask that it be adequate and effective if it is to be mandatory, is it?

From:	rockieh@rockielaw.com
To:	Mandatory Malpractice Insurance Task Force
Subject:	mandatory insurance
Date:	Monday, October 08, 2018 4:59:02 PM

Please consider this email as my comment on this tentative recommendation to mandate malpractice insurance. As a solo practitioner, I have always been insured. It has not, however, been easy to find this insurance coverage or inexpensive. I work full-time, but many insurers do not provide coverage for solo practitioners who work part-time. I envision going part-time as retirement gets closer. I also think if this is going to be mandatory for our members, it would be up to the Association to make sure that reasonably priced coverage is available to all of its members through its support.

Another relevant question is whether in-house attorneys would need to be insured. If the employer accepts the risk that their in-house lawyers may err, and they are not working for others, would we insist that they be separately insured to be a member of the Bar? What if in-house lawyers want to provide pro bono services? What if an in-house lawyer helps a family member with one matter during the entire year? Would an insurance mandate be appropriate under these very limited circumstances?

I question whether we have sufficient data that reflects a need for this requirement. Do we have a large number of clients who loose out because their lawyer was uninsured? Is this another rule requiring everyone to pay out large sums, to cover for the bad acts of a few?
How would we enforce the rule, or will the bad actors just misrepresent on the annual licensing paperwork?

Will your limited practice individuals be exempt from this very costly requirement for lawyers? Is that equitable?

I am not convinced that this would be a fair requirement or actually have the impact you are hoping for clients.

Thank you,
Rockie Hansen
WSBA 21804

Rockie Hansen PLLC
4718 South Magnolia
Spokane, WA 99223

rockieh@rockielaw.com
509-448-3572
509-448-1731 (fax)
509-953-3538 (mobile)

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From: Jeff Duggan
To: Mandatory Malpractice Insurance Task Force
Subject: Comment- Malpractice Insurance
Date: Monday, October 08, 2018 10:22:04 PM

Dear Committee,

My name is Jeffrey J. Duggan. I have been a Washington licensed lawyer since 1988 (WSBA # 18382).

I am writing to advocate for malpractice exemption(s) for attorneys like me and/or similarly situated.

I practice personal injury law part time in Hawaii and Washington. My main focus, however, is teaching Civics, Government, Debate and History. After being in a large personal injury law firm in Seattle for many years, I moved to Hawaii in 2000. Since 2002, I have been a Social Studies at Konawaena High School in Kealekekua, Hawaii. (Big Island)

Over the years I have received numerous personal injury referrals from colleagues, friends and former clients. I have always associated a Washington attorney to work with me, so I can utilize his office and staff. This attorney carried malpractice insurance, I did not.

I believe a part-time non-resident attorney who associates Washington local counsel with insurance should be exempt from mandatory insurance requirements. In my situation, I am able to supplement my income substantially, enjoy part time lawyering, and my clients are protected by coverage via associated counsel.

If I were required to obtain coverage for the small amount of cases I handle, I believe that I would be forced to stop practicing law and thus forfeit income. My cases are too infrequent to justify costs of full time coverage.

Thank you for your consideration. If you should have any questions, please do not hesitate to contact me.

Sincerely,

Jeffrey J. Duggan

Sent from my iPhone

From: Patrick Torsney
To: Mandatory Malpractice Insurance Task Force
Subject: Comment on Mandatory Malpractice
Date: Tuesday, October 09, 2018 10:00:54 AM

Hello,

My practice did not have any cases in Washington this year. I have little to no work in Washington and getting malpractice insurance just for Washington would be impractical. I plan on more work in Washington but my firm is only 15 months old and requiring malpractice insurance before the book of business is developed will be cost prohibitive.

--
LAW OFFICES OF PATRICK TORSNEY
Patrick Torsney, Esq, CPCU, FCLS
310 486 7373

Please respond to:
403 Via Corta
Palos Verdes Estates, CA 90274

Des Moines, IA   Palos Verdes Estates, CA   Seattle WA

From: Ron Atwood
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory malpractice insurance
Date: Tuesday, October 09, 2018 10:59:37 AM

Dear Task Force Members:

I am in favor of mandatory malpractice insurance. I am not sure there is a good argument against it.

My office is in Oregon and I joined the Oregon State Bar in 1978. As you know, we have the Professional Liability Fund here in this state. Thus, for the entirety of my law practice, I have been covered. It feels natural and right. I do recall when I was a very young lawyer and part of a firm one of the senior partners made an investment mistake and a client was out $500,000. Without malpractice insurance, the firm would have had to cover the loss. It was covered with a combination of benefits from the PLF and excess insurance.

I understand you are likely to recommend mandatory coverage and need to determine what exemptions should apply. As you go through that process, please allow those of us who have coverage through the PLF here in Oregon to qualify for our coverage in Washington.

Thank you.

Ron

Ronald W. Atwood
Ronald W. Atwood, PC
200 Oregon Trail Building tel: 503-525-0963
333 SW Fifth Ave. cel: 503-780-8219
Portland, OR 97204 fax: 503-525-0966

Mailing address:
Ronald W. Atwood, PC
P.O. Box 40028
Portland, OR 97240-0028

Workers' Compensation counsel for employers in Oregon, Washington, Montana and on the waterfront, practicing since 1978.

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From: Brian Suzuki
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Lawyer Malpractice Insurance: Comment
Date: Tuesday, October 09, 2018 11:48:30 AM

Hello WSBA:

I wanted to take a brief moment to offer my comments regarding the mandatory insurance proposal. I apologize if this finds you too late; only recently did I read the article in the NWLawyer magazine.

Currently, I have a Washington State Law License (#42786). I also have a Michigan State Law License (P72676). I do not currently practice law: instead I have part-time employment with a non-profit organization, and otherwise am a stay-at-home dad.

Though I understand the importance of carrying malpractice insurance while practicing, I would ask the task force to consider people like me: people currently not practicing law. Mandatory malpractice insurance would not only be costly (in addition to yearly dues and cle expenses), it would be unnecessary and unused. I do not currently have any malpractice exposure. I may return to the practice of law as my circumstances change; however, for now it would seem like an unnecessary cost/burden to maintain malpractice insurance.

Thank you for your time and consideration.

Brian Suzuki
WSBA #42786

Virus-free. www.avg.com

From:	Shawn Alexander
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory insurance
Date:	Tuesday, October 09, 2018 1:40:05 PM

As a low-bono solo practitioner in a rural area, I strongly oppose mandatory insurance as I will have to raise my rates to pay for insurance and as a direct result fewer of my clients will have access to the court system.

Shawn Alexander
Attorney-at-Law
P.O.Box 359
Olga WA 98279

From: Lisa Brewer
To: Mandatory Malpractice Insurance Task Force; Paul S; Lisa Brewer; PJ Grabicki
Subject: Opinion - Mandatory Malpractice Insurance
Date: Tuesday, October 09, 2018 1:43:16 PM

Taskforce Members and BOG Members:

Greetings. I received the Task Force's email re Mandatory Malpractice Insurance b/c I am someone who does not carry malpractice insurance.

My thoughts are as follows:

(1) If Malpractice Insurance becomes mandatory, the premiums will NOT drop as discussed. In a normal capitalist economy, yes, that might happen. However, once malpractice insurance becomes mandatory, the capitalist model is interrupted. There is no market force keeping premiums down because the attorney has no bargaining power. If the Ins companies don't have to keep premiums low...they wont. Don't kid yourselves.

Example - I had malpractice insurance in the past. No claims ever. Even so, the premiums were running $7,500-$10,000/year ($625 - $850 month) for a solo-practitioner family law policy w/ 5-yr rider. In comparison, the rent on my office suite w/ full-time maintenance is $700/mo. My current overhead is about $2,500/mo. Insurance would increase my overhead 30%+ overnight.

(2) My business model is to offer affordable representation in contested custody matters. My budget is very frugal. I do all my own work, which limits much of my exposure to malpractice claims. I only employ part-time help to answer phones and do filing. Mandatory Insurance would be a crippling expense. Family law has one of the highest premiums, if not the highest. I can't afford it.

(3) In all the discussion about affordable representation and access to justice, this will just increase cost because I will have to pass the cost on to my clients. I may also have to reduce the 3-5 direct representation pro bono cases I take each year. It'll make me sad, but I've got to pay my bills.

(4) The argument that attorney's who don't carry insurance are sloppy and will commit more malpractice is inaccurate. First, anyone who does PI work knows that the absence of coverage discourages frivolous litigation because the Plaintiff knows he's going to have to go after the Def's assets rather than just get a payout from the Surety. Second, I am actually MORE careful to avoid malpractice for the very reason that my personal assets *are* accessible/garnishible.

(5) I'm already paying a part of my dues to the Victim Fund (or whatever its called). I'd rather pay more to that fund than put money in the insurance industry's pocket.

Finally, I attended several of the recent BOG meetings and heard the commentary on Insurance and, while I couldn't disagree more, I sincerely doubt my comments will have any impact given the dicta voiced in the meetings. That said, I am vehemently opposed to mandatory malpractice insurance.

Cheers,

Lisa E. Brewer, Esq
The Brewer Firm
104 S. Freya St, Suite 226B
Turquoise Flag Bldg
Spokane, WA 99202
Ph (509) 325-3720; Fax (509) 534-0464
lbrewerlaw@msn.com

From:	moorelawoffices@aol.com
To:	Mandatory Malpractice Insurance Task Force
Subject:	Against Mandatory Insurance
Date:	Wednesday, October 10, 2018 3:54:45 AM

I have been a solo practitioner for over 20 years. Until I was sued for malpractice I always carried malpractice insurance. I believe that the reason I was sued for malpractice along with three other law firm's that were involved in the case, was because I had malpractice insurance and I happened to have the highest pay out. When I was presented with interrogatories they contained one question: do you have malpractice insurance? Followed by a request for production of my insurance policy.
Since then I have not had malpractice insurance for this reason. Recently I looked into obtaining malpractice insurance due to this task force and it's recommendations and there is no way I would be able to afford the premiums in light of the fact I have been sued before.

I am against mandatory malpractice insurance because I do feel it increases unnecessary litigation and because the cost as a solo practitioner is far too great. Additionally, I believe that the Bar Associations primary goal should be to take care of its members. I also believe that the sanctions we have in place and programs the Bar offers for those genuinely who have been wronged by their attorney are sufficient.

I appreciate you taking the time to review my comments.

Warm regards,

Lisa F. Moore
Attorney At Law

Moore Law Offices
Advocates For Justice

Tel: (206) 297-1389
2442 NW Market Street, # 149
Seattle, Washington 98107
United Sates

Tel: 00 1 206 226 5923
3 Rue d'Arcole
Paris, France 75004

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From: Donna Beatty
To: Mandatory Malpractice Insurance Task Force
Subject: Comment regarding mandatory malpractice insurance
Date: Wednesday, October 10, 2018 10:13:48 AM

Provided that those who hire an attorney are fully informed of the attorney's insurance situation, the requirement for attorneys to be insured against malpractice claims would infringe on a client's freedom to contract for the attorney's services. But being fully informed is crucial to that freedom. Once I decided to curtail my practice to a select group of clients, I decided not to carry malpractice insurance. However, I ensured my clients were informed of that decision, and I regularly remind them of that fact. And they are informed of the fact that my rates are reduced because I do not have the expenses associated with a malpractice policy. Frankly, being a part-time attorney and not having been insured for several years, at this point I may not be able to purchase insurance coverage on the open market. Requiring that I do so may prevent me from being of service to my clients.

Prior to implementing this drastic measure - making Washington state one of the few that effectively eliminates the part time practice of law by doing so - I suggest that the WSBA implement a mandatory disclosure policy, complete with a standard form that all uninsured attorneys *must* send to their clients and prospective clients at least once per year. Annual execution of the form by the client, or the initial execution by the prospective client, as well as the attorney, in order for services to be continued or commenced.

Perhaps the disclosure form should also contain a waiver of the client's right to request relief should the client suffer financial losses that would have been covered by malpractice insurance. The relief should be saved for those who seek assistance from pro-bono, volunteer attorneys. Additionally, the lack of malpractice insurance should be considered when a judge or arbitrator needs to award reasonable attorneys fees. Such awards should be reduced for those who do not have the expense that such coverage poses.

I believe it would be a grave disservice to the people of Washington to require mandatory malpractice insurance for all attorneys, even if applied only to attorneys in private practice. But ensuring that the status of an attorney's malpractice coverage is known, and ensuring that the risk is properly placed on those who choose to continue receiving services from such attorneys, is prudent, protective of those who do not understand the consequences of the risks they are taking, and respectful of the right to contract.

Thank you for your time.

Donna Beatty
WSBA 29561

From: Allison Law Group
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Insurance Question
Date: Wednesday, October 10, 2018 10:56:33 AM

I saw the article in the WSBA Take Note email about this. What would the exceptions be?

For example, my husband is currently licensed but he does not practice law. He stopped carrying malpractice insurance years ago because he doesn't touch any case.

He wants to keep his license active in case he decides to go back one day.

Would he be an exception? I could not find any text on the proposal, just meeting minutes on a variety of items.

Thank you,

Lisa Allison
Allison Law Group
PO Box 2776
Gig Harbor, WA 98335
425-361-3027
FAX (253) 244-9204

From: Simunds Law Group
To: Mandatory Malpractice Insurance Task Force
Subject: Feedback
Date: Wednesday, October 10, 2018 11:52:00 AM

I was disappointed to learn of the task forces recommendations. Frankly, I think it is a cure in search of a problem and will likely create more issues than it ostensibly attempts to resolve.

I understand the concerns that there many in small private practice that do not carry malpractice insurance and that should the client have a malpractice claim, there may be little or no recourse. However, a closer review of what services those firms provide is worthwhile. Many firms, like mine, are small for a reason. I have no hired help, no administration and this allows me to service clients at a rate that is affordable for most. I am probably unique in that I service only family and friends in Washington as my practice is located in Arizona and I do not advertise or actively seek clients in Washington. However, my point is the same, adding malpractice insurance costs to what is already a small margin endeavor, will effectively close my doors in Washington. That may not matter much as I don't serve a lot of clients anyway, but from my conversations with normal non-lawyers, the biggest deterrent to them pursuing a claim is not whether or not insurance is available, but the cost of legal services. Insurance costs are not significant to a large firm, it is part of their massive overhead which is then passed on to their clients in the form of either fees or "creative billing", which we can argue shouldn't exist, but undeniably does, especially with insurance firms. Small firms like mine will be forced to increase rates to cover the additional cost. It is easy for a administrator to say "just join a big firm then", this assumes that just because your record is clean, a big firm will want you and you are a good fit for the big firm environment. I have a small firm because I want control over the cases I take and the time I spend, I cannot do that in a big firm and I'm certain many other small operate this way for the same reason.

I understand the concern about clients being unable to recover should malpractice be an issue, frankly I understand that and I have had to deal with the repercussions of prior counsel's missteps in a few cases in Arizona. However, by and large, these clients would not have access to any legal assistance outside of a small firm and I for one would prefer not to feed into the general view of Joe Public that legal help is for the rich, or very poor.

Finally, the idea that the public cannot protect themselves from the rare case of malpractice is patently absurd. I have absolutely nobody come into my firm that has not 1) checked my website, and 2) looked at reviews online. With options like Google, Yelp and others, it is unlikely that substandard legal work will remain undiscovered for long. I'd rather the bar go after lawyers that fail to meet the standards of the profession than to see that duty partially delegated to private insurers because at least the client will be paid.

I am afraid that doing this will push us into the same situation as the medical and education

industries. I can find no area in which the availability of insurance did not inflate the costs, damages and payments in any circumstance. In medicine, you used to be able to go to your local doctor, who even made house calls and it didn't cost you a house mortgage on top of your insurance paying out, that is the case now. The inflation of medical services has far outpaced the inflation index. The same can be said for education. The availability of "free money", subsidized student loans for amazing amounts and regardless of likely ability to repay has pushed the inflation of education costs to far outpace overall inflation rates. The same will happen here. Insurers will pressure lawyers to settle claims that they do not see the point of litigating, regardless of merit, I know how insurers work. No fear though, the insurance companies will not lose, so those few bad apples will cause everyone's rates to rise. This will be passed on to clients. Those firms that cannot do so will close and you will have made Joe Public's view of the legal profession a reality, access to legal help for either the very rich or the very poor. I don't expect this to happen overnight, it will likely take the next decade or two, but it will happen.

Thank you for openness to other views, however, should this pass, I will no longer service Washington. I refuse to be impeded by some faceless insurance adjuster. Some may say this will never happen, they said the same to doctors and dentists and yet, here we are.

Respectfully,

Matthew G. Simunds, Esq.
For the Firm

THE SIMUNDS LAW GROUP, PLLC
3100 W. Ray Road
Suite 201
Chandler, Arizona 85226
(602) 374-4522

From:	Meliha Babic, Attorney at Law
To:	Mandatory Malpractice Insurance Task Force
Subject:	Letter from a WSBA solo attorney
Date:	Wednesday, October 10, 2018 11:59:10 AM
Attachments:	Letter to Mandatory Malpractice Insurance Task Force.docx

Please see attachment and include it with your consideration

Meliha Babic, Attorney at Law
Babic Law Firm, PLLC
P.O. BOX 628
Bellevue, WA 98009-0628
Tel: (425) 503-9108
www.babiclawfirm.com

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Babic Law Firm, PLLC

P.O. Box 628
Bellevue, WA 98009-0628
Tel: (425) 503-9108
babiclaw@yahoo.com

Meliha Babic, Attorney at Law

October 9th, 2018.

To: Mandatory Malpractice Insurance Task Force

RE: Recent proposed changes to mandatory malpractice insurance requirements

I wanted to contact the Mandatory Malpractice Insurance Task Force and address some of the fears and considerations I have as a solo practitioner working with a tiny home office and no support staff. My practice focuses on providing a wide range of legal services to local immigrant community. I handle all of my own paralegal tasks and also all lawyering. I have mostly incredibly satisfied and grateful clients who have learned to trust me and know that the modest fees I am charging are approachable and not out of their range. I have carried malpractice insurance in the beginning of my solo journey but have found even the minimum insurance fees crippling and unsustainable for my practice. In order to keep my legal fees low and able to serve my clientele I have had to cut back on spending for malpractice insurance. To date, no client has ever complained that they had not received 100% satisfaction with my services. In the event that malpractice insurance fees were mandatory for my practice (exemptions could be made for solos who earn less than 25K a year) I would have to shutter my solo practice and quit being a saving grace for so many who otherwise could not afford or out of cultural reasons be able to contact another attorney (I speak several languages and this is a the primary reason why I am able to service those communities- Bosnian, Serbian and Croatian). As mentioned earlier if this rule takes effect I will be closing down my practice and looking for an alternate employment as insurance fees are unsustainable along with other living expenses of a solo practitioner. I will also be failing my extended community in not providing them with services essential to protecting their personal and property rights. Adding WSBA

registration fees, CLE attendance fees, postal and office expenses my business would simply go bankrupt with such regulations. In addition, as a Libertarian, I am appalled at the societal regulation of the most fundamental interaction; that of a lawyer and a client, a priest and a parishioner and doctor and a patient.

The decisions are now in your hands dear Task Force members. I urge you to consider the plight of a solo practitioner who is unable to afford such mandatory fees, and who makes under 25K a year helping the underprivileged in the local community. In order to support this practice I have had to have secure other odd jobs and non legal work. With these mandatory insurance fees I could simply be forced to abandon the practice of law althogether.

Thank you for your sincere consideration,

Meliha Babic, Attorney at Law

From: chicago1@centurytel.net
To: Mandatory Malpractice Insurance Task Force
Subject: another thought from earlier commenter
Date: Wednesday, October 10, 2018 2:14:31 PM

Hi. I have commented before from my position as a retired attorney who is willing to keep up bar dues and CLE and wants to be called a legit attorney but finds $3000/year for insurance when I don't practice as "steep". I worked for a small tribe and don't have a pension, just SS and a very small 401k.

This is a new point. I was reviewing the OR list of people who don't pay malpractice insurance and did not see the category for inactive attorneys who are active in other states. You might consider this as legit reason not to have WA State malpractice insurance. I have been inactive in IL and TX after moving here. The reverse cam be true, so please consider those situations. Speaking on behalf of such folks. Don't have standing, there!

Thank you.

Katherine Krueger
Forks
25818

From: Saphronia Young
To: Mandatory Malpractice Insurance Task Force
Cc: Saphronia Young
Subject: Mandatory malpractice insurance for WA attorneys
Date: Wednesday, October 10, 2018 2:56:44 PM

Dear Task Force:

I favor this. We all make mistakes, and sometimes they are big, sometimes small. However, we ask all citizens to carry insurance before driving a car in recognition of the fact that doing so is simply the responsible thing to do. I believe that as attorneys, it is also the responsible thing to our clients for us to provide for them in the event we make a mistake that impacts them. I often refer clients to other attorneys, and I do not refer to any attorney whose WSBA profile indicates that they do not carry malpractice insurance. I would not want my clients, my friends, my family to be in the hands of counsel that did not care about them enough to provide this small safeguard for client well-being.

I also obtained malpractice insurance when I first set up my own practice, before I leased any equipment, rented an office, or hired an assistant. I believe that if one cannot afford this investment, one should reconsider the decision to have a law firm.

Very truly yours,

Saphronia Young
WSBA #31392

From: patricia michl
To: Mandatory Malpractice Insurance Task Force
Subject: mandatory malpractice insurance (version #2 with corrected quote on pg 4)
Date: Thursday, October 18, 2018 11:39:12 AM

I would like to submit the following comments to the Mandatory Malpractice Insurance Task Force as an addendum to my earlier comments dated 10/10/18:

1) **WHERE IS THE PROBLEM?**

Only 8% of actively practicing attorneys in Washington are uninsured. Using the Task Force's own figures there are 2,732 uninsured lawyers in Washington. 2,732 divided by 32,000 active licensed attorneys in Washington results in only**8%** of all active lawyers being uninsured. That is 8 out of 100 attorneys . . . so where is the problem? This number is a pittance and doesn't even justify the formation of a Task Force. Further, the Task Force's own Interim Report states on page 3, "The vast majority of Washington attorneys representing private clients carry malpractice insurance."

And where is the evidence that the tiny percentage of uninsured lawyers commit more malpractice than insured lawyers? There isn't any. As Professor Levin admits in the August 2018 *NW Lawyer* article entitled "Uninsured Lawyers . . . What Does the Research Tell Us?" - "We do not know whether uninsured lawyers are more likely to commit malpractice than other lawyers . . ."

And where is the empirical evidence that if uninsured lawyers do commit malpractice that the clients claiming harm are unable to collect damages? Again, there isn't any. Professor Levin in the August 2018 issue of *NW Lawyer*mischaracterizes the anecdotal case of *Schmidt v. Coogan* as one in which excessive lengthy litigation was caused by an uninsured defendant attorney. But in fact the lengthy litigation was actually caused by the exorbitant demands of the plaintiff client and the misconduct of the plaintiff client's attorney. And the client did collect some damages in the end. No problem has been identified that would justify imposing mandatory malpractice insurance.

2) **THE TASK FORCE IS RIFE WITH PREJUDICE AND CONFLICT OF INTEREST**

A significant number of the Task Force members came onto the Task Force with bias and prejudice towards voting "yes" on mandatory insurance. Others have a conflict of interest, for example, insurance company representatives. Still others are not in private practice and will not have to pay the malpractice insurance that they are recommending for others. They have no idea what it is like to pay rent for office space, pay a legal staff, pay for office supplies, pay for heat and light to keep

the office functioning or pay for the other multitude of expenses associated with running a law practice.

Specifically, the following Task Force members are ill-suited to be determining mandatory insurance for Washington lawyers:

1) Hugh Spitzer - academic, unlikely to ever have to pay mandatory malpractice insurance.

2) Stan Bastian - federal court personnel, unlikely to ever have to pay mandatory malpractice insurance.

3) **Dan Bridges - strong partisan in favor of mandatory malpractice insurance. See article in the September 2017 issue of *NWLawyer* entitled "A New Legal Standard for Attorney Malpractice." Also sits on the WSBA Board of Governors. Conflict of interest. Should not be allowed to vote on the insurance issue on the Board of Governors.**

4) Christy Carpenter - appears not to be a lawyer, unlikely to ever have to pay attorney mandatory malpractice insurance.

5) Mark A. Johnson - plaintiff's legal malpractice lawyer, may have vested interest in having insurance company's deep pocket to sue.

6) **Rob Karl - vice president of an insurance company, conflict of interest and unlikely to ever have to pay mandatory malpractice insurance.**

7) Kara Masters - practice includes working for insurance companies, business may increase with mandatory malpractice insurance.

8) Brad Ogura - public member, unlikely to ever have to pay mandatory malpractice insurance.

9) Suzanne Pierce - practice includes defense of lawyers, may benefit from mandatory malpractice insurance.

10) Brooke Pinkham - academic administrator, unlikely to ever have to pay mandatory malpractice insurance.

11) Todd Startzel - practice includes insurance defense, may benefit from mandatory malpractice insurance.

12) Stephanie Wilson - academic employee, unlikely to ever have to pay

mandatory malpractice insurance.

13) Annie Yu - government attorney, unlikely to ever have to pay mandatory malpractice insurance.

NOTE: The members above in bold are especially concerning as they appear to have a significant bias or conflict of interest which likely caused them to enter the Task Force with the intention of voting "YES" for mandatory malpractice insurance.

At least **70%** of the Task Force either have prejudice or conflicts of interest. Therefore, the Task Force should be disbanded as not comporting with the statement on page 1 of the Interim Report that the Task Force "started with an open mind." Additionally, the Task Force appears to lack any uninsured private practitioners, the very group that is being targeted. Therefore, the composition of the Task Force lacks the *"appearance of fairness"* which is necessary in any state sponsored governing body. The WSBA and all of its committees and programs are state sponsored governing bodies.

3) INSURANCE COMPANY REPRESENTATIVES ON THE TASK FORCE?

I object to insurance company representatives sitting on the Task Force. The insurance company representative will have a vote and predictably that vote will be a **"YES"** vote in favor of mandatory malpractice insurance. While it is acceptable for the Task Force to seek information from insurance companies regarding insurance rates etc., it is entirelyunacceptable for insurance company representatives to sit on the Task Force and definitely unacceptable for them to vote on the recommendation to the Board of Governors.

At this stage, when there is no mandatory malpractice insurance and insurance companies are eager for Washington to invoke mandatory insurance, it is reminiscent of the spider and the fly . . . "Come into my parlor," said the spider to the fly. Here, the spider = insurance companies and the fly = the small firms and solo practitioners that the Task Force is trying to force into the insurance company's web. However, once insurance is mandatory, all lawyers will be captive andall will eventually be drained by insurance companies. The public will suffer as well due to the increase in legal costs caused by the increase in the cost of malpractice insurance.

4) THE TASK FORCE ON PAGE ONE OF THE INTERIM REPORT WRONGLY CHARACTERIZES THE PRACTICE OF LAW AS A "PRIVILEGE"

The practice of law is a **right** not a privilege. Lawyers have as much right to pursue their careers as accountants, doctors, dentists, nurses, truck drivers, waitpersons, football players, newspaper reporters etc., etc. It is the WSBA that is privileged - the WSBA is privileged to serve the 32,000 active lawyers in the state of Washington. A voluntary state bar association would definitely bring this point home to the Task Force. Pursuing your vocation is part of the guarantee in the Declaration of Independence to "Life, Liberty, and the Pursuit of Happiness." Considering the biases, prejudice and conflicts of interest plaguing this Task Force, mandatory malpractice insurance has been a **foregone conclusion** since the formation of the Task Force. Virtually no concern or consideration has been expressed for the deep pit into which the Task Force is thrusting lawyers. The only focus has been on a vague unproven sense of "risk of injury to the public."

There is no objective basis for requiring mandatory malpractice insurance. We should maintain the status quo, no mandatory malpractice insurance for Washington lawyers. Alternatively, I would support a disclosure requirement whereby lawyers would inform their clients that they do not carry malpractice insurance.

As I stated before in my original comments to the Task Force, "Welcome to the New World Order and the Task Force paved the way."

Patricia Michl
WSBA # 17058
115 West 9th Ave
Ellensburg WA 98926

From: Shea Wilson
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice Task Force; Comment in Opposition to Mandatory Insurance
Date: Wednesday, October 10, 2018 4:17:13 PM

Ladies and Gentlemen:

I am an attorney who occasionally practices law, but has had the occasional year where I do not practice. Over the last five years my annual revenues have varied between $0 and $100,000. I have been a solo practitioner since 2007. I mainly do work in the merger and acquisition space for small deals, although occasionally have done securities work as well. I quit carrying malpractice insurance in the mid-2000s when the "best" insurance policy I could find wanted a $50,000 premium for $125,000 of coverage.

I fit your profile for a high-risk attorney.

I am 57 years old, have practiced in Washington state since 1991 and have never had a malpractice claim filed against me. I did work at large and medium-sized law firms in Seattle that had claims filed against them, though.

I have just a couple of thoughts for you.

In the data in the task force interim report, you observe that a disproportionate number of malpractice claims originate with small firm and solo practitioners. Could you examine your data more closely to see whether this phenomenon is a general systemic issue, or perhaps—as is frequently the case (80-20 rule)—a problem of a certain subset of small firm and solo practitioners? Repeat or habitual offenders, that is to say.

If your deeper research reveals what I suspect, I suggest you exempt attorneys from an insurance mandate until a credible claim of malpractice has been lodged against them. It need not be a claim fully prosecuted to judgment; you could simply include an APR that would require any attorney filing a malpractice claim on behalf of a client to file a copy of that claim with the WSBA. Judges receiving pro se filings could have a similar duty. And, of course, the WSBA could have an intake procedure for public complaints as well. If disciplinary counsel believe the claim well-founded, the target attorney could be ordered to show cause why they should not be required to purchase and maintain malpractice insurance, with a hearing to find facts.

If you are truly concerned about client protection, you should be looking to identify and weed out the bad actors. That is how to protect the public. A feel-good measure with serious detrimental impact on those of us who do not necessarily have the resources each year to afford insurance is an onerous burden to casually impose.

Thank you in advance for your thoughtful attention to my comment.

Very truly yours,

Chapin E. ("Shea") Wilson, WSBA #21205

From: Alexandra Molina
To: Mandatory Malpractice Insurance Task Force
Subject: Against mandatory malpractice insurance
Date: Wednesday, October 10, 2018 5:21:52 PM

Dear Insurance Task Force,

My name is Alexandra Molina (WSBA #47930) and I currently practice law as a solo practitioner with a multi-jurisdictional practice. I currently do not carry malpractice insurance due to cost.

Practicing law is a tremendous honor and a privilege. However, that honor comes at a costly price when one practices as a solo practitioner.

The imposition of a mandatory malpractice insurance requirement would be a tremendous financial burden on solo practitioners like myself. This is why I am vehemently opposed to this mandatory requirement.

I implore you to consider the extreme financial burden this represents to solo practitioners and those of us who represent clients with modest means.

Please do not saddle us with this costly notion.

Sincerely,
Alexandra Molina, Esq.

Sent from my iPhone

From:	Matthew Hardin
To:	Mandatory Malpractice Insurance Task Force
Subject:	Comment on Mandatory Malpractice Insurance
Date:	Wednesday, October 10, 2018 9:00:47 PM

I write to oppose the Task Force's tentative proposal for mandatory malpractice insurance.

I begin by noting that I presently practice out of state (in Virginia). The Virginia State Bar examined a similar proposal years ago, and rejected it. I incorporate by reference a publication opposing the Virginia proposal: http://www.vsb.org/docs/valawyermagazine/vl0708_debate-insurance.pdf

More specific to the proposal that's been put forth in Washington, my comments are as follows:

1) I am troubled by the under-representation of individuals on the WSBA Taskforce, who stand to be impacted by the proposed rule. There are very few solo practitioners (and do the solos on the task force carry insurance? We aren't told.). The task force is composed almost exclusively (if not exclusively) of lawyers who either have insurance through their firms, or those to whom the rule will not apply (academic and government lawyers, for example).

This under-representation brings to mind the debate in Idaho before their malpractice insurance rule was adopted. In a vote of members of the Idaho bar, only 51% favored making malpractice insurance mandatory, with 49% opposed. The Idaho proposal passed by only the narrowest of margins. Doubtless the vast majority of the 51% that voted to make malpractice insurance mandatory, already carried malpractice insurance. The estimated 14% of the bar that doesn't carry malpractice insurance had no effective representation in Idaho's debate, and it looks as if they have very little, if any, representation in Washington's debate.

As the WSBA has noted, those without malpractice insurance are a minority. They're lawyers on the fringe of the profession (some in semi-retirement, for example) and the fringe of the economy (a few thousand dollars a year in premiums is affordable for most practicing lawyers, but not all). Making malpractice insurance mandatory, with its costs, is going to push these lawyers out of the profession altogether. The small-town solo who's barely scraping by but charges rates working class folks can afford and does good work earning a modest living, will either jack up his fees to compensate for the new rule, or go out of business. The semi-retired practitioner who helps friends and family a few hours a week, will be forced into full retirement. Far from protecting vulnerable clients, this proposed rule is likely to cause clients to lose their lawyers. The only beneficiaries will be big firms with high rates that can more easily absorb an additional overhead cost.

2) While I oppose any change from the status quo in Washington (the malpractice proposal seems to be a solution in search of a problem), there are less restrictive means to address any supposed problems in Washington's current regulatory regime. For example, many states (e.g., Virginia) will suspend a lawyer's license to practice if the lawyer has any unpaid judgments against him. Such a system punishes only lawyers who have proven themselves to represent a risk to the public, rather than all lawyers everywhere. Other states (e.g., Ohio) require a lawyer to either have malpractice insurance, or get a written waiver from the client stating that the client is aware the lawyer has no such insurance. Making a statement regarding the availability of malpractice coverage a part of every representation agreement would put clients on notice, without driving lawyers out of the profession or increasing costs.

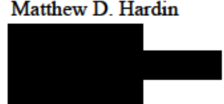
3) While I reiterate that I oppose any change from the status quo, and that, even making the assumption changes are necessary, mandatory malpractice insurance is not the right course of action, I nevertheless add that, if WSBA proceeds with a mandatory malpractice insurance scheme in some form, many exemptions will be necessary so that unforeseen issues do not arise. For example: There should be an exemption for lawyers who do not maintain an office in Washington (Oregon has such an exemption from its scheme for lawyers that do not practice in that state). There should be an exemption for lawyers with an Inactive Washington license to practice law (an unintended consequence that Idaho has seen, is that its rule affects those with Idaho licenses of any stripe, regardless of whether those attorneys practice

in Idaho or represent any risk to the Idaho public). There should be an exemption for those employed by, or exclusively representing, nonprofit entities (so that such entities aren't forced to bear, directly or indirectly, the additional financial burden imposed by the proposed rule). There should be an exemption for attorneys who practice less than a certain number of hours per year, or bill less than a certain amount per year in fees (to ensure that we do not drive part-time or semi-retired attorneys out of the profession).

In sum: there's no such thing as a free lunch. We all want to protect clients from unscrupulous or ill-informed lawyers. I'm sure the Task Force has that laudable goal at the forefront of its mind. But no regulation is without costs, and those who bear the costs will be at the lowest rungs of the economic ladder. Perkins Coie already carries insurance, and won't go bankrupt if malpractice insurance becomes mandatory. Its clients likely won't even notice if bills go up incrementally. But small-town, solo, and elderly practitioners often don't carry insurance, for a very simple reason: they can't afford it. These practitioners will cope with the regulation either by jacking up their rates (in which case economically vulnerable clients will struggle to pay or go entirely without representation), or by leaving the profession altogether. A farm hand seeking representation in Eastern Washington will notice when a small town lawyer increases his fee by 5%, even though a corporate client at a white-shoe firm in Seattle would not notice a similar increase. A senior on a fixed income will notice when the elderly lawyer she's used off an on for decades decides it isn't worth it financially to practice law in Washington anymore and retires, while a corporate client at a big firm wouldn't bat an eye at business being shifted to another lawyer in the same firm.

Consider the costs before you endorse this dangerous proposal.

Matthew D. Hardin



On Oct 4, 2018, at 7:49 PM, Washington State Bar Association <noreply@wsba.org> wrote:

Have you heard? The Mandatory Malpractice Insurance Task Force issued an interim report in July with a tentative conclusion that malpractice insurance should be mandated for Washington-licensed lawyers, with specified exemptions and minimum coverage levels. We are reaching out directly to you because you are registered with WSBA as not currently having professional liability insurance, and we want to make sure you are aware of the process and are able to provide feedback.

Background

The Washington State Bar Association Board of Governors formed the task force in September 2017 to collect input and examine current mandatory malpractice insurance systems in other jurisdictions. The task force will use this information to determine whether to recommend mandatory malpractice insurance as a requirement for licensing. Task force members expect to make a final recommendation to the Board of Governors in January 2019.

More information

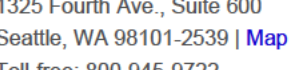
• Mandatory Malpractice Task Force informational brochure
• Task force website
• Interim report

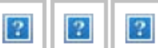
Provide feedback

• Open forum: All WSBA members are invited to provide feedback directly to task force members from 2-3 p.m. on Tuesday, Oct. 16, at the WSBA Conference Center (telephone participation will be available).
• Comments and questions can be directed to insurancetaskforce@wsba.org and will be provided to the entire task force.

Task-force members want to hear from you so their final report is responsive to members' concerns and expertise. Thank you.

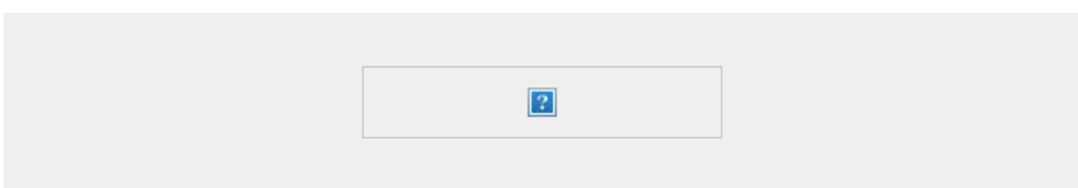
WSBA seal


Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539 | Map
Toll-free: 800-945-9722
Local: 206-443-9722



Official WSBA communication
All members will receive the following email, which is considered official:

- Licensing and licensing-related materials
- Information about the non-CLE work and activities of the sections to which the member belongs
- Mandatory Continuing Legal Education (MCLE) reporting-related notifications
- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications



From: Michael Miller
To: Mandatory Malpractice Insurance Task Force
Subject: Inquiries
Date: Wednesday, October 10, 2018 10:14:08 PM

Greetings,

I sent in a message about a week ago regarding more information on Lawyers in my position: Solo practitioner, primary practice located in another state that does NOT require malpractice insurance. I'm curious as to the exceptions to this rule stated in previous discussions - this will be extraordinarily difficult for the many in my position to afford, especially with a limited monthly income (I already supplement my income performing non-lawyer tasks just to pay bills while I continue to promote my practice).

I am against this measure and don't foresee the same risks advertised pertaining to my meager soft Intellectual property law firm entirely based on transactional work. I'd love to discuss this as well as my options further with one of the Task Force members.

Thanks you in advance for your time.

Cheers,

Michael C. Miller esq.

From:	Gail Ragen
To:	Mandatory Malpractice Insurance Task Force
Cc:	Jim Ragen
Subject:	Response to Request for Feedback on Mandatory Insurance Proposal
Date:	Thursday, October 11, 2018 10:10:01 AM
Attachments:	Response to WSBA re Mandatory Insurance Proposal.pdf

To the Task Force:

Please see attached and confirm receipt.

Gail M. Ragen

Ragen & Ragen
800 Fifth Avenue, Suite 4100
Seattle, WA 98104
Telephone: 425-260-4670
Email: gailragen@ragenlaw.com
Website: www.ragenlaw.com

RAGEN & RAGEN
ATTORNEYS AT LAW
800 FIFTH AVENUE, SUITE 4100
SEATTLE, WA 98104

TELEPHONE: (425) 260-4670 gailragen@ragenlaw.com

October 11, 2018

Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

Re: Response Regarding Mandatory Malpractice Insurance Proposal

Dear WSBA:

Thank you for reaching out to me for feedback in connection with your inquiry into whether the WSBA should implement a mandatory malpractice insurance program. Before providing my reasons for urging you to reconsider your tentative plan, I want you to know how disturbing it was to read your Interim Report. Not only do I believe the report is flawed, it falsely suggests that lawyers such as myself (and my husband and law partner) are more likely than insured lawyers to commit legal malpractice, unable to satisfy a judgment in the event that a judgment were entered against us and – indeed – are a danger to the public.

To provide context, I am an attorney admitted to practice in California (1980), Washington (1995) and Alaska (2007). I actively practice in all three states. Since my admission to each of these state bars, I have been in good standing and complied with the licensing and continuing education requirements of each jurisdiction. I enjoy (and have enjoyed for decades) outstanding relationships with my clients.

I went to the University of Texas School of Law and have been both an associate and partner in large California law firms. I have had my own firm in California and Washington. My husband Jim graduated from Harvard and went to NYU School of Law. After long and successful separate careers, Jim and I started our law firm together thirteen years ago. We have never lost a case. We have not raised our rates in ten years, in part because we made the considered decision that we do not need a brick and mortar office or malpractice insurance. We have passed out savings onto our clients. This year, we contributed $25,000 to NYU for law school scholarship funds, again passing our savings through to others.

Jim and I do not need or want malpractice insurance. We believe we have virtually zero exposure to malpractice claims. This past year, Jim and I won a multi-million dollar recovery for our clients in a 25-year intra-family fraud. Our clients are prevailing parties, and the arbitrator has issued an interim ruling that our $3 million-plus fee claim is reasonable in light of the amount and quality of our work. Last year, after ten

and a half years of contingency work on behalf of two blue-collar workers, and two trips to the Alaska Supreme Court, we resolved a legal malpractice case against two law firms (one a 500+ attorney firm and the other one of the oldest firms in Anchorage.) In addition, we provided years of free legal services to our clients to help them carry their nearly bankrupt company to a successful completion of its business and waited until all employees and other creditors had been paid before taking our contingency fee.

Jim and I stopped raising our rates in 2008 during the great recession as an accommodation to our clients (even though they had never requested any such accommodation). We have even been teased by clients because our rates are so low compared to our adversaries, particularly when litigating in New York, Southern California, Boston and other urban centers. We have not raised our rates because we believe that the billable rates and billable hour requirements at large firms are detrimental to the well-being of attorneys and a burden on clients. These billable rates and billable hour requirements contribute to the depression, unhappiness and substance abuse problems, and even an alarming suicide rate of attorneys, we read. Jim and I love practicing together. We are sober, well-to-do, successful lawyers.

Jim and I plan to retire soon – we tried to retire previously, but our clients have convinced us to continue to represent them. A few weeks ago, Jim met with a long-term client (a highly successful businessman) and told him, "I really mean it – we are *retiring."* The client just smiled. He said, "I've heard this before, but I'll believe it when I see it." We have difficulty saying no to the clients we have worked with for so long. We tell our clients, orally and in writing, that we elect not to carry malpractice insurance and say "we will certainly understand" if they want to select insured counsel. No client has ever rejected our representation or indicated any concern about our election to drop malpractice insurance. If they did, that would be fine with us.

We were offended by the Task Force's statement to the effect that uninsured attorneys are a danger to the public. In an email dated September 20, 2016, Daniel Hickey, who was acting as our local counsel in a large attorney malpractice case in Alaska and is one of the most respected attorneys in that state, wrote me after receiving a copy of a court filing. He wrote: "Gail, Outstanding memo. I'm increasingly persuaded that you're the best lawyer I know." Similarly, on December 23, 2016, an opposing counsel, Michael Lessmeier, also one of the most respected litigators in Alaska wrote to my husband and law partner, Jim Ragen:

> Jim, I want to say that I much appreciate the professionalism you and Gail bring to the cases you are involved in. That level of professionalism – and trust – make things possible that otherwise are not. It is the way law should be practiced. My best wishes to you and your family for this holiday season. Mike.

Jim Ragen responded:

> Thank you for your nice comments, but this is a two-way street. We can't settle without mutual professionalism and good faith. We were pleased at the beginning that you were involved. Please don't take that wrongly. We know that you are a tough and accomplished litigator – a strong opponent in any dispute – but we also have experienced your professionalism and integrity. As you say, that is how law should be practiced. As a result, all our clients benefitted. Let them all go forth and prosper, doing what they do best.

These communications are a source of pride and reflect the kinds of relationships with other counsel – even adversaries – that Jim and I prefer and value.

Nor are we, as the Task Force's statement suggest, unable to satisfy a judgment. After decades of hard work, careful investing, and working well with each other, Jim and I are on the brink of finishing the practice of law with plenty of assets to carry us through our retirement years. In the unlikely event that a client sued us, we would be able to satisfy a judgment – even a multi-million dollar judgment (which would likely be far more than any insurance we would carry).

Turning to the substance of the Task Force's report, I find it troubling on multiple grounds:

The Report Fails to Recognize the "Industry's" Conflict of Interest.

The Task Force does not identify the conflict of interest that the "Industry" has in concluding that malpractice insurance should be mandatory. The Industry has an enormous financial stake in the outcome of the WSBA's decision. If successful in forcing all Washington attorneys to pay annual premiums in the minimum amount of $1,200 (and more for more experienced attorneys), the Industry stands to gain over $2 million the first year; $10 million in five years; $20 million in ten years. This represents a huge windfall to the carriers and will come directly out of the pockets of members of the Bar and into the coffers of insurance companies. Such an approach will also increase fees charged clients. This troubles me deeply.

I am further concerned that other members of the Task Force may have an undisclosed conflict of interest. I would find it improper for any member of the Task Force to issue a report in support of mandatory malpractice insurance if they will receive referrals of malpractice cases from the carriers. Any such Task Force member would have a financial stake in the outcome, placing him or her in conflict with members of the Bar who would be forced to pay premiums going forward.

Mandatory Insurance Would Adversely Affect Women Lawyers

As noted above, I am on the brink of retiring, and I do not feel that my stake in this particular issue is large. Jim and I have not accepted any new cases for over a year.

But I feel I am well placed to speak on behalf of the attorneys I believe will be unduly burdened by mandatory malpractice insurance. This includes women lawyers. They will be disproportionately and adversely impacted by a mandatory malpractice insurance rule.

I strongly disagree with the Task Force's statement that "everyone knows" of instances in which uninsured attorneys have committed malpractice. This is simply untrue. But it is well-documented and irrefutable that women lawyers struggle to balance their careers and family obligations in ways that their male colleagues do not.

I have had an unusual career in many ways. I am 65 years old and have earned millions of dollars practicing law. I do not say this to boast, but rather to point out that I feel in many ways like the last soldier standing from the ranks of women lawyers with whom I have practiced over the years. So very many fine women lawyers I have known over the course of my career left the practice of law. Almost invariably, it was because it is so difficult to practice law and raise a family *when you are a woman*.

I know this to be true because, in addition to practicing law for 38 years, I gave birth to and raised three wonderful children who are now 33, 31 and 26 years old. I would not trade either experience – career or family – for the world. Neither would I criticize men who have combined their careers and family. But I will tell you this in no uncertain terms – in my case, like Ginger Rogers, it was like dancing in high heels and backwards.

In 1991, I resigned my partnership in a San Francisco law firm because my two small sons often were asleep after I drove across the Golden Gate Bridge every night. The Fortune 500 client I had brought to the firm chose to take its work with me when they became embroiled in mass tort litigation. I soon I had twelve lawyers and paralegals working for me in a rather unconventional setting. I was back to work two weeks after giving birth to my third child. Fortunately, I controlled my own practice and the client was flexible. But I traveled a lot, missed vacations, ran through O'Hare on the way from the East Coast to the West Coast frantic to be home in time for birthday parties, school events and the like. The male lawyers – so far as I observed – were not doing this crazy balancing act in quite the same way.

Speaking from experience, women lawyers need and deserve flexibility. They have gone to law school, done well, worked hard, and provided enormous value to their clients (and the public). As a profession, we cannot afford to keep losing these women and acting as though the playing field is level. Imposing a significant additional cost on lawyers to maintain their licenses will hurt women lawyers and the clients who need them. Many talented women lawyer/moms need to be able to take breaks from the law and keep their licenses without having to pay insurance companies for the privilege. They should get malpractice insurance if – in their own good judgment – they need or want it. But they should not be forced to pay for malpractice insurance in order to start their own practices or work part-time. More and more talented women will drop out of the practice of law, and we need to prevent this from happening.

Mandatory Insurance Would Adversely Affect New Lawyers

It now costs approximately $250,000 for law students to get a law degree. I find this staggering and depressing. Why is the Bar studying ways to increase barriers to entry when many of our best and our brightest potential lawyers are being priced out of the law? Now, in addition to carrying a mind-boggling school debt, those students will have to pay insurance premiums that significantly increase their licensing costs. These costs will also discourage these attorneys from serving poor or middle-income clients – who are poorly served by the legal profession.

An unintended consequence of a mandatory insurance program will be to increasingly narrow the ranks of potential lawyers, favoring students from wealthy families and precluding many worthy students from pursuing the law.

Recently, one of my daughter's friends asked to speak with me about her plan to go to law school. Meeting with her was both heartening and disheartening. She is a young woman of color, a great student, an all-around wonderful young woman who will be a great lawyer if she reaches her goals. She told me she wants to give back to her community. She wants to make a difference on such important issues as immigration. I encouraged her to pursue her goals, but I know that she faces financial peril in doing so. Was I right to encourage her to go forward with her plan? Should I have told her to forget it – it isn't worth it? I honestly don't know. But I don't want to be a part of raising yet another barrier to young people trying to enter or profession. And so I speak out against this proposal.

My husband has had the identical experience advising a young lawyer who wanted to serve the poor, but who had a $250,000 school debt. That young lawyer was likely to face an additional personal problem because his wife was deeply concerned about his large school debt and the detrimental impact it would have on their personal lives. (This was not a Washington couple.) Within the last two days, Jim and I have been asked to advise a recent law graduate in California. Her husband is driving Ubers to support them while she studies for the bar and they raise two small children. She wants to serve immigrants as an immigration lawyer. The last thing she needs is another licensing barrier, which will hurt her and the population she wants to serve.

Insurance Carriers FIGHT Malpractice Claims

I disagree with the premise that malpractice carriers protect the public. If a client sues an insured attorney, the malpractice carrier will put up a mighty fight *against the client.*

In my career, I have handled plenty of attorney malpractice cases – mostly on the defense side, but also on the plaintiff's side. The carriers have an obligation to defend the attorneys – not the public. The Task Force implies that there are many meritorious cases

against attorneys that don't get filed because the plaintiff attorneys fear any judgment would be uncollectible. I know from experience that there are meritorious cases against insured attorneys that do not get filed because the malpractice carrier, rather than honestly assessing the merits, will come in and conduct the land war of China – because that is how carriers make money, by charging and preserving those premiums.

Insurance Defense Lawyers Are Paid By and Loyal to the Carriers

By requiring all attorneys to get malpractice insurance, the WSBA is, in effect, depriving attorneys of the right to choose their own counsel in malpractice cases.

Insured lawyers are not able to choose their own counsel. Instead, the carriers choose defense attorneys from their "panels." Malpractice carriers form long-term relationships with insurance defense attorneys whose streams of work and livelihoods depend on keeping the carriers happy. Invariably, the carriers pay panel attorneys less than the going billable rate in the local communities. The panel lawyers make up for their lower rates by the volume of work they receive from the carrier. (This, by the way, supports my argument above that Task Force members should not be panel attorneys because of the inherent conflict of interest.)

Insured attorneys could, of course, insist on hiring counsel of their choosing to defend their professional reputations. But then they would forfeit the coverage for which the WSBA had forced them to pay. So, on top of forcing all attorneys to pay premiums for coverage they don't want or need, the WSBA is, in effect, denying them the right to choose their own counsel.

At a minimum, if malpractice insurance is to be mandatory, I maintain that the insureds must be given their choice of counsel at that counsel's normal billing rate. If the Industry members on your Task Force oppose this reasonable stipulation – and the Bar yields to them – the Bar has a conflict of interest.

Insurance Defense Lawyers Have An Incentive to Prolong Cases

Unfortunately, insurance defense lawyers often have minimum billable hour rules in their firms. These rules undermine quick resolution of cases and prolong litigation.

Uninsured Attorneys Have an Incentive to Avoid and Correct Errors

Jim and I look long and hard at cases before we take them to make sure they are in our wheelhouse and that we have the time, skills, and determination to undertake them. We make sure we are on all-fours with our clients. We tell them all kinds of things before we take the case, including that we elect not to utilize malpractice insurance.

During our 38-plus years as litigators, we have never missed a briefing deadline or a hearing. We have lived through the days of calendars, PDAs, practice software and

the like. We can read rules and scheduling orders and get the deadlines on the right days. We do not need help or instruction putting dates on our calendars. And our election to forego insurance coverage that we neither need nor want has no bearing on our ability to manage our calendars.

The primary reason that Jim and I work so hard to avoid errors is because we are skillful, caring, competent attorneys. But we also are putting our hard-earned assets on the line every day.

The Public is Competent to Read the WSBA Website

The WSBA has a mechanism for attorneys to disclose whether or not they carry insurance. Potential clients who care about insurance can find out whether a member is insured or not. If the WSBA believes the public requires large font admonitions on an attorney's letterhead, I suggest the following additional ones:

- I HAVE A 2000 HOUR BILLABLE REQUIREMENT THIS YEAR
- I HAVE A $250,000 SCHOOL DEBT
- I AM DEPRESSED
- I ABUSE SUBSTANCES

There is a Better Way

I believe the WSBA could have set up a task force to do something that would actually make a positive difference. Here are some suggestions:

- Tackle the financial barriers that prevent prospective lawyers from obtaining a law degree;

- Study the causes underlying attorney depression, substance abuse, unhappiness, despair and even suicide;

- Examine the treatment of women lawyers in terms of expectations, maternity leave, pay disparity and the like.

- Study how the profession could better serve the poor and middle-income public, who are less well served.

Conclusion

You reached out to me and I have responded. Jim and I are going to keep our Washington licenses for only a few more years, so others have more at stake than we do. But your statement that uninsured lawyers pose a danger to the public defamed us and other attorneys like us. If you decide to impose a mandatory insurance rule, you must not impugn our reputation as attorneys who have followed existing Bar rules and simply

exercised our right to decline coverage. Here is some sample language for your next report should you decide to require malpractice insurance.

> The WSBA conducted an investigation as to whether malpractice insurance should be mandatory in Washington. There has been no such requirement to date. Although there are pros and cons, the WSBA decided on balance that it would be beneficial to impose such a requirement going forward. This decision in no way reflects on the many WSBA members who have in the past elected not to utilize malpractice insurance.

Very truly yours,

Gail M. Ragen

Gail M. Ragen

From:	ken@pedersenadr.com
To:	Mandatory Malpractice Insurance Task Force
Subject:	Comments re: Mandatory Malpractice Insurance Task Force issued an interim report
Date:	Thursday, October 11, 2018 10:43:07 AM
Attachments:	10-11-2018 Ltr to Spitzer.pdf

Please see the attached letter addressed to Professor Spitzer.

Kenneth J. Pedersen
Arbitrator · Attorney at Law
P.O. Box 15164
Seattle, WA 98115-9998
(425) 202-5835

KENNETH J. PEDERSEN
ARBITRATOR · ATTORNEY AT LAW

P.O. BOX 15164, SEATTLE, WA 98115-9998
(425) 202-5835
ken@pedersenadr.com

October 11, 2018
—By Email Attachment Only—

Hugh D. Spitzer, Chair
Mandatory Malpractice Insurance Task Force
c/o Washington State Bar Association
insurancetaskforce@wsba.org

Dear Professor Spitzer,

This is in response to the October 4, 2018 email message from the Mandatory Malpractice Task Force seeking input on its proposed individual mandate requiring all Washington attorneys to purchase professional liability insurance in the private insurance market. I have procedural and substantive concerns about that conclusion.

1. Existing Client Notification System. The Task Force's interim report neglects to mention that for many years the Supreme Court has required active lawyer members of the Bar to annually certify whether they are "engaged in the private practice of law" and, if so, to state whether they are "currently covered by professional liability insurance." Admission and Practice Rule (APR) 26. The Rule authorizes the Bar to make this information available to the public by any means it deems appropriate, "which may include publication on the website maintained by the Bar."

Each attorney's entry in the WSBA's online lawyer directory includes information as to whether the attorney is in private practice, and whether he or she maintains professional liability insurance. Clients seeking to retain an attorney can readily determine whether their lawyer is or is not covered by insurance and can thus make an informed decision as to whether to hire that lawyer. To go further than this and to make professional liability insurance mandatory reflects a paternalistic attitude toward clients and their lawyers. As lawyers will inevitably pass the cost of insurance on to the client, the measure will increase attorney fees to all clients, the great majority of whom will never need professional liability protection.

The decision whether to hire an uninsured lawyer is best left to the client. Rule 26 permits the Bar to advertise information about the lawyer directory to

the public. Better that the Bar work to inform the public about the information available in the lawyer directory rather than impose an individual insurance mandate on attorneys that will raise the cost of all attorney services in Washington while providing a windfall to the insurance industry.

2. Absence of statutory authorization or membership vote. The report repeatedly references the Bar in the states of Idaho and Oregon, evidently the only two states in the U.S. that impose an individual mandate for professional liability insurance on attorneys. The fact that only four percent (4%) of the state Bar associations impose an individual insurance mandate on their membership ought to give us pause. The Oregon Professional Liability Fund is an independently managed quasi-subdivision of the state bar that was created in 1977 in response to "skyrocketing malpractice insurance premiums" in the commercial insurance market[1] The Task Force rejects the 40 year old Oregon system in favor of what it terms the "Idaho model," newly implemented in 2018. Idaho leaves the matter of obtaining malpractice insurance to what the Task Force optimistically terms the "highly competitive" "free market" system of commercial malpractice insurance.[2] There is no estimate of the per-attorney cost of the "Idaho model."[3]

Nor does the report plainly identify what is broken in the currently system. If there has been a recent flood of uncompensated malpractice claims requiring an individual insurance mandate on all attorneys in this state, I am unaware of it. Certainly, there should be greater proof of need than the anecdotal testimony of an anonymous "legal malpractice plaintiff's lawyer" and self-interested "insurance industry professionals." (Interim Report, 3.)

As far as procedure, it is noteworthy that the Oregon state board of governors was authorized by statute to create the professional liability fund:

> The board has the authority to require all active members of the state bar engaged in the private practice of law whose principal offices are in Oregon to carry professional liability insurance and is empowered, either by itself or in conjunction with other bar organizations, to do whatever is necessary and convenient to implement this provision, including the authority to own, organize and sponsor any insurance organization authorized under the laws

[1] "State by state, mandatory malpractice disclosure gathers steam," (ABA, October 26, 2012) https://www.americanbar.org/groups/bar_services/publications/bar_leader/2003_04/2804/malpractice/

[2] A market is not free if the malpractice insurance sellers are armed with the threat of Bar discipline should the lawyer choose not to buy.

[3] Any solo practitioner with recent experience in procuring health insurance in the individual marketplace will be justifiably suspicious of sanguine claims about affordability in the "free market" for insurance.

> of the State of Oregon and to establish a lawyer's professional liability fund.

Or. Rev. Stat. § 9.080(2)(a)(A). I am aware of no similar statute in Washington authorizing the WSBA to impose an individual insurance mandate on Washington attorneys. The legislature should have the opportunity to consider whether other professionals might also be required by their professional associations to purchase insurance, including physicians (who, the report notes, are not required to carry malpractice insurance), chiropractors, dentists and accountants, as this is manifestly a legislative issue.

In addition to the statutory authorization, before imposing an insurance mandate on members of the Oregon Bar, the board of governors conducted a secret ballot vote of the membership. As stated on the Oregon PLF website:

> The Oregon State Bar Board of Governors created the Professional Liability Fund in 1977 pursuant to state statute (ORS 9.080) **and with approval of the membership**. The PLF first began operation on July 1, 1978, and has been the mandatory provider of primary malpractice coverage for Oregon lawyers since that date.[4]

Similarly, an FAQ on the website for the Idaho Bar indicates that the membership was required to vote on the insurance mandate before it was implemented by the Idaho Supreme Court:

> **What prompted the rule change?**
>
> A resolution proposing to amend the Bar Commission Rules to require a minimum amount of legal malpractice coverage was submitted to the membership during the 2016 resolution process. The resolution passed by a 51% to 49% vote of bar members. The proposed rule change was submitted to the Idaho Supreme Court. The Court adopted the rule change in an order issued March 30, 2017.[5]

The Task Force's interim report doesn't discuss the mechanism for imposing its recommended individual insurance mandate. The WSBA should seek legislation authorizing it to put such a mandate in place and should additionally establish a procedure for a secret ballot vote of the membership after notice and the opportunity for the entire membership to be heard. Assuming the resolution passed, it might then be submitted to the Supreme Court.

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[4] https://www.osbplf.org/about-plf/overview.html (emphasis added)

[5] https://isb.idaho.gov/blog/category/licensing/

3. The Unrepresentative Composition of the Task Force. According to the Solo and Small Practice Section of the WSBA, "[s]olo and small practice firms comprise more than 60% of practicing lawyers in Washington."[6] The interim report claims that "Solo and small firm practitioners represent a disproportionate share of the malpractice claims." Yet the Task Force doesn't include a representative sampling of lawyers working as solo practitioners. In fact, the majority of the members of the Task Force are not affected in any way by its recommendations

The report identifies categories of attorneys exempt from the individual mandate in Oregon, including "government attorneys, in-house private company lawyers, attorneys providing services through nonprofit entities, including pro bono services, retired attorneys, full-time arbitrators, and judges and law clerks." A significant number of the task force members fall within one or more of these exempt categories, i.e. government lawyers, non-profit attorneys, and judges.

According to the Bar's online lawyer directory, at least two lawyer-members of the task force are not in private practice at present. One member, identified as working at the Attorney General's office, is not listed in the lawyer directory. One member is a Vice President of an insurance brokerage, and another appears to be a banker. One task force member works as a limited license legal technician.

Of the eighteen members of the task force, at least nine fall into an exempt category, or are exempt from the individual mandate as not currently engaged in private practice, or are non-attorneys.

Of the remaining members, not counting the LLLT, four work in firms of more than twenty lawyers. One works in a six-to-ten attorney firm, and three others work in firms with between two-to-five lawyers. There doesn't appear to be a single attorney actively engaged in solo private practice of law on the task force. The Task Force thus includes more non-lawyers than active solo practitioners.

This is significant since the interim report is critical of those engaged in solo practice who choose to self-insure rather than pay premiums to an insurance broker.[7] The report includes the condescending statement that the Task Force reached "a consensus that uninsured lawyers pose a distinct risk to their clients and themselves." The report includes a "key finding" that "[m]ost attorney

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[6] https://www.wsba.org/legal-community/sections/solo-and-small-practice-section

[7] The task force appears to think that large firms are more responsible than small or solo firms because their lawyers are more likely to be insured through a commercial brokerage. But the fact is that most lawyers practicing in large firms carry liability insurance to protect themselves from the negligence of their partners, not to protect the public at large. Lawyers in solo practice don't need protections from their partners because they have none. Yet the task force consistently refers to such solo attorneys as "uninsured" when it is equally likely that they choose to be self-insured.

misconduct grievances and disciplinary actions involve solo and small firm practitioners" without explaining the relevance of that observation, nor the relationship between bar disciplinary actions and professional liability insurance. In any event if, as earlier noted, more than 60% of Washington lawyers practice solo or in small firms, the "key finding" is unremarkable.

4. Conclusion. The Task Force failed to consider the utility of the existing system for notifying clients of lawyers' insured status. It doesn't discuss the fact that Idaho and Oregon, which it holds up as avatars, allowed the Bar membership to vote on the proposals and that an Oregon statute expressly allows creation of the Oregon Professional Liability Fund. There is no similar statute in Washington state. The legislature should have the opportunity to determine whether all professional associations in Washington should be authorized to require their members to obtain professional liability insurance as this is fundamentally a legislative decision.

Recommendations as significant as imposing an individual insurance mandate on 32,000 practicing lawyers in this state should be made with input as broad a sampling of the WSBA membership as possible. By not including a representative percentage of small firm and solo lawyers the Task Force has undermined its recommendations.

Sincerely.

Kenneth J. Pedersen
WSBA License #11150

cc: William D. Pickett, President, WSBA
Kari M Petrasek, Chair, WSBA Solo and Small Practice Section
Margaret Morgan, Senior Legal Editor, NWLawyer

From:	Thomas
To:	Mandatory Malpractice Insurance Task Force
Cc:	pswegle@gmail.com
Subject:	Mandatory Insurance
Date:	Thursday, October 11, 2018 11:15:46 AM

I write to address WSBA's proposal to require mandatory malpractice insurance.

My very brief biography: 1977 UW graduate, passed bar the same year, actively practiced for twenty-something years before semi-retiring from law and pursuing other activities. I have remained "active status" all along. Zero discipline, zero claims. I have kept up with legal, ethical and practice changes.

From time to time, I do get involved in cases. Usually, these are unpaid or pro bono. These are matters of my selection, where something is going or has gone very wrong and needs fixing, but fixing is unaffordable to the aggrieved. These matters have ranged from criminal prosecution to probates going sideways to representing a rape victim. If it would be useful, I can have clients I've helped send you letters. I have not done any bar-sponsored pro bono activity, and a major reason why is that it requires malpractice coverage. It is hard to justify spending thousands of dollars a year to give one's time away -- this is more altruism than a retiree can afford!

Also from time to time, I am asked to handle matters by friends, family, or old clients. Often (as you can imagine at my age) these are probates. These are sometimes paid engagements, though usually the amounts involved just about cover the underlying costs. Again, the folks I have helped are quite grateful (and will happily pen letters to you). These sorts of clients would not be well-served by taking lawyers like me out of circulation, which your insurance requirement will surely do.

I am not the only one in this situation, though many may not bother writing to you. Some of my classmates, with whom I have consulted from time to time about "friends and family" matters after their retirement from full-time practice, have gone inactive rather than pay dues and put in CLE time just to work for free. Not a few of these lawyers are very experienced people with deep institutional knowledge of Washington practice -- resources not to be lightly tossed aside. Requiring insurance to remain "active" compounds the likelihood of semi-retired lawyers departing the bar.

To be clear, I don't think mandatory insurance is necessary. WSBA handled the situation quite elegantly some years ago, requiring disclosure of whether a licensee has insurance; the client, thus being fully informed, can make a decision as to whether this is material. Market-based solutions tend to be the most flexible and efficient. Further, it is likely that perhaps 1% of the

lawyers cause 90% of the claims. Mandatory insurance, which your interim report implies is effectively a substitute for enforcement of competency standards by WSBA, thus shifts that cost to clients of competent lawyers. Not particularly fair, when viewed this way. In addition, insurance will not cover intentional acts, such as converting trust account funds, so that should not be a consideration.

But your email and interim report (the link to the "Mandatory Malpractice Task Force informational brochure" was broken) indicate that the die is cast, so I make three suggestions:

1. Pro bono or free representation should be excluded from activities requiring insurance.

2. Activities below a certain annual dollar amount (be it $25,000 or even $10,000) should be exempt from insurance requirements.

3. Certification of the above by an attorney at the time of annual Bar Association license renewal should waive the insurance requirement. Should the attorney, during the course of the year, exceed the waiver limits, the insurance requirement could kick in.

This will keep wise old heads in the loop, a win for both the Bar Association and the very public which is the intended beneficiary.

Thomas B. Nast

Seattle

WSBA #7713

From: Barnaby Zall
To: spith@uw.edu; john.bachofner@jordanramis.com; stan_bastian@waed.uscourts.gov; dan@mcbdlaw.com; christy@mylllt.com; gretchen@halehana.com; pjg@randalldanskin.com; pl.isaki@comcast.net; mark@johnsonflora.com; rkarl@siginsures.com; kara@appeal-law.com; evanm@idsalaw.com; spierce@davisrothwell.com; pinkhamb@seattleu.edu; tstartzel@ks-lawyers.com; anniey@atg.wa.gov; Doug Ende; Thea Jennings; Rachel Konkler
Subject: Comments on Mandatory Malpractice Insurance Task Force Interim Report and Recommendations
Date: Thursday, October 11, 2018 9:19:17 PM
Attachments: Oct 2018 note to MMITF.pdf

Task Force Chair Spitzer and members of the Mandatory Malpractice Insurance Task Force:

Thank you for your hard work and leadership in this project. Unfortunately, I will not be able to participate in the Open Session you plan for October 16, so I offer a statement of what I would have said and a follow-up memo with more detail.

I apologize for not getting these comments to you before this, but all my WSBA time this summer was spent on the Addition of New Governors Work Group, which was recently blocked by the Supreme Court of Washington.

A brief summary of the attached statement and detailed memo:
The MMITF Interim Report is significantly incomplete and reads more like an advocacy piece than a neutral analysis. The MMITF's proposal can be accurately summarized as: "The Bar is forcing innocent lawyers to pay millions to insurers, hoping insurers will pay thousands to victims." The materials available on the MMITF web page provide sufficient information to reasonably project that the MMITF's proposal would provide insurance companies with a net windfall of between $5.7 and $7.5 million per year, but the Interim Report doesn't actually mention that. The Final Report should remedy these deficiencies and provide sufficient detail to satisfy the constitutional requirements of *Janus v. AFSCME*. The proposed exemptions from mandatory coverage seem to duplicate the private practice requirement; there should be a *pro bono* exemption based on malpractice risk.

Thank you again.

Barnaby Zall
Law Office of Barnaby Zall
685 Spring St. #314
Friday Harbor, WA 98250
360-378-6600

COMMENTS ON MANDATORY MALPRACTICE INSURANCE TASK FORCE

October 11, 2018

Barnaby Zall
Friday Harbor, Washington
[redacted]
360-378-6600

Task Force Chair Spitzer and members of the Task Force:

Thank you for your work on this topic. Unlike many such volunteer-driven efforts, the Mandatory Malpractice Insurance Task Force has developed background information from a wide variety of sources, documented its research and work, and communicated actively with members. I have reviewed all of the material the WSBA made available from the MMITF on its website, and found the material very useful.

Unfortunately, I must raise two significant concerns about the MMITF's Interim Report which should be remedied in the Final Report. I attach a more detailed memo explaining my concerns and offering remedies, but here is a summary:

1) **The Bar is forcing innocent lawyers to pay millions to insurers, hoping insurers will pay thousands to victims, and the Interim Report doesn't even mention that:**
The MMITF Interim Report is significantly incomplete, reads more like an advocacy piece than a neutral analysis, and obscures essential facts. For example, MMITF's sole expert consultant said that it is not possible to calculate the number of additional valid malpractice claims and public losses, but this is not true. To its credit, the MMITF gathered enough reliable material to allow a reasonable projection of both costs and benefits from the "Idaho" model. But the explanations in its Interim Report and its summary comparison table of options did not include either of those crucial data points, and few WSBA members or decisionmakers are going to sift the MMITF materials as I did to find out the necessary and missing information.

Using the MMITF material made available to WSBA members, I calculate that currently self-insured or uninsured lawyers in Washington would likely face an average of between 23 and 35 actual malpractice claims a year once they become insured, with their new mandatory insurers making potential loss payments and legal expenses of $1.8 to $2.8 million a year. Every instance of legal malpractice is one too many, but the cost to currently self-insured or uninsured lawyers who do not make those legal mistakes would be premiums totaling between $7.5 and $10.3 million per year. The insurers would reap a windfall benefit (windfall because it results solely from government compulsion of innocent lawyers who do not wish to make these payments) of between $5.7 and $7.5 million a year. This is an extraordinarily inefficient remedy.

To be sure, a projection of between 23 and 35 actual malpractice claims from newly-insured lawyers is significant and there are likely steps which can and should be taken to prevent those claims. But you will not find those steps explained in the Interim Report, other than in a nicely-formatted summary table. There is no discussion of significant alternatives, such as

amending the rules of the WSBA Client Protection Fund; if part of the problem is that the CPF only pays when lawyers steal instead of making mistakes, why not change those rules and allow victims of mistakes to access the CPF, whose reports show that its net assets have been increasing by about $500,000 each year? That would utilize existing infrastructure and any additional costs are likely to be less expensive than projected insurance premiums. Why focus on forcing lawyers to pay insurance companies if there is an alternative to prevent the mistakes in the first place; rather than suggest that requiring lawyers to attend loss reduction CLE would increase the CLE burden, why not make loss prevention CLE as mandatory as ethics? None of these common sense alternatives appear in the Interim Report, which focuses solely on insurance coverage as a panacea.

Compensation, done poorly, shifts and multiplies the unfairness and costs of a failure of prevention. The Idaho model is potentially a legitimate policy choice, but, under recent constitutional restrictions on mandatory bar associations and the courts that oversee them, the MMITF must demonstrate, not just recite, both the bad and good, and seek the "clear and affirmative consent" of the innocent lawyers who will bear the bad. By not describing either the good or the bad in its communications to WSBA members and the Board of Governors, and by not seeking the "clear and affirmative consent" required by *Janus*, the MMITF Interim Report sets up the WSBA for failure. The MMITF must fill that gap in its Final Report.

2) **The proposed narrow exemptions make it certain that *pro bono* services will be reduced.**

The exemptions proposed for consideration appear to duplicate the limitation that mandatory coverage only applies to lawyers in private practice. More importantly, the MMITF exemption proposals ignore the likely significant *pro bono* services that are provided to nonprofit organizations by non-employee lawyers. There are a variety of tax and ethical reasons why lawyers provide services as independent legal counsel instead of as an employee.

For example, I provide hundreds of hours of high-level *pro bono* services each year to nonprofit and tax-exempt organizations, including representing them before the Supreme Court of the United States. The Supreme Court has cited my briefs in opinions and has granted the relief my briefs have sought in several cases. I am not employed or insured by these organizations. Yet my effective malpractice liability approaches zero.

Nevertheless, my *pro bono* services would not be recognized by the MMITF's draft exemption categories. The failure to provide an exemption for *pro bono* services will inevitably reduce the amount of services offered *pro bono*, if only because lawyers generally cannot add significant costs to *pro bono* practices without some offsetting revenue. The MMITF should propose exemptions that encourage, not prevent, *pro bono* services of all types.

SUMMARY OF RECOMMENDATIONS:

Include in the MMITF Final Report:
1) A clear and complete explanation of any proposed mandatory malpractice insurance proposal, including specific statements sufficient to meet any constitutional requirement of demonstrating both compelling governmental interest and how the proposal was narrowly tailored to avoid abridging the rights of association any more than required to protect the governmental interest.

2) The information required to calculate both the costs and benefits of any proposed mandatory malpractice insurance proposal, rather than just information on claims and coverage.

3) A clear and complete explanation of the costs and benefits of any proposed mandatory malpractice insurance proposal, including performing the calculation made possible under recommendation 2, plus any additional information available to the MMITF.

4) A description of alternatives considered that do not focus on insurance coverage, such as prevention, education, lawyer "repair" as in Oregon, and utilization of existing mechanisms such as changes to the rules and funding of the WSBA's Client Protection Fund.

5) A recommendation to satisfy the emerging *Janus* consent standard by seeking "clear and affirmative consent" from the membership for any proposal and demonstrate that consent through "clear and compelling evidence," rather than presuming that silence or the lack of comments on a complicated proposal is affirmative consent.

6) Additional exemptions from mandatory coverage for *pro bono* activity which does not present a significant risk of malpractice events.

Thank you for this opportunity to offer brief comments, and for your efforts on this Task Force.

MEMORANDUM IN SUPPORT OF COMMENTS TO THE MANDATORY MALPRACTICE INSURANCE TASK FORCE
Barnaby Zall
October 11, 2018

INTRODUCTION:

We are in a new era in which mandatory Bar associations are subject to increased constitutional scrutiny under Supreme Court of the United States decisions such as *Harris v. Quinn*, 573 U.S. ___, 134 S.Ct. 2618 (2014) and *Janus v. Amer. Fed. Of State, County and Mun. Employees*, 585 U.S. ____ (No. 16-1466), June 27, 2018 (rejecting the formula used by, *inter alia*, the WSBA to determine the amount of mandatory dues which may be spent on nonmandatory activities. Within a few days, the Supreme Court may decide whether to review *Fleck v. Wetch*, No. 17-886, https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17-886.html, in which the second Question Presented is: "Should *Keller v. State Bar of Cal*., 496 U.S. 1 (1990), and *Lathrop v. Donohue*, 367 U.S. 820 (1961), be overruled insofar as they permit the state to force Petitioner to join a trade association he opposes as a condition of earning a living in his chosen profession?" Although *Fleck* was filed before *Janus* came down, it, and other cases like it, are now challenging both the use of mandatory dues and the existence of mandatory (or integrated) bar associations under the new *Janus* "clear and affirmatively consent" standard, with evidence of consent that is "clear and compelling." *Janus*, slip op. 53.

The MMITF has reported its interim conclusion that malpractice insurance should be mandatory for private legal practice in Washington, with a few exemptions still to be determined. Put another way, no lawyer will be able to practice law in Washington without purchasing malpractice insurance, except in a few narrowly-defined instances. Since the practice of law is dependent on compelled association through the WSBA, the MMITF mandatory malpractice insurance requirement is subject to constitutional scrutiny. Although the Supreme Court first indirectly upheld such compelled association in 1956, *Railway Employes v. Hanson*, 351 U.S. 225 (1956), the author of the *Hanson* decision, legendary Justice William O. Douglas, rejected his own opinion five years later in *Lathrop v .Donohue*, 367 U.S. 820, 878-80 (1961). More importantly, in *Harris v. Quinn*, just four years ago, the Supreme Court soundly criticized *Hanson*: "The First Amendment analysis in *Hanson* was thin, and the Court's resulting First Amendment holding was narrow." 134 S.Ct. at 2629. Compelled bar membership is on shaky ground at the moment, so the MMITF Final Report should provide a well-documented and clear explanation of the problem it seeks to resolve and how its proposed solution is narrowly-tailored.

The MMITF performs important work by developing and communicating actual evidence of how the absence of malpractice insurance is a problem of sufficient dimensions to justify limits on First Amendment rights of association: not just to provide some measure of protection to those who allege harm from attorney malpractice, but also to protect the integrity of the WSBA itself and the judiciary which may rely on the Task Force's advice. "Courts, too, are bound by the First Amendment." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 326 (2010). Even exacting scrutiny requires specific evidence of both the identified state concern and

interest, and the narrowly-tailored proposed solution. A state may not limit the freedom of association based on generalizations or a "mere conjecture." *Lair v. Motl*, 873 F.3d 1170, 1178 (9th Cir. 2017), *reh'g denied*, 889 F.3d 571 (9th Cir. 2018), *petition for cert. filed, sub nom. Lair v. Mangan*, Aug. 2, 2018, No. 18-149 (state must show specific evidence to justify burden on association), *quoting, McCutcheon v. Fed. Election Comm'n*, 572 U.S. __, 134 S.Ct. 1434, 1452 (2014)("we 'have never accepted mere conjecture as adequate to carry a First Amendment burden'").

The MMITF has come a long way in providing that level of constitutionally-required evidence, but a crucial and readily obvious gap still appears in its Interim Report. The MMITF fails to communicate the costs and benefits of preventing and remediating the actual harm from malpractice, and so fails to provide the constitutionally-required evidence to justify its policy choice. And by defining the problem as only a question of insurance coverage, the proposed exemptions are not narrowly tailored to minimize the burden on associational freedom guaranteed by the Washington and Federal Constitutions. The Final Report should do better.

1) THE MMITF HAS FAILED TO EXPLAIN THE ACTUAL COSTS AND BENEFITS OF MANDATORY MALPRACTICE INSURANCE:

The entire statement of "risk" to the public in the Interim Report is:

> After accumulating a considerable amount of data and other information, and after hearing from other states, from bar regulators, from industry professionals, and from attorneys, the Task Force reached a consensus that uninsured lawyers pose a distinct risk to their clients and themselves.
>
> While it may be appropriate for attorneys to evaluate and assume personal risks created by lack of professional liability insurance, we concluded that it is simply not fair for the clients. Clients of uninsured lawyers often have a difficult time obtaining compensation from those attorneys after a malpractice event, and an even more difficult time finding legal representation for quite legitimate claims against those uninsured lawyers – malpractice plaintiff lawyers simply cannot afford to handle those claims, and the WSBA's Client Protection Fund is precluded from making payments based on malpractice.

Interim Report, 7-8.

Prevention is not mentioned, nor is utilizing existing structures such as the WSBA's Client Protection Fund as a foundation from which to build a cheaper, more effective and efficient structure than the "Idaho" model. Having malpractice insurance does not seem to prevent malpractice. One study of U.S. and Canadian lawyers noted that, although many U.S. lawyers do not have malpractice insurance while all Canadian lawyers do, "on the whole the claims data makes it clear that the reasons for malpractice claims—and the steps that can be taken to avoid them—are more or less identical in both countries." Daniel E. Pennington, *ARE YOU AT RISK? The Biggest Malpractice Claim Risks and How to Avoid Them*, 36 LAW PRACTICE 29, Oct. 12, 2011, *available at*: https://www.americanbar.org/publications/law_practice_home/law_practice_archive/lpm_magazine_articles_v36_is4_pg29/.

The MMITF Interim Report Leaves the Impression that It Doesn't Know What the Actual Harm is From A Lack of Insurance, Nor Does It Know What the Costs and Benefits of Its Idaho Model Proposal Will Be:

The MMITF materials, and its recent communications in the August 2018 NWLAWYER suggest that the Task Force has no idea of the actual amount of harm from malpractice by uninsured lawyers. Nor does it seem to have a handle on the costs of its preferred option. The MMITF apparently consulted with one professional expert in the area of mandatory malpractice insurance coverage: Professor Leslie C. Levin of the University of Connecticut Law School. Prof. Levin has written a law review article on the scope of the problem of lack of insurance coverage. Leslie C. Levin, *Lawyers Going Bare and Clients Going Blind*, 68 FLA. L.REV. 1281 (2016), *reprinted* in materials for the March 2018 MMITF meeting.

Prof. Levin notes "[S]o much about the true incidence of legal malpractice is not known." *Id.*, at 1283, *citing*, Manuel R. Ramos, *Legal Malpractice: No Lawyer or Client Is Safe*, 47 FLA. L.REV. 1, 5, 9 (1995) (stating that "scholars will never be able to present a complete and accurate picture of legal malpractice"). "It is exceedingly difficult to quantify the damage these uninsured lawyers cause as a result of malpractice. It is not even known how much LPL insurers pay annually in indemnity payments to resolve malpractice claims against insured solo and small firm lawyers." Levin, *supra*, at 1311.

Prof. Levin does tell us what she thinks she doesn't know: "In truth, it is exceedingly difficult to determine how much legal malpractice occurs, even among insured lawyers. It is impossible to know how much harm uninsured lawyers actually cause. There is little evidence these lawyers are more likely to commit malpractice than insured lawyers, but there is also no evidence they are less likely to commit malpractice." *Id.*, at 1309.

The MMITF Has Collected Sufficient Information to Answer Those Questions About Costs and Benefits:

Prof. Levin's concerns are, at best, exaggerated. As shown in the next section of this memo, the MMITF collection of materials does provide sufficient information to allow a reasonable projection of how much harm may be attributed to uninsured attorneys who become insured, and how much such insurance will cost them, as well as how much revenue mandatory insurance coverage will generate for carriers. The proposed Idaho model will generate millions for insurance companies while providing only thousands to victims of lawyers' mistakes. A windfall for insurers of $5.7 to $7.5 million a year. This is, on its face, an inefficient remedy.

Prof. Levin's article itself also gives us specific evidence that shows that uninsured lawyers are less likely to receive threats of malpractice claims. Levin, *supra*, at 1309. Professor Levin took a survey of members of the Arizona Bar, which found that 36% of insured Arizona lawyers "reported that they or a lawyer in their firm had been threatened with a malpractice action, but only 22% of the uninsured Arizona lawyers reported receiving threats." *Id.*

Prof. Levin speculates that "It is not clear whether the uninsured Arizona lawyers actually received fewer threats of malpractice actions than the insured lawyers. Insured lawyers may be more sensitive to client communications that imply such threats, because they must report possible claims to their insurers in order to preserve coverage. Insured attorneys may also be more likely to remember such threats because they communicated with insurers about them." *Id.*, at 1311. That speculation is well-founded, since the definition of "claims" is not the same as the definition of "the risk of injury to the public that arises from uninsured lawyers." As Prof. Levin notes, the existence of "claims made" policies dramatically increases the number of "claims" made far above the number of actual injuries.

Under a "claims made" policy, the lawyer's current insurer has the obligation to defend only claims filed during the current year, even if the act which generated the claim occurred long before. To trigger coverage, lawyers with "claims made" policy must notify their insurers if they have any information which might potentially give rise to a claim, even if a claim is never filed. So lawyers themselves self-protectively file "claims" with their insurers to trigger coverage, even if there was no actual injury or threat of a claim, and those "claims" affect the lawyers' premium calculations for many years.

In four decades of legal practice, I have never had an actual "claim" made against me, but I have notified my malpractice carrier of potential claims twice:

- an opposing lawyer impleaded me for "malpractice" in a case handled by my associate because, as he testified in deposition, I "filed a paper in court that was different from" his. During the same deposition, this lawyer admitted that in the past he had also sued to have his pet monkey declared a human being "under the doctrine of *genus*" because African-Americans had been declared full human beings after the Civil War. The court dismissed that "malpractice" claim, but I had to report it to my "claims made" insurer for five years following the claim. Although my insurer claimed that my notice would not have caused my rates to rise, the very helpful table of underwriting factors provided by ALPS to the MMITF demonstrate that any "claim" will increase rates (or at least not decrease them for a "claims-free" record). MMITF Minutes, April 2018, at 352.
- The Chief Justice of a state's highest court, who was an expert on civil procedure, designated himself down to my intermediate appellate panel in a case involving the appeal of a dog bite damages award that was far higher than the *ad damnum* clause; I was not trial counsel, but represented the winning trial counsels on appeal. After I introduced myself, the Chief Justice said, "I have a problem with the state of the law in this area." He then proferred a legal standard that required trial lawyers to listen to the tape-recorded discussions of the state's judicial conference to learn civil motion filings deadlines for post-verdict motions to amend *ad damnum* clauses (based on aiding expectations of insurers about whether to contest claims); ultimately the panel's decision adopted that standard. The client, who understandably didn't want to appeal further, many years later filed a malpractice claim against the trial lawyers, and I notified my "claims made" insurer of the possibility of a claim against me. No claim was ever filed against me, but I still had to report my "claim" to my insurer for five more years.

Other evidence provided by MMITF also supports Prof. Levin's speculation about "claims" vs. injury, including the Oregon Professional Liability Fund's 2017 Report, which noted that 68% of claims resulted in no payment or processing expenses (which are generally costs of representation), and what appears to be 19% of remaining claims involved "repairs" in an interesting Oregon program which simply provides a new lawyer to "repair" errors made by the original attorney, meaning that there was no actual injury following the repair. In other words, of the 840 "claims" filed under Oregon's very flexible program, approximately three-quarters were not actually injuries to the public. And as recorded in the MMITF Interim Report, ALPS, a malpractice insurer in Washington, found that half of all claims over the prior ten years were resolved without a loss payment or expense, presumably because they were unfounded.

The fact that most malpractice claims come from solo or small firm practitioners doesn't imply some additional risk to the public; the vast majority of lawyers practice solo or in small firms. The Interim Report says that the American Bar Association reported in 2015 that 65% of malpractice claims come from lawyers in firms of less than five lawyers. The ABA also reported that 76% of lawyers were in firms of less than five lawyers. Above the Law, *Small Law Is Huge*, Sept. 18, 2015, https://abovethelaw.com/2015/09/stat-of-the-week-small-law-is-huge/.

Prof. Levin also references another factor relevant to the MMITF's tentative conclusion that solo and small firm lawyers represent a higher risk of injury to the public: the widespread belief that larger law firms settle claims themselves before they rise to the level of a claim to their insurers. "While the clients of larger firm lawyers, who are repeat players in the legal system, can often negotiate effectively with those [plaintiffs'] firms for compensation if their lawyers make mistakes, the clients of solo and small firm lawyers—often individuals who are one-shot players in the legal system—lack this leverage." Levin, *supra*, at 1318.

What the MMITF Interim Report showed is that it does not have the data required to make the judgement that uninsured lawyers pose a risk to the public. As Prof. Levin wrote: "It is impossible to know how much harm uninsured lawyers actually cause." This makes any such assertion by the MMITF "mere conjecture," not sufficient constitutionally to justify government compulsion. *Lair v. Motl*, 873 F.3d 1170, 1178 (9th Cir. 2017), *reh'g denied*, 889 F.3d 571 (9th Cir. 2018), *petition for cert. filed, sub nom. Lair v. Mangan*, Aug. 2, 2018, No. 18-149 (state must show specific evidence to justify burden on association), *quoting, McCutcheon v. Fed. Election Comm'n*, 572 U.S. __, 134 S.Ct. 1434, 1452 (2014)("we 'have never accepted mere conjecture as adequate to carry a First Amendment burden'").

To the extent that there is a policy step to be taken, it should be justified solely on the ground of the actual risk, not a proxy. The MMITF material does not support the claim that there is a "risk" to the public solely from a lack of malpractice insurance. Any risk is from a "malpractice event," not from the lack of insurance. That is what the MMITF's Final Report should describe and analyze, not the secondary material discussed in the Interim Report.

The MMITF Failure to Explain the Likely Costs and Benefits of Mandatory Malpractice Insurance Will Trigger Complaints That The Vast Majority of Money Will Go to Insurance Companies:

Despite Prof. Levin's concern about the impossibility of calculating the level of risk of public injury from uninsured lawyers, the MMITF, to its credit, did obtain information which permits a quick calculation of risk from alleged malpractice by Washington lawyers insured by ALPS, which has provided legal malpractice insurance coverage in Washington for at least ten years. The data provides a real-world check on Prof. Levin's claim that "It is not clear how many lawyers receive a malpractice claim annually, but it appears to be less than 6% of insured lawyers." Levin, *supra*, at 1309. Using the ALPS 2017 data and depending on definitions which may vary, the actual claims rate for ALPS-insured lawyers appears to be about 1%.

While any loss is regrettable, it appears that mandatory malpractice insurance would result in an enormous windfall for insurers, available to them solely because of government compulsion of innocent lawyers who do not wish to make these payments. The MMITF proposal risks public opprobrium from appearing to disguise enormous kickbacks to preferred insurers as protection of the public. For example, a criticism might be "Plaintiffs lawyers and insurance companies said they were protecting the public, but 70% of the money went to insurance companies and the lawyers."

Using the MMITF material made available to WSBA members, I calculated that currently self-insured or uninsured lawyers in Washington would likely face an average of 23 to 35 actual malpractice claims a year, with their new mandatory insurers making potential loss payments and legal expenses of $1.8 to $2.8 million a year. Every instance of legal malpractice is one too many, but the cost to currently self-insured or uninsured lawyers who do not make those legal mistakes would be premiums totaling between $7.5 and $10.3 million per year. The insurers would reap windfall revenue of between $5.7 and $7.5 million a year.

The members of the MMITF have much more information than I do about these calculations, but here is how I calculated costs and benefits of mandatory malpractice insurance from the information made available from the WSBA's MMITF page (https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/mandatory-malpractice-insurance-task-force):

32,081 Washington lawyers:

According to information provided to the MMITF by Jean McElroy of the WSBA Office of General Counsel and others, as of February 2018, there were approximately 32,081 active lawyers in Washington.

21,095 in private practice:

The MMITF would limit the mandatory malpractice requirement to lawyers who are in "private practice," or not employed by government or in-house by business or non-profit organizations. Under the MMITF's definition, approximately 39% of Washington's lawyers are not in private practice, or about 12,500 lawyers who would not be subject to the mandatory

malpractice requirement. That leaves some 20,000 lawyers in private practice, although McElroy's Feb. 2018 figures seem to show that 21,095 are in private practice.

2,953 say they are self-insured or uninsured:

The MMITF reports that approximately 14% of those in private practice are uninsured or self-insured, or about 2,953.

ALPS insured 1,034 Washington lawyers in 2017:

In its October 2017 report, included in the minutes of the January 2018 MMITF meeting, ALPS said it insured 1,034 Washington lawyers in 2017, who collectively paid $2,601,091 in premiums, or an average premium payment of about $2,516 per attorney. Prof. Levin's NWLAWYER article says in a footnote that the current average premium for Washington lawyers is $2,324, but doesn't cite a source on the MMITF materials webpage.

ALPS insured lawyers reported 24 claims in 2017:

Although the ALPS 2017 report was not for a full year, ALPS said that its insured attorneys reported 24 claims. That would be about a two percent claims rate, about a third of Prof. Levin's "less than six percent of insured lawyers" estimate.

Half of ALPS claims were probably unfounded:

The MMITF Interim Report noted that ALPS reported that half of its claims over the prior ten years were resolved without any payments at all, including for costs of representation. They were likely unfounded claims or as noted above, not actually "claims" at all, but preventative reports by insured lawyers who wanted to trigger "claims made" policies.

Two-thirds of claims in Oregon were probably unfounded:

Despite Prof. Levin's concerns that data was impossible to obtain, there are states which provide that information; Oregon is one which provides specific and detailed information. The Oregon Professional Liability Fund's 2017 Report, despite Oregon having much more expansive inclusion criteria, said that 68% of all claims resulted in no payment or processing expenses (which were generally costs of representation). Again, these were likely unfounded. All Oregon lawyers participate in the Oregon PLF, which has substantial asset reserves, so there were no questions about claims being dropped because the lawyers were "judgment proof."

Actual claims paid in the ALPS pool likely totaled between 8-12, for a projected claims rate of between 0.77% to 1.2%:

Applying the two different actual claim numbers from both ALPS and the Oregon PLF claims rates, as defined above, to the 1,034 lawyers insured by ALPS results in a likely 2017 claim total of between 8 and 12 lawyers against whom actual claims were likely. That is, out of 1,034 insured lawyers, somewhere between about 0.77% and 1.2% would see actual claims filed against them.

ALPS average loss payments were $60,000, with expenses of $20,000.

The MMITF Interim Report says that ALPS's experience over the prior ten years is that average loss payments were $60,000, and expenses were $20,000. 97% of all malpractice claims are resolved for less than $250,000. Interim Report, *supra,* at 4.

Under mandatory malpractice insurance, uninsured lawyers in Washington would pay between $7.5 and $10.3 million a year in insurance premiums.

At the average $2,516 annual premium rate in the ALPS October 2017 report, the 2,953 uninsured lawyers in Washington would pay a total of $7,429,748 in premiums per year. At Prof. Levin's unsourced $2,324 average premium, the uninsured lawyers would pay $6,862,772 in premiums per year. At the higher Oregon PLF annual premium rate of $3,500, the uninsured lawyers in Washington would pay a total of $10,335,500 in premiums.

Projected using these ratios, mandatory malpractice insurers would expect to receive between 23 and 35 valid claims per year, and pay out between $1.8 million to $2.8 million in claims and expenses.

Using the 0.77% to 1.2% claims ratio and $80,000 in average loss payments and expenses projected from the ALPS and Oregon PLF experience, the 2,953 uninsured lawyers in Washington would expect to have to deal with between 23 and 35 valid claims per year, and their insurers would expect to pay out between $1.8 and $2.8 million in claims and expenses.

Insurers would net between $5.7 and $7.5 million after paying losses and expenses.

Average premiums of $7.5 to $10.3 million, less claims and expenses payouts of $1.8 to $2.8 million leaves between $5.7 to $7.5 million net for the insurers. This ratio is similar to the actual payout vs. overhead ratio reported by the Oregon PLF for 2017: Total claims payouts: $2,331,672 (32% of total operating costs); administration: $2,176,790 (30%); systems expenses: $743,576 (10%); Loss Prevention: $2,119,000 (28%).

I am not a member of the MMITF, and am relying only on the materials made available on the WSBA website to WSBA members. There is likely to be an explanation for this windfall and my calculations are likely to be at least partially inaccurate. It is also possible that I overlooked some clear explanation in the Interim Report or the deliberations of the MMITF, so that the calculations themselves are wholly misleading. Nevertheless, the only obvious explanation in the Interim Report is a summary comparison table, which includes conclusions and generalizations, rather than facts from which readers can make up their own minds.

The table entry for the MMITF's "preferred" approach, described as the "Idaho" model, contains only these bullet points:

- Provides diverse coverage options to members
- Free market allocates risks and costs based on practice character, claims history, and other underwriting standards
- Highly competitive market provides reasonable cost and different coverage, exclusions, and deductibles (Idaho reports no lawyers unable to obtain insurance)
- Modest operating costs
- Guarantees available coverage for vast majority of client claims

- Adverse reaction by members who feel "forced" to purchase insurance that they don't want.

The only description of costs and premiums is favorable, without the actual numbers to show what can be gleaned from the actual reports buried in the MMITF materials. It would likely affect readers' evaluations of this model for them to know that the additional net benefit to insurance companies would be $5.7 to $7.5 million per year, while the average benefit to individual claimants will be $60,000. Certainly, that information would generate an "Adverse reaction by members who feel 'forced' to purchase insurance that they don't want."

Properly stated, a legitimate policy choice is available to require malpractice insurance, but this choice was not justified sufficiently to satisfy constitutional requirements for government-compelled action:

The absence of such a calculation by the MMITF in its Interim Report makes it important, from a constitutional evidence standpoint, for the MMITF to address this question in its January Final Report to the Board of Governors. At a minimum, the MMITF should explain why it feels that the benefit to the public is worth the cost of this approach, and why it chose instead to focus its written explanation on the statement about "risk to the public from uninsured lawyers" instead of the costs and benefits from its chosen approach.

And as a constitutional matter, the MMITF should explain how and why its preferred approach is the narrowest and most effective way to address the risk to the public from lawyer mistakes. It should not rest on the mere fact that there are self-insured and uninsured lawyers in Washington without explaining the actual numbers that can be projected of both injury and remedial costs.

2) THE PROPOSED EXEMPTIONS FROM MANDATORY MALPRACTICE INSURANCE ARE TOO NARROW:

The MMITF continues to consider possible exemptions from the requirement to obtain malpractice insurance and has asked for comments on the proposed exemptions. The principal objection to the proposed exemptions is that the listed exemptions seem to duplicate the limitation of the insurance requirement to lawyers in private practice.

The list of proposed exemptions from the July 2018 MMITF meeting was:

- Employed as a government attorney, judge, administrative law judge, or hearing officer
- Employed by a business entity or nonprofit
- Employed by a public defender office
- Employed as a mediator or arbitrator
- Not providing any legal services, whether or not for compensation.

Certain categories, such as *pro bono* work, have been left off the most recent lists of proposed exemptions. I provide hundreds of hours of *pro bono* legal services, at a very high level, each year. I am self-insured, with sufficient personal resources to withstand any judgement

for malpractice liability. I am not judgement-proof. I disclose to my remaining clients that I do not have malpractice insurance; they choose to use my services even after that disclosure.

As a semi-retired lawyer, I limit my practice mostly to *pro bono* representation before the Supreme Court of the United States, almost all of which concerns the First Amendment and is performed for the Public Policy Legal Institute, a 501(c)(3) tax-exempt charitable corporation headquartered in Friday Harbor, Washington, of which I am the Chairman and President. www.publicpolicylegal.com. I am not employed by and receive no compensation from these clients. I am not insured by these organizations. Most of these organizations simply could not afford to employ or insure me.

My *pro bono* services are often of value to all Americans. I raise substantial questions of law to the Nation's highest court. Supreme Court opinions cite my briefs and have often provided the relief sought in the briefs. *See, e.g.*, *McCutcheon*, 134 S.Ct. at 1460 (the Internet has aided citizens' access to government records). My effective exposure to malpractice liability in representing these organizations before the Supreme Court through *amicus* briefs is effectively close to zero.

But in the winter of my career, the administrative complexities and financial burdens of even a *pro bono* practice weigh more than before. As I noted in earlier comments to an MMITF survey of members, adding a $3,500 annual premium for no reason related to my work and largely benefiting insurance companies would likely break the camel's back. I understand from reported comments from members that I am not alone in my assessment, and whether the MMITF agrees or not, its limited exemptions will not prevent a significant loss of *pro bono* services.

An inevitable loss of important *pro bono* services should not be an acceptable outcome of any proposal to serve the public. If it is an expected outcome of a proposal which serves, to a large degree, the financial interests of insurance companies, the MMITF should clearly state that expectation in its Final Report and explain why it is acceptable. Simply arguing that lawyers won't reduce their *pro bono* efforts is insufficient.

I would recommend that, if the MMITF adopts the proposed exemptions list outlined in the August and September meeting minutes, it also propose additional exemptions for lawyers who provide services to nonprofit organizations in areas which are unlikely to generate malpractice risk, including *pro bono* representation.

From:	milawoff@aol.com
To:	Mandatory Malpractice Insurance Task Force
Subject:	Mandatory Malpractice Insurance for Attorneys
Date:	Friday, October 12, 2018 8:09:52 AM

To the attention of the Insurance Task Force of the WSBA:

I am writing to comment on the proposal by the Bar Association to require that all attorneys purchase mandatory E&O coverage (otherwise referred to as mandatory malpractice insurance). It is estimated that the cost for each attorney to purchase the insurance will be $3,500 per year. The cost will be the same, regardless of the number of cases an attorney handles in a year. Attorneys who are semi-retired and handle only an occasional case will be required to pay the same amount as an attorney who practices full-time.

My husband and I are attorneys in Spokane. I graduated from law school in 1984 and passed the bar that same year. I established my practice on a shoestring, renting a small office and doing all of my own typing, filing, etc. As my practice grew I was able to move into larger office space and hire an assistant. If I had been required to purchase mandatory insurance I would not have been able to establish my own practice.

Recent law school graduates who have been admitted to the Bar will also be required to purchase E&O coverage. Young attorneys who are saddled with enormous amounts of student loan debt will also be placed at a serious disadvantage. These young attorneys will be unable to start their own practices; in many cases they will ultimately be forced to seek employment in other fields.

I handle only a few cases per year now, and most of the cases I do work on involve pro bono matters. Based on the Bar's anticipated passage of mandatory E&O coverage, my husband and I would be required to pay $7,000 per year. In order to purchase mandatory coverage, we would have to earn $14,000 because we would have to pay taxes and related expenses on the income we would earn before purchasing insurance.

If the Bar adopts the requirement for all attorneys to have E&O coverage, we will have no choice except to cease representing any clients, including those who need pro bono assistance. Requiring us to buy E&O insurance would mean that we would have to pay to provide pro bono services. While the Bar states that it is committed to helping low income individuals obtain pro bono assistance, it is clear that the adoption of mandatory E&O coverage will only further reduce pro bono assistance for those in need. Apparently, the decision has been made that it is better for low income persons to go without representation than to have an attorney who does not have E&O insurance.

Obviously, any costs incurred by attorneys must be passed on to their clients. Legal fees are increasing at an alarming rate, as evidenced by many published studies. Requiring attorneys to purchase E&O coverage will only drive hourly rates higher, further limiting access to legal services.

I further believe that no insurance requirements should be placed on attorneys who do not represent clients but spend their time as authors of books and articles and on other educational activities, or for attorneys who arrange for referral linkages and engage in cooperative activities to address legal issues.

Cheryl C. Mitchell
Mitchell Law Office
24 W. Augusta Ave.
Spokane, WA 99205
Phone (509) 327-5181
email: MiLawOff@aol.com

From: Jay Harris
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory Malpractice
Date: Friday, October 12, 2018 8:11:09 AM

Thank you for reaching out to me on this subject. As your report indicates about 14% of attorneys are not insured. It also appears that you intend to emulate Oregon which exempts in house and government attorneys. I would estimate that government and in house attorneys are easily 14% of the profession. In other words, your mandatory insurance including exceptions will accomplish little more than to make the WSBA feel good about one more needless rule.

From: Inez "Ine" Petersen
To: Mandatory Malpractice Insurance Task Force
Cc: Bill Pickett
Subject: ADDENDUM: Inez Petersen"s Response to Interim Report re Mandatory Insurance
Date: Friday, October 12, 2018 8:51:00 AM

Dear Task Force:

Recall that I stated that the 14% statistic representing how many attorneys were uninsured was overstated. It doesn't matter who pays for the professional liability insurance, so excluding all the employer-paid insured attorneys from the equation is incorrect in my view and skews the percentage.

Paramount to making any decision about mandatory insurance, I would like to know the number of all active attorneys who are uninsured.

I would also like to know how many of that number are able to self-insure.

Once the self-insured are excluded from the uninsured, then the Task Force can compute an accurate number of uninsured attorneys and an accurate percentage of active attorneys who are uninsured.

The next statistic would be to know how many uncollected judgments there were from uninsured attorneys in Washington.

If the Task Force doesn't have these few statistics, it has no real statistical basis for recommending mandatory insurance. Surveys and research would have been needed to gather these statistics. That would have taken time and effort. Did surveys and research take place?

Why am I so invested in the Task Force reconsidering its recommendation that insurance be mandatory? Because the anticipated increased cost of insurance will force me to quit being an attorney. I highly doubt that there will be a "free market" for solo attorneys.

I worked at Boeing for 30 years before my health forced me to retire in 1997. I was retired for 10 years; and during that time, I became involved in local city of Renton politics as secretary of the Highlands Community Association.

I filed against the EIS for The Landing, a big shopping center in Renton where the city officials were ignoring their own building code so the shopping center could open in time to influence the election. I led a fight against a planned Declaration of Blight in the Renton Highlands which resulted in the richest developers in town filing a defamation law suit against me (a favored way to silence a grass roots activist). I also filed campaign fraud complaint against the attorney friend of the developers, a candidate for municipal court judge, who lied in his campaign literature. Suffice it to say that I was not the darling of the local Chamber of Commerce crowd: the developers, the realtors, and the mortgage brokers--not to mention the mayor and her department heads.

The developers wanted to shut me up in the worst way but failed. Peter Buck (of Buck and Gordon at the time) and Michele Earle-Hubbard, along with the Institute for Justice, defended me in the defamation lawsuit. The developers appealed right up to the State Supreme Court before losing for the final time.

This introduced me to *pro bono* legal work but did not inspire me to become an attorney at that time. That happened the next year after I had some surgery which greatly improved my health enough so that I could attend law school. I owned my home, but I obtained a home equity loan against it to pay for law school. Mortgaging my home to attend law school was a huge sacrifice and threat to my financial security because of my age.

I was the oldest student in the class. My grades were not great, but I got the highest grade in the class for the last mock trial where I represented "Mrs. Pryde" in an adverse possession case where the young couple next door was trying to take her property.

My practice has evolved into a *pro bono* practice because there are so many elderly and disabled who come to me in need of legal help. I can absorb the cost of CLEs and insurance right now from my Boeing retirement. But I won't be able to do so if my insurance cost doubles.

Please take a fresh look at your statistics to see if the Task Force might arrive at a different answer regarding insurance.

Respectfully,
Inez Petersen, WSBA #46213

On Sun, Oct 7, 2018 at 2:31 PM Inez "Ine" Petersen <inezpetersenjd@gmail.com> wrote:

> **PREFACE**
>
> I believe that there is something seriously "broken" in the WSBA.
>
> In the realm of "brokenness" is the State Supreme Court's letter telling members that WSBA leadership is to be treated with respect, that the WSBA must be a safe and healthy environment in which to work, and that there must be policies developed to deal with "harassment and retaliation to cover all possible interactions by persons involved in Bar activities and Bar governance."
>
> My first thought was that this was prompted by WSBA leadership to silence the attorneys who wanted to present to the BOG initiatives that would limit the term of the executive director and immediately replace the current director who has been in that position for over a decade and earns almost a quarter of a million dollars annually.
>
> It seems incongruous to stop discussion on member-generated initiatives and changes to Bylaws **BUT MOVE AHEAD WITH MANDATORY INSURANCE.**
>
> If there were a need for policies to deal with "harassment and retaliation to cover all possible interactions by persons involved in Bar activities and Bar

governance," that need should have been transmitted by the governors because governors are the ones who are in charge of managing the WSBA--or should be. Governors, in turn, should be marching to the tune of the majority of the members.

Requiring such policies does nothing to protect members from overreaching by its leadership and does everything to protect and perpetuate such overreaching.

And I say that as a member who is still stinging from the 40% increase in dues where WSBA leaders trampled right over the Bylaws. Members were led to believe that this trampling was mandated by the State Supreme Court.

WITH TECHNOLOGY BEING WHAT IT IS TODAY, lawyers should be able to comment and vote on mandatory insurance in a way that least impacts their busy schedules. The BOG should want to know what the general consensus is among members regarding mandatory insurance.

Attorneys ought to have been able to **FREELY COMMUNICATE WITH EACH OTHER** regarding mandatory insurance. If a **GENERAL MEMBERSHIP BLOG** existed, then members could freely share their thoughts with each other without approval of WSBA staff as is the case with *NW Sidebar.*

Such transparency would make is easy for members to communicate with each other and would make it harder for WSBA leadership to independently forge ahead, for example, with dues increases and to stop member-initiated voting and member-initiated changes to Bylaws.

Perhaps there is hope in *Janus* to provide some relief.

IN THE REALM OF "BROKENNESS"

In the realm of "brokenness," I find the idea that it is necessary to make professional liability insurance mandatory.

The Interim Report states that the "Task Force is focusing on the risk of injury to the public that arises from uninsured lawyers." And later in the Interim Report the number of uninsured attorneys is stated as 14%. (And I question that 14% below.)

BUT WHERE ARE THE STATISTICS THAT INDICATE TO WHAT

EXTENT WASHINGTON'S UNINSURED LAWYERS HAVE ACTUALLY INJURED THEIR CLIENTS?

Without this basic statistic, the Task Force cannot be sure that the 14% (see comments below) of attorneys who carry no insurance constitute **A PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY.**

I QUESTION THE USE OF 14% AS REPRESENTING THE NUMBER OF UNINSURED ATTORNEYS. Para 2 on Page 3 indicated that the 14% was computed AFTER 39% of licensed attorneys were **EXCLUDED.** These attorneys were excluded because they work for an employer who provides malpractice insurance. **BUT excluding these attorneys also increases the percentage which misleads the reader as to the true prevalence of uninsured practitioners.**

It is more appropriate to compute a percent based upon the number of uninsured practitioners / total active practitioners. Did readers catch this? Did Task Force members? I believe this is an example of the **DELPHI TECHNIQUE** being used to "herd" Task Force members to consensus.

My 30 years at Boeing exposed me to the **DELPHI TECHNIQUE,** as well as working as a grass roots activist to fight a Declaration of Blight which was part of the city's planned redevelopment of the Renton Highlands.

I would need a complete and accurate accounting of the number of uninsured practitioners compared to the total number of active practitioners; this would be basic in determining whether there really is a **PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY.** "Significant enough" is the operative term.

The Task Force indicated this is "**a small percentage of Washington attorneys**" on one page and on another page indicated that "Malpractice plaintiffs' lawyers report **numerous instances** of worthy claims that they must reject for representation because the defendant lawyer is uninsured . . ."

Complete and accurate facts and data about these claimed "numerous instances" would be basic in determining whether there really is a **PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY.**

I do not see that the Task Force has compiled the basic statistics needed to

judge **THE TRUE SCOPE OF THE PROBLEM.**

Without understanding the true scope of the problem, it is not possible to determine whether there really is a **PROBLEM <u>SIGNIFICANT ENOUGH</u> TO MAKE INSURANCE MANDATORY.**

The Task Force assumes that ALL attorneys who do not carry insurance do not have the financial resources to make their clients whole. **DID THE TASK FORCE GATHER ANY STATISTICS REGARDING WHAT PORTION OF THE ~~14%~~ UNINSURED IS ABLE TO SELF INSURE?** Lack of funds may not be the only reason an attorney carries no malpractice insurance.

The Interim Report states "A license to practice law is a privilege." I do not agree. We earned the right to practice law in the same way doctors earn the right to practice medicine.

I resented and still resent the "boot on my neck" after I had passed the bar exam. My HIPPA rights were even violated by the WSBA during the process to obtain my bar card. There needs to be a total "reset" at the WSBA; possibly a voluntary bar association will help.

The Interim Report states that "The Task Force members expressed that malpractice insurance (or lack thereof) has a <u>significant impact</u> on clients . . ." **DOES THE TASK FORCE HAVE ANY STATISTICS TO QUANTIFY ACTUAL FINANCIAL IMPACTS TO CLIENTS OF THE ~~14%~~ UNINSURED?**

The Interim Report mentioned the "useful technical assistance" received from ALPS which is the WSBA's endorsed professional liability insurance provider. ALPS won't cover solo attorneys. Based on this fact alone, the WSBA should not have made ALPS its preferred carrier. A carrier that also insures solos should have been selected.

WHAT IS THE NUMBER OF THE ~~14%~~ UNINSURED ATTORNEYS WHICH FALL IN THE SOLO CATEGORY?

The Interim Report states that 28% of solo practitioners do not carry insurance. But the Interim Report fails to indicate the total number of solos. **ISN'T THE 28% STATISTIC MISLEADING? JUST LIKE THE 14% is misleading . . .**

This skewed manner of presenting statistics is the way the **DELPHI TECHNIQUE** manipulates consensus. Without the total number of solos, 28% is without context and is, therefore, misleading.

The Interim Report states that "If the Board of Governors desires further information on the specifics of the Task Force's work, the Board is encouraged to review the Task Force's detailed meeting minutes . . . " **ISN'T THE TASK FORCE SUBSERVIENT TO THE BOG?**

The Task Force should be reporting to the BOG routinely--the Task Force works for the BOG, just like the executive director and her staff should be working for the BOG, not the other way around.

From the Interim Report, it appears that the Task Force gave considerable weight to the opinions of a law professor's article--not a local professor, no actual legal experience, and based on claims that have no relationship to claims filed against Washington's uninsured lawyers (half of the claims which ALPS indicates are closed without payment). **HOW RELEVANT IS THE OPINION OF THIS OUT-OF-STATE LAW PROFESSOR?**

In fact, I would briefly consider information from out of state and then dismiss it because it does not directly relate to the percent of uninsured Washington lawyers who had malpractice claims. (I hearken back to my prior comments about the 14% being inaccurate to inform me of the number of uninsured attorneys OR the number of that number who lose a malpractice claim.)

The Interim Report stated that "Solo and small firm practitioners represent a **disproportionate share of the malpractice claims**."

AS IT DID TO COMPUTE THE 14%, DID THE TASK FORCE USE SKEWED NUMBERS TO COMPUTE "A DISPROPORTIONATE SHARE OF MALPRACTICE CLAIMS"?

DID THE TASK FORCE CONSIDER THAT SOLO ATTORNEYS OFTEN TAKE THE HARD CASES WHICH LARGER FIRMS REFUSE TO HANDLE?

I ask this latter question because I am an insured solo attorney; and all my cases are those which other law firms would not "touch with a ten-foot pole." This phenomenon could account for the claimed disproportionate share of malpractice claims among the ~~14%~~ uninsured attorneys.

The Interim Report stated "Most attorney misconduct grievances and disciplinary actions involve solo and small firm practitioners." **DID THE TASK FORCE JUXTAPOSE THIS AGAINST THE FACT THAT A HUGE MAJORITY OF MISCONDUCT GRIEVANCES ARE BASELESS AND RESULT IN NO DISCIPLINARY ACTION?**

Para 7 on Page 4 of the Interim Report stated "Malpractice plaintiffs' lawyers report **numerous instances of worthy claims** that they must reject because the defendant lawyer is uninsured, making a recovery much less likely."

DOESN'T THIS WRONGFULLY ASSUME THAT RECOVERY IS "A GIVEN" IF THE DEFENDANT ATTORNEY HAS MALPRACTICE INSURANCE? (Carriers may chose to pay off a plaintiff even if the defendant attorney is innocent; and this has the potential to skew statistics about the efficacy of mandatory insurance.)

DOESN'T THIS ALSO OVERLOOK THE FACT THAT REJECTED CLAIMS IF CARRIED FORTH WOULD BE SUBJECT TO THE 50% DISMISSAL RATE CLAIMED BY ALPS' STATISTICS?

HOW MANY "WORTHY" VERSES "UNWORTHY" CLAIMS WERE THERE?

COULD THE MANDATORY INSURANCE IDEA HAVE COME FROM MALPRACTICE ATTORNEYS WHO SEEK TO MAKE THEIR PRACTICES MORE LUCRATIVE? Most of our federal laws come from lobbyists in Washington, D. C., why can I not assume the same occurs locally?

The Interim Report stated "Over the last five years, WSBA Client Protection Fund application statistics indicate that 11% of the applications were denied because they described instances of malpractice rather than theft or dishonest conduct." **DID THE TASK FORCE CONSIDER RECOMMENDING THE EXPANSION OF THE WSBA CLIENT PROTECTION FUND TO INCLUDE MALPRACTICE BY NON-INSURED ATTORNEYS?**

If the Task Force had accurate statistics regarding the occurrence of uninsured defendant attorneys losing malpractice cases, then they could judge whether expanding the Client Protection Fund is a reasonable alternative to mandatory malpractice insurance.

Paragraph 9 on Page 4 of the Interim Report is another example of slanting statistics to give readers the impression that the problem is bigger than it really is. If 89.1% of national malpractice claims were resolved for less than $100,000, then 10.9% of national malpractice claims were resolved for $100,000 or more.

But it is this statement in this paragraph that deserves more attention: "**ALPS reports that based on its experience, over the past 10 years in Washington State, about half of all its claims were resolved without payment . . . the average loss payment was $60,000, and average loss expenses were about $20,000**."

If 14% is accurate **(BUT IT ISN'T)** to quantify the number of uninsured attorneys and 32,000 is accurate to quantify the number of total active attorneys, then there are approximately 4,500**(?)** uninsured attorneys in the State of Washington. The 4,500 is overstated.

The 14% is overstated because, as I explained earlier, the Task Force excluded 39% of the active attorneys before computing this percent. If readers and Task Force members want to know an accurate percent of active attorneys who are uninsured, then the 39% the Task Force excluded needs to be put back into the equation. That is the only way to determine whether there really is a **PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY.**

USING AN ACCURATE NUMBER OF UNINSURED ATTORNEYS, HOW MANY ARE SOLO?

HOW MANY OF THE ACCURATE NUMBER OF UNINSURED ATTORNEYS ARE ESTIMATED TO HAVE CLAIMS?

AND WHAT IS THE ESTIMATED NUMBER OF CLAIMS, CONSIDERING THE ALPS's 50% OF NO CLAIM BEING AWARDED?

Regarding Para 15 on Page 5, rather than requiring attorneys to "demonstrate financial responsibility," remove that requirement from LLLT/LPOs. We suffer from the tyranny of too many rules already.

Regarding Para 16 on Page 5, the AMA and the ADA do not require their members to carry malpractice insurance, and neither should the WSBA.

Regarding Para 18 on Page 5, if the premium of forced malpractice insurance is $3,500, **THAT IS TWICE WHAT I PAY NOW AS A SOLO PRACTITIONER.** I handle almost 100% *pro bono* cases. I would have to quit being a lawyer or abandon my *pro bono* clients who desperately need legal help. I'm sure that no public sector agency which provides malpractice insurance would hire a soon-to-be 74 year old women who has only been practicing law since Aug 2013.

HAS THE TASK FORCE GIVEN ADEQUATE CONSIDERATION TO HOW MANY *PRO BONO* ATTORNEYS WILL HAVE TO CUT BACK PRO BONO HOURS IN ORDER TO EARN MONEY TO PAY FOR THEIR MANDATORY MALPRACTICE INSURANCE?

ARE THOSE ATTORNEYS WORTH "THROWING TO THE CURB" CONSIDERING THE TRUE EXTENT OF THE PROBLEM OF UNINSURED DEFENDANT ATTORNEYS WHO LOSE MALPRACTICE CLAIMS?

DOES THE TASK FORCE BELIEVE THAT WE ATTORNEYS WILL NOT BECOME VICTIMS OF "FINANCIAL BLACK MAIL" BY THE EVER INCREASING COST OF INSURANCE WHEN PROVIDERS KNOW INSURANCE IS MANDATORY?

AND ABOUT THAT FREE MARKET MODEL mentioned on the first page of the Interim Report, I doubt there will be one. I searched and searched, and Zurich was the only company that would issue a policy to a new solo attorney. In my personal experience, the Task Force's free market is a myth.

Insurance companies are not known for being benevolent, **SO WHAT FACTS AND DATA LEAD THE TASK FORCE TO BELIEVE THAT MANDATORY INSURANCE WILL PAY IN THE VERY FEW CASES WHERE AN UNINSURED ATTORNEY LOSES A MALPRACTICE CASE?**

Task Force should have an accurate estimate of the number of "the very few cases," because that is the **PRIME STATISTIC** that could justify mandatory insurance. However, I believe such a statistic would prove there is **NOT A PROBLEM SIGNIFICANT ENOUGH TO MAKE INSURANCE MANDATORY.**

WE HAVE THE RULES OF PROFESSIONAL CONDUCT TO GOVERN US. The WSBA can use it *sua sponte* to discipline judgment-proof attorneys who do not prevail in malpractice cases. This will send a message quickly to the uninsured attorneys who engage in "sloppy practice."

The Task Force may be thinking that it is **NO BIG DEAL** to require mandatory insurance because 86% of attorneys already buy insurance. But it is **A BIG DEAL** to me.

I have purchased insurance from Day One. Having the cost go up because of the "social justice" mindset of the Task Force will hurt my *pro bono* practice which is 99% of everything I do. (I don't report my *pro bono* hours because I object to self-serving back slapping.)

CLOSING COMMENTS

Insurance companies fight "tooth and nail" not to pay claims. Why does the Task Force think this will change just because a small undetermined number of attorneys will be forced to buy insurance next year?

I believe that the WSBA is a business entity which owes its first loyalty to its members. Giving first priority to the public subjugates the loyalty which members should receive. Through loyalty to its members, the WSBA serves the public.

The goal of the Task Force from the first page of the Interim Report is **to eliminate** "**the risk of injury to the public that arises from uninsured lawyers.**"

To state it another way, the goal of the Task Force is **to eliminate "the possibility that even one attorney is judgment proof.**"

In my view, neither way of stating the goal of the Task Force is reasonable or practical.

AND ABOUT THAT DUTY TO PROTECT THE PUBLIC . . . Why is a prevailing client in a malpractice lawsuit against a judgment-proof attorney any more important "to protect" than a prevailing plaintiff in a non-malpractice lawsuit who cannot collect his judgment?

I believe that the Task Force will NOT be changing its mind based on my comments or anyone else's; BUT I hope I am wrong.

I believe social justice programs can be carried too far; and mandatory insurance to cover the percent of the uninsured that may lose a malpractice case is just such a social program.

Resources of members are finite, and the WSBA leadership should not call upon all its members everywhere to support every worthy cause. Priorities must be set.

As you can tell, I am vehemently opposed to mandatory insurance.

I also vehemently support a voluntary bar association to stop the mission creep and increasing dues currently plaguing WSBA members AND to stop the use of the State Supreme Court to keep WSBA employees in control of the BOG.

I have always been an independent thinker--I cannot stop now.

Sincerely,

Inez PETERSEN, WSBA #46213

Enumclaw, WA

From:	Walton Dabney
To:	Mandatory Malpractice Insurance Task Force
Subject:	National Guard and Reservist considerations
Date:	Friday, October 12, 2018 11:20:40 AM

All Concerned,

Thank you for reaching out for feedback. Please allow me to provide a perspective for you to consider: Military service can last for a few days, a few months, or years. In between active duty periods it would be overly burdensome to constantly retain and cancel insurance.

There are currently Washington Attorneys who are in the Reserves and the National Guard. These attorneys often are ordered to active duty for certain periods of time. To use myself as an example, I was activated for 60 days in the summer, then went back to civilian practice for 30 days, then went back to active service with a different unit for the next 30 days; after which I'll go back to civilian practice briefly, then be activated once again for 160 days.

For these brief periods where I am a solo attorney - not covered by the government or another firm's insurance - my client work is either low-complexity or pro bono so I can devote myself fully to service when the next inevitable time comes. There is no malpractice insurance on the market that could cater to my off-again-on-again liability at a reasonable price. Because those who serve in the JAG Corps are a very small subset of the general attorney population, I do not expect an ideal insurance model for us any time soon.

Therefore I request you consider a waiver for all attorneys in the Washington National Guard, the Reserves, and any state or federal organization that has the potential to order those attorneys into active uniformed service (the national oceanographic administration, the coast guard, etc). No doubt, many attorneys entitled to this waiver will chose to get insurance voluntarily. But for those who are called away often, it will make a big financial difference to those attorneys and their families.

Thank you for your consideration.

--
Walton L. Dabney

From:	Tonya Gisselberg
To:	Mandatory Malpractice Insurance Task Force
Subject:	Comments on Mandatory Malpractice Insurance
Date:	Sunday, October 14, 2018 2:34:56 PM

Hello:

I am writing to express my opinion about mandatory malpractice insurance. I object to mandatory malpractice insurance, unless it is reasonably priced and does not operate to preclude attorneys from providing services in certain practice areas.

I operate a solo law practice. I currently do not have malpractice insurance. Copyright law is one of my major practice areas. When I opened by own law practice, I immediately got malpractice insurance. After I paid for malpractice insurance coverage for one year, the insurance company refused to renew my policy. The reason given was that my copyright practice created more risk than the insurance company was willing to insure. I discussed the insurance company's decision with the person who sent me the letter refusing to renew my policy. He told me that insurance companies do not understand copyright law, do not know how to evaluate the risks associated with copyright law and therefore the company would not continue to provide me with malpractice insurance. I thought it was disingenuous for the insurance company to collect premiums from me for one year, knowing that I practice copyright law, then to refuse to provide me with malpractice insurance coverage going forward.

I attempted to obtain coverage from a different company. The premium quoted was about the same amount of money I made from my practice in the previous year, so I did not obtain that coverage.

I provide needed legal services to artists, authors and small business owners with limited funds to spend on legal services. If malpractice insurance becomes mandatory, but I cannot get insurance due to my copyright practice, that means I'll have to stop practicing copyright law. The decision of whether I can continue to practice copyright law should not hinge on the unwillingness or inability of insurance companies to evaluate risks in the copyright law practice area.

Aside from depriving me of a practice area, if I am prevented from continuing to practice copyright law, the artists and authors I represent will have fewer, and probably more expensive, options for legal services.

Unless the issues I have identified can be adequately addressed by the proposed mandatory malpractice insurance program, I am not in favor of such a program.

Sincerely,
Tonya Gisselberg

Tonya J. Gisselberg
Gisselberg Law Firm, Inc., PS
8201-164th Ave NE, Suite 200
Redmond, WA 98052
Phone: 888-697-5959

Fax: 877-811-8422
Skype +1 425 296 6645
Email: tonya@gisselberglawfirm.com
Blog: Seattle Copyright Watch
Website: Gisselberg Law Firm
LinkedIn: www.linkedin.com/in/tonyagisselberg

Tonya J. Gisselberg
Gisselberg Law Firm, Inc., PS

(888) 697-5959 Work
tonya@gisselberglawfirm.com

8201-164th Ave. NE, Suite 200
Redmond, WA 98052
www.gisselberglawfirm.com

From: Castagna, Thom
To: Mandatory Malpractice Insurance Task Force
Cc: Castagna, Thom
Subject: Statement in Opposition
Date: Monday, October 15, 2018 9:36:25 AM
Attachments: WSBA Opposition Statement_10-15-2018.pdf

Attached to this email is my statement in opposition to mandatory malpractice insurance.

Thank you.

Thomas M.A. Castagna, WSBA #18231

Statement in Opposition to Mandatory Malpractice Insurance

I am opposed to requiring private insurance as a condition of practicing law in Washington. Stated simply, private insurance companies, who are driven by a profit motive, should have no say in whether an individual is permitted to practice law in Washington. That important decision should remain solely with the Washington State Supreme Court and the Washington State Bar Association.

I believe that there are two ways to do anything: the right way and the easy way. By deferring difficult issues like lawyer malpractice and lack of public notice to insurance companies, we are taking the easy way. This path may have dire consequences by creating another financial barrier to the practice of law and further limiting the access to justice of the underserved. Though more difficult, there are better ways to reach our goals.

If compensating victims of lawyer malpractice is our goal, the Client Protection Fund, which is funded by all licensed attorneys, can be expanded to include some form of compensation for victims of lawyer malpractice. If reducing lawyer malpractice is our goal, additional requirements can be placed on lawyers while in law school (through course requirements), when they take bar exam (through examination questions), and while they are members (through required continuing legal education credits). If public notice is our goal, then attorneys without malpractice insurance should be required to notify potential clients on their websites and in their advertisements, during their initial consultation, and in writing as part of their fee agreement. Similarly, attorneys with malpractice insurance should be allowed and encouraged to advertise that fact. In addition, WSBA can provide better notice through its website and other its communication with the public by highlighting attorneys who do not carry malpractice insurance and acknowledging those that do. Finally, clients play an important role and have their own set of responsibilities during their legal representation. Among others, those include selecting an attorney and understanding their role in the attorney-client relationship. We should avoid doing anything to diminish these roles and responsibilities.

If the decision is made to require some additional form of protection for victims of lawyer malpractice, I would urge WSBA to keep a few things in mind.

First, many new lawyers are graduating from law school deeply in debt and have a much lower earning capacity than more seasoned attorneys. WSBA recognizes this by lowering its licensing and CLE fees for new attorneys. Private insurance companies may not be so generous and will likely view newly licensed attorneys as a greater risk, charging them higher premiums for basic coverage.

Second, access to justice is a serious issue. Before private insurance is required, full consideration must be given to the impact it may have on our attorneys serving the underserved. This should include designated areas of law where the general population is underserved as well as attorneys who practice less than full time, and attorneys who work *pro bono*.

Finally, rather than requiring private insurance obtained through the open market, WSBA should provide basic coverage to all attorneys licensed to practice in Washington. If it does, all licensed attorneys should pay some amount, thereby spreading the cost. Rather than exempt anyone from coverage, reduced rates be provided to certain groups like newly licensed attorneys and part-time attorneys (due to their limited earning potential), government attorneys (due to their limited risk), and attorneys serving or providing *pro bono* legal services to the underserved (to encourage service in these areas). Many attorneys would want additional coverage through the open market and should be encouraged to get it. Those that do should be able to highlight that fact in their advertisements as well as on the WSBA website.

Thank you.

Thomas M.A. Castagna, WSBA #18231

From: Carol Nottenburg <carol.nottenburg@cougarlaw.com>
Sent: Monday, October 15, 2018 2:50 PM
To: Mandatory Malpractice Insurance Task Force
Subject: Mandatory insurance remarks

I am one of the 15% (?) who do not carry malpractice insurance. In the past, I considered obtaining coverage, investigated options, and elected to go without. At that time (about 8 yrs ago), my patent practice was about 50% of total and research the other 50%. Only one insurance company would cover a part-time patent practice, and the cost was prohibitive with low limits (less than $1 million aggregate).

Since the interim report on mandatory insurance has come out, I have once again explored options. My current situation is one of semi-retirement. The best quote for $1 million aggregate is over $3000 / yr. It raises the cost of doing business for me to an unacceptable level. If insurance becomes mandatory, my best option is to fully retire, although it would hurt to give up the income.

Given mandatory insurance, will that mean that I can no longer provide legal advice to anyone? Including friends and family and people in need? There have been times that I've formed such attorney-client relationships to provide advice. I presume that attorneys in firms that have insurance will have the same issue and can't form any attorney-client relationship outside the firm, because the individual attorney doesn't have insurance.

In addition, because the Bar Association isn't offering insurance, we have to turn to the private market. In my case, because my practice is patent law, there is very little choice of providers as well. I find it objectionable that WSBA (or a government) forces individuals to buy from private, for-profit companies. If WSBA wants to force and enforce mandatory insurance, it should be available directly from WSBA.

Sincerely,

Carol Nottenburg

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carol nottenburg phd jd
cougar patent law
renton wa 98057
206-860-2120

From: Michael Cherry, WSBA Governor, District One

To: Mr. Hugh Spitzer, Chair, Mandatory Malpractice Insurance Task Force

Date: October 16, 2018

Re: Questions Regarding the Mandatory Malpractice Insurance Task Force, Interim Report to Board of Governors, July 10, 2018

Having reviewed the interim report, I have a few questions I am sure the task force can answer. Many questions may not be new; however, I am struggling to find the answer in the report or previous materials as there are few citations or hyperlinks in the report to underlying data. Therefore, I apologize in advance if this is information I should have been able to locate.

In addition, I should begin by saying I have malpractice insurance and am uncomfortable that any attorney would not have such insurance. Despite having insurance, I still worry I do not have adequate coverage for the work I do or if I make a claim it might be denied. However, before I am comfortable forcing individuals to have insurance, I need to better understand the problem and the recommended solution.

Also let me apologize in advance for the length of this memo. The subject is complex, I find it hard to communicate my concerns with this matter, and I want to provide enough background with my questions and my attempt to interpret the report so you can understand where my confusion lies. I am a data driven person, and I am not finding sufficient data in the report to support its conclusions.

My questions fall into these areas: Cost of Coverage, Financial Impact, Exemptions, Malpractice Insurance Market in Washington, and Other Means to Accomplish the Goal.

I respectfully submit these questions for your consideration, and I thank you in advance for your attention to my concerns.

COST OF COVERAGE

I cannot find an estimate of what the average attorney might pay, in Washington state, for the mandated coverage, based on the attorney's practice area. The report recommends "Minimum coverage levels should be mandated, e.g. $100K/$300K, $250K/$250K, $250K/$500K, or $500K/$500K."[1] While the report does not define the format of these numbers, my understanding the first number is the coverage per claim, and the second number is the aggregate payable for all claims (maximum coverage). But I am not sure which of the four the task force recommends.

The report indicates in Idaho the average premium "was approximately $1,200."[2] This appears to be for newly issued to solo practitioners, but it is not clear for what level of coverage (per claim and in the aggregate) or for which practice areas.[3]

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[1] Page 10, bullet item 4.

[2] Page 4, Item 11.

[3] Page 5, Item 19 suggests it might be for $100K/$300K.

Finally, the report quotes the ABA and ALPS without citation as suggesting the following practice areas have the highest incidence of claims, and therefore I assume, the highest rates for insurance: personal injury, real estate, family law, estate planning, certain (unnamed) corporate practices (patent?), and collection/bankruptcy.[4] Therefore, the factors that determine the rate appear to be experience (years licensed), practice area, and amount of coverage desired.

Did the task force survey any insured Washington state practitioners to determine what they pay for coverage, by experience, practice area, and coverage amount to determine an average rate for Washington attorneys?

Did the task force survey insurance providers, writing policies in Washington state, for an estimated average cost for coverage, by experience, practice area, and coverage amount to determine an average rate for Washington attorneys?

If the task force assumed Idaho and Oregon provide adequate models for Washington costs, what factors about the legal profession in those states support the assumption?

My assumption from reading the report is that the task force based on data from Idaho and Oregon, feels the costs of mandatory malpractice insurance are insignificant. If the task force is making the recommendation based on that assumption, I am not comfortable with their recommendation.

FINANCIAL IMPACT

I cannot find an estimate of the financial impact on an attorney, of mandated malpractice insurance. I am concerned that the task force, concluding the cost was insignificant, assumed the financial impact was also insignificant.

The financial impact to a large extent will hinge on whether legal fees are elastic in Washington state market for legal services. Elasticity refers how much an individual or a consumer changes their demand for a product or service in response to price changes.

Again, the task force's conclusion appears to be that the cost to an attorney or firm is minimal. However, the committee appears to accept that rates would increase by 15% per year.[5] It is not clear if this increase accounts for these factors: the attorney has a bigger pool of potential claimants, inflation and other general cost increases, offset by the lawyer's potentially improved skill. A 15% increase over six years[6] takes the assumed $1,200 per year to $2,414 (a 50% increase).

Year	Rate	15%
1	$ 1,200.00	$ 180.00
2	$ 1,380.00	$ 207.00
3	$ 1,587.00	$ 238.05
4	$ 1,825.05	$ 273.76
5	$ 2,098.81	$ 314.82
6	$ 2,413.63	50%

[4] Page 4, Item 5.
[5] Page 4, Item 11.
[6] Id. Stating full maturing at six years.

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Does the task force believe an attorney can increase fees over the six years to cover the 50% increase in insurance costs?

Does the task force believe that fees for legal services are going up in today's market, or does the task force believe market forces are pushing such fees down?

By not addressing this issue, is the task force suggesting that legal fees are elastic—an attorney can add the cost of insurance to their fees—and the market will accept the increase?

This assumption would not seem supported by either the survey of unmet legal needs in Washington or the access to justice issues low-income clients are facing. Is there a danger that the law of unintended consequences could come into play where helping the public by providing coverage for attorney mistakes, reduces the affordability of legal services to the public who can least afford hire an attorney? If so, does the task force have any data to determine which over time, is the better outcome?

I have found no data in the report to determine the impact on attorneys, especially solo and small practitioner's ability to spread the costs of malpractice insurance coverage to their clients, on the effect of mandatory malpractice insurance on the profitability of the attorney's practice, or the effect of mandatory malpractice insurance on potential client's ability to access affordable legal services.

EXEMPTIONS

In the recommendations, the task force concludes several categories of attorneys should be exempt but does not provide any rationale for the exemptions.[7] The conclusion states: "Lawyers make mistakes. A license to practice law is a privilege, and no lawyer should be immune from those mistakes."[8]

Again, the task force appears to follow Oregon. It recommends exemptions for government attorneys, in-house private company lawyers, attorneys providing services through non-profit entities, including pro-bono services, retired attorneys, full-time arbitrators, and judges and law clerks.

Does the task force believe attorney's in these categories are somehow better attorney's or any harm they might do does not harm clients?

The report indicates that non-profit organizations providing pro-bono frequently provide malpractice insurance for participating attorneys.[9] Frequently is not defined.

If malpractice claims are rare against these exempt lawyers, then actuarial experts can consider this in setting rates for their coverage. If malpractice insurance is mandatory then it is mandatory. Exceptions, which should be few, should require proof of no risk to clients or proof of insurance (or adequate funds available if self-insuring).

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[7] Page 10, bullet item 5.

[8] Page 8, paragraph 2.

[9] Page 5, item 14.

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MALPRACTICE MARKET IN WASHINGTON

I find little analysis of the insurance market for malpractice insurance in Washington. I have been told by two people that ten companies may be admitted and there may be other non-admitted malpractice insurance providers. My gut feeling is that mandatory malpractice insurance is effectively handing this industry a defacto monopoly.

Admittedly, WSBA cannot force the industry to do anything, it is beyond our role. However, this does not mean the task force should not study the industry and its processes and policies, understand the impact of mandatory malpractice insurance on the market, and if necessary work with the insurance commissioner on any needed reforms or changes.

Did the task force consider the impact of mandatory insurance on the industry?

Does the task force anticipate rates will go down because the pool of insured attorneys will be greater?

Does the task force suggest claims will go up?[10]

Did the task force examine existing policies to ensure such policies are in line with the task force's goals to ensure the public is protected, or do the policies' exclusions and limitations undermine the goal?

Did the task force consider whether the malpractice insurance providers can do a better job in defining the risk categories or practice areas to accommodate changes in the legal services market? For example, should cybersecurity policies be an additional rider to a policy, or with so many attorneys storing documents on hosted servers (the cloud) and using the Internet to communicate, should this risk just be factored into regular coverage of all policies today?

Did the task force consider whether the malpractice insurance providers could do a better job of writing understandable policies, so an attorney need not become an insurance expert to know what coverage they have?

The task force notes that in Idaho, no attorney has yet reported an inability to obtain the required insurance.[11] Theoretically, a policy is always likely available—Lloyd's will insure almost any risk—the real issue is an affordable policy.

Did the task force consider whether an attorney, who is not incompetent, but rather, works in a particularly risky pool, could be constructively disbarred, because no malpractice insurance provider will write an affordable policy?

OTHER MEANS TO ACCOMPLISH THE GOALS

The most concrete data in the report address solos and small firms. The report concludes we are the problem. We are the most likely to be uninsured.[12]

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[10] This is hinted at on page 7, item 8 '…instances of worthy claims that they must reject for representation because the defendant lawyer is uninsured, making a recovery less likely."

[11] Page five, item 19.

[12] Page three, item three.

We create a disproportionate share of malpractice claims.[13] We generate the most misconduct grievances and disciplinary actions.[14]

Malpractice insurance addresses a harm after it has occurred. It attempts to—but cannot make the injured party whole. This is like having a bad feature in software that no one understands how to use and solving the problem by writing a help file or manual. It's better to fix the root cause of the problem rather than address the symptoms after the fact.

Solo's and small firms are not going away. Analysis of the Washington State Bar Association (WSBA) Demographic Reports from 2011 to 2017 shows a 47% increase in the number of attorneys working in solo practices or as solo practitioners in a shared office. [15]

The WSBA demographic statistics also show a slight increase in the number of attorneys working in law firms with two to five lawyers. The number of lawyers working in mid-size (6 – 50 lawyers) and larger firms (51 – 100 lawyers) has remained relatively static. Based on the 2017 WSBA demographic statistics, there are 6,772 attorneys with Washington State Bar licenses working as solo practitioners and 4,443 attorneys working in firms of 2-5 lawyers.[16]

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[13] Page four, item four.

[14] Page four, item six.

[15] WSBA Demographic Report, 1/3/2017, available at http://www.wsba.org/~/media/Files/Licensing_Lawyer%20Conduct/Membership_Info%20Data/CountDemo_20170103.ashx, (last visited Mar. 28, 2017) (Statistics were calculated from previous annual reports collected by author, and are on file with author.)

[16] *Id.*

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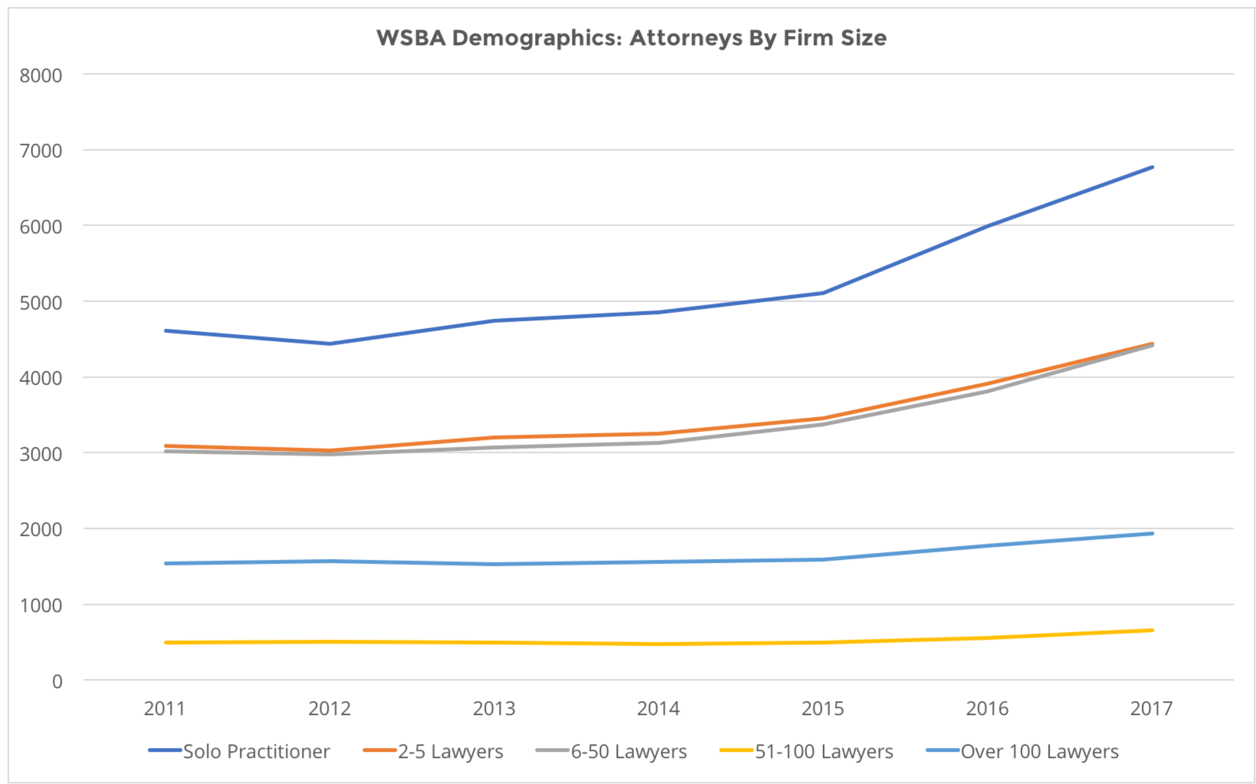

WSBA Demographics: Attorneys by Firm Size
Solo Practitioner (top), 2-5 (second), 6-50 (third), Over 100 (fourth) and 51-100 (bottom)

American Bar Association (ABA) U.S. law graduate employment data for law school graduates for the class of 2015 shows the addition of 688 new solo practitioners as of March 15, 2016. This report also shows 3,871 law school graduates were unemployed or still seeking employment.[17] Some percentage of the unemployed graduates will likely practice as solo practitioners and others will likely seek employment outside the legal services market.

The increasing number of attorneys practicing as solo practitioners in Washington state may be an artifact of the economy in Washington state. The booming tech industry is seeing many technology firms opening engineering centers in Washington, and besides bringing technical employees, there is an influx of attorneys from other jurisdictions.[18]

Experienced attorneys coming into Washington State chasing technical jobs migrating from Silicon Valley and other states are joining larger firms. If this is happening, then it may

[17] 2015 Law Graduate Employment Data, Apr. 26 2016 (from school reports of the class of 2105 as of Mar. 15, 2016), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2015_law_graduate_employment_data.authcheckdam.pdf, (last visited Mar. 28, 2017) (Again, statistics were calculated from previous annual reports collected by author, and are on file with author.)

[18] Josh Lipton, Morgan Brasfield, *Silicon Valley Techies Are Fleeing to Seattle*," CNBC TECH, available at http://www.cnbc.com/2017/03/17/silicon-valley-tech-talent-fleeing-to-seattle.html, (last visited Apr. 19, 2017).

reduce the number of new attorneys these firms will hire, pushing more inexperienced attorneys into solo practice.

Another survey, conducted by Robert Half Legal, a lawyer placement firm, asked attorneys working for medium and large law firms, "If you had the necessary capital, would you start your own law firm?"[19] In 2005, approximately 5% of the attorneys who responded answered 'yes'. In 2016, the affirmative responses hit 23%. The increase in attorneys willing to strike out on their own reflects two trends. More attorneys are dissatisfied with job prospects and working conditions in large law firms, and technology, including hosted services such as Office 365 are reducing the costs of establishing a solo practice or small firm.

Admittedly, as with addressing insurance industry issues, addressing the root causes of solo and small practice problems is outside the scope of the task force.

However, did the task force consider any changes to rules that would allow solo's and small firms to better collaborate and work together, to improve the quality of the legal services they provide, without running afoul of rules of professional conduct, such as Rule 1.5 Fees?

Removing barriers to solo's and small firms collaborating may address the root causes better than mandatory malpractice insurance. Allowing attorneys to work collaboratively in a "virtual firm or relationship" in the same manner software architects, developers and UI designers come together as individuals to develop apps, might go a long way to improve the quality of legal services.[20]

CONCLUSION

The task force outlined several alternatives in the report.[21] It appears to have blended these alternatives for its final recommendation.

Despite my personal inclination to support the recommendation, I cannot support it without answers to some of my questions.

I could at this time, support alternative three: Implement more extensive malpractice insurance disclosure requirements. Educating the public on why they should select an attorney, or at least educating clients on why they should add insurance to their criteria in selecting an attorney, combined with disclosure, might close the gap in uninsured attorney's without having to resort to mandatory insurance.

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[19] Aebra Coe, *More Lawyers Willing to Go Solo in 2016, Survey Finds*, LAW 360, available at https://www.law360.com/articles/798679/more-lawyers-willing-to-go-solo-in-2016-survey-finds (subscription required, last visited Apr. 19, 2017).

[20] I have a paper on this subject written for an ethics class for my LLM if the task force has any interest in exploring this concept.

[21] Page 8 and 9, items 1 through 7.