

MANDATORY MALPRACTICE INSURANCE TASK FORCE

AGENDA

July 18, 2018

1:00 p.m. – 4:00 p.m.

[Conference Call: 1-866-577-9294](tel:1-866-577-9294); Code: 52824#

AGENDA

1. Call to Order and Preliminary Matters
 - a. Approval of June 27, 2018 Minutes
2. Discussion with Oregon PLF Representatives on Oregon’s Mandatory Insurance Exemptions (Emilee Preble, Jeff Crawford, and Carol Bernick from Oregon Professional Liability Fund (PLF))
3. Discussion Regarding Possible Exemptions for the Task Force’s Mandatory Malpractice Insurance Recommendation

MEETING MATERIALS

- A. Draft June 27, 2018 Minutes (pp. 428-431)
- B. Oregon PLF List of Exemptions and Frequently Asked Questions (pp. 432-435)
- C. Oregon PLF Policy 3.150 Governing Exemptions (pp. 436-440)
- D. Oregon PLF Request for Exemption Form (pp. 441-442)
- E. Idaho Bar Commission Rules 302 and 303 (pp. 443-445)
- F. Nevada’s Proposed Administrative Docket Relating to Professional Liability Insurance, dated June 25, 2018 (pp. 446-527)
- G. Final Interim Report to the Board of Governors with Cover Memo (pp. 528-540)



A.
Draft June 27, 2018 Minutes

MANDATORY MALPRACTICE INSURANCE TASK FORCE

MEETING MINUTES

June 27, 2018

Members present were Chair Hugh Spitzer, Dan Bridges, Christy Carpenter, Gretchen Gale, P.J. Grabicki, Rob Karl, Evan McCauley (by phone), Brad Ogura, Suzanne Pierce (by phone), and Brooke Pinkham (by phone). Members John Bachofner, Stan Bastian, Lucy Isaki, Mark Johnson, Kara Masters, Stephanie Wilson, and Annie Yu were absent from the meeting.

Also present were Doug Ende (WSBA Staff Liaison and Chief Disciplinary Counsel), Thea Jennings (Office of Disciplinary Counsel Disciplinary Program Administrator), Rachel Konkler (Office of Disciplinary Counsel Legal Administrative Assistant), Sara Niegowski (WSBA Chief Communications and Outreach Officer), and Chris Newbold (Executive Vice President of ALPS).

The meeting was called to order at 1:01 p.m.

A. MINUTES

With a technical edit requested, the minutes of the May 23, 2018 meeting were otherwise approved as written.

B. DISCUSSION WITH CHRIS NEWBOLD (EXECUTIVE VICE PRESIDENT, ALPS) ON POTENTIAL FREE MARKET MODELING

At its May 23, 2018 meeting, the Task Force determined it would likely recommend an open-market mandatory malpractice insurance model. If an open market model is ultimately recommended by the Task Force, the proposal would require malpractice insurance as a condition of annual licensure for lawyers in Washington. The Chair invited Chris Newbold (Executive Vice President of ALPS) to lead a discussion from the insurer's perspective on potential considerations for developing an open market model.

Mr. Newbold shared his perspective that adopting an open market model would give lawyers the freedom to obtain competitive quotes and select a carrier that best meets their personal and financial needs. As it develops its proposed open market model, the Task Force will also need to consider possible exemptions for lawyers who are not engaged in the private practice of law, as well as others. Mr. Newbold noted that the recently implemented Idaho open market model provides for no exemptions, while the recent proposal that went to the Nevada Supreme Court in June 2018 provides for narrow exemptions.

Next, Mr. Newbold discussed the underwriting process for malpractice insurance carriers. He noted that solo practitioners represent the greatest proportion of uninsured lawyers, so



understanding the underwriting process for individual lawyers is critical to determining the impact of a mandatory malpractice system. Mr. Newbold highlighted three critical factors that affect the underwriting process for solo attorneys: prior acts, area of practice, and limited practice factors. With respect to prior acts, for an attorney purchasing malpractice insurance for the first time, his or her premium will likely increase annually by approximately 15% as the lawyer's length of exposure grows year-over-year and will continue to increase until the lawyer's practice (and his/her risk profile) is fully matured at six years. Mr. Newbold expressed concern that if a proposed regulatory scheme does not require prior acts coverage to cover claims that predate the current coverage period, lawyers might elect to purchase coverage only for the current coverage period—a cheaper option that would lessen the annual premium increase but would not protect clients for acts occurring outside the current coverage year.

Mr. Newbold further noted that the average premium can vary significantly based on a firm's principal area(s) of practice, and whether lawyers are practicing full-time or part-time. Additional factors affecting premiums include size and practice mix of a firm, attorney history with malpractice claims and disciplinary actions, the lawyer-to-nonlawyer staff ratio, law office management systems, and state characteristics.

Additionally, the Task Force discussed its concerns about lawyers who, in good faith, may be unable to obtain coverage from an insurance carrier under a mandatory insurance model. Although insurance industry experts who have met with the Task Force are optimistic that a policy will likely exist for every lawyer, it was noted that some lawyers who have histories of material malpractice claims or discipline may need to evaluate their ability to competently protect the public from errors and harm.

Finally, Mr. Newbold shared ALPS-specific statistics on average premiums and claims payouts. The average premium of Washington lawyers based on current market trends is \$2,500. However, the average premium amount reflects all insured practitioners, some of whom may carry coverage amounts of \$1,000,000. To determine what the range of possible premiums would likely be for new entrants into the market, the Task Force will need to perform some modeling of minimum coverage levels. Minimum levels of coverage under consideration by the Task Force are \$100K/\$300K, \$250K/\$250K, \$250K/\$500K, and \$500K/\$500K.

To provide context for discussions regarding minimum coverage amounts, Mr. Newbold noted that over the last 10 years, 97% of ALPS claims have resolved for less than \$250,000 and 50% resolved without any payment. Although ALPS only recently entered the Washington market, ALPS statistics show that in Washington, for all claims closed for which there was a payment, the average loss payment was \$119,856 and the average loss expense to defend those claims was \$40,454. Given these statistics, it was Mr. Newbold's assessment that a limit of liability coverage requirement of \$250K/\$250K would likely suffice to cover most claims.

There was additional dialogue with the Task Force members about the problem of ensuring continuous coverage to deal with prior acts, the difficulty of mandating tail coverage, deductibles, and claims expense allowances being "inside" or "outside" the coverage limit.

C. REPORT ON RECENT ABA REPORTS REGARDING THE PRO BONO WORK OF LAWYERS IN WASHINGTON AND NATIONWIDE (THEA JENNINGS)

Thea Jennings reported on the American Bar Association's national and Washington-specific reports on the pro bono work of lawyers, published in April 2018 and July 2017, respectively. The surveys assessed how, when, and why lawyers are motivated to undertake pro bono services. According to the surveys, pro bono services are services personally performed, without charge or expectation of fee, to persons of limited means or organizations that serve persons of limited means.

In Washington, approximately 56% of lawyers who provide pro bono services find clients through legal aid providers, non-profits, or bar associations. Lawyers providing malpractice insurance under these circumstances would likely be insured through these organizations. Given this information, the Task Force discussed the potential impacts on those who receive pro bono legal help, if lawyers providing pro bono services through other means stopped providing pro bono services in response to a mandatory malpractice insurance requirement.

D. REPORT TO THE BOARD OF GOVERNORS ON REVISED BACKGROUND INFORMATION AND "DECISION AGENDA"

The Task Force discussed revisions to its draft report to the Board of Governors and will continue to refine the report before it is presented to the Board in July.

In addition, the Task Force emphasized that it is sensitive to the feedback it is currently receiving from members regarding the mandatory malpractice insurance discussion. To ensure clear communication with the membership about this ongoing work, an article is expected to be published in *NWLawyer* in August or September to further inform the membership of the Task Force's recommendations.

In the meantime, WSBA Chief Communications Officer Sara Niegowski and WSBA Communications staff will continue outreach to members about the work of the Task Force through direct outreach at WSBA events and via written communications such as *Take Note*.

E. NEXT STEPS

At its July 2018 meeting, the Task Force will consider possible exemptions. Staff will reach out to representatives from the Oregon Professional Liability Fund to present to the Task Force on Oregon's exemptions.

F. ADJOURNMENT

The meeting adjourned at 2:48 p.m.

B.
Oregon PLF List of Exemptions and
Frequently Asked Questions

Exemptions - Annual & Midyear

Are You Exempt from Coverage?

You are exempt from the PLF coverage if you do not engage in private practice in Oregon, or if your principal office is outside of Oregon.

If you claim exemption from the PLF, you are not permitted to engage in any private practice in Oregon beyond the permitted scope of your exemption, whether or not you are paid for the work. If you claim exemption in error, you will be required to pay all past due assessment amounts with late payment charges, and you may be subject to OSB discipline.

Even if the nature of your exemption status has not changed, you must still request an exemption from PLF coverage each year.

You can request an exemption from PLF coverage by (1) completing the Request for Exemption form emailed with your yearly PLF assessment notice, or (2) submitting your Request for Exemption electronically via the link below. View the full list of PLF exemptions below.

Please note: exemption from PLF coverage does not change your bar status, nor does it satisfy your Pro Bono, MCLE, or IOLTA reporting requirements. To change your official status, you must contact the OSB.

Do You Need to Cease Coverage and Claim a Midyear Exemption?

Claim a midyear exemption **only** if you previously purchased PLF coverage in the current plan year and are now claiming an exemption from coverage and refund of the prorated assessment.

Click on the Midyear Exemption Request box below to submit the online form or download a paper copy [here](#). For more information about claiming a midyear request for exemption, see [Leaving Private Practice](#).

Exemptions from Coverage

Principal Office Outside of Oregon/Reciprocity

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).

However, an attorney admitted to Oregon through reciprocal admission under OSB Rule 15.05 is required to maintain alternative malpractice coverage for any Oregon legal work even if the attorney’s principal office is outside Oregon. By claiming this exemption, you are representing compliance with the alternative coverage requirements of Rule 15.05. If your principal office is in Oregon, you must participate in PLF coverage unless another exemption applies.

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.

Employment as a Government Attorney or Judge



PLF BYLAWS &
POLICIES



CONTACT US

For particular exemption questions, [Contact Us](#) or call:

503.639.6911 or
800.452.1639

(Toll free within Oregon)

 Please ask for:

Jeff Crawford or Emilee Preble

Attorneys should claim this exemption if they are employed by the U.S. government; the State of Oregon; a federally-recognized American Indian Tribal Government; a county, regional, or city government; or any other government body, board, or commission. In addition, judges should claim this exemption.

Attorneys serving as student legal advisors at any college or graduate school, and attorneys who supervise law students serving clients through any law school legal clinic, should claim exemption on account of such activities under this category or the next category (employed by a corporation or business entity) so long as (1) they are employees of the college, graduate or law school, or legal clinic, and (2) the services they provide are within the scope of their employment. *PLF Policy 3.150(B)(1)*

Employment by a Corporation or Business Entity (Including Nonprofits)

In-house counsel employed by a corporation or other business entity should claim this exemption. In addition, attorneys who are employees of nonprofit organizations should claim this exemption. *PLF Policy 3.150(B)(2)*

You should *not* claim exemption from PLF coverage if you provide legal services to a corporation or other business entity (including nonprofit organizations) as *independent contractor*, even if you have no other clients. Providing legal services to a client as an independent contractor constitutes the private practice of law for the purpose of determining PLF coverage. To decide whether you are an employee or an independent contractor, you should follow the same tests applied by the state and federal taxation and labor agencies.

You should *not* claim this exemption if you are an employee of a law firm, even if the law firm operates as a corporation or other business entity.

Employee or Independent Contractor for Legal Aid or Public Defender Office

You should claim this exemption if you are either an employee or an independent contractor for a nonprofit legal aid or public defender office. *PLF Policy 3.150(B)(3)*

In addition, you should claim this exemption if you are either an employee or an independent contractor for a private law firm that *exclusively* provides legal aid or public defender services through contractual arrangements with government agencies or the courts. *PLF Policy 3.150(B)(3)*

If you claim exemption under this category, the legal aid office, public defender office, or law firm must maintain malpractice coverage for you continuously through the year in the amount of at least \$250,000 per claim/\$250,000 aggregate of claims at all times during the year with an acceptable alternative carrier. An acceptable alternative carrier must be one of the following: (1) an admitted insurer in Oregon, (2) a surplus lines insurer that has complied with all applicable Oregon statutes and regulations of the Insurance Division of the State of Oregon, or (3) a risk retention group or purchasing group formed under federal statute and registered with the Insurance Division of the State of Oregon. Please confirm with your office that you have malpractice coverage that meets these requirements before you claim exemption from the PLF.

In addition, an attorney claiming exemption under this category must limit his or her practice *exclusively* to contractual legal aid or public defender work and may not represent private clients or engage in any other activities which constitute the private practice of law. If you wish to engage in these other activities, you must first obtain PLF coverage.

Attorneys who work as employees or independent contractors for a legal aid office may participate in the Oregon State Bar's Modest Means Program without obtaining PLF coverage under certain circumstances. *PLF Policy 3.150(G)(4)*

Retired Attorneys (not engaged in the private practice of law)

If you claim this exemption, you may not engage in any acts of private practice, even on a part-time or uncompensated basis. You may, however, engage in law clerk or paralegal activities relating to private practice under the supervision of a PLF-covered or exempt attorney. See the next category of exemption for details. Part-time or "of counsel" attorneys who do not follow these limitations must obtain current PLF coverage. *PLF Policy 3.150(G)(7)*

Law Clerk/Supervised Attorney (not engaged in the private practice of law)

If you claim this exemption, you may not engage in any acts of private practice, even on a part-time or uncompensated basis. You may, however, engage in law clerk or paralegal activities relating to private practice under the supervision of a PLF-covered or exemption attorney.

Note: You cannot make any strategy or case decisions, hold yourself out as an attorney to any client or represent any party, sign any pleadings or briefs, attend any depositions as the attorney of record, make any court appearances as the attorney of record, use the title "attorney," "attorney at law," or "lawyer" on any correspondence or documents, or be listed in the firm name or firm letterhead as an attorney or firm member (unless specified as retired). If you are retired, your name may be listed on the firm's letterhead as "retired" or "of counsel (retired)," whichever applies. *PLF Policy 3.150(G)(7)*

Mediation/Arbitration

If your practice is exclusively limited to mediation and/or arbitration, you may request an exemption from PLF coverage provided (1) you comply with ORPC 2.4 (Lawyer Serving as Mediator); (2) you do not hold yourself out as an attorney in private practice; and (3) you do not engage in any acts of private practice of law. To claim this exemption, you should check the "Other" box on the exemption form. You may use the title "JD" on your letterhead and professional listings, but should not use the title "attorney at law" or any other title that could imply you are in private practice. *PLF Policy 3.150(G)(8)*

Active Pro Bono and Admitted House Counsel

Attorneys with Active Pro Bono and House Counsel (admitted under Rule 16.05) membership status with the Oregon State Bar who do not engage in private practice are exempt from PLF coverage. Attorneys who qualify for exemption under these categories should check "Other" on the Request for Exemption form and write the applicable OSB membership status in the area provided.

Additional Exemption Categories

If you are exempt as unemployed or employed in a non-law related field, check the appropriate box on the Request for Exemption form. *PLF Policy 3.150(B)(4),(7), & (8)*.

C.
Oregon PLF Policy 3.150 Governing
Exemptions

after July 1, 1978 will have a Retroactive Date which is the date on which the attorney's PLF primary coverage first commenced.

(C) If an attorney terminates his or her PLF primary coverage, the attorney will receive a new Retroactive Date upon returning to PLF primary coverage which is the date on which the attorney's new period of PLF primary coverage commenced.

(BOD 10/9/09; BOG 10/30/09)

(D) Any attorney formerly exempt from PLF participation under Policy 3.150(C) who applies for PLF primary coverage during 2003 or 2004 will receive a Retroactive Date which will be the date on which the attorney's PLF primary coverage first commenced; or, upon provision of satisfactory information to the PLF, the attorney will receive an earlier Retroactive Date which will be the date beginning the continuous period in which the attorney met the primary coverage criteria under PLF Policy 3.100 prior to applying for PLF primary coverage. Any attorney to whom this subsection applies will be assessed under PLF Policies 3.200 and 3.250 as if that attorney had had PLF primary coverage continuously from the date of the attorney's Retroactive Date.

(BOD 8/11/95; BOG 11/12/95; BOD 2/7/03; BOG 2/27/03)

3.130 SPECIAL COVERAGE SITUATIONS

(A) Assistance for Impaired or Disabled Attorneys: An attorney who provides assistance to impaired or disabled attorneys at the request of the PLF or according to procedures recommended by the PLF will not be considered to be functioning as a "BUSINESS TRUSTEE" under Section III.3 of the PLF Claims Made Plan.

(BOD 4/10/98; BOG 5/30/98)

3.150 EXEMPTIONS FROM PLF PARTICIPATION

(A) (1) Active members of the Oregon State Bar whose principal office is not in Oregon are not eligible to obtain primary coverage from the Professional Liability Fund, and are required to

sign a request for exemption from PLF participation at least annually. Attorneys in this category will be required to inform the PLF whether or not they engage in the private practice of law in Oregon, and if so, will be required to provide the following additional information to the PLF at least annually upon request: whether or not they maintain professional liability insurance which covers them for their private practice of law in Oregon, the name and address of the insurance carrier, the name of the insured, the coverage limits and deductible, the retroactive date of the insurance policy, the policy period, a copy of the declarations sheet, and a copy of the policy and any endorsements. Attorneys are required to respond to information requests within 30 days.

(2) As used in subsection (1) of this section, an active member of the Oregon State Bar whose principal office is not in Oregon and is not otherwise exempt from the PLF primary coverage requirement is deemed to be engaging in the private practice of law in Oregon if the attorney meets any of the following criteria:

(a) The attorney appears as an attorney for a party in a proceeding before any court or administrative agency in the state of Oregon, or

(b) The attorney meets with current or prospective clients in Oregon, or

(c) The attorney maintains an office in Oregon. The term "office" is defined at PLF Policy 3.180(B).

(B) Attorneys not in private practice in the state of Oregon, either on a full-time or part-time basis with or without remuneration, are not subject to the annual assessment and may file a request for exemption based upon one of the following categories:

(1) employed exclusively as a government attorney or judge;

(2) employed exclusively by a corporation or business entity (including non-profit organizations but not including law entities);

(3) an employee or independent contractor with a legal aid or public defender office which provides professional liability coverage for the attorney through an Acceptable Alternative Insurer as defined at Subsection (D);

(4) employed in a non-law related field;

(5) retired;

(6) law clerk/supervised attorney not engaged in the private practice of law;

(7) unemployed;

(8) any other category which does not constitute the private practice of law in Oregon, or any activity which would be excluded or otherwise not covered by the PLF Claims Made Plan.

(C) [Reserved for future use]

(BOD 7/31/03; BOG 9/18/03)

(D) (1) An “Acceptable Alternative Insurer” is defined as an insurer which meets both of the following qualifications:

(a) The insurer is (1) an admitted insurer in Oregon, (2) a surplus lines insurer which has complied with all applicable Oregon statutes and regulations of the Insurance Division of the State of Oregon, or (3) a risk retention group or purchasing group formed under federal statute and registered with the Insurance Division of the State of Oregon.

(b) The insurer provides claims made professional malpractice insurance covering the activities of the exempt attorney with coverage limits of at least \$250,000 per

claim/\$250,000 aggregate, regardless of the amount of any applicable deductible.

(2) Attorneys claiming exemption under any exemption category which requires the attorney to maintain professional liability coverage for the attorney through an Acceptable Alternative Insurer must maintain the coverage at all times during the year while the exemption is in effect, and may be required to provide proof of such coverage upon request. Any attorney who fails to maintain such coverage will be referred to the Oregon State Bar for disciplinary action.

(E) Requests for exemption will be handled in accordance with procedures adopted by the Chief Executive Officer. Attorneys requesting exemption will be required to sign the following statement:

I hereby certify that I am exempt from the [year] assessment to the Professional Liability Fund for the following reason:

[List exemption categories]

I agree to notify the Professional Liability Fund immediately if I cease to be exempt at any time during [year].

(F) Exemptions from assessment must be applied for on an annual basis or when the attorney’s status changes from private practice in accordance with the administrative procedures of the PLF. It remains the obligation of an exempt attorney to notify the PLF of any change in status to private practice status and to pay the prorated assessment due at that time.

(G) Special policy consideration has been given by the PLF Board of Directors to exempt attorneys in the following situations:

(1) Non-Active and Out-of-State Attorneys: The Plan covers only those active members of the Oregon State Bar whose principal office is in the state of Oregon. Attorneys who are not active members of the Oregon State Bar or

whose principal office is not in Oregon are not entitled to participate in the PLF even if they serve Oregon clients.

(2) [Reserved.]

(3) Amicus Curiae: An attorney who has claimed exemption from the PLF may appear and file an amicus curiae brief on behalf of another without remuneration.

(4) Pro Bono Service: Attorneys who represent or perform services for clients on a pro bono basis are required to obtain PLF coverage. However, exempt attorneys may provide pro bono services through OSB-certified or other volunteer lawyer programs that provide professional liability coverage for the attorney through an acceptable Alternative Insurer or the PLF's pro bono coverage program as defined at Subsection (D).

(5) Family Practice: An exempt attorney may represent his or her spouse, parent, step-parent, child, step-child, sibling, or any member of the attorney's household. An exempt attorney also may represent a business entity owned or controlled by one or more of these listed family members if the representation is excluded under the terms of the PLF Claims Made Plan.

(6) Student Legal Advisers and Attorneys With Law School Legal Clinics: Attorneys who serve as student legal advisers at any college or graduate school, and attorneys who supervise law students serving clients through any law school legal clinic, are permitted and required to claim exemption from PLF participation under Subsection (B)(1) or (B)(2) on account of such activities so long as (a) they are employees of the college, graduate school, law school, or legal clinic, and (b) the services they provide to students or clients are within the scope of their employment.

(7) Law Clerks/Supervised Attorneys (Including Retired and "Of Counsel" Attorneys): An attorney may perform legal research and writing without obtaining PLF coverage provided:

(a) the attorney's work is reviewed and supervised by an attorney with PLF coverage (or an attorney who is permitted to engage in private practice while claiming exemption from the PLF);

(b) the attorney makes no strategy or case decisions;

(c) the attorney does not hold himself or herself out to any client as an attorney or represent any party;

(d) the attorney signs no pleadings or briefs;

(e) the attorney attends no depositions as the attorney of record;

(f) the attorney makes no court appearances as the attorney of record;

(g) the attorney does not use the title "attorney," "attorney at law," or "lawyer" on any correspondence or documents; and

(h) the attorney is not listed in the firm name or on the firm letterhead as an attorney or firm members (unless specified as retired). If the attorney is retired, the attorney's name may be listed on the firm letterhead as "retired" or "of counsel (retired)," whichever applies.

Attorneys may request exemption from participation in the PLF if they are retired or are "of counsel" to a law firm and will be acting in the same capacity as a law clerk so long as the limitations stated in this subsection are observed. Part-time or "of counsel" attorneys who do not follow these limitations must obtain current PLF coverage.

(8) Arbitration and Mediation: An attorney may serve as an arbitrator without obtaining PLF coverage provided that the

attorney's services are limited to serving as an arbitrator and do not include representing any of the parties in the arbitration. This exemption is available only if the attorney's practice is limited to serving as an arbitrator (or other exempt activity). An attorney claiming exemption under this provision may not use the title "attorney," "attorney at law," "attorney/arbitrator," "lawyer," "legal services," or similar phrase on any stationary, cards, billing forms, or professional listings unless the title is followed by an asterisk or other mark and the phrase "*Not engaged in the private practice of law" appears on the same page. However, attorneys claiming exemption under this category may use the title "J.D." after their name.

An attorney may perform mediation services without obtaining PLF coverage providing that the attorney's practice is exclusively limited to mediation (or other exempt activity) and the attorney complies with Rule 2.4 relating to mediation. An attorney claiming exemption under this provision may not use the title "attorney," "attorney at law," "attorney/mediator," "lawyer," "legal services," or similar phrase on any stationary, cards, billing forms, or professional listings unless the title is followed by an asterisk or other mark and the phrase "*Not engaged in the private practice of law" appears on the same page. However, attorneys claiming exemption under this category may use the title "J.D." after their name.

(9) Non-Covered Activities: An attorney who is otherwise exempt from participation in the PLF may engage in law-related activities and represent a client without obtaining PLF coverage if all of the attorney's activities would be excluded or otherwise not covered by the PLF Claims Made Plan.

(10) Government Activity Exemption: An attorney who is otherwise exempt from participation in the PLF may act on behalf of a government entity as a public official, employee or in any other capacity that comes within the defense and indemnity requirements of ORS

30.285 and 30.287, or similar state or federal statute rules or case law.

(BOD 08/10/12; BOG 11/10/12)

(11) Active Emeritus and Active Retired Membership Status: Attorneys who maintain Active Emeritus or Active Retired membership status with the Oregon State Bar are limited by the OSB as to their permitted activities. Attorneys in these membership statuses are exempt from PLF participation by definition and will not receive an annual billing statement and request for exemption form.

(12) Employed Attorneys: Employed attorneys claiming exemption under subsections (B)(1) through (3) above may represent a third party in an attorney-client relationship so long as such representation is within the attorney's scope of employment. Examples include employment by an insurance company, labor organization, member association, or governmental entity which involves representation of the rights of insureds, union or association members, clients of the employer, or the employer itself.

(H) It is the policy of the PLF Board of Directors and the OSB Board of Governors that "private practice of law" be construed strictly and include any part-time work, whether for remuneration or on a pro bono basis, except as specified above.

(I) All requests for exemption or failures to request an exemption are subject to verification by the attorney upon request by the Professional Liability Fund. Any misstatement may constitute a violation of Rule 8.4(a)(3) and may be the basis for disciplinary proceedings.

(BOD 8/14/92; BOG 9/22/92; BOD 7/16/93; BOG 8/13/93; BOD 5/6/94; BOG 8/12/94; BOD 8/11/95; BOG 11/12/95; BOD 12/1/95; BOG 1/20/96; BOD 8/9/96; BOG 9/25/96; BOD 2/28/97; BOG 4/5/97; BOD 4/25/97; BOG 7/26/97; BOD 10/3/97; BOG 11/16/97; BOD 4/10/98; BOG 5/30/98)

3.180 OUT-OF-STATE ATTORNEYS; PRINCIPAL OFFICE

(A) The provisions of ORS 9.080 (2) (a) and (c) concerning the location of the principal office of an

D.
Oregon PLF Request for Exemption
Form



Professional Liability Fund

mailing address:
PO Box 231600 | Tigard, OR 97281-1600
street address:
16037 SW Upper Boones Ferry Road
Suite 300 | Tigard, OR 97224

accounting: 503.924.1771
toll free: 800.452.1639
fax: 503.684.7250
www.osbplf.org

Plan Year 2018 Request for Exemption

COVERAGE PERIOD 1/1/2018 THROUGH 12/31/2018

Please Respond by:

1/10/2018

SIGN AND RETURN THIS FORM ONLY IF YOU ARE SEEKING AN EXEMPTION FROM COVERAGE FOR PLAN YEAR 2018.

You can request an Exemption online at www.osbplf.org. You must seek an exemption annually even if you are out of state.

If you had coverage during 2017 and are filing for an exemption for 2018, you will automatically receive Extended Reporting Coverage based on the remaining limits of your 2017 PLF Coverage Plan. For further information, please visit www.osbplf.org.

IF YOU COMMENCE THE PRIVATE PRACTICE OF LAW DURING 2018 WITH YOUR PRINCIPAL OFFICE IN OREGON, OR IF YOU RELOCATE YOUR PRINCIPAL OFFICE TO OREGON DURING 2018, YOU MUST NOTIFY THE PLF AND OBTAIN COVERAGE IMMEDIATELY.

Detailed information regarding PLF exemptions can be found on the PLF website at www.osbplf.org.

This Request for Exemption from the Professional Liability Fund assessment does not change your Oregon State Bar membership status. If you wish to change your status, please contact the regulatory services division of the Oregon State Bar. You do not have to be an inactive member to be exempt from the PLF assessment.

REQUEST FOR EXEMPTION

I hereby certify that I am exempt from the 2018 assessment to the Professional Liability Fund for the following reason:

I. My principal office is outside of Oregon.

II. I do not engage in private practice in Oregon, either full-time or part-time, with or without remuneration, and I am exempt for the following reason:

11 I am employed exclusively as a government attorney or judge.

12 I am employed exclusively by a corporation or business entity (including non-profit organizations).

17 I work exclusively as an employee or independent contractor for a legal aid or public defender office which provides me with professional liability coverage as required by the PLF.

14 I am presently employed in a non-law related field.

15 I am retired (not engaged in the private practice of law).

21 I work as a law clerk/supervised attorney (not engaged in the private practice of law).

13 I am presently unemployed.

16 Other (Specify): _____

I agree to notify the Professional Liability Fund immediately if I cease to be exempt at any time during 2018.

Dated: _____

(Signature required only if requesting exemption)

Please DO NOT return this form if you submit your exemption electronically.

2018

E.
Idaho Bar Commission Rules
302 and 303

Idaho Bar Commission Rules

Governing Admission to Practice and Membership in the Idaho State Bar

*As promulgated by the Board of Commissioners of the Idaho State Bar
and adopted by Order of the Supreme Court of the State of Idaho.*

***SECTION III Licensing**

*(*Section III rescinded and replaced 3-5-12 – effective 7-1-12)*

RULE 302. Licensing Requirements. Following admission as a member of the Bar, an attorney may maintain membership as follows:

***(a) Active or House Counsel Member.** An Active or House Counsel Member shall:

- (1) Pay the annual license fee required by Rule 304;
- (2) Comply with trust account requirements;
- (3) Comply with all applicable MCLE requirements under I.B.C.R. 402;
- (4) Verify the attorney's membership information under Rule 303, including an email address for electronic service from the courts; and
- (5) Certify to the Bar (A) whether the attorney represents private clients; and (B) if the attorney represents private clients, submit proof of current professional liability insurance coverage at the minimum limit of \$100,000 per occurrence/\$300,000 annual aggregate. Each attorney admitted to the active practice of law in this jurisdiction who is required to have professional liability insurance shall identify the primary carrier and shall notify the Bar in writing within thirty (30) days if the professional liability insurance policy providing coverage lapses, is no longer in effect, or terminates for any reason, unless the policy is renewed or replaced without substantial interruption.

*(*Section (a) amended 3-30-17 – effective 1-1-18 and amended 12-21-16 – effective 3-1-17)*

(b) Inactive or Emeritus Member.

- (1) An Inactive or Emeritus Member of the Bar may maintain membership by payment of the annual license fee required by Rule 304 and verification of the attorney's membership information under Rule 303.

(c) Judicial Member.

- (1) Except as provided in subsection (2) below, a Judicial Member is not required to meet licensing requirements.
- (2) Judicial Members who provide arbitration or mediation services for a fee must Transfer to Active status.

***(d) Senior Member.**

- (1) Any Active, Inactive or Judicial Member aged sixty-five (65) years or older who is not engaged in the practice of law may request Transfer to Senior status by submitting a written request to the Bar.
- (2) A Senior Member must meet the licensing requirements of an Inactive Member under subsection (b) above.

(*Section (d) amended 2-25-16 – effective 7-1-16)

***RULE 303. Membership Information.**

- (a) **Required Information.** All members of the Bar must provide the following membership information, which shall be considered public information:

- (1) Full name;
- (2) Name of employer or firm, if applicable;
- (3) Mailing address;
- (4) Phone number;
- (5) Email address for use by the Bar; and
- (6) In addition to the above information, an Active or House Counsel Member shall also provide:

- (A) An email address for electronic service of notices and orders from the courts in those counties and district courts where electronic filing has been approved by the Supreme Court. This email address may be the same as the email address identified in subsection (a)(5) above. If no separate email address for electronic service from the courts has been designated, the email address identified in subsection (a)(5) will be used for such service; and
- (B) Whether the attorney has professional liability insurance, if such disclosure is required under Rule 302(a).

- (b) **Changes to Membership Information.** Attorneys shall provide written notification to the Bar of any change in their name, mailing address, telephone number or business email address within thirty (30) days of such change, provided that written notification of a change in the attorney's email address for purposes of electronic service from the courts shall be provided to the Bar within seven (7) days.

- (c) **Failure to Notify the Bar of Changes.** The license of any attorney who fails to comply with subsection (a) and (b) above may be canceled by the Supreme Court for failure to meet licensing requirements.

- (d) **Notice.** All notices sent pursuant to these Rules shall be mailed to the mailing address of the attorney as filed with the Bar under subsection (a)(3) and shall be deemed notice upon the attorney.

(*Rule 303 amended 12-21-16 – effective 3-1-17)

F.

Nevada's Proposed Administrative
Docket Relating to Professional Liability
Insurance, dated June 25, 2018

STATE BAR OF NEVADA



June 25, 2018

Chief Justice Michael Douglas
Nevada Supreme Court
201 South Carson Street
Carson City, NV 89701-4702

3100 W. Charleston Blvd.
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Las Vegas, NV 89102
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RE: Proposed ADKT Amending SCR 79

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Dear Chief Justice Douglas:

www.nvbar.org

The State Bar of Nevada's Board of Governors submits to the Court a proposed Administrative Docket (ADKT) amending SCR 79 to require professional liability insurance as a condition of licensure.

If approved by the Court, the amendment would require minimum professional liability insurance in the amount of \$250,000 per claim and \$250,000 in the aggregate.

On behalf of the Board of Governors, I thank the Court for the opportunity to bring this petition forward for your consideration. I am available to provide further information as requested.

Respectfully,

A handwritten signature in blue ink that reads "Kimberly K. Farmer".

Kimberly K. Farmer
Executive Director

cc: Elizabeth Brown

1 Worker's Compensation. However, that requirement does not extend to all
2 attorneys in private practice.

3 Robert Fellmeth, Price Professor of Public Interest Law at the University of
4 San Diego School of Law argues that it is the responsibility of bar associations to
5 ensure public protection through mandated malpractice insurance¹. Fellmuth noted
6 that beyond the administration of a bar examination and minimal continuing legal
7 education requirements, there is no assurance of competence for the entirety of
8 attorney's career. By requiring professional liability insurance, bar associations
9 fulfill their mandates to protect the public.

10 The concept of mandating liability insurance is not new. According to
11 James Towery, past chair of the ABA Standing Committee on Client Protection,
12 "The reason for these requirements is simple and common sense: To obtain a state
13 license, you must demonstrate that you have the ability to protect the public if
14 anyone is injured by your negligence in your use of that license."²

15 State bar associations in the United States have examined mandatory
16 professional liability models since the 1970s when there was a need for affordable
17 insurance policies and malpractice claims were on the rise. It was at that time that
18 the Oregon State Bar enacted the Professional Liability Fund which mandates
19 coverage through its own captive insurance company and assesses premiums on
20 the annual license renewal form. Since then, other states have taken various
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22
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24 ¹ Testimony of Robert C. Fellmeth, Price Professor of Public Interest Law, University of San Diego
School of Law before the Little Hoover Commission, February 4, 2016.

25 ² GPSolo Magazine, Vol. 20, No. 3, April/May 2003.

1 approaches to the issue, typically through disclosure requirements to the state bar
2 or directly to clients³.

3 Nationally, the tide has slowly begun to turn toward mandating professional
4 liability insurance for all attorneys engaged in private practice. Beginning in 2018,
5 attorneys who opt to practice in Illinois without insurance will be required to
6 complete an annual four-hour interactive online self-assessment regarding the
7 operation of their law firms. The State Bar of Idaho recently mandated its
8 attorneys to carry professional liability insurance obtained on the open market. As
9 of their first compliance period, Idaho reported that all attorneys were able to
10 obtain coverage. The concept is also actively being explored by the State Bar of
11 Washington and the State Bar of California.

12 Mandatory professional liability insurance has been adopted by lawyer
13 regulatory associations on a global scale as well. As a condition of licensure,
14 malpractice insurance is required by solicitors and attorneys practicing in the
15 United Kingdom, Hong Kong, Malaysia, Singapore and some Canadian
16 provinces. As described by the Law Society for England and Wales, professional
17 liability insurance not only increases a solicitor’s financial security, it “serves an
18 important public interest function...[and] ensures that the public does not suffer
19 loss as a result of your civil liability, which might otherwise be uncompensated.”⁴

24 ³ Disclosure to the state bar association: AZ, CO, DE, HI, ID, IL, KS, MA, MI, NE, NV, NC, ND, RI,
VA, WA and WV. Direct disclosure to clients: AK, CA, NH, NM, OH, PA and SD.

25 ⁴ *Professional liability insurance*, L. SOC’Y §3.2 (July 4, 2012).

1 *Professional Liability Insurance Models Considered*

2 State bar associations that have mandated professional liability insurance
3 have done so using one of three models:

4 (1) Captive Carrier (“Oregon Model”) which creates a legislatively enacted
5 fund operated by a component unit of the state bar that is exempt from insurance
6 regulations. This model creates a shared risk pool regardless of the attorney’s
7 practice area or geographic location. Annual premiums are assessed on the
8 attorney’s license renewal application. The State Bar also considered a version of
9 this model in which a third-party carrier would provide minimum liability
10 insurance to all Nevada attorneys.

11 (2) Management Based Regulation (“Illinois Model”) which requires those
12 attorneys who do not carry professional liability insurance to complete a four-hour
13 interactive online self-assessment annually. The assessment poses questions about
14 the operations of the law firm and educates attorneys about deficiencies identified
15 during the self-assessment process.

16 (3) Open Market (“Idaho Model”) which, as a condition of licensure,
17 requires every attorney engaged in private practice to obtain a minimum level of
18 insurance obtained on the open market.

19 Ultimately, the State Bar concluded that establishing a professional liability
20 fund similar to the Oregon model would require a significant ramp up of a new
21 organizational and financial structure. For example, the Oregon Professional
22 Liability Fund employs nearly 50 staff and obtained specific legislative authority
23 to operate outside the state’s requirements for insurance providers. Nevada
24 Insurance Commissioner Barbara Richardson expressed concern over premium
25

1 rates, should the State Bar establish a captive carrier, especially for those attorneys
2 without a claims history, and noted that insurance market providers offer
3 affordable policies, unlike in the 1970s when the Oregon model was enacted.
4 Today's insurance climate is much different; those Nevada attorneys self-
5 reporting as being insured stated they use one of more than ten available insurance
6 providers. Furthermore, the State Bar elected to not pursue an educational model,
7 similar to the Illinois model, as is not sufficient for public protection; and
8 disclosure requirements may not go far enough to protect the public.

9 An open market model provides the most flexibility for attorneys to obtain
10 competitive quotes and select a carrier with services and pricing that best meet
11 their needs.

12 The State Bar also considered mandating disclosures to clients prior to
13 representation regarding (a) whether the attorney carries professional liability
14 insurance and (b) the amount of coverage the attorney has. Questions regarding
15 both these proposals were included in the State Bar's December 2017 survey of all
16 actively licensed attorneys. (The survey received an 11 percent response rate, or
17 1,001 of 8,908 active and active exempt attorneys.) Both proposals were strongly
18 opposed, receiving 56 percent and 57 percent negative feedback respectively.
19 Furthermore, when the data was broken down by practice size and public
20 attorneys were removed from the survey results, the rate of opposition was higher.
21 For example, more than 64 percent of all solo practice attorneys were not in favor
22 mandatory disclosures to clients and 61 percent of all those in full-time private
23 practice (69 percent of those in part-time private practice) were opposed to
24 disclosing the amount of coverage.

1 In the December 2017 issue of *Nevada Lawyer*, the State Bar explained the
2 various approaches to requiring professional liability insurance. (Article attached
3 as **Exhibit B.**) The article drew additional comments, both in favor and opposed
4 to the concept. One concern that came through was the potential boon to insurance
5 companies if insurance was required on the open market. While the State Bar
6 cannot predict the market reaction with certainty, given the relatively low number
7 of attorneys without insurance who would seek insurance among various carriers,
8 there would be an unlikely negative impact on overall rates.

9 Another concern that was raised in response to the *Nevada Lawyer* article
10 was the ability to continue to provide affordable rates to clients if professional
11 liability insurance was mandated. The State Bar understands the economic
12 pressures faced by attorneys in private practice and the impact of this requirement
13 on the cost of doing business. However, as the regulatory authority, the State Bar
14 has a responsibility for public protection and this Rule amendment puts in place
15 safeguards for both the attorney and client if a negligent act occurs.

16 Securing insurance as a matter of doing business is commonplace for
17 professionals, including doctors, accountants and engineers. Oftentimes, insurance
18 is required by third parties, like hospitals in the case of doctors. For lawyers, that
19 responsibility, as a self-regulating profession, is the responsibility of the State Bar.
20 Furthermore, prudent businesses of all types, even entrepreneurial ventures, secure
21 insurance as a means of personal and public protection in the event of an error or
22 omission.

1 *Rates of Uninsured Lawyer Practice and the Effect on Clients*

2 No lawyer is immune from a malpractice claim, regardless of the size of his
3 or her practice. “In fact, even good lawyers who do great work can still get sued.⁵”
4 ALPS, the State Bar’s endorsed professional liability insurance carrier, reported
5 more than \$6.6 million in claims paid over the last five years; \$12.8 million over
6 the last 10 years and almost \$50 million in claims paid since 1998. This data is
7 representative of ALPS, which covers 58 percent of those insured Nevada
8 attorneys, and does not include claims paid by all competitors in the market.
9 However, it demonstrates the need for insurance to protect client interests.

10 More than 60 percent of surveyed attorneys either agreed or strongly agreed
11 that attorneys without insurance are no more likely to commit malpractice than
12 those with insurance. Yet, 1,067 of the 6,713 active attorneys in private practice
13 elect to not carry professional liability insurance⁶ and according to responses
14 received from a 2017 survey of all attorneys who do not carry professional
15 liability insurance, 73 percent of those uninsured practitioners are in solo practice.
16 Another 15 percent work in a small practice setting. (The April 2017 survey is
17 attached as **Exhibit C.**)

18 Based on information provided by ALPS, three to four malpractice claims
19 per 100 Nevada attorneys are filed each year, equaling a claims frequency of 3.5
20 percent. Considering the roughly 1,000 uninsured attorneys in this state without
21 insurance, and without knowing whether that community is more susceptible to
22 claims or not, we would estimate these uninsured attorneys being prone to 30 to
23 40 claims per year.

1 Opponents of mandated professional liability insurance consider programs
2 like the State Bar’s Clients’ Security Fund to be available to cover the losses
3 clients may suffer due to attorney negligence. However, the Clients’ Security
4 Fund’s jurisdiction does not extend to those who have been the victim of negligent
5 representation. In fact, of the 33 claims denied by the Clients’ Security Fund in the
6 past five years, 22 (66 percent) were denied because the claim resulted from
7 attorney negligence or malpractice, rather than theft.

8 *Professional Liability Insurance and the Cost of Doing Business*

9 Given the rates of uninsured practice, the State Bar questioned why
10 attorneys would elect to engage in the practice of law without the safety net that
11 professional liability insurance affords both them and their clients. When asked
12 their reasons for electing to not carry insurance, Nevada attorneys cited several
13 reasons, with cost being the primary explanation⁷ (51 percent of survey
14 respondents). The State Bar considered this issue further in its survey of all
15 licensed attorneys in the state⁸. When asked to rate their level of concern about
16 several statements regarding professional liability insurance, three areas were
17 identified as having a high level of concern (or were given a “very concerned”
18 rating). They were:

- 19 - Impact on solo/small practices and the cost of doing business;

21 ⁵ *Saying ‘No’ to Malpractice Insurance – The True Cost of “Going Bare,”*
22 <http://solopracticeuniversity.com/2014/08/21/saying-no-to-malpractice-insurance-the-true-cost-of-going-bare/>

23 ⁶ Based on 2017 mandatory license disclosures, which are not verified, 84% of all private practice attorneys in Nevada carry professional liability insurance.

24 ⁷ April 2017 State Bar of Nevada survey of all attorneys who do not carry professional liability insurance.

25 ⁸ December 2017 State Bar of Nevada survey of all attorneys with an active and active exempt license status.

- 1 - Premiums for high-risk practices; and
- 2 - Ability to provide low cost or free legal services if not employed or actively
- 3 practicing.

4 The December 2017 survey of all actively licensed attorneys in the State is
5 attached as **Exhibit D**.

6 Recognizing the impact of mandating a minimum professional liability
7 insurance policy on private practice attorneys, especially those in a solo or small
8 firm practice, does not negate the State Bar's responsibility to ensure that all
9 clients are adequately protected, regardless of the size of the law firm providing
10 representation or the type of work performed. However, to assist with its
11 consideration of mandatory malpractice, the State Bar asked ALPS to project
12 pricing expectations for those without coverage.

13 The State Bar asked for rates for those seeking a \$250,000 per
14 claim/\$250,000 aggregate policy. This policy coverage was selected because 97
15 percent of all ALPS claims in Nevada resolve for less than \$250,000. Rates vary
16 depending on a multitude of factors including the area of practice, prior claims or
17 disciplinary action, desired limit of liability, years in business, etc. On a
18 generalized basis (without the benefit specific firm risk factors) for firms coming
19 into the market without prior acts exposure and seeking a \$250,000 per
20 claim/\$250,000 aggregate policy, estimated premiums would be approximately
21 \$1,350; for Clark County, given higher overall claims experience in that area,
22 annual premiums would be closer to \$1,500. These rates are the equivalent of one
23 hour of billable time per month.

1 The State Bar also asked ALPS to provide estimated premiums based on the
2 top five practice areas identified in the April 2017 survey of those attorneys who
3 do not carry professional liability insurance. These practice areas include:

- 4 (1) General civil litigation (plaintiff);
- 5 (2) Criminal defense;
- 6 (3) Corporate/business law;
- 7 (4) Personal injury (plaintiff); and
- 8 (5) Family law.

9 The average malpractice premiums for each of these areas of practice, and
10 with a policy amount of \$250,000 per claim/\$250,000 annual aggregate, are
11 demonstrated in the following chart.⁹ Rates are presented as a statewide average,
12 excluding Clark County, and by Clark County. The annual rates reflect new
13 entrants into the market (those with no prior acts coverage).

14 Area of Practice	15 Average Statewide Premium (Excluding Clark County)	16 Average Premium (Clark County)
17 General Civil (Plaintiff)	\$813	\$867
18 Criminal Defense	\$655	\$698
19 Corporate/Business Law	\$1,216	\$1,298
Personal Injury (Plaintiff)	\$1,560	\$1,665
Family Law	\$982	\$1,047

20 As a lawyer's risk exposure grows year-over-year, premiums will generally
21 increase over a six-year time horizon. Risk pricing is a multi-variate exercise and
22 how the factors interplay with one another will determine ultimate pricing.
23 Generally, one should expect to see increases of about 15 percent annually. Thus,

24 ⁹ These rates may be attributed to ALPS only and may not be representative of the broader
25 lawyers' profession liability (LPL) industry.

1 at the end of a six-year period, new uninsured attorneys to the market (with the
2 potential of wide discrepancies depending on other risk factors) could expect
3 averages around:

- 4 a. Clark County: \$3,489
- 5 b. Rest of Nevada: \$3,140.

6 There are certain risks that would fall out of the standard market appetite,
7 which could result in higher rates based on the need to go to surplus lines markets
8 (i.e. distressed firms or high-risk practice areas). However, insurance for all risks,
9 including distressed firms, should be available on the open market. As the State
10 Bar's endorsed carrier, ALPS has committed to work with current uninsureds to
11 aid them in finding an appropriate market, even if that falls outside their risk
12 appetite and will require more specialized markets depending on the risk.

13 To address affordability concerns for new entrants in the Nevada lawyer's
14 professional liability market, ALPS also offers a "Basic" policy option. This
15 policy was designed to offer solid firm protection, albeit with fewer coverage
16 enhancements, in exchange for a 20 percent reduction in price from their middle-
17 tiered Preferred policy. For those entering the market with no prior acts coverage
18 and electing "Basic" coverage, the premium charged should be significantly less
19 than most LPL policies in the market. Additionally, ALPS offers special tiered
20 rates to new lawyers going into solo practice, which starts at \$500 in their first
21 year of practice and increases on a fixed basis by \$500 a year with year three set at
22 \$1,500 as the liability exposure grows year over year. After year three, the
23 attorney enters the standard Nevada market, whereby rates will vary depending on
24 underlying risk factors.

1 To address attorneys who are semi-retired and may only represent a few
2 selected clients, most admitted professional liability carriers offer plans filed with
3 the Department of Insurance which allow a significant premium credit for limited
4 practice exposure. For instance, at ALPS, for firms averaging 25 hours or less in
5 monthly billings, Underwriting can apply a 50 percent premium credit, in effect
6 reducing premium by half. Berkley Insurance also offers coverage for part-time
7 practice based on the type of work performed. For example, the average premium
8 for a part-time attorney practicing criminal law would be around \$550 annually.
9 This is based on an average of 11-25 billable hours per week.

10 CONCLUSION

11 Requiring a minimum level of professional liability insurance for all
12 attorneys directly responds to the State Bar's mission to protect the public. If
13 adopted by the Court, this Rule amendment would impact all attorneys engaged in
14 private practice, regardless of the number of matters or clients or the amount
15 charged for those services. It is the position of the State Bar that regardless of the
16 attorney's practice size, the number of clients served, or fees charged, clients are
17 entitled to the same level of protection afforded to them by professional liability
18 insurance. Those attorneys who desire to provide pro bono legal services may do
19 so under the insurance policy offered by one of several pro bono legal service
20 organizations.

1 Additionally, because the proposed amendment only applies to those
2 attorneys who are engaged in private practice, there are attorneys for whom the
3 Rule would not apply, including, but not limited to those attorneys who:

4 - Maintain an active license, but have retired from the practice of law and
5 have attested that they do not represent clients;

6 - Are employed by an organizational client and do not represent clients
7 outside that capacity;

8 - Are unemployed or are not working in the legal field and attest to not
9 representing clients; and

10 - Are employed in the public sector, either as an attorney or member of the
11 judiciary.

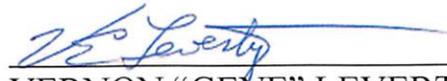
12 To facilitate compliance with the proposed Rule, the State Bar will provide
13 a list of insurance providers authorized to transact legal professional liability
14 insurance in Nevada on its website and in communications to our members. The
15 State Bar would also engage with professional liability insurers doing business in
16 Nevada to promote affordable coverage and ensure compliance with the Rule
17 changes. The State Bar will require reporting of professional liability insurance
18 carrier information and may verify compliance through random annual audits of
19 attorneys subject to this Rule and request proof of insurance, such as the
20 declaration page.

21 If adopted, the State Bar would anticipate implementation of the
22 professional liability insurance requirement six months after receipt of a Court
23 Order. This would allow time for notification to the attorneys affected by the
24 amendment and time for attorneys to quote and obtain insurance.

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RESPECTFULLY SUBMITTED this 25th day of June 2018.

STATE BAR OF NEVADA
BOARD OF GOVERNORS



VERNON "GENE" LEVERTY, President
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State Bar of Nevada
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EXHIBIT A

Rule 79. Disclosures by members of the bar.

1. Every member of the state bar, including active, nonresident active and inactive members, shall provide to the state bar, for the purposes of state bar communications, the following:

- (a) A permanent mailing address;
- (b) A permanent telephone number; and
- (c) A current e-mail address.

2. Every member of the state bar shall disclose to the state bar the following information:

- (a) Whether the lawyer is engaged in the private practice of law; and
- (b) Whether the lawyer is engaged as a full-time government lawyer or judge, or is employed by an organizational client and does not represent clients outside that capacity, or is not currently representing clients. ~~[- and]~~

3. ~~[(e) If]~~ Every lawyer engaged in the private practice of law and representing clients ~~[- whether the lawyer maintains professional liability insurance, and if the lawyer maintains a policy, the name and address of the carrier.]~~ shall attest to having current professional liability insurance coverage at the minimum limit of \$250,000 per occurrence/\$250,000 annual aggregate; subject to proof of compliance upon random audit.

4. ~~[3-]~~ Every member of the state bar shall inform the state bar of any change in any of the information disclosed under this rule within 30 days after any such change. The member shall report a change of address, telephone number or e-mail address online.

5. ~~[4-]~~ Every member of the state bar shall certify annually on a form provided by the state bar the information required under this rule.

6. ~~[5-]~~ The information submitted under this rule shall be nonconfidential, but upon request of a member, the state bar will not publicly disclose a member's e-mail address.

7. ~~[6-]~~ The State Bar shall notify in writing [A]any member who fails to provide the state bar with the information required by this rule [shall be]. Upon expiration of 30 days from the date the State Bar sends the member notice of non-compliance, said non-compliant member shall be: [subject to a fine of \$150 and/or suspension upon order of the board of governors and/or the supreme court from membership in the state bar until compliance with the requirements of this rule and/or until reinstatement is ordered by the supreme court.]

- (a) Assessed \$200, payable within 30 days to the State Bar; and

1 (b) Suspended from membership in the State Bar, but may be reinstated upon
2 filing verification of compliance on a form to be provided by the State Bar.

3 A member may apply for a one-year hardship exemption from the e-mail
4 provision on a form provided by the state bar. Supplying false information in
5 response to the requirements of this rule shall subject the lawyer to appropriate
6 disciplinary action.

7 8. [7.] The state bar shall provide the board of continuing legal education
8 with an annual membership roster within 60 days of the due date for annual
9 membership fees and registration forms.
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EXHIBIT B

JOIN THE DISCUSSION: WHETHER MALPRACTICE INSURANCE SHOULD BE MANDATORY FOR NEVADA ATTORNEYS

Weigh in with your input to help shape these potential programs!

BY ROBERT HORNE, PROGRAMS AND SERVICES MANAGER, AND
JENNIFER SMITH, PUBLICATIONS MANAGER, STATE BAR OF NEVADA

On November 8, 2017, the State Bar of Nevada's Board of Governors approved moving forward with the next steps to require Nevada attorneys to maintain professional malpractice insurance as a condition of being licensed in the state of Nevada. The board invites responses from *Nevada Lawyer* readers on this topic; bar members can join the discussion by sending feedback to publications@nvbar.org.

Proposal

The initial concept of the proposal regards bar members in private practice, requiring them to maintain minimum coverage limits of \$250,000 per claim with a \$250,000 aggregate for all claims. Nevada attorneys will be permitted to purchase malpractice insurance from any provider they wish: a system known as the "open-market model."

Taskforce Evaluation

Part of the State Bar of Nevada's mission is to protect the public. In order to study issues regarding mandatory malpractice insurance, the Board of Governors established a Professional Liability Insurance Taskforce, which has been meeting regularly throughout 2017.

"The taskforce has learned that the public believes all lawyers have malpractice insurance," said State Bar of Nevada President Gene Leverty. "Our lawyers are not required to have malpractice insurance." The taskforce made its recommendation to the Board of Governors after exploring various concepts it has evaluated.

Some options they explored included:

- Requiring attorneys to disclose to clients whether or not they carry insurance;
- Requiring all Nevada attorneys to carry malpractice insurance, leaving the responsibility of retaining the insurance to each attorney or firm; or
- Adopting a single insurer through the state bar that would provide minimum limits to all Nevada lawyers, while still allowing lawyers to retain excess limits on the open market.

Approaches in Other States

Alaska, California, New Hampshire, New Mexico, Ohio, Pennsylvania and South Dakota currently require attorneys to disclose whether or not they have malpractice insurance to their clients.

Three states require malpractice insurance.

Idaho

Idaho operates on the open-market model, and that state will also soon require all its attorneys to purchase minimum coverage through a professional liability insurance carrier. Idaho's rules become effective in January 2018, and they require attorneys to maintain insurance coverage at a minimum limit of \$100,000 per occurrence, with a \$300,000 annual aggregate.

Oregon

Since the 1970s, Oregon has required the maintenance of a mandatory professional liability fund, operated by Oregon's state bar. All attorneys licensed in Oregon receive minimum coverage through the fund; premiums attach to their annual license fees. Oregon's Professional Liability Fund serves as the insurance provider for Oregon lawyers in private practice.

In 2016, the Oregon assessment was \$3,500, with a reduced rate for lawyers in their initial years of practice. The fund provides coverage of up to \$300,000 per claim with a \$300,000 aggregate, including defense costs, and a \$50,000 claims expense allowance.

Illinois

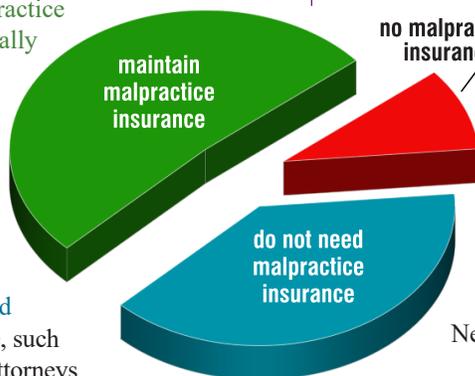
Illinois has adopted a practice-management approach to liability insurance, requiring attorneys who choose not to carry insurance to undergo an online practice assessment that also provides four hours of CLE credit.

Most Bar Members Already Covered

Nevada's Current Coverage Statistics:

- Attorneys engaged in the private practice of law who **maintain malpractice insurance**, either personally or through their firms: **5,301**
- Attorneys engaged in the private practice of law who **do not maintain malpractice insurance**: **988**
- Bar members **not in need of malpractice insurance**, such as judges, government attorneys and attorneys not representing clients: **4,012**

Already, most state bar members practicing private law in Nevada report that they either maintain malpractice insurance themselves or receive coverage through their firms. A strong majority – 5,301 bar members – reported this information on their mandatory disclosures. (The state bar does not verify information reported by attorneys.) There are 988



members engaged in the private practice of law who report they do not maintain insurance.

Five Possibilities Considered

During its evaluation period, the taskforce considered five models of malpractice insurance, including:

- **Open Market:** Recently adopted in Idaho, this model requires all attorneys to purchase minimum coverage through a professional liability insurance carrier. This is the model the Board of Governors selected for Nevada.
- **Mandatory Professional Liability Fund:** Oregon is the only state with such a fund. Operated by the Oregon bar, this model provides all Oregon attorneys with minimum coverage; premiums are attached to annual license fees.
- **Captive Insurance Carrier:** This model also provides minimum coverage to all the state's attorneys; however, in this model, a specific carrier is selected to provide policies to all bar members.

Participate in the discussion! Share your thoughts on the topic of mandatory malpractice insurance by emailing the state bar at publications@nvbar.org.

- **Risk Management Model:** This model was recently adopted in Illinois. It requires all Illinois attorneys to carry minimum liability insurance; however, if they elect not to do so, they must take a four-hour online course in risk management annually.

- **Association Group Captive Insurer Model:** In this model, an insurance company is owned by an association, its members or both. Nevada law allows captive insurers for associations, according to Nevada Revised Statute Chapter 694C.

Expert Opinions Gathered

On October 23, 2017, the taskforce held a round table discussion with some insurers currently providing malpractice insurance in Nevada and with Nevada Insurance Commissioner Barbara Richardson concerning various options under consideration by the taskforce. The insurers presented arguments to support certain options and recommended against others. For example, the commissioner expressed concern over premium rates, should the bar lock into one insurance carrier for minimum limits coverage.

continued on page 31

WHETHER MALPRACTICE INSURANCE SHOULD BE MANDATORY FOR NEVADA ATTORNEYS

Minimum limits of coverage were also discussed. Attendees recommended considering minimum limits of \$250,000/\$250,000 rather than \$100,000/\$300,000. The price differential between the coverage should be minimal, but the effective coverage is much better with \$250,000/\$250,000 limits. The taskforce thanked the insurers and commissioner for participating in the round table discussion.

Next Steps

The Board of Governors is looking at all avenues with respect to the open market model as they work out details and specifics prior to considering submitting this matter to the Nevada Supreme Court for a rule change. “The consideration process will ... allow everyone to vent their full pros and cons of the concept [through the process],” Leverty said.

Weigh In

The Board of Governors invites members to participate in the discussion. Share your thoughts on the topic of mandatory malpractice insurance by emailing the state bar at publications@nvbar.org.

The price differential between the coverage should be minimal, but the effective coverage is much better with \$250,000/\$250,000 limits.

RANDOM TRUST ACCOUNT AUDIT PROGRAM

The State Bar of Nevada’s Board of Governors is studying the creation of a mandatory trust account audit program.

Program Overview

Under the initial concept for this program, each year, a set percentage of active attorneys would be selected at random to have their trust accounts audited by a professional auditor with experience specific to lawyer trust accounts. The audits would incur no fees or charges, involve minimal, if any disruption, and be conducted as desk audits at the state bar offices. In addition, bar dues would not increase as a result of this program; it is expected the audits will reduce costs for the Office of Bar Counsel.

At the onset, approximately 60 attorneys would be selected each year for random audits. Attorneys who do not handle client money are exempt from random audits. If a lawyer is randomly selected, the trust account records from that attorney’s entire firm will be audited. At the conclusion of the audit, the attorney and/or firm will be provided with a written report of the auditor’s findings.

Purpose and Benefits

This program, designed to improve the state bar’s mission to protect the public, will provide three important benefits to both attorneys and their clients, including:

- **Education:** Attorneys subject to the random audit will receive a hands-on critique and evaluation of their trust account management. In addition, a similar program in North Carolina has been successful at encouraging members to engage in self-study and monitor their voluntary compliance.
- **Deterrence:** The use of external audits is a common practice in other fields, such as banking, security and taxation. This compliance protocol provides a deterrent aspect, leading to the prevention of possible violations.
- **Detection:** Many of the issues reported to the Office of Bar Counsel involve trust account violations. The ability to proactively detect deficiencies will help the state bar protect the public through self-regulation.

It is believed that the presence of a random trust account audit program will not only reduce the number of safekeeping complaints made to the state bar, but it will also encourage attorneys to be more proactive when managing their trust accounts, helping them self-detect minor infractions before they become substantial deficiencies that negatively impact clients and the public at large.

Your Feedback Matters

A survey was distributed via email to nearly 9,000 active and active exempt bar members to gather input related to the implementation of a random trust account audit program. Members’ feedback is already helping shape the program, and survey responses have also identified the need to avoid misconceptions by more fully informing bar members about the program’s concepts.

More input is invited! The Board of Governors is interested in members’ feedback on the envisioned random trust account audit program. Email your thoughts to publications@nvbar.org. **NL**

EXHIBIT C

OVERVIEW

In preparation for the Professional Liability Insurance Taskforce meeting, we attempted to gather information from attorneys who do not carry professional liability insurance about their reasons for electing against it. This survey also captures information including geographical demographics, years in practice, areas of practice, etc.

An electronic survey was sent to 976 attorneys in Nevada with active and active exempt status licenses. These attorneys indicated that that did not carry professional liability insurance on their 2016 mandatory license disclosures. Of those surveyed, responses were received from 232 individuals (24% of those surveyed).

Those surveyed were provided an “opt out” if they believed the information reported was incorrect and were provided an opportunity to make corrections to their disclosure statements. Fewer than a dozen attorneys indicated the information on their disclosure statements was incorrect.

SURVEY RESULTS SYNOPSIS

DEMOGRAPHICS

- The areas in the state where survey participants practice is statistically consistent with those surveyed.
- More than 55% of those surveyed have been in practice 20 years or longer, with the next largest segment being in practice for 10-19 years (26%).
- 96% maintain an active license.
- Nearly 80% survey participants indicated that they are employed in a private practice/law firm setting.
- More than 73% of survey participants are in private practice, with the next largest segment (15%) in small practices of 2-4 attorneys.
- The highest concentrations of practice areas are in: personal injury (plaintiff), family law, general civil (plaintiff), criminal defense, and corporate/business organization & transaction.

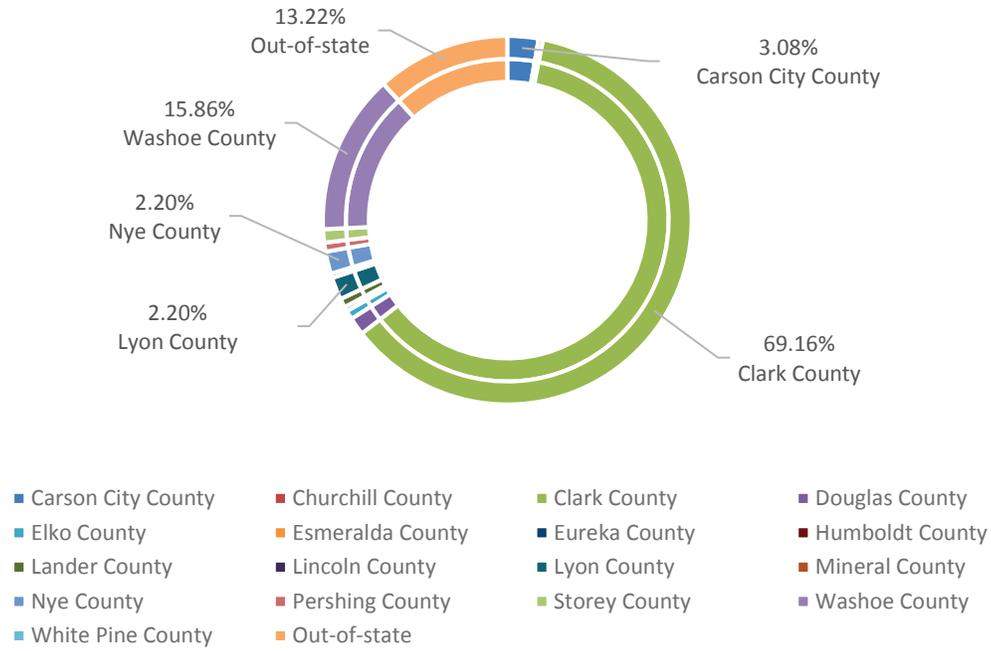
INSURANCE OPINIONS

- When asked why they elect to not carry professional liability insurance, the top reason was “cost prohibitive.”
- More than a third of the attorneys who responded stated they would elect to carry liability insurance if it was affordable.
- 72% of the survey participants stated that attorneys should not inform their clients that they do not carry insurance. (Of the 28% who responded affirmatively, disclosure by fee agreement was ranked as the best mechanism to inform clients.)
- More than half (56%) of survey participants stated that there is no reasonable expectation from the public that a lawyer maintains some amount of professional liability insurance.

DEMOGRAPHICS/AREA OF PRACTICE

- (1) **Practice Location:** Survey participants were asked to indicate which areas of the state they primarily practice. Participants were given the option of selecting more than one practice location. **The majority of those responding reside in either Clark (69%) or Washoe (16%) County or practice out of state (13%).**

Those counties not called out on the chart below made up fewer than 2% of the respondents.



- (2) Of those who responded that their practice was out-of-state, 93% do not carry professional liability insurance in that state.
- (3) **Years in Practice:** Survey participants were asked to indicate how many years they have been licensed to practice law. **More than 55% of those surveyed have been in practice 20 years or longer**, with the next largest segment being in practice for 10-19 years (26%).

Years in Practice	%	Total
Less than 4 years	5.83%	13
4-9 years	13.45%	30
10-19 years	25.56%	57
20-29 years	22.87%	51
30 years or longer	32.29%	72
Total	100%	223

- (4) **License Status:** Of those who responded, the majority (96%), maintain an active license to practice law.

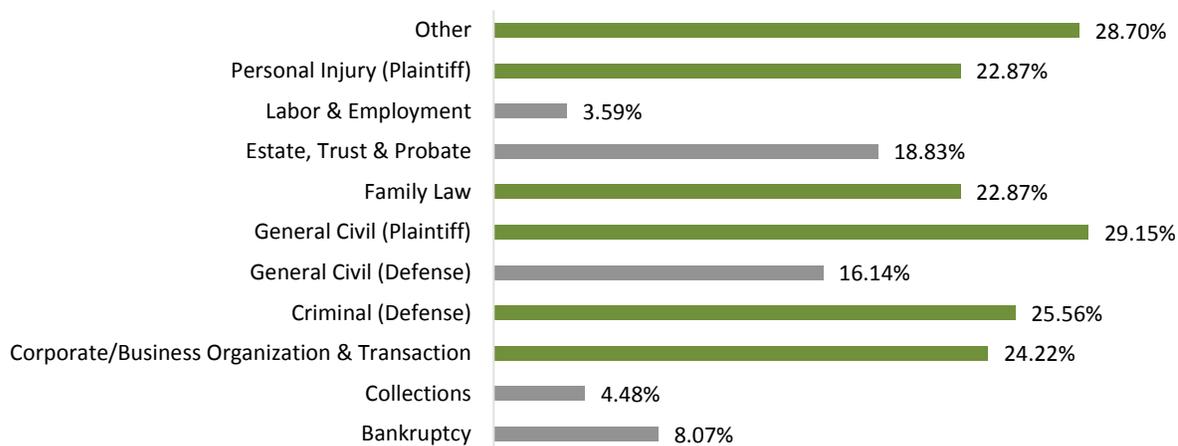
(5) **Practice Setting:** The majority of survey participants indicated that they are employed in a private practice/law firm setting.

Practice Setting	%	Total
Private Practice (Law Firm)	79.82%	178
Corporate/In House	4.48%	10
Government/Government Agency	1.79%	4
Legal Services/Non-Profit	0.90%	2
Private Trials/Arbitration/Mediation	2.24%	5
Retired	5.38%	12
Not Employed as a Lawyer	3.59%	8
Unemployed	1.79%	4
Total	100%	223

(6) Most survey participants (73%) indicated that they are in solo practice.

Firm Size	%	Total
Solo (1)	73.54%	164
2-4 attorneys	15.25%	34
5-14 attorneys	1.35%	3
15 attorneys or more	0.90%	2
N/A	8.97%	20
Total	100%	223

(7) Areas of Law. Survey participants were asked to indicate the area(s) of law that best describe their practice¹. **The highest concentrations of practice areas are in: personal injury (plaintiff), family law, general civil (plaintiff), criminal defense, and corporate/business organization & transaction.**



Those who indicated “other” were provided an opportunity to list their area of practice. A summary of the responses is below:

- Administrative (x 3)
- ADR (2)
- Appellate
- Automotive BI Defense
- Business litigation
- HOA Law
- Intellectual Property (x 4)
- Entertainment
- Freelance/Contract/Research and Writing (x3)
- Real Property/Real Estate (x 3)
- Insurance Coverage
- Immigration (x 8)
- Tax law (2)
- Not employed (x2)
- Labor Primarily
- State Bar Discipline and Admissions cases.
- No cases, but keep license (x2)
- Represent family members
- Pro Bono legal work (x2)
- Simple matters: sending out demand letters, pre-litigation, etc.
- Constitutional Law Impact Litigation
- Professional liability; professional privileges

¹ Suggested areas of practice were drawn from a 2013 study conducted by the Lawyers Mutual Insurance of Kentucky, which analyses the percentage of claims by areas of law.

LIABILITY INSURANCE OPINIONS

(8) **Reasons for Not Carrying:** Participants were asked to rank their top three reasons for not electing to carry professional liability insurance. Participants were provided the option of selecting one of the reasons below or adding a different/other reason.

The primary reason cited by 166 survey participants was “cost prohibitive.” Other top reasons include:

- Confidence in practice/not needed;
- Practice doesn’t require it; and
- Other

	Primary Reason	Second Reason	Third Reason	Not a Reason	Total
Cost prohibitive	51% (85)	25% (41)	19% (31)	5% (9)	166
Other	47% (22)	17% (8)	26% (12)	11% (5)	47
Confidence in practice/Not needed	40% (55)	28% (38)	15% (21)	16% (22)	136
Practice doesn't require it	27% (30)	24% (27)	16% (18)	34% (38)	113
Prefer to defend myself against charges/pay claims directly	11% (11)	19% (19)	29% (29)	42% (42)	101
Confusion about what type of insurance to purchase	7% (5)	12% (9)	13% (10)	68% (52)	76
Other	6% (1)	25% (4)	38% (6)	31% (5)	16
Represent clients pro bono	3% (2)	12% (9)	14% (10)	71% (52)	73
Unable to obtain coverage	3% (2)	11% (8)	5% (4)	81% (60)	74

Reasons marked as “Other” are categorized and listed as follows:

Type of Practice

- Low-risk area and type of practice
- Private practice is limited in scope and type of work.
- Primarily engage in business not law practice
- Entertainment Law denied coverage
- Almost all clients are firms in which I own an interest, am an officer or a director. Typical policies exclude coverage under these circumstances.
- Type of practice
- Practice mostly in tribal courts
- Unable to obtain coverage due to representation of medical marijuana clients
- Employed in real estate where my law background is an asset but I do not practice per se - I do exercise risk management skills
- Stay within my knowledge of specific fields

Maintenance Not Justified

- Don't have enough clients for it to make sense
- Very small case load does not justify cost, risk is low
- I have limited clients and limited activities
- Judgment proof/No assets
- My one claim in my entire career, my malpractice insure. co. refused to accept, so I handled it myself successfully.
- Only do a small amount of law work over the course of the year, probably more expensive to buy insurance than the amount of money that work would even generate.
- I'm not representing anyone
- I work part time for only one client, which is my husband's company.
- Rarely practice as lawyer
- Confidence in clients
- Business' total worth is under \$2000.00
- Only active case is an appeal
- Insurance companies will not adjust rates for low volume practice.
- In the past when I inquired about malpractice insurance, they said I needed to be working mostly full-time.

Affordability:

- Don't make enough \$ to make it worth it.
- Can't afford it!
- Law school debt and housing crash renders me judgment proof
- Meager assets are judgment proof
- Can't afford!

History/Perception:

- 41 years without claim
- No client complaint about service given
- If you have a claim the insurance companies in my experience do[n't] want to provide coverage
- Will make me a target
- Insurance makes me a target.
- Insurance is an invitation to be sued
- Encourages claims
- Insurance Companies interests are not the same as the attorney's best interests

Employer:

- I'm just an associate/no authority
- Boss doesn't want it
- Boss prefers to pay claims himself

Obtained Elsewhere

- I have it through my employer
- Provided by other(s)
- Only do appearance work for attorneys who are insured
- Work for insurer, self-insured
- In House
- I have usually work for another law firm or lawyer which carry liability insurance.

Semi-Retired/Limited Practice:

- Semi-retired and limit what I will do to existing clients or referrals from one source where all parties have agreed in writing.
- Semi-retired/very few cases/clients
- Almost completely retired
- I don't practice very much and it would be cost prohibitive for me
- Too few clients
- Not in Active Practice
- Retired
- Part-time practice; semi-retired
- Practice limited to friends as clients
- I am 76; practice narrowly limited, mostly for friends without charge
- I have not been active recently however wish to keep my options open.
- Basically retired. No court work.
- Not full-time attorney (not even really a part-time attorney)
- Minimal practice
- Unemployed

Work Outside Nevada

- Not in NV
- Do not engage in substantial work in the State of Nevada

(9) **Affordability.** Survey participants were asked if they would elect to carry professional liability insurance if affordable insurance was made available to them. **More than a third of the attorneys who responded stated they would elect to carry liability insurance if it was affordable.**

	%	Total
Yes	38%	81
Maybe	40%	86
No	22%	47

Total | 100% | 214

(10) **Client Notification.** Survey participants were asked to state whether attorneys should inform their clients if they carry professional liability insurance. **The majority, 72%, stated that attorneys should not inform their clients.**

	%	Total
Yes	28.5%	59
No	71.5%	148
Total	100%	207

(10)(A) **How to best inform.** Those attorneys who responded “yes” to question 10 were asked to rank the top three best mechanisms for informing their clients. Survey participants were given the option of selecting from the list provided below or giving another response. **Disclosure by fee agreement was ranked as the best mechanism to inform clients.**

	Best Mechanism	Second Best Mechanism	Third Best Mechanism	Total
Disclosure in Fee Agreement	71% (40)	20% (9)	8% (3)	52
Verbal Disclosure Prior to Retention	12% (7)	32% (14)	23% (8)	29
Posted on SBN Website/Attorney Profile	11% (6)	21% (17)	17% (6)	21
Posted Notice on Website	4% (2)	9% (4)	26% (9)	15
Posted Notice in Office	2% (1)	11% (5)	26% (9)	15
Other	0% (0)	7% (3)	0% (0)	3
Other	0% (0)	0% (0)	0% (0)	0

“Other” responses include:

- RE California Disclosure
- Written disclosure to client
- Tattoo on secretary's forehead

(11) **Public Expectations.** Finally, survey participants were asked if, generally speaking, the general public seeking legal aid from an attorney have a reasonable expectation the lawyer maintains some amount of professional liability insurance. **More than half the respondents indicated that there was no reasonable expectation.**

	%	Total
Yes	8.02%	17
Maybe	35.85%	76
No	56.13%	119
Total	100%	212

EXHIBIT D

PROFESSIONAL LIABILITY INSURANCE

Survey Report

December 22, 2017

The State Bar of Nevada sent a survey to 8,908 active and active exempt attorneys regarding their perceptions about mandatory professional liability insurance. The survey was open for a two-week period; 1,001 responses were received (11% response rate).

DEMOGRAPHICS

1. **Practice Setting:** The majority of survey takers are in private practice either full time (52%) or on a part-time/semi-retired basis (18%).

	%
Private practice (full time)	51.74%
Private practice (part-time or semi-retired)	18.34%
Public lawyer	11.37%
In House Counsel	6.05%
Judiciary	2.56%
Not currently working/Retired	3.79%
Not currently working in the legal field	2.46%
Other	3.69%

Other:

- I have a very limited practice due to limited internet and other resources where I live. I also am contracted as a municipal court judge and juvenile court master;
- Mix of private practice and public sector practice
- Inactive, but practicing in another state.
- I currently have a half-time contract as an independent contractor with a public agency to provide, primarily labor relations and lobbying services. I also have independent contractor agreements to hear administrative cases involving the discipline of licensees of the State Board of Medical Examiners and to hear appeals by pupils, coaches, officials and school found to have violated the regulations governing those individuals participation in interscholastic activities. I have a very limited private practice that does not accept new clients.
- Arbitration/mediation (x4)
- Professor (x2)
- Volunteer pro bono work on an occasional basis
- Semi-retired (Part time limited practice)
- I am a new attorney with intent to enter in private practice.
- occasional, contract for other attorneys only
- Judicial Law Clerk/Law School Fellow (x2)
- Work for federal government agency

2. **Size of Office** (NV Office only if multi-jurisdictional firm): **More than 70% of all survey takers practice in a solo or small practice setting.**

	%
Solo Practice	51.03%
2-4 attorneys	20.27%
5-14 attorneys	14.60%
15+ attorneys	14.11%

3. **Office Location** (or residence if not practicing)

- 58 % are in Clark County
- 19 % are in Washoe County
- 5% are in Carson City County
- 4% are in Rural Nevada counties; and
- 14% practice or reside out of state

Of those who practice out of state:

- 51% carry malpractice insurance in that state;
- 39% have clients in Nevada;
- 44% handle clients’ legal cases in Nevada

4. **Rate of PLI Coverage. Just over 50% of those attorneys who responded, carry professional liability insurance that affords coverage for their practice in Nevada (49.8% do not).**

Breakdown of PLI Coverage: Of those who carry professional liability insurance, the following represents a breakdown by practice size:

- 48% are solo practice attorneys;
- 72% are in 2-4-person practices;
- 70% are in 5-14-person firms; and
- 53% are in 15+ member firms.

Of those who carry PLI, the most common policy limit is \$1M per claim/\$1M aggregate

	%
Less than \$100,000 per claim/\$300,000 aggregate	0.82%
\$100,000 per claim/\$300,000 aggregate	3.47%
\$250,000 per claim/\$250,000 aggregate	7.96%
\$500,000 per claim/\$500,000 aggregate	8.98%
\$750,000 per claim/\$750,000 aggregate	0.61%
\$1M per claim/\$1M aggregate	40.61%
\$3M per claim/\$3M aggregate	5.92%
\$5M per claim/\$5M aggregate	3.67%
More than \$5M per claim/\$5M aggregate	5.51%
Unsure	22.45%

This policy limit is consistent among all practice sizes.

Most of those who are unsure practice in 5-14-person or 15+ member firms.

PERCEPTIONS

As attorney practices can migrate between private and public-sector settings, we asked that survey participants complete this section of the survey regardless of whether they are in private practice or not.

5. **Duty to Protect.** 66% of the survey takers stated they believed an attorney has a responsibility to protect his or her client from financial loss that may be caused by his or her negligence.

	%
Yes	65.90%
Maybe	18.92%
No	9.88%
Unsure	5.30%

6. **Method of Financial Recovery.** Nearly 64% stated that professional liability insurance provides a method of financial recovery for clients injured by attorney negligence.

	%
Yes	63.76%
Maybe	22.95%
No	9.76%
Unsure	3.53%

7. **Public Protection.** Just over 35% of the survey respondents stated that mandating minimum malpractice insurance was a way to protect the public. 39% disagreed.

	%
Yes	35.31%
Maybe	25.44%
No	39.25%

8. **Public Assumption.** When asked if they agreed that most (non-corporate) clients assume lawyers carry professional liability insurance, the results were nearly equal.

	%
Yes	33.50%
Maybe	12.32%
No	35.96%
Unsure	18.23%

9. **Attorney Reputation.** Survey takers were asked if they think attorneys who do not carry professional liability insurance negatively affect the reputation of the legal community. **More than 59% responded that it did not.**

	%
Yes	21.08%
Somewhat	19.83%
No	59.09%

10. **Statements about professional liability insurance.** Those surveyed were asked to indicate how strongly they agreed with the following statements. The two statements that had the most consensus are highlighted below.

	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Attorneys without insurance are no more likely to commit malpractice than those with insurance.	37.47%	23.40%	19.36%	11.59%	8.18%
Having insurance encourages malpractice lawsuits.	25.23%	25.23%	21.82%	18.41%	9.31%
Not having insurance (or "going bare") is an effective strategy for avoiding malpractice lawsuits.	3.73%	6.95%	27.18%	36.93%	25.21%
Uninsured lawyers negatively affect the reputation of the legal community when injured clients are left without recovery.	13.90%	25.31%	22.72%	18.15%	19.92%

11. **Mandatory Disclosures.** Survey respondents were asked if they were in favor of mandating disclosure to the client whether they carry malpractice prior to engaging in representation. **More than half (56%) stated they were not in favor of mandatory disclosures.**

Of those 44% who were in favor of mandatory disclosures:

- The majority (57%) were not in favor of disclosing to clients the amount of insurance coverage they have.
- The **top three best mechanisms to disclose** whether they have insurance coverage are: (1) Written disclosure in the fee agreement; (2) Written disclosure, separate from fee agreement; and (3) Posted notice in the attorney's office. "Other" disclosure methods include:
 - o Disclosure when asked
 - o Verbal disclosure/discussion at the onset
 - o Publication of mandatory requirement
 - o In lawyer advertising
 - o Email to client
 - o All of the above

12. **Minimum Insurance Policy.** Those surveyed were asked if they think a minimum policy of \$250,000 per claim/\$250,000 annual aggregate is adequate to protect clients. **35% stated that the policy minimum was adequate and 46% were unsure.**

Of the 19% who stated that the minimum policy was not adequate, **31% stated there should be no minimum policy and 30% stated a higher policy of \$1M per claim/\$1M aggregate was appropriate.**

- **31% stated that \$0 (or none) was appropriate;**
- 5% stated that a minimum policy of less than \$100,000 per claim/\$300,000 aggregate was appropriate;
- 0.5% stated that a minimum policy of \$100,000 per claim/\$300,000 aggregate was appropriate.
- 18% stated that a minimum policy of \$500,000 per claim/\$500,000 aggregate was appropriate;
- 2% stated that a minimum policy of \$750,000 per claim/\$750,000 aggregate was appropriate;
- **30% stated that a minimum policy of \$1M per claim/\$1M aggregate was appropriate;**
- 1% stated that a minimum policy of \$3M per claim/\$3M aggregate was appropriate;
- 0.5% stated that a minimum policy of \$5M per claim/\$5M aggregate was appropriate; and
- 6% stated that an “Other” amount was appropriate.

Of those who responded “Other” to the appropriate minimum policy, responses included:

- Depends on the type of cases/practice/services the attorney provides or the amount of recovery sought
- \$1M per claim/\$3M aggregate

13. **Concerns if Implemented.** Survey takers were asked to indicate their level of concern with the following statements if professional liability insurance is required for all private practice attorneys. The three areas with which attorneys voiced the greatest concern were in regard to (1) the impact on solo/small practice and the cost of doing business; (2) premiums for high-risk practice areas; and (3) ability to provide low cost or free legal services.

	Not at all Concerned	Moderately Concerned	Very Concerned
Impact on solo/small practices and cost of doing business	11.33%	29.52%	59.15%
Potential increase in the number of malpractice lawsuits filed	28.15%	35.56%	36.29%
Premiums for high-risk practice areas	11.89%	33.47%	54.64%
Ability to provide low cost or free legal services if not employed/actively practicing	14.39%	26.80%	58.81%
Inability to obtain insurance for my practice	39.83%	26.13%	34.04%

15. **Additional Comments.** Of the 8,908 attorneys surveyed, responses were received from 11% (or 1,001 attorneys). Additional comments were received from 412 survey takers. They are displayed in full below.

1. The State Bar of Nevada is exploring a proposal to require all attorneys engaged in private practice to maintain a state-mandated minimum amount of professional liability insurance. It appears that the primary purpose of the proposal is to protect private individuals who are generally more vulnerable to professional legal malpractice because most private individuals typically do not have the same market experience or bargaining power as more sophisticated clients, such as state or local agencies. Given that the primary purpose of the proposal is to protect private individuals, application of the proposal to all attorneys engaged in private practice is overly broad because there are some attorneys who are engaged in private practice—often as solo practitioners—who do not represent private individuals in any matters because they represent only state or local agencies. For example, the private practice of some attorneys consists exclusively of contracting with state or local agencies to perform legislative drafting services, such as drafting bills, regulations or ordinances, and the accompanying legal research services. It is highly doubtful that such legislative drafting or legal research services could result in any liability for professional legal malpractice, especially given the well-established protections from liability afforded by the doctrine of absolute legislative immunity. See *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (explaining that absolute legislative immunity applies to each of the “integral steps in the legislative process.”); *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 510 (1975) (explaining that absolute legislative immunity protects the legislative body’s counsel). Therefore, application of the proposal to such attorneys would impose an overly expensive and unreasonable burden on them without providing any corresponding benefit to the private individuals who are the intended beneficiaries of the proposal. In fact, the only benefit would be the windfall enjoyed by the insurance carriers collecting premiums under the state-mandated policies without being exposed to any realistic probability of liability risks under the policies because such attorneys do not represent private individuals in any matters. Accordingly, the proposal should be refined so that it does not apply to any attorneys engaged in private practice who do not represent private individuals in any matters but represent only state or local agencies. Alternatively, the proposal should include a waiver process whereby such attorneys are entitled to a waiver from the proposal upon declaring each year with their license renewal that they do not represent private individuals in any matters but represent only state or local agencies. Thank you for your consideration of these matters.
2. More than 90% of my work is as in-house counsel for a group of businesses. I currently work on other cases occasionally, to help my friends. This proposal would effectively prevent me from doing that. I wouldn't even be able to represent my own family members. Stop trying to hurt everyone because of what a couple idiots have done. Focus on cleaning up the profession, not on making it harder for those of us who are already doing the right thing.
3. May be forced to give up my small practice.
4. I oppose any mandatory malpractice insurance for attorneys. I have been a sole practitioner for 31 years, never carried malpractice insurance, and never had so much as a letter of complaint to the state bar. Of course, that means I have also never had a dispute with a client concerning my representation. This proposal is a prime example of a few bad apples spoiling the bunch. The bar maintains a client security fund to assist any client left high and dry by their attorney. I do appreciate that such fund is sometimes inadequate to cover all losses in any given year. My practice is down to about 3 clients, as I am semi-retired, and would like to see some smaller minimum coverage requirement for part-time, reduced practice for sole practice attorneys, if mandatory coverage is adopted.
5. I definitely think malpractice insurance should be required. I only have concerns as to whether clients should be informed or in what manner. I have seen malpractice occur unfortunately and

	<p>seen lower income clients/ non- corporate clients get raked by mistakes, lose money, and not be aware they had any financial recourse against the lawyer. (I don't know that mainstream public is even aware they can sue their attorney, as they seem to think "the buck stops there", with their attorney, so to speak.) Although there may be a slight chance of increase in malpractice suits with clients knowing there's malpractice insurance required, if the true interest is to protect clients and cause lawyers to think twice about practicing in areas in which they lack competence, and ultimately hurt clients often times, by all means, require insurance, let clients know they have recourse when pummeled by an attorney's mistakes.</p>
6.	<p>The idea that insurance is the cure to all problems with the legal profession is nuts. It will only encourage sleazy malpractice lawyers to file more needless lawsuits in hope of making an easy buck with an insurance settlement.</p>
7.	<p>For solo attorneys that are trying to establish their own practice this may be too onerous a regulation, the cost of practice is already high with student loans, advanced costs for clients, bar and CLE fees, adding mandatory malpractice insurance will definitely make it harder for solo attorneys like myself to stay afloat.</p>
8.	<p>I think \$100k as the minimum is sufficient. Solo practitioners will be severely impacted if having malpractice becomes mandatory - many just barely make it as is and the cost of obtaining that insurance can be quite high, especially if it is 250/500. I know many solos that struggle financially already - this requirement may simply be another financial burden they don't need. Plus, no client decides to retain an atty based on whether they have malpractice because they don't intend to sue their own attorney when they retain him/her. This will simply be yet another reason for the Bar to sanction attorneys; plus, clients can sue their attorney individually regardless of whether that atty has mal insurance.</p>
9.	<p>The article in the recent Nevada Lawyer did not provide enough information for state bar members, particularly when faced with a potentially expensive MANDATE. It is significant that approximately FORTY states DO NOT MANDATE this type of coverage, so the attempt to make it seem as if there is some sort of crisis is unconvincing. In addition, what is the rush?? Why is this being presented with very short time frames for us to consider and comment, when the "task force" had months and months? This is a very busy time of year for certain members (counseling clients about year-end tax matters, pension plan considerations, etc.). Moreover, why was there no discussion about the potential range of premium costs? Where did the task force get its information that "the public" assumes all attorneys have malpractice coverage? Absent any evidence, it sounds like nothing more than anecdotal and self-serving drivel. The monthly columns about attorney discipline are primarily from the Southern Nevada panel (i.e., Las Vegas)...the task force presented neither any evidence nor any argument that attorneys in the rest of the state suffer from deficiencies that would warrant MANDATORY malpractice coverage. In short, the case has not been made for this unwarranted imposition.</p>
10.	<p>Most of the losses sustained by clients have not been due to malpractice but by intentional misconduct which insurance would never cover.</p>
11.	<p>This is simply ridiculous.</p>
12.	<p>I am retired and no longer have any active files, however I occasionally reopen a file to facilitate satisfaction of an outstanding judgment. Would I have to obtain coverage? I carried malpractice coverage for 40 years and in favor of it being mandatory. However the policies do not cover intentional acts such as Bob Graham's theft of client funds. And if it did the coverage would not be anywhere enough. From my experience the premiums for some practice areas may be exorbitant and beyond the reach of many solo or small firm practitioners. While malpractice coverage is important, I don't think it address the major problem of theft of client funds which is a bigger stain on the profession and receives greater notoriety in the press than the occasional mistake that would be covered by a malpractice policy. I believe that there are many more issues that should</p>

	be considered before acting and burdening an entire industry for reasons that might not truly address the problems. I am also concerned that the Bar Association not be overly influenced by our President who has had a long standing relationship with ALPS a malpractice carrier. Thank you for considering my remarks A Happy New Year to all.
13.	I am not sure you can mandate it. But, if you choose to do so, there must be some studies to see how the state bar can provide low-cost insurance to its solo members.
14.	This is a bad idea.
15.	I believe attorneys should carry professional liability insurance. It is the right thing to do. None of us want to commit malpractice but if it does occur it not only protects the client but provides financial protection to the attorneys and to their firm as well. This particular issue was not addressed in your questions. I do have concerns about premium cost but I do believe this is an inherent cost of doing business, like GL insurance for example.
16.	I have 1 million / 2 million, which was not a selection, so I chose 1mil/1mil
17.	I understand the practice of law is a privilege, not a right, but this proposal is a bad idea. An insurance company is not properly the enforcer of attorney discipline in the State of Nevada. This requirement could potentially place the privilege to practice law after passing the bar exam in the hands of insurance companies. An attorney should not be limited in his or her practice of law by an insurance company. An insurance company is not the Nevada Supreme Court or the Disciplinary Board of the State Bar of Nevada. The client can make the decision on their own. My view is this proposed requirement is overbearing and could be subject to selective abuse. Thank you.
18.	Attorneys over age 70 should be exempt.
19.	I'm an active bar member who currently does not practice law. With student loans, CLE's, Bar dues, cost of living and cost of healthcare I am barely able to eat let alone cover one more insurance premium. I am financially unable to take on one more debt at this point. Additionally, it is my opinion private attorneys who don't have insurance are less likely to commit malpractice as it comes out of their own pocket which can end them financially. An attorney who causes malpractice gives other attorneys a bad whether they are insured or not. I have known attorneys who work at large firm take a more lacidascal approach in practicing because they are covered and don't have to worry. To me that is much worse.
20.	Need to somehow any requirement does not negatively impact providing services to low income persons.
21.	For a semi-retired attorney handling very few cases of moderate value (and primarily for personal acquaintances) with little chance of malpractice occurring even inadvertently, there is no need for insurance and the cumulative yearly cost would be prohibitive.
22.	Insurance should not be required. This is a "buyer beware" issue and would run many solos and small firms out of practice. If insurance is going to be required, the coverage needs to be minimal (like Nevada's auto limits).
23.	What exemptions would there be, for example: inactive attorneys, PT, public service attorneys, those not engaged in the practice of law but who have a law license (like a trust officer, business manager, CPA), those who have an active license but aren't working (like stay at home parent)? What would you do to attract insurance providers, so rates don't sky rocket if/when a provider exits (like the "Affordable" Care Act)? What about attorneys that retire — are you going to require a tail policy? Will you provide or work with the Legislature to provide a mechanism to protect us from unwarranted/excessive suits, like what was created for med mal?
24.	Mandatory coverage would put me out of business with no other means of income. I have been licensed since 1990 and have never had a malpractice threat, claim, or suit. I have had less than 4 fee disputes in 27 years; and, in each case resolved these claims in favor of the clients. I take

	<p>great caution in following all ethical rules, recently losing a potential client when I referred him to another attorney who specializes in the area of law the client needed. He lost all confidence in my abilities, and while I could not afford to lose the income, my ethical duties required that I make the referral as there was too much potential risk in his matter. That is adherence to the ethics of our profession. I do not earn enough to maintain an office, and presently my practice has a single client. The Bar would literally put me on the streets if I had to carry malpractice insurance. Not all attorneys are as fortunate as a Robert Eglett for e.g., and while I hold Robert in very high regard, I also take my career and ethical requirements very seriously. It is unconscionable to mandate that every attorney carry such coverage. If malpractice coverage is to be mandated, it should only be for lawyers either practicing in matters with a good deal of malpractice risk or only for those attorneys earning a certain threshold of income each year. If a client or consumer considers malpractice coverage a primary consideration they can always ask if an attorney is covered; and, if not, find another attorney. Again, to mandate such coverage would literally put me out of business after 27 years. Where is the fairness in that? Who protects the lawyers? Yes, there are some bad apples out there, as there are attorneys who take on too much work, or work they have no business taking on - but these decisions should be left to the clients and not forced on attorneys with very small practices.</p>
25.	<p>My sole client is a public agency and all potential litigation is farmed out to outside counsel. Otherwise, my only practice is as a mediator in court sponsored programs. I have no private clients. If my practice was otherwise, I would acquire insurance as a best practice.</p>
26.	<p>As insurance information is already being provided to the bar, there is no need to disclose it to clients.</p>
27.	<p>I do not see any reason why the limits should be 250/500. In the small town practice I engage in 100/300 is more than adequate. Making the requirement 250/500 would be cost prohibitive</p>
28.	<p>This seems like a solution in search of a problem. Nothing good ever happens when that approach is taken.</p>
29.	<p>Semi-retired or part-time attorneys should not be mandated to carry insurance if they do not routinely represent clients.</p>
30.	<p>I would strongly support the type of self-insured, mandatory coverage provided by the Oregon State Bar. I attended law school in Oregon and am licensed there. The fact that Oregon's PLF is actively involved with risk management, beginning with the earliest days of law school, creates a preventive way of thinking that provides unparalleled protection for clients and attorneys.</p>
31.	<p>Mandating professional liability insurance protects insurance companies, not clients.</p>
32.	<p>In Clark county solo practitioners and small firms have proportionally larger financial liabilities with increased business license fees and "professional" license fees, along with the other fees required to maintain an active license. Forcing malpractice insurance could make it cost prohibitive to practice law, especially when insurers could raise rates because they know that attorneys must buy insurance.</p>
33.	<p>Exceptions to mandatory malpractice insurance for government attorneys, those without an active Nevada practice, in house counsel.</p>
34.	<p>The Survey fails to consider attorneys who practice part time. \$250K is ridiculous considering an attorney may only handle a dozen legal matters a year, and said matters may be fully covered by a policy of say, \$50K per. This idea needs to be thought through a little better. I believe it will negatively impact many part time and semi retired attorneys. And, consequently, I believe it will impact the general public with fewer choices and higher fees. Mandating malpractice insurances is a good idea, but fixing the number at \$250K makes no sense whatsoever.</p>
35.	<p>Consider a tiered amount of insurance, based on annual billings by the attorney/firm. I am mostly retired and find serving low-cost and pro bono clients' needs very fulfilling. I dropped my</p>

	liability insurance this past year because the annual premium for \$1 million coverage amounted to nearly 50% of my billings (currently less than \$10,000 per year).
36.	1.The survey seems written to obtain support for a pre-determined conclusion(s). Not really an objective inquiry, but rather intended to support a decisions and conclusions already made. Has the bar done any research or gathered any statistics on how big of a problem / what level of risk exists for the public from uninsured attorneys in Clark county? Seems like the survey is seeking to validate a theory, I would like to see some real research done on this topic first. 2. Insurance companies are exploitative. They charge over-inflated premiums, and mandating insurance will open the door for them to raise premiums and charge even more predatory prices (due to the lack of competition and limited number of carriers). has the bar done any research regarding the costs that this will mandate and the availability of reasonably priced insurance in nevada ? I don't understand why the survey does not address this issue as it is an important consideration. 3 Is the insurance industry active in any way in influencing this policy change? If so, this should be disclosed to the bar. If not, this should also be clearly stated. 4. I would like to see the bar do research regarding the availability of affordable, reasonably priced insurance through a not for profit mutual insurance fund supported by and on behalf of state bar members.
37.	As in house counsel malpractice insurance does not protect my main client. Yet in-house counsel often provide legal services or give legal advise to employees, officers and directors free of charge or for reduced fees. If such services place in-house counsel in the private arena they will be discontinued to avoid paying for malpractice insurance. In my opinion this will not be a benefit to Nevada citizens but rather stifle pro bono work currently being provided. Also in my instance, as a semi-retired attorney, I would have to resign from the bar due to the cost of such insurance if in-house counsel are covered by this rule change.
38.	The issue of malpractice insurance is not one that can be resolved with a broad brush rule. For instance, a solo practitioner who does family law should not have to have the same insurance as a 150+ lawyer firm that handles complex civil litigation, or class action cases, that result multi-million dollar judgments. It is an absurd notion to think that a single rule will work for a community as diverse and complex as the legal community, without the rule taking the particulars of the practice into consideration. Additionally, your questions reflect the myopic approach you are taking to this complicated situation. How can anyone give an accurate opinion with a three-bubble answer sheet?
39.	I am very concerned that required malpractice insurance will encourage nuisance suits brought by dissatisfied clients who had unreasonable expectations and wouldn't accept the advise of competent attorneys. Also, based on quotes for malpractice insurance I received while in private practice, I am concerned that required insurance may make it cost prohibitive for young attorneys and solo practitioners/small firms to represent clients in domestic and family law, and other highly emotionally charged cases.
40.	I believe that this requirement would substantially effect solo attorneys while not really effecting any other attorney when it comes to absorbing the cost. We already pay over \$500 for bar dues, \$50 for CLE board plus very expensive CLE courses, \$200 state business license, \$300 county business license not to mention all the other office overhead including mandatory workers' comp, unemployment taxes, state business taxes and county business property taxes. Only solos foot all these cost by themselves. Almost all other lawyers have these expenses paid by their employer. This is not fair and would drive a lot of solos out of business. I think solos provide a lot to the community that others do not: low cost fees to the less fortunate and a lot of pro bono work. When we do not have insurance I think we provide a higher level of service knowing that a recovery will come straight out of our very own pocket. Please provide data showing that solos are leaving clients with no recover to justify this requirement. Or for that matter, what data can be presented showing that this requirement would actually solve a existing problem.

41.	While I understand the importance of protecting Clients from instances of malpractice, I fear that the idea of mandating malpractice insurance at a particular rate may have the potential to adversely affect many attorneys such as myself and our ability to continue to practice law and offer pro bono services to and or serve indigent individuals as well as employ other attorneys
42.	None.
43.	High cost will discourage small practices and low volume practice, for example, a retired lawyer who might take a case, either pro bono or small recovery.
44.	I feel there is movement towards greater regulation of attorneys (see also, trust account audits and increasing CLE). I think there should be less. Probably because I haven't seen the statistics to validate that any of this is necessary because of some increase or spike in problems these requirements are intended to cure (or that this is the way to cure the problem). So, it looks like well intentioned programs that complicate my life without purpose.
45.	I support the idea of mandatory malpractice insurance, but I think the required rates should be based on what kind of practice an attorney has. Ham-and-egggers don't deal with the same kind of money as the big boys on the Strip. Ticket-fixing and DUIs are way less life-or-death than capital-qualified lawyers. I think there should be graduated rates of required coverage, perhaps based on a firm's total revenue. I also think the Bar should consider spinning off some kind of insurance co-op to provide the coverage, so that we don't all get gouged by private insurance premiums. I mean, I don't do insurance law, so I don't know if that's even a legal option. But I think "stupid high premiums" is the best argument against mandatory malpractice liability, and a co-op structure would solve it.
46.	I am 73, have practiced law for nearly 50-years and serve as a court appointed arbitrator and short trial judge without any bar complaints or claims for legal malpractice. I limit my private practice to only a few small cases per year and then only on referral in limited areas of law which do not require a long-term commitment. I carried professional liability insurance for many years, but oppose any sweeping mandatory requirement for senior members of the bar. I am aware of disciplinary action against attorneys who have defrauded their clients (misappropriated funds, etc) but am deeply concerned that mandatory liability insurance, which will not cover criminal misconduct, will multiply malpractice claims and lawsuits and increase premiums, that will impose a hardship upon solo practitioners or small law firms. Sanctions are available to govern attorneys engaged in litigation.
47.	Need to consider exclusions for public attorneys: District Attorney, Public Defender, Attorney General, etc.
48.	I represent a few cases in the rural areas in order to meet my pro bono obligations. I refer cases to Nevada legal services but they have not taken any cases that I have referred to them. I answer numerous calls from individuals who have tribal court cases and cannot find an attorney to answer even general questions. The mandatory insurance requirements would prevent me from practicing even the small amount of cases that I now provide assistance. The rural attorneys typically do not get the big money cases because the real attorneys in Reno and Las Vegas are retained.
49.	I currently have 1 case in Nevada. My client is a previous client from when I practiced full time. I keep my license current but I own another business in another state where I live. The other business is unrelated to law.
50.	I would have liked to see some statistics from the Bar about client losses and lack of malpractice insurance.
51.	Mandatory insurance is a terrible idea! Disclosure is all that is necessary, if anything.
52.	I am retired but we always carried malpractice insurance

53. I disagree with a requirement for mandatory malpractice insurance or mandatory disclosures to clients because it will increase the burden on lawyers and law firms to do business, it will discourage attorneys from taking high risk types of cases because their insurance rates will increase, and it will encourage clients to pursue malpractice claims even when claims are not meritorious. In my experience, the general public and general clients do not even consider malpractice insurance when selecting an attorney because attorneys are already licensed and regulated by the State. Mandatory disclosures to clients will increase tension and burdens on the attorney client relationship, and will raise a potential conflict of interest from the inception of the attorney client relationship. The only malpractice case I have seen was initiated against a reputable attorney of another local firm by a developer as a business decision for the mere fact that insurance was available. Although the case was hotly disputed, the insurance was paid in settlement to avoid a trial because the insurance was available. The claim resulted in serious physical and mental distress of the attorney, and the firm. Mandatory insurance requirements will increase lawsuits against attorneys and result in economic loss and greater distrust and attacks on attorneys from the public, the press, and will motivate clients to bring more bar complaints (exaggerated to correspond with their insurance claims), insurance claims, and lawsuits against their attorneys. Mandatory insurance or insurance disclosures will increase the cost and risk of delivering legal services to the public. Any increase in security to the client, will be greatly outweighed by the increase in claims, lawsuits, bar complaints, and burden on the legal community.
54. Having Insurance does not in any way affect your ability to do your job any better or worse than not having it.
55. I am licensed in Nevada and California and have malpractice insurance for California but I do not believe it covers Nevada. I do not have any clients in Nevada and so not do any work in Nevada, so I do not think it is reasonable for me to have to pay for Malpractice insurance for Nevada.
56. Virtually all professional liability policies are "claims made", which provide no coverage for acts prior to first obtaining coverage, or after an attorney ends practice (or the policy ends). This proposal does little or nothing to protect the public (this is not like car insurance) and is an undue burden on maintaining a law license.
57. Limits of \$250,000/ \$250,000 should not be unaffordable for any attorney. Also legal aids provide malpractice so legal services legal aid can still be provided.
58. Greetings, Thanks for conducting this survey before taking action on this issue. If you require all practicing attorneys to carry MI then you will drive up the cost of doing business for attorneys who provide services to the poor, thereby further limiting the already limited access to justice for low income residents of the state. Small practitioners provide a valuable service to those in our State who can't afford to pay white-shoe attorneys to pursue smaller cases, and those small practitioners are already being squeezed in all directions by the ever increasing (and rarely decreasing) regulatory and procedural requirements of pursuing basic legal remedies. Further, because of technical requirements in the way malpractice insurance works coverage is often not available to clients as one would believe - the scope of what is typically covered is very narrow and filled with catch-22 provisions that void coverage. I ask that you consider the quality, availability, and cost of such coverage before requiring all attorneys to carry it. In my experience, what is on offer is low quality and high cost. If you were to strictly regulate the terms of how malpractice insurance is provided by carriers, then you may be able to achieve the result you are aiming at, e.g. like car insurance is strictly regulated, but this would require legislative action and could not be implemented by the State Bar, I believe. Mandatory insurance typically has the effect of distorting markets - just consider the mess that we have for a health care system, i.e. very high cost and low quality care - especially for poor people. I ask that you don't take the initial steps to turn the legal profession into a similar expensive and inefficient mess. Ours is one of the last existing professions that has not been completely co-opted by insurance companies into

	submission - I ask that you strongly consider the unseen long terms consequences before you go down this path. Cheers! Luke Busby
59.	I am in favor of mandatory malpractice insurance
60.	One issue that should be looked at is the price of insurance for small practices. If the Bar is going to require insurance, which I am not opposed to, the Bar should go to bat for us and find good and, most importantly, affordable insurance. The Bar cut a deal to assist us with legal research. I propose that the Bar try to get insurance that will cover us that does not cost a fortune. I am trying to get insurance for next year, and the price went up 3 times what I was paying last year. It is insane what it costs for smaller firms to obtain insurance.
61.	I am a public lawyer, so the requirement as proposed would not directly affect me. But any such requirement that is imposed should not affect the availability of legal services or the ability of attorneys in high-risk practices to continue to work without high insurance costs.
62.	This survey is way too vague, and requires answers that cannot accurately reflect a well-informed attorney set of responses. Many of the questions require conjecture or suppositions. I am in favor of malpractice insurance, though, I do believe it is a steep burden for some attorneys, especially those with low income clients, or pro bono advocates. In the end good malpractice coverage will do the most to limit an injured client's recovery, because a good team of malpractice defense attorneys are likely to overcome a complaint by a lay person client. basically, there needs to be some level of caveat emptor in a client's mind, and the threat of sanctions from the Nevada Bar should be sufficient motivation for most attorneys to do what is right.
63.	I am a contract attorney. I ensure that the law firms that I work for carry malpractice insurance and that I am covered under their policies. I am concerned that this new rule will require me to either obtain my own insurance, causing an overlap of coverage and issues as to which policy is primary, or cause issues with reporting as I work for a variety of clients. I am also concerned as I only work occasionally and the cost of carrying my own insurance may lead me to abandoning my pro bono work.
64.	As an attorney who has practiced for 43 years, while licensed in Nevada and California, and never had a malpractice claim, I am concerned about the cost of such coverage- especially in my speciality with a Masters in Tax. I agree with California procedure that lack of E & O insurance must be disclosed in writing. The mandatory coverage requirement would unfairly discriminate against solo and small firm practitioners in favor of medium to large firms who always have E& O coverage. Coverage only means the insured has a right to argue that coverage exists, to which the carrier will argue reservation of rights as to whether coverage does in fact exist or is the event/act/occurrence excluded. There should be consideration to opt out for attorneys with no claims and consideration of the practice period during which no claims were made or paid. I am opposed to the modification as I understand it presently.
65.	As a sole practitioner who does a small volume of cases each year and gives personal attention to each client, it would be punitive to make it mandatory for me to have malpractice insurance with premiums of \$10,000 per year. Only large firms that do high volume or any attorney who advertises on tv should be required to have malpractice insurance. This would take care of the greedy irresponsible attorneys who advertise for volumes of clients and give little personal care to each client, like attorney Robert Graham. I actually believe that I am more responsible to each client because I do not want to commit malpractice, especially because I am not insured. Plus, my years of experience and low volume make me able to give my clients first class service.
66.	Requiring insurance presumes sufficient diversity of Carriers and competitive pricing. If the State Bar is going to require malpractice insurance, then I submit the State Bar must be prepared to offer that insurance if private carriers will not insure, for whatever reason. A solo practioner could be effectively forced out of business if he or she has one or more claims as a carrier will always increase premiums substantially after claims are paid. Will lawyers be required to carry first dollar

	defense since this also affects the premium cost. What about deductibles? Eventually I can foresee the bar requiring depositing of insurance premium deductibles as a condition of licensure. I would recommend that if malpractice insurance becomes mandatory that Bar fees be reduced to \$100 per year, that CLE be free and that malpractice insurance be partially subsidized by IOLTA income.
67.	The questions seem slanted toward requiring mandatory minimum insurance. I favor mandatory disclosure of whether a lawyer or law firm has malpractice insurance but not mandatory insurance, or minimum mandatory amount.
68.	A client's potential financial loss from attorney malpractice varies depending on the type of case, the resources of the parties in the underlying matter, and a huge number of other factors. To require all attorneys, regardless of practice area or practice size, to carry the same minimum insurance amount ignores the diversity of the profession and the public served. In addition, it seems unlikely that many non-corporate clients would consider whether an attorney has malpractice insurance when choosing a lawyer. Likewise, an act of malpractice itself would likely have a greater effect on the reputation of the profession than a harmed client's inability to recover from the attorney.
69.	Some solo practitioners and under-employed attorneys are facing financial difficulties and struggle to pay regular ongoing bills. Moreover, there are attorneys that do not practice full-time. The addition of an extra expense an attorney is required to pay may not be feasible in these situations. Unless such an attorney is brought before the State Bar for professional misconduct or is a repeat violator of the professional responsibility rules, the requirement that an attorney be forced to carry malpractice insurance should not be mandated.
70.	It is a free market. I carry insurance that is substantial and more than what I put down because my practice covers up to as many people as are hurt with no cap
71.	Question the wordage of several of the questions, which appear to be slanting the issues toward a desired result. Double negatives? Clients are better protected by a competent, prepared attorney and an unbiased judiciary, along with strict disciplinary standards enforced against over reaching and/or unethical prosecutors.
72.	Mandatory insurance is a terrible idea for a number of reasons. First, it will raise the cost of doing business. Secondly, it will likely lead to a cottage industry of malpractice lawsuits. We've already seen the deplorable PI industry here in Las Vegas and I have no doubt attorney malpractice will follow. It's not the legitimate claims that I am concerned about, it is the client who heard what he/she wanted to hear instead of what was actually said or the client who just isn't happy even though the service was rendered and the result is typical. The insurance companies will be left paying \$5,000 here, \$10,000 there just to make the claimants go away. We already see this practice in PI, specifically automobile accidents, and it is embarrassing to the profession. We don't need to add to the insurance demand practice. If someone is truly harmed, bring it to the attention of the Bar who can deal with the Attorney and/or file a legitimate claim or lawsuit. However, this mandatory insurance is NOT the way to deal with legitimate claims. Finally, it will drive the reasonably priced good attorneys who wish to practice in a high-risk area out of the field. You are going to simply price good attorneys out of business. For all of these reasons, and more which I won't get into, I STRONGLY disagree with this proposal.
73.	I do not have not enough information to really opine on this as a mandatory requirement for all private practice attorney's, whether active in Nevada or not.
74.	Just thought I would mention that the design of your survey has a problem with it because it does not allow an attorney to identify him or herself as being employed by a firm which provides malpractice insurance.
75.	The proposed regulation, while perhaps well-intentioned, is completely ill-conceived. All it will do is impose additional costs on solo attorneys, particularly those in low-margin fields like criminal defense as well as giving an incentive for clients to file claims in bad faith in the hope of a quick payday. Even the California State Bar, which regulates my practice far tighter than Nevada does,

	doesn't mandate insurance cover, but does mandate disclosure (which I fully support). This is the worst idea to come out of the State Bar of Nevada in the last three years.
76.	A few bad apples should not burden and entire community
77.	<p>1. Cost of having insurance coverage can be hard on the small private practitioners who have to keep their administrative costs low in order to provide inexpensive but still quality service to clients. 2. The Board of Governors should probably look into the practice of other State Bars, like California, as regards MANDATORY requirement to carry professional liability insurance on its bar members. 3. Mandatory requirement to carry professional liability insurance can force lawyers to abandon their solo/small practice notwithstanding that they provide quality service to clients. Where will indigent clients go to for help in the alternative? To paralegals maybe or they go pro se. Are paralegals required to carry professional liability insurance? Does the State Bar regulate Paralegals? If clients go pro se because of the prohibitive cost to hire lawyers who must now increase their rates due to additional cost of professional liability insurance, would not that be pushing such clients to more risks of incompetent and inadequate self-representation? 4. Why does the State Bar not look first into the statistical complaints received on lawyers carrying professional liability insurance side by side with statistics on those without professional liability insurance. From the data and results gathered, how many were clearly actionable negligence? 5. I think requiring lawyers to include in their retainer agreement a provision about not having professional liability insurance is an effective disclosure to the clients. Maybe, the bar can require the lawyers to insists upon the clients to initial such disclosure provision so the clients are made fully aware of the lawyers' not having professional liability insurance. (Something like making a defendant aware of the waivers he has to make before making a plea to guilty or nolo contendere). 6. If a lawyer is disciplined at all, but is deemed still able to provide assistance to clients, then at that time maybe part of the order of the disciplinary body would be to require the lawyer to carry a professional liability insurance, if s/he does not carry one.</p>
78.	requiring liability insurance will put my practice out of business ...
79.	Jury verdicts are low, and clients will want to blame their attorneys and try to collect malpractice insurance where there is none.
80.	Criminal defense lawyers, which I am, are almost impossible to successfully sue because of barriers of a showing of actual innocence and success in post-conviction as a prerequisite. I haven't been sued in over 20 years and went bare four years ago.
81.	I think this requirement will negatively impact both the clients and the smaller practitioners currently operating. Malpractice insurance prices generally rise as an attorney becomes more experienced in the field. This requirement will force experienced solo practitioners to either charge more for their services or quit the practice entirely. This has the potential for leaving large swaths of the middle-class public without representation or with inexperienced representation because they can't afford the rates the larger firms currently charge and the solo attorneys will be left without the flexibility to discount rates because they simply can't afford to. I take on a lot of pro bono cases and low-cost cases because I want to help people who can't normally afford an attorney. This will force me to stop doing that in a few years.
82.	We are still personally liable regardless of whether or not we carry insurance so it only results in an additional expenditure. I carried insurance when I was practicing, however I don't feel the need to mandate everyone should. That should be an individual choice as it's their risk. The bar appears to be increasingly attempting to micro manage attorneys but fail to apply that same micromanagement to yourselves.
83.	If the bar is going to require malpractice insurance it should also recommend a two year statute of limitations for such claims to the Legislature. Otherwise malpractice insurance will eventually become too expensive.

84.	The question that should be answered is whether mandatory professional liability insurance will effectively resolve the real or perceived ills the Board of Governors is trying to cure. The Board of Governors will not cure the evil of "bad" attorneys by mandating the purchase of professional liability insurance (they will help out the already flush insurers). It has been proven time and again that it is virtually impossible to legislate good behavior. The bad actors will continue to be bad actors whether or not professional liability insurance is required. If the desire is to strengthen the quality of the profession and in turn protect the consuming public, then make the entry or admission requirements more stringent so that the less competent are winnowed out before they have a chance to start, and follow that with imposing stronger requirements to maintain an active license.
85.	Raising the idea of malpractice insurance to prospective clients is not ideal to me. It puts in their head the idea that they may want to sue me at some point.
86.	I'm in government but I am surprised that malpractice insurance is not a requirement. I had it when I was in private practice and would not sleep well if I did not have it. I believe the general public assumes all private attys have it. If it's not mandatory, the client should be informed expressly that her lawyer does not have malpractice insurance.
87.	I think insurance is a cost of doing business in the practice of law. Even the best lawyer can make a mistake that can seriously impact a client. Insurance at least provides some avenue of redress. I understand, however, the concern of solo practitioners, and admit that it does not really impact me as an employee of a lawfirm that pays for my insurance coverage.
88.	This is a terrible idea for small law firms.
89.	If you are required to have insurance to drive a vehicle, should you not be required to have insurance for practicing law? The bar may have to be involved to arrange for reasonable rates for new, or low income attorneys.
90.	I have always carried E&O to protect myself. I do not want to loss what I have worked a life time to obtain because I was 98%rather 100% accurate. My concern is that once Carriers know they have a captive market that rates will significantly increase as happened with the cost of CLE when it became mandatory.
91.	Retired attorneys who keep an active license may represent 1 or 2 clients within a 12 month span. Need to recognize this group when mandating insurance.
92.	Have the bar impose additional fees on uninsured lawyers and increase the fund available for compensation to clients damaged by uninsured lawyers
93.	The idea of mandating how an attorney or a firm protects themselves from business risk is reprehensible and the State Bar has no business delving into such decisions. Rather the BOG should be focused on working to better revise and enforce the existing rules of professional conduct. The reputation of the legal community isn't going to change one iota by mandating insurance (which the vast majority of attorney have anyway). But demonstrating to the public a willingness to truly police and discipline bad acting attorneys makes all the difference in the world.
94.	If I am in private practice and representing a governmental agency or entity as my only client, this new rule would require me to obtain the insurance (the cost of which I would have to pass through to my only client the agency). That cost would, depending upon the case, be extremely high. There should be some sort of insurance waiver for attorneys like me who represent only governmental agencies, but are NOT governmental employees.
95.	The issue for a small practice is cost. Most carriers want to charge higher rates for smaller practices apparently assuming that the small practice generate more risks. Also, as in all insurance, the carriers very often deny liability and force litigation. My experience had been that client will work things out with the attorney if a mistake has been made and the attorney is forthright about it.

96.	I have a million dollar policy for \$3700 per year. I have noticed in mandatory malpractice insurance jurisdictions the price of malpractice insurance is about the same for half the coverage. I am strongly against mandatory malpractice insurance as it lessens competition among insurers and drives up cost. I strongly oppose this measure.
97.	Mandating disclosure makes sense so that clients can be informed, but mandating insurance will cause the rates to go up for everyone.
98.	A lawyer who does not carry liability insurance already exposes him/herself and his/her assets to a malpractice suit.
99.	I would instead suggest a court or bar managed recovery fund similar to that already in place for other licensed categories (Real Estate Division, Manufactured Housing Division). Fund it by a small increase in bar dues.
100.	I already pay state bar dues that afford remedies for attorneys who have engaged in malfeasance. I shouldn't be forced to incur more expenses due to the conduct of others.
101.	Some information about the rate of malpractice claims over the past 10 years and the average settlement/judgment would be helpful to judge the need for insurance to protect the public, not just fatten already fat insurance companies.
102.	\$100,000 should be enough if forced to have insurance. \$200,000 is excessive.
103.	Malpractice insurance does not "protect" clients from attorneys' negligent or intentional malpractice. At best, it may provide for some remedial compensation when an attorney fails to fulfill her or his professional responsibilities. True and effective client "protection" is prospective, and is best achieved initially through appropriate ethical and moral screening.
104.	Malpractice Insurance isn't going to help clients in Robert Graham's case. He had a large practice and for years was stealing money. For small firms ,depending on the practice, the possibility of malpractice is very low. If a malpractice claim arises settlement is always an option, The best way to avoid malpractice is in determining whether or not to represent a client. And fortunately the relationship can be terminated if the lawyer determines the representation is fraught with problems that the attorney is uncomfortable in dealing with..
105.	Concerned for probono attorneys and attorneys who elect not to work full-time, but will accept clients on a case-by-case bases which allows for access to justice.
106.	As a government attorney for the majority of my career (12/16 years) I haven't really had to worry about this as much (and the firms at which I did work in private practice carried insurance for all attorneys), so it is not something I have given much thought. however, I believe that if a client is reduced to suing their attorney for malpractice, their opinion of the legal profession is already poor, and that attorney not having insurance will not be able to reduce that opinion much more.
107.	I practice criminal defense/traffic on a part-time basis. This insurance is not only not necessary, but it is a complete waste of my funds.
108.	There should be some differentiation for lawyers who practice in criminal defense versus civil litigation because the standards for a client's recovery are vastly different. It is not reasonable to require lawyers who focus on indigent criminal defense to maintain the same levels of insurance, since clients are limited in their avenues of recovery - an ineffective assistance of counsel claim is the primary method for a criminal defendant and by law does not involve money.
109.	This survey amounts to blatant push-polling and is written like the decision has already been made. With that being said, I have noticed that some sketchy law firms (e.g., Law Office of Dan Winder, PC, that everyone knows employees several disbarred attorneys as "case managers" that are clearly engaged in the unauthorized practice of law) do not carry malpractice insurance. These are the type of firms that should be required to carry malpractice insurance due to their improper dealings.
110.	Cost of insurance

111.	Most younger or new attorneys fall under their firm's insurance umbrella. Will they also have to provide insurance for themselves? Where is the money for this coming from?
112.	many lawsuits happen because it is cheaper to settle a case than it is to take it to trial. When looking into suing anyone, the first thing I look for is: Do we have deep pockets to go after? Usually insurance. EVEN ON QUESTIONABLE CLAIMS. I can always stop and not file if I cannot get a settlement.
113.	I think too many new attorneys are already being nickel-and-dimed to death by Bar-imposed costs.
114.	I think the better way to stop malpractice and protect clients is to continue focusing on why attorneys commit malpractice. It's typically substance abuse, mental health issues, or personal debt. The bar should focus more resources on these issues and I think malpractice will decrease
115.	This is another example of small practices being forced out of business. Not everybody wants to be associated with a large firm.
116.	Practices vary, and requiring a minimum may be far too much for some practices and far too little for other practice. Furthermore, it will increase the legal fees lawyers must charge, which clients already believe are too high. Finally, demanding that lawyers provide malpractice insurance is creating another form of government oversight that is unneeded and unwanted.
117.	This is a horrible idea. I would stop doing pro bono work, stop offering reduced fees for people who can't afford my work, this would increase my costs and cause me to drastically reduce my legal business.
118.	Any rule needs to have an exception for out of state lawyers who carry adequate insurance in their state of residence; for example I have a policy through a carrier of the State Bar of CA which covers my NV practice so any rule in NV should provide an exception for out of state carriers that are not contracted with the state bar of NV as it would be unfair to require out of state lawyers to carry two policies.
119.	As a collections attorney FDCPA bogus lawsuits are something I have to contend with on a daily basis for the past 20 years. My field of practice has outrageous insurance rates because of this and suits can be settled for far less because I don't have insurance, Thank God.
120.	Professional liability insurance for lawyers is extremely important and needs to be mandatory.
121.	We are professionals. We do not need every facet of how we conduct business to be micromanaged. Mandating insurance will significantly increase the cost of doing business so that solos will be forced to join larger firms. This will also result in an increase in the cost of retaining attorneys - something that most people already cannot afford. I currently do family law in a mid-sized firm. I want to open my own firm so that I can have more control over how my cases are handled and to provide a greater level of service to my clients. This will be harder, if not impossible, to accomplish if I am forced to pay a business expense according to what the State Bar deems appropriate. Instead, I will remain at my firm and continue to grind out cases and clients according to what is most profitable rather than what is best for the client. Such an outcome works against the reputation of attorneys in our state rather than improves it.
122.	Mandating insurance serves no purpose other than increasing costs of premiums, decrease competition both in the insurance industry and the legal profession, and unnecessarily increases the cost of providing legal services which will impact the availability of services for pro bono and other unprofitable areas.
123.	If insurance is mandated, there can be a stark difference between the income stream of a solo practitioner and an attorney in a law firm (even a small firm). Will the employer be required to cover the premium? Having the attorney be solely responsible could artificially/negatively impact a firm's salary structure.
124.	Forcing insurance and disclosures of the same is completely unnecessary and may cause confusion to the public

125.	Whose idea is this? If it was generated by a plaintiff's attorney trying to reduce competition, that would be a negative.
126.	This is a horrible idea. The only things it will accomplish is to create barriers for new attorneys, and increase premiums for those who have insurance.
127.	Do not do this. Malpractice is too expensive and will close small attorneys out of practice. It will become like PI, where lawsuits are abundant to get at policy limits.
128.	This is a HORRIBLE idea. Certain practices can surely be self-insured. I practice 95% criminal defense and simply have no need for coverage. Of far greater concern is the fact that the majority of situations where clients are financially harmed involve intentional conduct on the part of the attorney, something not covered under malpractice policies. At the very least there should be some provision that allows an attorney to explain why his/her practice can be self-insured exempting them from any such requirement. Please do not implement this horrible across the board rule.
129.	I thought we were mandated to have insurance already.
130.	My only concern is that State Bar of Nevada having an approved list of malpractice carriers. Working in a non-profit that is federally mandated, my agency purchases malpractice insurance through national association.
131.	It's worked fine so far- why change it? Charge more for bar dues- put it in a fund for "injured" clients.
132.	I have to have because if my contracts it but always have had it. I don't think it should be mandatory unless the state bar wants to find special rates. It's way too expensive right now.
133.	While I agree with the overall premise, once mandatory, our rates are going to increase dramatically. That is a huge concern.
134.	I am a patent attorney, and am not even sure insurance is available for my area as a solo.
135.	It would be helpful to know the ball park cost for the required coverage maybe with a couple of examples if possible. Obviously the practice area and firm size will affect price, but the variables could also be provided.
136.	My limits are actually \$1,000,000/\$2,000,000 but that option was not allowed in the previous question. The costs of the premiums are an anticipated cost of doing business and practice in high risk practice areas would be reflected by the association of practitioners in those areas to spread the premiums and their rates for providing services in those areas.
137.	This proposal will not improve the quality of legal services in Nevada. It will harm small practices, increase costs which must be passed on to clients, and reduce options for "risky" or "difficult" clients. It is hard enough dealing with such clients without them impressed with the idea that any result they do not like can be remedied by a claim against an insurance carrier who will pay them a few thousand dollars to go away. Nevada is a national joke with respect to excessive minor auto insurance claims already. Don't add another industry.
138.	I definitely don't think we should need to disclose whether we have insurance to clients; that will certainly lead to more lawsuits, and perhaps frivolous ones. I plan to carry insurance as long as I practice, but mandating it, I think, is excessive regulation. There are plenty of other incentives to be a good attorney and to avoid malpractice (e.g. bar discipline) that I don't think requiring insurance will help much in that regard. If you do mandate it, please make the requirement as low as possible because as a solo I already have so many expenses due to bar compliance, business license fees, etc. that it's difficult to make a good profit. Thanks for asking us; I do appreciate that.
139.	Although I do not provide services as an attorney to the public, I do carry insurance for my Arbitration/Mediation Practice. As there are few cases in which a malpractice case would survive an informed judge, I feel better carrying such insurance. However, I would not make insurance mandatory in such a practice.

140.	The board should ask an insurance broker to suggest several carriers meeting minimum coverage levels so that lawyers have an expert to advise them on obtaining the coverage and the premiums.
141.	I am retired but maintain my license. I represent no clients. I am happy to pay my dues and complete all CLE requirements. Imposing an insurance requirement on me serves no legitimate purpose and would be an unnecessary cost. I would likely go inactive.
142.	What if an attorney gets a claim against him/her and they cannot obtain coverage. this could effectively result in the loss of ability to practice.
143.	I would probably favor mandatory insurance for active, full time attorneys, but the statement in the survey email that insurance would be required "regardless of the number of cases or clients the attorney represents or whether cases are taken on a reduced fee or pro bono basis" indicates the contemplated rule goes too far. Semi-retired or occasional lawyers, and pro bono lawyers, will think twice about whether to provide services, as opposed to retiring, if they are required to maintain insurance.
144.	I have carried professional insurance for some time. I do so for the sake of my clients and my own piece of mind. But, I have a successful practice so the financial burden is not a big deal. I fear that mandating professional insurance will impact that segment of the bar that is providing affordable services to those in the most need. It will probably reduce over reaching by attorneys that may be tempted to accept cases they shouldn't. That being said, any requirement will necessarily have a greater impact on those attorneys who represent regular people and their problems and not corporate or insurer's interests.
145.	I carried liability insurance for many years - it is very expensive and not worth the price; lawyers are at the mercy of the insurance companies. It is a very bad idea to require lawyers to carry it, it would be a major financial gift to the insurance companies. If the Bar wants to make it mandatory, then the Bar should provide it on a sliding scale of cost. Part time practitioners should not be required to pay the same premium as full time practitioners or firms. The sole practitioner working part time should be not more than a third of the full time practice price. The Bar has a remedy in place already for those who purposefully do not follow the Rules of Professional Responsibility, we do not need to give the insurance companies a built in big payday. The number of lawyers who commit malpractice to the financial injury to a client is a small percentage of the total number of lawyers; to require malpractice insurance makes all the practitioners pay for the few that are at fault.
146.	If required, the Bar should facilitate getting it offered it at a discounted rate
147.	I find this survey to be worded in a very pro insurance manner. I think another survey should be sent out that would ask attorneys about professional liability insurance in a more neutral format. Such as "Do you believe professional liability insurance is necessary to protect the public from attorney malpractice?" "Do you believe professional liability insurance is necessary for a client of an attorney who has committed malpractice to adequately recover for said mal practice?" "Do you believe professional liability insurance is necessary to protect attorneys?" I am not sure how an attorney's insurance coverage affects the public's perception. If a client looks to my professional liability limits prior to hiring me as an attorney, I am not sure I want that client. That would indicate to me that the client may be looking for trouble, or a reason to bring suit against me. That is discouraging. I believe clients select attorneys for a number of reasons, namely an attorneys particular skill and expertise. I do not choose a doctor based upon the insurance he or she carries. I chose my doctor based upon their skill and expertise/recommendation etc. Choosing an attorney should be no different. Additionally, there are medical malpractice limits here in Nevada. If we force all attorneys to obtain professional liability insurance it would seem that there would be a very strong lobby to ensure a very low malpractice liability limit.
148.	I do wonder whether a blanket \$250K policy for every single attorney in private practice is a good idea. It does not take into account type or size of practice, type of clients, amounts of typical client

	recovery, or any other factor that might affect what a client might need. This is not like car insurance, where the types of injuries have the potential to be very similar no matter the type of driver.
149.	I am retired but for finishing up cases for clients that no one else would take on because they are native American claims that no one else is familiar with. I would not be able to do this if I am required to carry malpractice insurance.
150.	I have had insurance and it became useless and completely unaffordable. It would put me out of business. This is a GROSS OVERREACH by the Bar and disparately affects solo practitioners. I treat my clients with the utmost care and respect and I deeply disapprove of this move on the part of the Bar. If the Bar is so concerned with the competency of its lawyers, it should do a better job selecting them.
151.	If insurance is "required," there will definitely be an increase in cost. Some smaller firms or solo practitioners may be priced out of the market.
152.	I have practiced for more than 60 years without one malpractice claim. My practice now is very limited, but necessary for my older friends and family which is quite large in this area. My income level is substantially lower and my practice is extremely limited. I practice out of my home. Most of my work is pro bono, but is needed. Requiring liability would make it almost impossible for me to continue helping my friends and family.
153.	An across the board requirement that all practicing attorneys carry malpractice insurance is too broad of a measure. Requiring attorneys who do not represent private citizens to obtain malpractice insurance will impose a financial burden on the attorney but not protect the intended targeted group.
154.	Affordability will be an issue. If an attorney has been part of a malpractice lawsuit, even if they personally found to have committed no fault, but their firm pays through a settlement, this can make it extremely difficult to obtain future insurance on an affordable basis. Also, need to evaluate whether this would be applicable to pro bono work.
155.	Attorneys are (for the most part) intelligent people and should decide for themselves whether malpractice insurance is in their own and their clients' best interests and is financially feasible.
156.	I wanted to get some of my retired colleagues to work together in a practice with me, but they cannot afford to pay malpractice in certain specialities (i.e. Intellectual Property, Securities). Due to my work on real estate transactions, my malpractice premiums are 2-3x of what a general practitioner would be so affordability is a big concern. I am concerned about the brain drain where there are many very experienced attorneys who have retired from law firms, want to stay engaged on a limited basis, but affordability of malpractice insurance is a barrier to doing so.
157.	Back in 1986, there was a legal malpractice carrier void which required the Bar to bring in ALPS. Before that the carriers were increasing the malpractice premiums significantly or not writing small office policies. This could occur again if steps are not take to prevent this.
158.	The proposal is the result of one prominent attorney's push for mandatory malpractice insurance. Mandating such insurance will drive many small practitioners out of the business. It will encourage claims. It will do nothing to protect the public. Mandating malpractice insurance will make it expensive. Mandating insurance is only required in a three states--a very small minority. The amount proposed is so small that it will do nothing. This is a knee jerk reaction to one bad lawyer-Rob Graham. This proposal would not protect his aggrieved clients.
159.	Rather than making disclosure to clients mandatory, I would prefer mandatory disclosure to the Bar. Clients wanting to know an attorney's malpractice carrier information could simply access this information online, without creating yet another potential tripwire for the attorney consulting with potential clients. However, for the reasons I explain below, I would also create an exemption from the mandatory coverage for "non-practicing" active attorneys handling smaller matters. I am concerned for the "non-practicing" lawyers who elect to keep their bar membership active while not maintaining a practice. The first aspect of that concern is that retirees, new mothers

and other "non-practicers" do occasionally practice in a very limited capacity. If called upon to quash a traffic warrant for a neighbor, seal a misdemeanor record for a friend or write a letter to an insurance company on behalf of a nephew, those attorneys should not run afoul of the new rule. The second aspect of my concern is in enforcement. Would the aforementioned "non-practicers" face penalties or harassment from the Bar based upon the perception that they need coverage? By way of example I will use my wife. My wife closed her small criminal defense practice more than 2 years ago but maintained her "active" status with the Bar. Since then she has sat as a judge pro tem, worked as a substitute teacher, pursued artistic endeavors and, yes, even handled one pro bono case. During this time, she kept a P.O. Box with the same Executive Office within the City of Las Vegas that she had used while in practice, for the purpose of not publicly disseminating our home address to her many former clients. To the outside world, it might have looked like she was still in practice—so much so that the City of Las Vegas Business Licensing began to harass her to renew her business license. Even after she explained how she was no longer in business, they persevered. She finally got rid of her P.O. Box and now just runs the risk that our home address will be made public. This is the scenario that concerns me, but with the Bar in place of Business Licensing. I am afraid that the administrative staff entrusted with policing this requirement would chase such non-practicing lawyers completely out of the profession, and that would be a shame. A third aspect of this is pro bono work NOT done through a bar-approved pro bono provider. If a party can convince a non-practicing attorney to take a case pro bono, that attorney should not have to endure the expense of paying malpractice premiums. "No good deed goes unpunished" shouldn't apply to pro bono work too. I understand that this could be avoided by simply going to a bar-approved provider but I suspect many non-practicers might warm up to an individual pro bono case brought to them by an acquaintance before they would seek out cases through a pro bono organization.

160. Professional liability insurance is recommended for all lawyers. The burden on solos and small firms and new lawyers and on all lawyers to fund the cost to monitor this program is not outweighed by the potential societal benefits of requiring such insurance. It is a good thought and worth considering. While the concept does have merit, the case has not been made for a need.
161. Many competent attorneys that provide services at reasonable cost to consumers will have to stop practicing which will result in fewer attorneys providing the public's needs. It will concentrate business increasingly to larger firms which is the real objective of the pursuit of this policy. GRAHAM thought he had professional liability insurance..
162. Your survey is obviously worded so as to give you the result you want, which is to force more regulation on everyone. I am adamantly opposed to mandatory insurance or anything else that would likewise tend to strangulate private practice or private enterprise generally. This supposedly well meaning regulation will only make it even more difficult for people to get the legal help they need. This will drive out the part timers, semi-retired, and those who try to do a reasonable amount of pro bono work, as well as those just starting out because there is no insurance that is priced on a sliding scale for them. People with reasonable cases are already going without justice because the cost is too high or because they cannot find a lawyer at all. Rural areas will be disproportionately hit and they have a lot of trouble already. I'm sure that this will fall on deaf ears because you already decided to do it and just commissioned the survey to justify your predetermined outcome; but I vehemently dissent.
163. This is yet another fantastic way to ensure that private attorneys are run out of business. If you intend to make governmental employment or firm employment a mandatory exercise in the legal community you have found a wonderfully effective means of doing so.
164. I generally support this move in "theory" that it provides the public protection from negligence or willful acts like Graham. Insurance is "reactive". It only helps once a problem has arisen. The State Bar should be proactive in its approach. This would include raising (not lowering) the minimum scores to pass the Bar Exam (since pure politics were involved in trying to ensure more UNLV law

	grads passed), tightening up Rule 51.5 regarding non-ABA grads and what constitutes functional equivalence, etc. The goal should be to put the best prepared and more ethical lawyers in our State. Not everyone who goes to law should be able to pass a Bar Exam. Similarly not everyone who applies to law school should get in or graduate. Lowering Bar Exams scores to increase the pass rate to appease UNLV and its big money boosters and having very liberal standards for functional equivalence of non-ABA grads does nothing but ensure that less prepared, unqualified and unethical lawyers are admitted. Mandatory malpractice insurance is just a knee-jerk reaction to the fallout from a prior bad decision by the Bar.
165.	(1) Your survey is biased in favor of mandatory insurance. Have you surveyed a control group of non-lawyers? (2) I am mostly retired but every now and then other lawyers or companies consult me. The amount I get paid for doing this work would barely cover the annual premium of a minimum policy (I checked). If I am forced to buy coverage to maintain my ticket, I'll be forced to give up my ticket.
166.	Do it.
167.	There is little risk for part time practitioners in certain areas of law. Requiring insurance might make the difference whether a person could make this life-style choice. For that reason, I'm opposed to mandatory insurance.
168.	I think the State Bar should provide minimum levels of malpractice insurance for every bar member, paid for by assessments against each attorney or their practice. An attorney desiring greater protections could then purchase more insurance on the open market. That way, it would not be necessary to disclose the existence or non-existence of insurance, which would likely encourage malpractice lawsuits by disgruntled former clients. Also, the State Bar could immediately suspend an attorney who has not paid his or her assessment, just as they do when the Bar fees are not paid, or CLE credits are not earned/reported in a timely manner.
169.	Shame on you for attempting to increase the operating costs to low-cost providers like me. Someone likely has an hidden interest in selling insurance here, as I see no real, compelling facts to justify this push to force us to "buy insurance." Also, if the State Bar of Nevada is saying anything by mandating coverage, it is that the organization is one with zero trust in the quality of their own bar exam, CLE programs, or other work done to help ensure quality service to our public. This is a slap in the face to all these earnest support efforts to help each other in our bar organization.
170.	THIS IDEA IS GOOD IN THEORY, BUT DOING THIS WILL HAVE A GRAVELY DISPROPORTIONATE IMPACT ON THOSE ATTORNEYS WHO ARE SOLOS OR IN SMALL FIRMS ON THE PLAINTIFF'S SIDE. FIRST, SOME OF MY PRACTICE CONSISTS OF CLASS ACTION LITIGATION. INSURANCE COMPANIES WILL EITHER NOT WRITE YOU, WILL HAVE AN EXCLUSION OR IF YOU PRACTICE ANY CLASS WORK THE COST IS SO PROHIBATIVE, YOU CAN'T AFFORD IT. I HAVE LOOKED. MOST IF NOT ALL MID TO LARGE DEFENSE FIRMS HAVE E & O INSURANCE AS THEY CAN AFFORD IT. SECOND, IF A SOLO OR SMALL FIRM GETS ANY STATE BAR COMPLAINT, INCLUDING A BOGUS ONE, THAT HAS TO BE ON THE APPLICATION AND REPORTED TO YOUR CARRIER. EVEN A BOGUS COMPLAINT. I HAVE NEVER HAD A COMPLAINT, BUT I HAVE HAD SOME OFF THE WALL UNREASONABLE CLIENTS THREATEN TO DO SO. ONE BOGUS COMPLAINT MAKES INSURANCE COST PROHIBATIVE. AGAIN, THIS WILL HURT MOSTLY SOLOS AND SMALL PLAINTIFF FIRMS DISPROPORTIONATELY. I DO NOT BELIEVE REQUIRING MAL PRACTICE INSURANCE IS THE WAY TO GO, BUT IF THE BAR BELIEVES DISCLOSURE IS IMPORTANT THEN THAT WOULD BE A GOOD COMPROMISE. CLASS ACTIONS ARE AN IMPORTANT PART OF ENFORCEMENT OF CONSUMER RIGHTS, BUT INSURANCE IS COST PROHIBATIVE IF THAT IS PART OF YOUR PRACTICE. CONSUMERS WILL BE HURT AS WELL BECAUSE THOSE WHO PRACTICE STATUTORY CONSUMER LAW, FCRA, FDCPA, TILA, AUTO FRAUD, WRONGFUL REPOSSESSION AND FORCLOSURE ETC... ARE SOLO FIRMS. I WOULD SURMISE THAT THE NUMBER OF THOSE WHO CARRY INSURANCE IN ACTIVE PRACTICE, MOST ARE DEFENSE

	FIRMS. OTHER PROFESSIONALS LIKE DOCTORS, ACCOUNTANTS ARE NOT REQUIRED TO HAVE SUCH INSURANCE. IT SHOULD BE LEFT UP TO THE ATTORNEY TO MAKE THE DECISION IF HE OR SHE WANTS TO PAY FOR E & O INSURANCE. ATTORNEYS CAN'T LIMIT OR INSULATE THEMSELVES FROM PERSONAL LIABILITY VIA THE CORPORATE SHIELD. THEY ARE SUBJECT TO LAWSUITS FOR THEIR MAL PRACTICE, AND AGGRIEVED CLIENTS HAVE REMEDIES TO SEEK DAMAGES, BUT REQUIRING MAL PRACTICE IS NOT THE ANSWER. DISCLOSURE TO THE IS OF HAVING NO INSURANCE IS A GOOD COMPROMISE IF E & O IS BEING CONSIDERED ON BEING ADOPTED INSTEAD OF REQUIRING INSURANCE.
171.	This is completely unnecessary intrusion BY what is becoming a nanny, Overbearing mandatory bar. The free market should control this issue. I am opposed to mandatory insurance but OK with disclosures
172.	I highly disagree with forcing all attorneys to buy malpractice insurance. Also those vote of those whom it would personally affect should take priority of those working in a large firm who would not feel a direct hit from this.
173.	Not only will this skyrocket the costs of insurance, but it will absolutely increase the number of malpractice filings by unhappy clients, even when there is no legitimate claim.
174.	Another way for the Bar to intimidate solo practitioners.
175.	My practice is growing but remains very small. While the cost of malpractice insurance may or may not be very large, it would be a negative impact on my ability to grow my practice from the ground up. I think a mandatory rule such as this (if used at all), should be limited or conditioned upon a certain threshold for gross income of a firm. Very small firms such as mine really do not need insurance and imposing the cost would be an unfair burden on my practice.
176.	I am retired from the active practice of law, but active as an arbitrator. No reason to be forced to acquire professional liability insurance.
177.	I am a proponent of malpractice insurance but I am cognizant of the cost as a business owner. Yet, it is a protection also for the attorney as they can defend themselves.
178.	I only represent family members for minor matters. The cost of insurance would prevent me from that representation and thus they would have no representation.
179.	If the State Bar is concerned with protecting the citizens of Nevada from attorney malpractice, the State Bar should take a more active role in determining and punishing attorney's instead of trying to push these responsibilities onto the Court system.
180.	Mandatory insurance is a bad idea
181.	I am now in-house counsel in another state but still have Social Security Disability cases and occasionally do estate planning for Nevada clients. Even when practicing full time, my areas of practice were extremely low risk and also focused more on providing assistance to low-income clients. That is a high level of coverage for a lot of attorneys in private practice and totally unnecessary. \$100/\$300 is what I carried and was far more than any liability could have been for my clients. Applying a universal requirement like that prevents attorneys from doing part-time and reduced fee work.
182.	Professional Liability insurance protects the lawyer more than the client. I maintain such insurance to preserve my assets, not to protect my clients from my wrongdoing. Ethics rules and my own sense of professionalism and ethics protect my clients, not that I have insurance. Neither do I take unnecessary risks simply because I have insurance to back me up. On the other hand, there are sufficient numbers of lawyers, especially in solo and small practices that are not financially stable, causing them to take undue risks to earn that extra fee and putting their clients at unnecessary risk. Clients of those lawyers do need some protection from those unnecessary risks. Other states, like New Jersey, where I am also admitted already require professional liability insurance as a condition of admission to the bar. I do not believe there is any increase in

	malpractice claims due to such insurance requirement. If the concept is to protect clients, an alternative such as a client security fund, as in effect in New Jersey also, would do more to protect clients than simply requiring lawyers to be insured. Insurance only kicks in when a claim, and usually a lawsuit is instituted, making it more difficult and time-consuming for the client. A protection fund, administered by the State Bar and managed by volunteers, could resolve claims more quickly and efficiently and make client pay-outs more efficiently than simply requiring insurance as a back up to the attorney's ability to pay a claim.
183.	I want to express my opinion that this will only increase malpractice suits. Not one person has ever asked me if I had it. It is required for my work with Insurance carriers.
184.	Before mandating coverage, the Board of Governors should perform a study and report on how many instances of clients suing for malpractice and being unable to recover (ie insolvent attorney/practice) occur in Nevada annually; otherwise, we're just lining insurance company pockets for a problem that does not exist. In other words, I am very much unconvinced that this is a problem at all.
185.	I have coverage and always have, yet I strongly oppose a mandatory requirement. All that accomplishes is to increase in premium costs and to encourage more malpractice suits. I have never heard anyone state that they have a lower opinion of the legal profession based upon maintenance of malpractice coverage. I am further concerned that the current Board of Governors is entirely to activist. We just had a survey regarding mandatory audits of trust accounts, which would certainly be intrusive, time consuming and expensive. That won't stop the bad actors either, clients always find out first because they are unable to obtain their funds and then report it to the bar.
186.	I do not think that we should have to publish this information. However, it should be made available on the State Bar's website.
187.	This proposed over-regulation brings the Bar over the line into the free market and free competition, including giving big firms another competitive edge over solos. The proposed regulation will negatively impact the market, including edging out solos who are not insurable, but who are highly competent. Insurer underwriters look at frequency and severity of loss histories. Requiring insurers to offer coverage would solve this, but the Bar has no jurisdiction over carriers.
188.	Like the proposed amendment to rule 8.4[g], another stupid BOG idea.
189.	The questions and array of possible answers in this "survey" are for the most part extremely embarrassing. I cannot believe the State Bar of Nevada is playing lawyer games with members of the bar.
190.	If history and economics are any indication, mandatory insurance drives insurance rates higher because companies know that they have mandatory consumers. An increase in insurance will result in an increase in fees to the public, eliminating more of the public from being able to retain legal assistance. In an attempt to protect the public from a few bad eggs, you prevent the public access to the good ones.
191.	Mandatory malpractice insurance will increase the cost of doing business, pass that cost on to the clients, and thereby limit access to justice for indigent clients. Additionally, in-house counsel should not be required to maintain malpractice insurance.
192.	Please share the approximate cost (or the price range) for the minimum coverage under consideration. Thank you.
193.	Govern yourselves. Leave it up to each attorney or office. It will create a cesspool of malpractice suits. It is called a "practice" isn't it? More insurance money, more bad cases, more nonsense.
194.	Requiring all private practice attorneys to carry malpractice insurance minimum limits is overall a good thing for the attorneys, the clients, and the legal industry as a whole. The concern is that the insurance limits that attorneys actually have should not be something that is publicly available. If suit is filed against an attorney then disclosure of insurance limits is obviously necessary, but

	<p>availability of that information before suit is filed will lead to a cottage industry of seeking out lawyers with higher limits to target for lawsuits...just like personal injury lawyers ignoring valid claims that are small in order to pursue often frivolous claims against a commercial defendant (like a trucking company) just because they have higher insurance limits. Also, since the State Bar is also considering a policy of random trust account audits, if you are going to do that then you MUST also mandate malpractice insurance for lawyers.</p>
195.	<p>I have seen malpractice in cases handled by other attorneys that is very disturbing (e.g. litigation attorneys who do no discovery and take a case to trial with no witnesses, attorneys who take cases with inherent conflicts without adequately explaining the conflict to clients, attorneys who miss deadlines, etc.), and many of these attorneys had no malpractice insurance. If there is an increase in malpractice litigation simply from attorneys having insurance, this is likely because before making an insurance requirement, these clients who were harmed by their attorneys' negligent representation had no recourse and could do nothing. There may be some frivolous cases of people who just are upset they were unsuccessful with their litigation and are hoping to collect from someone else's insurance company to help compensate for their losses, but there are a lot of legitimate cases out there of attorneys who are mishandling cases. I strongly support the requirement for attorneys to have malpractice insurance. But it might be worth getting more detailed feedback from practitioners in different practice areas with different office sizes, with some quotes from available insurers, to provide better feedback on policy costs and limits to make it something affordable for a variety of practitioners. It is difficult for me, as a larger firm practitioner, to take an online survey and say what the policy limits should be for all attorneys, without having some idea of the cost of providing that insurance, for example, to a solo practitioner.</p>
196.	<p>There aren't enough companies who write malpractice insurance or broker who sell malpractice insurance in Nevada to warrant mandatory liability insurance. Rates in Nevada are very high and requiring mandatory insurance will encourage insurers to raise rates even higher because they know we need it. Mandatory insurance is a stupid idea and will only benefit the malpractice insurance companies. If more companies start writing insurance in Nevada and there is an effective broker network for the purchase of malpractice insurance, I may change my opinion. But right now, there is either enough competition or enough effective distribution to make it mandatory.</p>
197.	<p>Having previously been in private practice and left to join a government office, the BOG should carefully consider that most policies are "claims made" policies. For an attorney leaving private practice, the issue of whether, how long and the cost of purchasing "tail coverage" or ongoing protection after the attorney is no longer engaged in practice is a significant issue. Given that some statute of limitations are going to be based upon the "discovery" of harm, the need for coverage for years after ceasing to practice is a significant issue and can be costly. Those issues must be addressed as part of any "mandatory" coverage.</p>
198.	<p>If an attorney only represents criminal defendants, it is almost impossible for a legal malpractice law suit to end with payment of fees to the prior client. In the criminal defense context, the prior client must have a conviction reversed and then either be found not guilty or the case is dismissed. Requiring attorneys, who only represent criminal defendants, to have more than a minimal amount of malpractice insurance just costs the attorney a significant amount of money and is a windfall to the insurance company which, in all likelihood, will never pay a single penny. Clark County requires attorneys who accept criminal appointments to carry \$1,000,000 in malpractice insurance which costs approximately \$3000 per year. It is absurd!</p>
199.	<p>There should be no mandatory insurance, period. The insurers overcharge for their coverage and there is no real competition among the few insurers who write policies, so premiums are exorbitant, esp. for solo, semi-retired and part time attorneys (assuming the coverage is available, which it often is not). This is a bad idea.</p>

200.	If I make a mistake, I make it right with the client, period. The board and the courts have no business intruding like this, and if it becomes a rule, I hope it will be challenged in the courts, I will consider helping with that challenge.
201.	I do not think mandating every lawyer to obtain malpractice insurance is a good idea, other than helping disgruntled clients try to exact some measure of revenge.
202.	The mission of the State Bar of Nevada is to make the law work for everyone. This is one more instance of making it harder for the small or solo law firm, which are doing the bulk of the work, very often without pay.
203.	Mandating that an attorney carries professional liability insurance gives clients (i.e., the customer) a false sense of security. The onus should be on the client to make an informed decisions about his or her representation, which might include deciding to pay a lower fee for taking on the risk of hiring an attorney who does not carry insurance.
204.	I am guessing this idea came from attorneys who represent insurance companies. How about those pushing this matter disclose the the identity of their insurance company clients? But again, let me guess, that could violate attorney/client confidentiality, right? This appears to be nothing more than a money grab by insurance industry.
205.	I represent consumers and charge them nothing. I only ever recover if they do, and they're statutorily capped at \$1000 most times. That practice method and the requirement to have insurance would negatively impact my business, and a single policy claim would likely be barely more than my deductible
206.	For some reason the State Bar continues to follow the Oregon Trail. Yet, only a hugely small percentage of attorneys ever see a malpractice action against them while most carry insurance that adequately covers their practice. Most policies, if not all, do not cover theft (intentional acts) by attorney's of their client's money. I practiced law for two decades and never had a claim against my policy. Instead of mandatory requirements for coverage (we would be only the second state in the country) why not increase, not decrease, bar admission standards. The most recent bar pass rate was artificially inflated through political means. Might as well have complete reciprocity then. Let anyone practice in Nevada. In addition, you do not ask the right questions nor do you give us the proper information to make a more informed decision. Each year we need to disclose to the bar if we carry professional liability insurance. This is public record and any consumer can request the information from the Bar. However, even though you have that information, you have failed to disclose how many private practicing licensed attorney's in this state carry insurance v. those that don't. What the size of their practice is? If they carry individual policies or are covered by their firm? Etc. I think the Board of Governors should get back to representing their attorney's and advocating for them, not presuming negligence and giving us all bad names.
207.	Mandatory insurance is a good idea and should be implemented. It protects the public and I feel it will potentially lower rates by making every attorney purchase to spread risk and increase premiums to the insurers of the state.
208.	Nowadays, legal directories (including the state bar) report incidents of claims or complaints, without reporting the details or outcome. I am concerned that suddenly reporting insurance availability to the public acts as as if malpractice insurance is new, and therefore creates an incentive to make questionable claims. Even questionable claims are reported publicly, seemingly perpetually, without detail to allow the public to make an opinion about whether the claim says anything about the attorney's quality. Attorneys need the leeway to make judgment calls- it's what we do- and arming clients with information about mandatory insurance puts the attorney and client at odds with one another. I am generally in favor of mandatory malpractice insurance, if it can be accomplished without becoming a news story.
209.	hard to take court appointed cases on a part time basis if required

210.	I think that maintaining professional liability protects all concerns: The legal profession, the client, and of course, the practitioner!
211.	If I felt they would listen or it would help, I would spend as much time as necessary to put this matter out there. At this time, however, I do not feel that is the case.
212.	Insurance is very expensive , it makes you a target for greedy clients and then it costs another \$10,000 or so deductible to hire a defense attorney before the insurance kicks in to help.
213.	I am in general not in favor of more rules governing what we do. Over regulation
214.	the Nevada bar has been way to lax for way too long. all but the most sophisticated clients assume tat lawyers are required to carry E&O. we should, at an absolute bar minimum, be obliged to disclose if we do not carry E&O. at least let the consumer have a level playing field. why can't the bar get a group rate? the time has come to fix this gaping hole in our credibility
215.	It will advance the public' s view of the profession.
216.	What concerns me is the requirement that this be Nevada Admitted Coverage - My firm has \$15 million in coverage with an SIR which is presently \$250,000 I believe for lawyers outside Oregon (which has mandatory primary layer bar-provided coverage). We're about to move our coverage to the Pilot Legis Risk Retention Group -that's NOT Nevada admitted coverage - PilotLegis purchases their coverage or reinsurance in the London Market. If the PilotLegis coverage is not qualifying, then my firm would have to buy an extra Nevada only policy for me, at an additional cost. I do a moderate amount of Nevada work, but am primarily a California lawyer. The requirement to buy a wholly unnecessary Nevada policy is likely to be resisted by my firm, thus forcing me to either go inactive or resign from the Bar, despite having substantially more coverage than the bar proposes requiring. This proposal is poorly thought out and appears not to have had sufficient vetting by people who understand the insurance industry. Do NOT require the coverage to be admitted coverage in Nevada, simply require that it be coverage that may legally be offered in Nevada through a Risk Retention Group or through the surplus lines market, as well as admitted. Thanks,
217.	Are criminal defense lawyers going to be required to carry malpractice insurance? If so then this rule is just a scam to benefit insurance carriers. In the real world, there is no malpractice liability in criminal cases.
218.	Over the last decade, it is prohibitively expensive to get malpractice insurance if you do even occasional class action work (>1 per year) - even low value (e.g., injunctive) class actions where the only person taking any financial risk or facing financial consequences of the attorney's negligence, is the class action attorney. Mandating attorneys to get insurance on the open market is a VERY BAD idea.
219.	Clients already have a remedy in that they can sue their attorney and file a bar complaint.
220.	When I find out that an attorney does not have malpractice insurance, it causes me great concern. If they are not willing to carry insurance, it makes me wonder about the quality of the legal services being provided. Anyone can make a mistake. Insurance is there to protect our clients if we do.
221.	If the insurance is mandated, I think it is imperative that the Bar provide access to reasonably-priced insurance to all licensed attorneys, including those who may be difficult to insure due to practice areas or history.
222.	Between this and audits of trust accounts, the bar is definitely on the right track.
223.	There are many competent attys like myself who are conscientious and careful. I take good care of my clients and go above and beyond. However after paying huge prices for malpractice insurance for years - I finally could not afford it. However, I do not practice in areas where I am likely to cause damage to my clients and I have safeguards (as always) to ensure I am not committing

	malpractice. By forcing malpractice insurance, you will likely force many cost-effective lawyers out of business.
224.	I am over 70 years of age and practice only in the field of real estate where I prepare Deeds, etc. I was trained in New York and served in the Real Estate Division of the Attorney Generals Office. I have taught real estate law for many years. The probability of my making an error which will cost my clients money is very very low. My net worth exceeds \$1,000,000. I had \$1,000,000 of liability insurance when I had my own full time practice and when I was managing partner for LePome, Willick & Gorman, Esqs. We never had a claim. I bought "tail" coverage for 5 years after leaving full time practice. My semi-retired part time practice generates income below the level which requires a business license. Requiring me to pay for liability insurance in view of the foregoing is abusive and wholly unnecessary.
225.	Clients can decide whether to hire an attorney to provide services who has or does not have coverage. It should be a choice. I specifically elect not to carry insurance to prevent clients from wrongly believing an insurance company will provide a guaranty of any result. However, this choice does not prevent lawsuits or disciplinary action. More regulation does not provide protection to the public. It funnels money to insurance companies which are not required to pay claims. It's a false sense of security.
226.	The worst damage to clients has been done by attorneys who INTENTIONALLY embezzled funds and insurance does NOT cover intentional wrongdoing. Requiring anyone to buy a product from for profit companies should be unconstitutional.
227.	I worry that requiring insurance may have a negative impact on small offices offering low cost services to clients that make enough so as to not qualify for pro bono services but not enough to hire higher priced firms. Usually, attorneys who do not maintain insurance likely do not serve clients in high-value matters. These attorneys may assist with immigration, child custody, and eviction matters, where risk of monetary loss is not as high. This policy could create a bar of entry for these attorneys, and clients could go without representation if fees have to be raised. I do not know the extent of the problem surrounding uninsured attorneys. So that is a definite caveat to my concerns
228.	Solo attorneys, especially those who are retired or semi-retired, should only be required to carry malpractice insurance as part of reinstatement from suspension or disbarment.
229.	An attorney should be left to make their own decision whether to have their personal assets at risk (versus having insurance) in the event of a professional negligence claim, whether their personal assets are adequate to fairly compensate a client in the event of a claim, and as what types of services to provide and not provide in order to manage the risks of a claim being made and the potential amount of a claim.
230.	A family member of mine hired an attorney in San Diego who didnt carry malpractice insurance. He blew a statute of limitations and then pretended for months like he was actively litigating the case. Then they hired another attorney to sue the first attorney for malpractice. They still haven't recovered anything from the first attorney. It's just been a very disappointing experience. They just want their fees back at this point.
231.	Malpractice insurance for all is wrong. It punishes all for the acts of a few greedy lawyers. Most lawyers are reputable. Lawyers who bill inflated costs that they never incurred, like Marjorie Hauf, coerce clients to sign settlement agreement statements before they hand over the checks, so they get away with this fraud. As a result, clients are freely gouged by unscrupulous lawyers like her.
232.	I frankly thought that malpractice insurance was already mandatory so I am shocked (and embarrassed) to learn now that this is not so. I might also say that I have always been shocked (and embarrassed) by the ridiculously low number of CLE hours required. compare the CPA's and their 40 hours of CPE. And some of the "CLE" for which credit was granted was pathetic.
233.	I am mostly retired. As noted, I work only part-time and only for other attorneys, covering, say, depositions, a motion argument, etc. I presently never have a client for more than a couple of

hours at a time. I do my best to ascertain coverage for me on the contracting firm's malpractice insurance. Inasmuch as I have been mostly retired for some years, without much work history, I doubt I would be able to purchase malpractice insurance, and I'm certain I would not be able to afford it. Therefore, I would be forced never to work for anyone, ever. Also, I am uncertain about the efficacy of malpractice insurance. When I had a practice that wasn't under the umbrella of a corporation or someone else's practice, I maintained malpractice insurance. Even though I never had a claim, it was my 2nd largest expense, almost as much as my office rent. Personally, I do not much trust insurance companies. They do not have billions of dollars in assets because they pay claims. In my personal experience, collecting from an insurance company tends to be difficult, not just in circumstances in which one's client has been, say, involved in a collision. Along the way, I have represented sundry individuals who were suing their own insurance companies because the companies had declined to pay valid claims. I don't believe attorneys having malpractice insurance provides any assurance of settlements to any wronged clients. I also believe it will encourage frivolous claims. There are many reasons for problems in matters that don't involve negligence, error or omission on an attorney's part.

234. It is unconstitutional for you to require me to have legal malpractice insurance. If somehow it were constitutional for you to require me to have legal malpractice insurance it must be allowed that I can self insure by showing proof of my net worth. As a former legal malpractice defense attorney I am sure that having legal malpractice insurance increases frivolous lawsuits. This is because insurance companies are willing to settle frivolous claims to avoid having to pay Council to defend against them.
235. 1. My practice involves a substantial amount of time representing people of very limited financial means. If I am required to incur the significant expense of carrying malpractice insurance, this is going to significantly affect my ability to offer services at a reduced fee or to represent clients where I know the fee earned will be low. You are going to make it much more difficult for people of limited financial means to find reasonably-priced legal services (outside of personal injury) if you require attorneys to incur this significant additional cost as a requirement of licensure. 2. I think it was a mistake to stop listing whether an attorney carried malpractice insurance on the state bar website. 3. I think the survey results are going to be of questionable validity given that the questions were loaded in an attempt to force an attorney to answer that he/she is in favor of mandatory malpractice minimums.
236. I think this is the worse idea the Board of Governors has considered in the 24 years I have practiced law. I can't even believe the BofG is considering it. I think it is reprehensible for a semi private exclusive guild to be mandating that I do business with an industry that's only purpose is to harvest premiums and limit claims whenever possible. I have gone w/o malpractice insurance for years because one, I don't commit malpractice and have never had anyone so much as hint that they wanted to make a claim. I should have the right to self insure and given the standards of what is necessary to make a claim succeed I measure the possibility of loss to either myself or any client to be minimal. I would think any attorney that doesn't carry malpractice insurance is probably the better attorney for it as they are willing to risk their own assets against any claim.
237. Right now the State Bar requires who are listed on the Bar's website as a "specialist" to carry malpractice insurance. I think this should be required at a minimum, but I am not sure that every lawyer should be forced to have it. I have a lawyer client right now that did PI work. After a few claims his insurance company dropped him and he cannot get insurance. He is not a bad lawyer, he just had some bad clients. I personally don't believe that he was wrong, but the clients still made claims. After a few of those, the insurer dropped him. If mandatory insurance were required then he would be unable to practice law, and I don't believe we should have insurance companies governing whether or not we can practice. That is one significant concern I have. Therefore I believe that having an insurance requirement for those advertising/holding themselves out as a "specialist" should be in place, but others I don't believe that it should be a requirement (though I

	would certainly suggest it - maybe encourage in the same manner we do for pro-bono service - maybe even offer discounts on bar fees for those who are insured and can prove it. With extra fees from uninsured we could look into placing those fees into the recovery fund).
238.	Forcing attorneys to obtain malpractice insurance is an unnecessary added financial and administrative burden in an already tough economic environment. I practice out of state but want the ability to practice in Nevada without an added expense (ie in addition to my bar and CLE dues which I pay regardless). Please don't make make malpractice insurance mandatory.
239.	I am retired but have a small practice serving poor clients and veterans and pro bono with legal services. I disclose to potential clients that I do not have malpractice insurance. I also tell them that my fees would be a lot higher if I carried it. My practice does not involve complex issues. If it does, I refer them to other legal counsel. My practice is limited to tribal courts and tribal forums. If I have to carry malpractice insurance, I would consider becoming inactive and then practice as a tribal advocate as allowed under tribal laws (without State Bar oversight).
240.	If you do require reporting, please require premium reporting so that the Bar can track expenses and measure the burden this requirement is causing. Also reporting this would allow for determination of whether it would be preferable to go to an Oregon style system. Also, consider adding additional CLE / Professional Counseling in lieu of malpractice insurance for those attorneys who cannot or chose not to carry such coverage. Finally don't require the posting of how much coverage you have as it will unduly burden those who carry some coverage but less than the next guy.
241.	Unlike med.mal. policies, attorney E&O policies are "burning" policies, i.e., defense costs go against limits. In many cases, the defense costs will completely burn up a small policy, which is why we went from \$1M to \$2M per claim. We have \$2M claim / \$4M aggregate, which isn't in your survey. Many policies are \$1M claim / \$3M aggregate. VERY concerned about newbie lawyers and solos being able to obtain affordable insurance; State Bar may need to arrange such insurance, and maybe coordinate with the Department of Insurance to create a pool for those who cannot obtain it commercially for whatever reason.
242.	This is a bad idea.
243.	1) I already at for license just to be a short trial judge so please don't add to that cost for me when I dont practice law 2) i do have a type of business insurance that covers ADR if I were to need it but would expect to have immunity or be covered by AG on court appointed work anyaaay
244.	Do not mandate!
245.	Attorneys are "NOT THE MOMMY". We cannot be guarantors of outcomes and should not be REGULATED TO THE POINT THAT SOON WE WILL BE REQUIRED TO USE SPECIFIC SOFTWARE AND SPECIFIC INK COLORS FOR SPECIFIC PAPERS. We are Professionals and should not be treated like we have to provide porridge and warm milk for our clients with cookies in the lobby. That is absurd.
246.	More meddling. Are you people bored? STOP!
247.	Clients should be able to choose whether to retain a lawyer who is insured or a lawyer who is not insured according to what the client is able and willing to pay. Many clients now cannot afford to hire a lawyer and mandatory insurance will raise the price to retain a lawyer even higher. Therefore, mandatory malpractice insurance will increase the number of people who need legal services but cannot afford them. Furthermore, mandatory liability insurance will not likely make whole clients who have been harmed by attorney negligence. Mandatory insurance always increases costs in an industry without necessarily providing the desired payout to the intended beneficiaries. Insurance companies are notorious for maximizing profits by refusing to timely provide the benefits which they have contracted to provide. The companies delay and litigate valid claims to attain at least a reduced payout if not complete elimination of any payment.

	<p>Mandatory malpractice insurance will increase litigation over claims and only those clients financially able to litigate with the insurance companies will benefit. Furthermore, historic insurance costs to lawyers are not proportional to the volume of cases handled by the lawyer and thus mandatory malpractice insurance will cause attorneys who only handle a small volume of work to be unable to help the potential clients who are unable to pay the price demanded by high-volume firms. Insurance premiums demanded of me have been the same for my practice handling only a few cases per year as the premiums demanded of my colleagues who handle ten to a hundred times more cases per year. The insurance companies have been absolutely unwilling to tailor the premiums to the level of risk presented by my low-volume practice. Therefore, I was forced to drop malpractice insurance. I have only helped clients that claim they cannot hire an attorney elsewhere, usually because the up-front retainer is too expensive or the fees are just too high. If I am required to buy malpractice insurance, I will not be able to help these people. While one may think that I would help poor people through a legal aid organization that provides malpractice insurance rather than not help poor people at all, that thinking would be wrong. I tried helping people through a legal aid organization and found the organization's people so unsupportive and the experience so adverse and misrepresented that I promised myself that I would never do it again. Therefore, in my case, mandatory professional liability insurance will decrease the number of poor people who are able to attain legal aid in our state. So that reduces the issue to a very simple choice. The simple choice is to allow clients the freedom to make an informed decision to hire an attorney who does not carry malpractice insurance and assume the risk or require all attorneys to carry malpractice insurance, deny potential clients the right to make an informed choice, and exclude more of the poor who cannot pay higher fees from being able to hire an attorney for legal representation.</p>
248.	<p>Each and every client is a walking lawsuit. Providing additional sources of recovery to specious claims exponentially increases the likelihood of client lawsuits when they absolutely know that there is an untapped financial resource. A mandate of liability insurance encourages unnecessary litigation and I am absolutely opposed to requiring it. As it is, 90% of my work is gratis. Not only do I not get paid, but then they can sue and cause me to have to pay them for doing free work for them. I owe these people my best effort, not a lottery ticket.</p>
249.	<p>I believe this requirement and disclosures to clients as to whether the attorney has insurance will negatively affect small firms, create a false distinction in the attorneys' abilities and projected outcomes and encourage malpractice litigation once the minimum limits are disclosed for vexatious clients.</p>
250.	<p>This is a very very very bad idea and would force me to potentially close my Nevada practice. I practice law in 12 jurisdictions and have not been able to obtain even a quote on insurance despite numerous attempts due to the complexities of my firm. Malpractice insurance is a crutch used by inept lawyers to perform sloppy work rather than be appropriately diligent.</p>
251.	<p>It is so very difficult to maintain a solo practice. The increased coat of malpractice insurance would put put me out of business. Stop this.</p>
252.	<p>Current regulation is onerous enough. Please stop making it more difficult to run a small business.</p>
253.	<p>Level of coverage could be tied in some way to the amount of exposure (value of matters being handled).</p>
254.	<p>Mandatory insurance is a much better way to protect the public than mandatory audits of lawyers and law firms every five years. Bravo to the State Bar of Nevada.</p>
255.	<p>I represent clients in special education. I have done so for since 2001. I make very little income but have a passion to assist the marginalized. My practice does not have monetary damages as a remedy. I should not be forced into insurance that is not relevant and hurts my ability to protect those who cannot afford representation. When I do engage in legal actions that include monetary damages, I contract with co counsel. This would have a devastating outcome on my ability to</p>

	assist those who require legal services. I earn less than most secretaries and could not afford the premiums.
256.	Did you obtain or investigate price quotes for how much an attorney can expect to pay or budget for this type of insurance premium? What if providers gouge like health care insurance providers did before the health ins exchange was implemented? What if it is so truly unaffordable it puts single practitioners out of business? How are attorneys protected from price gouging? Thank you for asking membership for their questions and input.
257.	Lawyers can decide what is right for their practices. There is no need to legislate mandatory insurance for all attorneys. Many attorneys do not face the potential for malpractice lawsuits.
258.	bad idea
259.	Make disclosure to the client mandatory, but don't require the lawyer to carry it. It will simply discourage those who want to devote a lot of time to pro bono work. Not all pro bono work comes through Legal Aid offices. Many times, lawyers take clients on directly when they have a good cause but no money. In those instances, the requirement of insurance will simply keep a lawyer from taking the case. Let the clients decide who they want to work with -- just make disclosure mandatory. This method works in CA, and should work in NV.
260.	Minimum coverage requirements, if any, should take into consideration the nature and monetary value of the type of claims handled by the attorney. In many cases, even a minimum of \$50,000 per occurrence could far exceed any potential damage to a client. Unfortunately, insurers only seem to offer higher minimums than what's really needed based on the type of practice.
261.	For specialized areas of practice, the costs and the carrier selection is limited. For example, for patent law, there are no in state carriers and a special tax has to be paid on the policy. If the State Bar passes this, then the insurance companies must insure everyone- it has to work both ways.
262.	The Nevada Bar Board of Governors Nevada is infuriating. Young lawyers and solos are already struggling, especially in rural counties. Moreover, young lawyers in particular are straddled with huge law school loan debt even from Boyd where the debt can easily exceed \$100,000. Good paying jobs are still hard to find. Solo and small firm practice means low salaries. We are not making six figures. Do you have a clue about the cost of malpractice insurance, especially for so-called high risk practice areas like real estate, family law and personal injury? This is insane. Nevada is already one of the highest cost to practice states at just under \$500 annually along with 13 hours of MCLE. And the BOG just increased cost to practice by mandating one extra hour of CLE annually. Now you want to increase cost to practice even further by thousands of dollars! This is so ridiculous. What is driving this other than a parochial do-gooder mentality by the BOG at the expense of its members? Moreover, your survey is absurdly unfair. It is biased, replete with assumptions, leading questions and agenda-driven to get the results you want. The Nevada BOG is apparently hell bent on causing an insurrection among members. Keep it up. You are well on your way of entrenching an adversarial relationship if not a deep animus toward the Bar and the BOG. Add to the equation a heightened prosecutorial mentality by the Office of Bar Counsel and many of us ready to throw you guys out. Time for a voluntary membership bar that will dramatically lower our practice costs. The BOG is delusional, out-of-touch and totally tone deaf.
263.	My suggestion is limited to the small sole practitioner. Disclosure of no insurance to a client, or mandatory requirements to buy insurance should be governed by the dollar amount of exposure or potential malpractice claim. e.g. A firm that routinely litigates seven or eight figure claims or defends should not be treated the same as a sole practitioner who seldom, if ever deals with seven figures, or defends same. It's just common sense. Most attorneys who avoid or refer out or co-counsel on the big ones can very effectively be self-insured. Why drive them out of business with extra expense. The current trends in expenses are heavily felt by senior sole practitioners. Demarcation points on mandatory coverage should be linked to exposure.

264. I wonder about the requirement to obtain from any carrier licensed in Nevada. I do not know if the carriers which provide malpractice insurance to those at high risk- for instance those who have had prior claims- are licensed in Nevada.
265. Money is power in our honored profession as it is throughout our national life, it now appears. Mandating yearly insurance premiums in unknown amounts is just another way the huge law offices compete for business: by exercising their economic leverage and squeezing out the solo practitioners via the back door. They then can less guiltily charge their \$350+ an hour and deprive even more poor and hard working people the legal advice they so desperately need in this dog-eat-dog world. I have serious doubts about the constitutionality of any such proposed insurance mandate (hmmm: why does that sound so familiar?). But I am far more concerned with the Nevada public, who will -- as usual -- be the ultimate sufferers if this is imposed.
266. Please do not require mandatory insurance. This is a boon to insurance companies and is not really going to do much to protect clients from bad lawyers. Better screening at the front end (about who to admit to practice in Nevada) would be a better solution for the problem.
267. This makes no economic sense. The reality is that malpractice insurance doesn't more to protect a lawyer than it does clients damaged by lawyer. Also, we should be able to decide whether we want to risk it without insurance
268. I have been practicing personal injury law in California starting in 1975 and then in Nevada since 1992. I represent plaintiffs. I have always carried E & O coverage until 2 years ago when I mostly retired. I am 72 years old. I will handle an occasional case or a SS Appeal. It is burdensome, when I will earn a small income doing a little work in retirement, to pay up to \$10,000 for coverage. Maybe there should be an exclusion for those over 70 as there is with CLE requirements after that age. If I were still practicing full time I would carry coverage and I believe those in those practices should carry insurance.
269. Attorneys who have never had a claim or complaint against them for 20 or more years should not have to carry liability insurance and particularly if they practice in an area of law such as Family law.
270. One's area of practice can greatly impact the availability and cost of insurance which is not necessarily subject to debate with the carrier. Their underwriters make their determination and the attorney must either accept it or go without coverage.
271. Mandatory insurance is a rip-off just like CLE. The intentions are great but the results accomplish little. In the case of insurance, those of us who are exempt from dues can hardly afford any insurance and in fact do not need mandatory insurance. If we needed insurance we would buy it.
272. This may be seen by solo and small-firm practitioners as an additional barrier to entry into the legal marketplace. Take, for example, a solo practitioner who practices primarily in securities law. This rule may have the effect of forcing that practitioner out of the practice of law, as the cost of liability insurance is prohibitive. I would hope that the Board of Governors would consider the disparate effect on solo and small-firm attorneys when considering this new rule.
273. This is a HORRIBLE idea! The only other state that has done this experienced increased premiums of 3-4 fold once such coverage was no longer an optional purchase. Moreover, mandating coverage is unnecessary as offending attorneys are personally liable anyway, and the huge increase in cost to everyone doesn't offset a totally unknown cost to a few clients (that still have recourse) who hire substandard attorneys.
274. Stop the regulations. Attorneys are fiduciaries of their clients. We should not enact rules that put a burden on all attorneys, as nearly all are ethical and take their duties of trust very seriously. There are penalties for unethical attorneys (and criminal laws). Please treat us with dignity and respect rather than like mischievous children. Throwing more costs at us isn't going to fix malpractice or fiduciary breaches by bad apples.
275. I had always assumed malpractice insurance was required. When I first learned it wasn't I was shocked. I'm glad the bar is taking this up.

276. This proposal will drastically affect small practices, because IMHO, \$250,000/\$250,000 is NOT adequate protection for clients. My malpractice insurance for a low risk solo practice is very high because Las Vegas is considered a high risk legal community. Rob Graham ripped off over \$13 million in hard cash from vulnerable clients & left them with no potential assets for recovery. As a very long time lawyer, I have seen far too many recurring frauds by lawyers, because they have ready access to fungible cash in trust accounts [or probably not in trust accounts], which is a huge temptation for unscrupulous legal-types who live beyond their means. Although this proposal is a start in correct direction, it will never stem the tide of theft from clients because stone-cold thieves cannot resist the temptation to steal ready cash. I have represented dozens of defrauded clients against lawyers through Fee Dispute Committee in which large sums of money was stolen. Not one of those so-called lawyers expressed a second of remorse. Selfish motivations by that ilk will always overcome good ethics and honest dealings. IMHO the Bar is far too lenient on dishonest legal-types, who I hesitate to designate "lawyers," since that denigrates the title of those real lawyers who work hard and observe high ethical standards. However, some positive steps to protect the public is better than none. I constantly hear folks in the public sector identifying all lawyers with scum such as Rob Graham, who has sullied our proud profession for dozens of years to come. Makes me sick to my stomach, because Graham has destroyed what little positive reputation the legal profession managed to maintain.
277. I have found myself working on cases with other attorneys only to find out later that they had no coverage. So it is not only clients who need to know if a particular attorney is going "naked" or not.
278. Requiring a separate Nevada Malpractice Policy will force active attorneys who only work part-time in Nevada, to go inactive.
279. The true beneficiaries would be insurance companies. This regulation would increase the cost of legal services for most individual clients in Nevada in order for a small percentage of clients (probably the most disputatious) to dependably sue their lawyers. Why would the BOG support corporate interests over individual Nevadans?
280. I think the amount of liability insurance should coincide with the type of practice. I personally think it is unlike in the type of law I practice that I would cause \$250K in damages. I also don't think its unduly burdensome to mandate that but I do think the 100/300 policies may be sufficient depending on the area of practice.
281. For my last years of practice I will have one criminal case pending at a time, generally an appeal or other non-trial case and then I do a fair amount of pro bono work not covered by LACSN policy. Mandating insurance coverage would probably mean that I would go inactive.
282. This is a ridiculous proposal that will rightfully draw significant litigation
283. These questions are loaded, and designed to prompt answers that support a mandated malpractice insurance requirement. That's disappointing. It's also very disappointing these questions suggest malpractice insurance should exist and be the same for every attorney. Practices vary so significantly, one centrally mandated policy seems to suggest a lack of understanding of the profession. Such a requirement would probably not apply to me, as I do not have clients in Nevada and do primarily in-house work. I am a member of two other bars, both doing the same thing...group think...
284. 1. It is a reasonable expectation of the public that lawyers be appropriately insured. 2. If you can't afford to be insured, then you shouldn't be in business 3. No reasonable lawyer would advise their client to engage a lawyer without insurance 4. There is no sense in having a "race to the bottom" with some lawyers avoiding cost of insurance and trying to undercut other lawyers on cost - everybody loses 5. Lawyers who are not insured are more likely to engage in unprofessional conduct to keep their mistakes hidden, or to mislead clients, rather than to do the right thing and make proper disclosure where mistake has been made 6. Lawyers who are not

	insured are going to be more prone to depression and substance abuse due to the constant pressure of having their personal assets exposed to risk 7. This is the perspective of a Canadian resident lawyer where insurance is mandatory and the concept of mandatory insurance has not been debated in at least my 25 years of practice
285.	In house counsel/employees of non-law firms should be excepted from required insurance.
286.	Insurance is very high for solo practitioners. We already have to deal with annual renewal Bar fees, CLE's, and etc.
287.	This is a prime example of the Californication, with its heavy over-regulation, of Nevada.
288.	My firm carries malpractice insurance, but mandatory disclosures prior to signing would likely increase lawsuits whether frivolous or not. Mandating malpractice coverage could greatly increase the cost of coverage. Additionally, many situations are not covered by malpractice insurance anyway, so this would likely increase the cost of doing business in Nevada and may not have the intended result. It would likely make it much more difficult to start a new practice in the future.
289.	I'm an employee-attorney. My firm has insurance for all the attorneys, but the wording in this survey was ambiguous, so I selected "no" for the question whether I purchase insurance. This raises a question: is the proposal that individual employee-attorneys be required to buy insurance? If so, I don't like the sound of that. I'd much rather that be at the firm level. As a former solo, I thought insurance was too expensive. But I gather that may be a minority opinion.
290.	Is there really a problem that needs to be fixed?
291.	There is serious concern that requiring mandatory private malpractice insurance for all attorneys would be a significant burden on small firms and solo practitioners. Especially those who provide services to low income clients in need of legal help in areas like employment and labor law, medical malpractice, criminal defense or other areas where larger firms are uninterested in representing those clients because there is no guarantee of a big pay day. Requiring mandatory private insurance would have the effect of pushing attorneys who want to help poor and middle class people get justice who are less concerned about making large sums of money out of the market all together because it would put a significant financial burden on them. The American justice system, if you can even call it that, is already a pay for play system. The few attorneys out there who refuse to succumb to the soulless money grubbing industry the law has become cannot afford the significant burden of private insurance. This would leave only larger established firms in the market, who's only real care is how much money they can bleed from the system. However, I do support malpractice insurance. The best, and most equitable system of malpractice insurance is what the state of Oregon has done. Oregon created the Professional Liability Fund (PLF), a fund run by the state bar. Essentially, the fund acts as a single insurer for attorneys in the state, all attorneys practicing in Oregon must carry insurance. Insurance is a risk pool, and by establishing a single insurer with one risk pool in the state, it allows premiums for coverage to remain extremely low. This is the same premise behind Obamacare, and universal healthcare coverage generally. New attorneys get a discount on their coverage, those who get sued and lose pay an increased rate. Good, experienced attorneys pay a flat rate. It is inconceivable to me that the Nevada State Bar, with intelligent attorneys working on a solution to attorney malpractice would try to model our proposed attorney malpractice system the way insurance companies want them to. Requiring private insurance benefits one party, Corporate insurers. They get to rake in the money at high rates because of small risk pools and relative monopolies on the market share like a cartel that keeps prices high. This forces small attorneys that help everyday people out of the market forcing them to work for larger firms, most of whom practice in insurance defense, limiting the number of meritorious cases they have to defend because large plaintiffs firms will only take on cases with a relatively high probability of success and high ceiling for damages, leading to less claims for other

	<p>things like injury, employment liability etc. This would be a win win for Corporate Insurers and the law firms who represent them. If we are going to mandate malpractice insurance why are we modeling our mandated system off of the predatory insurance market that has plagued America for a century. Lets model our malpractice insurance system after the well reasoned and equitable system Oregon adopted that is working incredibly well for their state. Small firms and solo practitioners are not burdened with high premiums because of a single risk pool, clients can get some recovery in the event a bad attorney commits malpractice, and were not pandering to corporate interests that have already poisoned our legal system with unethical, morally bankrupt pursuit of profits. If we are going to mandate insurance, it should not be handed to the private insurance market. I think history, past and recent has shown us that unchecked capitalism and turning over control of the legal system to corporations almost always hurts the everyday American. This is the website for Oregon's PLF. I am opposed to any mandatory system that is not modeled off of this single state run insurer pool. https://www.osbar.org/plf/plf.html</p>
292.	<p>Attorneys that care to do pro bono work if they are not employed or not actively practicing are covered by the insurance carried by the legal services with whom they volunteer. Providing it on their own and not through a legal services program is another matter.</p>
293.	<p>Insurance doesn't necessarily protect clients. It's a means for counsel to fund a malpractice defense. In addition, many carriers simply offer max policy benefits if the matter will be litigated to minimize the expense to the carrier - leaving the attorney without protection, even if the attorney had a viable/strong defense. Insurance is a necessary evil. But, I do believe it encourages unfounded claims.</p>
294.	<p>You are asking for a feeding frenzy that will effectively take money from your members and redistribute it to insurance companies and a set of individuals that may have been financially harmed without actually protecting the individuals I think you are hoping to protect. If only 6 states have this sort of disclosure or mandatory cover - why do you think that is?</p>
295.	<p>Please don't be too quick to burden responsible attorneys with perceived protection needed against irresponsible attorneys. Especially don't make the legal profession as a whole pay for Attorney Graham's bad acts. Mandatory insurance will definitely drive up the cost of practice and may decrease consumers' options. That benefits the attorneys who can afford malpractice insurance but doesn't benefit good attorneys who can't. If you have to do something different, which is extremely questionable, perhaps lesser burden on attorneys would be better. For example, perhaps the option could exist of carrying malpractice insurance or disclosing that you don't. Some of your questions are well worded in that they seem to recognize that too much discussion about legal malpractice seems likely to increase malpractice litigation and to drive up premiums. Customers/clients have the right to ask if an attorney is insured, if that matters to them. Would this proposal have prevented the Graham debacle/scandal? Probably not. Most attorneys are not like Graham.</p>
296.	<p>I like the Oregon method. By using one mandatory fund, it avoids market inefficiencies and other problems that can arise by obligating attorneys to obtain coverage on their own.</p>
297.	<p>While in a perfect world malpractice coverage would be great in the abstract, in the real world it is an expense that many small practices cannot afford. I have been in practice since 1982 (NY) and 2008 (NV) and have NEVER had a claim. It is simply unfair to require it as a condition of licensing. Require disclosure and let the free market take care of matter, as clients can make informed choices if disclosure is made.</p>
298.	<p>The questions posed were blatantly biased toward provoking answers that appear favorable toward malpractice insurance in general and for specific minimum level requirements. The Bar is obviously seeking this change in policy regardless of membership opinion and is only circulating this charade of a survey to justify any such change.</p>
299.	<p>It's a must</p>

300.	I am going into semi-retirement and will handle only existing cases until they are completed. I am not taking on new clients and new cases. Malpractice insurance would be an unnecessary expense for me.
301.	As a sole practitioner who provides a reduced fee to my clients and takes "small" cases, a mandatory insurance requirement would cause me to close my doors and will limit access to lawyers for the public.
302.	Making anything mandatory, including insurance, inevitably leads to increased costs for the product or service. It's not simply supply and demand, but a forced artificial influence on the market. Currently, having malpractice insurance is a good idea considering the ramifications of not having it in the event a mistake is made. However, insurance companies know that malpractice insurance is a choice and they price their product accordingly. Forcing attorneys to purchase malpractice insurance will lead to increased premiums as the insurance companies no longer have to be concerned with overpricing their product. The fact that a group of educated individuals such as the BOG would even be considering this move is a travesty. Did the insurance companies put you up to this?
303.	I am mostly retired but occasionally appear in court to help a friend, neighbor or family member at no cost. It is unfair to impose this requirement on attorneys such as myself who are providing our services infrequently and at no cost.
304.	I have always carried malpractice insurance. But this is a HORRIBLE idea. What happens if you get sued and lose the ability to obtain malpractice insurance? No carrier will cover you. It is hard to get insurance even when you haven't been sued. Then you can't practice law if you can't get insurance? HORRIBLE. A better way would be to consider increasing bar dues and the State Bar obtaining coverage for a client protection fund in the event of malpractice-caused losses. You lose the ability to practice if you can't get insurance? Is that what you want to do? I can't believe that.
305.	Most large firms are insured by Lloyds of London underwriters or other foreign carriers, as most US insurers do not have the capacity to insure large law firms. If insurance is mandatory, the rules must be worded in such a way that the insurance is not required to be issued by carriers admitted to write policies in Nevada, since most London Underwriters are not admitted to write coverage in Nevada.
306.	In terms of protecting the public, disclosing you do not have insurance is waay better than disclosure of having insurance.
307.	Does the proposed law account for a practice with only one or a handful of clients that are sophisticated or related to or even owned by the attorney and therefore willing to allow the attorney to go bare?
308.	This seems to make more sense for attorneys who provide legal services to the general public. I am in-house and would be interested to know the rationale for requiring. I am not aware of situations where this had been a big issue with in-house counsel.
309.	I don't have an active law practice but provide a great deal of work to pro bono clients, helping with corporate compliance, formation, etc. I help a lot of neighbors & friends who can't pay a regular attorney. I meet all annual CLE requirements. Why do I have to pay for insurance? My skill and time help a lot of clients who can't afford legal fees.
310.	As someone who currently sits on both the disciplinary board and client security fund board, it is imperative that attorneys practicing in the private sector maintain malpractice insurance. There may be certain areas of practice that may not have a high probability of malpractice activity, but it is my belief that we, as a profession, need to protect the public in both perception and practice.
311.	What is the effect for those who do not maintain coverage. Will their license be suspended? Claims made policy may not provide coverage for claims made after the expiration of a policy. What protection is considered for the client?

312.	I maintain and have always maintained professional liability insurance. However, it dawns on me that there may be those who are unable to obtain it. It seems intrusive to deny those attorneys the right to practice simply because they are in private practice as opposed to those who work for government agencies or in-house for corporations.
313.	As a solo practitioner I have looked into the cost of professional malpractice insurance. Due to factors outside of my control, such as age, my premium would put me under sever financial distress. I believe that mandatory notice of insurance status would help inform consumers and would not necessarily hurt my practice. Also, in my experience, clients who have claims which would be subject to large damages are not going to small or solo firms. Instead, they opt for larger established firms which would either have insurance or significant financial means to defend or settle a malpractice claim.
314.	Requiring attorneys in private practice to carry professional liability insurance is excessive. Malpractice insurance is sufficient.
315.	I think the phrasing of the questions in this survey were super loaded.
316.	This is just another money grab like CLE, but this time for insurance companies who will hold attorneys hostage with high insurance rates. Clients are free to inquire if their attorney carries malpractice insurance, and decide whether or not they want to retain their services. This is not something the Board of Governors should be poking their noses into.
317.	Malpractice insurance should be encouraged, but not required unless there is a particular reason for it, i.e. an attorney had a prior issue. Moreover, if an attorney has a problem, he/she should have to fix the problem, not just get insurance to cover the problem.
318.	Oregon has tried this tack and the system did not work or is at least faltering upon bankruptcy. Premiums have been wholly out-of-control. The system simply did and does not work. To require attorneys to have a certain amount of coverage permits insurers to pervert the marketplace as they know that there is a certain number of policies at the minimal coverage range. Finally, one cannot protect all Clients. They pay, to a certain extent, for the coverage and should inquire as to coverage. Depending upon the answer, they can either retain that attorney or look elsewhere. We say that attorneys and doctors have the closest relationships of any profession with their Clients and Patients. It is a contradiction in terms to say that the relationship is confidential under all circumstances on one hand, but hey, we want to insure that you have these attributes on the other hand.
319.	In my view mandating insurance coverage threatens the availability of attorneys to provide legal services to the public. The competence and ability of an attorney to assist a client has nothing to do with whether they have malpractice insurance. Mandating disclosure of insurance (or making that information available on the Nevada State Bar's website for public access) may have merit. But restricting attorneys from being available to assist the public because they lack malpractice insurance is not appropriate and not in the public interst. Too few laypersons can afford or obtain legal assistance from an attorney. Restricting the pool of attorneys by mandating malpractice insurance (that some cannot afford or that some would just elect to not obtain and cease practicing) would not serve the public interest. It would make attorney's services, already difficult for persons of modest means to secure, less available to the public.
320.	There is no "one size fits all" that is going to protect the public from malpractice/negligence. And, if all attorneys are required to carry insurance and the plaintiffs' bar knows that, might you see an increase in malpractice claims? I again see the Bar trying to address an isolated problem through some mandatory requirement for all attorneys. Address the problem; don't burden all attorneys with more rules. I would note this won't affect my practice because I carry malpractice insurance at a relatively high level for a small, rural firm (\$5 million/\$5 million).
321.	If imposed I would give up my active license and would no longer provide pro bono advice to nonprofits in the state of Nevada

322. This proposal is in interference with the public's right to freely contract with legal counsel of their choosing under the circumstances of their choosing. If the public desires to contract with legal counsel who carries significant malpractice insurance, they are free to ask that question of the lawyer. If the lawyer refuses to answer, or does not have malpractice insurance, the client can seek representation elsewhere. If the Client desires to contract with an attorney who does not carry malpractice insurance for any number of reasons, relationship, expertise, lower overhead etc. they should have that ability to do so, as should the lawyer to have the ability to take on the risk of malpractice without insurance if he/she so chooses. The State Bar should not interfere on this issue and should leave this issue between the lawyers of the State of Nevada and their clients.
323. I have been denied coverage and this would put me out of business.
324. I am semi retired from private practice and do less than 250 hours of legal work per year mostly in the ADR area, for nonprofits or for friends and families. Having to purchase insurance before I could do these things would prohibit me from doing these community services.
325. This is yet another dumb idea. Clients can already find out IF a lawyer has insurance. In this day and age clients have never had more access to info about a lawyer prior to hiring one (i.e. webpages, Avvo rankings, state bar web info). If a client cares about insurance they can use these tools to make sure they hire a lawyer that has it. Take a free market approach and forget this plan to require insurance. Thank you.
326. If the Bar wants to impose mandatory insurance it needs to make a case for it. You know, like lawyers do. What is the average malpractice judgment amount? What is the average settlement amount? What areas of practice attract the most malpractice claims? How many clients are damaged by attorney malpractice? Not intentional wrongdoing; but actual negligence. Let's see some evidence that there is a problem before issuing yet another edict.
327. I think mandatory insurance to practice law is not the right answer. However, mandatory disclosure would be an effective way to put clients on notice. I believe that the bar currently lists whether an attorney has malpractice insurance, and I believe that disclosure is sufficient.
328. The questions appear to be biased toward reaching the conclusion that malpractice insurance should be mandatory in order to practice law. They are like asking if someone still beats his mother. Any answer is unfair. I have been practicing for nearly 35 years -- some time with insurance, and some time without -- and have never had an issue with malpractice. To force me to have to have it or be barred from practicing my profession is personally distasteful. Perhaps the Bar's energies should be concentrated more on providing younger lawyers professional education in ethics and civility.
329. In my practice, most of the claims I handle are not worth \$250,000, so having that amount as a policy minimum is excessive and unnecessary to protect the client. For me, having a policy is a good business practice, but it is not necessary the only business practice. I do not like the idea of the State Bar forcing me to run my business in a particular way or obtaining a specific policy. This amounts to an additional fee or fine to be a lawyer. Also, this will likely harm smaller and solo practices more than larger firms which already have these types of policies. If I worked at a large firm, the firm might cover my insurance, whereas smaller firms may not have those resources for its employees (or themselves). Also, my clients could still sue me even if I did not have insurance - I sue plenty of uninsured Defendants and sometimes that helps get me a resolution better than dealing with an insurance company. I see no benefit by enforcing this kind of policy.
330. How about you work on the pitiful state of the Bar's finances, and leave me and my insurance alone?
331. When I served on the Board of Governors I was a strong advocate for (1) Mandatory Malpractice Insurance and (2) Mandatory Pro Bono. It is inconceivable that one cannot drive a car without insurance but one can practice law without insurance and I do believe that the overwhelming majority of non-corporate clients believe that lawyers carry professional liability insurance. DO IT!

	It will also help reduce marginal practitioners since they will not be able to afford insurance. It's time ...way past time.
332.	Malpractice coverage should NOT be required. The mandating of such coverage will cause the coverage to become more expensive and less worthwhile, as in virtually all other settings where coverage is mandated. Mandating coverage is also a method for substantially increasing the costs of solo and small firm practices in order to favor larger firms. Many knowledgeable clients avoid large firms, and NONE of these clients is looking for lawyers based on the malpractice coverage they carry.
333.	I can't emphasize how much I disagree with this proposal. Don't do it. Nothing about this proposal will improve the delivery of legal services in this Nevada. All you're going to do is force attorneys, good and bad, to charge more to clients. Your survey questions are complete garbage by the way. Could you at least be a little subtle about putting your thumb on the scale?
334.	No questions were asked about the possibility that regulations might include a restriction requiring authorization of the insurer to do business in Nevada. Depending on what this means (e.g., does it exclude what are called "non-admitted" insurers who are not covered by a state's insurance fund?), such a requirement might severely hamper the ability of some lawyers (with either a claims history, disciplinary issues, or a particularly risky area of practice) from obtaining the mandated insurance coverage.
335.	I would like to know the number of actual lawsuits filed against Nevada attorneys for malpractice, how many attorneys actually carry malpractice, the average amount of coverage for such attorneys, and the average amount being paid in annual premiums.
336.	I am 75 years old and consider myself semi-retired. Since I closed my office, I have been covered by tail coverage for work done prior to that date. The only new matters I have taken on have been from a single source and all parties have been in agreement. The remainder of my work is for previous clients who have questions or want to make simple changes to their estate plans. Since my total fees for this year are less than \$5,000, malpractice insurance would not make sense.
337.	The practice area, firm size, and types of cases typically taken needs to be considered when determining policy limits.
338.	An attorney should have the ability to decide how he or she wants to manage his practice. That includes not having malpractice insurance if he/she wishes not to have malpractice insurance. (btw you did not have \$250k/\$500k as an option which is what I have.) We should not be required to carry malpractice insurance, but we should be required to have to publicly disclose whether we have malpractice insurance or not, and whether it meets the \$250k/\$250k suggested minimums, but not disclose the actual amount of coverage. "Let the market decide" is a good mantra here. If a client knows that an attorney doesn't have malpractice insurance, that client may be inclined to take their business elsewhere.
339.	Perhaps merely require disclosure of lack of malpractice insurance before assuming representation of a client if the attorney does not carry malpractice insurance.
340.	We live in a society with the freedom to contract. Every business potentially can injure its clients/customers by the business' negligent acts. However, we do not require every business in Nevada to maintain errors and omission insurance to cover such negligence. Attorneys are no different than any other business. We should maintain the freedom to contract and not mandate a requirement when the marketplace allows consumers to choose with whom they do business. Consumers already make decisions about whether to do business based on whether the attorney maintains malpractice insurance.
341.	There are several questions in the survey that are clearly meant to tilt the results of the survey in favor of mandatory insurance. this give the appearance that a decision has already been made and the survey is just cover to support that decision. Very unbecoming of a State Bar. I have practiced for 30 years in California (12 years in Nevada) without malpractice insurance. I have not

- had a single claim made against me. Why? Good client relationships; ethical behavior; excellent work; matters properly calendared. I suggest the Bar work to raise the standards of attorneys instead of adding a government mandate. I would also suggest a portion of all Bar dues go to a common pool to provide minimal coverage of claims not covered by malpractice insurance. that
342. Malpractice isn't determined by having malpractice insurance. Malpractice is determined by competence. You may have the highest requirements for insurance and still have incompetence and malpractice. Practitioners of the law are professionals who undergo lengthy educational requirements along with a difficult Bar Exam and character fitness vetting process. Where do you draw the line? How is the community protected if you have limited legal services only available the top earners in the community? These added requirements do nothing more than increase expenses for attorneys who represent the vast majority of members of our community. Implementing these additional hurdles will only harm the local community and serve the interest of the few who can afford to higher expensive legal advocates. If the Nevada State Bar is concerned about the community - they should emphasize targeting those engaged in the unauthorized practice of law. Focus on expanding legal services to average citizens with medium to lower income as opposed to creating hurdles that result in higher legal fees which prevent middle to low income earners from affording legal advocates. These additional hurdles will only diminish the availability of advocates who fight on behalf of members in our community with limited financial resources. How do these additional hurdles help a single mother who requires reduced legal fee to help fight abusive creditors preventing her from financing a home for her and her family? How do these additional hurdles help the local hotel/casino employee, making 10 dollars an hour, fight against creditors engaged in wage garnishment? How do these additional hurdles help a single-parent defend an aggressive custody matter? We have to draw boundaries - there are minimum requirements to protect the community. But we must also be cautious about implementing additional hurdles that will end up doing exactly the opposite of their intent - protect the community. Additional hurdles for legal advocates will very likely harm the community as a whole and make it easier for those who can afford legal advocates further exploit members of our community who are not as fortunate. Additional Note: I am deeply offended by the expression used in this Survey "Going Bare." The sexual innuendo with that expression is unprofessional and gives the impression that this important issue is not taken serious. I am deeply offended. I assume these survey's influence policy decisions in our profession and there is no room for such language in this very important dialogue.
343. I have over 35 years of experience as a lawyer practicing in both Nevada and California, representing both individuals and corporations. While I am well covered under my firm's policy, I am strongly against mandatory insurance requirements for all attorneys. Putting aside the question of how much coverage is "sufficient" for everyone's practice, or whether accommodations should be allowed for those attorney who are just starting out, what happens to existing clients if the attorney or firm can no longer afford coverage. Does he or she simply end his carrier and sent out "Dear John" letters to the clients? What if the lapse in coverage is only temporary? Does he or she then send out "Just Kidding" letters? Can the client waive the requirement so he or she may hold onto the attorney he or she selected notwithstanding the lack of coverage? Given the sometime arbitrary evaluations of risks by insurance underwriters, firms can find themselves without coverage without much notice. This is particularly so when considering the insurance market available to solo practitioners and smaller firms. I respect my clients and fully inform them of coverage when asked. In my opinion, the only effective answer is to keep the client informed. Written confirmation by the client of the attorney's insurance status is a good practice to memorialize the disclosure.
344. Cost of such insurance is a major concern.

345. The data for actual malpractice actions which result in a unrecoverable judgment needs to be disclosed and analyzed to determine whether this really an issue as compared to attorneys gambling or drinking away trust accounts, which wouldn't be covered by malpractice insurance.
346. during a short period of prior practice in a mandatory malpractice state, it was common for opposing counsel to make references about the ease of submitting a complaint to the bar and or carrier and how that would effect future rates even if the allegations were unfounded. it seems like there will always be some type of abuse no matter what the final decision is.
347. This is a "feel good" remedy that will actually create more problems than it will resolve. It is similar to the way bar discipline has been meted out be the SBN, in that the small fish are prosecuted while the powerful members of silk stocking firms often get a pass. It is a bad idea.
348. Shouldn't be mandatory.
349. I can afford to better serve my clients at more reasonable rates the less that I have to pay out for malpractice insurance. The nature of E&O coverage is that it keeps going up, year after year with a claims made policy, while simultaneously providing no coverage upon retirement unless the attorney keeps coverage alive. The majority of small firms and solos simply are barely getting by without this added burden and expense.
350. I would strongly request that the Board of Governors NOT mandate that lawyers carry professional liability insurance.
351. Any economic burden that is mandated in order to conduct business should be minimized and avoided as much as possible; especially insurance because mandatory insurance creates an uneven business playing field for the consumer. Also, mandatory insurance for attorneys will create a market place for claims and will encourage the filing of marginal claims against attorneys as well as will generally promote the filing of legal malpractice cases. Just as accident/injury attorneys advertise, it is highly foreseeable that TV lawyers will advertise legal malpractice claims, which will degrade the legal profession.
352. Insurance companies do not look out for the best interests of the policy holder (Attorney) or the beneficiaries (Clients) of the policy. Insurance companies primary focus is profit and their own best interests. Further, insurance companies often will not act in good faith even if a claim is valid and will initially deny and/or delay the payment of a claim since it is in the insurance companies best interest to do so.
353. 250000 is way to high for a minimum. this is a ridiculous barrier for solo and part time attorneys. I carried malpractice and insurance when I was taking on cases with significant assets at risk. now working part time I don't carry coverage because it is not necessary for what I do. Some attorneys only do traffic tickets. They should not be forced to carry 250,000 in insurance. Some attorneys don't actually practice because they are raising children and only keep their licence active in case an old client needs something small done or to keep current for when they want to return to work. The fact you are even considering this just shows how completely detached from the reality of most attorneys the board of governors actually is.
354. Generally speaking, it is good for the public, the attorney and the profession when attorneys carry malpractice insurance. Requiring attorneys to disclose when they do not carry E&O insurance is a good idea. I don't believe those attorneys who do carry insurance should be burden with making mandatory disclosures. Imposing that on them exposes them to discipline for failing to make the disclosure. Instead, burden those attorneys who do not want to carry insurance by requiring them to disclose that to the public. I am aware of several attorneys who had active licenses, but were not actively practicing , who have helped a person in need at no cost and did not have insurance at the time. Further, the matters handled were not remotely likely to result in a claim being brought against the attorney. Increasing regulation and the cost of maintaining an active license deprives the public from receiving help from attorneys that may be willing to handle a small matter at no cost on behalf of a client. In the situations I am thinking of, neither the

	attorney nor the client would have been dissuaded from proceeding in the relationship because the attorney did not have insurance. I don't have the view that those working in the bar office have. I suspect you see egregious harm caused by uninsured attorneys. So, I respect that this is of concern to you. But generally, in life, I think as a society we are better off with regulations that require disclosure rather than regulations that increase the cost of doing business, which gets passed on to the clients and results in additional people being priced out of the market.
355.	The BOG seems intent on making serious and substantial knee-jerk PR reactions to the Rob Graham situation by pushing this proposal and the random IOLTA audit proposal. The BOG seems to be oblivious to the overhead costs incurred by solo attorneys and the impact these proposals will have on solos. Requiring malpractice insurance is no way a guarantee that a lawyer will not commit malpractice. While it arguably gives the client some source of recovery it will not fully compensate a client in the event a mistake exceeds the policy limit. What it will do for sure is to impose further overhead costs each year on an attorney who gets NOTHING back for not committing any malpractice. All this so the BOG can promote they "are protecting the public" and for insurance companies to get even more profit. If this proposal is mandated the costs of malpractice premiums are going to skyrocket.
356.	Foolish idea. No other businesses are mandated to have insurance. You just increase the public's cost for attorney services, and as a practical matter, you also increase litigation over such services. Bad idea in business.
357.	I strongly believe there should be an exemption for pro bono work done outside the supervision an agency that carries its own malpractice insurance. I work in-house and don't have malpractice insurance. However, I enjoy doing pro bono work. I would be unable to do this work if I had to carry insurance to do so. The insurance premium would be paid by me and would be cost prohibitive.
358.	Is this separate than the malpractice the firm carries that each associate is protected under? Is it insurance for the individual lawyer no matter where the lawyer goes and basically the lawyer pays for it? It was unclear.
359.	I do not believe it should be mandatory to have malpractice insurance, and mandatory malpractice insurance would restrict and limit public access to attorneys. However, I do believe an adequate disclosure of information concerning whether or not an attorney has insurance should be mandatory and would serve the public.
360.	No additional comments at this time.
361.	This will make rates go up even for those who opt to get insurance coverage without the mandate
362.	The cost of liability insurance is very high. There are too few liability insurance carriers to make the market competitive. Shopping for liability insurance is very frustrating since there is little or no difference in the costs of insurance. Making insurance coverage mandatory would be a huge benefit to insurance companies but will prejudice the ability of many lawyers from practicing outside a law firm. This in turn reduces the competition for good lawyers thus increasing the costs of attorneys. In order for this Rule to be practicable the minimum limits of liability would have to be very small which translates into limitations on scope of coverage rendering the protection illusory. Additionally, set lower limits would encourage lawyers to "buy" lo-cost insurance under the impression that additional coverage is unnecessary. Mandating lawyers inform their client that they do not carrier insurance is good but requiring insurance is unreasonable
363.	I only see this as helping the high risk plaintiff's law firms that have been hit with a sufficient number of legal malpractice cases that they have become self insured because of the high premiums. To put something like this in place does not help the average solo practitioner trying to get by on teeny tiny cases where \$250k limits gets eaten up by defense costs. Without a doubt, as soon as there are limits like that required of attorneys, all legal malpractice plaintiff's attorney

	will start making the \$250k demand because legal malpractice suits are expensive to litigate and even if a case is only worth \$15k, defense fees could be that as high as \$250k, thereby forcing a higher settlement. Also, even if you require insurance, that does not mean there will be coverage. Legal malpractice insurance is always a notice claim policy such that before you change carriers, you have to list all known claims even if not filed yet so that it is covered by the next policy. This type of policy makes it very easy for carriers to deny coverage, saying the insured did not make the required disclosure. In all practicality, an attorney may not know he had to give notice to the new carrier because often times as attorneys, you don't know when your client is just angry or is actually going to sue you. So if the goal is to protect the community, implementing mandatory carrying of policies is not going to accomplish that purpose. All this will do is create a bigger market for attorneys who sue other attorneys.
364.	One prior claim whether meritorious or not renders most attorneys ineligible to obtain renewal and/or new coverage. The only way this works is a pool system where everyone can obtain coverage...will need to be handled by State Bar .
365.	This will not concern me because I have no Nevada business to speak of. I do know that the underwriting process can separate the wheat from the chaff. I have been shocked at the number of bare attorneys in my practice. They rely largely on their poverty to insure they don't get sued.
366.	How about the Bar finding low-cost insurance that could be available to members. Right now, my malpractice insurer is making more money from my practice than I am.
367.	What will be the impact of mandatory insurance on premiums and coverage. As a solo my coverage is limited to \$2 million/\$4 million with a \$4400 premium. I would prefer higher coverage but it is not available, and it would be less affordable. Will mandatory coverage affect my coverage and/or my premium? Also, what happens to an attorney's ability to practice law if carriers refuse to provide a policy or a policy is prohibitively expensive? Will the Bar or the Insurance Commissioner compel carriers to provide coverage and set a ceiling on rates as long as the attorney is licensed to practice?
368.	the 250K requirement needs to be "per firm" rather than per attorney. The requirement of 250K is ambiguous. Compare California 100K per attorney with max of 500K per firm, I think.
369.	As an attorney not practicing in Nevada who might plan on retiring there and with an interest in possibly becoming engaged in pro bono work, the potential lack or cost of malpractice cover would be a tremendous disincentive to engaging in such activity.
370.	If malpractice insurance will be mandated it should either be a smaller amount, such as \$25K, or else the State Bar should provide pool coverage so it can be affordable by lawyers that are either new to the professional and paying student loans, etc., or older attorneys that look to wind down or slow down their practice
371.	I once heard my mentor say that practicing w/o malpractice insurance was like driving w/o brakes. I concur. What is probably prompting this is Mr. Graham's travesty and I think about his former clients often and what a blemish he has left on our community. However, I am a also baby attorney, a single parent, 130k in debt, and am not yet affiliated with a firm so I would worry how this extra cost is going to affect me once my clerkship is over (but I am strong and determined as all heck-no whining here). In sum, good idea, but don't make it something that is overly burdensome to the baby attorneys saddled with 130k in loan debt, solo practitioners, retired counsel that give back with pro bono, etc.
372.	This would seriously impact semi retirees
373.	This survey looks like the Board is considering a one size fits all solution. I would suggest that insurance is not the primary issue with the reputation attorneys have in the community. Rather the primary issue we face is attorneys stealing money from their clients. Insurance will not cover these claims as it arises from intentional conduct. Making the client security fund more accessible would be one alternative solution. Furthermore, disbaring and criminally prosecuting attorneys

	who steal should further be aggressively pursued to ensure the public trust. As it is, I understand the Office of Bar Counsel has limited funding and is losing lawyers at such a fast rate that indicates they are either underpaid, subject to adverse working conditions, or both. And the DA's office has failed to prosecute lawyers for their wrongdoing. These issues need to be corrected before instituting program that will not solve the underlying problem.
374.	I believe this should have been done long ago. Health care professionals and other professional organizations carry liability insurance. I think it would being about a forced and positive change to the legal community. I believe it would force attorneys to be diligent, and would provide the courts an ability to enforce procedural rules without concern for the non-offending party client being penalized for their counsel's lack of adherence to NRCP and court orders. It would allow the court to issue the sanctions provided in many of the Rules because the client would still have recourse against their counsel for any misconduct that precludes their case from going forward. I am strongly in favor of this. It will weed out the attorneys that dona disservice to our profession and protect those who routinely follow rules and orders.
375.	Mandatory malpractice insurance will be an effective tool in helping to disbar bad attorneys.
376.	I'm not sure my responses should carry any weight. I'm a newly admitted attorney and work in-house so have no idea what the costs of insurance may be. If insurance costs could be lowered through a group insurance plan offered by the State Bar, then I think mandating insurance would be beneficial. But if it's cost prohibitive to the point you're preventing an attorney from practicing, I think that would be a huge disservice to the community...
377.	This is a very bad idea. Very bad. Maybe a minimal \$100K policy, but what if lawyer can't get insurance or afford it? Need lots of waivers and options out of it to keep good ethical lawyers serving the community in business. I have malpractice insurance, but it's expensive. Just post on state bar web site and fee agreement if lawyer doesn't have insurance.
378.	More regulation is not the answer. Let market forces dictate whether attorney's have malpractice insurance or not. Bad attorneys need to fail so they are eliminate from the market place.
379.	This was a very biased poll designed to get the desired results.
380.	I think even the suggestion of mandatory malpractice insurance is burdensome, unreasonable, and unnecessary.
381.	This makes sense only if the State Bar also obtains a number of carriers who will guaranty that they will provide coverage to all members, regardless of practice area or loss history. Also, the proposed minimum limits are too high; and fail to provide the amount of deductible. This is a good idea in principle, but it needs a lot more fine tuning.
382.	Nevada has run-away jury awards against attorneys causing limited carriers (my first carrier pulled out of Nevada) and a "jackpot" mentality against attorney malpracticce. Among clients, losing a case = malpractice. Not malpractice. Every 'bare' attorney I've ever known has personally made the client whole when there was an issue, so I don't think this is about protecting the public. It will negatively impact the 'average' professional by creating a barrier to entry to middle class attorneys and their middle class clients, who cannot afford the premiums. Simply put, this will negatively impact upper/lower to middle class people and the attorneys who service them.
383.	I am assuming that "attorneys in private practice" will be defined to exclude Government attorneys and other public attorneys.
384.	Requiring lawyers to disclose whether and/or how much insurance they have would be tantamount to putting a bullseye on our backs. Any disgruntled client, even in the absence of true (insurable) malpractice could file suit and it could evolve into what the personal injury market is now. Everyone has to carry insurance, so everyone is a target for unreasonable demands related to lawsuits because "who cares, it's the insurance company paying."

385.	Requiring attorneys to publically disclose or list the amount of coverage would create a disadvantage to smaller firms. Large firms can afford to carry more coverage than a smaller or solo firm. This may be perceived by clients as a disadvantage of using smaller firms.
386.	I have been admitted to the bar for 32 + years (31 + in Nevada). I have never had a claim of any sort for negligence and/or negligent representation. I believe the decision as to whether to carry professional liability insurance should continue to rest with me. Thank your for the opportunity to express my views.
387.	Just like any other business, it is for the client to ask whether you have malpractice insurance. I do not believe it should be a required disclosure to the client and think the incidence of false claims will increase dramatically.
388.	First mandate disclosure of insurance and see how that goes. Then, with more information and some data from requiring disclosure, only THEN should the Board consider mandating insurance coverage. I think at this point, requiring disclosure of coverage or lack thereof is sufficient!
389.	The State Bar needs to ensure that "bad" attorneys are disciplined, and received more than a slap on the wrist.
390.	I am semi-retired. I occasionally represent people on a pro bono basis and represent a corporate entity on mostly non legal matters but sometimes on a legal matter. I pay a \$500 bar fee, a \$40 CLE fee, \$500+ talking required CLE courses. If the bar requires me to purchase malpractice insurance I will surrender my law license and will do no pro bono work. The state bar will also not receive dues from me. I disclose on the bar web site that I don't have malpractice insurance. I will be personally liable for any malpractice. Adding an additional expense for someone who does not practice law full time will be the straw that breaks the camel's back and there are unintended consequences.
391.	There should be different standards for those practicing exclusively in criminal law, where the standard for being sued for malpractice is far different than those in civil practice.
392.	It is sad that the profession has come to this given the egregious acts of a minority of attorneys. With that being said, public protection from unscrupulous attorneys is paramount and practicing without liability insurance should no longer be allowed.
393.	Mandatory insurance will prevent uninsured attorneys from charging less than those that have insurance and thereby obtaining a competitive advantage
394.	Please consider the Washington State example, where insurance is not mandatory, but information regarding whether attorneys carry a policy is publicly available via the WSBA website. If the State Bar of Nevada is going to require its members to carry a policy, the Bar should consider offering insurance coverage to help keep the cost manageable.
395.	I already thought it was mandatory
396.	This is the most biased survey I have seen in professional use. It's written like the decision is already made and you all need some data to make it look like you have support. The BOG is off the rails recently
397.	Perhaps there should be a formal study done by an economist on the likely impacts.
398.	We have too many regulations as it is. We do NOT need any more nor does the public.
399.	Another solution in search of a problem. The Nevada State Bar should let market forces dictate insurance... And, if there is a problem with trust accounting, demonstrably incorrect legal decisions, and the like THAT RISE TO A VIOLATION OF THE NRPC, then the Bar should act. And swiftly. If the rumors are right, the flagship situation is Lawyers West, and, if the rumors are right, there was not enough insurance for the losses EVEN IF coverage could be triggered, which would take artful pleading. It is the Bar that is supposed to investigate and discipline attorneys. If the Bar wants to buy insurance for all attorneys and to cover up its poor discipline record, then maybe it

	should -- and name every Nevada licensed attorney as an additional insured. But to cram down a new obligation, that would threaten small firms and create viability concerns is misguided.
400.	Attorneys are tasked with assessing risks on a regular basis. One such risk is malpractice. new attorneys especially are both at the highest risk on performing malpractice but also are faced with the highest costs and lowest returns. As such, I am concerned that mandating malpractice insurance will reduce the availability of attorneys, but also not allow attorneys to structure their practices in the most efficient manner, especially when providing legal service to low income clients.
401.	If mandatory insurance is required, I will not be able to practice law in Nevada. This will add to an already very long list of costs to practice law in Nevada.
402.	The questions in this survey were incompetently designed and have an inherent bias in favor of mandating insurance coverage. If the Bar wanted real opinions, instead of a survey designed to validate its predisposition, it could have at least designed a survey that has some validity to it.
403.	Just more babysitting by the bar. Trying to protect all victims of the world. Only trying to look good to the public with a obvious disregard for those who practice law. Increasing regulations, increasing your control. Typical power grab for a government-sanctioned institution. Social justice for all? These are just a few of my thoughts. Gets old seeing these types of proposals coming from the bar.
404.	This is a decision between the attorney and the client. I have not seen this to be an issue, and if so, the State Bar has not communicated this very well. It will eliminate any pro bono work I would do (since I am a government attorney and do not carry insurance).
405.	I strongly oppose the BOG's proposal for mandatory professional liability insurance.
406.	Typical BOG over-reach.
407.	I think it's about time that malpractice insurance was required for all Nevada attorneys in private practice.
408.	attorneys who carry small case loads or who do low bono or pro bono work should have lesser requirements; conversely, attorneys who carry high case loads, work in very large firms, and/or have high-risk practice areas should be required to carry proportionately more insurance
409.	A mandatory disclosure requirement would be more than sufficient to advise clients of any potential risk and allow them to make an informed choice. Mandating liability coverage would simply increase the cost burden for small practices, quite possibly substantially and further reduce the availability of legal counsel for under-served areas of our community.
410.	An exemption for public sector attorneys who aren't actively representing clients should be exempted from the requirement.
411.	Yet another solution to a problem that would not exist if the State Bar of Nevada adequately limited the number of attorneys entering the profession in Nevada, and made the Nevada Bar Exam sufficiently difficult. Rather than aggressively regulate the entire bar to remedy the wrongs caused by proverbial overfishing of the Nevada legal market's waters, it would make more sense for everyone if the State Bar effectively limited the number of entrants who may participate.
412.	I am TOTALLY opposed to mandatory requirements for insurance

Additional Comment: This comment was received via email for inclusion in the survey results.

I took the emailed survey and submitted it last week but it took me a while to get some quotes for coverage so I could submit some more detailed comments.

I went to ALPS because I saw they were endorsed by the Bar and I had gotten coverage from them briefly many years ago. I assume their rates are competitive.

I do not want to be made to buy malpractice insurance. I have been in practice for 37 years, I have never received any claim of malpractice and I do not expect any.

I have never had a client ask me if I had insurance coverage.

I have sufficient funds available to cover the proposed limits for mandatory coverage.

I put in about 400 billable hours last year and I do not expect much more this year.

ALPS will give me about \$35 discount for having a light practice.

I was quoted premiums of \$1,339 for \$100/300k or \$1,883 for \$250/250k of coverage. That requires me to commit malpractice during the 12 months' coverage and for the claim to be made also within the same 12 months. I find this to have a ridiculously low chance of occurrence.

I just really do not see why the bar should require me to pay \$1,300 or \$1,800 for a year's coverage. What are the chances me committing malpractice in the next 12 months, the client filing the claim within the same 12 months and me not just paying off the claim from my own funds if it has any merit?

Each year I buy coverage the premium increases to cover the prior years. The estimates given to me by ALPS are as follows, quote:

An example/estimate would be:

Limits of \$100,000 / \$300,000

Year 1 - \$1,300

Year 2 – \$1,430

Year 3 – \$1,600

Year 4 – \$2,000

Year 5 - \$2,200

Year 6 – \$2,400

Year 7 – \$2,400

Year 8 – \$2,400

My last time in court on a contested matter was 2012. Right now I have one client who is being sued for declaratory relief on an easement, two client traffic tickets, an HOA converting from a profit to non profit corporation, a pending negotiation of a wrongful termination in public employment, a guardianship that requires annual accountings, a small family corporation where I mediate any internal frictions, a family with some real estate holdings that requires counseling in a legal context and a restaurant that wants a management contract for two employees. I have a variety of smaller matters pending.

The only litigation matter in this portfolio had a complaint filed in August, my client was served in September, I pointed out some confusion on the Plaintiff's part and we have had an open extension since

then to allow us to *not* have to file any responsive pleading while the Plaintiff thinks about their case a little longer. My client signed my retainer letter where I stated the expected ruling of the court, just so he would know where I predicted this matter would end if submitted to a Judge.

I make some routine probate appearances, I file annual lists of corporate officers, I prod corporate clients to hold annual meetings, I expect to file a petition for change of name next spring when my client turns 18. People call with simple questions that I answer over the phone. I steer people to inquire further about their situation and to get back to me. I make myself available to VARN and Nevada Legal Services with my free time. I have a relaxed practice with low overhead and I make a modest living from this.

I do not know what the State Bar and the Supreme Court think about the quality of legal services being offered to the public but I know they want us to be accessible and affordable and to try and steer conflicts towards extra judicial resolution. I do not think that mandatory malpractice insurance would promote any of these goals.

Thank you for considering these comments.

G.

Final Interim Report to the Board of
Governors with Cover Memo

WASHINGTON STATE
BAR ASSOCIATION
Mandatory Malpractice Insurance Task Force

MEMO

To: WSBA Board of Governors
From: Hugh Spitzer, Chair of Mandatory Malpractice Insurance Task Force
Douglas J. Ende, WSBA Chief Disciplinary Counsel, Staff Liaison
Date: July 10, 2018
Re: Interim Report of the Mandatory Malpractice Insurance Task Force

Attached is the Mandatory Malpractice Insurance Task Force's Interim Report to the Board of Governors documenting its work thus far and setting forth its work plan through January 2019.

Enclosure

Mandatory Malpractice Insurance Task Force

Interim Report to Board of Governors

July 10, 2018

On September 28, 2017, the Board of Governors established the Mandatory Malpractice Insurance Task Force and issued a Charter to guide the Task Force's work. The Charter asked the Task Force to focus on the nature and the consequences of uninsured attorneys, to examine current mandatory malpractice insurance systems, and to gather information and comments from WSBA members and other interested parties. The Charter also charged the Task Force with determining whether to recommend mandatory malpractice insurance in Washington, developing a model that might work best in this state, and then drafting rules to implement that model.

The Task Force has 18 members, including attorneys, a federal judge, a limited license legal technician (LLLT), industry professionals, and members of the public. The list of members is attached. We were asked to provide an interim report at the July 2018 Board of Governors meeting, and the Charter directs submittal of a final report by January 2019. The group has met monthly since last January. This Interim Report summarizes:

- Key information acquired by the Task Force thus far,
- Concerns raised by the membership in comments to the Task Force,
- Possible regulatory approaches, including a free market model the Task Force is tentatively considering recommending, and
- The need for certain categories of exemptions.

Members of the Task Force started with open minds but widely divergent ideas about mandating malpractice insurance for lawyers in Washington. But as the group deliberated carefully over its potential recommendation and reached a tentative consensus, Task Force members expressed a belief that we should move boldly and not to shy away from a difficult recommendation. Task Force participants stressed that the WSBA has a duty to protect the public and maintain the integrity of the profession. Consequently, the Task Force is focusing on the risk of injury to the *public* that arises from uninsured lawyers, who constitute a small percentage of Washington attorneys. A license to practice law is a privilege, and no lawyer is immune from mistakes. The members emphasized that a key goal of this project is to recommend effective ways to ensure that clients are compensated when attorneys make mistakes. The Task Force members expressed that malpractice insurance (or lack thereof) has a



significant impact on clients, and that it is appropriate for lawyers to ensure their own financial accountability.

This Interim Report describes the Task Force's tentative conclusion that:

- Malpractice insurance should be mandated for Washington-licensed lawyers, with specified exemptions;
- 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 non-profit entities, including pro bono services; retired attorneys; full-time arbitrators; and judges and law clerks;
- Minimum coverage levels should be mandated, *e.g.*, \$100K/\$300K, \$250K/\$250K, \$250K/\$500K, or \$500K/\$500K;
- Attorneys should be required to obtain minimum levels of professional liability insurance in the private marketplace, rather than establishing a "captive" single-carrier system. And the basic requirements should be simple and straightforward, avoiding multiple requirements that would interfere with the insurance market's ability to offer flexible and affordable policies.

The balance of this interim report describes our findings thus far, the concerns we have heard from WSBA members, a description of the options we considered, and more detail on where the Task Force is headed. With an approach tentatively identified, the next steps for the Task Force include developing the details of a practicable free market approach for Washington State and exploring in detail what potential limits, coverage levels, other requirements and exemptions should be included—keeping in mind the concerns raised by WSBA membership. We continue to receive useful technical assistance from ALPS, the WSBA's endorsed professional liability insurance provider, as well as from mandatory program administrators in Oregon and Idaho.

The Task Force will continue to meet in the coming months to discuss modeling and to draft its proposal, including any necessary rule changes, for the Board's consideration. We expect to publish an article in the September issue of *NWLawyer* updating the membership on our work and our preliminary recommendations, with the intent of soliciting additional member comments. After considering member suggestions, the Task Force will finalize its proposal for submission to the Board by January 2019.

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 and meeting materials available at <https://www.wsba.org/insurance-task-force>.

TASK FORCE APPROACH TO INFORMATION-GATHERING

Since its first meeting in January 2018, the WSBA Mandatory Malpractice Insurance Task Force has focused on gathering the information necessary to make a considered recommendation on whether professional liability insurance should be required in some form for Washington lawyers. During this information-gathering phase, the Task Force obtained information from the following sources, among others:

- WSBA data on Washington attorneys, their practice areas, how they practice (*e.g.*, solo/small firm/large firm/in-house), malpractice insurance levels, WSBA disciplinary information, and information about the Client Protection Fund;
- Jurisdictions with mandatory malpractice insurance programs in place or under consideration (Oregon and Idaho mandate malpractice insurance, and Nevada and California are considering doing so);
- A jurisdiction (Illinois) that implemented a proactive management-based regulation (PMBR) model;
- A law professor regarding empirical research on lawyers who go uninsured, other academic studies of the subject, and an ABA study of malpractice insurance (*2015 ABA Profile on Legal Malpractice Claims*);
- Experienced insurance industry professionals, including insurance brokers and underwriters;
- A legal malpractice plaintiff's lawyer;
- WSBA members through comments submitted to the Task Force.

KEY FINDINGS

What follows is the most significant data acquired by the Task Force regarding problems associated with lawyers who go uninsured, characteristics of malpractice insurance, and other relevant information.

1. Approximately 32,000 lawyers have active Washington licenses to practice law.
2. Over the last three reporting years, 14% of Washington lawyers in private practice have consistently reported being uninsured. The vast majority of Washington attorneys representing private clients carry malpractice insurance. (This excludes the 39% of licensed Washington lawyers who annually report that they are not in private practice. This excludes, for example, lawyers who work in public sector positions or in-house counsel jobs—attorneys who typically do not carry professional liability insurance.)
3. Lawyers who practice in solo or small firms are most likely to be uninsured. According to 2017 voluntary demographic information reported by Washington lawyers as part of the annual licensing process, approximately 28% of solo practitioners reported being uninsured.

4. Solo and small firm practitioners represent a disproportionate share of the malpractice claims. According to the *2015 ABA Profile on Legal Malpractice Claims (2015 ABA Profile)*, claims against lawyers in firms of five or fewer lawyers represented over 65% of claims during the period of 2012-2015. In Oregon, that state's Professional Liability Fund in 2015 paid out \$6.52 million in claims against solo practitioners, only \$1.64 million in claims against lawyers in small firms (2-5 lawyers), and \$1.71 million in claims against attorneys in large firms (15 or more).
5. According to the *2015 ABA Profile* and information received from ALPS, the practice areas of personal injury, real estate, family law, estate planning, certain corporate practices, and collection/bankruptcy have the highest incidences of malpractice claims. Not surprisingly, insurance premiums tend to be higher in those practice areas.
6. Most attorney misconduct grievances and disciplinary actions involve solo and small firm practitioners.
7. 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.
8. Over the last five years, WSBA Client Protection Fund application statistics indicate that 11% of applications were denied because they described instances of malpractice rather than theft or dishonest conduct. (The Client Protection Fund compensates clients only for lawyer theft or dishonest activities.)
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 \$60,000, and average loss expenses were about \$20,000.
10. Malpractice insurance premiums vary significantly based on many factors, including among others: years in practice, area of practice, size and practice mix of a firm, attorney history with malpractice claims and disciplinary actions, state characteristics, and whether lawyers are practicing full-time or part-time.
11. In Idaho, where mandatory malpractice began this year (2018), the average premium was approximately \$1,200 for ALPS policies newly issued to solo practitioners (the primary demographic of uninsured lawyers). That amount will likely increase annually by about 15% as the lawyer's length of exposure grows year-over-year until they are fully matured after 6 years. Average premium number, however, can vary broadly based on the firm's principal area(s) of practice.
12. New lawyers pay noticeably lower malpractice insurance premiums than more experienced lawyers. This is because virtually all malpractice insurance policies are written on a "claims made" basis, meaning that if a claim is filed against an insured

attorney today for an event that occurred two years ago, that lawyer's *current* insurer covers the claim, whether or not that insurer provided a policy when the claimed event occurred. Insurers set premiums to provide resources to pay claims on incidents that happened in the past. A first-year lawyer was not practicing in the past, and thus represents a lower risk to insurers. New attorneys can expect their premiums to gradually increase by an average of 15% year-over-year for the first five years after they start practice, and then those premiums level off.

13. Some malpractice insurance policies include a free extended reporting period for claims, or "tail" coverage for attorneys who have been with a specific insurance provider for a period of consecutive years (usually five) and retire. Tail coverage can be expensive (an unlimited tail can be up to 300% of the expiring premium) for retiring lawyers who do not qualify for a free extended reporting period endorsement or who do not have a relatively long history with a particular carrier.
14. In Washington State, approximately 56% of lawyers connect with their pro bono clients through legal assistance providers, other non-profit organizations, or bar groups. Organized *pro bono* programs provided through nonprofit organizations frequently provide malpractice insurance for participating attorneys.
15. There is a disparity in Washington's regulatory/financial responsibility requirements for different legal license types (LLTs/LPOs/lawyers). Court rules require that LLTs and LPOs demonstrate financial responsibility in order to be licensed, but lawyers do not have a similar requirement.
16. Virtually all physicians carry malpractice insurance because it is widely required by hospitals as a condition of admitting privileges.
17. On average, lawyers are practicing longer, and once lawyers reach the age of 71, the number in private practice who carry malpractice insurance drops precipitously.
18. Oregon-licensed lawyers with offices in that state must belong to the Oregon State Bar's Professional Liability Fund, paying a flat assessment (premium) of \$3,500 per year for coverage of \$300K/\$300K with a \$50,000 claims expense allowance and no deductible. The Oregon program was established in 1977, when lawyers were having difficulties obtaining malpractice insurance. The Oregon program provides a number of robust loss prevention programs and continues to be viewed favorably among attorneys in that state.
19. Idaho's malpractice insurance mandate began in 2018, based on a free-market model and requiring minimum coverage of \$100K/\$300K. Thus far, no Idaho attorneys have reported an inability to obtain the required insurance.
20. The State Bar of Nevada last month submitted a proposal to that state's supreme court recommending that Nevada attorneys be required to obtain \$250K/\$250K in coverage on the private market.
21. The vast majority of common law countries outside the U.S. (as well as civil law countries) require some form of malpractice insurance for lawyers in private practice.

For example, the minimum coverage requirements in most Australian states is either AUS\$1.5 million or AUS\$2 million (US\$1.11 million or US\$1.48 million); in British Columbia the required minimum is CDN\$1 million (US\$760,000); in Singapore the requirement is S\$1 million (US\$730,000); and for solicitors in England and Wales the minimum is £2 million (US\$2,628,000).

EXPRESSED CONCERNS FROM MEMBERSHIP

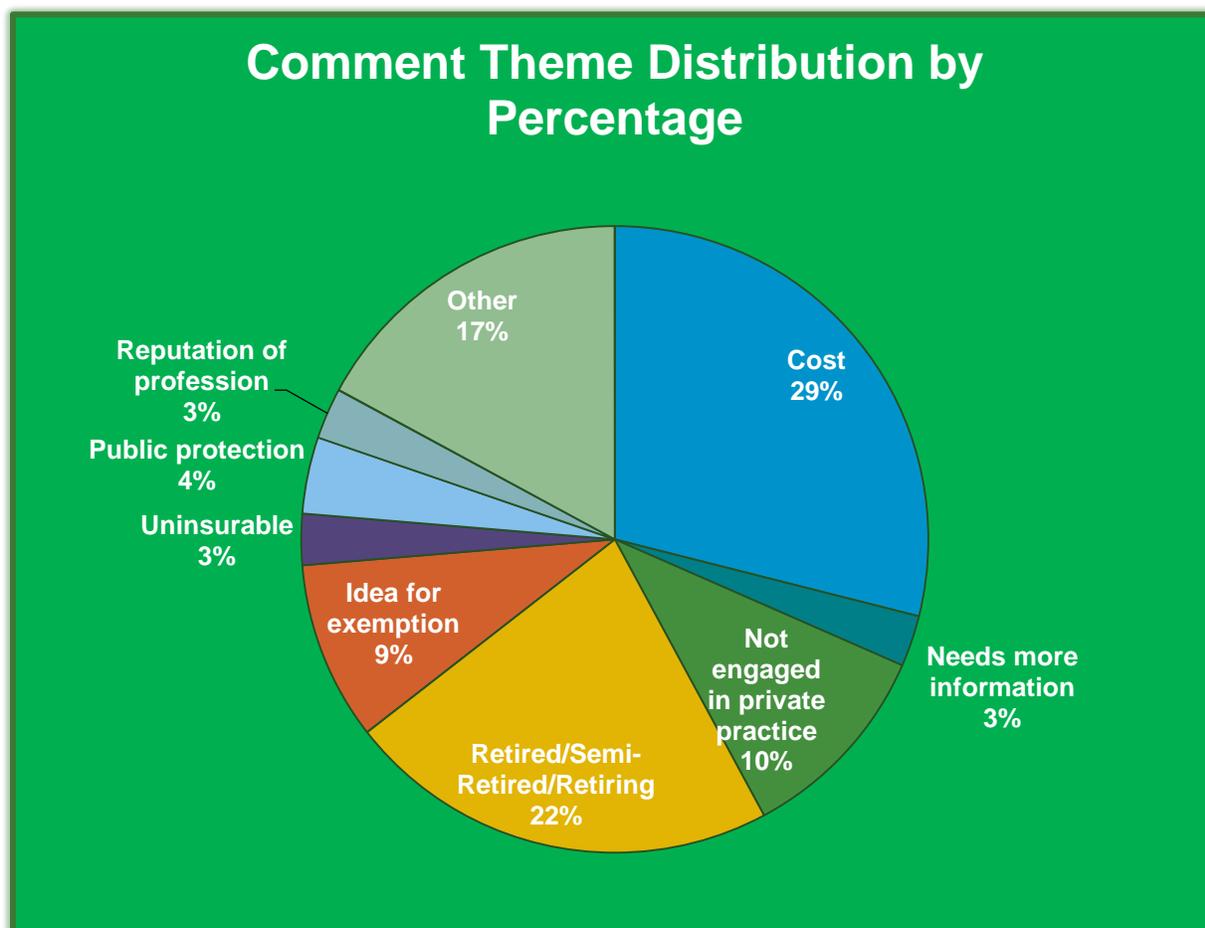
A number of concerns have been expressed by some WSBA members regarding the concept of requiring attorney malpractice insurance. The Task Force compiled comments primarily provided through letters and emails to the Task Force and letters to *NWLawyer*. As of June, 2018, 69 comments were received. The bulk of the comments expressed one or another of the following:

1. A concern about perceived prohibitive costs for insurance;
2. Concerns that retired/semi-retired/retiring attorneys will no longer be able to practice;
3. The desire to make malpractice insurance requirements inapplicable to lawyers not engaged in private practice (*e.g.*, government lawyers, in-house counsel, non-profit legal assistance or defense counsel);
4. Possible unfairness of requiring malpractice insurance for lawyers (often retired/semi-retired/retiring lawyers) who provide mainly pro bono services;
5. The perception of uninsurability (at reasonable cost) of attorneys in certain specialties, or attorneys who practice solely before specialized non-Washington State courts.
6. Ideas for exemption – commentator suggested one or more specific exemptions;
7. Needs more information – commentator expressed a need for more information;
8. Licensed but not actively practicing – commentator suggested insurance not necessary;
9. Public protection – commenter raised issues of public protection;
10. Reputation of the profession – commentator noted possible impact of imposing malpractice insurance on the public’s perception of the profession;
11. Retired/semi-retired/retiring – commentator noted possible impact of imposing malpractice insurance on retirees;
12. Uninsurable – commentator indicated he or she is unable to obtain insurance;
13. Malpractice insurance increases meritless claims against lawyers;
14. Malpractice insurance encourages sloppy practice because it reduces risk; and
15. The WSBA should primarily serve lawyers, not the public.

The vast majority of comments came from solo practitioners and small firm practitioners, many of whom do not currently carry professional liability insurance. 47% of the comments thus far

expressed opposition to an insurance mandate. 45% did not indicate support or opposition, and many of those suggested exemption categories, such as exemptions for government or corporate lawyers, exemptions for *pro bono* activities, or exemptions for semi-retired lawyers who engage in a limited private practice for family and friends. 8% of responders expressed support for mandating insurance.

The following chart displays the variety of concerns expressed.



TENTATIVE CONCLUSIONS AND POTENTIAL APPROACHES

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.

In the Task Force’s view, the WSBA has a duty to protect the public and maintain the integrity of the profession. Lawyers make mistakes. A license to practice law is a privilege, and no lawyer should be immune from those mistakes.

The Task Force considered a number of possible regulatory approaches for possible recommendation to the WSBA Board of Governors. These are listed below, together with a short list of considerations relevant to each approach.

1. Do nothing and maintain the status quo

- No resource cost or fiscal impact on WSBA
- Does not address the identified problems for clients in any way

2. Implement a Proactive Management-Based Regulation model (e.g., Illinois “PMBR” model, which increases training requirements for uninsured lawyers, particularly in practice management and bookkeeping).

- Directly addresses issues of competence/practice management but not financial responsibility for professional errors
- Practical effect of PMBR model in Illinois not yet known
- May reduce attorney errors, but does not provide protection to clients when claims do arise
- May encourage acquisition of insurance, but insufficient evidence at this time

3. Implement more extensive malpractice insurance disclosure requirements (e.g., South Dakota model, which requires large-print notice of lack of malpractice insurance on every uninsured lawyer’s stationery).

- Low cost to administer
- Impact on conduct appears significant in South Dakota, although the potential impact in Washington is unknown
- Appears to encourage acquisition of insurance
- Does not address financial responsibility when professional errors occur

4. Combine PMBR with more extensive disclosure requirements

(Combine 2 and 3 above, *i.e.*, require uninsured lawyers to both take annual courses on risk reduction, practice management and bookkeeping and disclose lack of insurance).

- Double requirement of extra mandatory training courses and vivid disclosure to clients of lack of insurance might cause many uninsured attorneys to purchase coverage
- Does not address financial responsibility when professional errors occur

5. Implement mandatory malpractice insurance through a free market model (e.g., Idaho model).

- 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.

6. Implement professional liability fund model (e.g., Oregon model, requiring all private practice lawyers with a primary office in Oregon to participate in the Bar-operated Professional Liability Fund, with coverage of all members).

- Coverage available for all members
- Robust practice management, member support, and claims support systems
- Relatively high annual premium (in current market) and high operating costs
- Large staff required to administer and significant fiscal impact to implement
- Choice restricted to single provider
- Spreads risks across all classes of lawyers, with internal "cross-subsidization"

7. Consider other approaches (e.g., allowing letters of credit or surety bonds for uninsured lawyers)

- Client ability to obtain sufficient recovery on surety bonds is unclear
- Letters of credit are as expensive or more expensive than insurance premiums, and would not typically provide defense costs for covered attorneys

As noted at the beginning of this Interim Report, the Task Force has tentatively concluded that it should recommend the following program to the Board of Governors:

- Malpractice insurance should be mandated for Washington-licensed lawyers, with certain exceptions. All attorneys subject to the requirement would be required to annually certify that they carry, and will continue to carry, professional liability insurance at or above the required minimum level.
- Minimum coverage levels should be mandated, *e.g.*, \$100K/\$300K, \$250K/\$250K, \$250K/\$500K, or \$500K/\$500K;
- Coverage should be “continuing,” meaning continued coverage from the initial coverage date, and policies should not be permitted that exclude attorney acts prior to the current year. However, because of expense constraints, lawyers obtaining malpractice insurance policies for the first time should not be required to obtain insurance that covers their acts prior to the coverage date.
- Attorneys should be required to obtain minimum levels of professional liability insurance in the private marketplace, rather than establishing a “captive” single-carrier system. And the basic requirements should be simple and straightforward, avoiding multiple requirements that would interfere with the insurance market’s ability to offer flexible and affordable policies.
- 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.

NEXT STEPS FOR THE MANDATORY MALPRACTICE INSURANCE TASK FORCE

The Task Force consensus described above is tentative, and based on the information we have obtained thus far and the Task Force’s consideration of that information. In the coming months, the Task Force will focus its efforts on:

- Considering feedback from the Board of Governors;
- Ramping up information efforts among WSBA members, and obtaining and considering additional comments received;
- Detailing the recommended malpractice insurance mandate, including the specific required coverage minimums;
- Identifying in detail the recommended exemptions from the professional liability insurance requirement; and
- Drafting a proposed Court Rule for the Board of Governor’s consideration

The Task Force has every expectation that it will be able to provide a final report to the Board of Governors by January 2019, as specified in the Charter. We look forward the Board’s questions and comments regarding this interim report.

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