

Washington State Bar
Association

MANDATORY MALPRACTICE INSURANCE p.24

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12 RULES FOR **EFFECTIVE** CROSS-EXAMINATION

As the Board of Governors begins considering the issue of mandatory malpractice insurance, it looks forward to getting member engagement and input from the outset of consideration of the topic. We commence the dialogue with two pieces in this issue of *NWLawyer*: this article, which provides the background on the Board's consideration of the topic to date, including a recommendation to create a Task Force to look at the issue in more depth, as well as another piece that provides one point of view in "Perspectives" on page 28. *NWLawyer* hopes to provide a forum for the exchange of ideas, so please share your thoughts by writing to us at nwlawyer@wsba.org.

WSBA BOARD OF GOVERNORS EXPLORES MANDATORY MALPRACTICE INSURANCE

by Kim Risenmay and Douglas Ende

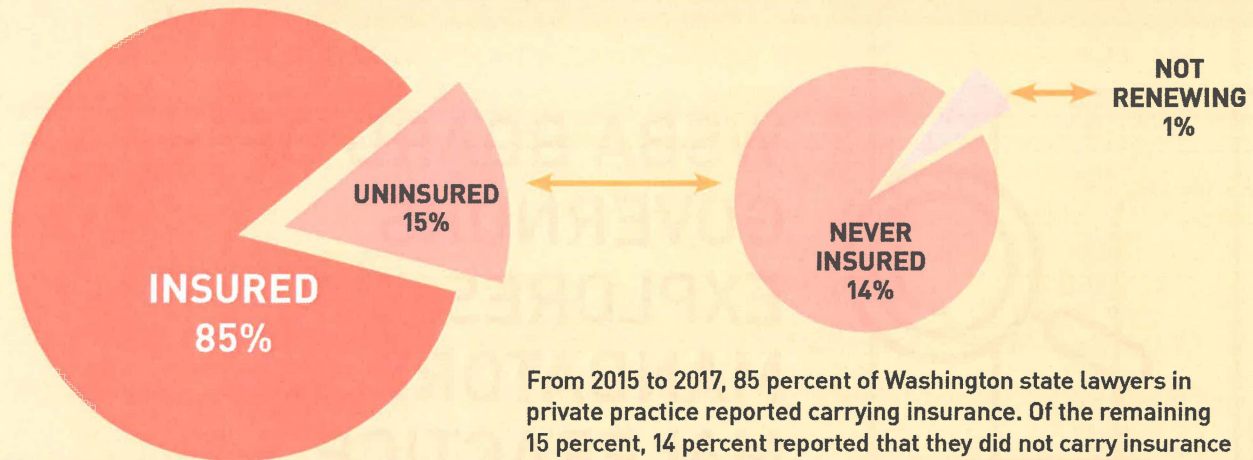
The Washington State Bar Association (WSBA) Board of Governors recently took up the question of whether requiring malpractice insurance for lawyers as a condition of licensing is an appropriate mechanism to help fulfill the regulatory duty to protect the public. The May 2017 Board of Governors meeting included a generative discussion about mandatory malpractice insurance. During a generative discussion, the Board does not make any decisions or take action, but rather seeks to educate participants about the topic and to stimulate a dialogue. During the May 2017 generative discussion, Kim Risenmay, WSBA Governor from District 1, and Douglas Ende, WSBA Chief Disciplinary Counsel, presented general information to the Board about the current status of mandatory malpractice insurance programs in the United States and in other countries, as well as the various methods used to implement such programs. The Board as a whole then discussed whether such a regulatory initiative would help protect the public by ensuring that consumers of legal services in Washington state are financially protected from legal errors. This article highlights some of the features of the Board's discussion.

In Washington, there is a significant discrepancy between the licensing requirements applicable to practitioners with limited licenses and those applicable to lawyers. Under Admission and Practice Rules (APR) 12 and 28, respectively, Limited Practice Officers (LPOs) and Limited License Legal Technicians (LLTs) are required to show proof of financial responsibility on an annual basis to maintain their licenses. Such financial responsibility is ordinarily established by certification of the existence of professional lia-

ALTHOUGH WASHINGTON ATTORNEYS ARE NOT REQUIRED TO CARRY MALPRACTICE INSURANCE, MOST DO.

2015-2017

Washington lawyers in private practice with liability insurance



From 2015 to 2017, 85 percent of Washington state lawyers in private practice reported carrying insurance. Of the remaining 15 percent, 14 percent reported that they did not carry insurance and one percent did not intend to renew their insurance at the end of its term.

Source: 2015-2017 WSBA annual licensing questions authorized by APR 26.

bility insurance. By contrast, Washington lawyers are not required to establish proof of financial responsibility to maintain their licenses. Washington lawyers are, however, as part of the annual licensing process, required to disclose to the WSBA whether they maintain malpractice insurance. See APR 26. The information is made available to the public through the lawyer directory on the WSBA website. Washington is one of 25 states that require disclosure of malpractice insurance either to the licensing organization or directly to the client. In

recent years, 85 percent of Washington lawyers in private practice reported that they are covered by malpractice insurance. APR 26 reporting data and demographic information also suggest that up to 30 percent of lawyers in solo practice are not covered by malpractice insurance.

Only two U.S. jurisdictions require lawyers to maintain professional liability insurance coverage as a condition of licensing: Oregon and Idaho. These two states use different models to implement their professional liability insurance

requirements. Oregon uses a professional liability fund, while Idaho has opted for an open-market approach. Outside of the U.S., many jurisdictions, including the Australian states, Canadian provinces, and England and Wales, require licensed legal practitioners to maintain professional liability insurance.

A professional liability fund is an adjunct to the jurisdiction's licensing and regulatory systems that acts as the insurance provider for all the jurisdiction's lawyers. Under such a system, lawyers in private practice are obligated

to pay an annual assessment as a condition of licensure, with exemptions for certain practitioners such as in-house counsel and lawyers in government service. The fund administers and pays claims, supports operation of the program, and provides a variety of loss-prevention services. Since 1979, using this model, Oregon's Professional Liability Fund (PLF)

ONLY TWO U.S. JURISDICTIONS REQUIRE LAWYERS TO MAINTAIN PROFESSIONAL LIABILITY INSURANCE COVERAGE AS A CONDITION OF LICENSING: OREGON AND IDAHO.

has served as the insurance provider for Oregon lawyers in private practice. In order to be licensed in Oregon, active members of the Oregon State Bar (other than those who are exempt)¹ pay an annual assessment to the fund. In 2016, the assessment was \$3,500 per year, with a reduced rate for lawyers in the initial years of practice. The fund provides coverage of up to \$300,000 per claim with a \$300,000 annual aggregate, including defense costs, and a \$50,000 claims expense allowance. In addition to providing coverage, the fund collaborates with the Oregon State Bar to provide loss-prevention services: legal education, practice management programs, and personal assistance programs are all available through the PLF to help reduce the risk of malpractice.² This model makes coverage readily available to those required to have it, but it provides no choice in the selection of an insurer.

In March 2017, following a vote of the members of the Idaho State Bar, the Idaho Supreme Court amended Idaho Bar Commission Rule 302 to require that active members submit proof of current professional liability insurance coverage on an annual basis. This is an example of the open-market model, under which lawyers are free to choose an insurance provider. Idaho Rule 302, which becomes effective in January 2018, requires insurance coverage at a minimum limit of \$100,000 per occurrence with a \$300,000 annual aggregate. Lawyers who do not represent private clients are not required to comply with this provision. This model provides a great deal of choice to lawyers seeking coverage, but will impose some administrative burden on the Bar in tracking proof of coverage and addressing lapses in coverage.

Following the informational presentation, the WSBA Board discussed a number of topics, including the duty

to protect consumers of legal services from the financial consequences of malpractice, the question of why solo practitioners appear more likely to go without coverage, and the 1986 WSBA effort to enact a system akin to Oregon's PLF, which was defeated by member referendum.

The Board of Governors is committed to continuing the conversation and has asked the Board's Executive Committee to consider formation of a task force to explore possible models for adoption of a mandatory malpractice insurance system in Washington. The Board will take action on whether to create the task force at its September 28-29 meeting in Seattle and would welcome member feedback on this issue.³ MWL

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DOUGLAS ENDE is employed at the WSBA as its Chief Disciplinary Counsel. He can be reached at douge@wsba.org.

The authors thank WSBA staff Thea Jennings and Maia Crawford-Bernick for research and drafting assistance with this article.

NOTES

1. In Oregon, exemptions from PLF participation apply to members whose principal office is not in Oregon, government lawyers, judges, lawyers employed exclusively



MEMORANDUM

To: WSBA Board of Governors
From: Douglas Ende, Chief Disciplinary Counsel
Date: May 5, 2017
Re: Background Materials for Mandatory Malpractice Insurance Generative Discussion

Although many U.S. jurisdictions, including Washington State, have insurance disclosure rules requiring reporting and/or disclosure of whether a lawyer is covered by professional liability insurance, few U.S. jurisdictions require, as a condition of licensing, that lawyers have such insurance. Since the 1970s, Oregon alone has had a comprehensive system (known as the Professional Liability Fund) requiring malpractice insurance for all licensed lawyers in Oregon representing private clients. (In the late 1980s there was an effort to propose a comparable system in Washington State, but it was defeated by a referendum submitted to the membership by the Board of Governors.) Last year, the Idaho Supreme Court enacted a rule (effective in January 2018) that will require Idaho lawyers to submit proof of minimum coverage at the time of annual licensing. Although rare in the U.S., the bars of a number of other countries, including the Canadian provinces, the Australian states, and England and Wales, require lawyers to have professional liability insurance as a condition of licensing.

The public-protection purpose of such measures is to ensure that consumers of legal services are financially protected from lawyer errors. In Washington State, financial responsibility obligations are currently imposed on limited license legal technicians (LLLTs) and limited practice officers (LPOs) by court rule. On a number of occasions in meetings with the Board of Governors, Justices of the Supreme Court have inquired about the discrepancy between the financial responsibility requirements applicable to LLLTs and LPOs and the lack of such a requirement for lawyers.

In 2016, the Board of Governors convened a Mandatory Malpractice Insurance Workgroup to gather information about the topic. The Workgroup included four Board of Governors members (Mario Cava, Bill Pickett, Andrea Jarmon, and Kim Risenmay), one WSBA member (PJ Grabicki), and one WSBA staff liaison (Doug Ende). Attached to this Memorandum is a compilation of the most germane information gathered by the Workgroup.

Accompanying Documents

- HISTORICAL EFFORT TO PROPOSE MANDATORY MALPRACTICE RULE: 1986 Status Report on Malpractice Insurance Coverage and Professional Liability Fund Proposal, Washington State Bar News (Appendix A)
- WASHINGTON STATE INSURANCE DISCLOSURE RULE: APR 26 FAQ & WSBA Professional Liability Insurance Disclosure Certification (Appendix B)
- WASHINGTON STATE STATISTICS ON COVERAGE: 2016 WSBA Malpractice Insurance Disclosure Reporting Statistics for Those in Private Practice (Appendix C)
- MANDATORY MALPRACTICE WORLDWIDE: Professional Indemnity Insurance Requirements Around the World (Appendix D)

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- THE OREGON APPROACH: About the PLF (from PLF website) (Appendix E)
- THE IDAHO APPROACH: Idaho Supreme Court Amended Order, March 30, 2017 (Appendix F)
- POTENTIAL SYSTEM MODELS: ALPS White Paper Available to ALPS-Endorsed State Bars Contemplating Mandatory Lawyers' Professional Liability Insurance (Appendix G)

APPENDIX A

MEMORANDUM

TO: ALL WASHINGTON LAWYERS

RE: STATUS REPORT ON MALPRACTICE INSURANCE COVERAGE AND PROFESSIONAL LIABILITY FUND PROPOSAL

Background

In May of this year a special WSBA Task Force reported findings to the Board of Governors and described possible models of a professional liability fund and a traditional insurance company. After reviewing this report, the Board of Governors appointed a new Task Force to design a professional liability fund. This Task Force did its work and sent out a description of its proposal in late August. It then conducted hearings in six different cities in the state, at which Bar members had an opportunity to see the details of the plan as set forth in the documents available at those hearings.

During this period and in addition to the hearings, there has been a large amount of communication from members in the form of letters and phone calls to members of the Task Force and the Board of Governors. In addition, a formal study of the proposal was conducted by a task force of the Seattle-King County Bar Association.

The intention had been to have the Board of Governors act at their September 20 meeting. It became obvious that this time table was too short. Accordingly, on the recommendation of the Task Force, the Board set a new time table. It also provided for this special *Bar News* article.

The revised time table now calls for the Board of Governors to act on the proposal at its December meeting. If the Board approves the concept/proposal, a substantial portion of the January *Bar News* will be devoted to a final description of the plan and the arguments pro and con.

What Now?

It is hoped that bar organizations of one kind and another, law firms and groups of Washington lawyers everywhere will exchange ideas, ask questions and debate this program. Members of the Task Force will be available to come talk to any group. The coupon included with this article is for you to send in to get a copy of the proposed court rule and the coverage plan.

All of the elements of this proposal are based on the deliberations of the Task Force, which undoubtedly will be meeting again before the December Board meeting; if you have questions or comments, the Task Force would be pleased to receive them. In addition, you should feel free to address any comments you want to any member of the Board of Governors.

The Task Force would like to note here that it has simply not been able to respond to all of your letters. In many cases, the letters have asked questions, and it is hoped that this material will furnish the answers. If it does not, please write again, and an effort will be made to respond promptly.

It seems unlikely that the ingredients of the plan would be changed in any substantial way from this point forward. However, the plan remains to be approved by the Board of Governors and, in this process, changes could occur.

Recent Changes

After receiving your many comments and conducting the hearings, the Task Force concluded that two fairly fundamental changes had to be made: provision for a less expensive program for those with part-time practices and a provision for a schedule of "deductibles."

One consistent and impressive objection came from those lawyers who have only a very small practice. While this may not be a large number in terms of the size of our Bar, nevertheless it did not seem right to fail to make a provision in the plan to avoid the possibility of terminating the practices of some of these part-time practitioners. Accordingly, the following provisions would be made for the lawyer who complied with the criteria: a lower coverage limit of \$100,000 and a substantially reduced assessment, i.e., 35% of the regular assessment or \$417 per year in the start-up phase. The criteria for this status have not yet been formalized. They will appear in the material which will be mailed to you if you send in the coupon which is part of this article. Generally, the thought is that the provisions would be available to a lawyer whose legal work over a period of the last three or four years has not exceeded an average value of \$20,000 per year and who does not have any vicarious liability for the activities of any other lawyer.

Since it was concluded that the above special category of limited exposure should be recognized, it seemed to follow that a lawyer should be permitted to elect to have only \$100,000 in coverage rather than the full normal \$250,000. One



thought here is that there will be many lawyers who do not have large practices and who will not qualify for the special limited exposure category but who should have the opportunity to pay a somewhat lower assessment and have lower coverage. The assessment for \$100,000 coverage would be 70% of the normal assessment for the full coverage of \$250,000.

Finally, the Task Force has decided to design into the schedule a series of "deductibles" ranging from \$2,500 up to \$100,000. These are not deductibles in the strict sense because, in keeping with the principle of the Fund which addresses public or client protection, the Fund should be committed to pay all losses from the first dollar. Therefore, the deductible would actually be an amount for which the lawyer indemnifies the Fund, and it would apply to both damages and claims expense. The Fund would have the right to demand the payment of the indemnified amount from the lawyer at any time after a claim was made.

The deductibles of \$2,500 and \$5,000 would be available to a lawyer electing to have only \$100,000 of coverage. The higher deductibles would be available only in the case of the full coverage of \$250,000 of the Fund.

As to the larger deductibles beginning at \$25,000, there would be a requirement of a showing of financial ability to cover the indemnity. This requirement could take a variety of forms depending on the circumstances.

Structure

The proposal is that the Fund would operate essentially under the control of the State Supreme Court. Under the terms of the rule, a non-profit corporation, the Washington Lawyers' Professional Liability Fund, would be created with a Board of nine members, six of whom would have to be lawyers.

Failure to pay an assessment or failure to pay a "deductible" would

be grounds for suspension from practice.

The key elements of the Professional Liability Fund are the assessment schedule and the coverage plan. The assessment schedule would set forth the assessment amount for the various types of coverage available including any surcharges that might be imposed and obligatory deductibles. The coverage plan would describe the acts and omissions which are covered; the exclusions would contain all of the terms which are typically in an insurance policy. The proposed court rule provides that each year the assessment schedule would have to be furnished in advance to the Board of Governors of the State Bar, and that Board would have the ability to ask the court to review the schedule. In addition, the rule would require that any change in the coverage plan would have to be submitted to the Board of Governors in advance of its acceptance by the court so that the Board of Governors would have an opportunity to object or seek modifications.

The rule *does* contemplate that the Board of the Fund would have the authority to establish a basis for both surcharges and imposed deductibles. This means that, as is presently the case in Oregon, the lawyer who generates claims would be required to pay a higher assessment or to accept a substantial deductible. It is also possible that the Board of the Fund could conclude from its observation of the loss data that certain types or characteristics of practice require treatment with larger assessments or imposed deductibles.

The Amount of the Assessment

A professional liability fund is different from an insurance company. An insurance company sets a premium for a year of coverage on the basis of a prediction of the amount of money that will be necessary to cover all of the claims that will be made during that policy year, whether paid during that year or

not, and cover its profit and taxes. The company relies on these premiums and its capital to be able to pay all claims. A Fund, on the other hand, relies simply on its membership to pay assessments from year to year to cover its cash needs. Because of this difference, the start-up of a Fund permits it to make a lower charge because its cash needs to pay the claims in the first year are obviously smaller than will be the case after it has been running for a period of time and has accumulated a history of claims which will mature in the year ahead.

To compute what is needed for a Professional Liability Fund for lawyers in Washington, the actuary engaged by the Task Force studied loss data from Washington insurance carriers and from the Oregon Professional Liability Fund. These studies led to the conclusion that, on a paid-claim basis, the assessments required for 1987, 1988 and 1989 would be, respectively, \$571, \$1,227 and \$1,776. The actuary counseled against a start-up with minimum funding, and the Task Force agreed. The Task Force resolved this by averaging the three figures for 1987, 1988 and 1989 to come up with an assessment of \$1,191. It is the hope that starting with what amounts to a substantial cushion would enable the Fund to maintain the same assessment for a period of three years.

It should be pointed out that the actuary concluded that there would be a 15%-per-year increase in claims expense based on observed results in recent years and a 7% increase in expenses. On these assumptions, the assessment for 1990 for the basic coverage would be \$2,282. Again, using these assumptions, the figures become rather staggering as one looks ahead even further. The implication of this, of course, is that the trend of increasing claims must be terminated.

This article is *not* intended to make a case for the Fund—It is intended to bring everyone up to date and to encourage all members to make the effort to become as knowledgeable as possible.

APPENDIX B



Professional Liability Insurance

Professional Liability Insurance Policies

[Frequently Asked Questions about Professional Liability Insurance](#)

[APR 26](#)

[Insurance Resources](#)

Washington lawyers are not required to have professional liability insurance coverage. However, they are required to report to the Washington State Bar Association, on a yearly basis, whether they have coverage. They are not required to report the following:

- Who their insurer is, if they have malpractice insurance coverage.
- The limits of their policy.
- The amount of any deductible that the lawyer must pay before the insurance company is obligated to pay a claim.
- Any limitations on or exemptions from coverage. For example, most legal malpractice insurance policies do not cover claims against a lawyer that arise out of illegal conduct by the lawyer.

Not all lawyers maintain professional liability insurance. Some lawyers may make a responsible decision not to maintain insurance because the lawyer is an in-house or government lawyer, or because the lawyer may choose to be financially responsible (self-insured).

The Washington State Bar Association does not independently verify the insurance information provided by lawyers. There is no guarantee that a lawyer has maintained insurance coverage after the report date or will continue to maintain insurance coverage in the future. There is also no guarantee that a lawyer has adequate insurance limits to cover all potential claims or that a particular claim will be covered by the policy. Note that it is also possible that the information displayed was erroneously reported or incorrectly entered in the State Bar's database.

The following is a list of questions that a prospective client might ask before entering into a lawyer-client relationship with a particular lawyer:

- Do you presently maintain professional liability insurance coverage?
- What is the name of your insurer?
- What are the limits of your coverage? Have any of those limits been used in the payment of other claims?
- What is the deductible under your policy?
- Does your policy cover the type of work you are doing for me?
- What is the term of your current coverage?
- Will you advise me if you discontinue your coverage or change your limits?
- Could you provide me with a Certificate of Insurance (evidence from an insurance company that the lawyer is insured)?
- If you do not maintain professional liability insurance, why have you made that decision?

Professional liability insurance policies provide insurance coverage for some but not all professional liability (malpractice) claims made against a lawyer. Most professional liability policies are written on a "claims-made" basis. This is different from the usual home-owners or automobile insurance policy. This means that the insurance company providing the insurance has agreed to cover claims that are made against the lawyer during the term of the policy. In other words, the policy that applies to a particular claim is the policy that is in effect at the time the claim is presented to the insurance company with a demand for payment - not the policy in effect when the lawyer's alleged negligence or mistake took place. Malpractice insurance policies typically limit the amount that the insurance company can be required to pay on each claim and the total amount that the insurance company can be required to pay on all claims made against the lawyer during the term (or effective period) of the policy. The maximum amount of coverage provided by a malpractice insurance policy is called the "limits" of the policy.

Frequently Asked Questions about Professional Liability Insurance

Why am I required to disclose whether I have Professional Liability Insurance?

Rule 26 of the Admission to Practice Rules (APR) provides that every active member of the Washington State Bar Association is required to disclose annually whether the lawyer maintains professional liability insurance.

What is the purpose of required insurance disclosure?

The purpose of the insurance disclosure rule is client protection. Under the Washington Rules of Professional Conduct, one of the basic principles of the lawyer-client relationship is that the lawyer will give the client sufficient information regarding material facts to allow the client to make an informed decision in matters relating to the representation. See, e.g., RPC 1.4; 1.7. Whether a lawyer maintains professional liability insurance may be a material fact for some persons in considering whether to hire a lawyer, and it should be easily available to a client or prospective client.

What does the rule require?

APR 26 requires that each active status lawyer certify annually on a form approved by the Board of Governors (a) whether the lawyer is in private practice; (b) if so, whether the lawyer maintains professional liability insurance; (c) whether the lawyer intends to continue to maintain insurance; and (d) whether the lawyer is a full-time government lawyer or house counsel and does not represent clients outside that capacity. The rule also requires

notification to the WSBA within 30 days if the lawyer in private practice ceases to be insured. The rule does not require lawyers to have professional liability insurance.

Is failure to disclose a disciplinary violation?

Failure to comply with the disclosure requirement will result in administrative suspension from practice until the information is disclosed, in the same way that lawyers may be suspended for failure to comply with the continuing legal education reporting requirements, but it is not a disciplinary violation.

What is done with this information?

This insurance information is available to clients or prospective clients on the lawyer directory on the WSBA website or by contacting the WSBA. In practice, the availability of this information will operate similarly to the contractor insurance and bonding information available to the public through the Department of Labor and Industries by contacting the Department or searching the Department's website.

Where can I find information on purchasing legal malpractice insurance?

The [ABA Standing Committee on Lawyers' Professional Liability](#) has a very helpful webpage with links to insurance resources for lawyers.

How should I fill out the Professional Liability Insurance Disclosure?

Mark the one box that fits your situation. If you represent clients in any capacity (whether it be pro bono or as a contract attorney) you should find out whether or not the organization for which you are providing services maintains and intends to maintain professional liability insurance and mark the appropriate box.

How should I notify the WSBA if my coverage lapses, is no longer in effect or terminates for any reason?

APR 26 requires written notification within 30 days if your coverage lapses, is no longer in effect or terminates for any reason. After you have filed your Professional Liability Insurance Disclosure during the license renewal process, you may make changes to it by logging into www.mywsba.org and clicking the Edit Liability Insurance Info link. Or, you may send a letter or [email](#) to the WSBA, attention Licensing Project Lead.



WSBA

Professional Liability Insurance (APR26) Trust Account (ELC 15.5; Amended APR 17) Reinstatement to Active Membership

Be sure to certify this form by signing at the bottom of this page.

Professional Liability Insurance (APR 26)

Washington lawyers are not required to have professional liability insurance coverage. However, they are required to report to the WSBA, on a yearly basis, whether they have coverage. APR 26 requires written notification within 30 days if your coverage lapses, is no longer in effect, or terminates for any reason. Such notification should be made online at myWSBA.org.

I certify that I will (**Mark the one box that fits your situation**):

- ☐ be engaged in the private practice of law, covered by, and intend to maintain Professional Liability Insurance.
- ☐ be engaged in the private practice of law, covered by, but DO NOT intend to maintain, Professional Liability Insurance.
- ☐ be engaged in the private practice of law BUT NOT covered by Professional Liability Insurance.
- ☐ NOT be engaged in the private practice of law because: (1) I do not practice law, or (2) I practice law as a government lawyer, or (3) I am employed by an organizational client, and I do not represent clients outside that capacity.

Trust Account (ELC 15.5; Amended APR 17)* (Choose either Yes or No, do not leave blank)

The trust account information question should be answered according to the facts as they exist on the date the form is certified. You do not need to report closed IOLTA accounts - only currently open accounts. You do not need to notify the WSBA if you open an IOLTA account midyear. You report only once a year.

Mark Yes or No. Write in information for ALL accounts if applicable, attaching separate page if necessary.

☐ Yes ☐ No I or my firm maintain(s) either an IOLTA account or other client trust account(s) for the deposit of client funds received in connection with representations undertaken using my Washington license.

If yes, write in information for ALL accounts, if applicable, attaching a separate page:

Institution	Branch/City	IOLTA Account Number
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*All funds and property of WA clients, if any, and all WA trust accounts and records, if any, must be maintained in compliance with RPC 1.15A and B.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing information is true and correct.

Signature	Date	Place Signed
-----------	------	--------------

Name: _____ WSBA No. _____

APPENDIX C

2016 WSBA ACTIVE LAWYERS MALPRACTICE INSURANCE DISCLOSURE REPORTING STATISTICS FOR THOSE IN PRIVATE PRACTICE

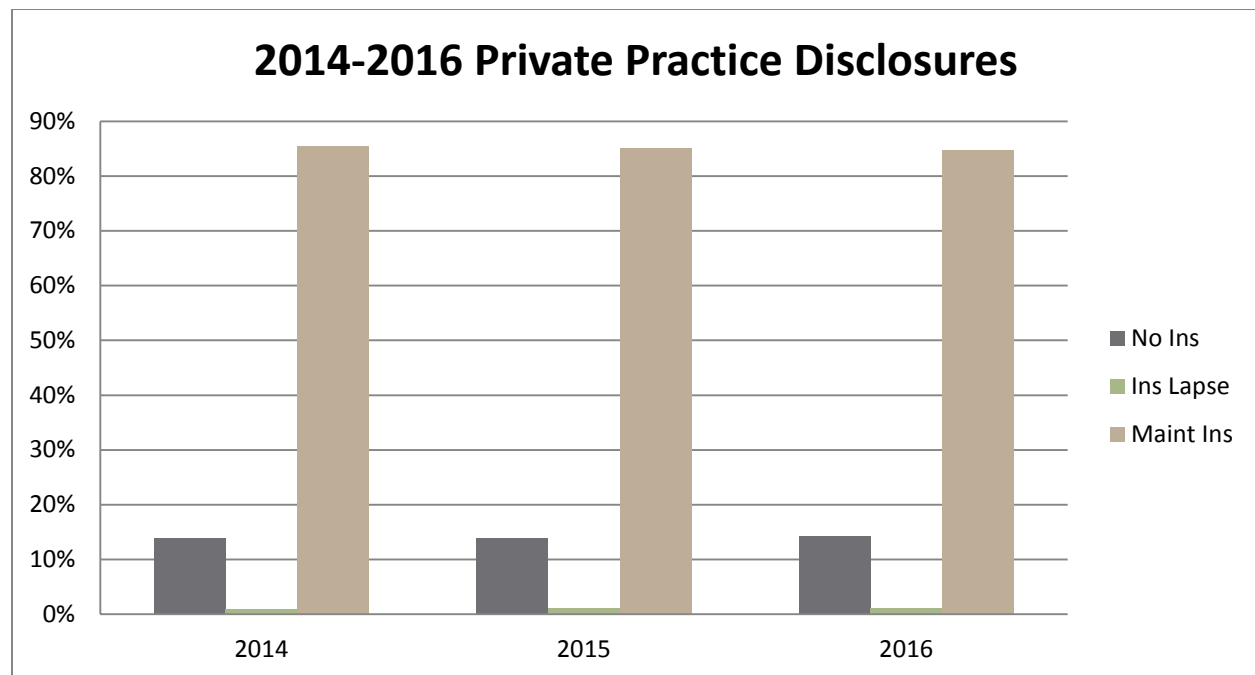
Under APR 26, active lawyers are required to report whether they carry malpractice insurance on an annual basis. During the annual licensing renewal process, lawyers must report whether they:

- do not have insurance (No Ins),
- have insurance but that it will not be maintained in the next reporting year (Ins Lapse), or
- have insurance and that it will be maintained (Maint Ins).

What follows are graphical representations of membership statistics along with demographic information relating to the size of firm for those in private practice related to malpractice insurance disclosures. Those not in private practice are not captured in this data. All information is detailed in percentages.

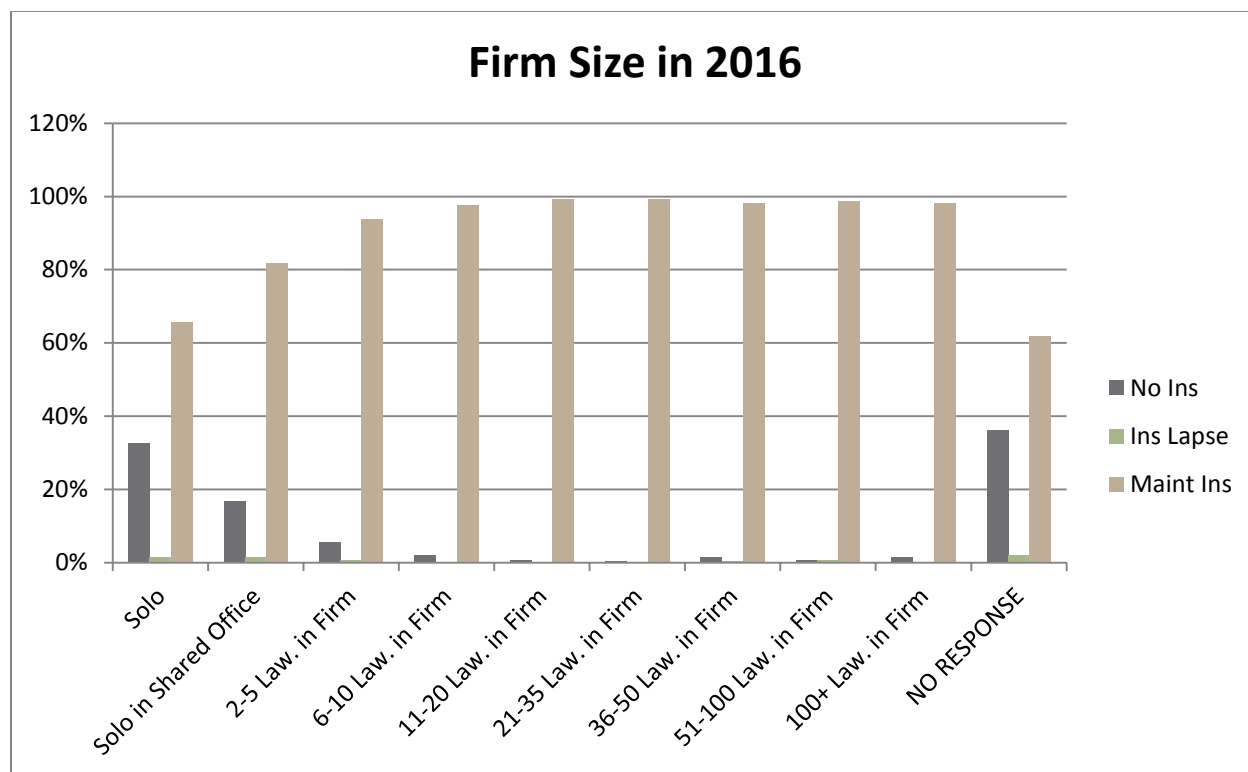
PRIVATE PRACTICE INSURANCE DISCLOSURES FOR 2014-2016

For the years 2014-2016, the graph below details the percentage of those in private practice reporting that they had no insurance, had insurance but intended to let it lapse, or had insurance and intended to maintain it. The chart reveals that consistently 14% of those in private practice do not carry insurance and 1% let their insurance lapse.



FIRM SIZE REPORTING

For the year 2016, the graph below details by size of firm what lawyers in private practice disclosed about their malpractice insurance in 2016.¹ Of those who responded regarding their firm size, the data reveals that approximately 30% of lawyers who identified themselves as solo practitioners are uninsured.



¹ This chart does not include lawyers who reported working in private practice in the government sector or acting as in-house counsel.

APPENDIX D

Table 1:
PROFESSIONAL INDEMNITY INSURANCE REQUIREMENTS
AROUND THE WORLD *Note: for information purpose; not a comprehensive listing

LOCATION	MANDATORY PROFESSIONAL INDEMNITY INSURANCE REQUIRED		MINIMUM COVERAGE
	YES	NO	
ASIA¹			
Malaysia	X		RM 250,000 for sole practitioner to maximum RM 2M for multi practitioner firm
Hong Kong	X		HK\$10,000,000
Singapore	X		S\$1,000,000
AUSTRALIA			
New South Wales ²	X		AUS\$2,000,000 per claim
South Australia ³	X		AUS\$2,000,000 per claim
Queensland ⁴	X		See Note 4
Tasmania ⁵	X		AUS\$1,500,000
Victoria ⁶	X		AUS\$2,000,000
Western Australia ⁷	X		
CANADA			
British Columbia	X		CDN\$1,000,000
Alberta	X		CDN\$1,000,000
Saskatchewan	X		CDN\$1,000,000
Manitoba	X		CDN\$1,000,000

¹ “Hong Kong Solicitors Indemnity Scheme Review of Insurance Arrangements Review Report” (28 November 2003), online: The Legislative Council of Hong Kong < <http://www.legco.gov.hk/yr03-04/english/panels/ajls/papers/aj0129cb2-1092-1e-scan.pdf>>.

² Professional Indemnity Insurance Policy 2010/2011”, online: LawCover, <[http://203.147.162.122/filelibrary/Files/Insurance/Sample_10.11CPII%20Policy\(standard\)_FINAL.pdf](http://203.147.162.122/filelibrary/Files/Insurance/Sample_10.11CPII%20Policy(standard)_FINAL.pdf)>.

³ <http://www.lawsocietysa.asn.au/other/lawclaims.asp>

⁴ <http://www.qls.com.au/content/lwp/wcm/connect/QLS/Your%20Legal%20Career/Practice%20Support/Professional%20Indemnity%20Insurance/>; Queensland Law Society Limitation of Liability Scheme acts to put a limit on liability in damages on solicitors effective July 1, 2010. Some members are eligible for a cap of liability of AUS\$1.5M to AUS\$10M depending on Class of Members: www.qls.com/content/lwp/wcm/resources/file/eb50b4068565216/100604-official-QLSLOL-scheme/document.pdf

⁵ Taslawociety.asn.au/web/en/lawsociety/practice/ConditionsPC.html; “Professional Indemnity Insurance Master Policy: 1 January 2006 to 31 December 2006”, online: The Law Society of Tasmania <<http://www.taslawociety.asn.au/news/2006MasterPolicy.pdf>>.

⁶ “Contract for Professional Indemnity Insurance for Solicitors: 2010/2011” online: Legal Practitioners Liability Committee, <<http://lplc.websynergy.com.au/media/file/policies/LPLC-Policyforsolicitors-10-11.pdf>>.

⁷ www.lawsocietywa.asn.au/moverview.htm

Ontario	X		CDN\$1,000,000
Quebec	X		CDN\$10,000,000
New Brunswick	X		CDN\$1,000,000
Nova Scotia	X		CDN\$1,000,000
Prince Edward Island	X		CDN\$1,000,000
Newfoundland	X		CDN\$1,000,000
Yukon	X		CDN\$1,000,000
Northwest Territories	X		CDN\$1,000,000
Yukon	X		CDN\$1,000,000
EUROPE⁸			
Austria	X		€400,000 for a single lawyer
Belgium	X		€1,250,000 for a single lawyer
Czech Republic	X		Kč 1,000,000 for a sole lawyer
Denmark	X		Kr DKK 2.5M
Estonia	X		kr EEK 1,000,000 for one insured
Finland	X		FIM 1,000,000
France	X		€3,850,000 per loss per lawyer
Germany	X		€250,000 per loss
Greece		X	
Hungary	X		Ft 5,000,000 per damage
Iceland	X		
Ireland	X		€2.5M each claim
Italy		X	
Latvia		X	
Lithuania	X		LTL 100,000
Lichtenstein	X		CHF 1,000,000
Luxemburg	X		€1,250,000
The Netherlands	X		€453,780 per event
Norway	X		kr NOK 2,000,000 per claim
Poland	X		Zł PLN404,890 (2009)
Portugal	X		€150,000 per lawyer
Slovakia	X		SKK 3,000,000
Slovenia	X		€250,000
Sweden	X		kr SEK 3,000,000 for pure economic loss caused by error or

⁸ Revised Comparative Table on Professional Indemnity October 2009” (27 August 2010), online: Counsel of Bars and Law Societies of Europe (CCBE) <http://www.ccbe.org/fileadmin/user_upload/NTCdocument/REVISED_Comparative_1_1282909942.pdf> at 39-43 and 62- 66.

			neglect and kr SEK 10,000,000 for damages caused by crime against property
NEW ZEALAND		X	
UNITED KINGDOM			
England and Wales ⁹	X		£2,000,000 per claim for sole practitioner; bodies corporate £3M
Northern Ireland ¹⁰	X		£250,000 for junior counsel; £500,000 for senior counsel
Scotland ¹¹	X		£2,000,000 per claim (2008)
UNITED STATES			
Oregon ¹²	X		US\$300,000 per claim
All Other States		X	
SOUTH AFRICA ¹³			AIIF provides professional indemnity coverage to all legal practitioners: R 1,562,500 for sole practitioner (2010). Generally determined by number of partners or directors of firm

⁹ Professional Indemnity Insurance” (8 June 2010), online: The Law Society

<<http://www.lawsociety.org.uk/productsandservices/practicenotes/piinsurance/4527.article>>; *Supra* note 1

¹⁰ www.lawsoc-ni.org/about-us/regulatory-framework-/?keywords=professional+indemnity; *Supra* note 1

¹¹ www.lawscot.org.uk/forthepublic/consumer-protections/professional-indemnity

¹² “Professional Liability Insurance Directory” *Standing Committee on Lawyers’ Professional Liability* (6 May 2009) online: American Bar Association

<<http://www.abanet.org/legalservices/lpl/directory/carriers/oregon.html>>; “State Implementation of ABA Model Court on Insurance Disclosure” *American Bar Association Standing Committee on Client Protection* (7 October 2010), online: American Bar Association Standing Committee on Client Protection <http://www.abanet.org/cpr/clientpro/malprac_disc_chart.pdf>.

¹³ www.aiif.co.za/index.php?certificate-of-insurance; www.aiif.co.za/downloads/2010-2011_english_policy.pdf; Attorneys Insurance Indemnity Fund (AIIF) provides insurance coverage at no cost to practitioners. AIIF provides professional indemnity insurance cover to all legal practitioners through annual premiums paid by the Attorneys Fidelity Fund.

APPENDIX E

About the PLF

The Oregon State Bar Board of Governors created the Professional Liability Fund in 1977 pursuant to state statute and with approval of the membership. The PLF first began operation on July 1, 1978, and has been the mandatory provider of primary malpractice coverage for Oregon lawyers since that date.

The PLF provides coverage of \$300,000 per claim/\$300,000 aggregate to every attorney engaged in the private practice of law in Oregon. This coverage includes defense costs and, in addition, there is a \$50,000 claims expense allowance. In 2016, the basic assessment for this coverage is \$3,500 for each attorney; the assessment has remained the same for five consecutive years.

The PLF's philosophy is that a program of this type must be mandatory for all lawyers in private practice in the state, as purely voluntary participation could result in adverse selection and a concentration of only the "bad" risks, leading to financial instability. Over time, the cost of coverage provided by the PLF has proved to be less than the cost of comparable commercial coverage.

Protecting Oregon Lawyers

Of the roughly 14,950 active members of the Oregon State Bar who live in Oregon, approximately 7,300 are in private practice and participate in the PLF. The remaining Bar members claim exemption from the PLF as corporate counsel, government lawyers, law professors, etc. These numbers fluctuate slightly throughout the year.

The coverage provided by the PLF is on a "claims made" basis rather than an "occurrence" basis. The PLF also provides automatic extended reporting or "tail" coverage at no cost to attorneys who discontinue practicing law in Oregon.

The PLF has enjoyed support from the membership and very good success with the handling of its claims. Based on recent data, roughly 67% of claim files are closed without payment of any settlement or judgment, while 33% involve some payment to a claimant. The average claim payment (including claims for which no payment was made) is approximately \$9,600. Roughly 40% of claim files are closed without payment of any claims expense, while 60% involve some claims expense. The average claims expense paid on a claim (including claims with no claims expense) is approximately \$11,400.

Services We Provide

In order to keep malpractice claims as low as possible, the PLF offers an extensive array of loss prevention programs, including (1) legal education seminars, publications, and practice aids that alert lawyers to malpractice traps, (2) a practice management advisor program that helps lawyers improve office systems and procedures, and (3) a personal assistance program that helps lawyers practice more effectively ([Oregon Attorney Assistance Program](#)).

Beginning in 1991, the PLF has also offered optional [excess coverage](#) on an underwritten basis to Oregon law firms. Coverage is available up to aggregate limits of \$10 million. Excess coverage is also available from commercial insurers. Roughly half of the lawyers in private practice carry some excess coverage.

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APPENDIX F

In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO SECTIONS OF)
THE IDAHO BAR COMMISSION RULES) AMENDED
(I.B.C.R.)) ORDER
)

The Board of Commissioners of the Idaho State Bar having presented proposed changes to the Idaho Bar Commission Rules (I.B.C.R), and the Idaho Supreme Court having reviewed and approved the recommendations;

NOW, THEREFORE, IT IS HEREBY ORDERED, that the Idaho Bar Commission Rules (I.B.C.R.), as they appear in the Idaho State Bar Desk Book and on the Idaho State Bar website be, and they are hereby, amended as follows:

1. That Rule 302 of SECTION III be, and the same is hereby, amended as follows:

SECTION III Licensing

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 ~~on or before February 1 of each year~~ (1A) whether the attorney represents private clients; and (2B) if the attorney represents private clients, ~~whether the attorney is currently covered by professional liability insurance; and~~ (3) whether the attorney intends to maintain professional liability insurance during the next twelve (12) months 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 ~~reports being covered by~~ 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.

...

2. That Rule 303 of SECTION III be, and the same is hereby, amended as follows:

SECTION III Licensing

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~~ insurance is required under Rule 302(a).

...

3. That Rule 402(e) of SECTION IV be, and the same is hereby, amended as follows:

SECTION IV Mandatory Continuing Legal Education

RULE 402. Education Requirement Report.

...

- (e) **Exemptions.** Exemptions from all or part of the CLE requirements of subsection (a) may be granted as follows:
- (1) **Eligibility.** An exemption may be granted:
 - (A) Upon a finding by the Executive Director of special circumstances constituting an undue hardship for the attorney; or

- (B) Upon verification of the attorney's disability or severe or prolonged illness, in which case all or a specified portion of CLE credits may be earned through self-study; or
- (C) For an attorney on full-time active military duty who does not engage in the practice of law in Idaho.
- ...

IT IS FURTHER ORDERED that the amendments to Rule 302 and 303 shall be effective January 1, 2018, and amendments to Rule 402 shall be effective immediately.


IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Rules.

DATED this 30 day of March, 2017.

ATTEST:


Clerk

By Order of the Supreme Court


Daniel T. Eismann, Vice Chief Justice

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the minutes entered in the above entitled case and now on record in my office. 3-30-17
WITNESS my hand and the Seal of this Court.

STEPHEN W. KENYON

Clerk

By  Chief Deputy

APPENDIX G



White Paper Available to ALPS-Endorsed State Bars Contemplating Mandatory Lawyers' Professional Liability Insurance Options

State Bars contemplating mandatory professional liability insurance programs are usually motivated by ensuring the public as consumers of legal services are financially protected from attorney error, improving the practice of law in the state and enhancing the reputation of the profession generally.

This white paper was developed at the request of State Bars inquiring of how a mandatory program might work, leveraging ALPS' 30 years in the lawyers' professional liability market. It presents two models of governing mandatory coverage: an open-market model and a mandatory fund. The two models approach the problem from very different perspectives and both models contain positive and not so positive attributes depending on how you perceive each. The open Market Program has less State Bar involvement and is best described as a monitoring program. The Mandatory Fund Model is much more robust and really addresses, in a participatory way, the whole concept of comprehensive client protection with central administration of a number of aspects of financial and personal responsibility to clients.

Open Market Model

In an Open Market Model, every lawyer licensed to practice law in the state must maintain professional liability insurance consistent with the standards set by the Supreme Court and the State Bar. In addition, it would require professional liability insurers to report all cancellations and non-renewals. In its simplest form, this program establishes minimum standards of required coverage and reporting requirements, but allows attorneys the flexibility to select their own insurance carrier and operates entirely in the open market with no government fund or guarantees. For purposes of this proposal, we will assume a minimum limit of \$500,000 per occurrence/ \$1Million annual aggregate with deductibles not to exceed \$1,000 per attorney insured under the policy.

This model is likely the one that most lawyers would favor, but puts a more significant supervisory burden on the State Bar and or the Court in the administration of program exceptions (discussed in detail later). For purposes of further reference, we assume the State Bar has the responsibility for all administrative functions as designee of the Supreme Court

Program Framework

The open-market model significantly increases the administrative responsibilities of lawyers' professional liability (LPLI) insurers by requiring carriers to report cancellations

and non-renewals to the State Bar. Because of the requirement for insurer reporting, it may require legislative action to authorize the Court to guarantee insurer compliance and create enabling financial responsibility legislation. At a minimum, insurers will be required to provide the State Bar, or its appointed party, with duplicate copies of all non-renewal and cancellation notices, at the same time such notices are sent to the attorney and to update the administrator of any rescissions of cancellation or non-renewal.

Insurer compliance can be done through legislative mandate or on a voluntary basis. The simplest is “voluntary” participation by the insurance community. The standards would state that in order for a certificate of insurance to be acceptable to the State Bar as proof of coverage, it must state that the carrier agrees to comply with Court’s rules in regard to reporting. Prior to the commencement of the program, the State Bar would notify all licensed or authorized insurers in the state. They would have the opportunity to indicate they agree to comply and the list of compliant companies would form.

In order to facilitate the attorney’s effort to secure appropriate coverage, the State Bar would maintain the list of compliant insurers on their web site and initially provide the list with the license renewal or application materials sent to individual lawyers or firms. All that said it would be the responsibility of the individual lawyer to be sure he or she obtained coverage from an acceptable company. Certification would be re-filed annually as part of the Bar renewal process.

If an attorney’s coverage lapses, the State Bar would send a notice informing the attorney that they need to obtain an exemption (discussed below) from the State Bar to practice without Professional Liability coverage and how to make such an application. It would further advise the attorney that license revocation will occur at a time certain (or had occurred if the State Bar wanted to be hard nosed) if coverage is not restored or an exemption obtained.

Certain types of attorneys may not, for professional reasons, need malpractice insurance or wish to obtain it. That list could include governmental lawyers, law professors, in-house corporate counsel or private practitioners working solely on a *pro bono* basis. Under the program, these attorneys would be allowed to petition the court for an exemption from mandatory malpractice rules. Additionally, some attorneys may not be able to acquire coverage in the commercial market due to area of practice, prior loss experience or lack of insurance history. These attorneys will require the State Bar to make difficult decisions about who to exempt and who not to exempt. The conditions of exemption need to be well defined in the regulations or rules and should be strictly applied to avoid litigation. It may be that the State Bar would also consider an exemption for attorneys wishing to post a bond equal to the minimum insurance limit. All these issues will require deliberate definition as part of the organizational process.

The proposed program would be administered by the Bar or by ALPS as a program administrator selected and appointed by the Bar. Administrator responsibilities would include the following:

- Collection of filings from insurers,
- Notification to the Court in the event an attorney fails to comply with the insurance requirements,
- Compilation of requests for exemption, and such other things as the court or Bar may determine as appropriate for administration of the program.

Though both simple and comprehensive, the free-market model has potential drawbacks:

- Insurer Cooperation – The requirements placed on insurers will create increased administrative burden. The increased administrative burden may encourage existing or prospective Lawyers Professional Liability Insurance carriers to exit the market, reducing the availability of coverage and potentially increasing the cost of coverage.
- Exemption Administration – There would be a burden for administering exemption requests and approvals/declinations. Further, in at least some cases, it is likely that the Court would have to revoke licenses of attorneys unable to comply with the requirements.
- Lack of integrated loss prevention - Though less a flaw in the open-market system than an opportunity cost of not pursuing the mandatory fund program, the open market model in its simplicity does not provide the comprehensive client protection included within the Mandatory Professional Liability Fund model. These resources (impaired lawyers program, comprehensive risk management and lawyer malfeasance coverage) could still be provided by the Bar, independently, and funded by an additional bar dues assessments.

Mandatory Professional Liability Fund

The implementation of a Mandatory Professional Liability Fund (“the Fund”) goes beyond simply requiring attorneys to carry lawyers’ professional liability insurance (“LPLI”) to truly protecting the legal consumer through a State Bar operated facility which could do any or all of the following: 1) provide lawyers’ professional liability malpractice coverage, 2) provide indemnification for clients against attorney malfeasance, 3) provide risk management and loss prevention resources to improve the practice of law in the state, and 4) identify and assist in the rehabilitation of impaired lawyers. Participation in the Fund would be mandatory for all attorneys licensed to practice in the state (subject to fee reductions for those attorneys not requiring professional liability insurance as discussed below).

Comprehensive Client Protection through The Fund

Participation in the Fund would be mandatory for all attorneys in private practice. Attorneys employed as in-house counsel, government or private industry, law professors and retired attorneys would be exempt from participation in the professional liability portion of the Fund. All others would be charged an assessment annually, on a per-

attorney basis for remaining portions of coverage. Only attorneys in private practice or other electing to participate fully would be afforded coverage for professional liability risks.

LPLI Coverage

The fund would provide all participants with LPLI coverage with no deductible. The limits provided by the Fund will need to be considered by the State Bar, and may be, on a per attorney basis, \$500,000 per occurrence/ \$500,000 annual aggregate, \$1Million per occurrence/\$1Million annual aggregate or any other amount selected by the State Bar. Those lawyers wishing to have greater protection would be able to obtain excess coverage above the fund in the open market through commercial carriers.

Unlike commercially available malpractice insurance, the Fund would incorporate coverage for attorney malfeasance with a sub-limit of \$100,000 annually on an occurrence and aggregate basis. This enhanced coverage replaces current client protection fund mechanisms and provides greater protection for consumers of legal services and streamlines indemnification for clients. Clients often do not distinguish between malpractice and malfeasance, and a single source of recovery can help improve the reputation of the Bar. All lawyers who have a license would pay an assessment for coverage just as they do presently

Loss Prevention and Risk Management

The stated purpose of the Fund would be to provide the public with protection against, and in the event of, a lawyer's mistake. It stands to reason that reducing the incidences of malpractice serves that purpose as well as does providing for client indemnification. To that end, a fundamental part of the Fund would be to design, administer and require participation in risk management and loss prevention programs designed to improve the practice of law. Activities could include, but are not limited to, sample forms, manuals, articles, risk visits, practice audits and continuing legal education.

Impaired Lawyer Program

The Fund's impaired lawyer program is a humanitarian program intended to identify lawyers suffering from impairment due to alcohol or drug use, excessive stress, mental disease or disorder, and provide them with recovery tools and resources. As with loss prevention, the impaired lawyer component of the Fund ultimately serves the goal of protecting clients and ensuring we are addressing challenged attorneys for a self-regulating profession. It is certainly not too much for a client to expect their attorney to perform legal services with competency and without impairment from alcohol, drugs or excessive stress.

The State Bar or Program Administrator would staff counselors and attorneys to perform the following functions:

- Coordinate recovery programs
- Provide professional and peer counseling
- Administer recovery groups
- Design and administer career evaluations and counseling; and
- Provide support to family members.

Practice intervention could, on a case-by-case basis, assist attorneys seeking treatment by ensuring their clients are handled to avoid potential claims. This would be coordinated by the Fund's professional staff but would involve volunteer lawyers to provide direct practice support as needed. All attorneys licensed to practice would pay this portion of the assessment.

Underwriting and Assessment Considerations

The malfeasance and lawyer impairment portions of the fund assessment would be the same for all licensed lawyers and would likely be less than \$250 per year depending on the ultimate design of coverage for the programs.

The LPLI portion of the assessment could be developed using one of two models. Both would collect the same total assessment for the Fund, but illustrates two different ways of distributing an assessment among participants.

The first model requires no underwriting, and would charge an equal base assessment to each and every participant. Preliminary review indicates that the assessment for the program would fall within the following ranges:

Limit	Assessment Range
\$500,000	\$2,000 - \$2,600
\$1,000,000	\$2,650 - \$3,300

The second model effectively underwrites attorneys by area of practice according to simplified classes of practice. Attorneys in higher-risk categories of practice (including but not limited to Mergers / Acquisitions and Securities Law) would be charged an assessment closer to the top of the range, attorneys in medium-risk practice (such as Civil Litigation plaintiffs' law and Real Estate) would be charged an assessment in the middle of the range, and attorneys in lower-risk practice (such as Domestic Relations or Criminal Law) would be charged a lower assessment. The preliminary indications of the range for this model are broader to reflect the risk classifications and higher expense involved in additional underwriting:

Limit	Assessment Range
\$500,000	\$1,300 - \$6,500
\$1,000,000	\$1,625 - \$8,125

Within either model, attorneys with prior malpractice claims would be charged an additional assessment to reflect their increased loss activity. The issue of part-time vs full-time attorneys would need to be addressed with respect to assessment charges and underwriting criteria. If elected, a separate lower assessment could be developed for part-time practitioners.

New attorneys entering the Bar would be charged a reduced rate (probably 50-60% of the normal assessment in year one) for the professional liability portion of the assessment on a step rated basis reaching full maturity in six years as their exposure on a claims-made and reported basis expands with experience.

If an attorney fails to pay their annual assessment, the Court would take disciplinary action against the attorney to include suspension or revocation of their law license to practice in the state.

Administration

The Fund could be overseen by a board or committee of comprised of members of the State Bar as appointed or elected by a process to be determined by the Supreme Court. The Fund could be administered by the Bar and by ALPS as a Program Administrator. In administering the program, the Program Administrator will at a minimum perform the following functions:

Certificate Management and Customer Service

- Determine individual attorney assessments and dissemination of license renewal materials.
- Administer a website for attorneys to renew licenses and pay assessments online. If applicable, it would also maintain the attorney profiles and underwriting information (if administering the underwriting model)
- Offer annual assessment payment options, including full payment at time of binding coverage, credit card billing for full premium payment at time of binding coverage and privately-funded financing plan terms of up to nine months.
- Issue Certificate of Coverages exhibiting the coverage terms and conditions. Once issued, the Certificate of Insurance remains in force until cancelled.
- Provide a full staff of customer service representatives available for telephone contact and discussion of the Fund and services.

Claims Management

The Program Administrator would need experienced claims professionals to administrator all aspects of claims handling. This staff would include state-based claims attorneys and appropriate support staff. The Program Administrator would be responsible for the initial intake through final resolution of all malpractice claims including:

- Determination of whether the allegations fall within coverage extended by the Fund
- Investigation and evaluation of each claim to determine the risk posed to the Fund. If litigation becomes necessary, the administrator will hire defense counsel to respond on behalf of the covered attorney and will monitor the claim throughout the litigation process. From the initial investigation through the claim conclusion, the administrator will make reasonable efforts to resolve the claim expeditiously and cost effectively under the facts and the law at issue.
- Timely establish and post the appropriate reserves reflecting the Fund's risk for its amount of coverage.
- Manage the reserve portfolio of the Fund
- Coordinate with the excess carrier responsible for excess layers of coverage, if any is purchased by the individual attorney or firm.
- Report relevant claims statistics in order for the Fund to determine the risk posed to the Fund each year and reset assessment amounts
- With regard to claims arising from lawyer malfeasance, the claims department will interface with the state's relevant client protection governing board, provide that board with claim information and follow the board's determination with regard to claim coverage

Accounting and Actuarial

The Program Administrator will:

- Receive assessments
- Manage assessment financing
- Administer accounting of the Fund on a GAAP basis
- Manage accounts payable and receivable
- Prepare monthly financial statements
- Book reserves as directed by claims personnel
- Issue expense and claim checks
- With the assistance of an independent actuary, review reserve adequacy, prepare annual budget recommendations and set annual assessment amount.

Investment Management

The Program Administrator will also manage the assets of the Fund in a manner designed to ensure adequate liquidity to meet Fund obligations, and provide an advantageous investment return on held assets.

Other Services

It is contemplated the Program Administrator, at the Bar's request, would assist the State Bar in developing and implementing an industry-leading risk management program, thus

providing additional Bar relevance to members. It would also, if requested, administer the lawyer impairment portion of the program.

While the potential is greater for ultimate client protection, it comes on the basis of a mandatory program for lawyers licensed in the state. Because of this, Supreme Court leadership is critical for leadership, approval and implementation.