

Malpractice Insurance Working Group
Subcommittee on Encouraging Insurance Coverage
Report and Recommendations to the Malpractice Insurance Working Group

The Subcommittee on Encouraging Insurance Coverage makes the following recommendations and observations:

Recommendations:

1. Require legal malpractice insurance as a condition of licensing;
 - Limited, specified exemptions to this requirement to be provided; and
 - Costs of insurance to be subsidized for those engaged in substantial pro bono and very low bono work that increases access to justice.
2. State Bar to conduct a lawyer education campaign, to include the following components:
 - Inform attorneys of the law and requirements regarding (1) mandatory insurance or (2) mandatory disclosure re lack of insurance; and
 - Retain a professional communications firm, if necessary, to ensure through outreach, including communication through law schools, California Lawyers Association events, [Bar exam?] etc;
 - Inform attorneys of the benefits of insurance and potential risks of failure to maintain insurance; and
 - Inform attorneys of the availability and affordability of professional liability insurance.
3. Require all attorneys to complete programs that provide educational tools and self-assessment for practice management and risk reduction;
 - Protecting the public is best served by preventing harm in the first place;
 - Insurers might promote a program that includes the mandatory loss prevention activities with coverage, thereby expanding the reach of coverage if not mandated.

Observations:

1. Mandatory disclosure requirements may be effective in encouraging lawyers to purchase insurance, but it is unlikely to be adequate or effective in protecting the public through education;
 - Clients may not fully understand implications of hiring an uninsured lawyer.
2. Even in the absence of data regarding harm suffered by victims of uninsured attorneys, the Bar must adhere to the statutory directive included in Business and Professions Code section 6001.1:

Protection of the public shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.
3. The potential impact on access to justice of mandating malpractice insurance should be the subject of further, separate study.
 - The Bar should consider mechanisms for assisting small/solo practitioners with financial assistance to purchase insurance for lawyers providing pro bono and low cost representation;
 - Low income clients should not be left vulnerable to uninsured attorneys.