

Malpractice Insurance Working Group
Subcommittee on Availability of Insurance and Ranges of Coverage
Report and Recommendations to the Malpractice Insurance Working Group

The Subcommittee on Availability of Insurance and Ranges of Coverage makes the following report and recommendations:

Report:

1. Adequacy and availability of insurance: a review of the California insurance market finds that there is adequate coverage available.
 - a. A review of the market found 17 admitted carriers and 18 non-admitted carriers that offer legal malpractice insurance.
 - b. Attorneys are able to obtain coverage at levels commensurate with their needs.
 - c. An open market is essential for ensuring ongoing availability of coverage that meets individual attorneys' needs.
2. Affordability of insurance is subjective
 - a. Insurance premiums in California are higher than in other states.
 - b. Insurance is available at rates that are commensurate with the coverage provided.
 - c. Attorneys whose income from legal work is very low report that they are unable to afford malpractice insurance.
 - 66% of uninsured respondents to the MIWG survey indicated that they could not afford insurance.
 - Many of the public comments submitted included unaffordability of insurance among the reasons for opposing mandatory insurance.
 - Some attorneys have stated that the cost of insurance, if required, would preclude them from providing reduced cost and/or pro bono services, or would force them to stop practicing law, with a negative impact on access to justice.
 - d. Some insurance carriers have indicated that they would consider offering lower cost policies for attorneys whose income from their legal work is below a threshold amount,
 - The Department of Insurance may agree to require new entrants to the California insurance markets to provide lower cost policies, but such a requirement may negatively impact the availability of insurance.

Recommendations:

1. If legal malpractice insurance is required, minimum coverage of \$100,000 per occurrence/\$300,000 aggregate per year is sufficient to protect the public.
 - a. The 2012-2015 ABA Profile of Legal Malpractice Claims reported that 89% of claims had total costs (including expenses and indemnity/settlement) of \$100,000 or less.
 - b. Currently insured attorneys who work in higher risk practices, or who represent clients with potentially greater losses, are likely to continue to maintain adequate insurance.