

instances of advice on discreet issues related to assisting people with regard to the workings of local government so they can have their voices heard.

10. What are the reasons to not require coverage?

I don't favor requiring malpractice coverage, without knowing all the reasons why someone might opt to not have coverage. I do favor requiring disclosure.

It's their choice as to what kind of risk they are willing to bear.

For in house counsel, I believe the employer can assess the risks in consultation with the counsel. For private practitioners, I believe malpractice insurance should be required in an amount commensurate with the risks of the practice area(s).

Government attorneys shouldn't be required to have malpractice insurance

Should remain voluntary.

I think it should be up to the attorney to decide.

If someone is an active licensed lawyer but they are counseling clients they should not be required to get insurance.

if active and only doing pro bono or mediation, coverage may not be needed

In-house lawyers have a single client (the corporation).

Being nearly retired.

I feel that malpractice insurance is a scam. Some years ago I fell into financial difficulty, and failed to renew my MP insurance because I didn't have money for the premium. When I attempted to re-up, the gap meant that all my prior acts were not covered, because the insurance was on a claims-made basis. I am left feeling that all my premium payments were for nothing, and that the protection afforded was illusory. I will never purchase MP insurance again unless legally required.

You said all Vermont lawyers with an active license. There are many attorneys who work for corporations, state agencies, not in practice, all of whom have licenses, none of whom could procure insurance if required. If you meant to say - all attorney representing clients or in private practice, or otherwise properly stated the question, then the answer would be "probably".

It is exceedingly rare for an employer to pursue a civil claim for malpractice against in-house counsel or decline to provide a defense to civil claim asserted by a third party. Employed Lawyers Insurance is available and affordable, but should be optional.

An active license may not mean a lawyer is doing private practice. Requiring malpractice insurance to do private practice would prohibit a person who is doing a light or occasional practice and may make entry into private practice prohibitively expensive.

Liability insurance should not be mandatory, but it is good practice to have it for the protection of the clients, as well as, the attorney.

They should have to disclose this to clients.

Coverage may be prohibitively expensive, especially for those whose employer does not provide it (thinking of government and non-profit attorneys). I am in favor of all having coverage if it can be priced reasonably.

You're going to drive up the cost of practicing and drive lawyers (especially semi-retired or only partially active lawyers) out of the practice of law. This is a horrible idea and I will fight it tooth and nail. It's a giveaway to big corporations, the insurance lobby, and big firms at the expense of everyone else.

If most states don't require coverage, what greater-government force in Vermont is pushing for this? I think that peer pressure would work best (see my affirmative answer to question 11). If lawyers had to admit they didn't have coverage, they would probably lose business until they did get it. Besides, the Question 8 is immediately followed up by Question 9. A one-size-fits-all approach to policy limits does not work, given the vast differences in risk amongst, i.e., different practice areas and years of experience.

Each lawyer decide on their own. May have assets otherwise protected. May have affordability problems paying for malpractice insurance. Attorneys should be free to make cost benefit decision to not buy. Oppose any statute or court rule that would require payments to insurance companies. Attorney education, admission standards, ethics requirements, disclosure to clients, and subsidies all better. Help clients and lawyers rather than impose another costly mandate.

Malpractice insurance is expensive and getting more expensive. It can be difficult for a lawyer to maintain the insurance

Government attorneys don't need it. They are also underpaid relative to private attorneys. You would be asking some of the least-paid attorneys to take on a needless expense- an expense which would be offset (if at all) by a government reimbursement, making it an unnecessary taxpayer-funded expense.

Whether to be protect one's own ass is a personal choice. A client who wishes to know is free to ask and then act accordingly.

There should be an exception for those practicing exclusively in-house or at nonprofits who don't ever have client funds

I do not think malpractice insurance coverage should be required for those licensed attorneys who work in non-legal roles. If it were required for those in my position, I would likely revert to inactive status or relinquish my Vermont law license altogether.

maybe not necessary for the individual

I do not think that state government attorneys need personal malpractice insurance.

I think active attorneys in private practice probably should have at least minimum coverage

People need to make their own business decisions. Coverage is expensive and, hopefully, rarely needed. I have practiced with and without coverage for over 40 years without a claim. Income during pandemic

non-existent, yet no carrier to my knowledge has reduced malpractice premiums although exposure was substantially reduced. This would be yet another mandate, driving up the costs of legal services. When did VT or the Fed. Judiciary last raise pay for indigent representation? It's a joke

Attorneys who are in-house counsel and do not represent clients other than their employer should not be required to have legal malpractice insurance coverage.

Requiring malpractice insurance in all instances across the board may create significant financial hardship for certain members of our bar, and there is no demonstrable need of which I am aware that would justify the imposition of such a draconian mandate. Disclosure of coverage, on the other hand, seems appropriate in most circumstances.

Some lawyers do not practice law in an area or concentration where they need malpractice insurance for ex. they may be covered under another attorney's policy such as attorneys who do legal research and writing or provide per diem services. To impose a mandatory requirement of malpractice insurance on every attorney with an active license could prove financially challenging. Plus, I think that attorneys are generally professional enough to obtain coverage if required or prudent for their work.

I think it could be published if the attorney has coverage or not when the public queries a license

This is an individual risk assessment by each law firm. I have insurance, but it is my single most expensive line item (as I practice in my home office) every year. I can see the rationale for rolling the dice and cancelling coverage, even though I currently have a policy. I think it very unlikely that I will ever be sued by a client.

It's a huge expense.

I've already stated my reasons above. It would be difficult to choose to work as an attorney part-time. It would not even cover the cost of the insurance if I didn't have an attorney willing to add me to theirs for work I do for them.

People starting out may not have the funds to purchase insurance

My concern is for those just starting out and in more rural, poorer areas. If a young attorney chooses to practice in a rural area of Vermont, s/he will need time and dedication to build a sustainable practice, and it will be built on their reputation. Insurance is additional overhead that could discourage the establishment of small practices in underserved areas. It adds both start up costs and ongoing costs (which inevitably will be passed on to clients, making legal services less affordable.

All lawyers foolish enough to not get insurance should be required to disclose to clients that they are uninsured. Some lawyers may keep an active license and not see clients, who knows.

will create cottage industry of suing lawyers

I am not putting myself out currently to be hired.

Protection of the public

Self insured

I would say YES to Q8 if the question was amended to say all Vermont lawyers with an active license in private practice. Requiring malpractice liability shouldn't apply to in-house counsel, government lawyers, or lawyers with active licenses who aren't engaged in the practice of law.

Not every licensed attorney practices law.

Some, like me, want to keep our license current should we decide to return to practicing, some have jobs that don't require a law license but they want to keep their license current, etc.

The Bar and our clients could be at the mercy of the insurance industry.

I believe that attorneys actively engaged in the practice of law should have coverage. There are various situations, however, including retirement (e.g., me), unemployment, being between jobs, extended maternity or paternity leave, etc., in which an attorney might still have an active license but not be actively practicing. In such cases, it might be perfectly appropriate for the attorney to not carry insurance, and lack of insurance should not be considered an ethical violation.

I don't think attorneys should be required to have malpractice coverage, since I don't know all the reasons why an attorney might choose to not have coverage. The fact that only two states nation-wide require malpractice insurance gives me pause. I do think the public has the right to know whether an attorney has coverage, though, so I favor disclosure of malpractice coverage.

Not all active attorneys are practicing law or in a firm

Not every practice has the same needs. In some situations this is just an added expense with no benefit to the attorney, clients, or the public - only the insurance carrier.

Personal responsibility.

Semi-Retired attorneys should not be forced to carry expensive insurance just to keep a license. Since most of what I do for others is pro bono, you would be limiting legal services to those who need them.

In the state from which I moved, attorneys who worked in government service or other specific categories were exempt from malpractice insurance requirements.

not in private practice=not necessary

The number of new attorneys seems to be shrinking. As long as the coverage costs more than \$2,000 per attorney, it will be difficult to get new attorneys to provide reasonably priced legal services in rural areas.

Contractors and public defenders have very limited risk under current statutes.

For in-house counsel, my employer is my client. Would they sue me for malpractice? I don't see how an insurance requirement would be suitable in this situation.

Business decision

I chose "no" only because a response is required. I don't know enough about the nuances of why states requires it to have a strong opinion. I do know that the coverage is shockingly expensive, which is a big burden on small firms, and the nature of underwriting makes attorneys reluctant to sue for unpaid fees

or take other defensive action to protect their businesses because the threat of the inevitable counterclaim and the impact that will have on their coverage is too serious.

These categories of lawyers should be exempt, either for financial reasons or because they don't control the circumstances under which they practice: In-house lawyers

In house counsel don't need insurance any more than we need an IOLTA account.

Not all active license attorneys are at law firms or other client based organizations.

I have found there is a limited pool of underwriters. ALPS uses the same pool as everyone else. If that small group of underwriters says "no," that would end your practice. Our ability to practice should not hinge on underwriting decisions by persons with no public accountability or disclosure. Disclosure of coverage would suffice.

It seems like coverage should be required so that clients are protected from a non-insured attorney's malpractice. Otherwise, an attorney should be forced to disclose that they lack insurance. I suppose policy limit requirements might vary depending upon the type of work attorneys do and the history of malpractice claims costs. For example, maybe real estate attorneys who handle mostly high-end properties should be required to have more coverage. I guess that gets too complicated though.

if you are working very little - almost retired - insurance is expensive - family law there is less exposure for liability like in other areas of law

Some practices (e.g., government, in-house corporate, not-for-profit, pro bono) have little or no risk of facing malpractice claims.

Proposed Statement: "It is reasonably foreseeable that total expenses for Client(s), including fees and costs, in this Matter will exceed One Thousand Dollars (\$1,000.00). Accordingly, notice is hereby provided to Client(s) that Attorney maintains no errors and omissions insurance coverage applicable to the services to be rendered in this Matter."

It is not needed and creates an unnecessary expense for criminal practitioners.

Some attorneys may be practicing in areas where obtaining malpractice insurance is unnecessary and may add expense for attorneys serving low-income and indigent clients. Adding this expense may affect accessibility to legal services for disadvantaged populations.

Exceptions should be made for pro bono work.

If they are in house or not holding funds

The cost of insurance can be prohibitive, especially for solo and small firm practitioners. Mandating insurance may put some good lawyers with very reasonable rates out of business and consequently deprive some clients with limited means of competent and affordable representation.

I don't know whether it should be required. I don't want to mandate an increase in costs for operating as an attorney, particularly for solo or small practices. But I think clients should have recourse if their attorney fails them. At a minimum, I think attorneys should have to disclose to clients at engagement whether they have coverage and what that means.

Individual choice. Expensive. Free market.

My impression is that many solo/small practice Vermont attorneys run on very tight margins. If mandatory insurance would cause some to drop out of practice, that seems too great a loss for the benefit gained.

I would have responded "Maybe" but it was not a choice. I think it depends on practice area for both the limits of coverage and whether or not it should be required. It might be helpful to look at they type of malpractice claims that are litigated or have some sense of what practice areas seem to have more issues.

Admittedly uneducated as to the policy issue. This seems like a solution in search of a problem.

I think that attorneys that are actively practicing law should have malpractice insurance (\$1 Million per claim) but there should be a carve out for the limited practice such as mine.

For people in situations like me, where I am offering limited pro bono services through avenues that allow me coverage. It's a selfish reason, not necessarily a great regulatory reason. Overall, it would likely benefit the profession and the public to require coverage. But there will be some folks who might be discouraged from pro bono practice (like myself) if we have to carry the separate cost of insurance coverage regardless of our client volume (or lack thereof)

Vermont is joining the rest of America in overregulation and administrative interference. Let the marketplace sort this out.

Some law practices may, by their nature, not justify the expense of carrying malpractice insurance. For example, in-house counsel, legal aid. and other public interest practices.

Requiring coverage will impair access to legal services. Representing impromptu, volunteer, or startup business situations as I have described above would not be possible. People would think less of the profession if more awkward barriers are placed in front of getting an attorney. Trying to parse out and regulate categories of representation that should and should not have counsel would be burdensome, imprecise, and would eliminate relationships from happening that should be happening.

see above for my reasons re pro bono attorneys. I believe active, fully licensed attorneys should be insured

12. What forms of disclosure do you suggest: ("Other" responses)

Other: INDIVIDUAL CHOICE

Other: I don't think that there is any one way....certainly in initial engagement letter would be a good way but I am not sure this should be mandated....could be all of the above...

Other: All options above except the first one

Other: STAY OUT OF THIS. IT IS NONE OF THE BAR'S CONCERN.