

14. What other considerations would you like the committee to be aware of?

I'm mindful of there only being two states that require malpractice coverage for all attorneys, and don't know why Vermont would want to join such a small number. I think requiring disclosure so that members of the public who want to check on who has coverage can, is a reasonable position.

If an attorney is in government practice, such a requirement to maintain malpractice insurance seems unduly burdensome.

Lawyers spend their careers trying to avoid, rectify or take advantage of mistakes. It is the epitome of arrogance to imagine that they won't make their own and the epitome of irresponsibility not to require protection for clients. Self-regulation without requiring malpractice insurance doesn't pass the straight face test.

\$1 million isn't what it used to be. Attorneys practicing real estate or personal injury can incur liability > \$1 million. Bar should provide guidance on amount of recommended coverage. Cyber Liability Coverage should provide broader coverage. Typical policy does not cover theft or fraud. If someone breaks into my office, I have coverage, but not if the theft is cyber fraud or ransomware.

I think that all clients or potential clients are entitled to know whether an attorney has malpractice coverage. My firm does not now automatically disclose this, but we would disclose it to any potential or existing client who asked. In 35 years of practice, I have never been asked, but I can see that it could be a factor for some folks. I would not want to have to disclose it separately to everyone, but having it available online to anyone who inquires makes sense.

My preference would be that the default is coverage, and that if an attorney lacks coverage that s/he has to disclose that up front, rather than all attorneys disclosing that they do have coverage.

Consider the extent to which the public expects all professionals, including attorneys, to have malpractice insurance as a matter of course. I was surprised to learn that Vermont does not require attorneys to carry malpractice insurance. My suspicion is that most average folks would be surprised to learn that fact as well.

A scheme that depends on private practitioners to purchase private malpractice insurance on a claims-made basis is flawed because the coverage is illusory if it vanishes because of a gap. For example, VBA requires insurance to participate in Lawyer Referral. But so what, if it's claims made insurance and it lapses after lawyer stops participating? There has to be a better way to protect clients.

You need to distinguish between those attorneys who have the potential to cause injury to a client or third party, and who are eligible to acquire insurance as distinguished from those of us that work in corporate or government practice, who still have the opportunity to cause injury to a third party, but for whom insurance is not an option.

I believe it is harmful to our clients and to our profession not to have malpractice coverage. None of us is perfect!

In fairness, and in the interest of full disclosure, all clients and potential clients should know whether their attorney carries malpractice insurance so that they can make an informed decision as to whether they would like to engage or continue engaging the attorney.

Coverage or lack thereof can be a determinative factor in whether or not a claim is pursued against an attorney. Particularly for in-house counsel, disclosing coverage is likely to lead the attorney to be added as a party to claims against their employers in order to maximize potential insurance recoveries. The VBA should not support any approach that incentivizes claims against attorneys. An increase in claims against attorneys undermines the public's confidence in the profession.

While I think it would be foolish for the attorney to practice without insurance, I can imagine the cost of insurance could preclude part-time or occasional practice. Disclosure to clients of the lack of insurance might be enough to encourage the purchase of insurance by most practitioners. I have not heard of client losses due to the lack of malpractice insurance and would not support a mandate for coverage without hard data on such losses.

I'D LIKE THE COMMITTEE TO JUST SAY NO TO THIS OVERREACH.

Requiring coverage makes sense to protect clients. However, I am sensitive to the concern that the mere existence of coverage might encourage weak claims to be brought (which would otherwise not be brought). And after a claim is brought, the cost of insurance increases.

Again, please be mindful that the risk of malpractice, as well as the potential damages, varies by firm, lawyer, area of the state, practice area, clientele, and many other factors. We lawyers know our business best. Arbitrarily-imposed, mandatory policy limits might result in too little coverage (why get more than the minimum?) or too much (why do I have to buy something I don't need?), unrelated to the actual risk.

As a government attorney who is not currently practicing law in Vermont, I do not believe I should be required to carry malpractice insurance in the state. It will create an unnecessary personal expense that may cause me to revisit whether I should remain actively licensed in the state. I remain licensed because I love Vermont and wish to maintain the option of working there again, potentially benefiting the state and its citizens. The additional expense might make me revisit that decision.

If you decide to mandate legal malpractice insurance coverage or require disclosure of coverage, I hope you will build in flexibility for those who do not practice law on a regular basis but still have reason to keep their Vermont licensure active.

This appears to be a solution looking for a non-existing Vermont problem. I am not aware that a doctor need have malpractice coverage or disclosure in Vt. Doctors kill people, lawyers do not.

When I hire a contractor to work on my house I ask to see their insurance and license so I know any accident won't come back to bite me. I think it's just as important for clients of lawyers to know that they are insured.

This current initiative is consistent with a disturbing tendency on the part of the VBA and the Vermont Judiciary to over-regulate attorneys whenever possible and expand the reach of the latter's bureaucracy at all costs.

As an attorney who is licensed in another state and only does occasional legal work in the form of assisting a primary attorney in that state with research, requiring malpractice insurance could be cost prohibitive and is unnecessary as a blanket requirement.

I am shocked at the tenor of these questions. In a million years it would never occur to me that this should either be a) required or b) public. Why not just advertise to potential litigants that there is a pool of money waiting for the adventurous or the vexatious litigant? Can you imagine every Vermonter publicly posting the limits of his or her own homeowner's policy? Madness. Just tack a notice to the mailbox with an invitation to be sued? Sounds like a trial lawyer's wet dream.

I would look carefully at how to empower the public to access and evaluate information about malpractice coverage when deciding to engage an attorney/law firm. I'm not sure any of the suggested alternatives above are sufficient by themselves, although they are better than what we have now; perhaps require some or all of them? Also, the bare fact that there is malpractice coverage doesn't help a consumer of legal services all that much unless they know what the policy limits are.

I think that all active Vermont lawyers with private or law firm practices should be required to have malpractice insurance, as this protects the public.

The huge cost of legal malpractice insurance!

I complete with attorneys throughout the United States, and pretty uniformly in my practice area, attorneys have malpractice insurance.

Part-time practice or lower-income solo practitioners might not be able to afford it.

I wonder about the reason for this survey and who will benefit if insurance is required. Clearly, insurers would benefit and certain individual clients who have been wronged could benefit. However, the cost of this mandate would be borne by every person seeking representation. It seems to me the overall cost would substantially outweigh any benefit. Perhaps requiring contributions to a client E&O fund (akin to Client Security Fund) by those who are uninsured is a less costly option.

Some states mandate an affirmative statement that the lawyer does not have professional liability coverage. If we as licensed attorneys are required to pay into a fund for professional discipline and for reparations to clients who have been harmed by their attorneys, it seems only appropriate for the attorneys to first provide coverage for harmed clients through professional liability coverage. I am retired from active daily practice but still maintain coverage as I complete residuary matter

There is no reason for an attorney (who for whatever reason) is not actively practicing currently (for whatever reason, but could return to practice) to spend the money on malpractice insurance.

I think of it as similar to the attorney trust account requirements... not everyone needs one.

The public is largely not aware of this issue.

The standard for requiring insurance should not be having an active license, but being actively engaged in the practice of law.

I haven't studied this or consider this very carefully. My reading is that, we should always look to protect the public. I suspect there may be certain types of/areas of practice for which malpractice insurance is

less important. For civil litigation, where outcomes are, for better or worse, generally measured in money, requiring some basic level of professional liability coverage, and certainly requiring pre-engagement disclosures regarding coverage, would help inform and protect the public.

Thank you for soliciting input from the bar.

Lawyers should protect the public. There's no reason for any lawyer not to have malpractice coverage. Better to have it and not need it than need it and not have it.

The committee should be mindful of the different levels of coverage needed and resources available to pay policies between larger firms and smaller firms/solo practitioners.

just as insurance protects both the person insured and the person making a claim in other circumstances it protects both parties here. I don't find the cost prohibitive.

We sometimes tend to do things (particularly around rules) just because other states are doing them, and it's not always clear that the changes are solving a problem we actually have. I'd like to feel confident that if we impose insurance and disclosure requirements, we are doing it because there is a demonstrated need, not just a speculative one.

In-house counsel and those who are not acting as lawyers still keep their license active. They should not have to get such insurance.

Recently, my coverage was ended not because of any claims, but because the underwriters had become leery of one particular field I practice in (environmental.) There had been no claims. I was tossed into the market -- and found out about the limited pool of underwriters, because the second company I approached told me that almost all of the underwriters had already been approached by the first company I had approached, and would not give a quote to a second company.

Balancing not encouraging malpractice suits with protecting the public from uninsured malpracticing attorneys.

In real estate practice, all lenders require proof of malpractice to work with them. Most require at least \$1M.

I have a very strong opinion on this, having had to tell prospective clients that their former lawyers might have no insurance. I had to tell them they might have to spend years collecting any judgment by trustee process or perhaps would never collect if the lawyer stopped earning in the meantime. They were shocked. Like most people I've discussed this with, they assumed all lawyers had malpractice insurance.

In suggesting the required limits, I am assuming that such coverage can be obtained at a reasonable cost by most all of the bar, even some lawyers or firms who have had several claims in recent years. If that is an unreasonable expectation in the current insurance market, I would reconsider my recommendation above.

As with plumbers, electricians, psychologists, md's, contractors, etc., licensed professionals and their clients should be permitted to make their own inquiries and arrangements regarding malp ins and worker's comp, e.g., provided the licensed persons who are NOT insured state clearly in their agreements that they do NOT have malp ins.

Pro bono work should be encouraged, perhaps with a statute that shields attorneys from civil suits (but not from ethical cases brought by the Professional Conduct Board). The statute could then be asserted as an affirmative defense in a malpractice or other civil suit arising from the representation, with the burden of proof on the lawyer/defendant to adduce evidence such as a representation agreement, to establish the pro bono nature of the relationship.

As you know, other states have stricter requirements than VT's and steps should be taken to protect the public.

That there are exceptions to the need for insurance.

Pro hoc vice attorneys should have insurance. State's attorneys should be insured so they can be sued for ministerial negligence or failure to disclose exculpatory evidence in a timely fashion or knowingly introducing false testimony. Attorneys who are on PCB probation or have been suspended should be required to have insurance for three years. If insurance is required, only Malpractice Insurance companies registered in Vermont and regulated by Commissioner of Banking and Insurance.

Years ago, had a client who was sued over a logging contract. Client's lawyer was responsible for selling land to 3rd party while there was one year left on the logging contract. Come spring, client went back to cutting timber, new owner sued client and client had to pay damages, even though he legally had a right to cut. Lawyer had no estate, so client was left with a substantial loss.

The kinds of clients who most need protection are those who will not be going to a website to check whether their attorney has coverage. I think clients should be informed up front.

Leave the status quo.

Question # 12 should allow for multiple selections. I would mandate certification upon license renewal and disclosure to client at time of engagement.

It seems like malpractice to me NOT to have malpractice insurance. Like driving a car, what we do can injure others. It can bankrupt a practitioner to be sued, and that will impact their practice of law. It can leave an injured party without a remedy. Plus malpractice insurance companies perform reviews of an attorney's law practice to help attorney's avoid malpractice traps, which better serves their clients.

The financial cost to solo or small firms, and whether the VBA could offer a group policy to lower premiums.

Public sector attorneys and private sector attorneys in certain low-risk practice areas might not need to be required to carry insurance.

This State requires insurance to operate a motor vehicles, which does not require a graduate degree or two day examination. How on earth can we justify not requiring malpractice insurance to practice law?

Some of the differences between the practice of law and the business of law and what they mean to being a lawyer in Vermont. Throw in the new CLE requirement for diversity/exclusivity training. Seriously?

It seems carriers charge more if you had a prior disability even where there is no misconduct or malpractice. Disability inactive status allows withdrawal from all cases immediately if you are sick. It

prevents harm to clients and should be incentivized by insurers. Unless insurers are transparent and guarantee their normal rate after DI status, insurance should not be required--or lawyers will be more inclined to paper issues over and create greater harm instead of addressing their illness.

Other: THIS IS NONE OF THE BAR'S BUSINESS. MANDATORY INSURANCE SCHEMES INCREASE THE COST OF PRACTICING LAW, WHICH MAKES JUSTICE HARDER TO OBTAIN FOR ANYONE WITHOUT A DEEP POCKET. THIS WRETCHED PROPOSAL WORSENS ACCESS TO JUSTICE.

We should stop shooting ourselves in the foot. This is unneeded. Look to solve real problems like increasing costs to clients when you need to pay to access or file documents on the new computerized filing system.

I am not going to add my contact information, but what the heck are you all thinking? Is there an outcry of clients with judgment proof, incompetent lawyers circling the wagons? Jeezum crow.

If all attorneys were required to have insurance, the insurance companies would collect more premiums. However, their tables will be adjusted so that individually, attorneys would pay less.

I assumed that all attorneys had Prof Liability Insurance.