Jorgen Bader
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Seattle, WA 98115

August 10, 2020

Hon. Judges of the Washington Supreme Court
P.O. Box 40929
Olympia, WA 98504-0920

RE: Mandatory Malpractice Insurance:

Dear Justices

Mandatory malpractice insurance on the Idaho model is contrary to the public interest. My letter, dated September 17, 2018 (enclosed) explains why.

Yours truly

Jorgen Bader

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September 17, 2018

Mandatory Insurance Task Force
c/o WSBA 1325 – 4th Ave. # 600
Seattle, WA 98101- 2529

RE: Mandatory Malpractice Insurance
For members of the Bar

Dear Task Force members:

Mandatory Malpractice Insurance for all members of the Washington State Bar is a bad idea, even if it excepts government and in-house lawyers who work solely for their full-time employer as client.

It will drive volunteer lawyers, who are mostly retired, to cease their service. I retired over twenty years ago and still keep my license in order to serve on various non-corporations as a counselor. I have held offices and was a member of the board of directors of over a half-dozen non-profit organizations, and I still serve as such on three. I gave and give legal advice, review documents, draft letters, interpret ambiguous passages in regulations, circulars, handbooks and the like. I've have never taken any money or even reimbursement of expenses. If I am required to buy malpractice insurance, I will resign my license and quit serving for free. There are others whose services are gratis (or almost so) for friends and family. The cost of insurance will prompt them to drop their pro bono activities too.

It will increase the costs of practicing law and thereby increase fees charged by many sole practitioners and small firms. Many of them will pass on the substantial added costs of insurance premiums (and the ancillary paper work) to the clients. Larger corporations usually go to the bigger full-serve firms that already have insurance coverage. The net result will be an increase in fees to individual, family and small business clients.

It introduces a third party into the lawyer-client relationship. Currently, a disgruntled client deals directly with his or her lawyer in resolving a dispute. The lawyer has a wide range of flexibility in resolving the dispute and to preserve his or her reputation, an incentive to settle the matter promptly to the satisfaction of both. Mandatory insurance makes the insurance carrier a party.. The presence of insurance may distort cases and increase the work involved. The self-interest of the carrier the insured often differ as can be seen in the volume of "bad faith" cases

By stripping single lawyers and small firms of the ability to just say "No". the requirement would shift the bargaining power between lawyers and insurance companies. The ability to withdraw gives the buyer leverage to keep premiums to reasonable levels. If lawyers lose that ability, the insurance companies can act like members of a cartel in sort of a "gentleman's competition" confident that the lawyer has to choose one or the other of the cartel. While now there may be seven companies, a few years ago there were only two or three. A true competitive market requires that buyers have the ability to walk away

There are less expensive methods to protect a client from loss from lawyer misconduct, e.g. if inadequate, increase the client indemnity fund.

The Bar needs to solicit the opinion of the membership by presenting both sides through advocacy by people who believe in their cause. The article in the NW Lawyer states the opposition in a pro forma manner. Its bias is shown by its final paragraph:

> "Ultimately the question the WSBA faces comes down to who should bear the risk of loss when a lawyer makes a mistake the lawyer or the public? It's time for Washington lawyers to answer that question."

That rhetorical question in the article has no more objectivity than this one:

> "Ultimately the question the WSBA faces down to should the Bar Association become a shill for malpractice insurance companies?"

The Bar Association answered that question when it set up the Client Indemnity Fund. . The courts also answered that question through its decision in cases by applying tort principles that make lawyers responsible for malpractice.

The focus ought to be on whether invoking insurance companies really over-whelming benefits to the public in light of its many drawbacks, such as reducing volunteer lawyer services, by raising costs to lawyers and their fees, by complicating dispute resolution, fees, etc.

The tone of the article and its final question broadcasts its bias and gives the impression that the Task Force is just going through the motion of soliciting comment for sake of appearance. To overcome that, open the NW Lawyer to genuine opponents and let the bar membership vote.

Yours truly

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