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Subject: FW: Comments on Changes to APR-26 Mandatory Malpractice Insurance
Date: Monday, September 28, 2020 2:16:23 PM

From: Michael J. Cherry [mailto:mikech@lexquiro.com]
Sent: Monday, September 28, 2020 2:09 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Michael J. Cherry <mikech@lexquiro.com>
Subject: Comments on Changes to APR-26 Mandatory Malpractice Insurance

Dear Ms. Carlson, Clerk of the Supreme Court

I am writing in regard to a proposal submitted to the Supreme Court to amend the current APR-26 from requiring admitted, active lawyers from having to report their insurance status to the Washington State Bar Association (WSBA) to having to have malpractice insurance (making such insurance mandatory).

My understanding is that the Board of Governors of WSBA has sent an alternative proposal calling for admitted, active lawyers to not only report their insurance status to the WSBA, but that they also have to disclose their insurance status to clients, and get informed written consent that the client understand the lawyer's insurance status.

I believe this second approach, report and disclosure, is the best approach. Admittedly, few people look to the WSBA admitted practitioner directory to determine a lawyer's insurance, or for that matter, disciplinary history. That is why disclosure is important. Disclosure protects the public by giving them knowledge of the attorney's insurance status, while allowing the attorney to manage their business as they see fit. This is particularly important during the current Covid-19 pandemic when many small or solo attorneys are struggling to keep their doors open to serve the public.

The WSBA report and disclose proposal was arrived at after considering many factors and represents a reasonable next step. Should this step be found to still not adequately protect the public, then the next step, mandatory insurance, can always be taken.

In the interests of full disclosure, I was a member of the WSBA committee which investigated this matter and made the disclosure recommendation to the Board of Governors, and I will be the Chair of the Practice of Law Board for 2021 fiscal year; however, this comment is my personal opinion only, and in this comment I am not speaking on behalf of the committee or the Practice of Law Board.

Sincerely,
Michael Cherry (WSBA #48132)

