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AUG 17 2020
Washington State
Supreme Court

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August 13, 2020

Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Re: Mandatory Malpractice Insurance Coverage

Dear Washington Supreme Court Justices:

I would have been unaware that the topic of mandatory insurance for malpractice had again come up, but for a letter to the editor in this month's Washington State Bar News. Ken Pedersen's letter noted you were seeking input, so here are my thoughts.

Throughout all of my career I have been a solo practitioner. For much of that time I have chosen not to carry malpractice insurance. As a result, I have been very careful to choose only those clients, and legal issues, that I feel fully confident in handling. I routinely turn away clients where, although I have some degree of expertise, I feel other attorneys are more capable of providing the best possible service. This means I make significantly less money than I might otherwise make. It reduces my stress level, makes the practice of law more pleasurable, and for those clients I do take, it helps to ensure that am able to give the maximum professional care and service.

The proposition that attorneys can somehow dial up the volume of their practice in order to generate more revenue to cover the cost of malpractice insurance is false. There are a finite number of cases and clients I choose to handle in our rural community of Chelan. Do you really want to force practitioners like myself to consider taking on cases and clients that might be better handled by attorneys with special expertise in a particular area of practice? For instance, last month I referred a case involving water law to one of three attorneys I know in nearby Wenatchee whose practices focus upon that area of the law. Now, I have dealt with water rights issues in the past, so it is not like I am unaware of the legal framework for that subject matter. But I'm not current on recent developments, such as which water well drilling companies are performing adequately in our community. I could have taken that case. But I passed it on because the potential client was likely to go to war with another family who is using the same well. That battle might ultimately determine whether or not their home remains reasonably habitable. They need—and deserve—the best possible chance of prevailing. These are exactly the types of cases I have the luxury of turning away because my costs of practice, out of my home, are

modest. If you force me to pay thousands in malpractice coverage, and I will likely not continue to have that same flexibility.

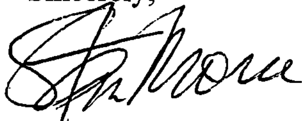
Another concern is how we who have solo practices manage issues that come up with clients. There is no attorney who does not occasionally encounter a disgruntled client. Not because there has been malpractice. Just because it is the nature of serving people who are in conflict, occasionally quite angry, which anger can sometimes be misdirected at the very person they have hired to help them. My recollection of how insurance companies handle these situations is that you must immediately report any potential problem, and you are constrained by the possibility that your insurance coverage might be invalidated if you want to personally solve the problem by talking to the client. Which means an attorney is prevented from solving what is almost always a solvable problem. There is only one winner in this scenario. Not the client. Not the attorney. Just the insurance carrier.

In my 41 years of practice I have no recollection of personally witnessing another attorney having a successful malpractice claim brought against them. I've read about a few instances, both in Washington and elsewhere. But in none of these was I aware that the offended client was unable to collect just compensation from the individual assets of an attorney who did not carry malpractice insurance.

Malpractice insurance is nearly always used by attorneys in partnerships to ensure that one partner does not adversely affect the financial affairs of other partners. There is nothing wrong with that. It is good business practice. But I do not have "partners" to worry about.

The WSBA and the Supreme Court possess the power to discipline attorneys who do bad work, or break the law, and to exert some pressure to require that reparations be made. We have a client compensation fund to cover the theft of client funds. Only one other state, Idaho, requires malpractice coverage. Please do not gift the insurance industry with the opportunity to profit off those few attorneys who like myself practice on a solo or limited practice basis and are thus able to control their case load and clientele so as to deliver the best possible work.

Sincerely,



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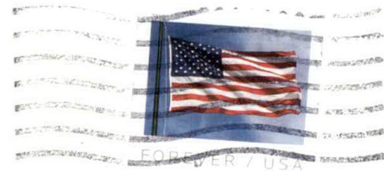

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