



MESSAGE FROM THE PRESIDENT

BY VERNON "GENE" LEVERTY, ESQ., PRESIDENT, STATE BAR OF NEVADA

TIPPING THE SCALES IN HONOR OF OUR PROFESSION

As the end of my presidential year approaches, it is a good time to review two taskforces' recommendations to the Board of Governors. The mandatory malpractice insurance taskforce (MMITF) and the random audit of trust accounts taskforce (RATTF), started by my predecessor Bryan Scott, have made their final recommendations to the Board of Governors.

Both taskforces have made final recommendations to the Board of Governors; their decisions were based on protecting the public and the honor of our profession. When considering any concept, the board asks, "Will it better protect the public and will it give our communities trust in the legal profession?" Our profession is judged by the public by what they experience, hear or read. An attorney who steals a client's money or commits a wrong with no malpractice insurance to compensate seriously erodes public trust in our profession.

Recommendations Regarding Random Audits of Trust Accounts

RATTF recommended to the Board of Governors that a random audit program of trust accounts should be implemented for any attorney holding clients' funds. There are approximately 3,022 trust accounts registered with the state bar. Nevada attorneys hold in trust more than \$400 million in IOLTA trust accounts.

The taskforce believes that random trust account compliance audits will provide a proactive educational benefit to attorneys that will correct minor problems; answer questions about trust accounting; and help lawyers develop proper accounting systems, record keeping and trust fund procedures. In addition to education, random compliance audits would provide two other essential benefits to the public and legal community: deterrence and detection.

On average there are 300 open matters in the Office of Bar Counsel: approximately 75 percent involve allegations of safekeeping. Twelve other bar jurisdictions have implemented random trust account audit programs. The RATTF modeled its proposed audit program on the Washington State Bar Association's program.

Recommendations Regarding Mandatory Malpractice Insurance

MMITF recommended to the Board of Governors that carrying malpractice insurance with minimum limits of \$250,000/\$250,000 should be mandatory

for all attorneys practicing law in Nevada. The recommended requirement to have malpractice insurance would only apply to those attorneys engaged in the private practice of law and would not apply to those attorneys who:

- Maintain an active license, but have retired from the practice of law and have attested that they do not represent clients;
- Are employed by an organizational client and do not represent clients outside that capacity;
- Are unemployed or are not working in the legal field and attest to not representing clients; and
- Are employed in the public sector, either as attorneys or members of the judiciary.

Malpractice Insurance Survey Results: April and December

Fifteen percent of Nevada lawyers admit they do not carry malpractice insurance. In addition, many of the insurers Nevada attorneys reported as theirs do not write insurance in Nevada.

MMITF conducted an unofficial survey of the public concerning whether they believe attorneys should be required to carry malpractice insurance. That survey determined that the respondents believe attorneys must have malpractice insurance, just as motorists must have auto insurance in order to drive.

In April 2017, MMITF conducted a survey of attorneys who admitted they do not carry malpractice insurance and

HON. JOHNNIE B. RAWLINSON



U.S. CIRCUIT JUDGE
FOR THE U.S. COURT
OF APPEALS FOR
THE NINTH CIRCUIT

Each month, I call attention to the contributions made by lawyers who have played an important role in the Rule of Law. In April, we spotlight Judge Johnnie Rawlinson, the first female, and first female African American, to serve as a judge for the U.S. District Court for the District of Nevada. After her appointment in 2000 by President Clinton, Rawlinson also became the first African American woman judge to serve on the U.S. Court of Appeals for the Ninth Circuit.

Rawlinson was raised in Kannapolis, North Carolina, where schools were segregated until late in her high school years; she was a member of the first integrated graduating class. She attended undergraduate college at North Carolina A & T, originally studying to be a teacher, until she developed a fascination with the law. She attended law school at the McGeorge School of Law, University of Pacific, in Sacramento, California, and moved to Las Vegas when her husband Dwight, a member of the U.S. Air Force, was transferred to Nellis Air Force Base. She served in the Clark County District Attorney's office for more than 17 years prior to her judicial appointment as a U.S. District Court judge in 1998. **NL**

found that more than 60 percent of the respondents agreed that no lawyers, including good ones, are immune from malpractice claims, regardless of the size of their practices. According to that survey, 73 percent of those uninsured attorneys are in solo practice; another 15 percent work in small practice settings.

The April 2017 survey also asked uninsured attorneys why they elect to engage in the practice of law without professional liability insurance. These attorneys cited several reasons; 51 percent said that cost motivated their decision to go without insurance.

In December 2017, the state bar conducted another survey of all licensed attorneys in the state. That survey asked respondents to rate their concerns about mandating insurance; respondents identified three areas as having a high level of concern. They were:

- Impact on solo/small practices and the cost of doing business;
- Premiums for high-risk practices; and
- Ability to provide low-cost or free legal services if not employed or actively practicing.

Malpractice Insurance: Taskforce Conclusions

Should a bar negate its responsibility to ensure that all clients are adequately protected, for the few who do not want to obtain insurance? Does it make sense to allow those persons with high-risk practices to opt out of carrying malpractice insurance? Is the cost of insurance a good enough reason for failing to require that the public be protected? The MMITF concluded that the reasons given for declining insurance simply cannot negate the responsibility of ensuring that all clients are adequately protected, regardless of the size of the law firm providing representation or the work performed.

MMITF fully evaluated the costs of carrying malpractice insurance. Two insurers provided example of premiums for the recommended coverage level

of \$250,000/\$250,000. Rates to newly insured attorneys range from \$500 in the first year of practice to \$1,500 in the third year. Most insured attorneys in Nevada carry coverage of at least \$500,000 or higher.

I am proud of the hard work that each taskforce has done. The guiding principle for each taskforce was to protect the public and uphold the honor of our profession.

CONTINUED DISCUSSION ON THE UNIFORM BAR EXAM

Every current Nevada attorney joined the profession with pride when they passed the Nevada bar exam. As I noted in my first Message from the President, Nevada's bar exam practices are facing criticism from those who want Nevada to adopt the Uniform Bar Exam (UBE). In this edition of *Nevada Lawyer*, I implore you to read the article by Richard Trachok, Chairman of the Nevada Board of Bar Examiners, in support of the Nevada bar exam, as well as Dean Hamilton's article urging Nevada to adopt the Uniform Bar Exam.

I urge everyone to get involved and discuss the issue of whether Nevada should forfeit its examination process and adopt the UBE. It should be noted that the UBE is not just an exam, but also an adoption of a form of reciprocity. If one passes the UBE in any state, then their scores can be used for admittance to the bar in another state that recognizes the UBE. At the urging of Dean Hamilton, the Board of Governors created a taskforce to evaluate reciprocity. I suggest you read the excellent article by Ann Morgan on reciprocity. Be informed about the pros and cons of UBE and reciprocity, because it may seriously affect your profession.