

## Citations for “The Politics of Lawyer Regulation,” published in Volume 7, Issue 2 of *The Practice* (January/February 2021)

1. IDAHO BAR COMM’N R. 302(a)(5) (2018); OR. REV. STAT. § 9.080 (2)(a)(A) (2018).
2. See ARIZ. CODE JUD. ADMIN. R. 7-210; UTAH JUDICIAL ADMIN. R. 14-802(c) (2017) (permitting licensed paralegal practitioners to engage in limited practice in areas including divorce and cohabitant abuse); WASH. ADMIN. & PRACTICE R. 28(F) (permitting Limited License Legal Technicians to give advice in defined practice areas). Washington is sunsetting the LLLT program due to cost and apparent lack of applicant interest. See Lyle Moran, Arizona approves nonlawyer ownership, licensees in access-to-justice reforms, ABA J. (Aug. 28, 2020), <https://www.abajournal.com/web/article/arizona-approves-alternative-business-structures-as-part-of-access-to-justice-reforms#:~:text=Access%20to%20Justice-,Arizona%20approves%20nonlawyer%20ownership%2C%20nonlawyer,in%20access%2Dto%2Djustice%20reform&text=The%20court%20also%20approved%20a,pool%20of%20permitted%20legal%20practitioners.> Some other states are also considering proposals to license legal technicians. See, e.g., Aebra Coe, *Like It or Not, Law May Open Its Doors to Nonlawyers*, LAW360 (Sept. 22, 2019), <https://www.law360.com/articles/1201357/like-it-or-not-law-may-open-its-doors-to-nonlawyers> [<https://perma.cc/WR7F-NVE4>].
3. See Laurel S. Terry, *The Power of Lawyer Regulators to Increase Client and Public Protection Through Adoption of a Proactive Regulation System*, 20 LEWIS & CLARK L. REV. 717, 772 (2016).
4. E-mail from Jim Grogan, Deputy Admin. & Chief Counsel, Ill. Attorney Registration & Disciplinary Comm’n, to author (July 19, 2016) (on file with author).
5. Lawyer professional liability can arise from negligence, breach of fiduciary duty, breach of contract, and intentional torts such as fraud and misrepresentation. See RONALD E. MALLEEN, LEGAL MALPRACTICE § 8:1 (West 2020). The term “malpractice” is used in this Article to encompass all of these causes of action.
6. The percentage of insured private practitioners ranges from about 80% in Arizona and Michigan to 94% in South Dakota. See Leslie C. Levin, *Lawyers Going Bare and Clients Going Blind*, 68 FLA. L. REV. 1281, 1299, 1301–02. A much higher percentage of solo lawyers are uninsured.
7. Robert I. Johnston & Kathryn Lease Simpson, *O Brother, O Sisters, Art Thou Not Insured?: The Case for Mandatory Disclosure of Malpractice Insurance Coverage*, PA. LAW., May-June 2002, at 28, 32; Levin, *supra* note 6, at 1324.
8. Uninsured lawyers can undermine the individual client’s trust in lawyers when a client discovers she has no meaningful recourse against an uninsured lawyer. Public trust is also undermined when the news media report stories about clients who cannot recover for the harm caused by those lawyers. See, e.g., Robert Elder, *Limited Help for Lawyers’ Victims*, AUSTIN AM. STATESMEN, June 23, 2008, at A1 (describing a client who had a large malpractice judgment against an uninsured lawyer); Molly Selvin, *Lawyers Split on Insurance Proposal*, L.A. TIMES (July 2, 2007), <https://www.latimes.com/archives/la-xpm-2007-jul-02-fi-legal2-story.html> [<https://perma.cc/7RX8-JJ4E>] (describing a client who could only recover a “tiny fraction” of a judgment against an uninsured lawyer); Andrew Wolfson, *Non-insured Lawyer Costs Woman*, COURIER J. (June 16, 2014), <https://www.courier-journal.com/story/news/local/2014/06/16/lawyers-lack-insurance-costs-okolona-woman/10638183/> [<https://perma.cc/HJ5V-LGW7>] (describing an uninsured lawyer who filed for bankruptcy to avoid paying a malpractice judgment to a disabled client).
9. See *In re* Amendments to Supreme Court Rule 79, Petition of the State Bar of Nevada, ADKT 534 (Nev. Sup. Ct. June 29, 2018), at Ex. C.
10. See Nicole A. Cunitz, Note, *Mandatory Malpractice Insurance for Lawyers: Is There a Possibility of Public Protection without Compulsion?*, 8 GEO. J. LEGAL ETHICS 637, 647 (1995); Levin, *supra* note 6, at 1282, 1291–95.
11. See MURRAY EDELMAN, THE SYMBOLIC USES OF POLITICS 4, 22–23 (1985).
12. Case studies have significant limitations. See Paul Brace et al., *Placing Supreme Courts in State Politics*, 1 STATE POL. & POL’Y Q. 81, 83–84 (2001). They can be useful, however, to help identify factors that subsequently can be studied in a larger number of states, using quantitative methods. See, e.g., Richard P. Caldarone et al., *Partisan Labels and Democratic Accountability: An Analysis of State Supreme Court Abortion Decisions*, 71 J. POL. 560, 569 (2009) (using quantitative methods to determine how intensity of public opinion, timing of elections, and type of contested election affects judicial decisions on abortion in eighteen states).
13. See BENJAMIN H. BARTON, THE LAWYER-JUDGE BIAS IN THE AMERICAN LEGAL SYSTEM 137 (2011).

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14. Benjamin Barton, *An Institutional Analysis of Lawyer Regulation: Who Should Control Lawyer Regulation—Courts, Legislatures, or the Market*, 37 GA. L. REV. 1167, 1207 (2003).
  15. See e.g., *infra* notes 214–15 and accompanying text.
  16. Barton, *supra* note 14, at 1188, 1200.
  17. See *infra* note and accompanying text. Starting in 1978, an organization known as HALT (Help Abolish Legal Tyranny) advocated for changes in lawyer regulation. See Leslie C. Levin, *The Emperor's Clothes and other Tales About the Standards for Imposing Lawyer Discipline Sanctions*, 48 AM. U. LAW REV. 1, 26 (1998). In 2004, HALT urged the ABA to adopt a rule requiring lawyers to purchase LPL insurance. See Devin S. Mills & Galina Petrova, *Modeling Optimal Mandates: A Case Study on the Controversy over Mandatory Professional Liability Coverage and Its Disclosure*, 22 GEO. J. LEGAL ETHICS 1029, 1036 (2009). That organization, now known as Responsive Law, does not appear to have been active in the more recent insurance debates. See *Advocacy*, RESPONSIVE LAW, <https://www.responsivelaw.org/advocacy.html> [<https://perma.cc/9WZW-38LV>].
  18. BARTON, *supra* note 13, at 1.
  19. Dennis Jacobs, *The Secret Life of Judges*, 75 FORD. L. REV. 2855, 2856 (2007).
  20. *Id.* at 2859.
  21. BARTON, *supra* note 13, at 37.
  22. See Daniel Carpenter & David A. Moss, *Introduction*, in PREVENTING REGULATORY CAPTURE: SPECIAL INTEREST INFLUENCE AND HOW TO LIMIT IT 13 (Daniel Carpenter & David A. Moss eds. 2014).
  23. James Kwak, *Cultural Capture and the Financial Crisis*, in PREVENTING REGULATORY CAPTURE, *supra* note 22, at 80. For example, shared identification with a group makes people more generous to the in-group members, and also more trusting of those members. *Id.* at 81. Relationships also affect behavior because people care about what other people think about them, and especially those with whom they frequently come in contact. *Id.* at 89.
  24. *Id.* at 79.
  25. *Id.* at 93.
  26. *Id.* at 95.
  27. See MAX H. BAZERMAN & DON A. MOORE, JUDGMENT IN MANAGERIAL DECISION MAKING 125 (7th ed. 2009).
  28. See BARTON, *supra* note 13, at 37.
  29. See BAZERMAN & MOORE, *supra* note 27, at 130; Dolly Chugh et al., *Bounded Ethicality as a Psychological Barrier to Recognizing Conflicts of Interest*, in CONFLICTS OF INTEREST: CHALLENGES AND SOLUTIONS IN BUSINESS, LAW, MEDICINE AND PUBLIC POLICY 80, 83, 89 (Don A. Moore et al. eds., 2005). Professionals are vulnerable to the same motivated biases as others, including the desire to see themselves as objective and fair in their decisions. Chugh et al., *supra* at 89. The “human tendency to support the self and ingroup creates a gravitational pull toward one set of interests, even when the pull is quite invisible, even to the self.” *Id.* at 87.
  30. *But see In re* Amendment to Supreme Court Rule 79, Order Denying Petition for Amendment to Supreme Court Rule 79, ADKT 534 (Nev. Sup. Ct. Oct. 11, 2018) (denying the State Bar of Nevada’s petition to impose an insurance requirement).
  31. See MODEL CT. RULE ON INS. DISCLOSURE (AM. BAR ASS’N 2004).
  32. Some of the largest states that do not require either insurance or disclosure that a lawyer is uninsured include Florida, New York, and Texas.
  33. See George M. Cohen, *Legal Malpractice Insurance and Loss Prevention: A Comparative Analysis of Economic Institutions*, 4 CONN. INS. L.J. 305, 308 (1997); Jerome B. Schultz, *Ensured Insurance: Bars Look at Mandatory Coverage*, B. LEADER, Jan.–Feb. 1987, at 18.
  34. Cohen, *supra* note 33, at 307–08; Fredric L. Goldfein, *Legal Malpractice Insurance*, 61 TEMPLE L. REV. 1285, 1285–86, 1295 (1988); Mary Ann Galante, *Malpractice Rates Zoom; Legal Insurance Crisis*, NAT’L L. J., June 3, 1985, at 19; John J. Lynch, *The Insurance Panic for Lawyers*, AB.A J., July 1, 1986, at 42, 43.
  35. Goldfein, *supra* note 34, at 1296; Schultz, *supra* note 33, at 18.
  36. *About the PLF*, OR. STATE B. PROF. LIABILITY FUND, <https://www.osbplf.org/about-plf/overview.html> [<https://perma.cc/RX7Z-STB9>] (last visited Mar. 2, 2020).
  37. See HERBERT M. KRITZER & NEIL VIDMAR, WHEN LAWYERS SCREW UP: IMPROVING ACCESS TO JUSTICE FOR LEGAL MALPRACTICE VICTIMS 38 (2018). Some state bars did, however, form bar-related (lawyer-owned) mutual insurance companies to provide more affordable LPL insurance to lawyers. See Cohen, *supra* note 33, at 308; Leslie C. Levin, *Regulators at the Margins: The Impact of Malpractice Insurers on Solo and Small Firm Lawyers*, 49 CONN. L. REV. 553, 565 (2016).
  38. See, e.g., *supra* note 4 and accompanying text; Petition of the State Bar of Nevada, *supra* note 9, at Ex. C.
  39. See KRITZER & VIDMAR, *supra* note 37, at 148.
  40. Levin, *supra* note 6, at 1316, 1324.

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41. *Id.* at 1313; *see also* Wolfson, *supra* note 8 (quoting plaintiff's malpractice lawyer who noted that some lawyers do not purchase insurance because they know "[t]hey can duck into bankruptcy court and protect virtually everything, making it impossible to bring justice").
42. *See* Darrel Tillar Mason, *Mandatory Malpractice Insurance—It's Time to Call the Question*, VA. ST. B. (Aug. 4, 2008), <http://www.vsb.org/site/news/item/mandatory-malp-ins-080408> [<https://perma.cc/RP68-FWGP>]; John Schlegemilch, *Insufficient Evidence to Support Mandatory Malpractice Insurance Requirements*, 8 NEV. LAW. 9 (2000); Schultz, *supra* note 333, at 19.
43. *See, e.g.*, Levin, *supra* note 6, at 1311–16 (describing cases in which clients were unable to recover); Thomas G. Bousquet, *It's Time for Mandatory Malpractice Insurance; Public Policy Reasons that Supported the Move to Mandatory Automobile Insurance Also Advocate Protecting Clients*, TEX. LAW., Dec. 6, 1993, at 11.
44. *See* Cunitz, *supra* note 10, at 655–57; Glenn Fisher, *Professional Liability Insurance Coverage—Viable Form of Self-Regulation or Simply Another Business Decision?*, LPL ADVISORY, Fall 2002, at 1.
45. Levin, *supra* note 6, at 1320.
46. For example, the average cost of comparable coverage for New Jersey lawyers in solo and two-person firms is about \$4100. E-mail from Mike Mooney, Senior Vice President, Prof'l Liab. Practice Leader, USI Affinity (July 9, 2018, 8:45 EDT) (on file with the author).
47. In Missouri, the mean claim payment for solo lawyers was \$52,678 and the median payment was \$24,351. KRITZER & VIDMAR, *supra* note 37, at 114. For lawyers in firms of two to five lawyers, the mean paid was \$110,994 and the median payment was \$34,034. *Id.*
48. *Coverage*, OR. STATE B. PROF. LIABILITY FUND, <https://www.osbplf.org/coverage/overview.html> [<https://perma.cc/TX9P-MB6B>] (last visited Mar. 2, 2020).
49. *See* Leslie C. Levin, *When Lawyers Screw Up*, 32 GEO. J. LEGAL ETHICS 109, 123 (2019). Of course, there are some states in which LPL insurance premiums are higher than in Idaho or Oregon.
50. *See* Alan Cooper, *VSB Sinks Mandatory Insurance*, VA. LAW. WKLY., Oct. 27, 2008; Jill Sunby, *What Montana Lawyers Think About Mandatory Malpractice Insurance*, MONT. LAW, Aug. 2001, at 25; James C. Gallagher, *Should Lawyers Be Required to Disclose Whether They Have Malpractice Insurance?*, 32 VT. B. J. 5 (2006).
51. *See* Levin, *supra* note 6, at 1321 n.220.
52. Oregon lawyers are exempted from purchasing insurance if they are exclusively providing pro bono services for Oregon State Bar certified pro bono programs. *Exemptions—Annual and Midyear*, OR. STATE B. PROF. LIABILITY FUND, <https://www.osbplf.org/assessment-exemptions/exemptions.html/> [<https://perma.cc/PMZ8-G54V>] (last visited Mar. 2, 2020). Idaho lawyers may also obtain an exemption when they are exclusively providing pro bono services through the Idaho Volunteers Lawyer Program. *See* Annette Strauser, *2018 Malpractice Coverage Requirement: General Information*, IDAHO STATE BAR, <https://isb.idaho.gov/blog/author/astrauser/> [<https://perma.cc/72CH-XJGV>] (last visited Mar. 2, 2020); E-mail from Susan R. Pierson, Dir., Idaho Volunteer Lawyers Program (July 30, 2018, 14:14 EDT) (on file with author).
53. If a malpractice claims fund were formed to compensate the victims of uninsured lawyers, low-income uninsured lawyers could, in lieu of purchasing LPL insurance, be required to contribute a lesser sum annually to that fund. *See* Levin, *supra* note 6, at 122.
54. *See* Mason, *supra* note 42; Cunitz, *supra* note 10, at 657; Fisher, *supra* note 44, at 1; Schultz, *supra* note 33, at 19.
55. *See, e.g.*, WASH. STATE BAR. ASS'N, MANDATORY MALPRACTICE INS. TASK FORCE, REPORT TO WSBA BOARD OF GOVERNORS 77 (Feb. 2019), [https://www.wsba.org/docs/default-source/legal-community/committees/mandatory-malpractice-insurance-task-force/mandatory-malpractice-insurance-task-force-report.pdf?sfvrsn=558e03f1\\_0](https://www.wsba.org/docs/default-source/legal-community/committees/mandatory-malpractice-insurance-task-force/mandatory-malpractice-insurance-task-force-report.pdf?sfvrsn=558e03f1_0) [<https://perma.cc/3NN5-X3Z5>] (noting a large number of admitted carriers in Washington).
56. In surveys in Nevada, New Mexico, and New Jersey, five or fewer lawyers in each of those states indicated that the main reason they were uninsured was because they could not obtain coverage or their claims experiences were unacceptable. *See* Levin, *supra* note 6, at 1293 (describing results of New Mexico survey); Petition of the State Bar of Nevada, ADKT 534, *supra* note 9, Ex. C, at 5; REPORT OF THE SUPREME COURT AD HOC COMM. ON ATTORNEY MALPRACTICE INSURANCE, June 2017, at app. Z, at 10, <https://www.njcourts.gov/courts/assets/supreme/reports/2017/atmalpracticeinsurance.pdf> [<https://perma.cc/PZ9V-ZWNY>]. It is unclear in some of those cases whether the lawyers truly could not obtain coverage or whether they simply could not afford it at the price at which it was offered.
57. In Oregon, only private practitioners are required to carry insurance. OR. REV. STAT. § 9.080 (2)(a)(A) (2018). In Idaho, in-house counsel are required to maintain insurance, but it is often purchased by the corporate employer.
58. ABA STANDING COMM. ON CLIENT PROTECTION REPORT 2 & table 2 (Aug. 2004).
59. *See id.* at 2.

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60. MODEL CT. RULE ON INS. DISCLOSURE preface (AM. BAR ASS'N 2004).
61. See ABA STANDING COMM. ON CLIENT PROTECTION, STATE IMPLEMENTATION OF ABA MODEL COURT RULE ON INSURANCE DISCLOSURE (2018), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/chart\\_implementation\\_of\\_mcrd.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/chart_implementation_of_mcrd.pdf) [<https://perma.cc/UB3D-EASY>]. Pennsylvania also posts the information on the Pennsylvania Supreme Court's Disciplinary Board website.
62. *Id.* Arizona, Colorado, Illinois, Massachusetts, Minnesota, Nebraska, Virginia, Washington, and West Virginia post the information on websites.
63. In Delaware, Kansas, Nevada, North Dakota, and Rhode Island the public can obtain this information by contacting state authorities. Hawaii and Michigan collect the information but will not disclose it to the public. Levin, *supra* note 6, at 1300.
64. See ABA Standing Comm. on Client Protection Report, *supra* note 58, at 2; Susan Saab Fortney, *Law as a Profession: Examining the Role of Accountability*, 40 FORDHAM URB. L.J. 177, 196 (2012); Nicole D. Mignone, *The Emperor's New Clothes? Cloaking Client Protection Under the New Model Court Rule on Insurance Disclosure*, 36 ST. MARY'S L.J. 1069, 1072, 1081 (2005); Jeffrey D. Watters, *What They Don't Know Can Hurt Them: Why Clients Should Know If Their Attorney Does Not Carry Malpractice Insurance*, 62 BAYLOR L. REV. 245, 247 (2010).
65. See, e.g., Mark Hansen, *Under Covered*, ABA J. Nov. 2001, at 47, 48; Jason Mil, *New Rule Would Require Attorney Disclosures Regarding Malpractice Coverage*, 18 J. OF THE ALLEGHENY COUNTY BAR ASS'N, Sept. 2005, at 7, 7.
66. Memorandum from James E. Towery, Chair, Ins. Disclosure Task Force, to Members of the California State Bar Bd. of Governors, Sept. 14, 2007, at 9; Levin, *supra* note 6, at 1303–07.
67. This is especially true in jurisdictions that do not require written acknowledgement from clients. See, e.g., ALASKA RULES OF PROF'L CONDUCT R. 1.4(c) (2018).
68. OMRI BEN-SHAHAR & CARL E. SCHNEIDER, MORE THAN YOU WANTED TO KNOW: THE FAILURE OF MANDATED DISCLOSURE 67 (2014). Mandated disclosures fail to inform even when disclosure occurs under “ideal circumstances” and when people should be attending to the information because it involves life-and-death matters. *Id.* at 42–53.
69. For example, in Ohio, the notice to clients states: “Pursuant to Rule 1.4 of the Ohio Rules of Professional Conduct, I am required to notify you that I do not maintain professional liability (malpractice) insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate.” OHIO RULES OF PROF'L CONDUCT R. 1.4(c) (2018). This notice does not clearly convey that the lawyer may carry no LPL insurance whatsoever or that the lawyer may be unable to satisfy a malpractice judgment as a result.
70. See, e.g., LEO J. SHAPIRO & ASSOCS., PUBLIC PERCEPTION OF LAWYERS: CONSUMER RESEARCH FINDINGS 18 (2002), [http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/public\\_perception\\_of\\_lawyers\\_2002.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/public_perception_of_lawyers_2002.authcheckdam.pdf) [<https://perma.cc/48H9-2T3E>] (noting that the public believes that law careers are lucrative); David O'Boyle & Michael Smith, *Survey Reveals Public Perceptions of Lawyers and Legal Profession*, WASH. LAW. (Apr. 2015), <https://www.dcbar.org/bar-resources/publications/washington-lawyer/articles/april-2015-legal-beat.cfm> [<https://perma.cc/7XD8-WUG3>] (reporting that nearly half of respondents think lawyers are rich).
71. The exception may be South Dakota, as lawyers there must include this information in advertising. See S.D. RULES OF PROF'L CONDUCT R. 1.4(d), 7.2(l) (2019).
72. Cognitive biases may also make it difficult for a client to change course once a decision to retain a lawyer is made. Levin, *supra* note 6, at 1326–27.
73. See CARROLL SERON, THE BUSINESS OF PRACTICING LAW: THE WORK LIVES OF SOLO AND SMALL-FIRM ATTORNEYS 139–40 (1996); Stephen Daniels & Joanne Martin, *Plaintiffs' Lawyers: Dealing with the Possible but Not Certain*, 60 DEPAUL L. REV. 337, 366 (2011).
74. See Nancy McCarthy, *Bar Board Will Tackle Malpractice Insurance Disclosure Again*, CAL. B.J., Nov. 2007; *State by State, Mandatory Malpractice Disclosure Gathers Steam*, B. LEADER, Mar.–Apr. 2004. Indeed, I have spoken with many lawyers who were surprised to learn that lawyers in private practice are not required to maintain LPL insurance.
75. For example, the Washington State Bar Association website states that not all lawyers maintain LPL insurance and that “[s]ome lawyers may make a responsible decision not to maintain insurance because . . . the lawyer may choose to be financially responsible (self-insured).” *Professional Liability Insurance*, WASH. STATE BAR ASS'N, <https://www.wsba.org/for-legal-professionals/license-renewal/license-renewal-faqs/professional-liability-insurance> [<https://perma.cc/V87V-HJ32>] (last visited Mar. 2, 2020). This statement may suggest to the public that they need not be concerned about uninsured lawyers because those lawyers will “self-insure.”

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76. Ideally, case studies should compare cases that occurred more or less contemporaneously. For the sake of completeness, however, and because the experience in Oregon is also instructive, it is included in this .
77. Texas decided the issue in 2010, less recently than the other states considered here. It is included for geographic diversity and because it is a large state with a state bar that is subject by law to some legislative oversight.
78. ANDREW GELMAN, *RED STATE, BLUE STATE, RICH STATE, POOR STATE* 20–23 (2008).
79. *See, e.g.*, Joel Lieske, *The Changing Regional Subcultures of the American States and the Utility of a New Cultural Measure*, POL. RES. Q. 538, 538 (2010). Political culture is distinct from political ideology. States of any of the three subcultures can be liberal or conservative. For example, Utah and Minnesota are both moralistic states. Daniel J. Elazar, *Minnesota—The Epitome of the Moralistic Political Culture*, in MINNESOTA GOVERNMENT AND POLITICS (Daniel J. Elazar et al. eds., 1999).
80. DANIEL J. ELAZAR, *AMERICAN FEDERALISM: A VIEW FROM THE STATES* 115 (3d ed. 1984). He also labeled some states as “moralistic/individualistic” (meaning closer to moralistic), “individualistic/moralistic” (meaning closer to individualistic), etc. *Id.* at 136–37.
81. Patrick I. Fisher, *Definitely not Moralistic: State Political Culture and Support for Donald Trump in the Race for the 2016 Republican Presidential Nomination*, 49 POL. SCI. & POL. 743, 744 (2016).
82. *Id.* at 744.
83. *Id.*; David R. Morgan & Sheilah S. Watson, *Political Culture, Political System Characteristics, and Public Policies Among the American States*, 21 PUBLIUS 31, 34–35 (1991).
84. Patrick Fisher, *State Political Culture and Support for Obama in the 2008 Democratic Presidential Primaries*, 47 SOC. SCI. J. 699, 702–03 (2010).
85. Lawrence M. Mead, *State Political Culture and Welfare Reform*, 32 POL’Y STUD. J. 271, 275 (2004).
86. Fisher, *supra* note 84, at 702.
87. *See, e.g., id.* at 703; Lieske, *supra* note 79, at 548.
88. C. David Moon et al., *Political Culture in the Urban West: Is It Really Different?*, 33 STATE & LOC. GOV’T REV. 195, 195 (2001).
89. *About the Oregon State Bar*, OR. STATE B., <https://www.osbar.org/about.html> [<https://perma.cc/V83E-V5RN>] (last visited Mar. 2, 2020). In 1977, when the Oregon State Bar proposed legislation authorizing the Professional Liability Fund, there were about 5000 members of the State Bar and 3500 lawyers in private practice. *See* Carl R. Neil, *Report to the Membership*, OR. ST. B. BULL., March 1977, at 5; John D. Ryan, *Growing Pains: Recollections of the 1977 OSB Specialization Controversy*, OR. STATE B., <https://www.osbar.org/publications/bulletin/02augsep/heritage.html> [<https://perma.cc/B744-KZ6K>].
90. *Membership Count & Statuses*, IDAHO STATE B., <https://isb.idaho.gov/licensing-mcle/membership-count-statuses/> [<https://perma.cc/AJ7G-DQML>] (last visited Mar. 2, 2020). The membership, including judges, in-house counsel, senior and emeritus members is 5670. *Id.*
91. *Demographics*, STATE BAR OF CAL. (2019), <https://members.calbar.ca.gov/search/demographics.aspx> [<https://perma.cc/3XPY-XFEP>] (last visited Mar. 2, 2020). This number excludes judges.
92. WASH. STATE BAR ASS’N, MANDATORY MALPRACTICE INS. TASK FORCE, REPORT TO WSBA BOARD OF GOVERNORS, *supra* note 55, at 8. Of the lawyers licensed to practice in Washington in 2017, 19,813 were private practitioners. *Id.*
93. STATE BAR OF NEV., ANNUAL REPORT 2018 (2019), <https://www.nvbar.org/wp-content/uploads/SBN-AnnualReport2018.pdf> [<https://perma.cc/B7CP-KTFK>].
94. *See* OFFICE OF ATTORNEY ETHICS, 2018 STATE OF THE ATTORNEY DISCIPLINARY SYSTEM REPORT 59 (2019), <https://www.njcourts.gov/attorneys/assets/oea/2018oeannualrpt.pdf?c=qY5> [<https://perma.cc/EM4J-74YN>]. In December 2018, there were 37,006 lawyers engaged in private practice in New Jersey.
95. STATE BAR OF TEX., MEMBERSHIP: ATTORNEY STATISTICAL PROFILE (2018–2019), [https://www.texasbar.com/AM/Template.cfm?Section=Content\\_Folders&Template=/CM/ContentDisplay.cfm&ContentID=43800](https://www.texasbar.com/AM/Template.cfm?Section=Content_Folders&Template=/CM/ContentDisplay.cfm&ContentID=43800) [<https://perma.cc/L5DC-RQM5>].
96. Tom Lininger, *Should Oregon Adopt the New ABA Model Rules of Professional Conduct?*, 39 WILLAMETTE L. REV. 1031, 1031–32 (2003).
97. *Oregon Blue Book*, OR. SUPREME COURT, <https://sos.oregon.gov/blue-book/Pages/state/judicial/supreme.aspx> [<https://perma.cc/4VB4-WUAC>].
98. *See, e.g.*, *Sadler v. Oregon State Bar*, 550 P.2d 1218, 1221–22 (Or. 1976); Roy Pulvers, *Separation of Powers Under the Oregon Constitution: A User’s Guide*, 75 OR. L. REV. 443, 457 (1996).
99. Edwin J. Peterson, *Lawyer-Client Conflicts of Interest Law: Contributions of Chief Justice Wallace P. Carson, Jr. During a Time of Dynamic Change*, 43 WILLAMETTE L. REV. 527, 528, 537 (2007).
100. OR. REV. STAT. § 9.010(2) (2017); *About the Oregon State Bar*, *supra* note 89.

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101. OR. REV. STAT § 9.490(1) (2017).
  102. See Peterson, *supra* note 99, at 527–28, 535.
  103. 1970 COMMITTEE REPORTS: THIRTY-SIXTH ANNUAL MEETING OF THE OREGON STATE BAR, PROFESSIONAL INSURANCE RECOMMENDATION 226 (1970).
  104. *Insurance Survey*, OR. STATE B. BULL., April 1970, at 23. Of the 725 questionnaires returned, 605 lawyers favored such an arrangement, 34 opposed it, and 86 were undecided. *Id.*
  105. *Id.*
  106. Oregon State Bar Statement of the Board of Governors Professional Liability Fund, 1977 Annual Meeting, at 1.
  107. *Id.* at 2–3.
  108. *Id.* at 3.
  109. *Id.*
  110. *Professional Liability Fund Report Due at Convention*, OR. STATE B. BULL., 1977, at 6.
  111. Manuel R. Ramos, *Legal Malpractice: Reforming Lawyers and Law Professors*, 70 TUL. L. REV. 2583, 2610 (1996).
  112. Oregon State Bar Statement of the Board of Governors, *supra* note 106, at 2.
  113. Cunitz, *supra* note 10, at 652.
  114. Daniel O’Leary, *The Professional Liability Fund: Milestone*, OR. ST. B. BULL., June 1978, at 9.
  115. CHARLES S. LOPEMAN, THE ACTIVIST ADVOCATE 88 (1999).
  116. *Id.* at 87–88, 100.
  117. *In re Kaufman*, 206 P.2d 528, 539 (Idaho 1949) (finding that the legislature could set minimum, but not maximum, requirements for bar admission). See also *State v. McCoy*, 486 P.2d 247, 252 (Idaho 1971) (noting “that control and administration of the organized Bar had always been recognized as a function peculiar to the judiciary”).
  118. The Idaho legislature convenes in early January and typically adjourns in late March or early April., IDAHO LEGIS. SESSION DATES, <https://legislature.idaho.gov/sessioninfo/sessiondates/> [<https://perma.cc/9A6X-JXDF>]. Its members earn less than \$7500 annually. *Idaho State Legislature*, BALLOTPEDIA, [https://ballotpedia.org/Idaho\\_State\\_Legislature](https://ballotpedia.org/Idaho_State_Legislature) [<https://perma.cc/LGW7-NZPK>].
  119. There has only been one instance in more than thirty-five years in which the Supreme Court has initiated a rule change. Telephone Interview with Diane Minnich, Exec. Dir., Idaho State Bar (May 11, 2018) (on file with author).
  120. *About Us*, IDAHO ST. B., <https://isb.idaho.gov/about-us/> [<https://perma.cc/RN8B-EXZA>] (last visited May 26, 2020) [hereinafter *Idaho About Us*]. Some lawyers asked the legislature to form the ISB. For a discussion of the legislation and opposition to it by some lawyer-legislators, see Jess B. Hawley, *Bar Integration in Idaho*, J. AM. JUD. SOC. 141, 142 (1931).
  121. See *supra* note 90 and accompanying text.
  122. *Idaho About Us*, *supra* note 120.
  123. IDAHO CODE § 3-408 (2018); IDAHO BAR COMM’N RULES R. 906(a) (2019). Any bar member can recommend changes to the rules of the bar by proposing a resolution. IDAHO BAR COMM’N RULES R. 906(b) (2019).
  124. IDAHO BAR COMM’N RULES R. 905(b), 906(b) (2019).
  125. *Resolution Process (aka Roadshow)*, IDAHO STATE B., <https://isb.idaho.gov/about-us/governance/resolution-process/> [<https://perma.cc/2ETQ-GHC5>].
  126. Jeffrey M. Wilson, *President’s Message: Mandatory Malpractice Insurance is Feasible*, THE ADVOCATE, Sept. 1994, at 6.
  127. *Id.*
  128. Jeffrey M. Wilson, *President’s Message: Mandatory Malpractice Insurance – The Debate Continues*, THE ADVOCATE, Nov. 1994, at 6, 16.
  129. *Board of Commissioners Meeting Review*, THE ADVOCATE, Oct. 1995, at 35; Andrew Schwam, *Mandatory Malpractice Insurance Resolutions Should Be Defeated*, THE ADVOCATE, Nov. 1995, at 4; *Fifteen Resolutions Will be Presented at ‘95 Roadshow*, THE ADVOCATE, Nov. 1995, at 9.
  130. Diane K. Minnich, *1995 Resolution Results*, THE ADVOCATE, Jan. 1996, at 6.
  131. IDAHO BOARD OF COMM’RS, Resolution 05-1 (on file with author); Telephone Interview with Diane Minnich, *supra* note 119.
  132. Diane K. Minnich, *Executive Director Report, 2005 Resolutions – The Results*, THE ADVOCATE, Jan. 2006, at 6.
  133. See IDAHO BAR COMMISSION RULES R. 304(a)(4) (2007).
  134. See Telephone Interview with Annette Strauser, MCLE & IT Adm’r, Idaho State Bar (May 22, 2015) (on file with author).

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135. Telephone Interview with Diane Minnich, *supra* note 119.
136. Telephone Interview with Michelle Points, former ISB President (May 8, 2018) (on file with author).
137. *Id.*
138. Idaho State Bar Board of Commissioners, General Session Minutes, Oct. 6, 2016; Idaho State Bar, 2016 Resolution Process: Res. 16-02, at 6, [https://isb.idaho.gov/wp-content/uploads/2016\\_voter\\_pamphlet.pdf](https://isb.idaho.gov/wp-content/uploads/2016_voter_pamphlet.pdf) [<https://perma.cc/US89-CBJC>] [hereinafter Idaho State Bar, 2016 Resolution Process]. Two voted against the proposal and one abstained.
139. Idaho State Bar, 2016 Resolution Process, *supra* note 138, at 6.
140. Telephone Interview with Michelle Points, *supra* note 136.
141. See Diane K. Minnich, *2016 Resolution Process – The Results*, THE ADVOCATE, Jan. 2017, at 22.
142. Telephone Interview with Michelle Points, *supra* note 136.
143. *In re* Amendments to the Sections of the Idaho Bar Comm. Rules, Amended Order, Mar. 30, 2017.
144. A survey conducted in 2016 of all ISB members indicates that about 9% of Idaho lawyers were uninsured. See 2016 Idaho State Bar Membership Survey 38, [https://isb.idaho.gov/wp-content/uploads/2016\\_isb\\_membership\\_survey.pdf](https://isb.idaho.gov/wp-content/uploads/2016_isb_membership_survey.pdf) [<https://perma.cc/R5NK-A3YJ>].
145. The Northwest Tri-State Compact between Washington, Oregon, and Idaho became effective in 2002 and enabled lawyers to gain reciprocal admission after three years of continuous practice in one of the states. See Mark J. Fucile, Reciprocity, In-House Counsel Admissions and Multi-Jurisdiction Practice in Washington (and Beyond) 6-4–6-5 (2015). The required period of practice is now five years. OR. RULES FOR ADMISSION OF ATTORNEYS 15.05(1) (2018).
146. OR. RULES FOR ADMISSION OF ATTORNEYS 15.05(6) (2019).
147. See *News Briefs*, THE ADVOCATE, Nov.–Dec. 2016, at 18–19.
148. See Telephone Interview with Diane Minnich, *supra* note 119.
149. See WASH. STATE BAR ASS’N, MANDATORY MALPRACTICE INS. TASK FORCE, REPORT TO WSBA BOARD OF GOVERNORS, *supra* note 55, at 30 (noting that the average premiums paid by Idaho solo lawyers to ALPS, a bar-affiliated insurer, was \$2200).
150. Lieske, *supra* note 79, at 544; Mead, *supra* note 85, at 275.
151. Mead, *supra* note 85, at 275.
152. *How Appellate Court and Supreme Court Justices are Selected*, CAL. COURTS, <http://www.courts.ca.gov/7434.htm> [<https://perma.cc/WEJ7-ZPYT>].
153. *Id.* Justices are typically elected to twelve-year terms. *Id.*
154. Santa Clara County Counsel Attorneys Ass’n v. Woodside, 869 P.2d 1142, 1151 (Cal. 1994).
155. *Id.* (quoting *Hustedt v. Workers’ Comp. Appeals Bd.*, 636 P.2d 1139, 1143 (Cal. 1981)).
156. *About Us*, STATE BAR OF CAL., <http://www.calbar.ca.gov/AboutUs.aspx> [<https://perma.cc/T2FX-C9EA>]. For discussions of how the California State Bar became unified through lawyers’ efforts, see DAYTON D. MCKEAN, THE INTEGRATED BAR 46–47 (1963); William T. Gallagher, *Ideologies of Professionalism and the Politics of Regulation in the State Bar*, 22 PEPP. L REV. 485, at 522–25 (1995).
157. CAL. CONST. art. 6, § 9.
158. See *supra* note 91 and accompanying text.
159. CAL. BUS. & PROF. CODE §§ 6001.2(a), 6013.5(a), 6076 (West 2019). In 2017, the legislature enacted legislation requiring the formation of a separate voluntary lawyers association so that the California State Bar could focus on admissions and discipline while the voluntary association could focus on section activities and educational programs. See *Frequently Asked Questions*, CAL. LAWYERS ASS’N, <https://calawyers.org/frequently-asked-questions/> [<https://perma.cc/EU3R-SDE3>].
160. The California legislature meets throughout the year and pays its members more than \$110,000 annually. *States with a full-time legislature*, BALLOTPEDIA, [https://ballotpedia.org/States\\_with\\_a\\_full-time\\_legislature](https://ballotpedia.org/States_with_a_full-time_legislature) [<https://perma.cc/WVX4-KMPW>]; *Comparison of State Legislative Salaries*, BALLOTPEDIA, [https://ballotpedia.org/Comparison\\_of\\_state\\_legislative\\_salaries](https://ballotpedia.org/Comparison_of_state_legislative_salaries) [<https://perma.cc/FDM8-6ZVQ>].
161. See CAL. BUS. & PROF. CODE § 6140.1 (West 2019).
162. See Dan Morain, *Justices Reject California Bar’s Financial Plea*, L.A. TIMES, Nov. 20, 1985, at A20 (noting that Assembly Republicans were “angry at the Bar for failings in its lawyer discipline system and for taking stands on legislation and blocking judicial races”); see also RICHARD L. ABEL, *LAWYERS ON TRIAL: UNDERSTANDING ETHICAL MISCONDUCT* 19–20, 22–23 (2011); Gallagher, *supra* note 156, at 490, 546–49.
163. See Cal. S.B. 1498, 1988 Cal. Legis. Serv. 1159 (West); Meighan A. Rowe, Note, *Protecting Those Who Protect Others: The Implications of the State Bar Act on Attorneys’ Rights in Disciplinary Proceedings*, 4 J. LEGAL ADVOC. & PRAC. 137, 140 (2002).

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164. ABEL, *supra* note 162, at 14; *see also* Galante, *supra* note 34, at 19.
165. Ralph J. Gampell, *President's Message: Malpractice Insurance: Equal Burden for All?*, 51 CAL. ST. B. J. 575, 577 (1976). The proposal emanated from concerns about obtaining coverage for members, but the president also noted that the profession has "duties to society at large, including the ability to compensate a consumer who has suffered a negligent loss at our hands." *Id.*
166. Benjamin Franklin Boyer & Gary Conner, *Legal Malpractice and Compulsory Client Protection*, 29 HASTINGS L.J. 835, 836 (1978).
167. State Assemb. B. No. 4225, 1985–86 Leg., Reg. Sess. (Cal. 1986); *see also* Jerry Gillam, *Sacramento File: Assembly Floor Action*, L.A. TIMES, Aug. 30, 1986, at 32.
168. GOVERNOR'S OFFICE, VETO MESSAGE–ASSEMBLY BILL NO. 4225 (Sept. 30, 1986).
169. Ed Jahn, *Lawyers' Insurance Measure Supported*, SAN DIEGO UNION-TRIB., May 10, 1987, at A-3.
170. *Id.* The opponents included the Los Angeles County Bar Association, which would lose its voluntary insurance program and associated commission payments, if all lawyers were required to belong to a single fund. *Id.* Other opponents included some solo lawyers, and criminal defense lawyers who did not think that they needed LPL insurance. *Id.* Insurance carriers also opposed it because they feared a mandatory insurance liability fund would end their voluntary insurance programs with the bar. *See* Telephone Interview with Terry Anderlini, former president, Cal. State Bar (June 25, 2019).
171. Telephone Interview with Terry Anderlini, *supra* note 170.
172. CAL. BUS. & PROF. CODE § 6147(a)(6) (West 1992); CAL. BUS. & PROF. CODE § 6148(a)(4) (West 1992); Telephone Interview with Terry Anderlini, *supra* note 170. **Error! Bookmark not defined.** In 1986, the state legislature had previously considered adopting an insurance disclosure rule, but failed to do so. *See* S.B. 1569, 1985-86 Leg., Reg. Sess. (Cal. 1986).
173. James E. Towery, *Should Disclosure of Malpractice Insurance Be Mandatory?: Pro*, GPSOLO MAG., Apr./May 2003, at 36, 38. For an explanation of the political reasons why this occurred, *see* Mignone, *supra* note 64, at 1079 n.50.
174. Towery Memorandum, *supra* note 66, at 2. The Task Force included an adviser to the California Supreme Court and one member of the public. *Id.*
175. *Id.* at 12–14. Most of the 112 comments received in 2006 came from attorneys and 78.5% opposed the proposal in whole or in part. *Id.* Likewise, during a second comment period after revisions, 78% of the comments opposed the proposal. *Id.*
176. *Id.* at 3.
177. *Id.* at 7.
178. Memorandum from Saul Bercovich, Staff Attorney, to Members of the Board of Governors 1 (Oct. 24, 2007).
179. *Legal Services Regulatory Roundup*, B. LEADER, Nov.–Dec. 2007, at 30, 30.
180. Carole J. Buckner, *Malpractice Insurance Disclosure Lurches Toward Approval*, ORANGE COUNTY LAW, April 2008, at 50–51.
181. Dan Levine, *Bar: Uninsured Lawyers Must Inform Clients*, THE RECORDER, May 20, 2008.
182. McCarthy, *supra* note 74.
183. *See* Levine, *supra* note 181.
184. Steven M. Ellis, *Supreme Court Adopts Malpractice Disclosure Rule*, METROPOLITAN NEWS-ENTERPRISE (Aug. 27, 2009), <http://www.metnews.com/articles/2009/malp082809.htm> [<https://perma.cc/SE6Z-8BH9>].
185. CAL. BUS. & PROF. CODE § 6069.5(a)-(b) (West 2019).
186. S. 36, 2017–18 Leg. (Cal. 2017) at ch. 422 § 40; *see* Dan Walters, *Legislature Tries State Bar Fix, but Remedy Falls Short*, SACRAMENTO BEE (May 14, 2017), <https://www.sacbee.com/news/politics-government/politics-columns-blogs/dan-walters/article150328762.html> [<https://perma.cc/2HJN-364P>].
187. STATE BAR OF CAL., MALPRACTICE INSURANCE WORKING GROUP, CHARTER, <http://www.calbar.ca.gov/Portals/0/documents/cc/Malpractice-Insurance-Working-Group-Charter.pdf> [<https://perma.cc/6V9V-7YDD>]. Four members of the Board of Trustees served on the Task Force. *Id.* There was one consumer advocate. *Id.*
188. *See* STATE BAR OF CAL., MALPRACTICE INSURANCE WORKING GROUP, REPORT TO THE BOARD OF TRUSTEES 3–4, 7, 10 (Mar. 15, 2019), [http://www.calbar.ca.gov/Portals/0/documents/reports/Malpractice-Insurance-Report\\_Summary\\_and\\_Supreme-Court-Cover-Letter.pdf](http://www.calbar.ca.gov/Portals/0/documents/reports/Malpractice-Insurance-Report_Summary_and_Supreme-Court-Cover-Letter.pdf) [<https://perma.cc/GM3V-9D45>].
189. *Id.* at 12.
190. *Id.* at 12–13.
191. Letter from Leah T. Wilson, Exec. Dir. & Jason P. Lee, Chair, Cal. State Bar Board of Trustees, to Supreme Court of Cal. (Mar. 27, 2019) at 1.



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192. G. ALAN TARR & MARY CORNELIA ALDIS PORTER, *STATE SUPREME COURTS IN STATE AND NATION* 368 (1988). ; *see also* Jim Brunner & Nina Shapiro, *State Supreme Court: Activist Justices, or Just Different?*, SEATTLE TIMES (Sept. 12, 2015), <https://www.seattletimes.com/seattle-news/politics/state-supreme-court-activist-justices-or-just-different/> [<https://perma.cc/NS9W-QBAR>] (describing criticism that the court has become more liberal and activist).
193. *See* Brooks Holland, *The Washington State Limited License Legal Technician Practice Rule: A National First in Access to Justice*, 82 MISS. L. J. SUPRA 75, 77, 106-11(2013). In doing so, the Court noted that “[p]rotecting the monopoly status of attorneys in any practice area is not a legitimate objective.” In the Matter of the Adoption of APR 28-Limited Practice Rule for Limited License Legal Technicians, No. 257-A-1005, at 7 (2012).
194. *Washington Supreme Court Justices*, WASH. COURTS, [https://www.courts.wa.gov/appellate\\_trial\\_courts/SupremeCourt/?fa=supremecourt.justices](https://www.courts.wa.gov/appellate_trial_courts/SupremeCourt/?fa=supremecourt.justices) [<https://perma.cc/ZV67-UQNH>] (last visited May 26, 2020); *Brief History of Washington State Supreme Court*, WASH. COURTS, <https://www.courts.wa.gov/education/?fa=education.supreme> [<https://perma.cc/FC83-PUDK>] (last visited May 26, 2020).
195. *See In re Discipline of Blanchard*, 144 P.3d 286, 292 (Wash. 2006); *Hizey v. Carpenter*, 830 P.2d 646, 652 (Wash. 1992); *Short v. Demopolis*, 691 P.2d 163, 169 (Wash. 1984); *State ex rel. Laughlin v. Wash. State Bar Ass’n*, 176 P.2d 301, 302–03 (Wash. 1947).
196. *Graham v. State Bar Ass’n*, 548 P.2d 310, 314–15 (Wash. 1976).
197. *See Short v. Demopolis*, 691 P.2d 163, 170 (Wash. 1984) (finding that Washington’s Consumer Protection Act could be applied to lawyers).
198. The legislature meets for 105 days in odd-numbered years and 60 days in even-numbered years. *Welcome to the Washington State Legislature*, WASH. STATE LEGIS., <http://leg.wa.gov/legislature/Pages/AboutUs.aspx> [<https://perma.cc/F5P5-W7L2>] (last visited May 26, 2020). Legislators are paid about \$49,000 annually. *Comparison of State Legislative Salaries*, *supra* note 160.
199. For example, in 1997, the legislature passed a law that promoted the suspension of the occupational licenses of individuals who failed to pay child support. WASH. REV. CODE § 74.20A.320 (1997). It added a note stating that it was mindful of the separation of powers among the branches of government, and therefore “strongly encourages the state supreme court to adopt rules providing for suspension and denial of licenses related to the practice of law to those individuals who are in noncompliance” with a support or visitation order. 1997 Wash. Sess. Laws ch. 58, § 809.
200. *History of the Bar*, WASH. STATE BAR ASS’N (Oct. 4, 2018), <https://www.wsba.org/about-wsba/who-we-are/history-of-the-wsba> [<https://perma.cc/28JW-D8LH>].
201. *Id.*
202. *Id.*
203. WASH. STATE BAR ASS’N, BYLAWS 25 (2018). The president is also a member of the Board. *Id.*
204. William H. Gates, *Lawyers’ Malpractice Insurance: What Shall We Do?*, WASH. ST. B. NEWS, May 1986, at 4.
205. Boyer & Conner, *supra* note 166, at 839.
206. Gates, *supra* note 204, at 4; Memorandum, *Status Report on Malpractice Insurance Coverage and Professional Liability Fund Proposal*, WASH. ST. B. NEWS, Oct. 1986, at 27.
207. Carole Grayson, *The Board’s Work*, WASH. ST. B. NEWSLINE, Dec. 12–13, 1986; *Professional Liability Fund Plans Finalized; Issue Set for Membership Vote*, WASH. STATE B. NEWS, Jan. 1987, at 30, 30.
208. Grayson, *supra* note 207; Memorandum from Douglas J. Ende, Chief Disciplinary Counsel, to Mandatory Malpractice Insurance Task Force, Jan. 17, 2018, at 1. A referendum was not required, but the Board of Governors did so “[i]n view of the importance of the issue.” *Professional Liability Fund Plans Finalized*, *supra* note 343, at 30.
209. Memorandum from Douglas J. Ende, *supra* note 208, at 1.
210. *See* Letter from Robert D. Welden, General Counsel, Wash. State Bar Ass’n, to Chief Justice Gerry L. Alexander, Wash. Supreme Court (Aug. 24, 2005) (on file with author).
211. Bob Welden, *Insurance-Disclosure Rule Information and Request for Comments*, WASH. ST. B. NEWS, July 2005, at 38.
212. Letter from Robert D. Welden, *supra* note 210.
213. *See* Robert Welden, *New Rule on Malpractice Insurance Disclosure*, WASH. STATE B. NEWS, June 2007, at 36.
214. Memorandum from Douglas J. Ende, *supra* note 208, at 1.
215. *See* WASH. STATE BAR ASS’N, MANDATORY MALPRACTICE INSURANCE TASK FORCE, CHARTER (Sept. 28, 2017), [https://www.wsba.org/docs/default-source/legal-community/committees/mandatory-malpractice-insurance-task-force/task-force-charter.pdf?sfvrsn=381a3bf1\\_6](https://www.wsba.org/docs/default-source/legal-community/committees/mandatory-malpractice-insurance-task-force/task-force-charter.pdf?sfvrsn=381a3bf1_6) [<https://perma.cc/F2TX-GLFK>].
216. Memorandum from Douglas J. Ende, *supra* note 209, at 2.

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217. WASH. STATE BAR ASS'N, MANDATORY MALPRACTICE INSURANCE TASK FORCE, *supra* note 55, at 1, app. B.
218. *Id.* at 3.
219. *Id.* at 7, 33–34. ALPS estimated that the annual cost of \$250,000/\$500,000 for a solo corporate lawyer in Seattle would be about \$2400. *Id.* at 33–34.
220. Timothy Darraugh, *Washington State Bar Nixes Mandatory Malpractice Insurance*, BEST'S INSURANCE NEWS, May 31, 2019.
221. *See id.*
222. Telephone Interview with Kevin Whatley, Exec. Dir., Equal Justice Wash. (June 12, 2020). Whatley's uninsured lawyer had neglected his personal injury case against an airline, which resulted in it being dismissed with prejudice. As a result of his experience, Whatley had spoken in favor of mandatory LPL insurance both before the WSBA's Task Force and at the Board of Governors' hearing. Telephone Interview with Kevin Whatley, Exec. Dir., Equal Justice Wash. (Apr. 15, 2020).
223. Telephone Interview with Kevin Whatley, Exec. Dir., Equal Justice Wash. (June 12, 2020).
224. *See* Suggested Amendment, APR 26, WASH. COURTS, [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.proposedRuleDisplay&ruleId=4751](http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=4751) ; Telephone Interview with Kevin Whatley, Exec. Dir., Equal Justice Wash. (Apr. 15, 2020).
225. Order *in re* the Proposed Amendment to APR 26—Insurance, Publication Order 25700-A-1281 (Dec. 4, 2019).
226. *See* Letter from Rajeev D. Majumdar, WSBA President, to Susan L. Carlson, Clerk of the Wash. Supreme Court (Jan. 26, 2020), [http://www.courts.wa.gov/court\\_Rules/proposed/2019Dec/APR26/Rajeev%20Majumdar%20-%20APR%2026.pdf](http://www.courts.wa.gov/court_Rules/proposed/2019Dec/APR26/Rajeev%20Majumdar%20-%20APR%2026.pdf). In the interest of full disclosure, I note that I submitted a letter in support of the proposal.
227. The Rule would require lawyers to disclose to clients if they do not carry a minimum of \$100,000/\$300,000 in malpractice insurance. *See* November 2020 – Proposed Rules Published for Comment, Rules of Professional Conduct, WASH. COURTS, [https://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.proposedDetails&proposedId=2152](https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedDetails&proposedId=2152).
228. The comment period for the WSBA's proposed rule runs until April 30, 2021. *Id.*
229. *Nevada and Idaho Are the Nation's Fastest-Growing States*, U.S. CENSUS (Dec. 19, 2018), <https://www.census.gov/newsroom/press-releases/2018/estimates-national-state.html> [<https://perma.cc/4CAR-QVGL>]; David F. Damore, *Limits on Nevada's Legislature Keep it From Serving the State*, BROOKINGS (June 14, 2019), <https://www.brookings.edu/blog/fixgov/2019/06/14/limits-on-nevadas-legislature-keep-it-from-serving-the-state/> [<https://perma.cc/8HJM-G6PG>].
230. *See* Mead, *supra* note 85, at 275.
231. *Nevada Supreme Court*, BALLOTEDIA, [https://ballotpedia.org/Nevada\\_Supreme\\_Court](https://ballotpedia.org/Nevada_Supreme_Court) [<https://perma.cc/J468-EGW4>] (last visited May 26, 2020).
232. Nev. SUP. CT. R. 39 (2018).
233. NEV. CONST. art. 4, § 2; Damore, *supra* note 229. The legislature meets for about four months and legislators and are only paid for the first sixty days of the session, plus a per diem thereafter. NEV. CONST. art. 4, §§ 2, 3, 4; Damore, *supra* note 229.
234. Damore, *supra* note 229.
235. *Our History*, STATE BAR OF NEV., <https://www.nvbar.org/about-us/our-history/> [<https://perma.cc/K8EU-V559>] (last visited May 26, 2020).
236. *See* NEV. SUP. CT. R. 78 (2018).
237. *See* Lieske, *supra* note 79 and accompanying text.
238. NEV. SUP. CT. R. 49, 103 (2018).
239. NEV. SUP. CT. R. 81 (2018).
240. Nev. SUP. CT. R. 86(6) (2018).
241. Telephone Interview with Richard Pocker, former President, State Bar of Nev. (May 15, 2019).
242. *See* Goldfein, *supra* note 34, at 1296.
243. John Schlegelmilch, *Insufficient Evidence to Support Mandatory Malpractice Insurance Requirements.*, NEV. LAW., June 2000, at 9.
244. *Id.*
245. *Id.*
246. *See* In re Amendments to Supreme Court Rule 79 Regarding Member Reporting Requirement, ADKT 384, at 2–3 (Nev. Sup. Ct. May 27, 2005).
247. The only mention of the subject in the *Nevada Lawyer* refers to the Board's approval of the petition to be filed in the Supreme Court "seeking the imposition of mandatory disclosure of professional liability insurance by all Nevada attorneys." *See* Allen Kimbrough, *Board of Governors Meets in Reno*, 13 NEV. LAW. 42, 42 (2005).

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248. Amendments to Sup. Ct. R. 79, *supra* note 246, at 3.
249. *Id.* at 4.
250. *Id.* at 2. The petition included: draft rule language; Welden’s 2004 letter to the Nevada Chief Justice, accompanied by the attachments previously sent to the Court; and a summary of the Bar’s findings about the availability of insurance in Nevada.
251. This approach was consistent with the ABA Model Court Rule, which states that insurance information “will be made available by such means as designated by the highest court in the jurisdiction.” See ABA Model Court Rule on Insurance Disclosure (2004).
252. See Order Amending Rule 79 of the Supreme Court Rules, In re Amendments to Supreme Court Rule 79, ADKT 384 (Nev. Sup. Ct. Sept. 13, 2005).
253. *Id.*
254. See ABA STANDING COMM. ON CLIENT PROTECTION, STATE IMPLEMENTATION OF ABA MODEL COURT RULE, *supra* note 61, at 5.
255. See Robert T. Eglet, *An Open Letter*, VEGAS LEGAL MAG., Jan. 12, 2017.
256. *Id.*
257. *Join the Discussion: Whether Malpractice Insurance Should be Mandatory for Nevada Attorneys*, NEV. LAW., Dec. 2017, at 28; Telephone Interview with Richard Pocker, *supra* note 241.
258. Bryan K. Scott, *Message from the President: Updates from the Bar*, 25 NEV. LAW. 4 (2017).
259. See Petition of the State Bar of Nevada, ADKT 534, *supra* note 9, at Ex. C.
260. See Vernon Leverty, *Message from the President: Tipping the Scales in Honor of Our Profession*, 26 NEV. LAW. 4 (2018).
261. See *Join the Discussion*, *supra* note 257, at 29.
262. State Bar of Nevada, Minutes of Board of Governors Meeting, Nov. 8, 2017, at 2. It also recommended, alternatively, that if lawyers did not maintain insurance, they must disclose this information in writing to clients. *Id.*
263. *Id.* at 2.
264. See Petition of the State Bar of Nevada, ADKT 534, *supra* note 9, at Ex. D.
265. *Id.* This is not the first occasion that the State Bar’s leadership evidenced a greater commitment to the public than some of its members. In the 1990s, the State Bar of Nevada Board of Governors approved and filed a petition with the Supreme Court to implement a mandatory pro bono plan. They subsequently withdrew the petition because they had not consulted with members, who voiced strong opposition. See Kendra Emi Nitta, *An Ethical Evaluation of Mandatory Pro Bono*, 29 LOY. L.A. L. REV. 909, 913–17 (1996).
266. Petition of the State Bar of Nevada, ADKT 534, *supra* note 9, at Ex. D.
267. *Id.* at 11–12.
268. Order Scheduling Public Hearing and Requesting Public Comment, ADKT 534, In re Amendment to Supreme Court Rule 79 (Nev. Sup. Ct. July 3, 2018).
269. See, e.g., Robert Prince & Eglet Prince, Comment Filed In Re Amendments to Supreme Court Rule 79 Regarding Professional Liability Insurance, ADKT 0534 (Jul. 10, 2018); Nancy Avanzino-Gilbert, Comment Filed In Re Amendments to Supreme Court Rule 79 Regarding Professional Liability Insurance, ADKT 0534 (Jul. 16, 2018); Mark Knobel & McDonald Carano, Comment Filed In Re Amendments to Supreme Court Rule 79 Regarding Professional Liability Insurance, ADKT 0534 (Jul. 16, 2018).
270. *Id.*
271. David Eric Kassab, *Avoiding Accountability: The Rise of Mandatory Legal Malpractice and Insurance Disclosure*, ABA/BNA LAWYER’S MANUAL OF PROF’L CONDUCT, Oct. 30, 2018.
272. Order Denying Petition for Amendment to Supreme Court Rule 79, ADKT 534, *supra* note 30.
273. See Telephone Interview with Richard Pocker, *supra* note 241.
274. TARR & PORTER, *supra* note 192, at 184, 237; John B. Wefing, *The Performance of the New Jersey Supreme Court at the Opening of the Twenty-First Century: New Case, Same Script*, 32 SETON HALL L. REV. 769, 771, 815–18 (2001); Virginia A. Long, *The Purple Threat: Social Justice as a Recurring Theme in the Decisions of the Poritz Court*, N.J. L.J., Oct. 30, 2006; Charles Toutant, *NJ Justices Call Provision of Consumer Contract Unenforceable*, LEGAL INTELLIGENCER, Jan. 15, 2019, at 3. The current Chief Justice, Stuart Rabner, has also been characterized as an activist. See *Supreme Court’s Stuart Rabner, Saved from Christie’s Axe*, NJ.COM (May 22, 2014), [https://www.nj.com/opinion/2014/05/christie\\_reappoint\\_chief\\_justice\\_stuart\\_rabner.html#incart\\_river](https://www.nj.com/opinion/2014/05/christie_reappoint_chief_justice_stuart_rabner.html#incart_river) [https://perma.cc/8QP9-K4DP].
275. N.J. CONST. art. VI, § VI (I). The State Bar reviews the qualifications of a governor’s intended nominees, but a compact with the governor’s office requires the Bar to keep the vetting process confidential and to report only to the governor on whether it deems a candidate qualified. Michael Booth, *Supreme Court Nominee Faces Resistance as*

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- Hearing Looms*, N.J. L.J., May 25, 2012. The bar reserves the right to testify at a confirmation hearing, however, if the bar gives the candidate a “not qualified” rating and the governor nominates the candidate anyway. *Id.*
276. N.J. CONST. art. VI, § VI (3).
277. Nevertheless, in the past decade, one Governor declined to renominate sitting justices, the judge’s qualifications. *See NJSBA Resolution Urges Constitutional Amendment to Protect Judicial Independence*, N.J. L.J., Apr. 11,
278. *In re Application of LiVolsi*, 428 A.2d 1268, 1271 (N.J. 1981); Michael P. Ambrosio & Denis F. McLaughlin, *The Redefining of Professional Ethics in New Jersey Under Chief Justice Robert Wilentz: A Legacy of Reform*, 7 SETON HALL CONST. L.J. 351, 353–54 (1997).
279. N.J. CONST. art. VI, § II.
280. *See McKeown-Brand v. Trump Castle Hotel & Casino*, 626 A.2d 425, 429 (N.J. 1993) (limiting the application of a New Jersey statute proscribing frivolous lawsuits so that it imposed attorneys’ fees on a party but not the party’s lawyers).
281. N.J. CONST. art IV, § 1. The legislature is not, however, considered a professional legislature, in part because legislators only receive salaries of \$49,000 per year. *See Comparison of State Legislative Salaries*, *supra* note 160.
282. For example, it has passed legislation governing lawyers’ fees and retainer agreements in family law cases. *See* N.J. STAT. ANN. §§ 5:3-5 (West 2018).
283. N.J. STAT. ANN. §§ 45:5-5.3, 45:9-19.17 (West 2018).
284. *See supra* note 94 and accompanying text.
285. *About Us*, N.J. STATE BAR ASS’N, <https://tcms.njsba.com/PersonifyEbusiness/AboutUs.aspx> [<https://perma.cc/P2EX-E32M>]; *Join the NJSBA*, N.J. STATE B. ASS’N, <https://tcms.njsba.com/PersonifyEbusiness/JointheNJSBA.aspx> [<https://perma.cc/9FYZ-TPXW>].
286. N.J. STATE BAR ASS’N, Bylaws art. VI, § 2.
287. Cheryl Baisden, *The New Jersey State Bar Association: The First 100 Years*, N.J. LAW. 19, 52 (Oct. 1999).
288. *See* Mark E. Hopkins, *Open Attorney Discipline: New Jersey Supreme Court’s Decision to Make Attorney Disciplinary Procedures Public-What it Means to Attorneys and the Public*, 27 RUTGERS L. REV. 757, 786 (1996).
289. *Id.* at 786.
290. *See* N.J. RULES OF PROF’L CONDUCT R. 3.3(a)(5) (1984). This rule had no counterpart in the *Model Rules* and is triggered even without an earlier affirmative misrepresentation by the attorney or the client.
291. *See* Leslie C. Levin, *Testing the Radical Experiment: A Study of Lawyer Response to Clients Who Intend to Harm Others*, 47 RUTGERS L. REV. 81, 95 n.52 (1994).
292. Hopkins, *supra* note 288, at 764. Likewise, in 1995 it overturned an advisory rule issued by its Committee on the Unauthorized Practice of Law that would have prohibited brokers and title companies from handling real estate closings without a lawyer. Joyce A Palomar, *The War Between Attorneys and Law Conveyancers—Empirical Evidence Says “Cease Fire!”*, 31 CONN. L. REV. 423, 436 (1999). The Supreme Court concluded the public interest would be better served by permitting laypersons to perform those legal services, notwithstanding arguments to the contrary from the NJSBA. *Id.* at 445–46, 464–65, 475–76.
293. *See* Bennett J. Wasserman, *All Clients Deserve Protection from Professional Negligence*, N.J. L.J., Jan. 20, 2014.
294. REPORT OF THE SUPREME COURT AD HOC COMM. ON ATTORNEY MALPRACTICE INSURANCE, *supra* note 56, at 1–2.
295. *See id.* at 14. Lawyers working in those entities could limit their vicarious liability, but the LLPs and LLCs were required to maintain at least \$100,000 per occurrence for each attorney employed by the firm, up to \$5 million. *See* David S. Neufeld, *Shelter from the Storm: A Review of Business Entities Available to New Jersey Professionals*, N.J. L.J., Mar. 2, 1998.
296. *See* William H. Michelson, *Mandatory Malpractice Insurance: Laudable but Unenforceable*, N.J. L.J., Nov. 3, 2003, at .
297. *See* N.J. Assemb. 617, 211th Leg.
298. Letter from Harold L. Rubenstein, Exec. Dir., NJSBA, to John Holtaway, ABA Center for Prof’l Resp. (Feb. 26, 2004) (on file with author).
299. REPORT OF THE SUPREME COURT AD HOC COMM. ON ATTORNEY MALPRACTICE INSURANCE, *supra* note 56, at 2–3.
300. *Id.* at 3, app. A.
301. Bennett J. Wasserman & Krishna J. Shah, *Mandatory Legal Malpractice Insurance: The Time Has Come*, N.J. L.J., Jan.14, 2010, at 1; Wasserman, *supra* note 293.

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302. REPORT OF THE SUPREME COURT AD HOC COMM. ON ATTORNEY MALPRACTICE INSURANCE, *supra* note 56, at 3–4, 167–68.
303. *Id.* at 167–68; ROBERT B. HILLE, MCELROY, DEUTSCH, MULVANEY & CARPENTER, <http://www.mdmc-law.com/tasks/sites/mdmc/assets/file/pdfs/bio/RobertB-Hille.pdf> [<https://perma.cc/5U52-AR62>].
304. REPORT OF THE SUPREME COURT AD HOC COMM. ON ATTORNEY MALPRACTICE INSURANCE, *supra* note 56, at 3–4, 167–68.
305. *Id.* at 7, 132.
306. *Id.* at 8. It further claimed that mandatory insurance may economically preclude some lawyers from practicing law. *Id.* at 136.
307. *Id.* at 132–34.
308. *See* Telephone Interview with Ad Hoc Committee Member (June 20, 2019) (on file with author). Insurers may have been concerned that if there were an insurance requirement, they would be pressured to write coverage for all lawyers in the state, regardless of claims experience.
309. REPORT OF THE SUPREME COURT AD HOC COMM. ON ATTORNEY MALPRACTICE INSURANCE, *supra* note 56, at 7–10, 144–45.
310. *See* Notice to the Bar, Report of the Supreme Court Ad Hoc Comm. on Attorney Malpractice Insurance – Publication for Comment (Nov. 14, 2017), <https://www.njcourts.gov/notices/2017/n171113a.pdf> [<https://perma.cc/E28Z-N56P>].
311. Letter from Eric G. Kahn, President, N.J. Ass’n for Justice, to Glenn A. Grant, Acting Admin. Dir. of the Courts (Jan. 2, 2018) (on file with author).
312. *See* Letter from Robert W. Ruggieri to Glenn A. Grant, Acting Admin. Dir. of the Courts (Dec. 20, 2017) (on file with author); Letter from Albert H. Sauer to Glenn A. Grant, Acting Admin. Dir. of Courts (Dec. 20, 2017) (on file with author).
313. Letter from Robert B. Hille, President, N.J. State Bar Ass’n, to Glenn A. Grant, Acting Admin. Dir. of the Courts (Jan. 15, 2018) (on file with author).
314. *Id.* at 1.
315. *See* S.B. 821, 218th Leg., Reg. Sess. (N.J. 2018). In May 2015, Scutari had also introduced a bill requiring all New Jersey lawyers in private practice to be covered by LPL insurance, which was carried over in 2016, but no action was taken. S.B. 2897, 216th Leg., Reg. Sess. (N.J. 2015).
316. *Saffer v. Willoughby*, 670 A.2d 527, 535 (N.J. 1996). The court subsequently permitted non-clients to recover attorneys’ fees in some malpractice cases. *See Innes v. Marzano-Lesnevich*, 136 A.3d 108, 116 (N.J. 2016).
317. *See* Henry Gottlieb, *Carriers’ Lawyers Marshal Forces for Assault on Saffer Fee-Shifting Rule*, N.J. L.J., Nov. 12, 2001, at; Charles Toutant, *A Broadside at Saffer Fee Shifting*, N.J. L.J., Aug. 12, 2002, at 28; Henry Gottlieb, *Testing the Reach of Saffer Fee-Shifting; Defense Lawyer Seeking Repeal*, N.J. L.J., Oct. 18, 2004, at 22.
318. Valerie Brown, *Pro-Attorney Legislation Tops NJSBA Legislative Agenda*, N.J. LAW., Aug. 11, 2008, at 2. This lobbying continued into 2019. *See New Jersey State Bar Association—Capitol Report*, N.J. L.J., Apr. 1, 2019.
319. *See Bar Report—Capitol Report*, N.J. L.J. (Mar. 25, 2019). USI Senior Vice President Mike Mooney, who made a presentation and arguments in favor of the bill before the legislature, also acted as a “resource associate member” of the Ad Hoc Committee and provided information to that Committee about LPL insurance costs in New Jersey. REPORT OF THE SUPREME COURT AD HOC COMM. ON ATTORNEY MALPRACTICE INSURANCE, *supra* note 56, at app. FF.
320. *Bar Report*, *supra* note 319.
321. *Malpractice Insurance Status Should be Disclosed to Clients*, N.J. L.J. (Feb. 19, 2018, 1:00 PM), <https://www.law.com/njlawjournal/2018/02/19/malpractice-insurance-status-should-be-disclosed-t/> [<https://perma.cc/2H6F-BBAP>].
322. Notice to the Bar – Ad Hoc Comm. on Attorney Malpractice Insurance; Supreme Court Action and Next Steps (Mar. 11, 2019), <https://njcourts.gov/notices/2019/n190313b.pdf> [<https://perma.cc/P2PK-639P>].
323. *Id.*
324. *Id.*
325. *See* REPORT OF THE SUPREME COURT AD HOC COMM. ON ATTORNEY MALPRACTICE INSURANCE, *supra* note 56, at 153–55.
326. *See* Telephone Interview with Ad Hoc Committee Member, *supra* note 308.
327. CAL JILLSON, TEXAS POLITICS: GOVERNING THE LONE STAR STATE 7 (3d ed. 2011).
328. SUPREME COURT OF TEX., TEX. JUD. BRANCH, <http://www.txcourts.gov/supreme/> [<https://perma.cc/KM8N-V84L>] (last visited May 26, 2020). Justices are elected to six-year terms. *Id.* The Texas Supreme Court is the court of last resort for civil cases. *Id.* The Texas Court of Criminal Appeals is the court of last resort for criminal cases.

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- COURT OF CRIMINAL APPEALS, TEX. JUD. BRANCH, <http://www.txcourts.gov/cca/> [<https://perma.cc/54JF-VUT9>] (last visited May 26, 2020).
329. See Mark Pulliam, *In Texas, a State Supreme Court Maintains Integrity, Despite Politics*, NAT'L REV. (June 13, 2017), <https://www.nationalreview.com/2017/06/texas-supreme-court-elected-justices-integrity-california-supreme-court-appointed-politicized/> [<https://perma.cc/4SCK-96DZ>].
330. *Election Overview*, FOLLOWTHEMONEY.ORG (2016), <https://www.followthemoney.org/tools/election-overview?s=TX&y=2016> [<https://perma.cc/GWB8-3KV3>] (last visited May 26, 2020).
331. See, e.g., Texans for Pub. Just., *Courtroom Contributions Stain Supreme Court Campaigns* 1 (2008), <http://info.tpj.org/reports/courtroomcontributions/courtroomcontributions.pdf> [<https://perma.cc/K9BM-56T2>] (last visited Feb. 16, 2020); Maurice Chammah, *Judicial Donations Raise Questions of Partiality*, TEX. TRIB. (March 26, 2013, 6:00 AM), <https://www.texastribune.org/2013/03/26/donations-judicial-campaigns-spur-ethics-worries/> [<https://perma.cc/FF5X-QZKZ>]; Morgan Smith, *Odor in the Court*, TEX. TRIB. (Feb. 2, 2010, 5:00 AM), <https://www.texastribune.org/2010/02/02/lawyers-biggest-donors-to-judicial-elections/> [<https://perma.cc/2WN6-VJM2>].
332. *State Bar of Tex. v. Gomez*, 891 S.W.2d 243, 245 (Tex. 1994); *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398–99 (Tex. 1979).
333. *In re Dow*, 481 S.W.3d 215, 224 (Tex. 2015).
334. The legislature meets for a maximum of 140 days that year, unless the governor calls a special session. *Frequently Asked Questions*, TEX. HOUSE OF REPRESENTATIVES, <https://house.texas.gov/resources/frequently-asked-questions/> [<https://perma.cc/23H8-S423>] (last visited May 26, 2020). Legislators earn \$7200 annually, plus a per diem. *Comparison of State Legislative Salaries*, *supra* note 160. Because it only meets biannually, it is often “so hard pressed in the closing days and hours of the session that critical business is left undone.” JILLSON, *supra* note 327, at 93–94.
335. TEX. GOV'T CODE ANN. §§ 325.001–325.015 (West 2019).
336. See SUNSET ADVISORY COMM'N, STAFF REPORT WITH FINAL RESULTS, STATE BAR OF TEX. A1–A3 (June 2017), [https://www.sunset.texas.gov/public/uploads/files/reports/State%20Bar%20of%20Texas%20and%20Board%20of%20Law%20Examiners%20Staff%20Report%20with%20Final%20Results\\_6-21-17\\_0.pdf](https://www.sunset.texas.gov/public/uploads/files/reports/State%20Bar%20of%20Texas%20and%20Board%20of%20Law%20Examiners%20Staff%20Report%20with%20Final%20Results_6-21-17_0.pdf) [<https://perma.cc/CE27-CFGK>]; John Sirman, *Sunset Commission Takes a Close Look at the State Bar*, 65 TEX. B. J. 500 (2002).
337. *Our Mission*, STATE BAR OF TEX., <https://www.texasbar.com/Content/NavigationMenu/AboutUs/OurMission/default.htm> [<https://perma.cc/D5LV-6HL3>] (last visited May 26, 2020).
338. See *supra* note 95 and accompanying text.
339. TEX. GOV'T CODE ANN. § 81.011 (a) (West 2019); *Frequently Asked Questions*, STATE BAR OF TEX., [https://www.texasbar.com/AM/Template.cfm?Section=Frequently\\_Asked\\_Questions&Template=/CM/HTMLDisplay.cfm&ContentID=42961](https://www.texasbar.com/AM/Template.cfm?Section=Frequently_Asked_Questions&Template=/CM/HTMLDisplay.cfm&ContentID=42961) [<https://perma.cc/KY4K-FY77>] (last visited May 26, 2020).
340. TEX. STATE BAR RULES art. IV, §§ 1, 3.
341. *About TLIE*, TLIE, <http://www.tlie.org/about/> [<https://perma.cc/R67G-T5YX>] (last visited May 26, 2020).
342. See Charles W. Wolfram, *Inherent Powers in the Crucible of Lawyer Self-Protection: Reflections on the LLP Campaign*, 39 S. TEX. L. REV. 359, 364, 392 n.112 (1998).
343. Bousquet, *supra* note 43, at 11.
344. Letter from Charles Herring Jr. to Chief Justice Wallace B. Jefferson (July 30, 2007) (on file with author).
345. *Id.* The survey response rate is not known.
346. See Letter from Chief Justice Wallace B. Jefferson, Tex. Supreme Court, to Roland Johnson, President, State Bar of Tex. (Apr. 14, 2010) (on file with author).
347. Memorandum from David J. Beck, Chair, Task Force on Insurance Disclosure, to State Bar of Texas Bd. of Dirs. 1 (June 11, 2008) (on file with author). The sole non-lawyer member was an Exxon employee and not a consumer advocate.
348. *Id.* at 3; PLI Disclosure-Attorney Survey Findings-February 2008 (on file with author). The response rate for the email survey was 6.6%. Memorandum from David J. Beck, *supra* note 347, at 3 n.2. One State Bar section reportedly campaigned to get its members to oppose disclosure before the polling was complete. See GRIEVANCE OVERSIGHT COMM., 2009 REPORT TO THE SUPREME COURT OF TEX. 3 (2009).
349. Mary Alice Robbins, *Déjà vu All Over Again: State to Reconsider Insurance Disclosure*, TEX. LAW., Oct. 5, 2009, at 16.
350. E-mail from Texas Task Force Member to Leslie C. Levin (Apr. 17, 2018: 21:41 EDT) (on file with author).

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351. Memorandum from David J. Beck, *supra* note 347, at 7. Recognizing, however, that the Texas Supreme Court might eventually decide to require some form of disclosure, the Task Force voted 6-4 to recommend that any required insurance disclosure be available only on the Texas State Bar's website and not through direct disclosure to the client. *Id.*
352. Robbins, *supra* note 349.
353. *Id.* It is unclear whether it was asked by the Supreme Court to do so. Compare Mary Alice Robbins, *Report: Counsel Without Malpractice Insurance Should Tell Clients*, TEX. LAW. (June 22, 2009), <https://www.law.com/texaslawyer/almID/1202431632489/Report-Counsel-Without-Malpractice-Insurance-Should-Tell-Clients/> [<https://perma.cc/3X85-9FDV>] with GRIEVANCE OVERSIGHT COMM., *supra* note 348, at 2.
354. GRIEVANCE OVERSIGHT COMM., *supra* note 348, at 2.
355. *Id.* at 2, 6-7.
356. Fortney, *supra* note 64, at 203-04; Mary Alice Robbins, *State Bar Board Overwhelmingly Rejects Insurance-Disclosure Rule*, TEX. LAW., Feb. 8, 2010.
357. See H.B. 2825, 81st Leg. Sess. (Tex. 2009). The bill died in the House committee. See Campbell & Chadwick, *Talk, Talk, Talk: Background Discussions About the Proposed Requirement of Disclosure of Lawyer E&O Insurance* (Oct. 30, 2009), <http://bruceacampbell.com/category/liability-insurance/> [<https://perma.cc/ZAP3-E6PV>]. That bill apparently did not move forward because the Supreme Court was still studying the issue, but it raised concerns among some lawyers that if a disclosure rule was not adopted, the legislature might become more involved in lawyer regulation. See Chuck Herring, *Pro: Disclosure Should be Required*, 72 TEX. B.J. 822, 822 (Nov. 2009); Robbins, *State Bar Board Recommends Against Insurance Disclosure*, TEX. LAW., Feb. 1, 2010.
358. See Fortney, *supra* note 64, at 204; Robbins, *supra* note 356.
359. Bruce A. Campbell, *A Viewpoint on Disclosure of Malpractice Insurance by Texas Lawyers*, CAMPBELL & ASSOCS. L. FIRM, P.C. (July 2010), <https://www.clegal.com/wp-content/uploads/2012/10/A-Viewpoint-on-Disclosure-of-Malpractice-Insurance-by-Texas-Lawyers1.pdf> [<https://perma.cc/CX9U-D5D9>].
360. See *id.*; Fortney, *supra* note 64, at 206.
361. STATE BAR OF TEX., *PLI Disclosure Survey of the Public - November 2009*, <https://www.texasbar.com/pliflashdrive/material/PublicSurvey.pdf> [<https://perma.cc/4PJB-BVZH>].
362. Chris Fick & Greg Liddell, *Personal Liability Insurance: Public Opinion Focus Group Study*, 9, 12 (Jan. 15, 2010), [https://www.texasbar.com/pliflashdrive/material/SBOT%20FG%20Report\\_Final\\_V3.pdf](https://www.texasbar.com/pliflashdrive/material/SBOT%20FG%20Report_Final_V3.pdf) [<https://perma.cc/UH6G-LNZQ>].
363. See Mary Alice Robbins, *The Report Card: Grading Roland Johnson's Term as State Bar President*, TEX. LAW., June 7, 2010.
364. See Letter from Juanita Valdez-Cox, Exec. Dir. of La Union del Pueblo Entero, to Bd. of the State Bar of Tex. (Dec. 14, 2009); Letter from Tom Smith, Dir., Public Citizen, Tex. Office, to Roland K. Johnson, President, State Bar of Tex. (Dec. 30, 2009); Fortney, *supra* note 64, at 208-09.
365. See *Draft Official Minutes, State Bar of Tex. Board of Directors Meeting* (Jan. 28-29, 2010), [https://www.texasbar.com/AM/Template.cfm?Section=Meeting\\_Agendas\\_and\\_Minutes&Template=/CM/ContentDisplay.cfm&ContentFileID=319](https://www.texasbar.com/AM/Template.cfm?Section=Meeting_Agendas_and_Minutes&Template=/CM/ContentDisplay.cfm&ContentFileID=319) [<https://perma.cc/G8Q9-PUP7>].
366. *Id.*
367. Letter from Roland K. Johnson, President, State Bar of Tex., to Chief Justice Wallace B. Jefferson, Tex. Supreme Court (Feb. 2, 2010).
368. *Id.* at 2.
369. See *id.* The 2009 survey asked respondents to list the factors that influenced their decision to hire a lawyer but did not provide a menu of options from which to select. STATE BAR OF TEX., *supra* note 361.
370. Tex. Sup. Ct. Advisory, *Court Decides Against Mandatory-Professional-Liability Insurance Disclosure* (Apr. 16, 2010) [http://www.txcourts.gov/All\\_Archived\\_Documents/SupremeCourt/CourtNewsAndAdvisories/advisories/Professional\\_Insurance\\_Disclosure\\_041610.htm](http://www.txcourts.gov/All_Archived_Documents/SupremeCourt/CourtNewsAndAdvisories/advisories/Professional_Insurance_Disclosure_041610.htm) [<https://perma.cc/J599-8QVJ>].
371. Letter from Chief Justice Jefferson, *supra* note 346, at 1.
372. *Id.*
373. Indeed, Charles Herring offered such evidence when he first requested that the Supreme Court look at the issue. See Herring, *supra* note 344 (noting that "when a lawyer shows that he has no malpractice insurance, I almost never take a case, regardless of the wrongdoing"); see also Bousquet, *supra* note 43, at 11 (describing instances of large default judgments against uninsured lawyers); Elder, *supra* note 26, at A1 (describing client who had an uncollectable \$10 million judgment against an uninsured lawyer).
374. Letter from Chief Justice Jefferson, *supra* note 346.

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375. Any disclosure requirement could impose on lawyers an obligation to notify clients if they become uninsured during the representation and indeed, some states already impose this requirement. *See, e.g.*, PA. RULES OF PROF'L CONDUCT R. 1.4 (c) (2019); S.D. RULES OF PROF'L CONDUCT R. 1.4 (c) (2019).
376. For example, the Supreme Court declined the invitation to weigh in on the subject of mandatory pro bono. One justice noted that the Court's primary role was adjudicating disputes, and that it preferred to leave difficult issues, such as access to justice, to the legislature. *State Bar v. Gomez*, 891 S.W. 2d 243, 247–48 (Tex. 1994) (Gonzales, J., concurring).
377. *See Rick Casey, The Coddled Lawyers of Our Fair State*, HOUSTON CHRON., Apr. 20, 2010 (describing two Texas Supreme Court decisions making it more difficult for plaintiffs to recover in certain types of malpractice cases).
378. Steve Miller, *Texas Tops in State Supreme Court Election Fundraising*, TEX. MONITOR, Jan. 3, 2018.
379. *See* STATE BAR OF TEX., 2018 Judicial Poll, Final Vote Summary (Feb. 6, 2018), <https://www.texasbar.com/AM/Template.cfm?Section=Home&ContentID=39261&Template=/CM/ContentDisplay.cfm> [<https://perma.cc/R9YK-J27P>].
380. ENDORSEMENTS FOR JUSTICE PHIL JOHNSON, CAMPAIGN FOR THE TEXAS SUPREME COURT, <https://www.justicephiljohnson.com/endorsements/> [<https://perma.cc/4LYN-CMEE>] (last visited Dec. 7, 2016); ENDORSEMENTS FOR JUSTICE EVA GUZMAN, CAMPAIGN FOR THE TEXAS SUPREME COURT, <https://www.evaguzman.com/endorsements/> [<https://perma.cc/2DE4-7BFU>] (last visited May 26, 2020).
381. *See supra* notes 214, 255, 301, and 344 and accompanying text. The Nevada and Washington Supreme Courts previously initiated efforts to look at insurance disclosure, but only after the ABA asked them to adopt its Model Court Disclosure Rule. The Texas and New Jersey Supreme Courts seemingly ignored that request and did not act until lawyers in those states raised the issue.
382. *See* Telephone Interview with Michelle Points, *supra* note 136 and accompanying text.
383. *See supra* text accompanying note 186. It is unclear who initiated the move to mandatory insurance in the 1970s in Oregon, but it seems to have come from within the OSB.
384. In California, the Supreme Court may not have acted because the legislature was attempting to address the issue.
385. *See, e.g.*, Joel Stashenko, *Lippman Announces Pro Bono Requirement for Bar Admission*, LAW.COM (May 2, 2012) (describing New York Chief Judge's initiative to require all bar applicants to provide fifty hours of pro bono representation).
386. There were occasional attempts by individual lawyer-legislators to raise the need for insurance requirements in Texas and New Jersey, but they failed to garner support. *See supra* notes 296, 315, 357 and accompanying text. In fact, all of the legislators in California (Willie Brown, Lloyd Connelly, and Hannah-Beth Jackson), New Jersey (Jon Bramnick and Nicholas Scutari), and Texas (Elliott Naishtat) who introduced legislation concerning mandatory LPL insurance were lawyers.
387. *See* Resolution Process, *supra* note 125 and accompanying text (discussing the Idaho resolution process); TEX. GOV'T CODE §§ 81.0877, 81.0878 (West 2018) (requiring a membership vote for proposed disciplinary rule changes).
388. *See supra* note 207 and accompanying text.
389. Courts may be more willing to disregard lawyer opposition when regulatory proposals affect the courts' work, as was the case with Washington's licensing of LLLTs and New Jersey's rules requiring greater candor to the court. *See supra* note 193 and accompanying text.
390. *See* WASH. STATE BAR ASS'N, MANDATORY MALPRACTICE INSURANCE TASK FORCE, REPORT TO WSBA BOARD OF GOVERNORS, *supra* note 16, at 63–66.
391. *See supra* note 219 and accompanying text: Telephone interview with Michelle Points, *supra* note 136; Petition of the State Bar of Nevada, ADKT 534, *supra* note 9, at 7.
392. *See* Order Denying Petition for Amendment to Supreme Court Rule 79, ADKT 534, *supra* note 30. The State Bar website does not advise the public that this information is available.
393. Morgan & Watson, *supra* note 83, at 43.
394. Only Virginia (traditionalistic) and West Virginia (traditionalistic/individualistic) are exceptions. *See* ABA STANDING COMM. ON CLIENT PROTECTION, STATE IMPLEMENTATION OF ABA MODEL COURT RULE, *supra* note 61, at 5–6.
395. In 2019—fifteen years after the ABA adopted its Model Court Disclosure Rule—the New Jersey Supreme Court indicated it would require disclosure by insured lawyers as to whether they carry insurance, but seemingly is not requiring disclosure by uninsured lawyers. *See* Notice to the Bar—Ad Hoc Committee on Attorney Malpractice Insurance, *supra* note 322 and accompanying text. That requirement has yet to be implemented.



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396. Nor do the case studies suggest that a state legislature with statutory responsibilities to review the State Bar's activities will promote significant public-regarding regulation. In recent years, the Texas legislature has not focused attention on the issue of uninsured lawyers or other public protection measures commonly found in other states. *See, e.g.*, STANDING COMM. ON CLIENT PROTECTION, AM. BAR ASS'N REPORT: STATE BY STATE ADOPTION OF ABA CLIENT PROTECTION PROGRAMS (2015), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/state\\_by\\_state\\_cp\\_programs.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/state_by_state_cp_programs.pdf) [<https://perma.cc/W5H3-YMR7>] (reflecting that Texas has not adopted most ABA-recommended client protection programs). It is possible that a state with a full-time legislature, more frequent legislative reviews of the State Bar, and a less traditionalistic political culture might adopt more public-regarding lawyer regulation.
397. *See Full-and Part-Time Legislatures*, NAT'L CONF. OF STATE LEGISLATURES (June 14, 2017), <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx>.
398. *See Disciplinary Board Makes it Easy for Public to Know if Lawyers Have Professional Liability Insurance*, PA. SUP. CT. DISCIPLINARY BD. (May 10, 2017), <https://www.padisiplinaryboard.org/news-media/news-article/3/disciplinary-board-makes-it-easy-for-public-to-know-if-lawyers-have-professional-liability-insurance> [<https://perma.cc/TTR3-DLWP>]; Mich. Sup. Ct., Administrative Order No. 2003-5 (Aug. 6, 2003).
399. For example, the ABA Commission on Ethics 20/20, which drafted revisions in the *Model Rules*, was composed entirely of lawyers and judges. *See* ABA Comm'n on Ethics 20/20, *About Us*, AM. BAR ASS'N, [https://www.americanbar.org/groups/professional\\_responsibility/committees\\_commissions/aba-commission-on-ethics-20-20/about\\_us/](https://www.americanbar.org/groups/professional_responsibility/committees_commissions/aba-commission-on-ethics-20-20/about_us/) [<https://perma.cc/LM3Q-URKS>] (last visited May 26, 2020).
400. *See supra* note 115 and accompanying text; Wash. State Bar Ass'n Bylaws § 6 (A) (2018), [https://www.wsba.org/docs/default-source/about-wsba/governance/proposed-bylaw-amendments/bylaws-amended-may-17-2018-1.pdf?sfvrsn=ba3c04f1\\_17](https://www.wsba.org/docs/default-source/about-wsba/governance/proposed-bylaw-amendments/bylaws-amended-may-17-2018-1.pdf?sfvrsn=ba3c04f1_17) [<https://perma.cc/ZVS9-FWYX>].
401. *See supra* note 304 and accompanying text.
402. *See supra* note 340 and accompanying text.
403. Order Scheduling Public Hearing and Requesting Public Comment, ADKT 534, *supra* note 268.
404. The impact of public opinion and public engagement on political decisionmakers is highly contingent on context. For a discussion of some of the research on this issue, see Anne Rasmussen et al., *With a Little Help from the People? The Role of Public Opinion in Advocacy Success*, 51 COMP. POL. STUD. 139, 140–47 (2018).
405. *See also* Fred C. Zacharias, *The Myth of Self-Regulation*, 93 MINN. L. REV. 1147, 1174–75 (2009); Fred C. Zacharias & Bruce A. Green, *Rationalizing Judicial Regulation of Lawyers*, 70 OHIO ST. L.J. 73, 94 (2009).
406. Such laws might include measures to protect client trust accounts (e.g., random audits), to license non-lawyer legal services providers, or to require lawyer disclosure of confidential information to protect the public.
407. *See supra* note 2 and accompanying text. Arizona and California license document preparers. *See* ARIZ. CODE JUD. ADMIN. §§ 7-201, 7-208 (2019); CAL. BUS. & PROF. CODE § 6400 (West 2019).
408. *See* 22 NYCRR § 1240.2(j) (2019); N.J. RULES OF PROF'L CONDUCT R. 5.1(a), 5.3 (2019).
409. Media attention in Nevada and New Jersey may have contributed to the Supreme Courts' decisions in those states to study the LPL insurance issue. It did not, however, seem to play a role in persuading the courts to adopt an insurance requirement or strong disclosure rules.