

Malpractice Proposal Needs Member Comment

by Karen A. Gould



At its October 2007 meeting, the Virginia State Bar Council directed the Special Committee on Lawyer Malpractice Insurance to develop a proposal to require Virginia's lawyers to carry legal malpractice insurance. This action by the council is a classic illustration of the point made by VSB President Howard W. Martin in his President's Column on page 12. The VSB does not act independently of the will of its members and the Supreme Court of Virginia. The VSB's many volunteers direct the operation of the VSB and steer the path for regulation of its members, subject to approval by the Court. In this case, the Special Committee on Lawyer Malpractice Insurance is acting at the direction of the council, which includes members elected by the lawyers of each judicial circuit and the elected chairs and president of the three VSB conferences, along with nine at-large members appointed by the Supreme Court.

This direction from the council came after almost a year of debate by the Lawyer Malpractice Insurance Committee on whether malpractice insurance should be a requirement of bar membership for those who represent clients drawn from the general public in private-practice settings. The committee was divided on the issue and asked the council for its opinion on whether the concept should be pur-

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sued. Debate at the October council meeting included proponents who contend the burden on attorneys of requiring insurance is outweighed by the public protection needs of their clients. Opponents argued that, with about 90 percent of Virginia lawyers reporting that they are insured, the bar doesn't have a problem.

After hearing the arguments pro and con and debating the topic, the council by a vote of 38–21 directed the malpractice insurance committee to develop one or more proposals "for mandatory malpractice insurance for Virginia attorneys engaged in private practice drawing clients from the general public." The recommended proposal(s) will be considered at a

subsequent council meeting. Just because the council has directed the development of a mandatory malpractice insurance rule is not determinative of whether the requirement will be approved either by the council or by the Supreme Court.

Once the proposal is developed, it will be published for public comment. At that time, I urge you to provide the bar with your comments and to contact council members who represent your circuit to express your opinion. To locate a council member from your circuit, consult the list on page 4 of this magazine, or search for your circuit at www.vsb.org/site/about/council. Council members are your representatives; in order for them to vote intelligently on this issue, they need your feedback. We are fortunate to have a system of self-regulation, but a true system of self-regulation needs the involvement of every lawyer. Please let us hear from you. ☺