

Counsel Column: Thank You for Your Service: Malpractice Coverage for Pro Bono Work

We hope you enjoy this new column from PLF General Counsel.

By Heather Bowman

In 1989, the members of the Oregon State Bar adopted the Pro Bono Aspirational Standard as a goal for Oregon attorneys. The Oregon Supreme Court also recognized the importance of pro bono legal services to the community by incorporating support of pro bono activities into the Oregon State Bar *Statement of Professionalism*, adopted in 2019.

Pro bono service “includes all uncompensated services performed by lawyers for the public good. . . Each lawyer in Oregon should endeavor annually to perform 80 hours of pro bono services. Of this total, the lawyer should endeavor to devote 20 to 40 hours or to handle two cases involving the direct provision of legal services to the poor, without an expectation of compensation. If a lawyer is unable to provide direct legal services to the poor, the lawyer should endeavor to make a comparable financial contribution to an organization that provides or coordinates the provision of direct legal services to the poor.” OSB Policy 12.100. This 80-hour standard includes all kinds of community volunteer work from giving free legal help to non-legal volunteer work in any area.

Oregon’s mandatory legal malpractice coverage is an important administrative consideration for any attorney doing pro bono legal work. For attorneys who already carry PLF primary coverage, no extra steps are required. The PLF plan covers individual attorneys whether in their regular employment or doing pro bono legal work.

Many Oregon lawyers do not have PLF coverage because they are eligible for a coverage exemption because they work in-house for a corporation or are employed by a government entity. Those lawyers may still want to support the legal needs in their communities. Fortunately, they have multiple options for doing pro bono legal work, even if they do not already carry their own PLF primary coverage.

VOLUNTEER WITH AN OSB CERTIFIED PRO BONO PROGRAM

The PLF provides Pro Bono Coverage free of charge to OSB Certified Pro Bono Programs. Lawyers who do not have their own PLF coverage can do pro bono legal work through these programs at no cost to the volunteer or organization. Programs exist across the state and in many practice areas. The Bar maintains a directory of volunteer opportunities at: <https://www.osbar.org/probono/VolunteerOpportunities.html>. Search for “OSB Certified” to find these programs.

The Oregon State Bar certifies new programs and requires the program to meet the requirements of OSB Policy 12.101. The application must show that there are policies and procedures to ensure volunteers provide good quality legal services. Program review focuses on how the program trains and supports attorneys, matches clients to appropriate attorneys, and adequately tracks clients.

A PLF Pro Bono Plan provides primary limits that are shared among all volunteers who do pro bono legal

work for a particular OSB Certified program who do not carry their own PLF coverage. This means that all the volunteers for that program who are relying on the Pro Bono Plan share an annual \$300,000 indemnity limit and \$75,000 claims expense allowance.

If the program is not OSB Certified, investigate whether the volunteer program has coverage for volunteer lawyers.

An Oregon lawyer without PLF coverage may also do pro bono work through other volunteer legal services programs that provide professional liability coverage for the volunteer through an “Acceptable Alternative Insurer” for the work of volunteer lawyers. An acceptable alternative insurer is defined in PLF Policy 3.150(D)(1) but generally means the coverage must be similar to PLF primary coverage in applicable limits and scope of coverage.

It is your responsibility as the volunteer lawyer to confirm whether the organization you would like to volunteer for has such coverage in place.

OBTAIN PLF COVERAGE FOR THE DURATION OF THE PRO BONO PROJECT

A third option for lawyers who do not already have PLF primary coverage is to pay for PLF coverage for the duration of a pro bono project. Lawyers are required to have PLF coverage at the time they perform the legal services. PLF coverage is “claims made” and includes automatic Extended Reporting Coverage (“tail” coverage), so if a claim is made against you after the pro bono project is over, coverage is available if you had PLF coverage at the time you performed the work. Even if you have Active Pro Bono membership status with the Oregon State Bar, you still need coverage for any period when you are providing pro bono legal services.

Buying short-term coverage makes good sense for a short-duration project. In 2024, one month of PLF coverage is less than \$300. (Please note that generally the minimum payment for PLF coverage is per quarter, but you can be reimbursed for unused full months of coverage. For a quote or additional quarterly installment information, please call PLF Accounting at 503.924.1771.) You may pay the assessment yourself, or your employer can pay the

assessment on your behalf as a way of supporting pro bono service.

OBTAIN ALTERNATIVE COVERAGE THROUGH YOUR EMPLOYER

Lawyers who are employed by an organization that provides liability coverage for employee-performed pro bono work—such as an errors and omissions (E&O) policy or a directors and officers (D&O) policy—are not required to have separate PLF coverage to do pro bono work. Although individual lawyers cannot purchase their own pro bono coverage except through the PLF, if you are employed exclusively by a corporation or nonprofit that has the appropriate coverage, you do not need to obtain your own coverage. It is up to you as the volunteer lawyer to ensure that the appropriate coverage is in place before engaging in any pro bono services.

Pro bono service is an important civic duty that legal professionals owe to their communities. The PLF supports this aspiration and encourages Bar members who wish to fulfill their pro bono goals through legal services to explore the options discussed above when considering potential volunteer opportunities. We are happy to answer any questions and walk through different coverage scenarios with you. ■



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