

NOTICE TO THE BAR – AD HOC COMMITTEE ON ATTORNEY MALPRACTICE INSURANCE; SUPREME COURT ACTION AND NEXT STEPS

In June 2017, the Supreme Court Ad Hoc Committee on Attorney Malpractice Insurance submitted its report and recommendations to the Court. The Ad Hoc Committee's three recommendations related to (1) whether to require malpractice insurance; (2) whether to require reporting of malpractice insurance status; and (3) whether to require attorneys to affirmatively disclose to clients if they lack malpractice insurance. The report was published for comment in November 2017. It is available at <https://www.njcourts.gov/courts/assets/supreme/reports/2017/attmalpracticeinsurance.pdf>

The Supreme Court reviewed the Advisory Committee's recommendations as part of the 2016-2018 rules cycle, taking into consideration the comments received as well as oral statements made at the May 2018 rules hearing. This notice memorializes the Court's action on the Ad Hoc Committee's three recommendations and the next steps.

(1) Mandatory Malpractice Coverage

The Ad Hoc Committee in its report recommended that the Court not adopt a requirement of mandatory malpractice coverage for all attorneys engaged in the private practice of law. The Court agreed with and adopted the recommendation of the Ad Hoc Committee and declined to impose a requirement of mandatory malpractice coverage for all attorneys engaged in the private practice of law.

(2) Mandatory Reporting as an Alternative to Mandatory Malpractice Coverage

Rather than a mandatory requirement that attorneys have malpractice insurance, the Ad Hoc Committee instead recommended adoption of a reporting requirement, which would require all attorneys to file (or to cause an insurer to file) with the Court a certificate of insurance setting forth basic policy information and any policy amendments, renewals, or terminations. The Ad Hoc Committee further proposed that this information be accessible by the public in the same manner as the information required under Rules 1:21-1A, -1B, and -1C.

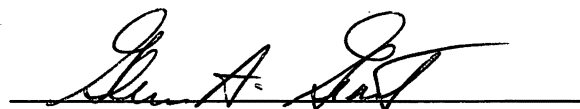
After considering the report and the comments received, the Court determined to approve this recommendation of the Ad Hoc Committee for a reporting requirement for attorneys. The Court has not yet, however, acted on the specific court rule proposed by the Ad Hoc Committee, instead asking that the Administrative Director of the Courts and the Clerk of the Supreme Court develop appropriate procedures to implement the reporting requirement. Once those procedures have been developed, the Court will

issue a notice announcing the details, which will include when and how consumers can access attorney malpractice coverage information online.

(3) Mandatory Disclosure to Clients as an Additional Alternative to Malpractice Coverage

As the second part of the alternative to mandatory malpractice coverage, the Ad Hoc Committee also recommended adoption of a requirement that attorneys without malpractice coverage affirmatively disclose to clients that lack of professional liability insurance. The Court, after considering the comments received, withheld action on this recommendation for mandatory disclosure of non-coverage. The Court will revisit this particular recommendation at a later date.

Questions regarding this notice may be directed to Heather Joy Baker, Clerk of the Supreme Court, at (609) 815-2955 or HeatherJoy.Baker@njcourts.gov.

A handwritten signature in black ink, appearing to read "Glenn A. Grant", is written over a horizontal line.

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: March 11, 2019