

# No Malpractice Coverage?

NOT A BARRIER TO PRO BONO SERVICE

By C. Michael Bryce, Candace Crowley, and Ashley Lowe



## All Lawyers Have Great Skills to Offer Pro Bono

Lawyers at each stage of their careers have much to offer in the way of pro bono service. New lawyers have enthusiasm and a desire to serve clients and earn courtroom experience. At mid-career, lawyers are proud to give back to the profession that has shaped their lives. Seasoned lawyers have the wisdom and experience to skillfully handle particularly challenging matters. For the retired or transitioning lawyer, pro bono service can fulfill the desire to stay involved in the profession.

## The Perceived Barrier: Malpractice Coverage

Carrying professional liability malpractice insurance is, of course, a responsible business practice, but it is not mandatory for Michigan lawyers. Some cannot afford to maintain malpractice insurance coverage—those just entering practice on their own; those transitioning toward, or in, retirement;<sup>1</sup> and those who are unemployed. Lawyers in certain settings—including those working in law schools—do not have access to coverage through their employers. How, then, can these lawyers obtain the malpractice protection necessary to responsibly provide pro bono legal services?

## Four Ways to Access Malpractice Coverage for Pro Bono Cases

There are four ways Michigan lawyers can access malpractice insurance coverage for their pro bono work. First, the 40 Access to Justice (ATJ) programs around the state (see sidebar on the following page) either carry their own malpractice insurance that extends to their pro bono lawyers or offer protection through a partnership with the State Bar of Michigan Pro Bono Initiative's Michigan Litigation Assistance Partnership Program (MI-LAPP). Each of the state's law schools have clinical programs, most of which meet the ATJ criteria. Significantly, pro bono cases from these clinics are covered by malpractice insurance. In short, if a law school has a clinical program involving pro bono lawyers, there is a plan for malpractice coverage.

Second, lawyers who want to provide pro bono services but do not have malpractice insurance for such work can contact an ATJ program and ask for a "reverse referral." If a client is income- and

asset-eligible under the ATJ program's eligibility guidelines and the case fits within the program's case priorities, most ATJ programs can add the client to their docket and provide malpractice coverage to the pro bono lawyer. There are additional benefits of working through an ATJ program that may make the lawyer's pro bono experience easier and more satisfying. For example, most ATJ programs screen clients for income eligibility, assess the merits of the case, understand that the case meets community priorities, offer technical assistance, and provide formal pro bono recognition.

Third, if the client matter is not able to fit in an ATJ program through a reverse referral, the State Bar MI-LAPP may be able to offer malpractice protection. Lawyers can request coverage if (1) the client's income is within 200 percent of federal poverty guidelines, (2) the client's liquid assets do not exceed \$5,000, and (3) the case is a meritorious civil matter that would not be handled by a private lawyer because there is no likelihood of a fee.<sup>2</sup>

To be sure, MI-LAPP malpractice coverage extends only to the particular pro bono matter and the lawyer handling that matter. The policy is secondary to any other protection available to the lawyer. If there is none, the MI-LAPP policy is the primary coverage.

The policy is offered through the CIMA Liability Protection Program for Legal Services Professionals and Public Defenders. It provides up to \$250,000 of coverage for each claim and \$500,000 in aggregate for professional liability and up to \$100,000 of coverage for each claim and \$300,000 in aggregate for personal-injury liability. The CIMA policy is a claims-made policy, and coverage is conditioned on the lawyer immediately notifying the State Bar of any potential claim.

Finally, many lawyers who do not represent clients on a full-time basis may purchase a limited practice policy, which allows them to undertake pro bono cases on behalf of low-income individuals and occasionally represent a friend or family member. Limited practice policies are perfect for the lawyer whose regular employment might be in the law-school environment or nonlegal setting or who may be slowing down a practice. Policies that allow an average of five to ten hours of legal work a week can be purchased starting around \$300 annually. Note, however, that an underwriter can quote a premium price for any kind of legal work or practice type, but the limited practice policy is one option to explore for pro bono services.

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## ACCESS TO JUSTICE PROGRAMS

Below are the Access to Justice programs that can extend malpractice coverage to lawyers accepting pro bono referrals or who have partnered with the State Bar of Michigan to offer that coverage. These programs meet the Access to Justice Fund<sup>3</sup> criteria established by the Michigan State Bar Foundation and the State Bar Pro Bono Initiative and are eligible to receive donations under Michigan's Pro Bono Voluntary Standard. Many of these programs have locations throughout the state (the listed city is where the main office is located):

American Civil Liberties Union Fund of Michigan, Detroit  
 Bay Area Women's Center, Bay City  
 Center for Civil Justice, Saginaw  
 Community Legal Resources, Detroit  
 Counsel & Advocacy Law Line, Southfield  
 Detroit Metropolitan Bar Association Foundation, Access to Justice Programs, Detroit  
 Diocese of Kalamazoo Immigration Assistance Program, Kalamazoo  
 Elder Law of Michigan, Lansing  
 Farmworker Legal Services, Bangor  
 First Step Legal Advocacy Project, Taylor  
 Free Legal Aid Clinic, Detroit  
 Freedom House, Detroit  
 Guild/Sugar Law Center, Detroit  
 HAVEN, Pontiac  
 International Institute of Metropolitan Detroit, Inc., Detroit  
 Justice for Our Neighbors, Grand Rapids  
 Lakeshore Legal Aid, Port Huron  
 Legal Aid & Defender Association Civil Law Group, Detroit  
 Legal Aid of Western Michigan, Grand Rapids  
 Legal Assistance Center, Grand Rapids  
 Legal Assistance Program of Macomb County, Clinton Township  
 Legal Services of Eastern Michigan, Flint  
 Legal Services of Northern Michigan, Escanaba  
 Legal Services of South Central Michigan, Inc., Ann Arbor  
 Michigan Indian Legal Services, Traverse City  
 Michigan Legal Services, Detroit  
 Michigan Migrant Legal Assistance Project, Grand Rapids  
 Michigan Poverty Law Program, Ann Arbor  
 Michigan Protection & Advocacy Services, Lansing  
 MSU College of Law, Clinical Law Programs, East Lansing  
 Neighborhood Legal Services of Michigan, Detroit  
 Pro Se Bankruptcy Project, Inc., Detroit  
 Salvation Army, William Booth Legal Aid Clinic, Detroit  
 Sixty Plus, Inc.—Elder Law Clinic, Lansing  
 Student Advocacy Center of Michigan, Ann Arbor  
 Thomas M. Cooley Law School, Clinical Law Programs, Lansing  
 Underground Railroad Civil Legal Aid Program, Saginaw  
 University of Detroit Mercy School of Law, Clinical Law Programs, Detroit  
 University of Michigan Law School, Clinical Law Programs, Ann Arbor  
 Washtenaw County/EMU Legal Resource Center, Ypsilanti  
 Wayne State University Law School, Clinical Law Programs, Detroit

## Where to Go Next

If you are a lawyer who has been reluctant to provide pro bono services because of a lack of malpractice insurance, please contact an ATJ Fund program in your community or the State Bar at [pbi@mail.michbar.org](mailto:pbi@mail.michbar.org). Rest assured that your services will be put to good use—with malpractice coverage in place. ■



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## FOOTNOTES

1. A retired attorney with malpractice insurance tail coverage may be precluded by that coverage from participating in the programs described in this article. If you are affected by such a policy clause, contact Rob Mathis, SBM pro bono service counsel, at [rmathis@mail.michbar.org](mailto:rmathis@mail.michbar.org).
2. For details, visit the SBM website at <http://www.michbar.org> (accessed September 9, 2011).
3. For information about the ATJ Fund, visit <http://www.atjfund.org> (accessed September 9, 2011). The Access to Justice Campaign is a partnership of the State Bar of Michigan, the Michigan State Bar Foundation, and Michigan's civil legal aid programs to increase resources for civil legal aid to the poor.