

INSURANCE:
Lawyers need none

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case. "That is simply not true."
Only Oregon makes lawyers carry insurance, but 26 other states require them to disclose whether they have coverage so clients can make a more informed decision about whom to hire, according to surveys by the American Bar Association and HALT, a legal reform group.

The Kentucky Supreme Court, though, has rejected proposals to require such disclosures, most recently in 2006.

The court didn't give its reasons, but former Kentucky Bar Association President Charles E. "Buzz" English Jr. of Bowling Green, said concerns were raised that identifying attorneys without insurance might encourage claims against those who are covered.

Another former bar president, Beverly Storm of Covington, said the KBA in 2000 considered requiring all lawyers to get insurance but dropped the proposal for fear it would be too expensive, especially for struggling sole practitioners.

Instead, the state Supreme Court adopted a rule mandating insurance only for lawyers and firms who shield their personal assets by incorporating into limited liability companies.

Liability coverage is available for as little as \$1,000 a year, said Asa "Pete" Gullett III, chief operating officer of Lawyers Mutual Insurance Co. of Kentucky, who said there is no



Jamie Kleinhelter won a case against her lawyer but isn't likely to collect much of the settlement. ALTON STRUPP/THE COURIER-JOURNAL

way of telling how many of the state's roughly 15,000 lawyers aren't insured.

In Oregon, where the bar has run its own insurance company since 1978 and annual premiums are \$3,500, the company's CEO, Ira Zarof, said "mandatory insurance has been a resounding success" and that "both the lawyers and the public have benefited immensely."

Pope, who represents plaintiffs in lawyer malpractice cases, said many lawyers pay more for their copy machines than the cost of insurance.

"We are supposed to be the protectors of justice and make sure our clients receive full, fair and adequate compensation," he said. "For a lawyer to choose not to carry insurance if they make a mistake, that is the height of hypocrisy."

William McMurry, Kentucky's only lawyer certified to handle legal malpractice cases

by the American Board of Professional Liability Attorneys, said some lawyers intentionally don't purchase liability coverage, knowing they won't be worth suing if they make a mistake. "They can duck into bankruptcy court and protect virtually everything, making it impossible to bring justice," he said.

Hiring a friend

Kleinhelter said she hired Bader because he was a friend of her husband and the only lawyer she knew.

She said he assured her that he had the skills to represent her when Aetna denied her claim for long-term disability coverage after she injured her shoulder and back in a fall in her tub.

Bader did not respond to calls and emails, but he admitted in court papers that he did nothing to advance Kleinhel-

ter's case other than to write a letter to Aetna.

When he stopped returning Kleinhelter's calls, she hired another lawyer, Will Driscoll, who in 2010 sued Bader for missing the deadline for suing Aetna.

In a deposition, Bader admitted he'd never handled a long-term disability claim.

"There were a lot of things going on at that time in my personal life," he said in the deposition.

"In hindsight," he said. "I probably should not have agreed to help her in the first place."

Jefferson Circuit Judge Judith McDonald-Burkman ruled summarily in Kleinhelter's favor in May 2011 and awarded her \$120,000, noting that the Social Security Administration had found her totally disabled and that a competent lawyer likely would have won or settled her case against Aetna.

But after making only a few payments, Bader filed for bankruptcy on Dec. 13 and later offered a reorganization plan that would pay her nothing, Kleinhelter has objected through a third lawyer, Matt Golden, alleging that Bader has concealed assets and under-reported his income. A hearing is set for July 9.

ABA backs disclosure

The American Bar Association recommends that states require lawyers disclose to their state's highest court whether they are covered by professional liability insurance and that such information be made available to the public.

Some states go further. Ohio makes lawyers reveal to pro-

spective clients whether they're covered and for the client to attest in writing that they are hiring the lawyer despite any lack of insurance. South Dakota makes lawyers disclose they're not insured on their letterhead. Washington mandates that coverage be listed on the profile page of every lawyer on the state bar's website.

Indiana, like Kentucky, has no disclosure requirement.

Opponents of such rules say they stigmatize lawyers who can't afford coverage. Many criminal defense lawyers don't purchase insurance, said Louisville lawyer Scott C. Cox, who does have it, because they are rarely sued for money damages.

But Gullett said that while personal injury and real estate lawyers generate the most claims, no area of the law is immune.

"I would never counsel a practicing lawyer not to have insurance," he said.

Storm, the former bar president, said she thinks there is "a lot of interest in taking another run at" a disclosure requirement in Kentucky, while McMurry said that, at the least, lawyers who advertise should be required to disclose they are uninsured.

Kleinhelter, noting that motorists must insure their vehicles, said she still can't believe that lawyers aren't required to have coverage. She said she lives now on \$1,000 a month—a fourth of her former salary.

"He had my future in his hands," she said of Bader, "and he cost me it."

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