

Proposed New Insurance Disclosure Rules (Revised)

**Proposed Amendment to Rule 9.6 of the California Rules of Court
and
Proposed New Rule 9.7 of the California Rules of Court**

**(As amended following February 16, 2007 Task Force meeting)
and
(Updated to be consistent with amendments to the
California Rules of Court, effective January 1, 2007)**

California Rules of Court

Rule 9.6. Roll of attorneys admitted to practice

The State Bar must maintain, as part of the official membership records of the State Bar, the Roll of Attorneys of all persons admitted to practice in this state. Such records must include the information specified in Business and Professions Code sections 6002.1 and 6064, rule 9.7 of these rules, and other information as directed by the Supreme Court.

Rule 9.7. ~~Insurance disclosure~~ Disclosure of Professional Liability Insurance

- (a) Each active member who is not exempt under subdivision (b) must certify to the State Bar in the manner that the State Bar prescribes:
 - (1) ~~Whether the member is currently covered by professional liability insurance~~ represents or provides legal advice to clients; and
 - (2) ~~Whether the member represents clients.~~ If the member represents or provides legal advice to clients, whether the member currently has professional liability insurance.
- (b) Each active member who is employed as a government lawyer or in-house counsel and does not represent or provide legal advice to clients outside that capacity must certify those facts to the State Bar in the manner that the State Bar prescribes. Members who provide this certification are exempt from providing information under subdivision (a).
- (c) Each member who transfers from inactive status to active status must provide the State Bar with the certification required under subdivision (a) or (b), as applicable, within thirty days of the effective date of the member's transfer to active status.
- (d) A member must notify the State Bar in writing of any change in the information provided under subdivision (a) or (b) within thirty days of that change.

- (e) The State Bar will identify each individual member who certifies under subdivision (a) that he or she ~~is not covered by~~ does not have professional liability insurance by making that information publicly available upon inquiry and on the State Bar's website or by a similar method.

- (f) A member who fails to comply with this rule in a timely fashion may be suspended from the practice of law until the member complies. If a member ~~supplies false information~~ knows or should know that the information supplied in response to this rule is false, the member will be subject to appropriate disciplinary action.

Comment

Rule 9.7(b) provides an exemption for a "government lawyer" or "in-house counsel" provided the member does not "represent or provide legal advice to clients outside that capacity." The basis of both exemptions is essentially the same. The purpose of this rule is to make information available to a client or potential client, through the State Bar, if a member is not covered by professional liability insurance. If a member is employed directly by and provides legal services directly for a private entity or a federal, state or local governmental entity, that entity presumably knows whether the member is or is not covered by professional liability insurance. The exemptions under this rule are limited to situations involving direct employment and representation, and do not, for example, apply to outside counsel for a private or governmental entity, or to counsel retained by an insurer to represent an insured.

Proposed New Rule 3-410 of the California Rules of Professional Conduct

(As amended following February 16, 2007 Task Force meeting)

California Rules of Professional Conduct

Rule 3-410. ~~Insurance disclosure~~ Disclosure of Professional Liability Insurance

- (A) A member who knows or should know that he or she is not covered by ~~is not covered by~~ does not have professional liability insurance shall inform a client at the time of the client's engagement of the member that the member ~~is not covered by~~ does not have professional liability insurance. The notice required by this paragraph shall be provided to the client in writing, ~~and the member shall obtain from the client a signed and dated acknowledgment of receipt of that notice.~~
- (B) If a member ~~is covered by professional liability insurance~~ does not provide the notice required under paragraph (A) at the time of a client's engagement of the member, and the member subsequently ~~ceases to be covered by~~ knows or should know that he or she no longer has professional liability insurance during the representation of the client, the member shall inform the client in writing within thirty days of the date that the member ~~ceases to be covered by~~ knows or should know that he or she no longer has professional liability insurance.
- ~~(C) Within thirty days of [insert effective date of this rule], a member shall inform in writing all existing clients for whom the member is currently rendering continuing legal services if the member is not covered by professional liability insurance.~~
- ~~(D)~~(C) Paragraphs (A), (B) and (C) ~~do~~ This rule does not apply to a member who is employed as a government lawyer or in-house counsel and does not represent or provide legal advice to clients outside that capacity.

Discussion

[1] ~~The disclosure obligation imposed Under by Paragraph (A) of this rule, a member who is not covered by professional liability insurance is required to disclose that fact directly to a client at the time of the engagement. This requirement applies with respect to new clients and new engagements with returning clients who engage a member to provide additional legal services. Paragraph (C) of this rule is transitional, and requires notice to existing clients for whom a member is currently rendering continuing legal services on the effective date of this rule. Notice is not required pursuant to Paragraph (C) if, for example, before the effective date of this rule, a member has completed the preparation of a will for a client or completed legal services relating to the incorporation of a client's business, if no continuing legal services are being provided for the client on the effective date of this rule. If, however, the same client returns for additional legal services after the effective date of this rule, notice would be required pursuant to Paragraph (A).~~

[2] A member may use the following language in making the disclosure required by Rule 3-410(A) ~~or Rule 3-410(C)~~, and may include that language in a written fee agreement with the client or in a separate writing:

“Pursuant to California Rule of Professional Conduct 3-410, I am informing you in writing that I ~~am not covered by~~ do not have professional liability insurance.”

[3] A member may use the following language in making the disclosure required by Rule 3-410(B):

“Pursuant to California Rule of Professional Conduct 3-410, I am informing you in writing that I ~~am no longer covered by~~ have professional liability insurance.”

[4] Rule 3-410(D) provides an exemption for a “government lawyer” or “in-house counsel” provided the member does not “represent or provide legal advice to clients outside that capacity.” The basis of both exemptions is essentially the same. The purpose of this rule is to provide information directly to a client if a member is not covered by professional liability insurance. If a member is employed directly by and provides legal services directly for a private entity or a federal, state or local governmental entity, that entity presumably knows whether the member is or is not covered by professional liability insurance. The exemptions under this rule are limited to situations involving direct employment and representation, and do not, for example, apply to outside counsel for a private or governmental entity, or to counsel retained by an insurer to represent an insured.