-----Original Message-----
From: Michael Kennedy [mailto:capmotion@earthlink.net]
Sent: Sunday, April 22, 2007 6:27 PM
To: jet@hogefenton.com
Cc: carmen.ramirez@ventura.courts.ca.gov; hmiller@girardikeese.com; hfujie@buchalter.com; john@mcnicholaslaw.com; joann@mnc.net; mdowning@co.la.ca.us; steve.silva@sdcda.org; dannimurphy@hotmail.com; jep@jpwrw.com; ssloanlaw@aol.com; dutton@infs.net; rutheash@aol.com; CDL-Member@yahoogroups.com

Subject: Malpractice insurance communication matter

ATTN: Jim Towery

I note that you are apparently behind the measure that would command attorneys to announce up front to their clients that they do not have malpractice insurance. Since you practice attorney malpractice law, I think you have a patent conflict of interest and should drop out of the Task Force that recommended such.

Although I have long-carried such insurance [greatly enriching insurance carriers, since I'll never need coverage], I think commanding publication of a person's status in that regard is utterly inappropriate. We cannot get information about the fact of a corrupt cop without leaping many hurdles and showing the materiality of such to our case [Pitchess], and then we can't share that information with others. And that is information about governmental corruption, which should be openly in the public domain [and perhaps even broadcast on a Megan's Law type registry]. But the fact of an attorney's lack of insurance coverage, which represents no badness whatsoever, must be trumpeted to his clients? That is outrageous.

As a separate issue, a government agency commanding the publication of communicative information has significant 1st Amendment issues [Wooley v. Maynard], which could invite decades of lawsuits against the State Bar also, which would doubtlessly cause an increase in my already grotesquely high Bar dues.

The State Bar is getting farther and farther from representing its members' interests, and more and more in the direction of its own liberty-infringing, regulatory agenda.

The Board of Governors should ashcan this absurd plan, and you should be ashamed of yourself for pressing it.

Mike Kennedy

Michael J. Kennedy
Ledger & Kennedy
Attorneys at Law
1111 East Tahquitz Canyon Way, #101
Palm Springs, CA 92262
760-320-6691
760-320-2121[fax]

Bercovitch, Saul

From: Chip Welch [chip_welch@hotmail.com]
Sent: Friday, May 11, 2007 3:47 PM
To: Bercovitch, Saul
Subject: Comment on Proposed New Rule 3-410 of the California Rules of Prof. Conduct

It is helpful that the discussion of the Proposed New Rule 3-410 of the California Rules of Professional Conduct includes suggested language for the wording of the disclosure. It would be useful if the discussion explained how a lawyer should handle making this disclosure when the attorney or law firm operates in more than one jurisdiction with similar disclosure requirements.

For example, Pennsylvania also requires mandatory liability insurance disclosure to new clients. Commentary to Pennsylvania Rule of Professional Conduct 1.4(c) includes suggested language that lawyers may use to provide this disclosure. Pennsylvania's language is different from California's suggested language.

It would be useful if the discussion explained how to properly provide these disclosures to the client when out-of-state requirements also apply. Must the lawyer include a separate disclosure statement for each state? Such a result would seem to invite confusion for the client who must read multiple disclosures. Does providing disclosure using the Pennsylvania suggested language satisfy the California disclosure requirements? Guidance on these issues in the discussion would be appreciated.

Sincerely,

Lyman C. Welch

Bercovitch, Saul

From: Karen Stein [karen@northgatelaw.com]
Sent: Monday, May 21, 2007 10:13 AM
To: Bercovitch, Saul
Subject: Comment on insurance disclosure rule

Exactly how is the consumer supposed to interpret the fact that an attorney either has or does not have insurance coverage? Does lack of coverage mean they are so good they don't need it or they are so bad they can't get it? Does having coverage mean they are afraid the potential of a claim or merely prudent? Does not having coverage mean they have no assets worth seizing? And how is the consumer to know how much coverage an attorney has?

This is another case of pointless bureaucracy. We already have too many people running around doing needless tasks. Let's not start another rat race.

Karen Stein

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May 21, 2007

VIA U.S. POST AND
FACSIMILE: (415) 538-2515

Saul Bercovitch, Staff Attorney
The State Bar of California
180 Howard Street
San Francisco, CA 94105-1617

Re: *State Bar Insurance Disclosure Rule*

Dear Mr. Bercovitch:

I understand that the State Bar is once again requesting public comment regarding the most recently revised proposed new insurance disclosure rule – proposed amendment to Rules 9.6 and 9.7 of the California Rules of Court. As such, please accept the following as my personal comments regarding this issue.

Of course, the State Bar's insistence on mandatory attorney disclosure to the client regarding one's existence (or non-existence) of malpractice insurance is rather curious, particularly, in light of the fact that at least 80% of those previous bar members that commented on the subject, commented negatively. Yet, in light of this fact, Mr. Towery and his grand, albeit sadly misguided, Task Force persevered.

Unfortunately, Mr. Towery and his "Task Force" are a prime example of why a majority of the attorneys of the State Bar believe the State Bar is a truly horrible institution, one that needs to have all of its funding cut off again in order to once more bring it back to reality. In this respect, we all recognize that when the State Bar is broke, at least it can't go around hurting innocent lawyers. But as soon as the State Bar and Task Forces like Mr. Towery's have ten bucks in their grubby little hands, they begin to regulate how and when an attorney is to make a "disclosure" regarding the existence or non-existence of malpractice coverage, boldly invading the attorney-client relationship without a care in the world as to how this will affect solo and small law firms. Of course, why should they? Indeed, Mr. Towery hails from a large San Jose law firm, whereas, Bar Governor James Scharf comes out of the San Jose U.S. Attorneys Office, obviously, neither one of whom cares a hoot about others that are not of their ilk.

Indeed, not only is the Task Force hopelessly misguided on this subject, but when Bar Governors such as James Scharf spout out: "Our ultimate mission is to protect the public. We're not really meant to be a trade organization, and I would think

the public – in deciding who to retain – should have information that helps them make good decisions." The obvious question arises – how would Mr. Scharf know anything about informing prospective clients about "making good decisions"? Admitted to the CA Bar in 1991, Mr. Scharf previously was in-house counsel for the California State Automobile Association and is now with the U.S. Attorney's Office. As such, he has always had one client – either a corporation or the U.S. Gooberment. He's never as much as once interviewed a prospective client. Furthermore, it is painfully clear that persons such as Mr. Schaff would, in any event, be in the exempt category under the Task Force's proposed rule.

Additionally, and equally as repulsive, is the fact that Mr. Towery proudly announces on the Hoge, Fenton website – http://www.hogefenton.com/towery.html – that he practices in the area of legal malpractice ("with an emphasis on professional liability and business litigation"), that he serves as the firm's "Ethics and Risk Management Partner," that he: "also specializes in matters relating to legal ethics. He serves as Adjunct Professor of Professional Responsibility at Lincoln Law School in San Jose. He is a former chair of the State Bar Discipline Committee, and has spoken and written widely on issues relating to legal ethics, the attorney-client relationship and attorneys' fees. Mr. Towery serves as counsel to lawyers and law firms, and has served frequently as an expert witness, regarding ethics issues."

Thus, if, as it is indicated above, Mr. Towery regularly practices in the area of legal malpractice, and whether as counsel for the plaintiff or the defendant, or as an "expert witness", wouldn't that constitute a conflict in terms of how he represents the State Bar and the "Task Force"? Doesn't it appear that a person in Mr. Towery's position would obviously want to arm-twist attorneys into buying malpractice coverage in order that more attorneys will hopefully be sued (and regardless of the merits of any such suit) so that he and his firm's business will grow? It certainly appears that way to the undersigned. Hence, doesn't Mr. Towery have a glaring conflict here? I believe so. And, yet, Mr. Towery proudly boasts that he is an "expert" as to legal ethics issues. Go figure!

In addition to the painfully embarrassing conflicts of those on the "Task Force", it is even more humiliating to the legal profession when one reviews the past agendas of the "Task Force" with respect to its "analysis" of the pros and cons of such a proposed rule change. I say this on account of the fact that there appears to be zero legal analysis of this rule in terms of the 1st Amendment to the U.S. Constitution (or to Article 1, §2 of the state's constitution).

If you were not already aware, please be advised by this response that the free speech clause of State's Constitution, Art. I, §2, enjoys existence and force independent of the U.S. Constitution's 1st Amendment. The state Constitution's free speech clause is at least as broad, and in many ways broader, than the comparable provision of the federal Constitution. The proposed amendment to Rules 9.6 and 9.7 of the California Rules of Court would result in the government compelling speech by the individual attorney.

Because speech results from what a speaker chooses to say and what he or she chooses not to say, the right comprises both a right to speak freely and also a right to refrain from doing so at all, and is therefore put at risk both by prohibiting a speaker from saying what he or she otherwise would say and also by compelling him/her to say what he/she otherwise would not say. The prohibition against compelled speech encompasses compelled access, where a speaker is required to disseminate the speech of another, even if not required to endorse the content. For corporations, as for individuals, the choice to speak includes within it the choice of what not to say. This general rule, that the speaker has the right to tailor the speech, applies not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather altogether avoid.

The United States Supreme Court has upheld constitutional challenges to compelled expression in two categories of cases: true compelled speech cases, in which an individual is obliged personally to express a message he/she disagrees with, imposed by the government; and compelled subsidy cases, in which an individual is required by the government to subsidize a message he/she disagrees with, expressed by a private entity.

Mandatory malpractice coverage disclosure wherein the government requires the attorney to disclose the existence or non-existence of such coverage to a prospective client, is properly classified as true compelled speech, since it requires the attorney to express specific content which he or she does not wish to present, as opposed to simply responding to any inquiry by the prospective client as to the existence or non-existence of such coverage.

In deciding whether, under the U.S. Constitution's 1st Amendment, a given regulation of speech or expressive activity is content based, and hence subject to strict scrutiny, or instead is content neutral, and hence subject to intermediate scrutiny (*i.e.*, time, place, and manner analysis), the California high court has stated that a restriction

is content neutral if it is justified without reference to the content of the regulated speech. Further, where the issue is compelled speech rather than prohibited speech, the inquiry is whether the regulation requires transmission of specific content.

Of course, mandatory malpractice coverage disclosure wherein the government compels the attorney (under penalty of punishment, including disbarment) to transmit specific information -- the existence or non-existence of such insurance coverage to a prospective client -- that the attorney does not wish to send to his/her/its client, and the fact that it is ostensibly consumer-related information, does not make it less entitled to 1st Amendment strict scrutiny. Also, mandating speech that a speaker, here, an attorney, would not otherwise make, necessarily alters the content of the speech between the attorney and the client.

So, because we've survived quite well here in California for over 150 years without such a rule, coupled with the obvious fact that a client is always free to inquire of the attorney whether or not he or she carries malpractice coverage, and since the "Task Force" has so shamelessly pushed the issue of mandatory disclosure of malpractice coverage (or the lack thereof), at a time when members of the "Task Force" admittedly emphasize their personal practice in this very area, and while the members of the Task Force have not spent two (2) minutes concerning themselves with the constitutional ramifications of this subject, and because the overwhelming majority of the Bar's membership is strongly against any rule that would require such mandatory disclosure as to the existence or non-existence of malpractice coverage, I respectfully submit that the rule should be summarily dumped by the State Bar. This is clearly a "lose-lose" situation, and one which will obviously be met with serious legal opposition in the event that the State Bar and/or the CA Supreme Court continues with their respective efforts in terms of attempting to implement these illegal rule changes.

Sincerely,

MAYO LAW CLINIC

By: WILLIAM MAYO

WTM/mf

-----Original Message-----
From: Frank Hoffman [mailto:f.hoffman.esquire@gmail.com]
Sent: Wednesday, May 23, 2007 3:37 PM
To: Pierce, Michelle
Subject: Re: Proposed New Insurance Disclosure Rules (Revised)

Inherent in any rulemaking is the questionable notion that the enforcement of the rule will actually make a situation better. Government administrators nationwide constantly imply that the institution of a regulation will solve or improve what is perceived as a problem. The problem for the regulated sector is that the control over study methodology is in the hands of those same government administrators. These individuals can easily rig such methodology and do so, all to prove that their regulations are having the desired effect (and then invariably that a few more rules or some more funding will nearly eliminate the problem). The public simply never gets good research to establish whether or not a regulation actually works as intended.

The insurance rules proposed are analogous. Notwithstanding the previous issues I raised -- that the insurance industry is not inherently virtuous, that the rule will amount to a free subsidy of the industry, and that the bar will not rate the quality of the insurance services, the same issues as presented in the government exist here. How will you determine independently if attorney services are better statewide due to the implementation of the rule? How will you reliably determine that legitimate claims are being paid at a higher rate than before the rule? Will the state bar unit that is designated to enforce the rule be conducting future studies on the efficacy of the rule?

Because I am certain that the Bar will not commission any reliable future outside study on this, because I have seen on the state and local governmental levels the corrupting influence the insurance displays, because the entanglement with a private business inherently carries with it unacceptable risks, and for all of the other reasons I mentioned, I oppose this or any rule that mandates, urges or encourages members to enrich the insurance industry.

If you approve it, at least have the intellectual integrity to forbid this bar unit from conducting studies on their own relevance.

Bercovitch, Saul

From: Bunniess@aol.com
Sent: Thursday, May 24, 2007 12:52 PM
To: Bercovitch, Saul
Subject: Mal Ins rules

As I said before, I don't think making attorneys disclose regarding coverage will change bad attorneys into good ones. It will just make it more costly as now ins companies can raise rates knowing more will need to buy from them.

Yes, I now have coverage but only because I felt that due to the change in bankruptcy rules, it was for my benefit to spend the money since the new law makes no sense to most of us! Not because I was worried about being sued.

I truly wish you would put forth more effort in getting complaints against attorneys timely handled. There is one old attorney here who has multiple complaints but he is still practicing and with no censure from you in regards to the complaints. I had two people contact you and file so I know there are complaints - plus the man in LA handling them told me there we weren't alone. This atty sleeps in court, misses hearings, etc. yet he continues on. What a wonderful Bar we pay for.

Patricia Johnson
122570

Bercovitch, Saul

From: Pierce, Michelle
Sent: Thursday, May 24, 2007 2:06 PM
To: Bercovitch, Saul
Subject: FW: Proposed New Insurance Disclosure Rules (Revised)

-----Original Message-----
From: Abdulaziz, Grossbart & Rudman [mailto:info@agrlaw.net]
Sent: Thursday, May 24, 2007 1:38 PM
To: Pierce, Michelle
Subject: Proposed New Insurance Disclosure Rules (Revised)

May 24, 2007

SENT VIA EMAIL ONLY!
michelle.pierce@calbar.ca.gov

Michelle Pierce
Administrative Assistant
State Bar of California
180 Howard Street
San Francisco, CA 94105

RE: Proposed New Insurance Disclosure Rules (Revised)

Dear Ms. Pierce:

Your files will reflect that I had previously written to the State Bar indicating that I did not feel that it was a good idea to mention that one has or does not have liability insurance. I still believe that to be the case. I note that there has been a slight change with respect to the language. However, I still believe that the new proposed rule is unacceptable.

Our firm is made up of five attorneys. We are the typical "too small and not big enough firm." We carry liability insurance. I believe that smart attorneys will now go after everyone who does not know or should know that he or she does not have professional liability insurance.

I have been an attorney for a long time and I am getting closer to retirement. If this rule becomes effective as written, when I retire from the firm, I may continue to do some work in the legal arena. I will then put in bold letters, that "I do not have professional liability insurance." To me, that would be "cheap insurance."

Very truly yours,
ABDULAZIZ, GROSSBART & RUDMAN

SAM K. ABDULAZIZ
SKA:dak

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STEPHEN G. CHANDLER
ATTORNEY AT LAW

1330 East 14th Street
San Leandro, CA 94577-4751
510-483-1446

May 25, 2007

Saul Berkovitch
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Public Comment on Proposed Regulation

I would like to make the following comments on what I believe is a very obnoxious proposal to force attorneys to make a disclosure that they lack malpractice insurance. I have a few questions that I think should raise some concerns from members of the Bar who do not work for the insurance industry. My concerns and questions are as follows.

1. What problem is being solved by this legislation? "Feel good" legislation is somewhat beneath the professionalism of a well-trained attorney. Are there any actual victims who would only pick an attorney with Errors and Omissions coverage? Why should I only work for people who want to sue me? I am not aware that there is a problem, so I don't know why we need legislation to fix it. Artificially increasing demand will make Errors and Omissions coverage too expensive.

2. Why is carrying insurance now becoming a material factor in determining whether one should enter into a transaction? Personally, I need the trust of my clients, and by advising them that I don't need to carry insurance because I have never been sued for malpractice works for me, but how about new attorneys? This will cripple them.

3. Do we need to support the insurance industry? Is the insurance industry hurting? Is there a reason we need to increase the demand so the prices will increase to help the insurance industry?

4. Wouldn't it be better for lawyers to limit their liability like we have done with doctors under MICRA? What is the minimum amount of insurance you can have to get around this disclosure? I see nothing in the proposal that has any mention of these limits. Is there a definition for "professional liability insurance" or is up to all attorneys or the insurance companies to define? Will we now have to have written contracts when we don't expect to receive more than $1,000.00 for a job?

5. Are there any other industries where the legislature requires the industry to note whether they have liability insurance as opposed to a bond or some other means of protecting the consumer? Doesn't the State Bar have a victim's restitution fund?

6. Can the insurance be through any type of insurance company, or is there a requirement that it have at least a B+ best rating?

7. Were there insurance agents or representatives on the Bar's insurance task force? It seems it would be a conflict of interest having the insurance industry tell lawyers what the lawyers need to do as far as their insurance needs.

I would appreciate if you would think about these questions and concerns and do whatever you can to eliminate this abomination targeting the middle and lower economic class citizens of this country.

When I go into a grocery store, am I entitled to know whether or not the grocery store is covered for their liability in case I should slip and fall? Should the store have to have a sign? Name one other business that demands insurance coverage instead of bonds or less expensive methods of protecting the consumer. I think its time for attorneys to stop bashing other attorneys and work together so we can create a favorable impression in the community about what we do, and this proposed insurance disclosure requirement detracts from that goal in my view. It seems to suggest that even attorneys believe that we are all bad apples.

Very truly yours,

STEPHEN G. CHANDLER

SGC/csc

Bercovitch, Saul

From: Rochael M. Soper, Esq. [rochael@soperlegal.com]
Sent: Monday, May 28, 2007 11:52 AM
To: Bercovitch, Saul
Subject: Proposed Insurance Disclosure Rules - comments

Dear Saul,

I have reviewed the recent draft of the Proposed Insurance Disclosure Rules at http://calbar.ca.gov/calbar/pdfs/public-comment/2007/Insurance-disclosure_Proposed-new-rules_revised.pdf

I have two comments.

First, I am not sure per Section 9.7(e) that it is wise to have this information posted to the State Bar's website. There is far too much trolling of website and spamming going on that I can only image members who are listed on the website being bombarded by both legitimate and bogus solicitations regarding insurance and other matters. I would respectfully request that the committee find other ways to make this information available.

Second, could you please inform me what the reasons are for forcing lawyers to disclose that they do not have professional liability insurance? I can imagine that the only attorneys this would affect are solos and those servicing lower income persons, those lawyers who cannot afford insurance. What is the point of forcing them to disclose this to their clients?

Looking forward to your response.

Sincerely,

Rochael M. Soper
Attorney at Law & Negotiator
555 Bryant, # 274
Palo Alto, CA 94301

tel: 650.619.7061
email: rochael@soperlegal.com

Bercovitch, Saul

From: Robert Mills [rwm@millslawfirm.com]
Sent: Friday, June 01, 2007 5:36 PM
To: Bercovitch, Saul
Subject: Insurance Disclosure

Saul: I support the amendments proposed as they appear to ameliorate this ill-conceived rule to some extent. Overall, however, I am strongly opposed to the disclosure rule itself as, I am sure, are most lawyers in California.

Robert W. Mills
millslawfirm.com
145 Marina Blvd.
San Rafael, CA 94901
(415) 455-1326
(415) 455-1327 fascimile

Bercovitch, Saul

From: Gerald McNally, Attorney at Law [gm@mcesq.com]
Sent: Friday, June 01, 2007 5:58 PM
To: Bercovitch, Saul
Subject: Proposed Rules 9.6 and 9.7 re Insurance Disclosures

Dear Mr. Bercovich:

I would like to express my opposition to such rules. They would both (a) tilt the playing field even more heavily in favor of the large firms with large clients, and (b) make it more difficult for small firms and solos to make a profit.

Further, a small firm's control over its practice would be ceded to faceless insurance company actuaries and underwriters, which puts such rules in conflict with the principle of independent representation. Would the State Bar then start advertising, "Make sure your attorney is insured..." ?

And the effect on small firms who DIDN'T have insurance would be to marginalize them even further.

My request is that this be made optional, as it is now.

Gerald McNally
Attorney at Law
206 N. Jackson St. #100
Glendale, CA 91206

(818) 507-5100

Bercovitch, Saul

From: kirkellis35@sbcglobal.net
Sent: Saturday, June 02, 2007 12:35 PM
To: Bercovitch, Saul
Subject: Proposed New Rule Requiring Disclosure Re Professional Liability Insurance

This rule should be adopted only if the State Bar makes such insurance available to all of its members on an affordable basis (in the case of those who perform legal work only occasionally, affordability should be measured by reference to the limited nature of the work being done); and only if legal exposure to the client can be limited to the greater of amount of insurance carried or the amount paid to the lawyer in connection with representing the client.

The reasons for these changes should be perfectly obvious. For example, what good does it do to tell someone you have professional liability insurance, either if you don't know that it would cover malpractice committed in connection with the matter for which you are providing representation; or if you don't know (and, thus, the client wouldn't know either) whether it would be sufficient in amount to cover claims?

Absent changes of the type suggested, PLUS adding another rule that will provide the lawyer with the ability to enter into an enforceable agreement with the prospective client to the effect that the lawyer will have no liability in excess of that provided by the insurance (or, if greater, the amount paid in fees for the representation in question), there is little reason for retired lawyers to do occasional work for clients despite the fact that the latter may stand to benefit greatly from the retired lawyer's greater training, experience and ability. After all, we all know about strike suits; and I'm not willing to risk my retirement on one.

G.Kirk Ellis, Esq.
kirkellis35@sbcglobal.net

Bercovitch, Saul

From: Ronald Blubaugh [roncarola@sbcglobal.net]
Sent: Saturday, June 02, 2007 4:33 PM
To: Bercovitch, Saul
Subject: Proposed Regulations on Professional Liability Insurance

Dear Mr. Bercovitch---I am an active member of the bar who has no professional liability insurance and will be affected by the proposed rule. I am writing this email to describe the problems I think the rule will create for me.

I retired at the end of 2003 as an administrative law judge for the State of California. From when I was admitted to the bar in 1975 until I retired, my entire legal career was as a state employee. I have never represented private clients for a fee. When I retired, I thought I would do some pro bono work so I maintained my active membership in the bar. For almost two years, I volunteered at the Senior Legal Hotline, a public service program operated by Legal Services of Northern California. At the time I was at the hotline, I was told that all of the volunteers were covered under the professional liability insurance policy of LSNC.

For various reasons, I stopped volunteering at the hotline in late 2006. Beginning in February of this year, I started volunteering at the Tommy Clinkenberg Legal Clinic, an offshoot of Loaves & Fishes, a non-profit charity in Sacramento that provides survival services to homeless and indigent people. The Tommy Clinkenbeard Legal Clinic provides free legal services to homeless people relating to infractions and misdemeanors in Sacramento County. The Legal Clinic also manages court-ordered community service sentences for homeless people to pay fines in lieu of incarceration.

The late Tommy Clinkenbeard was a Sacramento County deputy public defender with a passion for helping homeless people. For the most part, the clinic remains a function of the Sacramento County Public Defender's Office. I need to give you a brief description of how the clinic operates so you will understand my concerns. Homeless people with citations for illegal camping, open container, riding light rail without paying, storage of camping equipment on public property, trespassing, etc. attend a monthly meeting with public defenders (and since February, myself). They show us their tickets and we arrange for them to appear on a special Loaves & Fishes calendar operated by the Sacramento Superior Court at 2:30 p.m. on the third Thursday of each month. At this calendar, a deputy district attorney and a deputy city attorney make an offer of how much community service time each offender would have to do if they plead guilty (or no contest) to the charges pending against them. A few want to go to trial and if they do, the public defender represents them in the misdemeanor cases. For infractions, they are on their own. Most however, admit that they committed the charged offenses and plead. They are assigned to perform community service at Loaves & Fishes where by their work they then assist other homeless people. The program is good for them and it is good for the county because it keeps them from far more costly incarceration.

My role in this has been to assist the public defenders in counseling the clients, advising what the district attorney has offered, and discussing with them the implications of a plea. If they decide to plea, usually the public defender stands with them but I occasionally have done this. Rarely (once since February), the public defender has had to conflict out of representation one of these clients. In that situation, I represented the client. My entire service in this is pro bono.

So now comes the new rule. I do not have professional liability insurance. I have considered it

unnecessary because I have a very limited exposure to risk of actionable error or omission. To some degree, I am acting as an agent of the public defender. But I am not an employee of the public defender's office. So how would the rule apply to me? I assume that I would have to self report to the bar that I am representing clients and that I have no liability insurance. Then, I would have to secure from each person I counseled either at the clinic or in the court room a written acknowledgment that I had advised them in writing that I am not covered by professional liability insurance. In the mass operation that goes on at the courtroom, sometimes 40 to 60 clients with attorneys grabbing case folders one after the other (and in no relationship to whether they previously had met with that person), the whole discussion of professional liability insurance would, to say the least, be a burden.

I wonder also, how the rule will apply to those who still volunteer at the Senior Legal Hotline. They are unpaid volunteers, not employees. Not one that I knew carried professional liability insurance.

I recognize that the rule was designed for a different purpose than to create obstacles for attorneys who want to do only pro bono work. But for me, at least, I believe it will be a considerable obstacle. It is my present intention that if the rule is adopted as now written, I will go inactive and withdraw from the pro bono work I am now doing. I feel this would be a personal loss because I have enjoyed working with homeless people and had hoped to do more. I also believe it would be contrary to the Bar's stated goal of encouraging attorneys to perform pro bono services.

Thank you for taking the time to read this overly long communication. I hope you can consider the effect of this rule on attorneys who perform only pro bono services as you proceed to adoption of the new rule. --- Sincerely, Ronald E. Blubaugh, #65238

LAW OFFICE OF SUSAN K. ASHABRANER
2501 East Chapman Avenue, Suite 100
Fullerton, California 92831-3135
Phone: (714) 671-2089 Facsimile: (714) 671-2089 E-mail: sashalaw@abanet.org

June 4, 2007

Mr. Saul Bercovitch
The State Bar of California
180 Howard St.
San Francisco, CA 94105-1617

Re: Public comment re proposed new insurance disclosure rules

Dear Mr. Bercovitch:

I am vehemently *opposed* to an attorney's *mandatory* disclosure of professional liability (malpractice) insurance, for numerous reasons. (One reason is disclosure invites frivolous malpractice lawsuits by giving a disgruntled client the impression the attorney has "deep pockets.") Such disclosure should be voluntary, at the discretion of the attorney.

However, if a client or potential client inquires about such insurance, then of course, the attorney should be truthful.

Thank you for considering my comments.

Sincerely,

Susan K. Ashabraner
Attorney at Law
Cal. SBN 233065

Bercovitch, Saul

From: Michael Garner [mgarner@allianceadvisory.com]

Sent: Wednesday, June 06, 2007 11:22 AM

To: Bercovitch, Saul

Subject: Comment on Insurance Disclosure Rules (revised)

Dear Mr. Bercovitch:

I am an attorney practicing in Southern California. I am adding my voice in disapproval of the proposed requirement to disclose whether an attorney has professional liability insurance.

I have read many of the arguments for and against the measure but it appears that the major argument for disclosure is the client's right to know. Insurance, or the lack thereof, does not change the duties or liabilities of the attorney. Insurance is a risk management tool that an attorney may choose to use, to deal with his own risk of error. There is no requirement for a minimum amount of insurance or a minimum breadth of coverage under the proposed rule changes, so (if such a policy exists) an attorney could acquire a $1,000 of coverage and "have" insurance under the proposed regulation, making the disclosure meaningless.

Frankly, I do not see a public outcry for knowledge of an attorney's insurance coverage. I have only had two clients in the last twelve years inquire about insurance. I do not think this proposed rule does the public significant good and does many attorneys harm.

I again state my opposition to this proposed rule.

Michael E. Garner
Attorney
3390 Auto Mall Drive
Westlake Village, CA 91362
(805) 371-8020
(805) 371-8008 Fax

Bercovitch, Saul

From: FEQuinlan@aol.com
Sent: Thursday, June 07, 2007 8:20 AM
To: Bercovitch, Saul
Subject: Malpractice Insurance and another issue

Dear Mr. Bercovitch,

I have never had a claim and never had a client ask if I'm insured. The proposed rules are relatively inconsequential to me. I have insurance to defray the cost of a defense and to avoid distraction if I am sued. I have little expectation that the carrier will do much to settle claims so I wonder who is truly benefited by the proposed rules. Given the number of renegade lawyers I have encountered in my time in practice, I suspect the State Bar would be wise to focus on eradicating them rather than making arcane new rules it will be challenged to enforce.

Now, something my Bar Association can do for me and my clients is allow the listing of advanced degrees in law on the website. My clients are interested to learn that I have an LL.M. in Taxation as that has direct bearing on my preparation to respond to their needs. I would appreciate being able to list that qualification.

Sincerely,

Frank Quinlan

Kester & Quinlan LLP
680 Newport Center Drive
Suite 100
Newport Beach, CA 92660

fquinlan@kesterandquinlan.com

Bercovitch, Saul

From: Feedback
Sent: Thursday, June 07, 2007 12:14 PM
To: Bercovitch, Saul
Subject: FW: Atty Malpractice Disclosure

-----Original Message-----
From: WALCHLAW@aol.com [mailto:WALCHLAW@aol.com]
Sent: Thursday, June 07, 2007 11:17 AM
To: Feedback
Cc: WALCHLAW@aol.com
Subject: Atty Malpractice Disclosure

I heard that there is a proposal to require pre-claim disclosure of atty malpractice insurance. We are opposed to it as, among other reasons, it will foster suits and litigation (for both those insured and not insured) and is another unfair burden placed on attorneys but not others, including doctors, plumbers, drivers and owners of vehicles, etc. Discovery rules provide for such disclosure in litigation, and that is the proper time for such disclosure.

If there is anyone else involved with this issue, please forward our email to them and let us know who they are and how to contact them via email, if possible.

Thank you.

Sincerely,

Gary K. Walch, Esq.
Gary K. Walch, A Law Corp.
4766 Park Granada, Suite 114
Calabasas, CA 91302
Telephone: 818-222-3400
Fax: 818-222-3405
Email: Walchlaw@aol.com

Bercovitch, Saul

From: donald darst [donalddarst@yahoo.com]
Sent: Saturday, June 09, 2007 1:47 PM
To: Bercovitch, Saul
Subject: Insurance disclosure

Dear Mr. Bercovitch,
I am Donald W. Darst, SBN: 91469. I oppose the proposed Insurance Disclosure Rule. It seems, at first blush, to be a rather simple rule designed to protect the public from uninsured practioners. Of course, insurance does not make practioners competent, only potentially better able to pay damages should they commit mal[practice. The obvious side benefit to insurance defense firms was, probably, not your primary objective. Perhaps we could then legislate a rule mandating the disclosure of each practioner's religion, social background, marital status, bank account balances, sexual preference, etc. To some people, such disclosures are every bit as important as the existence of insurance. This proposed rule is politically correct silliness. It seems much more likely to cause meritless litigation by unhappy clients who know that insurance defense firms settle (after amassing significant billable hours) than to afford them some protection. Battles as to the necessary level of insurance coverage can't be too far behind. Please stay out of the affairs that should be between the practioner and his/her client. There are far too many important issues before the Bar, and this isn't one of them.

Bercovitch, Saul

From: A. Grant Macomber [macnmac@inreach.com]
Sent: Saturday, June 09, 2007 2:38 PM
To: Bercovitch, Saul
Subject: insurance disclosure

I am opposed to the proposed insurance disclosure rule. I am 68 and practice part-time because of health reasons. I cannot afford the premiums. To have to disclose absence of insurance when that is not required of other businesses and professions regulated by the state would make me look suspect.

A. Grant Macomber
Macomber & Macomber
890 Grass Valley Highway, Auburn, CA 95603
530-823-5038
SB#37202

Bercovitch, Saul

From: Robert Bicego [robertbicego@hotmail.com]
Sent: Sunday, June 10, 2007 1:30 PM
To: Bercovitch, Saul
Subject: Opposed to Malpractice Insurance Disclosure

I strongly oppose the proposal to require attorneys to disclose that they have malpractice insurance. There already is a requirement (I believe) that attorneys disclose to clients when they DO NOT have malpractice insurance. If the intent is to protect people from hiring attorneys who do not have malpractice insurance, that intent is squarely met with the current requirement to disclose no malpractice insurance carried.

The intent behind this proposal is politically and economically driven by those who would seek to create an atmosphere where, ultimately, people will have difficulty in finding an attorney to represent them.

I would respectfully ask and strongly encourage that this proposal be rejected. We, as a bar, are above these strategic moves to gain advantage and should remain true to our higher calling.

Robert Bicego
Attorney at Law
Yreka, CA

June 11, 2007

TO: Editor-In-Chief

Re: **Proposed Malpractice Insurance Disclosure Rule**
By The Committee on Regulation, Admissions and Discipline
California State Bar Association

Once again the minority underrepresented California Bar Association proposes a rule that would disproportionately harm minority and women members of the bar. See attached article from www.calbar.ca.org.

The proposed rule would require the California Bar Association to publish on its website whether an attorney carries malpractice insurance.

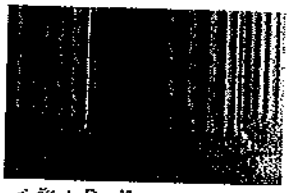
For many minority and female (e.g., at home mothers practicing part-time) attorneys, malpractice insurance is prohibitively expensive. Low income clients -- which the large white law firms do not serve -- cannot pay high legal fees. Consequently minority lawyers cannot in turn pay high malpractice premiums.

Those who cannot pay will now have the public distinction of being uninsured.

The proponents of the Rule are members of large law firms that are overwhelmingly white and male. For instance, the main proponent of the Rule, former bar President John Van de Camp (see attached June 2007 CALIFORNIA BAR JOURNAL article http://www.calbar.ca.gov), is a partner at the overwhelmingly white male law firm of Dewey Ballantine LLP.

It is discouraging enough trying to pay back student loans while serving underprivileged, poor fellow minority clients without the Bar stigmatizing us further as being the uninsurable (impliedly because we are incompetent) dregs of the profession.

Even if you do not agree with us, please at least consider publicizing this latest effort of the Old Guard to keep new upstarts of color in our place.



CALIFORNIA BAR JOURNAL

OFFICIAL PUBLICATION OF THE STATE BAR OF CALIFORNIA

June 2007

Broad opposition to insurance disclosure

By Nancy McCarthy
Staff Writer

In the face of widespread opposition to proposed rules that would require California lawyers to tell their clients if they carry malpractice insurance, a State Bar task force has revised its recommendation – barely. Despite the negative feedback, task force chair James Towery said the panel "unanimously decided we believe the original framework was still in the public interest."

The disclosure rules were developed after former bar President John Van de Kamp appointed a task force in 2005 to study whether an insurance disclosure rule was necessary. The American Bar Association adopted a model rule in 2004 and 20 states have adopted some kind of requirement.

The California task force recommended a rule a year ago that would:

- Require lawyers to inform their clients if they carry professional liability insurance, and
- Notify the State Bar of their insured status. The bar would then post that information on its Web site.

California would be the only state with such a dual requirement.

More than 100 lawyers, bar associations and other professional entities responded to the proposal, with almost 80 percent opposed in whole or in part. Many solo or small firm practitioners, in particular, argued that they would be disproportionately affected by a disclosure requirement and could not afford the high cost of malpractice insurance. Recently admitted lawyers and attorneys who serve clients unable to afford counsel also would be hard hit.

The proposal is "nothing less than an open invitation to a dissatisfied client to cut losses by suing the non-insured attorney in the hope of a quick cash settlement," wrote Sacramento lawyer Philip Tutt.

In October, the Conference of Delegates of California Bar Associations resoundingly voted to oppose the disclosure rules.

The chairs of several bar entities, including its ethics, professional liability and mandatory fee arbitration committees, offered support for the proposed rules. Los Angeles attorney Shiva Delrahim, for example, believes professionals who have fiduciary duties to their clients also have a responsibility to make pertinent disclosures to them. Clients look for honesty and integrity in their lawyers, she said, and can make a better-informed decision on whom to hire if more information is available.

The revised proposal, out for public comment until Aug. 6, makes disclosure prospective only, with no obligation to notify current clients, and eliminates a requirement that clients provide a signed acknowledgement of notification.

Still in the proposal is a requirement that the bar be notified whether a lawyer carries malpractice insurance. Failure to comply with the requirements would result in suspension from practice (an administrative, not disciplinary, action, similar to suspension for failing to pay bar dues).

Despite the revisions, board member John Dutton, who represents northern California, an area with large numbers of small firm or solo lawyers, remained opposed. "There are a lot of lawyers who are not aware of the details," he said. "We're alienating thousands of California lawyers if this proposal goes through."

Proposed New Insurance Disclosure Rules *(Revised)*

Bercovitch, Saul

From: Lemoure Eliasson [lemoure@cox.net]
Sent: Monday, June 11, 2007 2:00 PM
To: Bercovitch, Saul
Subject: malpractice insurance disclosure

Dear Mr. Bercovitch,

I am livid regarding the idea of requiring lawyers to disclose whether they are uninsured to their clients. I am a mother of two trying to keep my foot in the legal world by working very part time. At one point I had malpractice insurance and it was so expensive, I had to cancel it or stop working all together. With bar dues, continuing education, etc. it is so difficult to keep up with the expenses as is. The only attorneys that will not be impacted by this is those working for mid-sized or large firms. The rest of us solo-practitioners are going to be the hardest hit.

First, such a disclosure looks extremely unprofessional in the eyes of prospective clients;
Second, there is two much gray area, i.e. if at one point I am insured and then decide to take a hiatus and cancel my insurance, do I have to notify all past clients that I have not purchased a policy that will cover my past clients? There are so many different policies for attorneys like me that may not be working full time, uninterrupted throughout their entire career as attorneys;
Third, why doesn't the Bar Association ever look out for the attorneys that comprise the Bar. You would never see such a requirement among other professionals, like doctors, lawyers, CPA's, etc. Every year it gets harder and harder to work as an attorney. Although I graduated in the top 10% of my class, I have often thought of changing professions because this profession, places so many unfair demands on attorneys and it continues to get harder and harder to make a living as an "unconventional" attorney;
Fourth, this idea opens people like me up for so much personal liability, giving an unscrupulous client the upper hand and a tool for blackmail;
Fifth, malpractice insurance is not required by law, so why should such a disclosure be required?; and
Sixth, no other state has such a requirement. Why does California always have to be the state to use its attorneys as guinea pigs?

For the sake of the legal profession, I truly hope this nonsensical law is not passed.

Thank you,
Lemoure

Peter J. Smith
Attorney at Law
300 West Second Street
Carson City, Nevada 89703
(775) 882-9441
(775) 882-9056 - Fax

June 11, 2007

Mr. Saul Bercovitch
180 Howard St.
San Francisco, CA 94105

Re: Insurance disclosure

Dear Mr. Bercovitch:

I have been an attorney for 30 years and practicing law for 27 years. I have never had a claim against me for malpractice. I had malpractice insurance coverage for about 3 years a long time ago and I gave it up.

I think the motivation to require uninsured attorneys to tell their potential clients that they have no malpractice insurance coverage is mean spirited. I risk my property and my life savings on every decision I make. If I am giving a title opinion I tell my clients that I am not selling title insurance. If I give an opinion on the outcome of litigation I tell my clients I do not guarantee the outcome. If I make an error professionally that results in a client's damages I am personally liable for it.

If someone thinks that full disclosure of insurance coverage is important, they should explain what their deductible is on their policy, the effect of the claims made/occurrence terms, how the insurance in effect today may not mean you will be insured next month or next year, and what portion of the malpractice premiums go to pay for the defense against clients's claims rather than to pay the claims. Full disclosure should include an explanation that many professional decisions which turn out badly are not actually malpractice.

A large portion of my practice is in serving small businesses and people who work for a living. My clients can call me at home after hours. I can take a week off a couple times a year and check for messages. Divide my gross annual income by my hourly rate and you get 500. I do not get any discount on my insurance premium for having a lot of cases where the amounts involved are well below the deductible. I do not get any discount on my premium for the pro bono work I do for public and charitable groups. I am the fellow on the front lines serving the public and I choose not to buy malpractice insurance.

Unless insured attorneys are going to explain the pitfalls on malpractice coverage I do not think I should have to explain that I chose not to carry insurance myself.

Thank you,

Member of the Bar
Nevada and California

Bercovitch, Saul

From: Morrispartyof4@aol.com
Sent: Monday, June 11, 2007 10:26 PM
To: Bercovitch, Saul
Subject: Insurance Disclosure Rule - Revised

I submitted a comment in opposition to the original proposal and now am submitting a comment in regards to the revised proposal.

I am currently self-employed and receive a 1099. However, I have been providing services to a long term client who does insurance defense work. When I provide work for this client I am covered under the firm's malpractice policy as a contract attorney so long as I do not work on a full time basis. After reading the proposed regulation regarding disclosure, I am truly unsure where this would leave someone such as myself. Would I check the box for insured since I am technically covered by the contracing firm's malpractice coverage or do I check the "uninsured" box since I am technically uninsured in my capacity as an independent contractor when I do work for others other than the firm?

Further for the purpose of this disclosure requirement is my client the firm or the individuals/companies that I represent on a contract basis for the firm? Assuming that my client is the firm and I disclose my lack of insurance to them, would that be sufficient under the proposed professional responsibility rule or would I need to disclose my relationship with the firm to our mutual clients and their principals (insurance companies)?

I think that the proposed rule needs to be further refined to cover the large number of part time attorneys in the work force such as myself who work on a contract basis and are not technically employees of the firms with whom we are affiliated.

Thank you for your clarification.
Deborah Meyer-Morris, SBN 158876

Bercovitch, Saul

From: Wong, Nancy [nwong@OMM.com]
Sent: Thursday, June 14, 2007 3:56 PM
To: Bercovitch, Saul
Subject: Proposed Malpractice Insurance Disclosure Rule

Dear Sir and/or Madam,

I was once in private practice and understand the challenges -- financial and otherwise -- of having a practice. I deeply oppose the requirement that forces lawyers to disclose to clients whether they have or not have malpractice insurance. This is extremely unfair. The cost of overhead for a law practice is already very high and barely manageable for many firms, particularly small ones. Though I indeed had malpractice insurance for my own practice when I had it -- it was unreasonably high! Through the years, my cases only went smaller and smaller -- yet my premium kept going higher and higher...all for the "excuse" that I had been in more years of practice. Yet, I knew the real reason why it was going up was because the insurance company was too greedy. I never had a claim -- and I barely had many cases! Needless to say, the premium was a financial burden, I could barely afford it and it was unnecessary. Thus, to pressure attorneys into buying it by making them disclose it to their clients is just plain wrong.

I know many attorneys in private practice -- and almost 90% of them are struggling financially! Besides not being able to get enough ongoing business -- as there are too many lawyers in California -- firm overhead is already high. The proposed disclosure rule pressures all attorneys to buy malpractice insurance -- when many of them can barely afford to pay their office rent.

Whether an attorney decides to buy or not buy malpractice insurance should be up to that individual -- independent of pressures such as this proposed rule. I cannot help but to surmise that the insurance companies are behind this
push -- to get, yet, more money out of people.

People should be allowed to decide on their own whether they want insurance or not, not be pressured into it by insurance companies pushing under the guise of "public interest." We know our own risk and we should be allowed to assess it on our own freely.

Sincerely,
Nancy Wong

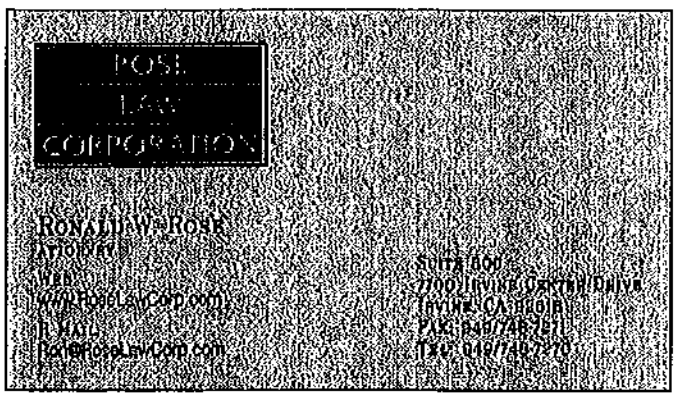
Bercovitch, Saul

From: Ronald W. Rose [ron@roselawcorp.com]
Sent: Friday, June 15, 2007 9:07 PM
To: Bercovitch, Saul
Subject: Mal Practice Disclosure

As a sole practitioner for 35 years, I resent state bar committee members from large firms dictating how I practice. This disclosure rule, if implemented, will only serve to raise the cost of legal fees to the middle class, my primary source of clients, and those who can least afford an attorney already. This proposed rule should be shelved. It sounds like someone has been lobbied by the insurance carriers!

Ron Rose

SBN 54439



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Bercovitch, Saul

From: Tina Nettesheim [tinanettesheim@yahoo.com]
Sent: Sunday, June 17, 2007 6:38 PM
To: Bercovitch, Saul
Subject: Comments re Rules re Disclosure of Insurance

I am a sole practitioner. I have been involved in litigation on behalf of client by unscrupulous attorneys. The lack of insurance can be devastating.

Even absent truly bad actors, there are many practicing attorneys who do work for their client which involve substantial risks, but who lack the assets (or insurance) to back up their work in case they make a mistake. I find it simply irresponsible, and the State Bar should take a stand to protect the public.

Thank you.

Christoph T. Nettesheim, Esq.
SBN 177884
chris@n-nlaw.com

Bercovitch, Saul

From: Jonas M. Grant [jonas@incorporatecalifornia.com]
Sent: Monday, June 18, 2007 1:04 PM
To: Bercovitch, Saul
Subject: Comment on revised insurance dislosure rule

I would respectfully suggest the (revised) rule be applied only to engagements where a written fee agreement is already required by other rules (e.g., over $1000 in fees, etc.).

Thank you for your consideration.

Jonas M. Grant, Attorney at Law
Law Office of Jonas M. Grant, P.C.
3500 W. Olive Ave., 3rd Floor
Burbank, CA 91505
818-786-4876 office
818-755-0077 fax
jonas@incorporatecalifornia.com
http://www.incorporatecalifornia.com

Bercovitch, Saul

From: Louis S. Caretti ESQ. [LouisCaretti@FLGCH.com]
Sent: Monday, June 18, 2007 3:15 PM
To: Bercovitch, Saul
Subject: INSURANCE DISCLOSURE PROPOSAL

Dear Mr. Bercovitch:

It would seem to me that the State Bar could spend much more productive time toward its mission by increasing and enforcing disciplinary penalties against attorneys who violate conduct rules of practice rather than going down a trial of requiring a disclosure of factual information that will only encourage litigation against attorneys who do carry malpractice insurance out of conscience and standards of good practice. No matter how one packages "disclosure", such disclosure will either render attorneys who do carry insurance more vulnerable to unscrupulous clients who are looking to file malpractice claims at the drop of a hat, or place attorneys who do not carry such insurance at a competitive disadvantage.

If the goal is to enhance quality of professional service, why not require disclosure of ones continuing education history, or ones experience and history in practice. The existence of malpractice insurance should be an irrelevant factor in the practice of law.

Louis S. Caretti
Law Offices of
FAVARO, LAVEZZO, GILL, CARETTI & HEPPELL, P.C.
300 Tuolumne Street
Vallejo, CA 94590
Telephone: (707) 552-3630
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Ph: (805) 339-0313, Ext 108
Fax: (805) 984-8394
E-mail: Parkerjd9@hotmail.com

June 18, 2007

Editor, California Bar Journal
180 Howard Street
San Francisco, CA 94105-1639

Attention: Nancy McCarthy

Re: Letter to the Editor, California Bar Journal

Dear Sir/Madam:

The proposed rules that would require California lawyers to tell their clients if they carry malpractice insurance is ill advised, a misconception, and a further effort to over regulate a business already inundated with over-regulation.

The net effect of such a requirement is to invite lawsuits. Lawsuits by clients who, displeased with the law and/or their recovery and/or legal service they received because of unique facts of their case (something that cannot be changed), have nothing to lose. They could (and some have) always sue their lawyer because he or she told them, as required if these rules become mandatory, that they have malpractice insurance. The client can always find another lawyer who will file a legal malpractice action for them. A case in point is Parker vs. Morton (1981) 117 Cal Cap 3d 751, 173 Cal. Rptr. 197. Also, see the March 23, 2007 case of Smith vs. Smith, citing as 2007 DJDAR. Thanks to Jacoby & Meyers, I know of an attorney in San Diego who runs an ad in the local newspaper advertising "sue your lawyer" and listing only his phone number.

Thank you.

Very truly yours,

JOHN W. PARKER

JWP/jlc

June 18, 207

Saul Bercovitch,Staff Attorney, State Bar of California
180 Howard Street
San Francisco, Ca 94105

Dear Mr. Bercovitch:

RE: PUBLIC COMMENT AGAINST THE NEW INSURANCE DISCLOSURE RULES

Michelle Pierce, a capable and kind administrative assistant provided me with a copy of the new Insurance Disclosure Rules. Despite public comment, it appears that "ringers" for the insurance industry are pushing these alleged reforms despite good sense and lack of proof that attorneys without malpractice insurance represent any greater threat to their clients than attorneys who have malpractice insurance. But, what is primarily disturbing about the new rules is the public crucifixation of attorneys who choose not to pay insurance companies for alleged malpractice coverage.

Fewer attorneys every year are left who don't work for government or corporate or insurance companies. Except for certain insurance defense attorneys, 99% of the rest of are left in the dark about the secret national insurance data bases, established by legislation and statute, and maintained by the insurance companies through ISO reporting and membership and NICB membership, reporting and investigations, all of which secret national data bases are shared with law enforcement and are not available for review, comment or change by the public, even when the data in the data bases is entirely false or erroneous. Consumers have rights over their confidential financial and credit information through the Fair Credit Reporting Act and other related statutes which give consumers the right to full disclosure from banks and the national credit reporting agencies, and provide consumers with the right to alter or change erroneous information. Not so with erroneous and slanderous information and hearsay reported to the ISO and NICB.

The proposed New Insurance Disclosure rules are driven by the insurance industry. It's not enough that attorneys would need to tell prospective clients about their insurance status, now this decision would become public knowledge, and ISO and NICB could include all such information in their secret data bases for future repercussions to the attorneys choosing to self-

insure. Once in the secret data bases, the information cannot be corrected or removed for any reason.

I can understand why most attorneys ignore the poor and ignore civil rights. Most people choose security and wealth over defending rights and issues and providing assistance to the poor. In the new corporate America, where the wealthy and powerful corporations, like the insurance industry buy the laws they want, their "fronts" in the California State Bar are merely doing what their insurance industry masters want and have wanted for years. The fact that these "fronts" have ignored the voices of California lawyers in overriding their objections to these insurance industry demands is proof of that.

Whether any of us are insured does not make us better lawyers, and there has been no evidence put forth to show that insured lawyers have fewer bar complaints or malpractice claims. I have represented clients against their former attorneys in big firms, and the big firms can affod to settle before the matter gets to court. So, those cases don't make it to the statistics.

If the State Bar of California wishes to answer to the dictates of the insurance industry, then the State Bar is owned by the insurance industry. When will the State Bar care about its members who are not already bought?

I ask you to reject these biased and ridiculous rules. You've rejected them before again and again. Don't let the powers stacked against those of us in touch with the poor and our civil rights be sacrificed to those who do the bidding of big corporate interests. Don't let money guide you in this.

Sincerely,

Susan Lea

Susan Lea
P.O. Box 792, Salida, Co 81201

LAW OFFICES OF
RANDY K. VOGEL
24411 RIDGE ROUTE DRIVE
SUITE 215
LAGUNA HILLS, CALIFORNIA 92653-1698
TELEPHONE (949) 380-1516
FACSIMILE (949) 768-0180
E-MAIL RANDYKVOGEL@aol.com

June 18, 2007

Saul Bercovitch
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed New Insurance Disclosure Rules (Revised)

Dear Mr. Bercovitch:

Please register my opposition to the "Revised" Proposed New Insurance Disclosure Rules. I am opposed to the Proposal for the following reasons:

1. The revised Proposal does nothing to address the actual problem of a lack of affordable liability insurance for California attorneys.

2. There is no evidence that the Proposal is necessary (no studies have been conducted to suggest there is a problem that needs fixing).

3. The Proposal does nothing to protect clients or prospective clients.

4. The Proposal places a huge burden on small firms and sole practitioners.

I am concerned that despite overwhelming opposition to the previous iteration of the Proposal, the Task Force appears determined to push forward this "solution in search of a problem." Perhaps naively, I thought that the Task Force would have taken a step back and reconsidered this entire "regulatory approach." Instead, all that has been done is to remove a few of the most onerous requirements in what one could cynically view as a calculated effort to side step the question of whether the Proposal is even necessary.

Law Offices of Randy K. Vogel

Randy K. Vogel

rkv:rr

Bercovitch, Saul

From: Stephen Barnett [sbarnett@law.berkeley.edu]
Sent: Wednesday, June 20, 2007 3:36 PM
To: Bercovitch, Saul
Subject: Insurance Disclosure Proposal

I strongly oppose the proposal.

Stephen R. Barnett, No. 75491

Bercovitch, Saul

From: dmwillard8@sbcglobal.net
Sent: Wednesday, June 20, 2007 3:49 PM
To: Bercovitch, Saul
Subject: Insurance disclosure

Dear Mr. Bercovitch,

I read the insurance disclosure issue article in the latest Cal. Bar Journal, and there obtained your name as contact for comments.

I also oppose the new proposed disclosure requirements as unjustified, inappropriately punitive, and overbroad.

The disclosure requirement is particularly punitive regarding attorneys like myself who have "active" status, but, in practice, are now only handling a few occasional or light part-time low-revenue legal matters a year. I consider myself basically retired from legal practice. Nonetheless, I must stay on active status to handle any legal matters at all. Any regulations should not treat such occasional or part-time, basically "retired" attorneys as if they were full-time attorneys with responsibilities to numerous clients.

There must be very many California attorneys in my circumstances of only occasional and part-time practice, including many attorneys that are effectively "retired", but who still have active status.

Getting liability insurance is prohibitively costly in relation to occasional or light part time low revenue practice, as premiums are generally not discounted for part-time practice. There is no justification for attorneys such as myself to be stigmatized by a disclosure requirement that might be appropriate for some types of full-time law practice, but which is not appropriate for occasional, low revenue practice, usually done more as a service than as a business.

Dwight Willard
Member, CA State Bar

Bercovitch, Saul

From: Matthew C. Mickelson [mattmickelson@bizla.rr.com]

Sent: Friday, June 22, 2007 10:57 AM

To: Bercovitch, Saul

Subject: Comments on New Insurance Disclosure Rules

Dear Mr. Bercovitch,

I write to comment for the second time upon the Bar's proposed malpractice insurance rules. I am disappointed that the revised proposal is virtually unchanged from the first one. Accordingly, the reasons why the rule should not be adopted remain the same: this proposal will penalize sole practitioners and small firms, which serve the poorer members of the public, by casting an aspersion upon them for refusing to spend money they don't have on insurance that is of little value in any event. To be blunt, this proposal, like its forerunner, if adopted would place a "mark of Cain" on the sole practitioner community. And those who would benefit? The large firm community. This proposal should be rejected.

Matthew C. Mickelson, State Bar No. 203867
Law Offices of Matthew C. Mickelson
16055 Ventura Blvd., Ste. 1230
Encino, CA 91436

Bercovitch, Saul

From: Chris Cockrell [ccockrell@bpclaw.com]

Sent: Monday, June 25, 2007 7:25 AM

To: Bercovitch, Saul

Subject: Proposed Insurance Disclosure Requirements

Mr. Bercovitch:

I wish to express my support for passage of the proposed requirements for disclosure of the lack of professional liability coverage.

I have been practicing twenty-six (26) yeas in both plaintiff and defense works, as well as transactional matters. The profession of the practice of law is not solely to generate income for the person licensed. Rather, this is suppose to be an honorable profession within which we offer protection to our clients from adverse consequences. It seems inappropriate, therefore, to place our pecuniary interests before protection of the client. To me, the failure to provide insurance information to a client constitutes deception and provides an unfair marketing advantage to those who do not have insurance.

In the past year I have worked closely with a client who incurred over $100,000 in fees trying to correct the errors of a prior attorney who did not have insurance. My client would have initially gone to other counsel if he knew the initially retained attorney did not have insurance.

I strongly recommend our profession move forward with the recommended changes.

Chris

Christopher L. Cockrell, Sr.
Borton Petrini, LLP
290 North "D" Street, Suite 500
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909-381-0527 Voice
909-381-0658 Fax

Bercovitch, Saul

From: Susan Kilano [skilano@aherninsurance.com]
Sent: Monday, June 25, 2007 12:03 PM
To: Bercovitch, Saul
Subject: Insurance Disclosure Regulations

Dear Saul:

I would like to take this opportunity to express my opinion regarding Insurance Disclosure by attorneys. I think that living in a state with the largest population of attorneys, it is definitely the right thing to have attorneys disclose if they have insurance or not. The reports that it will cripple or put some attorneys out of business is simply untrue. If they cannot afford insurance, then they should not be practicing law. The cost of insurance for someone that has gone uninsured for many years is relatively low in the first couple of years but does go up due to step increases or claims. I think if you asked the general public if lawyers should be required to disclose if they have insurance or not, the majority of them would agree that disclosure is a good thing. A few years back I insured a solo firm for $43,000 for 1m in coverage and no prior acts. The attorney had 2 or 3 claims in the past two years that amounted to $1,000,000 in losses and he was virtually uninsurable. He absolutely refused to go bear and paid the $43,000 with no complaint whatsoever. His behavior shocked me because I probably would have gone bear in that situation. Today, the same attorney, still a solo is paying $11,000 in premium and has been claims free for more than five years. Please let me know if I can offer any additional information to help the CA State Bar do the right thing and require lawyers to disclose if they have insurance or not.

Sincerely,

Susan Kilano

Susan Kilano
Vice President
skilano@aherninsurance.com

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Bercovitch, Saul

From: Howard Freedland [Howard.Freedland@open-silicon.com]
Sent: Tuesday, June 26, 2007 3:27 PM
To: Bercovitch, Saul
Cc: Howard Freedland
Subject: Insurance disclosure

My comments regarding the proposed insurance disclosure requirements are submitted below. The comments are my own as a member of the bar and of the public and do not necessarily reflect the opinions of my employer.

Once again the Bar is attempting to do something against the great weight of its members' opinion. What's going on here? Although I have practiced in house for a while now, I am not so far removed from private practice to fail to see this as a big firm vs. solo/small firm issue. I am sure that the Bar will get enough comments on that score, so I won't bother to repeat what you are already likely to hear. However, from a client's perspective having insurance or not is insufficient and misleading.

As a client, in which position I find myself fairly frequently, what matters in considering liability matters is the likelihood of an occurrence and the ability to pay the damages. The existence of insurance coverage does not answer the first and only partially – and ultimately misleadingly – answers the second. All lawyers can get insurance, even bad lawyers; just like all drivers can get automobile insurance, even bad ones. So the existence of insurance does not provide a "Good Housekeeping Seal of Approval" on a lawyer; and I am sure that the Bar would crack down (rightly so) on any lawyer who tries to advertise how good he or she is because he or she is insured. As for payment of damages, insurance only provides a partial answer. Is the claim covered? What's the policy limit? Does the limit decrease as costs of defense increase? are all questions that are not answerable in the black/white of "I have insurance".

A fairer proposal would be the status quo: it permits clients ask about insurance, how much assets are available to pay a claim beyond insurance limits or in the absence of insurance, and the like if they care. Discipline should be imposed on lawyers who do not pay malpractice judgments entered against them or their firms – whether because of lack of coverage, or lack of insurance, or lack of assets, or any other circumstances.

If this proposal is enacted, I expect that there will be plenty of lawsuits based on the inadequacy or misleading nature of the disclosure: "I have malpractice insurance" seems sufficient to connote a promise by the lawyer that the client will be made whole in the event of malpractice – perhaps the breach of trust will be sufficient to enable most clients to obtain a refund of their legal fees even if no malpractice occurs on a theory of breach of fiduciary duty. Letting lawyers deceive their clients in this manner pits the Bar against the public and does a disservice to both.

Howard M. Freedland

Director, Legal Affairs

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Bercovitch, Saul

From: Freda Pechner, Esq. [ourlawyer@hughes.net]
Sent: Thursday, June 28, 2007 9:15 PM
To: Bercovitch, Saul
Subject: Insurance Disclosure Rules

Dear Mr. Bercovitch: While I appreciate a rule that requires attorneys who do not have insurance to disclose that fact to a client, I do not believe that it should be necessary for attorneys to be required to disclose or even discuss professional liability insurance with any client, at least not until other professionals are also required to do so - doctors, dentists, engineers, etc. Whether or not one has professional liability insurance (which I carry and have always carried in my 29+ years as an attorney, most of them as a solo practitioner) has no bearing whatsoever on any matter about which a client might consult an attorney, and, for the most part, there would never be such a discussion, because most attorneys, I believe, are not usually negligent. Also, I think there is a possibility such readily available information might be an incentive to a less than honorable client to choose a particular attorney for an action, knowing that attorney did have insurance, a fact to be inferred if a particular attorney is not on the list of uninsured attorneys. To the extent the Bar seeks to protect the public, then attorneys can be required to report their insurance status to the Bar, but not to the public at large. Thank you for your attention.

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Joel Phillip Driver III • Attorney at Law

The State Bar of California
180 Howard Street
San Francisco, CA 94105

June 29, 2007

RE: Insurance Disclosure Task Force

I find it disturbing that a woman offering child-care in her home with as few as 4 or 5 children must disclose to the family she may be serving that she has or does not have liability insurance and an attorney has no duty to disclose.

Given the professed ethical duty incumbent upon an attorney I see no distinction between the child care mother and the solo practitioner. The mother has no duty to obtain the insurance, merely the duty to disclose.

As a solo practitioner I do carry insurance. Insurance is just a cost the peace of mind and I will carry it. The annual renewal is a continuing review of my business practices.

Eighty percent of the attorneys, particularly solo practitioners, may not be in favor of disclosure, but I do favor disclosure.

J. Phillip Driver III, Esq.

P.O. Box 326 - 120 W. Campbell Avenue, Suite C, Campbell, CA 95009-0326
Off.: (408) 378-3403 • Fax: (408) 378-0235 • (800) 222-3748 • E-mail: ACaDRIVER@aol.com

From: Michael Bradley [mailto:MBradley@MPBF.com]
Sent: Friday, June 29, 2007 5:39 PM
To: Hines, Raquel; Roeca, Russell; Carol Kuluva (E-mail); Jason Sommer (E-mail); John E. Hurley Jr. (E-mail); Lisa LeNay Coplen (E-mail); Mark Lester (E-mail); Randall Miller (E-mail); Ricky Ivie (E-mail); Robert Brace (E-mail)
Cc: Babcock, Starr; Carey Barney (E-mail); Eichler, Kathleen; Irwin, Heather; Margerite Downing (E-mail); Wondie Russell (E-mail)
Subject: RE: Proposed New Insurance Disclosure Rules (Revised)
--Comments due: Monday, July 16, 2007

I respectfully oppose the new disclosure rules on insurance. This is not because I oppose the idea that California lawyers should have insurance. I believe that any responsible lawyer would have insurance. But attempting to accomplish this goal by adding a disclosure requirement to the Rules of Professional Conduct and the Business and Professions Code is just another trap which will ensnare a lot of lawyers who will be guilty of nothing other than unfamiliarity with the rules.

I would be OK with the proposals if they were conditioned upon a reconfirmation that these were disciplinary rules only and not additional bases for civil liability. This is clearly what was intended by Rule 1-100, but is obviously not what is happening in the judicial world. Until that enormous problem is rectified, I believe it is unfair and unwise to expand lawyers' duties by addition to the Rules.

As to the B&P code, if it is to be amended to expand duties, I think it should self-contain an exclusive remedy, like invalidation of the fee agreement. Just allowing it to be yet another basis for a civil claim does not advance the intended purpose of consumer protection.

Finally, I know of no other profession in California which has this requirement and I don't see why lawyers should be singled out.

Sincerely,

Mike Bradley

Bercovitch, Saul

From: Scott Weible [weible@earthlink.net]
Sent: Saturday, June 30, 2007 10:58 AM
To: Bercovitch, Saul
Subject: Proposed Rule Requiring Disclosure of Malpractice Insurance

Dear Mr. Bercovitch,

My comments about this proposal, as a lawyer who has practiced for nearly 25 years, is that it is an extraordinarily bad idea. Extraordinarily bad idea.

The issue is not whether a lawyer has malpractice insurance. The issue is whether the lawyer has committed malpractice. To disclose THAT fact ... whether the lawyer has been disciplined for matters dealing with professional competence, sued, or settled a claim for professional malpractice ... would be salutary. All it accomplishes to disclose whether a lawyer possesses malpractice insurance is provide a incentive for a client to sue the lawyer at a drop of hat. If it is SO important that a lawyer have malpractice insurance that the State Bar forces lawyers to disclose this fact publicly, then the inference is that the State Bar is encouraging clients to sue their lawyers.

The possession of malpractice insurance is irrelevant. It is the frequency with which a lawyer has been disciplined, sanctioned, sued or settled that is what needs to be known to a client.

I, strongly, oppose this extremely poorly conceived idea.

Scott Alan Weible, 127106.

Bercovitch, Saul

From: Rochael M. Soper, Esq. [rochael@soperlegal.com]
Sent: Saturday, June 30, 2007 6:21 PM
To: Bercovitch, Saul
Subject: Comments on Revised Insurance Disclosure Rules

Saul,

I have reviewed the revisions to the Proposed Insurance Disclosure Rules. I find the revisions surprisingly minor and innocuous given the amount of opposition to the rules as reported in the Cal Bar Journal.

I have yet to see any persuasive justification for requiring lawyers to disclose that they do not have professional liability insurance and I want to make clear my opposition to the requirement to do so. While I do have professional liability insurance, I can imagine that this provision would disproportionately apply to solos and those servicing lower income persons, those lawyers who cannot afford insurance. What is the point of forcing them to disclose this to their clients?

If the State Bar is insistent on going ahead with these disclosure rules in spite of the opposition and without reasonable justification, then I suggest broadening the category of those exempt from the disclosure rules to include those working in legal aid and pro bono capacities and perhaps exempting those below some income level (not unlike the way bar dues are pro-rated depending on income). I would also suggest taking suggestions from others in the profession as to any additional categories of attorneys who should be exempt from the disclosure rules.

Finally, regarding the substance of the provisions themselves, I see no revisions to Section 9.7(e) regarding having this information posted to the State Bar's website. As I stated in previous comments, there is far too much trolling of websites and spamming going on that I can only imagine that members who are listed on the website will be bombarded by both legitimate and bogus solicitations regarding insurance and other matters. I would oppose to being listed on the website for just this reason. I would strongly suggest and request that the committee find other ways to make this information available and state clearly that it will not post this information on any publicly available areas of the State Bar website.

Please let me know if you have any questions.

Sincerely,

Rochael M. Soper
Attorney at Law & Negotiator
555 Bryant, # 274
Palo Alto, CA 94301

tel: 650.619.7061
email: rochael@soperlegal.com

Bercovitch, Saul

From: Eva Levine [ellevine@sbcglobal.net]
Sent: Saturday, June 30, 2007 6:25 PM
To: Bercovitch, Saul
Cc: dutton@infs.net
Subject: Comments on the Revised Insurance Disclosure Proposal

Dear State Bar:

I remain opposed to the subject proposal for the following reasons:

1. Malpractice insurance is essentially a risk management measure for a practicing attorney. The primary beneficiary is the insured attorney. The argument that insurance disclosure is a consumer-friendly measure is simply disingenuous. Even doctors, who face more serious malpractice issues, are not required to disclose any information concerning their insurance, until a malpractice issue actually arises. If attorneys are required to disclose insurance information to their clients, the clients would feel entitled to get detailed information on such insurance, and attorneys are obligated to disclose such details. After all, proponents of the proposed requirement want to help clients assess whether to hire a particular attorney. So, if I were a prospective client, and everything else being equal, I probably would go to the attorney with the highest coverage for safety reasons, instead of the attorney who has minimum coverage.

2. This probable scenario of clients choosing attorneys with better insurance coverage leads to a second problem with the proposed requirement, which is that it will become a de facto marketing tool. This tool obviously benefits firms with deep pockets.

3. I also have licenses as an insurance and a real estate broker, and I had securities licenses for a while. Professionals in these businesses all carry E and O insurance. But no requirements on disclosure are imposed on the practitioners, either to their clients or to the respective licensing boards. Neither are doctors subject to such a requirement, as mentioned above. I find that this requirement under consideration by the State Bar intrusive and unnecessary. Why should insurance information be public information? You might as well classify all California attorneys into two groups – with or without insurance.

4. I seriously question the benefits of the disclosure requirement. It interjects an onerous issue into the attorney-client relationship; it calls into question the ability of an attorney to serve his clients by equating it with whether or not he has insurance; it obviously pits big firms against small firms with the former's ability to buy MORE coverage, as a group or individually (so the issue becomes not whether an attorney carries any insurance, but also how much); it may help plaintiff attorneys identify more efficiently which attorney is more profitable to sue.

5. The most obvious beneficiary of this requirement, I can tell with 100% certainty, is insurance companies who will use the State Bar's public information to sell their malpractice policies.

6. Again, insurance is a risk management issue for the practitioner to decide, and nobody else. If the attorney wants the benefits, he will buy it. The proposed disclosure requirement is counter-productive, and is not standard practice among other professionals, and the State Bar should drop it.

Sincerely,
Eva Levine

From: Rickey Ivie [mailto:rivie@imwlaw.com]
Sent: Sunday, July 01, 2007 2:54 PM
To: Michael Bradley; Hines, Raquel; Roeca, Russell; Carol Kuluva (E-mail); Jason Sommer (E-mail); John E. Hurley Jr. (E-mail); Lisa LeNay Coplen (E-mail); Mark Lester (E-mail); Randall Miller (E-mail); Robert Brace (E-mail)
Cc: Babcock, Starr; Carey Barney (E-mail); Eichler, Kathleen; Irwin, Heather; Margerite Downing (E-mail); Wondie Russell (E-mail)
Subject: RE: Proposed New Insurance Disclosure Rules (Revised)
--Comments due: Monday, July 16, 2007

I join Michael's very thoughtful opposition. I only disagree with the proposition that the fee agreement should be invalidated. Rather, I urge that to the extent damages are shown then the fees should be reduced commensurately.

Sincerely,

Rickey Ivie, Esq.
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Bercovitch, Saul

From: William Ramseyer [wmr83@earthlink.net]
Sent: Monday, July 02, 2007 9:08 AM
To: Bercovitch, Saul
Subject: Insurance disclosure, no

Sir: I represent lower income clients and charities. I have never even had the word malpractice mentioned in 32 years of practice. Mandatory disclosure would force me to get insurance and pass that cost to my clients who can least afford it. This proposal penalizes good attorneys. This is law for the rich and the large firms who represent them. It is anti small clients and the attorneys who represent them.
William Ramseyer

Bercovitch, Saul

From: Knapton, Gerald [GKnapton@Ropers.com]
Sent: Monday, July 02, 2007 11:36 AM
To: Bercovitch, Saul
Subject: Proposed New Insurance Disclosure Rules

Dear Mr. Bercovitch and Board Committee on Regulation, Admissions and Discipline Oversight:
I am in favor the new rules as a result of the many unfortunate situations I have seen where great harm has been caused by uninsured lawyers.

I wonder if the language in the revised Rule 9.7 (a) (2) might be modified a bit (modification shown by underlining) to read:

(2) If the member represents or provides legal advice to clients, whether the member currently has professional liability insurance in effect that covers the member's services.

This would allow such a certification when the lawyer believes that the services are insured thorough the E&O policy provided by the member's law firm and it also might be a bit of an impediment to lawyers offering opinions on, say, securities law, when the insurance policy covers only other kinds of law practice.

Thank you for your work on this important issue.

/s/ Gerald Knapton
July 2, 2007

Gerald G. Knapton, Esq. (SBN 077038)
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Bercovitch, Saul

From: michael falotico [michaeltfalotico@gmail.com]
Sent: Monday, July 02, 2007 11:50 AM
To: Bercovitch, Saul
Subject: Ojection to Mandatory Insurance disclosure

Dear Mr. Bercovitch,

Please register my objection to the mandatory insurance disclosure now being proposed by the State Bar.

I object on the following grounds:

1. There has been no groundswell of complaints from the public nor from the members of the bar. This is solely another administrative rule proposed and launched by the State Bar. The State Legislature has not asked for it. I believe we should wait for the State Legislature to move first. Surely, this is not something the public has demanded but rather a State Bar regulation.

Moreover, it is almost certainly NOT something that the Bar members have been demanding. On the contrary, the Bar members have up to now been quite content with the status quo. Hence, since both the public and Bar members have not been complaining there is no need to fix something that is not broken.

2. Individual clients may ask if the prospective attorney has insurance. Hence, there is an easy remedy for any client.

3. The mandatory insurance disclosure amounts to nothing more than a new tax on attorneys. Rather than making Bar members lives easier, we now are forced to pay insurance. Cui bono? Who benefits? The insurance companies, of course. These companies stand to make a windfall from the sweat of the attorneys.

4. There is a conflict of interest: many attorneys are involved in litigation against the very insurance industry they must now fund.

5. The new mandatory insurance hits the small law firms and sole practitioners disproportionately hard. Already 20% of the State Bar is on "inactive" status. This percentage will doubtless go up if some attorneys, who cannot afford the higher rates of insurance, are forced to follow the proposed Rule.

6. Quite bluntly, there is no doubt that some lawyers will go out of business. The State Bar should work in favor of attorneys, not against them.

I admire the State Bar and you do good work. I believe, however, in this specific instance you are misguided.

Michael Falotico
Bar # 134631

Bercovitch, Saul

From: Bsdlaw@aol.com
Sent: Monday, July 02, 2007 1:33 PM
To: Bercovitch, Saul
Subject: Comments on Insurance Disclosure

As a small practitioner in a two man firm, I wanted to express my displeasure with the proposed mandatory insurance disclosure.

I view this as another "feel good" approach by the Bar as to what they think consumers want or need, as opposed to what is in the best interests of practicing attorneys whose bar dues support the State Bar.

Unless the State Bar can do something to make malpractice insurance affordable to even the smallest practitioner, I find it unconscionable that the Bar would support such a proposal. Legal malpractice insurance is exceedingly expensive, and the cost is based to a large extent on your claims history, *regardless* of the merits of the claim or how the claim was resolved. A legal malpractice suit could be filed against an attorney and then dismissed without even being served and with no settlement being paid, and it would still count as a claim.

This proposed measure will most directly effect small practitioners, who are usually the attorneys servicing the greater number of the consumer public, as opposed to mega-firms who cater to insurance companies and large corporate interests, and whose clientele would probably insist on their corporate counsel having malpractice insurance anyway.

If any professional needed malpractice insurance, it would be physicians, yet there is no requirement that a licensed physician, whose lack of professional care may cause death or injury, maintain such insurance. Why should attorneys be any different?

The maintenance of malpractice insurance is also illusory. What if the amount of coverage was less than the potential claim? What if the claim wasn't covered because of some exclusion in the policy (ie., lawyer and client lose or dismiss case and get sued for malicious prosecution, and client then cross-sues lawyer for indemnity but the policy excludes coverage or indemnification for claims related to malicious prosecution)? What if the policy subsequently lapsed for some reason after the retainer agreement with the disclosure was entered into? What if the policy had some large self-insured retention or deductible, and the lawyer refused to pay his own money to cover that part of the claim? What if the policy required the consent of the insured to settle, and the attorney, for whatever reason, declined to give consent? Moreover, there is no guarantee of competency, even if an attorney has malpractice insurance.

I wish the State Bar would be more attorney friendly, instead of catering to fictions about what the public needs or requires in order to retain a competent attorney.

Lawrence A. Strid
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Bercovitch, Saul

From: Alvin S. Tobias [toby13@verizon.net]

Sent: Monday, July 02, 2007 2:52 PM

To: Bercovitch, Saul

Subject: Insurance disclosure

Once again we are being sbjected to a suggestion to do that which no other (to my knowledge) profession (Medical profession, CPA's, Insurance agents, Real estate Agents Etc. Etc.) is required to do. This is an ill conceived idea for the following reasons:

1. Practioners who are forced to state that they are uninsured will be relegated to a secondary status. While it could be argued that an uninsured lawyer is comfortable in his or her professional competency it is hardly likely that a prospective client will look at the disclosure except in a negative fashion. It will ecourage prospective clients to "shop" for the lawyer with the best insurance in the mistaken belief that he or she is the better practioner.

2. Any disclosure would seem to encourage clients to seekk reaspons to "play the lottery" (in the words of our 'brethren' in the insurance industry) thus encouraging the filing of malpractice suits.

3. The only people who will benefit from this (and, no coubt, whose lobbyists are encouraging this) will be the insurance industry. To state the obvious, that industry has antipathy for lawyers. The resulting financial windfall to insurers would be, to say the least, substantial. They will then be able to use that cash to further encourage the federal government (and some state legislators) to enact onerous legilation along the lines of our ridiculous non economic damage limitations. (Personally I do not practice in the persoanl injury area so this has not affected me--but it is an awful law, once again aimed at our profession to the great detriment of injured persons and the protection of the medical profession---which does not have the requirement sought to be enacted.)

4. Such a requirment seems to set up an apparent conflict of interest given the facts that the pocketbook in many lawsuits is an insurance provider---what if it is your own carrier.

5. This requirement would encourage "fly-by-night" insurers to start pedalling policies.

There are probably a dozen or so more reasons which will come to mind over as i think about this some more. The Board should spend more time seeking to increase the ethical and collegial problems which abound in our profession rather than to appease the public with crumbs like this. This idea is ill conceived and will be poorly executed.

Alvin S. Tobias (41150)

Bercovitch, Saul

From: Olivia Sanders [sanderslaw@sbcglobal.net]
Sent: Monday, July 02, 2007 6:21 PM
To: Bercovitch, Saul
Subject: Professional Liability Insurance - Public Disclosure

I am opposed to public discloure of an attorney's insured status. I am not opposed to the bar requiring that an attorney maintain some level of professional liability insurance.

Olivia Sanders
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400 Corporate Pointe, Suite 593
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(310) 641-9001
(310) 641-9007 (Facsimile)

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July 2, 2007

Saul Bercovitch
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Attorney Insurance Disclosure

Dear Sir:
The article in today's LA Times was both shocking and disgusting in disclosing that over 30,000 attorneys in the state of California are practicing law without a net and with complete disregard for the rights of their clients. The article further states that the majority of malpractice suits deal with personal injury and Real Estate cases. Just for the record, I am a REALTOR and for thirty years in three different states have always had to carry insurance primarily due to attorneys combing every document for some finite omission of something they can use against brokerages and or agents in my industry. The article further quotes an industry spokesperson stating that there are just so many ways an attorney can make a mistake as if that is justifiable.

Sir this whole concept including the fact that it was law for a time but then allowed to lapse is a total travesty of the legal and judicial field. I understand my fiduciary responsibility to my clients but do not believe legal practitioners understand their responsibility to their clients and the public. The constitution and bill of rights stipulate the protections citizens are entitled to but your industry is obviously not prepared to provide the protections for their errors or omission that can damage the rest of us. And by the way, someone that is not openly practicing law is just as dangerous in particular when they are asked a question and volunteer information that someone believes to be valid and relies on. I fully understand and believe that there are many fine attorneys who work very hard on behalf of their clients and properly cover themselves. I also hear the charlatans who are constantly looking for odd situations to take advantage of. A recent conversation with an attorney who dealt in class action suits revealed he was excited when the San Fernando Valley Orange line opened up and stated (drooled over the thought) of how many cases he was going to pickup of motorists incorrectly entering the private bus street even if it was properly posted. By the way I do not believe he carries insurance either and believes he could always file bankruptcy but still continue to practice.

Sir, you need to clean up your industry's act and soon. If you allow this to happen you are no better than a bunch of illegal immigrants driving with no auto insurance and expired license plates.

Sincerely

David J. Strauss
20032 Community St # 74
Winnetka, CA 91306
(818) 324-0713
knd@earthlink.net

Bercovitch, Saul

From: John Martin [martlaww@msn.com]
Sent: Tuesday, July 03, 2007 7:57 AM
To: Bercovitch, Saul
Subject: comments

Saul
I have been a practioner since 1994, and carried insurance for several years. I have never been sued by a client, and have never had a complaint against me or my law practice to the bar.

I had insurance for several years, but it got more and more difficult to get insurance, especially since I began working on class actions. The price rose and rose, with more and more paperwork and it really became cost prohibitive. it continues to be cost prohibitive.

We already have classes such as law practrice management, and substance abuse, which in my view are tmie consuming and unnecessary. We have so many regulations, such as mandatory arbitrations for client fee disputes, and so many other rules. In short, we bear heavy burdens the public probably does not understand or apprecate.

A rule that would require an attoney to disclose whether they have insurance or not is fine, but to require disclosure violates fundamental freedom of contract principles. The consumer may ask, and again I have no problem requring disclosure if asked, or some public website as to those who have insurance or somthing like that, but to require a small practiioner to voluntary blurt out to a prospective client "I have to tell you I dont have insurance for malpractice" What is that impact to the public? What will they think? They will think something negative about the attorney. Whats wrong with them not to have insurance? Let me find a possibly sleazy attorney who does have insurance? Is that the solution? Again, my record is perfect, in part because I resolve client problems if I can, make compromises for the client benefit (e.g.: billing disputes), return the clients phone calls promptly, keep them informed of their case, and other such requirements. However, despite those practices, such as rule would be a "de facto" requirement for insurance. Is so, then the bar has a duty like Oregon to provide theinsurance or make the insurance mandatory at an inexpensive price. If you want such security, then that is another matter (which again, would benefit larger law firms) Small practioners provide a key role to insure justice. Providing lawyers, particularly plianitiff lawyers who are already "contingency" fee lawyers who put their money, time and risk into a case, cannot then be forced to get insurance. Again, I oppose MANDATORY disclosure up front to a client, not a requirement that an attonrey disclose it if asked.

And, as stated, mandatory insurance carried by all members by way of dues etc. is also a diffrerent matter. Some members of the bar are already alienated by the bar, so this would merely be yet another reason for the bar to tell lawyers to go find another business unless you are a big firm and

can afford insurance (which, like a fancy office, is always passed on to the client). More regulations will merely make it more difficult to lawyers, and also encourage lawyers to be sued, whcih is never a good thing. We have funding already to take care of clients who are taken advantage of through bar programs. That should be enough, as well as a consumer who asks questions of a lawyer, and leaves a lawyer or complains about a lawyer through our already existing systems.

Thank you for your time.
JP Martin, Esq. (SBN 175203)

Bercovitch, Saul

From: Malpracticeexpt@aol.com

Sent: Tuesday, July 03, 2007 12:18 PM

To: Bercovitch, Saul

Subject: Re: New Insurance Rule(s) Proposal- Comments

After years of hiatus following pilot use of insurance notification in B&P 6147 et. al. present proposal reflects a poor compromise whose only role will be to accomplish the obvious. (Disenfranchisement of attorneys whose practices generally competes with public service law firms to serve a population not sought out by the legal profession in general). The proposal's failure to deal with reality and patent subservience to attorneys instead of affording the public served with needed protection and fair, informed consent, makes the proposals, as promulgated disingenuous.

ON THE OTHER HAND, WITH SOME TWEAKS, THE PROPOSAL COULD EASILY ACCOMPLISH ITS PURPORTED OBJECTIVE OF PUBLIC PROTECTION AND PERMIT THE OBJECTIVE ISSUES TO UNEMOTIONALLY PASS MUSTER WITH THE CALIFORNIA SUPREME COURT.

The following additions, correction, or deletions to the proposed rule(s) are suggested for reasons set forth:

Delete the discussion in the Rule of Professional Conduct since it serves to water down the requirement.

Amend both rules to apply to all clients, whether preexisting or not. Empirical data was not provided by the Board and for that reason the Board was apparently unaware that many ongoing client relations continue for very long time periods. There is no logic to failing to protect the public by eliminating full and fair informed consent concerning insurance from requirements for all attorney client relations (except the two expressly identified).

Amend both rules to reflect an ongoing duty on the part of all attorneys who in fact represent clients and have, at the time of engagement, properly failed to provide any notice to prospective clients because of presence of insurance, to notify such clients of change in insurance status, in the same manner as new clients are required to be notified. There is no logic to permitting attorneys to mislead clients by discontinuing insurance (voluntarily or otherwise) the day after being retained of their noninsurance status. For many transactional activities, most litigation and most hybrids lawyering, the time periods involved cover multiple years. Lulling a client into a sense of false security believing their errant lawyers are financially able to respond in damages to malfeasance constitutes a Board of Bar Governor support for deception.

Add reasonable alternatives to insurance on the same basis as traditional, commercial insurance with equal dignity. Bonds, self-insurance trusts and other imaginative devices are used by law firms who can afford the luxury with the same public protection as commercial insurance. Failure to permit such alternatives consitutes Board of Bar Govenor sanction of commercial enterprises unrelated to public protection or representation of California lawyers.

Add to the client, insurance notification rules the following: Attorneys who are directly or indirectly self-insured for any portion of the first Five Million of errors and omissions liability coverage are " 'conditionally insured' for the purpose of these rules. They are required to provide all prospective clients and prior clients (upon change of circumstance) with express notification of any and all insurance levels." An attorney who is self insured for the first 5 million of liability and carries insurance of $100,000 thereafter ought remain free to make such business judgment decisions independent of the Board of Bar Governors belief that commercial insurance at all levels seems "traditional", but the Board ought not mislead the public into a false belief it is being protected when that is not a true statement of fact. Likewise the Board ought not differentially treat attorneys whose law firms practice reasonable alternative indemnity devices consistent with good business practice and public protection.

Phillip Feldman, BS, MBA, JD, AV , Board Certified Professional Negligence-Legal, former State Bar Examiner, former Legal Malpractice litigator, Plaintiff & Defense, Former Judge Pro Tem Superior Court, Attorney-Client Fee Dispute Aribtrator 27 years, Present National Expert Witness-legal malpractice, Risk Management

Consultant, State Bar Defense ,Counsel, Forty Years practice.

Bercovitch, Saul

From: Christine Kurek [kurekcl@yahoo.com]
Sent: Tuesday, July 03, 2007 4:21 PM
To: Bercovitch, Saul
Subject: public comment re: insurance disclosure

Dear Mr. Bercovitch:

I read the article in the LA Times re: the proposed rule to require that attorneys in CA must disclose whether they carry malpractice insurance. I have reviewed the proposal on the California Bar website, and disagree with two points:

1) I am concerned that only new clients would receive the disclosure. Whether an attorney carries malpractice insurance is an important matter that should be disclosed to all clients.

2) The new proposal appears to eliminate the requirement that the disclosure be made in writing with a signed acknowledgement. Best practice would dictate that, for the protection of the client and the attorney, there be a signed acknowledgement. It would be fairly simple to include in a retainer agreement, as well, therefore minimizing any perceived burden caused by the requirement.

Thank you for your time and consideration of the above.

Sincerely,

Christine Kurek
CA Bar Member (inactive)

Bercovitch, Saul

From: Jeanne Karaffa [jeannekaraffa@earthlink.net]

Sent: Tuesday, July 03, 2007 3:48 PM

To: Bercovitch, Saul

Subject: Mandatory Insurance

Plese accept these comments: I am a sole practitioner and have been since 2000. During that time I purchased insurance at an affordable rate. I sued a client for unpaid fees, and of course, he sued me for malpractice. There was no merit to his case and he ended up settling with me at substantially less than he owed. When I attempted to renew my insurance, I was told that I could not renew unless I paid exhorbitant prices. My business waxes and wanes, and I could not afford to pay the prices set. And how long do I have to wait until the insurance companies consider me "blemish-less" so that I can purchase insurance again. Large firms can afford to insure their attorneys -- I cannot. I will be at great disadvantage if I have to disclose that I do not have insurance. Thank you.

Jeanne Karaffa
jeannekaraffa@earthlink.net
EarthLink Revolves Around You.

Bercovitch, Saul

From: H. Strong [stronglaw@gmail.com]
Sent: Tuesday, July 03, 2007 6:23 PM
To: Bercovitch, Saul
Subject: Opposition to Proposed New Insurance Disclosure Rules (Revised)

Dear Mr. Bercovitch:

I write in opposition to the proposed Insurance Disclosure Rules.

These Rules will have the effect of making it even harder for aggrieved consumers (who already have a very tough time finding counsel) to obtain lawyers to help them. Indeed, some have suggested that this is one result intended by some of the proponents of this proposed Rule.

The sun setting of the previous California Rule was a good thing.

There is no good reason to bring back this deceased disclosure rule.

Thank you for your consideration of my views.

Howard Strong
Law Offices of Howard Strong
P.O. Box 570092
Tarzana, CA 91357-0092
(818) 343-4434

Bercovitch, Saul

From: Larry Karlin [KarlinJD@verizon.net]
Sent: Friday, July 06, 2007 7:13 PM
To: Bercovitch, Saul
Subject: malpractice insurance discosure

Dear Mr. Bercovitch,

I am afraid that the proposed insurance disclosure requirement would put me out of business prematurely. I now practice only as a contract attorney, handling applicants' depositions for Workers Comp. applicants' attorneys. This is a part-time employment for me, grossing less than $20,000 a year at $50 per hour. The least expensive coverage I have found would cost me well over 10% of my income (I have other expenses, primarily transportation costs, State Bar fees and MCLE). I have considered this insurance prohibitively expensive. Would the firms that employ me have to disclose that while *they* have malpractice insurance, some of the contract attorneys they employ do not? I doubt they want to have to explain all that to the client. Would *I* have to disclose, as I introduce myself to the client at the deposition prep. immediately before the noticed deposition, that while the firm they hired may have malpractice insurance, I personally do not? (Usually through a Spanish language interpreter, by the way.) If the client at that point declined to go forward, there might be adverse consequences for their case and my employer might be responsible for costs. My fear, of course, is that this requirement will put the final coffin nail in what has been a small but usefull supplement that paid for my schooling and training as I develop my competence and practice in my second profession, as a recently-licensed Marriage and Family Therapist.

Very, Truly Yours,

Laurence M. Karlin
Calif. State Bar #34081

Bercovitch, Saul

From: Lefebvre, Vickie [vickiel@qualcomm.com]
Sent: Monday, July 09, 2007 9:11 AM
To: Bercovitch, Saul
Subject: Proposed Rule Changes

Dear Mr. Bercovitch:

I would like to comment on the proposed rule changes regarding professional liability insurance. I believe the suggested changes are good and would enable the general public to make better informed decisions regarding the employment of an attorney's services.

I do, however, have a couple of questions regarding specific situations. I recently left the employment of a law firm where one of the "senior associates" is not a licensed California attorney. He is licensed in the State of Washington. He took the Bar exam July of last year and did not pass and he has not taken it again. Before I left Catalyst Law Group, Brandon Rath was promoted to "head of the corporate/securities/litigation" group, and put in a supervisory position over a licensed California attorney. To the best of my recollection, since Mr. Rath is not licensed in California, he is not specifically covered by Mr. Jurgensen's professional liability insurance (Jurgensen is the owner of the firm).

If the new rules take effect in February 2008, at that point, should Mr. Rath inform his new clients that he does not have liability insurance, or, since Mr. Rath is working at Catalyst and Catalyst has professional liability insurance, would that not be necessary?

The State of Washington does not require its attorneys to carry professional liability insurance.

Your response would be greatly appreciated.

Sincerely,

Vickie L. Lefebvre
(858) 658-5523 direct
(858) 658-2502 fax

Bercovitch, Saul

From: Feedback
Sent: Monday, July 09, 2007 12:16 PM
To: Bercovitch, Saul
Subject: FW: Yes for Malpractice Insurance Disclosures

-----Original Message-----
From: Mark Baron [mailto:markbaron@charter.net]
Sent: Monday, July 09, 2007 12:11 PM
To: Feedback
Subject: Yes for Malpractice Insurance Disclosures

To The State Bar,

I urge you to do the right thing. I urge the Bar to demonstrate to the public that it acts in the best interest of the public and that it is not the sole regent of the 150,000 lawyers in this state. **I urge you to demand that lawyers must tell their clients if they carry malpractice insurance in the initial client lawyer agreement.**

Anyone who has been involved in a legal malpractice suit or a "shake down law suit" caused by legal incompetence knows how dysfunctional the American legal system is. Anyone involved in a legal malpractice suit know about the abusive billing practices of lawyers and the exorbitant cost to fight the lawyer's insurance company. The cost to defend yourself is prohibitive. A competent defense team is out of the reach of most people. Right or wrong is not a factor in a law suit. How much money you can spend to defend yourself is the major factor. It is better to know up front if your lawyer has malpractice insurance. The consumer at least has some recourse for incompetent legal performance.

Thank you,
Mark Baron

Bercovitch, Saul

From: martin brandfon [mbrandfon@earthlink.net]
Sent: Monday, July 09, 2007 3:43 PM
To: Bercovitch, Saul
Subject: Mandatory Insurance Disclosure Requirements - against

dear mr. bercovitch:

please note my objection to the proposed rule regarding attorney disclosure to clients about malpractice insurance coverage.
i am against the proposal for all of the obvious reasons:
1) this measure will not protect the public from "bad" attorneys
2) it will increase attorneys fees to low and middle class clients and thereby increase "in pro per" litigants - clogging the court calendars, etc.
3) on a personal level, it may cause me to lose clients and business, possibly affect my reputation
4) if i get coverage, it will increase my expenses and lower my net income unless i (see #2 above) raise my fees!
5) i figure that i save at least $5000/yr in expenses without insurance.
in over 25 yrs of practice with only one irate client frivolously suing me (settled for $5000) i am at least $125,000 ahead of the game.
6) the only one who wins here will be the insurance company (singular).
7) if the st. bar provided it's own low-cost insurance fund for its members i would consider buying in.
8) don't cave on this p.r./b.s.
9) just say "no, thanks"

martin saul brandfon
redwood city
sbn 107901

ps- if every active member in the bar would just send me $1.00 each i will retire tomorrow.

FAX TRANSMISSION SHEET

RICHARD A. MUENCH, APC
State Bar No. 49669
25231 Paseo De Alicia, Suite 103
Laguna Hills, CA 92653
Phone: (949) 859-8215
Fax No: (949) 859-4275

TO: SAUL BERCOVITCH
FROM: RICHARD MUENCH
DATE: 7-9-07
FAX NUMBER: 1-415-538-2515
RE: PROPOSED INSURANCE DISCLOSURE REQUIREMENTS
Number of Pages: __ (including this cover sheet)

Dear Mr. Bercovitch:

I have practiced law in California since 1971 and have been a sole practitioner since 1982. It would be a serious mistake to implement a requirement that attorneys either carry malpractice insurance or require them to disclose their non-insurance status

If you have any problems receiving this FAX, please contact Genie Kindig at the telephone number listed above. Thanks!

ORIGINAL DOCUMENTS WILL BE SENT VIA U.S. MAIL __

ORIGINAL DOCUMENTS WILL NOT BE SENT X

to their clients. While it might sound like a good idea at first blush, it would seriously impact solo practitioners, especially those in my situation who would like to continue to practice at age 65 but who want to do so on less than a full-time basis. Try to keep the "little people" in mind when enacting such a sweeping reform!!

Very truly yours,

Richard A. Muench

St. Bar # 49669

ROBERTA M. YANG
Attorney at Law
P.O. Box 492106
Los Angeles, CA 90049-8106
(310) 948 3298
robertamyang@gmail.com

July 9, 2007

Saul Bercovitch
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Public Comment on Proposed Insurance Disclosure Rules

Dear Mr. Bercovitch:

Please accept this letter as public comment on the latest efforts of the State Bar of California to expand the regulation of attorneys.

The practice of law has greatly changed over the course of the last 20-30 years. It has become more business- and explicitly profit-minded, and less collegial. As a result, more and more attorneys are seeking legal careers that do not follow the traditional path of working full-time in a law firm setting, to expressly avoid many of the complaints about the current practice of law environment.

The proposed insurance disclosure rules, both in the basic structure or as slightly modified, fail to recognize that the proposed approach does not, and cannot apply, to all practitioners. Those that are engaged in the practice of law in the traditional office setting, whether that be determined by % of time or nature of the practice, are more easily made subject to this kind of additional regulatory requirement.

But for the growing numbers of attorneys who don't work or no longer work strictly as an attorney representing clients, for example, in transactions, in court, or in-house, but rather as business or management consultants, as real estate developers, or for whom legal training and experience serves as a foundation but not the main or sole means of making a living, should be exempt from the regulation without any requirement of disclosure. These attorneys and the types of professions they occupy go beyond those employed as government lawyers or in-house counsel.

For those attorneys whose practices primarily involve the representation of clients, as opposed to other types of engagements, the proposed disclosure

requirements should be imposed only upon occurrence of a triggering event. It's much like how the vehicular insurance requirement works in real life: when an accident occurs from which a party seeks damages, then the disclosure to the allegedly aggrieved party can be made mandatory. Where an attorney does not have a heavily client-based practice, like an attorney working as a consultant where legal advice is not the primary service provided by the attorney, it is wholly irrelevant whether the attorney carries malpractice insurance.

This two-pronged approach (imposed upon attorneys in the traditional office practice and only disclosable upon demand as a result of a triggering event) likewise covers non-traditional attorneys in other occupations who occasionally may handle a client matter. The same inquiry can be made upon a triggering event with no requirement of coverage involved.

Again, I fear that the State Bar, evidenced in its long-heralded and much checkered history of over-regulating attorneys with mixed results, is taking a tangential path to its goal of public protection. The primary challenge for any attorney regulatory body is screening for ethical predisposition before one is licensed and during licensure. Whether one carries malpractice insurance or not is a red herring for the public.

By the same token, this type of proposed regulation fails to distinguish between practitioners in law firms, where the expense of malpractice is borne, not by the individual attorney but by the firm, versus practitioners in smaller office settings, where there is a greater likelihood that the expense will be borne by the individual attorney. This inequality and inequity can be partially addressed in any proposed rule, say, by requiring each attorney to carry his or her own policy, irrespective of additional coverage by any employer-firm.

Applying the current effort to require malpractice insurance in a practical manner and to make mandatory insurance more palatable, perhaps an altogether different approach is to require insurance coverage at time of licensure, just like auto insurance, with no other disclosure needed.

Thank you for the opportunity to comment.

Very truly yours,

Roberta M. Yang

ROBERTA M. YANG

Bercovitch, Saul

From: BauerLaw@aol.com

Sent: Tuesday, July 10, 2007 10:03 AM

To: Bercovitch, Saul

Subject: Questioning the good of insurance disclosure

I am a practicing attorney of 29 years. The demanding need for the good of the public is provide low cost and pro bono legal services to the public. I have insurance, not for the public good, but for the protection of my family. The public good comes from my representing domestic violence victims in family law court and civil court - I represent victims and families, give lectures and presentations and take many, many telephone calls. I see literally hundreds of victims and their families go without legal representation and thus with no relief because of no money to pay lawyers wanting $350 - $500 per hour. Those lawyers and the big firms can pay the malpractice insurance many times over with no effort with no adverse effect on their clients. The ability to provide legal services should come before the cost of insurance. You require the many sole practitioners and small firms to pay malpractice insurance and you reduce the legal representation of the poor - again, there is only so much money to pay the budget, insurance, rent, etc. - you force lawyers to pay for insurance and you lose representation of the poor accordingly. The State Bar has always had a love affair with the big firms and with lawyers earning big money, but never has paid attention to the sole practitioner helping out the common guy and charging little or nothing often. Look at the "Top Lawyer" listing or the "Big Law Firm" listing - who cares other than the so-called top lawyers or the grunts at the big firms? I say again, "who cares?". Look at the monthly "Trial Digest" - all about lawyers and the large verdicts. What about the legal service lawyers? Do they not pay dues? Or the public defenders? Or the pro-bono lawyers - not the big firm pro-bono lawyers who still get paid anyway, but the small time pro-bono lawyers that work for free with no expectation of payment? Also, importantly, who polices the insurance companies? Require mandatory insurance and the policies will run the lawyers, not the other way around - look at the effect of medical malpractice insurance which dictates practice and behavior to the doctors. What about that conflict - who wins, the client or the insurance company? Enough. The State Bar needs to realign its policies. The public good is representation to those without means and the mandatory insurance will only reduce that representation. Richard Bauer 79754

RONALD S. SMITH
A LAW CORPORATION
SUITE 341
8383 WILSHIRE BOULEVARD (323) 653-2345
BEVERLY HILLS, CALIFORNIA 90211-2415 FAX (323) 653-1314

July 11, 2007

Mr. Saul Bercovitch
VIA FACSIMILE (415) 538-2515

Re: Insurance Disclosure

Dear Mr. Bercovitch:

I would like to comment on the proposed insurance disclosure requirements. Any such rule requiring such disclosure may in fact be misleading to the public.

As you of course well know, I could maintain malpractice insurance for 36 years, inform my clients of that fact and if for some reason at the end of my practice I purchase a one year tail, it could turn out that a lawsuit served upon me after said period of time would not be covered because I had a claims made policy. Thus, having insurance at the time I sign up a client may only mislead the client into believing that I am covered when in fact the policy could lapse and unlike an automobile or homeowners policy provide absolutely no coverage to my client who makes a claim for an act or omission to act that I may have made during the time I was covered but presented to me after said policy was not renewed or cancelled.

Additionally, would the disclosure also require the amount of said policy? For example having coverage in the sum of $100,000.00 may mislead a client into believing that if I make a mistake they have $100,000.00 worth of protection when in reality that $100,000.00 policy limitation my also include the cost of defense which would radically reduce the available insurance coverage that my client thought they were getting.

What about "off shore" insurance companies that may go under and who may not be protected by the California Insurance Guarantee Association? What type of disclosure would protect the client in that case?

Are doctors required to make such disclosure? What about other professionals? Is there something unusual about our profession that would mandate such a rule?

I am neither for nor against such a rule. I only believe that if a rule is in fact instituted it not mislead the public into believing that they have more protection by retaining an "insured" lawyer than one who is "self-insured."

As for me, I remember when I could get a million dollars worth of coverage for about a thousand dollars a year. Hey, I guess those were the days when I could also buy a gallon of gas for 33 cents. But now, the quotes I get (despite having a claim free history) is more like $10,000.00 a year for $100,000.00 of coverage with a deductible of $5,000.00 or $10,000.00. Just not worth it for me and it certainly wouldn't be beneficial for my clients.

Sincerely,

RONALD S. SMITH

RSS/gf

RICHARD S. LESLIE
ATTORNEY AT LAW
P.O. BOX 90400
SAN DIEGO, CALIFORNIA 92169-2400
TELEPHONE (858) 456-0695
FAX (858) 456-0639

July 13, 2007

State Bar of California
180 Howard Street
San Francisco, California 94105
Attn: Saul Bercovitch

Re: **Proposed Insurance Disclosure Rules**

Dear Friends:

These comments are in opposition to the proposal requiring disclosure of the fact that an attorney does not have malpractice insurance.

The original charge to the Task Force was to study if there should be a requirement in California that attorneys disclose whether they maintain professional liability insurance. The Task Force never came forward with any information that supported their position other than recognizing the fact that some other states have requirements with respect to this subject matter and the **naked assertions that this is necessary to protect the consumer and the "client's right to know."**

If the client has a right to know and the consumer should be protected, then let the rules require disclosure whether or not there is professional liability insurance. The lack of fairness of this proposal is exposed when one considers the reality that a requirement to disclose the existence of malpractice insurance would be met with overwhelming opposition, which would lead to a scuttling of the proposal. **Attorneys with insurance would not want the issue of malpractice to be raised at the outset of the relationship. Nor should it be!**

The proposed title of Rule 3-410 is "Disclosure of Professional Liability Insurance," yet the rule requires the disclosure only if there is no professional liability insurance. If it is important that consumers know, why not tell them in either case? **The Task Force provides extremely weak reasons for not requiring disclosure of the presence or absence of insurance.** Disclosure of the presence or absence of insurance would give the consumer the kind of information that the Task Force asserts is important.

If there is no disclosure when insurance is in place, then the consumer is in the dark at the outset. This surely is not what the Task Force desired. So, why is the proposal directed at

RICHARD S. LESLIE
ATTORNEY AT LAW

disclosures only when there is an absence of insurance? The answer is - because the Task Force knows that the introduction of the subject of the presence of insurance might invite the client to be thinking in terms of malpractice at the outset of the relationship. **This proposal targets those who have no insurance and would raise the issue of malpractice at the outset of the relationship only with respect to them – this is grossly unfair!**

Fundamental fairness requires that the rule does not single out one group of attorneys, but rather, that the rule either requires disclosure of the presence or absence of insurance, or that no rule is promulgated.

Thank you for your thoughtful consideration.

Sincerely,

Richard S. Leslie

Richard S. Leslie

Bercovitch, Saul

From: Anerio V. Altman [avaesq@cox.net]

Sent: Saturday, July 14, 2007 9:11 AM

To: Bercovitch, Saul

Subject: Comment on the Proposed Rules regarding Disclosure of Insured Attorney

That would be just one more way that I lose a client to a larger law firm. As a small firm practitioner under 40, I can't even practice in Business Litigation, and am barely able to address serious incorporations, because of my age and the fact I don't have the bells and whistles of a larger partnership or law firm.

Additionally, I practice in Bankruptcy law, and my clients are skittish enough as is. They won't really understand what it means to not have insurance, but will just know that I don't have it.

Sincerely,

Anerio V. Altman, Esq.

Law Office of Anerio V. Altman
We are a Federal Debt Relief Agency
27031 Vista Terrace #209
Lake Forest, CA 92630
In Orange County
Phone: (949) 218-2002
In Los Angeles County
Phone: (213) 291-6959
In Either County:
Fax: (949) 218-0581
www.smietanalaw.com

Deuteronomy Chapter 15

"1 At the end of every seven years thou shalt make a release.

2 And this is the manner of the release: every creditor shall release that which he hath lent unto his neighbor; he shall not exact it of his neighbor and his brother; because the LORD'S release hath been proclaimed."

C C A P

Central California Appellate Program
2407 J STREET, SUITE 301 • SACRAMENTO, CALIFORNIA 95816-4736
(916) 441-3792
Fax (916) 442-0330

July 19, 2007

Sue Bercovitch
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Public Comment on Proposed New Insurance Disclosure Rules

Dear Ms. Bercovitch:

We appreciate the opportunity to comment on proposed rules changes requiring insurance disclosure.

As the Insurance Disclosure Task Force develops the new rules (Proposed New Rule 9.7 of the California Rules of Court and Proposed New Rule 3-410 of the California Rules of Professional Conduct), it would be helpful for the rules to clarify the obligations of attorneys who have been appointed to represent individuals who are entitled to appointment of counsel. Both proposed rules exempt attorneys who are government lawyers or in-house counsel and do not provide legal advice to clients outside that capacity, but appointed counsel do not appear to fall within the exemptions unless they are government employees.

The appellate projects (First District Appellate Project, California Appellate Project, Central California Appellate Program, Appellate Defenders, Inc., and Sixth District Appellate Program) are nonprofit corporations under contract with the appellate courts of the State of California to (among other services) arrange for the appointment of counsel for people entitled to have counsel represent them in matters that are on appeal. Each of the appellate projects carries professional liability insurance that covers appointed counsel for work performed in the course and scope of the appointment. Because some of the attorneys practice only on an appointed basis, and do not represent clients on

a retained basis, many do not have their own separate professional liability insurance. For the legal services they provide, they are covered under the respective appellate project's policy for that case.

The following questions arise.

1. Since those attorneys do not have their own professional liability insurance (even though they are covered by the appellate project's professional liability insurance), are they required to notify their clients that they do not "have" liability insurance (under proposed rule 3-410 of the Rules of Professional Conduct)? Earlier versions of the proposed rules used the language "covered by professional liability insurance," but the current proposed language has changed it to "has professional liability insurance." Was the change substantive, requiring the attorney to be the direct contractor with the insurance carrier in order to be able to claim that he or she "has" insurance? Or was the change simply an effort to change passive voice ("is covered by") to active voice ("has"), not recognizing that the meaning of the phrase was changed, at least arguably?

2. Similarly, under rule 9.7 of the Rules of Court, will the attorney be required to notify the State Bar that he or she does not "have" professional liability insurance, even if all of the legal services performed are "covered by" the appellate projects' professional liability insurance policies?

3. Some attorneys do engage in a legal practice that includes clients who retain them, in addition to clients for whom they have been appointed. Some may not have coverage under any professional liability insurance policy for those clients who retain them. If the rules are intended to be interpreted in a way that the attorneys are considered to "have" insurance if their legal services are covered by the appellate projects' policies, how do those attorneys advise the State Bar of their coverage status? They do have professional liability insurance coverage for some clients, but not for all clients.

The questions presented in this letter may also apply to attorneys who are appointed at the trial court level who are not government lawyers, because they are not employed by a county department of the public defender, but either are appointed by the court on an ad hoc basis or are members of a firm or consortium under contract with the county to provide services in the trial court on an appointed basis.

Thank you for your consideration of our comments.

Very truly,

George Bond, Executive Director
Central California Appellate Program

Mat Zwerling, Executive Director
First District Appellate Project

Jonathan Steiner, Executive Director
California Appellate Project– Los Angeles

Elaine Alexander, Executive Director
Appellate Defenders, Inc.

Michael Kresser, Executive Director
Sixth District Appellate Program

Bercovitch, Saul

From: Paul Miller [paulmilleresq@sbcglobal.net]
Sent: Wednesday, July 25, 2007 10:35 AM
To: Bercovitch, Saul
Subject: Proposed New Insurance Disclosure Rules

Dear Mr. Bercovitch:

I want to again express my displeasure with the proposed new insurance disclosure rule. I believe this new proposed rule unfairly penalizes new attorneys or solo practitioners who have so few clients that it is prohibitively expensive for them to carry liability insurance. Additionally, in reviewing who was on the committee reviewing this proposed rule, I noticed that nearly all of the lawyers were from big, multi-member law firms, and hardly any solo practitioners or new attorneys were represented on the committee. It is logical that a new insurance disclosure rule would not affect big firms much, because they already have insurance, so why would they care if this rule was adopted or not? Furthermore, I believe it may create a situation in which unscrupulous clients may be more likely to sue their attorney if they know he or she does not carry insurance. Finally, I know of no other specialized profession, such as the medical or accounting fields, where their practitioners have to declare whether they have insurance or not to their clients.

Please do not adopt this new rule.

Sincerely,

Paul Miller
Member 222775

Bercovitch, Saul

From: louis@wuiplaw.com
Sent: Friday, July 27, 2007 7:41 PM
To: Bercovitch, Saul
Subject: Opposition to Revised Proposal for New Insurance Disclosure Rules

July 27, 2007

Opposition to Revised Proposal for New Insurance Disclosure Rules

I oppose the revised proposal for new insurance-disclosure rules ("Proposal-II") because Proposal-II suffers from substantially the same defects as its predecessor. That is, Proposal II remains deceptive and fundamentally unfair in nature.

In my comments dated August 8, 2006, I analogized malpractice insurance to a "pot of gold" that may be used to compensate for harm to clients caused by attorney carelessness. It is the GOLD (not the pot) that clients care about. Since pots may contain gold in an insufficient amount for client compensation and gold can be held in vehicles other than pots, requiring only those attorneys without a pot to disclose that fact to clients would be tantamount to systematic Bar-sanctioned deception. As a corollary, if the Bar wanted to ensure full disclosure so as to address the concerns of clients worried about the consequences of attorney negligence, the Bar would require ALL attorneys to disclose HOW MUCH gold they have instead of whether they have a pot.

No one wants to play on an uneven field or be treated differently from other similarly situated individuals. Proposal-II's supporters effectively want to force those who choose to forego malpractice insurance to wear a "NO INSURANCE" badge. Common sense tells us that such a legally mandated badge puts the wearer in a commercially disadvantageous position relative to those who do not have to wear a badge.

Interestingly, the same supporters do not suggest that those with malpractice insurance should be required to wear an "INSURED" badge. Perhaps the supporters are worried that such a badge would label wearers as "deep-pockets" for malpractice lawsuits. In any case, it would be instructive to see how many of the Proposal-II's supporters have chosen to purchase malpractice insurance and how many have not.

Notably, the Proposal-II's supporters have carved out an exception to the "no-insurance disclosure" requirement for existing clients. This exception shows that the Proposal-II's supporters are not interested in protecting ALL clients--only those with NEW BUSINESS. Gee, I wonder why Proposal-II's supporters think such clients merit extra protection?! No wonder there are so many jokes relating to attorney duplicity that end with a punch line that in effect say "Kill all lawyers!"

Should the Bar be interested in pursuing mandatory FULL disclosure of malpractice insurance coverage, perhaps the Bar should first look to see whether there are any similar rules applicable to other state-licensed service professionals, e.g., physicians, dentists, engineers, notaries, real estate agents, hair dressers, etc. I see no reason why attorneys should be held to a different standard in this matter.

In any case, I have attached in MSWord format a draft revision of a portion of Proposal II to show how Proposal II may be improved, should it be decided that mandatory full disclosure pertaining to malpractice insurance is warranted.

Respectfully submitted,

Louis Wu (California State Bar No. 202,949)

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The State Bar of California's
Law Practice Management & Technology (LPMT) Section
Executive Committee (ExCom)

BY MAIL AND EMAIL

July 27, 2007

Board of Governors
c/o Saul Bercovitch, Esq. <saul.bercovitch@calbar.ca.gov>
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Statement of Opposition to Proposed Rules of Insurance Disclosure

Introduction

By branding a "Scarlet M" on all California attorneys choosing not to carry malpractice (professional liability) insurance, the pending proposed disclosure rules are discriminatory, overreaching and unjustified. Among other flaws, the proposed rules disproportionately impact 70% of the state's licensed lawyers, namely sole and small firm practitioners.

Thus, the LPMT ExCom hereby officially joins the 78% of commenting Bar members[1] who have expressed opposition to the proposed new rules. We hereby urge the State Bar Board of Governors to reject the proposed rules.

Analysis

I. Overview

Collectively, the three provisions at issue[2] would require every licensed California attorney to disclose to each prospective client whether or not the lawyer has malpractice insurance. For each attorney who does *not* have malpractice insurance, his/her official bar membership record – including the <http://members.calbar.ca.gov/search/member.aspx> online profile – will indicate the nonexistence of such coverage. That scarlet letter would be branded on approximately one-fifth – namely 30,000 – of the Bar members.[3]

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[1] Mike McKee, *Bar Still Wants Insurance Disclosure Rule* (Recorder Apr. 23, 2007), available at <http://www.law.com/jsp/ca/PubArticleFriendlyCA.jsp?id=1177059872833>; William Mayo, *INSURANCE DISCLOSURE WILL HURT LAWYERS* Letter to the Editor (Recorder Apr. 27, 2007), available at <http://www.law.com/jsp/ca/PubArticleFriendlyCA.jsp?id=1177578269066>.

[2] Proposed Amendment to Rule 950.5 of the California Rules of Court (CRC); Proposed New Rule 950.6 of the CRC; Proposed New Rule 3-410 of the California Rules of Professional Conduct (CRPC).

[3] In 2001, a *California Bar Journal* survey found that 18% of private practitioners go "bare" or do not have professional liability (malpractice) insurance. This phenomenon is not unique to California. By way of comparison, Illinois found that 40% of its sole practitioners do not have such insurance.

II. Harm to Public

The proposed rules are premised on the presumption that the public will be better protected under a new regime. However, many of the proposed changes, once implemented, would work *against* the public interest. The principal effects of the proposed rules changes – whether desired or not – will be to compel attorneys to obtain malpractice insurance and to place attorneys lacking malpractice insurance at a competitive disadvantage. Some of the adverse consequences are summarized below:

- ***Solo attorneys and attorney at small firms*** comprise more than 100,000 – over 70% – of our state bar's 150,000+ members. As noted above, approximately 27,000 members – 18% – of the Bar have chosen to go without malpractice insurance. The solo and small firm constituency will be most adversely impacted by the proposed rules changes – even though such practitioners are generally the least capable of affording coverage.

  Statistics demonstrate that sole and small firm lawyers earn substantially less money[4] than the larger law firm lawyers, none of whom actually feel the pain of having to purchase malpractice insurance out of their own pockets.

  There is no "affordable" malpractice insurance available in California for experienced attorneys. The State Bar of California endorses a private insurance carrier's offering of malpractice insurance and receives a substantial stipend from every policy written under that program.[5]

  Malpractice insurance, on average, costs between $4,000 and $7,000; the cost is substantially higher in certain practice areas. It is not reasonable to expect a lawyer to spend 10% of his/her earnings (not gross revenue) for such insurance when he/she can typically barely subsist now. Consequently, under the proposed rules, solo attorneys and small firms would inexorably face the dilemma of either passing the additional cost on to their clients or absorbing it themselves. Neither alternative bodes well for the public.

  If, on the one hand, the cost is passed on, clients of these solo attorneys and small firms – often that portion of the public *least* capable of affording legal services in the first place – will face higher legal bills. In turn, the specter of increased legal fees will be a further *dis*incentive for poorer clients to seek the assistance of lawyers.

  If, on the other hand, the cost is absorbed, the least prosperous members of the Bar will become even less profitable and some may altogether disappear. Fewer solo attorneys and small firms will mean fewer choices for consumers – hardly serving the public interest or the intent of the proposed rules changes.

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[4] 25% of California's lawyers earn less than $50,000 per year; 49% earn less than $99,999 per year.

[5] In contrast, neighboring Oregon has had mandatory malpractice insurance since 1978 and offers an affordable insurance program for its members.

- ***New attorneys*** entering solo practice will find the cost of obtaining malpractice insurance to be an additional barrier to entering the profession. Because they are just starting out (and have yet to establish a predictable cash flow), they are among those least likely to be able to afford malpractice insurance.

  As new entrants into the marketplace for legal services, new solo attorneys are already at a competitive disadvantage. Yet the new rules would force them to navigate between a rock and a hard place. Being unable to afford malpractice insurance and compelled to tell clients they do not have it will further exacerbate that disadvantage. Nothing in the currently proposed rules changes addresses educating new (or experienced) lawyers about the economics of law practice so they would be better equipped to afford such insurance.

  This additional barrier will likely translate into fewer people entering the profession, once again providing consumers with fewer choices. Moreover, the impact will probably fall disproportionately on new attorneys who are ***minorities***, a group already underrepresented in our profession. Though certainly not an intended consequence, an undercutting of the Bar's efforts to promote diversity in the practice would apparently ensue if the Board were to enact the proposed rules changes.

III. Implementation – Fatal Flaws

As practicing attorneys and law practice management specialists, our executive committee members also have grave concerns about ***the actual implementation of the proposed new rules and the specifics of attorney disclosure.*** Any idea, no matter how well-intended, may falter if it is confusing and difficult to put into practice. In the given context, we anticipate the following problems and dilemmas if disclosure of malpractice coverage becomes mandatory.

- Will attorneys bear the *additional* burden of explaining to clients and prospective clients the *specifics* of their malpractice insurance coverage, such as the amount of coverage, rating of insurer, type of insurance, coverage period, policy expiration date, etc.?

- It is disingenuous to believe that these sorts of detailed conversations will not take place as a result of mandatory disclosure. In turn, such discussions will force attorneys to become insurance industry practice experts just to be able to explain the fine points of malpractice policies to their clients and prospective clients.

- Prospective clients will assuredly ask about the specifics. It is also fair to assume that the accuracy and adequacy of an attorney's explanations about his or her coverage would themselves become a part of any subsequent potential malpractice litigation. The additional burdens on attorneys and insurers in these situations would be significant.

- Furthermore, in and of itself, this intrusion into the attorney-client relationship is entirely inappropriate and overreaching. A client always has been, and remains, free to inquire of the attorney whether or not he or she carries malpractice coverage.[6] Even worse, posting "no malpractice insurance" on an attorney's web bio would go even farther – by, for all intents and purposes, discouraging the potential client from ever contacting the branded attorney in the first instance. If public instruction were truly the rationale, a valid set of rules would, at a bare minimum, specify mandatory education of the public as to the significance – and lack thereof – of a lawyer choosing not to carry malpractice coverage.[7] The Task Force has not delineated any such description for the State Bar website or elsewhere.

- Finally, we are at a loss to understand how the proposed rules will address disclosure requirements for lawyers and firms that self-insure. Adequate self insurance is in the public interest. That alternative approach should be recognized in the proposed rules, rather than leaving the impression that such firms and individuals offer their clients no protection whatsoever.

As practicing lawyers and law practice management specialists, we firmly believe that the proposed changes will *not* do an effective job of protecting and informing the public. Requiring disclosure without better educating the public about malpractice insurance is at best a half-way measure of limited value. It will unfortunately cause much confusion and hardship.

IV. Ulterior Purpose of Compelled Insurance is not an Appropriate Rationale

Other professions require neither professional liability insurance nor disclosure of the absence of such coverage. Not doctors; not accountants; not architects. Why should the legal profession? In any event, we are also left with the uneasy feeling that the proposed rules changes dance around the core issue and are a half-way measure towards mandatory malpractice insurance.

If compelling California attorneys to obtain malpractice insurance is indeed in the consumers' interest, then why not take a cleaner approach and require it outright – while also, as has Oregon, providing a cost-effective way for all California attorneys to obtain it?

If the Board of Governors is contemplating the compelled purchase of such insurance by lawyers, then it should commission a task force to assess that issue directly, instead of by the "back-door" method implicit in the instant Task Force's pending proposed rule changes.

Absent better, more easily obtainable public information and cost-effective solutions to getting insurance, the proposed rules are piecemeal and severely flawed.

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[6] One reason for this proposal given at page 9 of the report of the committee suggests that clients may expect that lawyers have professional liability insurance; this conclusion is without support.

[7] If more information for clients is better than less, why do we not require lawyers to disclose their won-lost record or other evidence of the results they have obtained in the past for clients? Furthermore, why not educate citizens about the economics of law practice, so that they truly know what to ask lawyers?

Conclusion

The Board of Governors is obliged to act in the best interests of all members, including sole and small firm practitioners.[8] It would be remiss in fulfilling that duty if it passed the pending proposed rule changes.

The LPMT therefore joins the overwhelming majority of the Bar's membership that strongly opposes those rules.

Respectfully submitted,

Law Practice Management & Technology (LPMT) Section Executive Committee (ExCom) by:

s/ Lawrence R. (Larry) Meyer
Chair, LPMT ExCom

s/ Robert D. Brownstone (Active Bar Member # 152231)
Chair, LPMT ExCom Insurance Disclosure Standing Subcommittee

[8] Indeed, relatively recently, the Board of Governors announced an effort to address the economic concerns of sole and small firm practitioners and to reverse the perception held by many that The State Bar lacks concern about their interests. The current effort flies in the face of such a purported effort.

Bercovitch, Saul

From: Michael T. Sweeney [mts@mtslaw.info]
Sent: Monday, July 30, 2007 11:28 PM
To: Bercovitch, Saul
Subject: Public Comment: Proposed New Insurance Disclosure Rules

To Whom It May Concern:

As a member of the State Bar of California for more than 11 years, I strongly oppose the proposed new insurance disclosure rules.

As a solo practitioner in an expensive city, I know the unique challenges of managing a small law practice. I also know that, as a solo practitioner, I am able to provide high-quality, affordable services to many elderly and immigrant clients who simply cannot afford to work with larger law firms. Essentially forcing attorneys to purchase expensive insurance policies will create a tremendous financial burden on new members of the Bar. The proposed new rules will effectively discourage new attorneys from becoming solo practitioners.

The proposed rules will also burden part-time attorneys who maintain very small practices.

Sincerely,

Michael T. Sweeney
San Francisco, CA

California Judges Association

The Voice of the Judiciary

July 30, 2007

88 Kearny Street
Suite 1850
San Francisco, CA 94108-5523
Phone: 415-263-4600
Toll Free: 1-866-432-1CJA
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Web: www.caljudges.org

Mr. Saul Bercovitch
Staff Attorney
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed New Insurance Disclosure Rules

Dear Mr. Bercovitch:

The California Judges Association ("CJA") through its Committee on Alternative Dispute Resolution has reviewed and considered the proposed new rules on insurance disclosure, namely the proposed Amendment to Rule of Court 9.6, proposed new Rule of Court 9.7, and proposed new Rule of Professional Conduct 3.410.

CJA concurs with the State Bar Committee on Alternative Dispute Resolution that the intent of the proposed insurance disclosure rules is to address the subject of professional liability insurance in the context of the attorney-client relationship, except for government lawyers and in-house counsel. CJA is concerned about the impact of the Rules on members of the Bar, such as retired judges, who work exclusively as ADR neutrals and therefore do not represent or provide legal advice to clients. We request consideration be given to including such members in the exemption in subdivision (b) of Rule 9.7 that presently refers to government lawyers and in-house counsel. We also suggest parallel changes in proposed Rule of Professional Conduct 3-410.

We also note that proposed Rules 9.6 and 9.7, as drafted, do not make clear how members who work exclusively as neutrals would be listed in the Bar's public records if those Rules were adopted. Under the proposed Rules such members would not certify whether they are covered by professional liability insurance (proposed Rule 9.7(a)(2)); rather, they would simply certify that they do not represent or provide legal services to clients. There should be no risk that the Bar's public records would contain any suggestion that such members are not covered by professional liability insurance, or that they failed to disclose if they are covered. Presumably these concerns would be addressed appropriately by the Bar's staff in the implementation of the Rules if the current draft of the Rules were adopted.

Thank you for your consideration.

Sincerely,

Scott L. Kays
President

c: Hon. Daniel M. Hanlon, ADR Chair

Bercovitch, Saul

From: Joe Marman [marmanla@localnet.com]
Sent: Tuesday, July 31, 2007 12:39 PM
To: Bercovitch, Saul
Subject: Attorney malpractice

Hi Saul, I want to express my extreme disappointment and anger at the attempt to impose requiring malpractice coverage for attorneys. I cannot afford this. I had insurance when it cost $4000 per year. Then it jumped to $12,000 per year, and I have not had coverage in the last ten years. I have no problems with my clients, and I have never committed malpractice. If an attorney wants to go with out insurance, he is smart enough to make his own decisions. I also could not afford the insurance currently, since I am paying child support, and my settlements are down drastically, and my income has dropped so badly, that I had to lay off my two staff employees. To require malpractice insurance would run me out of business. I volunteer for 3-4 court programs as settlement conferences judging, and I have volunteered for years as a traffic judge and small claims judge. I would no longer be able to afford to volunteer my services to court programs, and I would have to devote all my time to my practice. I could not do pro bono cases.

Please stop this stupid tactic of trying to impose malpractice insurance. I do not think many of my friends could afford it also. If the State Bar would sell coverage at a reasonable price, that would make a difference, like less than $6000 per year, but not at current commercial rates.

Joe Marman
(916) 721-3324
Fax 721-3633
marmanla@localnet.com

Bercovitch, Saul

From: Robert A Firehock [raf.law@sbcglobal.net]
Sent: Wednesday, August 01, 2007 1:58 PM
To: Bercovitch, Saul
Subject: Comment on Insurance Disclosure Rules

Dear Mr. Bercovitch:

The proposed rule has no substantive impact on me or my semi-retired, part-time practice, so my comments are motivated only by general concerns.

There is a big difference between providing the coverage information upon inquiry and posting it on the website. The first suggests an interested consumer exercising some diligence, while providing a modicum of business privacy to the attorney. The second raises the specter for those of us who do not have insurance of being inundated with advertising solicitations. As long as 'posting it' is only to the individual attorney's information file/page, that may provide some protection. If posting can include aggregated lists of who has insurance and who doesn't, I suggest that should be prohibited specifically, as should any ability to create such lists.

Also, the term 'or by a similar method' seems a bit vague. Is that just a savings clause or are there methods beyond the ones listed that are similar to telling people when they ask and posting it on the Internet? Is sending lists of uninsured lawyers to insurance companies 'similar'? Can a similar method only be employed if the first two are not? I suggest that 9.7(e) be amended by (a) deleting 'or by a similar method' or (b) inserting 'or, if the State Bar is unable to make that information available through these methods, then by a similar method'.

As part of my reduced practice, I serve as General Counsel to a Joint Powers Authority Board, for which they compensate me when I provide legal advice from time to time during the year. I do not consider myself 'outside' counsel, since I am an appointed officer. I also represent a few clients from time to time, since that does not conflict with my very occasional JPA work. The rule seems to suggest that I have to disclose to the JPA that I don't have insurance, as well as my private clients, though the rationale for exempting government lawyers would seem to apply as well to the JPA. Since I started quite some time ago putting a standard 'no insurance' clause in my private engagement letters, notice to them is not an issue. However, as an appointed official I have no 'engagement' letter with the JPA, nor do I anticipate ever having one. I suggest that 3-410(C) be amended to say 'This rule does not apply to a member who is employed as a government lawyer or in-house counsel, with respect to such employer. However, if the member represents or provides legal advice to clients outside that capacity,

then it does apply but only with respect to all such outside clients.'

Thank you for considering my comments.

Respectfully submitted,

Robert A. Firehock
64077

Bercovitch, Saul

From: MikeWaterm@aol.com
Sent: Wednesday, August 01, 2007 11:32 PM
To: Bercovitch, Saul
Subject: insurance disclosure

I believe that this is a terrible idea.

What if an attorney practices a minimal amount of law; Let us assume that an in-house attorney for a small real estate company has no malpractice coverage because his firm won't pay the premium (as his work is "just" in-house and is about drafting contracts and the like.
The attorney agrees to draft a will or some other document for a client who has little money - so the attorney says "if you pay me $50, I will draft your will for you". He knows that the client can't afford much more than that right now.....
If he has to pay for malpractice insurance, he will not be able to practice law.....
Doesn't seem fair. It will also prevent some poorer people from using a lawyer as only the rich will be able to hire attorneys who carry big, expensive malpractice insurance.

Based on that thinking, let's prevent anyone from driving on the California roads who does not have an insurance policy where the premium is at least $10,000. Then we can make the roads as exclusive as the access to attorneys.....

Mike Waterman

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GORDON R. LINDEEN
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TELEPHONE (805) 526-2586

August 2, 2007

Mr. Saul Bercovitch
180 Howard Street
San Francisco, CA 94105

Re: Malpractice Insurance Disclosure

Dear Mr. Bercovitch:

As I have read the arguments in favor of requiring attorneys to disclose whether they have malpractice insurance, I have wondered if an underlying objective of at least some of the proponents might be to put the solo or small practitioner out of business.

Large law firms carry high levels of malpractice insurance. They need to do so because they are dealing with major cases involving large amounts of money. But solo practitioners and attorneys in small firms typically deal with cases involving small amounts of money. If one of these attorneys makes a mistake, it would usually involve a small amount. The mistakes, if any, made by a solo practitioner in a bad year would probably not equal the cost of a yearly premium for basic malpractice insurance.

The high cost of malpractice insurance would be a major drain on the income of a solo practitioner. If a solo practitioner found it necessary to carry the insurance in order to compete, she, or he, might decide to leave the profession. This would not be good. Solo practitioners are needed to handle the minor cases for individuals. These solo practitioners are also typically the ones who perform the greatest amount of pro bono work for individuals. If they are gone, will the major law firms with expensive offices and overhead donate their time to answer the needs of individuals with minor problems? Probably not! It would probably not even be possible for them to work their way through the large firm's phone system.

I would strongly suggest that the idea of malpractice insurance disclosure be dropped.

Very truly yours,

Gordon R. Lindeen

Gordon R. Lindeen

University of San Diego

Center for Public Interest Law | Children's Advocacy Institute | Energy Policy Initiatives Center

August 3, 2007

Saul Bercovitch
The State Bar of California
180 Howard Street
San Francisco, CA 94105

FAX: (415) 538-2515

Re: Comment on Insurance Disclosure Rule

Dear Mr. Bercovitch:

The Center for Public Interest Law (CPIL) supports required disclosure of insurance coverage, but objects that the proposed rule is unacceptably weak in three respects: (a) it only applies prospectively to new clients, (b) it does not require written acknowledgment from clients, and (c) it does not require adequate disclosure of the nature and extent of coverage. And, in fact, we respectfully argue that the rule actually cuts back on the underlying fiduciary duty of an attorney to make such disclosures to all clients, and that it fails to reach the larger issue: the lack of recovery for persons injured by negligence caused by persons licensed – by us. As discussed below, practicing attorneys effectively control the State Bar, particularly as to entry barriers and the initiation of discipline. Supreme Court review is largely passive and is limited. The private interest control of our profession by its own membership is unique among all public regulatory bodies. CPIL argues that the Bar should go substantially beyond the niggling disclosure here proposed. Liability insurance should either be required by the State Bar for any attorney relied upon by consumers for legal representation and advice, or the Client Security Fund should be substantially expanded in amount and scope to provide indemnification for such judgments up to no less than $500,000 per claim.

We have a special interest in the subject matter of this rule. CPIL has monitored the State Bar's regulatory activities for 27 years, publishing the CALIFORNIA REGULATORY LAW REPORTER. From 1987 to 1992, I served as State Bar Discipline Monitor, by appointment of the Attorney General and reporting to the Chief Justice. CPIL served as the staff of the Monitor. The five-year inquiry into Bar discipline produced eleven reports, some twenty rule changes, and two new statutes – with the important partnership of five successive State Bar Presidents. Those statutes created the current State Bar Court and made other changes. Those changes included fee agreement and disclosure requirements – among them the disclosure of liability insurance status. The regrettable sequence of events leading to its excision need not be recounted here. Two years ago, I was asked by then-Bar President John Van de Kamp to perform a review of the discipline system as it recovered from its unfortunate defunding in the late 1990s. I gave an oral report to the RAD Committee in March of 2005. I urged then the importance of full disclosure of liability insurance status to consumers.

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CPIL website: www.cpil.org • CAI website: www.caichildlaw.org

Reply to: ☒ San Diego Office • ☐ Sacramento Office

CPIL notes the following background relevant to the RAD Committee's consideration of this rule: One seminal purpose of professional regulation is prevention of the irreparable harm that befalls the public from dishonest or incompetent practice. To prevent that harm, agencies set up licensure systems and barriers to entry – and then monitor practice to excise those who visit such harm on consumers. The State Bar does not do a credible job at this fundamental task. It gives applicants a single examination – usually at age 25. The test likely fails to examine competence in the actual area of law practiced by attorneys and relied upon by consumers. The exam is, rather, a retention/writing ability examination on general law subjects. The Bar's license is general, allowing any attorney to essentially practice in any area of law desired – regardless of competence. And the Bar lacks the kind of private checks present in the medical profession to effectively bar entry of the incompetent (by hospital admission and certification that is effectively necessary for medical practice). The current system of law specialty certification has value, but the overall system does not prevent an attorney from taking a criminal defense case one day, advising on an estate or tax matter the next, helping with a patent on the third day, and then finishing the week by filing a Subdivision Map Act application for a new housing development – while also advising tenants, debtors, and perhaps immigrants seeking green cards. To top it off, the Bar then does not require any retesting or demonstration of competence – whatever – for the next fifty-plus years of a professional career.

This is the regulatory system allegedly preventing the irreparable harm coming from incompetent practice. But it gets worse. The Bar's discipline system does not generally react to one – or even several – serious acts of incompetence. Even where damage is substantial, we generally leave remedy to the civil system of malpractice suit. Our discipline system, perhaps understandably, eschews coverage of "mistakes" unless they become a radically documented, persistent pattern. And even then, meaningful disciplinary actions are rare. Meanwhile, the Bar has a Client Security Fund – allegedly intended to provide security to ... clients. But it has a rather low ceiling per claim and, more importantly, only covers dishonest acts by attorneys – not incompetence, not even gross and repeated incompetence.

We know that about 20% of our licensees operate naked – without any coverage whatever. Most of them are small operators – where we know serious consumer harm from negligence disproportionately occurs (practitioners who often lack background and colleagues to advise and help control quality). And most of this 20% are effectively judgment-proof. Clients have no remedy as to this population of over 20,000 attorneys. No malpractice attorney will even take their case lacking money recovery at the end. Usually, nobody will even know about it. There will be no Client Security Fund payout. There will be no discipline. There will be nothing but the loss and its likely repetition.

To top it all off, members of the State Bar now argue that an attorney need not even disclose to a client that he or she has no coverage – which means there will be no practical money remedy for negligence. The logic is apparently that uncovered attorneys save money and therefore charge less and serve clients at lower cost – which will be lost if they have to disclose. The loss will allegedly occur because some clients may prefer attorneys with insurance. Are these commentators listening to what they are saying? By the way, none of them seem to be suggesting Client Security Fund coverage for the protection of these clients. Rather, the focus is on the baffling proposition that client preference for insured counsel may disadvantage them. Of course, we know that those uncovered practitioners are passing their malpractice coverage savings along to their clients. Give us a break.

Add to the relevant background the oft-stated truism about the fiduciary duty of an attorney to his or her client. It is not just any fiduciary duty. Since the 19th century case of *Cox v. Delmas*, it has been consistently held to be a fiduciary duty "of the very highest character." Presumably, that means something. CPIL suggests that this duty standing alone requires disclosure of insurance status – and not just technical small print inclusion in a fee agreement form. If an attorney is running naked (and is usually effectively judgment-proof), the client needs to know it specifically and to sign off on it with informed consent. Under what theory of fiduciary duty is such a requirement excused? How is such dispensation stated? "I have a fiduciary duty of the highest order to you – a duty of fidelity and trust. Many attorneys are covered for liability, but I am not. If I commit a negligent act that falls below the applicable standard of care and you suffer damages, I know you will recover nothing. But I need tell you nothing about it." Really? Why is such a failure of disclosure not a breach of fiduciary duty appropriate for Bar discipline?

The State Bar will not discipline an attorney for such a failure of disclosure under current law – notwithstanding the fiduciary breach implications. And as noted above, we already fail to really assure competence in the actual area of practice relied upon. We fail to retest – ever. We fail, really, to excise the incompetent. We fail to cover incompetence in our disciplinary system except at the extreme, occasional end. We limit the Client Security Fund to intentional dishonesty. And now we propose a disclosure requirement – that (a) excludes present clients (apparently not covered by fiduciary duty), (b) does not require attorneys to detail the level of coverage we do or do not have, and (c) does not require acknowledgment that the client understands counsel's status. That probably cuts back from the proper underlying fiduciary duty of disclosure that should apply absent any rule.

CPIL supports disclosure and, as noted, contends it is required anyway as part and parcel of an attorney's fiduciary duty to his or her clients – future *and* present. But the Bar needs to own up to its real responsibility here. If we are serious about being an "honorable profession" (and it is no accident we suffer a regrettable level of public revulsion), we need to start walking the walk. Everyone knows we can talk the talk. That walk requires attention to competence assurance. And it requires coverage (and some assumption of responsibility) where actionable negligence damages our clients. That means either requiring liability coverage, or providing at least some measure of indemnification through our offices. We all may have to pay another $50 or $100 or $200 a year into a Client Security Fund to provide it. But we are the ones who decide who gets to practice law and who continues to practice law. Uniquely among public agencies – absolutely uniquely, ours is controlled by our own profession. We elect persons who are permitted to exercise the power of the state to determine entry and to initiate exit from the practice of law. We, above any other trade or profession, should properly assess ourselves to make sure there is some recovery when we fail to optimally do our job.

CPIL suggests that the State Bar begin the process of living up to its responsibility by going substantially beyond the current proposed rule to honestly provide the assurances properly assumed by us in exercising regulatory powers and understandably relied upon by the public.

Respectfully submitted,

Robert C. Fellmeth, Executive Director
Center for Public Interest Law
Price Professor of Public Interest Law
Former State Bar Discipline Monitor

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JEFFREY R. TOFF
Certified Specialist
Workers' Compensation

RICHARD V. DE GRUCCIO
Attorney

SUSAN A. GOMES
Legal Assistant

August 3, 2007

SENT VIA FACSIMILE ONLY (415-538-2515)

Saul Bercovitch
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed New Insurance Disclosure Rules

Dear. Mr. Bercovitch:

I am writing on to comment on the Proposed New Insurance Disclosure Rules. Although we are, and always have, maintained professional liability insurance, I am opposed to the proposal to require disclosure of whether an attorney maintains professional liability insurance.

While I certainly understand the benefits of an attorney having insurance, I do not think it should be mandatory. If an attorney is knowledgeable, competent, and organized, he or she may feel secure enough not having insurance and may never submit a claim. By requiring the disclosure of having no insurance, such an attorney would essentially be given a scarlet letter as if to say there is something wrong with the attorney. Hence, the attorney would be forced to purchase insurance to avoid the negative implications.

The end result of this proposed rule will be to just put more money in the pockets of the insurance companies. Do they really need more money?

Very truly yours,

LAW OFFICES OF JEFFREY R. TOFF

RICHARD V. DE GRUCCIO

Bercovitch, Saul

From: Esqsy@aol.com
Sent: Saturday, August 04, 2007 3:24 PM
To: Bercovitch, Saul
Subject: Ins Disclosure

If that's not an invitation to a lawsuit, I don't know what is -- in an atmosphere where clients with unreasonable expectations who lose their case want to exact their pound of flesh, or, even when a lawyer obtains an excellent result, greedy clients think they ought to have obtained more and sue their lawyers. Stop the madness, please!! There are already too many onerous standards regulating attorneys that keep us busy with CYA letters and keep us up at night -- don't add another.

Stephany Yablow
(818) 761-7010

Bercovitch, Saul

From: Christine Chorney [chrissycatlaw@yahoo.com]
Sent: Saturday, August 04, 2007 7:34 PM
To: Bercovitch, Saul
Subject: Insurance disclosure

Dear Mr. Bercovitch:
I am writing to you to oppose the proposed rule that would require attorneys to disclose to their clients whether they carry malpractice insurance and inform the State Bar of their insured status, which would then be posted on its web site.
As a small practitioner, I am vehemently opposed to these proposed rules. I believe that such a disclosure would seriously harm me and other small practitioners by suggesting to clients that there is something wrong with the attorney who does not carry malpractice insurance, and that it would tend to steer those clients to the big firms which can afford the insurance because they service wealthy clients and corporations. In fact, there is nothing wrong with not having insurance, just a matter of affordability. If I had to buy insurance, I would have to increase my rates, which the clients could not afford, which would then put me out of business. I have been practicing law for 30 years, have never had malpractice insurance, and have never been sued. I think that there is a need for all kinds of lawyers and law firms, big and small, expensive and less expensive, and I object to any rules which would create disadvantages for the small firms.
Very truly yours,
Christine A. Chorney
State Bar #70439

Law Office of
BARBARA MACRI-ORTIZ
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VIA FACSIMILE (415) 538-2515 & U.S. MAIL

August 5, 2007

Mr. Saul Bercovitch
Staff Attorney
The State Bar of California
180 Howard Street
San Francisco, CA 94105

RE: PROPOSED NEW INSURANCE DISCLOSURE RULES (REVISED) PUBLIC COMMENT

Dear Mr. Bercovitch:

As you know, I previously provided public comment concerning the proposed new insurance disclosure rules by letter dated September 15, 2006. I have reviewed the revisions to the proposed rules that were recently circulated for comment. The purpose of this letter is to offer my opinion concerning the amendments that have been made to the proposed rules. I do not intend this letter to be viewed as a complete response to the proposed rules. I would request that my initial communication be made available to the decision makers, and that the following comments be considered in addition to my previous communication.

As I previously stated, I am not opposed to providing my clients with written disclosure concerning whether I have professional liability insurance for the matter for which I am being retained. I have been providing such disclosure to my clients for years, and I believe it is in the best interest of both the attorney and the client to inform one's clients

about the existence of malpractice insurance or the absence of such insurance, whatever the case may be.

I previously stated that disclosure should be made to the client only, and that such disclosure should not be public information or reported to the State Bar. I can appreciate the Bar's interest in compliance and thus, I can understand why the reporting requirements are desirable. However, I still cannot see how the Bar and its members would be better served by posting this information on the State Bar's website. I explained in my previous letter the potential problems created by publicizing the status of the insurance coverage for each of the members. In particular, the disclosure rules would be problematic for those attorneys who perform some legal services on a contract basis for which there may be insurance, and other legal services that are provided by the attorneys in their own private practice where there may not be professional liability insurance coverage.

While the existence or non existence of insurance may be easy to accurately report to the individual client, how would this situation be reported to the Bar? More importantly, it would not be possible for the Bar's website to contain an accurate disclosure that would be useful to the consumer seeking insurance disclosure information on the Bar's website. Furthermore, the problems I brought to your attention on page 3 of my letter dated September 15, 2006, have still not been resolved. Just as the attorneys covered by professional liability insurance are concerned that they may be made the target of potential litigation as a result of public disclosure, so too are the attorneys who represent unpopular causes and clients. We do not want to become targets either.

Finally, I would like to reiterate one of my suggestions that was not incorporated into the revised disclosure rules. As I explained on page 4 of my letter, if the purpose of the disclosure rules is to protect the client, it would seem that the easiest and most efficient way to accomplish that is to require the attorney's retainer agreement to contain a paragraph at the end of the retainer advising the client of his or her right to file a complaint with the State Bar in the event that a serious problem arises during the course of the representation.

I appreciate the Board's consideration of the problems and concerns that have been expressed during the public comment period by a variety of lawyers. I believe that the proposed rules as presently drafted still create unnecessary obstacles for many of the private attorneys in this state who are representing the legal interests of California's

under-served populations. Thus, I would hope that the Board will also realize that these proposed rules should be viewed as another impediment to the delivery of legal services to the poor, and balance the relative merits of the proposal with the potential it has for reducing the availability of attorneys to serve California's poor and downtrodden populations.

Thank you for the opportunity to comment on this important issue.

Sincerely,

Barbara Macri-Ortiz

xc: M. Carmen Ramirez, Board of Governors, District 6 Representative

Bercovitch, Saul

From: Elen Brandt [elenbrandt@msn.com]
Sent: Monday, August 06, 2007 9:06 AM
To: Bercovitch, Saul
Subject: Opposition to Proposed Rule 3-410

VIA E-Mail:
To: Saul Bercovitch
From: Elen Pass Brandt

Re: The proposed New Rule 3-410 of the California Rules of Professional Conduct

Dear Mr. Bercovitch:

I am writing to voice my opposition to and address my concerns over the proposed Rule 3-310 of the California Rules of Professional Conduct. The Rule would require two new things of members of the State Bar: (1) they disclose in writing to all their clients that you do not carry malpractice insurance, and *the more onerous addition*, and (2) Attorneys be required to report to the State Bar if they do not carry errors and omissions insurance and that information will be published on the State Bar public website and be available for viewing by non-members.

If these rules are enacted and the State Bar turns its usual "deaf ear" to the desires of the membership, anyone not carrying malpractice insurance will be publicly labeled as such – with all the attendant negative inferences on their practice.

Instead, and what I feel more importantly, why doesn't the State Bar require members report and post any and all unsatisfied malpractice claims, insurance settlements, and unpaid judgments against them on the Bar website – wouldn't that be more informative to the hiring public? The additional irony in all of this is that carrying malpractice insurance is often for those so inclined.

This is yet another way the insurance companies inject themselves into our practice, creating a big fat bonanza for that industry. In a healthy practice, the cost of insurance may be 7-10% of an attorney's yearly income. But what if you practice an area of law where the client base is not well-heeled? Will your clients be able to pay the extra fees you will need to charge just to keep afloat? What about pro bono? Just because you are doing pro bono does not mean you can't be sued. Will people who notoriously give their time to the needy be twice penalized by yet greater loss of income and exposure to suit? What about the newly admitted, solo practitioners, and semi-retired lawyers? Will the cost of playing cause them to leave the practice?

This is yet another hurdle intended to turn the practice of law into an exclusive club. There are already too many of our membership feeling disenfranchised by the indifferent attitude of the State Bar. When does the California State Bar plan on actually representing its own membership instead of the large insurance industry? Ironically, the Rule will exempt "in-house counsel" and "government lawyers" from compliance – furthering the elitist impression already laid down by the Bar directors, and insulating the Bar administration from its own requirements.

Risk management for any attorney is that member's own business and no one else's. These proposed rules are counter-productive and not the standard of practice among other professions (including physicians). The enactment will turn us into two public classes of lawyers – with and without insurance.

For all of the above, I am firmly and absolutely opposed to the enactment of this Rule, and request that my opposition be noted for the record.

Very truly yours,

Elen Pass Brandt

Elen Pass Brandt
Attorney & Counselor at Law
P.O. Box 6251
Auburn, CA 95604-6251
415.455.9393 or 530.745.0555

LAW OFFICES OF
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VIA FACSIMILE TO 415-538-2515

August 6, 2007

Saul Bercovitch, Esq.
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed Insurance Disclosure Rules

Dear Mr. Bercovitch,

I am appalled and outraged at the arrogance and obstinacy demonstrated by the Committee on Regulation, Admissions and Discipline Oversight ("Committee") in continuing to move forward with this unnecessary, counter-productive and fundamentally dishonest initiative.

In its own words, the Insurance Disclosure Task Force acknowledged, in its April 12, 2007 memo, that the "vast majority" (78.5%) of comments received opposed this proposal "in whole or in part." My own analysis of the responses indicates that 71.5% of the comments are wholly opposed to this proposal; the attempt to "spin" this opposition by lumping in the 7% who want some changes with the 71.5% who are wholly opposed, and thus dilute the perceived level of opposition, is in itself dishonest. Yet despite this overwhelming opposition by the "vast majority" of those responding, the Committee in its august and unassailable wisdom has decided that it knows better that those of us who are out here actually practicing law and doing our best to represent the interests of our clients. A number of words come to mind – arrogance, hubris, imperiousness, others less polite – but I don't believe the language has yet been invented that is adequate to describe this level of blind self-importance and lack of respect for the opinions of others.

Although the numerous and glaring defects in this proposal have already been well-documented in the previous round of public comments, allow me to try to summarize at least the

most obvious ones.

There is absolutely no evidence that these rules are needed. Where is the statistical data showing that clients are suffering more harm from the attorneys who have made a business decision to forgo malpractice insurance, than is suffered from those attorneys who do carry such insurance? Such data does not exist. As discussed below, just because an attorney has insurance does not mean that that a given claim will be covered. More fundamentally, attorneys who carry malpractice insurance are not more competent than those who don't, and in fact I would argue that those of us without malpractice insurance are incented to provide a higher level of care and service, because we know our personal assets are at risk.

The problem is not attorneys who don't have insurance, the problem is incompetent attorneys. The Task Force alleges that "the important goal of client protection would be advanced by an insurance disclosure requirement," but the reality is that such a requirement will do nothing to advance that goal. Clients do not want a malpractice claim that may or may not be covered by insurance (putting aside the bottom-feeders hoping for a windfall); clients want their legal matters handled competently the first time. I do not think an insurance recovery is going to provide much solace to a client who has lost her business, or a client who has lost custody of his child, due to incompetent representation. If we want to protect consumers from incompetent attorneys, then (aside from the obvious idea of actually weeding out those attorneys) we should require that attorneys provide disclosure regarding their experience with malpractice claims and disciplinary actions to clients. Such a requirement would provide information consumers could actually use to their benefit.

These rules are counter-productive, because they will negatively impact perfectly competent solo and small firm attorneys, and reduce or eliminate the ability of attorneys to serve poor and middle-class clients with fees that are lower than those charged by large firms. Just which "consumers" are we trying to protect here – those who need low cost legal services, or those who are affluent and sophisticated enough to pursue malpractice claims?

Finally, these rules are fundamentally dishonest, in any number of ways:

- The disclosure required by these rules is misleading and deceptive. As the Task Force itself noted in its April 12, 2007 memo, whether a given claim will be covered by insurance "is based upon a multitude of factors." This one observation, by itself, should rightly sound the death knell for these proposed rules, but instead the Committee takes this a justification for basing the disclosure requirement on the question of whether an attorney "has" insurance, not whether the attorney is "covered by" insurance. Even better, the disclosure requirement is based on the attorney's reasonable belief that he or she "has" insurance, even if that is not the case. We all know that the typical consumer/client is not going to know that the distinction between "has" and "covered by" even exists, let alone understand the significance of that distinction. Yet that same consumer will be lulled into a false sense of security by these rules, believing that if the

worst happens at least there will be insurance available to satisfy the malpractice claim. To provide deceptive and misleading information to clients in the name of "consumer protection" is the height of hypocrisy.

- These rules will incent, perhaps even force, attorneys to engage in deceptive practices, by purchasing the cheapest insurance they can find, with low limits and high deductibles, covering only the lowest risk areas of their practice while leaving the other high-risk areas uncovered, etc., just so they can say they "have" insurance. Is this really a good way to build the general public's faith and confidence in the legal profession?

- These rules will unfairly and falsely characterize attorneys who make a reasoned business decision to not carry insurance as substandard, second class or incompetent in the minds of the public. This not only places an unfair burden on such attorneys, it is blatantly defamatory and will undoubtedly spawn litigation against the State Bar on this basis, which my hard-earned Bar dues will be used to defend.

- Most dishonestly, these rules are nothing more than a blatant attempt by the insurance industry and those who serve their interests to achieve by foul means that which cannot be accomplished fairly. The Committee knows full well that any attempt to impose mandatory malpractice insurance would be met by a firestorm of protest, and so the Committee is attempting to achieve the same result through the backdoor by means of these hypocritical and deceptive rules. For shame!

As noted above, these rules are guaranteed to generate legal actions seeking to enjoin their implementation, litigation which I will certainly support and/or join. I believe such actions will ultimately be successful, because these rules simply cannot stand up to any impartial scrutiny. But regardless of the outcome, these actions will undoubtedly result in very public and ugly infighting between members of the legal profession, further undermining the already low esteem in which we are held by the general public. I ask the Committee to seriously consider whether that is really in the interest of lawyers or their clients.

Sincerely,

Dana E. Miles

VIA FAX (415-538-2515

August 5, 2007

Mr. Saul Bercovitch
The State Bar of California
180 Howard St
San Francisco, CA 94015

REFERENCE: NEW INSURANCE DISCLOSURE RULES COMMENTS

Dear Mr. Bercovitch:

I am the true believer that whats good for the goose is good for the gander. The attorneys like to sue and harass innocent people because they the attorneys know they will compromise because it is cheaper to do then to goto trial. The attorneys should be forced to carry malpractice insurance and make it available for the public to view on the state bar web site as to how much insurance they carry. This should apply for everybody (government, law firms, corporations, LLP, partnership or sole proprietor. All attorneys should disclose this in writing to present and current clients and the clients must sign the disclosure saying that they have received this. The attorneys should not worry about cost because when they file a law suit they could care less about cost. I think the attorneys should absorb all this cost. After all if they can charge $150.00 to fax documents (shame on the attorneys and the state bar for allowing this) why should they worry about cost (especially since the state bar not only endorses these outrageous charge but encourages it). This will keep the attorneys in line and let them taste what it feels like to be sued all the time for nothing. This will be an incentive for the attorneys to do things by the law because if they don't another attorney is waiting to sue them for mistake they make. Currently all attorneys know that they will receive nothing if they sue another attorney. But if they were forced to carry insurance the attorneys would understand how the average public feels. This is a way for the public to have recourse against a lousy attorney (we have a lot of them in the state of California). The attorneys also know the state bar is a useless organization that serve the attorneys and could care less about the public. YES I HAVE HEARD THIS FROM THE PUBLIC AND ATTORNEYS ALL OVER THE STATE. The state bar is their in name and nothing else. I will give you a tragedy that happened to me but nobody would help me to prosecute this attorney. I went through a divorce and during the middle of my divorce my ex's attorney was involved in the kidnapping with my ex. The attorney picked my ex and 3 children and drove then to the airport (35 miles from where the children were picked up). Then upon arriving at the airport the attorney gave them airplane ticket (I have a copy of the airline ticket and the attorney even signed the children's name on it) to fly out of state to Minnesota and put them on the plane. The place where they were hiding the lady in Minnesota said that my ex's attorneys was aware of everything to the police the same day they were kidnapped. The children were hidden in Minnesota for over month but the attorney was in contact with them on a daily basis. One of the correspondence

from her attorneys to mine said "if we keep looking for the children then his client would go into hiding so that we would never find them again. Yes their was a court order prohibiting that but the attorney said nobody will do anything to me (not the judge, or the state bar). His exact quotes were as follow: The judges are attorneys so they won't do anything to me and the state board is a useless organization and they are only there for name. He was laughing the whole time he was talking to me. But he was right because no attorney would take a case against him and the other attorneys also advised me to not waste my time with the state bar because they will not do anything ("THE GOOD OLD BOY CLUB"). This attorney is still laughing about this incident. This attorney broke every law in the book but he is still practicing and laughing at me everyday. This attorney not only boldly tells his colleges what he did but his colleges tell him it's a good thing we practice law in California because the state bar will not do anything to us. But the state bar fools the public into thinking that they actually do something. I have the attorneys name, police report, airline ticket, my son telling me it was him and the car he went to the airport in. Yes it was the attorneys car. This all started my home and then to the airports (cameras being recorded at LAX and Minneapolis airport). If you were to interview everybody involved it would all lead back to ex's attorney as the one that arranged all the details for the kidnapping of my children (at least 6 witness). There is also written documents proving that the attorney was very instrumental in the kidnapping of my children. If the state bar is truly working for the people then they should work with me and remove this attorney from ever practicing law any where in the United States again. I will be happy to meet with you and provide the state bar with everything I have so that you can proceed to strip him of his bar license for life. I am trying to prevent this from happening to another family again. Just for your information I saw him a month ago and he was still laughing at me over this incident,

As I said earlier all the attorneys I talked to said if the attorney in the kidnapping had insurance they would have sued him and collected a hefty fee for them and a hefty fee for me. They all said what he did puts a bad name on all attorneys.

Therefore I am vehemently recommending that all attorneys be required to do the following:

1. Carry liability insurance
2. Amount of insurance be of public records
3. Have all clients sign (current and new) an acknowledgement stating that they have received from the attorneys concerning liability insurance and how much the attorney is carrying in insurance.

Should you have any questions, please call me at (626) 282-4307 and I look forward to hearing from real soon

Thank you,

Aditya Prasad
294 Barranca Drive
Monterey Park, CA 91754

PROMOTING JUSTICE SINCE 1877

August 6, 2007

Saul D. Bercovitch, Esq.
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Public Comments on Proposed Insurance Disclosure Rules

Dear Mr. Bercovitch:

Thank you for the opportunity to comment on the proposed new insurance disclosure rules developed by the State Bar's Insurance Disclosure Task Force.

At its June 3, 2007 board meeting, the Board of Directors of the Alameda County Bar Association (ACBA) discussed the proposed rules and voted to provide public comments that reflect the ACBA's opposition to the proposed rules. The concerns and comments expressed by Board members include:

- The value of malpractice insurance does not make it an issue of professional ethics and does not make it a proper subject for uniform mandatory disclosures by attorneys to their clients.
- There are many and varied types of services and circumstances in which lawyers represent and counsel clients. The potential value or appropriateness of malpractice insurance can vary greatly depending on the type of services being rendered, the particular attorney-client relationship, the position of the client, and other circumstances.
- The proposed disclosure rules would disrupt the attorney-client relationship. For example, mandating an emphasis on insurance could distract attention from other matters far more significant to a decision to proceed with a representation. Also, mandated disclosure as to malpractice coverage, in essence, suggests that the client should enter into the attorney-client relationship with a measure of expectation that the attorney will breach the attorney's duty to the client.
- Mandated disclosure could be misleading in the client's selection of counsel. There are better indicators of the abilities and qualifications of an attorney for a particular representation than whether the attorney does or does not have malpractice coverage.

ALAMEDA COUNTY BAR ASSOCIATION

70 Washington Street, Suite 200 • Oakland, California • 94607
510.302.ACBA(2222) • Fax 510.452.2224 • www.acbanet.org

- Clients interested in their lawyers' malpractice coverage are already free to ask and—as with any communication with one's counsel—to receive a straightforward response. For the interested client, this type of dialogue is more likely to provide meaningful information concerning coverage than a simple (and necessarily standardized) disclosure statement.
- There is no apparent reason why professional liability insurance should be a subject of disclosure for attorneys in particular. It does not appear that comparable professionals are subject to these types of disclosure provisions by their respective regulatory agencies.
- Instead of mandating disclosure, it would be helpful if the State Bar would increase its efforts to make insurance available to attorneys, particularly solo practitioners.

If the Task Force requires any additional information, please feel free to contact me at 510.444.3131 or paul.johnson@filicebrown.com. You may also feel free to contact the ACBA Executive Director, Ann Wassam, at 510.302.2208 or ann@acbanet.org.

Sincerely,

Paul R. Johnson

Paul R. Johnson
Member, ACBA Board of Directors and
Chair, ACBA Board Committee on Membership

cc: Cheryl L. Hicks, ACBA President

Bercovitch, Saul

From: PaladinEsq@aol.com
Sent: Monday, August 06, 2007 9:43 PM
To: Bercovitch, Saul
Subject: Proposed new insurance disclosure rules for attorneys

August 6, 2007

Saul Bercovitch
State Bar Of California
180 Howard Street
San Francisco, CA 94105

Fax: 415 538 2515
saul.bercovitch@calbar.ca.gov

Dear Mr. Bercovitch:

I am opposed to a rule which would require attorneys to disclose the existence of legal malpractice insurance to clients.

A rule requiring disclosure on this issue would place an unreasonable burden on small firm practitioners and sole practitioners who do not have such insurance.

I do not recall hearing statistics about the average settlement or judgment for legal malpractice against attorneys licensed in California who do not have malpractice insurance. Such information would be relevant to making a determination about disclosure because it should be known what damages have been caused by uninsured attorneys.

The burden of added expenses to attorneys from this proposal may be out of proportion to the amount of damages being caused by uninsured attorneys who commit legal malpractice.

A mandatory disclosure rule would probably reduce availability of legal services by making it more expensive for attorneys to be in business. This would favor large firms over small firms and sole practitioners.

If a mandatory disclosure rule were adopted I think the State Bar should be required to participate in arranging a low cost insurance pool for attorneys to obtain coverage in an amount equal to the average settlement or judgment against uninsured attorneys. The number of attorneys who do not have any settlements or judgments should be taken into account because people who are not contributing to the problem of causing damages should not be penalized by having the increased expense of insurance.

The proposal for requiring disclosure seems like a way for larger firms to put pressure on small firms and sole practitioners by making it more expensive to compete on an equal basis. Small firms and sole practitioners would feel pressured to obtain insurance in order to appear to have equal ability with larger firms or compared to insured firms.

It also appears that the idea of requiring disclosure on this issue might be encouraged by insurance companies which want to create more business for themselves by selling more insurance.

We used to have a requirement for disclosure of this type in the past and the rule apparently was discontinued. I have not heard about significant problems being caused by not requiring disclosure. I do not recall hearing if the prior period of the disclosure rule had a significant effect of reducing uninsured legal malpractice losses.

There should have to be a greater showing of public need for this type of disclosure rule before it is implemented. There should be a showing of the amount of uninsured legal malpractice losses caused by licensed attorneys for the various periods in question: 1. Before the previous disclosure rule went into effect; 2.

During the time of the prior disclosure rule; 3. During the most recent period when no disclosure has been required; 4. What can be expected to be accomplished in the future for the public benefit by returning to a disclosure requirement.

If a disclosure rule is implemented I think the time for the disclosure should only be at the time of discussing or signing a retainer agreement. The existence of insurance should otherwise be left as a private matter for attorneys and should not be listed for public viewing in State Bar records.

Sincerely,

John Paladin
Attorney And Counselor At Law
Paladin Real Estate Company
Post Office Box 801777
Valencia, California 91380-1777

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E mail: PaladinEsq@AOL.com
www.AttorneyPaladin.com

The State Bar of California
Litigation Section
Executive Committee

August 6, 2007

Via Email and U. S. Mail

Board of Governors
c/o Saul Bercovitch, Esq., saul.bercovitch@calbar.ca.gov
The State Bar of California
180 Howard Street
San Francisco, California 94105

Re: Statement of Opposition to Proposed Rules of Insurance Disclosure

Dear Mr. Bercovitch:

I write this letter on behalf of the Executive Committee of the Litigation Section of the California State Bar to express our opposition to the proposed legislation that attorneys disclose to prospective clients whether or not the attorney carries malpractice insurance. The Litigation Section Executive Committee has been provided with a copy of the opposition prepared by the State Bar's Law Practice Management Committee dated July 27, 2007 and concurs with the concerns expressed and does not feel it necessary to restate or attempt to improve upon those comments.

The Litigation Section represents over 9,000 members of the State Bar and respectfully requests that the Board of Governors takes to heart the concerns expressed by the overwhelming percentage of the commenting members and rejects the proposal to impose upon lawyers a requirement not imposed upon other professions.

Respectfully submitted,

Dale C. Campbell
Co-Chair, Legislative Subcommittee of the
Executive Committee, Litigation Section

cc: Erik Olson, Chair of the Litigation Section
Jahan Sagafi, Co-Chair of the Legislation Sub-Committee of the Litigation Section
Robert D. Brownstone, Chair, LPMT ExCom Insurance Disclosure Subcommittee

ANNE L. MENDOZA
ATTORNEY AT LAW

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E-MAIL: annelmendoza@comcast.net

August 6, 2007

Saul Bercovitch
The State Bar of California
180 Howard Street
San Francisco, California 94105

Re: Objection To Proposed Insurance Disclosure Rules

Dear Mr. Bercovitch

Please consider this letter my opposition to the Proposed Insurance Disclosure Rules.

In particular, it is most unfortunate that the State Bar has so much time to to spare to devise new ways to regulate. The result is excessive regulating and this proposal falls squarely in that box.

In addition, the proposed rule is essentially dishonest. Because there would be a revolt by the membership if malpractice coverage were mandated, the lower road of disclosure has been taken. Disclosure will, of course, result in fewer clients or higher fees.

Finally, I object to the proposed rule because it ignores the high cost of doing business that the private practice of law entails, particularly for solo practitioners. The rule does nothing to ensure the availability of affordable malpractice insurance. Rather it throws the membership to the for profit private sector for that determination. Surely, Oregon regulators who have managed to advocate and implement a state sponsored plan have made a better showing than California regulators.

Sincerely,

Anne L. Mendoza

ALM:tg

To: MR. SAUL BERCOVITCH	From: MARK WASHEL
Fax Number: 415-538-2515	Phone Number: 510-481-8213

No. of pages, including cover sheet: FOUR

Comments:

RIGHT NOW IT IS APPROX 11:20AM.
THIS IS THE FAX WE SPOKE ABOUT ON THE
PHONE LESS THAN TWENTY MINUTES AGO - IN OTHER
WORDS THE FAX I TRIED TO SEND OUT THREE
TIMES EARLIER, BUT WHICH DID NOT GO THRU DUE TO
A MALFUNCTIONING FAX MACHINE AT THE
THE CSB.

TO: Saul Bercovitch
The State Bar of California
180 Howard Street
San Francisco, CA 94105 AT FAX #: 415-538-2515

Gentlemen:

SUBJECT: PROPOSED NEW INSURANCE DISCLOSURE RULES

I desire to weigh in, and under the opportunity to make PUBLIC COMMENTS, concerning whether: one, lawyers should be required to inform clients and/or prospective clients as to whether they carry professional liability insurance; and in fact also two, and somewhat related to the immed previous, lawyers should absolutely be required to carry professional liability insurance.

While some lawyers, and especially sole practitioners, have argued that it would be an unfair financial burden to themselves and small law firms to be put in a position that would virtually require them to carry liability insurance - and as at least virtually all of the larger law firms do - if they were to be able to continue to successfully compete for clients, however that argument ignores that from the client's standpoint that it is infinitely more important that a sole practitioner or a small law firm have such insurance than that a large and wealthy law firm, and such as for instance Littler Mendelson, have such insurance.

{In other words the decision by a large and powerful law firm, and such as for instance Littler Mendelson, if it chooses to purchase liability insurance - and altho I would assume that Littler Mendelson almost certainly does have liability insurance - is actually a decision by such a large law firm to protect itself (from even easily manageable losses) and NOT the client, since a law firm AND BUSINESS as large, wealthy, and financially powerful as Littler Mendelson - and just like General Electric, IBM, or Exxon Mobil - could always choose to be self insured, since such a large and wealthy business is not likely to go out of business and/or go bankrupt due to one or two lawsuits being brought against it - OR AT LEAST AS LONG AS ONE OF THOSE LAWSUITS DOES NOT FULLY BRING TO LIGHT LITTLER MENDELSON's KEY ROLE IN SOME OF THE BIGGEST ILLEGAL COVERUPS IN CALIFORNIA HISTORY INVOLVING SUCH ITEMS AS: ONE, TRAFFICKING IN UNDOCUMENTED ALIENS; AND TWO, AT LEAST THOUSANDS OF PEOPLE BEING SECRETLY EXPOSED TO ASBESTOS.}

Also, lawyers have unusually high rates of alcoholism, drug addiction, depression, suicide, and divorce. In other words, an extremely high percentage of the members of the legal profession are an extremely dysfunctional group, and a group that as standard procedure still bills it clients two hundred dollars and more per hour even for many of the hours that those members are far too addled by drunkenness and drug addiction to be able to function.

Furthermore, since the California State Bar also often allows lawyers who are being treated for extreme alcoholism and/or drug addiction to keep on practicing law - AND IN OTHER WORDS TO ALSO KEEP ON BILLING CLIENTS - while they are still extremely disabled from their addictions, and through the CSB's various programs (and including its cooperation with the organization

known as "The Other Bar") that aim to keep secret from the public most of the instances in which individual attorneys have extreme problems with alcoholism and/or drug addiction, therefore it is absolutely essential that clients who have had their cases completely mangled by incompetent and cocaine and heroin addicted attorneys be able to go to the attorney's insurance company to be made financially whole.

{For instance during the "Diary Girl" case, and in which the primary lawyers for the defense in the first phase of the case were Melvin Belli and Shelley Antonio (I believe Shelley Antonio has since married and changed her last name to O'Brien), while that trial, and which was extremely extensively covered by the media, was going on, it is inconceivable - and although no lawyer and nor the CSB was willing to publicly talk about it - that most lawyers did not come to the conclusion that Shelley Antonio, and who in that trial put on a performance of stupidity, incompetence, incoherence, and extreme erraticness of even beyond Birkhimer, Longaway, Popik, Scholick, Strickland, and Lucy McCabe proportions, almost certainly suffered from extreme drug addiction. Instead, both the CSB and lawyers in general circled the wagons and kept the public in the dark as to the most likely reason for Shelley Antonio's performance and incompetence, since if the public realized the true state as to the total incoherence of many lawyers' minds and the extremely high rates of drug addiction that infests the legal profession, lawyers would no longer be able to get members of the general public to agree to pay high hourly fees to lawyers, SINCE THE GENERAL PUBLIC WOULD REALIZE THAT MOST LAWYERS ARE NOT THE EXTREMELY SUPERIOR AND HIGHLY INTELLIGENT BEINGS THEY PRETEND TO BE. (NOTE: I looked up and made copies of two cases in which Shelley Antonio was personally involved, in other words not as a lawyer, but instead as a plaintiff and a defendant, and it seems that her former roommate found her to be as much of a nutcase in her personal life as she was in her role as a lawyer in the "Diary Girl" case. In fact, Antonio's former roommate accused her of having a drug problem and of being a suicidal nut, so based on those "standards" and from what I now know about the CSB, it is not at all surprising that the CSB allowed Antonio to keep her law license. Of course the CSB also still further protects Shelley Antonio by not listing both her maiden name and her married name - but now lists her only under her married name - so therefore anyone who is presently considering hiring her or the law firm that she is a member of would be unlikely to realize that they would likely be hiring the lawyer that certainly some, and due to her performance in the "Diary Girl" case, would consider to be the biggest clown and most incompetent lawyer in the entire estate of California)}

And let's also discuss the fact that many lawyers are suspended, and occasionally disbarred, by the CSB do to neglecting to pay their annual dues to the CSB. As the CSB has itself repeatedly admitted, most lawyers who get in that situation have serious problems with alcoholism and/or drug addiction. Does anybody really believe that most of the lawyers who have serious problems with drug addiction, and especially the ones who also lose their law licenses because of being so deeply in debt to their drug dealers that they can't afford to pay their annual dues to the CSB so as to retain their law licenses, do not also first embezzle their clients' money before being suspended or disbarred!!!

Speaking of full disclosure, let's also discuss the California State Bar's secret system of two sets of books and private reprovals, and which therefore allows a lot of lawyers who are incompetent and/or crooks to keep on practicing law, and therefore gypping clients, and including since if a potential client decides to phone the CSB so as to check out a lawyer he or she is thinking of hiring, usually the CSB will tell the potential client that said lawyer's record is totally clean, and even if that lawyer has a long history of repeatedly engaging in: one, outrageous and/or illegal and/or totally incompetent conduct; and /or two

system of selling pardons by going thru the charade of pretending that the bribe the attorney paid to buy that pardon was supposedly a fee to purchase a course from the CSB. (In fact while we are on the subject of coverups by the CSB, I am well aware that when the CSB decides to reinstate a lawyer which it had previously disbarred, it normally changes the records it makes available to the general public so as to fool the general public into thinking that previously the attorney was only suspended but not disbarred. And that when you ask CSB employees about that, they repeatedly, insistently, and vehemently lie about it and deny it, since if they told the truth about it, the CSB would fire them on trumped up charges.))

And speaking of coverups, AND AS OPPOSED TO FULL DISCLOSURE, finally let's discuss the fact that in the Bay area it is accepted practice by both lawyers and judges, that lawyers, and after signing a fee agreement with a client, will be allowed to tell the deliberate lie to a judge, and with the judge pretending to believe that lie by the lawyer, that there are oral understandings superseding the fee agreement with the client that the lawyer signed, and that also neither the CSB and nor the local judges do anything about seeing that lawyers who engage in such sleazy practices and criminal activities, and which includes theft, perjury, racketeering, fraud, conspiracy, and mail fraud, are both disbarred and also sent to prison. And since lawyers who play that game also often arrange to have their secretary, clerk, or law partner commit perjury by insisting that the client supposedly agreed to that "oral understanding," and/or they inform the client at a critical juncture in the case, and such as just before the trial or going to deposition, that the lawyer will agree to continue in the case only if the client agrees to a new fee agreement - in other words the attorney is also engaging in extortion - attorneys who engage in such extortion, and also their clerks, secretaries, and associates, etc, should also receive a still additional ten years in prison.

In conclusion, it was almost twenty years ago that I first began to truly comprehend how extremely sleazy the legal profession, and especially in California, is. That was largely due to the fact that due to my being a whistleblower, I saw that in certain places, and such as for instance San Francisco, the primary purpose of most of the larger, more powerful, and more politically connected law firms was arranging under the table bribes to the local judges, and which of course were then followed by the window dressing of courtroom trials in which the judges would pretend to consider the facts and the evidence. And over the last several years, and as I have seen more and read more, I have come to comprehend that the typical lawyer, and especially in California, and extra especially in the Bay area, AND EXTRA EXTRA EXTRA ESPECIALLY IN SAN FRANCISCO, is even far sleazier than I had previously thought. And then to even throw some icing on the cake, about a year ago I first became aware of Wendy Borcherdt and her experiences with and comments about the totally corrupt California State Bar, in other words the organization that pretends its primary purpose is to protect the public, but which in reality has as its primary purpose keeping licensed a lot of thieves, criminals, and parasites who actually should be both disbarred and also sent to prison.

Very truly yours,

Mark Winshel

Mark Winshel

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August 8, 2007

Saul Bercovitch, Staff Attorney
The State Bar of California
180 Howard Street
San Francisco, CA 94105

RE: Proposed New Insurance Disclosure Rules (Revised)

Dear Mr. Bercovitch and Members of the Insurance Disclosure Task Force:

This is a comment from the Professional Responsibility and Ethics Committee of the Los Angeles County Bar Association.

Our Committee believes that advising clients that the attorney has or does not have insurance will not serve the objective the proposed rules are intended to address, which is the protection of consumer-clients. Advising clients that an attorney has insurance is misleading, because the details are significant.

The amount of insurance; the existence of pending claims against the policy; whether the amount of insurance is reduced by defense legal fees; the existence of the insurance at the time a lawsuit is commenced (the industry standard is that they are triggered by claims made), are all material factors that are not disclosed by a simple disclosure that insurance exists. Even when law firms procure insurance it is purchased to cover the firm, not to protect the client. Therefore, they often do not have sufficient coverage for the particular matter. Also, because polices are claims made, the insurance may not cover prior acts. Coverage limits are often unrelated to the risk that a lawyer undertakes in representing clients. A disclosure without details leads clients into a false sense of security.

A client would also like to know other information which may be material. Does the lawyer have expertise in handling certain cases? Has the lawyer been subject to prior discipline? Does the lawyer has had previous trial experience? How many times the lawyer had to take the bar exam? There is no persuasive reason why insurance should be singled out for disclosure, as opposed to other considerations regarding a lawyer's representation of a client.

Although the proposed rules do not mandate attorneys procure insurance, the ultimate effect is mandatory legal malpractice insurance. Attorneys will not want to be stigmatized for not having insurance. However, for mandatory insurance to be successful and meaningful, there must be studies done, based on empirical data by organizations that are expert in this area.

Insurance is not a subject matter for a Rule of Court. Rather, it is a matter for legislative action after detailed study, research, and deliberation, as to whether mandatory legal malpractice is feasible and meaningful to fulfill the purpose it intends. There is no study of client expectations regarding a lawyer's insurance status, and no study of whether clients have decided not to retain counsel based on a disclosure that a lawyer is not insured. The people that the proposed rules intend to protect (the consumer-clients) do not have any input in this matter. There is no data showing that the public wants attorneys to have insurance. Perhaps, with the added costs of insurance, poor or middle class consumers would be unable to afford to hire an attorney, thus this becomes an access to justice issue.

Please consider the issues raised in the Conference of Delegates Emergency Late Filed Resolution from 2006 (attached) as relevant to these matters.

We appreciate the opportunity to comment on this important matter.

Sincerely yours,

Toby Rothschild, 2nd

Toby J. Rothschild
Chair, Professional Responsibility
and Ethics Committee

Enclosure

cc: Gretchen M. Nelson
Stuart A. Forsyth

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REFER TO FILE NO.
Office / CDCBA 2006

September 22, 2006

The Board of Directors
Conference of Delegates of California Bar Associations
ATTN: Laura Goldin, Executive Director
3450 Sacramento Street, Suite 521
San Francisco, California 94118

Re: Request for Leave to Present Emergency Late-Filed Resolution

Ladies and Gentlemen:

I write on behalf of the Beverly Hills Bar Association, which requests leave to file the attached resolution as an emergency late-filed resolution for consideration by the 2006 Conference. This resolution addresses the mandatory malpractice insurance disclosure rules circulated for public comment by the State Bar of California – a matter of substantial importance to the bar and the public.[1]

The proposed rules were circulated for public comment on or about June 22, 2006, following authorization by the Board of Governors at its June 17 meeting. The proposed rules were first brought to the attention of the Beverly Hills Bar Association delegation at its initial pre-Conference caucus on September 7, 2006. As a consequence, the Beverly Hills Bar Association effectively was precluded from filing the attached resolution in the ordinary course as a late-filed resolution in accordance with Sections 5(D)(2)(a) and 5(D)(2)(b) of the Rules of the Conference. The public

1. This is a matter of substantial importance for the additional reason that the proposed rules are diametrically opposed to the position adopted by the Conference of Delegates in 1993 on the same subject.

comment period, which initially was scheduled to end on September 15, 2006, has been extended to permit the Conference to express its views on the proposed rules.

The attached resolution is being presented for filing as soon as reasonably possible after the occurrence of the aforementioned events. Presentation of this resolution has been duly authorized by the Beverly Hills Bar Association.

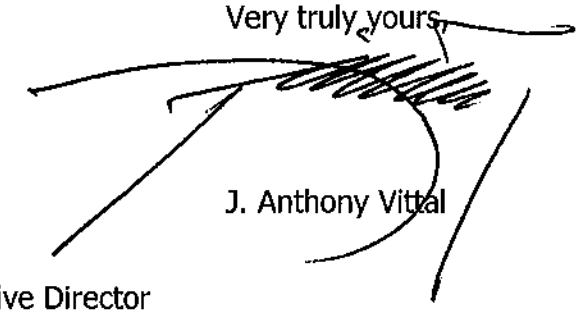
The subject matter of the resolution will not be before the Conference at its 2006 meeting unless the resolution is filed.

The business of the Conference previously scheduled for the meeting will allow time for consideration of the resolution without unduly restricting the time for consideration of other matters deemed by the Board to be of equal or greater importance to the Conference, the bar and the public.

The resolution is accompanied by the Report of the Insurance Disclosure Task Force of the State Bar of California, which has recommended the proposed rules, in lieu of counter-arguments of a responsible spokesperson for the opposite viewpoint. We also have solicited a counter-argument from Jim Towery, the Chair of the Insurance Disclosure Task Force, as a responsible spokesperson for the opposite viewpoint. As of the time I write this letter, we have not had a response from Mr. Towery. We believe that the Task Force Report provides both the rationale for the opposing viewpoint and a discussion of the reasons the Task Force rejected the views expressed by the proponent of this resolution.

For the foregoing reasons, the Beverly Hills Bar Association urges you to grant this request and to place the attached resolution on the agenda of the 2006 Conference as a special setting for full debate.

Very truly yours,



JAV:t
COCBA 001.wpd
Enclosures as stated
cc: Marc Staenberg, Executive Director

J. Anthony Vittal

RESOLUTION ELF-02-2006

Opposition to Proposed Mandatory Insurance Disclosure Rules

RESOLVED, that the Conference of Delegates of California Bar Associations urges the Board of Governors of the State Bar of California not to adopt proposed Rule 3-410 of the Rules of Professional Conduct, which would mandate the disclosure, by a lawyer to the lawyer's client, the fact that the lawyer is not covered by lawyers' professional liability insurance.[1]

FURTHER RESOLVED, that the Conference of Delegates of California Bar Associations urges the Board of Governors of the State Bar of California not to recommend to the California Judicial Council that it adopt proposed Rule 950.6 of the California Rules of Court, which would mandate that an active member of the State Bar of California certify to the State Bar whether the member represents clients and, unless the member is employed as a government lawyer or as in-house counsel to the exclusion of all other clients, whether or not the member is covered by lawyers' professional liability insurance.[2]

FURTHER RESOLVED, that the Conference of Delegates of California Bar Associations urges the Board of Governors of the State Bar of California not to recommend to the California Judicial Council that it adopt the proposed amendment to Rule 950.5 of the California Rules of Court, which would mandate public disclosure of the information certified under proposed Rules 950.6.[3]

FURTHER RESOLVED, that the Conference of Delegates of California Bar Associations urges the California Judicial Council not to adopt the proposed amendment to Rule 950.5 and proposed Rule 950.6, of the California Rules of Court.

FURTHER RESOLVED, that the Conference of Delegates of California Bar Associations urges the State Bar of California to determine why over 18% of the active members of the State Bar in private practice do not maintain lawyers' professional liability insurance coverage; to evaluate whether the establishment of a captive lawyers' professional liability insurance carrier would achieve coverage of all active members in private practice; and, if so, to propose the enactment of appropriate legislation.

Proponent: Beverly Hills Bar Association

STATEMENT OF REASONS:

Existing Law: There currently is no requirement that an active member of the State Bar maintain lawyer's professional liability insurance ("LPL") coverage or that he or she disclose to anyone whether or not he or she maintains LPL coverage.

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1. The language of the proposed rule is included as an attachment to the Report of the Insurance Disclosure Task Force (June 2, 2006), a link to which is posted on the CDCBA web site, and which can be downloaded from the State Bar web site at the URL http://calbar.ca.gov/calbar/pdfs/public-comment/2006/Insurance-Disclosure_Agenda.pdf.

2. *Ibid.*

3. *Ibid.*

This Resolution: Consistent with the position taken by the Conference of Delegates of the State Bar in 1993, this resolution urges the State Bar and the Judicial Council not to adopt the proposed rules. Instead of the proposed rules, this resolution urges the State Bar to determine why active members of the State Bar in private practice do not maintain LPL coverage; to evaluate whether the establishment of a captive LPL carrier would achieve coverage of all active members in private practice; and, if so, to propose the enactment of appropriate legislation.

The Problem: Setting a precedent for the regulated professions, the proposed rules will require a lawyer in private practice to publicly disclose to the State Bar, and to disclose to every client, whether or not he or she is covered by malpractice insurance – and to keep those disclosures current. While offered as a "consumer information" proposal, the indirect effect of the proposed rules will be to force uncovered lawyers to obtain and maintain malpractice insurance, while directly imposing a substantial notification burden – both immediate and ongoing – on all lawyers in private practice.[4]

The most important obligation lawyers owe their clients is honesty. The proposed mandatory disclosure of the mere existence or non-existence of malpractice coverage is antithetical to the fundamental fiduciary duty of honesty. The proposed mandatory disclosures fail to explain the intricacies of insurance coverage, and "public education" groups will not solve the problems created by the current proposal. Further, the proposed mandatory disclosures may create a false sense of security that will engender a host of unintended consequences.[5]

Disciplinary rules should not be imposed on us as "chicken soup." With no showing of compelling need for regulation, the proposal should be rejected.

IMPACT STATEMENT:

This resolution will not affect any other law, statute, or rule.

AUTHOR AND/OR PERMANENT CONTACT: J. Anthony Vittal, The Vittal Law Firm, 1900 Avenue of the Stars, Suite 2500, Los Angeles, California 90067-4506. Telephone: (310) 339-2520; eFax: (603) 484-5374; tony.vittal@abanet.org. Diane L. Karpman, Karpman & Associates, 9200 Sunset Boulevard, Penthouse 7, Los Angeles, California 90069-3502. Telephone: (310) 887-3900; Fax: (310) 887-3901; karpethics@aol.com.

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4. In addition, the proposal applies without exception to every member who is representing clients, wherever the member may be located, without regard to where the client may be located. Thus, the proposal applies to the 18.3% of the State Bar membership who practice outside California and may be subject to different and/or inconsistent obligations in their "home" jurisdictions.

5. Given the principle in fiduciary duty law that any disclosure, if made, must be sufficiently complete as not to be misleading, a requirement that a lawyer disclose to a prospective or continuing client the "absence" of LPL insurance, if there is no coverage for any part of the lawyer's engagement, despite the existence of an LPL policy otherwise covering the lawyer, arguably requires the lawyer to disclose that fact as well, with a discussion of the reasons for the exclusion (which may be beyond the particular lawyer's competence, thus arguably necessitating the engagement of coverage counsel for the purpose of making the disclosure). Those are unnecessary and unwarranted burdens to impose on any lawyer.

RESPONSIBLE FLOOR DELEGATES: J. Anthony Vittal and Diane L. Karpman

ARGUMENT OF THE BEVERLY HILLS BAR ASSOCIATION IN FURTHER SUPPORT OF EMERGENCY LATE-FILED RESOLUTION CONCERNING PROPOSED MALPRACTICE DISCLOSURE RULES

The Beverly Hills Bar Association is pleased to present this argument in further support of its Emergency Late-Filed Resolution concerning the proposed mandatory malpractice disclosure rules.

Historical Background:

By amendment to Sections 6147 and 6148 of the Business & Professions Code effective January 1, 1993, the Legislature mandated disclosures of the existence or absence of lawyer's professional liability insurance ("LPL") coverage and, in certain circumstances, the policy limits of that coverage, in lawyers' engagement agreements. (Stats. 1992, ch. 1265, §§ 3-4.) In 1993, the Conference of Delegates approved a resolution proposed by the Beverly Hills Bar Association, joined by the Los Angeles County and Long Beach Bar Associations, calling for the repeal of the then-existing statutory disclosure requirements, because those disclosures were inherently deceptive to consumers. The Legislature tinkered with the disclosure requirements in an effort to remedy their inherent deficiencies, but added a sunset provision. (Stats. 1993, ch. 982, §§ 4-6.) After extending the sunset provisions at the behest of the State Bar, the Legislature ultimately repealed the disclosure requirements effective as of January 1, 2000. (Stats. 1996, ch. 1104, §§ 8-11.)

In 2004, the ABA House of Delegates narrowly adopted a Model Court Rule on Insurance Disclosure, mandating annual disclosure, by a lawyer to his or her licencing authority, whether or not the lawyer maintains LPL coverage. In response, in 2005 the State Bar established its Insurance Disclosure Task Force to consider the propriety of adopting the ABA model rule. The Task Force proposes not only that the State Bar and the Judicial Council do so, but that the State Bar re-adopt by rule a variation of the discredited client disclosure requirements previously imposed, and then repealed, by the Legislature.

The Board of Governors of the State Bar has circulated the proposed rules for public comment without recommendation. The State Bar has agreed to extend the comment deadline to permit this Conference to express its views on the proposed rules.

This Resolution:

Consistent with the position taken by the Conference of Delegates of the State Bar in 1993, this resolution urges the State Bar and the Judicial Council not to adopt the proposed rules. Instead of the proposed rules, this resolution urges the State Bar to determine why active members of the State Bar in private practice do not maintain lawyers' professional liability insurance coverage; to evaluate whether the establishment of a captive lawyers' professional liability insurance carrier would achieve coverage of all active members in private practice; and, if so, to propose the enactment of appropriate legislation.

The Problem:

These mandatory malpractice insurance proposals will disproportionately burden recently admitted attorneys and the attorneys who serve minorities, the legal aid-eligible population, and that

segment of the population ineligible for legal aid but generally unable to afford counsel. The reporting requirements in proposed Rule 950.6 accomplish little more than establishing a two-tiered bar and, absent full disclosure of the limitations and exclusions on coverage in the relevant policy or policies applicable to each attorney, will afford consumers of legal services cold comfort. Similarly, the negative disclosures to current and prospective clients proposed by Rule 3-410 are as likely to cause misinformation as to provide useful information to those clients.

Although the proposals would facially appear to be consumer oriented, in effect they will increase the costs of legal services. Lawyers will have little choice but to obtain coverage or be branded. This negative branding has little relationship to competent delivery of legal services and will unduly impact small-firm and solo practitioners, whose practices may be unable to support the premiums required by carriers for meaningful professional errors and omissions coverage.

In effect, the proposals will impair the ability of those lawyers least able to afford coverage to continue in practice, possibly driving some out of the practice of law. Those are the very lawyers who are most likely to provide legal services to minority clients and the otherwise unserved and underserved segments of the population. Therefore, these disclosure proposals will adversely affect access to justice. A bar with almost 155,000 active members (lawyers eligible to practice without restriction) should be able to mandate a policy for all its members, rather than a policy which functionally exempts large firms and powerful attorneys and targets small firms and solo practitioners.[1]

These proposed reporting and disclosure requirements will be unduly burdensome and misleading. In addition to the initial report and disclosures upon adoption of the rules and the initial negative disclosure at the time the lawyer is engaged, if a lawyer who originally is covered subsequently ceases to be covered, the lawyer must inform each client of the loss of coverage, in writing, within 30 days of the loss of coverage.

The mechanics of this proposed rules will be a severe shock to those lawyers who are currently without coverage. There not only will be the time and cost involved in notifying clients, but also the backlash when clients, receiving a notification that their attorney is not covered by insurance, decide to seek new counsel. The process becomes more onerous when initial or replacement malpractice coverage is difficult to obtain or is accidently dropped and additional notices need to go out to the client.

If this weren't enough of a burden on the lawyer without malpractice insurance, the lawyer must also be concerned about the possibility of a gap in coverage – either when obtaining coverage and failing to obtain "nose" coverage[2] or when switching carriers. The failure to notify clients of such a gap, which may not be clear to the practitioner at the time it occurs, may subject the lawyer to suspension as called for by the rule. It also may give the malpractice plaintiff an unexpected bonus

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1. In addition, the proposal applies without exception to every member who is representing clients, wherever the member may be located, without regard to where the client may be located. Thus, the proposal applies to the 18.3% of the State Bar membership who practice outside California and may be subject to different and/or inconsistent obligations in their "home" jurisdictions.

2. Coverage for errors and omissions occurring before the effective date of the policy, which requires an endorsement and a potentially substantial additional premium.

(the violation of the rule and a breach of fiduciary duty claim for failure to disclose the limitations on coverage) when suing.

The most important obligation lawyers owe their clients is honesty. The proposed mandatory disclosure of the mere existence or non-existence of malpractice coverage is antithetical to the fundamental fiduciary duty of honesty. The proposed mandatory disclosures fail to explain the intricacies of insurance coverage, and "public education" groups will not solve the problems created by the current proposal. Further, the proposed mandatory disclosures may create a false sense of security that will engender a host of unintended consequences.[3]

Is the public going to understand that policies typically are issued on a hybrid "claims made/occurrence" basis, so that coverage is triggered only when a client complains – but even then exists only if the claim also arises when the policy is in force absent "nose" coverage [a prior-acts endorsement]? What about exclusions, deductibles, "PacMan" Clauses,[4] and other issues involving policy lapses? Professional errors and omissions coverage is an extremely complicated issue. Although the proposal may look good on the surface, what assistance does it really provide to the consuming public? Simply mandating disclosure begs these and a number of other important questions.

It is important to remember that coverage has nothing to do with the acts of dishonest lawyers, because intentional misconduct cannot be covered by insurance.[5] For example, the media recently has been fixated on allegations of illegal wiretapping at the behest of members of the legal community. Obviously, those acts will not fall within the penumbra of a law firm's coverage, but will the carriers also disclaim coverage for innocent partners of the firms, who knew or should have known what their miscreant partners were doing?

While efforts to mandate these types of disclosures are in vogue, it is important to note that the Rules Revision Commission (Ethics 2000) of the American Bar Association rejected the concept of mandatory disclosure in its proposed amendments to the Model Rules of Professional Conduct.[6]

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3. Given the principle in fiduciary duty law that any disclosure, if made, must be sufficiently complete as not to be misleading, a requirement that a lawyer disclose to a prospective or continuing client the "absence" of LPL insurance, if there is no coverage for any part of the lawyer's engagement, despite the existence of an LPL policy otherwise covering the lawyer, the lawyer arguably would have to disclose that fact as well, with a discussion of the reasons for the exclusion (which may be beyond the particular lawyer's competence, thus arguably necessitating the engagement of coverage counsel for the purpose of making the disclosure). Those are unnecessary and unwarranted burdens to impose on any lawyer.

4. Clauses permitting costs of defense of a malpractice claim to diminish liability coverage limits.

5. This is an express public policy position of the State of California, stated in the Insurance Code. That said, injuries from intentional misconduct already are addressed by the Client Security Fund, which will not be affected by this proposal.

6. After that proposal was rejected, at its 2004 Annual Meeting, the ABA House of Delegates did adopt (by the very narrow margin of 213-202) the proposed Model Rule on Insurance Disclosure(Recommendation 108), revised "to harmonize the rule with respect to states which already have such a rule," over the objection of the ABA Standing Committee on Lawyers' Professional Liability (the "LPL Committee") and the objection of various members of the California Bar. (See Report on the ABA Annual Meeting (August 23, 2004) at 13, available at http://www.abanet.org/leadership/2004/annual/

The existence of coverage has little to do with a lawyer's recognition of fiduciary obligations, with which the organized bar is supposed to be concerned. Lawyers are one of the few remaining self-regulating professions.

A secondary, less vetted, level of lawyer regulation is effectuated independent of the statutes and rules governing lawyers; it is imposed by carrier exclusions.[7] For example, serving on a board of directors or as an officer of a client or even a non-profit organization can be excluded, as can joint client/lawyer investments or acquisitions. Under the Rules of Professional Conduct, those activities are permissible, so long as certain formalities are satisfied. Nevertheless, carriers can deny coverage to policy holders if they engage in them. Is it good for our clients for carriers to be increasingly involved in the regulation of the legal profession? Generally, the states that have regulations involving disclosure and/or coverage are small and have relatively homogeneous lawyer populations. By contrast, states with large populations of lawyers, with varied types of legal practice, do not mandate disclosure.[8]

Annual premium rates range anywhere from around $4,000 to $7,000 or more per lawyer, depending on a lawyer's practice area and the amount of coverage requested. Some areas of practice, such as patents and class actions, are almost uninsurable.

Because California has an enhanced disciplinary system, with full time State Bar Court judges, which is funded at a cost of more than $40,000,000 a year, issues of lawyer misconduct are vetted at the State Bar and are fully resolved in that system. The issues investigated by the California disciplinary system include the leading predicates for claims of professional negligence, such as poor communication, calendering problems, and suing a client over a bill – issues unrelated to the existence or absence of LPL insurance coverage. The proponents of these proposals offer no evidence that the same conditions exist in California, with its unique disciplinary system, as may justify these requirements in other states.

SelectCommitteeReportFINAL.doc.) As stated in the Executive Summary of the Report accompanying Recommendation 108:

> The LPL Committee . . . believes that the topic of lawyers' professional liability insurance is complex and unfamiliar territory for most of the public and many lawyers. Given the nature of claims-made coverage, the LPL Committee believes it is likely that the general public's idea and expectations of what "insurance coverage" means at the time a client hires a lawyer is much different than actual reality. Therefore, simply telling a client that insurance coverage exists at the time of hiring can be tantamount to telling the client nothing.

(Available at http://www.abanet.org/leadership/2004/execsumm04.pdf.) In January of this year, the Arkansas Bar rejected adoption of the Model Rule.

7. See Davis, Anthony E., Professional Liability Insurers as Regulators of Law Practice, 65 FORDHAM L. REV. 209 (1996).

8. New York, Texas, Florida, New Jersey, et al. (See chart detailing state implementation of Model Rule (8/11/06), available at the website of the ABA Standing Committee on Client Protection; see also Report of the Committee on Professional Responsibility of the Association of the Bar of the City of New York to the Chair of the ABA Task Force, available at www.abcny.org/pdf/report/victor_report2-b.pdf.

Simply stated the proposed rules will do nothing more than invite malpractice suits by dissatisfied clients, who will view their suits as nothing more than a way to extract money from an LPL carrier without regard to the consequences to the lawyer.

The Beverly Hills Bar Association urges you to support this resolution and, by so doing, to communicate to the State Bar the rejection of the proposed rules by the voluntary bar associations of this state, on behalf of all California lawyers in private practice.

Bercovitch, Saul

From: Tim Canning [tc@tclaws.com]

Sent: Thursday, August 09, 2007 10:57 AM

To: Bercovitch, Saul

Subject: New Insurance Disclosure Rules (Revised); comment in opposition

Dear Mr. Bercovitch:

I write to express my opposition to the proposed rules requiring attorneys to disclose whether they are covered by malpractice insurance.

I am a sole practitioner in Northern California. Most of my practice involves representing individuals on a contingency fee basis in claims against stockbrokers and financial planners. I also represent individuals on a low-fee and occasionally a no-fee basis.

The net effect of the proposed rule will be to indirectly require all attorneys to carry malpractice insurance, which will primarily benefit only the insurance companies, and not injured consumers. Further, another effect will be to make it even more difficult for consumers, the poor, and even middle-class individuals in need of legal services to obtain representation, as it will increase the costs of practicing law.

Thank you for your consideration of this comment.

Tim Canning CSB 148336
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tclaws35@yahoo.com

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Bercovitch, Saul

From: maggi draper [maggi@humboldt1.com]
Sent: Thursday, August 09, 2007 11:12 PM
To: Bercovitch, Saul
Subject: comments re proposed rule 3-410

Dear Mr. Bercovitch:

I understand that members of the bar are to contact you with regard to the proposed new Rule 3-410. I hope this is timely.

My opinion is that there are many bar members who do not wish to be subject to public scrutiny regarding whether malpractice insurance is carried or not. While I believe disclosure in contracts is important and necessary, I feel it is wrong to "guilt trip" attorneys (via the internet disclosure) into carrying malpractice insurance; if an attorney wishes to have that protection, fine. Insurance is a business decision on the part of the attorney or firm, based on its risk and economic circumstances. While it is important to protect clients from incompetence and malpractice, and to protect attorneys from suit, the best way to serve that goal is to improve MCLE standards and offerings far beyond what they are at present. Insurance does not improve the quality of service, which should be our goal as an organization.

Attorneys learn new things every day, and are forced to keep up to date in order to practice effectively. Thus the MCLE offerings we are currently given could be much more effective than they currently are. They should be tailored and researched to afford more targeted benefit in the area of protecting a practice from suit, and on office procedures at a practical level that include office management classes etc. at a detailed level, if necessary. Many attorneys who do not carry malpractice work at a very high level with a degree of care commensurate with their own knowledge that they are not insured, but for many others training at the level of fail safe procedures would be the best insurance.

My guess is that most negligence cases come likely come from oversights. Such errors are likely to be committed by the stressed-out, overworked attorney without a staff or with a less than competent office arrangement. Having a higher grubstake to meet in order to cover insurance costs could easily lead to an excessive work load for many practitioners, and thwart the goal of eliminating the need for insurance. Not all members wish to have endless billable hours with high rates, but rather choose to work with lower income clients on a less intense basis. For these practitioners, malpractice insurance is clearly prohibitive - and could create more problems than it solves. My point is that there is a relationship here that needs to be taken into consideration in this rule proposal, which may be better suited to big firms than small practices, and to well-heeled clients rather than the millions of people for whom representation is almost out of reach as it is.

Another argument against forced public disclosure. If all attorneys are pushed to carry insurance like doctors, we could be faced with the same fate: a bonanza for insurance companies and guaranteed deep pocket to lure the litigious into suit. I urge those making decisions about this to avoid creating the same nightmare for bar members.

Sincerely,

Margaret Draper
Attorney at Law
POB 176
Bayside, CA 95524

707.826.9072

it to the intended recipient, you are hereby notified that reading, disseminating, distributing or copying this message is strictly prohibited.

If you have received this message by mistake, please immediately notify us by replying to the message and delete the original message immediately thereafter.

September 3, 2007

Saul Bercovitch
Staff Attorney
State Bar of California

Dear Mr. Becovitch:

I am a sole practitioner and write to you regarding proposed Rule 3-410 of the California Rules of Professional Conduct.

I have been in practice since 1973. For many years I carried errors and omissions coverage. The premiums climbed steadily. About 15 years ago it dawned on me that I had been in practice for more than 20 years and there had been no claims alleging professional negligence filed against me. At the same time I realized that for the substantial bulk of my legal practice my financial exposure for professional negligence in the vast majority of my cases would be less than $ 50,000.00.

I did the math. If I paid just $ 5,000.00 per year for 10 years, I was guaranteeing that I would lose $ 50,000.00. On the other hand if I didn't have coverage in that ten year period and then became liable to a client for $ 50,000.00 or less, I wouldn't be any worse off, and, if there were no claims then I would be $ 50,000.00 to the good. Therefore I decided to become self-insured. I have sufficient assets to be used to pay such claim. And, if a meritorious claim were to be filed, I would pay it, not fight it. Since that time I estimate I have saved somewhere between $ 75,000.00 and $ 100,000.00 in premium expense.

I have always disclosed in my fee contracts that I do not carry E&O insurance and that I am self-insured. Not one single client has ever so much as commented about that disclosure.

I don't know if having the State Bar list the fact that I don't carry E&O insurance would be of any benefit to any of my clients or potential clients. I have survived almost exclusively on personal referrals from family, friends and former clients. I honestly cannot think of a client that I have represented who would have gone to the State Bar website.

Posting such information on a public website for attorneys appears somewhat discriminatory. Plus, if attorneys are required to make the lack of coverage disclosure in their attorney fee agreement, what purpose is served by having that information posted on a public website?

No response from you is expected. I hope my comments are useful to you.

Very truly yours,

Gerald D. Langle
SBN 53944

July 10, 2007

Comments from HALT – *An Organization of Americans for Legal Reform* to the State Bar of California Insurance Disclosure Task Force Regarding California's Revised Proposed Rules Concerning Legal Malpractice Disclosure

Pursuant to the California State Bar Insurance Disclosure Task Force's request, HALT hereby submits comments regarding the Bar's revised rule proposals concerning malpractice insurance disclosure requirements.

HALT supported the California Bar's original recommendations for these disclosure requirements. As part of our advocacy efforts, HALT works to make information easily available to the public and to better inform consumers of their rights within the legal system. The Bar's original recommendations allowed for accessible public information, and required greater accountability for lawyers. Although an insurance disclosure rule would be a step forward for California, failing to require a signed acknowledgement by the client and only applying these rules prospectively limits the positive effect these proposals will have on the California legal system.

I. A Rule Should be Adopted that Disciplines an Attorney who Fails to Inform a Client that He or She Does Not Have Professional Liability Insurance.

The Task Force's original proposal would have required a lawyer to disclose a lack of professional liability insurance to a client when he or she was not insured. The revised proposal states that a lawyer must disclose this information to a client when a lawyer "knows or should know that he or she does not have professional liability insurance." This revision weakens the Task Force's original standard, as an attorney can fail to disclose this important information and still avoid professional discipline.

HALT supports the original proposal as it establishes a higher standard of attorney conduct and urges the court to adopt the following language: "A member who is not covered by 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 professional liability insurance."

The original proposal would have encouraged attorneys to take the proactive step of inquiring about whether they are covered by professional liability insurance. If an attorney could be disciplined for failing to disclose to a client that he or she was not covered by malpractice insurance, that attorney would most likely find out if he or she was insured. In a law firm, for example, an associate may not have been told whether his or her professional conduct is covered by the firm's malpractice insurance, but the original proposal created a strong incentive for all attorneys to find out whether they are insured. The revised proposal decreases this motivation.

Whether or not an attorney is insured can be an important factor in a client's decision to hire an attorney. Lawyers should know their insurance status and a lawyer can obtain this information with greater ease than a potential client. The original proposal established a strict standard that would have served as a strong incentive for attorneys to learn whether they were covered by malpractice insurance. Disclosing to a client that an attorney is not insured for malpractice might have a negative impact on business, and this revised proposal could allow attorneys to shirk these new rules by simply claiming ignorance. The original proposal did not allow for such a loophole.

If the revised proposal is adopted, attorneys can fail to disclose that they are uninsured, but avoid discipline by claiming that they were unaware of the status of their malpractice insurance. Attorneys have less of an incentive to disclose this information under the revised rule, and in turn, clients would often be unable to make a fully informed decision when hiring an attorney. The California Rules of Professional Conduct were intended to protect clients and this revised rule offers less protection to clients than the original proposal.

II. These Proposed Rules Should Apply Retroactively to Those Cases that Fall Within California's Statute of Limitations for Legal Malpractice.

The Task Force's original proposal would have required an attorney to "inform in writing all existing clients for whom the [lawyer] is currently rendering continuing legal services if the [lawyer] is not covered by professional liability insurance." The revised proposal only "applies with respect to new clients and new engagements with returning clients."

Although these proposed rules may help future clients become fully informed when hiring an attorney, they offer no protection for past or present clients. The California legislature has declared that both past and present clients have enforceable rights for legal malpractice claims. In California, the statute of limitations for legal malpractice is four years from the date of the wrongful conduct or one year after the client discovers, or should have discovered, the misconduct. Past and present clients have the right to bring a legal malpractice claim in California, but this revised proposal does not give these same clients the right to know whether their attorney has malpractice insurance.

The Bar should follow the lead of the legislature and require attorneys to notify all clients whose cases fall within the four-year statute of limitations for legal malpractice if they do not have professional liability insurance.

The legislature has given past and present clients the right to file malpractice claims against their attorneys up to four years after the wrongful conduct. If these past

and present clients are entitled to sue for legal malpractice, they should also have the right to know if their lawyers are insured. Past, present, and future clients have equivalent rights under the California malpractice statute and consequently, the Bar should protect all classes of clients under the Rules of Professional Conduct.

III. The California Rules of Professional Conduct Should Require a Client to Sign a Written Acknowledgement that He or She has Been Informed About the Lawyer's Lack of Malpractice Insurance.

The Task Force's original proposal would have required an attorney to obtain a signed acknowledgment from a client that stated that he or she had been informed that the attorney was not insured. The revised rule requires an attorney to notify a client in writing when he or she does not have malpractice insurance, but the client does not need to acknowledge this disclosure. HALT supports the original proposal as it gave greater protections to clients.

The original proposal stated that a lawyer without malpractice insurance "shall obtain from the client a signed and dated acknowledgement of receipt of that notice." A client should be fully informed when hiring an attorney and this original requirement would have helped ensure that clients were aware of their attorney's liability insurance status. There is some risk to the client when his or her attorney is practicing law without any malpractice insurance. The Task Force recognized this in its original proposal, but has since dropped the requirement that a client knowingly consent to being represented by an uninsured attorney.

The goal of California's new disclosure rule is to ensure that clients are aware of an attorney's malpractice insurance status when hiring a lawyer. The rule loses much of its strength if it does not require a signed acknowledgement from the client. Without this requirement, lawyers could simply include a brief clause in lengthy paperwork that he or she is uninsured.

HALT urges the Task Force to require an attorney to receive a signed acknowledgement from a client. California legal consumers may be greatly benefited from the protections offered by these new rules, but failing to require a signed client acknowledgement could render these proposals ineffective.

* * * * *

The recent revisions significantly weaken the Task Force's original proposals. HALT supported California's efforts to require a system of dual disclosure where uninsured attorneys would be required to inform their clients, and the Bar, about their insurance status. Under the new proposals, however, an attorney could simply claim ignorance as a reason for failing to tell a client that he or she was not covered by

professional liability insurance. These rules offer no protections to past or present clients, even though these clients may have rights to sue an attorney under California's statute of limitations for legal malpractice. Lastly, the purpose of these new rules is to protect clients, but failing to require a lawyer to obtain a signed client acknowledgement, could negate any consumer protections that these proposals originally offered.

We respectfully urge the Bar to reject the recent revisions.

Respectfully submitted,

HALT, Inc.
By:

Suzanne M. Blonder
Senior Counsel