Proposed New Insurance Disclosure Rules (Revised)
Public Comments

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
1.	Michael J. Kennedy	I	Attorney	Oppose	Jim Towery has a "patent conflict of interest" because he practices attorney malpractice law. "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." The fact of an attorney's lack of insurance coverage "represents no badness whatsoever." 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."	April 22, 2007	No
2.	Lyman C. Welch	I	Attorney. Inactive in California, resides in Pennsylvania	Proposes technical amendments	"It would be useful if the discussion [of the proposed Rule of Professional Conduct] 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…. It would be useful if the discussion explained how to properly provide these disclosures to the client when out-of-state requirements also apply."	May 11, 2007	No
3.	Karen Stein	I	Attorney	Oppose	"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?"	May 21, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
4.	William Mayo	I	Attorney	Oppose	Objects to the attempt to "regulate how and when an attorney is to make '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 firms." Jim Towery has a conflict of interest because he regularly practices in the area of legal malpractice. The proposal is "properly classified as true compelled speech." Objects because there has been no legal analysis of the rule in terms of the 1st Amendment of the U.S. Constitution (or Article 1, § 2 of the California Constitution). 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."	May 21, 2007	No
5.	Frank Hoffman	I	Attorney	Oppose	"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 [in my comments on the June 2006 insurance disclosure proposal], I oppose this or any rule that mandates, urges or encourages members to enrich the insurance industry."	May 23, 2007	Yes
6.	Patricia Johnson	I	Attorney	Oppose	Attorney has insurance coverage. Does not think that requiring attorneys to make a disclosure regarding coverage "will change bad attorneys into good ones." It will just make it more costly as insurance companies "can raise rates knowing more will need to buy from them."	May 24, 2007	Yes

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7.	Sam K. Abdulaziz	I	Attorney in small law firm (five attorneys)	Oppose	Attorney's firm carries professional liability insurance. Previously wrote that he does not feel that it is a good idea to mention that one has or does not have insurance. Notes that there "has been a slight change with respect to the language" of the proposal, but still believes it is unacceptable. "[S]mart attorneys will now go after everyone who does not know or should know that he or she does not have professional liability insurance."	May 24, 2007	Yes

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8.	Stephen G. Chandler	I	Attorney	Oppose	"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." Asks why carrying insurance is "now becoming a material factor in determining whether one should enter into a transaction." Says that advising clients that he does not need to carry insurance because he has never been sued for malpractice works for him, but asks about new attorneys, stating this "will cripple them." Asks whether there is a reason "we need to increase the demand so the prices will increase to help the insurance industry…. Wouldn't it be better for lawyers to limit their liability like we have done with doctors under MICRA?" The proposal does not mention any minimum amount of insurance required to "get around" the disclosure and it does not define "professional liability insurance." Asks whether there are 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. Asks whether the insurance can be through any type of insurance company, or if there is a requirement that it have at least a B+ best rating. "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."	May 25, 2007	Yes

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9.	Rochael M. Soper	I	Attorney	Oppose	Attorney has professional liability insurance. Finds the revisions "surprisingly minor and innocuous" given the amount of opposition to the rules. Has yet to see any persuasive justification for requiring lawyers to disclose that they do not have professional liability insurance. Rules will disproportionately apply to solos and those servicing lower income persons, those lawyers who cannot afford insurance. 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)." Opposed to information being posted on the State Bar's website. "[T]here 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 strongly suggest and request that the committee find other ways to make this information available."	May 28, 2007 and June 30, 2007	No
10.	Robert W. Mills	I	Attorney	Oppose	Supports the proposed amendments "as they appear to ameliorate this ill-conceived rule to some extent." However, strongly opposed to the disclosure rule itself.	June 1, 2007	No
11.	Gerald McNally	I	Attorney	Oppose	Proposed rules would "(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."	June 1, 2007	No

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12.	G.Kirk Ellis	I	Attorney	Oppose unless other changes are made	"This rule should be adopted only if the State Bar makes such insurance available to all of its members on an affordable basis … 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." Asks what good it does to tell someone you have professional liability insurance, either if you do not know that it would cover malpractice committed in connection with the matter for which you are providing representation, or if you do not know whether it will 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."	June 2, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
13.	Ronald Blubaugh	I	Attorney, retired, performs bono services only	Oppose	Commenting attorney has no professional liability insurance. He retired at the end of 2003 but maintained his active status so he could do pro bono work. He volunteered at the Senior Legal Hotline, a public service program operated by Legal Services of Northern California and was told that all of the volunteers were covered under the professional liability insurance policy of LSNC. He volunteers at a legal clinic that provides free legal services to homeless people relating to infractions and misdemeanors. He has considered professional liability insurance unnecessary because he has a very limited exposure to risk of actionable error or omission. Asks how the proposed rule would apply to him. Assumes he would have to report to the State Bar that he is representing clients and has no insurance. Believes he would have to secure from each person he counseled either at the clinic or in the court room a written acknowledgment that he had advised them in writing that he is not covered by professional liability insurance. "In the mass operation that goes on at the courtroom … the whole discussion of professional liability insurance would, to say the least, be a burden." Asks how the rule will apply to those who volunteer at the Senior Legal Hotline. "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." Believes this "would be contrary to the Bar's stated goal of encouraging attorneys to perform pro bono services…. 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."	June 2, 2007	No

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14.	Susan K. Ashabraner	I	Attorney	Oppose	"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."	June 4, 2007	No
15.	Michael E. Garner	I	Attorney	Oppose	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 rules, so (if such a policy exists) an attorney could acquire $1,000 of coverage and "have" insurance under the proposed rules, "making the disclosure meaningless." Does 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."	June 6, 2007	No
16.	Frank Quinlan	I	Attorney	Oppose	Attorney has insurance. Has never had a claim and never had a client ask if he is insured. The proposed rules are relatively inconsequential to him. "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."	June 7, 2007	No

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17.	Gary K. Walch	I	Attorney	Oppose	Proposal to require pre-claim disclosure of malpractice insurance "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."	June 7, 2007	No
18.	Donald W. Darst	I	Attorney	Oppose	"Insurance does not make practitioners competent, only potentially better able to pay damages should they commit malpractice. 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 practitioner'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 practitioner and his/her client."	June 9, 2007	No
19.	A. Grant Macomber	I	Attorney	Oppose	"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."	June 9, 2007	Yes
20.	Robert Bicego	I	Attorney	Note: Comment based on misunderstanding of existing law and proposed change to existing law.	"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."	June 10, 2007	No

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21.	Unidentified correspondence to Editor of California Bar Journal	--	--	Oppose	"Once again the minority underrepresented California Bar Association proposes a rule that would disproportionately harm minority and women members of the bar…. 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…. 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."	June 11, 2007	--
22.	Lemoure Eliasson	I	Attorney, part-time practitioner	Oppose	"At one point I had malpractice insurance and it was so expensive, I had to cancel it or stop working all together." Proposal will hit solo practitioners the hardest. Such "a disclosure looks extremely unprofessional in the eyes of prospective clients." There are too many "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?… [W]hy 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." The proposal "opens people like me up for so much personal liability, giving an unscrupulous client the upper hand and a tool for blackmail…. [M]alpractice insurance is not required by law, so why should such a disclosure be required?"	June 11, 2007	Yes

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23.	Peter J. Smith	I	Attorney	Oppose	Commenting attorney has practiced law for 27 years and has never had a claim made against him for malpractice. He had malpractice coverage for about 3 years a long time ago but gave it up. He thinks the motivation behind the proposal is "mean spirited." If someone thinks that full disclosure of insurance coverage is important, they should explain details concerning their policy, including the deductible, effect of the claims made/occurrence terms, etc. Full disclosure should include an explanation that many professional decisions which turn out badly are not actually malpractice. "Unless insured attorneys are going to explain the pitfalls on malpractice coverage I do not think I should have to explain that I choose not to carry insurance myself."	June 11, 2007	No
24.	Deborah Meyer-Morris	I	Attorney, self-employed, works on a contract basis	Oppose Seeks technical clarification	When commenting attorney provides work for one firm she is covered under the firm's malpractice policy as a contract attorney so long as she does not work on a full time basis. Not sure whether she would "check the box" for insured, since she is technically covered by the contracting firm's malpractice coverage, or for uninsured, since she is technically uninsured in her capacity as an independent contractor when she does work for others. Asks whether, for the purpose of this disclosure requirement, her client is the firm or the individuals/companies that she represents on a contract basis for the firm. Believes the proposed rule needs to be further refined to cover part-time attorneys who work on a contract basis and are not technically employees of the firms with which they are affiliated.	June 11, 2007	Yes

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25.	Nancy Wong	I	Attorney, formerly in private practice	Oppose	"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." Commenting attorney had malpractice insurance for her own practice when she had one, but it was "unreasonably high." Her cases became smaller and smaller but her premium kept going higher and higher for the "excuse" that she had been in more years of practice. She knew the "real reason" that it was going up was that the insurance company was "too greedy." She never had a claim and barely had many cases. "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." Cannot help but to "surmise" that the insurance companies are behind this proposal.	June 14, 2007	No
26.	Ronald W. Rose	I	Attorney, sole practitioner	Oppose	"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!"	June 15, 2007	No
27.	Christoph T. Nettesheim	I	Attorney, sole practitioner	Support	"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."	June 17, 2007	No

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28.	Jonas M. Grant	I	Attorney	Suggests modification	"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.)."	June 18, 2007	Yes
29.	Louis S. Caretti	I	Attorney	Oppose	The State Bar could spend "much more productive time toward its mission" by increasing and enforcing disciplinary penalties against attorneys who violate the Rules of Professional Conduct, instead of "requiring a disclosure of factual information that will only encourage litigation against attorneys who do carry malpractice insurance." The 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 the quality of professional service, asks why not require disclosure of one's continuing education history, or one's experience and history in practice. "The existence of malpractice insurance should be an irrelevant factor in the practice of law."	June 18, 2007	No
30.	John W. Parker	I	Attorney	Oppose	"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" by clients against their lawyers.	June 18, 2007	No
31.	Susan Lea	I	Attorney	Oppose	"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 crucifixion of attorneys who choose not to pay insurance companies for alleged malpractice coverage." The proposed rules are "driven by the insurance industry." If the State Bar "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?"	June 18, 2007	Yes

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32.	Randy K. Vogel	I	Attorney	Oppose	The proposal "does nothing to address the actual problem of a lack of affordable liability insurance for California attorneys." There is "no evidence that the proposal is necessary (no studies have been conducted to suggest there is a problem that needs fixing)." The proposal "does nothing to protect clients or prospective clients." The proposal "places a huge burden on small firms and sole practitioners."	June 18, 2007	No
33.	Stephen R. Barnett	I	Attorney, professor of law	Oppose	"I strongly oppose the proposal."	June 20, 2007	No
34.	Dwight Willard	I	Attorney	Oppose	Opposes the proposed disclosure requirements as "unjustified, inappropriately punitive, and overbroad." The requirements are "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…. 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…. 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."	June 20, 2007	No
35.	Matthew C. Mickelson	I	Attorney	Oppose	"I am disappointed that the revised proposal is virtually unchanged from the first one." The reasons the rule should not be adopted therefore remain the same. The "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." If adopted the proposal would place a "mark of Cain" on the sole practitioner community. The large firm community would benefit.	June 22, 2007	Yes

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36.	Christopher L. Cockrell, Sr.	I	Attorney	Support	The profession of the practice of law "is not solely to generate income for the person licensed" but is supposed 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."	June 25, 2007	Yes
37.	Susan Kilano	I	Vice President, Ahern Insurance Brokerage	Support	"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 are "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."	June 25, 2007	No

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38.	Howard M. Freedland	I	Attorney, in-house counsel	Oppose	Commenting attorney sees this as a "big firm vs. solo/small firm issue." Is sure the State Bar will receive enough comments on that score, so does not repeat what is likely to be heard. "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." As for payment of damages, insurance only provides a "partial answer" given issues relating to coverage, policy limits, etc. "A fairer proposal would be the status quo: it permits clients [to] 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."	June 26, 2007	Yes

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39.	Freda D. Pechner	I	Attorney	Oppose	"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."	June 28, 2007	No
40.	Joel Phillip Driver III	I	Attorney, sole practitioner	Support	"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 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."	June 29, 2007	No

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41.	Michael Bradley	I	Attorney	Oppose Suggests modifications	"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."	June 29, 2007	No
42.	Scott Alan Weible	I	Attorney	Oppose	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, been sued, or settled a claim for professional malpractice, would be salutary. The only thing accomplished by disclosing whether a lawyer possesses malpractice insurance is to provide an "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."	June 30, 2007	No

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43.	Rochael M. Soper	I	Attorney	Oppose	[Both sets of comments from this attorney are summarized in No. 9, above.]	June 30, 2007 and May 28, 2007	No
44.	Eva Levine	I	Attorney	Oppose	Insurance is a risk management issue for the practitioner to decide, and nobody else. The proposed disclosure requirement is counter-productive, and is not standard practice among other professionals. 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." The "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.… Why should insurance information be public information? You might as well classify all California attorneys into two groups – with or without insurance." Disclosure requirement "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." The "most obvious beneficiary of this requirement … is insurance companies who will use the State Bar's public information to sell their malpractice policies."	June 30, 2007	Yes
45.	Rickey Ivie	I	Attorney	Oppose Suggests modifications	Joins Michael Bradley's opposition of June 29, 2007. Only disagrees "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."	July 1, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
46.	William Ramseyer	I	Attorney	Oppose	"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."	July 2, 2007	No
47.	Gerald Knapton	I	Attorney	Support Suggests modification	In favor of the new rules "as a result of the many unfortunate situations I have seen where great harm has been caused by uninsured lawyers." Suggests that Rule 9.7(a)(2) be modified to read: "If the member represents or provides legal advice to clients, whether the member currently has professional liability insurance <u>in effect that covers the member's services</u>. 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."	July 2, 2007	Yes

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
48.	Michael Falotico	I	Attorney	Oppose	There has been no "groundswell of complaints" from the public or members of the bar. "The State Legislature has not asked for it. I believe we should wait for the State Legislature to move first." There is "no need to fix something that is not broken." Clients may ask if a prospective attorney has insurance. "Hence, there is an easy remedy for any client." The disclosure "amounts to nothing more than a new tax on attorneys." Members of the Bar would be "forced to pay" for insurance, benefiting the insurance companies. "There is a conflict of interest: many attorneys are involved in litigation against the very insurance industry they must now fund." The "new mandatory insurance hits the small law firms and sole practitioners disproportionately hard." 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."	July 2, 2007	No
49.	Lawrence A. Strid	I	Attorney in two person firm	Oppose	"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.… 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." There is no requirement that a licensed physician maintain such insurance. "The maintenance of malpractice insurance is also illusory" given coverage limits, exclusions, possible lapses in coverage, etc. There "is no guarantee of competency, even if an attorney has malpractice insurance."	July 2, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
50.	Alvin S. Tobias	I	Attorney	Oppose	Attorneys "who are forced to state that they are uninsured will be relegated to a secondary status." It is unlikely that a prospective client will look at the disclosure except in a "negative fashion. It will encourage prospective clients to 'shop' for the lawyer with the best insurance in the mistaken belief that he or she is the better practitioner." The proposal will encourage the filing of malpractice suits. The only people who will benefit from this will be the insurance industry. The proposed requirement "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." The proposed requirement would encourage "fly-by-night" insurers to start offering policies. "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."	July 2, 2007	No
51.	Olivia Sanders	I	Attorney	Oppose Not opposed to mandatory insurance	"I am opposed to public disclosure of an attorney's insured status. I am not opposed to the bar requiring that an attorney maintain some level of professional liability insurance."	July 2, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
52.	David J. Strauss	I	Member of the public	Support	The article in the LA Times on the proposal "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.… 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.… [T]his 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." Your "industry is obviously not prepared to provide the protections for their errors or omission that can damage the rest of us.… [Y]ou need to clean up your industry's act and soon."	July 2, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
53.	John Martin	I	Attorney	Opposed to mandatory disclosure up front to a client Has no problem requiring disclosure if asked, or some public website as to those who have insurance	Commenting attorney has been in practice since 1994, and carried insurance for several years. It became more and more difficult to get insurance, especially since he began working on class actions. Eventually it "became cost prohibitive." A rule that would require an attorney "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 requiring disclosure if asked, or some public website as to those who have insurance or something like that, but to require a small practitioner to voluntary blurt out to a prospective client 'I have to tell you I don't have insurance for malpractice' What is that impact to the public? What will they think? They will think something negative about the attorney. What's wrong with them not to have insurance? Let me find a possibly sleazy attorney who does have insurance? Is that the solution?" Such a rule would be a "de facto" requirement for insurance. If so, "the bar has a duty like Oregon to provide the insurance or make the insurance mandatory at an inexpensive price." More regulations will "make it more difficult to lawyers, and also encourage lawyers to be sued, which is never a good thing."	July 3, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
54.	Phillip Feldman	I	Attorney	Oppose proposal as drafted Proposes modifications	"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." Proposes modifications. "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.… 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.… 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." Add to notification rules that attorneys who are self-insured for any portion of the first $5,000,000 are "conditionally insured" for purpose of the rules, and are required to provide prior and prospective clients (upon change of circumstance) with notification of 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."	July 3, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
55.	Christine Kurek	I	Attorney, inactive	Support, but disagrees with two points and proposes modifications	Commenting attorney disagrees with two points: 1) Attorney is "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 revised proposal eliminates the requirement that the disclosure be made in writing with a signed acknowledgement returned from the client. "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."	July 3, 2007	No
56.	Jeanne Karaffa	I	Attorney, sole practitioner	Oppose	"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 exorbitant 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."	July 3, 2007	No
57.	Howard Strong	I	Attorney	Oppose	"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."	July 3, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
58.	Laurence M. Karlin	I	Attorney, practicing part-time as a contract attorney	Oppose	The "proposed insurance disclosure requirement would put me out of business prematurely." Commenting attorney practices part-time as a contract attorney, handling applicants' depositions for Workers Compensation applicants' attorneys. He grosses less than $20,000 a year at $50 per hour. The least expensive coverage he has found would cost him well over 10% of his income. "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 useful 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."	July 6, 2007	No
59.	Vickie L. Lefebvre	I	Member of the public, formerly employed by law firm	Support Raises technical questions	"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." Comment raises technical question about disclosure obligation of a Washington attorney who is not a licensed California attorney, but supervises attorneys in a California law firm, and may not be covered by the law firm's professional liability insurance policy.	July 9, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
60.	Mark Baron	I	Member of the public	Support	"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 knows 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."	July 9, 2007	No
61.	Martin Brandfon	I	Attorney	Oppose	The proposal will not protect the public from "bad" attorneys, will increase attorney's fees to low and middle class clients and thereby increase the number of pro per litigants, and may cause the commenting attorney to lose clients and business, possibly affecting his reputation. If he gets coverage, it will increase his expenses and lower his net income unless he raises his fees. The "only one who wins here will be the insurance company (singular)." If the State Bar "provided its own low-cost insurance fund for its members" commenting attorney "would consider buying in."	July 9, 2007	No
62.	Richard A. Muench	I	Attorney, sole practitioner since 1982	Oppose	While the proposal "might sound like a good idea at first blush, it would severely impact sole 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."	July 9, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
63.	Roberta M. Yang	I	Attorney	Oppose	"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.… [F]or the growing number 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." For attorneys whose practice primarily involves the representation of clients, the proposed disclosure requirements "should be imposed only upon occurrence of a triggering event." That would be similar to how auto insurance works "in real life: when an accident occurs from which a party seeks damages, then the disclosure to the allegedly aggrieved party can be mandatory." This type of regulation also "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 grater 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 the time of licensure, just like auto insurance, with no other disclosure needed."	July 9, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
64.	Richard Bauer	I	Attorney	Oppose	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." Lawyers in big firms can pay for malpractice insurance "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…. 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…. 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."	July 10, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
65.	Ronald S. Smith	I	Attorney	Neither for nor against an insurance disclosure rule, but believes if a rule is adopted it should not mislead the public	Any rule requiring such disclosure "may in fact be misleading to the public." Notes the claims made nature of policies. "[H]aving 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 provide no coverage. Asks whether the disclosure would require the amount of the policy limits. Notes that a client may be misled because of wasting limits. Asks about "off shore" insurance companies that may go under and who may not be protected by the CIGA. "What type of disclosure would protect the client in that case?" Asks whether there is "something unusual about our profession" that would mandate an insurance disclosure 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.'"	July 11, 2007	No
66.	Richard S. Leslie	I	Attorney	Oppose	"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 assertion 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…. Attorneys with insurance would not want the issue of malpractice to be raised at the outset of the relationship. Nor should it be!… If it is important that consumers know, why not tell them in either case?… Disclosure of the presence or absence of insurance would give the consumer the kind of information that the Task Force asserts is important…. 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 <u>presence or absence</u> of insurance, or that no rule be promulgated."	July 13, 2007	Yes

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
67.	Anerio V. Altman	I	Attorney, small firm practitioner	Oppose	"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."	July 14, 2007	No
68.	California Appellate Projects	G	The five appellate projects, nonprofit corporations under contract with the appellate courts to (among other services) arrange for the appointment of counsel	Raises technical questions and suggests modifications	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." Each of the appellate projects carries professional liability insurance that covers appointed counsel for work performed in the course and scope of the appointment. Many of the attorneys do not have their own separate professional liability insurance. Comment asks whether attorneys who do not have their own insurance policies will be required to notify their clients under the Rule of Professional Conduct, and the State Bar under the Rule of Court, that they do not "have" insurance, even if the legal services performed are "covered by" the appellate projects' policies. Asks whether the change in the proposed rules from "covered by" insurance to "has" insurance was substantive. Some attorneys also engage in a legal practice that includes clients who retain them, and may not have coverage under any insurance policy for those clients. How do those attorneys advise the State Bar of their coverage status? Assuming they "have" insurance for their appointed work, they would have insurance for some clients, but not for all clients. Comment notes that the questions presented may also apply to attorneys who are appointed at the trial court level who are not government lawyers, 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.	July 19, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
69.	Paul Miller	I	Attorney	Oppose	"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."	July 25, 2007	Yes

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
70.	Louis Wu	I	Attorney	Oppose as drafted Proposes revisions, in the event it is decided that mandatory full disclosure by all attorneys is warranted	The revised proposal "suffers from substantially the same defects as its predecessor." The proposal "remains deceptive and fundamentally unfair in nature." Requiring only those attorneys without insurance to disclose that fact to clients "would be tantamount to systematic Bar-sanctioned deception." If the Bar "wanted to ensure full disclosure" it would require all attorneys to disclose how much insurance they have. The proposal'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." The revised proposal carves out an exception for existing clients, showing that the proposal's supporters are not interested in protecting all clients – only those with new business. "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." Proposes revisions, in the event it is decided that mandatory full disclosure by all attorneys is warranted.	July 27, 2007	Yes

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
71.	Law Practice Management & Technology (LPMT) Section Executive Committee (ExCom)	G	State Bar Section Executive Committee	Oppose	Many of the proposed changes would work against the public interest. Principal effect will be to compel attorneys to obtain insurance and to place attorneys lacking insurance at a competitive disadvantage. Solo and small firms will be most adversely impacted. There is no "affordable" malpractice insurance available in California for experienced attorneys. Solo attorneys and small firms would "face the dilemma of either passing the additional cost on to their clients or absorbing it themselves. Neither alternative bodes well for the public." New attorneys entering solo practice will find the cost of obtaining insurance to be an additional barrier to entering the profession. The impact will probably fall disproportionately on new attorneys who are minorities. Comment raises concerns about actual implementation of the proposed rules. It is "disingenuous to believe" that detailed conversations about the specifics of coverage will not take place as a result of mandatory disclosure, and it is "fair to assume" that the accuracy and adequacy of an attorney's explanations would become part of any subsequent potential malpractice litigation. The "intrusion into the attorney-client relationship is entirely inappropriate and overreaching." A client has always been free to ask the attorney whether or not he or she carries malpractice coverage. Posting "no malpractice insurance" on an attorney's web bio would, 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." Adequate self insurance is in the public interest, and that alternative approach should be recognized in the proposed rules. An "ulterior purpose" of mandatory insurance is not an appropriate rationale, but should be addressed directly, if that is what the Board of Governors is contemplating.	July 27, 2007	Yes

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
72.	Michael T. Sweeney	I	Attorney, sole practitioner	Oppose	"[A]s a sole 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."	July 30, 2007	No
73.	California Judges Association	G	Judges Association	Requests consideration of modification	CJA is concerned about the impact of the proposed rules on members of the Bar who "work exclusively as ADR neutrals and therefore do not represent or provide legal advice to clients." CJA requests that consideration be given to including such members in the exemption in the proposed rules that refers to government lawyers and in-house counsel. Also raises issues relating to implementation if the proposed rules are adopted, and public records of members who work exclusively as ADR neutrals. "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."	July 30, 2007	No
74.	Joe Marman	I	Attorney	Oppose	"I want to express my extreme disappointment and anger at the attempt to impose requiring malpractice coverage for attorneys. I cannot afford this." Commenting attorney had insurance when it cost $4,000 per year but then it jumped to $12,000 per year, and he has not had coverage in the last ten year. "If an attorney wants to go with out insurance, he is smart enough to make his own decisions.… To require malpractice insurance would run me out of business.… 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.… 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."	July 31, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
75.	Robert A. Firehock	I	Attorney, semi-retired, has part-time practice	Has general concerns Raises technical questions and suggests modifications	"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…. 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." The term "or by a similar method" seems a bit vague. Suggests that proposed rule 9.7(e) be amended, either by deleting "or by a similar method" or by inserting "or, if the State Bar is unable to make that information available through these methods, then by a similar method." Commenting attorney serves as General Counsel to a Joint Powers Authority Board. He does not consider himself "outside" counsel, since he is an appointed officer. He also represents a few clients from time to time. "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.'"	August 1, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
76.	Michael A. Waterman	I	Attorney	Oppose	"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."	August 1, 2007	No
77.	Gordon R. Lindeen	I	Attorney	Oppose	"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 firms need to carry high levels of malpractice insurance because they are dealing with cases involving large amounts of money. Solo practitioners and attorneys in small firms typically deal with case involving small amounts of money. If one of these attorneys makes a mistake, it would usually involve a small amount and the mistakes, if any, in a bad year would probably not equal the cost of a yearly premium. 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 insurance to compete, he or she might decide to leave the profession. That 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."	August 2, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
78.	Robert C. Fellmeth	G	Executive Director, Center for Public Interest Law, University of San Diego	Supports disclosure, but objects that proposal is unacceptably weak	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." CPIL argues 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 of the lack of recovery for persons injured by negligence caused by licensed attorneys. The State Bar should go substantially beyond the proposed disclosures. "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." About 20% of the attorneys in California practice without any insurance coverage. "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…. Of course, we know that those uncovered practitioners are passing their malpractice coverage savings along to their clients. Give us a break."	August 3, 2007	Yes

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
79.	Jeffrey R. Toff	I	Attorney	Oppose	"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 would be to just put more money in the pockets of insurance companies."	August 3, 2007	No
80.	Stephany Yablow	I	Attorney	Oppose	"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."	August 4, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
81.	Christine A. Chorney	I	Attorney	Oppose	"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."	August 4, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
82.	Barbara Macri-Ortiz	I	Attorney	Oppose as drafted Opposes reporting to State Bar and public disclosure Supports direct disclosure to client of presence *or* absence of insurance	Attorney commented on the initial proposal, and asks that these comments be considered in addition to her previous comments. "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 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." Disclosure should be made to the client only, and such disclosure should not be public information or reported to the state Bar. Publicizing the status of the insurance coverage of attorneys creates potential problems. In particular, the disclosure rules would be problematic for attorneys who perform some legal services on a contract basis for which there may be insurance and other legal services in their own private practice for which there may not be insurance. While this situation may be easy to report to an individual client, commenting attorney asks how it would be reported to the State 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. Attorneys who are covered by insurance are concerned that they may be made the target of potential litigation as a result of public disclosure, and so are attorneys who represent unpopular causes and clients. 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."	August 5, 2007	Yes

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
83.	Elen Pass Brandt	I	Attorney	Oppose	"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, <u>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</u> – wouldn't that be more informative to the hiring public?" 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?… What about the newly admitted, solo practitioners, and semi-retired lawyers? Will the cost of playing cause them to leave the practice?" When does the 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."	August 6, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
84.	Dana E. Miles	I	Attorney	Oppose	"There is absolutely no evidence that these rules are needed.… The problem is not attorneys who don't have insurance, the problem is incompetent attorneys." Clients do not want a malpractice claim that may or may not be covered by insurance; clients want their legal matters handled competently the first time. If we want to protect consumers from incompetent attorneys we should require that attorneys provide disclosure regarding their experience with malpractice claims and disciplinary actions. The proposed 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 law firms." The "disclosure required by these rules is misleading and deceptive. As the Task Force itself noted … whether a given claim will be covered by insurance 'is based upon a multitude of factors.'" The typical consumer/client will not know or understand the significance of the distinction between "has" and "covered by" insurance and will be "lulled into a false sense of security." The 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" leaving other areas uncovered. The 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 …" This is an attempt to impose mandatory insurance "through the backdoor by means of these hypocritical and deceptive rules." The rules are "guaranteed to generate legal actions" and, 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."	August 6, 2007	Yes

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
85.	Aditya Prasad	I	Member of the public	Supports 1) mandatory insurance for all attorneys, 2) public disclosure of the amount of insurance, and 3) direct written disclosure to current and new clients of the amount of insurance, with client signing the disclosure confirming they received it	Attorneys "like to sue and harass innocent people" because the attorneys know they will compromise because it is cheaper to do than to go to trial. 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.… 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.… 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)." Attorneys also know the State Bar is "a useless organization that serve[s] the attorneys and could care less about the public."	August 6, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
86.	Alameda County Bar Association	G	County bar association	Oppose	"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." The potential value or appropriateness of malpractice insurance can vary greatly depending upon particular circumstances. The proposed disclosure rules would disrupt the attorney-client relationship and could distract attention from other matters far more significant to a decision to proceed with a representation. Mandated disclosure "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." Clients interested in their lawyers' malpractice coverage are already free to ask. There is no apparent reason why professional liability insurance should be a subject of disclosure for attorneys in particular and not comparable professionals. "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."	August 6, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
87.	John Paladin	I	Attorney	Oppose	Proposal would "place an unreasonable burden on small firm practitioners and sole practitioners" who do not have insurance. No statistics about the average settlement or judgment for legal malpractice against attorneys who do not have 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." Proposal will "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." Small firms and sole practitioners will 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." California had an insurance disclosure requirement in the past. Before this type of disclosure rule is implemented, there should be a showing of the amount of uninsured legal malpractice losses caused by licensed attorneys in the relevant time periods: 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 the time for 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."	August 6, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
88.	Litigation Section Executive Committee	G	State Bar Section Executive Committee	Oppose	Concurs with the concerns expressed in the July 27, 2007 opposition prepared by the Law Practice Management & Technology Section Executive Committee and 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."	August 6, 2007	No
89.	Anne L. Mendoza	I	Attorney, sole practitioner	Oppose	The proposal is "excessive regulating" by the State Bar. 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." The proposed rule "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."	August 6, 2007	Yes
90.	Mark Winshel	I	Member of the public	Support	Supports disclosure. Also believes that lawyers should 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 … have such insurance." The decision by a large law firm to purchase liability insurance is a decision to protect itself, not the client, since large firms could always choose to be self insured, and a large law firm is not likely to go out of business or go bankrupt due to one or two lawsuits being brought against it.	August 7, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
91.	Professional Responsibility and Ethics Committee of the Los Angeles County Bar Association	G	LACBA committee	Oppose	"[A]dvising 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.… A disclosure without details leads clients into a false sense of security." A client would also like to know other information that may be material, such as expertise, prior discipline, 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." LACBA committee requests that the issues raised in the Conference of Delegates Emergency Late Filed Resolution relating to the June 2006 insurance disclosure proposal be considered.	August 8, 2007	Yes

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
92.	Tim Canning	I	Attorney, sole practitioner	Oppose	"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."	August 9, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
93.	Margaret Draper	I	Attorney	Believes disclosure in contracts is important and necessary, but opposes public disclosure via the internet	"[T]here 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.… My guess is that that most negligence cases 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." This proposal "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.… 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."	August 9, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
94.	Gerald D. Langle	I	Attorney, sole practitioner	Oppose	"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?"	September 3, 2007	No

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment	Commented on June 2006 proposal
95.	HALT	G	An Organization of Americans for Legal Reform	Supports initial Task Force proposal Opposes proposed revisions as weakening the initial proposal	The original proposal would have required a lawyer to disclose a lack of professional liability insurance 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." The original proposal "establishes a higher standard of attorney conduct" and "would have encouraged attorneys to take the proactive step of inquiring about whether they are covered by professional liability insurance…. [T]his revised proposal could allow attorneys to shirk these new rules by simply claiming ignorance." The proposed rules should apply retroactively to cases that fall within the statute of limitations for legal malpractice. The revised proposal only applies with respect to "new clients and new engagements with returning clients." Although the "proposed rules may help future clients become fully informed when hiring an attorney, they offer no protection for past or present clients…. 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 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 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…. The recent revisions significantly weaken the Task Force's original proposals."	July 10, 2007	Yes