

Proposed New Insurance Disclosure Rules (June 16, 2006)
Public Comments

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment
1.	Michael J. Siegel	I	Attorney, sole practitioner representing crime victims	Oppose	Some areas of practice, such as the commenting attorney's, involve low fees/low risk, making coverage not financially feasible. Has tens of thousands of current and former clients. Alternative proposal is that notice be required only for new clients after the implementation date of any disclosure requirement.	February 22, 2006
2.	David Justin Lynch	I	Attorney	No position stated on disclosure. Supports mandatory insurance.	Mandatory insurance should be required for all lawyers with an assigned risk plan for lawyers who cannot obtain insurance in the open market. Deductibles should be smaller and wasting limits policies should be illegal. There should be more stringent requirements for lawsuits against lawyers.	April 12, 2006
3.	Randall Difuntorum	G	State Bar staff, Rules Revision Commission	Offers drafting suggestions.	Proposes various amendments, most of which are technical in nature.	May 3, 2006
4.	Michael J. Brady	I	Attorney. Past chair, Mandatory Insurance Task Force	No position stated on disclosure. Supports mandatory insurance.	Recommends mandatory legal malpractice coverage enacted as a statute.	June 21, 2006
5.	Eileen Walker	I	Attorney	Support	Sees "nothing wrong" with requirement for disclosure, but does not see requiring a method which would create expense and excess paper work.	June 22, 2006

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6.	Marc Meister	I	Attorney	Offers drafting suggestion if there is a disclosure requirement	Raises questions about applicability of proposal to free legal advice, mistaken beliefs that coverage exists, and self-insured retentions. Notion of coverage can be misleading. While rule is "well intentioned," it may have practical issues that prevent its usefulness. If the Task Force stands by its belief that there should be a disclosure if an attorney does not have malpractice insurance, suggests broadening proposed Rule 3-410 to require disclosure only if the attorney is not covered by any professional liability insurance whatsoever (by adding the word "any" in front of professional liability insurance).	June 26, 2006
7.	Stephen B. Bedrick	I	Attorney, primarily court-appointed appellate work	Oppose	Unfair hardship to pay full cost of insurance to cover a small part of practice or make a disclosure to the occasional private client.	June 27, 2006
8.	Paul A. Frassetto	I	Attorney, prosecutes malpractice actions	Support	Attorneys are not required to maintain insurance, so proposal has no direct economic effect on uninsured attorneys. "I really do not see how our profession can argue against allowing our client making better choices." Mandatory and affordable insurance would be the best solution.	June 30, 2006

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment
9.	Julie Sullwold Hernandez	I	Attorney	Oppose	Cost of insurance creates "insurmountable bar" for many attorneys, particularly sole practitioners. State Bar does little to help sole practitioner. Should come up with a means of affordable malpractice insurance for sole practitioners.	June 30, 2006
10.	John Lenderman	I	Attorney	Opposes disclosure to State Bar	Concerned about a public list that will result in getting solicitations for insurance. Cost of insurance is excessive and leads to higher fees that are ultimately charged to the clients. States that any report "should examine who is pushing the issue politically." Speculates that it is the insurance industry or attorneys who sue other attorneys. The disciplinary system already punishes errant lawyers.	July 3, 2006
11.	Thomas Schneck	G	Small law firm	Oppose	Consumers would benefit more from disclosure of an attorney's malpractice claims history (claims, disposition of claims, amount of settlement). Ploys to encourage mandatory malpractice insurance have long been favored by large firms in order to distribute their high overhead to other members of the Bar who do not have such overhead but compete with them. The overhead raises the cost of legal services to consumers served by small firms and solo practitioners.	July 6, 2006
12.	Sam K. Abdulaziz	I	Attorney in small law firm	Oppose	Proposal will invite more lawsuits than appropriate. This will stir up more litigation and not benefit anyone.	July 7, 2006

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13.	Kathleen Page	I	Attorney in two person firm	Support	Although insurance is costly, the more attorneys there are in the system the more attorneys there are to spread the costs among. Every client should be informed that an attorney has no malpractice coverage.	July 8, 2006
14.	Fred Gipson	I	Public Protection Project	Support	Disclosure via the Internet and to the client is "caveat emptor, reinforcement, and long overdue." Concerned that an insurance company or "scam artist" will target the market with policies with limits of \$5,000 or \$10,000, which will allow attorneys to say they have coverage.	July 10, 2006
15.	Jonathan G. Stein	I	Attorney	Support	Clients have a right, and a need, to know about their attorney's malpractice insurance status. Affordable malpractice insurance for solo practitioners is available. The rules do not require insurance. Underinsurance is an issue, but so are underinsured drivers.	July 10, 2006
16.	Anju Multani	I	Attorney	Oppose	Against mandatory disclosure re malpractice insurance.	July 10, 2006
17.	Christine Callahan	I	Attorney	No position stated on disclosure. Opposes mandatory insurance unless it is made affordable.	Opposes mandatory malpractice insurance unless the State Bar offers a low cost and affordable premium as a benefit to its members.	July 10, 2006

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18.	Frank Hoffman	I	Attorney	Oppose	State Bar intends to encourage profits of private corporations at the expense of its members. Bar employees view insurance as a career path. "Strong arms" members into contributing to a corrupt industry. Protests any entanglement with the insurance industry. Members not carrying this "suspect" coverage will be branded as inept or unprepared. Believes there should be a real problem that cannot be dealt with in a better way.	July 11, 2006
19.	A.Grant Macomber	I	Attorney	Oppose	To make an issue of lack of insurance might make clients uncomfortable. "Stigmatizing" uncovered lawyers would be "most unkind."	July 12, 2006
20.	Samuel M. Huestis	I	Attorney	Oppose	Strongly opposes proposal due to the nature of claims-made insurance policies and the high likelihood of misleading the general public by the proposed disclosures. Although the goal of insurance disclosure is laudable, the rules may do more harm than good.	July 12, 2006

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21.	Donald H. Graham	I	Attorney, corporate counsel with a part-time private practice for which he has malpractice insurance	Oppose	Commenting attorney has numerous objections to the proposal. Notes that most states and most professions do not have anything like the insurance disclosure rule. Asks whether the rule is supposed to provide free discovery for potential litigants. Asks whether we need to develop "informed consent" forms, and where the disclosures will end. Asks whether we "really have a problem with our efforts to protect clients?" If the reason for the rule is to improve awareness and protection for clients, suggests an alternative, including a public awareness program.	July 13, 2006
22.	M. Brent Pickelsimer	I	Attorney	Oppose Supports prior disclosure in fee agreements as required by former B & P Code.	Unfairly stigmatizes "little guy practitioners" who provide low cost legal services. Suggests that "black list," probably generated by insurance industry, would essentially force all attorneys to obtain malpractice insurance and create flood of junk mail from insurance industry. Does not see need for change. "ONLY those members who have a record of discipline should be subject to stricter no-insurance disclosure rules because they have demonstrated a propensity for erring."	July 13, 2006

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment
23.	Frank Maul	I	Attorney	Oppose	Unaware of other professions similarly regulated. Disclosure to clients would be highly embarrassing. Internet list would further embarrass Bar members. Proposal provides little protection to the public for smaller claims (below the amount of the high deductibles) or for bigger claims exceeding the smaller coverage limits that attorneys get to keep premiums low.	July 13, 2006
24.	Paul Miller	I	Attorney	Oppose	Disclosure serves no public policy interest. Unscrupulous clients will target uninsured attorneys with flimsy claims of malpractice to pressure settlement. Unfairly targets new attorneys who are solo practitioners with a small client base, part time attorneys and attorneys who practice in fields unrelated to law "This proposal has the trademarks of legislation that appears to have been authored by the insurance industry alone, and the State Bar is blindly accepting it, regardless of whether it is for the good of its members or not."	July 17, 2006

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25.	Susan Lea	I	Attorney, Sole practitioner	Oppose	Disclosure to clients should not be compelled. The proposed public disclosure rule is more troubling. There is really no excuse for trying to publicly embarrass or condemn licensed attorneys in good standing for simply refusing to have malpractice coverage. This is justice only for the rich. "Are those of us willing to represent the poor, not comfortable working for corporations, law schools, government agencies, law firms, etc. supposed to be singled out in this despicable manner?"	July 20, 2006
26.	Patricia Johnson	I	Attorney	Oppose Not opposed to direct disclosure to client.	Direct disclosure to clients is acceptable but publication via the Internet is "beyond acceptable." Making insurance affordable and weeding out bad attorneys would be time and money better spent.	July 22, 2006
27.	Philip Tutt	I	Attorney	Oppose	Proposal is unfair to small practitioners and "nothing less than an open invitation to a dissatisfied client to cut losses by suing the non-insured attorney in the hope of a quick cash settlement. " People who stand to benefit from this rule are insurance underwriters.	July 24, 2006
28.	Janet L. Dobrovolny	I	Attorney	Oppose	Requests a "self-insurance option," similar to options available for medical and auto. Self-insurance is a greater motivator for lawyers than insurance to avoid professional negligence. Proposal is a "give away to the powerful insurance interests unless an alternative way to comply is provided."	July 31, 2006

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29.	Kenneth G. Petrulis	I	Attorney	Oppose	Proposed rules will result in consumer misinformation. Rules assume malpractice insurance is something you have or don't have, which is often not the case. Malpractice insurance is subject to many vagaries as to the existence and adequacy of coverage. Proposal will place a disproportionate, perhaps impossible, burden on new and part-time attorneys. Will make it more difficult for solos to start and maintain business. Targets economically disadvantaged and the attorneys who serve them. Will inhibit the number of lawyers available to serve low-income clients. Because the proposed rule is self-reported and not verified, it encourages noncompliance. There will be time and cost in notifying clients, plus backlash when clients, receiving notification of non-insurance, decide to seek new counsel. Failure to notify the client about a gap in coverage, which may not be clear at the time it occurs, may subject an attorney to discipline. Proposal runs counter to inclusionary spirit of Pipeline to Diversity program. California should not implement a disclosure requirement unless it is ready to ensure every attorney access to affordable insurance.	August 2006

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment
30.	Shiva Delrahim	I	Attorney	Support	As professionals who must uphold the highest of fiduciary duties to our clients, we should be required to make these pertinent disclosures to clients who look to us for honesty and integrity in dealing with their matters personally. It is imperative that clients be made aware of an attorney's lack of liability insurance. Whether the client wishes to continue to be represented by the attorney is then the client's choice. As the state with the largest number of attorneys, we should have been at the forefront of this issue. To reduce costs associated with rule implementation, the information can be an additional item to be dealt with in the annual bar fees statement.	August 1, 2006
31.	Frank Hoffman	I	Attorney	Oppose	Protests any entanglement with the insurance industry. Report behind proposal gives insufficient consideration to insurer fraud against claimants. Suggests a member referendum on this proposal.	August 3, 2006

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32.	Matthew C. Mickelson	I	Attorney	Oppose	Unfair to smaller practitioners who cannot afford malpractice insurance. Forced reporting requirements would act like a "mark of cain" making it appear to clients that a lack of malpractice insurance in some way diminishes a lawyer's professional worth. It is not morally or professionally wrong to simply decide not to pay for insurance. California "abolished any reporting in 1999. Since that date there has been no indication that clients are clamoring for such information, and if they do, they need merely ask their attorney the question."	August 3, 2006
33.	Charles F. Festo	I	In House Attorney	Oppose	"I'm not convinced either requirement would accomplish much other than to create the need for additional bureaucracy to administer the papers."	August 4, 2006

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34.	Barry I. Newman	I	Attorney	Oppose	Proposal creates more harm than the evil it is intended to prevent. The range of insurance "protection" is dramatically broad (differing between specific policies and insurers in dollar and subject coverage; in period applicability; in claim procedures; and in a multitude of other provisions and conditions), leaving the public with a false sense of security about "covered" lawyers. Recommends instead: a) require <i>all</i> lawyers to carry and maintain a minimum level of approved coverage; and/or b) an approved format report of the actual coverage (or lack thereof) to be communicated by <i>all</i> lawyers to <i>all</i> existing and potential clients.	August 5, 2006
35.	Jonas M. Grant	I	Attorney	Oppose Suggests modification if proposal is approved.	Finds that clients are not interested in coverage. If proposal goes forward, it should be modified so that law corporations that maintain security for claims in accordance with the State Bar's rules in this regard be allowed to represent that they are in effect "covered" or "self-insured", which "is, in my opinion, wholly accurate."	August 5, 2006

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36.	Dixon Q. Dern	I	Attorney	Oppose	Supports Ken Petrulis' objections in the August 2006 CBJ. Opposes giving the insurance carriers any leeway. Carriers are "arrogant and unyielding" in their attempt to charge the most they can. "The implication of the disclosure is that if you don't have insurance you are a risk to your clients, and that is an unfair burden to place on attorneys." Believes making rule violation a disciplinable action a "big waste of time and money."	August 5, 2006
37.	Stuart J. Schwartz	I	Attorney, sole practitioner	Oppose	Disclosure will stigmatize uncovered attorneys as second tier attorneys, causing severe financial hardship or forcing riskier engagements and clients. Benefit to client is minimal without information about overall quality of attorney. By not providing a way for attorneys to obtain affordable coverage, proposal is unfair and a grave injustice.	August 5, 2006
38.	Dan Cronin	I	Attorney	Oppose	Does not see where the proposed rule is of any benefit to practicing attorneys. The consumer already has considerable benefits available in the form of the security fund, etc. The State Bar should start acting like a trade organization instead of just the opposite.	August 7, 2006
39.	A. Grant Macomber	I	Attorney	Oppose	Task Force rushed to adopt an insurance disclosure requirement. No determination made that a problem exists. Rules are poorly drafted. Because Jim Towery is paid by insurance carriers, he has a conflict of interest.	August 8, 2006

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40.	John Cronin	I	Attorney	Oppose	Proposal makes it more difficult for sole practitioners to compete with larger firms.	August 8, 2006
41.	Richards D. Barger	I	Attorney	Oppose	Proposes adding a new subsection to RPC 3-400 to provide that if any lawyer cannot satisfy a final judgment for malpractice, lawyer's license will be suspended until judgment is satisfied.	August 9, 2006
42.	Louis Wu	I	Attorney	Oppose	Proposal effectively calls for deception and systemic bias on the part of the Bar. Proposal does not require attorneys who have malpractice insurance to make any disclosure about their insurance. Proposal is harmful to consumer because "partial disclosure is often more deceptive in nature than either full disclosure or no disclosure."	August 8, 2006
43.	Peter M. Appleton	I	Oregon attorney	No position	Oregon's system is based on member-funded Professional Liability Fund and is not really insurance coverage. It provides modest levels of compensation for victims of professional malpractice.	August 9, 2006
44.	Richard Leslie	I	Attorney	Oppose	Proposal is unfair, unwise, unwarranted, too broad and not likely to protect the consumer in any meaningful way. Prefers disclosure about past negligence. Disclosure damages relationship with existing clients. No exemption for members with claim-free history or attorneys who independently consult with clients in an in-house like capacity.	August 9, 2006

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45.	Lynee I. Urman	I	Attorney	Oppose	Would contract attorneys be required to disclose to attorneys who hire them? No need for public disclosure of absence of insurance, particularly if direct disclosure rule is adopted. Lack of insurance creates a negative stigma. Will result in decline of lawyers willing to take on small cases.	August 10, 2006
46. .	Eva Liang Levine	I	Attorney	Oppose	Agrees with arguments of Ken Petrulis in the August 2006 CBJ. No evidence that attorneys with insurance are better than attorneys without insurance. Proposal will negatively impact small firms and sole practitioners and fewer people will serve the disadvantaged. No evidence that clients assume lawyers carry insurance. Public list creates two classes of lawyers. Prefers more effective discipline process.	August 10, 2006
47.	Michael Mahoney	I	Attorney	Oppose	As far as commenting attorney knows, Task Force members are insured and are proposing a rule they will never need to obey. Disclosure would require that uninsured lawyers advertise that they are worse than others, even lawyers with no disciplinary record. Client acknowledgement requirement would prevent lawyer from helping client on the case until signature is received. Can think of no better recipe for mischief.	August 11, 2006
48.	David Korrey	I	Attorney	Oppose	Proposal is workable only if State Bar "elects to get in the insurance program by guaranteeing that affordable basic insurance is made universally available to the bar members."	August 14, 2006

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49.	M. Hollie Rutkowski	I	Attorney	Oppose	In workers compensation practice, case value is small. Desperate people may find they can threaten their attorneys with malpractice and suggest "that \$5,000 would make the pain go away." Proposal targets the economically disadvantaged and attorneys who serve them.	August 16, 2006
50.	Nancy Aronson	I	Attorney	Oppose	Cost of insurance can be exorbitant for solo practitioners. "[M]ost insurance is almost completely useless." Only covered if you keep the same insurance. Insurance companies, knowing this, increase rates every year. The rate is then so high that you have to change companies. If there are any claims against you when you had previous insurance, current insurance <i>and</i> previous insurance will not cover you. Until they reform insurance to assure that coverage means coverage, it is a complete waste of money.	August 15, 2006
51.	Coleen Gillespie	I	Attorney	Oppose	Proposal discriminates against small offices and solo practitioners and against attorneys (as opposed to other professions).	August 16, 2006

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52.	Amy L. Kreutner	I	Attorney, sole practitioner	Oppose	Proposal poses a concrete threat to commenting attorney's ability to provide free assistance to the poor. Cannot afford malpractice insurance. Attorneys have ethical duty to answer clients about insurance coverage. State Bar should explore affordable malpractice insurance for all attorneys. Insurance might be provided on a sliding scale basis, pegged to attorney's income.	August 16, 2006
53.	Deborah Meyer-Morris	I	Attorney, self-employed, works from home part-time	Oppose	Proposal presents a minefield for solo and part-time attorneys and those who experience a gap in coverage. Will limit access of the middle and lower classes to legal services.	August 16, 2006
54.	David J. Murray	I	Attorney, sole practitioner	Oppose	Proposal has disparate impact and will affect only solos and part time lawyers. Does not need another reporting requirement or having to worry about violating some obscure bar rule regarding gap or tail coverage.	August 16, 2006
55.	Michael Szkaradek	I	Attorney and CPA	Oppose	Clients interested in knowing limits of an attorney's malpractice coverage would also be interested in knowing 1) the attorney's personal ability to pay any judgment in excess of policy limits; and 2) any limitations on the liability of the attorney's firm or other partners. Proposal does not require that information to be disclosure. Malpractice insurance disclosure boils down to the "'haves' trying to stick it to the 'have nots.'"	August 18, 2006

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56.	Harley A. Merritt	I	Attorney, sole practitioner	Oppose	Neither the State Bar nor the Legislature has addressed finding a way to provide coverage for the public's protection, while making that coverage affordable. Proposal will indirectly compel lawyers to purchase insurance. Insurance may be too expensive for some or unavailable to new attorneys. Requiring insurance is a windfall to the insurance companies. Proposal is fatally flawed without some mechanism to determine who carries insurance and who does not.	August 21, 2006
57.	Gerson Simon	I	Attorney	Oppose	State Bar should not use dues to lobby the Legislature to require disclosure to clients.	August 21, 2006
58.	James F. Johnson	I	Attorney, court-appointed criminal defense practitioner	Oppose	There are many problems associated with mandating coverage. Attorney is provided with malpractice insurance coverage for court-appointed criminal appellate work in California Court of Appeal or Supreme Court. Coverage does not apply to federal habeas corpus matters. Many lawyers provide assistance and counsel on federal habeas corpus petitions on a pro bono basis.	August 22, 2006
59.	James T. Ryan	I	Attorney	Oppose	Commenting attorney's income from legal services, since 1995, has never been more than \$18,965. Asks how he can possibly afford to pay for insurance. Accommodations should be made for attorneys who offer low or no cost legal services.	August 23, 2006

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60.	Howard M. Freedland	I	Attorney, in house counsel	Oppose	Clients want to know the likelihood of having to make a claim against the lawyer and the extent to which the firm could satisfy a claim. Mere disclosure that the lawyer has insurance is misleading. There would be no requirement to disclose policy limits or policy terms and conditions.	August 23, 2006
61.	John G. Appel, Jr.	I	Attorney	Oppose	Whether a lawyer has insurance is a business and personal choice. Insurance is obtained for the benefit of the insured, not a third party. Client's "right" to know is unsupported. Legislature's sunset of disclosure requirement should be respected as the will of the public. If insurance is "material" to a client, and a client has a "right" to disclosure of insurance information, all lawyers should make a full disclosure so clients are fully informed. Educational materials will be inadequate. Disclosure should not be a disciplinary offense. Rule of Court is an improper vehicle for regulation. Will increase malpractice suits against covered lawyers. State Bar has not solved real problem – the lack of affordable insurance – which should be a priority.	August 29, 2006

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62.	Michael V. Mahoney	I	Attorney, sole practitioner for commercial collections	Oppose, except for disclosure to the State Bar	Insurance companies do not like to cover sole practitioners with no clerical staff. Based on quotes received and high deductibles for insurance, coverage would not be sound business choice if low dollar cases were involved. The public will turn away from uninsured lawyers. Mere presence of insurance can be misleading, absent disclosure of policy limits. Objects to requirement of client signature on written disclosure to client.	September 1, 2006
63.	Steven B. Haley	G	West Valley Bar Association	Support by most who responded, but one bar member who responded opposed	One bar member expressed a desire for less paperwork for covered attorneys. The member opposed to the proposal 1) questions assumption that clients assume lawyers have insurance; 2) believes that disclosure to existing clients creates confusion; 3) believes that new or younger lawyers will be affected adversely; and 4) believes that proposal creates unwarranted suspicion about competency of uninsured attorney.	September 7, 2006
64.	Steven A. Lewis	I	Attorney	Support	Failure to disclose absence of insurance is a material omission and therefore properly covered by a RPC and Rule of Court.	September 7, 2006

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65.	Carol Kuluva and Carey Barney	G	Co-chairs, State Bar's Committee on Professional Liability Insurance	Support in concept but concerns raised on form of disclosure and wording of proposed rules. Request for additional time to evaluate and provide further comment.	General concept of disclosure of lack of insurance was generally agreed to as appropriate as a matter of public protection, but concerns were raised as to the form of disclosure and the present wording of the proposal. Comments raised include 1) impact of rule violation in civil litigation as evidence of breach of fiduciary duty or negligence per se; 2) State Bar exposure to liability; 3) consistency with other proposed revisions to RPCs; 4) ambiguities surrounding representations of presence of "coverage"; 5) alternatives such as bonds; and 6) unlicensed carriers entering the market.	September 8, 2006
66.	Shawn J. Curtin	I	Attorney, sole practitioner	Oppose	Income from small law practice does not justify outrageous insurance premiums charged. Disclosure is awkward, especially for existing clients. Proposal is "another assault on the small, underpaid solo practitioner who delivers honest legal services to a variety of clients at low cost without the bureaucratic entanglements of a big firm."	September 8, 2006
67.	Glenn Dorfman	I	Attorney, sole practitioner	Oppose	Commenting attorney no longer carries malpractice insurance. Is gradually retiring, and does not want to pay for malpractice insurance. Disclosure to existing clients would be embarrassing. Agrees with letters to editor in CBJ against the proposal.	September 8, 2006

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68.	Robin Snoke	I	Attorney	Oppose	Opposed to insurance disclosure of any kind. Result of forcing public disclosure will be that the big firms and their corporate clients will have an advantage, and the "citizen attorney and his individual clients will be at a disadvantage." State Bar has a reputation for representing itself and the interests of big firms and their corporate clients, not the interests of the citizen attorneys who represent the individuals.	September 8, 2006
69.	Maurice Rozner	I	Attorney	Oppose	Commenting attorney says that effectively the new rule will put him out of business. Cannot afford insurance since he does not work full time. Will not get clients if forced to disclose he is self-insured.	September 9, 2006
70.	Mary Cavanagh	I	Attorney	Oppose	States that we should all be "ashamed" of this proposal that does nothing to protect the public and unfairly labels those who lack malpractice insurance as lesser attorneys. Oregon has the Professional Liability Fund, which costs far less than policies in California. California should follow Oregon's example.	September 11, 2006

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71.	Stephen Greenberg	I	Attorney, sole practitioner doing post-conviction criminal defense from home office	Oppose	90% of commenting attorney's practice consists of court-appointed appellate work, with malpractice insurance covered by the appellate project system. Attorney has very few private clients. Likelihood of malpractice suit is "less than remote, given the law's requirement of complete exoneration as a prerequisite to malpractice relief." Proposal would impose an unfair burden. Disclosure in the context of the work the attorney does is virtually meaningless, but may scare away the very few private clients he has. Attorney has experience with a murder appeal where a client hired a private attorney in a law firm (which, the attorney notes, probably had malpractice coverage) and the quality of the representation was not good. Disclosure would hurt both clients and responsible counsel.	September 11, 2006

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72.	Michael J. Siegel	I	Attorney, sole practitioner, representing crime victims	Supports disclosure to State Bar. Opposes disclosure to client	Proposal appears to be "solution in search of a problem." No evidence of consumers harmed by an attorney's failure to maintain malpractice insurance, number of malpractice suits involving uninsured attorneys, number that resulted in consumer not receiving appropriate compensation. Cost of contacting existing clients would be a major undertaking. Nature of attorney's practice (low risk, modest income per case, statutory fee structure) does not warrant purchase of insurance. Requirement of acknowledgement of disclosure from clients is unworkable. Desires exemption for pro bono service.	September 11, 2006
73.	John D. Harwell	I	Attorney, sole practitioner	Support	Commenting attorney has experience with an attorney being sued for malpractice who announced that he had no insurance and no assets in his name. The case, worth about \$500,000 in damages, went away as no contingency based lawyer would continue representation because of the difficulty of collecting any judgment. No client should be put into that position without advance notice. At a minimum, clients should be given the information necessary to make an informed choice. Insurance should be required.	September 11, 2006
74.	Frank Mangan	I	Attorney	Oppose Not opposed to disclosure to State Bar	This is going too far with regulations. Malpractice insurance is unnecessary to perform criminal defense work. Burdens sole practitioners. Would not mind disclosure to the Bar.	September 11, 2006

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75.	Steve Chandler	I	Attorney, general practitioner	Oppose	For general practitioners, malpractice insurance is too expensive and "we've already cut our overhead to the bone to stay in business." Proposal does not require disclosure if an attorney <i>does</i> have insurance, and that is done for rich lawyers in big firms who already have insurance. Insurance premiums will rise, causing costs to pass on to consumers, except for us "little people" whose clients cannot afford the high legal rates already charged by the "big" lawyers.	September 11, 2006
76.	Robert R. Beauchamp	I	Attorney, essentially an in-house lawyer for a real estate developer, but still does some part-time representation	Oppose	Commenting attorney does minimal part-time representation, primarily but not exclusively pro bono. Malpractice insurance is prohibitively expensive in light of the attorney's minimal practice. Proposal will force him to abandon his limited practice. Does not want his lack of insurance posted on State Bar website, with the "negative connotation" the statement carries. The State Bar is becoming a "tool of large firm lawyers imposing greater and greater restrictions and expenses on solo and small firm lawyers."	September 11, 2006
77.	Keith Higginbotham	I	Attorney	Oppose	Attorney is mostly an "appearance attorney" practicing exclusively federal bankruptcy law, making court appearances for other law firms. Opposes both disclosures, especially to the client, which would have a "chilling effect" on his specialized practice.	September 11, 2006

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78.	Jack Cohen	I	Attorney	Supports direct disclosure to client only	Dual disclosure is overkill. Requiring direct disclosure to client enables client to personally question the attorney regarding reasons for lack of insurance, unlike public disclosure, such as on the State Bar website.	September 12, 2006
79.	Edward Poll	I	Attorney	Oppose	No empirical support exists for presumption that clients expect lawyers to carry insurance. At the time of engagement, clients generally focus on their problems. Inserting notice of lack of insurance will either have no effect or negatively impact the economic survival of a major segment of the Bar - solo and small firm practitioners. Unwarranted negative inference will be drawn from lack of insurance. If more information for clients is better, why not require lawyers to disclose won-lost record and other evidence of results obtained for clients? If public information is reason for proposal, why not educate public and lawyers about economics of law practice and other related issues? Other professions do not require insurance or disclosure of its absence. No empirical support that proposal will have any benefit for consumers. If State Bar is concerned about consumer protection, insurance should be mandated. Proposal flies in the face of effort the Board of Governors recently announced to address economic concerns of sole and small firm practitioners and reverse the perception that the State Bar fails to be concerned about their interests.	September 12, 2006

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80.	Rob Sall	I	Attorney	Support Suggests modification	Clients have a right to know material facts in making the decision to hire a lawyer and whether to continue to use the services of a lawyer. Absence of malpractice insurance is a material factor. Suggests modification to RPC 3-410 (c) to change "currently rendering legal services" to "actively performing current legal services" and require notice to client within 30-60 days of a dormant file becoming active again.	September 12, 2006
81.	John Dye	I	Attorney	Oppose	Agrees with CBJ editorials by Michael Szkaradek and Michael Mahoney against proposal. Clients are free to ask about insurance coverage. Insurance industry is already too invasive and lawyers already have to comply with too many arcane rules.	September 12, 2006
82.	Robert C. Fellmeth	G	Executive Director, Center for Public Interest Law, USD School of Law	Support	Proposal is modest compared to stronger alternatives such as a Bar fund to guarantee payment of all malpractice judgments or mandatory insurance. Public disclosure should also include insurance coverage limits. Violation of rule should make attorney liable for any judgments obtained and subject to disbarment for non-payment or placed on inactive status until coverage is obtained.	September 13, 2006
83.	Gerald Knapton	G	Chair, Committee on Mandatory Fee Arbitration of State Bar	Support	Attorneys should reveal their lack of liability insurance coverage at the onset of the attorney-client relationship. Proposal is an improvement to requiring disclosure in the fee agreement, which is not always required to be in writing.	September 13, 2006

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment
84.	Richard H. Dwiggins	I	Attorney	Oppose	This is an annoying burden that will only hurt the lawyer of modest means while returning no significant benefit to the public.	September 13, 2006
85.	LaurelT@ri-net.com	I	Attorney, corporate counsel in insurance industry	Oppose	Unless insurance is mandatory, proposal is a way of eliminating perfectly competent solo practitioners and small or public interest firms from practicing in competition with bigger firms that provide firm insurance.	September 13, 2006
86.	Lemoure Eliasson	I	Attorney, part-time practitioner	Oppose	Commenting attorney is a "stay at home mom" who is trying to keep one foot in the legal profession until she can immerse herself completely again. "For those of us working minimal hours, just to stay in the loop, this would kill overhead costs and prevent us from practicing our profession. The Bar seems more interested in protecting others then protecting those that pay dues."	September 13, 2006
87.	Clinton D. Hubbard	I	Attorney	Opposes proposal in current form	Written notice to existing client should be deferred for 2-3 years, and notice to new clients should be deferred for 1-2 years to allow insurance market to adjust. Study needed to ascertain cost of insurance for currently uninsured attorneys. Suggests exploring mandatory insurance if it can be made affordable. Dual disclosure is overkill. Disclosure to State Bar only is the preferred first step. Insurance coverage is illusive and may provide false sense of security to consumers.	September 13, 2006

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment
88.	Gerald Leib	I	Attorney	Oppose	Proposal is unreasonable, unjust and unfairly discriminates against sole practitioners and small firms. Potential clients are often litigious.	September 14, 2006
89.	Suzanne Blonder and Rachel Decker	G	Associate Counsel and Program Assistant, HALT, Inc.	Support	Direct disclosure of insurance to clients is the most important recommendation. Clients are the true victims when attorneys refuse malpractice coverage. Lawyers are expected to fully protect their clients' interests. Through rules such as this, clients are better informed when choosing their representation. Disclosure requirement serves to 1) inform clients whether a lawyer or prospective lawyer is insured; and 2) encourage lawyers to obtain insurance coverage. The State Bar should increase accessibility of the information and adopt a web-based service for consumers. Mandatory malpractice insurance is needed to fully protect lawyers and clients. Most clients assume that their lawyers are covered by professional liability insurance.	September 14, 2006

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment
90.	Melissa Pritchett	I	Attorney, solo part-time practitioner	Oppose	Commenting attorney is ready, willing and able to pay for coverage, but all insurers she has been able to find refuse to offer her any coverage whatsoever. Attorney has not had any complaints filed about her or communicated to her, and has not had any disciplinary actions taken against her. If the State Bar offered affordable insurance to all practitioners, then lawyers could choose to have coverage. Proposal is not equitable or practical.	September 14, 2006
91.	Calvin Gunn	I	Attorney, solo practitioner	Oppose	Commenting attorney is outraged that the Bar has become the "shill" for the liability insurance industry, in total derogation of its responsibility to its own members and contrary to the expiration of the statutory requirements in the B & P Code. Only the Legislature has authority to require insurance, which should be made affordable. Objects to conflict of interest by the Task Force because James Towery's law firm is a leading counsel for the liability insurance industry. Clients are free to ask about insurance coverage. Commentator suggests that if proposal is adopted, he will seek a judicial ruling to challenge the Bar's authority to implement the proposal.	September 14, 2006
92.	Martin S. Snitow	I	Attorney	Supports disclosure to client only	Disclosure to the client is acceptable but not to the State Bar. Believes that former statutes worked well and should be revived.	September 14, 2006

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment
93.	Andrew Elowitz	G	Chair, Law Practice Management & Technology Section of State Bar	Further study is essential before any of the proposed changes are approved and implemented.	Many of the proposed changes may work <i>against</i> the public interest. Comment raises concerns about impact on solo practitioners, new attorneys, small firms, and the clients that those attorneys serve. Concerns expressed about the actual implementation of the new rules and the specifics of attorney disclosure. The LPMT Section believes the proposed changes will not do an effective job of protecting and informing the public. Effect of proposal will be to compel attorneys to obtain malpractice insurance, but if that is in the public's interest, why not require insurance while providing a cost-effective way to obtain it? Recommends deferral pending study of issue in greater detail Regardless of whether proposed rules are adopted, recommends emphasizing public education about malpractice insurance and lawyer education about malpractice and malpractice insurance.	September 15, 2006
94.	Alex Seiberth	I	Attorney	Oppose	There is no requirement for insurance and no inferences should be drawn about those who wish to be uninsured. Insurance is rarely used but expensive.	September 14, 2006

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment
95.	Barbara Macri-Ortiz	I	Attorney, sole practitioner serving legal needs of the working poor	Opposes proposal as currently drafted. Preference for requirement that <i>all</i> attorneys disclose presence or absence of coverage, directly to clients only.	Any disclosure rules should apply equally to all attorneys, and require disclosure of both the presence and absence of insurance. Disclosure should be made to client only. Disclosure to State Bar followed by public disclosure raises concerns. Lawyers could become targets of frivolous litigation as a result of public disclosure. Information may be misused and abused. Reporting problems exist if lawyer has coverage for some but not all work. Recommends that fee agreements advise client of right to file a discipline complaint in order to best protect a client.	September 15, 2006
96.	Paul Dorroh	I	Attorney	Support with modifications	There may be substantial reasons for uncertainty about whether an attorney is "covered by professional liability insurance" when an attorney does not obtain his or her own policy, but instead relies on a policy obtained by a law firm. Rules should have provisions that clarify what kinds of information (short of an insurance policy issued in an attorney's own name) suffice for a reasonable and informed belief that an attorney is "covered by professional liability insurance."	September 15, 2006

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment
97.	Rina Harai	I	Attorney	Opposed pending further study	There is no evidence that a problem exists. Further study is needed regarding need for insurance and added costs to the consumer. State Bar should provide affordable coverage if it believes that coverage is needed to protect consumers. Raises concerns about impact on available legal services for low and moderate-income consumers. Suggests increasing contributions to the client security fund as an alternative.	September 15, 2006
98.	Ronald S. Berman	I	Attorney	Support	On balance, it is our duty as attorneys to take the "high road." The client's right to be fully informed about relevant circumstances is more important to the integrity of the Bar than allowing a member to be silent on the issue.	September 15, 2006
99.	Dana Miles	I	Attorney, split practice between sole practitioner and corporate employee	Oppose	Attorney does not believe the benefit of malpractice insurance justifies the cost. Finds the unspoken assumption underlying the proposal to be "offensive and misguided, that assumption being that lawyers will inevitably commit malpractice and thus their clients need to be protected." Lawyers do not inevitably commit malpractice, and lawyers buy malpractice insurance to protect themselves, not their clients. Clients do not base their decision to hire a lawyer on whether the lawyer has insurance coverage. Almost all clients simply do not care, and those that do are sophisticated enough to ask the question.	September 15, 2006

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment
100.	Barry Kahn	I	Attorney	Opposes proposal as currently drafted	Questions wisdom of proposal and favors the concept of a minimum surety bond. Purchase of insurance is an individual business decision.	September 15, 2006
101.	Timothy D. Regan, Jr.	I	Attorney	Oppose	Commentating attorney sees no evidence that a problem exists with uninsured lawyers. Clients are free to ask about insurance. We don't need a "Wall of Shame." Determined efforts should be made to make affordable insurance available to the sole practitioner and small firms.	September 15, 2006
102.	Anne L. Mendoza	I	Attorney, sole practitioner	Oppose	Proposal represents an indirect and thus dishonest effort to mandate malpractice insurance in a climate deemed too hostile for direct action. Burdens placed on uninsured members are both "odious and unreasonable." If consumer protection and informed consent are the point, attorneys should be required to disclose the amount of their coverage. Disclosure requirements are not fair without ability of members to obtain affordable insurance. State Bar has an obligation to create a climate of compliance by offering an alternative fund.	September 15, 2006
103.	Robin Yeager	I	Attorney	Oppose	Whether to carry insurance is a business decision that should not be mandated by the State Bar. It would be tantamount to indicating the attorney has done something wrong when in fact the attorney has done nothing improper.	September 15, 2006

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment
104.	James Ellis Arden	I	Attorney and member of Association of Professional Responsibility Lawyers and Professional Responsibility and Ethics Committee of Los Angeles County Bar Association (LACBA)	Oppose	Because there is no consistency in coverage, coverage disclosures will be completely fraudulent to those clients whose claims will not be covered. Recommends instead a State Bar educational piece explaining to the public the ins and outs of malpractice coverage. This education will enable the public to ask about coverage and its particulars. Current proposal will be more costly than a public information campaign.	September 18, 2006
105.	John Toker	G	Chair, State Bar's Committee on Alternative Dispute Resolution	No position. Recommends drafting revisions.	Recommends that Rule 950.6 be redrafted so it requires attorneys to disclose to the State Bar whether they are covered by insurance only when they "represent clients or provide legal advice to clients."	September 24, 2006

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment
106.	Louisa Lau	G	Chair, Professional Responsibility and Ethics Committee of Los Angeles County Bar Association (LACBA)	Oppose	LACBA committee believes that any rule on insurance disclosure is properly a matter of legislative judgment. The Legislature has already made a policy decision by allowing the lapse of the statutory requirements for disclosure. Some committee members believe disclosure is merely prophylactic. Others feel that insurance disclosure may not be material and that other potential disclosures might be more important and material to a client. Consensus was reached that any disclosure is best incorporated into statutory provision relating to fee agreements and <i>not</i> placed into a Rule of Court or a rule of ethics, the breach of which subjects an attorney to discipline.	October 4, 2006
107.	Steven A. Lewis	G	Chair, Committee on Professional Responsibility and Conduct (COPRAC) of State Bar	Support Proposes amendments	COPRAC supports the proposed disclosure rules. The absence and/or cessation of professional liability insurance coverage is significant, potentially affecting both the client's interest and the client's willingness to hire or to continue to use the services of the particular lawyer in question. COPRAC rejects notion that burden is on client to discover if lawyer has coverage. Recommends extending deadline to notify existing clients from thirty days to sixty days.	October 5, 2006

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment
108.	Christopher L. Cockrell Sr.	I	Attorney	Supports	Points made by Diane Karpman in her October 2006 CBJ column do not overcome what commenting attorney perceives is a duty to the consumer to provide appropriate information to making a knowing decision. Attorneys without insurance are not “selling the same product” as attorneys with insurance, and the consumer needs to be informed.	October 11, 2006

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment
109.	J. Anthony Vittal and Diane Karpman	G	Conference of Delegates of California Bar Associations; proponents of Resolution ELF-2006	Oppose. CDCBA Resolution contains an alternative proposal for action.	CDCBA overwhelmingly approved a Resolution urging that the proposed rules not be adopted. Instead, the Resolution urges the State Bar to determine why over 18% of the active members in private practice do not maintain professional liability insurance coverage; evaluate whether the establishment of a captive professional liability insurance carrier would achieve coverage for all active members in private practice; and, if so, propose the enactment of appropriate legislation. While offered as a "consumer information" proposal, the indirect effect of the proposed rules will be to force uncovered lawyers to obtain and maintain malpractice insurance, while directly imposing a substantial notification burden on all lawyers in private practice. The proposed disclosure of the mere existence or non-existence of malpractice coverage is antithetical to the fundamental fiduciary duty of honesty. The proposed disclosures fail to explain the intricacies of insurance coverage, and "public education" groups will not solve the problems created by the proposal. The proposed disclosures may create a false sense of security that will engender a host of unintended consequences.	October 7, 2006

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment
110.	Jerome Fishkin	I	Attorney, represents attorneys in ethics matters	Opposes proposed Rule of Professional Conduct 3-410, elevating the issue into a disciplinary offense	If potential clients are going to be informed whether or not an attorney has malpractice insurance, remedies should be civil, not disciplinary. The former remedies in B & P Code Sections 6147 and 6148 were adequate. The advantage of that law was to discourage clients who were not damaged by the omission from seeking a windfall or forfeiture of a portion of the fees. If an attorney can be disciplined for failure to make a disclosure, the consumer gets no benefit. Clients increasingly attempt to manipulate the Rules of Professional Conduct to use threat of a complaint as a way to get an attorney to reduce or withdraw a legitimate bill. Commenting attorney notes several areas that are "ripe for litigation" because they are not addressed by the proposal.	October 17, 2006

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment
111.	Diane Karpman	I	Attorney	Oppose	Proposal presents problems in the regulation of the profession. Beyond all the “esoteric” insurance issues, insurance policies include exclusions that can render the policies voidable. Exclusions allow carriers to “privately and quietly regulate the practice of law.” Policy exclusions can be triggered by perfectly acceptable conduct that conforms to the rules. The proposed rules will profoundly impact solo/small practitioners, who are most likely to provide legal services to minorities and the poor. This becomes a critical issue regarding access to justice, as these costs will be passed on to the clients. Enactment of the proposed rules will result in more lawyers being forced to obtain coverage or be marked with a “scarlet letter.” That would mean more “secret regulations from outside our community.” The ABA’s Ethics 2000 Project specifically rejected such a rule in 2002 because what does coverage have to do with ethics? Enactment of this rule is tantamount to a relinquishment of the legal profession’s self-regulation.	October 2006

No.	Name	Group (G) or Individual (I)	Identification	Position	Summary of comment	Date of Comment
112.	Michael G. Evans	I	Attorney. Practice resembles an in house counsel, as 90% of his work is for one client, but is also Of Counsel to another law office and occasionally provides other legal services.	Oppose	Adopts Diane Karpman's October 2006 CBJ column. If required to pay premiums for insurance to keep his name off a "Class B" attorney list, commenting attorney's representation would become de facto pro bono work, unless he significantly raised his fees to a level his clients could not afford, in which case they would probably need to find legal representation elsewhere.	October 31, 2006