



State Bar of Georgia

PROFESSIONAL LIABILITY INSURANCE COMMITTEE MEETING

Monday, April 22, 2019
12:00 Noon
YLD Board Room
State Bar Headquarters
Atlanta, Georgia

MINUTES

Call to Order

At approximately 12:12 p.m. Chair Linley Jones called the meeting to order.

Roll Call & Introductions

The following committee members were present: Linley Jones; Peter Werdesheim; Warren Hinds; Shannon Sprinkle; Emerson Carey, Jr.; Kenneth B. Hodges, III, and Executive Committee Liaison, David S. Lipscomb.

Committee members Sarah Brown Akins; William T. Davis; Michael G. Frick; Christine L. Mast; Christopher Balch; and Kimberly C. Butler participated via teleconference.

Committee members William Thomas Mitchell; William T. Clark; David Neal Lefkowitz; and R. Gary Spencer were not in attendance.

Also present were the following State Bar of Georgia staff members: General Counsel Paula J. Frederick; Executive Director Jeff R. Davis; Deputy General Jenny Mittelman, Deputy General Counsel and staff liaison William D. NeSmith, III; and Paralegal Betty Ross Derrickson.

Approval of the Meeting Minutes

Hearing no objections, the February 19, 2019 Professional Liability Insurance Committee meeting minutes were unanimously approved as presented.

Agenda Amendment

With the Committee's approval the meeting's agenda was amended to add an update of the Supreme Court meeting as item 2. under Unfinished Business; and the proposed disclosure rule as item 6. under New Business.

Unfinished Business

1. Report on PLI Presentation and Feedback at BOG

Board Chair Linley Jones informed the Committee that the presentation regarding proposed mandatory professional liability insurance at the March 29, 2019 Board of Governors meeting went very well. Board members were divided as to whether they oppose or support mandatory liability coverage. However, there were many members who were undecided. A major concern was who would/should be excluded from the rule. The presentation lasted approximately 2 hours.

Board member Ken Hodges added that most of the concerns he encountered regarded whether this matter had been adequately/properly vetted and disseminated to Bar members. Mr. Hodges indicated that he has dedicated his next Georgia Bar Journal article to this matter, and will send out one or two more email blasts to Bar members regarding this matter. Mr. Hodges would like the Committee to meet at least one more time with the goal of have a proposed rule ready for presentation at the 2019 State Bar of Georgia Annual meeting, or in the interim, presentation of a proposed disclosure rule.

2. Supreme Court Meeting Update

Board member Ken Hodges indicated that he believes the Supreme Court of Georgia is generally in favor of mandatory professional liability insurance; however, they too think that more in depth consideration should be given to the matter.

New Business

1. Consideration of Additional Practice Exceptions to the Proposed Mandatory Professional Liability Insurance Rule

The committee initially discussed attaching exemptions to the same criteria used in determining whether an IOLTA account of required; however, this idea was not agreed upon. The Committee considered whether the following groups should be exempt from the proposed rule:

- a. Juvenile court lawyers/child advocates/guardian ad litem for juveniles – the Committee indicated this group should not be excluded; however, additional information is needed. Inquiry should be made to Nikki Vaughan, Chair of the Child Protection and Advocacy Law Section and someone from the Family Law Section.
- b. Criminal defense lawyers – the Committee determined that this group should not be exempt.
- c. Lobbyists – the Committee determined that section (b)(3) of proposed Rule 1-210 covers this group. This group will be added to that section of the rule.
- d. Out-of-state lawyers – the Committee determined that this group should not be exempt.

- e. Lawyers admitted pro hac vice – the Committee determined that the State Bar of Georgia has no jurisdiction over this group. Pro hac vice is governed by the Uniform Superior Court rules.
- f. Lawyers whose practices do not require IOLTA accounts – the Committee determined that this group already falls under section (b)(3) of proposed Rule 1-210.
- g. Senior judges and other retired lawyers who do occasional pro bono work or part-time work (1-2 clients per year) - the Committee determined that senior judges already fall under section (b)(3) of proposed Rule 1-210. The remaining group listed should not be exempt.

The committee determined that Comments should be added to proposed Rule 1-210 to provide explanations of and clarity to the rule.

2. Appeal panel/exemption process

The Committee voted to add language to the proposed rule that establishes an appeal panel/exemption process. The language will be reviewed at the next meeting.

3. Consideration of exception to diminishing limits prohibition for larger policies

By majority vote the committee approved, as an interim measure, an amendment to section (a) to add an exclusion to the eroding policy portion of the rule that allows eroding policy limits if the policy is over \$1,000,000. Chair Linley Jones will reach out to the insurance commissioner for additional information.

4. Create study subcommittee to study other jurisdictions

Board members Ken Hodges and Pete Werdesheim will work together to track what other jurisdictions are doing regarding mandatory professional liability insurance.

5. Plan outreach efforts

Chair Linley Jones and Committee Member Ken Hodges informed the Committee of current plans they have to speak with various groups about this issue. Mr. Hodges also plans to contact every member of the Board of Governors before the 2019 Annual Meeting to discuss this issue. Committee members were encouraged to make opportunities to talk about this initiative with various groups, i.e., volunteer bar organizations, sections, CLE's, and committees to inform, discuss, and address the issues and concerns.

6. Disclosure Rule

Board Member Ken Hodges indicated that if proposed Rule 1-210 is not ready for an affirmative vote at the 2019 State Bar of Georgia Annual Meeting, an interim step should be available. The interim step is to recommend the adoption of a proposed rule for meaningful disclosure that will include the provision of the Illinois

registration rule (PMBR-Proactive Management Based Regulation). General Counsel Paula Frederick was asked to revise the previously drafted disclosure rule as discussed. The proposed disclosure rules will be circulated to the Committee members before the next meeting and discussed and voted on at the next meet.

Next Meeting Date

The Committee determined that the next meeting will be Tuesday, May 7, 2019, at 12:00 noon. The meeting will be held at State Bar of Georgia Headquarters in Atlanta, Georgia.

Comments

The Committee discussed the issue of the impact the insurance industry may have if professional liability insurance is mandated, i.e. inequality of providing coverage, rate setting, etc. Linley Jones indicated that the insurance commission has previously stated to her that he saw no reason a mandatory insurance provision would cause rate increases. Linley Jones was asked to speak with the insurance commissioner again and other underwriters to weigh in on how a mandatory professional liability insurance rule will impact rates in the insurance industry.

Adjournment

There being no further business, the meeting was adjourned at approximately 2:05 p.m.