

MINUTES

December 13, 2018

Professional Liability Insurance Committee Meeting

Attendees: Linley Jones, Bill NeSmith, Deputy General Counsel, State Bar of Georgia, David Lipscomb, Sally Akins, Bill Clark, Shannon Sprinkle, Warren Hinds, Jeff Davis, Executive Director State Bar of Georgia, David Lefkowitz, Pete Werdesheim, Michael Frick, Christine Mast, Paula Frederick, General Counsel, State Bar of Georgia, Ken Hodges, President, State Bar of Georgia by conference call.

Meeting was called to order by Chair, Linley Jones at 12:05 p.m. The chair called for introductions of the members and after explained that the purpose of the committee is to discuss requiring members of the State Bar of Georgia to have professional liability insurance.

Ken Hodges joined the group by conference call, welcoming the members and thanking them for agreeing to serve on such an important committee. President Hodges reiterated his position that all lawyers practicing law in Georgia should be required to have PLI.

David Lipscomb suggested that the Board of Governors will not support mandatory PLI but will support to determine how many lawyers in Georgia have liability insurance and a study of requiring lawyers to reporting whether they do or do not carry PLI. Chair pointed out that the mission of the Committee is to make a recommendation based on what the Committee determines is in the best interest of the public and the Bar, regardless of what it is believed that the Board of Governors may do.

A discussion ensued about what will be the enforcement mechanism if a lawyer is required to have PLI, but doesn't; will mandatory PLI cause rates to go up once the insurance companies know that they have a captive audience, will mandatory PLI encourage clients to sue, what about lawyers that can't afford it, and if they cannot afford PLI, should they be practicing law?

In the discussions, it was suggested that the Bar may want to consider an enhancement to Clients' Security Fund. Bill NeSmith addressed this topic and explained that the Clients' Security Fund does not pay out on malpractice claims, only on claims of proven dishonesty and only if the dishonest lawyer was disbarred or indefinitely suspended.

Paula Frederick said that mandatory PLI is good idea, but we have to figure out how to get there. Issues include limits of liability, costs, enforcement for failure to insure, would mandatory insurance have eroding limits, what about deductible, what to do about lawyers who cannot afford a deductible?

After much more discussion, the consensus among the committee members is to recommend to the Board of Governors that the State Bar of Georgia should require all lawyers practicing law in Georgia to have PLI. Some were still concerned about reception at Board of Governors. Once again, the Chair pointed out that the mission of the Committee is to make a recommendation based on what the Committee determines is in the best interest of the public and the Bar, regardless of what it is believed that the Board of Governors may do.

All agreed that more time is needed to craft a detailed proposal. President Hodges told the committee that it was not necessary to have a recommendation for the Board at the Mid-Year Meeting in January 2019 as the committee may need more time to craft a good proposal and to fully investigate mandatory PLI in other jurisdictions. President Hodges suggested that the committee might be able to provide a proposal to the Board of Governors at the Spring meeting, which will be held March 29-31 at the Ritz-Carlton, Lake Oconee, Greensboro, Georgia.

The committee began discussing possible requirements for requiring a lawyer to disclose to a client if the lawyer has PLI. The general consensus was if there was no mandatory PLI, but mandatory disclosure of PLI, limits of liability should not be part of that disclosure. The committee discussed that if PLI disclosure was mandatory, how would that be accomplished? Some suggestions were: signage in waiting room, disclosing PLI coverage on the State Bar website directory and the CloudLawyer directory, include the disclosure in any fee agreement, disclosure via website/advertisement. There was a brief discussion about mandatory fee agreements as not being embraced by the Executive Committee, so disclosure by fee agreement would not likely be effective without mandatory fee agreements.

It was suggested that State Bar could post information on its website for public consumption to explain what PLI is, that a client should always ask a lawyer if they carry PLI and ask questions about limits.

The committee discussed that if mandatory PLI was required, what would be the enforcement mechanism? Would enforcement be through the disciplinary process or an administrative suspension like CLE.

The committee discussed requiring lawyers to turn in their declarations page perhaps in connection with the dues notice. Jeff Davis suggested that this might require more staff to keep up with all of the new required documents. It was suggested that the lawyer should just disclose that they have PLI and not require any verification. A false statement about mandatory disclosure of PLI to the Bar could be pursued through the disciplinary process.

The committee inquired as to how many lawyers in Georgia currently carry PLI. Some committee members suggested that most have PLI and other believed that no more than 1/3 carry PLI. Paula Frederick explained to the committee that insurance companies will not disclose how many Georgia lawyers they have insured and consider that information confidential and proprietary. It was her belief that the State Bar cannot get that information.

The committee discussed the Oregon Bar model in which the Oregon Bar buys one policy and covers all lawyer in Oregon. The cost of the PLI is then factored into lawyer dues. There are exceptions of who can be excluded, such as judges, in house counsel, prosecutors and others. The committee's consensus that State Bar should not attempt group purchasing like the Oregon Bar and should pursue other ways to require PLI.

There being no additional discussions, the Chair set the next meeting for January 7, 2019 at noon in the YLD Boardroom. The room was booked at the meeting and the committee adjourned.