



# State Bar of Georgia

Professional Liability Insurance Committee

AGENDA

January 8, 2021

Zoom meeting

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<u>I. Welcome &amp; Introductions</u>	(Twyman)	1
<u>II. Approval of Minutes from August 26, 2020 meeting</u>	(Twyman)	2-3
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2020-2021

Professional Liability Insurance

This special committee will study and make recommendations to the Executive Committee and Board of Governors on issues concerning lawyers' professional liability insurance.

**Chairperson**

Christopher Paul Twyman, Rome 2021

**Member**

Sarah Brown Akins, Savannah 2021

Kimberly Cofer Butler, Savannah 2021

Gregg Jarvis Conley, Atlanta 2021

Stephanie Kirijan Cooper, Birmingham 2021

J. Hamilton Garner, Moultrie 2021

Brandon Cory Goldberg, College Park 2021

Warren Raymond Hinds, Roswell 2021

Kenneth Bryant Hodges, III, Atlanta 2021

Linley Jones, Atlanta 2021

Herman Maddox Kilgore, Marietta 2021

David Neal Lefkowitz, Athens 2021

Daniel James O'Connor, Vidalia 2021

Dennis C. Sanders, Thomson 2021

Toronda Michelle Silas, Atlanta 2021

R. Gary Spencer, Atlanta 2021

Shannon McKenzie Sprinkle, Atlanta 2021

Meredith Wilson Sutton, Marietta 2021

**Executive Committee Liaison**

David S. Lipscomb, Lawrenceville 2021

**Staff Liaison**

Paula J. Frederick, Atlanta 2021

Professional Liability Insurance Committee  
Meeting of August 26, 2020  
Via Zoom

MINUTES

The meeting was called to order at 10:00 a.m.

**Attendance:**

Committee members: Christopher P. Twyman, Kimberly Butler, Gregg Conley, J. Hamilton Garner, Brandon Goldberg, Warren Hinds, Kenneth Hodges, III, Herman Kilgore, David Lefkowitz, Denis C. Sanders, Toronda Silas, R. Gary Spencer, and Meredith W. Sutton.

Executive Committee Liaison: David S. Lipscomb

Staff: Paula J. Frederick, William NeSmith, and Kathya S. Jackson.

Guest: Dawn Jones, Bar President

**Approval of Meeting Minutes:**

The Committee approved the Minutes from the August 10, 2020 meeting.

**Discussion Items:**

After its last meeting, the committee conducted a survey to rank the options in order of preference. The committee reviewed and discussed the survey results.

Judge Hodges would like the committee to consider defining disclosure. Disclosure is currently defined as publication on the bar website under the membership directory. However, Judge Hodges would like the definition to be broader.

Bar Counsel will work on an executive summary. Mr. Twyman will provide the executive summary to the Board of Governors prior to its October 24<sup>th</sup> meeting. Mr. Twyman will give the BOG a report regarding the progress of the Committee and also ask for feedback regarding defining disclosure. Bar Counsel will gather other states rules/definition regarding disclosure.

The committee discussed how to present the options to the BOG. They discussed providing the BOG with all the options the committee considered but recommending one option. Mr. Twyman

would like the committee to continue considering ways to present to the BOG and also how to vote for the recommended option.

The next meeting will be after the Fall BOG meeting.

The meeting adjourned at 11:30 a.m.

**From:** Gottfried, Robert [<mailto:Robert.Gottfried@americanbar.org>]  
**Sent:** Tuesday, December 15, 2020 4:12 PM  
**To:** Paula Frederick <[PaulaF@gabar.org](mailto:PaulaF@gabar.org)>  
**Subject:** RE: LPL question

Hi Paula,

It's nice to finally "meet" you! Thanks so much for your email. I had been trying to keep an eye on the developments in Georgia, so the update is much appreciated, as well!

As I'm sure you can imagine, disclosure means so many different things depending on what jurisdiction you're in. Basically, I've found two real categories: 1) direct written disclosure to the client; or 2) "disclosure" to the state bar on the attorney's annual registration form.

In terms of written disclosure to clients, some states like California (like you said) require notice in writing of a *lack* of coverage at the time of engagement. Then you have other extremes, like West Virginia, which requires written notice on firm letterhead on *every correspondence* the lawyer sends to the client.

There are also a few states who collect that information but do not make it public. New Mexico comes to mind. Attorneys are required to disclose whether they have malpractice insurance in their annual registration statement, but the state does not make this information available to the public. There are also a lot of states that do what Georgia is proposing to do: they require disclosure to the bar, and then information about their coverage is available to the public by request.

I'm attaching this document I've created, which should have the most update to date information about the "landscape" of these disclosure requirements, along with links to relevant statutes/rules.

I hope that helps, and I'm happy to answer any other questions you may have.

Thanks,  
Robert

**Robert Gottfried**  
**Cell: 407-797-1267**

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**From:** Paula Frederick <[PaulaF@gabar.org](mailto:PaulaF@gabar.org)>  
**Sent:** Tuesday, December 15, 2020 9:47 AM  
**To:** Gottfried, Robert <[Robert.Gottfried@americanbar.org](mailto:Robert.Gottfried@americanbar.org)>  
**Subject:** LPL question

Hello Robert—I'm a longtime CPR member and general counsel for the State Bar of Georgia. The Red Book says you staff the LPL committee. I don't think I have met you yet, but welcome! We've been considering mandatory Professional Liability Insurance and/or mandatory disclosure in Georgia for two years now, and the ABA resources have been helpful. A member of our committee has asked what "disclosure" means in various jurisdictions. Do you have any information on that? For

instance, some jurisdictions require that a lawyer actually tell each potential client whether they are covered by a PLI policy (I think California requires the lawyer to tell the client after being hired), others require posting a sign in waiting area of the lawyer's office. The rule we are considering requires the lawyer to disclose to the Bar and not directly to anyone else. Potential clients can call the Bar and get the information but the lawyer has no further obligation.

I'm also curious whether any jurisdiction gathers this information but keeps it secret from the public. Let me know if you've got that info.

Thanks!

--Paula Frederick

**PAULA J. FREDERICK** | General Counsel



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CONNECT WITH THE BAR:    

## **Lawyers' Professional Liability/Malpractice Insurance Disclosure Requirement**

*Rev. 12/15/2020*

### **Alabama**

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No requirement.

### **Alaska – Written Disclosure to Client Required; Information Not Public**

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#### [Alaska Rule of Professional Conduct 1.4\(c\)](#)

Requires disclosure in writing to existing client if malpractice insurance limits lower than \$100k per occurrence/\$300k aggregate, or written disclosure whenever insurance obtained by attorney drops below those limits or is terminated.

Alaska provides suggested disclosure language.

Information not made available to public.

### **Arizona – Disclosure to State Bar Required; Information Public**

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#### [Arizona Supreme Court Rule 32\(c\)\(12\)](#)

Requires disclosure on annual attorney registration statement.

Information available to the public on State Bar of Arizona website.

### **Arkansas**

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No requirement. Rejected ABA Model Court Rule on Insurance Disclosure on 1/21/06.

### **California – Written Disclosure to Client Required; Information Not Public**

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#### [California Rule 1.4.2](#)

Requires disclosure in writing to client at the time of engagement if lawyer knows or reasonably should know that they do not have professional liability insurance. If notice was not provided at time of engagement, lawyer must inform client in writing within 30 days of the date lawyer knows or reasonably should know that they no longer have professional liability insurance.

California provides suggested disclosure language.

Information not made available to public.

## **Colorado – Disclosure to State Bar Required; Information Public**

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### [Colorado Rule of Civil Procedure 227](#)

Requires disclosure on annual attorney registration statement.

Registration statement asks: 1) whether attorney is engaged in the private practice of law; and 2) whether the attorney intends to maintain insurance during the time attorney is engaged in the private practice of law.

Information made available to the public on Supreme Court Office of Attorney Registration website.

## **Connecticut**

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No requirement. Connecticut Superior Court Rules Committee [voted unanimously](#) to refuse to adopt insurance disclosure rule on 2/23/09.

## **Delaware – Disclosure to State Bar Required; Information Public upon Request**

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Requires disclosure on annual certification statement to Delaware Supreme Court.

Information available to the public upon request to the Delaware Supreme Court.

## **District of Columbia**

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No requirement.

## **Florida**

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No requirement. Declined to adopt ABA Model Court Rule on Insurance Disclosure.

## **Georgia - Pending**

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Considering adoption of disclosure rule.

## **Hawaii – Disclosure to State Bar Required; Information Not Public**

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### [Rules of the Supreme Court of Hawaii 17\(d\)](#)

Requires disclosure on annual attorney registration statement.

Information not made available to public.

## **Idaho – Malpractice Insurance Coverage Mandatory**

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### [Idaho Bar Commission Rule 302\(a\)\(5\)](#)

Require attorneys to carry malpractice insurance of at least minimum limits equal to \$100k per occurrence/\$300k aggregate. Must disclose this information to the Idaho Bar in annual attorney registration.

Must notify Idaho Bar in writing within 30 days of lapse of coverage or termination of coverage unless policy renewed/replaced without substantial interruption

Information made available to the public.

## **Illinois – Disclosure to State Bar Required; Information Public**

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### [Illinois Supreme Court Rule 756\(e\)](#)

Requires disclosure on annual attorney registration statement.

If attorney is engaged in the private practice of law and discloses that they do not carry malpractice insurance, must complete [self-assessment](#) of the operation of his or her law practice or obtain insurance and report such fact to the ARDC.

Information re: insurance disclosure made available to public on Illinois Attorney Registration and Discipline Commission website. Information related to self-assessment is confidential other than the fact that the lawyer completed the self-assessment.

## **Indiana**

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No requirement.

## **Iowa**

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No requirement.

## **Kansas – Disclosure to State Bar Required; Information Public**

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### [Kansas Rule of the Supreme Court 208A](#)

Requires disclosure on annual attorney registration statement.

Registration statement asks: 1) whether attorney is engaged in the private practice of law; 2) whether the attorney is currently covered by professional liability insurance; and 3) whether attorney is exempt from the rule because they are a government attorney or in-house counsel.

Must disclose to Office of Judicial Administration in writing within 30 days if insurance policy lapses, is no longer in effect, or terminates for any reason.

Information made available to public “in manner designated by Supreme Court.”

## **Kentucky – Pending**

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No requirement. Declined to adopt a disclosure rule in November 2006.

On August 5, 2015, the Kentucky Bar Association Taskforce on Professional Liability Insurance [unanimously recommended](#) to the Kentucky Bar Association Board of Governors submitting proposal to the Kentucky Supreme Court recommending adoption of the [ABA Model Court Rule on Insurance Disclosure](#).

## **Louisiana**

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No requirement.

## **Maine – Disclosure to State Bar Required; Information Public**

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### [Maine Bar Rule 4\(b\)\(3\)](#)

Requires disclosure on annual attorney registration statement.

Registration statement asks: 1) whether attorney is engaged in the private practice of law; 2) whether the attorney is currently covered by professional liability insurance; 3) whether attorney intends to maintain insurance during period lawyer is engaged in private practice of law; and 4) whether attorney is exempt from the rule because they are a government attorney or in-house counsel.

Must disclose to Maine Board of Overseers of the Bar in writing within 30 days if insurance policy lapses, is no longer in effect, or terminates for any reason.

Information made available to public “by such means as designated by the Board.”

## **Maryland**

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No requirement.

## **Massachusetts – Disclosure to State Bar Required; Information Public**

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### [Massachusetts Supreme Judicial Court Rule 4:02\(2A\)](#)

Requires disclosure on annual attorney registration statement. Must notify Board in writing within 30 days of lapse in or termination of coverage.

Information made available to public “by such means as may be designated by the Board.”

## **Michigan – Disclosure to State Bar Required; Information Not Public**

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### [Michigan Supreme Court Administrative Order 2003-5](#)

Requires disclosure in annual dues notice.

Information not available to public.

## **Minnesota – Disclosure to State Bar Required; Information Public**

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### [Minnesota Supreme Court Rule 22](#)

Requires disclosure on annual attorney registration statement.

Registration statement asks: 1) whether lawyer represents private clients; 2) if attorney represents private clients, whether lawyer is currently covered by professional liability insurance; and 3) if covered, the name of the primary carrier.

Must disclose to Lawyer Registration Office in writing within 30 days if insurance policy lapses, is no longer in effect, or terminates for any reason, unless it is renewed or replaced without substantial interruption

Information made available to public upon inquiry to Lawyer Registration Office.

## **Missouri**

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No requirement.

## **Montana**

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No requirement.

## **Nebraska – Disclosure to State Bar Required; Information Public**

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### [Nebraska Supreme Court Rule 3-803\(6\)](#)

Requires disclosure on annual attorney registration statement to Nebraska Supreme Court.

Registration statement asks: 1) whether attorney is currently covered by professional liability insurance; 2) whether the attorney is engaged in the private practice of law; 3) whether the attorney is a partner, shareholder, or member in LLP; and 4) whether they are exempt from these provisions because they are a government attorney or in-house counsel.

Must disclose to Attorney Services Division through online account within 30 days of lapse in coverage, termination of coverage, or acquisition of coverage.

Information made available to public “by any means designated by the Supreme Court.”

## **Nevada – Disclosure to State Bar Required; Information Public**

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### [Nevada Supreme Court Rule 79](#)

Requires disclosure on annual attorney registration statement to the Nevada State Bar.

Registration statement asks: 1) whether lawyer is engaged in the private practice of law; 2) if engaged in the private practice of law, whether they maintain professional liability insurance; and 3) if they have professional liability insurance, the name and address of the carrier.

Must inform the Bar within 30 days of any change in coverage.

Information made available to the public upon request.

## **New Hampshire – Written Disclosure to Client Required; Information Not Public**

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### [New Hampshire Rule of Professional Conduct 1.19](#)

Requires disclosure in writing to client at time of engagement or at any time subsequent to engagement if malpractice insurance limits lower than \$100k per occurrence/\$300k aggregate. Disclosure must be made on state-prescribed form ([Rule 1.19](#)) and must be signed by client.

Information not available to public.

## **New Jersey - Pending**

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On March 11, 2019, the New Jersey Supreme Court issued a [Notice to the Bar](#) on the Ad Hoc Committee on Attorney Malpractice Insurance's recommendation to the Court.

The Committee recommended not adopting a mandatory malpractice coverage option. The Committee recommended instead that the Court adopt a mandatory reporting requirement, requiring attorneys to submit to the court a certificate of insurance setting forth basic policy information, and to make this information available to the public.

The New Jersey Supreme Court approved the recommendation of a reporting requirement, but has not acted on the specific rule proposed by the Committee. The Court made no comment on the recommendation to adopt a requirement of mandatory disclosure to the attorney's client.

## **New Mexico – Written Disclosure to Client Required; Information Not Public**

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### [New Mexico Rule of Professional Conduct 16-104\(c\)](#)

Requires disclosure in writing to client at time of engagement if malpractice insurance limits lower than \$100k per occurrence/\$300k aggregate. Disclosure must be made on state-prescribed form ([Rule 16-104\(c\)](#)) and must be signed by client.

Must provide written notice to client on same form if an insurance policy in effect at the time of engagement lapses or is terminated.

Information not available to public.

## **New York**

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No requirement. See [NYCLA Formal Ethics Opinion No. 734](#).

## **North Carolina**

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No requirement. Repealed its requirement that attorneys disclose to the Bar whether they carry malpractice insurance effective 1/1/2010.

## **North Dakota – Disclosure to State Bar Required; Information Public**

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### [North Dakota Rule of Professional Conduct 1.15\(j\)](#)

Requires disclosure on annual attorney registration statement to North Dakota Supreme Court.

Registration statement asks: 1) whether lawyer represents private clients; 2) if lawyer represents private client,s whether they are covered by professional liability insurance; and 3) whether lawyer intends to maintain such insurance over next 12 months.

Must provide written notice to Clerk of the Supreme Court within 30 days if coverage lapses, is not in effect, or is terminated, unless renewed or replaced without substantial interruption.

Information available to the public upon request.

## **Ohio – Written Disclosure to Client Required; Information Not Public**

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### [Ohio Rule of Professional Conduct 1.4\(c\)](#)

Requires disclosure in writing to client at time of engagement or at any time subsequent to engagement if malpractice insurance limits lower than \$100k per occurrence/\$300k aggregate or if the professional liability insurance is terminated. Disclosure must be on state-prescribed form ([Rule 1.4](#)) and must be signed by client.

Information not available to public.

## **Oklahoma**

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No requirement.

## **Oregon – Malpractice Insurance Coverage Mandatory**

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### [Oregon Revised Statute 9.080\(2\)](#)

Requires attorneys to carry malpractice insurance of at least minimum limits equal to \$300k per occurrence/\$300k aggregate. Requires attorneys to pay assessment to Oregon Professional Liability Fund, which automatically covers each attorney.

## **Pennsylvania – Written Disclosure to Client Required; Disclosure to State Bar Required; Information Public**

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### [Pennsylvania Rule of Professional Conduct 1.4\(c\)](#)

Requires disclosure in writing to “new clients” if lawyer does not have malpractice insurance, if malpractice insurance limits lower than \$100k per occurrence/\$300k aggregate, or if the professional liability insurance is terminated.

Requires disclosure on annual attorney registration statement.

Information made available to public on [Pennsylvania’s Disciplinary Board](#) website.

## **Rhode Island – Disclosure to State Bar Required; Information Not Public**

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### [Rhode Island Supreme Court Article IV Rule 1\(b\)](#)

Requires disclosure on annual attorney registration statement to Rhode Island Supreme Court.

Must notify Clerk of the Supreme Court within 30 days of any change.

Information not made available to public.

## **South Carolina**

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No requirement.

## **South Dakota – Written Disclosure to Client Required; Disclosure to State Bar Required**

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### [South Dakota Rule of Professional Conduct 1.4\(c\)](#)

Requires disclosure to clients in writing to if lawyer does not have malpractice insurance limits “of at least \$100k” or if the professional liability insurance is terminated or lapses.

Disclosure must be on lawyer’s letterhead and use specific disclosure language written in rule. Disclosure must be included in every written communication with a client. Rule 7.5 requires disclosure to be in black ink with type no smaller than the type used for the lawyer’s names.

Requires disclosure on annual attorney registration statement to State Bar.

## **Tennessee**

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No requirement.

## **Texas**

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No requirement. Specifically declined to adopt rule requiring insurance disclosure.

## **Utah**

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No requirement.

## **Vermont**

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No requirement.

## **Virginia – Disclosure to State Bar Required; Information Public**

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### [Rules of the Virginia Supreme Court – Professional Guidelines 18](#)

Requires disclosure in annual registration statement to Virginia State Bar.

Registration statement asks: 1) whether attorney is covered by professional liability insurance; 2) whether the attorney is engaged in the private practice of law; and 3) if engaged in the private practice of law, whether they attend to maintain coverage during the duration of their practice.

Information available to public on Virginia Bar's website under headings: Public Information → Attorney Records Search → Attorneys without Malpractice Insurance

## **Washington – Disclosure to State Bar Required; Information Public**

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### [Washington Supreme Court Admission and Practice Rule 26](#)

Requires disclosure in annual registration statement to Washington Bar.

Registration statement asks: 1) whether lawyer is engaged in private practice of law; 2) if engaged in private practice of law, whether lawyer is currently covered by professional liability insurance; 3) whether lawyer plans to maintain insurance during duration of private practice; and 4) whether they are a full-time government lawyer or in-house counsel.

Must notify the Bar in writing within 30 days of insurance policy lapsing or terminating for any reason.

Information available to public on Washington State Bar's website.

## **West Virginia – Disclosure to State Bar Required; Information Public**

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### [State Bar By-Laws, Article III\(A\)](#)

Requires disclosure in annual registration statement to West Virginia State Bar.

Registration statement asks: 1) whether lawyer is engaged in private practice of law; 2) if so engaged, whether the lawyer is covered by limits of not less than \$100k per claim/\$300k aggregate; 3) if not covered by professional liability insurance, whether the lawyer has another form of adequate financial responsibility in an amount not less than \$100k to satisfy any liability arising from lawyer or person employed by lawyers' acts or omissions; and 4) whether lawyer is exempt from this rule.

Information available to public on West Virginia State Bar website.

## **Wisconsin**

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No requirement.

## **Wyoming**

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No requirement. However, [comment \[1\]](#) to Wyoming Rule of Professional Conduct 1.4 states that upon an inquiry from prospective clients, an attorney must respond truthfully regarding "financial responsibility, including whether the lawyer has legal liability insurance."



24 (e) Each member shall provide the State Bar of Georgia with confirmation of coverage  
25 upon request.

26 (f) The information required by this Rule is due on July 1 of each year. A member  
27 who does not comply with the requirements of the Rule by September 1 shall cease to be  
28 a member in good standing. A member deemed not to be in good standing under this  
29 Rule shall be returned to good standing upon making the disclosure required in subpart  
30 (a) to the Membership Department of the State Bar of Georgia.

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32



57 Rule shall be returned to good standing upon making the disclosure required in subpart  
58 (a) to the Membership Department of the State Bar of Georgia.

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85 “not covered,” or “exempt.” Each member shall provide the State Bar of Georgia with  
86 confirmation of coverage upon request.

87 (e) The State Bar of Georgia encourages those members who do not have a policy of  
88 professional liability insurance to complete the Bar’s voluntary online self-assessment of the  
89 operation of their law practice and to avail themselves of the resources which it recommends to  
90 address any deficiencies identified by the self-assessment.

91 (f) The information required by part (a) of this Rule is due on July 1 of each year. A member  
92 who does not comply with the requirements of the Rule by September 1 shall cease to be a  
93 member in good standing. A member deemed not to be in good standing under this Rule shall be  
94 returned to good standing upon making the disclosure required in subpart (a) to the Membership  
95 Department of the State Bar of Georgia.

96



120 each module of the self-assessment completed. Upon completion of each module in the  
121 Proactive Management Based self-assessment program, the lawyer will receive the results of the  
122 self-assessment and suggested resources to help the lawyer address any deficiencies identified by  
123 the self-assessment. All information related to the self-assessment shall be confidential and not  
124 shared with the Office of the General Counsel, except for the fact of completion of the self-  
125 assessment. Neither the Bar nor the lawyer may offer this information into evidence in a  
126 disciplinary proceeding. The Bar may report self-assessment data publicly in the aggregate.

127 (e) The information required by this Rule is due on July 1 of each year. A member who  
128 discloses that he or she is not covered by a professional liability insurance policy remains in  
129 good standing for one year in order to complete the Proactive Management-Based Assistance  
130 Program or to obtain insurance. If the member neither completes the self-assessment required at  
131 parts (c) and (d) nor obtains insurance, he or she goes out of good standing on July 1 of the  
132 following year. A member deemed not to be in good standing under this Rule shall be returned to  
133 good standing upon making the disclosure required in subpart (a) to the Membership Department  
134 of the State Bar of Georgia and, if not covered by a policy of malpractice insurance, by  
135 completing the self-assessment course.

136 (f) Each member shall provide the State Bar of Georgia with confirmation of coverage upon  
137 request.

138 (g) The Bar will provide the information required by part (a) of this rule upon request from any  
139 person but will not publish it as part of the member's listing in the Member Directory on the  
140 official website of the State Bar of Georgia.

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OPTION 4  
Mandatory Insurance Requirement

**Rule 1-210. Professional Liability Insurance**

(a) All active members of the State Bar of Georgia engaged in the private practice of law in Georgia must be covered by a policy of professional liability insurance, in an amount no less than \$100,000 per claim and \$300,000 in the aggregate (“Minimum Limits”). For any Minimum Limits policy the expenses of defense must be outside the policy limits so that the Minimum Limits stated above are not reduced by payment of attorney’s fees or claims expenses incurred by the insurer for the investigation, adjustment, defense, or appeal of a claim.

(b) The following members shall be exempt from the requirements of this rule:

(1) Members who are employed by a governmental entity or other organization and whose practice is limited to matters concerning the entity or organization;

(2) Members whose practice consists solely of serving as an arbitrator or mediator; and

(3) Members who are not actively engaged in the practice of law or who do not represent clients.

(c) Each lawyer who is required by this rule to have professional liability insurance shall notify the Membership Department of the State Bar of Georgia in writing within 30 days if coverage lapses, is no longer in effect, or terminates for any reason. Each lawyer’s insurance status shall appear in the State Bar Member Directory as either “covered,” “not covered,” or “exempt.” Each member shall provide the State Bar of Georgia with confirmation of coverage upon request.

167 (d) The information required by this Rule is due on July 1 of each year. A member  
168 who does not comply with the requirements of the Rule by September 1 shall cease to be  
169 a member in good standing. A member deemed not to be in good standing under this  
170 Rule shall be returned to good standing upon providing the Executive Director of the  
171 State Bar of Georgia with proof of professional liability insurance coverage.

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OPTION 5

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Take no action