State Bar of Georgia

Professional Liability Insurance Committee

AGENDA

October 18, 2019

Savannah, Georgia

I. Welcome & Introductions
   (Twyman)  1

II. Approval of Minutes from September 24, 2019 meeting
    (Twyman)  2-3

III. Discussion Items
    (Frederick)

   A. Preparation for Town Hall
      October 18, 2019 from 3:30-5 pm at The DeSoto Hotel in Savannah, GA
      a. Power Point Presentation  4-11
      b. Memo to Bar Membership  12-18

   B. Next Steps
      a. Review feedback received to date
      b. Possible locations for additional Town Hall meetings
         i. January 10, 2020 from 3:30-5pm at the Georgian Terrace Hotel
         ii. March 2020 at the Chateau Elan Winery & Resort

   C. Future meeting dates
      a. November 5, 2019 from noon-2 pm at Bar Headquarters
      b. December 4, 2019 from noon-2 pm at Bar Headquarters

IV. Adjourn
2019 - 2020

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 2020

Member
Sarah Brown Akins, Savannah 2020
Kimberly Cofer Butler, Savannah 2020
Christy Crowe Childers, Macon 2020
Stephanie Kirijian Cooper, Birmingham 2020
J. Hamilton Garner, Moultrie 2020
Brandon Cory Goldberg, College Park 2020
Warren Raymond Hinds, Roswell 2020
Kenneth Bryant Hodges III, Atlanta 2020
Linley Jones, Atlanta 2020
Herman Maddox Kilgore, Marietta 2020
David Neal Lefkowitz, Athens 2020
Daniel James O'Connor, Vidalia 2020
Dennis C. Sanders, Thomson 2020
Toronda Michelle Silas, Atlanta 2020
R. Gary Spencer, Atlanta 2020
Shannon McKenzie Sprinkle, Atlanta 2020
Meredith Wilson Sutton, Marietta 2020

Executive Committee Liaison
David S. Lipscomb, Lawrenceville 2020

Staff Liaison
Paula J. Frederick, Atlanta 2020
Professional Liability Insurance Committee  
Meeting of September 24, 2019  
Atlanta, Georgia  

MINUTES  

The meeting was called to order at 12:00 p.m.  

Attendance:  

Committee members: Christopher P. Twyman, Kimberly C. Butler (phone), Stephanie K. Cooper (phone), J. Hamilton Garner (phone), Brandon C. Goldberg, Warren R. Hinds, Kenneth B. Hodges, III (video), Linley Jones (phone), Daniel J. O’Connor (phone), Dennis C. Sanders, Toronda M. Silas, Shannon M. Sprinkle, and Meredith W. Sutton  

Executive Comm. Liaison: David S. Lipscomb  


The Committee approved the Minutes from the August 20, 2019 meeting.  

Discussion Items:  

The Committee decided to present several options to the bar membership and the Board of Governors. The options will include:  

- Mandatory Insurance Rule  
- Mandatory Disclosure Rule with a mandatory self-assessment course for attorneys without insurance  
- Mandatory Disclosure Rule with voluntary self-assessment course for attorneys without insurance  
- Mandatory Disclosure Rule  

Shannon Sprinkle, J. Hamilton Garner, David Lipscomb, and Kimberly Butler will work on the language of the proposed Mandatory Insurance Rule, specifically the non-eroding portion of the rule.  

Chair, Christopher Twyman, will circulate a memo along with the four options to the members of the Board of Governors prior to Fall meeting of the Board. Bar Counsel will invite the Savannah Bar and other local bars to the October town hall meeting.
Committee members will be assigned to present the different options at the October town hall meeting in Savannah.

After the October town hall meeting, the Committee will begin making arrangements to present the options at different local bar associations.

The ultimate goal of the Committee is to have all the final versions of all the options ready by the Spring Board of Governors meeting. The Committee will give the Board of Governors the final version for voting at the Board’s Annual meeting in June 2020.
Committee Members
- Christopher Twyman, Chair
- Sarah Akins
- Kimberly Butler
- Christy Childers
- Stephanie Cooper
- J. Hamilton Garner
- Brandon Goldberg
- Warren Hinds
- Kenneth Hodges, III
- Linley Jones
- Herman Kilgore
- David Lefkowitz
- Daniel O'Connor
- Dennis Sanders
- Toronda Silas
- R. Gary Spencer
- Shannon Sprinkle
- Meredith Sutton
- David Lipscomb – Executive Comm. Liaison

Mandatory Disclosure
Option One
- Lawyers in private practice must disclose whether they are covered.
- Published in the online Member Directory.
- Information due July 1st
- Noncompliant lawyers go out of good standing on September 1st
- Must make disclosure to Membership Dept. to return to good standing.

Options
Option One: Mandatory Disclosure
Option Two: Mandatory Disclosure with Voluntary Risk Assessment
Option Three: Mandatory Disclosure with Mandatory CLE for Lawyers without Insurance
Option Four: Mandatory Insurance

Exemptions
Option One
- Inactive
- Government lawyers
- In-house counsel
- Arbitrator/Mediator
Sample Directory Listing
Illinois

Sample Directory Listing
Covered

Sample Directory Listing
Not Covered

Sample Directory Listing
Not Covered

Sample Explanation
Colorado

Mandatory Disclosure
Option One

Rule 1-210. Professional Liability Insurance

(a) Each active member of the State Bar of Georgia who is engaged in the private practice of law in Georgia shall disclose on the annual license fee statement whether the member is covered by a policy of professional liability insurance.
Mandatory Disclosure
Option One

Rule 1-210. Professional Liability Insurance (continued)

(b) Each member who has previously reported being covered by professional liability insurance shall notify the State Bar of Georgia in writing in such form and manner as the Board may designate within 30 days if the insurance policy providing coverage lapses, terminates, or is no longer in effect for any reason.

Mandatory Disclosure
Option One

Rule 1-210. Professional Liability Insurance (continued)

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

Mandatory Disclosure
Option One

Rule 1-210. Professional Liability Insurance (continued)

(c) The information required by this Rule shall be publicly available and included in the member's listing in the Member Directory on the official website of the State Bar of Georgia.

Mandatory Disclosure with Voluntary Risk Assessment

OPTION TWO

Mandatory Disclosure with Voluntary Risk Assessment
Option Two

- All provisions of Option One, plus
- Encourage lawyers without coverage to take a voluntary risk assessment course.
- The course is free and lawyers would receive CLE credit upon completion.
- Results are confidential.
- The program generates information tailored to the lawyer's needs to reduce the risk of a malpractice claim.
Voluntary Risk Assessment
Colorado

There are ten self-assessment tests:
- Developing Competent Practices
- Communicating in an effective, timely, professional manner
- Ensuring that Confidentiality requirements are met
- Avoiding conflicts of interest
- File management, security, and retention

Mandatory Disclosure with Voluntary Risk Assessment Option Two

Rule 1-210. Disclosure of Professional Liability Insurance (continued)

(b) Each member who has previously reported being covered by professional liability insurance as set forth in paragraph (a)(2) of this Rule shall notify the State Bar of Georgia in writing in such form and manner as the Board may designate within 30 days if the insurance policy providing coverage lapses, terminates, or is no longer in effect for any reason.

Voluntary Risk Assessment
Colorado

There are ten self-assessment tests:
- Managing the law firm/legal entity and staff appropriately
- Charging appropriate fees and making appropriate disbursements
- Ensuring that reliable trust account practices are in use
- Access to justice and client development
- Wellness and inclusivity

* Colorado Assessment

Mandatory Disclosure with Voluntary Risk Assessment Option Two

Rule 1-210. Disclosure of Professional Liability Insurance (continued)

(c) The information required by this Rule shall be publicly available and included in the member’s listing in the Member Directory on the official website of the State Bar of Georgia.

Mandatory Disclosure with Voluntary Risk Assessment Option Two

Rule 1-210. Disclosure of Professional Liability Insurance (continued)

(d) The State Bar of Georgia encourages those members who are not covered by a policy of professional liability insurance to complete the Bar’s voluntary online self-assessment of the operation of their law practice and to avail themselves of the resources which it recommends to address any deficiencies identified by the self-assessment.
Mandatory Disclosure with Voluntary Risk Assessment Option Two

Rule 1-210. Disclosure of Professional Liability Insurance (continued)

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

Mandatory Disclosure with Mandatory CLE Option Three

Timing

- Disclosure required by July 1st.
- After disclosure lawyers have one year to do risk assessment or obtain coverage.

Optional Disclosure with Mandatory CLE for Lawyers

OPTION THREE

Mandatory Assessment Illinois

There are 6 modules to complete the course:

Mandatory Assessment

Illinois

There are 8 modules to complete the course (continued):

- Client Trust Accounts

- Attorney Wellness

- Civility & Professionalism

- Diversity & Inclusion, Culturally Competent Lawyer

Mandatory Disclosure with Mandatory CLE

Option Three

Rule 1-210 Disclosure of Professional Liability Insurance (continued)

(c) Every other year, beginning with registration for 2020-2021, each lawyer covered by paragraph (a) who discloses that he or she does not cover a policy of professional liability insurance shall complete a self-assessment of the operation of his or her law practice or shall obtain malpractice insurance and report that fact on the annual license fee statement for the following year.

Mandatory Disclosure with Mandatory CLE

Option Three

Rule 1-210 Disclosure of Professional Liability Insurance (continued)

(d) The Proactive Management-Based Assistance program is a free interactive online educational program provided by the Bar. It requires the lawyer to assess his or her law office and operations based upon requirements of the Georgia Rules of Professional Conduct and best-practices for operation of a law office. Lawyers may earn one hour of Ethics CLE credit for each module of the self-assessment completed.

Mandatory Disclosure with Mandatory CLE

Option Three

Rule 1-210 Disclosure of Professional Liability Insurance (continued)

(b) Each lawyer shall maintain, for a period of six years from the date the coverage is reported, documentation showing the name of the insurer, the policy number, the amount of coverage and the term of the policy, and shall produce such documentation at the request of the State Bar of Georgia.

Mandatory Disclosure with Mandatory CLE

Option Three

Rule 1-210 Disclosure of Professional Liability Insurance (continued)

(e) Upon completion of each module in the Proactive Management-Based self-assessment program, the lawyer will receive the results of the self-assessment and suggested resources to help the lawyer address any deficiencies identified by the self-assessment. All information related to the self-assessment shall be confidential and not shared with the Office of the General Counsel, except for the fact of completion of the self-assessment. Neither the Bar nor the lawyer may offer this information into evidence in a disciplinary proceeding. The Bar may report self-assessment data publicly in the aggregate.
Mandatory Disclosure with Mandatory CLE Option Three

Rule 1-210. Disclosure of Professional Liability Insurance (continued)

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

Mandatory Insurance Option Four

- Require lawyers in private practice to be covered by malpractice insurance policy.
- Lawyers have to report whether they have insurance on their dues statement.
- Information is public.
- Lawyers who do not comply will go out of good standing on September 1st of the Bar year.

Mandatory Disclosure with Mandatory CLE Option Three

Rule 1-210. Disclosure of Professional Liability Insurance (continued)

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

Mandatory Insurance Option Four

Rule 1-210. Professional Liability Insurance (continued)

(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 occurrence 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.

Mandatory Insurance Option Four

Rule 1-210. Professional Liability Insurance (continued)

(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.
Mandatory Insurance
Option Four
Rule 1-210. Professional Liability Insurance
(continued)

(c) Each lawyer who is required by this rule to have professional liability insurance shall so certify by providing the name of the insurance company and the policy number on the annual license fee notice, and 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 "yes," "no," or "exempt."

Mandatory Insurance
Option Four
Rule 1-210. Professional Liability Insurance
(continued)

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

QUESTIONS AND COMMENTS
Dear Fellow Bar Member:

I am honored to serve as the chair of the Professional Liability Insurance (PLI) Committee. This year’s committee has taken a fresh look at the issue of mandatory insurance coverage and has considered the feedback that you and other Bar members have provided. We have modified the draft rule that was presented to the Board last spring, but we also want to present three other options for discussion and feedback:

**Option One** would require all lawyers in private practice to disclose on their dues statement whether they are covered by a malpractice insurance policy. The information would be published in the member’s listing in the online Member Directory. Lawyers in private practice who fail to disclose would go out of good standing on Sept. 1 of the Bar year, which is the same date that members who do not pay their license fees cease to be in good standing. To return to good standing the member would need to make the disclosure to the Membership Department of the Bar. Lawyers who do have coverage would not be required to provide information about the insurance company, policy number or policy limits.

**Option Two** would include all of the provisions of Option One, with an additional provision encouraging lawyers who are not covered by a PLI policy to take a free voluntary self-assessment course provided by the Bar online and designed to evaluate the lawyer’s practice for the risk of malpractice. The assessment would be modeled on one used in Colorado. Members could receive CLE credit upon completion of the course. The results would be confidential and members would receive information about resources to help reduce the risk of a malpractice claim.

**Option Three** would include all of the provisions of Options One and Two, with two changes: 1) the self-assessment course (Proactive Management-Based Assistance) would be mandatory for all lawyers who are not covered by a PLI policy, and 2) the information would not be published on the website. If the lawyer failed to make the disclosure or, if not covered, to either complete the assessment or to obtain coverage within one year of the required disclosure date, he or she would go out of good standing.

**Option Four** is the proposal that requires lawyers in private practice to be covered by a PLI policy. We have amended the provision that required the coverage to be non-eroding so that it would only apply to policies with minimal limits. This option would require lawyers to obtain or be covered by a PLI policy and to report that fact to the Bar on the dues statement. Members who do not comply would go out of standing as of Sept. 1 of the Bar year.

The draft language for each of the options is attached.

The committee is hosting a Town Hall meeting during the 2019 Fall Board of Governors Meeting in Savannah on **Friday, Oct. 18** from 3:30-5 p.m. at the DeSoto Savannah Hotel. Please attend if you can. Committee members will be present to hear your thoughts on the current proposal and other options or to answer any questions that you have.

As always, the committee welcomes your comments as we continue with this important work.

Chris Twyman  
Rome Circuit, Post 1  
chris.twyman@cbtlaw.com
OPTION 1

Mandatory Disclosure Requirement

Rule 1-210. Professional Liability Insurance

(a) Each active member of the State Bar of Georgia who is engaged in the private
practice of law in Georgia shall disclose on the annual license fee statement whether the
member is covered by a policy of professional liability insurance.

(b) Each member who has previously reported being covered by professional liability
insurance shall notify the State Bar of Georgia in writing in such form and manner as the
Board may designate within 30 days if the insurance policy providing coverage lapses,
terminates, or is no longer in effect for any reason.

(c) The information required by this Rule shall be publicly available and included in the
member's listing in the Member Directory on the official website of the State Bar of
Georgia.

(d) Each member shall maintain documentation showing the name of the insurer, the
policy number, the amount of coverage and the term of the policy, and shall produce such
documentation at the request of the State Bar of Georgia.

(e) The information required by this Rule is due on July 1 of each year. A member
who does not comply with the requirements of the Rule by September 1 shall cease to be
a member in good standing. A member deemed not to be in good standing under this
Rule shall be returned to good standing upon making the disclosure required in subpart
(a) to the Membership Department of the State Bar of Georgia.
OPTION 2
Mandatory Disclosure Requirement with Voluntary Assessment


a) Each year, every member of the State Bar of Georgia shall certify:

1) Whether the member is engaged in the private practice of law; and

2) Whether the member is currently covered by a policy of professional liability insurance.

b) Each member who has previously reported being covered by professional liability insurance as set forth in paragraph (a)(2) of this Rule shall notify the State Bar of Georgia in writing in such form and manner as the Board may designate within 30 days if the insurance policy providing coverage lapses, terminates, or is no longer in effect for any reason.

c) The information required by this Rule shall be publicly available and included in the member’s listing in the Member Directory on the official website of the State Bar of Georgia.

d) The State Bar of Georgia encourages those members who are not covered by a policy of professional liability insurance to complete the Bar’s voluntary online self-assessment of the operation of their law practice and to avail themselves of the resources which it recommends to address any deficiencies identified by the self-assessment.

e) The information required by part (a) of this Rule is due on July 1 of each year. A member who does not comply with the requirements of the Rule by September 1 shall cease to be a member in good standing. A member deemed not to be in good standing under this Rule shall be returned to good standing upon making the disclosure required in subpart (a) to the Membership Department of the State Bar of Georgia.
OPTION 3

Mandatory Disclosure Requirement with Mandatory CLE for Lawyers Without Insurance

(Proactive Management-Based Assistance)

Rule 1-210 Disclosure of Professional Liability Insurance.

(a) Each active member of the State Bar of Georgia who is engaged in the private practice
of law in Georgia shall disclose on the annual license fee statement whether the member is
covered by a policy of professional liability insurance. Members whose practice consists solely
of serving as an arbitrator or mediator and members who do not represent clients are exempt
from the provisions of this rule.

(b) Each lawyer shall maintain, for a period of six years from the date the coverage is
reported, documentation showing the name of the insurer, the policy number, the amount of
coverage and the term of the policy, and shall produce such documentation at the request of the
State Bar of Georgia.

(c) Every other year, beginning with registration for 2020-2021, each lawyer covered by
paragraph (a) who discloses that he or she is not covered by a policy of professional liability
insurance shall complete a self-assessment of the operation of his or her law practice or shall
obtain malpractice insurance and report that fact on the annual license fee statement for the
following year.

(d) The Proactive Management-Based Assistance program is a free interactive online
educational program provided by the Bar. It requires the lawyer to assess his or her law office
and operations based upon the requirements of the Georgia Rules of Professional Conduct and
best-practices for the operation of a law office. Lawyers may earn one hour of Ethics CLE credit
for each module of the self-assessment completed. Upon completion of each module in the
Proactive Management Based self-assessment program, the lawyer will receive the results of the
self-assessment and suggested resources to help the lawyer address any deficiencies identified by
the self-assessment. All information related to the self-assessment shall be confidential and not
shared with the Office of the General Counsel, except for the fact of completion of the self-
assessment. Neither the Bar nor the lawyer may offer this information into evidence in a
disciplinary proceeding. The Bar may report self-assessment data publicly in the aggregate.

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

(f) The Bar will provide the information required by part (a) of this rule upon request
from any person but will not publish it as part of the member’s listing in the Member Directory
on the official website of the State Bar of Georgia.
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 occurrence 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 so certify by providing the name of the insurance company and the policy number on the annual license fee notice, and 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 “yes,” “no,” or “exempt.”
(d) The information required by this Rule is due on July 1 of each year. A member who does not comply with the requirements of the Rule by September 1 shall cease to be a member in good standing. A member deemed not to be in good standing under this Rule shall be returned to good standing upon providing the Executive Director of the State Bar of Georgia with proof of professional liability insurance coverage.