

Dear Fellow Board 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-A 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 September 1 of the Bar year, which is the same date that members who do not pay their dues 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 ONE-B 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 The information would not be published in the member’s listing in the online Member Directory.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 September 1 of the Bar year, which is the same date that members who do not pay their dues 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-A, with an additional provision encouraging lawyers who are not covered by a PLI policy to take a 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 take the assessment course for free and receive CLE credit upon completion. The results of the test 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-B and Two, but the self-assessment course would be mandatory for all lawyers who are not covered by a PLI policy. 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 September 1 of the Bar year.

OPTION FIVE is the option to not take any action on the matter.

The draft language for each of the options is attached to this memo. We look forward to further discussion and hope to take a final vote on this matter during the current Bar year. Committee members have expressed a strong preference for in-person debate, so if the Spring 2021 meeting is virtual the Committee may recommend holding the issue for discussion and a vote at the 2021 Annual meeting.

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

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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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33 OPTION 1B

34 Mandatory Disclosure Requirement (without publication)

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

37 (a) Each active member of the State Bar of Georgia engaged in the private practice of
38 law in Georgia shall disclose on the annual license fee statement whether the member has
39 professional liability insurance.

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

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

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

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

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

52 (d) Each member shall provide the State Bar of Georgia with confirmation of coverage
53 upon request.

54 (e) The information required by this Rule is due on July 1 of each year. A member
55 who does not comply with the requirements of the Rule by September 1 shall cease to be
56 a member in good standing. A member deemed not to be in good standing under this

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.

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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.

(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) 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

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