ATTORNEY COMMENTS FROM STATE BAR BLOG
Comments (211)

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steven b frankoff - September 26, 2009 2:03 PM
Bad idea

Susan - September 28, 2009 12:27 PM
Forcing attorneys to reveal their PLI would invite lawsuits. Clients are already at liberty to inquire of a prospective attorney regarding their PLI or lack thereof.

Grant Harpold - September 29, 2009 8:38 AM
I guess we're just plumbers afterall. Another hit on our "profession" if this "feel good" idea passes.

Joel Holm - September 29, 2009 11:29 AM
I think it is a bad idea. All attorneys have clients who are never satisfied even when they have reached a good settlement to their case. Mentioning liability insurance to this sort of client will only encourage malpractice suits for them to see what else they can get.

Kelly Matthews - September 29, 2009 12:34 PM
I think it is a bad idea. Clients could simply inquire about it if necessary. Clients come to us for litigious reasons in the first place, to make this disclosure offers them another avenue of recourse - against the attorney. In other words, we would just be planting a seed in their minds. Plus, smaller offices may not have the insurance for financial reasons and to force the disclosure carries a sense of not being a good lawyer.

Bruce Schimmel - September 29, 2009 4:42 PM
This proposal is another attempt by large firms to gain an advantage over small firms and solo practice members.

First, I do not and have not carried malpractice insurance for decades. It was too expensive and would have put me out of business. If I have to carry malpractice insurance to not be disadvantaged by large firms, I'll have to raise my rates to the level of attorneys in large firms. That will put me at a disadvantage and cause more clients to not be able to afford legal services. Large firms want this. Then, only their large clients, which can afford higher rates, will be able to pay for legal services.

Second, I don't need malpractice insurance. I don't work on matters that are likely to involve a malpractice claim, such as securities offerings.

The only claim I ever had filed against me was by a non-client, the Federal Government, whose case was so weak, it was dismissed on summary judgment.

I believe that if I had not had malpractice insurance, the Federal Government would not even have file suit. Malpractice insurance breeds claims.

Third, I've never had a client even ask me whether I have malpractice insurance or sue me for malpractice.

Forth, if a client wants to know whether an attorney has malpractice insurance, it can ask. We don't need a confessional statement raising an issue that is covered by the free market.

If we are going to have to state differences between large firms we may as well add whether we make large political contributions to judges, or maintain firm retreats to entertain clients.

This is a bad idea.

Wayne Watson - September 29, 2009 5:19 PM
I carry malpractice insurance but I think this is a bad idea and should not be required.

Michelle Hinson - September 30, 2009 7:44 AM
Being forced to let the clients know that we have a deep pocket if they want to get some money "without hurting anyone but the insurance company" will also make grievances in support of the malpractice case more prevalent. I resented it when we were forced to notify each client of how to file a grievance against us, just like the beauticians. I felt that was a blow against our being professionals and this proposal would be a further onslaught.

Kurt Arbuckle - September 30, 2009 8:31 AM
This is obviously just a way to force attorneys to get PLI. "Hi, I'll be glad to represent you, but I don't carry PLI." How likely is that client going to hire that lawyer? I believe that all lawyers should carry PLI at a level compatible with their practice. So why not simply require all attorneys to carry some minimum amount of PLI. It would probably make it cheaper for all of us.
Janis - September 30, 2009 9:15 AM

This is a TERRIBLE idea! I'm in a small firm and I DO have malpractice coverage. However, to advertise that coverage to clients is to invite the clients to file a claim. In 30 years of practice, I've never had a claim, but I've had some dissatisfied clients. - Even when their cases were successful! That's the nature of an advesarial process. Requiring up-front disclosure of malpractice insurance is stupid. The only ones who would benefit from it are the insurance agents and the big firms.

Shannon Salmon - September 30, 2009 9:39 AM
What a horrible idea which invites lawsuits. What is the alleged purpose, and who proposed this?

James Saint - September 30, 2009 9:53 AM
I too believe this is a very bad idea. I think we are getting too political and reactionary. I carry PLI and always plan to. However, I do not believe that the insurance industry

should be able to make this mandatory, which is where this is headed. If someone decides they do not need to carry it, then they should not have to. I think that is a bad idea, but we are way too paternalistic already. This will encourage baseless and unnecessary lawsuits and will be bad for the profession.

Randy - September 30, 2009 10:52 AM
If one drives a car in Texas, the person is required to have minimum liability insurance. Why should that same standard not apply when a person entrusts their life savings, or issues involving family unity with a trusted professional? As a profession, and not a trade association, we as lawyers should hold ourselves to higher standards in dealing with the public.

It is clear from the comments, that many responders failed to read the recommendation of the Grievance Oversight Committee or to look at the experience in other states. As recommended by the G.O.C., no coverage would be mandated and no insured lawyer would be required to disclose that the lawyer is insured. The ONLY requirement affects lawyers who choose to "go bare". For clients of those lawyers, it is a material fact regarding representation that should in all honesty be disclosed.

Michael H - September 30, 2009 11:38 AM
The Supreme Court should follow the Task Force recommendation and not implement any rule about malpractice insurance disclosure.

W Shelton - September 30, 2009 12:46 PM
Bad idea.

Rich Robins - September 30, 2009 3:29 PM
Surely the INSURANCE LOBBY has nothing to do with this reform effort? The Texas Bar already makes a lot of money off of us in exchange for so little, and it's always looking to make more. Follow the money...

Michael Cramer - October 1, 2009 4:07 PM
Let me get this straight. We cannot tell a jury that a defendant has insurance because the assumption is that they will award a run-away verdict, knowing that the insurance company will have to pay the judgment.
Why do lawyers not deserve the same privilege against said disclosure?
Have any of the Supreme Court justices ever paid a malpractice premium for themselves, or was it paid by some firm administrator in their ivory tower?

JHP - October 2, 2009 10:59 AM
Requiring such disclosure protects no one. Stop telling me how to run my firm.

RWC - October 2, 2009 12:45 PM
This is a terrible idea. The risk of malpractice is mine and I should have the right to either accept it or cover myself appropriately. Requiring a disclosure would force everyone to obtain coverage and invite malpractice suits.

RT - October 2, 2009 1:27 PM
I agree with the vast majority of comments that this is not a good idea. A client is able to inquire and determine if the lack of insurance is a reason not to hire an attorney. Like all the other background inquiries they may make to help determine whether to hire an attorney, this is only one. Why stop here? Why not disclose all past claims and disciplinary actions? That, to me, would be more relevant that the presence/lack of insurance. Why not disclose how many similar cases to the clients the attorney has handled? They may not have handled many, and shouldn't the client know that as well. It's a slippery slope that there is no need to proceed down.

IS - October 2, 2009 4:47 PM
Another bad idea--even for those of us that have insurance. What makes us so much more responsible than every other profession, including physicians? The only real beneficiaries would appear to be the liability carriers. How about a cap on liability in legal mal practice cases?

TGS - October 4, 2009 9:40 AM
It seems as though virtually every comment on the proposal was that the proposal was a bad idea. Add me to the list. Why would ANYONE want to put more money into the coffers of an insurance company, and we all know just how carriers react to any sort of a claim...stall, delay, deny.

I've been out there 30+ years w/o a single complaint. I carried insurance for a couple of years, but the cost/benefit ratio was not in my favor and I re-evaluated the decision to carry insurance.

rudy vasquez - October 4, 2009 4:56 PM
1. I am not in favor of disclosure.
2. I am in favor of large and small firms disclosing validated grievances and claims and settlements against large lawfirms for malpractice acts and omissions perpetrated on their clients.
3. I believe the legislature should look at the option that State Bar should be sunsetted at the next legislative opportunity. It may be found that the Bar serves no substantial purpose to attorneys or the public, save and except for a few. and I will notify my State senator of the same.

rc - October 4, 2009 9:32 PM
This is just an additional burden placed on many of us who are working to help those in need of legal representation. Not just sometimes, but all the time. For the insurance disclosure to be mandatory for attorneys while not mandatory for other professions is unequal treatment and discrimatory on its face. I am for having malpractice insurance, NOT for mandotorily disclosing whether we have it.

The "feel good" argument that its good for the consumer is a red herring. Is it really good for the consumer though? What we do lends itself to conflict because its based on conflict. We argue our client's perspective in a manner that hopefully results in a positive

outcome for them. Sometimes this doesn't happen. Not because of what we do or don't do, but because of the facts of the case. Some of our clients may not be happy with a jury verdict, an arbitrators decision, or if a conflict results, if an attorney has to withdraw.

When medical patients are signing away their rights through disclosures and waivers and arbitration agreements, do doctors also include a paragraph that says "oh yeah and by the way, in case don't turn out the way you like, I carry malpractice insurance?" No..and why not, because its an open invitation for litigation.

For those who do carry insurance, they would be more likely to be sued. For those who don't, their practice may suffer in numbers. Either way, there is no clear benefit to the consumer, lawyers would be less likely to take cases and could result in many attorneys or firms less willing to accept probono opportunities, why risk it right? The only party to benefit out this whole thing is...you guessed it, the INSURANCE COMPANIES!!

Kconn - October 5, 2009 8:06 AM
No. Toto is not in Kansas any more and lawyer's are not cars.

Abner Burnett - October 5, 2009 11:08 AM
I agree that this is a bad idea, and adopt by reference as if fully set out herein all of the reasons stated above as to why it is a bad idea.

I don't think anyone should ever have to announce their insurance coverage or lack thereof. Not even auto drivers have to publicly do that.

We just assume that a new Mercedes is insured and an old banger isn't.

E. Taylor - October 5, 2009 11:36 AM
Bad idea! Where does it end? Why not have legislation making ALL professionals disclose professional liability insurance? ANSWER: Because it is a bad idea. The only thing to come out of this is higher malpractice costs, increased malpractice claims and a more adversarial attorney/client relationship. We will all be on "guard" more than necessary to represent our clients. This is an expensive proposal to everyone involved and I am not sure who benefits from this disclosure. It is not like attorney malpractice coverage is a secret but it certainly does not need to be published. Finally, there is already too much information being posted on the internet - at what point does one thing lead to another and we no longer have security in private/privileged information (because of mandatory disclosures of professional information)?

E. Taylor - October 5, 2009 11:41 AM
I thought the issue was to disclose or not to disclose (lawyers malpractice insuranace coverage) - not whether malpractice insurance should be mandatory. There is a difference. Do Texas drivers have to publish on a public site their insurance coverage? I do not think so but I may be wrong.

G - October 5, 2009 12:11 PM
I am against disclosure. There is no justification for it.

Margret Schulman - October 5, 2009 12:29 PM
I feel strongly that lawyers should not be required to carry malpractice insurance and should not be required to notify clients or potential clients about coverage or lack thereof. For those with coverage, its disclosure invites the mindset that there is a deep pocket available to redress grievances (real or imagined). For those without insurance, being forced to disclose that fact implies to the consumer that the attorney or his services are somehow inferior. I do believe that requiring the disclosure of attorney discipline is an important factor that potential clients shoud be made aware of.

RA - October 5, 2009 1:54 PM
I see no reason for disclosure. Terrible idea.

David Bower - October 5, 2009 4:22 PM
An outrageous idea.

Lets see if any of us can remember the last Doctor or Hospital which disclosed their malpractice coverage to me, or the Nursing Home that we put our parents into, or my CPA, or my Home Builder or General Contractor.

It is the Small Practitioners who take the brunt of these consumer driven initiatives.

Kyle - October 6, 2009 2:24 PM
I will be agreeable to the disclosure when the TARP money is payed back, (i.e. when hell freezes over). If we have too disclose PLI, then give us a cap on damages awared in a legal malpractice case, say, the amount of the PLI policy purchased.

Bob Kalinke - October 6, 2009 2:28 PM
Like others, I carry malpractice insurance but do not believe that the State Bar of Texas should be involved with my business. They should regulate ethics, not business, and this is not an ethics issue.

good lawyer - October 6, 2009 3:07 PM
Absurd. Probably another TLR initiative and the Texas "supreme" Court is all too happy to oblige. At some point enough should be enough. If the people wanting to pass this are so worried about Texas consumers, maybe they should put their time and money into electing a high court with some integrity. Hopefully the State Bar will stand up and keep it from passing.

Sandra - October 6, 2009 3:14 PM
I too believe that this is an outrageous idea. It is not fair to the solo practioner and small firms.

Dan Wash - October 6, 2009 4:17 PM
While I do carry malpractice insurance and think it is a good idea for my clients and myself, I do not think it is ever wise to tempt a greedy or unhappy client to make a claim by letting them know I have made provision for it. I understand that it is something that a person seeking representation might like to know, but I don't see that information being made available to me by my doctor, accountant, or other businesses. Do we need a target on our back?

Craig Daugherty - October 6, 2009 6:51 PM
Why is it always lawyers who get picked on with these inane ideas? What about the doctors? If it's a good idea for lawyers the same should certainly be true for our brothers in other professions. Let's make every doctor, chiropracter, nurse, hospital, insurance broker, plumber, accountant, etc. hang their policies on the wall (or for nurses) wear them on a badge.

Doesn't the Supreme Court have better things to do than harass us?

cecil r biggers - October 6, 2009 9:04 PM
Concur that this is a bad idea. As an active member of the pro bono college and of the College of the State Bar, this would discourage pro bono cases. Many of my most demanding clients are "pro bono" and to disclose that insurance is carried would only invite retaliation if their case is not resolved satisfactorily. {Note I have never had a complaint of any kind from a paying client}. I have been practicing for 35 years and believe that this idea is the product of an insurance lobby supported court.

L Macom - October 7, 2009 11:16 AM
Bad idea

Bruce Heffner - October 7, 2009 12:16 PM
They tried this same garbage in Florida and it was the insurance companies writing Attorney E&O that were pushing it, thinking it would generate more sales. Absurd what next diclose that I had my flu shot?

bruce heffner - October 7, 2009 12:26 PM
Good thinking! why would any atorney do pro bono work when it could cost them. Does Texas have a problem with attorneys getting sued and no assets are available to satisfy the damages? If you have to disclose, do you have to also state your policy limits carried or just that you have "insurance".

M. Murphy - October 7, 2009 12:46 PM
Requiring disclosure does nothing to protect the public. Whether a lawyer does or does not have insurance has no bearing on his/her professional competence. Actually, the reverse may be true - uninsured lawyers tend to be more careful because they can't rely on the insurance to bail them out if they make a mistake. Required disclosure will incorrectly "brand" lawyers who don't have insurance as "bad" lawyers in the public's mind. Further, it is unfair to solos and small firms who often cannot afford malpractice

insurance. Additionally, why should we have to anticipate everything a client might want to know in making a hiring decision? If it is important to them to know if a lawyer carries insurance, they can ask. But providing that information to people who didn't particularly care (especially if the disclosure is required only of uninsured attorneys) will likely give the impression that the attorney is not good or is operating outside the guidelines of acceptable practice.

Ralph H. Brock - October 7, 2009 12:50 PM
Why should we have to disclose whether we carry something we are not even required to have?

This is a solution to a problem that doesn't exist â€“ the brainchild of one Austin lawyer whose practice consists mainly of suing his colleagues who carry professional liability insurance for legal malpractice.

The whole process has been rigged â€“ an unrepresentative "task force" composed of the aforementioned Austin lawyer, chaired by a big-firm lawyer who stated his bias for disclosure before the task force even met, and a balance of big-firm and boutique lawyers â€“ no solos or small firm lawyers until an outcry was raised, and then only two, even though solo and small-firm lawyers make up nearly 70% of the Bar.

Then there is the Supreme Court's Grievance Oversight Committee, which also recommended disclosure as a disciplinary rule requirement, a committee that included eight lawyers, only two of whom would be subject to the rule â€“ the other six being government lawyers, law professors, or a member of a captive insurance defense law firm.

And speaking of government lawyers, they would not be affected by a disclosure rule â€“ only private practitioners. Private practitioners already carry the ball on the occupation tax and the legal services fee. We don't need another rule that adverse affects just one portion of the membership.

This is a bad idea, and it should not be imposed on the lawyers of Texas unless it is approved in a referendum of those lawyers.

Ben W. Stluka - October 7, 2009 2:57 PM
I strongly oppose the disclosure requirement

What is wrong with the current status of attorney Insurance Disclosure which
I assume is that if a client asks if you have professional liability coverage you disclose it or refuse to disclose it and the prospective client can make the decision whether or not to hire.

While I have coverage, I am not so sure it is a great idea for the state bar assn or supreme court to mandate disclosure; then what would be next, disclosure of policy limits, complicated options of being self insured as in

worker's comp, another state bar bureaucracy for Tx attorneys to pay bar dues to staff ? Why not require lawyers to wear a target on their backs ?

It is laughable that some folks think that the Texas Bar is a union for attorneys. Other than CLE (that usually costs extra) it seems to me that the focus is on pro bono programs, I.O.L.T.A. program that somehow the bar
assn justifies taking client's interest on trust funds to redistribute to others, a health insurance plan that has so many bells and whistles that many solos can not afford.

Why are not the exsisting rules of discovery which allow for disclosure of insurance coverage, limits, etc. sufficient for attorneys. Do doctors have to post malpractice coverage on their waiting room walls ? Seems like they may have a better union.

David Butterbaugh - October 7, 2009 3:29 PM
This is a very bad idea. Are doctors required to disclose whether or not they have liability insurance? I strongly urge the SBOT Board of Directors to NOT SUPPORT this proposed policy.

James Oden - October 8, 2009 9:09 AM
I agree with the majority that this will do nothing but encourage already litigous clients and create more lawsuits. It serves as no protection to the public. As many others have said, why does my doctor not have to disclose what he has to me? I vote NO!

Larry J. Doherty - October 8, 2009 11:40 AM
First: Require minimum limits as a predicate for keeping a license in good standing. Lawyers are the only insulated class of fiduciary NOT required to bond their fidelity.

Second: Allow disclosure of excess coverage for those who are proud of shouldering their responsibility.

Steve - October 8, 2009 1:29 PM
Quote: "If we are going to have to state differences between large firms we may as well add whether we make large political contributions to judges, or maintain firm retreats to entertain clients."

It is probably a good idea to require a complete disclosure in a public venue (such as an on-line repository) of every political contribution received by every judge, with an index by name and firm so that parties are aware when there are large donations at play.

Quote: "Are doctors required to disclose whether or not they have liability insurance?"

JACHO (http://www.jointcommission.org/) requires hospitals to require insurance as a part of accreditation. That is kind of like stating that before you can practice in Court or before any agency you have to have insurance on file there. I think that is a bit rigorous to

say the least (in other words, I don't think attorneys should have insurance requirements like doctors do).

Interesting thoughts though.

Dan Tartaglia - October 8, 2009 2:37 PM
I think it is a terrible idea. I am strongly opposed.

C. Michael Black - October 8, 2009 2:55 PM
I can think of many reasons why this proposal should be defeated, and not a single reason why it should not. For all of the reasons in the negative comments by others, this is a bad idea.

JHPhillips - October 8, 2009 2:58 PM
Bad idea!

Reminds me of the board certification disclosure - let's see if we can't make some other lawyer demean him/herself in public.

I'm not board certified - [the public hears - I'm not as good as someone who is certified]

I don't have e&o coverage - [the public hears - I'm not as good as someone who has coverage]

Stephen Paine - October 8, 2009 3:00 PM
I do not believe that lawyers should have to disclose whether they have professional liability insurance. Looking back over almost 40 years, I cannot recall an instance where a prospective client asked whether we had coverage. They are free to do so and we would answer honestly.

Bill Morgan - October 8, 2009 3:02 PM
This is not a good idea.

Michael A. Koenecke - October 8, 2009 3:09 PM
I agree with the majority of my colleagues here: a terrible idea. I wish the State Bar would pay half as much attention to pursuing malpractice and ethical lapses, not to mention investigating the unlicensed practice of law, as it does figuring out ways to make law practice more burdensome.

Thomas John Fisher - October 8, 2009 3:24 PM
I carry malpractice insurance due to the nature of most of my practice. That said, this is another bad idea from the State Bar and Supreme Court for all or most of the reasons stated above. There is always a bad apple in any barrel of apples, and posting insurance information is only begging for claims by the bad apple.

Amy J. Bloomquist - October 8, 2009 3:27 PM
I agree that this is not a good idea as it harms the small firms and solo practitioners, especially part-timers who may choose not to get the malpractice insurance because it is cost prohibitive.

Kim Hegwood - October 8, 2009 3:31 PM
I am against disclosure. I believe that it invites litigation and does not tell a client whether an attorney is competent or capable of handling a particular matter. There are a lot of solo attorneys practicing in Texas and the costs of malpractice insurance is usually very high. It punishes the wrong people.

Claudia Everett - October 8, 2009 3:41 PM
Although our firm carries malpractice insurance, I agree with the other posters that this is a terrible idea and will invite malpractice claims.

Keith Davis - October 8, 2009 3:52 PM
I think this is silly and insulting. I've never had a person I contacted for services have to disclose the insurance they carry to me; why should I have to disclose it to my potential clients? On the other hand, whenever I have asked vendors whether they had insurance or for proof of insurance, they have been happy to comply, just as I would comply with a potential client's request.

I suspect most attorneys already provide way more information about themselves to their clients than most other businesses do. Why are we singled out for this crazy requirement?

Disclosure should not be required.

Keith

John Tiholiz - October 8, 2009 4:23 PM
Am very much against. Does nothing to improve ethics or the quality of legal representation. Will indirectly force everyone to buy insurance without mandating it, which is clearly the unstated intent, and is a huge gift to for-profit insurance companies.

Andy Friedmann - October 8, 2009 5:15 PM
I, too, oppose disclosure. The main reasons have already been stated quite well, and I hope the sheer volume of protesting attorneys helps derail this terrible idea.

Greg Richards - October 8, 2009 5:41 PM
Bad idea. I don't need to repeat the reasons why. Other comments pretty much cover it.

Benjamin J. Cuba - October 8, 2009 6:40 PM
Our firm has coverage. We are strongly opposed to disclosure requirements.

Charlotte Yochem - October 8, 2009 6:52 PM
I am opposed to this.

William Boor Jr - October 8, 2009 9:34 PM
This is a bad idea that if implemented will, I believe, frustrate goals the State Bar and the Texas Supreme Court strive to achieve, From a purely economic perspective this will have the effect of increasing the cost to conduct business which will force some folks out of the profession. In turn, there will be less time and less funding available to serve the public through various pro bono efforts.

Cory - October 9, 2009 9:21 AM
I think this is a bad idea. If it has to be done, at the very least it should be limited to requiring disclosure only of those who do not carry malpractice insurance.

Kathy Biehl - October 9, 2009 12:28 PM
Mandatory public disclosure of insurance coverage will harm the reputation of perfectly competent attorneys who have made the business decision not to carry insurance. That decision is generally made on the basis of economics. I know from the attorneys I've seen face that issue that it is difficult and humbling and always comes down to cutting costs simply to keep the door open.

Small and solo practices are already struggling to get and keep clients in this troubled economy. This kind of disclosure will amount to the licensing agency deliberately torpedoing a portion of its membership. Potential clients are going to read the worst into a mandated disclosure that an attorney does not carry PLI. (In this economy, it could just as easily mean that the attorney had to make the choice between PLI and health insurance.) This disclosure is going to scare off business for the smaller practitioner. Many potential clients are going to assume that the attorney is incompetent or unethical or otherwise deficient, and many potential clients will rule out such an attorney without meeting him/her in person and making a personal determination of competence.

Requiring this kind of disclosure would not merely be an intrusion of government into attorney's personal business relationship with clients, it would be an active, deliberate and in many cases devastating interference in it.

Corey Davis - October 9, 2009 1:32 PM
For the reasons cited by others above I am strongly opposed to the disclosure requirement

Bob - October 9, 2009 2:18 PM
I carry PLI. However, with the exception of a few insurance carriers who I sometimes provide defense services for their insureds, I have NEVER had a client ask me if I had a PLI policy, PLI coverage or any insurance at all. I have performed legal services from admiralty to workers compensation. Clients do not hire you because you may or may not have insurance. It is not material to their decision making process. They hire you because they have an issue that needs to be taken care of and they want you to be the one to do it. Whether they hire you by reputaion, skill or pulling your name out of the telephone book, PLI is not on their mind.

This is a bad idea. I do not know whether it will promote litigation for malpractice, but it will surely make it easier for the attorney who is asked to sue another attorney to go to a web site and make his decision, not on whether there is a valid and justifiable claim, but on whether there is an insureance carrier who can be "pushed for business reasons" to give up the defense of an attorney and coerced into a settlement.

Jessica Estrada - October 9, 2009 2:49 PM
This is a bad idea and believe strongly that it should not be implemented.

Kathryn Geiger - October 9, 2009 5:21 PM
It has always amazed me that the State Bar works to the detriment of its members. Now they want us to encourage people to sue us.

KRB, Attorney, Dallas, TX - October 9, 2009 5:55 PM
I think this is a bad idea. It will do nothing to improve the quality of legal services offered by Texas attorneys. I would appreciate more details about the reasoning behind the disclosure requirement. I would also like to know the names of all individuals at the Bar who are supporting disclosure, who will recommend it and specifically why they are recommending disclosure.

Karen Menzies - October 10, 2009 9:00 AM
I am vehemently opposed to the idea for all of the various reasons previously stated.

Bill (William) Jolly - October 10, 2009 10:39 AM
I am OPPOSED to requiring the disclosure to client (or prospective client) as to whether attorney has malpractice insurance or not.

Rachel - October 11, 2009 12:05 PM
I am opposed to mandatory insurance disclosure. I believe requiring disclosure will only invite litigation.

Richard Senasac - October 12, 2009 9:39 AM
What an astonishingly bad idea. Please note my ferverent opposition.

Bonny M.M. Link - October 12, 2009 11:44 AM
OPPOSED. I can think of may reasons why this is a very bad idea, and can see from the posts that many others can as well. I cannot, however, think of one logical, sound reason why this is a good idea. However, it appears that a few people out there do think that it is a good idea to bet against themselves and let the insurance company skip happily away with the premium.

Mike Bloch - October 12, 2009 2:37 PM
I have malpractice insurance, and I still think this is a bad idea. Clients are free to inquire as to whether a particular lawyer has PLI. This smacks of an attempt to compel more attorneys to obtain insurance.

Richard Weaver - October 12, 2009 4:45 PM
Does anyone enjoy seeing that billboard on I-10 that says, "We Sue Lawyers"?

Disclosing that you have PLI will invite more lawsuits against attorneys.

Lawyers that sue other lawyers first want to know whether an attorney that allegedly committed malpractice carries PLI. If she does not have PLI, the plaintiff is less likely to pursue a lawsuit.

Do we really want to see more billboards and advertisements encouraging suits against attorneys?

The Mission Statement of State Bar of Texas is: "... to support the administration of the legal system, assure all citizens equal access to justice, foster high standards of ethical conduct for lawyers, enable its members to better serve their clients and the public, educate the public about the rule of law and promote diversity in the administration of justice and the practice of law."

Does the Professional Liability Insurance Disclosure Proposal help meet this mission? I think not.

In addition to limiting lawsuit abuse, we are trying to protect the integrity and reputation of the Bar.

Linda Greenup - October 13, 2009 9:22 AM
I am opposed.

Robert Myers - October 13, 2009 11:20 AM
After reading all of the materials on the State Bar website on each side of this debate, I am struck by the lack of stated purpose for the proposal. Is it in the best interests of the Bar for the proposed disclosure to be made? Is it in the best interests of the public? Is it in the best interests of the insurers?

Many members of the Bar will argue that the proposed disclosure requirements are simply a thinly-veiled Bar-mandated requirement that they obtain insurance if they are uncovered and that maintaining insurance merely makes them a target for a legal malpractice complaint. This argument is not without merit.

Having engaged in the somewhat unique practice of suing attorneys for negligence and breach of fiduciary duty on behalf of clients, I have found that, in most cases of actionable attorney malpractice, the offending attorney(s) have insurance. However, in many instances (typically an aggrieved client in a family law or criminal law situation) the attorney(s) is/are uninsured. I always disclose to my legal malpractice client (and include a provision in my contract) that if the target attorney(s) are discovered to have no insurance, I will cease representation and withdraw. Most attorneys whom I know that practice in this area have a similar policy. As a result of this policy, from the standpoint

of a Plaintiff's lawyer in the malpractice area, litigation that would have otherwise commenced has not. I do not offer an opinion on whether this is a good or bad result (I see both sides), I merely report it as fact.

I tend to be persuaded by the argument that the duty already exists to make disclosure to a client if an attorney is asked about coverage. The Grievance Committee's argument that most clients don't ask is not compelling to me. I often have clients ask, especially business clients and corporations which routinely require not only disclosure but proof of minimal amounts of coverage as a precondition to hiring this firm. Further, the Bar is adequately equipped to inform the public of its right to inquire and is equipped to impose sanctions for any attorney or law firms' failure to make proper disclosure, upon inquiry. This seems a less draconian way of insuring disclosure to any potential client of the existence, vel-non, of insurance, while not making obtaining coverage "mandatory" for the not insignificant number of attorneys and small firms who are ill-equipped to obtain affordable coverage.

The creation of a pool of coverage for otherwise uncovered attorneys smacks of the same type of governmental interference in the operation of private business as is the controversial issue of universal health care now being considered in the Congress. While no one questions the benefits sought to be achieved by covering everyone, the practical application of any such program tends to operate to the detriment of more interested parties than those whom it benefits. Nether the Bar nor the Court needs to be in the insurance business and/or the insurance oversight business. This state and this profession does not need another layer of bureaucracy and oversight on yet another aspect of an attorneys' practice. The requirement for mandatory coverage (and that is, practically, what is being touted here) is another unnecessary burden on the small practitioner. If disclosure is universally and routinely required, then the small practitioner or one who simply cannot afford or otherwise obtain insurance coverage is at a competitive disadvantage to those who can afford it and can obtain it.

While speaking of "universal coverage", what about the attorney that simply cannot obtain coverage? If "disclosure" is required, Is there to be a concomitant requirement imposed upon the insurers that they must cover any attorney, regardless of claim history and/or grievance history, at some affordable cost? How does the Bar propose to either make or enforce such a requirement, if there is to be one? As said, any lawyer who cannot obtain affordable coverage is at a competitive disadvantage to those who can.

While laudatory in purpose from a public relations standpoint, the entire plan has far-reaching consequences that should be carefully considered before making a decision. If a disclosure requirement is inevitable (and that seems the way the wind is blowing) then compromises such as exemptions for solos and firms of less than five members or some other such thing should be considered. Nonetheless, as a general rule, I am opposed to the proposed disclosure requirements, at least in their present form.

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Jim Roberts - October 13, 2009 11:35 AM
I have read the report of the Tax Force on Insurance Disclosure. In terms of any arguments in favor of disclosure, I find them poor and unimpressive.

What other states do: That is irrelevant.

Surveys of what lawyers vs the public wants: A person on the phone will say anything. In the office, the only things that interest the public are how much? and how long?

Absence of insurance as a material fact? See above.

Clients of uninsured attorneys have no remedy: Customers of uninsured auto mechanics, plumbers, insurance salespeople, barbers, doctors, etc etc often have no remedy too. Why arent' all other businesses required to disclose whether they are insured or not?

Disclosure enhances informed consumer decisions: Clients are free to ask. As a practical matter, that is not what is important to them. See above

Failure of the system causes people to lose respect for the legal system: When they are unable to get their car fixed, or when the plumber floods the house and the homeowner cannot get that covered, how does the car/home owner feel about the justice system? I suggest that the State Bar and the Supreme Court consider revamping the court processes to make them easier and friendlier to the average guy, rather than being so focused on grinding out every little fact that a simple dispute costs tens of thousands of dollars.

Failure to disclose is a breach of an attorneys fiduciary duty: The lawyer is not hired to take the client to raise and nurture. At some point, we need to respect the clients intelligence and stop trying to do all the thinking for the client.

The burden should not be on the client to ask: Why not? See above.

Protection of clients should be paramount: This argument is just flat out going overboard to stretch beyond all conceivable limits. No. Representing the client on the issue on which the lawyer is hired should be paramount. If the client is concerned about insurance, the client can ask. See above about what most clients really care about.

Uninsured attorneys will not suffer a direct financial impact: That is dead wrong. If an attorney is required to say he or she does not have insurance, the clients will naturally shy away. They will not know why the attorney has to disclose he or she has no insurance.

The client will just assume it is a bad thing. Just like when an attorney was forced to say he or she was not board certified.

Fairness. Since the Task Force report is all about fairness, consider this: When the State Bar and the Supreme Court have made sure that every plumber, car salesman, carpenter, doctor, banker, maid, and all others who hold themselves out as offering products and services to the public are all required to disclose whether they have insurance to cover the losses of their clients, patients and customers, then and only then should attorneys be required to disclose.

With all that said, I am insured. I don't want to have to disclose that either. Either way, I don't want the issue disclosed. I believe disclosure will start the client thinking about when, how and what to sue about. No one wins in that system.

Dwhite - October 13, 2009 11:51 AM
We never have an inquiry about malpractice insurance from a client. The inquiry always comes from the defense lawyer after we have sued the ex-client for unpaid attorney fees. They usually file a garbage counterclaim and with the transmittal letter ask us to notify our carrier. We don't have malpractice insurance and never have.

The decision was clear to us when we hired someone who did have malpractice coverage and who brought a case with them. The attorney was sued for a garbage reason. His co-counsel from another firm did not have coverage. Co-counsel was let off the hook after Plaintiff's counsel found out he had no coverage. The insurance company that still covered the hired attorney for work done prior to his hire with our firm settled the case by paying a substantial sum. So we see the fact of not having malpractice insurance to be a deterrent to bogus claims.

Frankly I have no problem disclosing that we have no insurance. In fact I do that anyway in the initial consultation and I tell them why. We will not buy insurance because of our practice of pursuing unpaid fees and we don't want some insurance company telling us not to be suing ex-clients.

Still I am opposed to the mandatory disclosure requirements. Whether someone has insurance should not be a business reason for hiring an attorney unless the client is contemplating suing the attorney before he does any work. Or unless the client is planning on running up a big accounts receivable knowing the attorney will not sue him/her because he/she will risk losing coverage.

Will the next mandatory disclosure be the assets and liabilities of the entity we do business under? Will we have to disclose who owns our car, house, whether we have any funds in savings accounts that would not be exempt from execution? This all seems to be post-judgment discovery at the onset of the attorney/client relationship.

Josh Tetens - October 13, 2009 6:39 PM
Why do we have a State Bar? Are they really supporting me as an attorney? Why am I forced to be a member? And why would this even be an issue?

We can't tell a jury about insurance so why should we open ourselves up before our clients, who are rarely pleased with any outcome in their case?

I am strongly opposed to this idea and believe it will negatively effect attorneys in Texas.

Cary White - October 13, 2009 11:31 PM
This is obviously a very hot topic and worthy of thoughtful dialogue and consideration. Many have very strong opinions on this issue. Thank you for raising it and for all of the terrific comments on your post.

As an independent insurance broker that specializes in legal malpractice insurance for attorneys and law firms, please understand I hear you loud and clear and have no position on whether this matter should pass or not.

On the other hand, based on the comments above it does appear that the debate should widen somewhat and that additional information is necessary. Here are several thoughts/comments:

(1) Texas is not the first to consider this issue - is there any relevant experience of legal professionals in other states that have enacted similar disclosure rules? On August 26, 2009, the Supreme Court of California entered an order adopting Rule 3-410 requiring lawyers without professional liability insurance to provide written disclosure of their lack of coverage to all new clients and returning clients. Unfortunately, this rule does not go into effect until January 1, 2010. So California is not a guide yet.

(2) Cost - there are many options for legal malpractice insurance coverage and I strongly consider all legal professionals to at least make enquiries annually before electing to go uninsured to properly evaluate the cost and benefit of coverage vs. no coverage.

(3) Lack of Insurance as a risk management technique - some in the posts above suggest that not having insurance is a deterrent to litigation. Is this really wise counsel? Is it advice you would give to one of your clients?

(4) Public Policy - regretfully, mistakes do happen and insurance is the means many use to protect themselves from loss but also to be financially responsible for the losses others suffer. If we were to take some of the posts above at face value, then should we also be advocating the repeal minimum auto insurance requirements across the country?

(5) The Behavior of Others - just because some individuals and businesses do not have one type of insurance or another is no reason why other businesses and even professionals should not have coverage.

Finally, if it appears that Texas will adopt such a disclosure rule and I do not know that they are, would it not be better to concentrate on the details of those requirements instead of fighting to the bitter end?

(1) Content of Disclosure - you should be carefully considering the form, content and intended message of your disclosure form and work to be sure that any new rules would allow you flexibility in these areas.

(2) Change In Insurance Circumstances - The California rule has several provisions that could be more clear:

- notice must be given within (30) days coverage is not-renewed, cancelled, or is otherwise lost

- notice is not required for legal services rendered in an emergency

- notice is not required if the legal representation of the client will not exceed four hours

Law firms that purchase insurance may actually have a more difficult time than the uninsured if: (1) a lawyer has a catastrophic claim that exhausts their policy limits during their policy year, (2) a lawyer cannot obtain insurance at their normal policy anniversary date, (3) a lawyer elects not to renew their insurance due to cost or other changes at their practice, (4) a brief engagement or emergency engagement expands to an engagement exceeding four hours. These real possibilities could lead to some unexpected notice requirements and tricky record keeping and should be carefully considered.

ndgb - October 14, 2009 11:32 AM
After reading all these comments, I wonder if the task force and the GOC will read them or have they already decided? I always find it interesting that all these "rules" come from those who are exempt from the very rules they impose.

I am strongly opposed for most of the reasons that have already been stated. The public won't benefit, the insurance carriers will. Mandatory PLI is next to come.

Horrible idea for solos who do pro bono work. SBOT wants us to work for free and to spend money for having that privilege with bar dues, occupation tax, mandatory $65 for legal services, etc.

Someone has already said that the risk of malpractice is mine and purchasing insurance (or a computer or a scanner for my office) is a business decision that should be made by the lawyer and not by SBOT.

At the very least, the decision should be up to the membership and not to a select few.

Jack Rushing - October 14, 2009 1:04 PM
This is a terrible idea which will create more problems than it solves. In over thirty years of practice I have never even been sued by a client. Lawyers mainly don't have insurance because of the cost. The cost has to be passed on to the client. While this is not a problem with high dollar cases or wealthy clients,it will make make it more difficult for others to afford a lawyer which will in turn require even more pro bono representation. It will also encourage litigation and create an additional burden for small firm and solo practitioners.

Kevin Afghani - October 14, 2009 5:18 PM
OPPOSED.

The primary victims of this proposed rule would be solo and upstart firms trying to bring additional competition to the legal marketplace. Starting up one's own business is challenging enough without the additional start-up cost of malpractice premiums.

The proposed rule could also make Texas an undesirable jurisdiction for patent attorneys like myself, since patent attorneys face some of the highest malpractice premiums of all legal specialties.

BLA - October 14, 2009 5:30 PM
Attorneys practing as in-house counsel should be exempt from disclosing to the Bar and, coorespondingly, the public whether they maintain professional liability insurance. The insurance protects only the client, and given that most professional liability insurance for in-house counsel is as a rider to the company's directors and officers liability insurance policy, the attorney's only client, the company, would have knowledge of the existence of insurance. Requiring disclosure by in-house counsel might cause others to believe they are covered under that insurance when dealing with the company itself, which would not be the case, and would, as mentioned, invite unnecessary and warrantless lawsuits.

SDP - October 16, 2009 11:00 AM
Requiring disclosure is not necessary. When this issue becomes relevant, after a claim has been asserted, then the attornety will be required to disclose that as a normal part of discovery.

Furthermore, requiring an attorney disclose that to a client at the front end of a case is not useful. Suits for malpractice result after an attorney has, in the eyes of the client, negligently handled the case. By the time the negligence occurs and a claim against the attorney is made, significant time will likely have passed. In the meantime, insurance would have lapsed or been procured. So what the client was told on the frontend will have no effect on the backend.

Requiring an attorney to disclose this information would be tantamount to requiring Wal-Mart to disclose its insurance before Plaintiff Pauly slips and falls. There will be that small segment of society that is more likely to fall if they know about the insurance.

JB - October 16, 2009 11:01 AM
A trendy idea not prompted by actual client issues- bad for Texans who need legal advice and their attorneys.

Mack Travers - October 16, 2009 5:36 PM
Personal Liability Insurance disclosure is unworkable. A lawyer's Personal Liability Insurance is written on a "claim made" basis. At the time a client hires the lawyer, no claim has been made, so there can be no coverage. The lawyer cannot speculate whether there will be coverage if or when a claim is made and reported to the insurer.

Most Personal Liability Insurance policies have a "consent to settle" clause. Even if the lawyer has purchased a policy, and a claim is made, there is only speculation that consent will be given.

These and many other policy terms must be fully and truthfully explained to a client if disclosure is required. It will greatly increase the cost to the legal services consumer because of the complexity.

Most policies have a deductible. For the solo or small firm, it might be $5,000 or $10,000. The mage-firms probably have 6 to 7 figure deductibles. The effect of deductibles is yet another element of coverage to be fully and completely explained to the consumer if Personal Liability Insurance disclosure is to be properly implemented.

Personal Liability Insurance disclosure will cause many lawyers to practice "defensive lawyering." This too will increase costs to the consumer. These increased costs translate to quality legal services being available to fewer and fewer people.

In law school we were told to never be the third lawyer on a case. If Personal Liability Insurance disclosure is publicized, many lawyers will decline representation of a client who inquires of Personal Liability Insurance at the initial interview. Again, the legal services consumer loses.

Several State Bar sections, including GP Solo and Family Law have overwhelmingly voted against Personal Liability Insurance disclosure.

Mack Travers
Katy, TX

Dennis - October 18, 2009 1:19 PM
Disclosure is pointless, because regardless of disclosure or if one holds PLI, all attorneys are held to the same standards. It would merely create an additional burden.

JS - October 19, 2009 1:55 PM
The Bar should require attorneys to have at least a minimal level of malpractice insurance. Once that happens, I do not care if it is disclosed or not. But there are too many bad lawyers out there, and it is unfair to clients and potential clients to force them

to bear the risk of an attorney's screwups.

Norbert Walker - October 19, 2009 3:21 PM
Insurance is for the insured and has nothing to do with professional competence. When will the State Bar stop wasting time on matters that have nothing to do with maintaining lawyer professionalism?

NW

Johnson - October 19, 2009 5:32 PM
I have received much medical treatment over the years, including procedures for which paralysis was among the disclosed risks. My young son has had even more procedures, with risks of paralysis & blindness. Not once did any doctor or surgeon disclose to me whether he/she had professional liability insurance. Not once did I feel it necessary for me to ask. I do not belive such a disclosure should be mandated for attorneys either. Among other reasons, it sends the message that attorneys are not to be trusted.

JAM - October 20, 2009 5:42 PM
LPL insurance disclosure is inherently misleading to a client, whether couched as "I have a malpractice insurance policy," or "I don't have a malpractice insurance policy," or "I do not have a professional liability insurance policy with limits acceptable to the Bar."

1. LPL policies are written on a claims-made basis, meaning that the existence of a policy at the time the disclosure is made will likely have little to do with having an LPL policy when the claim is made, which can be years down the road. Lawyers change jobs; law firms go in and out of business; LPL prices go up and down; lawyers retire. If a lawyer is required to make a disclosure on Day 1 that the lawyer has an LPL policy and that status later changes, or the lawyer knows that status is about to change in the near future (e.g., because the lawyer has decided not to renew the policy, or can't get quoted for a policy, or is moving to a policy with materially different coverage and limits), would that trigger a further disclosure requirement? And if so, to whom? The lawyer's current clients? The lawyer's past clients who are still within the 2-year statute? Within the 4-year statute? Within the discovery rule period? The latter can easily be from the beginning of the lawyer's practice. (Wills, anyone? Prenuptial agreements?) This rapidly becomes an undefinable set. What is the lawyer to do? Send an annual "State of My Malpractice Insurance" letter to current and past clients? The Grievance Oversight Committee 2009 Report suggests limiting disclosure to "during the representation," which seems to wholly miss the nature of claims-made coverage and draw an unjustified distinction between current and former clients. Claims often show up for the first time after the representation has ended. In a disclosure regime, wouldn't the latter have an equal interest in learning of an impending change?

2. LPL policies are written with multiple exclusions, just as other insurance polices are. Some of the exclusions are specific to the lawyer's conduct (e.g., intentionally wrongful conduct exclusions); some are specific to practice areas (e.g., securities or IP exclusions); and some are specific to particular types of relief (e.g., exclusions for the disgorgement or

restitution of fees). So the fact that the lawyer has an LPL policy may be of no benefit whatsoever to the client, whose take-away from the initial disclosure would most likely be that there will be insurance. To make a meaningful disclosure, the lawyer would fast have to become a student of the LPL policy. If the lawyer is hired to handle a matter that falls within a practice-area exclusion -- or may fall within it, or part of it may fall within it -- what would the lawyer do? A naked "I have LPL insurance" likely wouldn't do the trick without some further explanation, and crafting the explanation would quickly sink into the arcana of LPL policy exclusions as applied to hypothetical acts, errors or omissions the lawyer might commit in the course of handling the matter (and would make a nice "See, you knew we didn't cover that" piece for the LPL carrier if a coverage dispute later arose). What is the lawyer to do? Staple a copy of the policy to every engagement letter?

3. LPL policies are written with limits. In many instances, the limits are substantially less than the potential damages that could result from an error in handling the matter. If the lawyer carries a policy with $100,000 limits that liquidate with defense costs, then is the "I have insurance" disclosure meaningful to a client with a seven-figure matter? No, it's not. A naked "I have insurance" disclosure would leave clients with a false sense of security. The corollary to having so little insurance that the client's claim would likely dwarf it is having a retention so large that the client's claim will likely never trigger the actual insurance. How would a disclosure rule handle large retentions? LPL policies at large law firms often have substantial retentions -- $100,000 or $200,000 or $250,000 per claim -- which may underlay $10M or $15M or $20M in limits. The risk manager knows that, as a practical matter in any given year, 90% or more of the claims made will likely be disposed of within the retention. Buried in this structure is solvency risk, the risk that the firm proves unable to fund the retention. Does a naked "I have insurance" disclosure fit this circumstance? The Grievance Oversight Committee 2009 Report recognizes the solvency risk issue and suggests punishing a lawyer who miscalculates the risk: "The rule should also specify that the rule would be violated if a lawyer, or firm employing a lawyer, either knows, or has reason to know, that the deductible or self-insured retention amount cannot be paid in the event of loss."

4. The attempt to duck these issues via the sleight-of-hand of requiring disclosure of the absence of an LPL policy (versus the affirmative disclosure of the existence of a policy) -- for the lawyer to state, in the words of the Grievance Oversight Committee, "I do not have a professional liability insurance policy with limits acceptable to the Bar" -- suffers from the same problems. Just as lawyers go out of coverage, so, too, do they come into coverage. Lawyers join firms with policies; lawyers decide to buy a policy (which, even with a retro date as of inception might still provide coverage if the lawyer's error for an existing client comes after the retro date); some carriers offer career coverage endorsements for some risks. Thus, the non-existence of an LPL policy on Day 1 does not mean that there won't be an LPL policy if, as and when the client decides to make a claim, a decision potentially (mis)guided by the client's memory of the lawyer saying at the outset of the representation that there is no insurance. This comes full circle to the LPL status update problem discussed above.

5. Knowing that there is an insurance policy is quite different from knowing what the policy does and does not cover. Every day in mediation rooms and courtrooms across this state lawyers fight over what insurance policies mean and whether particular claims or parts of claims are covered under the unique circumstances of each case. It makes no sense to have a lawyer sit down with the client on Day 1 and attempt to make some disclosure, meaningful to the client (who in all likelihood has never read his or her own auto or home policy), about the state of the lawyer's malpractice insurance. Such a disclosure is not a meaningful proxy for the quality of the lawyer. (Do clients think a lawyer without malpractice insurance must be a bad lawyer since no one will insure him or her, or do clients think a lawyer with malpractice insurance must be a bad lawyer because good lawyers don't need malpractice insurance?) And such a disclosure is not a meaningful estimation of any reasonable probability that the lawyer will or will not have insurance coverage for a future claim by the client.

6. These are not idle theoretical questions. Any disclosure about insurance would have to be meaningful to the client, particularly if the goal is to assist the client in making a decision, such as whether to hire the lawyer, or whether to fire the lawyer who lets a policy lapse and get one who has insurance, or whether to sue the lawyer. Making a meaningful disclosure about the nature, scope and extent of the lawyer's present and anticipated future insurance is almost impossible. But that is what will be expected of the lawyer, particularly if this is written into the Disciplinary Rules of Professional Conduct. In legal malpractice claims, the TDRPC are commonly bandied about as minimum standards all lawyers must meet; they are not safe harbor rules. Thus, if a rule says the lawyer must disclose x about the lawyer's LPL policy, that will be expanded by the need to make the disclosure meaningful to this particular client under these particular facts. From there, it's a short step to a claim that the lawyer improperly procured the representation by failing to make a meaningful disclosure about the lawyer's insurance. On this point the Grievance Oversight Committee 2009 Report, which recommends the negative disclosure approach -- "I don't have insurance" -- is particularly unhelpful. It suggests that "[t]he Bar, as approved by the Supreme Court, should prescribe the form of notice in these circumstances so that clients get standardized notices," but at the same time "preserve and protect each attorney's opportunity to discuss privately with a prospective client the availability, or necessity of, insurance protection." That's a breeding ground for claims that the lawyer's private discussion -- "We've never needed it"; "It just made us a target for groundless counterclaims when we sued to collect fees"; etc. -- detracted from, minimized or trivialized the importance of the disclosure and the potential consequences to the client from the facts disclosed.

7. There are some special cases which bear mentioning.

8. How would a disclosure rule work for insurance defense lawyers? Texas has adhered to the concept that the insured is the lawyer's client. Would a disclosure rule require the insurance defense lawyer to make an insurance disclosure to each insured? The new checklist: open the file, run a conflicts check, file an answer, send out a request for disclosure, mail the insured a letter about the firm's insurance coverage (which must be

signed by the insured/client, returned and kept in the insurance defense lawyer's file for the Bar's review on pain of violating the Disciplinary Rules) . . . .

9. How would a disclosure rule work for appointed lawyers? What would the purpose be? The lawyer gets appointed in a criminal case, or in a CPS termination case, or in a JV court proceeding. The client has little to no say about who the appointed lawyer is going to be. Why tack on an insurance disclosure requirement? And how does this work when the client is a minor? If you're appointed to represent the children in a CPS termination case, you may have clients so young that it's hard enough to communicate the nature of the termination proceedings, let alone explaining what LPL insurance is and why the child should or should not care about this issue. It makes no sense to add an insurance disclosure -- a meaningful disclosure -- in this circumstance. What do you do if you have been appointed to represent a party who can't be found, such as a biological parent who has disappeared in a termination proceeding or a lot owner in a tax sale case?

10. The Grievance Oversight Committee 2009 Report suggests exempting in-house corporate counsel from any promulgated rule. Why is that? Have they no client? Or does the Committee just mean to suggest that an in-house attorney does not need to make the disclosure to his or her corporate employer but would otherwise apply any rule to other clients. (Looking over that vacation condo lease for the president? Taking care of that traffic ticket for the CFO?)

11. An insurance policy is but one asset among many for the potentially liable lawyer. If there is to be a disclosure rule, is there a principled basis for limiting it to insurance policies? There are lawyers who don't carry LPL insurance but who have substantial assets. If insurance disclosure is meant to help the client answer the question of whether the lawyer can respond in damages, then wouldn't disclosure of personal net worth statements be of equal or, in many instances, greater assistance to the client? This is not as far-fetched as it sounds. The Grievance Oversight Committee 2009 Report includes this curious passage in supporting its recommendation: "From a consumer viewpoint, businesses are regularly required to disclose financial status under SEC requirements. Insurance companies are required to disclose information on claims paid experience, and Medicare has recently simplified comparison shopping of hospitals and care facilities by requiring disclosures on costs, treatment effectiveness. and risks for individual institutions." So why stop at insurance for lawyers?

12. LPL policies are risk-management tools for lawyers and law firms, akin to other risk-management-tools such as computerized conflict-checking systems, centralized calendaring systems, and the other risk-management items inquired about on most LPL policy applications, albeit different because those risk-management tools are directed at reducing the risk of making a mistake while LPL policies are directed at reducing the financial risk to the lawyer when a mistake is made. Most lawyers do not purchase LPL policies with the thought, "This will be a benefit for my clients." Instead, most lawyers purchase LPL policies with the thought, "This will protect my assets if I make a mistake." Unlike mandatory auto insurance, the legislature has not required lawyers to have LPL insurance or to carry proof-of-insurance cards around with them while representing a

client. The comments above touch on the many practical problems with any form of a disclosure rule. The current state of any given lawyer's LPL insurance cannot be sketched out for a client in a meaningful manner in a few sentences. When the client is sitting in your office on Day 1, could you provide a meaningful and truthful answer to the question: "If you do something wrong in handling my matter and I decide to make a claim against you, will you have insurance coverage for that claim?" The proposed disclosure requirement is an attempt to answer that question by proxy but an insurance disclosure rule is such an imperfect proxy, and so difficult to implement in a meaningful fashion which avoids misleading a client, that no disclosure requirement should be adopted.

Linda Russell - October 21, 2009 4:24 PM
This is a terrible idea. Not only will it impose a new hardship on attorneys, especially sole practitioners, it will encourage clients to sue at the slightest disappointment. No, no, no.

HappyDoc - October 21, 2009 9:51 PM
It's nice to see that attorneys so thoroughly understand the reasons why physicians, accountants, engineers and other professionals find requirements to carry malpractice insurance so odious.

While it is certainly more difficult to sue an attorney than another professional, simply because sharks rarely eat their own, the ability of attorneys to practice negligently, refuse to honor a client's wishes, put themselves or their firm ahead of the client or otherwise take action (or inaction) injurious to a client is well known and amply demonstrated.

Perhaps the state bar would like to submit the issue to an impartial panel - say one formed by the AMA - in order to completely explore the manner in an efficient and nondiscriminatory fashion. What say you?

Edward - October 21, 2009 11:46 PM
As a physician I find the rich irony of these comments quite entertaining!

me - October 22, 2009 7:01 AM
this is hilarious and absolutely needs to happen.

Anthony Silas - October 22, 2009 8:08 AM
I am a solo practitioner and I oppose any mandate that requires me to carry malpractice insurance or disclose whether I do to potential clients. If the client asks I will tell them.

I also oppose listing whether an attorney carries malpractice insurance on the State Bar website. I don't want clients shopping for attorneys based upon the possibility of recovery from an insurance policy if things don't turn out the way the client likes. Remember, the client often hires the attorney after the facts have been established. Attorneys are frequently doing their best to clean up the client's mistakes.

Jason - October 22, 2009 8:37 AM
I am in complete agreement with my medical collegues. There is quite a bit of irony in this thread. I live in Florida and we currently have a lagre personal injury firm that is fighting to get "disclosure" of insurance to be law so that juries can award ample awards.

Why is that Lawyers as professionals do not have to live up to the same standards as other professionals (like physicians). We are required in Florida to carry malpractice insurance or have a statemtn of finances available to cover the minimum amounts. If we "go bare" this needs to e disclosed to the patient at the time of their visit. Again what joyful irony you all present.

Kevin Holmes - October 22, 2009 11:12 AM
Very bad idea!

First, it would be a further regulatory requirement by a profession that is already drowning in regulation.

Second, it serves no purpose in providing better legal service to the public. It merely raises the cost of providing that service because what attorney is going to try building a trust relationship with a client by starting out with "And I don't carry malpractice insurance". The chilling effect on the relationship from that point forward is comparable to the "I love you and want you to marry me ... after we take care of this silly ol' pre-nup".

Tracey Ford Spillman - October 22, 2009 6:18 PM
For a myriad of reasons, including many of those cited by others above, I strongly oppose the disclosure requirement.

David - October 22, 2009 10:43 PM
The hypocrisy and irony in this posting is amazing. As a physician, I have to carry malpractice insurance, or I can't practice at ANY hospital and can't be on ANY insurance panel.

Why shouldn't attorneys need to follow similar professional standards?

It seems that some of you are suggesting that if a professional has malpractice insurance, a client is more likely to go after them because of a less than perfect outcome? Cry me a river. Attorneys have been using this mentality to encourage patient lawsuits for years.

For those who complained about "a profession that is already drowning in regulation", that's really hilarious. What profession is responsible for all those regulations?

No wonder Scalia made his recent comments about attorneys.

http://blogs.wsj.com/law/2009/10/01/scalia-we-are-devoting-too-many-of-our-best-minds-to-lawyering/

Sherry German - October 23, 2009 9:44 AM
Terrible idea. Clients would just have a new way to skitter out of paying what they owe. They already think it is unfair they have to pay us anyway. Why give them more ammunition? Doctors are not required to disclose their insurance status why should we?

Fester Aadams - October 23, 2009 2:57 PM
If it's a bad idea for attorneys, it must also be a bad idea for all other licensed professionals.

In Texas, is professional liability insurance optional for other professionals, such as physicians, architects or engineers? If they are required to have PLI, then there is no need to dislcose this fact. If it is optional, disclose it. In most states that allow physicians to "go bare", the physician is required to post a sign disclosing the lack of PLI.

Perhaps the Bar should consider the Equal Protection Clause of the Fourteenth Amendment when making their decision. Should they decide against disclosure, then the Texas Legislature should consider leveling the field for other professions.

Pain Doc - October 23, 2009 3:18 PM
physician malpractice = good thing
lawyer malpractice = bad thing

What color is the sky on Bizarro Lawyer World?

Morgan - October 23, 2009 6:01 PM
I think it’s a good idea; total transparency. Clients should know if they have the opportunity to make money off of us. I’ve been suing doctors for years, and think it’s finally time lawyers have the same vulnerability. Realistically, I deserve to get sued and lose my entire life savings. I mean, if a doctor—who has far more education and training than I do—can lose everything in one fell swoop, I should have the same risk. In fact, I deserve to lose everything, because ultimately, I have been a leech on society, and have only engaged in self-serving, reprehensible, morally-vacuous behavior. I just hope I’m not going to go to hell when I die—but I doubt it.

Steve Lobel - October 23, 2009 7:23 PM
I carry 1M/3M malpractice and it is well known that I must have this or I could not practice at all. It does not invite lawsuits, it does not change the way I practice. I am certain my practice has more unhappy clients than most, but it is the nature of my practice. I think you guys should step up and just buy a premium and proudly display it. I think I am that good, and if a mistake is made with dereliction, damages, deviation, and duty- then that is what my premiums are paid up for.

elmo - October 24, 2009 2:36 PM
Sherry:
In all states that I know of doctors are REQUIRED to have insurance so your statement is rather pointless. Yes there are exceptions (such as florida) but this must be disclosed as

stated above. So my question to you is, why should attorney's feel they are so special that they can exclude themselves from what is mandated by other professions such as medicine?

you guys are whiny - October 24, 2009 7:49 PM
I can't believe all the whining on this board...

Physicians for the most part have to carry malpractice insurance (especially if they want to have any hospital priviledges). Those premiums are typically 30-80k/year...

Plumbers have to carry liability insurance (otherwise you'd be a fool to hire them)...

Why shouldn't lawyers be required to carry some type of PLI?

It is funny how so many of you (lawyers) reveal your anxieties on this board about the perceived implications of having insurance, when most of you have NO compunction at all about going after physicians and other high earning individuals. ...

Brian - October 26, 2009 11:48 AM
Liability insurance is not a requirement for practicing law. A disclosure requirement would place a unnecessary cloud upon an attorney's practice. The primary purpose of liability insurance is to protect the professional, not the client.

An attorney may choose not to have insurance for legitimate reasons: the cost, he or she has assets adequate to pay for any liability, or he or she does not have assets for which he or she needs protection.

Attorneys who provide valuable services and who may not be able to afford liability insurance should not have to practice under such a disclosure.

I am not aware of a similar disclosure requirement for other professions such as physicians, engineers, or accountants. I am also not aware of a requirement of disclosure by manufacturers of product liability coverage or for businesses in general for general liability or employment liability coverage.

The requirement would hurt the profession more than help it.

Lisa - October 26, 2009 2:23 PM
It has been said in earlier posts, but needs to be repeated: you cannot use physicians as an example of why disclosure is bad. WE ALL HAVE TO HAVE MALPRACTICE INSURANCE. Period. No exceptions (except apparently Florida). There is no disclosure issue because everyone has it.

We agree with you that insurance requirements are onerous for many reasons; but you are only seeing this now that it affects you.

Sarah - October 26, 2009 3:47 PM
Physicians practice in fear of being sued because the system is such that even if you do everything right, you can have a less qualified physician on the stand testifying against you--something the jury wouldn't realize--and lose your kid's college savings and, worse yet, your mistaken belief that if you are well-trained, work hard, and try to do the right thing for all of your patients, you won't be demonized and punished by one of them. Lawyers are also not forced (a la EMTALA) to take on clients who have no intention of paying them and then be sued by the same. The repeated "it would invite lawsuits" comments is remarkable given what your profession has done to ours.

Perplexed - October 27, 2009 12:49 PM
Even if we were to accept the proposition that insurance disclosure is somehow helpful to a client, (although that argument does not seem to be supported by emperical evidence) the proposed disclosure is grossly misleading. As most lawyers know, the determination of the availablity and the limits of insurance coverage has been and continues to be the subject of great debate between insureds and insurance companies. It is not uncommon for one to have an insurance policy and believe coverage is available for an event when, in fact, no coverage is present. So if the presence or absence of insurance coverage is to be a critical factor in selection of counsel, is a comprehensive opinion on the presence of coverage for a particular case to be obtained prior to the accepatance of every case? Wouldn't it be a conflict of interest for the lawyer involved to issue the opinion? Wouldn't every lawyer have to hire other lawyers to provide the opinion? If anything less is done, if the only thing that is disclosed is the "fact" that someone has paid a premium for some type of insurance that may or may not cover any given malpractice, how does that assist with the selection of counsel if coverage in fact is the important criterion? As far as I can tell, the rule as stated would mislead more than it would assist. A practical rule is not apparent.

Lastly, I carry a very large insurance policy. I have thought this to be the responsible thing to do both for my clients and my personal assets. But if this passes, I will dramatically reduce what I carry because I am certain that it will make me a target when I otherwise would not be.

Eric Beasley - October 27, 2009 3:31 PM
I oppose mandatory disclosure and agree with M. Murphy's comments as follows: "M. Murphy - October 7, 2009 12:46 PM
Requiring disclosure does nothing to protect the public. Whether a lawyer does or does not have insurance has no bearing on his/her professional competence. Actually, the reverse may be true - uninsured lawyers tend to be more careful because they can't rely on the insurance to bail them out if they make a mistake. Required disclosure will incorrectly "brand" lawyers who don't have insurance as "bad" lawyers in the public's mind. Further, it is unfair to solos and small firms who often cannot afford malpractice insurance. Additionally, why should we have to anticipate everything a client might want to know in making a hiring decision? If it is important to them to know if a lawyer carries insurance, they can ask. But providing that information to people who didn't particularly care (especially if the disclosure is required only of uninsured attorneys) will likely give

the impression that the attorney is not good or is operating outside the guidelines of acceptable practice."

Perplexed - October 28, 2009 2:08 PM
To the medical professionals who find this board ironic: I do not know whether my doctors do or do not have mal-practice insurance. I hope they do because I consider it to be a responsible thing to do. But they have been the physicians that I have trusted for over 20 years without a clue about the status of their insurance coverage. I cannot imagine asking them to disclose it. Nor would I select a health care professional based on whether he or she had insurance or recommend that anyone else do so. If people start making decisions based on that, heaven help us all.

Stacy Castillo - October 29, 2009 12:32 PM
I think requiring disclosure of liability insurance is a very bad idea, and I think it only serves to benefit the large firms at the expense of small firms and solo practitioners. This proposed rule would not benefit the consumer but the insurance companies and large firms.

Sienna - October 29, 2009 9:15 PM
These comments are interesting if looked at from a doctor's perspective. We must fully disclose and have state mandated levels of coverage. Is you concern that it invites litigation? drives up operating costs? is not a need-to-know issue for the client. I certainly agree on all accounts.
I feel for you, but this was started long ago...

Rick R. - October 30, 2009 1:49 PM
HORRIBLE IDEA! It's like the old disclosure requirement, "Not certified by the Texas Board of Legal Specialization" -- to the people who thought up the phrase it sounded good, but to many members of the public it came across as, "I'm not supposed to be handling these types of cases."

As a practical matter this would force a lot of attorneys who don't need malpractice insurance to carry it anyway, just because without it potential clients would go elsewhere.

And what is to stop someone from claiming to have coverage when they actually don't?

Keep in mind that this is talking about MALPRACTICE insurance, not LIABILITY insurance. So a lawyer sues someone on a valid claim and the client gets hit with a counterclaim and loses. He THINKS he can go after his lawyer -- but unless the lawyer committed MALPRACTICE he has no protection anyway.

Over the years I have known one attorney and met another attorney who was constantly worried about being sued. The one I knew left law and became a stockbroker. The other one stopped taking cases within 2 years of getting licensed and went to work for an insurance company running CLE seminars about professional liability coverage for lawyers. If lawyers are required to disclose whether they have malpractice insurance the

same situation will develop as with doctors--to keep down their malpractice rates they won't take risky cases. But unlike medicine, there is no "Emergency Room" and no EMTALA (the federal law requiring certain types of emergency medical treatment regardless of ability to pay) for law -- people with risky cases will have to just hope they can find a lawyer who is so inexperienced that he doesn't recognize the potential problems. ... Just what someone with a major problem needs!

Lance Loyd - October 30, 2009 2:48 PM
Are we even going to acknowledge the fictitious claim of public's best interest here? Let's be realistic, this was initiated by the insurance companies, and how the topic weaseled it's way into legitimate debate confounds but doesn't surprise me. But it does make me enjoy my job even more.

It is a pointless idea because it will give the client unreasonable expectations of the litigation process, i.e., that they can just sue the lawyer if they lose in court.

Joseph Hammond - November 3, 2009 12:40 PM
I am strongly against the disclosure rule.
I really can't see an upside to this issue and I am glad that many in the bar agree that this is an exceedingly bad idea.

This is GREAT!!! - November 3, 2009 10:11 PM
Every lawyer advertising as "the Eagle" or "the Tiger" or "The Elephant" should just take this paragraph and insert 'physician' where appropriate. So now, after suing a 1) physician for trying to practice good medicine 2) company or organization who had no culpability in an injury to make a buck, if you lose the aggrieved patient will sue you. This is just, well, awesome. Karma rules!

Are we even going to acknowledge the fictitious claim of public's best interest here? Let's be realistic, this (litigious behavior by patients seeking compensation via insurers) was initiated by the insurance companies (lawyers), and how the topic weaseled it's way into legitimate debate (medical practice) confounds but doesn't surprise me. But it does make me enjoy my job even more (less).

It is a pointless idea because it will give the client unreasonable expectations of the litigation process (their medical care), i.e., that they can just sue the lawyer (doctor) if they lose in court (don't like how things turned out).

Nan Wagoner - November 8, 2009 11:08 PM
I am astonished with the willingness to take our valuable time even considering such an outrageously ill-conceived idea. Not a single valid argument supports proceeding down this path, while a host of compelling arguments amply set forth in the online-comment-blog demonstrate why doing so would significantly HARM the public and everyone else except insurance companies and large firms. To suggest that PLI disclosure is not tantamount to requiring coverage is both disingenuous and offensive. Shame, shame on

the proponents - I expect better than this from our profession.

Jon Davis - November 8, 2009 11:19 PM
While I am in favor of attorneys maintaining professional liability insurance, I am opposed to the idea of yet another mandate from another governmental or quasi-governmental entity. We have enough stupid notices and disclosure requirements.

We are regulating our society to the point that those who wish to comply are overwhelmed, those who would not comply still don't, and the public is not half a whit better off or better informed for all of the notices and disclosures. This sounds like some bad idea that sounded good at the moment and no one in committee had the courage to say, "gimme a break."

This idea needs to be rejected.

Bill Blair - November 9, 2009 2:45 PM
I oppose this proposal for the same reasons that are ably set out in Bill Miller's article in the November Bar Journal.

Carey Ebert - November 11, 2009 1:24 PM
I oppose this proposal for a number of reasons. Malpractice insurance is for the benefit of myself and my partner to protect our assets against potential claims. It is not a benefit for our clients. Although we have always carried insurance, it places a huge burden on sole and small practitioners. This disclosure would create unfair competition across the board. Further, clients would have a false sense of security as to actual coverage.

Jason Kyle - November 11, 2009 5:14 PM
I strongly oppose this idea, for many of the same reasons listed above. I am still not clear what perceived problem this mandatory disclosure would solve.

Marianne Baker - November 17, 2009 11:42 AM
This is a truly bad idea. While malpractice insurance can be a good idea to protect the client, mandatory disclosure will be like waving a flag in front of a bull. We should not be inviting lawsuits from our clients. Moreover, disclosure may distract clients from seeking other, more productive forms of disupte resolution.

L Rardin - November 17, 2009 1:46 PM
What other profession is required to tell you if they carry malpractice insurance? A disclosure requirement will not help people determine the qualifications of a lawyer. This is a burden to attorneys trying to keep their fees at a reasonable level.

Carmen Thayer - November 24, 2009 10:20 AM
In these difficult times, lawyers suing other lawyers to obtain an insurance settlement would be the likely consequence of this legislation. Lawsuits would force insurance company to raise the insurance premiums and financial burden on insured attorneys (like doctors). If the itent of the legislation is to address the issue of attorneys that do not carry

insurance, then (like doctors) it would be preferable to require a minimum level of insurance be held by all attorneys rather than mandate disclosure.

B. Condit - November 25, 2009 1:57 PM
A bad idea. Note its not just the increased cost to deliver the service for the premium, but you have to consider the "hidden costs" of the deductable. Even the most stupid alleged claim would be reported to your carrier who will then assign it to defense counsel who will immediately rack up a couple of thousand. Question, suppose this rule went into play, a lawyer gets a notice of claim and doesn't report it to his carrier and defends it himself. Is yet another rule going to require, under threat of a penalty, that any claim must be reported to your carrier. Who and how will this be monitored? This is a bad idea.

Andrea Moore - November 28, 2009 8:49 AM
Since I doubt that any client chooses an attorney based on whether they carry malpractice insurance or not, I fail to see why this is a good idea.

Tasso Triantaphyllis - November 28, 2009 9:23 AM
What a terrible idea!!!! I cannot think of a legitimate, honest or ethical justification for it. However, I will go along with it as long as every lawyer in a big law firm or every insurance executive disclose to their clients whether they have a drinking problem, a drug problem, whether they have cheated on their wife and what their net worth is!!! These are more legitimate reasons to require such disclosures than disclosing whether a lawyer has malpractice insurance!

Chris Vickers - November 29, 2009 10:32 AM
Who dreams this stuff up? I cannot fathom how a rational person could weigh the equities of this proposal and still support it. If a client wants to know, he may ask. If he is concerned that an attorney lacks insurance, he can seek other counsel. Insured attorneys are not made more competent by fact that they are insured any more than insured drivers are made more competent by fact that they have insurance. Do the proponents of this change think otherwise? Really?

Tragically, the current fad to passionately and irrationally promote any law, impinge any freedom, constrict any act, and legislatively force others to do what makes them feel good has arrived in the form of this proposal.

E.L. - November 29, 2009 2:57 PM
Bad idea. If you don't have it already you probably don't charge what the large firms do making your services accessible to the less fortunate. If this is the case, you should be rewarded for being reasonable in your practice (in some cases selfless), not flagged.

If you do have it, you mine as well name yourself as the next deep pocket from which to collect if your client is unhappy. Then we can all specialize in suing one another rather than making progress for clients. A good use of our gifting and education.

Barbara Lynch Schnack - November 30, 2009 1:41 PM
What a terrible idea...I believe that the net effect of requiring attorneys to disclose this information is that fewer of us will carry professional liability insurance rather than expose ourselves as tempting targets for prospective litigants. We purchase professional liability insurance for the same reason we purchase homeowners' insurance, health insurance, or life insurance: to protect ourselves and our families from financial ruin should disaster befall us. The notion that lawyers carry professional liability insurance because of some overwhelming sense of responsibility to the public is just misguided.

michael spinks - November 30, 2009 4:08 PM
OMG, what a really bad idea. the only worse idea we have had is the old rule about the "specialist disclaimer.'

GLB - December 1, 2009 11:33 AM
This is, in my opinion, yet another assault on Solo / small firm practitioners, and will certainly affect their ability to fairly compete in the marketplace.

Specifically, the proposed rule requiring up-front disclosure [or even the rule requiring the posting of insurance/no insurance on the Bar website] will only serve the interests of the insurance companies and large firms.

Further, doctors are not required to do this, nor are any other professionals I am aware of.

Sophisticated Clients already ask for this information and, other than those I have outlined above, the proposed mandates serve no purpose.

Rudolph Szabados - December 1, 2009 4:29 PM
Poorly thought-out initiative that will parse out attorneys with coverage inviting the proliferation of the already out of control litigious vampire feeding frenzy not to mention CRUSH small practice competition with the big boys.

Randy - December 8, 2009 2:55 PM
NO. Bad Idea.

But will they listen or be like congress?

Steven Earl - December 9, 2009 1:28 PM
It is a bad idea. The fact that it is 2009 and we are discussing a disclosure that has never been needed is proof that it is not needed. We have had ethics rules forever but not this.

I note that LLPs and PCs (the vast majority of lawyer entities) are already required to carry insurance. So is the goal to increase the sales of insurance, drive up rates since you have to have it to compete, or what?

To me one big problem is if you advertise you have insurance, how will a client understand the coverage a lawyer has? Will a client understand what is a covered claim

and what is not? Will a client understand coverage reduction by costs? Who has to explain all this to the client? What if you carry it but then drop it or are cancelled. The client might not have any insurance to recover against but "the lawyer said he had insurance." So to me I see more problems are created than solved.

NCC - December 9, 2009 4:18 PM
Very poor idea. The benefits perceived by this idea's advocates are not there.

Gregg - December 10, 2009 5:33 PM
Bad idea. The fact that the ABA thinks it is a good idea makes it suspect. This is Texas. We don't need 2 classes of attorneys. Next thing someone will want us to handout the nameof our insurance company, policy limts and a contact number. We should keep this camel's nose out of the tent.

Mitchell Bearden - December 11, 2009 3:55 PM
This is an extraordinarily bad proposal. It is hard to see how this provide any meaningful benefit to average individual client. At most, all it will do is at another layer of meaningless administrative headaches and general increase in fees charged.

If the existence (or not) of professional insurance is such a so vital to the public interest (and I believe it is not), why not treat this like automobiles and impose an insurance requirement with some ridiculously low minimum coverage as a requirement for maintaining your license.

Mark - December 11, 2009 4:12 PM
I agree with previous comments that the information is irrelevant when phrased only as a yes or no issue. As worded, this simply is a means to pick on small or solo firms, as opposed to under-insured larger firms.

Bobbie K. - December 12, 2009 12:49 PM
I strongly disagree with required disclosure. Even if a majority is finally achieved to shove this idea through, there remains a large percentage of our fellow lawyers with serious concerns. A much larger percentage of us should agree before we move forward. Sticking a large bright colored band-aid of "pli disclosure" on the problems of policing ourselves doesn't accomplish much more than making the Bar look like it did "something." Let's focus on the problem, not the media spin.

G Adams - December 12, 2009 8:33 PM
There should be not requirment to disclose insurance information. The only thing having insurance means is that someone paid a premium. It has nothing to do with the quality legal services provided by the insured attorney.

Putting insurance information between the attorney and client improperly inserts the business of the attorney into the professional service.

Carlos E.Kepke - December 13, 2009 11:39 AM
Bad idea.Clients can ask if they want to know though I have never had one ask.No compelling need for more regulations.

Nathan - December 14, 2009 10:05 AM
Don't do it for the following reasons:

*invites malpractice suits for attorneys who obey the rule
*difficult to enforce against attorneys to obey
*more regulation, hence more inefficiency in the form of bureaucracy and sucking up attorneys' time (of which we don't have enough as it is)
*wasteful of clients time, usually at a time when they need useful information, not disclosures

Herb Treger - December 14, 2009 4:51 PM
I say not just "No" but "HELL NO"! I am a solo practitioner and in 36 years of practice I have had only 2 lawsuits filed against me [both of which I later won] and I have never had anyone ask me whether or not I carry E&O insurance. I used to many years ago but I abandoned it because it was too expensive. Only desperate, hungry, predatory plaintiff's attorneys and the insurance industry itself will benefit from such a requirement. The former solely for the purpose of having fresh carion to eat. The later to provide an all new growth industry to replace and supplement their income as new government regulations hanging just beyond the horizon and threaten depletion of their amassed health care reserves. The client in the meantime gets nothing beneficial from disclosure. New RESPA regulations make it clear that the consuming public wants LESS DETAIL AND LESS INFORMATION - NOT MORE. PLI disclosure is a travesty and a disaster looking for a place to happen.

Wishing for a Barrista Gig at Starbucks - December 16, 2009 11:52 AM
OMG! Do you have any idea how many of us have no work and can barely pay CLE and dues and student loans at this point? The offshoring of even the document reviews and the never-ending start up new law schools are KILLING this profession. Wall Street was the death knell. Pay for E&O? HaHaHa. Who put them up to this? The insurance lobby? Plaintiff atty's who need work? Lol

Stan - December 16, 2009 11:53 AM
very bad idea

p - December 16, 2009 12:07 PM
While we're at it, why don't we require that lawyers hand their clients a draft petition for malpractice and a check for the filing fee, just in case they need it?

TERRIBLE idea.

Martin Scott Stehling - December 16, 2009 12:10 PM
If asked, the lawyer should truthfully answer. BUT to volunteer the information to a

client would only breed concern by the client. Is this the idea of the malpractice insurance industry?

Ron Nickum - December 16, 2009 12:20 PM
I have read the summaries of the PLI meetings and I have read the blogs. I have seldom seen lawyers, a contentious bunch if ever there was one, so united on an issue. If the Supreme Court follows the wishes of the majority of the bar, the proposal will be rejected. If it does as it pleases, and adopts the proposal, that outcome will certainly be a reflection on the Court and its attitude. I carry insurance so I really don't care one way or the other; except, I agree that telling the client about malpractice insurance is an invitation to a malpractice party if the results one obtains are not satisfactory to the client.

Bob Brown - December 16, 2009 12:26 PM
I think this is a bad idea, and I agree with the "Con" side of the article in the recent Texas Bar Journal that the policy will be misleading to clients who are aware that a non-disclosure means that the lawyer carries some kind of malpractice insurance. It doens't say how much he or she carries or whether it would cover all or part of any potential claim generated by the particluar representation. I think that if the recommendation was to also require disclosure by those who carry insurance as to the particular coverages and policy limits, that would probably be soundly defeated because those firms large and small who are insured would not want a potential client to know how much they might get in a lawsuit against the lawyer, and it would be misleading because even such disclosure would not assure the potential client that his claim would in fact be covered. Accordingly, since those who are covered could hide behind the rule and be silent, it puts the uninsured at a distinct advantage by a duty to disclose but the potential client really gets no useful information from the rule. This is very similar in thrust to the "not board certified" rule in place for so long, making those poor slobs who aren't board certified make a negative disclosure that implies some sort of second tier lawyer. I like many have practiced for over 30 years without a malpractice claim or grievance, and should not be penailzed if I choose to not carry insurance.

Todd WHite - December 16, 2009 12:31 PM
Who is behind this move Insurance companies.

FS - December 16, 2009 12:34 PM
I think it is a bad idea. I could list several reasons, but they would just be duplications of all those already listed.

Jerry R. McClain - December 16, 2009 12:38 PM
Why not just turn over oversight of the bar to the insurance lobby and be done with it ... they seem to have more influence over what the bar should be doing than the bar itself. Until there is better control of the insurance industry in Texas, this is a BAD idea since the industry clearly would saddle Texas attorneys with some of the highest rates in the nation (as home, auto, and medical malpractice rates already are). It's obvious that such a requirement is aimed at generating more malpractice premiums from Texas attorneys because requiring coverage disclosure would (1) require attorneys to obtain coverage at

amounts competitive with other attorneys to remain competitive (and only the largest firms can afford this type of escalation) and (2) result in more lawsuits and more judgments against attorneys and, hence, would scare attorneys into buying higher coverages with higher premiums. Given toothless insurance oversight in Texas that has allowed the lobby to keep some of the highest insurance rates in the nation in a variety of catagories (even after significant tort reform legislation and shrinking coverage options), the insurance industry must really be licking their lips for this rule change.

Greg Pine - December 16, 2009 12:51 PM
I can't think of another profession that requires this disclosure and do not believe it would benefit ours to do so.

Charles K. Bluntzer - December 16, 2009 1:15 PM
I am sure glad to see all the comments against this proposal. I believe it is a noncompetitive proposition. The insurance companies like it. I believe we need to look at the Directors who are pushing this and find out why they previously voted the way they did.

bassfishinglawyer - December 16, 2009 1:22 PM
Just keep adding more and more requirements to the profession. As a whole, we want to be treated different/better than the ordinary profession, but I think we are being pushed further and further into the corner. I have been at this for over 20 years, but being a plumber (or something like it) sounds better than ever right now. Very few requirements! BTW - I carry insurance, and always have, but it went up 400% this year. If it continues to do that, I will not be carrying it.

Charles Batchelor - December 16, 2009 1:24 PM
Cost prohibitive for the little guy. Sounds like the insurance folks are not making enough money in the other areas of our life.(Robust Laughter) I understand the intent is to ferret out the bad apples of the bunch but there are more direct ways to "protect the cloth" and not regulate to death the faithful. Our personal liberties are under attack like no other time in history and I am a bit disappointed that this type of measure is even considered.

FW - December 16, 2009 1:31 PM
This is like when we were forced to state in advertising whether or not we were board certified. The general public did not understand even what that meant and most thought it meant the attorney was a paralegal. Not all attorneys in this state are fortunate enough to be able to afford the luxury of malpractice insurance with the economy the way it is and clients not paying their bills.

Kelley Hammon - December 16, 2009 1:33 PM
Would such a requirement really serve our clients? I think not. Such a requirement would only serve to line the pockets of big insurance companies. I already pay an arm and a leg for professional liability coverage. I can't imagine what my premiums will be if this measure passes. Clients have the right to ask attorneys for proof of professional liability coverage. If the attorney cannot produce it, the client can take his/her business elsewhere.

Rob Clements - December 16, 2009 1:36 PM
I do not know if there is any comment left after reading the prior posts. I believe this is a bad idea at best.

J. Brian Martin - December 16, 2009 1:41 PM
While I carry professional liability insurance as a matter of choice and safe practice, I believe continuing legal education a better shield against malpractice claims that this measure will surely foster. To require this is an absolute pitard designed to skewer the profession unfairly. As attorneys we all, I hope, believe in equal protection under the law that we are all charged with upholding. I hope the Supreme Court sees it that way as well. This proposal is a very bad idea.

Joe Watts - December 16, 2009 1:43 PM
Our firm carries insurance for the firm, but I agree with the overwhelming majority of opinions that public disclosure is a bad idea. It will invite lawsuits and add to the "lawsuit crisis."

Stephen Coen - December 16, 2009 1:52 PM
Just another heavy-handed attempt to cram something foul down our throats. Whose state bar is this, anyway? When is it goint to be my turn to impose a big-government-happy whim on everyone else?

George Conner - December 16, 2009 1:56 PM
It takes an amazing amount of talent to be sober and think of an idea this bad.

Why not replace the Texas Supreme Court with a panel of insurance executives?

Michael Flynn, J.D., Ph.D. - December 16, 2009 1:58 PM
A bad idea. More of the government telling people that it is government's job to protect them. From what? Their own attorney? This is not the profession policing itself for best ethical practice, but an intrusion of Big Brother telling people that "he" will protect them from something. Presumes a danger. Presumes that Big Brother can protect. Takes legitimate responsibility from both clients and lawyers.

David Pyke - December 16, 2009 2:13 PM
I don't mind disclosing this, but I deal with clients where we don't necessarily get into a big fee agreement. How to disclose is the issue for me? Can we simply put it on our website? Maybe IF a written fee agreement is included, it should be disclosed.

PS -- Those of you think malpractice insurance is too expensive have been listening to too many Republican's and Physician's rhetoric. It is not too expensive if you've not had claims.

Layne P - December 16, 2009 2:37 PM
Just when we finally had no more obligation to confuse clients with the "Not certified by

the Texas Board of Legal Specialization" disclaimer, now we face the fun of explaining why we carry no malpractice insurance. Why?

Our ma and pa office is 99% transactional and I can assure you that the cost of our fees is of paramount concern to the vast majority of our individual clients (versus business clients). They already think attorney's charge absurd fees and passing on additional costs for insurance is just another burden. Of course we don't HAVE to buy it, but then we get to answer the questions that arise only because of the disclosure.

Larger firms who handle larger matters from clients with larger pocketbooks probably tend to carry insurance already and their clients would be more likely to inquire about it, too, but making this an across the board disclosure requirement seems unlikely to help anyone and put more pressure on those of us trying to help small clients without having to file bankruptcy proceedings ourselves.

Could the disclosure be limited to certain size firms?

Better yet, why not establish an uninsured malpractitioner fund? Realtors have one, among others? Maybe add the fee to court filing fees and let the litigious-oriented clients fund it?

As with the overwhelming majority, I say it is a BAD IDEA!

Layne P - December 16, 2009 2:41 PM
Maybe the Texas Supreme Court should really do something to address the issue, like limiting law school classes. Then those of us on the edge of making a living at law could afford insurance and the need for disclosure would go away.

My vet friend just laughs at how stupid our state bar is compared to their system. I think he said A&M puts out about 120 vets a year. I think our graduating class at UT in the '90s was 500 or 600...

S. Gary Werley - December 16, 2009 2:58 PM
To tell someone you have malpractice insurance is deceptive without telling them the many hurdles one has to overcome to prevail. If you start the disclosure process where does it end. We could adopt the methods of the construction industry and obtain insurance for that client and pass on the costs to him.I also have never been asked whether I had insurance or not.

Dennis Jones - December 16, 2009 3:16 PM
Bad Idea.

Papa Jo - December 16, 2009 3:47 PM
I can't afford insurance - not even health insurance, much less E & O coverage!! Disclosing that I have no coverage would cause me to lose what few clients I have. If the

big firms want to wipe out the solo practitioners, this is a great first step.

michael dickens - December 16, 2009 4:00 PM
Forcing attorneys to disclose they have professional liability insurance is a bad idea. This will put a target on the attorney's back. Forcing an attorney to make this disclosure will also place an undue burden on the attorney.

Seth Hinkley - December 16, 2009 5:00 PM
I have PLI coverage, but I have to echo much of what has been posted above: requiring disclosure of PLI is a bad idea.

ZeeAngel - December 16, 2009 5:28 PM
The issue is whether liability insurance should be disclosed, not whether the attorney has it or not. Other professions do not mandate the disclosure of insurance and similarly attorneys should not have to disclose such information. If clients are interested, they can certainly ask. Physicians may have insurance, but they certainly do no have to disclose the existence or limits by statute. Further, physicians enjoy limited liability compliments of our state's legislature. Finally, there are certain areas of practice that it makes sense to have insurance because client matters involve high stakes. By contrast, there are many other areas of practice that do not involve this sort of exposure. I have practiced in both arenas, so at times I have had professionaly liability insurance and at times I have not. I am not in support of mandating the disclosure of insurance.

Janice Miles - December 16, 2009 5:47 PM
Court appointments in Bexar County pay lawyers at a rate of $20 to $25 per hour. A single court appearance by a lawyer in misdemeanor court in representation of an indigent client is paid at $33.33. I assume we would also be required to tell our indigent clients whether or not we carry malpractice insurance. Would we also be required to explain to our indigent clients what "malpractice" is and, to make sure they understand in view of their often limited education, give them a few examples of circumstances under which they could sue?

Luis Suarez - December 16, 2009 6:53 PM
why disclosure about malpractice insurance? if it is a question of advising the client what resources are available to pay for professional mistakes, then let's also require that lawyers disclose their net worth of non-homestead assets to clients, or post on the State Bar of Texas website their 1040s for the past two years.

Ben Hunsucker - December 16, 2009 9:36 PM
When the cost of medicine became outrageous, the lawyers got blamed not the insurance companies that made the premiums outrageous for all medical doctors. Not just the ones making mistakes that caused injury and/or death.

This is another attempt of the large lobbying power of the insurance companies to use the legislature to boost their revenues. It may be promulgated by "our own" but who benefits?

If a client asks us about mal-practice insurance then we already have an obligation to inform them.

Additionally, we already have a mechanism in place for malpractice. Its known as a court of law. Not to mention the grievance process that we have spent much time, money and effort revising.

Joan - December 16, 2009 10:41 PM
Strongly opposed to this idea.

Just like the old rule about telling clients you are not board cert. even though it wasn't required.

I deal with a primarily non-English speaking immigrant clientele. It took me forever to explain the board cert. rule and convince clients that I am allowed to practice law.

I do not look forward to more explaining about something that is not required. Or, is this the first step to the public demanding that attorneys carry malpractice insurance?

Simple. Recommend this NOT be required to the court.

Steve - December 17, 2009 4:36 PM
So what if PLI is disclosed? I hear the common complaint that it will breed lawsuits? Isn't that what has happened with Auto Liability Insurance? Breed lawsuits?
I find it ironic how we, as attorneys, are planning how to avoid being sued. Don't let people know we can be sued, that would be terrible. Allowing the general public to be fully aware of the public's rights would be bad for us. How pathetic!

Cynthia - December 18, 2009 6:59 AM
Bad idea. If a client wants to know if you have malpractice insurance, all they have to do is ask.

Making an issue of whether or not an attorney has malpractice coverage will only invite lawsuits and grievances. Even though it can be a legitimate concern, any representation has complications and ultimately the success or failure of legal representation is always predicated in some degree upon the actions of other people outside the control of the attorney, often including the actions of the client.

Having insurance is not a barometer of the quality of an attorney's representation but people will perceive the lack of insurance as a deficiency on the part of the attorney who does not have it if the State Bar makes it an issue. For all the surveys, if it were really something consumers considered necessary, especially in Texas, some constituency or group would have clamored for it long ago. It's not broken, don't try to fix it.

Again, bad idea

Greg Housewirth - December 18, 2009 11:38 AM
Agree. It is hard enough to make a living in this profession without an additional complication and expense. As a family law attorney, I deal regularly with clients who are angry and looking for someone to blame for their misfortunes. Leading them to believe there is a readily available payment source will increase malpractice litigation.

Richard G. Rogers - December 18, 2009 3:41 PM
I am a solo practioner in a very specialized area of the law. I carry PLI to protect my family and my assets, not to protect my client. If the Texas Supreme Court desires to make a target of certain lawyers who carry PLI, this would certainly do it.
Why fix a problem that doesn't exist? I do not ask physicians a similar question before I let them treat me.

Logan - December 20, 2009 3:40 PM
I am by no means experienced in these matters.
But when a practice is insured, the cost of business goes up and this translates to the client's expenses, but there will be more clientele as it is safer to take risks. An uninsured practice may be cheaper, but you get what you pay for. Ultimately how a practice deals with its clients is the majority of real insurance. In my opinion, just having PLI creates a double standard between those who do have it and those who don't take more risk, but the division will grow if it's advertised, leading to everyone eventually having PLI. And that in turn would again make the disclosure irrelevant, as everyone would already have it so its common knowledge. These are my immediate thoughts on the matter.

Walter Fortney - December 20, 2009 7:01 PM
Insurance does not cause negligence. It only encourages a claimant and his attorney to sue in hopes of a settlement. Good cases will be filed whether or not there is insurance. Disclosure will only encourage questionable suits.

William A McDowell, jr - December 21, 2009 4:30 PM
although I carry the inssurance, I am against the requirement to do so or to be required to post anything anywhere stating that I do carry it. The court in requiring same is only announcing to the world 'SUE THE LAWYERS'. I lost confidence in the supreme court a long time ago and don't have much left for the state bar.

SPW - December 22, 2009 1:56 AM
We are now forced to pay for services for the indigent. We are STRONGLY encouraged to volunteer our time and expertise to provide legal services for the indigent and are fearful that this will become mandatory. We are forced to tell people that we are not board certified rather than have those who are board certified advertise that as an added asset. We are forced to tell people that they can file a complaint against us and give them the telephone number, as if we expect a complaint to happen.

The Bar and the Supreme Court treat us as if we are low class people guility of trying to rip off clients. If they have no confidence in us, how can the public? Let's get rid of the guilt complex.

I have a clean record, I volunteer and I am not ashamed to be an attorney. I am a solo practitioner, and I cannot afford malpractice insurance. Can't the Bar and the Supreme Court just allow us to make a living? Focus on positive, supportive measures that help us be better attorneys. If lack of malpractice insurance is creating a problem for some, don't punish all of us.

Jennifer McKay - December 29, 2009 11:20 AM
For the same reasons we got rid of the rule which mandated attorneys shall disclose if they are not board certified (was confusing to the clients, made the attorney look unqualified to practice, made the attorney look like he was not even licensed to practice law....), why on Earth would we require attorneys to throw this bit of information out there to confuse people as to my qualifications. In my opinion, PLI is to protect me and my assets, not my clients. This just encourages law suits. Look what's happened in the medical field. The costs of insurance have driven many good docs out of business.

Herbert W. Henry - December 30, 2009 3:15 PM
I have been practicing law in Bay City, Texas, as a sole practitioner ever since I obtained my law license on December 13, 1971.

During this 38 years, I have never once had anyone ask me for anything because of alleged malpractice.

I think I am a good lawyer. I have a Phi Beta Kappa key, and I graduated 4th in my class in law school.

I practice in a small town by choice, not really caring for life in the big city. But I must say, the powers that be that run the State Bar of Texas live in a different world than the world in which I live.

I can't even remember when I last had malpractice insurance, it has been so long - perhaps as many as thirty years. I realized early on that if I was going to stay in business in a small town I could not afford the luxury of malpractice insurance.

So, now, people who have never walked in my shoes propose to make me publish what amounts to an implied apology for being a poor lawyer by announcing that I do not have malpractice insurance.

It is tough to make it in a small town. Please don't make it even harder by imposing this burden on us. Go away, please.

James - December 31, 2009 9:21 AM
It seems to me that this requirement will have undesirable results. It could discourage settlements because a client might be more inclined to pursue a questionable claim if he/she thinks that the lawyer might be responsible if they don't get the result they wanted. I think it favors the large firms that could show larger limits. Those clients that have a real need for a firm with higher coverage already inquire of their lawyers about coverage.

Why invite others to shop around on this basis?

Doc - December 31, 2009 11:17 AM
Love it, love it, love it!!!!

Give guns to the animals and give them a fighting chance against the hunters. It makes the hunt that much more interesting.

I agree with every comment here. Disclosing malpractice insurance invites litigation. Unfortunately, us docs don't have to disclose it. It is mandatory that we have it with state mandated minimum coverage. It is mandatory to have it to be on staff in a hospital. So, no disclosure necessary. Everyone knows where the deep pockets are. The only disclosure that is necessary is when you DON'T have it. Welcome to the circus that your profession has created.

Rich Robins - January 1, 2010 10:22 AM
Why stop at requiring attorneys to disclose, regardless of whether they're asked by clients, if they carry malpractice insurance? Why not also require that attorneys disclose, before even being potentially asked, the nature of their familial and extra-familial relations? Wouldn't this make sense, since one's familial and extra-familial relations can also impact one's ability to render adequate service to clients, and to compensate them if the client perceives the financial opportunity to go after a deep pocket for any recovery that neither courts nor insurors would give them?

Admittedly the current rules require attorneys to tell the truth when asked about whether they carry professional liability insurance. But why stop there? The insurance lobby stands to make so much, and can sponsor the Texas Bar's relentless pursuit for more revenues, while the Bar continues doing so remarkably little for the tens of thousands of attorneys who are still forced to pay hundreds of dollars to the Texas bar each year.

Wasn't the Texas Bar nearly voted out of existence by its members around a decade ago?

http://www.texasbar.com/PrinterTemplate.cfm?Section=Texas_Bar_Journal1&Template=/ContentManagement/ContentDisplay.cfm&ContentID=1786

http://www.sunset.state.tx.us/78threports/bar/dec_02.pdf

Imposing further unwarranted intrusions on members will make such an abolition finally more likely now that cyberspace enables and empowers progressive thinkers to organize and rid ourselves of such a parasitic fossil. So for attorneys' sake state-wide, please do impose further restrictions like the mandatory insurance disclosure proposal.

H L Clarke - January 2, 2010 10:25 PM
I am opposed to such disclosure. The public complains about a litiguous society and then the SBOT proposes a new disclosure which is sure to encourage more litigation whether or not the allegations are true. There are too many clients who would use the information

as a "shakedown" if the client was not pleased with the legal result of his/her case. This is at the top of the "worst ideas" yet proposed by SBOT.
The additional burden on solo/small firm attorneys would definately be counterproductive.

Sherri Cothrun - January 8, 2010 11:07 AM
This is a bad idea for all of the reasons others have posted previously. This information is not a representaion of a lawyer's competence or a predictor of the representaion the lawyer will provide. It may discourage clients from hiring a lawyer who does not have insurance for the sole purpose of finding one they can sue. Each client has the opportunity to make this inquiry when they speak to an attorney if it is an important consideration to th client.

Carolyn Price - January 8, 2010 11:37 AM
I am against the proposed rule.

Keith Martinson - January 18, 2010 3:24 PM
Bad, bad idea!

JDH - January 19, 2010 12:10 AM
I too am opposed to this proposal. I wonder if the powers that be in the State Bar will go with the what its members clearly want or will they simply ignore us? It will be interesting to see...

Greg Baumgartner - January 20, 2010 9:18 AM
I oppose this idea.

SA - January 22, 2010 4:05 PM
Horrible idea! Will hurt solos and small firms that can least afford it. This whole process has been a huge waste of time and money. Why does the State Bar insist on making the practice of law more expensive and more difficult for its members? Stop working against us and start working for us. Vote NO.

Daniel Keene - January 23, 2010 12:46 PM
The pros and cons regarding this disclosure requirement are well documented. I am adamantly opposed.

Joseph R. Preston - January 25, 2010 10:51 AM
I oppose this idea. It will hurt solo practitioners and small firms.

Susan Morrison - January 26, 2010 6:06 PM
Having paid for professional liability coverage my entire career, I thought I would be in favor of this disclosure, but after reading the pros and cons article in the Bar Journal I am convinced to vote AGAINST it. What we should be focused on is passing the rule against lawyers having sex with clients. That would do more to bring our ethics and professional standing up to the level of doctors, dentists, and massage therapists, than this insurance disclosure! Yes, massage therapists have higher standards of conduct than lawyers because they have a bright line rule prohibiting sexual relations with clients.