

ABA Rule Would Require Malpractice Insurance Notice

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Over the years, the ABA Committee on Client Protection has tried in various ways to encourage lawyers to disclose to their clients whether or not they had malpractice insurance. In December 2003, the Committee proposed to tie disclosure of coverage to the lawyer's annual or biennial registration statement. Under that proposal, lawyers would state whether they maintained malpractice insurance of at least \$100,000/\$300,000. They would also advise whether there were any unsatisfied malpractice judgments against them.

In response to widespread opposition by the bar to its 2003 proposals, the ABA Committee has now proposed a new Model Court Rule which would not require either disclosure of any specific coverage amount or notice of an unsatisfied malpractice judgment. The new Rule, would however, be tied to the lawyer's registration statement.

The Rule would require lawyers in private practice to state only whether or not they are covered by malpractice insurance. The coverage amount need not be disclosed. Lawyers who report being covered by insurance must advise the courts within 30 days if the insurance policy lapses, is no longer in effect or terminates for any reason. Any information submitted under the Rule will be made available to the public "by such means as may be designated by [the highest court of the jurisdiction]." Any lawyer who failed to comply with the Rule would be subject to suspension.

Lawyers who are engaged in the practice of law as fulltime government lawyers or as fulltime counsel to an organization would be exempt from the rule.

New York has no rule requiring malpractice insurance coverage nor any rule dealing with disclosure of coverage or the lack it. Only Oregon requires its lawyers to maintain malpractice insurance. Several states require disclosure of coverage in the registration statement and a few require lawyers to tell their clients directly whether or not they have coverage.