

Virginia State Bar Seeks Comments to
Proposed Amendments to Part 6, Section IV, Paragraphs 18 and 19
Rules of Supreme Court of Virginia

The proposed rule changes for Paragraphs 18 and 19, providing that all active members of the Virginia State Bar engaged in the private practice of law representing clients (either individuals or entities) drawn from the general public be covered under a professional liability (malpractice) insurance policy, will be debated by the council of the Virginia State Bar at its October 17, 2008 meeting.

NOTE: THESE PROPOSED RULE CHANGES HAVE BEEN PRESENTED TO BAR COUNCIL FOR CONSIDERATION BY THE BAR'S SPECIAL COMMITTEE ON LAWYER MALPRACTICE INSURANCE. NEITHER THE COMMITTEE NOR THE BAR COUNCIL HAVE TAKEN A FORMAL POSITION ON THE MERITS OF REQUIRING MALPRACTICE INSURANCE. RULE CHANGES MUST BE PUBLISHED BEFORE ANY ACTION CAN BE TAKEN BY BAR COUNCIL.

Any member of the bar having comments about the proposed changes should direct those to: Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219-2800, no later than September 26, 2008.

PROPOSED PARAGRAPH 18

18. **MANDATORY MALPRACTICE INSURANCE RULE.**— In order to protect the public and promote the financial responsibility of each active member of the Virginia State Bar in regard to professional liability claims, each such member shall, upon admission to the bar, and with each application for renewal thereof, submit the certification required herein. The active member shall certify to the bar on or before July 31 of each year whether or not such member is regularly engaged in the private practice of law involving representation of clients (individuals or entities) drawn from the public. All members so engaged are required to be covered under a professional liability (malpractice) insurance policy written by an insurer authorized by state or federal law to offer such insurance in the jurisdiction in which the member practices and providing minimum coverage limits of EITHER \$100,000 per claim with a claim expense allowance of at least \$50,000 outside the policy limits OR \$200,000 per claim where claims expenses are inside the policy limits. The active member shall then certify that he or she has the required insurance and shall provide the name of the insurance carrier and the policy number.

The foregoing shall be certified by each active member of the Virginia State Bar in such form as may be prescribed by the Virginia State Bar. By signing the certification, the member authorizes the bar to verify the existence of such policy with the named insurer and authorizes the named insurer to release such

information to the bar. Each active member who certifies to the bar that such member is covered under a professional liability insurance shall notify the bar in writing within thirty (30) days if the insurance policy providing coverage lapses, is no longer in effect or terminates for any reason, unless the policy is replaced with another policy and no lapse in coverage occurs. An extended reporting endorsement or “tail coverage” would not meet this requirement. The member shall provide the bar with the name of the insurance carrier and the policy number for any replacement policy.

Failure to comply with this Rule shall subject the active member to the penalties set forth in Paragraph 19 herein. An untruthful certification or unjustified failure to notify the bar of a lapse or termination of coverage shall subject the member to appropriate disciplinary action.

PROPOSED PARAGRAPH 19

19. **PROCEDURE FOR THE ADMINISTRATIVE SUSPENSION OF A MEMBER.**— Whenever it appears that a member of the Virginia State Bar has failed to comply with any of the Rules of Court relating to such ~~person's~~ attorney's membership in the bar, the Secretary-Treasurer shall mail a notice to the member advising of the member's noncompliance and demanding (1) compliance within sixty (60) days of the date of such notice and (2) payment of a delinquency fee of \$50; for each Rule violated, provided, however, that the delinquency fee for an attorney who does not comply with the timely completion requirements of Paragraphs 13.2 and 17 (C), or the insurance coverage requirements of Paragraph 18, of these rules shall be \$100, and the delinquency fee for an attorney who does not comply with the certification requirements of Paragraphs 13.2, 17 (D), and 18 of these rules shall be \$100. The notice shall be mailed by certified mail to the member at his or her last address on file at the Virginia State Bar.

In the event the member fails to comply with the directive of the Secretary-Treasurer within the time allowed, the Secretary-Treasurer will then mail a notice to the member by certified mail to advise (1) that the attorney's membership in the bar has been suspended and (2) that the attorney may no longer practice law in the Commonwealth of Virginia or in any way hold himself or herself out as a member of the Virginia State Bar. Thereafter the attorney's membership in the Virginia State Bar may be reinstated only upon showing to the Secretary-Treasurer (1) that the attorney has complied with all the Court's rules relating to his or her membership in the bar and (2) upon payment of a reinstatement fee of \$150 for each Rule violated, provided, however, that the reinstatement fee for an attorney who was suspended for noncompliance with Paragraphs 13.217 and 18 of these

rules shall be \$250, and shall increase by \$50 for each subsequent such suspension, not to exceed a maximum of \$500.

Whenever the Secretary-Treasurer notifies a member that his or her membership in the bar has been administratively suspended, the Secretary-Treasurer shall also (1) advise the Chief Judges of the circuit and district in which the attorney has his or her office, as well as the clerks of those courts and the Clerk of the Supreme Court, of such suspension and (2) publish notice of the suspension in ~~the next~~ *issue of the Virginia Lawyer Register*.

An administrative suspension shall not relieve the delinquent member of his or her annual responsibility to attend continuing legal education programs or to pay his or her dues to the Virginia State Bar.

PROPOSED MANDATORY CERTIFICATION

MANDATORY CERTIFICATION REGARDING PROFESSIONAL LIABILITY INSURANCE -- All ACTIVE members (including attorneys selecting active status) are required to complete this form. Pursuant to Supreme Court Rule Part 6, Section IV, Paragraph 18, all active members in private practice representing clients drawn from the public are required to maintain professional liability insurance. You **MUST ANSWER** the following questions, **SIGN** the certification and return it to the Virginia State Bar to remain in good standing.

1. Are you engaged in the private practice of law regularly representing clients (individuals or entities) drawn from the public? Yes No
-- If your answer to question 1 is YES, then answer question 2; if NO, continue to the Name and Signature lines.
2. Are you currently covered by a professional liability (malpractice) insurance policy written by an insurer authorized by state or federal law to offer such insurance in the jurisdiction in which you practice and providing minimum coverage limits of EITHER \$100,000 per claim with a claim expense allowance of at least \$50,000 outside the policy limits OR \$200,000 where claims expenses are inside the policy limits. An extended reporting endorsement (tail coverage) is insufficient to satisfy this requirement. Yes No
-- If your answer to question 2 is YES, then provide the following information; if NO, you will be notified by the Virginia State Bar regarding your noncompliance with Paragraph 18.

The name of the insurance carrier (not the agent) providing your malpractice insurance and the policy number:

Name of Malpractice Insurance Carrier Policy Number

I certify that the information above is true and correct; and, if I have certified that I am currently covered by a professional liability insurance policy, I authorize the Virginia State Bar to verify the existence of such policy with the named insurer and authorize the insurer to release such information to the bar. I understand that the Supreme Court Rule requires me to notify the Virginia State Bar in writing within 30 days if my coverage lapses or terminates and is not replaced within the 30 days. I understand that an untruthful certification or unjustified failure to notify the bar of a lapse or termination of coverage shall subject me to appropriate disciplinary action.

Name (Please print): _____ Signature (**Required**) _____