

**VIRGINIA STATE BAR'S
SPECIAL COMMITTEE ON LAWYER
MALPRACTICE INSURANCE
SEEKING PUBLIC COMMENT ON PROPOSED
AMENDMENTS TO PART 6, SECTION IV, PARAGRAPH 18
OF THE RULES OF THE SUPREME COURT OF VIRGINIA**

For the past 15 years, the Virginia State Bar has collected information from each active member on the annual dues statement certifying whether the member is in private practice and, if so, whether he or she has lawyer malpractice insurance coverage. Such members are also required to report whether there are any unsatisfied judgments against them arising out of professional services they rendered.

Throughout this period of time, the bar's active membership has consistently reported that approximately 90% of those in private practice do have malpractice insurance coverage. From time to time, however, information has been received by the bar that indicates there is sometimes confusion about the kind of insurance members have and the coverage which it actually provides.

In an effort to collect more accurate data, the bar's Special Committee on Lawyer Malpractice Insurance is proposing amendments to Part 6, Section IV, Paragraph 18 of the *Rules of the Supreme Court of Virginia* which would require each active member in private practice who indicates they are covered by malpractice insurance to submit with their annual certification proof of their insurance in the form of a copy of a declarations page or a certificate of insurance containing specific information about the nature and extent of the coverage provided. The rule changes will require that the bar keep this information confidential.

These proposed rule changes will be considered by the Council of the Virginia State Bar at its next meeting on June 14, 2007, and the proposed changes are published below for comment. Any member of the bar having comments about the proposed changes may direct those to: Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219-2800 no later than **May 7, 2007**.

18. FINANCIAL RESPONSIBILITY.—In order to make available to the public information about the financial responsibility of each active member of the Virginia State Bar for professional liability claims, each such member shall, upon admission to the bar, and with each application for renewal thereof, submit the certification required herein or obtain a waiver for good cause shown. The active member shall certify to the bar on or before July 31 of each year: a) whether or not such member is currently covered by professional liability insurance, other than an extended reporting endorsement; b) whether or not such member is engaged in the private practice of law involving representation of clients drawn

from the public, and, if so, whether the member intends to maintain professional liability insurance coverage during the period of time the member remains engaged in the private practice of law; and c) the date, amount, and court where rendered, of any unsatisfied final judgment(s) against such member, or any firm or professional ~~corporation~~ entity in which he or she has practiced, for acts, errors, or omissions (including, but not limited to, acts of dishonesty, fraud, or intentional wrongdoing) arising out of the performance of legal services by such member.

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 and shall be made available to the public by such means as may be designated by the Virginia State Bar. Those active members certifying that they are in private practice and have professional liability insurance shall furnish with their certification proof of their insurance in the form of a copy of a declarations page or certificate of insurance containing at least the following: named insured, the company issuing the policy, the type of insurance provided, the policy period, and the limits of liability. The bar is required by this rule to keep confidential and not disclose the information contained in the proof of insurance submitted.

Each active member who certifies to the bar that such member is covered by 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.

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.

“Good cause shown” as used herein shall include illness, absence from the Commonwealth of Virginia, or such cause as may be determined by the Executive Committee of the Virginia State Bar whose determination shall be final. Any determination by the Executive Committee may be reviewed by the Supreme Court upon request of the member seeking a waiver.

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