



*An Organization Of*

**AMERICANS FOR LEGAL REFORM**

November 4, 2004

George R. Reinhardt, Jr., Esq.  
President  
State Bar of Georgia  
104 Marietta Street NW, Suite 100  
Atlanta, Georgia 30303

Dear Mr. Reinhardt:

We understand that the Board of Governors is holding a hearing on November 5, 2004 to consider an important proposal that would require lawyers to directly disclose to clients whether they carry professional liability insurance. HALT strongly supports this recommendation because it allows consumers to make a more informed choice when deciding whether to retain a particular lawyer. In an era that places a premium on principles of sunshine and transparency, we believe this requirement is long-overdue.

HALT is a nonprofit public interest group dedicated to increasing access and accountability in the civil justice system. HALT's Lawyer Accountability Project works to make lawyers more responsive to the needs of legal consumers and to empower legal consumers to protect themselves from negligent, unscrupulous and incompetent attorneys. Through our well-known Report Cards, appellate litigation, media campaigns, legislative work, white paper releases and grassroots lobbying, HALT has been on the forefront of fights to improve systems in place to weed out unethical lawyers and provide recourse to victimized legal consumers.

Recently, we have directed much of our reform work toward advocacy for legal malpractice insurance requirements and, at a minimum, mandatory disclosure of malpractice insurance status. We have made these efforts a priority because members of the public, including many from Georgia, tell us that the secrecy surrounding lawyers' insurance status marks one of the greatest obstacles facing legal consumers.

As you know, the vast majority of state client protection funds, including Georgia's, limit coverage to losses stemming from theft. Attorney discipline systems, including Georgia's, do not provide financial compensation to victimized clients. As a result, a legal malpractice case is frequently a client's only recourse when her attorney's negligence has caused financial loss.

We hear every week from consumers who have fallen victim to an attorney's negligence and are shocked to learn, long after they have filed a malpractice lawsuit, that their former lawyer is uninsured. Understandably, they believe that they should have received that information upfront and that they, in all likelihood, would have retained a different attorney had they known that this lawyer did not carry malpractice insurance.

This misapprehension is understandable. If an individual applies to her state for a vehicle registration, she must show proof of financial responsibility, usually in the form of proof of insurance. Similarly, if she applies for a contractor's license, she is also required to show proof of insurance. The reason for these requirements is simple and common sense: To obtain a state license, an individual must demonstrate that she has the ability to protect the public if anyone is injured by her negligence in her use of that license. This same principle should extend to lawyers licensed by the State Bar of Georgia. Indeed, the modern trend favors disclosure of malpractice insurance coverage.

Earlier this year, we collaborated with the American Bar Association's Standing Committee on Client Protection to implement a model rule requiring lawyers to disclose whether or not they carry a minimum level of professional liability insurance. A few months ago, we worked with officials in Illinois to persuade the state Supreme Court to adopt the ABA model rule and to go a step further by providing this critical information on the disciplinary commission's Web site.

A few years ago, the Virginia State Bar decided to provide information about lawyers' insurance status on its public Web site. While the state has not compiled formal statistics yet, officials at the Virginia Bar tell us they have seen a dramatic increase in the number of lawyers that carry malpractice insurance since the rule was implemented. And in 1999, HALT was pleased that South Dakota enacted a rule requiring uninsured lawyers to disclose their uninsured status on letterhead. This reform also led to a meteoric rise in the number of insured lawyers. More than 98 percent now carry professional liability insurance – a figure that's more than twice the national average of 40 percent.

Success in Virginia and South Dakota is largely attributable to the fact that the rule requires *direct* disclosure of insurance status to clients, not simply to the state's highest court. A disclosure requirement attempts to serve two purposes: (1) to inform clients of whether a lawyer or prospective lawyer is insured and (2) to encourage lawyers to obtain insurance coverage. These goals are only advanced if the information is communicated directly to clients.

We anticipate that some at the hearing may urge the Board of Governors to weaken the proposed disclosure rule by amending it to merely require disclosure in a lawyer's bar registration papers, rather than direct communication with clients and prospective clients. A requirement that insurance information be disclosed in registration papers, however, is merely an assurance that the state's highest court will be informed of an attorney's insurance status; it is not a guarantee that *clients* will have access to this information. It is crucial that the Board of Governors recognize that it is *clients* who stand in harm's way when an attorney refuses malpractice coverage, not the state's highest court. In light of this important principle, Georgia's rule should require direct public disclosure to clients.

HALT also anticipates that opponents of this proposal will argue to the Board of Governors that this proposal will lead to an unfair financial burden on certain types of lawyers. As a *Fulton County Daily Report* article noted, insurance premiums typically do not cost more than \$1,000 per year, and in many cases these premiums are far less expensive. ("Lawyers Could Face Disbarment for Failing to Disclose Coverage Status," November 3, 2004) While most lawyers will never commit malpractice, a few dollars a week in insurance fees is a small price to pay to guard clients and protect the integrity of the profession.

Admittedly, direct disclosure to clients that an attorney has chosen to "go bare" may discourage some prospective clients from hiring that attorney. But this should be the client's prerogative. That kind of choice on the part of a consumer is one of the bedrocks of American society.

We strongly urge the Board of Governors to adopt this important proposal. By taking this long-overdue step, the Bar can satisfy its vital mission to protect Georgia's client population and help restore honor and integrity to the legal profession. Should you need any further information about the necessity of a direct disclosure rule, please do not hesitate to contact me at (202) 887-8255. I will be happy to provide you with additional data and research that supports this critical recommendation.

Sincerely,

Suzanne Mishkin  
Associate Counsel