

HALT Status Update:
Does Your State Require Lawyers to Make Their Insurance Status Known?

In August, 2004, the American Bar Association adopted the following model rule, requiring lawyers to disclose whether they are covered by legal malpractice insurance

Each lawyer admitted to the active practice of law shall certify to the highest court of the jurisdiction...**whether the lawyer is currently covered by professional liability insurance** [and] whether the lawyer intends to maintain insurance during the period of time that the lawyer is engaged in the private practice of law. Each lawyer...who reports being covered by professional liability insurance shall notify the highest court of the jurisdiction in writing within 30 days if the insurance policy providing coverage...terminates for any reason. [This information] will be made available to the public. [emphasis added]

Since the ABA issued this recommendation, states have started to consider amending their Rules of Professional Conduct to include a requirement that lawyers disclose their insurance status to the state's highest court. HALT has offered input to many of the states that have considered such a proposal, and HALT has strongly urged the states to go beyond the ABA's baseline recommendation by requiring lawyers to directly disclose to clients whether or not they carry malpractice insurance. In comments to the Illinois Supreme Court, for example, HALT wrote:

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 Illinois Attorney Registration and Disciplinary Commission 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, Illinois' rule should require direct public disclosure to clients.

Ultimately, **Illinois** decided to follow HALT's recommendation and make its list of uninsured lawyers available to the public on the attorney discipline body's Web site:

www.iardc.org/malpracticeinfo.html

In addition, **Alaska, New Hampshire, Ohio** and **South Dakota** require that uninsured lawyers directly disclose their insurance status to their clients. In South Dakota, the rule specifies disclosure in the uninsured lawyer's letterhead. Ohio requires more generally that uninsured lawyers inform their potential clients through a "standard form."

Delaware, Kansas, Michigan, Nebraska, New Mexico, North Carolina, Virginia and West Virginia require lawyers to disclose their insurance status on their annual registration statement. In Kansas, legal consumers may obtain a listing from the Clerk of the Court. In Virginia and North Carolina, the information is made available on their respective State Bar Web sites. Delaware, New Mexico and Michigan have chosen to collect data about malpractice insurance for statistical purposes only, and therefore do not publicly post information about specific lawyers. Two states, Nebraska and West Virginia, have indicated that they will make the information available to the public, but the actual means of disclosure are unclear.

Six states are currently considering the adoption of the rule: **California, Kentucky, Pennsylvania, Massachusetts, Minnesota** and **Washington**. HALT is currently urging these states to adopt direct disclosure rules that will ensure that clients and prospective clients have access to this critical information.

Alabama, Arkansas, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Louisiana, Maine, Maryland, Mississippi, Montana, Nevada, New Jersey, New York, North Dakota, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Wisconsin, Wyoming and the **District of Columbia** have yet to weigh in on this important issue.