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Lawyers Must Disclose Lack of Malpractice Insurance

The California Supreme Court has adopted a new rule making it mandatory for attorneys who are not covered by professional liability (malpractice) insurance to advise clients that they do not have this insurance coverage. The new rule, 3-410 of the California Rules of Professional Conduct, goes into effect January 1, 2010.

After January 1, attorneys who do not have coverage must also disclose the lack of insurance in writing to all existing clients. Additionally, if an attorney has had insurance but elects to drop his/her malpractice coverage, clients must be advised in writing within 30 days of the termination of the insurance coverage.

The rule applies to any legal matter that will require four hours or more of legal representation. It does not apply to attorneys employed as a government lawyer or in-house counsel when representing or providing legal advice to a client in that capacity. The rule also does not apply to legal services provided in an emergency. In California, attorneys are not required to carry professional liability insurance.

“Although unpopular in some legal circles, this rule is designed to protect the client,” states W. Brian Ahern, president of Ahern Insurance Brokerage (AIB). “I believe the Supreme Court felt that the decision to retain a lawyer must be based on full disclosure, and not having professional liability insurance could be an important factor to some potential clients.”

Ahern advises lawyers that do not currently have professional liability insurance to work with an insurance broker that specializes in the needs of law firms. “There are many programs available that will provide attorneys with good coverage while controlling premiums.”

Ahern also recommends that existing professional liability policies be reviewed annually to ensure that a firm’s coverage remains adequate considering the new rule.

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