

## Rule 1.4.1: Disclosure of Professional Liability Insurance

(Commission's Proposed Rule – Clean Version)

- (a) A lawyer who knows or should know that he or she does not have professional liability insurance shall inform a client in writing, at the time of the client's engagement of the lawyer, that the lawyer does not have professional liability insurance whenever it is reasonably foreseeable that the total amount of the lawyer's legal representation of the client in the matter will exceed four hours.
- (b) If a lawyer does not provide the notice required under paragraph (a) at the time of a client's engagement of the lawyer, and the lawyer subsequently knows or should know that he or she no longer has professional liability insurance during the representation of the client, the lawyer shall inform the client in writing within thirty days of the date that the lawyer knows or should know that he or she no longer has professional liability insurance.
- (c) This Rule does not apply to a lawyer who is employed as a government lawyer or in-house counsel when that lawyer is representing or providing legal advice to a client in that capacity, or to a court-appointed lawyer in a criminal or civil action or proceeding with respect to the matter in which the lawyer has been appointed.
- (d) This Rule does not apply to legal services rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client.
- (e) This Rule does not apply where the lawyer has previously advised the client under paragraph (a) or (b) that the lawyer does not have professional liability insurance.

### COMMENT

- [1] The disclosure obligation imposed by Paragraph (a) applies with respect to new clients and new engagements with returning clients.
- [2] A lawyer may use the following language in making the disclosure required by paragraph (a), and may include that language in a written fee agreement with the client or in a separate writing:  
  
*"Pursuant to California Rule of Professional Conduct 1.4.1, I am informing you in writing that I do not have professional liability insurance."*
- [3] A lawyer may use the following language in making the disclosure required by paragraph (b):  
  
*"Pursuant to California Rule of Professional Conduct 1.4.1, I am informing you in writing that I no longer have professional liability insurance."*
- [4] Paragraph (c) in part provides an exemption for a "government lawyer or in-house counsel when that lawyer is representing or providing legal advice to a client in that capacity." The basis of both exemptions is essentially the same. The purpose of this Rule is to provide information directly to a client if a lawyer is not covered by professional liability insurance. If a lawyer is employed directly by and provides legal services directly for a private entity or a federal, state or local governmental entity, that entity presumably knows whether the lawyer is or is not covered by professional liability insurance. The exemptions

for government lawyers and in-house counsels are limited to situations involving direct employment and representation, and do not, for example, apply to outside counsel for a private or governmental entity, or to counsel retained by an insurer to represent an insured.

- [5] Paragraph (c) also provides an exemption for “a court-appointed lawyer in a criminal or civil action or proceeding with respect to the matter in which the lawyer has been appointed.” A lawyer must provide notification in all other actions and proceedings as required by paragraphs (a) and (b).