

Implementing the Mandatory Disclosure Rule

1. The proposed rule is a variation on the Virginia rule which requires that active members report to the State Bar on an annual basis whether they are in private practice and are covered by professional liability insurance. (In our rule the report is called the “Certificate of Financial Responsibility.”) The State Bar then makes the information available on its website for the benefit of inquiring consumers. There is no requirement that anyone carry insurance.
2. Like Virginia, we would capture the information once a year through a short questionnaire on the annual dues statement. Although most lawyers would likely comply by simply completing and returning the questionnaire, those who prefer to pay online would be permitted to respond electronically.
3. Lawyers who fail to submit the required information in a timely fashion (on or before June 30) would be subject to a late filing fee of \$30 and would be liable to be suspended. The compliance procedures would be in all respects the same as those used to enforce the payment of annual dues, and proceedings in the Administrative Committee would follow the same schedule. In the likely event that a noncompliant lawyer fails to pay dues and also fails to submit the required information, only one late fee would be imposed.
4. Lawyers will be “required” to update their information whenever their circumstances change, in much the same way as they are “required” to notify the State Bar of address changes. However, since there would be no effective way of identifying lawyers who fail to update, there would probably be no systematic effort to enforce that requirement. It would simply exist to encourage the submission of more timely information.
5. Unlike Virginia, which asks the consumer to inquire specifically online as to whether the subject lawyer has insurance and then offers a very confusing response, we suggest that the information regarding insurance coverage be included on a screen disclosing all the public information in our database concerning the lawyer. At a glance the consumer could learn the lawyer’s address, membership status, and whether the lawyer has insurance coverage.
6. Although the processing of the insurance information would ultimately be highly automated, we believe that the initial implementation of the rule ought to be relatively “hands on.” For that reason we expect, at least in the first year, to hand sort all the forms and to enter them categorically in the computer by batches. This would enable us to react more effectively to responses that are ambiguous or electronically indigestible. Frankly, we would expect a fair amount of confusion among the membership the first time around and believe that the learning curves of the lawyers and the State Bar’s staff will be shorter and less painful if we carefully inspect our data as it is received in the first year. Once we understand the range of possible, and likely, responses, we would try to design a process that would feature almost total reliance upon OCR (optical character reading) technology. Given our preference for initially hand sorting the forms, our most significant direct cost in 2004 would be for temporary personnel. We estimate that we would need to employ someone fulltime for approximately three months

to assist with the processing of the information and the compliance process at a cost of \$7,000 to \$8,000.

7. In order to create the software necessary to capture and store the information preliminary to its publication on the internet, we estimate programming costs of approximately \$4,000. We believe that our in-house IT professional can do the programming necessary to upload the information from our database to the website at no cost beyond his salary. Even so, we would note that this undertaking will certainly tax a very limited and precious resource and may interfere with the development of other technological initiatives. For instance, we are hoping to make our CLE records fully interactive this year. It is possible that pursuing the mandatory disclosure project would delay our implementation of this new service to our members.
8. At this point we do not expect other significant fixed costs in the first year. We do have some concern that our membership department may be vexed and overburdened by the additional telephone traffic, recordkeeping, and confusion generated by this enterprise. That being the case, and being mindful of the laws of unintended consequence, I do not regard it as unlikely that the support of this undertaking may ultimately require additional full-time staff.
9. If, as expected, we transition to a much more automated administrative process after the first year, we would need to purchase a fairly sophisticated and expensive optical scanner and some additional software. Our cost for these acquisitions would be in the neighborhood of \$12,000. The scanner would, happily enough, have a significant additional utility for us. It would enable us to proceed with our plans to archive digitally the State Bar's voluminous files. It would, we suspect, also enable us to save some of the cost of the temporary personnel referenced above.
10. It should be noted that it is quite likely that a significant amount of the information featured on our website would be inaccurate. The primary problem is time. Since the information would be routinely captured only once a year, it could be out of date very quickly and for a long time. Although we can require (encourage) our members to report changed circumstances, I am not sanguine as to voluntary compliance. When you consider also errors generated by the responding lawyer's misreporting and/or misrepresentation, and our staff's (or computer's) inevitable mistakes, there exists the very real possibility that the inquiring consumer will be occasionally misinformed. Additionally, in those instances, hopefully few in number, when we mistakenly publish information that inaccurately describes a lawyer as being uninsured, there is likely to be considerable consternation. At the very least, we are going to have to include on the website a thorough disclaimer regarding accuracy. The significance of malpractice insurance would need to be carefully explained and consumers should be encouraged to raise the issue personally with their lawyers in order to be sure that they have the latest and most accurate information.