

**PRESIDENT**

Kimberly A. Dymecki  
Suwanee

**PRESIDENT ELECT**

Jason Sheffield  
Decatur

**EXECUTIVE VICE PRESIDENT**

Natasha Silas  
Atlanta

**VICE PRESIDENTS**

**District #1**

A- Gabe Cliett  
Statesboro

B - Patrick Ferris  
Douglas

**District #2**

A - Gary Lamar  
Albany

B - Lon Kemeness  
Tifton

**District #3**

A - Nyonnohweah Seekie  
Macon

B - Richard Hagler  
Columbus

**District #4**

A - LeeAnne Lynch  
Decatur

B - Rick Ryzek  
Lawrenceville

C - Christopher Davis  
Conyers

**District #5**

Michael Brill  
Manal Chehimi  
John A. Garland  
Suzanne Tevis  
Teri Thompson  
Atlanta

**District #6**

A - James Boles  
Stockbridge

B - Brian Lockerbie  
LaGrange

**District #7**

A - Carlos Rodriguez  
Marietta

B - Jad B. Johnson  
LaFayette

**District #8**

A - Sean Brodie  
Gray

B - Clay Tapley  
Dublin

**District #9**

A - Sarah Sevcech  
East Elijay

B - Drew Powell  
Clarksville

C - William S. Hardman, Jr.  
Gainesville

**District #10**

A - Charles Rollins  
Augusta

B - Allie McCarthy  
Athens

**SECRETARY**

Ashleigh Merchant  
Marietta

**TREASURER**

Elizabeth Brandenburg  
Decatur

**PARLIAMENTARIAN**

Arturo Corso  
Gainesville

**EXECUTIVE DIRECTOR**

Jill Travis  
Atlanta

# Georgia Association of Criminal Defense Lawyers

215 Church Street, Suite 111  
Decatur, GA 30030  
(404) 248-1777

29 September 2021

Board of Governors  
State Bar of Georgia  
104 Marietta St. NW, Suite 100  
Atlanta, GA 30303

Distributed via email

Dear Members of the Board of Governors of the State Bar of Georgia,

I am writing to let you know that the Georgia Association of Criminal Defense Lawyers (GACDL) is strongly opposed to mandatory Professional Liability Insurance (PLI) for Georgia Lawyers. GACDL further opposes any requirement for public disclosure of a State Bar of Georgia member's PLI status. The purpose of this letter is to explain GACDL's position on the five proposals<sup>1</sup> to be considered at the 2021 Fall Board of Governors Meeting.

GACDL has more than 1,500 members, all of whom practice criminal defense. As a result, we ask you to vote "No" to Options 1 through 4 and, should the option be presented, GACDL urges you to vote "Yes" to Option 5 which allows each Georgia attorney make her own decision as to whether, and to what extent, she chooses to purchase PLI without subjecting such decisions to public disclosure.

The State Bar of Georgia exists "to foster among the members of the Bar of this State the principles of duty and service to the public; to improve the administration of justice; and to advance the science of law." Placing a requirement upon its members to purchase PLI does not advance any of the principles of our State Bar's mission.

Physicians are not required to purchase PLI. Accountants are not required to purchase PLI. Architects are not required to purchase PLI. The licensed insurance agents who would undoubtedly benefit from mandated PLI are not required to carry PLI; nor are dentists, optometrists, engineers, chiropractors, nurses, or financial advisors. And to the best of our knowledge, none of these professionals are required to disclose whether or not they carry such insurance.

<sup>1</sup> The proposals being the five Options documented here:

<https://gabar.org/committeesprogramssections/committees/upload/PLI-Options-August-2021-final.pdf> (last visited September 2, 2021).

The PLI Committee of the State Bar appears poised to bring a consensus-driven recommendation<sup>2</sup> that this Board adopt Option 2 which requires most lawyers<sup>3</sup> to publicly disclose whether or not they maintain PLI and, optionally, encourage uninsured lawyers to complete the Bar's voluntary online self-assessment of the operation of their law practice and to avail themselves of the resources which it recommends to address any deficiencies identified by the self-assessment. GACDL has no concern about the optional self-assessment and, indeed, understands how an objective assessment would be helpful information for attorneys to have available to guide their PLI decision; however, the public disclosure of an attorney's PLI status has several drawbacks:

1. Public disclosure has the potential to elevate the maintenance of PLI above considerations of competence and suitability when a person selects an attorney to represent her.
2. Public disclosure could incentivize lawsuits against criminal defense lawyers. Not only can the threat of civil exposure have a chilling effect on the candor of a lawyer-witness, Professional Rule of Conduct 1.7 is implicated and could disrupt attorney-client relationships should concerns about potential malpractice arise during the course of representation. These potential consequences to public disclosure jeopardize protection of the public good and administration of justice in ways contrary to the mission of the State Bar.
3. GACDL has also received input from members concerned that, in some jurisdictions, public disclosure will have the unintended consequence of working as a disincentive, deterring lawyers from carrying PLI. Specifically, one member suggested that, in smaller jurisdictions, where, for instance, a minority of lawyers maintain PLI, should a malpractice claim result in even a nominal, nuisance settlement, additional clients would be incited to bring similar claims simply to obtain such a settlement. Ultimately, the impact of having to address such litigation coupled with the likely premium increases could cause even the most conscientious, risk-averse lawyer to abandon PLI altogether.
4. Despite the goal of the PLI Committee from the outset – to require maintenance of PLI by all lawyers practicing in Georgia<sup>4</sup> – GACDL understands that the Options under consideration are intended to exempt<sup>5</sup> public defenders - a large percentage of criminal defense attorneys in Georgia. Exempting public defenders from any such requirement, including mere disclosure, would perpetuate the age-old myth that public defenders are somehow inferior to private lawyers in terms of competency and effectiveness or that their clients are less worthy of protection from legal malpractice. In either case, the Bar should resist encouraging such baseless stereotypes and disparate policy impacts. This exemption may bode well for government budgets in the short-term but, if a shift to mandated PLI or disclosure results in an increase in civil actions alleging wrongdoing by criminal defense attorneys, public defenders would not be immune from suits – defended by the Attorney General's office - and, ultimately, insurance coverage could easily become necessary in the long-term.

<sup>2</sup> See, Professional Liability Insurance Committee Meeting Minutes of July 23, 2021 here:

[https://gabar.org/committeesprogramssections/committees/upload/PLIMinutes\\_072321.pdf](https://gabar.org/committeesprogramssections/committees/upload/PLIMinutes_072321.pdf) (last visited September 2, 2021).

<sup>3</sup> Notably missing from the list of excluded lawyers are public defenders whose potential insurance costs implicate both state and county budgets.

<sup>4</sup> See, Professional Liability Insurance Committee Meeting Minutes of December, 13, 2018 here:

[https://gabar.org/committeesprogramssections/committees/upload/121318\\_minutes.pdf](https://gabar.org/committeesprogramssections/committees/upload/121318_minutes.pdf) (last visited September 2, 2021).

<sup>5</sup> See, e.g., paragraph (b)(1) of Option 2 here: <https://gabar.org/committeesprogramssections/committees/upload/PLI-Options-August-2021-final.pdf> (last visited September 2, 2021). The drafted language is not clear and could be tailored more precisely to achieve this end. As it stands, a reasonable argument remains that while General Counsel for the Georgia Public Defender Council would be exempt, public defenders would not be exempt because their practice is not "limited to matters concerning the (governmental) entity."

Ultimately, the only true beneficiaries of mandated PLI would be the insurance industry and the lawyers who make their living suing lawyers; thus, the proposals for mandatory PLI or public disclosure of PLI status should fail. If presented, GACDL urges the Board of Governors of the State Bar of Georgia to vote "Yes" for Option 5 which maintains the status quo where attorneys—as educated and reasoned individuals—each make their own decisions as to whether, and to what extent, they choose to purchase PLI and such decisions are not subject to public disclosure.

Sincerely,



Kimberly A. Dymecki, President

cc: State Bar Executive Committee Members:

Elizabeth L. Fite, President, [elf@rogersfite.com](mailto:elf@rogersfite.com)  
Sarah B. Akins, President-Elect, [sbakins@epra-law.com](mailto:sbakins@epra-law.com)  
Hon. J. Antonio DelCampo, Treasurer, [tony@dcglawfirm.com](mailto:tony@dcglawfirm.com)  
Ivy Cadle, Secretary, [icadle@bakerdonelson.com](mailto:icadle@bakerdonelson.com)  
Dawn M. Jones, Immediate Past President, [dawnjoneslaw@gmail.com](mailto:dawnjoneslaw@gmail.com)  
Elissa B. Haynes, YLD President, [haynese@deflaw.com](mailto:haynese@deflaw.com)  
Ron Daniels, YLD President-Elect, [ron@dlawllc.com](mailto:ron@dlawllc.com)  
Bert Hummel, YLD Immediate Past President, [bert.hummel@lewisbrisbois.com](mailto:bert.hummel@lewisbrisbois.com)  
William C. Gentry, Cobb Circuit, Post 7, [bill@gentrylawfirm.law](mailto:bill@gentrylawfirm.law)  
R. Javoyne Hicks, Stone Mountain Circuit, Post 8, [rjavoynehicks@gmail.com](mailto:rjavoynehicks@gmail.com)  
Shiriki Cavitt Jones, Atlanta Circuit, Post 30, [shiriki.jones@coyote.com](mailto:shiriki.jones@coyote.com)  
David S. Lipscomb, Gwinnett Circuit, Post 1, [david@lipscomblaw.com](mailto:david@lipscomblaw.com)  
Martin E. Valbuena, Paulding Circuit, [martinvalbuenapc@bellsouth.net](mailto:martinvalbuenapc@bellsouth.net)  
Nicki Noel Vaughan, Northeastern Circuit, Post 2, [nvaughan@hallcounty.org](mailto:nvaughan@hallcounty.org)  
Christopher Paul Twyman, PLI Committee Chair, [chris.twyman@cbtjlw.com](mailto:chris.twyman@cbtjlw.com)  
Paula J. Frederick, General Counsel, [paulaf@gabar.org](mailto:paulaf@gabar.org)