

Professional Liability Insurance Disclosure



Hearing Report Harlingen, October 15

By Kelley Jones King

Four attorneys attended the second public hearing in Harlingen – all of them speaking against lawyers having to disclose whether or not they have professional liability insurance to prospective clients. One of those attorneys traveled three hours from San Antonio to testify after having surgery the day before preventing his attendance at the Wednesday hearing.

Testimony of those who attended included:

- Professional Liability Insurance covers only negligence and the majority of times where a lawyer has hurt a client it is not negligence.
- This discussion must be a special interest issue.
- If a lawyer is going to have to disclose issues that might impact representation there are other things more germane than insurance (examples: health, financial status, personal problems) What is so special about insurance that it should be disclosed?
- The American Bar Association is never happy with the status quo [so the adoption of a model rule by the House of Delegates might or might not have relevance].
- What public policy does this proposed disclosure truly serve?
- What harm has resulted in the past that has caused the Supreme Court of Texas to offer this proposal?
- People do not enter into personal or business relationships thinking about future mishaps and this proposal would add that context to the front end of the attorney-client relationship.
- This proposal, if implemented would make lawyers more vulnerable to being sued by clients unhappy with the result of a case.
- Clients will be worried about representation but will not be better protected with this disclosure.
- The public looks at the issue globally without information/knowledge about what professional liability insurance covers or does not cover.
- What percentage of lawyers are sued annually? The grievance process exists to punish lawyers who do not live up to their professional obligations.
- Insurance disclosure is a ticket to draw people in to sue attorneys.
- After more than 19 years in consumer bankruptcy practice, had several complaints filed with the State Bar that were dismissed because there was no misconduct.

Those complainants would have been more likely to file suit if I had insurance and there is a likelihood that I would have had to pay even though the complaints were baseless.

- This is a non-issue. Attorneys are not required to have professional liability insurance and if a client asks, we are already obligated to provide that information.