

Professional Liability Insurance Disclosure



Hearing Report San Antonio, October 14

By Kelley Jones King

Of the approximately 60 people attending the first of seven State Bar of Texas public hearings regarding whether Texas attorneys should be required to disclose to the public whether or not they are covered by professional liability insurance, 21 lawyers testified against disclosure and one member of the public testified for “transparency” in all areas of the judicial system including disclosure.

The Supreme Court of Texas has asked the State Bar of Texas Board of Directors to give its recommendation on whether Texas attorneys should be required to disclose to the public whether or not they have professional liability insurance. The State Bar Board has developed a process for obtaining input from attorneys and the public, including a series of public hearings, which began in San Antonio Wednesday. State Bar directors will continue to collect information through their January 2010 board meeting where a vote will be taken with a final report prepared for the Court the first week of February.

State Bar directors at the hearing included Guy Choate of San Angelo; Lisa Tatum, Sylvia Cardona, Allen Dubois, Pamela Gilbert, and LaMont Jefferson of San Antonio; State Bar President Roland Johnson and President-elect Terry Tottenham also attended the hearing which was moderated by Jonathan Smaby, executive director of the Texas Center for Legal Ethics and Professionalism.

State Bar President Roland Johnson opened the hearing with a short overview of the Professional Liability Disclosure Issue and the Court’s request of the State Bar Board of Directors. Directors listened to the testimony and made themselves available after the hearing and over the coming months leading up to the January vote.

A sample of the testimony received at the hearing against requiring disclosure included:

- The legal profession should not be singled out as the only profession to be required to disclose whether or not practitioners have professional liability insurance.
- The trust relationship between a lawyer and a client would be immediately compromised once the lawyer discloses whether or not he or she has professional liability insurance.

- Each firm should be allowed to make the business decision of whether to carry or disclose professional liability insurance coverage on its own.
- A lawyer's report of coverage is a snapshot of a moment and does not guarantee he or she will have coverage at the time in the future when a suit might be filed.
- The profession already polices itself. The Court and the Legislature have reduced the number of lawsuits so it is ironic that this proposal will increase the number of lawsuits.
- Those practitioners who do wrong and do not follow the rules will continue to break the rules and adding more rules will not clean up that bad behavior by the few who disregard the current codes of good conduct. If you want to require insurance, do so – but requiring disclosure will not solve any problem.
- Requiring disclosure of professional liability insurance is a disincentive for lawyers to do pro bono work. Clients will not benefit from such a requirement and small firms will be especially targeted.
- This proposed requirement would disproportionately impact minority attorneys as most minority lawyers in Texas practice in small firms or solo practices.
- In Court appointments, the lawyer often meets the client after the appointment is made — the practicalities of implementing disclosure make it impossible.
- There is a danger that this will become an issue of competence not an issue of insurability.
- Consumers are smart and know what they want and what they need. The relationship between an attorney and a client is sacrosanct and forcing the disclosure of whether or not an attorney has insurance on the front end of that relationship plants a seed of doubt.
- Attorneys take self-regulation seriously and our disciplinary system is real and effective. We do not need an insurance company to be part of that process.
- How ironic to purport to solve a non-existent problem while simultaneously contaminating the lifeblood of pro bono.
- Creates same problem of confusing the public that the Bar resolved several years ago when it eliminated the “not board certified” requirement from lawyer advertising.