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PUBLICCITIZEN

December 30, 2009

Mr. Roland K. Johnson
President, State Bar of Texas
Harris, Finley & Bogle, P.C.
777 Main St., Ste. 3600
Fort Worth, TX 76102

Dear Mr. Johnson:

I write this letter on behalf of Public Citizen to request that the Board of Directors of the State Bar of Texas recommend that the Texas Supreme Court adopt a rule to require Texas lawyers in private practice to disclose to clients and prospective clients whether they carry professional liability insurance.

The American Bar Association adopted such a model rule in 2004, and 25 of the 29 states that have addressed the issue of disclosure of professional liability insurance status have adopted a rule. The Texas Supreme Court's own Grievance Oversight Committee strongly endorsed this rule proposal its 2009 Report.


We also understand that the State Bar paid some \$13,000 for a scientific poll that concluded that some **70.4% of the public support adoption of such a rule**, and that **80% of the public believe that whether a lawyer carries insurance is an important factor in the decision whether to hire a lawyer.**

Having a law license is an important right. It also is a privilege granted by the State. Lawyers should be honest and forthright in dealings with clients. An uninsured lawyer who injures a client is likely to leave the client without any practical remedy. Texas law requires drivers to have insurance, but does not require lawyers to have insurance—even though lawyers have great power and great potential to injure clients financially. This proposed rule would cost lawyers nothing. It does not require that they carry insurance. It simply requires honesty and forthright disclosure of insurance status. Texas consumers are entitled to at least that much information.

Public Citizen requests that the Bar Board recommend that the Texas Supreme Court adopt such a rule. If the Court does not do so, the Texas Legislature is likely to address the issue. Such legislation was introduced during the last Session, but was not pushed forward because the Texas Supreme Court appeared likely to act on the rule proposal. If the Court does not adopt a rule, the proposed legislation will be introduced next Session and I anticipate that Public Citizen will support such legislation.

We appreciate your considering our views on this very important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Smitty" with a stylized flourish at the end.

Tom "Smitty" Smith
Director – Texas Office

cc: Board of Directors, State Bar of Texas
enclosure: Copy of letter to Texas Supreme Court as comments concerning the proposed amendments to the Texas Disciplinary Rules of Professional Conduct



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EXECUTIVE DEPT-SBOT

La Union del Pueblo Entero

Founded by César E. Chávez

December 14, 2009

To: Members of the Board of the State Bar of Texas

Dear Board Members:

On behalf of La Union del Pueblo Entero I write this letter to respectfully request that the Board of Directors of the State Bar of Texas recommend that the Texas Supreme Court adopt a rule to require Texas lawyers to disclose to clients and prospective clients whether they carry professional liability insurance.

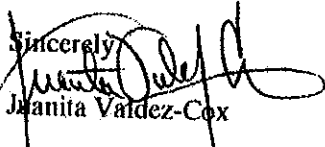
It is my understanding that the American Bar Association has recommended adoption of such a rule, that 25 of the 29 states that have addressed the issue of disclosure of professional liability insurance status have adopted a rule, and that the Texas Supreme Court's own Grievance Oversight Committee resoundingly endorsed this rule proposal its 2009 Report.

We also understand that the State Bar paid some \$13,000 for a scientific poll that concluded that some **70.4% of the public support adoption of such a rule**, and that **80% of the public believe that whether a lawyer carries insurance is an important factor in the decision whether to hire a lawyer.**

Having a law license is an important right. It also is a privilege granted by the State. Lawyers should be honest and forthright in dealings with clients. An uninsured lawyer who injures a client is likely to leave the client without a practical remedy. Texas law requires drivers to have insurance. But the law does not require lawyers to have insurance, even though lawyers have great power and great potential to injure clients financially. This proposed rule would cost lawyers nothing. It does not require that they carry insurance. It simply requires honesty and forthright disclosure of insurance status. Texas consumers are entitled to at least that much information.

We ask that you please adopt such a rule.

We appreciate your considering our views on this very important issue.

Sincerely,

Juanita Valdez-Cox

Executive Director

Tel: (956) 782-6655

P. O. Box 188 San Juan TX 78589
juanitavc@lupenet.org

Fax: (956) 782-2125



TEXAS CRIMINAL DEFENSE LAWYERS ASSOCIATION

January 25, 2010

VIA FAX OR EMAIL

Board of Directors
State Bar of Texas

Dear Members of the State Bar Board of Directors:

On behalf of the Texas Criminal Defense Lawyers Association (TCDLA), I submit this letter in opposition to any proposed requirement that lawyers or law firms obtain professional liability insurance or disclose that they do not have it. TCDLA believes that any such requirement would be unnecessary, counterproductive and potentially misleading to the public.

TCDLA is a non-profit association providing assistance, support and continuing education to its members. TCDLA has over 3,000 members. It is the largest state association of criminal defense lawyers in the nation.

While TCDLA echoes many of the arguments by lawyers, legal organizations and State Bar sections against mandatory disclosure of the existence or non-existence of professional liability insurance, TCDLA submits that any requirement that criminal lawyers or law firms obtain professional liability insurance or disclose that they do not have it would be unnecessary, counterproductive and misleading to the public. In 1995, the Texas Supreme Court held in *Peeler v. Hughes & Luce*, 909 S.W.2d 494, 497-498 (Tex. 1995) that plaintiff criminal defendants who have been convicted of a criminal offense may negate the "sole proximate cause bar" to their claim for legal malpractice in connection with that conviction ***only if they have been exonerated on direct appeal, through post-conviction relief, or otherwise.*** *Peeler*, 909 S.W.2d at 498 (emphasis added). In other words, under Texas law, a criminal defense attorney may **not** be held liable for malpractice, unless a convicted plaintiff first overturns his conviction and proves his innocence in a court of law. Then, the plaintiff must prove that the criminal defense attorney's malpractice caused the wrongful conviction.

Because of the rule in *Peeler*, successful malpractice cases against criminal defense attorneys in Texas are virtually unheard of. Any requirement, therefore, that criminal defense attorneys obtain professional liability insurance or disclose that they do not have it would not only be unnecessary, it would give members of the public the false impression that they could successfully sue criminal defense attorneys for malpractice as easily as they could sue other types of attorneys in Texas.

Another reason why it is unnecessary and potentially misleading to require criminal defense attorneys to obtain professional liability insurance or disclose that they do not have it, is that wrongfully convicted criminal defendants already have access to compensation through the state of Texas. Wrongfully convicted criminal defendants can receive up to \$80,000 for each year of wrongful imprisonment, plus free college tuition and financial and personal counseling, under the "Tim Cole Act" (Texas House Bill 1736), which went into effect on September 1, 2009. Beginning the effective date of the new law, any criminal defendant who attempts to sue his criminal defense attorney after receiving compensation under the Tim Cole Act is actually seeking a double recovery.

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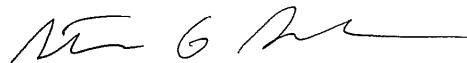
George Taylor, San Antonio

Coby Waddill, Denton

TCDLA founded in 1971

While TCDLA is sensitive to consumer rights and believes that all lawyers should strive to provide the very best legal services to their clients, TCDLA believes that there should be no requirement for lawyers or law firms to obtain professional liability insurance or disclose that they do not have it. In the event that the State Bar advances such a requirement, TCDLA asks that an exception be made for lawyers who practice criminal defense to any significant degree.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stanley G. Schneider". The signature is fluid and cursive, with a long horizontal stroke at the end.

Stanley G. Schneider
Texas Criminal Defense Lawyers Association
President, 2009-10



TEXAS CRIMINAL DEFENSE LAWYERS ASSOCIATION

cc: Hon. Wallace B. Jefferson, Chief Justice, Supreme Court of Texasate here