



# The Supreme Court of Texas

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April 14, 2010

## via Hand Delivery

Mr. Roland Johnson, President  
State Bar of Texas  
1414 Colorado  
Austin, Texas 78701

Dear Mr. Johnson:

In 2007, the Supreme Court asked the State Bar to consider whether Texas lawyers should be required to publicly disclose the existence or non-existence of professional liability insurance. In response, the State Bar created the Task Force on Insurance Disclosure,<sup>1</sup> which submitted its report to the State Bar Board of Directors on June 11, 2008. By a narrow vote, the task force recommended that the Court decline to adopt an insurance disclosure rule.

We asked the Board for an affirmative vote for or against disclosure by February 2010. The Bar sought input from constituencies across the state so that it could make a fully informed decision before presenting its final recommendation to the Court. The State Bar: (1) conducted seven public hearings across the state; (2) held four public opinion focus groups in Houston, San Antonio, Dallas and Lubbock; (3) sent a letter to every licensed Texas lawyer; (4) published an article on the "pros" and "cons" in the November issue of the *Texas Bar Journal*; (5) posted information on the issue on its blog; (6) and commissioned a survey regarding Texans' opinion. Ultimately, the Board recommended that attorneys not be required to publicly disclose whether they have professional liability insurance.<sup>2</sup>

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<sup>1</sup>David Beck of Houston Chaired the Task Force. Other members of the Task Force were Kim Askew of Dallas, David Brown of Houston, Ron Bunch of Waxahachie, George Edwards of Houston, Chuck Herring of Austin, Jo Ann Merica of Austin, Bill Miller of Texarkana, Mark Osborn of El Paso, Lee Ann Reno of Amarillo, Gary Reaves of Keller, Eduardo Rodriguez of Brownsville, Fidel Rodriguez of San Antonio, and State Bar staff member Ray Cantu.

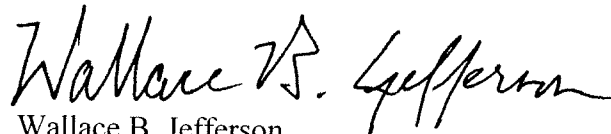
<sup>2</sup>President Johnson's February 2, 2010 letter to Chief Justice Jefferson and the Executive Summary detailing the results of the State Bar's efforts are available at the Court's website at <http://www.supreme.courts.state.tx.us>.

The Court commends the Board on the extensive efforts reflected in the report and accompanying attachments. As with any complex issue, good arguments were presented in favor of and against mandatory professional liability insurance public disclosure. Of course, we should be concerned if clients are unable to recoup sums occasioned by lawyer malpractice, or if the public would view the non-existence of such insurance a critical factor in the decision to retain a lawyer. But, as your process demonstrated, there is little evidence of either circumstance. On the other hand, lawyers noted that the public may assume erroneously that mandatory disclosure about past insurance coverage is an assurance of future coverage. In addition, data from public survey opinions show that the public has not viewed the existence of such coverage as important in determining whether to retain a particular lawyer. In fact, after participants in focus groups learned more about professional liability insurance disclosure and heard arguments both for and against, the percentage of participants favoring disclosure declined significantly. Other lawyers and interest groups feared that mandatory disclosure would negatively impact pro bono or reduced-rate legal services for low-income Texans. All of these arguments for and against mandatory disclosure highlight the complexity of this issue.

The Court congratulates the State Bar Board of Directors, the State Bar staff, and everyone who contributed to the thorough examination of this question. It was an arduous but important task. The State Bar created an open and informed process that allowed for a comprehensive review of the issue from all sides and perspectives. The information gleaned during this process has given the Court the tools to make an informed decision.

Having considered the State Bar's recommendation and the materials supporting the recommendation, the Court will retain the status quo. In making this decision the Court is mindful of the overarching principle that clients or prospective clients are entitled to information on the existence of their lawyers' professional liability insurance, and lawyers may voluntarily disclose to clients, potential clients, or the public whether they maintain such insurance.

Sincerely,



Wallace B. Jefferson  
Chief Justice