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Re: Proposed Mandatory Malpractice Insurance

Mr. Crowgey:

Thank you for your inquiry and in response to your informal poll on this issue, I am against the proposal mandating malpractice insurance coverage as a condition for practicing law.

I personally maintain malpractice insurance with coverage far in excess of the proposed minimum coverage. I work hard and sleep well. I have used my own malpractice policy three times not to defend claims from clients, but to defend against baseless claims from vanquished adversaries. It would be more taxing to advocate aggressively for the poor and oppressed if each time I did my own meager wealth was at risk from such spurious claims. If due to the sheer volume of such spurious claims, I ever became uninsurable, then the poor and oppressed would have one less advocate.

It is not the role or function of the Virginia State Bar to dictate to other members of the Bar either the necessity of malpractice insurance or the quantum of that coverage.

The Bar may become muddled in arguments citing lack of data documenting the extent of harm to clients of Virginia lawyers from uninsured lawyers, the false sense of security, the potential financial impact on all lawyers in private practice, the shift in market conditions and controls on malpractice insurance premiums, the loss of certain members of the Bar that would prematurely end their practice rather than to obtain such coverage, and the control to regulate the bar effectively given to malpractice carriers, or it may avoid the quagmire and simply ask "does the Bear's nose belong in the honey jar?"

Should the government require members of the bar to purchase particular goods or services from other private parties? Does such a requirement offend the notion of the government taking property without compensation or due process? Individual freedoms continue to slip away as the

country moves from the rough and rugged birth of this nation by men and women who valued freedom and the right of self-determination. The nation's politics are driven by two parties, one of which ignorantly but candidly claims that centralized government knows best, notwithstanding the simple and beautiful logic defying such a policy and a world replete with contrary evidence, and the second party that talks of less government, but driven by an attitude of "the spoils to the victor," which has increased government and goodies to their friends and supporters at an alarming rate the first party can only envy.

The nation needs responsible citizens not leaders to coddle them with offers to think for and protect them, and to offer bail outs for friends or for stupidity or failure to assess risks.

Most of the Bar with children hope to raise their children to be independent, able to think on their own and not dependent upon mommy or daddy to care for them their entire lives. Why should the Bar join in with the alarming trend making sucklings of the public, until the rugged, independent and innovative American returns to the anemia plaguing the rest of the world, from which it had risen to shine for a brief moment in history.

If the public wants representation by an attorney with a pot of gold available to pay for inevitable errors and omissions, then the public should make the inquiry before engaging the attorney. It is not the role of the Bar to create sucklings of the public or drones of its members. The proposal should be rejected.

Very truly yours,

/s/

Thomas H. Roberts