



30 Bank Street  
PO Box 350  
New Britain, CT 06050-0350  
06051 for 30 Bank Street  
  
(860)223-4400  
fax (860)223-4488

Testimony of Ralph J. Monaco, President  
Connecticut Bar Association  
Judiciary Committee  
House Bill 6605, An Act Requiring Attorneys to Maintain Professional Liability Insurance  
March 21, 2011

Senator Coleman, Representative Fox, and members of the Judiciary Committee thank you for the opportunity to appear and comment on **House Bill 6605, An Act Requiring Attorneys to Maintain Professional Liability Insurance**. My name is Ralph J. Monaco and I am the President of the Connecticut Bar Association, the preeminent voluntary association of attorneys in Connecticut with over 9,000 members who practice in every area of the law. The CBA believes that this bill is very well intentioned and wishes to remind the committee of the association's long history of supporting diverse efforts to protect the consumers of legal services. Nevertheless, the CBA strongly **opposes section 2** of the bill, which would wrongfully and unnecessarily expand the purpose of the client security fund to include making loans to attorneys to purchase professional liability insurance. The CBA also has concerns about section 1 of the bill, which I will discuss below.

Two years ago, the governor and the legislature illegally swept \$2 million from the client security fund into the general fund. The CBA and several individual attorneys sued to prevent that transfer on the grounds that paying state expenses was wholly unrelated to the client security fund's designated purposes and was an "illegal expropriation" that violated the constitutional separation of powers and the plaintiffs' constitutional, statutory, and common law rights. The purpose of the client security fund is limited primarily to reimbursing claimants for losses caused by an attorney's dishonest conduct in an attorney-client relationship and, secondarily, to providing crisis intervention and referral assistance to attorneys who suffer from alcohol or substance abuse or have gambling or behavioral problems. The fund was created at the request of the CBA, is administered by the Judicial Branch, and all attorneys admitted to the bar of this state must pay an annual client security fund fee. Attorneys who pay the fee do so with the understanding that the fund is to be used for restitution to clients who have suffered losses due to theft or misappropriation of clients' money by a dishonest attorney. It was never intended to be a source of money to lend to attorneys for any reason. Allowing the fund to be misused in this manner would potentially deprive the fund of the ability to pay a client who has been the victim of theft, particularly if a portion of the fund is tied up in loans and consequently would have an insufficient balance to pay a meritorious claim made by such a victim. Presently, the client security fund is strained to compensate all of the claims made against it.

As for section 1 of the bill, the CBA believes that more information is required in order to take a position on the issue of mandatory professional liability insurance. While we believe that the vast majority of attorneys admitted to practice in Connecticut and who actively practice in this state have professional liability insurance, we do not know how many attorneys fail to maintain liability insurance, or how many clients who have sued an attorney for malpractice have been unable to satisfy a judgment obtained against the attorney. There has been no legislative finding of fact that supports the proposal set forth in House Bill 6605. One scenario that concerns us, for example, is the retired or part-time lawyer who is providing pro bono services. If professional liability insurance is mandatory, these lawyers may not be able to provide their services for free. During these times of limited funds for legal services for the poor, we do not want to discourage lawyers from serving in a pro bono capacity. We also believe that insurance regulation may be required to protect lawyers from unfair insurance practices, including

unreasonable increases in premiums or dropping certain lawyers based on improper motives. Perhaps these are the reason that Connecticut is one of 49 states that do not require attorneys to maintain liability insurance. However, **there is an alternative** that would provide a significant level of protection to consumers of legal services without mandating professional liability insurance for all or most attorneys.

The CBA would support a measure that would require mandatory disclosure of professional liability insurance of attorneys who are admitted to the bar of this state. Such a disclosure would allow consumers to make an informed decision as to whether they would hire an attorney who discloses that he or she does not maintain professional liability insurance. We believe that mandatory reporting also will provide evidence concerning the number of attorneys who do not carry professional liability insurance. Such a requirement would serve to inform – and, therefore, protect – clients and potential clients about an attorneys' insurance coverage.

I would be happy to answer any questions you may have.