

Appeal Dismissed, Petition for Writ of Mandamus Conditionally Granted, and Majority and Dissenting Opinions filed March 4, 2010.



In The

**Fourteenth Court of Appeals**

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NO. 14-09-00387-CV

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IN RE STEVEN TUAN PHAM

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ORIGINAL PROCEEDING  
WRIT OF MANDAMUS

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NO. 14-08-01153-CV

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STEVEN TUAN PHAM, SMITH & GARG, L.L.C., AND SARITA GARG.,  
Appellants

V.

SHELLY LETNEY, Appellee

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On Appeal from the 215th District Court  
Harris County, Texas  
Trial Court Cause No. 2008-43381

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## D I S S E N T I N G   O P I N I O N

In consideration of the unique relationship between attorney and client, I write this dissenting opinion to express my concern about mandatory arbitration provisions in attorney-client agreements.

I have no disagreement with the majority's analysis and disposition of all issues with the exception of Shelly Letney's claim that the method or means of inducing her signature on the agreement renders enforcement procedurally unconscionable. I adopt former Fourth Court of Appeals Chief Justice Phil Hardberger's concern that special public-policy considerations are implicated when an attorney imposes an arbitration provision on his or her client. *See Henry v. Gonzalez*, 18 S.W.3d 684, 692 (Tex. App.—San Antonio 2000, pet. dism'd) (Hardberger, C.J., dissenting). Accordingly, I disagree with the majority's decision to "decline to impose a requirement that attorneys must, in all cases, fully inform prospective clients regarding implications of an arbitration clause in an attorney-client contract."

Whatever public policy may be served by enforcing arbitration agreements is more than offset by the public policy of insuring that consumers of legal services have protection from attorneys who might take advantage of their clients. Shelly Letney, a personal-injury claimant, is representative of the average consumer of legal services. She should be afforded the expectation that an attorney is obligated to fully reveal and explain potential conflicts of interests at the inception of the relationship. Moreover, the attorney should offer the prospective client an opportunity to seek advice from another source before signing an attorney-client agreement that contains language potentially detrimental to the client's interests if the client later finds it appropriate or necessary to pursue the attorney for malpractice or other misconduct.

Under the Texas Disciplinary Rules of Professional Conduct, "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Tex. Disciplinary R. Prof'l Conduct 1.03(b), *reprinted in* Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Vernon 2005) (Tex. State Bar

R. art. X, §9). The Supreme Court of Texas Professional Ethics Committee agrees that lawyers should be allowed to insert arbitration clauses in their client contracts as long as “(1) the client is aware of the significant advantages and disadvantages of arbitration and has sufficient information to permit the client to make an informed decision about whether to agree to the arbitration provision, and (2) the arbitration provision does not limit the lawyer’s liability for malpractice.” *See* Tex. Comm. On Prof’l Ethics, Op. 586 (2008).

Notwithstanding the application of settled contract law and public policy favoring alternate dispute resolution, many respected jurists and lawyers oppose arbitration because it is not cost effective, disgorges unwary consumers of the right to a jury trial, and eliminates appellate review for errors of law. I remain a proponent of arbitration. However, when the legislature and rule-making authority in the legal profession fail to protect consumers of legal services, I believe the courts have an obligation to act because public perception of the legal profession’s ability to self-police is not favorable.

Based on Shelly Letney’s averment that she was unaware of the arbitration agreement and her sworn statement that petitioner did not fully explain the terms, I would hold the trial court did not abuse its discretion by denying the petitioner’s motion to compel arbitration. Accordingly, I respectfully dissent.

/s/ Charles W. Seymore  
Justice

Panel consists of Chief Justice Hedges and Justices Seymore and Sullivan (Hedges, C.J., majority).