

By: Corte

H.B. No. 2843

A BILL TO BE ENTITLED

AN ACT

relating to legal and judicial ethics.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 2, Government Code, is amended by adding Chapter 92 to read as follows:

CHAPTER 92. DISCLOSURE OF FINANCIAL RELATIONSHIP.

Sec. 92.001. DEFINITIONS. In this chapter:

(1) the term "financial relationship" as used in this chapter means any relationship between a judge and a person that provides an actual or potential economic benefit of more than \$1,000 to the judge or any person related to the judge by affinity or consanguinity within the first degree, as determined under Chapter 573. The term includes any current relationship, known future relationship, or past relationship. The term does not include a political contribution accepted by the judge in compliance with Subchapter F, Chapter 253, Election Code.

(2) "Economic benefit" includes any gift, money, service, use of facility, real or personal property, or any other thing of value.

Sec. 92.002. DUTY TO DISCLOSE. A judge presiding in a civil case who has actual knowledge of a financial relationship with any attorney or party involved in the case, in the two years preceding the date on which the first pleading or motion was filed by the attorney or party in the case, shall disclose the financial

1 relationship to the attorneys and parties involved in the case.

2 Sec. 92.003. FAILURE TO DISCLOSE. A judge's knowing  
3 failure to make a disclosure required by Section 92.002 is ground  
4 for disciplinary action by the Judicial Conduct Commission.

5 SECTION 2. Section 81.002, Government Code is amended to  
6 read as follows:

7 (6) "Chief disciplinary counsel" means either the  
8 attorney selected under Section 81.076, or the attorney general  
9 under Section 81.080, who performs disciplinary functions for the  
10 state bar under the Texas Disciplinary Rules of Professional  
11 Conduct and the Texas Rules of Disciplinary Procedure.

12 SECTION 3. Section 81.072(b), Government Code, is amended  
13 to read as follows:

14 (b) The supreme court shall establish minimum standards and  
15 procedures for the attorney disciplinary and disability system.  
16 The standards and procedures for processing complaints against  
17 attorneys must provide for:

18 (1) investigation of all inquiries and complaints;

19 (2) a full explanation to each complainant on  
20 dismissal of an inquiry or a complaint;

21 (3) periodic preparation of abstracts of inquiries and  
22 complaints filed that, even if true, do or do not constitute  
23 misconduct;

24 (4) an information file for each complaint filed;

25 (5) a complaint tracking system to monitor processing  
26 of complaints by category, method of resolution, and length of time  
27 required for resolution;

1           (6) notice [~~by the state bar~~] to the parties of the  
2 filing and status of a written complaint filed with the state bar or  
3 attorney general that the state bar or the attorney general has the  
4 authority to resolve [~~of the status of the complaint~~], at least  
5 quarterly and until final disposition, unless the notice would  
6 jeopardize an undercover investigation;

7           (7) an administrative system for attorney  
8 disciplinary and disability decisions as an option to trials in  
9 district court, including an appeal procedure under the substantial  
10 evidence rule;

11           (8) an administrative system for reciprocal and  
12 compulsory discipline;

13           (9) interim suspension of an attorney posing a threat  
14 of immediate irreparable harm to a client;

15           (10) authorizing all parties to an attorney  
16 disciplinary hearing, including the complainant, to be present at  
17 all hearings at which testimony is taken and requiring notice of  
18 those hearings to be given to the complainant not later than the  
19 seventh day before the date of the hearing;

20           (11) the commission adopting rules that govern the use  
21 of private reprimands by grievance committees and that prohibit a  
22 committee:

23                   (A) giving an attorney more than one private  
24 reprimand within a five-year period for a violation of the same  
25 disciplinary rule; or

26                   (B) giving a private reprimand for a violation  
27 that involves a failure to return an unearned fee, a theft, or a

1 misapplication of fiduciary property; and

2 (12) distribution of a voluntary survey to all  
3 complainants urging views on grievance system experiences.

4 SECTION 4. Section 81.077(c), Government Code, is amended  
5 to read as follows:

6 (c) This chapter does not prohibit a grievance committee, on  
7 its own or through the chief disciplinary counsel or the attorney  
8 general, from investigating a complaint of professional misconduct  
9 alleged to have occurred in the geographical area served by the  
10 committee, but any action must be filed in the county of the  
11 attorney's residence.

12 SECTION 5. Section 81.078(e), Government Code, is amended  
13 to read as follows:

14 (e) Either the grievance committee for the bar district or  
15 the general counsel may enforce [~~seek enforcement of~~] this section.

16 SECTION 6. Subchapter E, Chapter 81, Government Code, is  
17 amended by adding new section 81.080 to read as follows:

18 Sec. 81.080. ATTORNEY GENERAL ENFORCEMENT.

19 (a) At the attorney general's discretion, the attorney  
20 general may serve as the chief disciplinary counsel, and has all the  
21 enforcement powers and duties of that office.

22 (b) If the attorney general serves as the chief disciplinary  
23 counsel, the attorney general shall act in accordance with all  
24 applicable procedures established in the Texas Rules of  
25 Disciplinary Procedure, but the attorney general shall have the  
26 discretion to initiate investigation and enforcement proceedings  
27 independent of a writing apparently intended to allege profession

1 misconduct as described in Rule 2.09, Texas Rules of Disciplinary  
2 Procedure, and without complying with Rule 2.09, Texas Rules of  
3 Disciplinary Procedure.

4 (c) If the attorney general initiates a disciplinary action  
5 or disciplinary proceeding defined by Rule 1.06 of the Texas Rules  
6 of Disciplinary Procedure, the attorney general shall act as the  
7 chief disciplinary counsel.

8 (d) The attorney general may, at the attorney general's  
9 discretion, elect to serve as the chief disciplinary counsel in a  
10 disciplinary action or disciplinary proceeding that is initiated by  
11 the state bar.

12 SECTION 7. Title 6, Civil Practice and Remedies Code, is  
13 amended by adding Chapter 148 to read as follows:

14 Sec. 148.001. Division of Fees Between Lawyers Not of the  
15 Same Firm. A lawyer shall not divide a fee for legal services with  
16 another lawyer who is not a partner in or associate of the lawyer's  
17 law firm, unless:

18 (1) The client consents to employment of the other lawyer in  
19 writing after a full disclosure that a division of fees will be  
20 made.

21 (2) The division is in proportion to the services performed  
22 by each lawyer or, by a writing given to the client, each lawyer  
23 assumes joint responsibility for the representation.

24 (3) The total fee of the lawyers does not exceed reasonable  
25 compensation for all legal services the lawyers provided to the  
26 client.

27 SECTION 8. Section 148.001, Civil Practice and Remedies

1 Code, as added by this Act, applies only to a contract for  
2 attorneys' fees that is executed on or after the effective date of  
3 this Act. A contract for fees that is executed before the effective  
4 date of this Act is governed by the law applicable to the contract  
5 immediately before the effective date of this Act, and that law is  
6 continued in effect for that purpose.

7 SECTION 9. This Act takes effect September 1, 2003.