

By: Hinojosa

S.B. No. 1195

A BILL TO BE ENTITLED

AN ACT

relating to prohibited solicitation of professional employment by an attorney or the attorney's agent or employee; providing a criminal penalty.

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

SECTION 1. Section 81.071, Government Code, is amended to read as follows:

Sec. 81.071. DISCIPLINARY JURISDICTION. Each attorney admitted to practice in this state and each attorney specially admitted by a court of this state for a particular proceeding is subject to the disciplinary and disability jurisdiction of the supreme court, the office of the attorney general to the extent Section 81.0721 applies, and the Commission for Lawyer Discipline, a committee of the state bar.

SECTION 2. Section 81.072, Government Code, is amended by amending Subsection (a) and adding Subsection (p) to read as follows:

(a) In furtherance of the supreme court's powers to supervise the conduct of attorneys and except as provided by Section 81.0721, the court shall establish disciplinary and disability procedures.

(p) This section does not apply to a complaint alleging that an attorney solicited professional employment in violation of the Texas Disciplinary Rules of Professional Conduct.

SECTION 3. Subchapter E, Chapter 81, Government Code, is amended by adding Section 81.0721 to read as follows:

Sec. 81.0721. DISCIPLINARY PROCEDURES FOR CERTAIN ALLEGATIONS OF MISCONDUCT. (a) Notwithstanding any other law, the office of the attorney general has the exclusive authority to:

(1) investigate a grievance alleging that an attorney solicited professional employment in violation of the Texas Disciplinary Rules of Professional Conduct; and

(2) discipline an attorney found to have engaged in conduct described by Subdivision (1).

(b) A person may file a grievance alleging that an attorney solicited professional employment in violation of the Texas Disciplinary Rules of Professional Conduct with either the state bar or the office of the attorney general. The state bar and the office of the attorney general shall enter into a memorandum of understanding that provides procedures by which the state bar forwards to the office of the attorney general a grievance described by this subsection that is filed with the state bar.

(c) The office of the attorney general shall establish standards and disciplinary procedures for processing grievances relating to allegations of attorneys' misconduct in soliciting professional employment. The standards and procedures established under this section must, to the extent practicable, be substantively identical to and include the same elements as the standards and procedures established by the supreme court under Section 81.072.

SECTION 4. Section 81.076, Government Code, is amended by

adding Subsection (i) to read as follows:

(i) This section does not apply to a complaint alleging that an attorney solicited professional employment in violation of the Texas Disciplinary Rules of Professional Conduct.

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

(c) This chapter does not prohibit a grievance committee from investigating a complaint of professional misconduct alleged to have occurred in the geographical area served by the committee, other than a complaint alleging that an attorney solicited professional employment in violation of the Texas Disciplinary Rules of Professional Conduct. Any ~~[but any]~~ action must be filed in the county of the attorney's residence.

SECTION 6. Section 81.078(e), Government Code, is amended to read as follows:

(e) The ~~[Either the]~~ grievance committee for the bar district, ~~[or]~~ the general counsel, or the office of the attorney general for proceedings under Section 81.0721 may seek enforcement of this section.

SECTION 7. Subchapter H, Chapter 81, Government Code, is amended by adding Section 81.116 to read as follows:

Sec. 81.116. SOLICITATION OF PROFESSIONAL EMPLOYMENT. (a) A person commits an offense if the person:

(1) is an agent or employee of an attorney; and  
(2) engages in conduct on behalf of the attorney that, if engaged in by the attorney, constitutes solicitation of professional employment in violation of the Texas Disciplinary

1 Rules of Professional Conduct.

2 (b) An attorney commits an offense if the attorney:

3 (1) engages in conduct that constitutes solicitation  
4 of professional employment in violation of the Texas Disciplinary  
5 Rules of Professional Conduct; and

6 (2) refers legal business acquired through the conduct  
7 described by Subdivision (1) to another attorney in exchange for a  
8 referral fee.

9 (c) An offense under this section is a Class A misdemeanor.

10 SECTION 8. Section 74.056, Government Code, is amended by  
11 adding Subsection (e) to read as follows:

12 (e) The presiding judge of an administrative judicial  
13 region shall assign a judge to serve as a visiting judge in any  
14 court to hear a case or proceeding if an attorney retained by a  
15 party in the case or proceeding is determined by the office of the  
16 attorney general to have solicited professional employment in the  
17 case or proceeding in violation of the Texas Disciplinary Rules of  
18 Professional Conduct. In assigning a judge under this subsection,  
19 the presiding judge shall appoint a judge from a county other than  
20 the county in which the case or proceeding is pending or a county  
21 contiguous to that county.

22 SECTION 9. The office of the attorney general and the State  
23 Bar of Texas shall enter into the memorandum of understanding  
24 required by Section 81.0721(b), Government Code, as added by this  
25 Act, not later than December 1, 2003.

26 SECTION 10. The office of the attorney general shall adopt  
27 the standards and disciplinary procedures required by Section

1 81.0721(c), Government Code, as added by this Act, not later than  
2 December 1, 2003.

3 SECTION 11. Sections 81.071, 81.072, 81.076, 81.077, and  
4 81.078, Government Code, as amended by this Act, and Section  
5 81.0721, Government Code, as added by this Act, apply only to a  
6 complaint filed with the State Bar of Texas or the office of the  
7 attorney general on or after January 1, 2004, regardless of whether  
8 the conduct or act that is the subject of the complaint occurred or  
9 was committed before, on, or after that date.

10 SECTION 12. This Act takes effect September 1, 2003.