

By: Williams

S.B. No. 1722

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. Subtitle B, Title 2, Government Code, is amended by adding Chapter 35 to read as follows:

CHAPTER 35. DISCLOSURE OF FINANCIAL RELATIONSHIP

Sec. 35.001. DEFINITIONS. In this chapter:

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

(2) "Financial relationship" means a 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.

Sec. 35.002. DUTY TO DISCLOSE. A judge presiding in a civil case who has actual knowledge of a financial relationship with an attorney or party involved in the case, during 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 each attorney and party involved in the case.

2 Sec. 35.003. FAILURE TO DISCLOSE. A knowing failure by a
3 judge to make a disclosure required by Section 35.002 is a ground
4 for disciplinary action by the State Commission on Judicial
5 Conduct.

6 SECTION 2. Subdivision (6), Section 81.002, Government
7 Code, is amended to read as follows:

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

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

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

- 19 (1) investigation of all inquiries and complaints;
20 (2) a full explanation to each complainant on
21 dismissal of an inquiry or a complaint;
22 (3) periodic preparation of abstracts of inquiries and
23 complaints filed that, even if true, do or do not constitute
24 misconduct;
25 (4) an information file for each complaint filed;
26 (5) a complaint tracking system to monitor processing
27 of complaints by category, method of resolution, and length of time

1 required for resolution;

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

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

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

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

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

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

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

27 (B) giving a private reprimand for a violation

1 that involves a failure to return an unearned fee, a theft, or a
2 misapplication of fiduciary property; and

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

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

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

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

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

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

19 Sec. 81.080. ATTORNEY GENERAL ENFORCEMENT. (a) At the
20 attorney general's discretion, the attorney general may serve as
21 the chief disciplinary counsel and has all the enforcement powers
22 and duties of that office.

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

1 independent of a written statement apparently intended to allege
2 professional misconduct as described in Rule 2.09, Texas Rules of
3 Disciplinary Procedure, and without complying with Rule 2.09, Texas
4 Rules of Disciplinary Procedure.

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

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

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

15 CHAPTER 148. DIVISION OF LEGAL FEES

16 Sec. 148.001. DIVISION OF FEES BETWEEN LAWYERS NOT OF THE
17 SAME FIRM. A lawyer shall not divide a fee for legal services with
18 another lawyer who is not a partner in or associate of the lawyer's
19 law firm, unless:

20 (1) the client consents to employment of the other
21 lawyer in writing after a full disclosure that a division of fees
22 will be made;

23 (2) the division is in proportion to the services
24 performed by each lawyer or, by a writing given to the client, each
25 lawyer assumes joint responsibility for the representation; and

26 (3) the total fee of the lawyers does not exceed
27 reasonable compensation for all legal services the lawyers provided

1 to the client.

2 SECTION 8. Section 148.001, Civil Practice and Remedies
3 Code, as added by this Act, applies only to a contract for
4 attorney's fees that is executed on or after the effective date of
5 this Act. A contract for attorney's fees that is executed before
6 the effective date of this Act is governed by the law applicable to
7 the contract immediately before that date, and that law is
8 continued in effect for that purpose.

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