

By: Hinojosa

S.B. No. 1508

A BILL TO BE ENTITLED

AN ACT

1
2 relating to a subpoena issued to obtain information relating to
3 certain attorney-client relationships.

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

5 SECTION 1. Chapter 24, Code of Criminal Procedure, is
6 amended by adding Article 24.012 to read as follows:

7 Art. 24.012. ISSUANCE OF SUBPOENA TO ATTORNEYS FOR
8 INFORMATION RELATING TO REPRESENTATION OF CLIENTS. (a) A subpoena
9 relating to an attorney's representation of a defendant in a
10 criminal matter may not be issued under this chapter or Chapter 20
11 to the attorney unless the attorney general approves the issuance.

12 (b) In determining whether a subpoena described by
13 Subsection (a) should be issued, the attorney representing the
14 state shall weigh the client's right to effective assistance of
15 counsel against the interest of the public in the fair
16 administration of justice and effective law enforcement.

17 (c) As an alternative to the issuance of a subpoena, the
18 attorney representing the state shall make a reasonable effort to
19 obtain the client representation information directly from the
20 attorney or other appropriate sources, including a direct request
21 to the attorney to provide the information. The attorney
22 representing the state is not required to request the client
23 representation information directly from the attorney or make other
24 reasonable efforts to obtain the information if the request or

1 attempt to obtain the information would subsequently impair the
2 issuance of a subpoena or if the request or attempt would otherwise
3 compromise the investigation or prosecution of the case.

4 (d) The attorney general may approve a request for or
5 issuance of a subpoena described by Subsection (a) only if:

6 (1) the information sought is not protected by a claim
7 of privilege;

8 (2) all reasonable efforts to obtain the information
9 were unsuccessful;

10 (3) there are reasonable grounds to believe that an
11 offense has been or is being committed and the information is
12 reasonably needed for the investigation or prosecution of the
13 offense;

14 (4) the need of the attorney representing the state
15 for the information outweighs any potential adverse effect on the
16 representation of the client, including a risk that the other
17 attorney may be required to testify against the client or may be
18 disqualified from representing the client as a result of that
19 testimony; and

20 (5) the attorney representing the state draws the
21 subpoena narrowly and seeks only material information in a limited
22 subject area and from a reasonable and limited period of the
23 representation of the client.

24 SECTION 2. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2005.