

By: Ellis

S.B. No. 749

A BILL TO BE ENTITLED

1 AN ACT

2 relating to provision of notice regarding and limitation of
3 attorney's fees for services provided in connection with the making
4 of a wrongful imprisonment claim.

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

6 SECTION 1. The heading to Subchapter A, Chapter 103, Civil
7 Practice and Remedies Code, is amended to read as follows:

8 SUBCHAPTER A. ELIGIBILITY; NOTICE OF ELIGIBILITY [~~AND CHOICE OF~~
9 ~~COMPENSATION METHOD~~]

10 SECTION 2. Subchapter A, Chapter 103, Civil Practice and
11 Remedies Code, is amended by adding Section 103.002 to read as
12 follows:

13 Sec. 103.002. NOTICE TO WRONGFULLY IMPRISONED PERSON. (a)

14 In this section:

15 (1) "Department" means the Texas Department of
16 Criminal Justice.

17 (2) "Penal institution" has the meaning assigned by
18 Article 62.001, Code of Criminal Procedure.

19 (3) "Wrongfully imprisoned person" has the meaning
20 assigned by Section 501.091, Government Code, as added by Chapter
21 180 (H.B. 1736), Acts of the 81st Legislature, Regular Session,
22 2009.

23 (b) The department shall provide to each wrongfully
24 imprisoned person information, both orally and in writing, that

1 includes:

2 (1) guidance on how to obtain compensation under this
3 chapter; and

4 (2) a list of and contact information for nonprofit
5 advocacy groups, identified by the department, that assist
6 wrongfully imprisoned persons in filing claims for compensation
7 under this chapter.

8 (c) The department must provide the information required
9 under Subsection (b):

10 (1) at the time of the release of the wrongfully
11 imprisoned person from a penal institution; or

12 (2) if the wrongfully imprisoned person is not
13 confined in a penal institution, as soon as is practicable after the
14 date of the full pardon or granting of relief on the basis of
15 innocence or actual innocence, respectively.

16 SECTION 3. Section 501.091, Government Code, as added by
17 Chapter 180 (H.B. 1736), Acts of the 81st Legislature, Regular
18 Session, 2009, is amended by adding Subsection (d-1) to read as
19 follows:

20 (d-1) The department shall provide information to
21 wrongfully imprisoned persons as required by Section 103.002, Civil
22 Practice and Remedies Code.

23 SECTION 4. Chapter 103, Civil Practice and Remedies Code,
24 is amended by adding Subchapter C to read as follows:

25 SUBCHAPTER C. ATTORNEY'S FEES

26 Sec. 103.101. ATTORNEY'S FEES LIMITED; PREREQUISITES TO FEE
27 AGREEMENT. (a) An attorney may not charge or collect a fee at a rate

1 that exceeds the maximum rate established under Section 103.102 for
2 preparing, filing, or bringing a claimant's application or mandamus
3 action under this chapter.

4 (b) An attorney may enter into a fee agreement with a
5 claimant for services related to an application or mandamus action
6 under this chapter only after the attorney has disclosed in writing
7 to the claimant the maximum rates for fees established under
8 Section 103.102.

9 (c) An attorney may not charge or collect a fee for
10 preparing, filing, or bringing a claimant's application or mandamus
11 action under this chapter before a final determination is made by
12 the comptroller or the court, as applicable, that the claimant is
13 eligible or ineligible for compensation under this chapter.

14 Sec. 103.102. MAXIMUM HOURLY RATES. (a) The comptroller by
15 rule shall establish a maximum hourly rate for an attorney's
16 services related to:

17 (1) preparing or filing an application under this
18 chapter; and

19 (2) bringing a mandamus action under this chapter.

20 (b) In setting the rates under Subsection (a), the
21 comptroller shall consider:

22 (1) rates charged for similar attorney's services; and

23 (2) compensation incentives necessary because of the
24 delayed nature of payment of attorney's fees as required by Section
25 103.101(c).

26 Sec. 103.103. SUBMISSION OF FEE REPORT. (a) Together with
27 an application for compensation under this chapter or not later

1 than the 14th day after the date the application is filed, an
2 attorney seeking payment for preparing or filing the application
3 must file a fee report with the comptroller's judiciary section.

4 (b) An attorney seeking payment for bringing a mandamus
5 action under this chapter must file a fee report with the
6 comptroller's judiciary section not later than the 14th day after
7 the date a final court order is issued.

8 (c) A fee report under this section must include:

9 (1) a sworn copy of the attorney's fee agreement,
10 signed by the attorney and claimant;

11 (2) the total dollar amount sought for attorney's
12 fees;

13 (3) the number of hours the attorney worked preparing,
14 filing, or arguing the application or mandamus action; and

15 (4) a brief description of work done during those
16 hours.

17 Sec. 103.104. VIOLATION. An attorney who charges or
18 collects a fee for services described by Section 103.102 in an
19 amount that exceeds a fee computed in accordance with the maximum
20 rate established under that section violates Rule 1.04(a), Texas
21 Disciplinary Rules of Professional Conduct.

22 SECTION 5. Before January 1, 2012, the comptroller shall
23 establish the maximum hourly rates as provided by Section 103.102,
24 Civil Practice and Remedies Code, as added by this Act.

25 SECTION 6. Subchapter C, Chapter 103, Civil Practice and
26 Remedies Code, as added by this Act, applies only to an attorney's
27 fee agreement entered into on or after January 1, 2012. An

1 attorney's fee agreement entered into before January 1, 2012, is
2 governed by the law as it existed immediately before the effective
3 date of this Act, and that law is continued in effect for that
4 purpose.

5 SECTION 7. This Act takes effect September 1, 2011.