
HOUSE BILL 2504

State of Washington

57th Legislature

2002 Regular Session

By Representatives Boldt and Casada

Read first time 01/18/2002. Referred to Committee on Judiciary.

1 AN ACT Relating to the protection and education of consumers of
2 legal services; and adding new sections to chapter 2.48 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (1) Promptly upon agreeing to provide legal
5 services for a client, a lawyer shall provide the client a written
6 explanation of the scope of the legal services, the manner by which
7 charges for services or goods will be determined, and all other
8 material terms of their contractual relationship. Promptly upon
9 agreeing to any material changes in the scope or terms, the lawyer
10 shall provide the client a written explanation of the changes.

11 (2) Except to the extent that a lawyer's claim to collect payment
12 for legal services or related goods or services is consistent with an
13 explanation of the scope and terms of the lawyer's engagement, and of
14 any material changes, that was actually agreed to in writing by the
15 client, a lawyer may bring the claim only in a small claims department
16 of a district court in an amount within the jurisdictional limit set by
17 RCW 12.40.010 and must be represented there by a nonlawyer employee or
18 agent. In bringing such a claim, the lawyer has the burden of proving
19 by clear and convincing evidence that the client had been informed of

1 and had agreed to any contractual terms that were not explained and
2 agreed to in writing by the client.

3 (3) If a lawyer provides legal services to a client through a
4 professional services corporation or other law firm that enters into a
5 contractual relationship with the client, the provisions of this
6 section applicable to the lawyer also apply to the law firm.

7 NEW SECTION. **Sec. 2.** If a lawyer refers a client to a second
8 lawyer not practicing in the same law firm as the first with the
9 intention or expectation that the second lawyer will pay a referral fee
10 or share fees from the client with the referring lawyer or law firm,
11 the referring lawyer shall provide the client a written explanation of
12 the intended or expected referral fee or sharing of fees before the
13 client enters into a contractual relationship with the second lawyer.
14 The client may recover any fees paid or shared by the second lawyer to
15 the referring lawyer or law firm that were not so explained to the
16 client, or later agreed to in writing by the client, in an action for
17 disgorgement against either one or both lawyers or their law firms
18 commenced within three years after discovering the material facts of
19 the transaction.

20 NEW SECTION. **Sec. 3.** (1) At the time of establishment of a
21 professional relationship with a client, or as soon thereafter as
22 practicable, and within three-year intervals in the case of an ongoing
23 professional relationship with a client, a lawyer shall provide to the
24 client a written statement that discloses, in plain language, the
25 circumstances under which information relating to the client will be
26 covered by the attorney-client privilege or by the lawyer's duty of
27 confidentiality, or both, and the meaning of those concepts. The
28 disclosure statement shall explain the exceptions to the attorney-
29 client privilege and to the lawyer's duty of confidentiality that are
30 recognized in state and federal court rules, statutory law, and
31 judicial decisions.

32 (2) At a minimum, the disclosure statement required by this section
33 shall explain each of the following:

34 (a) The general conditions under which information communicated
35 between the client and the lawyer is privileged from disclosure that
36 otherwise could be compelled by judicial authority;

1 (b) The types of actions by the client that might cause the loss of
2 the privilege as to information initially covered by the attorney-
3 client privilege;

4 (c) The general conditions under which information gained by the
5 lawyer is covered by the lawyer's duty of confidentiality.

6 (3) The disclosure statement should explain the extent to which the
7 attorney-client privilege and the lawyer's duty of confidentiality
8 apply in each of the following circumstances:

9 (a) To information relating to the client if the client uses the
10 lawyer's services to further a crime or fraud or to conceal from
11 discovery a crime or fraud, whether or not the lawyer was aware of that
12 purpose when providing the services;

13 (b) To information the disclosure of which would mitigate or
14 rectify substantial injury to the financial interests or property of
15 another that has resulted from the client's commission of a crime or
16 fraud in furtherance of which the client has used the lawyer's
17 services;

18 (c) To information that the client or another person intends to
19 physically harm or intimidate a judge or a person who is not a judge;

20 (d) To information that the lawyer reasonably believes is necessary
21 to reveal in order to prevent the client or another person from
22 committing a crime;

23 (e) To information the disclosure of which would rectify or correct
24 perjury or other fraud by the client or another person upon a tribunal;

25 (f) To information the disclosure of which is necessary to comply
26 with any law;

27 (g) To information that the lawyer or client is directed to
28 disclose by a court order or by a subpoena issued by an attorney or a
29 governmental official lawfully empowered to issue a subpoena;

30 (h) To information the lawyer discloses without the client's
31 consent to another lawyer to secure legal advice about the lawyer's
32 compliance with any laws or rules governing the lawyer;

33 (i) To information acquired by the lawyer while providing services
34 other than legal services, such as business advisory services,
35 investment advisory services, accounting services, counseling services,
36 lobbying services, or corporate director services or while interacting
37 socially or in a nonlawyer capacity with the client;

1 (j) To information acquired by the lawyer to prepare documents for
2 disclosure to a third party, a governmental agency, or the general
3 public;

4 (k) To information relating to conduct of the client in his or her
5 capacity as a trustee or other fiduciary if the information is sought
6 by or on behalf of a beneficiary of the trust or other fiduciary
7 relationship;

8 (l) To information that a client who is a guardian, personal
9 representative, receiver, or other court-appointed fiduciary has
10 breached a fiduciary responsibility;

11 (m) To information that the lawyer reasonably believes is necessary
12 to reveal in order to establish a claim or defense in a controversy
13 with a client;

14 (n) To information that the lawyer reasonably believes is necessary
15 to reveal in order to establish a defense to a criminal charge or civil
16 claim against the lawyer based upon conduct in which the client was
17 involved;

18 (o) To information that the lawyer reasonably believes is necessary
19 to reveal in order to respond to allegations in any proceeding
20 concerning the lawyer's representation of the client;

21 (p) To information from a nonclient employee, officer, or director
22 of a client organization if the information is sought by another person
23 on behalf of the organization or if the lawyer's duty to the client
24 organization requires that the lawyer voluntarily disclose the
25 information to the other person;

26 (q) To information that the lawyer reasonably believes is necessary
27 to reveal to protect the welfare or financial interests of a client who
28 the lawyer reasonably believes cannot adequately act in his or her own
29 interests;

30 (r) To information or documents relating to a client that is sought
31 by a guardian or other person authorized to act for a client who has
32 been adjudicated, or the lawyer reasonably believes, to have lost legal
33 capacity;

34 (s) To information relating to a deceased client that the lawyer
35 reasonably believes the disclosure of which is necessary to further the
36 client's intentions concerning the disposition of the client's probate
37 or nonprobate estate;

38 (t) To information that relates to coclients jointly represented on
39 a matter of common interest by the lawyer, including the disclosure of

1 information to each coclient before or after the development of any
2 adversity between them.

3 (4) A lawyer may comply with this section by providing a disclosure
4 statement that has been published by either the Washington state bar
5 association or the administrative office of the courts for purposes of
6 satisfying the requirements of this section; provided that there has
7 not elapsed more than three years since its publication, or its
8 republication without material revisions, or more than one year since
9 that organization's publication of any such disclosure statement with
10 material revisions.

11 (5) The failure of a lawyer to provide to a client an adequate
12 disclosure statement required by this section, and the actions of a
13 lawyer inconsistent with disclosures made in a disclosure statement
14 provided pursuant to this section, may be considered as evidence by a
15 court in any dispute between the lawyer and the client.

16 NEW SECTION. **Sec. 4.** Sections 1 through 3 of this act are each
17 added to chapter 2.48 RCW.

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