
HOUSE BILL 1186

State of Washington 58th Legislature 2003 Regular Session

By Representatives Boldt and Mielke

Read first time 01/20/2003. Referred to Committee on Judiciary.

1 AN ACT Relating to legal services reform; amending RCW 2.48.210,
2 2.48.220, and 2.48.230; and adding new sections to chapter 2.48 RCW.

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

4 **Sec. 1.** RCW 2.48.210 and 1921 c 126 s 12 are each amended to read
5 as follows:

6 ~~((Every person before being admitted to practice law in this state
7 shall take and subscribe the following oath:~~

8 ~~I do solemnly swear:~~

9 ~~I am a citizen of the United States and owe my allegiance thereto;~~

10 ~~I will support the Constitution of the United States and the
11 Constitution of the state of Washington;~~

12 ~~I will maintain the respect due to courts of justice and judicial
13 officers;~~

14 ~~I will not counsel or maintain any suit or proceeding which shall
15 appear to me to be unjust, nor any defense except such as I believe to
16 be honestly debatable under the law of the land, unless it be in
17 defense of a person charged with a public offense; I will employ for
18 the purpose of maintaining the causes confided to me such means only as~~

1 are consistent with truth and honor, and will never seek to mislead the
2 judge or jury by any artifice or false statement of fact or law;

3 I will maintain the confidence and preserve inviolate the secrets
4 of my client, and will accept no compensation in connection with his
5 business except from him or with his knowledge and approval;

6 I will abstain from all offensive personality, and advance no fact
7 prejudicial to the honor or reputation of a party or witness, unless
8 required by the justice of the cause with which I am charged;

9 I will never reject, from any consideration personal to myself, the
10 cause of the defenseless or oppressed, or delay any man's cause for
11 lucre or malice.— So help me God.) The supreme court by rule shall
12 prescribe the form of oath of attorney for applicants for admission to
13 the state bar.

14 **Sec. 2.** RCW 2.48.220 and 1921 c 126 s 14 are each amended to read
15 as follows:

16 ((An attorney or counselor may be disbarred or suspended for any of
17 the following causes arising after his admission to practice:

18 (1) His conviction of a felony or misdemeanor involving moral
19 turpitude, in which case the record of conviction shall be conclusive
20 evidence.

21 (2) Wilful disobedience or violation of an order of the court
22 requiring him to do or forbear an act connected with, or in the course
23 of, his profession, which he ought in good faith to do or forbear.

24 (3) Violation of his oath as an attorney, or of his duties as an
25 attorney and counselor.

26 (4) Corruptly or wilfully, and without authority, appearing as
27 attorney for a party to an action or proceeding.

28 (5) Lending his name to be used as attorney and counselor by
29 another person who is not an attorney and counselor.

30 (6) For the commission of any act involving moral turpitude,
31 dishonesty or corruption, whether the same be committed in the course
32 of his relations as an attorney or counselor at law, or otherwise, and
33 whether the same constitute a felony or misdemeanor or not; and if the
34 act constitute a felony or misdemeanor, conviction thereof in a
35 criminal proceeding shall not be a condition precedent to disbarment or
36 suspension from practice therefor.

1 ~~(7) Misrepresentation or concealment of a material fact made in his~~
2 ~~application for admission or in support thereof.~~

3 ~~(8) Disbarment by a foreign court of competent jurisdiction.~~

4 ~~(9) Practicing law with or in cooperation with a disbarred or~~
5 ~~suspended attorney, or maintaining an office for the practice of law in~~
6 ~~a room or office occupied or used in whole or in part by a disbarred or~~
7 ~~suspended attorney, or permitting a disbarred or suspended attorney to~~
8 ~~use his name for the practice of law, or practicing law for or on~~
9 ~~behalf of a disbarred or suspended attorney, or practicing law under~~
10 ~~any arrangement or understanding for division of fees or compensation~~
11 ~~of any kind with a disbarred or suspended attorney or with any person~~
12 ~~not a licensed attorney.~~

13 ~~(10) Gross incompetency in the practice of the profession.~~

14 ~~(11) Violation of the ethics of the profession.))~~ The supreme court
15 shall prescribe rules of procedure governing the discipline, including
16 suspension or disbarment, of members of the state bar.

17 **Sec. 3.** RCW 2.48.230 and 1921 c 126 s 15 are each amended to read
18 as follows:

19 ~~((The code of ethics of the American Bar Association shall be the~~
20 ~~standard of ethics for the members of the bar of this state.))~~ The
21 supreme court shall establish from time to time and enforce rules of
22 professional conduct for the members of the bar of this state, but no
23 such rules of conduct shall prohibit any member from voluntarily
24 revealing information relating to the representation of a client to the
25 extent the lawyer reasonably believes necessary for any of the
26 following purposes:

27 (1) To warn that the client or a third person has made, and still
28 poses, a true and real threat to harm another person, whether or not
29 the threatened person has notice of the potential danger;

30 (2) To prevent the probable death or substantial bodily harm of any
31 person;

32 (3) To prevent the client from committing any crime;

33 (4) To prevent the client from committing a fraud that is
34 reasonably expected to result in substantial injury to the financial
35 interests or property of another and in furtherance of which the client
36 has used or is using the lawyer's services;

1 (5) To prevent, mitigate, or rectify substantial injury to the
2 financial interests or property of another that is reasonably expected
3 to result or has resulted from the client's commission of a crime or
4 fraud in furtherance of which the client has used the lawyer's
5 services;

6 (6) To report, pursuant to chapter 26.44 RCW, evidence of
7 reasonable cause to believe that any child has suffered abuse or
8 neglect;

9 (7) To report, pursuant to chapter 74.34 RCW, evidence of probable
10 cause to believe that any vulnerable adult has suffered abandonment,
11 abuse, financial exploitation, or neglect;

12 (8) To report to appropriate authorities or to others evidence that
13 any lawyer has committed misconduct that if known by the authorities
14 would reasonably be expected to result in the lawyer's suspension or
15 disbarment;

16 (9) To report to appropriate authorities or to others evidence that
17 any judicial officer has committed misconduct that if known by the
18 authorities would reasonably be expected to result in the judicial
19 officer's suspension or removal from judicial office;

20 (10) To report to appropriate authorities or to others evidence
21 that any elected official or executive state officer, as those terms
22 are defined in chapter 42.17 RCW, has knowingly violated any law.

23 **NEW SECTION. Sec. 4.** (1) Promptly upon agreeing to provide legal
24 services for a client, a lawyer shall provide the client a written
25 explanation of the scope of the legal services, the manner by which
26 charges for services or goods will be determined, and all other
27 material terms of their contractual relationship. Promptly upon
28 agreeing to any material changes in the scope or terms, the lawyer
29 shall provide the client a written explanation of the changes.

30 (2) Except to the extent that a lawyer's claim to collect payment
31 for legal services or related goods or services is consistent with an
32 explanation of the scope and terms of the lawyer's engagement, and of
33 any material changes, that was actually agreed to in writing by the
34 client, a lawyer may bring the claim only in a small claims department
35 of a district court in an amount within the jurisdictional limit set by
36 RCW 12.40.010 and must be represented there by a nonlawyer employee or
37 agent. In bringing such a claim, the lawyer has the burden of proving

1 by clear and convincing evidence that the client had been informed of
2 and had agreed to any contractual terms that were not explained and
3 agreed to in writing by the client.

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

8 NEW SECTION. **Sec. 5.** If a lawyer refers a client to a second
9 lawyer not practicing in the same law firm as the first with the
10 intention or expectation that the second lawyer will pay a referral fee
11 or share fees from the client with the referring lawyer or law firm,
12 the referring lawyer shall provide the client a written explanation of
13 the intended or expected referral fee or sharing of fees before the
14 client enters into a contractual relationship with the second lawyer.
15 The client may recover any fees paid or shared by the second lawyer to
16 the referring lawyer or law firm that were not so explained to the
17 client, or later agreed to in writing by the client, in an action for
18 disgorgement against either one or both lawyers or their law firms
19 commenced within three years after discovering the material facts of
20 the transaction.

21 NEW SECTION. **Sec. 6.** (1) At the time of establishment of a
22 professional relationship with a client, or as soon thereafter as
23 practicable, and within three-year intervals in the case of an ongoing
24 professional relationship with a client, a lawyer shall provide to the
25 client a written statement that discloses, in plain language, the
26 circumstances under which information relating to the client will be
27 covered by the attorney-client privilege or by the lawyer's duty of
28 confidentiality, or both, and the meaning of those concepts. The
29 disclosure statement shall explain the exceptions to the attorney-
30 client privilege and to the lawyer's duty of confidentiality that are
31 recognized in state and federal court rules, statutory law, and
32 judicial decisions.

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

35 (a) The general conditions under which information communicated

1 between the client and the lawyer is privileged from disclosure that
2 otherwise could be compelled by judicial authority;

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

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

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

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

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

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

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

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

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

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

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

35 (i) To information acquired by the lawyer while providing services
36 other than legal services, such as business advisory services,
37 investment advisory services, accounting services, counseling services,

1 lobbying services, or corporate director services or while interacting
2 socially or in a nonlawyer capacity with the client;

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

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

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

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

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

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

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

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

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

36 (s) To information relating to a deceased client that the lawyer
37 reasonably believes the disclosure of which is necessary to further the

1 client's intentions concerning the disposition of the client's probate
2 or nonprobate estate;

3 (t) To information that relates to coclients jointly represented on
4 a matter of common interest by the lawyer, including the disclosure of
5 information to each coclient before or after the development of any
6 adversity between them.

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

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

20 NEW SECTION. **Sec. 7.** Sections 4 through 6 of this act are each
21 added to chapter 2.48 RCW.

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