

BILL ANALYSIS

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C.S.S.B. 1210
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Jurisprudence
3/28/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

Current law does not address conflicts of interest regarding staff attorneys and law clerks employed by state courts. C.S.S.B. 1210 prohibits a law clerk or temporary attorney from negotiating for or accepting employment with a law firm or other private entity during his or her clerkship until the last six months of his or her clerkship. It also prohibits a law clerk from accepting a benefit from a law firm or other entity if it violates bribery law. C.S.S.B. 1210 also authorizes a potential clerk to negotiate for employment with a firm or other private entity prior to acceptance of a clerkship, and even to accept a benefit (i.e. bonus) prior to the clerkship. However, if prior acceptance of employment or benefit occurs, the clerk must disclose that agreement or benefit to the clerk of the court. The information disclosed will be a matter of public record.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 2D, Government Code, by adding Chapter 57, as follows:

CHAPTER 57. STAFF ATTORNEYS AND LAW CLERKS; CONFLICT OF INTEREST

Sec. 57.001 **APPLICABILITY OF CHAPTER.** Provides that this chapter applies only to an attorney or law clerk employed by a court of this state for a specified and limited term.

Sec. 57.002. **CERTAIN CONDUCT PROHIBITED.** Prohibits an attorney or law clerk subject to this chapter from negotiating or accepting certain employment or benefits during the actual term of employment with the court, except as provided by Section 57.003 or 57.004.

Sec. 57.003. **PRIOR OFFER OF EMPLOYMENT.** Provides that this chapter does not prohibit the employment of an attorney or law clerk by a court solely because, before actual employment with the court begins, the attorney or law clerk: accepts an offer of employment with a law firm or other private entity that begins after the date the attorney's or law clerk's employment with the court terminates, or accepts a benefit from a law firm or another private entity in connection with anticipated employment by the firm or entity unless the law clerk or attorney knows or should know that the benefit is offered, conferred, or agreed to be conferred to influence or attempt to influence the law clerk or attorney in the performance of the law clerk's or attorney's duty as an employee of the court.

Sec. 57.004. **PERMITTED NEGOTIATIONS.** Authorizes an attorney or law clerk subject to this chapter to negotiate for or accept employment with a law firm or another private entity after the 181st day before the date the attorney's or law clerk's term of employment with the court is to end.

Sec. 57.005. DISCLOSURE. Requires an attorney or law clerk subject to this chapter who has, in accordance with Section 57.003 or 57.004, entered into an agreement for employment with or accepted a benefit from a law firm or another private entity to file a statement containing certain information with the clerk of the court. Provides that information filed under this section is a public record and requires it to be made available to any person on request.

Sec. 57.006. REQUIRED RECUSAL. Prohibits an attorney or law clerk subject to this chapter who, in accordance with Section 57.003 or 57.004, entered into an agreement for employment with or accepted a benefit from a law firm or another private entity from participating during the employment with the court in any matter before the court that involves the law firm or private entity. Prohibits the attorney or law clerk, after the termination of employment with the court, from participating on behalf of the law firm or private entity in any matter that was pending before the court during the period the attorney or law clerk was employed by the court. Requires a recusal from participation in a matter under this section to be made by public order of the court.

Sec. 57.007. SANCTIONS. Provides that an attorney that violates this chapter is subject to sanctions by the State Bar of Texas.

SECTION 2. Amends Section 36.10(a), Penal Code, by providing that Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) do not apply to a benefit to a public servant who is subject to Chapter 57, Government Code, as added by this Act, if the benefit is offered, conferred, or agreed to be conferred by a law firm or another private entity in connection with the anticipated employment by the firm or entity and the public servant complies with Chapter 57, Government Code.

SECTION 3. Effective date: upon passage or September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

SECTION 1. Differs from As Filed version by adding new text to clarify restrictions placed on attorneys and law clerks regarding the acceptance of benefits from firms and entities. Increases from 91 to 181 the number of days before the end of employment with the court as the date after which an attorney or law clerk can negotiate with a law firm or another private entity. Deletes text that allowed an attorney or law clerk to file a disclosure statement with a public information officer designated by the court. Restates proposed text to prohibit an attorney or law clerk, after employment with the court has ended, from participating in a case that was pending before the court prior to the termination of the attorney or law clerk. Adds a new section to state that an attorney who violates this chapter is subject to sanctions by the State Bar of Texas.

SECTION 2. Adds a new SECTION 2 to provide that certain sections of the Penal Code do not apply to the receiving of certain benefits by a public servant.

SECTION 3. Renumbers proposed SECTION 2 as SECTION 3.