
ENGROSSED SUBSTITUTE HOUSE BILL 2276

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Law & Justice (originally sponsored by Representatives Lisk, Huff and Sheahan)

Read first time 04/03/97.

1 AN ACT Relating to civil legal services; amending RCW 43.08.260;
2 adding a new section to chapter 43.08 RCW; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
5 promote the provision of civil legal services to indigent persons,
6 subject to available funds. To the extent that funds are appropriated
7 for civil legal services for the indigent, the legislature intends that
8 civil legal services be offered within an oversight framework that
9 ensures accountability.

10 **Sec. 2.** RCW 43.08.260 and 1995 c 399 s 62 are each amended to read
11 as follows:

12 (1)(a) The legislature recognizes the ethical obligation of
13 attorneys to represent clients without interference by third parties in
14 the discharge of professional obligations to clients. However, to
15 ensure the most beneficial use of state resources, the legislature
16 finds that it is within the authority of the legislature to specify the
17 categories of legal cases in which qualified legal aid programs may
18 provide civil representation with state moneys. Accordingly, moneys

1 appropriated for civil legal representation pursuant to this section
2 shall not be used for legal representation that is either outside the
3 scope of this section or prohibited by this section.

4 (b) Nothing in this section is intended to limit the authority of
5 existing entities, including but not limited to the Washington state
6 bar association, the public disclosure commission, the state auditor,
7 and the federal legal services corporation to resolve issues within
8 their respective jurisdictions.

9 (2) Any money appropriated by the legislature from the public
10 safety and education account pursuant to RCW 43.08.250 or from any
11 other state fund or account for civil representation of indigent
12 persons shall be used solely for the purpose of contracting with
13 qualified legal aid programs for legal representation of indigent
14 persons in matters relating to: (a) Domestic relations and family law
15 matters, (b) public assistance((~~7~~)) and health care, ((~~and entitlement~~
16 programs~~7~~)) (c) ((~~public~~)) housing and utilities, ((~~and~~)) (d)
17 ((~~unemployment—compensation~~)) social security, (e) mortgage
18 foreclosures, (f) home protection bankruptcies, (g) consumer fraud and
19 unfair sales practices, (h) rights of residents of long-term care
20 facilities, (i) wills, estates, and living wills, (j) elder abuse, and
21 (k) guardianship.

22 (3) For purposes of this section, a "qualified legal aid program"
23 means a not-for-profit corporation incorporated and operating
24 exclusively in Washington which has received basic field funding for
25 the provision of civil legal services to indigents ((~~under Public Law~~
26 101-515)) from the federal legal services corporation or that has
27 received funding for civil legal services for indigents under this
28 section before July 1, 1997.

29 ~~((2) Funds distributed to qualified legal aid programs under this~~
30 ~~section shall be distributed on a basis proportionate to the number of~~
31 ~~individuals with incomes below the official federal poverty income~~
32 ~~guidelines who reside within the counties in the geographic service~~
33 ~~areas of such programs. The department of community, trade, and~~
34 ~~economic development shall use the same formula for determining this~~
35 ~~distribution as is used by the legal services corporation in allocating~~
36 ~~funds for basic field services in the state of Washington.~~

37 ~~(3)(a))~~ (4) The department of community, trade, and economic
38 development shall establish a distribution formula based on the
39 distribution by county of individuals with incomes below the official

1 federal poverty level guidelines. When entering into a contract with
2 a qualified legal services provider under this section, the department
3 shall require the provider to provide legal services in a manner that
4 maximizes geographic access in accordance with the formula established
5 in this subsection (4).

6 (5) Funds distributed to qualified legal aid programs under this
7 section may not be used directly or indirectly for ~~((lobbying or in~~
8 ~~class action suits. Further, these funds are subject to all~~
9 ~~limitations and conditions imposed on use of funds made available to~~
10 ~~legal aid programs under the legal services corporation act of 1974~~
11 ~~(P.L. 93-355; P.L. 95-222) as currently in effect or hereafter~~
12 ~~amended.)):~~

13 ~~((b)(i))~~ (a) Lobbying.

14 (i) For purposes of this section, "lobbying" means any personal
15 service, advertisement, telegram, telephone communication, letter,
16 printed or written matter, or other device directly or indirectly
17 intended to influence any member of congress or any other federal,
18 state, or local nonjudicial official, whether elected or appointed:

19 (A) In connection with any act, bill, resolution, or similar
20 legislation by the congress of the United States or by any state or
21 local legislative body, or any administrative rule, rule-making
22 activity, standard, rate, or other enactment by any federal, state, or
23 local administrative agency;

24 (B) In connection with any referendum, initiative, constitutional
25 amendment, or any similar procedure of the congress, any state
26 legislature, any local council, or any similar governing body acting in
27 a legislative capacity; or

28 (C) In connection with inclusion of any provision in a legislative
29 measure appropriating funds to, or defining or limiting the functions
30 or authority of, the recipient of funds ~~((pursuant to chapter 54, Laws~~
31 ~~of 1992))~~ under this section.

32 (ii) "Lobbying" does not include the response of an employee of a
33 legal aid program to a written request from a governmental agency, an
34 elected or appointed official, or committee on a specific matter. This
35 exception does not authorize communication with anyone other than the
36 requesting party, or agent or employee of such agency, official, or
37 committee.

38 (b) Grass roots lobbying. For purposes of this section, "grass
39 roots lobbying" means preparation, production, or dissemination of

1 information the purpose of which is to encourage the public at large,
2 or any definable segment thereof, to contact legislators or their staff
3 in support of or in opposition to pending or proposed legislation; or
4 contribute to or participate in a demonstration, march, rally, lobbying
5 campaign, or letter writing or telephone campaign for the purpose of
6 influencing the course of pending or proposed legislation.

7 (c) Class action lawsuits.

8 (d) Participating in or identifying the program with prohibited
9 political activities. For purposes of this section, "prohibited
10 political activities" means (i) any activity directed toward the
11 success or failure of a political party, a candidate for partisan or
12 nonpartisan office, a partisan political group, or a ballot measure;
13 (ii) advertising or contributing or soliciting financial support for or
14 against any candidate, political group, or ballot measure; or (iii)
15 voter registration or transportation activities.

16 (e) Representation in fee-generating cases. For purposes of this
17 section, "fee-generating" means a case that might reasonably be
18 expected to result in a fee for legal services if undertaken by a
19 private attorney. The charging of a fee pursuant to subsection (6) of
20 this section does not establish the fee-generating nature of a case.

21 A fee generating case may be accepted when: (i) The case has been
22 rejected by the local lawyer referral services or by two private
23 attorneys; (ii) neither the referral service nor two private attorneys
24 will consider the case without payment of a consultation fee; (iii)
25 after consultation with the appropriate representatives of the private
26 bar, the program has determined that the type of case is one that
27 private attorneys do not ordinarily accept, or do not accept without
28 prepayment of a fee; or (iv) the director of the program or the
29 director's designee has determined that referral of the case to the
30 private bar is not possible because documented attempts to refer
31 similar cases in the past have been futile, or because emergency
32 circumstances compel immediate action before referral can be made, but
33 the client is advised that, if appropriate and consistent with
34 professional responsibility, referral will be attempted at a later
35 time.

36 (f) Organizing any association, union, or federation, or
37 representing a labor union. However, nothing in this subsection (5)(f)
38 prohibits the provision of legal services to clients as otherwise
39 permitted by this section.

1 (g) Representation of undocumented aliens.

2 (h) Picketing, demonstrations, strikes, or boycotts.

3 (i) Engaging in inappropriate solicitation. For purposes of this
4 section, "inappropriate solicitation" means promoting the assertion of
5 specific legal claims among persons who know of their rights to make a
6 claim and who decline to do so. Nothing in this subsection precludes
7 a legal services program or its employees from providing information
8 regarding legal rights and responsibilities or providing information
9 regarding the program's services and intake procedures through
10 community legal education activities, responding to an individual's
11 specific question about whether the individual should consult with an
12 attorney or take legal action, or responding to an individual's
13 specific request for information about the individual's legal rights or
14 request for assistance in connection with a specific legal problem.

15 (j) Conducting training programs that: (i) Advocate particular
16 public policies; (ii) encourage or facilitate political activities,
17 labor or antilabor activities, boycotts, picketing, strikes, or
18 demonstrations; or (iii) attempt to influence legislation or rule
19 making. Nothing in this subsection (5)(j) precludes representation of
20 clients as otherwise permitted by this section.

21 (6) The department may establish requirements for client
22 participation in the provision of civil legal services under this
23 section, including but not limited to copayments and sliding fee
24 scales.

25 (7)(a) Contracts entered into by the department of community,
26 trade, and economic development with qualified legal services programs
27 under this section must specify that the program's expenditures of
28 moneys distributed under this section:

29 (i) Must be audited annually by an independent outside auditor.
30 These audit results must be provided to the department of community,
31 trade, and economic development; and

32 (ii) Are subject to audit by the state auditor.

33 (b)(i) Any entity auditing a legal services program under this
34 section shall have access to all records of the legal services program
35 to the full extent necessary to determine compliance with this section,
36 with the exception of confidential information protected by the United
37 States Constitution, the state Constitution, the attorney-client
38 privilege, and applicable rules of attorney conduct.

1 (ii) The legal services program shall have a system allowing for
2 production of case-specific information, including client eligibility
3 and case type, to demonstrate compliance with this section, with the
4 exception of confidential information protected by the United States
5 Constitution, the state Constitution, the attorney-client privilege,
6 and applicable rules of attorney conduct. Such information shall be
7 available to any entity that audits the program.

8 (8) The department of community, trade, and economic development
9 must recover or withhold amounts determined by an audit to have been
10 used in violation of this section.

11 (9) The department of community, trade, and economic development
12 may adopt rules to implement this section.

13 NEW SECTION. Sec. 3. A new section is added to chapter 43.08 RCW
14 to read as follows:

15 The joint legislative civil legal services oversight committee is
16 established.

17 (1) The committee's members are one member from each of the
18 minority and majority caucuses of the house of representatives, who are
19 appointed by the speaker of the house of representatives, and one
20 member from each of the minority and majority caucuses of the senate,
21 who are appointed by the president of the senate.

22 (2)(a) The committee shall oversee the provision of civil legal
23 services funded through RCW 43.08.260 and shall act as a forum for
24 discussion of issues related to state-funded civil legal services.

25 (b) By December 1, 1997, and by December 1st of each year
26 thereafter, the committee must report to the appropriate standing
27 policy and fiscal committees of the legislature on the provision of
28 legal services under RCW 43.08.260.

29 (3) The committee chairman is selected by the members and shall
30 serve a one-year term. The chairman position rotates between the house
31 and senate members and the political parties.

32 (4) The committee shall meet at least four times during each fiscal
33 year. The committee shall accept public testimony at a minimum of two
34 of these meetings.

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