

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 541
Judiciary

(Delegate Simmons)

Judicial Proceedings

Courts - Lawyers - Retainer Agreements

This bill provides that a provision in an attorney retainer agreement that requires a person seeking representation to reimburse a lawyer for attorney's fees in the event of a future dispute between the person and the lawyer is unenforceable. The provision is enforceable if allowed by law and the client was independently represented in making the agreement.

The unenforceability of such a provision cannot be waived, unless allowed by law and the client was independently represented in making the agreement.

Fiscal Summary

State Effect: Any increase in the number of Attorney Grievance Commission cases, or actions in District Court between clients and lawyers regarding unenforceable retainer agreements, could be handled with existing resources.

Local Effect: Any increase in circuit court actions between clients and lawyers regarding unenforceable retainer agreements could be handled with existing resources.

Small Business Effect: Probably minimal. Attorneys whose practices qualify as a small business could no longer enforce this type of provision in their retainer agreements.

Analysis

Current Law/Background: At common law, a contract can be unenforceable if it has an illegal purpose, is contrary to public policy, or is unconscionable, among other reasons.

Under Rule 1.8(h) of the Maryland Lawyers' Rules of Professional Conduct, a lawyer may not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making this agreement, and may not settle a such a liability claim with an unrepresented client unless that person is advised in writing to seek independent counsel.

Under Rule 1.5, of the Rules of Professional Conduct, a lawyer may not charge an unreasonable fee or an unreasonable amount of expenses. Comment 9 to Rule 1.5 provides that if a procedure has been established for the resolution of a fee dispute, such as an arbitration or mediation procedure established by the bar, the lawyer must comply with the procedure if it is mandatory, and should consciously consider submitting to it if it is voluntary.

The Maryland Bar Association's Committee on the Resolution of Fee Disputes has jurisdiction to investigate attorneys in all Maryland counties except Baltimore, Montgomery, and Prince George's, and Baltimore City, where disputes are handled by their local bar associations, respectively. The Maryland Bar also maintains a Client Protection Fund charged with reimbursing losses caused by theft of money by members of the State Bar when acting either as attorneys or fiduciaries.

Additional Information

Prior Introductions: HB 999 of 2006, a similar bill, received an unfavorable report in the House Judiciary Committee.

Cross File: None

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2007
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