

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

House Bill 1364  
Judiciary

(Delegate Norman, *et al.*)

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Courts - Breach of Contract - Attorney's Fees

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This bill prohibits a court, in an action for breach of contract, from modifying the terms of the contract that authorize the recovery of attorney's fees and specify a percentage of fees (if any) that may be awarded.

The bill applies prospectively to court orders on or after the bill's October 1, 2013 effective date.

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Fiscal Summary

**State Effect:** The bill is not expected to materially affect State finances.

**Local Effect:** The bill is not expected to materially affect local finances.

**Small Business Effect:** Potential meaningful impact on small businesses with attorney fee provisions in their contracts.

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Analysis

**Current Law:** In general, a party to a lawsuit is responsible for his/her legal fees, regardless of the outcome of the case (the "American Rule"). However, there are over 80 exceptions to the American Rule in State law, including wage and hour cases, worker's compensation cases, and consumer protection cases. The conditions under which an individual is eligible for an award of attorney's fees and the extent of these awards is inconsistent among the cases eligible for attorney's fees awards under State law. Most of the applicable statutes do not provide guidance on the calculation of attorney's fees.

In addition to statutory exceptions to the American Rule, private parties may include fee-shifting provisions in their contracts requiring the losing party to pay the reasonable attorney's fees of the winner. In these cases, courts will often look to Rule 1.5 of the Maryland Rules of Professional Conduct for guidance on reasonable attorney's fees. Rule 1.5 prohibits a lawyer from agreeing to, charging, or collecting an unreasonable fee or an unreasonable amount for expenses. Rule 1.5 also includes a list of factors to be used in determining the reasonableness of a fee, including:

- the time and labor required;
- the novelty and difficulty of the questions presented in the case;
- the skill required to perform the legal service properly;
- the likelihood that acceptance of the case will preclude the attorney from other employment;
- the customary fee for similar work in the community;
- any time limitations imposed by the client or circumstances;
- the amount involved and the results obtained;
- the nature and length of the attorney's relationship with the client;
- the experience, reputation, and ability of the attorney performing the services; and
- whether the fee is fixed or contingent.

These factors are extremely similar to the factors considered in a statutory claim for an award of attorney's fees. However, Maryland courts have recognized that unlike statutory claims, contractual claims for attorney's fees are not based in public policy, and as such, have noted that when applying Rule 1.5 to requests for attorney's fees in contract cases, "...trial judges should consider the amount of the fee award in relation to the principle amount in litigation, and this may result in a downward adjustment." *Monmouth Meadows Homeowners Ass'n v. Hamilton*, 416 Md. 325, 337(2010).

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland State Bar Association, *Maryland Litigator*, "Attorney's Fees in Maryland: Careful What You Wish For!" (February 2012); Department of Legislative Services

**Fiscal Note History:** First Reader - March 18, 2013  
mlm/kdm

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