

Department of Fiscal Services
Maryland General Assembly

FISCAL NOTE

House Bill 1043 (Delegates Preis and Doory)
Judiciary

Court-Ordered Mediation - Board of Certification for Mediators

This bill provides for court-ordered mediation, and establishes a Board of Certification for Mediators.

The bill has various effective dates.

Fiscal Summary

State Effect: State revenues and expenditures could increase as discussed below. The requirements of this bill relating to the circuit courts could be handled with the existing budgeted resources of the Judiciary. Any potential future savings to the courts stemming from an increased use of mediation cannot be quantified at this time.

Local Effect: None.

Small Business Effect: Meaningful effect on small businesses as discussed below.

Fiscal Analysis

Bill Summary: This bill establishes a seven-member Board of Certification for Mediators to certify and evaluate persons seeking qualification as board certified mediators. The board is required to charge fees to cover the costs of its operations. The bill establishes certain minimum requirements for certification, including those related to education and training.

Malpractice insurance, including coverage for mediation practice, of at least \$100,000 per occurrence and an aggregate limit of \$200,000 is required for board certified mediators. The board is allowed to approve the participation of student mediators and waive the applicable degree and experience requirements in programs that use volunteer mediators supervised by board certified mediators.

A circuit court must issue an order requiring the parties to a family dispute, as defined, to participate in up to two hours of mediation in any action filed with the court. The court must provide the parties with a list of the board certified mediators qualified to mediate family disputes. The parties are allowed to select a mediator who is not board certified. The bill provides for the payment and prepayment of mediation services by the parties. The bill also allows court orders requiring mediation in matters other than family disputes.

Provisions of the bill establishing the board are effective October 1, 1997. Provisions requiring court referrals to mediation are effective October 1, 1998.

State Effect: There are several inherent problems in determining the fiscal impact of this bill: (1) the board is required to charge fees to cover the cost of the operation of the board, but the bill does not direct that fee revenue either to the general fund or a special fund; (2) it is unknown if the fee structure would involve an annual, biennial, or other payment schedule; (3) the Administrative Office of the Courts reports that cases are not currently tracked in a manner by which the number of family dispute cases covered by this bill can be estimated; (4) the number of mediation practitioners, both in terms of individuals and in terms of firms and/or associations, is also unknown; and (5) the bill does not establish the board under the aegis of any existing State agency or budget. Accordingly, it is difficult to determine the nature of the bill's effect on State revenues or expenditures, including any potential staffing needs of the board.

In any event, it is assumed that fees would be set at a cost recovery level, subsequent to some research into making a more precise determination of potential practitioners who would seek certification (see Small Business Effect below).

The seven board members would be reimbursed for expenses under the standard State travel regulations. Any such expenditures would depend upon the time, location, and frequency of the task force's meetings. Expenses are assumed to be minimal and absorbable within the board's fee derived resources.

For purposes of illustration, if it is determined that the potential family dispute caseload and the number of practitioners would require a multiple person staff, the board might need one Administrator, one Certification Specialist, one part-time Investigator, and one part-time Office Clerk. As a result, State expenditures could increase by an estimated \$96,787 in fiscal 1998, which reflects the bill's October 1, 1997 effective date. This figure includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Future year expenditures would reflect annualization and inflation, and include (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 2% annual increases in ongoing operating expenses including the part-time contractual Investigator and Office Clerk.

Finally, while it is anticipated that this bill would provide some workload savings for the courts, such a saving would not translate into any immediate cost reductions. Over time, an easing of the Judiciary's workload would slow the need for additional judges. However, such an eventuality, or its pace, cannot be reliably quantified at this time.

Small Business Effect: The January 1997 edition of the Directory of Maryland Dispute Resolution Professionals, produced by the University of Maryland at Baltimore Law School, has approximately 160 listings of persons or entities referring to themselves as alternative dispute resolution (ADR) professionals. Of that number, 25 are law firms, and 22 are ADR organizations separate from law firms. It is believed that there could be twice as many practitioners as are in this listing.

However, some of the directory listings representing firms or associations are actually only a single person. A certain number of other listings represent members of the clergy, the courts and other public entities (such as the Consumer Protection Division of the Office of the Attorney General), and nonprofit community activists/organizations. Therefore, it is difficult to know the actual number of mediation practitioners in the State who would qualify as a small business. In addition, many attorneys offer these services without a business listing for mediation services.

In any event, it is likely that the requirements of this bill on the courts to refer cases to mediation would work as a stimulus to the supply of mediators in the State. It is assumed that a sufficient number of ADR specialists to meet this demand would desire and attain certification. The malpractice insurance coverage required by the bill should not impede any such industry growth.

It is also possible that increased demand for mediation services could induce the creation of private sector ADR instructional programs and schools. However, it is difficult to estimate

the actual effect of the bill on the industry beyond some limited expectations for growth. This is due, in part, to the bill's maximum time limit on court ordered participation by the parties (2 hours) in the mediation process. Even with the ability of the parties to voluntarily consent to extend the sessions, such an initial limitation could inhibit the interest of bona fide mediation professionals.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Anne Arundel County State's Attorney's Office; University of Maryland at Baltimore Law School; Maryland Committee of Dispute Resolution; Anne Arundel County Conflict Resolution Center; Department of Fiscal Services

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