

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 980

(Senator Hafer)

Judicial Proceedings

Lawyers - Solicitation of Clients - Prohibition on Written Communications

This bill prohibits a lawyer from sending a written communication to a prospective client for the purpose of obtaining professional employment if the communication concerns a worker's compensation claim or relates to a work-related accident or disaster that involves the recipient of the communication or the recipient's relative. This prohibition applies to communications sent directly by the lawyer or through an agent. The bill contains an exception for written communication sent at the request of the prospective client.

Fiscal Summary

State Effect: Any increase in Attorney Grievance Commission cases could be handled with the existing resources of the Judiciary.

Local Effect: None. This bill does not directly affect local finances.

Small Business Effect: Potential meaningful. Lawyers whose practices qualify as small businesses and who rely on direct-mail solicitation of clients may have to resort to other means of client solicitation.

Analysis

Current Law: Rule 7.3 of the Maryland Lawyers' Rules of Professional Conduct governs direct contact by lawyers with prospective clients. With respect to written communication, the rule prohibits a lawyer from soliciting professional employment from a prospective client by written communication if:

- the lawyer knows or reasonably should know that the physical, emotional, or mental state of the prospective client would prevent the prospective client from exercising reasonable judgment in employing a lawyer;
- the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or
- the solicitation involves coercion, duress, or harassment.

In Maryland, lawyers must wait 30 days after an accident or disaster before sending a communication, directly or through an agent, to a prospective client for the purpose of obtaining professional employment if the communication concerns an action for personal injury or wrongful death, or otherwise relates to an accident or disaster involving the person to whom the communication is sent or the person's relative. This prohibition contains an exception for a communication sent at the request of the prospective client.

Background: In *Florida Bar v. Went for It, Inc.*, 515 U.S. 618 (1995), the U.S. Supreme Court upheld the Florida Bar's 30-day waiting period of "special vulnerability and private grief" before soliciting accident victims and their relatives through direct mail.

The Federal Court of Appeals for the Fourth Circuit held that an attempt by the Maryland legislature in 1996 to ban direct-mail solicitation of criminal or traffic defendants within 30 days of arrest was unconstitutional. *See Ficker v. Curran*, 119 F.3d. 1150 (4th Cir. 1997).

Additional Information

Prior Introductions: None.

Cross File: HB 486 (Allegany County Delegation) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Letter of Advice to Delegate Edwards, Attorney General of Maryland, March 2, 2005; Department of Legislative Services

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mll/jr

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510