

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1563 (Delegate Smigiel, *et al.*)
Rules and Executive Nominations

Attorneys - Direct Marketing Communications - Required Disclosure

This bill requires an individual, person, or attorney not authorized to practice law in Maryland to conspicuously disclose in any written or broadcast direct marketing communication intended to solicit professional employment in Maryland that the individual, person, or attorney is not authorized to practice law in Maryland.

Fiscal Summary

State Effect: The bill does not substantively change State activities or operations.

Local Effect: The bill does not substantively change local activities or operations.

Small Business Effect: Potential minimal.

Analysis

Current Law/Background: For a written, audio, video, or electronic communication, as specified, that is sent by a lawyer to obtain professional employment, under specified circumstances, the communication must contain the words “this is an advertisement” in a prominent place at the beginning and end of each communication or otherwise prominently displayed as required in statute. State law prohibits a lawyer or an agent acting on behalf of the lawyer from sending a communication that does not meet the requirements established in State law and the Maryland Lawyers’ Rules of Professional Conduct.

The Maryland Lawyer’s Rules of Professional Conduct prohibit a lawyer from contacting a prospective client in person, by phone, or electronically if a significant motive of the

lawyer is pecuniary gain. This prohibition does not apply if the person contacted is also a lawyer or the person has a familial, personal, or prior professional relationship with the lawyer. A lawyer may participate with a prepaid or group legal service plan, however, that is operated by an organization not owned or directed by the lawyer and that uses in-person or telephone contact for solicitation from persons who are not known to need legal services in a particular matter covered by the plan. Every written, recorded, or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter (and who does not have a relationship with the lawyer as noted above) must include the words "Advertising Material" on either the outside of the envelope, if any, or at the beginning and end of a recorded or electronic communication.

The Maryland Rules prohibit a lawyer from making a false or misleading communication about the lawyer or his or her services. A communication is considered false or misleading if it (1) contains a material misrepresentation of fact or law or omits a necessary fact; (2) is likely to create an unjustified expectation about the results a lawyer can achieve; or (3) implies that the lawyer can achieve results by methods that violate the Maryland Lawyers' Rules of Professional Conduct.

Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process against a lawyer. The Maryland Rules presuppose, however, that whether or not discipline is imposed and the severity of the sanction depend on all the circumstances, including the willfulness and seriousness of the violation, extenuating circumstances, and whether or not the lawyer has committed previous violations.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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ncs/mcr

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