

Department of Legislative Services  
Maryland General Assembly  
2009 Session

**FISCAL AND POLICY NOTE**

Senate Bill 474

(Senator Lenett, *et al.*)

Judicial Proceedings

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**Courts - Family Law - Award for Reasonable and Necessary Expense for Pro Bono Representation**

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This bill authorizes a court to award an amount for reasonable and necessary expenses in proceedings relating to divorce, alimony, or property disposition to a lawyer, law firm, or organization that represents a party free of charge. Costs and counsel fees may be awarded to a lawyer, law firm, or organization that represents a party free of charge in a proceeding relating to child support, custody, or visitation.

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**Fiscal Summary**

**State Effect:** Any increase in the workload for the Judiciary can be absorbed within existing budgeted resources.

**Local Effect:** Any increase in the workload for the circuit courts can be absorbed within existing budgeted resources.

**Small Business Effect:** Law firms providing pro bono services may be awarded reasonable and necessary expenses or costs and counsel fees.

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**Analysis**

**Current Law:** Courts are authorized to order either party to pay or reimburse the other party for any reasonable and necessary expense of prosecuting or defending a proceeding involving divorce, property disposition, and alimony. Reasonable and necessary expenses include suit money, counsel fees, and costs. Courts must consider the financial resources and needs of both parties and whether there was substantial justification for prosecuting or defending the proceeding before ordering any payment. If a courts finds

that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, the court must award reasonable and necessary expenses to the other party, unless there is a finding by the court of good cause to the contrary. The court may order any amount awarded for counsel fees to be paid directly to the lawyer and enter a judgment in favor of the lawyer.

In proceedings relating to the custody, support, or visitation of a child, a court may award to either party the costs and counsel fees that are just and proper. Before awarding costs and counsel fees, the court must consider the financial status of each party, the needs of each party, and whether there was substantial justification for bringing, maintaining, or defending the proceeding. If a court finds that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, the court must award costs and counsel fees, unless there is a finding by the court of good cause to the contrary.

**Background:** Rule 6.1 of the Maryland Rules of Professional Conduct suggests that full-time practicing attorneys provide 50 hours of pro bono service annually; however, there are no mandatory service requirements. Maryland Rule 16-903 requires attorneys to report annually on any pro bono activities.

According to information compiled by the Judiciary, in calendar 2007 Maryland attorneys provided almost 1.1 million hours of pro bono service and 47% of attorneys reported some pro bono activity. Family law was the service area for which the most pro bono hours were reported. Attorneys who primarily practice family law also had the greatest percent of participation in pro bono activity, with 69% of attorneys reporting some pro bono service.

**State and Local Fiscal Effect:** The workload for the Judiciary and circuit courts may be affected to the extent that courts consider and enforce an award of expenses and fees for pro bono services as allowed under this bill. Although there is no way to reliably predict in how many more cases such an award will be made, it is anticipated that the Judiciary and the circuit courts can absorb any increase in workload within existed budgeted resources.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 11, 2009  
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