

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 887

(Delegate Smigiel, *et al.*)

Judiciary

**Lawyers - Simultaneous Service As Counsel to Counties and Municipalities -
Prohibition**

This bill prohibits a lawyer from serving as legal counsel for a county in the State while also serving as legal counsel for a municipal corporation in the State. The circuit court in the county in which a violation is occurring has jurisdiction, on application of the Attorney General, to issue a writ of mandamus commanding a person to comply with the bill's provisions. A person who violates the prohibition against simultaneous service is in violation of the conflict of interest provisions of the Maryland Lawyers' Rules of Professional Conduct and subject to the disciplinary authority of any duly organized bar association in the State.

Fiscal Summary

State Effect: None.

Local Effect: The majority of jurisdictions can handle the bill's requirements with existing budgeted resources.

Small Business Effect: Potential minimal. Law firms may lose potential fee income as they will not be able to serve as legal counsel for a county and a municipality simultaneously.

Analysis

Current Law: There is no law prohibiting simultaneous service as counsel to a county and a municipality.

Rule 1.7 of the Maryland Lawyers' Rules of Professional Conduct prohibits a lawyer from representing a client if the representation involves a conflict of interest. A conflict of interest exists if:

- the representation of one client will be directly adverse to another client; or
- there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

However, even with a conflict of interest, a lawyer may represent a client if:

- the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- the representation is not prohibited by law;
- the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- each affected client gives informed consent, confirmed in writing.

The Attorney Grievance Commission in Maryland oversees the discipline of Maryland attorneys. Counsel for the commission investigates possible misconduct and prosecutes disciplinary proceedings. If an attorney is found to be in violation of the Rules of Professional Conduct, disciplinary measures that may be ordered by the Court of Appeals include disbarment, suspension, and reprimand.

Local Fiscal Effect: A jurisdiction hiring legal counsel will need to perform due diligence when selecting an attorney to ensure that the attorney is not in conflict with the prohibition against simultaneous representation of a county and a municipality. The majority of jurisdictions advise that there will be no fiscal impact. Montgomery County advises that it obtains outside counsel on a regular basis for various reasons and this bill may increase these costs because a lawyer agreeing to work for the county will not be able to represent other municipalities at the same time.

Additional Information

Prior Introductions: None.

Cross File: SB 587 (Senator Pipkin) - Judicial Proceedings.

Information Source(s): Garrett County, Montgomery County, Town of Bel Air, Town of Leonardtown, City of Salisbury, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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