

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1221 (Delegate Glass)
Judiciary

Discovery - Disclosures Regarding Anonymous Internet Communications

This bill establishes that in a civil action in which a party alleges that an anonymous individual has engaged in Internet communications that are tortious, any party seeking information held by a nongovernmental person or entity that identifies the tortfeasor must file a subpoena that complies with specified requirements and procedures, unless the court, having considered the interests of each person affected by the action, orders more expedited procedures.

Fiscal Summary

State Effect: Any increase in District Court workload as a result of the bill can be handled with existing budgeted State resources.

Local Effect: Any increase in circuit court workloads as a result of the bill can be handled with existing budgeted local resources.

Small Business Effect: Potential meaningful effect on small businesses that allow anonymous Internet communications and small businesses that are the subject of these communications.

Analysis

Bill Summary:

Filing a Subpoena: A party seeking information identifying an anonymous communicator must file with the court a complete copy of the subpoena and “supporting materials,” including a copy of the communications that are the subject of the subpoena, at least

30 days before the date on which disclosure is sought. The party must also include a copy of the communications that are the subject of the subpoena.

The bill defines “supporting materials” as information demonstrating that (1) one or more communications that are or may be tortious or illegal have been made by an anonymous individual communicating on the Internet, or the party requesting the subpoena has a legitimate, good-faith basis to contend that the party is the victim of actionable conduct in the jurisdiction where the suit was filed; (2) other reasonable efforts to identify the anonymous communicator have been unsuccessful; (3) the identity of the anonymous communicator is important, is centrally needed to advance the claim, relates to a core claim or defense, or is directly and materially relevant to that claim or defense; (4) no motion to dismiss, motion for summary judgment, or other motion challenging the viability of the action is pending; and (5) the person to whom the subpoena is addressed is likely to have responsive information.

Service of Subpoena: A party seeking information identifying an anonymous communicator must (1) serve two copies of the subpoena, supporting materials, and communications that are the subject of the subpoena on the person to whom the subpoena is addressed and (2) provide payment sufficient to cover postage for mailing one copy of the application within the United States by registered mail, return receipt requested.

Response to Subpoena: Unless the anonymous communicator has consented to disclosure in advance, within five business days after receipt of a subpoena and supporting materials, the person to whom the subpoena is addressed to must (1) send an electronic mail notification to the anonymous communicator reporting that the subpoena has been received if an electronic mail address is available and (2) forward one copy of the subpoena, by registered mail or commercial delivery service, return receipt requested, to the anonymous communicator at the last known address if an address is on file with the person to whom the subpoena is addressed.

To allow the anonymous communicator an opportunity to object, the party to whom the subpoena is addressed may not comply with the subpoena earlier than three business days before the date on which disclosure is due. If any person files a written objection or a motion for a protective order or to quash or modify the subpoena, compliance with the subpoena must be deferred until the court rules on the obligation to comply.

Objection to Subpoena, Order to Quash or Modify Subpoena: A written objection or an application to the court for a protective order or to quash or modify a subpoena must enumerate the reasons to deny the disclosure of the subpoena and address whether (1) the identity of the anonymous communicator has been disclosed in any way beyond its recordation in the account records of the party to whom the subpoena is addressed; (2) the subpoena fails to allow a reasonable time for compliance; (3) the subpoena

requires disclosure of privileged or other protected matter and no exception or waiver applies; or (4) the subpoena subjects a person to undue burden.

On or before the date of filing, the anonymous communicator must serve the objection or motion on the party seeking the subpoena and the party to whom the subpoena is addressed. The party to whom the subpoena is addressed must serve the objection or motion on the party seeking the subpoena and the anonymous communicator whose identifying information is sought, on or before the date of filing.

If any person files an objection or a motion (1) the party serving the subpoena may not be entitled to inspect or copy the materials except in accordance with a court order and (2) any interested person may request that the court hold a hearing on the matter. Two copies of a notice of hearing must be served on the subpoenaed party, who is required to mail one of the copies, by registered mail or commercial delivery service, return receipt requested, to the anonymous communicator whose identifying information is the subject of the subpoena at that person's last known address.

An interested party may apply to the court for a protective order or request that the court quash or modify the subpoena at least seven business days before the date on which disclosure is sought under the subpoena.

Background: A Virginia carpet and rug cleaning business with several negative reviews on the Yelp website filed suit against the online reviewers and sought to compel the website to release their names. According to Hadeed Carpet, the reviews were posted by competitors, not actually customers that the company could identify through its database, and as such were defamatory and not protected by the First Amendment. The trial court ruled in favor of Hadeed Carpets in 2012, and an appellate court affirmed the ruling. In reaching its 2-1 decision, the Virginia Court of Appeals noted that if the reviews were posted by individuals who were not Hadeed customers, than the reviews are not based on opinion, but are instead based on false statement of fact, in which there is no constitutional value.

Virginia has a statute with provisions that are similar to the ones contained in the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), RT.com, techdirt.com, *The New York Times*, Department of Legislative Services

Fiscal Note History: First Reader - March 3, 2014
mc/kdm

Analysis by: Amy A. Devadas

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