

TESTIMONY OF KELLY HUGHES IVERSON
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OPPOSING THE TAXATION OF LEGAL SERVICES PROVISIONS OF HB 1628

March 2, 2020

Good Afternoon. My name is Kelly Hughes Iverson, and I am here on behalf of the Bar Association of Baltimore City (BABC) as its Immediate Past President. I am pleased to share the table with Darren Kadish, the Bar Association's President-Elect.

It is my honor to be here before this distinguished panel, but in truth, I would rather there be no need for me to appear. This body hears often from the Maryland State Bar Association; it hears from the Bar Association of Baltimore City only rarely. But this issue – the proposal to tax legal services – has mobilized us. You may have discerned by now that the BABC, which is 2500 members strong, stands opposed to HB 1628 as currently drafted, and urges this Committee to issue an unfavorable report.

I adopt and incorporate all of the points raised by my colleague Mr. Kadish. Among other things:

1. Individuals need lawyers often during some of the most vulnerable periods of their lives. Increasing the cost of legal services will place a greater financial burden on these people when they can least afford one.
2. The Constitution grants criminal defendants the right to have an attorney of their choice. A tax on legal services that infringes on this right may be unconstitutional.
3. A tax audit of an attorney's legal bills could violate attorney-client privilege and the work product doctrine.
4. A tax on legal services is also bad for business. Corporations that can hire law firms from any state will choose to hire lawyers outside of the State of Maryland. This is particularly true for highly sophisticated work. If a national law firm has offices both in Maryland and outside the state, the economically rational decision would likely be to assign work to offices outside of the State of Maryland, rather than force their clients to pay the legal services tax when it otherwise would not be necessary. Clients will also likely demand that their matters be assigned outside of the State of Maryland to keep their legal bills down.
5. This tax will hit smaller businesses particularly hard because, unlike larger businesses with in-house legal departments, smaller businesses cannot afford to have an in-house legal department.
6. Oftentimes, clients seek legal advice from attorneys to ensure that they are complying with applicable laws and regulations. A tax on legal services provides a disincentive to companies to seek this advice in advance, thereby potentially reducing compliance with applicable laws and regulations.
7. Most of Maryland's law firms are small, with minimal administrative staff. Imposing an additional administrative burden on these law firms will require them to hire additional

personnel, and the cost of these additional personnel will be passed on to clients through higher rates in addition to the imposition of a percentage tax.

8. A tax on legal services is regressive because the poor pay a larger percentage of their income on taxes than do the wealthy.
9. A tax on legal services will create an unfair advantage for corporations and government agencies with their own in-house attorneys because these entities will not have to pay the legal services tax.
10. A tax on legal services creates a separation of powers issue, because attorneys are regulated by the Court of Appeals of Maryland.
11. A state-imposed tax on services provided by Maryland attorneys in federal court may violate the Supremacy Clause of the United States Constitution.
12. A legal services tax may violate the Maryland Declaration of Rights.

And of course, the administrative uncertainties and challenges are many. The bill defines “taxable price” as consideration “of any kind” that is “payable,” not just “paid.” Does the tax therefore accrue when a bill is issued and it becomes an account payable? What does one do with fees that are not collected for 120 days or more – or not at all? Or are converted to pro bono or “low bono” when a client is unable to pay for services as originally contracted? If taxes are collected from the lawyers on accounts payable, will the taxes be refunded if their legal services are not in fact compensated?

And there are jurisdictional difficulties. I am admitted to practice in Maryland and in the District of Columbia. When I am sitting in my office in Baltimore preparing a motion to be filed in a case pending in the D.C. Superior Court, one might argue I am practicing in the District of Columbia. But I am sitting in Maryland. Are those services subject to Maryland tax? What about when I try the case and am physically present in the District of Columbia? Are those services subject to Maryland tax? If they are, then clients would be able to shave 5% off of their legal bills by hiring D.C. or Virginia-based law firms for the next case. What about when an out-of-state law firm enters its appearance representing an out-of-state client in a case pending in Maryland? Are those services subject to Maryland tax?

My law firm, Goodell DeVries Leech & Dann, LLP, also works on cases that are national in scope, and my partners appear in courts across the country. We compete for that work with firms across the country, offering excellent value for top-quality legal services. Would legal services performed by our Maryland firm, with our office in Baltimore, on cases pending elsewhere in the country be subject to Maryland tax? If they are, then cost-conscious clients may decide to hire firms located in the many, many jurisdictions that do not impose a tax on legal services, rather than hire a Maryland firm. And my firm, of course, is comprised of not just lawyers. My firm currently employs 64 non-lawyer staff, providing jobs in Baltimore City to support cases litigated across the country. Loss of work to firms in other states would adversely impact our ability to provide those Baltimore City jobs.

But beyond the impact on lawyers and law firms and their employees, I want to call the Committee’s attention to the irony of this proposal. This tax on legal services is proposed with a

goal of improving education funding in underserved areas. But this is a bill that taketh away with one hand what it giveth with the other, because it hurts many of the very people it is designed to help. It would be difficult for a child to study – even at a better-funded school -- when her family has been unfairly evicted from their housing, for example. In our well-intentioned efforts to address inequitable education funding, we cannot forget that many of those who suffer from inadequate access to education also suffer from inadequate access to justice. One need only look at data compiled by the Access to Justice Commission (on which I serve as a Commissioner) to see the impact of access to civil legal services:

As the Commission reports, 71% of low-income households have experienced a significant civil legal problem in the past year.¹ Significant civil legal problems could include issues relating to housing (a broad category that includes landlord-tenant problems, foreclosures, evictions, aging in place for seniors, tax sales of homes -- sometimes for unpaid water bills of only a few hundred dollars -- and ground rent, among others), personal injury, taxes, bankruptcy, or domestic violence, to name a few.

Data prove that lawyers made a difference in outcomes: the success rate in protective order cases is 83% in cases with representation, compared to 32% without representation.² Success rates in an eviction case were 94% for those represented by lawyers, compared to only 32% without legal representation.³ Yet despite the known benefit that lawyers provide, pro se rates are climbing. In a December 2017 report on self-represented litigants, the Maryland Judiciary Access to Justice Department reported that 80% of litigants in domestic cases in Maryland were unrepresented at the time the answer was filed. In most civil cases in District Court, at least one party, and often both parties, are unrepresented.⁴ Pro se rates are climbing because the cost of legal services puts them out of reach for many of those who need them most.

Legal services are not a luxury; in our world of ever-growing complexity, they are a necessity. As the cost increases with a tax on legal services, it will push legal services even farther out of reach for those who cannot restructure their businesses to bring more services in-house, or choose out-of-state counsel, or take other maneuvers to lessen the impact of the tax.

The Bar Association of Baltimore City urges the Committee to issue an unfavorable report on HB 1628's attempt to tax legal services.

¹ https://3696f76f-41f9-42c2-8ed9-862af4ca2278.filesusr.com/ugd/9ac3d5_2c23567114c94ab3bd83628ae4691426.pdf, accessed March 2, 2020.

² Jane C. Murphy, *Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women*, 11 AM. U. J. GENDER SOC. POL'Y & L. 499, 511(2003).

³ Hasvold, Aubrey and Regenbogen Jack, Colorado Commission for the Homeless and the Colorado Center on Law and Policy, *Facing Eviction Alone* (2017) at <<https://cclponline.org/wp-content/uploads/2017/09/Facing-Eviction-Alone-9-11-17.pdf>>.

⁴ <https://mdcourts.gov/sites/default/files/import/accesstojustice/pdfs/fy17srlreport.pdf>, accessed March 2, 2020.