

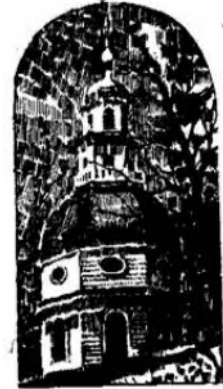


**Maryland State Bar Association, Inc**

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## 2010 LEGISLATIVE RECAP

### Maryland Legal Services Corporation Funding

Whoever coined the American idiom, “better late than never,” never spent the final day of a Maryland General Assembly Session waiting late into the evening for passage of their most important bill. Senate Bill 248 / House Bill 106 – Civil Cases – Maryland Legal Services Corporation (MLSC) Fund was the most important of all the bills endorsed by the Maryland State Bar Association (MSBA) during the 2010 Session. While most observers of this legislation expected debate on the bill to extend late into the Session, nearly all had hoped that deliberations on the bill would have been completed before *sine die*.

As introduced, the identical Senate and House versions of the bill would have increased filing fee surcharges in the circuit courts, the District Court (for civil cases), and summary ejection charges in the District Court. The rationale behind the bill was to try to address the precipitous decrease in Interest on Lawyer Trust Accounts (IOLTA) balances caused by the dramatic decrease in interest rates. Those IOLTA funds serve as the primary source of funding to MLSC to provide civil legal services to the poor throughout Maryland. The current surcharges are set at \$ 25 in the circuit courts, \$ 10 in the District Court, and \$ 5 for summary ejection filings. Those levels of funding to the MLSC fall far short of meeting the needs of the poor in Maryland, which is estimated to be in the \$9 million range. The bill, as introduced, sought increase surcharge levels to meet that level of need. The Senate passed the bill without amendment. However, the House amended the surcharge increases down to a level that would have produced a funding yield of approximately \$4 million. When the bill went to Conference Committee to reconcile the differences between the Senate and House versions, the Committee reached agreement of surcharge increases that would produce approximately \$6.3 million. That agreement was reached in the early evening of the Session’s final day, and was not passed until the final half-hour of the Session.

Under the provisions of the bill, as approved by the General Assembly, effective July 1, 2010, filing fee surcharges will increase from \$25 to \$55 in the circuit courts, from \$10 to \$18 for civil cases in the District Court, and from \$5 to \$8 for summary ejection cases. Additionally, the legislation affixed a “sunset provision” to the bill, abrogating the surcharge increases after three (3) years, effective June 30, 2013. Moreover, the Conference Committee accepted a House amendment that requires the MLSC to provide an “informational budget” to the General Assembly, outlining income, disbursements to individual grantees, personnel costs and other operational information.

Overall the MSBA, and presumably the legal services community, should regard the outcome related to the passage of SB 248 as a positive result. The bill passed the Senate 33-13, and the House by a margin of 96-43. Congratulations to Susan Erlichman of MLSC (as well as MLSC Board Chairman, Vernon Boozer), Chief Judge Robert M. Bell, of the Court of Appeals, Wilhelm Joseph of the Legal Aid Bureau, and so many others in the legal services community who worked so tirelessly on this bill.

## **Judicial Compensation**

During the 2009 Session, the Judicial Compensation Commission made its recommendations on judicial compensation to the General Assembly. Those recommendations were the result of the Commission's statutorily mandated 4-year review of judicial compensation in Maryland. Due the economic downturn last year, the legislature voted to defer action on the Commission's recommendations until the 2010 Session. Unfortunately, the economy has not rebounded sufficiently to allow for judicial salary increases in 2010.

In a quirk of the legislative process, judicial salary recommendations are presented to the General Assembly in the form Joint Resolutions in each Chamber. This year they were Senate / House Joint Resolution 4. As provided in the Courts Article, the General Assembly has 50 days to amend the proposed salary increases, otherwise the increases become effective. However, when the legislature determines that the salary increases are not feasible, they can simply amend the salary increases out of the Resolutions, and proceed to "pass" the Resolutions. This is what occurred again this Session. To a casual observer of the Annapolis legislative process, it might appear that because the legislature "passed" SJ 4 and HJ 4, that the increases were approved. This was not the case.

## **Contested Judicial Elections**

With 2010 being an election year, the General Assembly was poised to consider Constitutional Amendments, which if passed by the legislature, would be placed before the voters of Maryland in the upcoming general election. One such piece of legislation was Senate Bill 833 / House Bill 1385 – Circuit Court Judges – Election, Qualifications and Term of Office. The bill would have converted the current system of contested elections for circuit court judges to a system of retention elections, and would have reduced the term of office of a circuit court judge from 15 to 10 years.

The MSBA supported this measure, as it has in previous introductions. Even though the bill was sponsored in the Senate by Attorney General Douglas Gansler, the bill failed in both Chambers without a Committee vote.

## **Office of the Public Defender Governance**

In the aftermath of the controversy in 2009 concerning the removal of the incumbent Public Defender, the legislature began an inquiry during the fall of 2009 into manner of governance of the Office of the Public Defender (OPD). Upon reviewing the statute governing the OPD, the Senate Judicial Proceedings Committee concluded that the statute was unclear concerning cause from removal of the Public Defender and the role of the OPD Board of Trustees, in terms of whether it is an advisory board or a governing board. Both the Senate and the House concluded that the law needed to be clarified in those areas. Additionally, both Chambers concluded that the Board needed to be enlarged from its current 3-members, all of whom are appointed by the Governor.

In response to the concerns heard in both Chambers, the legislature passed Senate Bill 97 – Office of the Public Defender – Board of Trustees – Membership. The bill repeals the provision that the Public Defender serves at the pleasure of the Board, that the Public Defender maybe removed for cause, based on a majority vote of the Board, enlarges the Board from 3 to 13 members, provides that the Public Defender shall serve for a 6-year term, and may be reappointed at the end of that term. The MSBA supported the bill.

## Land Record Improvement Fund – Restoration

In November of 2009, Governor O'Malley began the process of addressing a projected budget deficit going into fiscal year 2011. As part of that process, the Governor proposed a \$25 million transfer from the Circuit Court Real Property Record Improvement Fund (Fund). Popularly known as the Land Record Improvement Fund, the Fund is a special fund in the budget of the judicial branch of government. The proposed transfer was initiated by an action of the Board of Public Works, but required approval of the General Assembly.

After exhaustive review by the Senate Budget & Taxation Committee and the House Appropriations Committee rejected the Governor's proposed transfer, and thus, the Fund balance was not affected. The leadership of the Maryland Judiciary and the MSBA Real Property Section deserve congratulations for making a compelling case to the budget committees that resulted in nullification of the proposed transfer.

## Civil Litigation Funding

During the 2009 Session, legislation was introduced that sought to regulate entities that provide "civil litigation advances" in Maryland (the MSBA supported that legislation). Typically, these firms offer cash advances to individuals who have pending personal injury cases. These "advances" are repaid from the proceeds of the litigant's award or settlement. The 2009 legislation failed; however, during the 2009 Interim, the Commissioner of Financial Regulation determined that civil litigation advances are loans, and are subject to the statutory maximum usury rate of 33%. Since the effective interest rate on the advances far exceeds 33%, the Commissioner issued a "Cease and Desist" order against one of the companies operating in Maryland.

In 2010, the civil litigation funding industry response was to have legislation introduced that purported to regulate the civil litigation funding industry. However, because the bill specified the "advances" are not loans, the bill would have removed the industry from the under the regulatory authority of the Commissioner, and would have rendered the industry unregulated. Accordingly, the MSBA and the Commissioner of Financial Regulation opposed the bill. The bill died in both the Senate and House committees without a vote.

## Civil Jury Trials

In 2010, legislation in the form of a Constitutional Amendment (Senate Bill 118) was passed by General Assembly to prohibit an individual from requesting a civil jury trial unless the amount in controversy is greater than \$15,000 (exclusive of attorney fees and costs). The bill was introduced with a \$20,000 jury trial threshold, but was amended to the \$15,000 level.

## Same Sex Marriage

Late in the 2010 Session, legislation was introduced (SB 1120 / HB 1532) which sought to delay any State agency activity that would facilitate the recognition in Maryland of same-sex marriages performed in other jurisdictions. The legislation was prompted by an Opinion of the Attorney General, dated February 23, 2010 (95 Op. Att'y 17 Gen. 3 (2010)). The Attorney General opined that Maryland may recognize such

unions. Yet the legislation would have prohibited any action that would recognize those unions unless specifically authorized by the Court of Appeals or the General Assembly. Both bills failed.

## **Attorney General Impeachment Effort**

In the aftermath of Attorney General Gansler's Opinion concerning recognition of out-of-state same sex marriages, Delegate Don Dwyer introduced **House Simple Resolution 1 – Articles of Impeachment of Attorney General Douglas F. Gansler**. The Articles alleged that the Attorney General had exceeded his constitutional authority in his February Opinion concerning same-sex marriage, and that he had “usurped” the authority of the General Assembly.

The Resolution was introduced on the House floor. Delegate Dwyer moved for an immediate vote on the Resolution, which was ruled as “out-of-order,” and the Resolution was referred to the House Judiciary Committee, where after a raucous hearing, the measure died.

## **Auto Insurance Minimum Coverage**

One of the most fiercely debated measures of the 2010 Session was House Bill 825 – Vehicle Laws – Required Security – Minimum Amounts. As passed by the legislature, the bill increases the minimum liability coverage for bodily injury or death of one person from \$20,000 to \$30,000, and for bodily injury or death of more than one person from \$40,000 to \$60,000. The bill affects both the issuance and the renewal of all vehicle insurance policies, effective January 1, 2011.

## **Additional Judgeships**

Although the Judiciary of Maryland did not seek additional judgeships in 2010, legislation (SB 874) was introduced that would have created additional circuit court judgeships in Baltimore, Montgomery and Prince George's counties, and in Baltimore City. Additionally, the bill would have created District Court judgeships in Baltimore City, and in Charles, Harford, Montgomery, Prince George's counties. The bill died without a vote.

## **Distracted Driving**

After many tries, the General Assembly passed Senate Bill 321 – The Delegate John Arnick Electronic Communications Traffic Safety Act. The bill is named in honor of the late-Delegate who pioneered the legislature's past efforts to ban cell phone use while driving. The bill prohibits use of a hand-held cell phone while a vehicle is in motion. The bill does not affect hands-free communication devices.

The bill provides that violation of the Act is a secondary offense, and provides a fine of \$40 for a first offense, \$100 for a second offense.

## MSBA Watch-list

Issue	Bill Numbers	MSBA Position	Update/Outlook
MLSC Funding	SB 248 / HB 106	Support	Passed in the 11 <sup>th</sup> hour
OPD-Bd. of Trustees	HB 122, SB 97, SB 531	Support w/amendments	SB 97 passed amended
Judicial Compensation	SJ 4 / HJ 4	Support	Died quickly. No surprise.
Additional Judgeships	SB 874	Monitor	Died quietly.
Atty General Impeachment	House Simple Resolution 1; (HS 1)	Monitor	Failed
Contested Judicial Elections - Repeal	SB 833	Support	Heard in JPR 3/10; JUD Hearing 3/17
“Loretta’s Law” - Power of Atty Act	HB 659	Several Sections Supported	Passed
Civil Litigation Funding	SB 833 / HB 1331	Oppose	Failed
Extending Civil Immunity	SB 411	Oppose	Passed
Auto Insurance – Minimum Security	HB 825	Monitor	Passed
Land Record Improvement Fund	SB 141 (BRFA)	Oppose transfer from LRIF to General Fund	Transfer failed
Civil Jury Trials – Amt in Controversy	SB 118/ SB 119	Monitor	Passed amended

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