

## **Move to Give Pa. Legislature Power to Decide Venue Aims to Prevent Med Mal 'Liability Crisis,' but Could Backfire**

Kline & Specter's Shanin Specter said that allowing the General Assembly to make venue decisions would only ramp up tensions between the branches of government. The measure's sponsor said he wanted to ease interbranch relations.

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A proposed amendment currently before the Pennsylvania House Judiciary Committee would, if enacted, grant the state legislature the authority to create statutes establishing the venue of a civil lawsuit.

The introduction of House Bill 2660 warns against a possible rule change to Rule 1006 subdivision (a.1) in the works that stands to reverse restrictions from the early 2000s limiting where a medical malpractice liability suit may be filed.

The memo introducing the bill cautions that eliminating the venue limitation could revive a "liability crisis" that preceded the rule's enactment and may "inflame conflict between the Judiciary and the General Assembly."

The bill, introduced by Rep. Rob Kauffman, R-Franklin, aims to “reinforce comity between the branches, as it existed for decades if not centuries previously,” according to the memo.

“This will not strip the Judiciary of its general authority to prescribe rules for venue, but it will settle the rising conflict over whether this is a shared area of constitutional authority,” the memo said.

But, according to Kline & Specter’s **Shanin Specter**, allowing the General Assembly to make venue decisions would only ramp up tensions between the branches. He said the bill is just one of several recent efforts from the legislature to take on the powers of other branches of government via constitutional amendment.

“That is troubling because it seeks to upset the delicate balance among our three branches of government,” said Specter. “The majority of legislators in both bodies understand that and will sensibly put the breaks on most of these efforts, including this one.”

The proposed legislation, which was referred to the Judiciary Committee on June 7, would add a single line to the end of Article V, Section 10(c) of the state constitution saying, “Notwithstanding the provisions of this section, the General Assembly may, by statute, establish venue in civil cases in the Commonwealth of Pennsylvania.”

Curt Schroder, executive director of the Pennsylvania Coalition for Civil Justice Reform, said the General Assembly is qualified to take on the added authority considering the statute already empowers it to determine jurisdiction. “While venue and jurisdiction are very different, they are at the very least either siblings or close cousins,” he said.

Schroder said the health care community has been pushing for the amendment, with assistance from the PCCJR, as part of an effort to get ahead of a proposed rule change that could go before the state Supreme Court in the near future.

That proposal, introduced in 2019, seeks to remove an early-2000s addition to the venue rules stating that a medical professional liability action may only be brought against a health care provider in the venue where the cause of action occurred.

Schroder said the early-2000s change was part of an interbranch effort to curb liability premiums for health care professionals, which he said skyrocketed in part due to frequent high verdicts in medical malpractice suits. Changes like the restriction on venue, he said, have proven effective in addressing the issue.

“Basically, venue shopping ... would run rampant again if this rule was adopted,” Schroder said. He said he does not know when or how the high court will rule on the matter but said, “one thing we do know is this threat has hung over the head of the health care community for over three years now.”

In the explanatory comment for the Civil Procedural Rules Committee rule change proposal, committee chair David Kwass critiqued the current rule for providing “special treatment of a particular class of defendants, which no longer appears warranted.” He cited Supreme Court data indicating a drop in medical professional liability action filings in the past 15 years.

“Additionally,” wrote Kwass, “it has been reported to the committee that this reduction has resulted in a decrease of the amount of claim payments resulting in far fewer compensated victims of medical negligence.”

Schroder said the PCCJR disputes those comments, in which, he says, “conclusory statements are made with nothing to back them up.”

Specter called worries that removing the rule would create a medical liability crisis “backwards.”

“The wholesale changes to substantive and procedural law 20 years ago have created a highly uneven system of justice in medical malpractice litigation, where only a small fraction of persons who are badly injured from medical malpractice are, as a practical matter, able to obtain redress in the Pennsylvania court system,” he said.

Removing subdivision (a.1) of Rule 1006 would result in some reshuffling of where cases are filed, Specter said, but he said the other substantive law changes made as part of the effort to temper liability costs would stand in the way of a huge influx of cases.

He said venue rules should be changed to apply equally to all types of defendants, regardless of whether it is the legislature or the high court deciding on the issue.

As for how empowering the General Assembly to determine venue would affect other kinds of cases outside the realm of medical malpractice, “It’s highly unpredictable,” Specter said, “and that’s part of the reason why the constitution should not be amended in this regard.”