

CHRIS WEST
Legislative District 42
Baltimore and Carroll Counties

Judicial Proceedings Committee



Annapolis Office
James Senate Office Building
11 Bladen Street, Room 322
Annapolis, Maryland 21401
410-841-3648
800-492-7122 Ext. 3648
Chris.West@senate.maryland.gov

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

January 22, 2026

The Maryland State Senate
Judicial Proceedings Committee
The Honorable William C. Smith, Jr.
2 East Miller Senate Building
Annapolis, Maryland 21401

Re: Senate Bill 131: Estates and Trusts – Fiduciaries – Attorney-Client Privilege

Dear Chairman Smith and Members of the Committee,

Senate Bill 131 is identical to last year's Senate Bill 135, which passed unanimously in this Committee and then passed on the Senate floor 44-0. The bill never was taken up by the House last year. The purpose of this bill is to give the House another shot at doing the right thing and passing this bill.

Maryland defines attorney-client privilege as: (1) Where legal advice of any kind is sought, (2) from a professional legal adviser in his or her capacity as such, (3) the communications relating to that purpose, (4) which are made in confidence, (5) between the attorney and the client, (6) are at the client's insistence permanently protected, (7) from disclosure by the client or by the legal adviser. *Newman v. State*, 384 Md. 285, 302 (Md. 2004) (citing *Harrison v. State*, 276 Md. 122, 135 (1975)).

Maryland recognizes some limited exceptions to attorney-client privilege; however, a fiduciary exception to attorney-client privilege is not among them. See *Trasatti v. Trasatti*, 2018 Md. App. LEXIS 546. On the other hand, Maryland court decisions do not explicitly establish that there is no such exception to the attorney-client privilege. So, the law in Maryland is currently in the grey area on this issue.

In the context of estate administration, the attorney-client privilege protects communications between the fiduciary and the fiduciary's legal counsel which occur in the course of administering the trust or estate.

If beneficiaries or others were able to require the disclosure of such communications, the result would be a breakdown in the attorney-client relationship. No longer could a fiduciary communicate with his or her legal counsel without worrying that whatever was said might be

CHRIS WEST
Legislative District 42
Baltimore and Carroll Counties

—
Judicial Proceedings Committee



Annapolis Office
James Senate Office Building
11 Bladen Street, Room 322
Annapolis, Maryland 21401
410-841-3648
800-492-7122 Ext. 3648
Chris.West@senate.maryland.gov

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

discoverable and might be the subject of litigation by a disappointed beneficiary or by someone else.

Because neither Maryland case law nor our statutes clearly state that Maryland either recognizes or does not recognize a fiduciary exception to the attorney-client privilege, parties often raise the issue in litigation, resulting in increased cost and delayed adjudication of the pending matter.

This bill will add a section to the Estates and Trusts Code that makes clear, like in many other states, that Maryland does not recognize a fiduciary exception to the attorney-client privilege.

I appreciate the Committee's consideration of Senate Bill 131 and will be happy to answer any questions the Committee may have.