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To: Members of Senate Judicial Proceedings Committee

From: MSBA Estate & Trust Law Section

Date: January 20, 2026

Subject: **SB 131** – Estates and Trusts – Fiduciaries – Attorney-Client Privilege

Position: Support

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports Senate Bill 131– Estates and Trusts – Fiduciaries – Attorney-Client Privilege**. Senate Bill 131 creates certainty in the law by codifying the attorney-client privilege in fiduciary situations.

Problem with Current Law

The attorney-client privilege, codified at Maryland Code Ann. Cts. & Jud. Pro. § 9-108, is an established, sacrosanct privilege that frees clients to communicate openly with their attorneys without fear that their communications can be discovered and used against them.¹ However, there is uncertainty whether the attorney-client privilege applies to a fiduciary (such as a trustee, agent under a financial power of attorney, or a personal representative) who seeks advice and counsel. Maryland law does have some limited exceptions to the attorney-client privilege, however, a fiduciary exception is not one of them. *See Trasatti v. Trasatti*, 2018 Md. App. LEXIS 546 (explaining that Maryland has never recognized a fiduciary exception to the attorney-client-privilege) (unreported opinion). A minority of jurisdictions have recognized a fiduciary exception to the attorney-client privilege allowing beneficiaries to access privileged communications and documents. Recognizing the adverse impact of this exception to fiduciaries, several states have expressly codified legislation declaring that there is no fiduciary exception to the attorney-client privilege. Because Maryland Courts have not directly addressed this uncertainty, litigants are forced to bear increased costs and delayed adjudication when the issue is raised during fiduciary litigation.

¹ Maryland has adopted the following definition of the attorney-client privilege: (1) Where legal advice of any kind is sought, (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence, (5) by the client, (6) are at his insistence permanently protected, (7) from disclosure by himself or by the legal adviser, (8) except the protection may be waived. *Newman v. State*, 384 Md. 285, 302 (Md. 2004) (citing *Harrison v. State*, 276 Md. 122, 135 (1975)).

How SB 131 Solves the Problem

Senate Bill 131 eliminates the uncertainty by codifying an affirmative statement that the attorney-client privilege applies when an attorney represents a fiduciary. This, in turn, allows fiduciaries to be candid and thorough when discussing legal issues with their attorney, as any other client would in any other scenario. Explicitly codifying that Maryland does not recognize a fiduciary exception to the attorney-client privilege will save time and money for all parties involved in fiduciary litigation.

For the reasons stated above, the Estate and Trust Law Section of the MSBA **supports SB 131 and urges a favorable committee report.**

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