

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 673

(Senator Frosh)

Judicial Proceedings

Judiciary

Estates and Trusts - Payment of Attorney's Fees - Contingency Fee

This bill allows payment of attorney's fees to be made without court approval if (1) the fee is paid to an attorney representing the estate in litigation under a contingency fee agreement signed by the decedent or the current personal representative of the decedent's estate; (2) the fee does not exceed the terms of the agreement; (3) a copy of the agreement is on file with the register of wills; and (4) the attorney files a statement with each account stating that the scope of the representation by the attorney does not extend to the administration of the estate.

Fiscal Summary

State Effect: None.

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Current Law: An attorney is entitled to reasonable compensation for legal services rendered to an estate and/or personal representative. Upon the filing of a petition in reasonable detail by the personal representative or the attorney, the court may allow a counsel fee to an attorney employed by the personal representative for legal services. The compensation must be fair and reasonable in the light of all the circumstances to be considered in fixing the fee of an attorney. The court must also take into consideration what would be a fair and reasonable total charge (including the personal representative's

compensation) for the cost of administering the estate and not allow aggregate compensation over that amount. The personal representative must give specified written notice to creditors who have filed claims that are still open and all interested persons of a petition for attorney's fees.

Payment of attorney's fees may be made without court approval if (1) each creditor, who has filed a claim that is still open, and all interested persons consent in writing to the payment; (2) the combined sum of the payments of personal representative commissions and attorney's fees does not exceed the statutory limitation on personal representative commissions; and (3) the signed written consent form states the amounts of the payments and is filed with the register of wills.

Unless the will provides a larger amount, a personal representative's commission may not exceed 9% if the property subject to administration is not over \$20,000. If the property is over \$20,000, the personal representative's commission may not exceed \$1,800 plus 3.6% of the excess over \$20,000.

A personal representative must periodically file written accounts of his or her management and distribution of property with a certification that notice of the filing has been mailed or delivered to all interested persons.

Background: A 2005 Attorney General Opinion (90 Op. Att'y Gen. 145) indicated that orphans' court review is required whenever estate funds are used for payment of attorney's fees (aside from the limited statutory exception described above, where consent is obtained from creditors and interested persons), including where a decedent had entered into a contingent fee agreement with an attorney prior to death. The opinion was in response to a request that indicated orphans' courts around the State had adopted differing practices concerning whether and when to require fee petitions in such cases.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Register of Wills, Office of the Attorney General, Department of Legislative Services

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mlm/kdm

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510