

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 694

(Senator West)

Judicial Proceedings

Judiciary

Estates and Trusts - Guardianship of the Property of Disabled Persons - Court-Appointed Attorneys

This bill requires the State to pay a reasonable attorney's fee for an alleged disabled person that is indigent, in a protective proceeding (to protect the property of the alleged disabled person). In any action in which payment for the services of a court-appointed attorney for the alleged disabled person is the responsibility of the local department of social services, the bill requires the court to appoint an attorney who is under contract with the Department of Human Services (DHS) to provide legal representation for the alleged disabled person, unless the court finds that the appointment would not be in the best interests of the alleged disabled person. In such an action, if an attorney has previously been appointed, the court must strike and replace the previously appointed attorney with an attorney who is under contract with DHS, unless the previously appointed attorney is willing to accept the same fee and the court does not find a conflict of interest. The appointment of an attorney under contract with DHS must be in accordance with the terms of the contract. **The bill takes effect October 1, 2023.**

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances, as discussed below.

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

Small Business Effect: Minimal.

Analysis

Current Law: Current law authorizes the court, on petition and after notice or hearing as required by law or the Maryland Rules, to appoint a guardian of the property for a minor or a disabled person. For a disabled person, a guardian must be appointed if the court determines that (1) the person is unable to manage effectively the person's property and affairs because of physical or mental disability, disease, habitual drunkenness, drug addiction, imprisonment, compulsory hospitalization, detention by a foreign power, or disappearance and (2) the person has or may be entitled to property or benefits that require proper management. Unless the alleged disabled person has chosen counsel, the court must appoint an attorney to represent the alleged disabled person in the protective proceeding.

In a protective proceeding to appoint a guardian of *the person* for an alleged disabled person, statute requires the State to pay a reasonable attorney's fee for a court-appointed attorney if the alleged disabled person is indigent (and includes largely the same language that is included in the bill relating to actions in which payment for the services of the court-appointed attorney is the responsibility of the local department of social services). However, statute is silent with respect to payment of the attorney's fee for a court-appointed attorney, if an alleged disabled person is indigent, in protective proceedings to protect the property of the alleged disabled person.

Under the Maryland Rules, § 10-106, the court is required to promptly appoint an attorney for an alleged disabled person – upon the filing of a petition for guardianship of the person, property, or both – if the individual is not represented by an attorney of the alleged disabled person's own choice. The rules further require the court to order payment of reasonable and necessary fees of an appointed attorney. Fees may be paid from the estate of the alleged disabled person or as the court otherwise directs. To the extent that the estate is insufficient (*i.e.*, the alleged disabled person is indigent), the fee of an attorney for an alleged disabled person *must* be paid by the State.

The Court of Special Appeals, in an *unreported opinion* addressing § 10-106, emphasized the authority of the Maryland Rules when a State statute is silent or an earlier enacted statute is inconsistent with the rules. The court remarked that when a statutory provision “which mandates court appointment of an attorney, simply makes no provision for the payment of attorney's fees in guardianship of the property cases ... the rule fills the potential void by shifting that burden [of paying fees] to the State.” *In Re Selby*, No. 360 (Md. Ct. Spec. App. Feb. 8, 2019).

State Fiscal Effect: The bill is not anticipated to materially affect State operations or finances given that (1) DHS has previously indicated that it volunteers payment up to \$500 for court-appointed attorneys in guardianship of the property cases when the appointed

attorney is unable to secure funds from elsewhere under the Maryland Legal Services Program and (2) the Maryland Rules, as discussed above, require, to the extent the estate is insufficient, that the State pay a reasonable fee for attorneys appointed by the court.

Additional Information

Prior Introductions: HB 477 of 2020 passed the House with amendments and was referred to the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: HB 990 (Delegate Crutchfield) - Judiciary.

Information Source(s): Montgomery County; Department of Human Services; Judiciary (Administrative Office of the Courts); Register of Wills; Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2022
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