

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 135

(Senator West)

Judicial Proceedings

Judiciary

Estates and Trusts - Fiduciaries - Attorney-Client Privilege

This bill establishes, under Title 15 (“Fiduciaries”) of the Estates and Trusts Article, that unless waived by the client, a communication between an attorney and a client that acts as a fiduciary is subject to the attorney-client privilege, even if fiduciary funds are used to compensate the attorney for legal services rendered to the client. The existence of a fiduciary relationship between a fiduciary and a beneficiary does not constitute or give rise to a waiver of the attorney-client privilege for communications between the attorney and the fiduciary. “Fiduciary” includes a person granted authority to act for a principal under a power of attorney.

Fiscal Summary

State Effect: The bill does not directly affect State finances.

Local Effect: The bill does not directly affect local government finances.

Small Business Effect: Minimal.

Analysis

Current Law:

Attorney-client Privilege

Section 9-108 of the Courts and Judicial Proceedings Article establishes that a person may not be compelled to testify in violation of the attorney-client privilege. The Supreme Court of Maryland, in *Newman v. State*, (1) cites the U.S. Supreme Court’s recognition of the

attorney-client privilege as “the oldest of privileges for confidential communications known to the common law” and (2) describes the privilege as understood to be a rule of evidence that prevents the disclosure of a confidential communication made by a client to the client’s attorney for the purpose of obtaining legal advice. 384 Md. 285, 300-302 (2004).

Duty of Confidentiality

The court, in *Newman*, also distinguishes between the attorney-client privilege and an attorney’s duty of confidentiality toward their client under the Maryland Attorneys’ Rules of Professional Conduct. Under the rules, an attorney must not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted under specified exceptions. The court indicates that the attorney-client privilege addresses compelled disclosure of client secrets during judicial proceedings, whereas client confidentiality under the rules of professional conduct relates to the attorney’s general duty to maintain the confidentiality of all aspects of a client’s representation. The attorney-client privilege applies in judicial and other proceedings in which an attorney may be called as a witness or otherwise required to produce evidence adverse to the client. The rule of confidentiality applies in all other situations that do not involve the compulsion of law. *Id.* at 303-304.

“Fiduciary”

Under existing definitions under Title 15 of the Estates and Trusts Article, that apply to the bill’s provisions, “fiduciary” is defined to include (in addition to the bill’s inclusion, for the purposes of the bill’s provisions, of a person granted authority under a power of attorney) a trustee acting under a deed, will, declaration of trust or other instrument in the nature of a trust or appointed by a court, a receiver, custodian, committee or guardian of the property of a minor or disabled person, executor, administrator, or personal representative.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 310 (Delegate Cardin) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Orphans’ Court of Baltimore County; Register of Wills; Department of Legislative Services

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