

HB 1264, Estates and Trusts – Administration of Estates – payment of Commissions and Attorney’s Fees

Opposition and Request for an Unfavorable Recommendation

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To: House Judiciary Committee, Del. Luke Clippinger, Chair, Del. Vanessa E. Atterbeary, Vice-Chair

Dear Chairman Clippinger, Vice-Chair Atterbeary, and Members of the Committee,

I support the position taken by my MAJOC colleagues and offer, individually, my further thoughts.

This proposed legislation would, with the change of a single word, strip the Orphans’ Court of its jurisdiction in a key area of administrative oversight in the estates of decedents in Maryland. That is clearly and unashamedly its intent. So then the question arises, why? Why is this necessary and why do the proponents seek to have it done?

Prior to 1997, no fees or commissions could be taken from estate funds without petitioning the Orphans’ Court for approval. Requirements for that petition include now, as then, detailed descriptions of the work that was performed to earn those fees and/or commissions. So let’s first look at why that permission was important, and remains so today.

We’re talking about the expenditure of someone’s assets when that someone (someday it will be YOU) cannot speak to approve or deny that sum and in most cases, has left no specific instructions or limitations. So the Orphans’ Court, from a disinterested and objective perspective, is tasked with determining what is fair and reasonable for the work performed. That is why the law requires a detailed description of that work.

Sometimes, the work is fairly simple and the fees and commissions requested are quite modest. In those cases, it adds time and expense to thoroughly detail those requests. So Estates and Trusts 7-603 was added in 1997 to relieve the personal representatives, and especially the legal community, of having to draft such detailed petitions when the amount requested does not exceed the statutorily allowable amount and all the living persons and entities that have standing in the estate are in agreement. This has been working well for nearly 24 years now – an entire generation!

But now we come to this bill, which wants to “change the wording from “may,” as in, “*may* be made without court approval,” to “shall,” as in “*shall* be made without court approval.” What a difference one little word can make.

If this bill passes, fees and commissions which meet the guidelines (not exceeding the allowable amounts, being filed appropriately, and being consented to by all the affected heirs and creditors) will be paid without court oversight. That sounds harmless enough. And in most cases it would be.

But there are those cases in which it wouldn't.

Perhaps the gross value of the estate on which the fees and commissions are calculated is not correctly assessed.

Perhaps the person preparing the consent form did not accurately calculate the allowable amount.

Perhaps the estate is insolvent.

Perhaps the people signing the consent form don't know they have a choice (we all know most people sign what an attorney asks them to sign), or don't understand the form itself (but it was put before them by an attorney, so it must be ok, right?).

Perhaps there is that rare, very rare but not unheard of, instance where the attorney or personal representative has an opportunity to take advantage of the heirs and creditors – and does.

Perhaps some of the heirs are minors, who cannot sign and who do not yet have a guardianship with oversight created for their inheritance.

Perhaps the estate is very simple, but of great value in real estate and/or cash; are the attorney and personal representative really entitled to hundreds of thousands of dollars in fees and commissions for one or two days' work?

Perhaps...

I have personally seen all of these situations. There are sure to be other examples that other courts have seen, or that we will see in the future.

Most of the time, when a consent is properly filed, and the amount is not exorbitant, most Orphans' Courts do not deny it or reduce the fees. This language change would actively **prevent** them from scrutinizing the fee in regard to the work done. Where, then, is the protection for the people against mistakes, or dishonesty, or greed? Where is the transparency if such a thing can be done in the shadows, outside of the light of court approval? Even the attorneys and personal representatives are not served by this action, as it deprives them of the indemnity provided by court approval.

Collecting fees and commissions has already been simplified, largely to accommodate the legal community and relieve them of tedious and unnecessary work in simple situations. To go farther and make it mandatory to pay fees and commissions without court oversight at all doesn't help the people of Maryland. It only ensures two things:

1. the **maximum** allowable fee will become **THE FEE**, even when the work done was insufficient to actually **earn** it – it will be **required**; and

2. a gateway is provided for those who prefer to act in the shadows and avoid the scrutiny of the courts.

I therefore respectfully request that you return an unfavorable recommendation on this bill.

Thank you,
Melissa Pollitt Bright