

CHRIS WEST
Legislative District 42
Baltimore County

Judicial Proceedings Committee

Vice Chair, Baltimore County
Senate Delegation



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Annapolis Office
James Senate Office Building
11 Bladen Street, Room 303
Annapolis, Maryland 21401
410-841-3648 · 301-858-3648
800-492-7122 Ext. 3648
Chris.West@senate.state.md.us

District Office
1134 York Road, Suite 200
Lutherville-Timonium, MD 21093
410-823-7087

February 24, 2022

The Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
11 Blanden Street
Annapolis, Maryland 21401
The Honorable William C. Smith, Jr.

Re: SB – 694 – Estates and Trusts - Guardianship of the Property of Disabled Persons - Court-Appointed Attorneys

Dear Chairman Smith and members of the Committee,

In Title 13 of the Estates and Trusts Article, there are two types of guardianships set forth for the protection of disabled persons. One is a guardianship of the *person* of the disabled person, and the other is a guardianship of the *property* of the disabled person. In Subtitle 7, dealing with guardianships of the *person* of the disabled person, the law provides that unless the disabled person has counsel of the person's choosing, the court shall appoint an attorney to represent the person in the proceeding. Further, the law provides that if the disabled person is indigent, the State shall pay a reasonable attorney's fee. The bill goes on to provide that in any action in which the payment of such an attorney's fee is currently the responsibility of a local social services department, the court will appoint an attorney contracted with the Department of Human Services and shall strike the appearance of a previously appointed attorney and instead appoint an attorney contracted with the Department of Human Services.

Senate Bill 694 merely replicates these rules in the context of a guardianship of the *property* of a disabled person. Unless the disabled person has counsel of the person's choosing, the court shall appoint an attorney to represent the person in the proceeding. If the disabled person is indigent, the State shall pay a reasonable attorney's fee. In any action in which the payment of such an attorney's fee is currently the responsibility of a local social services department, unless the court finds that it would not be in the best interests of the disabled person, the court will appoint an attorney contracted with the Department of Human Services and shall strike the appearance of a previously appointed attorney and instead appoint an attorney contracted with the Department of Human Services, unless the previously appointed attorney is willing to accept the same fee, and the court does not find a conflict of interest..

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, the fee of an attorney for an alleged disabled person must be paid by the State.

Thus, Senate Bill 694 provides for the payment of attorney's fees for guardians of the *property* for indigent disabled persons in the same manner already in the law for the guardians of the *person* of the disabled person.

I am pleased to report that this bill is endorsed by the Maryland Judiciary, by the Estates and Trusts Law Section of the Maryland State Bar Association and by the Maryland Department of Human Services.

Therefore, I request a favorable report from the Committee. I will also be happy to answer any follow-up questions the Committee may have.