

CHRIS WEST
Legislative District 42
Baltimore and Carroll Counties

Judicial Proceedings Committee



Annapolis Office
James Senate Office Building
11 Bladen Street, Room 322
Annapolis, Maryland 21401
410-841-3648 · 301-858-3648
800-492-7122 Ext. 3648
Chris.West@senate.state.md.us

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

January 23, 2025

The Maryland State Senate Judicial Proceedings Committee
The Honorable William C. Smith, Jr.
2 East Miller Senate Building
Annapolis, Maryland 21401

Re: Senate Bill 135: *Estates and Trusts – Fiduciaries – Attorney-Client Privilege*

Dear Chairman Smith and Members of the Committee,

Maryland defines attorney-client privilege as: (1) Where legal advice of any kind is sought, (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) which are made in confidence, (5) by the client, (6) are at his insistence permanently protected, (7) from disclosure by himself or by the legal adviser, (8) except the protection may be waived. *Newman v. State*, 384 Md. 285, 302 (Md. 2004) (citing *Harrison v. State*, 276 Md. 122, 135 (1975)).

Maryland recognizes some limited exceptions to attorney-client privilege; however, a fiduciary exception to attorney-client privilege is not among them. See *Trasatti v. Trasatti*, 2018 Md. App. LEXIS 546. The fiduciary exception to the attorney-client privilege, which is recognized in a minority of states, allows the beneficiaries of a trust or estate to discover communications between the fiduciary and counsel generated while administering the trust or estate. The result is a breakdown in the attorney-client relationship.

Maryland case law and statutes do not clearly state that Maryland does not recognize the fiduciary exception to the attorney-client privilege. As a result, parties often raise the issue in litigation, resulting in increased cost and delayed adjudication of the matter.

This bill will add a section to the Estates and Trusts Code that makes clear, like many other states, that Maryland does not recognize the fiduciary exception to the attorney-client privilege

I appreciate the Committee's consideration of Senate Bill 135 and will be happy to answer any questions the Committee may have.