

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 109 (Delegates Dumais and Vallario)
Health and Government Operations

Judicial Proceedings

Guardianship of the Person - Disabled Persons - Attorney's Fees

This bill authorizes a court, under specified circumstances, to order payment of reasonable and necessary attorney's fees incurred in bringing a petition for appointment of a guardian of the person of a disabled person to be paid from the estate of the disabled person. The bill specifies (1) the factors that a court must consider before granting or denying a petition and (2) the circumstances under which a court may or may not require the deposit of funds into the court registry or appointed attorney's escrow account.

Fiscal Summary

State Effect: This bill is not expected to materially affect State operations or finances.

Local Effect: This bill is not expected to materially affect State operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: On the filing of a petition for attorney's fees made in reasonable detail by an interested person or an attorney employed by the interested person, a court may order payment of reasonable and necessary attorney's fees incurred in bringing a petition for appointment of a guardian of the person of a disabled person to be paid from the estate of the disabled person.

Before ordering the payment of attorney's fees, the court must consider the financial resources and needs of the disabled person and whether there was substantial justification for the filing of the petition for guardianship. If the court finds an absence of substantial

justification for bringing the petition for guardianship, the court must deny the petition for attorney's fees. A court may not award attorney's fees if the petition for guardianship is brought by (1) a governmental agency paying benefits to the disabled person; (2) a local department of social services; or (3) an agency eligible to serve as the guardian of the disabled person.

A court is further authorized to require the deposit of an appropriate sum into the court registry or the appointed attorney's escrow account within 30 days after the order of appointment has been entered, subject to further court order. A court may not require the deposit of an appropriate sum into the court registry or the appointed attorney's escrow account if payment for the services of the court-appointed attorney for the alleged disabled person is the responsibility of (1) a governmental agency paying benefits to the disabled person; (2) a local department of social services; or (3) an agency eligible to serve as the guardian of the disabled person.

Current Law: No statutes or court rules exist that address the recovery of necessary and reasonable attorney's fees incurred by an interested person in successfully petitioning for the appointment of a guardian of the person of a disabled person. An interested person may petition a court for the appointment of a guardian of the person of a disabled adult. An interested person can be the guardian, the heirs of the disabled person, or any person or agency eligible to service as a guardian of the disabled person under law. If an interested person is also a disabled person, an interested person can also be a judicially appointed guardian, committee, conservator, or trustee for that person, or, if none, the parent or other person having assumed responsibility for the person.

The court may (1) superintend and direct the care of a disabled person; (2) appoint a guardian of the person; and (3) pass orders and decrees respecting the person as seems proper, including an order directing the disabled person to be sent to a hospital. On petition and after any required notice or hearing, a guardian of the person of a disabled person is appointed if the court determines from clear and convincing evidence that (1) the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or drug addiction and (2) no less restrictive form of intervention is available which is consistent with the person's welfare and safety.

Unless the alleged disabled person has counsel of his or her own choice, the court must appoint an attorney to represent the alleged disabled person during the pendency of the guardianship proceeding. The court is required to fix the fee of an appointed attorney, which is paid out of the fiduciary (guardianship) estate or as the court directs. In relation to a guardianship proceeding, a fiduciary estate is the real or personal property administered by a guardian of the person of a disabled person to the extent that the guardian exercises control over any property of the disabled person. Once a guardian is appointed,

no attorney's fee in an amount exceeding \$50 may be paid in a fiduciary estate administered under court jurisdiction unless the amount of the fee has been first approved by court order.

If the alleged disabled person is indigent, the State is required to pay a reasonable attorney's fee. 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, unless the court finds that it would not be in the best interests of the alleged disabled person, the court must (1) appoint an attorney who has contracted with the Department of Human Resources (DHR) to provide those services, in accordance with the terms of the contract and (2) strike the appearance of a previously appointed attorney and appoint an attorney who is under contract with DHR, in accordance with the terms of the contract.

Background: DHR's Maryland Legal Services Program (MLSP) is statutorily mandated to provide, among other things, legal representation for indigent adults during the pendency of a disability proceeding. Such legal representation is generally provided by attorneys that have contracted with MLSP. In 2014, MLSP contractors represented a total of 2,054 adult clients, or 97% of the total number of MLSP's adult guardianship cases. MLSP advises that each attorney, on average, has two in-person contacts with each client for an average total of eight hours spent on each matter. The Governor's proposed fiscal 2016 budget includes approximately \$1.14 million in general funds for MLSP contractors in adult guardianship matters, which is a 114.5% increase over the \$530,118 appropriated in fiscal 2015.

The court registry (otherwise known as a "circuit court fund") is a fund maintained at the local level by each county's clerk of circuit court. Monies deposited into the court registry can only be distributed by court order.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2015
mar/kdm Revised - House Third Reader - March 27, 2015

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