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Judicial Proceedings Committee

Vice Chair, Baltimore County
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THE SENATE OF MARYLAND
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Senate Judicial Proceedings Committee
The Honorable William C. Smith, Jr.
2 East Miller Senate Building
Annapolis, Maryland 21401-1991

RE: SB 467 – Estates and Trusts – Administration of Estates – Payment of Commissions and Attorney’s Fees

Dear Chairman Smith and Members of the Committee:

I am pleased to introduce Senate Bill 467 which changes a single word in the Maryland Code. This bill was brought to me by the Maryland State Bar Association’s Estates and Trusts Section.

Currently, Maryland law provides that in the administration of estates, the payment of commissions to personal representatives and the payment of attorney’s fees “may be made” without court approval so long as: (a) all creditors who have filed claims but haven’t been paid yet consent in writing to the payment; (b) the combined sum of such commission payments and attorney’s fees does not exceed the maximum amounts permitted to be paid under the Maryland Code (9% of the first \$20,000 of the estate plus 3.6% of the balance of the estate), unless the will provides for higher compensation; and (c) signed written consents are filed with the Register of Wills by all “Interested Persons” in the estate. Under the current law therefore, anyone who might have a possible objection to the payment of the commissions or attorney’s fees can prevent such sums from being paid by merely refusing to execute the consent form.

Under current law, if all unpaid creditors and all “Interested Parties” have executed the consent form, the payment of such commissions and fees “may be made” without court approval. The problem with the verbal phrase “may be made”, however, is it suggests that the Orphans Court still “may” have a role to play.

Assuming that all unpaid creditors and Interested Parties have consented to the payment of the commissions and attorney's fees, there is no reason why the Orphans Court should get involved at all. There is no need for a Petition for approval of the commissions and fees to be filed with the Orphans Court, no need for a Court proceeding, and no need for the Orphans Court to enter an Order approving the commissions and fees. All of that is simply a waste of time and money. That is why this bill changes the operative verbal phrase from "may be made" to "shall be made".

For these reasons I request a favorable report on Senate Bill 467.

I have with me Michaela Muffoletto, the Chair Elect of the Estates and Trusts Section of the Maryland State Bar Association, who will be able to expound more on the issues at hand in this bill and the salutary effects this legislation would have.