



BYRON E. MACFARLANE
REGISTER OF WILLS FOR HOWARD COUNTY
8360 COURT AVENUE
ELLCOTT CITY, MARYLAND 21043

410-313-2133
Toll Free Number: 1-888-848-0136

FAX 410-313-3409
www.registers.maryland.gov

February 8, 2021

Hon. William C. Smith, Jr., Chairman
Judicial Proceedings Committee
Miller Senate Office Building, 2 East
Annapolis, Maryland 21401

Re: SB467 – Estates and Trusts – Administration of Estates – Payment of Commissions and Attorney’s Fees

Dear Chairman Smith,

I write to you and your committee in support of this bill. It will require fees be paid to an attorney for an estate when all interested persons consent to those fees, and the amount of those fees are at or below the statutory maximum provided in the Estates & Trusts Article.

I support this bill as a Register of Wills – working with grieving families every day, as an attorney – who understands how seriously members of our profession take our duty to charge fair fees to our clients, and as a citizen – who believes that our government should not stand in the way of members of a family – especially those in grief – who have managed to find consensus.

This legislation is a simple, straightforward proposal that would respect the decisions made by parties in estates and prevent judicial intrusion into otherwise harmonious proceedings. When parties agree to pay an attorney for legal services, they are agreeing to pay them a portion of their own inheritance, so no one is better positioned to decide whether those fees are reasonable. Under current law, however, courts have the authority to reduce or deny these fees despite the unanimous agreement of the parties. This creates conflict where none exists, creates confusion for the attorney and the family, prolongs the administration of the estate, and delays closure for family members coping with the death of a loved one.

Opponents of this legislation have stated the courts need to retain the ability to cut or deny fees to attorneys who, in their view, are unfairly overcharging their clients, and to protect, in their words, “uninformed” citizens who don’t understand what they’ve agreed to. They paint an unflattering picture of both our Estates & Trusts attorneys and our fellow citizens. That picture doesn’t reflect this reality: Attorneys regularly charge reasonable fees and in almost every estate the parties either affirmatively consent or do not object to those fees.

It is important to note that there are numerous instances in probate when interested parties offer their consent and their competence isn’t questioned by the courts. These include consenting to the appointment of the personal representative, agreeing to waive the requirement of the personal representative to obtain a bond, and consenting to admit a copy of a will to probate. Also, parties sometimes consent to settlement agreements, which, as a matter of law, the orphans’ courts cannot reject. If the aforementioned consents are never subject to such second-guessing, either by practice or by law, unanimously agreed-upon attorney’s fees should be no different.

In closing, when courts interfere with unanimous agreement among family members in an estate to pay reasonable attorney’s fees, it has real life consequences for attorneys and for Marylanders in grief. We should respect the judgment of our citizens, encourage harmony among family members, and reward them by reducing harmful interference by the state. I, therefore, urge a favorable report on Senate Bill 467.

Thank you for your time, attention, and service to our great state.

Sincerely,

A handwritten signature in black ink that reads "Byron E. Macfarlane". The signature is written in a cursive, flowing style with a long horizontal line extending from the end of the name.

Byron E. Macfarlane