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February 17, 2022
The Senate Judicial Proceedings Committee
2 East Miller Senate Building
Annapolis, MD, 21401
The Honorable William C. Smith Jr.

Re: SB 468 - Estates and Trusts - Personal Representatives - Payment of Commissions and Attorney's Fees Without Court Approval

Dear Chairman Smith and Members of the Committee,

Senate Bill 468 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.

The use of the verbal phrase "may be made" without court approval turns out to have caused difficulties because the words "may be made" leave open the possibility 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's why SB 468 provides that if all of the conditional factors have occurred, the Personal Representative may pay the attorneys fees. It eliminates the role of the Orphans Court. To guard against any abuse, the bill explicitly provides that the payment may only be for legal work rendered prior to the date of the consent of the Interested Persons. So it would be impermissible for the attorneys to apply for legal fees to be paid prior to the time the legal services are rendered.

I appreciate the Committee's consideration of Senate Bill 468 and will be happy to answer any follow-up questions the committee may have.