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February 15, 2022

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

**Re: SB468 – Estates and Trusts – Personal Representatives – Payment of  
Commissions and Attorney’s Fees Without Court Approval – FAVORABLE**

Dear Chairman Smith and Members of the Judicial Proceedings Committee,

I write to you and your committee in strong support of this bill. This legislation clarifies current law, which allows the personal representative of an estate to pay personal representative’s commissions and attorney’s fees without court approval 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.

In truth, this legislation should not be necessary because the plain language of Estates & Trusts §7-604(a)(1) is clear and unambiguous. However, some judges misinterpret or ignore current law and its legislative history, ignore the express wishes of family members, and exceed their limited jurisdiction by reducing or denying agreed-upon commissions and fees. These extra-legal decisions create unnecessary hostilities, create confusion for attorneys and families, prolong the administration of estates, and delay closure for family members coping with the deaths of loved ones. This bill will reign in courts which refuse to respect the will of the legislature and invent authority where none exists, and it will ensure that the wishes of Maryland families are respected. After all, when families consent to pay a personal representative or an attorney for their 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. A court should not substitute its own – subjective – judgment for the express wishes of an estate’s interested persons.

Opponents of this legislation have stated the courts need the unfettered authority to cut or deny commissions or 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 argue the unambiguous current law is, rather, ambiguous – in order to invent authority where none exists. And they paint an unflattering picture of both our Estates & Trusts attorneys and the average citizen. That picture doesn’t reflect this reality: Personal representatives and attorneys regularly charge reasonable commissions and fees and in almost every estate the families either affirmatively consent or do not object to those payments. Moreover, in none of the cases in which an orphans’ court has interfered with payment of commissions or fees – which are permitted under §7-604(a)(1) – has it ever been shown that there was any undue influence over a family member consenting to those payments, nor of any impropriety by any attorney.

It is also 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 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 personal representative’s commissions or attorney’s fees, it has real life consequences for attorneys and for Marylanders in grief. We should respect the unambiguous will of the legislature in the original enactment of Estates & Trusts §7-604(a)(1) and the judgment of our citizens, we should encourage harmony among family members, and we should prevent extra-legal interference by our courts. I strongly urge a favorable report on this bill.

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

Sincerely,



Byron E. Macfarlane