

MAJOC



MARYLAND ASSOCIATION OF THE JUDGES OF THE ORPHANS' COURTS

Testimony in Opposition to House Bill 339 February 12, 2020

Chairman Clippinger and members of the Committee, my name is Anne Dodd and I am the Chief Judge of the Howard County Orphans' Court and President of the Maryland Association of Judges of the Orphans' Court, otherwise known as MAJOC. I am here today to testify in opposition to House Bill 339, an Act concerning Task Force to Study the Maryland Orphans' Courts. The members of the Board of MAJOC are unanimously opposed to this bill. I reached out to all Orphans' Court Judges via our group email system and asked them to advise me if they disagreed with the position of the Board. No judge replied negatively.

As you know, the Orphans' Court appears in the Maryland Constitution. Originally, the only qualifications for serving as a judge were Maryland citizenship and citizenship of their county for the preceding year. Over time, changes were made to allow Montgomery and Harford Counties to roll their Orphans' Courts into their Circuit Courts so that Circuit Court judges sit as Orphans' Court judges on a rotating basis. And then, Baltimore City, Prince George's County and Baltimore County made changes to require their judges to be attorneys admitted to practice in Maryland and members in good standing of the Maryland Bar. These jurisdictions have determined that they prefer the model of an attorney judge, who, because the position is part-time, can also practice law. In these jurisdictions the judges hear cases individually.

In the remaining 19 counties the judges sit en banc, at least 2 of whom must hear cases and sign orders. Statutory changes were made to both Howard and Calvert Counties to allow their judges to be practicing attorneys. As a matter of fact, in 2018 in Howard County there were 6 candidates for the Orphans' Court, 4 of whom were attorneys. The electorate chose two attorney judges and one lay judge.

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In the remaining 17 counties practicing attorneys may not serve. This is in keeping with the original conception of the Orphans' Courts and works best for them. While it might seem counterintuitive for a lay person to serve as a judge, you, as lawmakers, who are yourselves not all attorneys, know well that it is possible for non-attorneys to understand the law. Also, all judges are required to take judicial education classes on a regular basis. A look at the very low number of appeals overturned by a higher court would tell you a successful story. The citizens get a low cost and accessible court that is able to act more swiftly than other courts. And when real property is involved, swiftness matters.

As you can see, each county has its own system in place. You might ask then whether there is equal justice across the State because of the differences in the make-up of the various courts, The Orphans' Courts have "special limited jurisdiction and are confined to the letter of their authority" [E&T 2-102, general considerations]. I would argue that no matter the qualifications of the judges, all courts are constrained by the applicable statutes contained in the Estates & Trusts Articles as well as the Maryland Rules; and all litigants have the same opportunity to appeal the rulings of the Orphans' Court. I'll repeat: a look at the very low number of appeals overturned by a higher court would tell you a successful story.

When we refer to the Maryland Orphans' Courts we are really referring to the courts of 22 individual Maryland jurisdictions. While the Maryland Constitution set up the structure of the Orphans' Courts, and the statutes and rules determine how judges behave, it is the local jurisdictions that employ and compensate the judges; as a matter of fact, local jurisdictions pick-up the tab for all Orphans' Courts' expenses. And, while each jurisdiction pays its own bill, the amount of compensation for the judges in 11 jurisdictions only is determined by statute; the remaining 13 jurisdictions make their own determination regarding judges' compensation. As you can see, control of the Orphans' Courts is shared by 24 individual jurisdictions and the State.

This bill calls for a task force to "modernize" the Orphans' Courts. But, what does that mean? The sponsor tells me that it means "uniformity" to him. The courts do not need to be uniform to administer equal justice under the law. Uniformity for its own sake will not modernize the courts. What works well for a large, urban jurisdiction just doesn't work so well for a small, rural jurisdiction. And, because the jurisdictions are charged with paying for their courts, they're invested in their system.

I urge you to allow the individual jurisdictions to continue to determine the composition of their courts and modernize within the confines of their budgetary and cultural constraints.