

HB868_Delegation_FAV.pdf

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THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401
HOWARD COUNTY DELEGATION

March 30, 2022

The Honorable William C. Smith Jr.
Chair, Judicial Proceedings
The Maryland Senate
11 Bladen Street, 2 East
Annapolis, Maryland 21401

Dear Chair Smith:

The Howard County joint House and Senate Delegation voted in favor of the following bill that will appear before your Committee:

*HB0868 - Circuit Court for Howard County – Judges Sitting as Orphans’ Court Ho. Co.
06–22*

A copy of the Delegation vote sheet in favor of this bill is attached and we request a favorable Committee Report. Please contact the Howard County Delegation office at x3360 or hoc1@mlis.state.md.us if you require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Clarence K. Lam".

Senator Clarence K. Lam
Senate Chair
Howard County Delegation

A handwritten signature in black ink, appearing to read "Courtney Watson".

Delegate Courtney Watson
House Chair
Howard County Delegation

Howard County Delegation

Voting Record – 2022 Session

Bill Number: HB0868

HoCo Bill Number: 6-22

Vote Date: 1/26

Final Action: Passed

Motion:

Favorable

Favorable with Amendment

Withdrawn

| Name | Yea | Nay | Abstain | Excused |
|-------------------------------|-----|-----|---------|---------|
| Lam, Clarence, Chair, Sen. | | ✓ | | |
| Watson, Courtney, Chair, Del. | ✓ | | | |
| Guzzone, Guy, Sen. | ✓ | | | |
| Hester, Katie Fry, Sen. | ✓ | | | |
| Atterbeary, Vanessa, Del. | ✓ | | | |
| Ebersole, Eric, Del. | ✓ | | | |
| Feldmark, Jessica, Del. | ✓ | | | |
| Hill, Terri, Del. | | ✓ | | |
| Kittleman, Trent, Del. | | ✓ | | |
| Novotny, Reid, Del. | ✓ | | | |
| Pendergrass, Shane, Del. | | | | ✓ |
| Terrasa, Jen, Del. | ✓ | | | |

Committee Reporter Abbey Rubeling

HB868_Macfarlane_FAV.pdf

Uploaded by: Byron Macfarlane

Position: FAV



BYRON E. MACFARLANE
REGISTER OF WILLS FOR HOWARD COUNTY
9250 JUDICIAL WAY, SUITE 1100
ELLCOTT CITY, MARYLAND 21043

March 29, 2022

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

**RE: HB868 – Circuit Court for Howard County – Judges Sitting as Orphans’ Court
Ho. Co. 6-22 – FAVORABLE**

Dear Chairman Smith and Members of the Judicial Proceedings Committee,

I write to express my strong support for House Bill 868, which is a local bill that would transfer jurisdiction over probate matters from an elected panel of three orphans’ court judges to a judge of the Circuit Court sitting as the orphans’ court. I thank our delegation for choosing to introduce this legislation after holding a public hearing, gathering written testimony, reviewing data related to the operations of the orphans’ court and Circuit Court, debating this issue, and hearing from me, our judges, and members of the public. I note that while attorneys have felt they could not speak publicly on this issue for fear of reprisal, since this bill’s introduction, I have personally received universally supportive feedback from Estates & Trusts attorneys in Maryland.

This bill received overwhelming support in the House of Delegates: The Judiciary Committee voted 17 to 3 for a favorable committee report, there was no debate on second or third reading, and it was passed with a strong bi-partisan vote of 119 to 10.

This legislation represents an exciting and critically needed reform to probate in Howard County that will create a more efficient, more reliable, and more equitable process for grieving families by eliminating numerous existing systemic shortcomings:

First, we would give families a system that is far more efficient. Our current court is part-time and comprised of three judges – part-time means unnecessary delays and requiring a majority of three judges to act means time-consuming disagreements.

Second, we would give families the confidence that their matters are heard by a fully vetted, trained, full-time, attorney judge. Howard County is ready to move on from a lay court to a professionalized system like Harford and Montgomery Counties.

Third, while the Circuit Court is used to ruling on pleadings and referring contested matters to settlement conferences or mediation, the orphans' court almost always holds hearings even on simple motions and petitions and does not refer any matters to mediation. This means that family members have to attend hearings – paying for legal counsel and taking time off of work – and be forced into adversarial situations that could be avoided.

Fourth, we would no longer burden voters with figuring out what they're voting for when they get to judges of the orphans' court. Virtually no one understands this court and very few people interact with them directly – in FY2021 the total number of county residents who attended a hearing before this court, out of a total population of 330,000, was 47.

Lastly, we would not be reinventing the wheel – we have Registers of Wills and Circuit Courts in Harford and Montgomery Counties that enacted the same reforms decades ago, and whose administrative procedures could be easily replicated here.

The state judiciary's motto is "Efficient, Fair, Effective Justice for All." Unfortunately, our orphans' court system fails to live up to that promise. House Bill 868 will fix this for the benefit of Howard County families.

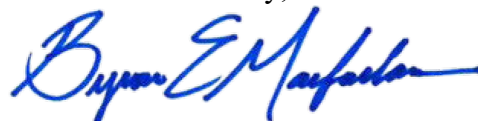
For additional background and statistics, enclosed please find the following:

1. **Howard Orphans' Court vs. Howard Circuit Court:** A breakdown of the caseload of the orphans' court and the Circuit Court for Howard County, showing the *de minimus* impact this legislation will have on the Circuit Court.
2. **Howard Orphans' Court vs. Harford Circuit Court:** A side-by-side statistical comparison of the orphans' court for Howard County and the Circuit Court for Harford County sitting as the orphans' court, which clearly demonstrates the superiority of the Circuit Court model.
3. **Appeals:** Appeals filed between FY2019 and FY2021 in the 19 lay orphans' courts, showing that Howard County's court was second only to the Anne Arundel County's as having the most appeals filed from its decisions. **Also included is a recent reversal by the Circuit Court, finding that the orphans' court misinterpreted the law, exceeded its jurisdiction, and had implemented impermissible local rules.**
4. **Judiciary Studies:** A list of commissions and other bodies that have studied substantive reform to the orphans' courts, which have universally agreed they should be abolished.
5. **Past Referenda:** Legislative history and election results on referenda reforming orphans' courts in 1964, 1972, 2010 and 2012, all of which passed the General Assembly overwhelmingly and were ratified by the voters overwhelmingly.
6. **FAQ:** Frequently Asked Questions about the orphans' court with detailed answers.

I hope this Committee will respect the bipartisan support for this measure by the Howard County delegation and by the House of Delegates, respect local courtesy, vote for a favorable report, and allow it to be put before the voters for their consideration.

Thank you for your time and careful attention to this matter.

Sincerely,



ATTACHMENT 1

Caseload: Howard County Orphans' Court vs. Howard County Circuit Court

**Comparison of Circuit Court and Orphans' Court New Proceedings & Projected Increase in Caseload
if Circuit Court Takes Over Probate Matters**

| | FY12 | FY13 | FY14 | FY15 | FY16 | FY17 | FY18 | FY19 | FY20 | FY21 | AVG |
|-----------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| Circuit Court | 8,203 | 8,371 | 8,617 | 8,871 | 8,430 | 8,320 | 9,864* | 7,120 | 5,914 | 5,298** | 7,901 |
| Orphans' Court | 200 | 230 | 202 | 205 | 216 | 188 | 185 | 206 | 196 | 272*** | 210 |
| % Increase | 2.44% | 2.75% | 2.34% | 2.31% | 2.56% | 2.26% | 1.88% | 2.89% | 3.31% | 5.13% | 2.66% |

* Advised that this increase in caseload was due to the financial crisis and an increase in foreclosures.

** Advised that this decrease was due to COVID restrictions and a decline in criminal and juvenile cases.

*** This increase is due to unexpected COVID deaths and should return to the ~200 case range in future years.

ATTACHMENT 2

Contrast in Efficiency: Harford County Circuit Court Sitting as Orphans' Court vs.
Howard County Orphans' Court

Harford County (Circuit Court sitting as orphans' court)
VS.
Howard County (Elected three-judge orphans' court)

| | Harford County | Howard County | Difference | Findings |
|---|---|---------------|---|--|
| ORDERS ISSUED | 3,030 | 717 | Harford Court issues more than four times as many orders. | Harford County's Circuit Court, sitting as the orphans' court, issues a far greater number of orders and does so at a faster rate than Howard County's elected orphans' court. |
| AVG. ORDERS ISSUED PER WEEK | 58 | 13 | Harford Court issues more than four times as many orders on average. | |
| NEW PROCEEDINGS SUBJECT TO COURT ACTION | 417 | 276 | Harford Court has 51% greater caseload. | |
| HEARINGS HELD IN FY2021 | 123 | 59 | Harford Court holds twice as many hearings in the same number of hearing days. | Harford County holds and resolves more hearings in the same amount of time. |
| AVG. HEARINGS PER WEEK | 2 | 1 | Harford Court holds twice as many hearings on average. | |
| AVG. TIME FROM FILING TO HEARING | 1-2 Months | 1-2 Months | Harford Court schedules hearings just as quickly . | |
| AVG. TIME FROM FILING TO ACTION | 9-10 Days | 17-18 Days | Harford Court resolves matters nearly twice as quickly. | Harford County resolves matters faster than Howard County. |
| HOW OFTEN IN SESSION | Once Per Week (But Available as Needed) | Once Per Week | Harford Court meets just as often , sometimes more often. | Harford County meets just as often, sometimes more often than Howard. |
| ORDERS REVERSED ON APPEAL BY HIGHER COURT (FY19-21) | 1 out of 4 | 1 out of 1 | Orders reversed on appeal on substantive legal grounds were four times as likely in Howard County. | Howard County is reversed on appeal more often than Harford. |

**Based on FY2021 data and dockets unless otherwise indicated.*

ATTACHMENT 3

Studies of the Judiciary: A History of Conclusions that Maryland Discontinue Use
of Elected Orphans' Courts

Historical Overview:

Commissions and Other Bodies That Have Studied Whether Maryland Should Discontinue Use of Orphans' Courts

The debate over the future of the orphans' courts is not new. As far back as the Constitutional Convention of 1850, Marylanders have at least engaged in this debate if not come to conclusions about reforms to our probate system. These forums include constitutional conventions, commissions on the courts specifically, and a Committee on Abolishing the Orphans' Courts established within the Maryland State Bar Association. Below is a summary of the discussions and conclusions of these numerous bodies established over the past 172 years, from oldest to most recent:

Maryland Constitutional Convention (1864)

Delegates to the convention convened to draft the 1864 Maryland constitution discussed abolishing the orphans' courts.

Maryland State Bar Association Thirteenth Annual Meeting (1908)

In its Report issued at the conclusion of its Thirteenth Annual Meeting held during July of 1908, the Maryland State Bar Association called for abolishing the orphans' courts. Under the subject heading, "Recommendations for Future Legislation," items B, C and D addressed the orphans' courts:

- "B. That the State be divided into judicial circuits whereby each county will have a resident judge, elected by the people who shall preside in the Circuit Courts and also in the Orphans' Courts and thereby **abolish the present system of selecting and electing Judges for the Orphans' Court, who are often laymen, inexperienced in matters of law.**"²¹
- "C. That **the Orphans' Court in the counties should be abolished** and the business of those courts be performed by the county judges."²²
- "D. That **the Orphans' Court of Baltimore City should be abolished** and instead of the present arrangement of that court one member of the Supreme Bench of Baltimore City should attend to the business of the court."²³

Commission on the Judiciary Article (1942)

In its 1942 Report's summary of findings submitted to Governor Herbert R. O'Connor, the Commission recommended "abolition of the Orphans' Courts."²⁴ It further found, "In 1851, when the Court of Chancery was abolished and the local courts were given legal, equitable and criminal jurisdiction, reasons for the separate existence of the Orphans' Courts ceased. **In the Constitutional Convention of 1851, both the majority and minority committee reports**

recommended abolition of the Orphans' Courts. This commission now makes this recommendation, which is in accord with practice long established (now, but not in 1851) in England, in the District of Columbia and in many states.”⁵ The Commission’s more complete analysis of the Orphans’ Courts stated as follows:

- “Consultation of members of the commission with lawyers and others from various parts of the state has disclosed a **widespread opinion that the jurisdiction over matters of probate and the administration of estates of deceased owners should now be committed to the trained judges of the trial courts, and that the Orphans’ Courts should be abolished.** Plainly, **the work of the courts of untrained men in the counties causes dissatisfaction.** This is the opinion of members of the commission, and they recommend that the change be made, both in the counties and Baltimore City, effective January 1947, when the terms of the judges elected in the November election will expire.”⁶

- “**The use of persons untrained in the law as judges of the Orphans’ Courts is a survival of the practice existing before the Revolution,** when trained lawyers were not required for any court of the province although the need of training was in fact bringing lawyers to the higher courts before 1776. Beginning with the constitution of that year, all other courts of the state were by the year 1805 equipped with trained judges, but although the problems to be disposed of in probate and administration of estates were of no lesser importance and difficulty, lawyers have not been required to preside over Orphans’ Courts. The result has been that the regular courts of law and equity have been made available to aid in the disposition of special matters, and this division and duplication of machinery still exists. In recognition of the need for it, the Orphans’ Court of Baltimore City has in practice been equipped with trained lawyers in recent years; three of them have been exercising the restricted powers of these courts, whereas one trained judge, without the restrictions appropriate to untrained judges, could effectively dispose of the problems presented. **The jurisdiction, freed from the restrictions of the special tribunals, should be placed in the ordinary trial courts.** The commission is of the opinion that one judge might well be permanently assigned to the work in Baltimore City, but that such assignment should be left to the discretion of all the judges of the city courts altogether.”⁷

Committee on Abolishing the Orphans’ Courts (1948)

In its January 21, 1948 Report to the Maryland State Bar Association, this Committee called for legislation abolishing the orphans’ courts, citing “**overwhelming evidence in support of the proposed judicial reform.**”

Commission on Judicial Administration (1954)

In its 1954 Report of the Orphans’ Court, the Commission called for abolishing the orphans’ courts: “The Commission desires to express its concurrence in the recommendations

made by previous commissions and study groups for improvements to the state's probate system. It agrees that **the existing methods are archaic and have long outlived their usefulness.**"⁸

Maryland Constitutional Convention Commission (1968)

On June 16, 1965, Governor J. Millard Tawes appointed a 27-member Constitutional Convention Commission to study the existing state constitution, determine if modifications were necessary and whether a constitutional convention should be held. The Commission convened between 1966 and 1967 and a convention was held from 1967 to 1968. The Commission and convention held hearings and conducted debates over a wide spectrum of proposed reforms.

During testimony and debate at both the Commission and the Convention, the officers and delegates were unanimous in their belief that the Orphans' Courts, along with the numerous other untrained, part-time courts, be abolished. There was no recorded opposition to assigning jurisdiction over probate matters to another court – either the newly created District Courts or existing Circuit Courts. There is no evidence that the survival of the Orphans' Courts – as the multiplicity of Trial Magistrates, Municipal Courts, People's Courts, Justices of the Peace, Committee Magistrates, and Housing Courts were abolished – is due to a conscious decision by the Convention to maintain them, without change, in perpetuity. Rather, the record shows the Convention, representing the diversity of the State, was determined to bring structure and harmony to a chaotic patchwork of judicial entities.

There were, however, concerns expressed throughout this process about leaving the ultimate question – of which court would inherit the duties of the Orphans' Courts – unanswered. At the 7:30 P.M. session of the Constitutional Convention Commission on July 12, 1966, a Judge Carter made several statements to that effect:

“This is time and time again. The Legislature will not go along with that because of political considerations, about three of them in each county. They put the pressure on the representatives and they don't abolish them. Now if you leave this completely open, this matter of the Orphans' Court – what I am trying to say is this. **Won't there be political consideration, rather than matters of what is proper and best** and leave it open as to whether it goes to the People's Court or Circuit Court?”

“I think **political considerations will get into the picture** as to whether it goes to the Circuit or People's Court.”

“I think there ought to be certain limitations written in here on matters of basic importance, and matters that might be influenced by political considerations and not left wide open to the Legislature.”

After this last statement, the Chairman asked, “Judge Carter, how would you do that with respect to the Orphans' Court?” to which Judge Carter responded, “I would make a judgement as to which place it ought to go and write it in the Constitution.” Despite this concern, there were repeated statements by members of the Commissions that placed trust in the legislature to make this decision before the District Courts would be established in 1971.

Speaking broadly about the goals of reforms to the judiciary, toward the end of the Convention Delegate F. DeSales Mudd of Charles County began to lay out the Convention Commission's mission and process to accomplish this:

“Here the Committee on the Judicial Branch accepted its first challenge, that is accepted the responsibility of upgrading the courts of limited jurisdiction in the State of Maryland. It is generally recognized, and I believe there is no dissent in the State, that to improve administration of justice in our great State the first responsibility is to improve it at the level dealing with the greatest number of people.”

“It was our considered view, after much research and thought, that the most feasible and practical manner of adopting into a unified uniform court structure the chaotic condition now existing in Maryland in the courts of limited jurisdiction was by adopting in the uniform court system the fourth tier, namely the district court, to take over the jurisdiction of the trial magistrates and people's courts and by whatever other name the courts of limited jurisdiction are now operating in the State of Maryland.”

“Basic to our recommendation is that courts at all levels shall be peopled by judges, full-time judges who are lawyers. We think that without that requirement the situation cannot be improved to meet the expanding caseloads and mounting litigation now rising and increasing from day to day in our complex society.”

“We acknowledge that the proposed court structure does not include in the plan the existing orphans' court system. As some of you may know, there has been a movement and recommendation in the State for years that the probate courts in Maryland identified by the name orphans' court be done away with. It has been accomplished in one jurisdiction, namely Montgomery County.” (November 15, 1967, pp. 848).

Just as there were concerns about leaving the question of which court would inherit the probate portfolio up to the legislature, Delegate Joseph L. Johnson of Baltimore City expressed concern whether – unlike the remaining reforms proposed by the Convention – the State would never achieve a *uniform* probate system:

“I think it is very unlikely that the legislature is going to establish a uniform orphans' court system throughout the entire State.” When asked by another delegate, “Why could they not?” Delegate Johnson – referring to repeated commentary about political considerations influencing the legislature – stated, “I do not believe they would because of the commentary by this body.” (Nov. 15, 1967, pp. 872).

Coming back again to the jurisdictional question, at a following meeting of the Convention, Delegate Edward B. Rybczynski of Baltimore City inquired as to where the duties of the orphans' courts would be transferred. Delegate John W. Hardwicke of Harford County responded:

“They may be picked up by the superior [Circuit] court, but not necessarily do. It is not our intention to dictate to the legislature with regard to the functions of any of the four levels of courts. If they want to take the Orphans’ Court functions and give them to the district court, I cannot say this Convention has any intention to object to that. I think, however, as a matter of logic and plausibility, they will probably go to the superior [Circuit] court.”

He further stated:

“I can conceive of a situation where the legislature might assign the function of the Orphans’ Court to the clerks of the superior [Circuit] court in the several counties and not have a judicial function at all with regard to what the Orphans’ Court does.” (January 4, 1968, pp. 3212).

Later, Delegate Rybczynski made an effort to introduce an amendment to settle the question of which court would absorb the probate duties of the orphans’ courts:

“...I asked the question of Delegate Hardwicke as to just what was going to happen to the powers and duties of the Orphans’ Court, and the answer was that it was going to be hanging in limbo until the General Assembly got to it. I thought it was our clear understanding that its powers were going to go to the superior [Circuit] court, and for that reason I thought the amendment was prepared by now.” (Jan 4, 1968, pp. 3260).

The Chairman of the Convention intervened to state, “It is not in the schedule on the theory that the legislature has ample time between now and 1971 to decide where to vest that jurisdiction.” (Jan 4, 1968, pp. 3260).

These fears – that the Maryland General Assembly would not decide which court would inherit the responsibility of overseeing probate matters and that Maryland would not see a uniform probate system across jurisdictions – both turned out to be well-placed, as that is precisely what occurred. It seems undoubtedly a historical fluke, influenced by personal relationships and local politics, that spared the Orphans’ Courts the same fate as other untrained lower courts and has led to the nonuniform system we have today.

Washington & Lee Law Review (1969)

Following the 1968 Maryland Constitutional Convention, an article in the Washington & Lee Law Review delved into the debate at the convention on abolishing the Orphans’ Courts. It described the debate as follows:

“The dispute that arose in the Convention that was carried into the referendum fight centered on the minor judiciary... The smaller counties fought bitterly against losing their courts and state senators were not happy with losing the patronage that accrued to them with the trial magistrates as a result of senatorial courtesy.”⁹

“The Orphans’ Courts, manned by laymen and handling probate matters, were dropped, their jurisdiction presumed to be absorbed by the superior courts, thereby elimination in each county three positions considered political prizes. These changes aggravated a large number of incumbents in the positions affected, and their respective state organizations fought effectively against the constitution, particularly in the rural areas and also in Baltimore County and Baltimore City.”

Commission on Judicial Reform (1974)

In its Final Report issued on December 31, 1974, the Commission analyzed the arguments for and against abolishing the Orphans’ Courts. The majority report called for abolishing the Courts statewide and explained as follows:

“Since at least the time of the ‘Bond Commission’, a state study group appointed in 1941, there has been **widespread agreement within the bar that Orphans’ Courts are no longer needed for the administration of justice in the state.** The Maryland State Bar Association has repeatedly called for their abolition over the past thirty years. The grounds for this position are:

- (1) The Orphans’ Courts judges **perform largely routine and formalized functions** such as signing prepared documents. These matters could just as easily be handled by Registers of Wills who, in fact, perform most of the essential clerical and administrative functions related to decedents’ estates.
- (2) The **few areas where significant issues of judgment are involved in cases before Orphans’ Court judges are often directly appealed to Circuit Court** for an authoritative decision before a judge with legal training.
- (3) The **primary reason** for the maintenance of the Orphans’ Courts **has been the fact that these judgeships represent three relatively lucrative, undemanding elective political positions** in almost every jurisdiction in the state.
- (4) Since the Orphans’ Court judge performs almost no function that is not being adequately handled by either the Register of Wills or the Circuit Court, it is clear that **Orphans’ Court is a superfluous function of the Judicial Department of Government, one that taxpayers and fee-payers in the court ought not to continue to be obligated to support.** Moreover, it is the **only court in the state judicial system that is not professionalized** in the sense that legal training is a prerequisite for judicial office.
- (5) **Abolishing Orphans’ Courts should have no adverse or untoward impact on the institutions that must absorb its functions** since its work is already largely a duplication of the activities of Registers of Wills and Circuit Courts.”

Despite these conclusions being drawn nearly 50 years ago, they remain absolutely true to this day. To the credit of the commissioners, this compelling argument for abolishing the Orphans' Courts has withstood the test of time. Time has been unkind, however, to the perspective of a single dissenting delegate to the majority report. This lone commissioner's argument against abolishing the Orphans' Courts was summarized as follows:

“Against these important negative considerations, the Commission has weighed other factors: the important political and social tradition of Orphans' Court in many Maryland counties, and the useful and effective role many Orphans' Courts judges play in explaining the probate system to laymen unfamiliar with processes of settling decedents' estates.”

Assuming, for the sake of argument, that this perspective had any rational basis at the time it was written, it most certainly does not today:

- Aside from the judges themselves, one would be hard-pressed to find any citizen who would agree that the Orphans' Courts are an “important political and social tradition,” due to the obscurity of the court and the minimal interaction it has with the public. In Howard County, for example, between August 2020 and July 2021, only 60 Howard County residents attended hearings before the Orphans' Court, and only 43 of them were interested persons in estates, the other 17 being attorneys.
- One would also be hard-pressed to find any citizen or member of the Bar who would agree that these judges play a “useful and effective role” in “explaining the probate system to laymen...” The probate system is explained to members of the public by the Registers of Wills and by their attorneys, if they have them, not the Orphans' Courts. Moreover, in my experience, judges of the Orphans' Courts frequently misstate aspects of the probate process during judicial proceedings and tend to rely very heavily on the Registers of Wills to guide them, sometimes even in the most fundamental and elementary aspects of probate. Indeed, in some jurisdictions the judges say very little during these proceedings, deferring to the Register to ask pertinent questions and explain procedures to those in attendance.

Ultimately, all but one member of the 1974 Commission supported abolishing the Orphans' Courts, though they deferred to the Legislature to decide whether this should be done on a statewide or jurisdiction-by-jurisdiction basis.

Commission to Study the Judicial Branch of Government (1982)

In its Report issued in December 1982, the Commission recalled the unanimous findings of earlier bodies that the Orphans' Courts be abolished. It referred to the Courts as being “of relatively ancient lineage, and frequent targets of abolitionist efforts.” (Section I, pp. 2-3)

Commission on the Future of Maryland Courts (1996)

In its Final Report issued on December 15, 1996, the Commission recommended, “The current Orphans’ Courts should be abolished. Their jurisdiction and operations should be transferred to the Circuit Court.” (pp. 43-46). In explaining its reasoning, the Commission made numerous comments:

- “Although the Orphans’ Courts do occasionally try contested cases, **the greatest part of their work is more routine.** They approve a variety of orders dealing with the administration of estates. Evidence presented to the Commission indicated **that much of what they do is not so much adjudicatory as advisory.**”
- “**The judges are not lawyers or law-trained,** except to the extent they participate in legal education seminars devoted to probate law and administration.”
- “The Maryland State Bar Association and most of the judicial reform commissions that have considered the matter in the past fifty years have recommended the abolition of the Orphans’ Courts, regarding them as **an unnecessary anachronism.**”
- “[Court of Appeals Chief Judge] Marbury [in an address to the Maryland State Bar Association in 1947] observed that, while lawyers appreciate the danger of non-lawyers making legal decisions, laypersons generally do not. He commented, however: ‘But when a layperson is made to understand that at least **90 percent of the orders signed by Orphans’ Courts are merely matters of form which could just as easily be signed by the Register of Wills,** he could see no reason for paying salaries to 72 now 66 extra State officials for doing this work. And when he understands that in the remaining cases **important questions of law have to be decided by individuals who have no legal training,** he will begin to wonder why we have kept this system so long.’”
 - “In response to Judge Marbury’s argument, it was argued that transfer of the functions of the Orphans’ Court to the Circuit Court would overburden the Circuit Court. In 1948, after actually surveying the work done by the two courts [the Orphans’ and Circuit Courts], the Maryland State Bar Association found that there would be no such overload—that ‘**the slight additional work which will fall upon the county circuit judges is patently most insignificant and,** when added, to their existing duties, **will cause little impact.**’”
- “The undeniable fact is that **it does not take a collegial body of three persons, whether law-trained or not, to make the kind of decisions that Orphans’ Court judges make.**”

- **“The routine decisions, which account for 80 to 90 percent of the total number of decisions, can as easily be made by a properly trained official serving in the Circuit Court.”**
- **“The more serious decisions, involving the resolution of contested cases and the application of often arcane principles of law to disputed facts, ought to be made by the judges and juries who make those kinds of decisions in other cases and who, for the most part, end up making them in probate cases as well.”**
- **“Both the Circuit Courts and the Orphans’ Courts have jurisdiction over guardianships of children. Well-established uniform procedures govern those cases in the Circuit Courts. No such procedures governing them exist in the Orphans’ Courts.”**
- **“Through this recommendation [to vest jurisdiction over probate with the Circuit Courts], the Commission believes that the cited advantages of the Orphans’ Courts can be retained without the need for a separate, loosely controlled, court system.”**

Conclusion

While these bodies have recommended ending the use of elected, lay orphans’ courts in Maryland, there is a history of deference to local jurisdictions whether they believe this type of reform is the right thing to do for them. Just as the Harford and Montgomery County delegations did many decades ago, Howard County’s delegation has chosen to move in the direction of following these consistent recommendations by ending elections for orphans’ court judges.

ATTACHMENT 4

Precedent: A History of Reforms, From Legislative Passage to Approval by the
Voters

Orphans' Court Reforms - Summary

LEGISLATIVE HISTORY - FLOOR VOTES

| Jurisdiction | House of Delegates | | State Senate | |
|-------------------------------|--------------------|---------|--------------|---------|
| | For | Against | For | Against |
| 1963 - Montgomery County | 118 | 0 | 19 | 9 |
| 1972 - Harford County | 107 | 3 | 36 | 0 |
| 2010 - Baltimore City | 134 | 5 | 45 | 2 |
| 2011 - Prince George's County | 105 | 29 | 46 | 0 |
| 2012 - Baltimore County | 105 | 30 | 46 | 0 |

ELECTION RESULTS

| Jurisdiction | Statewide % | Local Jurisdiction % |
|-------------------------------|-------------|----------------------|
| 1964 - Montgomery County | 67.9% | 85.7% |
| 1972 - Harford County | 71.6% | 75.3% |
| 2010 - Baltimore City | 83.5% | 87.9% |
| 2012 - Prince George's County | 87.8% | 93.6% |
| 2012 - Baltimore County | 88.1% | 86.9% |

**1964 - Question 2 - Montgomery County - Circuit Court
Sitting as Orphans' Court**

| Jurisdiction | FOR | % | AGAINST | % |
|--------------------------|----------------|--------------|----------------|--------------|
| Allegany County | 4,695 | 57.7% | 3,445 | 42.3% |
| Anne Arundel County | 18,505 | 56.9% | 14,024 | 43.1% |
| Baltimore City | 55,754 | 62.4% | 33,549 | 37.6% |
| Baltimore County | 80,312 | 63.8% | 45,561 | 36.2% |
| Calvert County | 1,330 | 69.0% | 597 | 31.0% |
| Caroline County | 1,065 | 60.1% | 707 | 39.9% |
| Carroll County | 3,780 | 60.4% | 2,475 | 39.6% |
| Cecil County | 2,538 | 56.0% | 1,992 | 44.0% |
| Charles County | 1,573 | 65.2% | 840 | 34.8% |
| Dorchester County | 1,404 | 58.0% | 1,017 | 42.0% |
| Frederick County | 4,944 | 64.8% | 2,687 | 35.2% |
| Garrett County | 706 | 46.5% | 811 | 53.5% |
| Harford County | 9,558 | 74.6% | 3,251 | 25.4% |
| Howard County | 5,027 | 68.1% | 2,350 | 31.9% |
| Kent County | 960 | 61.1% | 610 | 38.9% |
| Montgomery County | 95,948 | 85.7% | 16,046 | 14.3% |
| Prince George's County | 33,087 | 62.2% | 20,103 | 37.8% |
| Queen Anne's County | 1,289 | 70.4% | 542 | 29.6% |
| St. Mary's County | 1,778 | 55.6% | 1,420 | 44.4% |
| Somerset County | 834 | 66.5% | 421 | 33.5% |
| Talbot County | 2,035 | 73.1% | 750 | 26.9% |
| Washington County | 4,825 | 55.7% | 3,839 | 44.3% |
| Wicomico County | 4,299 | 68.4% | 1,986 | 31.6% |
| Worcester County | 1,307 | 75.9% | 416 | 24.1% |
| TOTALS | 337,553 | 67.9% | 159,439 | 32.1% |

| 1972 - Question 11 - Harford County - Circuit Court Sitting as Orphans' Court | | | | |
|--|----------------|--------------|----------------|--------------|
| Jurisdiction | FOR | % | AGAINST | % |
| Allegany County | 5,254 | 54.0% | 4,484 | 46.0% |
| Anne Arundel County | 29,326 | 68.5% | 13,459 | 31.5% |
| Baltimore City | 71,490 | 69.1% | 31,965 | 30.9% |
| Baltimore County | 101,179 | 73.3% | 36,780 | 26.7% |
| Calvert County | 1,617 | 68.8% | 734 | 31.2% |
| Caroline County | 985 | 51.2% | 940 | 48.8% |
| Carroll County | 5,979 | 57.9% | 4,355 | 42.1% |
| Cecil County | 3,439 | 55.0% | 2,817 | 45.0% |
| Charles County | 3,760 | 61.8% | 2,322 | 38.2% |
| Dorchester County | 1,062 | 50.3% | 1,048 | 49.7% |
| Frederick County | 6,697 | 56.6% | 5,136 | 43.4% |
| Garrett County | 1,021 | 42.1% | 1,405 | 57.9% |
| Harford County | 18,204 | 75.3% | 5,975 | 24.7% |
| Howard County | 12,464 | 73.4% | 4,526 | 26.6% |
| Kent County | 1,365 | 64.8% | 742 | 35.2% |
| Montgomery County | 87,425 | 79.5% | 22,476 | 20.5% |
| Prince George's County | 71,397 | 75.3% | 23,455 | 24.7% |
| Queen Anne's County | 1,492 | 61.5% | 934 | 38.5% |
| St. Mary's County | 2,251 | 57.6% | 1,657 | 42.4% |
| Somerset County | 605 | 47.4% | 671 | 52.6% |
| Talbot County | 2,066 | 61.3% | 1,305 | 38.7% |
| Washington County | 6,594 | 61.4% | 4,151 | 38.6% |
| Wicomico County | 3,732 | 62.4% | 2,248 | 37.6% |
| Worcester County | 1,287 | 53.7% | 1,109 | 46.3% |
| TOTALS | 440,691 | 71.6% | 174,694 | 28.4% |

**2010 - Question 3 - Baltimore City - Require Orphans'
Court Judges to Be Attorneys**

| Jurisdiction | FOR | % | AGAINST | % |
|------------------------|------------------|--------------|----------------|--------------|
| Allegany County | 12,902 | 74.7% | 4,379 | 25.3% |
| Anne Arundel County | 148,403 | 83.9% | 28,566 | 16.1% |
| Baltimore City | 124,524 | 87.9% | 17,215 | 12.1% |
| Baltimore County | 209,105 | 82.1% | 45,467 | 17.9% |
| Calvert County | 21,267 | 77.5% | 6,186 | 22.5% |
| Caroline County | 6,112 | 74.3% | 2,115 | 25.7% |
| Carroll County | 44,058 | 78.1% | 12,333 | 21.9% |
| Cecil County | 19,619 | 76.4% | 6,077 | 23.6% |
| Charles County | 33,797 | 82.0% | 7,400 | 18.0% |
| Dorchester County | 7,131 | 75.7% | 2,290 | 24.3% |
| Frederick County | 52,840 | 80.5% | 12,798 | 19.5% |
| Garrett County | 5,538 | 71.5% | 2,208 | 28.5% |
| Harford County | 70,626 | 82.4% | 15,127 | 17.6% |
| Howard County | 78,326 | 81.2% | 18,086 | 18.8% |
| Kent County | 5,052 | 75.4% | 1,644 | 24.6% |
| Montgomery County | 214,744 | 86.4% | 33,915 | 13.6% |
| Prince George's County | 187,432 | 90.4% | 19,945 | 9.6% |
| Queen Anne's County | 13,205 | 77.7% | 3,790 | 22.3% |
| St. Mary's County | 20,946 | 75.9% | 6,666 | 24.1% |
| Somerset County | 4,645 | 74.2% | 1,616 | 25.8% |
| Talbot County | 10,442 | 76.8% | 3,152 | 23.2% |
| Washington County | 24,668 | 75.6% | 7,942 | 24.4% |
| Wicomico County | 19,886 | 80.7% | 4,756 | 19.3% |
| Worcester County | 14,789 | 79.0% | 3,927 | 21.0% |
| TOTALS | 1,350,057 | 83.5% | 267,600 | 16.5% |

| 2012 - Question 1 - Prince George's County - Require Orphans' Court Judges to Be Attorneys | | | | |
|---|------------------|--------------|----------------|--------------|
| Jurisdiction | FOR | % | AGAINST | % |
| Allegany County | 20,345 | 82.6% | 4,293 | 17.4% |
| Anne Arundel County | 203,766 | 86.1% | 32,885 | 13.9% |
| Baltimore City | 196,580 | 87.9% | 26,974 | 12.1% |
| Baltimore County | 296,876 | 85.5% | 50,351 | 14.5% |
| Calvert County | 34,653 | 83.9% | 6,664 | 16.1% |
| Caroline County | 9,320 | 79.1% | 2,469 | 20.9% |
| Carroll County | 62,889 | 80.2% | 15,570 | 19.8% |
| Cecil County | 31,032 | 82.3% | 6,665 | 17.7% |
| Charles County | 62,103 | 89.7% | 7,099 | 10.3% |
| Dorchester County | 10,158 | 79.1% | 2,682 | 20.9% |
| Frederick County | 90,679 | 86.9% | 13,610 | 13.1% |
| Garrett County | 8,672 | 78.0% | 2,447 | 22.0% |
| Harford County | 96,641 | 84.3% | 17,937 | 15.7% |
| Howard County | 123,458 | 88.3% | 16,353 | 11.7% |
| Kent County | 6,114 | 71.6% | 2,421 | 28.4% |
| Montgomery County | 377,031 | 92.2% | 31,770 | 7.8% |
| Prince George's County | 330,815 | 93.6% | 22,799 | 6.4% |
| Queen Anne's County | 17,920 | 80.3% | 4,392 | 19.7% |
| St. Mary's County | 36,631 | 84.4% | 6,746 | 15.6% |
| Somerset County | 7,281 | 82.8% | 1,516 | 17.2% |
| Talbot County | 14,307 | 81.2% | 3,309 | 18.8% |
| Washington County | 44,283 | 82.8% | 9,194 | 17.2% |
| Wicomico County | 31,363 | 86.4% | 4,951 | 13.6% |
| Worcester County | 20,439 | 85.3% | 3,534 | 14.7% |
| TOTALS | 2,133,356 | 87.8% | 296,631 | 12.2% |

| 2012 - Question 2 - Baltimore County - Require Orphans' Court Judges to Be Attorneys | | | | |
|---|------------------|--------------|----------------|--------------|
| Jurisdiction | FOR | % | AGAINST | % |
| Allegany County | 20,390 | 82.8% | 4,224 | 17.2% |
| Anne Arundel County | 206,584 | 86.5% | 32,219 | 13.5% |
| Baltimore City | 198,000 | 89.0% | 24,348 | 11.0% |
| Baltimore County | 305,002 | 86.5% | 47,729 | 13.5% |
| Calvert County | 34,979 | 84.0% | 6,639 | 16.0% |
| Caroline County | 9,271 | 79.2% | 2,440 | 20.8% |
| Carroll County | 63,764 | 80.6% | 15,341 | 19.4% |
| Cecil County | 31,189 | 82.6% | 6,568 | 17.4% |
| Charles County | 62,727 | 89.7% | 7,218 | 10.3% |
| Dorchester County | 10,380 | 80.0% | 2,592 | 20.0% |
| Frederick County | 90,513 | 87.2% | 13,255 | 12.8% |
| Garrett County | 8,811 | 78.7% | 2,391 | 21.3% |
| Harford County | 97,391 | 84.9% | 17,332 | 15.1% |
| Howard County | 123,284 | 88.4% | 16,110 | 11.6% |
| Kent County | 6,131 | 72.0% | 2,384 | 28.0% |
| Montgomery County | 374,891 | 92.3% | 31,395 | 7.7% |
| Prince George's County | 326,453 | 92.7% | 25,612 | 7.3% |
| Queen Anne's County | 17,960 | 80.9% | 4,235 | 19.1% |
| St. Mary's County | 36,471 | 84.6% | 6,660 | 15.4% |
| Somerset County | 7,467 | 83.1% | 1,515 | 16.9% |
| Talbot County | 14,558 | 81.5% | 3,305 | 18.5% |
| Washington County | 44,862 | 83.2% | 9,066 | 16.8% |
| Wicomico County | 31,776 | 86.9% | 4,785 | 13.1% |
| Worcester County | 20,667 | 85.6% | 3,482 | 14.4% |
| TOTALS | 2,143,521 | 88.1% | 290,845 | 11.9% |

ATTACHMENT 5

Appeals: Statistics Demonstrating Lay Courts Reversed on Appeal More Often than Upheld, Including the Howard County Orphans' Court

Appeals Filed From Decisions of the 19 Lay Orphans' Courts in Maryland - FY2019 to FY2021

| Jurisdiction | Appeals Filed | Settled | Withdrawn | Dismissed | Affirmed | Reversed | Affirmed in Part, Reversed in Part | Pending |
|---------------|---------------|-----------|-----------|-----------|-----------|-----------|------------------------------------|----------|
| Allegany | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 |
| Anne Arundel | 11 | 0 | 3 | 4 | 2 | 0 | 1 | 1 |
| Calvert | 6 | 4 | 1 | 0 | 0 | 1 | 0 | 0 |
| Caroline | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 |
| Carroll | 7 | 4 | 0 | 1 | 0 | 1 | 0 | 1 |
| Cecil | 7 | 1 | 0 | 1 | 0 | 5 | 0 | 0 |
| Charles | 8 | 2 | 0 | 1 | 3 | 1 | 0 | 1 |
| Dorchester | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Frederick | 4 | 1 | 0 | 0 | 1 | 2 | 0 | 0 |
| Garrett | 4 | 0 | 0 | 0 | 2 | 2 | 0 | 0 |
| Howard | 10 | 2 | 3 | 0 | 0 | 2 | 0 | 3 |
| Kent | 2 | 1 | 0 | 0 | 0 | 1 | 0 | 0 |
| Queen Anne's | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 |
| Somerset* | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| St. Mary's | 2 | 0 | 0 | 0 | 1 | 1 | 0 | 0 |
| Talbot | 8 | 0 | 2 | 4 | 1 | 1 | 0 | 0 |
| Washington | 3 | 0 | 2 | 1 | 0 | 0 | 0 | 0 |
| Wicomico | 3 | 1 | 2 | 0 | 0 | 0 | 0 | 0 |
| Worcester | 6 | 4 | 0 | 0 | 1 | 1 | 0 | 0 |
| | 85 | 20 | 13 | 12 | 13 | 19 | 1 | 9 |

Appeals Filed From Decisions of the 19 Lay Orphans' Courts in Maryland - FY2019 to FY2021

| Jurisdiction | Appeals that Reached Substantive Decision | Affirmed | Reversed | Affirmed in Part, Reversed in Part | % Affirmed | % Reversed | % Affirmed in Part, Reversed in Part |
|---------------|---|-----------|-----------|------------------------------------|---------------|----------------|--------------------------------------|
| Allegany | 1 | 0 | 1 | 0 | 0.00% | 100.00% | 0.00% |
| Anne Arundel | 3 | 2 | 0 | 1 | 66.67% | 0.00% | 33.33% |
| Calvert | 1 | 0 | 1 | 0 | 0.00% | 100.00% | 0.00% |
| Caroline | 1 | 1 | 0 | 0 | 100.00% | 0.00% | 0.00% |
| Carroll | 1 | 0 | 1 | 0 | 0.00% | 100.00% | 0.00% |
| Cecil | 5 | 0 | 5 | 0 | 0.00% | 100.00% | 0.00% |
| Charles | 4 | 3 | 1 | 0 | 75.00% | 25.00% | 0.00% |
| Dorchester | 0 | 0 | 0 | 0 | N/A | N/A | N/A |
| Frederick | 3 | 1 | 2 | 0 | 33.33% | 66.67% | 0.00% |
| Garrett | 4 | 2 | 2 | 0 | 50.00% | 50.00% | 0.00% |
| Howard | 2 | 0 | 2 | 0 | 0.00% | 100.00% | 0.00% |
| Kent | 1 | 0 | 1 | 0 | 0.00% | 100.00% | 0.00% |
| Queen Anne's | 1 | 1 | 0 | 0 | 100.00% | 0.00% | 0.00% |
| Somerset* | 0 | 0 | 0 | 0 | N/A | N/A | N/A |
| St. Mary's | 2 | 1 | 1 | 0 | 50.00% | 50.00% | 0.00% |
| Talbot | 2 | 1 | 1 | 0 | 50.00% | 50.00% | 0.00% |
| Washington | 0 | 0 | 0 | 0 | N/A | N/A | N/A |
| Wicomico | 0 | 0 | 0 | 0 | N/A | N/A | N/A |
| Worcester | 2 | 1 | 1 | 0 | 50.00% | 50.00% | 0.00% |
| | 32 | 13 | 18 | 1 | 40.63% | 56.25% | 3.13% |

IN RE ESTATE OF * IN THE
PATRICIA TATE TAYLOR * CIRCUIT COURT FOR
(APPEAL – ORPHANS’ COURT) * HOWARD COUNTY
* MARYLAND
* CASE NO.: C-13-CV-21-000369

* * * * *

MEMORANDUM, OPINION AND ORDER OF COURT

This matter comes before the Court on the Petition of Lawrence Wilhite, Personal Representative of the Estate of Patricia Tate Taylor (Estate No.: 30653) appealing the January 27, 2021 Order of the Orphans’ Court for Howard County both denying approval of the First Amended Account of the Estate filed with the Howard County Register of Wills on December 29, 2021 and declaring that commissions or attorneys’ fees cannot be paid pursuant to Estates and Trusts Article § 7-604(a) without the Orphans’ Court approval.

Having considered this matter *de novo* incident to a hearing held on March 7, 2022; the Court determines the following facts and makes the following conclusions of law:

- (1) The duly appointed personal representative of an estate may pay personal representative commissions or attorneys’ fees pursuant to Estates and Trusts Article § 7-604(a) without Orphans’ Court approval;
- (2) The Orphans’ Court erred by concluding in its January 27, 2021 Order that pursuant to Estates and Trusts Article § 7-604(a), commissions or attorneys’ fees cannot be paid without the Court approval;
- (3) The payment of attorneys’ fees in the amount of \$15,876.00 by Lawrence Wilhite, Personal Representative of the Estate of Patricia Tate Taylor reported in the First Amended Account filed with the Howard County Register of Wills on December 29, 2020 complied with the requirements of Estates and Trusts Article § 7-604(a);

- (4) The operative word or auxiliary verb “may” in Estates and Trusts Article § 7-604(a) does *not* grant the Orphans’ Court discretion or authority to approve or deny personal representative commissions or attorneys’ fees;
- (5) Estates and Trusts Article § 7-601 does not require that maximum personal representative commissions or fees only be paid and approved in the final account of the personal representative; and
- (6) Estates and Trust Article § 2-102 (b) and Md. Rule 6-102 prohibit the Orphans’ Court from establishing “rules of practices and procedures” inconsistent with the statutory law of Maryland and/or the Maryland Rules.

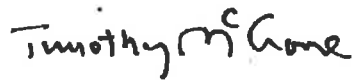
THEREFORE, upon the above-recited findings of facts and conclusions of law, it is this

03/15/2022 by the Circuit Court for Howard County,

ORDERED, that the order of the Orphans’ Court dated January 27, 2021 denying the approval of the First Amended Account in the Estate of Patricia Tate Taylor (Estate No.: 30653), be and the same is hereby **REVERSED**; and it is further

ORDERED, that the First Amended Account of Lawrence Wilhite, Personal Representative of the Estate of Patricia Tate Taylor (Estate No.: 30653) filed with the Howard County Register of Wills on December 29, 2020, be and the same is hereby **APPROVED**;

03/15/2022 2:18:50 PM



Timothy J. McCrone

Entered: Clerk, Circuit Court for
Howard County, MD
March 15, 2022

Timothy J. McCrone, Judge
Circuit Court for Howard County

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**Attorney for Appellant, Lawrence Wilhite,
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Tate Taylor**

Interested Persons

ATTACHMENT 6

FAQ: Frequently Asked Questions and Answers About the Orphans' Court

Ho. Co. 6 – 22 – Circuit Court Sitting as Orphans’ Court

FAQs

1. WHAT IS THE ORPHANS’ COURT AND WHAT DOES IT DO?

SHORT ANSWER?

It is a panel of three elected judges that handles simple administrative matters and periodic contested matters in probate – the legal process for distributing assets from someone who has died.

LONG ANSWER?

The orphans’ court was established in 1776 – modeled after London’s Court of Widows and Orphans, subsequently abolished in the United Kingdom in 1850. This court was given jurisdiction over probate proceedings, from the appointment of the Personal Representative (better known as the “executor”) to contested matters to the closing of the estate.

In the 1970’s, the General Assembly transferred the overwhelming bulk of these powers to the Register of Wills, leaving the court to handle mostly administrative matters and the periodic contested matter. However, the most serious of contested matters – like challenging the validity of someone’s Last Will and Testament – are transmitted to the Circuit Court for adjudication. Ironically, the weightiest of matters in probate aren’t handled by our probate court.

The court is made up of three elected judges who sit one day per week, but not every week of the year. On average, the court holds one to two hearings per week and has approximately 15 administrative matters to sign. These matters are thoroughly reviewed and scrutinized by the Register’s auditors prior to being put before the court, so most matters simply need the judges’ signatures.

2. WHY IS THIS COURT ELECTED AND WHY DON’T THEY HAVE TO BE LAWYERS?

SHORT ANSWER?

That’s how it’s always been (ie. the worst reason for doing anything).

LONG ANSWER?

Originally, these judges were appointed by the Governor as pure patronage jobs. Eventually, they were made accountable to the public through elections. It is the only trial-level court comprised of a panel of three judges – the District and Circuit Courts have a single judge preside. Orphans’ courts are made up of the only judges elected based on party affiliation, the only judges who serve four-year terms, the only judges who don’t have to abide by the mandatory retirement age of judges in Maryland at 70, and the only judges who don’t have to be members in good standing with the Maryland State Bar Association.

The orphans’ court was historically one of many longstanding lay courts – meaning courts comprised of non-lawyer judges. Maryland had housing courts, chancery courts, courts of common pleas, and others where the judges were appointed and did not need to be lawyers. In the late 1960’s and early 1970’s the

state decided to abolish this hodgepodge of lay courts and combine their functions into the District Court. When that decision was made, there was unanimous agreement by stakeholders that the orphans' courts should, likewise, be done away with. However, the decision of whether to transfer their jurisdiction to the District or Circuit Courts were left to the legislature. Since these judges were the only lay judges elected rather than appointed, and many had considerable political clout, these antiquated courts survived the shuttering of all of the lay courts in the state. Simply put, it's an historical fluke that they still exist as elected lay courts.

Three jurisdictions have passed constitutional amendments to require their judges to be lawyers – Baltimore City, Baltimore County, and Prince George's County. Two others – Harford and Montgomery Counties – ended elections for orphans' court judges and have their Circuit Courts preside over probate matters. There is, therefore, precedent for institutional reform to how different jurisdictions choose to assign jurisdiction over decedents' estates.

3. How do other counties in MD handle probate matters? Other states?

SHORT(ISH) ANSWER?

Most counties in Maryland use the same system, but 3 jurisdictions require their judges to be lawyers and 2 use a Circuit Court judge (these 5 jurisdictions contain 60% of the state's population). 35 states and the District of Columbia use a court like our Circuit Court, and the remaining 13 states use a professionalized probate court with a lawyer judge. Out of 3,006 counties in the United States, Howard County is one of just 19 that use our lay court system.

LONG ANSWER?

Maryland has the most convoluted probate system in the country. Of our 24 jurisdictions, 19 have an elected panel of three judges who do not have to be lawyers, three (Baltimore City, Baltimore County, and Prince George's County) also elect three judges but they must be lawyers and they preside over matters individually rather than as a panel, and two (Harford and Montgomery) do not have elected orphans' court judges, rather a judge of the Circuit Court presides over probate proceedings.

Looking outside Maryland, in 34 states and the District of Columbia, probate is handled by a court of general jurisdiction – like Maryland's District or Circuit Courts. In 16 states, there is a specialized probate court. 4 states have a hybrid of the two. Maryland is the only state with an orphans' court and the only state in which probate judges do not have to be lawyers.

4. What's wrong with the status quo?

SHORT ANSWER?

The current system isn't fair to voters who don't understand what they're voting for, and it is inadequate to meet the expectations and needs of grieving families – who deserve efficient, fair, and effective justice and instead get a system that is inefficient, prejudicial, unreliable, and inferior to another system we could easily adopt.

LONG ANSWER?

All too often in government, we wait until a genuine crisis arises to take stock of how well our institutions are working. My philosophy of government, in contrast, has always been that we should engage in an ongoing cycle of action, reflection, and adjustment to achieve the very best systems for the public. The orphans' court in Howard County has undergone no meaningful reform since its inception in 1840. In 181 years, neither the court itself nor anyone interested in its functionality has taken the time to rethink how we can best handle administrative matters and the occasional contested issue, until now.

First, we ask voters every four years to elect three judges virtually no one is familiar with to positions virtually no one understands. In Fiscal Year 2021, the number of Howard County residents who went before this court was a grand total of 47 – out of a population of over 330,000 people. It simply doesn't make sense to elect officials with such little interaction with the community. And most people, when pressed, would guess that this court deals with orphaned children, which it does not.

Second, we just shouldn't elect judges. Putting jurists – who are supposed to be impartial – in the position of raising money and soliciting votes from attorneys and members of the public who come before them is simply untenable. We know that the General Assembly will end contested elections of Circuit Court judges sooner or later, which will leave us scratching our heads over why orphans' court judges still are. We should act now in anticipation of these statewide reforms.

Third, judges should be lawyers. I shouldn't even have to say that, but orphans' court judges are the only lay judges in Maryland and the only lay judges to preside over probate proceedings anywhere in America. Maryland did away with all its myriad lay courts in the early 1970's and the only reason the orphans' courts survived is because they are elected – which gives them some influence and shields them to some degree from any scrutiny. But the public deserves confidence in their judiciary, and that means having trained, experienced, vetted, professionalized courts, including those handling probate matters. Having a panel of three judges who aren't required to be lawyers or may be lawyers but don't have the experience or training of a Circuit Court judge means having a court that misinterprets the law and exceeds the scope of its jurisdiction, holds hearings when it should render decisions based on pleadings, struggles with evidentiary rulings, establishes local rules that are prohibited by law, creates conflict and stress for families by demonstrating partiality and failing to maintain proper decorum in the courtroom, and takes an excessive amount of time to render decisions.

Fourth, the orphans' court is systemically inefficient. It is part-time and is comprised of three judges. Part-time court means delays. Requiring a majority of three judges to act means time-consuming disagreements and delays. Over the years I have asked judges over and over again why we need three judges instead of one to preside over mostly simply administrative rulings, and never heard any reasonable response.

Lastly, we have an inefficient system by design – but we have an alternative at our disposal, which is to have a Circuit Court judge sit as the orphans' court. That system – used in Harford and Montgomery Counties – is demonstrably more efficient, is able to rule on matters more quickly, conclude hearings more quickly, and is both appealed less often and reversed on appeal by a higher court less often. Why wouldn't we scrap an antiquated, inefficient system for one that is proven to be superior?

5. How will the public benefit from passing this bill?

SHORT ANSWER?

The public will be given a system that is more efficient, more reliable, and more equitable than the one we have now.

LONG ANSWER?

By adopting a system for adjudicating probate matters that is used in Harford and Montgomery Counties and most states in our country, the public will be given a system that is more efficient, more reliable, and more equitable than the one we have now.

A fully trained, vetted, experienced jurist, a judge of the Circuit Court, sitting as the orphans' court, will be able to render decisions more quickly, will more expertly adhere to Maryland law, and will not needlessly hold hearings when they're not necessary or prolong proceedings beyond what is reasonable. They will serve as an impartial and professional component of a system that should show competence, compassion, and care for people grieving the death of a loved one.

The numbers do not lie. This system is dramatically superior to our elected orphans' court.

HB 868 Dodd unfavorable.pdf

Uploaded by: Anne Dodd

Position: UNF

BILL NO. HB 868
TITLE: Circuit Court for Howard County – Judges Sitting as Orphans’ Court
COMMITTEE: Senate Judicial Proceedings
HEARING DATE: March 30, 2022
POSITION: Unfavorable
FROM: Anne L, Dodd
Chief Judge, Howard County Orphans’ Court

Senator Smith and Members of the Committee, this testimony is sent on my own behalf and not that of the judiciary. Unfortunately I am faced with using this opportunity to rebut testimony presented by the Register of Wills for Howard County to the House Judiciary Committee, I will not comment on the history he provided as that has no bearing on the present day.

WRITTEN TESTIMONY

The Register of Wills presented written testimony to the House Judiciary Committee that included a chart comparing the Howard County Orphans’ Court with Harford County. The chart is misleading.

- The number of orders issued is related to the number of cases, some with multiple pleadings, on a docket. The register prepares the docket. To show that Harford County issues more orders is to show only that their register included more pleadings on their dockets. It does not show a lack of work by the Court.
- I cannot replicate the average time from filing to action. In almost all cases orders are drafted by the Chief Judge immediately after the conclusion of a hearing. It is rare for an order to be held even one day. Statutorily, all orders are to be prepared by the Register acting as our clerk. The Register has chosen never to be present at court hearings so he is not in the position to prepare them.
- The comparison of how often the court is in session is misleading. While we have scheduled hearings one day a week, we consistently work more than that. In addition to hearings, the Court has a full docket of matters 52 weeks a year. As Chief Judge I am in contact with the Register’s staff several times a week and the judges are always available when needed. To say we are not is simply untrue and does not accurately reflect the Court’s history of diligence.
- The number of Orders reversed on appeal is incorrect. He uses fiscal instead of calendar years.
 - In FY 19 there were 0 appeals filed.
 - In FY 20 there were 4 appeals filed by 2 estates. One was dismissed and 3 were withdrawn.
 - In FY 21 there were 6 appeals filed.
 - One resulted in a consent order that essentially affirmed the Orphans’ Court Order; another was found not to be proper venue, an issue not raised in the Orphans’ Court; the third was dismissed; the fourth was reversed; 2 are pending. One is being held *sub curia* by the Circuit Court and the other will be withdrawn.

ORAL TESTIMONY

The Register also submitted oral testimony to the House Judiciary Committee that was misleading.

- "Unnecessary delays" – The Orphans' Court acts immediately on most petitions. Those required to be held for response are done so to follow the law. The Court has no control over the time it takes the Register's office to add pleadings to dockets. It is untrue to say we delay unnecessarily. In almost all cases, orders or rulings are drafted by the Chief Judge and signed by at least two judges at the conclusion of hearings.
- The training judges receive is substantial and comprised of both mandatory and elective classes. The Register is not aware of the number of classes taken both in person and virtually by judges.
- "Matters not sent to mediation" – The Court has ordered mediation one time and suggested it on more than one occasion. MD Rule 17-602 states that the Orphans' Court may order parties to attend fee-for-service mediation but that **any party may choose not to participate**. The Court has not found any cost free mediation services. While appearing before us is essentially free, the hourly cost for mediation is not. Pro se litigants are less likely to want to pay for mediation and those with attorneys would have to pay both attorney fees and mediation costs.
- "Howard County Orphans' Court fails to live up to the state judiciary's motto: Efficient, Fair, Effective Justice for All" - As the Register is our clerk per E & T 2-208 (e) and is charged with, "making out and issuing every summons, process, or order of the court and, in every respect, act under the control and direction of the court as the clerk of a court of law acts under the direction of the court of law", he is responsible for ensuring the efficiency of the court. Instead of following the law and acting under the control and direction of the court, he attempts to control and direct the court. **Allowing the Register to decide how the Court should rule would be abrogating its responsibility and according to MD Rule 18-102.9 (a) (4) that is against the Maryland Code of Judicial Conduct.**
- The number of appeals reported by the Register from our court is completely out of context. Without numbers of rulings and outcomes, the picture is distorted which makes it unreliable. Over almost 12 years, the length of time Judge Turner and I have been on the bench, the Court has been overturned on the merits 1 ½ times and one time on an issue heard *de novo* that was not raised in the Orphans' Court. The Court has a stellar appeal record as you can see below.

| YEAR | NO. RULINGS | NO. APPEALS | DISPOSITION | PENDING APPEALS |
|------|-------------|-------------|---|-----------------|
| 2011 | 674 | 7 | 5-dismissed 1-settled 1-denied by CC for failure to appear | 0 |
| 2012 | 881 | 7 | 1-OC affirmed 2 dismissed 1-settled 3-withdrawn | 0 |
| 2013 | 924 | 3 | 1-OC affirmed 1-dismissed 1-settled | 0 |
| 2014 | 962 | 3 | 1-OC affirmed 2-dismissed | 0 |
| 2015 | 1070 | 4 | 1-appeal denied by CC 2-dismissed 1-summary judgment | 0 |
| 2016 | 801 | 6 | 2-OC affirmed 3 dismissed 1-withdrawn | 0 |
| 2017 | 1095 | 1 | 1-withdrawn | 0 |
| 2018 | 997 | 1 | ½ OC affirmed ½ OC reversed | 0 |
| 2019 | 1161 | 4 | 1-dismissed 3-withdrawn | 0 |
| 2020 | 844 | 0 | | 0 |

| | | | | |
|------|------|---|--|--|
| 2021 | 1079 | 7 | 1-consent order essentially affirming OC 2-dismissed 1-reversed 1-reversed but issue was not heard in OC due to de novo hearing | 2 1 being held <i>sub curia</i> by CC and 1 to be withdrawn |
|------|------|---|--|--|

MISLEADING AND DENEGRATING REMARKS

As explained above, the Register of Wills is Clerk of the Orphans’ Court and by law is to act under the control and direction of the Court. It is unusual for a clerk to take to social media to make a case for abolishing the court he serves, but the Register has done just that. He denigrated the Court in his remarks to the Howard County Delegation, misleading the Delegation immediately prior to their vote to pursue this bill and has continued to malign the Court on social media. Due to meeting protocol, I was not allowed to rebut his allegations.

SOCIAL MEDIA

On his social media posts, The Register called the House Judiciary Committee vote on HB 868 a “victory for the truth and the public interest over lies and fear mongering”. The judges have not taken to social media to remark one way or another on this or any other bill. He has posted that, “the Orphans’ Court in Howard County is widely viewed as the worst in the state”. He is the one promulgating that view. And, he has accused the Court of not being compassionate or fair. This after sending me an email a little more than a year ago telling me that he had the “greatest respect “for me.

The Register characterized the Senate passage of SB 468 as ensuring, “that orphans’ courts will not be able to interfere with the payment of attorney’s fees and personal representative’s commissions when families agreed to those fees and they’re at or below a certain amount”. In actuality, SB 468 was drafted specifically in response to judges’ concerns about an interpretation of E & T § 7-604 allowing attorneys and personal representatives to take their fees up- front. I applaud your unanimous passage of SB 468. Going forward, attorneys and personal representatives won’t be able to take their fees early in the estate process and before they are earned.

CONCLUSION

The Orphans’ Court offers a venue that is less intimidating, cheaper and quicker than the Circuit Court. To deprive citizens of this benefit due to the Register’s pique is to take a sledge hammer to something that boils down to an issue of control. I urge an unfavorable report.

HB868 Spalding Unfavorable.pdf

Uploaded by: Charles Spalding

Position: UNF

We are Joanne and Charlie Spalding. We live in Columbia, Md.

The Orphans court has been very helpful to us. We found the court efficient and approachable. The Orphans Court in Howard County helps to streamline a difficult process at a difficult time for citizens' lives. The Hearings we attended were organized and answers and direction were clear.

We see no good reason to subsume a well focused operation into a more broadly structured organization. The functions of the Orphans' Court will surely suffer degradation when shuffled into the myriad services the Circuit Court must currently provide. The financial impacts of this legislation are minimal at best, shifting at least \$36,900 to the State while saving the county \$55,000 (annual estimates). At worst, the State will incur a \$400,000 increase in expenses if an additional judge is needed to handle the increased workload.

For these reasons, we ask the Senate Judicial Proceedings Committee to find HB868 unfavorable.

HB 868 OPPOSITION.pdf

Uploaded by: Ed Crossland

Position: UNF

March 29, 2022

Hon. William C. Smith, Jr. Chair
Judicial Proceedings Committee
Miller Senate Office Building
11 Bladen Street
Annapolis, Maryland

Re: HOUSE BILL 868

Dear Senator Smith and Committee Members:

We are writing you regarding HB 868. We serve as judges of the Garrett, Allegany and Washington County Orphans' Courts in western Maryland.

We are opposed to this bill. Last year, the House and Senate passed a bill that established a Task Force to Study the Orphans' Courts in Maryland. The Task Force held several hearings and submitted an extensive report and those matters are being addressed by the legislature this session.

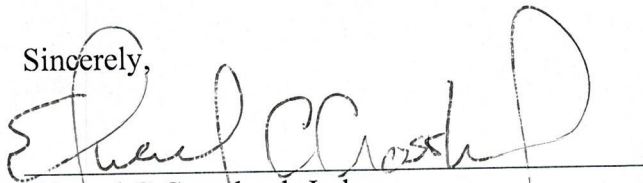
This bill, HB 868, to eliminate the elected Orphans' Court in Howard County, is troubling in that:

- The delegate sponsoring this legislation was a member of the Task Force and this matter was never discussed in those proceedings.
- The judges for Howard County were not consulted, and it is our understanding were actually excluded, from the hearing before the delegation when this was taken into consideration, and that their record on appeals is outstanding.
- The sponsor of this bill testified in the House that her intention is to take this statewide next year, which we are opposed to.
- In our three counties in western Maryland, our courts operate with very few, if any, appeals to the Circuit Court, and afford an opportunity for grieving families to have their issues brought before the Orphans' Court in an expeditious manner.
- The Orphans Courts statewide will be permitted, if the Task Force Study recommendations are enacted, to have practicing attorneys seek election, and in fact, two of the three judges in Howard County are attorneys. If the concern is that lay judges lack the requisite legal training, this issue would be eliminated when the changes are enacted and practicing attorneys may seek election, serve; and thus not burden the Circuit Courts, which in western Maryland, are still coping with the delays caused by COVID.

Due to the relatively quick scheduling of this hearing and also the distance to Annapolis, it is not possible for us to be present for the hearing, but desire the committee note our opposition to this bill.

Thank you for your kind attention to this matter.

Sincerely,



Edward C Crossland, Judge
Allegheny County Orphans' Court



Albert L. Feldstein, Judge
Allegheny County Orphans' Court



Craig W. Alexander, Judge
Allegheny County Orphans' Court

Ernest J. Gregg, Jr. Judge
Garrett County Orphans' Court

Jack Rush Turney, Judge
Garrett County Orphans' Court

Jeffrey D. Murphy
Garrett County Orphans' Court

Frank E. Novinger, Judge
Washington County Orphans Court

Paul D. Bannister, Judge
Washington County Orphans' Court

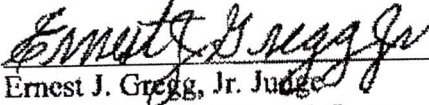
Andrew Dunn, Judge
Washington County Orphans' Court

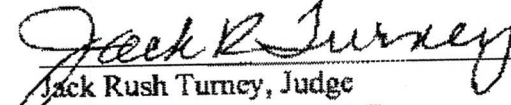
Sincerely,

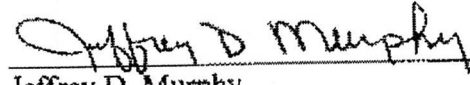
Edward C Crossland, Judge
Allegheny County Orphans' Court

Albert L. Feldstein, Judge
Allegheny County Orphans' Court

Craig W. Alexander, Judge
Allegheny County Orphans' Court


Ernest J. Gregg, Jr. Judge
Garrett County Orphans' Court


Jack Rush Turney, Judge
Garrett County Orphans' Court


Jeffrey D. Murphy
Garrett County Orphans' Court

Frank E. Novinger, Judge
Washington County Orphans Court

Paul D. Bannister, Judge
Washington County Orphans' Court

Andrew Dunn, Judge
Washington County Orphans' Court

Thank you for your kind attention to this matter.

Sincerely,

Edward C Crossland, Judge
Allegheny County Orphans' Court

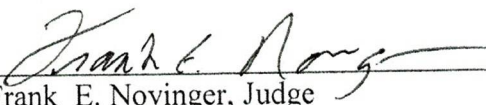
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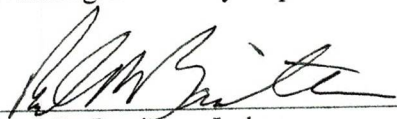
Craig W. Alexander, Judge
Allegheny County Orphans' Court

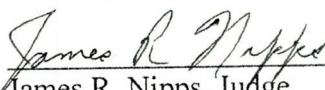
Ernest J. Gregg, Jr. Judge
Garrett County Orphans' Court

Jack Rush Turney, Judge
Garrett County Orphans' Court

Jeffrey D. Murphy
Garrett County Orphans' Court


Frank E. Novinger, Judge
Washington County Orphans Court


Paul D. Banister, Judge
Washington County Orphans' Court


James R. Nipps, Judge
Washington County Orphans' Court

HB 868_JWD_unf.pdf

Uploaded by: Jacob Deaven

Position: UNF

House Bill 868 – Jacob W. Deaven, Attorney at Law, Unfavorable

Senator Smith, Senator Waldstreicher, and Distinguished Members of the Committee,

I am writing to you about HB 868, Circuit Court for Howard County – Judges Sitting as Orphans' Court Ho. Co. 06–22.

I write to you on this Bill not as a resident of Howard County but as an attorney who makes regular appearances before Orphans' Courts throughout the entire state. Based on my experience, I think the Orphans' Court is an integral part of the Maryland Judiciary. Harford County would be doing a disservice by having Circuit Court Judges replace the Orphans' Court.

In my years of experience, I have found Orphans' Court Judges are particularly cognizant of their unique position in the Maryland court system. The people appearing before them are suffering the loss of a loved one, overwhelmed with understanding the probate process, are often nervous about making their first appearance before a Judge or Court, and frequently appear pro se. I have found Orphans' Court Judges particularly understand this and can correctly rule on probate law while offering guidance and comfort that those before them may need. They have the time and patience a Circuit Court Judge, with a busy docket, may not be able to afford to a grieving constituent. Like you, they are elected from their jurisdiction and understand the people they serve.

Over the year 2021, a task force met to study the Orphans' Court and provide recommendations for improving it. When members of this legislature introduced legislation to create the task force, they hoped the committee would determine if it would be prudent to replace the Orphans' Court in every county with Circuit Court Judges sitting as the Orphans' Court. The intent being to create a more uniform probate court experience throughout Maryland. The members of this task force included representatives from the Legislature, Orphans' Court Judges, a Register of Wills, and an attorney chosen by the Maryland Bar Association. After their year-long study, they made five recommendations to improve the Orphans' Court. This Bill does not represent one of their findings.

There is often pressure to support legislation introduced by a Delegation when the Bill's subject is exclusively the Delegation's county. I believe this is referred to as a local courtesy. I am asking that you give more thought and consideration to this Bill than you would other Bills which may be subject to a local courtesy. After a year of study, this change is not one recommended by a committee created to study this subject, and, from my personal experience, it would be detrimental to the people of Howard County, though they may not realize it yet.

Sincerely yours,



Jacob W. Deaven

Attorney at Law

senate HB 868 opposition.pdf

Uploaded by: juliet fisher

Position: UNF

March 29, 2022

HB 868 - Opposition

To:

Chair – Senator William C. Smith, Jr.
Vice-Chair – Senator Jeffrey D. Waldstreich
Members of the Senate Judicial Proceedings Committee

We, William Evans, Juliet Fisher, and Arthur Frank are judges of the Orphans' Court for Baltimore County, but are submitting this testimony in our individual capacities.

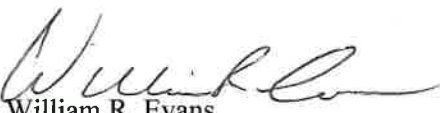
As Orphans' Court Judges who have served combined more than 30 years on this bench, we understand and value the important function that this court provides to the citizens of Maryland. Although we are in one of the most populous counties for Orphans' Courts in the state, we understand and appreciate the value that each distinct court adds to their jurisdiction. Each court offers citizens of their state access to a people friendly court that can provide not only assistance with the limited probate jurisdiction but can provide that assistance much quicker and more cost effectively than the Circuit Courts.

To allow the Circuit Court in Howard County to basically absorb the Orphans' Court would deprive that jurisdiction of the resource that is the Orphans' Court. In Montgomery County where this happened decades ago, the attorneys who practice there have consistently stated that the Circuit Court handling the Orphans' Court matters just simply does not work well. In fact, it should be noted that this legislation was not brought by the attorneys who practice in Howard County but by the Register in that jurisdiction who has had issues with specific judges in his jurisdiction. The current issues in Howard County between the Register and the court should NOT warrant an abolishment of the entire court.

All states have some version of a probate court in addition to other specialty courts that are created to address specific areas of the law similar to the Orphans' Courts in Maryland. To deprive the citizens of Howard County this valuable resource would be an injustice to the citizens of that jurisdiction.

In addition, last year a Task Force to Study Maryland's Orphans' Courts was created and held numerous meetings and crafted a very detailed report and recommendations to improve the courts themselves. It should be noted that there were ZERO recommendations as to abolishing any of the Orphans' Courts. If there was such a strong need for the Orphans' Court to be absorbed by the Circuit Court, this is an issue that should have been recommended by the esteemed panel on the Task Force that comprised members of the House and Senate, two Orphans' Court Judges, one Register, and an esteemed member of the Maryland Bar. The fact that they made no such recommendation should clarify that there is no need or desire by most citizens to have this result.

We ask this Committee to vote **UNFAVORABLY** because abolishing the Howard County Orphans' Court will deny the citizens of Howard County a less costly and more efficient system for resolving their probate disputes.



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Arthur Frank
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Towson, MD 21286
arthurfrank@comcast.net

WRITTEN Senate testimony12.pdf

Uploaded by: Leslie Smith Turner

Position: UNF

BILL NO. House Bill 868

TITLE: Circuit Court for Howard County – Judges Sitting as Orphans’ Court

COMMITTEE: Senate Judicial Proceedings

HEARING DATE: March 30, 2022

POSITION: REQUESTING UNFOVORABLE FINDING/OPPOSED

FROM: Leslie Smith Turner, M.A., J.D., Associate Judge, Howard County Orphans’ Court

Introduction:

Currently, I am one of three (3) sitting judges on the Howard County Orphans’ Court Bench. I am a former federal prosecutor, former state prosecutor, private litigator, former Chief Judge of the Howard County Orphans’ Court, Equal Opportunity Investor and Developmental Disabilities Administrator for the State of North Carolina. I am completing my third term, 12th year on the bench. Do not intend to run for reelection, but I am **OPPOSED** to the abolition of the Court and requesting an **UNFAVORBLE** finding by this committee. I earnestly believe this probate court or specialty court has been a significant asset to the Howard County community. Unfortunately, I am unable to attend the Senate Judiciary Hearing, I will be judging or hearing three (3) probate cases in Howard County, the last of which is scheduled for 2 p.m.

RATIONALE

The reasons for HB 868 have not been crystal clear or concise. One can only speculate. During prior General Assembly sessions, the sponsor has indicated a preference for all attorney Orphans’ Court judges as opposed to lay or non-attorney judges. Oddly, one does not have to be an attorney to serve on the US Supreme Court.

In this 2022 election year, there are four (4) candidates vying for a seat on the Howard County Orphans’ Court Bench. Three (3) of the four (4) candidates are practicing attorneys. The fourth is a former lay jurist on the Howard County Orphans’ Court. When elected this year to fill the three (3) court seats, if the Court is abolished, they will not be seated and the voters will be disenfranchised.

Granted, the Howard County Orphans’ Court is not statutorily required to have an all attorney bench, but over the last eleven (11) years, it has not been without an attorney any of those years. This term, it is comprised of two members of the bar and one lay jurist. Also wish to point out that a ruling requires the consensus of only two jurists or a majority. It functions like the US Supreme Court, the majority rules. The three (3) judges do not have to agree on everything. There are discussions and different perspectives can sometimes be very helpful. Frequently, there is total agreement or the judges are of the same accord, then there is a ruling from the bench. Having two judges agree in Howard County is not a problem. If the third disagrees, that judge does not sign the order

In 2021, HB 868's sponsor served on a task force created by the Maryland General Assembly to study the Orphans' Courts. The task force issued a voluminous extensive report with five (5) major recommendations. The abolition of the Howard County Orphans' Court was not one of them.

Note, HB 868 was not promoted by the attorneys who practice in Howard County, but by its Register of Wills who disagrees with its judges, for whom he is statutorily designated to serve as clerk. Statutorily, the Register is the Court's clerk and is to act at the Court's direction and not direct the Court. The Register has gone on social media to malign the Court. The Register has opined that the Court issues egregious decisions.

The Court's appeal record is stellar. Since 2010 and over 10,000 rulings, the Howard County Orphans' Court has been overturned 2 1/2 /(2.5) times. One of them was a change of venue, that neither party raised during the hearing and the court did not address it. On the de novo appeal the Circuit Court changed the venue. In the 1/2 instance, the Circuit Court did not approve/grant the Court's sanctions, but upheld its ruling. Recently, the Circuit Court overturned the Court's ruling that an attorney with consents could not take all or the maximum statutory commissions prior to the conclusion or closing of the case. The Orphans' Court's rationale was that all the coffers should not be depleted in the event of an unforeseen occurrence, such the need for successor personal representatives and /or attorneys. If so, there would be no monies to pay them. The Maryland Bar Association has introduced a bill to address this matter, indicating that, even with consents, part or all of the commissions are to be paid only after tasks have been completed until the conclusion of the case.

COST-EFFECTIVENESS

If the Howard County Orphans' Court is abolished, the savings with respect to the three (3) part time judges will be about \$55,00.00 annually. The cost to the State of replacing them with one Circuit Court Judge will probably be over three (3) times that amount, approximately \$170,000.00. If the county has to bear the cost of the Circuit Court Judge's staff, administrator, secretary, clerk, paralegal, etc., the county is likely to gain additional expenses.

If the Howard County Circuit Court were to follow the Montgomery County model and have the judges rotate as probate jurists, the public and litigants are likely to suffer comparatively speaking. In Montgomery County in which the Circuit Court sits as the Orphans' Court, the judges, 20 plus, rotate bi-weekly in that roll, which means probably that incomplete cases move from one judge to another. Subsequently, it appears as if the litigants do not have the same continuity and consistency as in Howard County.

The Howard Court Orphans' Court Bench seat in 2010 paid \$8,000 annually, that was never realized, because of tax deductions, social security, etc. Even though the jurists have hearings one day a week, Wednesday, as many as four (4) on that day. They have to prepare for them. Plus, they have had close to 30 matters a day, on Tuesday, not to mention: Conference meetings; Maryland Association of Office Court (MAJOC) meetings; and Joint meetings that has

statewide representatives from the Estates and Trusts Section of the Maryland State Bar Association, local bar associations, the State Comptroller's Office, the Maryland Attorney General's Office, different county registers of wills offices and different county Orphans' Courts. During my tenure, I have yet to see a Circuit Court jurist from Montgomery or Hartford County there. These are meetings where state and local issues are presented for possible resolution.

The fabulous new grandiose courthouse on Judicial Way was designed in collaboration with the Orphans' Court Judges over two terms. It has a bench created for three judges to sit en banc, chambers designed for three judges to deliberate, with two attorney-client conference rooms. Plus, it is strategically situated across the hall from the Office of the Register of Wills which is statutorily designated as the Orphans' Court's Clerk. The current physical placement of both, facilitates convenient access of litigants to the Register and the Court.

To abolish the Howard County Orphans' Court, "The Peoples' Court" per Senator Hough, who likes the Court, would be a mistake. To abolish the Orphans' Court is to eliminate a relatively inexpensive forum for pro se and poor litigants. It is a specialty court and such courts are prevalent at the Federal level.

SERVICE

The Orphans' Court has been serving the public since the 1700s. It has evolved with the times. It has served Howard County well for many decades. It is not an archaic institution, even though its name is. More than likely, most of the public in Maryland does not realize the Orphans' Court is the probate court, until they suffer a grievous loss, death, of a relative or friend and need the assistance of the Court. Many of the people served by the Court do not have attorneys representing them and its easier for them to maneuver on their own, even though attorneys are recommended. The atmosphere in the Orphans' Court is less intimidating and formal, than that of the Circuit Court. The Orphans' Court is less expensive than the Circuit Court. The Courts' appeal record demonstrates that the public is not dissatisfied with its service.

CONCLUSION

The issues in Howard County between the Register and the Court should **NOT** warrant an abolishment of the entire Court, much less a constitutional amendment for the State to consider. New elections may generate new Registers and new judges. Please render an **UNFAVORABLE** finding with respect to HB 868.

HB868 MaryParrish unfavorable.pdf

Uploaded by: Mary Parrish

Position: UNF

As a citizen of Howard County, I have serious concerns about HB 868. If the Orphans Court is dissolved and the work is taken on by the Circuit Court, the typical citizen going through probate will have to face problems not currently encountered at the Orphans Court.

Rather than facing a three-person panel made up of both attorneys and lay persons in comfortable surroundings, the citizen "customer" will appear before a far more intimidating Circuit Court. Many would feel compelled to hire an attorney to assist them. In the current arrangement, one may follow the probate process easily without paid legal help.

I also have concerns about the timeliness of the proposed arrangement. With the present Orphans Court, cases are handled swiftly and seldom appealed. If the proposed bill is approved, citizens will face a crowded docket. Probate cases will take longer and run up higher legal fees.

Please consider your constituents facing probate and issue an unfavorable Committee report.

HB 868_MAJOC_unf.pdf

Uploaded by: Melissa Bright

Position: UNF

HB 868 (crossover)

Melissa Pollitt Bright and the Maryland Association of Orphans' Court Judges (MAJOC)

Unfavorable

To the Senate Judicial Proceedings Committee

Senator Smith, Senator Waldstreicher, and distinguished Members of the Committee,

Greetings. I am the Chief Judge of the Orphans' Court for Wicomico County, but I submit this testimony in my individual capacity **and** on behalf of the Board of the Maryland Association of Orphans' Court Judges (MAJOC), of which I am president, but not on behalf of the Maryland Judiciary or any of its parts.

This bill to abolish the Orphans' Court of Howard County was presented to and approved by the House Judiciary Committee and then by the full House as a local bill. While we all understand and appreciate the courtesy generally extended to local bills, it is imperative that everyone understand this is NOT a local bill in either intent or actuality.

First, local bills arise out of local needs. There is no actual demonstrated need for this measure. The information presented on the record to the Howard County Delegation, given to them by trusted individuals, is a compilation of incomplete, often inaccurate, and thoroughly misrepresented "facts," including some outright untruths. Most alarmingly, some of the testimony to the Delegation and to the House Committee shows clearly that those testifying had not done their fact checking and were in actuality not as familiar with the Orphans' Court as they purported to be. That is particularly alarming, given that aside from the sponsor, the star witness in both situations, and likely here as well, is the Register of Wills for Howard County. His testimony referred to the Howard County court as a "lay" court, which it is not – two of the three judges are attorneys, a majority that can carry every decision made by the court. It is appalling to see that an elected official who is Constitutionally mandated to serve as Clerk of Court to the Orphans' Court is so unfamiliar with his court that he doesn't know his judges. The rest of his testimony, which appears to be the bulk of the "information" given to the sponsor, is filled with similar inaccuracies and some that are much worse. This begs the question of what is the purpose here and how much is it actually based on local needs...or even truth.

Further, the testimony of both the sponsor and the Register indicate clearly that this is the opening gambit in a larger plan that affects the entire state. The Register brings up the appeals records of many, but not all, of the Orphans' Courts, apparently trying to make a point about lay courts. He includes Howard and Anne Arundel counties in his list of "lay" courts, but both of them are composed of two-thirds attorneys. He omits from the data five jurisdictions, nearly 20% of the state-wide court. Is this because he makes an assumption that attorney judges' decisions are never appealed? Or because inclusion of that data would skew the picture he is trying to paint? He draws the rest of the state into the discussion by claiming that only 19 Maryland counties out of the entire nation use lay courts for probate. This is untrue. Lay judges serve probate courts in several states; Georgia alone has lay judges in 67 of its 159 probate courts. "Despite what the controversy of today might suggest, laymen chosen from the general community have presided over the administration of wills and estates for thousands of years." (The Debate Over Nonlawyer Probate Judges: A Historical Perspective, by James Findley, 2010, taken from law.ua.edu)

(please continue to next page)

By the way, did you know that 22 states have non-attorney judges in other courts, including criminal matters, and that a law degree is **not** required to serve as a Justice on the Supreme Court of the United States?

The Register also recites a list of bodies and committees that have discussed, over the last two centuries, getting rid of the orphans' court. He omits that though that discussion has taken place so often, **not once has it progressed beyond discussion.** The most recent study, completed by the Maryland Legislature's Task Force to Study the Orphans' Court (2021), did not even take up that issue as a discussion beyond one members' mention of it. That Task Force did make five recommendations to the Legislature, two of which are embodied in legislation currently making its way through this session. Abolishing the Orphans' Court, or any individual Orphans' Court, was NOT a recommendation of the Task Force.

Most importantly, in her testimony before the House Judiciary Committee – specifically at 1:47:50 in the recording – the sponsor indicates that her goal is Howard County this year and that next year she wants the legislature to “look into” the rest of the state. She co-sponsored and served on the Task Force that just “looked into” the Orphans' Court, but went to the Howard County Delegation without the support of the Task Force to request this bill.

This bill, and any bill that is proposed to become the law of the State of Maryland, especially when it requires a Constitutional Amendment, deserves careful study and scrutiny. This is much more than a local bill. Sadly, it is also a personal vendetta that one or more individuals are asking the Legislature to execute for them. Space and time do not allow for full rebuttal of the allegations brought to you, but MAJOC stands ready to supply accurate, documented, and verified truth about every issue that has been raised. Please set this bill aside for now and investigate the truth after the session concludes, when you will not be rushed. Please vote “Unfavorable.”

Thank you,
Melissa Pollitt Bright
melissapbright@gmail.com
443-735=2631

Written Testimony HB 868 Michele Loewenthal Unfavo

Uploaded by: Michele Loewenthal

Position: UNF

March 29, 2022

HB 868

Unfavorable

Chair – Senator William C. Smith, Jr.
Vice-Chair – Senator Jeffrey Waldstreicher
Members of the Senate Judicial Proceedings Committee

Our names are **Lewyn Scott Garrett, Michele E. Loewenthal and Charles Bernstein**. We are judges of the Orphans' Court for Baltimore City, but are submitting this testimony in our individual capacities.

The Orphans' Courts in Maryland are the Probate Courts and we preside over the administration of estates. We are a specialty court and we supervise the management of estates of people who have died, with or without a Will. Because we are a Court specific to probate, we are able to devote the time and attention to mastering the subject matter of estates and to provide families a more expedited process to the resolution of the distribution of the assets of their deceased family members. Many times, the surviving family members are poor or working class and desperately need access to the assets to which they are now entitled, particularly when the primary earner is the decedent. Getting these assets quickly to the appropriate heirs and legatees is a hallmark of current Orphans' Court jurisprudence.

Abolishing the Orphans' Court as a separate court and having the Circuit Court absorb this responsibility would be a mistake. Circuit Court judges are tasked with hearing civil, criminal and family law cases and would be burdened with the extra responsibility of having to hear probate matters. One of us, Charles Bernstein, served as a Judge on the Circuit Court for Baltimore City and now serves as a Judge on the Orphans' Court for Baltimore City. Based upon his experiences, he strongly believes that the Orphans' Court is much better positioned to handle this very specialized, esoteric area, than an already overworked, overburdened Circuit Court. Even though it appears that this bill is a local bill sponsored by a Howard County delegate, this bill's impact would far exceed Howard County. Relatives, creditors, personal representative and other interested person are located in multiple jurisdictions. This bill negatively affects the citizens of all the counties and Baltimore City.

Specialty Courts dealing with difficult, after arcane, esoteric matters are well recognized in both federal and state jurisprudence. Because of the specific knowledge and experience required, both sovereigns utilize specialized courts such as Tax Courts, Bankruptcy Courts, Courts of Contract Appeals, and, of course, the Orphans' Courts. These courts are correctly deemed necessary so that expertise, often beyond the experience of many, can be applied.

It will be more costly to hire additional Circuit Court judges and staff and would be less efficient for the processing of estate matters because it takes much longer to move matters through the Circuit Court than through the Orphans' Court. We encourage you to consult with the Conference of Circuit Court judges so that you can learn that the Circuit Court judges do not want to assume the role of Orphans' Court judge. In addition, we also pride ourselves that we are the People's Court. Many litigants appear without attorneys and don't understand the process. We have more available time to

listen to the individual litigants who appear before us, to answer some of their questions and to provide a more expedited ruling because this is the area of law in which we concentrate.

Legislation was passed last year creating a Task Force to study how to improve the Orphans' Court. None of the recommendations included abolishing the Howard County Orphans' court or any other Orphans' Court. This HB bill 868 was submitted at the request of the Register of Wills for Howard County who has personal issues with judges on his court. This is not a reason to strip the citizens of Maryland of the important resource of an Orphans' Court, a court devoted entirely to the efficient administration of estates.

We ask this Committee to vote UNFAVORABLY because abolishing the Howard County Orphans' Court will deny the citizens of Howard County a less costly and more efficient system for resolving their probate disputes.


Lewyn Scott Garrett



Michele E. Loewenthal



Charles Bernstein

HB 868 UnFv Nicole Miller.pdf

Uploaded by: Nicole Miller

Position: UNF

HB 868 UnFv Nicole Miller

Good Afternoon distinguished members of the Committee,

As a former (and possibly future) Judge of the Orphans' Court in Howard County, I want to share my perspective. The Orphans Court is an asset to each county that it exists in. It gives the citizens of the community a less formal court experience, which is helpful as the people are grieving and in need of speed and compassion. Orphans' Court is more welcoming, less intimidating, faster, and it is a part time position which makes it cost effective.

This court is of limited jurisdiction, specifically about probate and the Judges get specialized and ongoing education on these matters. It is better to have this Court than to add more work to the Circuit Court Judges (and their Clerks Office), who already have a big case load and little to no knowledge about probate.

If anyone strongly disagrees with a decision made by the Orphans' Court, they are able to file an appeal. During my four years on the Court, there were very few appeals and in each case our Orphans' Court decision was upheld.

This court was designed to be a panel of the peers of those it serves. They are individuals from the community and merge their different perspectives and experiences for the good of those they serve. The Judges are elected by the people and are accountable to the people. Please don't take this resource away from the people of Howard County.