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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.

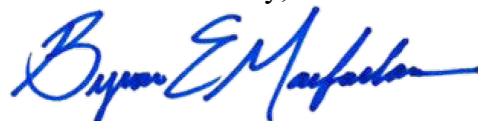
For additional background and statistics, enclosed please find the following:

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.

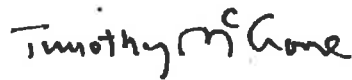
THEREFORE, upon the above-recited findings of facts and conclusions of law, it is this

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.