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To: Maryland Senate – Judicial Proceedings Committee
From: MSBA Estate & Trust Law Section
Date: January 23, 2025
Subject: **SB 22** – Task Force to Study Fiduciary Adjudication in Maryland
Position: **Support with Amendments**

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **Supports Senate Bill 22 – Task Force to Study Fiduciary Adjudication in Maryland**, and urges a **favorable** report, **with amendments** as discussed below.

In 1777, Maryland established Orphans’ Courts in each of its jurisdictions. Those courts, which for the most part took their current form in the 1860s, continue their original purpose of adjudicating probate matters and, in some instances, overseeing the guardianship of minors. In the ensuing centuries, however, probate law has become much more complex, trusts and other non-probate vehicles of wealth transmission have become increasingly prevalent, and the methods used for selecting Orphans’ Court judges in Maryland’s jurisdictions have varied significantly. As a result, Marylanders involved in fiduciary litigation find themselves in a situation where multiple courts may have jurisdiction over elements of the same case, where the background and qualifications of the judge or judges hearing their case vary depending on location, and where inefficiencies in the system may require them to try the same case twice.

Three years ago, The Task Force to Study the Maryland Orphans’ Courts addressed some of these concerns and inefficiencies. Shortly after the Report’s publication, the Estate and Trust Law Section Council established a work group to review and study its recommendations. Some of those recommendations – such as easing restrictions on the outside practice of non-fiduciary law by, and the nonpartisan election of, Orphans’ Court judges, we promptly supported. However, other recommendations – especially that for the creation of a cross-jurisdictional court – engendered a review of Maryland fiduciary adjudication as a whole. In the course of that review, the work group’s members – who practice all aspects of fiduciary law throughout the State – became convinced that minor tweaks to the Orphans’ Court (by statute, the sole consideration of the prior task force) were insufficient to address issues of uniformity, equal protection, and efficiency in Maryland’s fiduciary adjudication system.

SB 22 creates a new task force designed to build and expand on the work of its predecessor. First, the task force is directed to examine all aspects of fiduciary adjudication in Maryland, including

the selection and training of judges, jurisdiction over various types of fiduciary matters, the treatment of contested and uncontested matters, and how inefficiencies and inequalities in the current structure can be addressed while preserving or enhancing those aspects of it that continue to serve Marylanders well. The bill requires appointment of task force members representing a diverse array of perspectives among groups involved in Maryland fiduciary matters. In discussions with other groups interested in this matter, we have developed the attached amendments designed to treat all groups equally, enhance the task force's geographic diversity, and protect confidential information. We believe those amendments will foster the bill's goals of creating a task force that will be able to offer consensus solutions that will provide Marylanders with a fiduciary adjudication system that provides efficient and equal access to justice across the State.

For the reasons stated above, the Estate and Trust Law Section of the MSBA **supports Senate Bill 22 – Task Force to Study Fiduciary Adjudication in Maryland**, and urges a **favorable** report, **with amendments** as attached.

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SENATE BILL 22

N2, D1

(PRE-FILED)

5lr1283
CF 5lr1552

By: **Senator West**

Requested: October 19, 2024

Introduced and read first time: January 8, 2025

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Task Force to Study Fiduciary Adjudication in Maryland**

3 FOR the purpose of establishing the Task Force to Study Fiduciary Adjudication in
4 Maryland to examine and analyze the efficiency, uniformity, and quality of fiduciary
5 adjudication in Maryland and make recommendations; requiring the orphans'
6 courts, circuit courts, registers of wills, and Administrative Office of the Courts to
7 comply with certain requests of the Task Force; and generally relating to the Task
8 Force to Study Fiduciary Adjudication in Maryland.

9 Preamble

10 WHEREAS, In 2022, the Task Force to Study the Maryland Orphans' Courts issued
11 a report identifying certain inefficiencies and other problems with the selection of judges
12 for, and adjudication of matters before, the orphans' courts; and

13 WHEREAS, More recent developments have further illustrated those problems,
14 including the lack of uniformity in probate adjudication across Maryland's jurisdictions;
15 and

16 WHEREAS, The adjudication of other fiduciary matters, including those relating to
17 trusts and adult guardianships, involve overlapping issues with probate matters and can
18 be more efficient; and

19 WHEREAS, Maryland created the orphans' courts in 1777 in order to assist families
20 with the transmission of wealth on a member's death; and

21 WHEREAS, In the ensuing 248 years, methods for holding and transmitting wealth
22 have changed significantly, and probate and fiduciary legal issues have become
23 substantially more complex; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, The General Assembly recognizes the value that a specialized court
2 brings to families in times of transition; and

3 WHEREAS, The General Assembly also recognizes the need for further changes to
4 fiduciary adjudication in Maryland in order to provide a uniform and efficient system for
5 its citizens; now, therefore,

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
7 That:

8 (a) There is a Task Force to Study Fiduciary Adjudication in Maryland.

9 (b) The Task Force consists of the following members:

10 (1) two members of the Senate of Maryland, appointed by the President of
11 the Senate;

12 (2) two members of the House of Delegates, appointed by the Speaker of
13 the House;

14 (3) two members who are judges of an orphans' court, at least one of whom
15 serves in a jurisdiction where orphans' court judges are required to be attorneys, appointed
16 by the chair of the Conference of Orphans' Court Judges;

17 (4) one member who is a judge of the circuit court in a jurisdiction where
18 the circuit court sits as the orphans' court, appointed by the Chief Justice of the Supreme
19 Court of Maryland;

20 (5) two members of the Maryland State Bar Association, designated by the **chair**
21 **of the** Estate and Trust Law Section Council, **who between them shall include** a fiduciary
litigator **and a resident of a jurisdiction with a population of less than 250,000;**

22 (6) **two Registers of Wills designated by** the president of the Maryland
Register of Wills Association; and

23 (7) one member with expertise in budgeting and personnel matters,
24 appointed by the Governor.

25 (c) The Governor shall designate the chair of the Task Force from among the
26 members appointed by the President of the Senate or the Speaker of the House.

27 (d) The Administrative Office of the Courts shall provide staff for the Task Force.

28 (e) A member of the Task Force:

29 (1) may not receive compensation as a member of the Task Force; but

30 (2) is entitled to reimbursement for expenses under the Standard State
31 Travel Regulations, as provided in the State budget.

1 (f) The Task Force shall:

2 (1) examine the qualifications, training, and methods of selection of judges
3 hearing probate and other fiduciary matters in Maryland;

4 (2) examine the jurisdictions of the orphans' courts and circuit courts with
5 respect to fiduciary matters;

6 (3) analyze the efficiency of the procedures for adjudicating contested and
7 uncontested matters in the orphans' courts and circuit courts;

8 (4) analyze the effect of the different qualifications of orphans' court judges
9 and related litigation procedures on the uniform application of justice in Maryland;

10 (5) analyze and compare the laws and practices of other states relating to
11 the adjudication of fiduciary matters, including the selection, qualification, and training of
12 judges hearing those matters;

13 (6) seek guidance from appropriate witnesses with experience or expertise
14 in the area of fiduciary adjudication;

15 (7) examine any other research, analysis, or guidance related to the best
16 practices for adjudicating fiduciary matters;

17 (8) offer one or more opportunities for members of the public and other
18 interested parties to give their opinions on the subjects considered by the Task Force; and

19 (9) make recommendations to improve efficiency, uniformity, and quality
20 of fiduciary adjudication in Maryland.

21 (g) The orphans' courts, circuit courts, registers of wills, and Administrative
22 Office of the Courts shall comply with all reasonable requests by the Task Force for
23 information and data the Task Force considers necessary for its work; **provided that the
disclosure of such information or data does not violate any confidentiality or privilege.**

24 (h) On or before January 1, 2026, the Task Force shall report its findings and
25 recommendations to the Governor and, in accordance with § 2-1257 of the State
26 Government Article, the General Assembly.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
28 1, 2025. It shall remain effective for a period of 1 year and, at the end of June 30, 2026, this
29 Act, with no further action required by the General Assembly, shall be abrogated and of no
30 further force and effect.