

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 116

(Senator West)

Judicial Proceedings

Judiciary

Orphans' Court Judges - Restriction on Practicing Law

This bill modifies an existing prohibition (that does not apply equally in all counties and Baltimore City) against an orphans' court judge practicing law during a term of office. The bill narrows the prohibition and makes it equally applicable to all counties and Baltimore City.

Fiscal Summary

State Effect: None.

Local Effect: The bill does not directly affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill modifies a prohibition against an orphans' court judge acting as an attorney at law in any civil or criminal matter during a term of office, which under current law is subject to exceptions applicable in certain counties and Baltimore City. The bill repeals the exceptions and establishes a narrower prohibition applicable to all counties and Baltimore City that prohibits an orphans' court judge from acting as an attorney at law in a civil or criminal matter during a term of office if the matter is (1) within the jurisdiction of the orphans' court in any county or Baltimore City and related to the administration of an estate or a guardianship of a minor or (2) related to the preparation of an estate plan or estate planning documents that might come within the jurisdiction of the court in any county or Baltimore City following the death of any individual.

Current Law: Under the Maryland Constitution, each county and Baltimore City elects, for a term of four years, three judges to the orphans' court of their respective jurisdictions, with the exception of Harford, Howard, and Montgomery counties, where a circuit court judge sits as the orphans' court. The orphans' courts are the State's probate courts. The courts supervise the handling of estates and also have certain jurisdiction over the guardianship of minors and their property.

Under State law, with exceptions in certain counties and Baltimore City, an orphans' court judge may not act as an attorney at law in a civil or criminal matter during a term of office. The prohibition does not apply:

- in Harford and Montgomery counties;
- in Baltimore City, to an orphans' court judge while practicing law before any court of the State except an orphans' court; or
- in Baltimore, Calvert, Howard, and Prince George's counties, to an orphans' court judge while practicing law in connection with a case that is (1) outside the jurisdiction of the orphans' court and (2) unrelated to the administration of an estate or guardianship.

Generally, the Maryland Code of Judicial Conduct (Judicial Code) prohibits a judge from practicing law; however, a part-time judge of an orphans' court who is an attorney may practice law, to the extent expressly allowed by law and subject to other applicable provisions of the Judicial Code, provided that (1) the judge must not use the judge's judicial office to further the judge's success in the practice of law and (2) the judge must not appear as an attorney in the court in which the judge serves.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 210 and HB 1240 of 2023.

Designated Cross File: HB 528 (Delegate Buckel) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - January 10, 2024
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