

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 416

(Senator Forehand)

Judicial Proceedings

Orphans' Court - Minor - Guardianship of the Person

This bill repeals a limitation on the authority of an orphans' court to exercise jurisdiction over guardianship of the person of a minor to instances where the presiding judge of the court is a member of the bar. The bill, however, instead limits that authority to uncontested matters. The bill applies only prospectively.

Fiscal Summary

State Effect: None.

Local Effect: The bill is not expected to materially affect local government finances.

Small Business Effect: None.

Analysis

Current Law: Chapters 748 and 749 of 2009 established that if the presiding judge of the orphans' court is a member of the bar, an orphans' court may exercise jurisdiction over guardianship of the person of a minor, regardless of whether the minor has property, may inherit property, or is destitute. An orphans' court that exercises, or is requested to exercise, such jurisdiction may transfer the matter to the circuit court, on a finding that the best interests of the child require utilization of the equitable powers of the circuit court, and may waive the costs, if any, of the transfer.

The counties and Baltimore City each elect three judges to the orphans' court of their respective jurisdictions, with the exception of Montgomery and Harford counties where a circuit court judge sits as the orphans' court. The judges must be citizens of the State, and residents, for the preceding 12 months, in the jurisdiction in which they may be elected. Pursuant to Chapter 481 of 2010 (adopted by the voters of the State and

Baltimore City at the November 2010 general election), judges of the Orphans' Court for Baltimore City also must be admitted to practice law in the State and be members in good standing of the Maryland Bar. (See Maryland Constitution, Art. IV, § 40.) A similar requirement applicable to orphans' court judges in Prince George's County has been proposed by the General Assembly (Chapter 394 of 2011) and will be on the November 2012 ballot for voter approval as a constitutional amendment. The Court of Appeals has held (prior to the adoption of Chapter 481) that orphans' court judges are not required to be members of the bar. (See *Kadan, et al. v. Board of Supervisors of Elections of Baltimore County, et al.*, 273 Md. 406 (1974).)

Background: The Attorney General, in a May 2009 letter to the Governor, expressed concern that SB 905 and HB 634 of 2009 (enacted as Chapters 748 and 749) might be determined to unconstitutionally modify the qualifications for judges of the orphans' court, but found no clear precedential authority requiring a conclusion that the bill was clearly unconstitutional. The Attorney General was concerned that the bills "in effect, add[ed] a new qualification requirement ... before an orphan's court may exercise its full statutory jurisdiction." (Advice of counsel to Governor Martin O'Malley, May 18, 2009.)

The Estate and Trust Law Section of the Maryland State Bar Association has also indicated that the authority established under Chapter 748 and 749 of 2009 potentially provides unequal access to the courts. In jurisdictions where no sitting judge of the orphans' court is a member of the bar, the alternative is circuit court, where filing fees are higher and longer delays can occur. According to the Estate and Trust Law Section, 9 of the 22 jurisdictions that have sitting orphans' court judges have judges who are attorneys.

Additional Information

Prior Introductions: SB 853 of 2011, a similar bill, received a hearing in the Senate Judicial Proceedings Committee but no further action was taken. HB 769 of 2010 passed the House and received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: HB 823 (Delegate Waldstreicher) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland State Bar Association (Estate and Trust Law Section), Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2012
mc/kdm

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510