
To: Members of Senate Judicial Proceedings Committee
From: MSBA Estate & Trust Law Section
Date: January 23, 2020
Subject: **SB0149** – Orphans’ Courts – Appeals Procedures
Position: **Support**

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports Senate Bill 0149 – Orphans’ Courts – Appeals Procedures.**

Upon an appeal from the orphans’ court to a circuit court, the record is required to be transmitted by the appropriate register of wills within a specific amount of time. Maryland Rule 7-505(e) requires the register to transmit the record to the circuit court within 60 days after the date the first notice of appeal is filed. Section 12-502(b)(1) of the Courts and Judicial Proceedings Article of the Maryland Code provides that an appeal can be taken within 30 days of the date of final judgment, and Section 12-502(b)(2) provides further that, within 30 days thereafter, the register is required to transmit the record to the circuit court. The difference between the rule and the statute has created a procedural inconsistency as to the timing of the transmittal of the record by the register to the circuit court. As an example to illustrate the inconsistency, if an order is issued on September 1st and an appeal is taken from that order on September 5th, Section 12-502(b)(2) requires that the record be transmitted by October 5th, but the Rule would require that it be transmitted by November 4th.

It is our understanding from various orphans’ court judges and registers throughout the state that, because this is a procedural issue, the registers follow Maryland Rule 7-505(e) and not Section 12-502(b)(2).

This inconsistency does not exist for appeals from an orphans’ court to the Court of Special Appeals. There is no similar transmittal language in Section 12-505 of the Courts and Judicial Proceedings Article of the Maryland Code, and Maryland Rule 8-412(a)(3) requires the record to be transmitted from the orphans’ court to the Court of Special Appeals within 60 days after the date the first notice of appeal is filed.

SB0149 revises Section 12-502(b)(1) to remove the reference to “an order for appeal” and replace it with “notice of appeal” to be consistent with the actual document being filed as well as to provide consistency with the language found in Maryland Rule 7-505(e). SB0149 also revises Section 12-502(b)(2) to remove “30 days thereafter” and replace that language with “60 days after

the filing of a notice of appeal under Paragraph (1) of this subsection.” These revisions are consistent with the Rule and general practice of the registers and courts.

For the reasons stated above, the Estate and Trust Law Section of the MSBA **supports SB0149 and urges a favorable committee report.**

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