

P. O. Box 11
Allen, Maryland 21810
February 12th, 2020

Delegate Luke Clippinger, Chair
House Judiciary Committee

Re: HB339; Task Force to Study the Orphans' Court – Opposition

Dear Chairman Clippinger and Members of the Committee,

First, it is my duty and obligation to state at the outset that I submit this testimony in my individual capacity and not on behalf of the Maryland Judiciary or any of its parts. I oppose the creation of a task force for the purpose stated in this bill.

The subject of the proposed study is Maryland's Orphans' Court. What is that court, anyway? You have heard, or will hear, from my esteemed colleagues and others, about the history of the court, its jurisdiction, and how it functions. But what is the "why" of this little-understood court?

You and I are going to die. All of us will, someday, die. We will not, at that point, be any longer able to call the shots about what we want done with what belongs to us. Whether it's Grandma's china, Aunt Mattie's stock in a western gold mine, that family heirloom that the cousins all want, the money we have so carefully saved, or the business we have spent our entire adult lives building and nurturing, it will belong to someone else. And there will be nothing we can do about it. Who will speak for us? Who will assure that our families have what should go to them, and settle their differences in regard to what we leave them? Who will be sure our bills are paid so that our good name is unsullied when we are in our graves? Who will watch over our children's property until they are old enough to take care of it themselves?

The Orphans' Court will.

The Orphans' Court has a sacred duty to uphold and enforce the written last wishes of those who have passed away, to protect the interests of their heirs, to see to it that their creditors are paid, to safeguard the inheritances of minors, and to settle estate-related disputes. This sacred duty is so fundamental in our state that the performance of it was established under the Prerogative Court in colonial times, and was assigned to the Orphans' Court in the midst of the American Revolution.

But why give this jurisdiction to this odd duck of a court, so different in formation from the other courts?

The Orphans' Court is the only court in our judiciary with which most of our citizens will have dealings at some point in their lives. It is the only court in our judiciary where the parties are not necessarily adversaries, although sometimes they are. It is the court that does not decide guilt or innocence, but does determine whether or not duties and obligations have been correctly fulfilled and who will be responsible for decedents' property and minors' inheritances.

The Orphans' Court deals with Maryland's citizens during some of the most difficult times of their lives. People who have dealings with this court are often grieving, stressed, feeling lost and

confused, trying to do the best they can to settle the affairs of a loved one or a friend who placed trust in them. This is a situation that calls for a different approach from a criminal trial or civil litigation. This requires, sometimes, that people be allowed to be heard with a little less formality so that they can move through their grief.

The founders wisely determined that local people with local ties would be best able to assist families in these situations. They understood the profound differences between the regions of our state, which has been called "America in Miniature." So they didn't enfold the functions of this court into the state courts, but assigned these responsibilities to the local jurisdictions, making the judges employees of the counties and Baltimore City rather than of the state. They made them accountable to the people they serve by having them elected on a regular basis. They ensured that these family matters would be overseen by people who might know the families and would certainly know the local culture. They would understand the people before them. Even more, the people who entrust them with this sacred duty are more likely to know everything about the judges, for we all know how effective a county grapevine can be!

This is **why** we have an Orphans' Court. The judges in this court of very narrow jurisdiction are not all required to be lawyers, a distinction they share with the Supreme Court of the United States. (And which can also serve to remove the foxes from the henhouse in that they have jurisdiction over the fees that attorneys may charge for estate work.) They are required to take initial and continued training through the Judicial Institute, the same body that oversees continuing education for other judges in Maryland. An overview of salaries will show that they are not in it for the money. Most of those who seek this position have a love for the work and for the people they serve. And if they are frequently retired from a full time career, this simply means that they have life under their belts, experience on which to draw, and time to give their citizens the full attention they deserve.

Orphans' Courts must enforce the laws of the State of Maryland; there are no local rules. But the judges are local employees, serving local needs on local schedules, with strictly local funding, which means there are some differences. A study of the Orphans' Court in Maryland is therefore of necessity a study of each individual court, all 24 of them, because even in Montgomery and Harford Counties where the Orphans' Courts are served by Circuit Court judges, while sitting as the Orphans' Court they have only the authority specifically granted to that court. Any changes should originate on a local basis with those jurisdictions that will have to implement and fund them.

On a statewide level, it ain't broke so it don't need fixin'. What fixes something in a metropolitan area often wreaks havoc and hardship in a rural area...and vice versa. Please do not spend money and time on a study that cannot adequately address the breadth of the system it is designed to study. I urge you to abandon this proposal as unnecessary - the matter can be safely left to the discretion of the local jurisdictions to effect change if and where needed.

Respectfully submitted,

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