

BILL NO. HB 868
TITLE: Circuit Court for Howard County – Judges Sitting as Orphans’ Court
COMMITTEE: Senate Judicial Proceedings
HEARING DATE: March 30, 2022
POSITION: Unfavorable
FROM: Anne L, Dodd
Chief Judge, Howard County Orphans’ Court

Senator Smith and Members of the Committee, this testimony is sent on my own behalf and not that of the judiciary. Unfortunately I am faced with using this opportunity to rebut testimony presented by the Register of Wills for Howard County to the House Judiciary Committee, I will not comment on the history he provided as that has no bearing on the present day.

WRITTEN TESTIMONY

The Register of Wills presented written testimony to the House Judiciary Committee that included a chart comparing the Howard County Orphans’ Court with Harford County. The chart is misleading.

- The number of orders issued is related to the number of cases, some with multiple pleadings, on a docket. The register prepares the docket. To show that Harford County issues more orders is to show only that their register included more pleadings on their dockets. It does not show a lack of work by the Court.
- I cannot replicate the average time from filing to action. In almost all cases orders are drafted by the Chief Judge immediately after the conclusion of a hearing. It is rare for an order to be held even one day. Statutorily, all orders are to be prepared by the Register acting as our clerk. The Register has chosen never to be present at court hearings so he is not in the position to prepare them.
- The comparison of how often the court is in session is misleading. While we have scheduled hearings one day a week, we consistently work more than that. In addition to hearings, the Court has a full docket of matters 52 weeks a year. As Chief Judge I am in contact with the Register’s staff several times a week and the judges are always available when needed. To say we are not is simply untrue and does not accurately reflect the Court’s history of diligence.
- The number of Orders reversed on appeal is incorrect. He uses fiscal instead of calendar years.
 - In FY 19 there were 0 appeals filed.
 - In FY 20 there were 4 appeals filed by 2 estates. One was dismissed and 3 were withdrawn.
 - In FY 21 there were 6 appeals filed.
 - One resulted in a consent order that essentially affirmed the Orphans’ Court Order; another was found not to be proper venue, an issue not raised in the Orphans’ Court; the third was dismissed; the fourth was reversed; 2 are pending. One is being held *sub curia* by the Circuit Court and the other will be withdrawn.

ORAL TESTIMONY

The Register also submitted oral testimony to the House Judiciary Committee that was misleading.

- "Unnecessary delays" – The Orphans' Court acts immediately on most petitions. Those required to be held for response are done so to follow the law. The Court has no control over the time it takes the Register's office to add pleadings to dockets. It is untrue to say we delay unnecessarily. In almost all cases, orders or rulings are drafted by the Chief Judge and signed by at least two judges at the conclusion of hearings.
- The training judges receive is substantial and comprised of both mandatory and elective classes. The Register is not aware of the number of classes taken both in person and virtually by judges.
- "Matters not sent to mediation" – The Court has ordered mediation one time and suggested it on more than one occasion. MD Rule 17-602 states that the Orphans' Court may order parties to attend fee-for-service mediation but that **any party may choose not to participate**. The Court has not found any cost free mediation services. While appearing before us is essentially free, the hourly cost for mediation is not. Pro se litigants are less likely to want to pay for mediation and those with attorneys would have to pay both attorney fees and mediation costs.
- "Howard County Orphans' Court fails to live up to the state judiciary's motto: Efficient, Fair, Effective Justice for All" - As the Register is our clerk per E & T 2-208 (e) and is charged with, "making out and issuing every summons, process, or order of the court and, in every respect, act under the control and direction of the court as the clerk of a court of law acts under the direction of the court of law", he is responsible for ensuring the efficiency of the court. Instead of following the law and acting under the control and direction of the court, he attempts to control and direct the court. **Allowing the Register to decide how the Court should rule would be abrogating its responsibility and according to MD Rule 18-102.9 (a) (4) that is against the Maryland Code of Judicial Conduct.**
- The number of appeals reported by the Register from our court is completely out of context. Without numbers of rulings and outcomes, the picture is distorted which makes it unreliable. Over almost 12 years, the length of time Judge Turner and I have been on the bench, the Court has been overturned on the merits 1 ½ times and one time on an issue heard *de novo* that was not raised in the Orphans' Court. The Court has a stellar appeal record as you can see below.

| YEAR | NO. RULINGS | NO. APPEALS | DISPOSITION | PENDING APPEALS |
|------|-------------|-------------|---|-----------------|
| 2011 | 674 | 7 | 5-dismissed 1-settled 1-denied by CC for failure to appear | 0 |
| 2012 | 881 | 7 | 1-OC affirmed 2 dismissed 1-settled 3-withdrawn | 0 |
| 2013 | 924 | 3 | 1-OC affirmed 1-dismissed 1-settled | 0 |
| 2014 | 962 | 3 | 1-OC affirmed 2-dismissed | 0 |
| 2015 | 1070 | 4 | 1-appeal denied by CC 2-dismissed 1-summary judgment | 0 |
| 2016 | 801 | 6 | 2-OC affirmed 3 dismissed 1-withdrawn | 0 |
| 2017 | 1095 | 1 | 1-withdrawn | 0 |
| 2018 | 997 | 1 | ½ OC affirmed ½ OC reversed | 0 |
| 2019 | 1161 | 4 | 1-dismissed 3-withdrawn | 0 |
| 2020 | 844 | 0 | | 0 |

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|------|------|---|--|--|
| 2021 | 1079 | 7 | 1-consent order essentially affirming OC 2-dismissed 1-reversed 1-reversed but issue was not heard in OC due to de novo hearing | 2 1 being held <i>sub curia</i> by CC and 1 to be withdrawn |
|------|------|---|--|--|

MISLEADING AND DENEGRATING REMARKS

As explained above, the Register of Wills is Clerk of the Orphans’ Court and by law is to act under the control and direction of the Court. It is unusual for a clerk to take to social media to make a case for abolishing the court he serves, but the Register has done just that. He denigrated the Court in his remarks to the Howard County Delegation, misleading the Delegation immediately prior to their vote to pursue this bill and has continued to malign the Court on social media. Due to meeting protocol, I was not allowed to rebut his allegations.

SOCIAL MEDIA

On his social media posts, The Register called the House Judiciary Committee vote on HB 868 a “victory for the truth and the public interest over lies and fear mongering”. The judges have not taken to social media to remark one way or another on this or any other bill. He has posted that, “the Orphans’ Court in Howard County is widely viewed as the worst in the state”. He is the one promulgating that view. And, he has accused the Court of not being compassionate or fair. This after sending me an email a little more than a year ago telling me that he had the “greatest respect “for me.

The Register characterized the Senate passage of SB 468 as ensuring, “that orphans’ courts will not be able to interfere with the payment of attorney’s fees and personal representative’s commissions when families agreed to those fees and they’re at or below a certain amount”. In actuality, SB 468 was drafted specifically in response to judges’ concerns about an interpretation of E & T § 7-604 allowing attorneys and personal representatives to take their fees up- front. I applaud your unanimous passage of SB 468. Going forward, attorneys and personal representatives won’t be able to take their fees early in the estate process and before they are earned.

CONCLUSION

The Orphans’ Court offers a venue that is less intimidating, cheaper and quicker than the Circuit Court. To deprive citizens of this benefit due to the Register’s pique is to take a sledge hammer to something that boils down to an issue of control. I urge an unfavorable report.