

BILL NO. House Bill 868

TITLE: Circuit Court for Howard County – Judges Sitting as Orphans’ Court

COMMITTEE: Senate Judicial Proceedings

HEARING DATE: March 30, 2022

POSITION: REQUESTING UNFOVORABLE FINDING/OPPOSED

FROM: Leslie Smith Turner, M.A., J.D., Associate Judge, Howard County Orphans’ Court

Introduction:

Currently, I am one of three (3) sitting judges on the Howard County Orphans’ Court Bench. I am a former federal prosecutor, former state prosecutor, private litigator, former Chief Judge of the Howard County Orphans’ Court, Equal Opportunity Investor and Developmental Disabilities Administrator for the State of North Carolina. I am completing my third term, 12th year on the bench. Do not intend to run for reelection, but I am **OPPOSED** to the abolition of the Court and requesting an **UNFAVORBLE** finding by this committee. I earnestly believe this probate court or specialty court has been a significant asset to the Howard County community. Unfortunately, I am unable to attend the Senate Judiciary Hearing, I will be judging or hearing three (3) probate cases in Howard County, the last of which is scheduled for 2 p.m.

RATIONALE

The reasons for HB 868 have not been crystal clear or concise. One can only speculate. During prior General Assembly sessions, the sponsor has indicated a preference for all attorney Orphans’ Court judges as opposed to lay or non-attorney judges. Oddly, one does not have to be an attorney to serve on the US Supreme Court.

In this 2022 election year, there are four (4) candidates vying for a seat on the Howard County Orphans’ Court Bench. Three (3) of the four (4) candidates are practicing attorneys. The fourth is a former lay jurist on the Howard County Orphans’ Court. When elected this year to fill the three (3) court seats, if the Court is abolished, they will not be seated and the voters will be disenfranchised.

Granted, the Howard County Orphans’ Court is not statutorily required to have an all attorney bench, but over the last eleven (11) years, it has not been without an attorney any of those years. This term, it is comprised of two members of the bar and one lay jurist. Also wish to point out that a ruling requires the consensus of only two jurists or a majority. It functions like the US Supreme Court, the majority rules. The three (3) judges do not have to agree on everything. There are discussions and different perspectives can sometimes be very helpful. Frequently, there is total agreement or the judges are of the same accord, then there is a ruling from the bench. Having two judges agree in Howard County is not a problem. If the third disagrees, that judge does not sign the order

In 2021, HB 868's sponsor served on a task force created by the Maryland General Assembly to study the Orphans' Courts. The task force issued a voluminous extensive report with five (5) major recommendations. The abolition of the Howard County Orphans' Court was not one of them.

Note, HB 868 was not promoted by the attorneys who practice in Howard County, but by its Register of Wills who disagrees with its judges, for whom he is statutorily designated to serve as clerk. Statutorily, the Register is the Court's clerk and is to act at the Court's direction and not direct the Court. The Register has gone on social media to malign the Court. The Register has opined that the Court issues egregious decisions.

The Court's appeal record is stellar. Since 2010 and over 10,000 rulings, the Howard County Orphans' Court has been overturned 2 1/2 /(2.5) times. One of them was a change of venue, that neither party raised during the hearing and the court did not address it. On the de novo appeal the Circuit Court changed the venue. In the 1/2 instance, the Circuit Court did not approve/grant the Court's sanctions, but upheld its ruling. Recently, the Circuit Court overturned the Court's ruling that an attorney with consents could not take all or the maximum statutory commissions prior to the conclusion or closing of the case. The Orphans' Court's rationale was that all the coffers should not be depleted in the event of an unforeseen occurrence, such the need for successor personal representatives and /or attorneys. If so, there would be no monies to pay them. The Maryland Bar Association has introduced a bill to address this matter, indicating that, even with consents, part or all of the commissions are to be paid only after tasks have been completed until the conclusion of the case.

COST-EFFECTIVENESS

If the Howard County Orphans' Court is abolished, the savings with respect to the three (3) part time judges will be about \$55,00.00 annually. The cost to the State of replacing them with one Circuit Court Judge will probably be over three (3) times that amount, approximately \$170,000.00. If the county has to bear the cost of the Circuit Court Judge's staff, administrator, secretary, clerk, paralegal, etc., the county is likely to gain additional expenses.

If the Howard County Circuit Court were to follow the Montgomery County model and have the judges rotate as probate jurists, the public and litigants are likely to suffer comparatively speaking. In Montgomery County in which the Circuit Court sits as the Orphans' Court, the judges, 20 plus, rotate bi-weekly in that roll, which means probably that incomplete cases move from one judge to another. Subsequently, it appears as if the litigants do not have the same continuity and consistency as in Howard County.

The Howard Court Orphans' Court Bench seat in 2010 paid \$8,000 annually, that was never realized, because of tax deductions, social security, etc. Even though the jurists have hearings one day a week, Wednesday, as many as four (4) on that day. They have to prepare for them. Plus, they have had close to 30 matters a day, on Tuesday, not to mention: Conference meetings; Maryland Association of Office Court (MAJOC) meetings; and Joint meetings that has

statewide representatives from the Estates and Trusts Section of the Maryland State Bar Association, local bar associations, the State Comptroller's Office, the Maryland Attorney General's Office, different county registers of wills offices and different county Orphans' Courts. During my tenure, I have yet to see a Circuit Court jurist from Montgomery or Hartford County there. These are meetings where state and local issues are presented for possible resolution.

The fabulous new grandiose courthouse on Judicial Way was designed in collaboration with the Orphans' Court Judges over two terms. It has a bench created for three judges to sit en banc, chambers designed for three judges to deliberate, with two attorney-client conference rooms. Plus, it is strategically situated across the hall from the Office of the Register of Wills which is statutorily designated as the Orphans' Court's Clerk. The current physical placement of both, facilitates convenient access of litigants to the Register and the Court.

To abolish the Howard County Orphans' Court, "The Peoples' Court" per Senator Hough, who likes the Court, would be a mistake. To abolish the Orphans' Court is to eliminate a relatively inexpensive forum for pro se and poor litigants. It is a specialty court and such courts are prevalent at the Federal level.

SERVICE

The Orphans' Court has been serving the public since the 1700s. It has evolved with the times. It has served Howard County well for many decades. It is not an archaic institution, even though its name is. More than likely, most of the public in Maryland does not realize the Orphans' Court is the probate court, until they suffer a grievous loss, death, of a relative or friend and need the assistance of the Court. Many of the people served by the Court do not have attorneys representing them and its easier for them to maneuver on their own, even though attorneys are recommended. The atmosphere in the Orphans' Court is less intimidating and formal, than that of the Circuit Court. The Orphans' Court is less expensive than the Circuit Court. The Courts' appeal record demonstrates that the public is not dissatisfied with its service.

CONCLUSION

The issues in Howard County between the Register and the Court should **NOT** warrant an abolishment of the entire Court, much less a constitutional amendment for the State to consider. New elections may generate new Registers and new judges. Please render an **UNFAVORABLE** finding with respect to HB 868.

