

SB 210 Support (2023).pdf

Uploaded by: Athena Malloy Groves

Position: FAV

WENDY A. CARTWRIGHT, ESQ.
ATHENA MALLOY GROVES, ESQ.
JASON A. DELOACH, ESQ.

Bill No.: Senate Bill 210
Title: Orphans' Court Judges – Restriction on Practicing Law
Committee: Judicial Proceedings
Hearing Date: February 9, 2023
Position: Recommend Favorable Committee Report

COMMENTS:

Chairman Smith and Members of the Committee:

We, the Judges of the Orphans' Court for Prince George's County, collectively in our individual capacities, offer this written testimony in support of Senate Bill 210.

The bill arises from one of the five recommendations of the 2021 Task Force to Study the Maryland Orphans' Courts, of which Judge Groves was a member. They are suggestions for possible improvements to the court. Recommendation No. 4 states that "[a]n Orphans' Court judge may not act as an attorney in a civil or criminal matter during a term of office in any matter which is within the jurisdiction of any Orphans' Court of the state or in any matter related to the administration of an estate or guardianship of a minor."

Out of the twenty-four jurisdictions in Maryland, twenty-one have Orphans' Courts. Pursuant to the Annotated Code of Maryland, Estates & Trusts Article, § 2-109, only the judges of Baltimore City, Prince George's County, Baltimore County and Calvert County may practice law, provided that it is not in the areas of Estates & Trusts and Guardianship of Minors. In the remaining jurisdictions, an attorney serving as an Orphans' Court Judge may not practice law at all.

The position of Orphans' Court Judge is considered part-time, as the respective salaries for each jurisdiction so reflect. Therefore, it is unlikely that an attorney would give up the practice of law to seek the office of Orphans' Court. This limits the pool of possible candidates who would run for the position in the remaining seventeen jurisdictions. The

Senate Bill 210
Support
Page 2

passage of the bill to amend the statute would not only increase the number of possible candidates, but also establish uniformity across the State regarding the persons who may seek to serve as an Orphans' Court Judge. This would be an overall improvement for the Court.

Therefore,

We urge a Favorable Committee Report for Senate Bill 210.

Respectfully submitted,

Wendy A. Cartwright, Esq.

Athena Malloy Groves, Esq.

Jason A. DeLoach, Esq.

SB 210 testimony.pdf

Uploaded by: juliet fisher

Position: FAV

Juliet G. Fisher
8100 Sandpiper Circle, Ste. 108
Nottingham, MD 21236
443-803-1476
Julietfisher1@yahoo.com

February 8, 2023
Maryland Senate
Judicial Proceedings Committee

Re: Testimony in Support of Senate Bill 210
Orphans' Court Judges – Restriction of Practicing Law

Good Afternoon Chairman Smith and members of the Committee,

Thank you so much for allowing me to speak to you today about Senate Bill 210. As you may be aware, I am Juliet Fisher, a Judge of the Baltimore County Orphans' Court, which oversees the probate and administration of all estates in Baltimore County as well as handling guardianships of minors' property. I am here on behalf of myself and Judges Evans and Frank, both of whom support the passage of SB 210.

Last year a Task Force to Study the Orphans' Courts was created and one of the recommendations of the Task Force was to allow more attorneys to run to be Orphans' Court Judges, which is a part-time position, which is exactly what this proposed Bill would do.

Currently, the Judges in Baltimore City, County, Prince George's County, and Calvert County who are attorneys are allowed to continue to practice law part-time as long as that practice does not encompass any subject matter that could be heard under the jurisdiction of the Orphans' Court so that there would not be any conflict of interest. This is exactly what myself and other judges in these jurisdictions are currently doing and it has been working extremely well for us.

In all of those jurisdictions except for Calvert, the Judges are required to be attorneys. Currently in Calvert County, their Orphans' Court consists of two attorney judges and one lay judge. In most of the other jurisdictions, attorneys are not willing to run to be part-time Orphans' Court Judges as it requires them to give up their entire law practice.

There has been a push to have more attorney judges in these jurisdictions, but the willingness of attorneys to serve as Orphans' Court Judges will not be known unless this bill is successful.

In addition, this Bill creates statewide uniformity in the ability of attorneys to become Orphans' Court judges while only having to refrain from practicing estates and trusts and guardianship law.

I personally believe that the passage of this Bill will create more opportunities to have legal professionals acting as part-time Orphans' Court Judges and will address the recommendations of the Task Force to Study the Orphans' Court.

William Evans, Esq.

Juliet Fisher, Esq.

Arthur Frank, Esq.

Senate Bill 210 written testimony_fav (1).pdf

Uploaded by: Michele Loewenthal

Position: FAV

**LEWYN SCOTT GARRETT, ESQ.
MICHELE E. LOEWENTHAL, ESQ
CHARLES BERNSTEIN, ESQ**

February 9, 2023

Bill No.: Senate Bill 210

Title: Orphans' Court Judges – Restriction on Practicing Law

Committee: Judicial Proceedings

Hearing Date: February 9, 2023

Position: Recommend Favorable Committee Report

Chairman Smith and members of the Judicial Proceedings Committee

We are the Judges of the Orphans' Court for Baltimore City and together, as well as in our individual capacities, are providing this written testimony in support of Senate Bill 210. We are a specialty court and hear cases involving the administration of an estates as well matters involving guardianship of a minor.

This bill will allow attorneys in all jurisdictions throughout the state, which have an Orphans' Court, to serve as Orphans' Court judges. Currently, judges in Baltimore City, Baltimore County, Prince George's County and Calvert County are permitted to practice law in matters other than those heard in the Orphans' Court. The lawyer judges in these jurisdictions have law practices that do not interfere with their duties as Orphans' Court judges since their practices are not in the Orphans' Court. My colleagues and I have law practices and we are able to properly serve as part time Orphans' Court judges while maintaining a law practice. Lawyers in other jurisdictions who may be interested in running to be an Orphans' Court judge may be reluctant to serve because they would have to give up their law practice entirely. The passage of this bill will improve the Orphans' Court by creating the opportunity for more lawyers to serve as Orphans' Court judges. This bill will also provide uniformity in the state regarding who can serve as an Orphans' Court judge.

The legislature created a Task Force to Study the Orphans' Court. The Task Force met last year. Allowing more attorneys to serve as Orphans' Court judges was one of the recommendations of the Task Force.

For the above stated reasons, we favorably support the passage of Senate Bill 210.

Lewyn Scott Garrett, Esq.
Chief Judge

Michele E. Loewenthal, Esq.
Associate Judge

Charles Bernstein, Esq.
Associate Judge

SB210 Amended.pdf

Uploaded by: Christopher West

Position: FWA

UNOFFICIAL COPY OF SENATE BILL 210

SENATE BILL 210

N2

3lr1906

By: **Senator West**

Introduced and read first time: January 23, 2023

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Orphans' Court Judges - Restriction on Practicing Law**

3 FOR the purpose of altering a prohibition on certain judges of the orphans' court acting as
4 attorneys to prohibit a judge of the orphans' court from acting as an attorney in
5 certain matters related to the administration of an estate or a guardianship of a
6 minor; and generally relating to judges of the orphans' court.

7 BY repealing and reenacting, without amendments,

8 Article - Estates and Trusts

9 Section 2-101

10 Annotated Code of Maryland

11 (2022 Replacement Volume and 2022 Supplement)

12 BY repealing and reenacting, with amendments,

13 Article - Estates and Trusts

14 Section 2-109

15 Annotated Code of Maryland

16 (2022 Replacement Volume and 2022 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

18 That the Laws of Maryland read as follows:

19 **Article - Estates and Trusts**

20 2-101.

21 In the estates of decedents law, the word "court" means the orphans' court in a
22 county, or the court exercising the jurisdiction of the orphans' court in a county.

23 2-109.

2

UNOFFICIAL COPY OF SENATE BILL 210

1 【(a) Except as provided in subsection (b) of this section, a] **A** judge of the court may
 2 not act as an attorney at law in a civil or criminal matter during a term of office **IF THE**
 3 **MATTER IS:**

4 **(1) (I) WITHIN THE JURISDICTION OF THE COURT IN ANY COUNTY OR BALTIMORE**
CITY; AND

5 ~~**(1) (I)**~~ **(II) RELATED TO THE ADMINISTRATION OF AN ESTATE OR A**
 6 **GUARDIANSHIP OF A MINOR ; OR**

(2) RELATED TO THE PREPARATION OF AN ESTATE PLAN OR ESTATE
PLANNING DOCUMENTS THAT MIGHT COME WITHIN THE JURISDICTION OF THE COURT IN ANY
COUNTY OR BALTIMORE CITY FOLLOWING THE DEATH OF ANY INDIVIDUAL.

7 【(b) This section does not apply:

8 (1) In Harford County;

9 (2) In Montgomery County;

10 (3) In Baltimore City, to a judge of the Court while practicing law before
 11 any court of the State except an orphans' court; or

12 (4) In Prince George's County, Baltimore County, Calvert County, and
 13 Howard County, to a judge of the Court while practicing law in connection with a case that
 14 is:

15 (i) Outside the jurisdiction of orphans' court; and

16 (ii) Unrelated to the administration of an estate or guardianship.]

17 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
 18 **October 1, 2023.**

SB210 Amendment.pdf

Uploaded by: Christopher West

Position: FWA

SB0210/823528/1

BY: Senator West

(To be offered in the Judicial Proceedings Committee)

AMENDMENT TO SENATE BILL 210

(First Reading File Bill)

On page 2, in line 4, after “**(1)**” insert “**(I)**”; in the same line, after “**COUNTY**” insert “**OR BALTIMORE CITY**”; in line 5, strike “**(2)**” and substitute “**(II)**”; and in line 6, after “**MINOR**” insert “**; OR**”

(2) RELATED TO THE PREPARATION OF AN ESTATE PLAN OR ESTATE PLANNING DOCUMENTS THAT MIGHT COME WITHIN THE JURISDICTION OF THE COURT IN ANY COUNTY OR BALTIMORE CITY FOLLOWING THE DEATH OF ANY INDIVIDUAL”.

SB210 West FAV.pdf

Uploaded by: Christopher West

Position: FWA

CHRIS WEST
Legislative District 42
Baltimore and Carroll Counties

Judicial Proceedings Committee



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Annapolis Office
James Senate Office Building
11 Bladen Street, Room 322
Annapolis, Maryland 21401
410-841-3648 · 301-858-3648
800-492-7122 Ext. 3648
Chris.West@senate.state.md.us

District Office
1134 York Road, Suite 200
Lutherville-Timonium, MD 21093
410-823-7087

February 9th, 2023
Senate Judicial Proceedings Committee
The Honorable William C. Smith, Jr.
2 East Miller Senate Building
Annapolis, Maryland 21401

Re: Senate Bill – 210 - Orphans' Court Judges - Restriction on Practicing Law

Dear Chairman Smith and Members of the Committee,

Last year a Task Force to Study the Orphans' Courts was established. The Task Force recommended allowing more attorneys to run to be Orphans' Court Judges (a part-time position), which is exactly what this proposed Bill would do.

Currently, the Judges in Baltimore City, County, Prince George's County, and Calvert County who are attorneys are allowed to continue to practice law part-time so long as that practice does not involve any subject matter that could be heard under the jurisdiction of the Orphans' Court, to prevent conflict of interest.

In the aforementioned jurisdictions except for Calvert, the Judges are required to be attorneys. In Calvert County, their Orphans' Court consists of two attorney judges and one lay judge. In most of the other jurisdictions, attorneys are not willing to run to be part-time Orphans' Court Judges because they're required to give up their law practice.

Senate Bill 210 creates statewide uniformity for attorneys to become Orphans' Court judges while only having to refrain from practicing estates and trusts and guardianship law. This bill will expand the opportunities for legal professionals to act as part-time Orphans' Court Judges, following through on the recommendations of last year's Task Force.

I appreciate the Committee's consideration of Senate Bill 210 and will be happy to answer any questions the Committee may have.

SB 210 - MSBA Estate and Trust Section Council Wri

Uploaded by: Laura Thomas

Position: FWA



MSBA Main Office
520 West Fayette Street
Baltimore, MD 21201
410-685-7878 | msba.org

Annapolis Office
200 Duke of Gloucester Street
Annapolis, MD 21401
410-269-6464 | msba.org

To: Maryland Senate – Judicial Proceedings Committee

From: MSBA Estate & Trust Law Section

Date: February 9, 2023

Subject: **SB 210** – Orphans’ Court Judges – Restriction on Practicing Law

Position: **Support with Amendments**

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports Senate Bill 210** – Orphans’ Court Judges – Restriction on Practicing Law – **with amendments** as discussed below.

Description of Current Law

In most jurisdictions, the position of Orphans’ Court judge is not full-time.¹ In Baltimore City, Baltimore County, and Prince George’s County, Orphans’ Court judges must be attorneys in good standing, and attorneys are permitted to be judges in all other jurisdictions. Current § 2-109 of the Estates and Trusts Article prohibits those attorney-judges from practicing law “in a civil or criminal matter during a term of office”, except:

- In Baltimore City, the restriction applies only to cases before any Orphans’ Court; and
- In Baltimore, Calvert, and Prince George’s Counties, it is limited to cases within the Orphans’ Courts’ jurisdiction that are “unrelated to the administration of an estate or guardianship.”

Problem Addressed by this Legislation:

The current statute treats attorney-judges of the Orphans’ Courts differently based solely upon geography: those in Baltimore City and Baltimore, Calvert, and Prince George’s Counties are permitted to practice law with some restrictions, while those in all other jurisdictions are banned from practicing. In addition to creating an uneven playing field, current law provides a disincentive for lawyers in the total prohibition counties to run for Orphans’ Court. If elected, they must give up their practices entirely, which could be a significant hardship. By contrast, lay judges

¹ The Orphans’ Courts of Harford, Howard, and Montgomery Counties are staffed by Circuit Court Judges.



MSBA Main Office
520 West Fayette Street
Baltimore, MD 21201
410-685-7878 | msba.org

Annapolis Office
200 Duke of Gloucester Street
Annapolis, MD 21401
410-269-6464 | msba.org

in those jurisdictions may maintain their other professions (so long as they do not interfere with judicial duties) without restriction, and attorney-judges in the limited practice jurisdictions only need to sacrifice the estate planning and administration elements of their practices.

How this Legislation Solves the Problem:

Senate Bill 210 addresses these issues by creating a level playing field for attorney-judges of the Orphans' Courts across the State, and frees lawyers in most counties to serve as judges without loss of their entire practices. As drafted, SB 210 prohibits attorney-judges only from practicing law in matters that fall within the jurisdiction of the Orphans' Courts and relate to the "administration of an estate or a guardianship of a minor."

We are concerned that the bill's current language is too narrow, and could permit attorney-judges to engage in estate planning and the drafting of documents upon which the Orphans' Court eventually must rule. This easily could create the perception of bias among the judges. Accordingly, we recommend amending SB 210 to prevent attorney-judges from practicing in those areas. Suggested language for the necessary amendment is appended to this testimony.

For the reasons stated above, the Estate and Trust Law Section of the MSBA **supports SB 210, with the amendments outlined above, and urges a favorable committee report. For further information, please contact:**

Christine W. Hubbard
(410) 798-4533
christine@chubbardlaw.com

Sarah B. Kahl
(410) 244-7584
sbkahl@venable.com

Laura Thomas
(443) 537-2891
lthomas@darslaw.com



MSBA Main Office
520 West Fayette Street
Baltimore, MD 21201
410-685-7878 | msba.org

Annapolis Office
200 Duke of Gloucester Street
Annapolis, MD 21401
410-269-6464 | msba.org

SUGGESTED AMENDMENTS TO SB 210

2-109.

[(a) Except as provided in subsection (b) of this section, a] A judge of the court may not act as an attorney at law in a civil or criminal matter during a term of office IF ~~THE MATTER IS:~~

(a) THE MATTER IS:

(1) WITHIN THE JURISDICTION OF THE COURT IN ANY COUNTY OR BALTIMORE
CITY: AND

(2) RELATED TO THE ADMINISTRATION OF AN ESTATE OR A GUARDIANSHIP
OF A MINOR; OR

(b) THE MATTER IS RELATED TO THE PREPARATION OF AN ESTATE PLAN OR ESTATE
PLANNING DOCUMENTS THAT COULD COME WITHIN THE JURISDICTION OF THE COURT IN ANY
COUNTY OR BALTIMORE CITY FOLLOWING THE DEATH OF ANY INDIVIDUAL.

SB 210 2-8-23 written testimony.pdf

Uploaded by: Kimberly Cascia

Position: UNF

SB 210

Kimberly Jean Cascia

Unfavorable

Senate Judiciary Committee

Senator William C. Smith, Senator Jeff Waldstreicher and Members of the Committee

While I am a Judge of the Orphans' Court for Queen Anne's County, I come to you today in my individual capacity and not on behalf of the Maryland Judiciary or any of its parts.

I write to you today in opposition to SB 210 Orphans' Court Judges – Restriction on Practicing Law

Maryland law (Estates and Trust Article, Section 2-109, currently permits Orphans' Court judges to practice law in a limited number of urban jurisdictions so long as such practice does not include practice before the Orphans' Court. In our more rural jurisdictions, the relationship between the public and the judges of the Orphans' Court is more intimate. We are more generally known for the positions we hold. The public would more likely view our appearance before another court as one suggesting that the entire system is corrupt and that what matters is having the right connections.

Public trust of the Maryland court system including the Orphans' Courts must be held as paramount, and neither the legislature nor the judiciary should risk compromising the public view through the allowance of judges to also practice law, regardless of the specifics of the type of law practiced. The current exemptions should not be expanded beyond the few jurisdictions where it is currently permitted.

I oppose passage.

Respectfully,
Kimberly Jean Cascia