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**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**

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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.<sup>1</sup> 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

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



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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:**

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## 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.**