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**To:** Maryland House of Delegates – Judiciary Committee

**From:** MSBA Estate & Trust Law Section

**Date:** February 26, 2024

**Subject:** **HB1258** – Estates and Trusts – Estate Administration – Publication of Notice

**Position:** **Support**

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The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports House Bill 1258 – Estates and Trusts – Estate Administration – Publication of Notice.**

### **Description of Current Law**

Under current law, notice of various occurrences during the administration of a probate estate are required to be published in a newspaper of general circulation.<sup>1</sup> In all but a small number of probate estates in Maryland, the law requires publication of notice of the appointment of the Personal Representative (aka Executor).

A newspaper of general circulation is defined in Md. General Provisions Code Ann. § 1-113. In addition, the Court of Appeals has stated that, "...it is a term generally applied to a newspaper to which the general public will resort in order to be informed of the news and intelligence of the day....and thereby to render it probable that the notices or official advertising will be brought to the attention of the general public."<sup>2</sup>

### **Problems Addressed by this Legislation:**

There are three (3) problems with the current law that we believe are addressed by the proposed legislation.

The first problem, and typically the most important for those interested in an estate is the cost of the publication in a newspaper. The fee for publishing notice can cost in the

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<sup>1</sup> Specifically, there are four occurrences in which publication in a newspaper of general circulation is required: (1) Notice of judicial probate (Md. Estates and Trusts Code Ann. § 5-403); (2) Notice of appointment and description of real property owned by a non-resident decedent (Md. Estates and Trusts Code Ann. § 5-503); (3) Notice of appointment of Personal Representative (Md. Estates and Trusts Code Ann. § 7-103); and (4) Notice of hearing to determine distribution of a probate estate by the court (Md. Estates and Trusts Code Ann. § 9-112).

<sup>2</sup> *Van Gorder v. Board of Supervisors of Elections*, 229 Md. 437, 441 (1962)

hundreds of dollars. In addition, most counties only have one newspaper that qualifies as a newspaper of general circulation under Maryland law, which eliminates the competition amongst publishers for an estate's business and results in inflated pricing. For some estates, the cost of the publication, especially if the bill must be paid by the Personal Representative before he or she can access funds from the estate, can be prohibitive to even opening the estate.

The second problem is the decreasing reliance on newspapers by the general public. With each passing year, it becomes less likely that publication in a newspaper will "render it probable that the notices or official advertising will be brought to the attention of the general public." Many people rely on the internet to provide them with the information that newspapers provided in the past. In addition, the likelihood that a person interested in an estate subscribes to one of these newspapers is smaller each year.

The third problem is the lack of consistency amongst the Registers of Wills because of the requirements imposed on them by the newspapers. The newspapers in some jurisdictions require that the cost for the publication be submitted with the paperwork to open the estate, while those in other jurisdictions do not. This creates confusion among Personal Representatives and legal practitioners as to the requirements of each jurisdiction.

#### **How this Legislation Solves these Problems:**

The proposed legislation solves each of the problems outlined above. Firstly, the Register of Wills offices will provide publication of notice at no charge to estates in Maryland. This eliminates the cost of the notice to all estates. Secondly, it moves the publications for all estates to one, central database that is easily findable through an internet search and one that is housed with all other pertinent information for an estate that an unknown heir or creditor may need. The change to a centralized database increases the likelihood that the notice will be brought to the attention of the general public. Lastly, it makes the estate notice process consistent across the state of Maryland.

For the reasons stated above, the Estate and Trust Law Section of the MSBA **supports House Bill 1258 and urges a favorable committee report. For further information, please contact:**

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