

# MAJOC



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## MARYLAND ASSOCIATION OF THE JUDGES OF THE ORPHANS' COURTS

To: House Judiciary Committee

Dear Chairman Clippinger and Members of the Committee:

I write in **opposition to House Bill 660**, which proposes significant changes to the process of admitting a copy of an executed will in probate proceedings. While the intent behind the bill may be to streamline the probate process, there are several important concerns that must be addressed before this bill is enacted.

- Erosion of Judicial Oversight:** The proposal to transfer the authority of admitting a copy of a will from the orphans' court to the register of wills significantly reduces judicial oversight in an area that often involves complex and sensitive matters. The orphans' court, as a judicial body, is better suited to assess the legitimacy of a will and the intentions of the decedent. Removing judicial review from this process and giving the register of wills more discretion to accept a copy of a will without a court order could lead to abuses, errors, or inadvertent acceptance of fraudulent or invalid wills.
- Potential for Disputes and Lack of Safeguards:** The bill allows the register of wills to admit a copy of a will based on the signatures of the decedent and witnesses, but without requiring full judicial review. This is concerning because the possibility of a will being lost or destroyed could also indicate potential disputes about its authenticity or the decedent's intentions. A court, with its experience in dealing with such matters, provides a neutral forum to resolve any such disputes. Allowing the register of wills to make decisions without judicial intervention could result in increased litigation as heirs and legatees challenge the validity of the will after it has been admitted.
- Overburdening Registers of Wills:** While the bill intends to streamline the probate process, there is a risk that registers of wills will become overburdened with complex decisions regarding the validity of copies of executed wills. Registers are not judicial officers, and while they play an important administrative role, they lack the expertise and authority to handle matters that could involve questions of fraud, undue influence, or mental capacity. By expanding their responsibilities in this manner, we may be placing a heavy burden on registers without giving them the proper tools to make nuanced decisions that could impact the distribution of an estate.
- Lack of Adequate Safeguards for Heirs and Legatees:** Under the proposed legislation, the heirs and legatees named in the will must consent to the admission of the copy, but this does not provide sufficient protection for individuals who may be unaware of the existence of a copy, or those who may be coerced into providing consent. Judicial review offers a better safeguard against potential manipulation of the process, ensuring that the decedent's true intentions are upheld.

5. **Unintended Consequences:** By simplifying the process, the bill may unintentionally encourage the use of incomplete or questionable will copies in probate proceedings. Without the oversight of the orphans' court, the potential for errors in the probate process may increase, leading to delays, confusion, and disputes that could have been avoided through a more thorough review by the court.

### **Conclusion:**

While the desire to expedite probate proceedings is understandable, the shift of authority from the orphans' court to the register of wills in the acceptance of a copy of a will undermines important safeguards in the probate process. Judicial review and oversight are necessary to ensure that the decedent's wishes are accurately represented and that all interested parties are protected from potential fraud or mistake. We urge the General Assembly to reconsider House Bill 660 and preserve the essential role of the orphans' court in overseeing the admission of wills in probate proceedings.

Respectfully submitted,

### **Maryland Association of Judges of the Orphans' Court (MAJOC)**

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