



Conference Of Orphans' Court Judges

2016-2017 Term

Hon. Anne L. Dodd, Chair

*Hon. Wendy A. Cartwright,
Vice-Chair*

Stephane J. Latour, Staff

Sharon Wright, Staff

Board Members:

Hon. Melissa Pollitt Bright

Hon. Sally Saunders Camp

Hon. Cleopatra Campbell

Hon. Kimberly J. Cascia

Hon. Joseph V. DiPietro

Hon. Juliet G. Fisher

Hon. Athena Malloy Groves

Hon. Frank H. Lancaster

Hon. Theodore Philip LeBlanc

Hon. Michele E. Loewenthal

Hon. John Dale Smack, III

Hon. Leslie Smith Turner

*Administrative Office of the
Courts*

Internal Affairs

580 Taylor Avenue – A2

Annapolis, MD 21401

(410) 260-3453

Maryland Judiciary
Judiciary Education and Conference Center
2011D Commerce Park Drive
Annapolis, MD 21401

MEETING MINUTES

Members Present

Hon. Melissa Pollitt Bright
Hon. Cleopatra Campbell
Hon. Wendy A. Cartwright
Hon. Kimberly Cascia
Hon. Joseph V. DiPietro
Hon. Anne L. Dodd
Hon. Juliet G. Fisher
Hon. Athena Malloy Groves

Hon. Frank H. Lancaster
Hon. Theodore Philip LeBlanc
Hon. Michele E. Loewenthal
Hon. J. Dale Smack
Hon. Leslie Smith Turner
Stephane J. Latour, Staff
Sharon Wright, Staff

A meeting of the Conference of Orphans' Court Judges was held Monday, April 11, 2016, at the Judiciary Education and Conference Center, beginning at 10:30 a.m. Judge Dodd began the meeting by calling for an approval of the minutes of the previous meeting.

Judge Bright moved for approval of the minutes of the February 1, 2016 meeting, followed by a second to the motion by Judge Smith Turner. The motion passed with the following changes: The spelling of Judge Groves name was corrected. In the second paragraph on Page 1, added that Judge Fisher was nominated but withdrew from the nominations for Chair of OC Conference.

1. Reports

A. Education

Judge Smack nominated Judge Bright as Chair and Judge Cartwright seconded the nomination, Judge Bright is now the Chair for the Education Committee.

1. Relationship between Orphans' Court judges and ROW:

Judge Smack advised that the President of MAJOC, Chair of the OC Conference, and Chair of the Registers' Association will meet to identify and discuss the issues, especially in regard to legislation. The committee agreed to await feedback from this meeting before proceeding on this issue. Judge Dodd pointed out that this would be an ex-officio meeting of Officers of MAJOC, the Conference and the Register of Wills Association and the emphasis would be on legislation.

2. Mentoring:
It was decided to divide the State into 5 clusters to kick off the mentoring initiative. This effort should stress networking among judges. The committee will proceed with mentoring development following feedback from Judge Dodd's letter.
3. Ethics:
A refresher on Ethics with regard to elections is needed. The committee will work on this for the Judicial Institute curriculum of 2018, probably in April of that year. Judge Tisdale was suggested as a possible faculty member for this.
4. Regular emails/mailings:
The committee agreed to proactively provide education mini-courses/discussions through regular communications to all Orphans' Court judges. Judge Bright is planning to attend the National College of Probate Judges meeting in May and will share what is offered at that Conference.

B. Legislative

Judge Smith Turner nominated Judge Cascia as Chair and Judge DiPietro seconded the nomination. Judge Cascia will remain the Chair of the Legislative Committee. Judge Cascia informed the Committee that Judge Campbell had been hospitalized and would not be in attendance. Judge Cascia shared the status of all pertinent bills affecting the Orphans Court and reported as follows:

HB 492 & SB 155 Email Retention-dead
HB 199 OC name change – dead
HB 472 Row retention of estate files – passed
HB 485 Row admission of will – pulled
HB 1336 notice requirement method del. – dead
HB 1489 & SB 171 Guardianship of a minor criminal history- pulled
SB 1089 Inheritance Tax – dead
HB 9 Baltimore compensation passed
HB 193 & SB 151 Baltimore Co. election procedures – pulled
SB 772 financial inst. Right to funds on death – dead
HB 824 Cecil Co. travel expenses – dead
SB 913 Spousal Elective Share –dead
HB151 – Pulled
HB9 – Passed

C. Policy, Rules and Forms

The Committee members chose Judge Loewenthal as the Chairperson and Judge Groves as the Vice-Chair. There were no reports from the Probate Committee Liaison or the Rules Committee Liaison.

1. Consent to Compensation Form

The Consent to Compensation Form was reviewed and the new proposed language was discussed. The two main additions are the language specifying the total allowable statutory maximum compensation based on the gross estate known at this time is \$ _____ and that if no consent is signed the court will determine the amount to be paid. The Committee voted 3-2 in favor of requesting that this form be sent to the Rules Committee.

2. Pre-Trial Order

The Committee reviewed two Pre-Trial/Scheduling Orders, one from Baltimore City and one from Baltimore County to decide if we wanted to recommend a uniform document. We decided to suggest the Baltimore City Pre-Trial form because it was less detailed and that our

recommendation is to include it in the Bench book, not to submit it to the Rules Committee as a required form. The Committee will email a copy of the sample form to conference members.

3. Joint Meeting

Judge Groves attended the Joint Committee meeting. The members expressed frustration that Orphans' Court judges were refusing to grant Petitions for Fees until the estate is closed. The Committee reviewed the statute, discussed the case law and determined that fees can be and should be granted during the course of the administration, but not before an Accounting is filed. There was disagreement concerning whether an Orphans' Court judge can refuse to grant the fees requested if a Consent is signed if the Judge disagrees with the amount.

4. Assistant Attorney General

At the present time, the Orphans' Court and ROW share the same Assistant AG. Stephane Latour was asked to assist in getting the OC their own Assistant AG to represent the OC when there are conflicts with the ROW. He informed the Conference that AAG Michele McDonald would directly contact the Chair about this issue.

5. Attorney's fees in Guardianship cases

Judge Groves raised the concern that there isn't a statute or uniform method for determining attorney's fees in Guardianship cases. We compared E&T 7-602 (Estate) and 14-103 (Trusts), which address attorney's fees, and decided to mention the issue to the Conference members for feedback.

D. Chair's Report

1. Judge Dodd asked conference members to please read and suggest changes to the Minutes prior to the following meeting. Minutes will go from Staff to the Chair and then to all members about three weeks prior to the next meeting.
2. All correspondence from the Conference will be routed through Staff to be placed on letterhead.

E. Staff Report

1. Stephane Latour briefly spoke on the Bench Bar Conference. Judge Fisher had inquired why the Orphans' Court judges were not invited. He informed the Conference that Chief Judge Barbera is handling that issue personally.
2. Stephane will follow up with JIS regarding obtaining email addresses.

2. Ongoing Issues

- A. The Conference was asked to contact Judge Groves or Judge Loewenthal directly with their opinion on Attorney's fees in Guardianship cases in order that they may discuss it at the next Policy, Rules and Forms meeting. Judge Dodd suggested obtaining input from the Joint Committee.
- B. Regarding the meeting that has been set up between Judge Smack (MAJOC President), Byron MacFarland (ROW) and Judge Dodd (OC Chair) on May 12, 2016, after the Joint Meeting to resolve legislative concerns internally and to bridge the gap between the Conference, ROW and MAJOC,

Judge Cartwright indicated that there has to be an acknowledgment on both sides of the roles each play. Specifically, what the OC should expect; what the Register should expect and what are the definitive roles each play. This would greatly improve the relationship of both units.

- C. Judge Groves raised the question of “how do the OC Judges inform the ROW’s that they cannot give legal advice to the public?” Judge Cartwright communicated to her ROW that they cannot give legal advice via memorandum. This issue was tabled.
- D. A survey will be mailed to the entire Orphans’ Court Judge base to inform them that the Conference is starting a mentoring program for OC judges and to ask for feedback on how they would like to be helped. The Conference agreed to not force the mentoring program but would offer it to any judge that was interested. This topic should be brought up at the MAJOC Conference. It was determined that there were 27 new judges at orientation last year. There are one vacancy in Anne Arundel County and two vacancies in Carroll County.

3. New Issues

A. *Role of the OC Chief Judge*

Judge Groves wanted a clear definition of the role of the Chief Judge, their responsibilities and how they communicate with their Register of Wills. Judge Cartwright indicated an Opinion on this issue had been written by David Hayes. Judge Cartwright also indicated that the role of the Chief Judge is as follows:

- i. To prepare the budget and submit for approval by County Executive and City Council;
- ii. Sign Orders not signed by other Judges;
- iii. Handle the Press and Public;
- iv. Represent the Court;
- v. And to be aware of everything that is going on in that Court.

Judge Dodd pointed out that the Chief Judge does not have more than one vote when judges sit en banc. Judge Bright said that the role of the Chief Judge should be included in the Bench Bar book. The Education Committee will include this as a topic for a future judicial education class.

4. Action Items

- A. Feedback is due from meeting with MAJOC President, Conference Chair and Register of Wills representative on relationship between Orphans’ Court Judges and Register of Wills.
- B. Divide the State into 5 clusters for the Mentoring Program.
- C. A draft of the Consent to Compensation Form is to be sent to Rules Committee with new language.
- D. The PR&F Committee is to email a copy of the Pre-Trial sample form to conference members.
- E. Judge Dodd to mail a survey to the entire Orphans’ Court Judge base to inform them that a mentoring program for OC judges is being implemented. She will draft survey questions to be reviewed via email.

There being no further business, the meeting adjourned at 1:10 p.m. The next meeting is scheduled for June 6, 2016, beginning 10:30 a.m.

Respectfully submitted,

Stephane Latour, Staff

Sharon Wright, Staff