



2017-2018 Term

Hon. Anne L. Dodd, Chair

Hon. Wendy A. Cartwright, Vice-Chair

Stephane J. Latour, Staff

Brenda Iazzetta, Staff

Conference Members:

Hon. George R. Ames, Jr.

Hon. Melissa Pollitt Bright

Hon. Sally Saunders Camp

Hon. Maureen Carr-York

Hon. Kimberly J. Cascia

Hon. Charles M. Coles, Jr.

Hon. Juliet G. Fisher

Hon. Athena Malloy Groves

Hon. Frank H. Lancaster

Hon. Theodore Philip LeBlanc

Hon. Michele E. Loewenthal

Hon. Leslie Smith Turner

CONFERENCE OF ORPHANS' COURT JUDGES

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

MEETING MINUTES

Members Present:

Hon. George R. Ames, Jr.
Hon. Maureen Carr-York
Hon. Wendy A. Cartwright
Hon. Kimberly J. Cascia
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. Leslie Smith Turner

Staff Present:

Stephane J. Latour

On Monday, September 18, 2017, the Conference of Orphans' Court Judges met at 10:30 am at the Judicial College Education and Conference Center to approve the June Minutes and to discuss the established agenda.

I. Approval of the June 5, 2017 Minutes

The Chair began the meeting by calling for the approval of the draft minutes of the June 5, 2017 meeting. There were no objections to the draft provided to the membership for review. Judge Loewenthal subsequently moved for approval of the minutes which was seconded by Judge LeBlanc.

The minutes were unanimously approved.

Administrative Office of the
Courts
Internal Affairs
580 Taylor Avenue – A2
Annapolis, MD 21401
(410) 260-3453

II. Committee Reports

Education Sub-Committee

2017 Membership

Hon. Melissa Pollitt Bright, Co-Chair [absent]

Hon. Wendy A. Cartwright, Co-Chair

Hon. George R. Ames, Jr.

Hon. Sally Saunders Camp [absent]

As a result of personal or professional conflicts, the sub-committee was unable to meet. Judge Bright however submitted a report to the Chair in advance in which she noted the sub-committee continues its work on the Orphans' Court pamphlet with anticipation of presenting a draft to the Conference at its November meeting. Additionally, the sub-committee encourages input from Orphans' Court judges regarding "*Baby Judges School*" as it prepares to work with the Judicial Institute on constructing this critically important training.

Legislative Sub-Committee

2017 Membership

Hon. Juliet G. Fisher, Chair

Hon. Maureen Carr-York

Hon. Kimberly J. Cascia

Hon. Frank H. Lancaster

Hon. Leslie Smith Turner

Judge Fisher informed the Conference that the Rules Committee is working on drafting an ADR provision in the Maryland Rules for Orphans' Courts proceedings. Judge Fisher was asked to speak on this topic and recently addressed the Rules Committee's Probate sub-committee. She noted that Judge Cartwright was also in attendance. The proposed rule(s) would allow an Orphan's Court judge to order ADR for mediation and settlement conferences. She noted that parties would have to consent to the ADR or they could opt out. The proposed rule is designed to give OC judges more tools in handling/resolving their cases. Judge Fisher encouraged the membership that once the rule(s) goes into effect, to start an ADR program in their jurisdiction. She noted that grants are available from MACRO for this purpose. There was a subsequent discussion by the body that ranged from the benefits of ADR and resolution of cases, to training, and the cost to pro se litigants.

The other topic of discussion was HB87/SB156 (Baltimore County – Orphans Court Judges -Non Party Affiliation). Judge Fisher informed the membership that the legislation was tabled by legislators in favor of a potential state wide bill. Judge Fisher stated that if the conference were in favor of a state wide initiative, efforts needed to be undertaken in the near term to get legislative proposals ready for next year's legislative session.

There was a lengthy discussion among the membership about the pros and cons of supporting such legislation, with a number of members expressing their opinions on the topic. The Chair subsequently requested the matter be placed to a vote to gauge the position of just the Conference in support of such legislation. After a motion for a vote was presented by Judge Fisher and seconded by Judge Cartwright, the motion failed after a vote of 5 for the measure and 5 against it and one abstention. The Conference discussed the possibility of future debate on this matter.

Policy, Rules & Forms Sub-Committee

2017 Membership

Hon. Michele E. Loewenthal, Chair

Hon. Athena Malloy Groves, Vice-Chair

Hon. Charles M. Coles, Jr. [absent]

Hon. Theodore Philip LeBlanc

Judge Loewenthal distributed a handout to the Conference outlining proposed changes to the OC website drafted by Judge Groves. The revisions suggested by Judge Groves were modeled after her review of Circuit Court websites. After a brief review of the handout, the membership was given a deadline of November 1, 2017 to submit any changes to Judge Groves so that the Conference could vote on the proposal at its November meeting.

Judge Loewenthal informed the Conference that the rule change (16-813/Rule 3.9 (Services as an Arbitrator/ Mediator)) was approved by the Court of Appeals. She also described for the membership the three step process a proposed rule change must undergo for approval. The final item discussed was the Petition for Funeral Expenses. She described an experience in Judge Groves' court where a petition was submitted without attachments which she returned to the RoW. The membership was asked if they had any similar experiences, and a discussion was held as to whether a rule change was necessary to require both the oath as well as receipts, as only one is required at this time under the rules. The Chair asked that the rules be reviewed in more detail before taking other action.

Chairman's Report

The Chair informed the membership that:

- there was no meeting in June for either the Joint Committee or Ex-Officio Legislative Caucus, and the next planned meetings are scheduled for September 28th or October 19th;
- all OC judges completed the mandatory EEO online course;
- attorney Britt Stouffer has not responded to her with possible rule changes regarding the responsibility of PR's to legally distribute firearms;
- the Conference presented a Certificate of Appreciation on the occasion of Sharon Wright's retirement;

- the next Conference meeting is scheduled for November 13th and it will be the last meeting of the year. She asked that membership be ready to review year end accomplishments and propose goals for 2018; and
- reminded membership that as of January 1, 2016, no member may serve more than two consecutive terms of two years. And, while there is no guarantee of reappointment, asked those who are interested to inform Staff. Judges' Fisher, Groves, LeBlanc and Loewenthal all expressed an interest in being reappointed.

Staff Report – the Conference was informed of the requirements for membership for the Commission on Judicial Disabilities and its Judicial Inquiry Board. The composition of the former is outlined in the Maryland Constitution and does not call for an OC judge to serve as a member. The composition of the latter is governed by Rule 18-403 which states that “two judges” may serve, along with the others identified, but not specify which judges.

III. New Issues

Fees and Commissions

The Chair provided background, case law and excerpts from the Henderson Commission Report, to the Conference on this matter and asked the membership to discuss how they handle situations involving PRs and attorneys when the amount of the fee petitioned is above the statutory limit.

Judge Carr-York informed the members that in her jurisdiction they discuss it automatically, thoroughly review the paperwork, get explanations from counsel, and then the three judges vote. She noted that usually the requests are typically not honored explaining they must be sufficiently justified.

Judge Lancaster informed that a review of what counsel did is undertaken before granting a request. He noted they pay attention to whether a matter should have been performed by a PR and if so, deduct that amount from the total.

Judge Dodd echoed that her court handles these matters similarly as her colleagues described. Her court does not pay fees for ministerial work beyond the statutory limit whether performed by attorneys or lay personal representatives. Attorneys' fees for legal work are considered upon review of supporting information.

Judge Cascia also stated her court operates similarly to what her colleagues described and added their decisions to date, have not been appealed.

Judge Loewenthal informed that if a PR hires an attorney to administer the estate and the PR is not getting the commissions, they pay the attorney appropriately. They do require an itemization of the work and look for reasonableness.

Judge LeBlanc noted that if it is over the amount, an itemized hourly bill that is dated/timed must be provided for review. If reasonable, it is approved. Otherwise, a hearing is held for an explanation.

Issues of Contempt

Judge Lancaster wanted to hear from the membership regarding the practice of the RoW in his jurisdiction. In short, the RoW will use “contempt” to force parties to file their reports. His belief is that only the court has this authority. Judge Groves asked if Show Causes were being issued by the RoW to which Judge Lancaster informed that was not the case. Judge Lancaster appeared to clarify that the RoW was not holding parties in contempt but rather issuing notices that suggest such if procedure was followed. Rather than issue fines, many courts institute show cause proceedings to have the personal representative removed.

Judge Lancaster then asked if the membership fined or jailed parties, and if the former, where does the fine go. A number of the members stated they jail, and a discussion ensued over the issue of fines.

Judge Dodd asked the Conference to submit any ideas for the 2019 Judicial Education course catalog to Judge Cartwright.

IV. On-going Issues

The Chair announced that any updates by Conference members on cluster meetings and mentoring would be discussed at the November 13th meeting.

V. Review of Action Items

- Research the term for the judges who sit on the Judicial Inquiry Board, along with meeting frequency, times and location; **Staff**
- Changes to OC website to be submitted to Judge Groves by November 1st; **Membership**
- Prepare list of year-end accomplishments; **Membership** and
- Prepare goals for 2018 Conference. **Membership**

VI. Adjournment

The Conference adjourned at 1:00 pm.