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**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*

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## CONFERENCE OF ORPHANS' COURT JUDGES

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

### MEETING MINUTES November 13, 2017

**Members Present:**

Hon. George R. Ames, Jr.  
Hon. Melissa Pollitt Bright  
Hon. Maureen Carr-York  
Hon. Wendy A. Cartwright  
Hon. Kimberly J. Cascia  
Hon. Anne L. Dodd

Hon. Juliet G. Fisher  
Hon. Frank H. Lancaster  
Hon. Theodore Philip LeBlanc  
Hon. Michele E. Loewenthal  
Hon. Leslie Smith Turner

**Staff Present:**

Stephane J. Latour  
Brenda Iazzetta

On Monday, November 13, 2017, the Conference of Orphans' Court Judges met at 10:30 am at the Judicial College Education and Conference Center to approve the September Minutes and to discuss the established agenda.

The Chair began the meeting by introducing Jonathan G. Lasley, an attorney with Stewart, Plant & Blumenthal, LLC who came to speak on the proposed legislation from the Estates & Trust Section Council regarding the Elective Share. Mr. Lasley's back-up materials were provided electronically to the Conference prior to the meeting, and Judge Dodd received Mr. Lasley's permission to distribute hard copies to the members at today's meeting.

**I. Presentation by Jonathan G. Lasley, Esq.**

Mr. Lasley began his presentation by stating that the Elective Share has been an issue for quite some time with the Section Council and the various bills that have been introduced over the years trying to address it; the problem being that the current statute does not work for many people. He informed that the current formula makes it easy to disinherit a spouse, and that the formula is based entirely on probate assets. Since estate planning has evolved over the years, he would like to see non-probate assets included when determining the elective share. He stated that historically Maryland's policy has been to provide support for surviving spouses who would otherwise be impoverished. He stated that

we have a two-tier system of those who can afford to litigate, and those who cannot afford to litigate. Mr. Lasely informed that this is the third iteration of this concept over the last three years, stating that it first evolved from efforts by some legislators, and then the Section Council proposed a bill the last two years that was based on the federal gross estate. He said that last years' bills were pulled and a workgroup was formed. They worked with legislators, sponsors from the House and Senate, and members of the Estate and Trust Law Section Council, a member of the Elder Law Section Council, two law professors from Maryland law school, and elder states people in the Bar.

He stated that the bill does not seek to revisit Maryland's underlying policy, and that the support policy that has been in place remains: basic structure of one-third if there is an issue, and one-half if there is not an issue, and that by including non-probate assets into the formula, it restores the default setting in favor of the surviving spouse. He further informed that when drafting this, they initially left the court of original jurisdiction over determining the share open. The workgroup came up with a solution of placing original jurisdiction with the Orphans' Court for the calculation of the share, because the election would be filed with the Register, and that it makes sense to have the Orphans' Court do that so it has the ability to certify issues up to the circuit court as they do now. Mr. Lasley stated that the Section newsletter which comes out later this month or early next month will have a detailed commentary on the bill which will be posted on their website, and he will make sure that Judge Dodd has that and can circulate it.

In conclusion, Mr. Lasley said they are hoping to get feedback from the Conference as to placing original jurisdiction with the Orphans' Court and on the judicial guidance piece.

Members discussed their concerns with the proposed legislation:

- Taking away the autonomy of the decedent to make estate planning arrangements that would work for their own circumstances, and that some of the factors the proposal sets up are extremely subjective and based on whatever judge it is before.
- Increased litigation as a result of the subjective factors in making determinations as to people's relationships and their intent.
- The Orphans' Court does not have jurisdiction over non-probate assets. Anyone who does not like their calculation would have an automatic appeal on the grounds that the Orphans' Court has no jurisdiction over the non-probate assets.
- There might need to be a rules change or a constitutional change in order for the Orphans' Court to have jurisdiction to evaluate non-probate assets, and because it is jurisdictional, it may have to be a constitutional change.
- The use of the formula and the subjective factors, such as the length and nature of the relationship, and how an Orphans' Court judge is going to decide how much to reduce the estate based on, for example, whether they were married for eight months versus five years.

Mr. Lasley addressed some of these concerns. He spoke about testamentary freedom, stating that Maryland has imposed a limit in favor of surviving spouses on testamentary freedom for at least 300 years, so this is not a change in policy. He said that only Georgia does not have an elective share. He further stated that the majority of states have something that include some element of non-probate assets, and that the proposal gives a formula that they think will work for the majority of people and

think it will reduce the cases that go to litigation overall. Mr. Lasley informed that there is a provision in the bill requiring everybody who has information to provide it.

In conclusion, Mr. Lasley, stated that if anyone wanted to continue the conversation, that his contact information was on the front of his materials, and expressed that he appreciated everyone's input.

**MOTION by Judge Bright** - Judge Bright moved that the Conference go on the record noting it collectively expressed some deep concerns with the proposed legislation as presented. The motion was seconded by Judge Carr-York, and the motion was unanimously approved.

One of the members asked if the legislative committee can testify on behalf of the Conference if they are opposed. Mr. Latour replied in the negative, and stated that if bills impacting the Orphans' Court are sent to him during the legislative session for comment by the Conference, then that would be the position adopted or not adopted by the Judiciary. One of the members asked if the legislative committee can only testify if asked, and Mr. Latour replied yes, if asked [by the Chief Judge], and Judge Cascia and Mr. Latour reminded the membership of the legislative protocol.

## **II. Approval of the September 18, 2017 Minutes**

The Chair called for the approval of the draft minutes of the September 18, 2017 meeting. There were no objections to the draft provided to the membership for review. Judge Fisher subsequently moved for approval of the minutes, which was seconded by Judge Ames.

The minutes were unanimously approved.

## **III. Committee Reports**

### Education Sub-Committee

#### 2017 Membership

Hon. Melissa Pollitt Bright, Co-Chair  
Hon. Wendy A. Cartwright, Co-Chair  
Hon. George R. Ames, Jr.  
Hon. Sally Saunders Camp [absent]

#### **End-of-Year Report:**

- Sought to clarify the relationship between the Orphans' Court and the Registers (Judge Dodd created the ex-officio committee with Registers to discuss legislative proposals). Proposed a Judicial College class for 2019 to define, clarify, and train how the judges and Registers work together to accomplish the work of the Orphans' Court.
- Attempted to set up a mentoring network for all judges; limited success. Network created but not in much use.
- Began preparations to work with the Judicial Institute when it is preparing for the next Baby Judges training for Orphans' Court judges. Have requested that there be a follow-up Orientation II program created. Judge Cartwright is the current liaison to the Judicial Institute.

- Attempted to facilitate cluster meetings with limited success, however, the attempt did generate some feedback as to concerns around the state, which were passed on to the Conference.
- Revised old Orphans' Court pamphlet and submitted proposed version to Conference.
- Sought clarification of the duties of the Chief Judge of the Orphans' Court; will be working to further define this role.
- Discussion of general education requirements for Orphans' Court judges was tabled indefinitely.
- Facilitated the completion by most of the Orphans' Court judges of the required online course, Workplace Laws, Regulations, and Policies Affecting Judges and Courts. Judge Bright was able to help the last few complete the course, for which she was acknowledged and thanked for her efforts. The Orphans' Court thus has 100% compliance.

**Goals for 2018:**

- Receive feedback on pamphlet draft, then finalize and distribute.
- Concentrate on Baby Judges training.
- Deadline for feedback on both issues is February 1, 2018.

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

**End-of-Year Report:**

- They were asked to give an opinion with respect increasing the Spousal Allowance amount from \$50,000 to \$100,000.
- They discussed amongst themselves other legislation that they were not asked to give an opinion on, such as county non-partisan legislation, as well as state-wide non-partisan legislation. They made the decision that they are not going to push forward non-partisan legislation this year, although the majority of the sub-committee has agreed it is something they will discuss next year.

**Goals for 2018:**

- They will look at any legislation in which Orphans' Court judges are not included as full members of the Judiciary and see if there are any changes that need to be made with respect to that.

- They will continue to follow the proposed elective share legislation, which they may or may not be asked about, as well as spousal allowance, which was increased last year and again this year.

Judge Dodd reminded the Conference that starting next year, the Chair of the Conference will also be a member of the Legislative Committee.

*Policy, Rules & Forms Sub-Committee*

2017 Membership

Hon. Michele E. Loewenthal, Chair

Hon. Athena Malloy Groves, Vice-Chair [absent]

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

Hon. Theodore Philip LeBlanc

**End-of-Year Report:**

- Rule change on Services as an Arbitrator/Mediator (formerly Rule 3.9) is now Rule 18-103.9 and was adopted as of August 1, 2017.
- Website overhaul – Judge Loewenthal informed that Judges’ Groves and LeBlanc went through the comments and changes that were proposed prior to the November 1st deadline, which were provided from Judge Dodd and Mr. Latour. They decided to adopt the suggested changes, and when revised, they will email the final version to everyone.

**Goals for 2018:**

- Petition for funeral expenses. Judge Groves found that in Prince George’s County, the Register was not requiring receipts when claimants were asking for funeral expenses. If a claimant just certified as to what the expenses were, the Register accepted it without receipts. They will look into whether they want the form to say if receipts are required, and if this is a problem throughout.
- Firearms. When the firearms issue was discussed, the Conference discussed about whether a certification was needed for the firearms to be lawfully distributed, and whether to do that through a change in Rule 6-417 or an affidavit, or something else. The membership discussed it, but the Conference did not come to a conclusion.
- Complete website overhaul.
- In certain jurisdictions, when there is a consent to appointment of a personal representative, the Register is not requiring foreign heirs to sign a consent. They will ask others to inquire what their Register does, so they can find out whether this is a state-wide problem.

### Chairman's Report

The Chair informed the Conference that neither the Joint Committee nor the Ex-Officio Legislative Caucus had met since the last meeting. Judge Dodd asked the Conference if they wished to elect a 2018 Chair or Vice Chair at this meeting or wait until the first meeting in 2018. She stated that, with the exception of last year, the Conference staff began the first meeting of the year with the election of officers as the first order of business.

Mr. Latour stated that those judges who requested to be reappointed, have been reappointed and that their letters will go out later today. Those reappointed are Judges' Bright, Fisher, Groves, LeBlanc, and Loewenthal. Everyone else's terms expires in 2018. Judges' Dodd and Camp will not be returning. There will be two new judges appointed, but he does not know who the new members are going to be.

#### **Goals for 2018:**

- Continue to hold cluster meetings.
- Review ways to offer mentoring for new judges.
- Review and update the conference policies.
- Communicate with Chief Judge Barbera with respect to the Conferences' concern about only responding to proposed legislation when asked in cases dealing with issues pertaining exclusively to the Orphans' Court.

#### **2017 End-of-Year Review:**

Judge Dodd asked the Conference to refer to the End-of-Year Review she provided to them electronically prior to the meeting. A printed copy was also provided to the Conference with today's materials. Judge Dodd did not go through each item, but said that she pulled the information from the 2017 minutes. A copy is included as an attachment to these Minutes.

#### **IV. New Issues**

**Robes** – Judge Groves asked that this be brought before the Conference to see whether we want to ask Chief Judge Barbara for her assistance in encouraging judges to wear robes.

Members discussed that there was a general understanding that Chief Judge Bell was insistent that Orphans' Court judges wear robes. Mr. Latour recalled that this issue came up before and that some of the membership thought that Judge Bell had issued a directive on this issue, but that directive could not be located and the issue subsequently dropped.

There was further discussion and Judge Dodd asked if there was any county represented at today's Conference meeting that does not wear robes, and there was none. Judge Dodd then asked if there was any one in favor of sending a letter to Chief Judge Barbara on this issue, and no one was in favor of doing so.

**Future Meeting Dates:**

January 22, 2018

March 12, 2018

June 4, 2018

October 15, 2018

December 3, 2018

**State-Issued Badges**

Mr. Latour explained to the Conference that the Department of General Services (DGS) is in the process of collecting badges that should not belong to certain employees, such as employees who left state employment and not returned them, state employees who have multiple badges, and old badges that have not been turned in for the current badge. DGS needs to collect these badges because they are afraid of misuse. When DGS reviewed the Judiciary, he was asked by the head of Operations to collect the badges since he is the point person for the Orphans' Court Conference and judges. DGS can only issue badges to state employees. Mr. Latour explained that as county paid employees, it was the responsibility of the county to issue the judges appropriate identification.

Judge Bright stated that she thought the badge was issued by the Judiciary itself, because Judge Bell mandated that they have ID cards. She asked if we need judicial identification and, if so, who is going to issue it. Mr. Latour replied that there are only two types of badges: one issued by the State through DGS, and those issued through the County.

Mr. Latour will be contacting Orphans' Court judges to inform them that their state badges were issued in error and request they be returned.

**V. On-going Issues**

- Cluster Meetings – Judge Dodd spoke of their importance, and urged the Conference to keep them on the agenda for next year.
- Mentoring – Judge Dodd stated that Mentoring is in their mandate, and thinks it is really important.

**VI. Review of Action Items**

- To get a response from the Judicial Inquiry Board as to whether or not the Orphans' Court judges can serve. **Staff**
- Provide feedback on the Orphans' Court pamphlet and Baby Judges training to Judge Bright by February 1, 2018; **Membership**
- Judge Bright previously requested that a hardcopy of the mandatory judges' course be provided for reference. Brenda Iazzetta provided the Conference a hardcopy of "Workplace Laws, Regulations, and Policies affecting Judges and Courts" at today's meeting, and will distribute via the ListServ to all Orphans' Court judges; **Staff**

On behalf of the Conference, Judge Cartwright acknowledged Judge Dodd as a stellar Chair, that she embodies what the Conference had in mind when it was created, and thanked her for all of her hard work.

**VI. Adjournment**

The Conference adjourned at 1:06 pm.