



CONFERENCE OF ORPHANS' COURT JUDGES

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

MEETING MINUTES June 4, 2018

Members Present:

Hon. Melissa Pollitt Bright
Hon. Maureen Carr-York
Hon. Wendy A. Cartwright
Hon. Kimberly J. Cascia
Hon. Juliet G. Fisher
Hon. Athena Malloy Groves
Hon. Theodore Philip LeBlanc
Hon. Michele E. Loewenthal
Hon. Leslie Smith Turner

Staff Present:

Stephane J. Latour
Brenda Iazzetta

I. Call to Order

On Monday, June 4, 2018, the Conference of Orphans' Court Judges met at 10:30 am at the Judicial College Education and Conference Center to approve the March 2018 minutes and to discuss the established agenda.

Judge Groves called for the approval of the draft minutes of the March 12, 2018 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 LeBlanc. The minutes were unanimously approved.

2018-2019 Term

Hon. Athena Malloy Groves, Chair

Hon. Juliet G. Fisher, Vice-Chair

Stephane J. Latour, Staff

Brenda Iazzetta, Staff

Conference Members:

Hon. George R. Ames, Jr.

Hon. Melissa Pollitt Bright

Hon. Maureen Carr-York

Hon. Wendy A. Cartwright

Hon. Kimberly J. Cascia

Hon. Charles M. Coles, Jr.

Hon. Frank H. Lancaster

Hon. Theodore Philip LeBlanc

Hon. Michele E. Loewenthal

Hon. Leslie Smith Turner

Hon. Nathaniel C.W. Wilson

In Memoriam

**Hon. Carville D. Duncan, Jr.
1942-2018**

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Internal Affairs
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II. Subcommittee Reports

Legislative Subcommittee

2018 Membership

Hon. Juliet G. Fisher, Chair
Hon. Maureen Carr-York
Hon. Kimberly J. Cascia
Hon. Frank H. Lancaster [absent]
Hon. Leslie Smith Turner

Judge Fisher reported that the Legislative Subcommittee discussed the augmented estate legislation proposed by the Maryland State Bar Association that was tabled for this session. Jonathan Lasley wants to meet with Judges' Groves and Fisher to discuss. He forwarded information and proposals from other states that Judge Fisher shared with the Subcommittee, and will provide to any member who wants to look at it. Judge Fisher would like to alleviate the concern of people having to redo their estate planning, and suggested that future legislation apply only to wills that are completed after the effective date of legislation.

Judge Fisher stated that a spouse being disinherited under a will is what triggers the augmented estate, so the legislation is really just for wills. Judge Groves thought that under the proposed legislation, a spouse could ask for an augmented estate whether there was a will or not. She wanted further clarification. Judge Fisher said it is her understanding that the legislation was intended for a spouse to elect against a will; if it is intestate, non-probate assets would be lumped in and the spouse would get 50%. Judge Fisher asked the Conference if everyone is comfortable with the position of future legislation applying only to wills dated after the legislation is passed. Judge Cartwright agreed that a date would preserve estate planning already done before the effective date of the legislation. Judge Fisher will inform the Conference when a date is set to meet with Mr. Lasley and extended the invitation to anyone who wants to attend. If anyone would like to send Judge Fisher something in writing, she will share the information with Mr. Lasley.

Judge Fisher wants to continue the discussion about Orphans' Court Judges running as non-partisan and make sure everyone is okay with that. Judge Groves clarified the difference between running non-partisan and cross-filing. She explained that we want to cross-file, because that is what the Circuit Court does, and that the school boards run non-partisan. Judge Carr-York stressed that we need to change the part of the law that calls Orphans' Court Judges "public officials" in addition to changing the party affiliation, and that she would like to have a term longer than four years.

Judges Turner and Carr-York suggested that the MAJOC Agenda contain specific discussion items and be sent in advance of future MAJOC meetings so people have notice. They discussed that there was a report at the recent MAJOC meeting that was made by Judge Fisher on behalf of the Conference Legislative Subcommittee. Judge Fisher replied that the report she gave to MAJOC was her own opinion about pending potential legislation to be discussed, and not a Subcommittee report.

Policy, Rules & Forms Subcommittee

2018 Membership

Hon. Michele E. Loewenthal, Chair

Hon. Theodore Philip LeBlanc, Co-Chair

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

Hon. Nathaniel C.W. Wilson [absent]

Judge Loewenthal reported that the Subcommittee is working on proposed language for Registers to give Personal Representatives (PRs) after they have been appointed. Judge Loewenthal received Judge Smack's course materials on distribution of firearms in the State. They are working on a list/information sheet that is coming from a statute in the public safety code to alert PRs that if there are firearms in the estate, that they cannot just give them out. Judge Fisher asked if there will be a form that PRs will need to sign off on. Judge Bright stated that Britt Stouffer, Esq. made a clear recommendation at last year's MAJOC meeting that the PR is not qualified to make such determinations. The PR needs to turn firearms over to a licensed Maryland firearm dealer, because we cannot hold a PR responsible for the background checks. Judge Bright stated that whether the PR signs off or not, they would not have the tools to be fully in compliance with the law, and thinks the only thing we should require of the PR is to turn the guns over to a licensed dealer to do the background checks for distribution. Judge Fisher suggested that the form could be that any firearms in the estate will be turned over to a licensed dealer. Judge Carr-York specified "regulated" firearms, because there are some that are not regulated.

Judge Loewenthal said the Subcommittee is not ready to provide a recommendation to the Conference. She would like time to review what Judge Wilson provided the Subcommittee this morning, which included other ideas about how to handle and links to the Maryland State Police Licensing Division about the transfer of firearms. The Subcommittee will study the materials over the summer, and present their recommendations to the Conference at the October meeting.

Judge Loewenthal then talked about a discrepancy in Rule language that Judge Fisher brought to her attention: Maryland Code § 12-502(b) and Maryland Rule 7-505(e).

Maryland Courts and Judicial Proceedings § 12-502(b):

- (1) An appeal pursuant to this section shall be taken by filing an order for appeal with the register of wills within 30 days after the date of the final judgment from which the appeal is taken.

- (2) Within 30 days thereafter the register of wills shall transmit all pleadings and orders of the proceedings to the court to which the appeal is taken, unless the orphans' court from which the appeal is taken extends the time for transmitting these pleadings and orders.

MD Rule 7-505:

(e) Transmittal of Record. Unless a different time is fixed by order entered pursuant to this section, the Register of Wills shall transmit the record to the circuit court within 60 days after the date the first notice of appeal is filed. The filing fee shall be forwarded with the record to the clerk of the circuit court. For purposes of this Rule, the record is transmitted when it is delivered to the clerk of the circuit court or when it is sent by certified mail by the Register of Wills, addressed to the clerk of the circuit court. On motion or on its own initiative, the Orphans' Court or the circuit court for good cause show may shorten or extend the time for transmittal of the record.

Judge Cartwright said that there is a gap between the two rules that leave 30 days or 60 days up for interpretation. Judge Fisher suggested changing the rule to be in accordance with the statute so they line up. Judge Loewenthal favors the language in the rule, and would rather change the statute. Judge Loewenthal requested that Conference members ask their Registers what they do, and she will also ask the head of the RoW.

Education Subcommittee

2018 Membership

Hon. Melissa Pollitt Bright, Chair
Hon. Wendy A. Cartwright, Co-Chair
Hon. George R. Ames, Jr. [absent]
Hon. Carville D. Duncan, Jr. [absent]

Judge Bright presented the final draft of the tri-fold brochure, as well as a full-sheet version. The members preferred the tri-fold for the campaign season, but are interested in having both. The members provided Judge Bright minor edits. Judge Bright then read a submission from Judge Turner about the history of the Orphans' Court name, and discussion followed. Judge Bright told the Conference that the language on the brochure with respect to the history of the name came from a Judge in Baltimore City who has a degree in history and is an expert in his field. The goal is to have the brochures available prior to the Primary Election.

Judge Bright put on record with the Conference that the Subcommittee is short of members and should have a new Chair. This will be taken up after the new judges are installed.

III. Staff's Update

Mr. Latour did not have anything to report. He asked the Conference if they heard from Judge Lancaster since he is absent today. Judge Cascia replied that she had and he was unable to attend today's meeting.

IV. Old Business

Cluster Meetings

Cluster meetings will be tabled until after the elections and installation of new judges. The concept will be introduced at the Baby Judges' School in February.

Cross Filings

Already discussed.

Longer Terms

Judge Loewenthal would still like to try and implement an 8-year term. In doing so, it was discussed that salaries would not change for 8 years. Judge Carr-York said that Anne Arundel County has not had a salary increase in 12 years. Judge Groves said that Prince George's County will be getting a salary increase after 12 years of having no increase. Judge Groves asked the Conference if an 8-year term works better, and the Conference agreed that it does. Judge LeBlanc asked how we go about getting longer terms, and if cross-filing should be handled at the same time. Judge Cascia said they would need to talk to a delegate and have legislation drafted. Judge Groves stated she thought it would take a constitutional amendment to change the term length; Judge Fisher does not think terms are in the Constitution, but in the Estates and Trusts Article. Judge Bright asked Judge Fisher if we are required to present the issue before the Judicial Legislative Committee, and Judge Fisher suggested that we have it drafted first to see what it looks like. Mr. Latour was asked by Judge Bright to look into the issue.

Judge Loewenthal stated that we can address all of them, but asked if there would be three separate bills. Judge Carr-York said the "public officials" language would have to change. Mr. Latour asked if any of the members had spoken to Alexis Rohde about the issue. Judge Fisher provided a copy of a Letter of Advice issued by Alexis Rohde on May 26, 2015 regarding legislation enabling Orphans' Court Judges to Cross-File in Elections, which states that "historically judges of the Orphans' Courts have registered their party affiliation when running for office and according to counsel for the State Board of Elections, altering this historical practice would require a statutory change." Judge Fisher asked Mr. Latour how they can do this. Mr. Latour replied that to his knowledge we do not draft legislation, but he will check with the Government Relations Division.

Baby Judges' Orientation

Judge Cartwright informed that the orientation will be in the same format as the first one. She asked the Conference to send her faculty recommendations. The Orientation is scheduled to be held February 21-22, 2019, and will include judges appointed since the last orientation. Judge Groves inquired as to Judge Cartwright's committee. Judge Cartwright replied that she is working with the Judicial College and told the Conference that if anyone is interested in being on the Committee to let her know.

V. New Business

JCECC Badges

Judge Bright would like Conference members to be issued a badge to access the JCECC without having to go through security, and further stated that their County badge carries no weight at the JCECC. She inquired about who to ask about a Judiciary ID, because they are required to come to the JCECC for continuing education and meetings. Mr. Latour stated that the Judiciary does not issue IDs, and that only the Department of Governmental Services (DGS) issues IDs on behalf of State employees. Mr. Latour said he can look into the matter, but it is his understanding that the directive only allows for State employees to bypass security by showing their Judiciary badge to JCECC security personnel. Mr. Latour was asked if their state badges were taken away because of wrongdoing by an Orphans' Court Judge, and he responded that it was a result of an audit whereby DGS was made aware that badges were erroneously issued to individuals who were not state employees, and DGS asked that those badges be returned.

Grant Awards for ADR Programs

Judge Groves informed that the Administrative Office of the Courts (AOC) can no longer issue grants to Orphans' Courts for ADR programs. Judge Cartwright said she spoke to Jonathan Rosenthal and Alisha Parker at MACRO who told her that the AOC had a change in position and direction. Judge Cartwright asked the Conference to pass this information to every county.

Affidavits in Lieu of Accounts

Judge Groves informed that some of the Registers were not accepting Affidavits in Lieu of Accounts. This should not be the case because the Rules still allow for Affidavits in Lieu of Accounts. There was a miscommunication that had to do with a specific matter in which advice was given by Alexis Rohde. Judge Groves suggested that each Orphans' Court meet regularly with their Registers because of the impact they have on the Court.

Forms Subcommittee

Judge Groves sits on the Guardianship Forms Subcommittee of the Rules Committee and told the Conference that forms are being updated with respect to Guardianship of Person and Property and Guardianship of the Minor and Disabled Persons.

Meeting with Chief Judge Barbera

Judge Groves informed that she contacted Chief Judge Barbera's office and asked if the Chair and Vice Chair could meet with her about where she wants the Conference to go from here. They are scheduled to meet on July 12th and if there is anything Members want brought up to let her know. Judge Cascia stated that previous meetings with the Chief Judge were open to more people. Judge Groves said she would take it under consideration.

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**
- Inquire with the Government Relations Division about drafting proposed legislation. **Staff**

VII. Adjournment

Judge Fisher moved to adjourn the meeting, which was seconded by Judge Cartwright. The Conference adjourned at 12:50 pm.