



## CONFERENCE OF ORPHANS' COURT JUDGES

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

### MEETING MINUTES October 15, 2018

#### Members Present:

Hon. Melissa Pollitt Bright  
Hon. Maureen Carr-York  
Hon. Wendy A. Cartwright  
Hon. Juliet G. Fisher  
Hon. Athena Malloy Groves  
Hon. Theodore Philip LeBlanc  
Hon. Michele E. Loewenthal  
Hon. Leslie Smith Turner  
Hon. Nathaniel C.W. Wilson

#### Staff Present:

Stephane J. Latour  
Brenda Iazzetta

#### I. Call to Order

On Monday, October 15, 2018, the Conference of Orphans' Court Judges met at 10:30 am at the Judicial College Education and Conference Center to approve the June 2018 minutes and to discuss the established agenda.

The Conference took a moment to remember and honor their colleague, Judge Carville Duncan.

Judge Groves called for the approval of the draft minutes of the June 4, 2018 meeting. There were no objections to the draft provided to the membership for review. Judge LeBlanc subsequently moved for approval of the minutes, which was seconded by Judge Bright. The minutes were unanimously approved.

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#### **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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*Administrative Office of the Courts  
Internal Affairs  
580 Taylor Avenue - A2  
Annapolis, MD 21401  
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## **II. Chair's Report**

Judges Groves and Fisher met with Chief Judge Barbera on July 12, 2018 for the purpose of asking her what she envisions for the Conference moving forward. First, Chief Judge Barbera wanted to know what the Conference is working on. Judge Groves informed that the Education Subcommittee has been working on a pamphlet to disseminate to the public at each of the Orphans' Courts, and that a former pamphlet was used in conjunction with the one Baltimore County is using to prepare this new one. Judge Groves then reported that the Policy, Rules and Forms Subcommittee is working in conjunction with ROW to provide information to Personal Representatives on what to do if there are guns in an estate. Judge Groves also informed the Chief Judge that the Conference has discussed coming up with a formulation as to attorneys' fees if an attorney is representing a guardianship, and that would probably be something to work on with the Rules Committee. Judge Fisher then spoke to the Chief Judge about the Legislative Subcommittee. Judges Groves and Fisher informed the Chief Judge that the Conference has expressed concern that their opinion is not asked with regard to legislation that deals directly with the Orphans' Court. Chief Judge Barbera said she was not aware of that, and would look into it.

Judge Fisher told the Conference she thought it was a great meeting, and that they also discussed the disparities between the different jurisdictions, as well as their concerns about term limits for Conference members.

Judge Fisher expressed to the Conference her concern that the current Chairs of the Subcommittees all have terms ending on December 31, 2019, and asked Mr. Latour if he could bring up the issue of term limits again with the Chief Judge. Mr. Latour said he would follow up with Chief Judge Barbera. Judge Fisher asked Mr. Latour if he knows whose terms are ending this year. Ms. Iazzetta provided a list that indicates the following members have terms ending on December 31, 2018: Judges George R. Ames, Jr., Maureen Carr-York, Wendy A. Cartwright, Kimberly J. Cascia, Charles M. Coles, Jr., Frank H. Lancaster, and Leslie Smith Turner. Judge Fisher suggested that a different way for those interested to serve on the Conference may be for people to apply for any vacancies. Judge Fisher asked Mr. Latour if he knows about the recent change regarding term limits. Mr. Latour informed that when the new Administrative Order was issued, the current Conference members could remain on the Conference for another year, and new members would be subject to a two-year term.

Judge Groves informed that Chief Judge Barbera is very interested in Education, and it was suggested to speak to the JCECC about the possibility of partnering with a library in the western and eastern parts of the state to see if we can do live streaming of classes. We can promote attendance for the two-day judicial requirement by making the location more convenient, and have someone at the location take attendance. Judge Bright liked that idea and asked if it would be more difficult to make it available online, so that not everyone has to attend at the same time. Judge Groves said that the Chief Judge also mentioned webinars. Judge Bright stated that part of the lack of attendance is that many judges have other jobs.

Judge Smith-Turner asked about recourse for those who do not fulfill the two-day requirement. Mr. Latour was asked to speak with Chief Judge Barbera about recourse and enforcement of the mandate. It was discussed that the two-day requirement should be explained during the New Judge's Orientation. Judge Groves will speak to Stacey at the JCECC about the video library and training. Judge Carr-York asked if there is a way to record the courses and have them available to download.

Judge Groves said that Chief Judge Barbera was impressed that the Conference as a body is dedicated to making the Orphans' Court better, and would like to meet once a year.

### **III. Subcommittee Reports**

#### *Education Subcommittee*

##### 2018 Membership

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

Judge Bright informed that the Education Subcommittee met with David Pugh, Assistant Manager of Judicial Education at the JCECC, who will help them coordinate the Orientation for new Orphans' Court Judges. There will be an evening session on February 20<sup>th</sup> over dinner, and full-day classes on February 21<sup>st</sup> and 22<sup>nd</sup>. The outline is done, but the speakers need to be finalized, and classes will be basically the same as before.

Judge Bright stated that the Orphans' Court brochure should be ready for dissemination by the end of the current week.

Judge Groves informed that the Bench Book will be given to all new judges at their orientation, and there will also be an addition to the Bench Book since Orphans' Court Judges now have the authority to order mediation. Updates to the Bench Book will also be mailed, and hard copies will be printed for those who do not have email.

Judge Bright noted that the Education Subcommittee is short of members and needs new ones once new judges are appointed.

#### *Policy, Rules and 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

Judge Loewenthal reported that the Subcommittee revised the firearm notice during their meeting and she will email the revised Notice to the Conference. The purpose of the Notice is to notify Personal Representatives that if the estate has firearms, there is something they are supposed to do. It will be called "Important Notice Regarding Firearms." Judge Loewenthal read the beginning of the Notice, and then said there will be information in all caps to please contact a licensed firearm dealer or the Maryland State Police Licensing Division (MSPLD), followed by contact information for the MSPLD. Judge Loewenthal said she obtained this

information from former Judge Dale Smack's class in October of 2016, wherein he referenced Public Safety statute 5133 regarding certain restrictions. Judge Loewenthal is going to list the 13 reasons on the Notice about why a person may not possess a regulated firearm. The suggestion of adding language regarding contacting an attorney was discussed, but the Subcommittee does not want people to think they are not required to contact a licensed firearm dealer.

Judge Fisher informed the Subcommittee that she spoke to the Joint Committee of Bench, Bar and ROW, and they are interested in reviewing the form. Judge Loewenthal will be sending the revised Notice to the Conference, and also to Bryon Macfarlane, Register of Wills for Howard County, to compare forms and get their input.

Judge Loewenthal then spoke of whether there is a conflict in Maryland Courts and Judicial Proceedings § 12-502(b) that the Register of Wills shall transmit all pleadings and orders of the proceedings to the court to which the appeal is taken within 30 days, and Maryland Rule 7-505(e) that 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.

Judge Loewenthal asked the Conference at the last meeting to ask their Registers what they do. Judge Loewenthal's Register said within 60 days. She also asked her Register whether they differentiate between the pleadings and orders in § 12-502(b), and the record in 7-505(e), and was told that they do them all within 60 days. Judge LeBlanc was also told 60 days by his Register. Judge Loewenthal asked the other members if they could please ask what their Registers do.

Judge Loewenthal informed that the Subcommittee thinks 60 days makes more sense and recommends changing the statute, which is a Legislative Subcommittee issue, and not under the Policy, Rules and Forms Subcommittee. Judge Fisher would like to talk to the Chair of the Judicial Legislative Committee to see if they would be interested, and Mr. Latour will provide the contact information to Judge Fisher.

Judge Groves informed the Conference that she attended the Joint Committee of Bench, Bar and ROW on June 6, 2018, and that Judge Fisher attended the one in October. Judge Groves spoke about the items discussed at the June 6<sup>th</sup> meeting:

- 2018 Legislative Summary.
- Federal exclusion amount for states is \$11.2M; Maryland kept exclusion at \$5M.
- Change in inheritance tax for those who died after December 31, 2017.
- Administration exemptions.
- Waiver of fees.
- Guardianship – Adding a standby guardian in the event of adverse immigration action.
- Maryland Achieving Better Life Program.

- Upcoming legislative session:
  - Elective share.
  - Electronic wills – Nevada has a statute allowing the testator to sign electronically, and a witness does not need to be present. Looking at amending Maryland Estates and Trusts Section § 4-104 that deals with wills executed outside of Maryland.
- ROW discussed scanning wills for safekeeping.
- Firearm information could be on ROW website.
- Standardized Accounting Forms – Attorney said no one was really interested, because every account is different. ROW is also opposed to standardizing.
- Publication of PR appointment and whether it is clear as to a 1<sup>st</sup> or 3<sup>rd</sup> date of publication. Requirement is to publish three times.
- ROW can grant an extension to modify the administration form online up to 90 days.

Judge Fisher attended the Joint Committee Meeting of Bench, Bar and ROW on October 4, 2018. The following were discussed:

- Augmented estates.
- Electronic wills.
- \$40,000 spousal allowance will not change.
- Payment of spousal allowance.
- Trust accounting bills.
- Guns.
- No bond of administrative small estates.
- Montgomery County Circuit Court Judges each sit as an Orphans' Court Judge two weeks out of every year. The issue came up of whether a PR, who is also an attorney, should be compensated at their fee rate. A judge decided that a PR, who is also an attorney, will not be paid over the maximum commission.

The next Joint Committee Meeting of Bench, Bar and ROW will be on January 17, 2019.

### Legislative Subcommittee

#### 2018 Membership

Hon. Juliet G. Fisher, Chair

Hon. Maureen Carr-York

Hon. Kimberly J. Cascia [absent]

Hon. Frank H. Lancaster [absent]

Hon. Leslie Smith Turner

Judge Fisher said there is not a lot to report because of the current election season. She would like to talk to the Judiciary Legislative Committee to move things along with respect to removing the public official's designation and running non-partisan. Judge Groves said the issue of cross-filing has been coming up since at least 2008 by former Judge Donald E. James. Judge Groves said that she and two other judges went to a hearing in 2013 on Senate Bill 327 (Elections for Judges of the Orphans' Courts – Nonpartisan Elections). Two Assistant Attorney

Generals supported the legislation, as well as former Chair to the Conference, Judge Joyce M. Baylor-Thompson, who submitted a position statement in favor of cross-filing to the Judiciary Legislative Committee. Former Conference Vice Chair, Judge Theresa A. Lawler and David Hayes, Assistant Attorney General, also wrote letters in support of SB 327.

Judge Groves spoke about term limits and that Article IV, Section 3 of the Maryland Constitution does not state Orphans' Court term limits. Article XVII, Section 3, states that all State and county officers elected by qualified voters (except judges of the Circuit Courts, judges of the Supreme Bench of Baltimore City, judges of the Court of Appeals and judges of any intermediate courts of appeal) shall hold office for terms of four years, and until their successors shall qualify. The Conference also discussed the issue of salary raises for Orphans' Court Judges.

#### **IV. Staff's Update**

Mr. Latour informed that he spoke with Suzanne Pelz in the Government Relations and Public Affairs Division, and that the Judiciary Legislative Committee does not draft legislation. Judge Fisher asked if that changed, and Mr. Latour advised her to contact Suzanne Pelz for mechanisms to change legislation.

Mr. Latour did not have an update as to whether or not the Orphans' Court Judges can serve on the Judicial Inquiry Board. He will follow up with Judge Reed.

#### **V. New Business**

The next meeting date was discussed, and it was decided to reschedule December's meeting to January 14, 2019.<sup>1</sup>

#### **VI. Review of Action Items**

- Speak with Chief Judge Barbara about term limits for Conference members, and about recourse for those who do not fulfill the two-day education requirement. **Staff**
- Follow up with Judge Reed as to whether or not the Orphans' Court Judges can serve on the Judicial Inquiry Board. **Staff**

#### **VII. Adjournment**

Judge Groves adjourned the meeting at 12:52 pm.

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<sup>1</sup> Meeting date was rescheduled to Thursday, March 28, 2019.