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HB 339 – Task Force to Study the Maryland Orphans’ Courts

Dear Colleagues,

The Orphans Court of Maryland has exclusive jurisdiction over the administration of disputes relating to wills, estates, and trusts. Significantly, Orphans Courts in individual jurisdictions throughout Maryland are not uniform, and judges of Orphans Courts are not uniformly required to be attorneys or have any practical or specific knowledge relating to estate and trust law, evidence, or legal training of any nature.

In Montgomery County and Harford County, no elected Orphans Courts actually exist; rather, the Circuit Court for those counties act as the *de facto* Orphans Courts, and all will disputes or estates and trust administration matters immediately proceed in the jurisdiction of the Circuit Court. In Baltimore City, Baltimore County, and Prince Georges County, the Orphans Court Judges are elected, but pursuant to a constitutional amendment, they are required to be attorneys admitted in good standing before the Maryland State Bar. In each of the 19 other jurisdictions, ranging from as large as Anne Arundel County and Howard County to as small as Kent and Caroline, judges of the Orphans Courts are elected in partisan elections every four years and not required to be attorneys or to have specific legal training.

As a legislator and a practicing attorney who has handled dozens of often complex and highly contested disputes involving the construction of wills and estate and trust administration, I would suggest that this rather odd situation cries out for further investigation and policy analysis. Criminal laws are uniformly adjudicated before judges who are licensed, practicing attorneys appointed through a process with significant oversight and input. Family and domestic law matters are similarly adjudicated on a uniform basis throughout the state of Maryland and include the appointment of family law magistrates and child support hearing magistrates in each of the 24 jurisdictions. The laws with respect to the appointment of judicial officers in every other field except the construction of wills, estates, and trusts are handled uniformly and are required to be presided over by actual attorneys in good standing as Maryland lawyers.

There is no rational reason why there is such tremendous disparity in the composition and minimum requirements for qualification for the Orphans Court. There may, however, be multiple

theories, approaches, and solutions to the problems inherent in such a fundamentally inefficient and illogical system, including maintaining certain levels of jurisdiction for the existing Orphans Courts.

This legislation, rather than prescribe a particular approach to the thorny issue of how to bring Maryland's Orphans Courts – their jurisdiction, the selection of their judges, and the qualifications associated therewith – into the 21st century, puts that issue before a task force duly constituted by the legislature. As with many issues, it is extremely difficult for our General Assembly to sort through the myriad of stakeholders and competing administrative concerns associated with examining issues concerning the operation of the Orphans Court of Maryland and proposed solutions thereto within the narrow timeframe of the 90- day legislative session. A task force comprised of multiple members of this legislature and wide variety of stakeholders with intimate knowledge of estates and trust law and the operations of the Orphans Court in their various forms would have an opportunity to thoroughly assess these issues and provide recommendations to the General Assembly for legislative action and potential constitutional amendments in coming years.

The dilemma of the current nonsensical approach to our Orphans Courts' jurisdiction and the composition of our courts is real. If your loved one dies in Montgomery County or is possessed of estate property within Montgomery County, and significant disputes happen to arise with respect to the construction of the will or administration of the estate, you immediately have the benefit of the jurisdiction of the Circuit Court under a trained and experienced judge who is a practicing attorney and has been thoroughly vetted by a wide variety of stakeholders prior to his or her appointment.

If, however, you have the exact same situation but you live a few miles outside of Montgomery County (in Frederick or Howard Counties), the resolution of any controversies or claims relating to your loved one's will or estate administration proceeds initially (and often inefficiently) before a panel of part-time partisanly elected Orphans Court judges who may or may not (and more often are not) be attorneys with any formal training in estate and trust law or the law in general.

As the law becomes ever more complex and disputes relating to these matters accordingly grow more complicated, and in many cases more financially significant to the parties involved, allowing this system where only a few counties get the benefit of a legally- trained professional judiciary to adjudicate their matters –while the vast majority of counties do not – makes no sense. A task force to evaluate where and to what extent problems exist in the current Orphans Courts – along with the best possible solutions to ameliorate those problems – would be a simple and cost-effective manner for this General Assembly to begin addressing these systemic concerns.

I would ask for a favorable report on HB 339.