

“The History of the Orphans' Court in Maryland

Like much of the legal structure in Maryland, the Orphans' Court's existence had its origins in England. The Orphans' Court owes its name, confusing to the 21st century mind, to the fact that the children of deceased male landowners were considered orphans when the father died. They were the persons for whom the "orphans' court" legal system was developed, to protect their inheritance interests.

Orphans' Courts were unknown in provincial Maryland and were first created in Maryland under the Acts of 1777. They were to be established in each county and served by a Register of Wills. The initial act established that in contested cases, the parties were entitled to file their actions in courts of general jurisdiction—the then general court, the chancery court, or the county court. In 1851, the judges of the Orphans' Court became constitutional judges. Present constitutional recognition of the Orphan's Court can be found in Maryland Constitution Article IV, §§ 1 and 40.

Judges of the Orphans' Courts exercise limited jurisdiction. The Court is charged by Estates and Trusts Article § 2-102 with conducting judicial probate, directing the conduct of personal representatives, and passing orders necessary for the administration of a decedent's estate. At the request of an interested person, an issue of fact arising in the Orphan's Court may be transferred to the Circuit Court for trial.

In 1964 and 1972, Montgomery County and Harford County, respectively, became exempted from Section 40 of Article IV of the Constitution, which otherwise requires that there be an Orphans' Court in every county and Baltimore City. Section 20(b) of Article IV provides that the judges of those two counties "shall each, alternately and in rotation...sit as an Orphans' Court for their county..."

No history of the Orphans' Court in Maryland would be complete without mention of the frequent attempts to abolish it or curtail it. The Constitution convention of 1867 considered the abolition of the Orphans' Court, ultimately choosing instead a substitute which provided for three elected judges. That substitute now resides in the Constitution.

Sources:

Address by Judge Ogle Marbury, Proceedings of the Maryland State Bar Association (52nd Annual Meeting 1947)

Decedents Estates in Maryland, Hon. A. Northrop and R. Schmuhl (1994)”

Source: <https://mdcourts.gov/orphanscourt/history> (as of September 2021)