

## CONFERENCE OF ORPHANS' COURT JUDGES

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

### MEETING MINUTES

#### 2017-2018 Term

*Hon. Anne L. Dodd, Chair*

*Hon. Wendy A. Cartwright, Vice-Chair*

*Stephane J. Latour, Esquire, Staff*

*Sharon Wright, Staff*

#### **Board 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*

*Administrative Office of the  
Courts  
Internal Affairs  
580 Taylor Avenue - A2  
Annapolis, MD 21401  
(410) 260-3453*

#### Members Present:

Hon. Melissa Pollitt Bright

Hon. Kimberly Cascia

Hon. Joseph V. DiPietro

Hon. Anne L. Dodd, Chair

Hon. Juliet G. Fisher

Hon. Athena Malloy Groves

Hon. Frank H. Lancaster

Hon. Theodore Philip LeBlanc

Hon. Michele E. Loewenthal

Staff:

Stephane J. Latour

A meeting of the Conference of Orphans' Court Judges was held Monday, November 7, 2016, at the Judiciary Education and Conference Center, beginning at 10:30 a.m.

#### **I. Approval of September 12, 2016 minutes**

The Chair began the meeting by calling for an approval of the minutes of the September 12, 2016. Judge LeBlanc moved for approval of the minutes of the September 12, 2016 meeting, followed by a second to the motion by Judge Lancaster. The motion passed without any changes.

#### **II. Committee Reports**

Education Sub-Committee - due to low committee membership, it is still in the process of revamping the old MAJOC sponsored pamphlet as noted at the last OCC meeting. It was clarified that the pamphlet would be completed and distributed electronically in 2017. A concern that has been raised is compliance with continuing education requirements via the Judicial Institute (now Judicial College). A number of options have been discussed to deal with the situation; make-up classes, remote classes, rider share, etc.

Legislative Sub-Committee - it was reported that no pre-filings were listed on the General Assembly's home page. Said filings are usually posted by December 1st. Judge Fisher requested that the members check with their Register of Wills (ROW) regarding compliance with Rule 6-202 (2). There was a brief conversation about the Legislative Protocol and comment by the sub-committee on behalf of the OCC as opposed to comments by individuals to their representatives. The sub-committee was asked to provide the conference with a summary of all bills that impacted the Orphans' Court during the upcoming session.

## **Policy, Rules and Forms Sub-Committee:**

- Orphans' Court Website:

Judge Loewenthal informed that Judge Groves will again query OC judges to gauge their interest in assisting in updating the website.

- Rule 16-813 and Rule 3.9:

Judge Loewenthal informed the OCC that the proposed rule change will be an agenda item at the Attorney and Judges Sub-Committee meeting on December 15, 2016. Judges Loewenthal and Fisher will present the proposal to the Sub-Committee. There was brief discussion as to the intent, purposed and ethics of the proposed rule change.

- Committee Meetings:

Judge Loewenthal briefed the Conference on which sub- committee members would attend the various committee (Judiciary and otherwise) meetings; Joint Committee of Bench Bar, Rules Committee, ROW, Probate Subcommittee, etc.

Judge Groves acts as the sub-committee liaison for the Joint Committee of Bench Bar and ROW meetings. She informed the Conference that the last meeting was held on 9/29/16. She informed that the:

Section Counsel of the Estates & Trusts Section gives updates on legislation and that in 2017 will:

- o reintroduce the 2016 Elective Share measure;
- o introduce changes to the Maryland Trust Act;
- o introduce a measure extending the exemption of the Motor Vehicle Tax; and
- o expand the definition of a qualified power of appointment.

Also on the agenda was a temporary appointment of an agent to make temporary medical decisions for minor children. Currently, no such authority exists.

Register of Wills past president raised three issues related to the inheritance tax: 1) are Pet Trusts subject to tax (some ROWs oppose while others have issues with the calculations), 2) exemption for domestic partners (is an affidavit required), and 3) ROWs are seeing an increase in time to pay the tax. As it relates to ROW forms, there is discussion as to whether the certified mail requirement is necessary.

Old Business:

Judge Groves informed there was discussion as to whether other Orphans' Court judges should attend the meetings. She outlined that usually MAJOC and Orphans' Court Conference members attended the meetings, ROW and Estate & Probate sends their representatives as well as Alexis Rohde from OAG. After a lengthy discussion, a motion was put forth by Judge Dodd and seconded by Judge LeBlanc to recommend to MAJOC that the delegation representing the Orphans' Courts at the Joint Meeting would consist of the Orphans' Court Conference Chair, Vice-Chair, Policy, Rules Committee Liaison and Legislative Chair, plus two at-large Orphans' Court Judges. (Note: said

representatives would be in addition to the MAJOC President and Vice-President.] The vote was 5 in favor, 2 opposed with 2 abstentions; the motion carried.

ROW - uniformity/consistency among the Registers as it relates to a number of ROW issues outlined by Judge Groves is to be addressed at future Joint meetings.

ADR - mediation occurs in Baltimore City, Baltimore County and Wicomico County. Prince George's County has received a grant to start its own program.

The next Joint meeting is January 26, 2017.

Chairman's Report - Judge Dodd distributed two handouts to the Conference; the Maryland Constitution (as it related to the OC) and information from the Maryland Estate Planning and Probate Laws Annotated pertaining to the report of the Henderson Commission.

Staff Report/Action Items:

- the 2013 OAG Opinion concerning the responsibilities was provided to the Conference;
- Judge Dodd informed that the aforementioned proposed rule change was previously addressed by Judge Loewenthal; and
- The Conference decided not to pursue the Study Committee as its purpose was not clear.

**III. On-going Issues**

- Conference Appointments - letters from Chief Judge Barbera were handed out to those OCC members present at the meeting.
- Mentoring - Judge DiPietro was recognized by Judges Cascia and Bright for what he has done not only for them, but other OC judges as well.

Cluster Reports:

- i. Cluster 1 – Allegany, Frederick, Garrett & Washington

Judge Dodd reported that Cluster 1 had a very successful meeting. Among the items discussed after an overview of the Conference was presented were: wearing of robes, procedure for recusal from cases (sent to OCJ), non-partisan elections, court's role in Caveats, orientation for new chief judges, rapport with Clerks and Registers of Wills, and a need for follow up orientation for judges after their second year of office.

- ii. Cluster 2 - Anne Arundel, Baltimore, Baltimore City, Carroll & Howard

Judge Fisher reported that she will try to organize a meeting in the spring of 2017.

- iii. Cluster 3 - Calvert, Charles Prince George's, & St. Mary's

Judge Groves reported that she will try to organize a meeting in the spring of 2017.

iv. Cluster 4 – Caroline, Cecil, Kent, Queen Anne’s, & Talbot

Judge DiPietro reported that it was difficult trying to organize a meeting for his cluster due to a lack of interest. Judge Cascia will assist him in trying to organize a meeting.

v. Cluster 5 - Dorchester, Somerset, Wicomico & Worcester

Judge Bright also reported difficulty in organizing a meeting, but has had preliminary talks with some judges. She reiterated the training compliance issues that are being addressed.

- Ex-officio Legislative Caucus – a meeting was held on September 29, 2016 and Judge Dodd relayed that:
  - o Baltimore County is considering reintroducing legislation about OC Judges cross filing in elections w/o party affiliation;
    - Judge Fisher noted that OAG had provided previous guidance on this issue;
  - o the Conference sent a letter to the Rules Committee about a rule change for Arbiters and Mediators;
  - o the OCC Legislative Committee has decided:
    - not to be politically active regarding issues outside the OC, including Escheat matters;
    - not to support a name change due to lack of unified support by OC judges; and
    - not to support Baltimore City’s proposal to change the length of term of office from 4 to 8 years;
  - o Judge Dodd was informed the only legislation the ROWs plan on pursuing at this time is related to the Inheritance Tax Exemption for Domestic Partners.

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

- Personal Representative’s Firearms Certification – Judge Dodd handed out a proposal to the members requesting that Rule 6-417 be amended to require the PR to certify, under penalty of perjury, that regulated firearms have been distributed lawfully. A motion was made by Judge Cascia and seconded by Judge DiPietro to have the proposal reviewed by the Policies, Rules & Forms Sub-committee. The motion passed with 6 votes in favor and 3 opposed.

#### **V. 2016 Year End Reports & Prospective Issues for 2017**

Education Sub-Committee - Judge Bright reiterated points she made earlier in the meeting. For 2017, the Committee plans on the completing the pamphlet, moving forward with work on the Cluster, working with the Judicial Institute (now Judicial College) on Orientation II training for

new OC Judges and 2019 “Baby Judges” orientation training, adding at least one new member, to its ranks to tackle these projects.

Legislative Sub-Committee - Judge Cascia reiterated points she made earlier in the meeting. Judge Fisher commented on two non-related sub-committee matters.

Policy, Rules and Forms Sub-Committee - Judge Loewenthal discussed two rule change proposals, 6-416 and the Mediator Rule change; the former is before the COA and the latter before the appropriate committee. For 2017, the Committee looks to ensure that the OCC is represented at outside joint meetings, and to overhaul the OC website.

Chairman – Judge Dodd provided to the Conference a list of twelve end of year review items handled by the Conference. Specifically:

- Met 5 times,
- 3 active committees: Education, Legislative & Policy, Rules & Forms
- Reviewed Ethical obligations of judges,
- Surveyed all Orphans’ Court Judges regarding their desire for mentoring, and set up a mentoring system for those judges interested in participating by pairing judges; and surveyed and responded to other concerns of judges,
- Organized the Ex-Officio Legislative Caucus the purpose of which is to find common ground by allowing Orphans’ Court judges and Registers of Wills to review both the language and the intent of legislation proposed by either group prior to its submission,
- Approved advancement of a proposed change to Maryland Rule 6-416, Consent to Compensation Form which was subsequently approved by both the Probate Sub-Committee and The Rules Committee as well as the Maryland Court of Appeals, resulting in codification in the Maryland Rules,
- Divided the state into 5 clusters, identified cluster leaders, and planned cluster meetings,
- Pursued consideration of a separate AG for ROWs and OC judges and invited Michele McDonald from the OAG to discuss this issue with the Conference,
- Approved advancement of a proposed change to Maryland Rule 16-813, Rule 3.9, Service of Arbitrator or Mediator. This change is currently in the hands of the Probate Sub-Committee,
- Representatives attended meetings of the Probate Sub-Committee and Rules Committee meetings, Joint Committee meetings, and Ex-officio Legislative Caucus meetings, reporting back to the Conference,
- Distributed through the ListServ, the procedure to follow when an entire Orphans’ Court recuses from a matter, and
- 2 members resigned.

For 2017, Judge Dodd acknowledged the items being pursued by the three committees. Additionally, she believes the OCC should do a better job of communicating to OC judges what exactly it does and will design a reporting mechanism to handle this task. Judge Groves commented that said report should also be provided to MAJOC.

Judge Dodd was acknowledged by the membership for her leadership in 2016.

## **VI. Information Exchange**

The last item of discussion was an inquiry regarding scheduling orders and potential conflict between language found in 2-504 and 6-461. The Chair will contact Alexis Rohde at OAG for legal advice on this matter.

## **VII. 2017 Conference Dates**

The Conference agreed on the below listed dates and noted that leaderships votes will take place at the first meeting of the year.

- January 23, 2017
- March 13, 2017
- June 5, 2017
- September 18, 2017 and
- November 13, 2017

## **VIII. Adjournment**

There being no further business, the meeting adjourned at 1:30 p.m. The next meeting is scheduled for January 23, 2017, at 10:30 a.m.

Respectfully submitted,

Stephane J. Latour, Staff