



CONFERENCE OF ORPHANS' COURT JUDGES

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

MEETING MINUTES January 22, 2018

Members Present:

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. Juliet G. Fisher
Hon. Athena Malloy Groves
Hon. Frank H. Lancaster
Hon. Leslie Smith Turner
Hon. Nathaniel C.W. Wilson

Staff Present:

Stephane J. Latour
Brenda Iazzetta

On Monday, January 22, 2018, the Conference of Orphans' Court Judges met at 9:30 am at the Judicial College Education and Conference Center to elect officers, approve the November 2017 minutes, receive committee assignments, and discuss the established agenda.

Mr. Latour began the meeting by welcoming two new judges to the Conference: Hon. Nathaniel C.W. Wilson (present) and Hon. Carville D. Duncan, Jr. (absent).

I. Election of Officers

Judge Groves was nominated by Judge Fisher for the position of Chairperson, and her nomination was seconded by Judge Bright. A vote was taken to appoint Judge Groves as Chair, and the Conference unanimously agreed. Judge Fisher was then nominated by Judge Groves for the position of Vice-Chair, and her nomination was seconded by Judge Bright. The Conference unanimously voted for Judge Fisher's appointment. The Chair and Vice-Chair will serve a one-year term.

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. Carville D. Duncan, Jr.

Hon. Frank H. Lancaster

Hon. Theodore Philip LeBlanc

Hon. Michele E. Loewenthal

Hon. Leslie Smith Turner

Hon. Nathaniel C.W. Wilson

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II. Approval of the November 13, 2017 Minutes

Judge Groves called for the approval of the draft minutes of the November 13, 2017 meeting. There were no objections to the draft provided to the membership for review. Judge Ames subsequently moved for approval of the minutes, which was seconded by Judge Fisher. The minutes were unanimously approved.

III. Sub-Committee Assignments

Judge Groves briefed Judge Wilson on each sub-committee, and stated that as Chair she will be sitting ex-officio on each of the sub-committees, which leaves a vacancy on the Policy, Rules & Forms Sub-Committee. Judge Bright informed that the Education Sub-Committee also has a vacancy since Judge Camp is no longer a member of the Conference.

Judge Fisher spoke about the reference made on Page 5 in the November 13, 2017 minutes about the Chair of the Conference also being a member of the Legislative Committee. Judge Fisher moved that either the newly-elected Chair or Vice-Chair can serve as a member of the Legislative Sub-Committee. Judge Bright seconded the motion, and it was unanimously approved.

Judge Groves invited Judge Wilson to sit on the Policy, Rules & Forms Sub-Committee since she will be officially leaving it, and Judge Wilson accepted.

Broke into Sub-Committees at 10:00 am; reconvened at 10:45 am.

IV. Sub-Committee Reports

Education Sub-Committee

2018 Membership

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

Mr. Latour asked Judge Groves if she will be reaching out to Judge Duncan about his sub-committee assignment. Judge Groves stated that she will inform him that he has been assigned to the Education Sub-Committee.

Judge Bright told the Conference that she was re-elected as Chair, and Judge Cartwright was re-elected as Co-Chair.

Old Business:

Judge Bright informed that the Education Sub-Committee was previously asked to work on defining the role of the Orphans' Court Chief Judge. That task was not accomplished, because the AG Opinion they were referring to was a private communication directed at a specific situation. The Education Sub-Committee has been unable to find anything that defines the role of the Chief Judge specifically for the Orphans' Court. Judge Cartwright suggested we ask someone to come and speak to the Conference about the Chief Judge's role and, if the Conference approves, they will seek out someone to come and do a brief presentation. Judge Cartwright thought Alexis Rohde, Assistant Attorney General, would be a good place to start, and also to ask Mr. Latour for recommendations if Ms. Rohde cannot present.

There was discussion about whether the role of the Chief Judge is an administrative one (i.e. budget), and questioned whether this was something that should be assigned to the Chief Judge, especially since there are different pay scales in different jurisdictions. If there is a pay difference, it stands to reason there should be a responsibility difference.

Judge Lancaster asked whether defining the role of the Chief Judge would require a constitutional amendment. Judge Bright suggested they include that in the Sub-Committee's investigation. Mr. Latour informed that the Constitution speaks to the Court of Appeals' Chief Judge as the Administrative Judge of the Judicial Branch, and the Code speaks to the administrative functions of different county administrative judges. He does not know if the Orphans' Court Chief Judge is noted in the Code, but it is not in the Constitution. Judge Cartwright stated that the Chief Judge is mentioned in Estates and Trusts Article § 2-107, wherein there is one line stating that the Governor shall designate and commission one of the three judges of the Court in each county as Chief Judge of the Court.

Judge Bright proposed that the Subcommittee get input about the role of the Chief Judge and investigate about what the Code says about other Chief Judges and then discuss as a Conference. Judge Groves asked if the Conference can take a vote for the Education Sub-Committee to have a speaker present on the topic of the role of the Chief Judge of the Orphans' Court, and the Conference unanimously agreed. Mr. Latour stated that he thinks Judge Cartwright's idea of reaching out to Alexis Rohde to get her input is a good first step and, depending on what she relays back, ask her to speak to the Conference. Judge Carr-York asked that an additional item be mentioned to Ms. Rohde, which is that different jurisdictions have different statements as to the selection of the Chief Judge.

Orphans' Court Pamphlet – February 1st is the deadline to provide feedback. Judge Bright will disseminate feedback to the Sub-Committee members. She will also forward the pamphlet to the new Conference members for their review.

Workplace Laws Online Course – The Sub-Committee will provide the handout to any who did not receive or cannot find the email.

Mentoring-Division of State – Judge Bright informed that there being so few Sub-Committee members, they will be dividing the state into parts; one part for which each committee member who will be responsible for contacting whenever information is to be disseminated.

Cluster meetings – The Sub-Committee will brainstorm alternative suggestions or continue to encourage.

Judicial Institute – Judge Bright informed that we need to encourage all Orphans’ Court judges to meet their two-day obligation for continuing education. New Judge Orientation will be on February 21 and 22, 2019. The format will be as before; planning and speaker engagement is in progress. The Sub-Committee can suggest speakers for topics in this course.

Policy, Rules & Forms Sub-Committee

2018 Membership

Hon. Michele E. Loewenthal, Chair [absent]
Hon. Theodore Philip LeBlanc, Co-Chair [absent]
Hon. Charles M. Coles, Jr.
Hon. Nathaniel C.W. Wilson

Judge Groves reported that Judge Loewenthal will remain as Chair and Judge LeBlanc will be Co-Chair. Judge Groves spoke about the new Guardianship forms and videos, and asked that Orphans’ Court judges familiarize themselves with both. The video is required viewing for anyone who is appointed as guardian of a person and/or property. It is a half-hour video, and a certificate is required to be signed once completed. The forms and videos can be accessed on MDcourts.gov:

<https://mdcourts.gov/family/guardianship/guardianofminortrainingprogram>

Legislative Sub-Committee

2018 Membership

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

Judge Fisher informed that the Legislative Sub-Committee has not been specifically asked about certain legislation, but that there are two that have been refiled: one repealing some of the surviving current intestate portion, and the other is that the Kent County Orphan’s Court Judges are wanting to increase their compensation.

Judge Fisher stated that the Conference does not take a position unless asked, but wanted to discuss the information that Judge Groves disseminated by email to the Conference prior to today’s meeting (Legislative Proposals for the 2018 Session of the General Assembly). Judge Fisher believes that both bills are going to considerably change things and that even though the

Legislative Sub-Committee has not been asked to take a position, they have concerns with both bills.

Judge Fisher informed that with regard to the intestate succession bill, the spouse's share of an estate increased just last year from the first \$15,000 plus one-half to the first \$40,000 plus one-half when there are no minor children at issue. Bar Counsel had sought to increase the spouse's share to the first \$100,000. The Legislative Sub-Committee is hopeful that the Court of Appeals will ask their opinion on this, since they need to make sure that the surviving spouse has a reasonable share of net income without disinheriting the children. Judge Fisher further stated that the provisions that are in place are sufficient to meet the needs of the spouse and also to leave something for the children. Judge Fisher encouraged the Conference to contact their legislators to express their opinion; that if they want to testify in an individual capacity, not as a body, they are welcome to do so.

Judge Groves stated that the bills do not currently have numbers, and that the Legislative Sub-Committee will inform the Conference when they do.

Judge Fisher then spoke about the second bill regarding the augmented elective share of a spouse which includes bringing in non-probate assets with probate assets. It seeks to give the Orphans' Court jurisdiction of calculating the elective share of all assets, regardless of how titled. She thinks it is very rare that people are disinheriting their spouse, but that the Estate and Trust Law Section Council think it is a problem for three reasons:

1. It is too easy to disinherit a surviving spouse;
2. In some circumstances, a widow or widower can receive a disproportionately large share of the estate; and
3. Judicial redress often is beyond the reach of poorer individuals, thus creating a two-tier system for relief from the current statute's inequities.

The Conference discussed their concerns with the proposed legislation:

- Increased litigation.
- Orphans' Court Judges do not have jurisdiction to make a determination as to non-probate assets for the purposes of augmented estates, or jurisdiction to interfere with 3rd party beneficiary contracts.
- Increase in Wills being contested.
- Requires everyone to re-evaluate their estate planning; move assets in different ways.
- Decedent's wishes would not be met.
- Increases the work of the personal representatives.
- Registers would be asked to certify that the number they were given with respect to the augmented estate is correct.

Judge Groves informed that after Mr. Lasley spoke before the Conference at the November meeting, at the joint meeting of the Bench, Bar and ROW, he proposed language to amend Estates and Trust Article § 2-102 in response to the Conference's concerns about not having express jurisdiction over these matters.

Judge Bright mentioned that the elective share language is very similar to the Uniform Probate Code, which Maryland has not adopted, and suggested we contact the National Center for State Courts and the National College of Probate Judges and ask them to look into this provision.

Judge Fisher encouraged everyone to contact their legislators in an individual capacity and disseminate information to other judges. She also informed that Judge Groves will be in contact with Loraine Hennessy, President of the ROW organization, to make sure that there is no legislation being filed by either the Registers of Wills or the Orphans' Court judges without the other's knowledge.

Staff Report

Mr. Latour indicated that he has not heard back from the Judicial Inquiry Board as to whether or not Orphans' Court judges can serve on the Board, and hopes to be able to report back to the Conference at the next meeting.

V. On-going Issues

Cluster meetings – Judge Groves will speak to Judge LeBlanc about Prince George's, Charles and Calvert getting together.

VI. New Issues

Non-Partisan Elections - Judge Fisher spoke about whether or not our Conference can look further into the non-partisan election cycles and have a more substantive discussion. The discussion was tabled at the end of last year. She informed that the Baltimore County bill was held up because they wanted to see it state-wide, and asked the Conference if they would consider having substantive discussions about state-wide elections. Judge Fisher further stated that it cannot be done without the support of the Conference, and that she could have it drafted by a legislator, but not without the Conference's support.

Judge Carr-York stated that if we are going to discuss this, she thinks it needs to be put on the agenda so people know it is coming and will be prepared to discuss both sides of the issue, because there is a difference of opinion. Judge Bright suggested that after the Conference discusses this issue at the March meeting, and if there is a solid difference of opinion, that both sides be presented to the MAJOC membership.

Staggered terms – Judge Bright asked if there would be support to discuss staggered terms for Orphans' Court judges as a future agenda item. She stated that there is precedent in the Maryland Constitution of 1864, and it was done according to an archived transcript, because of a political situation whereby a whole courthouse had been turned over from one party to another. That would mean the possibility of the Register and all three Orphans' Court judges being replaced in a single election cycle. Everyone would run independently. In 1864, the election provided for three seats to be filled, and then one of those three would run again in two years, one in four years, and then one in six years. Judge Carr-York asked when the last time was that

an entire court turned over in a jurisdiction by reason of being voted out. Judge Bright will look that up.

Judge Turner asked the Conference if their respective jurisdictions run on a three-person slate or individually. Judge Bright informed that they have run on a slate in the past. Judge Coles stated that when he was in Howard County, they did run on a slate, but he does not know about Carroll County. Judge Fisher stated that she ran on a slate in Baltimore County, and when they had a fundraiser, it was for all three of them.

Longer terms - Judge Cascia stated that she would be more interested in changing the length of the term. It was discussed that Circuit Court judges have 15-year terms, and that maybe Orphans' Court judges consider 6 or 8-year terms. Judge Groves will add this to the next meeting's agenda if we have time.

Judge Bright withdrew her request for a staggered-terms discussion as an agenda item at the next meeting.

Definition of retirement benefit – Judge Carr-York stated that we need to think about the definition of the retirement benefit if we are going to look into longer terms. She informed that currently if you do not have a county benefit, then you must serve two full terms in order to qualify for the state benefit; that means eight years. She stated that the county took away all benefits for part-time employees in 2010. Judge Bright informed that her county pays for retirement benefits after 12 years, and it is capped at 4% of a person's last annual salary times number of years served, not to exceed 12 years. Judge Carr-York said that is how the state benefit reads.

VII. 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**
- Provide feedback on the Orphans' Court pamphlet to Judge Bright by February 1, 2018. **Membership**
- Judge Cartwright to contact Alexis Rohde to get her input about defining the role of the Chief Judge of the Orphans' Court. **Membership**
- Judge Malloy Groves to inform Judge Duncan of his sub-committee assignment. **Membership**

VIII. Adjournment

The Conference adjourned at 12:23 pm.