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**2016-2017 Term**

*Hon. Anne L. Dodd, Chair*

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

*Stephane J. Latour, Esquire, Staff*

*Sharon Wright, Staff*

**Board Members:**

*Hon. Melissa Pollitt Bright*

*Hon. Sally Saunders Camp*

*Hon. Kimberly J. Cascia*

*Hon. Joseph V. DiPietro*

*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*

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# CONFERENCE OF ORPHANS' COURT JUDGES



## Maryland Judiciary

Judiciary Education and Conference Center

2011D Commerce Park Drive

Annapolis, MD 21401

### MEETING MINUTES

**Members Present:**

Hon. Melissa Pollitt Bright

Hon. Sally Saunders Camp

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. Leslie Smith Turner

Hon. Michele Loewenthal

**Staff**

Stephane J. Latour, Staff

Sharon Wright

A meeting of the Conference of Orphans' Court Judges was held Monday, September 12, 2016, at the Judiciary Education and Conference Center, beginning at 10:30 a.m. Judge Dodd began the meeting by calling for an approval of the minutes of the previous meeting.

Judge DiPietro moved for approval of the minutes of the June 6, 2016 meeting, followed by a second to the motion by Judge Bright. The motion passed with the following change. On page 2 under C-2 the word His was changed to another in the second line before the word jurisdiction.

The Conference welcomed Michele McDonald, Chief Counsel, Courts and Judicial Affairs Division, Office of the Attorney General (OAG), who was invited to speak to the issue of the Conference having an Assistant Attorney General separate from the Register of Wills.

AAG McDonald opened by explaining the scope of what the OAG office is charged with. She stated that her office represents and advises the Judicial Branch. As such, it serves as counsel to the Court of Appeals, the Court of Special Appeals, each Circuit Court, the District Court of Maryland, and the 22 Orphans' Courts. Her Office also represents and advises the clerks of each court (including the elected Clerk of the Circuit Court for each county), and the Registers of Wills for each county, as well as individual State judges. Moreover, the Office advises and represents court-related agencies, such as the Administrative Office of the Courts, the Standing Committee on Rules of

Practice and Procedure, the Commission on Judicial Disabilities, the Attorney Grievance Commission, the Client Protection Fund, and the State Board of Law Examiners.

AAG McDonald stated that Assistant Attorney General Alexis Rohde is the Probate expert on her team and to utilize her experience she is assigned to the Orphans' Court and the Register of Wills. OAG normally does not experience any conflict with their clients and all entities in the State have to work together. AAG McDonald stated that the advice OAG gives is the same for all State entities to ensure consistency throughout. The Orphans' Court need for a separate attorney is unjustified because:

- a. The Orphans' Court judges are constitutional judges and do not need representation in court.
- b. The OAG only gives the Orphans' Court advice concerning procedural and substantive matters.
- c. The Orphans' Court is not a heavy user of attorney services, do not normally have a large staff and does not have enough work to justify having its own attorney.

Judge Smith Turner asked if the OAG gives the same advice to the Register of Wills that they give to the Orphans' Court Judges. AAG McDonald answered yes.

Judge Bright explained she was concerned about the relationship between the two bodies (Orphans' and Registers) because from time to time, conflicts do arise between the two and that was the purpose of asking for separate attorneys. AAG McDonald replied that the OAG is not the arbitrator of good client relationships. The OAG's job is to give the best legal advice and representation to their clients only. They are not there to mediate differences. There was acknowledgement by the Conference that the issue with the Registers primarily concerned interpersonal relationships and that it was limited to a few jurisdictions.

AAG McDonald went ahead to explain the OAG's job concerning the Registers. Any and all personnel actions are under the authority and control of the Comptroller.

AAG McDonald talked about the OAG 2013 Opinion concerning the responsibilities of the Orphans' Court. She will forward a copy to Stephane Latour.

Judge Dodd stated that her Register and Orphans' Court Judges get along fine. However, she could recall an issue where the Register requested a hearing regarding assessment of property and any judgment that the Orphans' Court made likely would be appealed. Also, there was an issue of ex parte communication. Since AAG Rohde was advising the ROW, Judge Dodd was sent to another AAG who had to seek AAG Rohde's advice. The case was ultimately transferred to another venue. Judge Dodd praised AAG Rohde on her work and advice to the Orphans' Court.

Judge Lancaster raised his concern that the Register would issue letters of Testamentary when the court is not in session. AAG McDonald will respond directly to Judge Lancaster concerning this issue.

AAG McDonald told the Conference that Orphans' Court judges receive judicial immunity as well.

## 1. **Reports**

- A. **Education Committee** - is currently in the process of revamping the old MAJOC sponsored pamphlet. The Committee will follow-up with district coordinators funding the pamphlet
- B. **Legislative** – the Committee reviewed the protocol from Judge Long prior to the meeting for review reminding everyone “to avoid infringing upon the powers reserved to the legislature.”
1. Escheat -the power of the state to acquire title to property for which there is no owner. Judge Cascia read from a prepared paper that she had researched (see attached). After much discussion the membership decided not to pursue this issue.
  2. Name change - the Committee decided not to proceed at this time due to lack of support among Judges.
  3. Term Length – the Committee decided not to pursue at this time.

There has been no new legislation introduced since the last meeting and the Committee did not receive any new legislation resulting from the May 13th email that Judge Dodd sent out.

### C. **Policy, Rules and Forms**

1. Website:  
Judge Groves discussed certain points that should be corrected in the website. There is redundancy on the different pages. She hopes that others will assist her in updating the website.
2. Rule 16-813, Rule 3.9, addition  
Judge Fisher and Judge Loewenthal proposed an addition to Rule 16-813, Rule 3.9, Service as Arbitrator or Mediator, for the Committee to discuss. The change would allow Orphans’ Court judges, both attorney and lay judges, to conduct ADR. The judge has to be certified as a mediator. The paragraphs specify that any ADR proceedings conducted cannot conflict with an Orphans’ Court judge’s duties and that the judge’s judicial office cannot be used to further the judge’s success in the practice of ADR. The Committee agreed that these conditions of practice will ensure the integrity of the judge’s judicial office while allowing the judge to pursue other areas of interest. The Committee voted to approve the Rule change and to submit it to the Conference for a vote.

Judge Fisher moved to support this change to Rules 16-813 and 3.9. Judge LeBlanc seconded. All Conference Judges were in favor. Motion passed. Judge Loewenthal will draft a letter to the Rules Committee

#### D. **Chairman's Report**

1. Judge Dodd sent notice via the ListServ to all judges that the Maryland Judiciary will be sun-setting Word Perfect as of June 20, 2017 and will utilize Microsoft Word only. Orphans' Court Judges will no longer be able to send a Word Perfect document electronically to anyone in the Judiciary. Judges will need to be trained on Microsoft Word. The only judges expressing a need for this training were those from Caroline County. They were sent notice that the training would be held in Cecil County the 3rd week of February 2017 and in Harford County the 3rd and 4th weeks of February. Judges should consult with the Administrative Clerk or Judge at one of those locations to be included in the training sessions. If anyone else needs the training, please do the same.
2. Communications – Judge Dodd asked the judges to check the email address we have for them, if they have not been receiving information about the Conference (agenda, minutes, etc.). Judge Dodd was concerned that a number of judges (more than 40% - 5 out of 12) failed to respond to Sharon's request for lunch selection. Judge Dodd asked the judges to remember that the order had to be made in advance and to please adhere to the necessary deadline. Also, please respond whether you want lunch or not.
3. November 7, 2016 will be the Conference's last meeting. Judge Dodd would like to spend part of that meeting reviewing what has been done this year. She asked committee chairs to come prepared with a list of their committee's accomplishments as well as items the committees wish to pursue in 2017.
4. The next Joint meeting (representatives of the MAJOC, ROW Association, Attorney General's Office and Estate and Trust Law Section Council) is scheduled for Thursday, September 29th at 9:45 am. The Ex-Officio Legislative Caucus will be held immediately thereafter.
5. A request was sent to Victor Laws, chair of the Probate Subcommittee, asking if consideration could be given to including an Orphans' Court judge on the Subcommittee. The Subcommittee is made up of judges and attorneys who didn't seem to have probate experience. He responded that while anyone may attend and be heard at the meeting, only Rules Committee members can be appointed with voting rights on the Committee. He suggested that we request inclusion on the Rules Committee and from there it would be easy to be appointed to the Probate Subcommittee. Judge Dodd will draft a letter to Chief Judge Barbera if the Conference has an interest in being represented on this Committee. The Committee deals with Rule changes for all courts and requires an extensive amount of reading. Judge Dodd is not interested in being appointed, but asked if anyone else was interested. There being no one interested in serving, this will not be pursued.
6. Probate Subcommittee (8/11/16) & Rules Committee (9/18.19) meeting review. The notes from these meetings are attached hereto.

- E. **Staff** – Obtaining email addresses for the Orphans’ Court judges is still under review.

## 2. **Ongoing Issues**

- A. No one was interested in serving on the Rules Committee when Judge Dodd asked. Judge Fisher said that a Probate, Rules & Form committee person should represent the Conference at those meetings.
- B. Stephane Latour mentioned that the length of time a Judge take leave from court should be addressed in writing to Chief Judge Barbera. Due to the sensitivity of this issue, the Conference decided not to pursue.
- C. Judge Lancaster could not locate any correspondence regarding Orphans’ judges wearing robes but informed the matter was settled in his jurisdiction.
- D. **Appointments for Conference** – Chief Judge Barbara is still reviewing replacements for the two current vacancies. There is no new update.
- E. **Mentoring Update** – Judge DiPietro has not heard from the Judges assigned him. Judge DiPietro did reach out but did not receive a response.

### F. **Cluster Reports**

- a. Cluster 1 – Garrett, Allegany, Washington, Frederick – Judge Dodd  
Contacted judges by email, telephone, written invitation, and follow up email. There was a 73% positive response. Will use the Hagerstown library as a meeting place on September 17th. Asked Conference for assistance with talking points.
- b. Cluster 2 – Carroll, Baltimore County, Baltimore City, Howard, Anne Arundel - Judge Fisher  
Meeting was held in Towson for an hour. Talked about issues in the court and general issues surrounding the courts. Judge Fisher gave everyone in attendance a tour of the Towson Courthouse. She received good feedback and is planning to hold the meeting twice a year.
- c. Cluster 3 – Prince George’s, Charles, Calvert, St. Mary’s - Judge Groves  
Sent an email to the Chief Judges in her group. Did not receive a response from any of them. She will email all the judges in her group the week of September 19th. Only heard from 3 judges and she does not want plan meetings for only 4 people.
- d. Cluster 4 – Cecil, Kent, Queen Anne’s, Caroline, Talbot - Judge Camp  
Will have to give to someone else. Judge DiPietro will try to put something together for this group.
- e. Cluster 5 - Dorchester, Wicomico, Somerset, Worcester – Judge Bright  
Nothing has been started yet. She might need to turn this group over to someone else.

### 3. **New Issues**

- A. Terms of Office – The judges who have been appointed to one year terms in 2016 will need to let staff know whether or not they wish to be considered for reappointment on or before the last meeting scheduled for November 7th.
- B. Conference Chair – Judge Dodd was appointed to the Conference for a one year term. In the immediate past, the chair of the Conference has served a two year term. At the November meeting a vote will need to be taken on whether to vote in a new Chair or wait until January after the Chief Judge makes the new appointments. It will also need to be decided whether the chair should serve a term coinciding with his or her Conference appointment, or something else.

Judge Fisher said that the Conference should wait until January to vote for the new Chair. The Conference decided that going forward, the Chair will serve a two year term and will vote for the Chair in 2017.

A poll was taken of the judges who would like to be reappointed. Judges Lancaster, Smith Turner, Dodd, Cascia replied yes. Judge Dodd is interested in possibly serving one more year and asked Stephane Latour to ask the Chief Judge if she could finish out Judge Smack's term if reappointed.

- C. Proposed Legislation – Judge Loewenthal asked that the Conference discuss proposed legislation that would provide for Orphans' Court elections every 8 years. Recognizing a concern that this would allow for less frequent, possible pay increases, she would like to discuss the possibility of amending the proposal to allow for more frequent pay raises with the hopes that there would be support on the Conference before legislation is introduced.

During the discussion of this issue, Judge Dodd indicated that she has a problem with the raises for sitting judges. Judge Bright indicated that the Judiciary cannot mandate Orphans' Court judges' salaries. Judge Loewenthal asked if the Conference supports the 8 year term with the same salary. Judges Lancaster and Bright do not support this issue. Judge Bright would like to see staggered terms instead of extended terms. There was a majority vote against this proposal.

#### Action Items:

1. Form study committee to review new legislation before recommending to Judicial Council. The committee should consist of Ex-Officio member, Conference Board member, probate subcommittee and MAJOC Member.
2. Draft Letter to Rules Committee with new language for Rules 16-813 and 3.9. – Judge Loewenthal
3. AAG McDonald to forward Stephane Latour a copy of the OAG 2013 Opinion concerning the responsibilities of the Orphans' Court.

There being no further business, the meeting adjourned at 1:30 p.m. The next meeting is scheduled for November 7, 2016, beginning 10:30 a.m.

Respectfully submitted,

Stephane Latour, Staff

Sharon Wright, Staff