



CONFERENCE OF ORPHANS' COURT JUDGES

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

MEETING MINUTES March 12, 2018

Members Present:

Hon. George R. Ames, Jr.
Hon. Maureen Carr-York
Hon. Wendy A. Cartwright
Hon. Kimberly J. Cascia
Hon. Juliet G. Fisher
Hon. Athena Malloy Groves
Hon. Frank H. Lancaster
Hon. Theodore Philip LeBlanc
Hon. Michele E. Loewenthal
Hon. Leslie Smith Turner
Hon. Nathaniel C.W. Wilson

Staff Present:

Stephane J. Latour
Brenda Iazzetta

I. Call to Order

On Monday, March 12, 2018, the Conference of Orphans' Court Judges met at 10:30 am at the Judicial College Education and Conference Center to approve the January 2018 minutes and to discuss the established agenda.

II. Guest Speaker – Jonathan G. Lasley, Esq. Chair-Elect, MSBA Estate and Trust Law Section Council

The Chair informed the Conference that the MSBA Estate and Trust Law Section Council met last Monday, to discuss the jurisdiction provision of the proposed elective share legislation (HB 777). Judge Groves stated that Mr. Lasley is attending today's meeting to discuss the Section Council's proposed amendments to HB 777, which address the Conference's concerns about jurisdiction. Mr. Lasley provided a handout to the Conference with the proposed amendments.

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

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Mr. Lasley stated that the Bill looks at the elective share in a holistic sense, so as to not divide between probate and non-probate assets. He hopes that the proposed amendments address the concerns they had when they last met with respect to the issue of jurisdiction.

Judge Fisher stated that jurisdiction should start in the Orphans' Court, that the proposed amendments resolve a lot of the jurisdiction issues, and that she is comfortable with them.

Judge Cartwright informed that there is a typo in § 2-102(d) of the proposed amendments. The reference to Section 3-3010(b) is incorrect, and should be § 3-301(b).

The Conference discussed the proposed new amendments to Section § 3-413. Judge Groves talked about the responsibility of the Personal Representative, who serves as a conduit in the transmittal of information. If an election is filed, a duty would be imposed upon the Personal Representative to inform the Court of non-probate assets if they are aware of any. If there are assets the Court does not know about, and that the Personal Representative finds out about them after the fact, those would be factored into the calculated share, and the Court could get a judgment to go after them. Mr. Lasley answered that the proposed legislation does not add to the job of the Personal Representative, since they are already responsible for non-probate assets. Judge Fisher spoke of increased litigation due to going after the non-probate assets, and a concern of being retroactive to the date of estate planning. Judge Wilson noted that, if passed, it would take effect on October 1, 2018, and therefore it should apply to any wills dated after October 1, 2018.

Judge Lancaster commented that the proposed legislation disrupts the intent of the testator, and the will of the decedent should not be disputed. Mr. Lasley stated that marriage brings with it responsibility, and one cannot disinherit a spouse. With respect to beneficiary designation, Mr. Lasley said that wills as such are not affected, but non-probate assets will be affected. Judge Cartwright sees it dividing families, and asked where it helps families settle issues. Mr. Lasley replied that from the perspective of their practice, it will reduce that strife. The proposed legislation will allow for planning and consistency, and will help by making planning more certain.

Judge Fisher informed the Conference that HB 783 (Estates and Trusts – Share of Intestate Estate Inherited by Surviving Parent – Repeal) was withdrawn.

Judge Groves asked whether everyone understood and was comfortable with the jurisdictional language, and they all were. One of the members requested a vote on the Bill as a whole, and Mr. Latour reminded the Conference that they could not vote on proposed legislation.

III. Approval of the January 22, 2018 Minutes

Judge Groves called for the approval of the draft minutes of the January 22, 2018 meeting. There were no objections to the draft provided to the membership for review. Judge Cartwright subsequently moved for approval of the minutes, which was seconded by Judge Ames. The minutes were unanimously approved.

IV. Sub-Committee Reports

Policy, Rules & Forms Sub-Committee

2018 Membership

Hon. Michele E. Loewenthal, Chair

Hon. Theodore Philip LeBlanc, Co-Chair

Hon. Charles M. Coles, Jr. [absent]

Hon. Nathaniel C.W. Wilson

Judge Loewenthal discussed the Petition for Funeral Expenses and whether or not to state that there had to be proof of receipts or documentation. The form says that “The expenses are as follows (or as set forth in the attached statement or invoice)”. The Sub-Committee discussed deleting the word “or” or whether to say that documentation is required, and they decided that it did not make sense to change the entire rule, since a rule change requires a lot of steps. Their conclusion was to speak to the Register to require the documentation.

Judge Loewenthal said that the Sub-Committee discussed the issue of firearms and whether there should be language as to a Personal Representative certifying that firearms were lawfully distributed, and they also looked to see where that could be if there was a change in the rule. They concluded that when the Register provides information to the Personal Representative about what needs to be filled out, that there could be an attachment about how firearms are supposed to be lawfully distributed.

Judge Wilson said that the Maryland State Police handle firearm transfers, and suggested that we get a general form from them with the detailed requirements, and put that in a folder like is currently done for a vehicle transfer, which the Register provides to the Personal Representative. At a minimum, a web link to msp.gov could be provided.

Judge Fisher noted that some people do not have access to the web, and stated that it would be helpful for the Personal Representative to acknowledge on paper that guns were transferred in accordance with the requirements, and also list those requirements.

Judge Loewenthal asked the Conference to provide her any information they have, and they will make a uniform decision based on the information gathered. Judge Cartwright informed that Judge Smack taught a class a couple of years ago that made it clear as to how Personal Representatives need to distribute firearms, and suggested that we get a copy of the training materials or contact Judge Smack. Judge Wilson will get information from the State Police.

Judge Loewenthal asked if the Petitioner is required to watch the Guardianship of Minor Video, and if they have to sign. Judge Groves said that in Prince George’s County, it needs to be filed before a person is appointed guardian. It was mentioned that the change in the guardian rules requires that guardians complete the training video and sign the Certificate of Completion.

Education Sub-Committee

2018 Membership

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

The Education Sub-Committee did not meet today. Judge Bright provided Judge Groves and Mr. Latour a progress report prior to today's meeting.

Judge Cartwright stated that Alexis Rohde, Assistant Attorney General, located an opinion letter dated March 6, 2009, from her predecessor David Hayes, addressed to Hon. Joseph DiPietro, Chief Judge of the Orphans' Court for Queen Anne's County, regarding the role of the Chief Judge of the Orphans' Court. Copies of the letter were handed out to Conference members. Judge Fisher asked if it should be disseminated to MAJOC and the bench books updated.

The members discussed the role of the Chief Judge. Judge Fisher stated that judges in her court (Baltimore County) sit individually. Judge Ames referenced page 2 of Judge DiPietro's letter, with respect to what occurs when the Chief Judge is absent, and stated that in his court the longest serving judge will preside. Judge Groves stated that the judges in Prince George's County also sit individually, but that the Chief Judge has duties over and above those listed, such as setting courtroom policy and working on the budget. Judge Cartwright stated that there are some things that require an administrative memo to the Register, for example, that the Register can give advice as to procedures, but cannot give legal advice. Judge Carr-York said her Chief Judge does not preside over the hearings, and that the opinion letter makes it sound like that is how it is supposed to be. Judge Cartwright responded that it is an opinion letter, recognizing that each jurisdiction may do things differently if the judges so agree.

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 addressed the issue of Orphans' Court Judges having to declare their party affiliation because they are not considered as part of the Judiciary when running for election or re-election, but as public officials. She further stated that the Circuit Court Judges, who are considered part of the Judiciary, do not have to declare their party affiliation, but they cross file, thereby appearing on both the Democrat and Republican tickets. Judge Fisher spoke about non-

partisan elections being more about running on qualification than party affiliation. Judge Lancaster agreed that members of the Judiciary should be non-partisan. Judge Fisher will only go forward with this issue if she has the support of the Conference, and would then request a legislator to draft it. Judge Cascia raised the issue of longer terms in conjunction with cross filing. Judge Carr-York is in favor of declaring party affiliation even though once in office, Orphans' Court Judges cannot address partisan issues, but challengers do. Requests for salary increases were also discussed. It was suggested to consider these matters once the legislative session is over.

V. Staff's Update – Review of Action Items

Mr. Latour informed that he does not have an update from the Judicial Inquiry Board.

VI. Old Business

See Sub-Committee Reports above.

VII. New Business

Mr. Latour stated that at the last meeting Judge Groves told the Conference that, as Chair, she would be sitting ex-officio on each of the sub-committees. Mr. Latour informed that this needs a motion.

Judge Ames moved that the Chair of the Conference of Orphans' Court Judges sit ex-officio on each of the sub-committees, which was seconded by Judge Cartwright. The motion was unanimously approved.

Judge Wilson spoke of Judge Cleopatra Campbell's passing.

VIII. 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**
- To obtain firearm information from the Maryland State Police. **Judge Wilson**
- To obtain course materials or information from Judge Smack regarding firearms.

IX. Adjournment

The Conference adjourned at 12:48 pm.