



BYRON E. MACFARLANE
REGISTER OF WILLS FOR HOWARD COUNTY
8360 COURT AVENUE
ELLCOTT CITY, MARYLAND 21043

410-313-2133
Toll Free Number: 1-888-848-0136

FAX 410-313-3409
www.registers.maryland.gov

March 29, 2021

Hon. William C. Smith, Jr., Chairman
Judicial Proceedings Committee
Miller Senate Office Building, 2 East
Annapolis, Maryland 21401

Re: HB681 – Task Force to Study the Orphans’ Courts

Dear Chairman Smith,

I write to you and your committee in support of this legislation. It establishes a task force to examine the composition of the orphans’ courts, the differences among courts from jurisdiction to jurisdiction, compare Maryland’s orphans’ courts to other states’ probate courts, and make recommendations to improve these courts. **The state of these courts and their future are issues that have been debated by the General Assembly, by various commissions, by the State Bar Association, and elsewhere as far back as the 1864 constitutional convention.** It is in the interest of these courts and our state to bring a group of stakeholders together to advise the General Assembly, in a comprehensive, thoughtful way, whether and how to reshape our probate courts.

I’ve dedicated my time in public life to improving institutions. In my own office, I have worked to achieve peak efficiency and have advocated for legislation over the past ten years that make the Registers and the probate process function as expeditiously as possible to best serve the public. As someone who feels strongly about questioning the status quo and the sort of institutional inertia that can lead to suboptimal systems – which can lead to harmful outcomes for the public – it is undeniable that an examination of the orphans’ courts is a meritorious endeavor. To demonstrate this, let me summarize the current makeup of these courts:

- In two jurisdictions, a Circuit Court judge sits as the orphans' court.
 - Montgomery County accomplished this by constitutional amendment and referendum in 1964. Harford County followed suit in 1972.
 - These courts are staffed by the Circuit Court judges' staff.
- In three jurisdictions, the judges of the orphans' courts are required to be attorneys and sit individually on a rotating basis.
 - This is the case in Baltimore City, Baltimore County, and Prince George's County.
 - In two of these jurisdictions the courts sit Monday through Friday. In one the court sits Tuesday through Thursday.
 - These courts have staff provided by the local jurisdiction.
- In the remaining 19 jurisdictions, a combination of attorney and lay judges sit as a three-judge panel.
 - Currently, 15 of these 19 courts have no attorney judges.
 - These courts have no dedicated staff.
 - Some of these courts meet twice per week, some once per week on Tuesdays, one once per week on Wednesdays, some twice per month, and some once per month.
 - Some of these courts have no computers.
 - Some of these courts use audio cassette players to record court hearings.

As we reflect on this hodgepodge of systems – especially in comparison with relative uniformity in our District and Circuit Courts – I ask this question: If the Maryland General Assembly were to establish a framework for probate courts in Maryland, is it even remotely conceivable that this is what it would create? The answer to that question is no. We must, therefore, consider what changes to the current framework – if any – should be made. This task force legislation would do just that.

The only opposition to this legislation in the Judiciary Committee was from the Maryland Judicial Conference – which has been resolved by an amendment in the House, and from the Maryland Association of the Judges of the Orphans' Courts – which argued, simply put, what the orphan's courts do is none of anyone's business. The Judges' opposition and proposed alternative – centered on the idea that a self-evaluation by the judges themselves – excludes the diverse spectrum of vital stakeholders identified in this legislation. Without robust stakeholder input no serious, meaningful, or holistic recommendations could possibly be made and we, therefore, need this task force.

This legislation is straightforward and long overdue to bring people together to decide whether and how to improve our state's probate courts. I urge a favorable report.

Thank you for your time, attention, and service to our great state.

Sincerely,



Byron E. Macfarlane