

Courts with Jurisdiction Over Fiduciary Matters

A Comparison for the Purpose of Examining Maryland's Circuit and Orphans' Courts

By: Registers of Wills Byron Macfarlane and Mary Rolle

BACKGROUND: Under items one (1), two, (2), and five (5) of the duties of the Task Force to Study Fiduciary Adjudication in Maryland, we are required as follows:

- (1) Examine the qualifications, training, and methods of selection of judges hearing probate and other fiduciary matters in Maryland;
- (2) Examine the jurisdiction of the orphans' courts and circuit courts with respect to fiduciary matters; and
- (5) analyze and compare the laws and practices of other states relating to the adjudication of fiduciary matters, including the selection, qualification, and training of judges hearing those matters.

The foregoing details, summary, and attachment provide a comparison of the approach taken by each jurisdiction within the United States for the purpose of examining Maryland's Circuit and Orphans' Courts.

FINDINGS: Upon thorough and careful research into Maryland’s Circuit and Orphans’ Courts, and into each jurisdiction in the United States and which courts in are given jurisdiction over probate and other fiduciary matters, we may conclude as follows:

A. QUALIFICATIONS OF CIRCUIT AND ORPHANS’ COURT JUDGES

a. Circuit Court Judges:¹

- i. U.S. and Maryland citizenship.
- ii. Registration to vote in State elections at the time of appointment.
- iii. Residence in the State for at least five years.
- iv. Residence, for at least six months next preceding appointment, in the geographic area where the vacancy exists.
- v. Age of at least 30 at the time of election or appointment.
- vi. Membership in the Maryland Bar.
- vii. Mandatory retirement age of 70.²

b. Orphans’ Court Judges:³

- i. U.S. and Maryland citizenship.
- ii. Registration to vote in State elections at the time of appointment.
- iii. Residence, for at least twelve months next preceding appointment, in the geographic area where the vacancy exists.
- iv. Age of at least 18 at the time of election or appointment.
- v. In Baltimore City, Baltimore County, and Prince George’s County, membership in the Maryland Bar.
- vi. In Harford, Howard, and Montgomery Counties, a Judge of the Circuit Court sits as the Orphans’ Court.
- vii. No mandatory retirement age.

c. Key Differences Related to Qualifications

- i. Circuit Court judges must have been residents of the state for five years (six months in the jurisdiction in which they are appointed or elected) whereas Orphans’ Court judges must have been residents for twelve months.
- ii. Circuit Court judges must be members of the bar whereas the bar requirement for Orphans’ Court judges varies as follows:
 - 1. In Harford, Howard, and Montgomery Counties, the Circuit Court sits as the Orphans’ Court, so each judge is guaranteed to be a member of the bar,
 - 2. In Baltimore City, Baltimore County, and Prince George’s County, an Orphans’ Court judge must be a member of the bar,

¹ MD Constitution, Art. 4, § 40; Maryland State Board of Elections, “Qualifications for Filing Candidacy,” <https://elections.maryland.gov/candidacy/qualifications.html>.

² MD Constitution, Art. 4, § 3.

³ MD Constitution, Art. 4, § 40; Maryland State Board of Elections, “Qualifications for Filing Candidacy,” <https://elections.maryland.gov/candidacy/qualifications.html>.

3. In the remaining 18 jurisdictions in Maryland an Orphans' Court judge is not required to be a member of the bar.
- iii. Unless they become a judge through a contested election, Circuit Court judges are formally vetted by a Judicial Nominating Commission and appointed by the Governor, whereas there is no vetting process for Orphans' Court judges.
- iv. Circuit Court judges must be at least 30 years old, whereas Orphans' Court judges may be as young as 18.
- v. Circuit Court judges, like District Court judges, Appellate Court judges, and Supreme Court justices, must retire at age 70, whereas Orphans' Court judges are the only judges in Maryland who have no mandatory retirement age.

B. TRAINING OF CIRCUIT AND ORPHANS' COURT JUDGES

a. **Circuit Court Judges**

- i. Graduation from an accredited law school and membership in the Maryland bar.
- ii. Training and continuing education of judges is currently governed by an Administrative Order of the Supreme Court of Maryland dated January 30, 2023, entitled, "Continuing Education and Outreach and Leadership of Judges and Magistrates."
- iii. Initial Training
 1. Each newly appointed or elected judge must attend, and be in residence at, the next New Trial Judge Orientation Program held following their appointment or election.
 2. This is a comprehensive residential judicial program with a focus on judicial ethics, professionalism, and best practices in presiding over judicial proceedings, as well as significant aspects of the law and procedure applicable in trial courts, including domestic violence.
 3. The Judicial College may develop required online courses from time to time deemed essential by the Chief Justice for judges and magistrates, "including on topics such as security, ethics, and combatting discrimination in the workplace." All judges must complete these courses within 90 days of release, or 60 days for newly appointed or elected judges.
- iv. Annual Education Requirements
 1. Each year every Circuit Court judge shall complete 15 hours of education, with at least 3 of the 15 hours being satisfied on "diversity and inclusion topics."
 2. Hours can be satisfied by:
 - a. Completion of New Trial Judge Orientation Program, Family Law University, Criminal Law University, training in judicial

- roles in problem-solving and other specialty courts, attendance at a CANDO Judicial Conference (for judges hearing a juvenile docket) or other specialty programs.
 - b. Courses offered through the Judicial College or other approved entities.
 - c. Courses or education programs offered through a non-Maryland Judiciary entity that has been pre-approved in writing by the Chair of the Education Committee.
 - d. Serving as faculty for any course offered by the Judicial College or an approved specialized judicial education course offered by another Maryland Judiciary entity.
 - e. In-Person Attendance. Under section (f)(3) of the Order, at least 6 required course hours must be satisfied by attending in-person courses, unless excused upon good cause by the Asst. State Court Administrator of the Judicial College, the Chair of the Education Committee, or the Chief Justice.
 - 3. Judges presiding over family law, criminal law, juvenile, and specialty courts must attend the corresponding Family Law University, Criminal Law University, and other trainings again within a few years and then again a few years following.
- v. Compliance
 - 1. All registration and attendance records shall be maintained by the Judicial College. If a judge or magistrate attends a pre-approved judicial education course external to the Maryland Judiciary, the judge or magistrate shall provide the course agenda and certification of successful completion to the Judicial College to ensure the credit is counted toward the annual judicial education requirement.

b. Orphans' Court Judges

- i. No minimum education required prior to serving.
- ii. Training and continuing education of judges is currently governed by an Administrative Order of the Supreme Court of Maryland dated September 10, 2025, entitled, "Conference of Orphans' Court Judges and Education for Orphans' Court Judges."
- iii. Initial Training (Orientation Procedures)
 - 1. Effective January 1, 2026, after the appointment or election of a new judge, but before they are sworn in and begin performing duties, a judge must complete onboarding sessions with the Commission on Judicial Disabilities, the Judicial College, Judicial Information Services, and the Office of Information Privacy.
 - 2. After the appointment or election of a new judge, but before they are sworn in and begin performing duties, there is a three-phase orientation process:

- a. Phase one requires a meeting between the sitting Chief Judge, any administrative staff, and the Register of Wills. The purpose of this meeting is largely to provide the new judge with various printed materials and explain their role and the role of the Register.
- b. Phase two requires “bench training” for the new judge to be coordinated by the Chief Judge, which must include at least two days of observing the court in session. It also involves making “every effort” to “expose” a new judge “to a variety of issues, judicial styles, and philosophies.” Lastly, it states that no later than two months after being sworn in, a judge from a metropolitan jurisdiction should spend at least one day observing a non-metropolitan bench and vice versa. (Note that “metropolitan” is not defined).
- c. Phase three requires attending “the next offered Orientation Program for new Orphans’ Court Judges.” This is a three-day program provided by the Judicial College, which shall include an overview of the Orphans’ Court, education on relevant areas of substantive law, judging and judicial ethics, and other topics as determined by the Judicial College in consultation with the Conference of Orphans’ Court Judges.”
- d. The Judicial College may develop required online courses from time to time deemed essential by the Chief Justice for Orphans’ Court judges, “including on topics such as security, ethics, and combatting discrimination in the workplace.” All judges must complete these courses within 90 days of release, or 60 days for newly appointed or elected judges.

3. Annual Education Requirements

- a. Effective January 1, 2027, every Orphans’ Court judge shall complete the Annual Training Program. Attendance at judicial education courses and programs offered through the Judicial College or externally are not substitutes for attending the Annual Training Program and do not satisfy the annual education requirement for Orphans’ Court judges.
- b. Until then, each year every Orphans’ Court judge shall complete 15 hours of education, with at least 3 of the 15 hours being satisfied on “diversity and inclusion topics.”
- c. Hours can be satisfied by:
 - i. Completion of New Orphans’ Court Judge Orientation Program.
 - ii. Courses offered through the Judicial College or other approved entities.

- iii. Courses or education programs offered through a non-Maryland Judiciary entity that has been pre-approved in writing by the Chair of the Education Committee.
- iv. Serving as faculty for any course offered by the Judicial College or an approved specialized judicial education course offered by another Maryland Judiciary entity.
- v. In-Person Attendance. Under section (f)(3) of the Order, at least 6 required course hours must be satisfied by attending in-person courses, unless excused upon good cause by the Asst. State Court Administrator of the Judicial College, the Chair of the Education Committee, or the Chief Justice.

4. Compliance

- a. All registration and attendance records shall be maintained by the Judicial College. If an Orphans' Court judge attends a pre-approved judicial education course external to the Maryland Judiciary, the judge shall provide the course agenda and certification of successful completion to the Judicial College to ensure the credit is counted toward the annual judicial education requirement.
- b. Each Chief Judge shall take all actions necessary to ensure compliance with initial and continuing education requirements.

c. Key Differences Related to Training

- i. Many Orphans' Court judges, including former judge Rolle, have described the initial training of "baby judges' school" as substantially inadequate to prepare them for their roles. They have further told us they don't or can't comply with these requirements because the Judicial College does not offer sufficient courses.
- ii. Orphans' Court judges have no mandatory training in professionalism or best practices in presiding over judicial proceedings.
- iii. While substantial differences in training previously existed, including, but not limited to, Orphans' Court judges having no required training in ethics, the most recent Administrative Order of the Supreme Court issued September 10, 2025, has brought the initial and continuing education requirements for these judges more in alignment with those of other trial judges.

C. METHODS OF SELECTION OF CIRCUIT AND ORPHANS' COURT JUDGES

a. **Circuit Court Judges:**

- i. Circuit Court judges are either appointed by the Governor after a formal vetting and nomination by a Judicial Nominating Commission or elected in a contested primary and/or general election to fifteen-year terms.⁴
- ii. To apply for a judicial vacancy, an applicant needs to file:
 1. Financial Disclosure Statement with the State Ethics Commission (when the judge becomes a candidate for a full 15-year term) & Maryland Judiciary Financial Disclosure Statement with the State Court Administrator.
 - a. The purpose of these reports is to identify real estate interests, equity interests, and other relationships such as employment, debts and gifts so that the public can be assured that the impartiality and independent judgment of those officials and employees will be maintained.
 2. Confidential Personal Data Questionnaire with the Administrative Office of the Courts⁵
 - a. The purpose of this is to examine, in great detail, the educational history, law practice experience, business and civic engagement background, personal and professional conduct, and general fitness of a candidate to be appointed to the Circuit Court.

b. **Orphans' Court Judges:**

- i. Elected to four-year terms each gubernatorial election. They run in partisan primaries and general elections. Judges also may be appointed to vacancies by the Governor, to serve out the remainder of a deceased, resigned, or removed judge.⁶
- ii. To run for Judge of the Orphans' Court, a candidate must file:
 1. Financial Disclosure Statement with the State Ethics Commission & Maryland Judiciary Financial Disclosure Statement with the State Court Administrator
 - a. The purpose of these reports is to identify real estate interests, equity interests, and other relationships such as employment, debts and gifts so that the public can be assured that the impartiality and independent judgment of those officials and employees will be maintained.

⁴ MD Constitution, Art. 4, § 5.

⁵ See Questionnaire:

<https://www.mdcourts.gov/sites/default/files/import/judgeselect/pdfs/judapplication.pdf>.

⁶ MD Constitution, Art. 4, § 40.

2. Confidential Personal Data Questionnaire with the Administrative Office of the Courts
3. Candidate Information Sheet with the local Board of Elections⁷
 - a. The purpose of this is to verify the candidate is a registered voter and to provide contact information for both the Board of Elections and the general public.

c. Key Differences Related to Methods of Selection

- i. Orphans' Court judges are elected in partisan primary and general elections to four-year terms with no term limits, without vetting by a Judicial Nominating Commission or other entity to determine whether they are qualified or fit to serve.
- ii. Nearly all Circuit Court judges are appointed by the governor after completing a Confidential Personal Data Questionnaire and are vetted and nominated by a Judicial Nominating Commission to determine whether they are qualified or fit to serve.
- iii. After their appointment, Circuit Court judges are elected by running in both major party primaries and the general elections to fifteen-year terms, subject to the mandatory retirement age of 70.
- iv. Infrequently, Circuit Court judges are elected in contested elections, without vetting by a Judicial Nominating Commission.⁸

D. JURISDICTION OF CIRCUIT AND ORPHANS' COURT OVER FIDUCIARY ADJUDICATION

- a. The Orphans' Courts have jurisdiction over probate estates⁹ and concurrent jurisdiction with the Circuit Courts over guardianships of the property or person of minors.¹⁰ However, an Orphans' Court may only exercise jurisdiction over a guardian of the person of a minor if the presiding judge is a member of the bar.¹¹ Upon petition, any guardianship proceeding initiated in an Orphans' Court may be transferred to the Circuit Court.¹² Upon petition or on the court's own initiative, an Orphans' Court may transfer a proceeding related to the guardianship of the person of a minor to the Circuit Court.¹³

⁷ See Candidate Information Sheet:

<https://elections.maryland.gov/forms/documents/candidateinfosheet.pdf>.

⁸ Only 14 challengers have defeated appointed judges through contested elections between 1985 and 2025. See "Report and Recommendations" published by the Workgroup to Study Judicial Selection, July 2024:

<https://online.flippingbook.com/view/994939268/>

⁹ MD Code, Estates & Trusts, §2-102.

¹⁰ MD Code, Estates & Trusts, §13-105(a)(1).

¹¹ MD Code, Estates & Trusts, §13-105(c)(1).

¹² MD Code, Estates & Trusts, §13-105(a)(2).

¹³ MD Code, Estates & Trusts, §13-105(c)(2)(i).

- b. The Circuit Courts have jurisdiction over all other fiduciary matters, including exclusive jurisdiction over guardianships of adults.¹⁴
- c. **Key Differences Related to Jurisdiction**
 - i. Orphans' Courts have original, but not exclusive, jurisdiction over probate estates.
 - 1. Some issues that arise during probate may or must be transmitted to a Circuit Court for adjudication, most frequently caveat proceedings.
 - 2. When clearing title to real property and making distribution to heirs would ordinarily require opening multiple estates, one may petition the Circuit Court to use its equitable powers to resolve the issue in a single judicial action.
 - ii. Orphans' Courts and Circuit Courts have concurrent jurisdiction over guardianships of minors, however most Orphans' Courts are prohibited from exercising jurisdiction over guardianships of the person of minors because the presiding judge is not a member of the bar or a majority of members of a three-panel court are not members of the bar
 - iii. Circuit Courts have jurisdiction over all other fiduciary matters.

E. ANALYSIS OF OTHER STATES RELATING TO THE ADJUDICATION OF FIDUCIARY MATTERS, INCLUDING THE SELECTION, QUALIFICATION, AND TRAINING OF JUDGES HEARING THOSE MATTERS

- a. Please see the attachment for detailed information about each state's probate and other fiduciary courts.
- b. **Overview**
 - i. In 39 states and the District of Columbia, a court of general jurisdiction hears probate and other fiduciary matters.
 - ii. In Maryland and 10 other states, a specialized probate court hears probate and some combination of other fiduciary and non-fiduciary matters.
- c. **Qualifications, Composition & Selection**
 - i. In 39 states, the District of Columbia, and 7 of the 11 states with a specialized probate court, a judge must be a member of their state Bar Association in good standing.
 - 1. Of the remaining four states, including Maryland, there are other requirements to hold office:
 - a. In Alabama, judges in 2 jurisdictions (Jefferson and Mobile Counties) must be attorneys.
 - b. In Georgia, a judge must be at least 25 years old and have a high school diploma or equivalent. Judges in 29 of 159

¹⁴ MD Code, Courts and Judicial Proceedings, § 1-501.

counties (those with a population over 90,000) must be attorneys.

- c. In South Carolina, a judge must be at least 21 years old and either have a bachelor's degree or have worked at least four years for a probate judge.
 - d. In Maryland, judges in 3 jurisdictions must be attorneys, and in 3 more jurisdictions must be attorneys by virtue of having Circuit Court judges sit as the Orphans' Courts.
 - e. In comparison to every other jurisdiction in the United States, the state Maryland most closely aligns in terms of requirements to serve as a probate judge is Alabama.
- ii. In all 49 other states and the District of Columbia, a single judge presides over probate and fiduciary matters.
 - iii. Maryland is the only jurisdiction in the United States that employs a three-judge panel to adjudicate probate matters.
 - iv. Of the 11 states with specialized probate courts, 8 are elected and 3 are appointed.

d. Jurisdiction

- i. Maryland is the only state with an independently elected Orphans' Court, and has the most restricted jurisdiction of any of the specialized probate courts.
- ii. The Orphans' Courts may only exercise jurisdiction over probate estates and guardianships of the person and property of minors, with exceptions.
- iii. The other 10 probate courts may exercise jurisdiction over some or all of the following:
 - 1. Probate and Fiduciary Matters:
 - a. Advance directives;
 - b. Civil actions against fiduciaries;
 - c. Conservatorships;
 - d. Guardianships of the person and property of disabled persons;
 - e. Powers of attorney;
 - f. Trusts;
 - 2. Probate and Fiduciary-Related Matters:
 - a. Cemetery associations;
 - b. Certificates of residence;
 - c. Determinations of parentage by assisted reproduction;
 - d. Determining legal title of assets;
 - e. Determining parental rights;
 - f. Elder abuse;
 - g. Enforcement of judgments of claims;

- h. Gravesites;
- i. Partitions of property;
- j. Paternity;

3. Other Matters:

- a. Adoption;
- b. Alimony
- c. Annulment;
- d. Appeals of state registrar's decisions regarding amended birth and death certificates.
- e. Birth and death certificates;
- f. Child custody;
- g. Child support;
- h. Children requesting assistance;
- i. Divorce;
- j. Emancipation of minors;
- k. Eminent domain proceedings;
- l. Establishing and operating water management districts;
- m. Involuntary commitment to mental institutions;
- n. Marriage licenses;
- o. Name changes;
- p. Quarantine and isolation orders for public health emergencies;
- q. Removal of life support;
- r. Gender change;
- s. Restoration of firearms rights;
- t. Termination of parental rights;
- u. Weapons carry licenses;

e. **Key Differences Related to Other States' Practices**

- i. Most jurisdictions in the United States vest jurisdiction over probate and fiduciary matters in courts of general jurisdiction.
- ii. Maryland is one of 11 states with a specialized probate court.
- iii. 7 of these 11 states require judges to be attorneys.
- iv. Maryland is one of only four states that does not require a judge presiding over probate or other fiduciary matters to be an attorney.
- v. Maryland is one of only two states with the mere requirement that a judge be at least 18 years old.
- vi. Maryland's Orphans' Courts have the most limited jurisdiction of all of the 11 states' specialized probate courts.
- vii. Maryland is the only state with an independently elected Orphans' Court.
- viii. Maryland is the only state that uses a three-member panel to hear probate and other fiduciary matters.