

Home > Commentary > It's time to abolish the Orphans' Court

It's time to abolish the Orphans' Court

Editorial Advisory Board // November 21, 2025 //



▶ Listen to this article

The Orphans' Courts in Maryland were first established in Maryland in 1777 and in 1851 the judges of those courts became constitutional judges under Article IV, Section 40. The constitutional convention of 1867 considered the abolition of the Orphans' Court, but ultimately chose a substitute providing for three elected judges.



The last modern constitutional convention of 1967-1968, which led to the abandonment of local chancery courts, rent courts, and people's courts and the creation of our present-day District Court system, could not agree on what to do with the Orphans' Court, so it survived.

To this day, in all but Harford, Howard and Montgomery counties, probate matters are still heard by a panel of three elected judges, most of whom are not lawyers by training. Those counties moved away from this ancient system by amendments to the state constitution and have such cases heard by circuit court judges. Now is the time for the rest of the state to join them, for several reasons.

First, under the current system, in most counties, people with absolutely no training or qualifications can run for this judicial office, and can, of course, win. These positions are at the end of the ballot and many voters have no idea who the candidates are or even what the Orphans' Court does.

Second, the Orphans' Courts handle very important matters, to wit, probate and estates. They direct the conduct of personal representatives and have jurisdiction over the property of minors. Probate proceedings may involve an estate valued at a few hundred dollars or several million dollars. These judges approve administration accounts and the payment of attorneys' fees or personal representative commissions.

If there are disputes, these judges hold formal hearings, consider evidence submitted, including testimony, and must apply the appropriate Maryland law to resolve the dispute. Particularly in these circumstances, many of these elected judges may be in over their heads, to say the least.

Third, we know from the experience in the three counties where circuit court judges hear probate cases instead of Orphans' Court judges, that we have an easy solution to these inherent issues stemming from an anachronism. Just abolish the Orphans' Court once and for all and let the circuit courts in each county do what they do every day.

In the past legislative session, the General Assembly formed the Task Force to Study Fiduciary Adjudication in Maryland, whose work is to be completed by June 30, 2026. Their charge is "to examine the qualifications, training, and methods of selection of judges hearing probate and other fiduciary matters in Maryland; and examine the jurisdictions of the orphans' courts and circuit

courts with respect to fiduciary matters. The Task Force will analyze: the efficiency of procedures for adjudicating fiduciary contested and uncontested matters in the orphans' courts and circuit courts; the effect of the different qualifications of orphans' court judges and related litigation procedures on the uniform application of justice in Maryland; and the laws and practices of other states relating to these matters, including the selection, qualification, and training of judges to hear fiduciary matters."

We are happy that the General Assembly saw fit to create this Task Force and look forward to their work. They will know, in advance, how we see this issue.

EDITORIAL ADVISORY BOARD MEMBERS

James B. Astrachan, Chair

James K. Archibald

Gary E. Bair

Arthur F. Fergenson

Nancy Forster

Susan Francis

Julie C. Janofsky

Ericka N. King

George Liebmann

George Nilson

Catherine Curran O'Malley

Angela W. Russell

Debra G. Schubert

Jeff Sovern

H. Mark Stichel

The Daily Record Editorial Advisory Board is composed of members of the legal profession who serve voluntarily and are independent of The Daily Record. Through their ongoing exchange of views, members of the board attempt to develop consensus on issues of importance to the bench, bar and public. When their minds meet, unsigned opinions will result. When they differ, or if a conflict exists, majority views and the names of members who do not participate will appear. Members of the community are invited to contribute letters to the editor and/or columns about opinions expressed by the Editorial Advisory Board.