

TASK FORCE TO STUDY FIDUCIARY ADJUDICATION IN MARYLAND

Proposed Recommendations

Submitted by Senator Chris West and Jonathan G. Lasley

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BE IT RESOLVED that the Task Force to Study Fiduciary Adjudication in Maryland shall offer the following recommendations to the Governor, General Assembly, and Judiciary as part of its final report:

I. IMPROVE THE TRAINING OF JUDGES HEARING FIDUCIARY MATTERS

The Task Force recommends that the Judicial College establish a “Fiduciary University” along the lines of the existing Family Law University. We suggest that the curriculum be developed and supervised by a committee of Judges (serving or retired) and attorneys (currently practicing or retired) with deep experience in all aspects of fiduciary litigation.

- The course offerings should include two tracks: a basic curriculum for judges new to hearing fiduciary matters, and an ongoing curriculum for all fiduciary judges that will cover the gamut of new developments and specific issues affecting fiduciary law in Maryland.
- No Orphans’ or Circuit Court judge may hear any fiduciary matter without completing the basic curriculum as soon as it is offered following their appointment, election, or selection to hear such cases.
 - Lay Orphans’ Court judges, non-Maryland attorney judges of the Orphans’ Court, and new Orphans’ Court judges must complete additional training on the role of the judiciary and the function of judges before sitting on any matters.
- Judges hearing fiduciary matters must complete a specified number of hours in the University curriculum (or accepted substitutes) annually in order to continue hearing fiduciary cases.
- The Judicial College shall report judges’ compliance, or lack thereof, with these requirements to the Judiciary for appropriate enforcement action.

II. IMPROVE THE EFFICIENCY OF CONTESTED MATTERS

In order to eliminate some of the inefficiencies inherent in the current system of *de novo* appeals and transmission of issues, the Task Force recommends that the General Assembly enact legislation streamlining those procedures and guaranteeing to each party the right to be heard by a judge who is an attorney as follows:

- Any party to a contested matter (other than the opening of judicial probate) that ordinarily would come before the Orphans’ Court in a jurisdiction that does not require all Orphans’ Court judges to be attorneys, or which does not rely on its Circuit Court to sit as its Orphans’

Court may remove that matter directly to the Circuit Court in that jurisdiction as a matter of right.

- Any party to a contested matter (other than the opening of judicial probate) that ordinarily would come before the Orphans' Court in a jurisdiction that requires all Orphans' Court judges to be attorneys, or which relies on its Circuit Court to sit as its Orphans' Court may remove that matter directly to the Circuit Court in that jurisdiction for the sole purpose of obtaining a jury trial.
- In the case of any such removal:
 - The Orphans' Court will have no further jurisdiction with respect to the contested issue(s), and will be bound by any relevant Circuit Court rulings.
 - Any appeal from the Circuit Court in a matter so removed will be to the Appellate Court of Maryland.
 - If the parties to a contested matter choose not to avail themselves of this right of removal, any appeal from the Orphans' Court will be to the Appellate Court of Maryland.
 - The failure of a party to exercise this right of removal shall be deemed to waive the right to a jury trial in that matter.

III. CONTINUE MOVEMENT TOWARD THE CREATION OF A SPECIALTY COURT TO HEAR ALL FIDUCIARY MATTERS

While the above recommendations will improve the training of judges and the efficiency of the adjudication process, they will leave separate courts hearing different fiduciary matters. Those matters often are inter-related, and the Task Force believes it would be in the best interests of the uniform administration of justice in Maryland if a single court or division ~~staffed by specially-trained attorney judges~~ held jurisdiction over all fiduciary matters. Accordingly, the Task Force suggests that the new General Assembly taking office in 2027 create a new task force with a narrower mandate to work out the details of establishing either:

- A separate court, staffed by specially-trained ~~attorney~~ judges, to serve as the trial court for all fiduciary matters in Maryland; or
- A "Fiduciary Division" within the Circuit Court to hear all fiduciary matters.
 - As a part of this study, the General Assembly may want to consider experimenting with either option by converting the Orphans' Courts in Baltimore County, Baltimore City, and Prince George's County (all of which currently require lawyer judges) into either fiduciary trial courts or fiduciary divisions within the Circuit Courts for that county, and/or establishing Fiduciary Divisions in Harford, Howard, and Montgomery Counties (where Circuit Court judges sit as the Orphans' Court).

Should the General Assembly decide either to pursue a separate fiduciary court or to retain the current Orphans' Court, the Task Force urges it to study the qualifications and methods of selection of the judges of that court. In particular, we suggest that the General Assembly consider:

- Requiring that judges of the fiduciary or Orphans' Court (as the case may be) be selected and retained using the same procedures as required for judges of the Circuit Court, including the creation of a specialized Judicial Nominating Commission to fill vacancies;
- Analyzing the term lengths of the judges;
- Providing appropriate minimum and maximum ages for judges serving on the fiduciary or Orphans' Court; and
- If a fiduciary court is created or the current Orphans' Court is retained with its jurisdiction expanded to other fiduciary matters, requiring that all judges of that court be Maryland attorneys in good standing.

IV. IMPROVE DATA TRACKING

During our deliberations, the Task Force found it difficult to obtain accurate and complete data on fiduciary matters heard by the ~~Circuit~~ Courts. Accordingly, we recommend that the Rules Committee of the Judiciary or other appropriate authority establish new intake categories (and/or sub-categories) for fiduciary matters as follows:

- Matters affecting a trust or to which the trustee of a trust is party (this category excludes real estate deeds of trust or the trustees under such deeds, as well as the trustees of ERISA or other retirement accounts);
- All probate matters, including transmissions of issues and *de novo* appeals from the Orphans' Courts;
- Guardianships of the person or property of any minor or disabled individual;
- Matters arising under Powers of Attorney or Advance Directives; and
- Disputes involving beneficiary designations.