



Task Force to Study Fiduciary Adjudication in Maryland

Annapolis, Maryland
June 2026

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Task Force to Study Fiduciary Adjudication in Maryland Final Report

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**Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland**

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THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401-1991

TASK FORCE TO STUDY FIDUCIARY ADJUDICATION IN MARYLAND

June 30, 2026

The Honorable Wes Moore, Governor
The Honorable Bill Ferguson, President of the Senate
The Honorable Joseline Peña-Melnyk, Speaker of the House of Delegates
Honorable Members of the General Assembly

Dear Governor Moore, President Ferguson, Speaker Peña-Melnyk, and Members:

The Task Force to Study Fiduciary Adjudication in Maryland (“task force”) respectfully submits its report. Chapter 220 of 2025 (House Bill 315) required the task force to study specified issues and make recommendations to improve the efficiency, uniformity, and quality of fiduciary adjudication in Maryland. After gathering extensive information and several meetings, the task force adopted four general recommendations, each with subparts, to (1) improve the training of judges hearing fiduciary matters; (2) increase the efficiency of contested matters; (3) move toward the creation of a specialty court to hear all fiduciary matters; and (4) improve data collection related to fiduciary adjudication. The task force’s recommendations include creation of a new task force, additional legislation for the General Assembly to consider, and specific actions for the Judiciary.

I thank the task force members for their diligence, attention, and contributions to the task force. I would also like to acknowledge the assistance provided by the Judiciary. I also extend my appreciation to the various stakeholders and professionals, including orphans’ court and circuit court judges, who shared their perspectives with the task force, and to the staff who supported our collective effort to study fiduciary adjudication in Maryland.

Sincerely,

Senator Nick Charles, Jr.,
Chair

NC/jg

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Maryland General Assembly Task Force to Study Fiduciary Adjudication in Maryland Membership Roster

Senators

Senator Nick Charles, Jr., Chair
Senator Chris West

Delegates

Delegate J. Sandy Bartlett
Delegate Aaron Kaufman

Nonlegislative Members

Judge Juliet G. Fisher – Orphans’ Court for Baltimore County

Judge Athena Malloy Groves – Orphans’ Court for Prince George’s County

Jonathan G. Lasley, Esq. – Maryland State Bar Association

Byron E. Macfarlane – Howard County Register of Wills

Judge Catherine Huger McQueen – Circuit Court for Montgomery County

Monica Mitchell – Corporate Impact Partners and Joint Center for Political and Economic
Studies

Kelly M. Preteroti, Esq. – Maryland State Bar Association

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Contents

Letter of Transmittal	iii
Roster	v
Executive Summary	vii
Chapter 1. Introduction	1
Chapter 2. Background	3
History, Function, and Composition of the Orphans' Courts	3
Initiatives to Address Issues.....	3
Recent Developments	4
Chapter 3. Task Force Process and Meetings	5
Process	5
Meetings.....	7
Chapter 4. Recommendations	9
Overview.....	9
Recommendations.....	9
Appendices	15
Appendix 1. Preliminary Report and Extension Letter	17
Appendix 2. Chapter 220 of 2025.....	31
Appendix 3. Administrative Order on the Conference of Orphans' Court Judges and Education for Orphans' Court Judges.....	35
Appendix 4. Number of Estates Requiring Action by the Registers of Wills or by the Orphans' Courts	
Appendix 5. Who Hears Probate Cases in the United States and Maryland	
Appendix 6. Jurisdiction of Probate Cases in the United States – Additional Information	
Appendix 7. Preliminary Fiscal Information (For Discussion Purposes Only).....	
Appendix 8. Registers of Wills – National Analysis of Courts with Jurisdiction Over Probate Fiduciary Matters.....	
Appendix 9. Maryland State Bar Association – Cross-Jurisdictional Judges Work Group	
Appendix 10. Registers of Wills – Orphans' Courts Weekly Schedule by Jurisdiction	
Appendix 11. Maryland State Bar Association – Educational Background of Orphans' Court Judges by County.....	
Appendix 12. Opinion of the Attorney General – <i>Orphans' Court – Extent of Supervisory Power of Court over the Register of Wills</i> (May 13, 2013).....	

Appendix 13. Recommendations Proposed by Jonathan Lasley, Esquire, Senator West,
Judge Fisher, and Judge Groves.....
Appendix 14. Task Force Vote on Recommendations
Appendix 15. Final Recommendations Adopted by Task Force.....

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Executive Summary

This report presents the findings and recommendations of the Task Force to Study Fiduciary Adjudication in Maryland, established by Chapter 220 of 2025. In 2021, the Task Force to Study the Maryland Orphans' Courts issued a report identifying certain inefficiencies and other problems with the selection of judges for, and adjudication of matters before, the orphans' courts. Subsequent developments, along with initiatives to address these underlying concerns, have further highlighted these issues, including a lack of uniformity in fiduciary adjudication across Maryland's jurisdictions.

The creation of this task force reflects a continued effort by the General Assembly and stakeholders within the legal system to evaluate whether Maryland's existing framework for fiduciary adjudication effectively promotes consistency, efficiency, and fairness. Questions regarding jurisdictional overlap, differences in judicial qualifications and training across jurisdictions, and procedural mechanisms (e.g., transmission of issues of fact and *de novo* appeals) have remained central to these discussions.

The task force met from October 2025 through May 2026, during which it received testimony, data, research, and recommendations from judges, registers

of wills, attorneys, court personnel, public officials, and members of the public. The task force (1) reviewed Maryland's current fiduciary adjudication system; (2) examined probate and fiduciary court structures in other states; (3) considered available workload and caseload data; and (4) evaluated potential structural, procedural, and educational reforms designed to improve the administration of fiduciary matters statewide.

As part of its work, the task force issued a preliminary report in December 2025 identifying initial findings and goals for continued study. Following an additional meeting in May 2026, the task force developed and voted on the four recommendations contained in this final report. These recommendations are intended to address identified inefficiencies and inconsistencies in the current system and to promote greater uniformity, clarity, and effectiveness in the adjudication of fiduciary matters in Maryland.

The recommendations focus on (1) improving the training of judges hearing fiduciary matters; (2) improving the efficiency of contested matters; (3) taking actions toward the creation of a specialty court to hear all fiduciary matters; and (4) improving the collection of jurisdiction-specific data related to fiduciary matters.

Chapter 1. Introduction

The creation of the Task Force to Study Fiduciary Adjudication in Maryland in 2025 followed years of discussion regarding the role and structure of Maryland's orphans' courts and the adjudication of fiduciary matters. Previous commissions, workgroups, and the Task Force to Study the Maryland Orphans' Courts (2021) identified concerns relating to overlapping jurisdiction, varying judicial qualifications, procedural inefficiencies, and the lack of uniformity in the adjudication of fiduciary matters across the State. More recent developments underscored the importance of examining whether Maryland's existing framework is fair, efficient, and consistent.

Chapter 220 of 2025 (see **Appendix 2**) required the task force to:

- examine the qualifications, training, and methods of selection of judges hearing probate and other fiduciary matters in Maryland;
- examine the jurisdictions of the orphans' courts and circuit courts with respect to fiduciary matters;
- analyze the efficiency of the procedures for adjudicating contested and uncontested matters in the orphans' courts and circuit courts;
- analyze the effect of the different qualifications of orphans' court judges and related litigation procedures on the uniform application of justice in Maryland;
- 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;
- seek guidance from appropriate witnesses with experience or expertise in the area of fiduciary adjudication;
- examine any other research, analysis, or guidance related to the best practices for adjudicating fiduciary matters;
- offer one or more opportunities for members of the public and other interested parties to give their opinions on the subjects considered by the task force; and
- make recommendations to improve efficiency, uniformity, and quality of fiduciary adjudication in Maryland.

To carry out its charge, the task force met between October 2025 and May 2026, and received testimony, data, research, and recommendations from judges, registers of wills, attorneys, court personnel, public officials, and members of the public. The task force reviewed Maryland's current fiduciary adjudication system, examined probate and fiduciary court structures in other states, considered available workload and caseload data, and evaluated potential structural, procedural, and educational reforms.

As part of its work, the task force issued a preliminary report in December 2025 identifying initial findings and goals for continued study (see **Appendix 1**). This final report summarizes the task force's work, findings, and final recommendations. The final recommendations are intended to improve the adjudication of fiduciary matters in Maryland while promoting greater efficiency, uniformity, and public confidence in the judicial system.

The task force is composed of 12 members, including 2 Senators, 2 Delegates, 2 orphans' court judges, 1 circuit court judge (nonvoting member), 2 members of the Maryland State Bar Association (MSBA), 2 registers of wills, and 1 member with expertise in budgeting and personnel matters.

The report consists of three primary sections (Chapters 2, 3, and 4), which are described below.

- **Background (Chapter 2)** – A brief overview of the history, function, and composition of the orphans' courts in Maryland, initiatives to address issues, and recent developments.
- **Task Force Process and Meetings (Chapter 3)** – A description of the task force's process and meetings since October 2025.
- **Recommendations (Chapter 4)** – A listing of the four recommendations, along with background and rationale.

Chapter 2. Background

History, Function, and Composition of the Orphans' Courts

Maryland's orphans' courts were first created by the Acts of 1777, replacing the colonial Prerogative Court after independence from Great Britain. The Orphans' Court is Maryland's constitutionally established probate court and is responsible for overseeing the administration of decedents' estates. Section 2-102 of the Estates and Trusts Article grants the orphans' courts jurisdiction over judicial probate, the conduct of personal representatives, and the issuance of orders necessary for the administration of a decedent's estate. The courts also exercise jurisdiction over the guardianship of the property of minors and, in certain jurisdictions, the appointment of guardians of minors. Although orphans' courts exercise limited jurisdiction, any issue of fact arising before the court may be transferred to the circuit court for trial at the request of an interested party.

The Maryland Constitution of 1851 elevated orphans' court judges to constitutional judges. Currently, three orphans' court judges sit in Baltimore City and each Maryland county, except Harford, Howard, and Montgomery counties, where circuit court judges sit as orphans' court judges through constitutional amendments that went into effect in 1964, 1972, and 2022, respectively.

Orphans' court judges are elected to four-year terms during the general election and must be at least 18 years old, citizens of Maryland, and residents of their jurisdiction for at least 12 months prior to the election. There is no minimum education to serve as an orphans' court judge except in Baltimore City and Baltimore and Prince George counties, where judges are constitutionally required to be licensed attorneys and members of the Maryland Bar in good standing. While the Maryland Constitution requires all circuit, District, and appellate court judges to retire at age 70, there is no mandatory retirement age for orphans' court judges.

Initiatives to Address Issues

Though the Orphans' Court has existed in some form since Maryland's earliest years of statehood, probate law and fiduciary litigation have evolved significantly over time. As a result, stakeholders have repeatedly examined whether the structure and jurisdiction of the Orphans' Court remain effective, efficient, and equitable, and have debated potential judicial reforms.

Debate regarding the role and structure of the Orphans' Court dates back to the Constitutional Convention of 1850. During the Constitutional Convention of 1867, delegates considered abolishing orphans' courts but ultimately decided to reform and restructure them by mandating the election of three judges in each county and Baltimore City. This structure remains largely in effect today across the State. The Commission on Judicial Reform (1974), the

Commission to Study the Judicial Branch of Government (1982), and more recently, the Commission on the Future of Maryland Courts (1996) each recommended abolishing the orphans' courts citing concerns about administrative inefficiencies, inconsistent adjudication practices, and disparities in judicial qualifications.

In response to ongoing concerns, Chapter 525 of 2021 established the Task Force to Study the Maryland Orphans' Courts. In its December 2021 report, the task force recommended several reforms, including the creation of a cross-jurisdictional probate court to adjudicate more complex matters, prohibiting political party affiliation for candidates for orphans' court judgeships, and establishing ethical and professional standards governing orphans' court judges who also engage in the private practice of law.

Following the publication of the task force's report, the Estate and Trust Law Section of MSBA convened a workgroup to evaluate the recommendations. The workgroup concluded that the recommendations did not fully resolve the issues of uniformity, equal protection, and efficiency in Maryland's fiduciary adjudication system.

To further examine concerns regarding the administration of fiduciary matters in Maryland, Chapter 220 of 2025 established the Task Force to Study Fiduciary Adjudication in Maryland to evaluate all aspects of fiduciary adjudication across jurisdictions in the State and to develop recommendations to improve the efficiency, uniformity, and quality of fiduciary adjudication statewide.

Recent Developments

On September 10, 2025, the Supreme Court of Maryland issued an administrative order titled "Conference of Orphans' Court Judges and Education for Orphans' Court Judges" (see **Appendix 3**). The order expands training and orientation requirements for new orphans' court judges to include an overview of the court's jurisdiction, education in relevant areas of substantive law, and instruction on judicial ethics and conduct. The order also mandates continuing annual education requirements for all orphans' court judges, effective January 1, 2027.

In June 2026, the Supreme Court of Maryland officially removed an orphans' court judge in Anne Arundel County from office, following the dismissal of wiretapping and misconduct in office criminal charges against the judge and the unanimous recommendation for removal of the judge by the Maryland Commission on Judicial Disabilities. The removed judge is running for re-election during the 2026 election cycle. In May 2026, the commission recommended the removal of another Anne Arundel County orphans' court judge. That judge is not seeking re-election, and the Supreme Court of Maryland has not yet acted on the commission's recommendation in that case.

Chapter 3. Task Force Process and Meetings

Process

The task force held a total of eight meetings between October and December 2025. In December 2025, the task force voted to approve a preliminary report and extension letter. After the General Assembly adjourned in April 2026, the task force met one time in May 2026 to discuss and vote on recommendations for the final report (see **Appendix 15**).

In October 2025, the task force approved a definition of “fiduciary” for purposes of fiduciary adjudication to include (1) a trustee acting under a deed, will, declaration of trust or other instrument in the nature of a trust or appointed by a court, a receiver, custodian, committee or guardian of the person and/or guardian of the property of a minor or disabled person, executor, administrator, or personal representative and (2) an agent appointed under a financial power of attorney or an advance directive.

From October through December 2025, the task force heard from various stakeholders, including circuit court judges sitting as orphans’ court judges in Harford, Howard, and Montgomery counties; lay orphans’ court judges serving in Allegany, Charles, and Wicomico counties; the Register of Wills for Baltimore County; a former orphans’ court judge for Howard County; staff of the Register of Wills for Frederick County; Clerk of the Circuit Court for Queen Anne’s County; and members of the public. Additionally, written testimony was submitted to the task force.

In November 2025, the task force approved the use of data regarding estate activity specified in **Appendix 4 – Number of Estates Requiring Action by the Registers of Wills or by the Orphans’ Courts**. The Department of Legislative Services (DLS) presented to the task force data from the Judiciary regarding the number of cases filed in the circuit courts for trustee matters, cases filed for guardianship of the person and/or property of a minor, and appeals from the orphans’ courts to the circuit courts for fiscal 2021 through 2025. The Registers of Wills presented fiscal 2025 data on the number of appeals from the orphans’ courts to the circuit courts, which was consistent with DLS data. The registers of wills also presented fiscal 2025 data on contested and uncontested matters handled by the orphans’ courts, which was disputed by the orphans’ court judges on the task force. Judge Groves presented data about the number of hearings and pleadings in fiscal 2024 through 2026 for the Orphans’ Court of Prince George’s County.

In addition to the data described above, DLS presented research about the composition and structure of the orphans’ courts in Maryland and a comparison of jurisdictional statutes of probate courts in other states (see **Appendix 5**). Additional information compiled by DLS about jurisdiction of probate cases in other states is also included in this report as **Appendix 6**. DLS presented preliminary fiscal information (*for discussion purposes only*) to help gauge the potential magnitude of costs associated with different fiduciary adjudication scenarios related to court structure (see **Appendix 7**). The Registers of Wills and members of task force representing MSBA

presented research about fiduciary courts in other states (See **Appendix 8** and **Appendix 9**). The registers of wills also provided a current court schedule indicating how often orphans' court judges sit weekly across the State (see **Appendix 10**), and MSBA presented research about the educational attainment of current orphans' court judges (see **Appendix 11**).

Some of the key issues the task force considered are discussed below.

- **Jurisdiction** – Members noted that (1) the current bifurcated jurisdiction of the orphans' court over estates and probate and the circuit courts over trusts is inefficient (*e.g.*, a decedent with a will and a trust requires two court proceedings for the same matter); (2) statute allows for a *de novo* appeal and a transmission of issues of fact from the orphans' court to the circuit court creating delays, duplication of effort, and additional costs; and (3) having a single court to handle all fiduciary matters may improve efficiency, uniformity, and quality of fiduciary adjudication in Maryland.
- **Duties of Registers of Wills to the Orphans' Courts** – The task force discussed the duties of the Registers of Wills as the clerks of the orphans' courts, including the need of the orphans' courts to have their own dedicated staff. The Registers of Wills submitted a 2013 opinion of the Attorney General which indicated, among other things, that although the Registers of Wills are the clerks of the orphans' courts, the Comptroller, not the orphans' courts, has power over the personnel of the Registers of Wills. 98 *Md. Op. Att'y Gen.* 23 (2013) (see **Appendix 12**).
- **Qualifications and the Effect of Different Qualifications for Orphans' Court Judges** – The task force discussed qualifications for orphans' court judges compared to circuit court judges, including whether to (1) require orphans' court judges to be licensed Maryland attorneys in good standing, subject to a judicial nominating process; (2) increase the minimum age for an orphans' court judge (currently 18 years); and (3) establish a mandatory retirement age for orphans' court judges. The task force also discussed the effect on the uniform application of justice of having three systems in Maryland: (1) lay orphans' court judges (who may be attorneys by coincidence) in 18 jurisdictions; (2) attorney orphans' court judges (by requirement) in Baltimore City, Baltimore and Prince George's counties; and (3) circuit court judges sitting as orphans' court judges in Harford, Howard, and Montgomery counties. The task force noted that differences between large jurisdictions and small, rural jurisdictions with fewer licensed attorneys and judges are a consideration in making any of these changes.

The task force adopted the preliminary report and extension letter in December 2025 with a focus on the following topics for its continued work beginning in April 2026: (1) requiring all judges hearing fiduciary matters to be Maryland attorneys in good standing; (2) requiring each jurisdiction to have a single court (specialty court or division) to hear all fiduciary matters and provide for efficient appeals, including properly vetted and selected judges and adequate staff; and (3) mandated and improved education and training for all judges hearing fiduciary matters. The

task force discussed three additional proposed recommendations submitted by the Registers of Wills; however, the task force did not vote on or include those recommendations in the preliminary report as topics for future study and deliberation.

In May 2026, the task force reviewed, discussed, and approved by an 8-2 vote the recommendations proposed by Senator West and Jonathan Lasley, Esquire that incorporated some recommendations by orphans' court judges on the task force (see **Appendix 13**). The Registers of Wills then proposed a recommendation that the new task force study granting courts conducting fiduciary adjudication concurrent jurisdiction over all non-fiduciary death-related civil matters, which was approved by an unanimous vote (10-0) (see **Appendix 14** for the voting record on recommendations and Appendix 15 for the final version of recommendations).

Meetings

Exhibit 1 contains a summary of the topics of discussion for the task force's meetings. Agendas, meeting materials, and videos for the task force are available at: <https://dls.maryland.gov/policy-areas/tf-to-study-fiduciary-adjudication-in-md>

Exhibit 1 Task Force to Study Fiduciary Adjudication in Maryland Summary of Meeting Items

October 20, 2025	<ul style="list-style-type: none"> ● Introductions of Task Force Members and Staffers ● Legislative Intent of Task Force ● Overview of the Nine Objectives of the Task Force ● Background on the Purpose and Need for Task Force ● Definition of "Fiduciary" for Task Force ● Identification of Substantive Issues to be Addressed ● Data and Information Requests
October 27, 2025	<ul style="list-style-type: none"> ● Qualifications, Selection, Training of Judges Hearing Probate and Other Fiduciary Matters in Maryland ● Jurisdictions of the Orphans' Courts and Circuit Courts Over Fiduciary Matters ● Jurisdictions of Probate Courts in Other States
November 3, 2025	<ul style="list-style-type: none"> ● Jurisdictions of Probate Courts in Other States (continued) ● Efficiency of the Procedures for Adjudicating Fiduciary Contested and Uncontested Matters in the Orphans' Courts and Circuit Courts ● Appeals from the Orphans' Courts to Circuit Courts

November 10, 2025	<ul style="list-style-type: none"> ● Discussion – Workload/Caseload Data – Orphans’ Courts and Register of Wills (continued) ● Qualifications, Selection, and Training of Judges Hearing Probate and Other Fiduciary Matters in Maryland
November 17, 2025	<ul style="list-style-type: none"> ● Questions and Discussion – Circuit Court Judges That Sit as Orphans’ Court Judges in Harford, Howard, and Montgomery Counties ● Questions and Discussion with Orphans’ Court Lay Judges from Charles and Wicomico Counties ● Workloads of the Orphans’ Courts (continued) ● Duties and Workloads of the Registers of Wills (Continued)
November 24, 2025	<ul style="list-style-type: none"> ● Definition of “Cases” for the Task Force’s Report and Recommendations ● Maryland Judiciary Data ● Duties and Workload Registers of Wills (continued) ● Workload Orphans’ Courts (continued) ● Proposals and Possible Recommendations – Working Document ● Preliminary Fiscal Information of Scenarios Related to “Structural” Changes in the Current Fiduciary Adjudication System
December 1, 2025	<ul style="list-style-type: none"> ● Public Hearing ● Preliminary Fiscal Information of Scenarios Related to “Structural” Changes in the Current Fiduciary Adjudication System (continued) ● Effect of the Different Qualifications of Orphans’ Court Judges and Related Litigation Procedures on the Uniform Application of Justice in Maryland
December 8, 2025	<ul style="list-style-type: none"> ● Vote on the Task Force’s Preliminary Report and Proposed Recommendations
May 13, 2026	<ul style="list-style-type: none"> ● Discussion and Vote on the Task Force’s Final Recommendations

Chapter 4. Recommendations

Overview

The task force adopted four general recommendations, each with subparts, which are discussed below. This list of recommendations is not intended to be an exclusive compilation of ways to improve efficiency, uniformity, and quality of fiduciary adjudication in Maryland.

Recommendations

1. Improve the Training of Judges Hearing Fiduciary Matters

The task force recommends that the Judicial College establish a “Fiduciary University,” modeled after the Judiciary’s existing Family Law University, to provide specialized education for judges hearing fiduciary matters. The curriculum should be developed and overseen by a committee composed of sitting and retired judges and attorneys with substantial experience in fiduciary litigation and fiduciary law.

The Fiduciary University should include two education tracks: (1) a foundational curriculum for judges newly assigned to hear fiduciary matters and (2) a continuing education curriculum for judges currently hearing fiduciary matters that addresses developments in the law and emerging issues affecting fiduciary practice in Maryland.

No orphans’ court or circuit court judge should hear fiduciary matters without completing the foundational curriculum following appointment, election, or assignment to hear such cases. In addition, lay orphans’ court judges, orphans’ court judges who are not members of the Maryland Bar, and newly elected or appointed orphans’ court judges should complete supplemental training addressing the role of the judiciary, judicial decision-making, and the ethical responsibilities of judges before presiding over fiduciary matters.

The task force further recommends that judges hearing fiduciary matters be required to complete a specified number of hours of fiduciary education annually through the Fiduciary University (or an approved equivalent program) as a condition of continuing to hear fiduciary cases. Compliance with these education requirements should be monitored by the Judicial College, which should report compliance and noncompliance to the Maryland Judiciary for appropriate administrative action.

Background/Rationale

Members of the task force were concerned that judges hearing fiduciary matters may not consistently complete available educational requirements, and there is currently no uniform policy

to ensure compliance with fiduciary-specific training requirements. As a result, judges may preside over complex fiduciary proceedings with significantly different levels of subject-matter expertise. The task force concluded that a more structured and enforceable education framework through a Fiduciary University in consultation with the Judicial College is necessary to ensure that all judges hearing fiduciary matters possess the knowledge and skills required to administer cases fairly, efficiently, and consistently.

2. Improve the Efficiency of Contested Matters

To eliminate some of the inefficiencies in the current system of transmission of issues of fact and *de novo* appeals from the orphans' courts to the circuit courts, the task force recommends that the General Assembly enact legislation streamlining those procedures and guaranteeing each party the right to be heard by a judge who is an attorney.

Specifically, the task force recommends that the legislation specify that in a jurisdiction with lay judges, any party to a contested matter (other than the opening of judicial probate) that ordinarily is heard by the orphans' court may remove the matter directly to the circuit court as a matter of right. In a jurisdiction with attorney-judges only or where the circuit court judges sit as orphans' court judges, any party may remove the matter directly to the circuit court for the sole purpose of obtaining a jury trial. In the case of any removal:

- the orphans' court has no further jurisdiction regarding the contested issues and is bound by the circuit court's rulings and decision;
- an appeal of the circuit court's decision is to the Appellate Court of Maryland; and
- failure to exercise the right of removal by the parties (1) is deemed to waive a jury trial in the matter and (2) means an appeal from the orphans' court decision is to the Appellate Court of Maryland.

Background/Rationale

Transmission of Issues of Fact: Section 2-105(b) of the Estates and Trusts Article authorizes an interested person to request that an issue of fact be determined by a court of law. If the orphans' court has not determined the fact, the issue *must* be transmitted to a court of law, which is the circuit court. Maryland Rule 6-434 sets forth the procedure for transmitting issues of contested facts from the orphans' court to the circuit court for trial whose judgment is then binding on the orphans' court. This statutory authorization undermines efficiency by dividing adjudication between the orphans' court and circuit court for issues of fact, creating delays and additional costs for the parties and the court. The recommendation addresses this issue by specifying that once a case has been removed from the orphans' court to the circuit court, the orphans' court has no further jurisdiction over the proceeding.

De Novo Appeals: Section 12-502 of the Courts and Judicial Proceedings Article authorizes a party to appeal a final judgment of an orphans' court to a circuit court, to be heard *de novo* by the circuit court. This provision does not apply to Harford, Howard, and Montgomery counties, where the circuit court judges sit as orphans' court judges. Section 12-501 of the Courts and Judicial Proceedings Article offers an alternative option by specifying that instead of an appeal to the circuit court from a final judgment of an orphans' court, a party is generally authorized to appeal an orphans' court final judgment to the Appellate Court of Maryland. The appeal to the Appellate Court of Maryland is *on the record*, which is the general standard for appeals to that court.

This statutory authorization of a *de novo* proceeding from the orphans' court to the circuit court creates inefficiency by allowing two hearings for the same matter. Instead of an appeal from the orphans' court to the circuit court *on the record*, the *de novo* proceeding in the circuit court allows the case to be entirely relitigated as if there had never been a prior hearing or judgment in the orphans' court, which creates a duplication of work, time, and costs. The recommendation addresses this issue of *de novo* appeals by requiring that the case be heard once, either in the orphans' court or the circuit court, with one appeal *on the record* to the Appellate Court of Maryland.

Cases Heard by Attorney-Judges: The recommendation also allows a party in a jurisdiction with lay orphans' court judges to have the case heard by a circuit court judge (who is required to be an attorney).

3. Actions toward Creation of a Specialty Court to Hear All Fiduciary Matters

As stated above, Maryland currently has three types of orphans' court structures that hear estate and probate matters: (1) lay judge (no attorney requirement, but judges may be attorneys by coincidence); (2) attorney-judge only (Baltimore City, Baltimore and Prince George's counties); and (3) circuit court judges sitting as orphans' court judges (Harford, Howard, and Montgomery counties). Orphans' courts have jurisdiction over judicial probate, and other estate administration matters, including concurrent jurisdiction with the circuit court over guardianship of the person and/or property of a minor. The circuit courts have jurisdiction over trusts and other fiduciary matters, including guardianship of the person and/or property of a disabled adult. Having three types of orphans' court structures and divided jurisdiction over fiduciary matters between the orphans' courts and circuit courts undermines the efficiency, uniformity, and quality of fiduciary adjudication in the State.

New Task Force

Creation of Specialty Court for Fiduciary Matters

To improve fiduciary adjudication in Maryland, the task force recommends that the General Assembly enact legislation during the 2027 session to create a new task force with a narrower mandate to work out the details of establishing either (1) a separate court in each

jurisdiction, staffed by specially-trained judges in fiduciary matters, to serve as the trial court for all fiduciary matters in Maryland or (2) a Fiduciary Division within the circuit courts to hear all fiduciary matters.

In addition, the new task force may consider studying the following options:

- converting the attorney-judge orphans' courts in Baltimore City and Baltimore and Prince George's counties into either fiduciary trial courts or fiduciary divisions within the circuit courts for those jurisdictions;
- establishing a Fiduciary Division in Harford, Howard, and Montgomery counties, where circuit court judges sit as orphans' court judges; and
- granting the court conducting fiduciary adjudication concurrent jurisdiction with the District Court or the circuit court over all non-fiduciary death-related civil legal matters.

Qualifications and Selection of Judges

In addition, the task force recommends that the new task force study the qualifications and methods of selection of judges conducting fiduciary adjudication. Specifically, the task force suggests that the new task force consider:

- requiring all judges be selected and retained using the same procedures required for circuit court judges, including the creation of a specialized Judicial Nominating Commission to fill vacancies;
- analyzing the length of terms of office for judges;
- providing appropriate minimum and maximum ages for judges;
- expanding jurisdiction to other fiduciary matters; and
- requiring all judges to be Maryland attorneys in good standing.

Potential Legislation – Qualifications and Selection of Judges

If the General Assembly decides to pursue a separate fiduciary court (with or without the creation of a new task force) or retain the current orphans' courts, the task force recommends that the legislature consider altering the qualifications and selection of judges as specified above.

Background/Rationale

Because of the complexity involved in changing the orphans' court structure to a single court to handle all fiduciary matters in Maryland, and the limited time available to the task force consider viable options, the task force believes that further study by a new task force is necessary. Altering the orphans' court structure and/or jurisdiction over fiduciary matters raises the issue that small, rural jurisdictions in the State may lack a sufficient number of attorneys to become orphans' court judges or lack the capacity in the existing circuit courts to handle all fiduciary matters. Furthermore, based on the preliminary fiscal information related to the fiduciary adjudication scenarios the task force discussed, different court structures result in varying fiscal impacts on the salary and personnel costs of the State and counties (see Appendix 7). These issues and others that may result from a structural change warrant continued study and consideration by a new task force.

In addition, under the Maryland Constitution, each county elects, for a term of four years, three judges to the orphans' court of their respective jurisdictions, with the exception of Harford, Howard, and Montgomery counties, where a circuit court judge sits as the orphans' court. Elections for judges of the orphans' courts occur during the gubernatorial elections and candidates are nominated by primary election, nonprincipal political party nomination, or petition, and listed on the ballot with party designation. To qualify as an orphans' court judge, a person must be at least 18 years of age, and a citizen and resident of the State for 12 months preceding the election. To improve the quality, impartiality, and selection of orphans' court judges, it is recommended that consideration be given to changing the current partisan election of orphans' court judges that lacks a vetting process to that resembling the election of circuit court judges.

Finally, altering the minimum age requirement, having a mandatory retirement age for orphans' court judges (a majority of the current orphans' court judges are age 70 or older), and requiring orphans' court judges to be Maryland attorneys in good standing are changes, among others, that warrant future consideration.

4. Improve Data Collection

The task force recommends that the Rules Committee of the Judiciary or other appropriate authority establish new intake categories and/or subcategories for the collection of data related to fiduciary matters specified by local jurisdiction, as follows:

- trusts or a case in which a trustee of a trust is a party (except real estate deeds of trust or trustees of such deeds, and trustees of Employee Retirement Income Security Act (ERISA) or other retirement accounts);
- probate matters, including transmission of issues of fact and *de novo* appeals from the orphans' court to the circuit court;

- guardianship of the person and/or property of a minor or disabled adult;
- matters arising under powers of attorney or advance directives; and
- disputes involving beneficiary designations.

Background/Rationale

Members of the task force expressed concern about the accuracy and completeness of the data collected from the Judiciary related to trusts/trustee cases filed in the circuit courts. Also, the Judiciary was unable to specify the number of cases involving the transmission of issues of fact and *de novo* appeals from the orphans' court to the circuit court. This data is important and relevant to determine caseload for a court that handles all fiduciary matters. Other data not requested by the task force, but deemed important, are cases related to guardianship of the person and/or property of a disabled adult, powers of attorney, advance directives, and beneficiary designations.

Appendices

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