

Task Force to Study Fiduciary Adjudication in Maryland

Proposals and Possible Recommendations – Working Document

The proposals listed below reflect ideas raised during previous task force meetings. They are only potential proposals that members may choose to bring forward for consideration and voting at the December 8 meeting of the task force.

*****Note:** This list is **not exhaustive, nor does it limit the proposals** that task force members may introduce on December 8. It is provided only as a **working document** to support discussion and preparation. The proposals are presented in no particular order.

1. Attorney Judges vs. Lay Judges

- Require that all Orphans' Court judges be licensed attorneys and members of the Maryland bar in good standing.
- Grandfather current lay Orphans' Court judges through the end of their current term, but require that all future Orphans' Court judges be licensed attorneys and members of the Maryland bar in good standing.
- Eliminate the current three-judge panel model and evaluate whether jurisdictions instead require one or two full-time attorney judges.

2. Mandatory Age Requirements

- Establish a minimum age of 30 years to serve as an Orphans' Court judge.
- Establish a mandatory retirement age of 70, mirroring rules for Circuit and District Court judges.

3. Training and Continuing Education

- Require enhanced judicial training and mandatory annual continuing education, requiring specific training and continuing education relating to fiduciary matters.
- Require judicial oversight to ensure compliance with continuing education and mandatory training requirements and establish consequences for judges who fail to meet those requirements.
- Rolling over the 15 hours of continuing education if a judge is not compliant, more specifically, if a judge does not complete the 15 hours in a given year (without approval or permission from the Judicial College), it rolls over to the next year and the judge must complete the previous year hours (or years) along with the new year's requirements to be in compliance.
- Removing a judge for noncompliance of continuing education and training at the end of the year (unless the judge has approval or permission for noncompliance from the Judicial College).
- Create a Fiduciary University modeled on the existing Family Law University.

- Conduct annual education programs, retreats, or workshops that include both Registers of Wills and Orphans' Court judges.

4. Roles of Registers of Wills and the Orphans' Court

- More clearly define and delineate the scope of duties for both the Registers and the Orphans' Court.
- Provide dedicated staff for Orphans' Courts that currently operate without independent staff (e.g., model after Baltimore City and Baltimore and Prince George's counties).
- Require annual data collection and reporting requirements for both the Registers and the Orphans' Courts.

5. Vetting of Orphans' Court Judges

- Implement a vetting process conducted by a commission or the Judicial College.
- Consider use of a nominating committee for screening and recommending candidates.

6. Structural Proposals

- Orphans' Court Judges (full time, attorneys in good standing) handle probate and nonprobate fiduciary matters within Orphans' Courts, except in Harford, Howard, and Montgomery counties (where circuit court judges sit as the orphans' court). *Important to note that certain fiduciary matters carry a right to a jury trial, such as guardianship of the person of an alleged disabled adult and some trust issues. If those matters were shifted to the Orphan's Courts, something would need to be done to allow the Orphan's Courts to summons jurors.
- Orphans' Court Judges (full time, attorneys in good standing) handle fiduciary matters organized by the eight Judicial Circuits, with each county having a part-time or full-time magistrate judge to handle routine, uncontested matters.
- Circuit Court judges handle fiduciary matters, similar to Harford, Howard, and Montgomery counties, except that the Circuit Court judges would not sit as orphans' court judges limited to probate matters, but would handle all fiduciary matters.
- Every jurisdiction would adopt the model used in Harford, Howard, and Montgomery counties, with several structural changes, including:
 - (1) The Circuit Court would sit as the "Fiduciary Court" (ending the name "Orphans' Court)."
 - (2) The Circuit Court judges or magistrates, as determined by Administrative Judges, would preside, depending on the simplicity or complexity of the matters before the Fiduciary Court.
 - (3) The Fiduciary Courts would assume all of the current jurisdiction of the Orphans' Courts and also be expanded to handle all fiduciary matters, along with plenary jurisdiction over other death-related District and Circuit Court matters such as cemetery plots, replevin actions to retrieve stolen or misappropriated estate assets, disposition of human remains, determining legal title, and non-probate assets.
 - (4) The Register of Wills would continue to act as clerk to the newly-named Fiduciary Court with minimal additions of staff.

- Create a dedicated “Fiduciary Division” within each of the eight Judicial Circuits with Circuit Court judges handling fiduciary matters and each county having a part-time or full-time magistrate judge to handle routine, uncontested matters.
- Expand the jurisdiction of the current Orphans’ Courts system to include fiduciary matters.
- The Registers of Wills continue to act as the clerk to the Orphans’ Courts or Circuit Courts under all structural proposals.

7. Non-Partisan Elections

- Conduct elections for Orphans’ Court judges on a non-partisan basis.

8. Maryland Judiciary

- Require annual data collection requirements relating to Orphans’ Courts (*e.g.*, number of *de novo* appeals from Orphans’ Courts to Circuit Courts; number of transmission of facts from Orphans’ Courts to Circuit Courts; number of appeals from Circuit Courts to Appellate Court; number of Orphans’ Courts appeals directly to Appellate Court; disposition of cases that were appealed).
- Require annual data collection requirements for Circuit Courts that handle Orphan’ Court matters (currently Harford, Howard, and Montgomery counties).

9. Extension of the Task Force

- Proposal for legislation during the 2026 legislative session to extend the task force and its reporting requirements until fall/winter 2026. (Current termination of the task force is June 30, 2026). *Important to note this would allow for the preliminary report by Jan. 1, 2026 - which will include any recommendations approved by a majority vote on Dec. 8, 2025 - while extending the task force’s work through fall/winter 2026 to allow for closer examination of certain proposals.