

**MINUTES OF THE JOINT MEETING OF REPRESENTATIVES OF THE
ATTORNEY GENERAL, REGISTERS OF WILLS, ORPHANS' COURT
JUDGES AND ESTATE AND TRUST LAW SECTION COUNCIL**

January 21, 2010

A joint meeting of representatives from the offices of the Attorney General, Registers of Wills, Orphans' Court Judges, and the Estate and Trust Law Section Council was held on Thursday, January 21, 2010, at 10:00 a.m. at the Judiciary Training Center, Annapolis, Maryland.

Present at the meeting were the following:

Attorney General's Office:

David K. Hayes

Orphans' Court Judges:

Honorable Joyce M. Baylor-Thompson, Baltimore City
Honorable Joseph V. DiPietro, Queen Anne's County
Honorable Carville D. Duncan, Talbot County
Honorable Karen Friedman, Baltimore City
Honorable Vicky L. Ivory-Orem, Prince George's County
Honorable Penelope A. Keating, Queen Anne's County
Honorable Theresa A. Lawler, Baltimore County
Honorable Athena Malloy Groves, Prince George's County

Registers of Wills:

Honorable Charlotte K. Cathell, Worcester County
Honorable Grace G. Connolly, Baltimore County
Honorable Margaret H. Phipps, Calvert County
Honorable Paul G. Zimmermann, Carroll County

Estate and Trust Law Section Council Members:

Jonathan D. Eisner
Allan J. Gibber
Matthew Mace, Vice-Chair
Sharon J. Ritter, Secretary
Richard Wright, Chair

The Minutes from the previous meeting, September 10, 2009, were reviewed. The Minutes from September 10, 2009 meeting were then approved.

1. Register Phipps explained that internet access to estates is very close to being available. Only the docket will be visible, which will include the date of death, the name of the Personal Representative, the name of interested persons and the date the Personal Representative was appointed. Guardianships will not be accessible through the internet.

2. The group next reviewed legislation for the 2010 session.

Rich Wright presented the ten (10) legislative items that the Section Council is attempting to introduce:

a. Maryland Uniform Power of Attorney Act. Senator Kelly and Delegate Dumais will sponsor this piece of legislation. Rich Wright pointed out that it will likely be difficult to pass this legislation.

b. Transfer and Recordation Tax Exemptions for Transfers to or from an Estate or Certain Non-Business Trusts. This legislation is in response to a practice by the Montgomery County Land Records Office that attempts to impose a recordation tax based on the value of a mortgage assumed by the transferee when transfers are made from estates and/or trusts, even when the transfers are to relatives that would typically be exempt under applicable sections of the Tax General Article. The Section Council has not yet obtained a sponsor for this bill.

c. Inheritance Tax Exemption for Spouses of Predeceasing Descendants. Chairman Vallario will sponsor this legislation.

d. Maryland International Wills Act. Senator Frosh and Chairman Vallario will sponsor this legislation.

e. Clarification of Effect of Divorce on the Will of a Divorced Person. No sponsor is yet lined up for this legislation.

f. Authorizing a Guardian to Pay Court-Approved Fees, Commissions and Expenses After the Death of a Ward. This piece of legislation is in response to the *Battley v. Banks* case. Senator Frosh and Chairman Vallario will sponsor this legislation.

g. Clarification of the Post-Mortem Consequences of a Criminal Conviction for Exploiting a Vulnerable Adult. No sponsor has been obtained for this legislation.

h. Orphans' Court Authority to Extend the Time for a Surviving Spouse to Make an Elective Share Election if the Surviving Spouse Files a Timely Petition for such an Extension. This legislation is intended to negate the *Downes v. Downes* result, which occurred in 2005. Chairman Vallario and Senator Frosh will sponsor this bill.

i. Clarification of the Effect of Deeds Granting Property From a Trust or Estate. Chairman Vallario and Senator Frosh will sponsor this legislation.

j. Emergency Legislation Regarding Formula Clauses Relating to the Federal Estate Tax after December 31, 2009. Chairman Vallario and Senator Frosh will sponsor this piece of emergency legislation.

3. The attendees next discussed other legislation of potential interest to the group.

a. Delegate Carter is attempting to sponsor legislation that would force a certain percentage of one's inheritance to a minor child. The group believes that this legislation is not appropriate and that it should be studied before it goes any further. Louisiana is the only state in the country which has any sort of forced inheritance and the group does not believe that there are public policy reasons to enact such a bill. Delegate Carter likely sponsored this bill because she believed that Judge Garrett from the Baltimore City Orphans' Court wanted such a bill. However, Judge Garrett only intended for this matter to be studied by the appropriate parties for several years before considering any legislation. Delegate Carter also spoke to Angela Vallario about this piece of legislation. The Section Council will reach out to Delegate Carter, as well as to Judge Garrett, to request that the legislation be studied and then decisions can be made after appropriate review of the matter.

b. A Constitutional amendment for Baltimore City has been proposed that would require that all Orphans' Court judges be lawyers. The entire group thought this was an extremely worthwhile change because it would allow each judge to hear cases on his or her own. Senator Rosenberg and Senator Gladden are sponsors to this piece of legislation.

c. Senate Bill No. 25 has been submitted by Senator Frosh and Senator Forehand. This bill would permit transfers of real estate to trusts where the trust would retain the same creditor protection that tenancy by the entireties ownership currently affords spouses.

d. Register Connolly then requested that the Council consider sponsoring a piece of legislation that would clarify what is necessary to recognize a domestic partnership. In order to register as a domestic partnership, there are certain requirements in the Health General Article. That Health General Article is referenced in the Estates and Trusts Article and provides for an exemption from the Maryland inheritance tax if all conditions are satisfied. Under the law, it is clear that in order to qualify as a registered domestic partnership, an individual must have a signed affidavit and two other pieces of evidence. There has been some confusion regarding the word "may" in the section, but the group believes that the law is fairly clear. The Section Council will study this along with David Hayes from the Attorney General's Office to see if a simple rule change, or clarification from the Attorney General's Office, will suffice.

e. Register Connolly also asked the question: how should a child of a same sex couple be treated for purposes of the inheritance tax exemption? The group unanimously agreed that the child of one of the parties to a domestic partnership would not qualify as a step-child with respect to the other partner in the domestic partnership. This would require a change of law to provide such an exemption.

f. Finally, Register Connolly informed the group that the increased probate fee bill will be submitted again this year and she has obtained two sponsors from Montgomery County.

4. David Hayes next brought up a question of what happens when someone files papers with the Register (which requires a payment along with such filing) and fails to make the appropriate payment. Mr. Hayes asked the group if there is an actual rule that allows the Registers to reject such a filing. Specifically, Mr. Hayes was concerned about caveat filings, claim filings or other time sensitive filings that would potentially be rejected for failure to timely pay a fee.

The group discussed the fact that there are many filings in the Circuit Court requiring a fee and litigants in all cases must submit the fee with the filing or the filing is rejected. If the Registers want to be more permissive, perhaps a rule could be enacted where the payment of the fee within one week of the filing due date would ratify the filing (assuming the filing of the document was timely).

Judge Keating pointed out that there is an Attorney General's opinion that specifically allows a claim against an estate to be rejected if a fee does not accompany the claim. The ultimate issue is how the Registers are handling this in each jurisdiction and the need to be uniform. The group will continue discussing this in the future and suggest to the Rules Committee that they consider a rule change if the Registers desire one.

5. Judge Lawler raised the issue of whether the Section Council is planning to submit a bill in the 2010 legislative session to address the problems associated with the guardianship of the person of minors bill that passed in the 2009 session. Specifically, Judge Lawler would very much like to abolish the requirement that only lawyer-judges be permitted to hear these guardianship matters.

The Registers, Orphans' Court Judges and Section Council continue to study this troubling law and are looking to prepare a comprehensive response to the current statute. The next meeting of this Guardianship Subcommittee will be held on February 11, 2010. The Committee will address Judge Lawler's concerns (which are shared by many of the other Judges throughout the state) and attempt to suggest some concrete solutions to the problems within the law. Rich Wright suggested that one or two members of the Family Law Section be added to the Subcommittee and the entire group thought this was an excellent idea. Sharon Ritter will reach out to a member of the Family Law Section to add such a person to the committee.

With respect to guardianship matters, the group has not seen an influx of guardianship cases in the Orphans' Courts since the law went into effect in the fall of 2009. Prince George's County has its own procedures to address these guardianship matters and Benjamin Woolery is attempting to combine the Prince George's County rules with other rules to come up with a uniform system that could be used throughout the state.

6. Judge Lawler explained that Judge Bell recently signed an administrative order that expanded the CLE requirements for Orphans' Court ("OC") judges. Prior to October, 2009, all judges (other than OC judges) were required to attend two full days of CLE each year. Judge Bell's Order of October, 2009 expanded the two-day CLE requirement to OC judges. As a result of this new CLE requirement, options for CLE are growing for the OC Judges, which everyone agreed will be terrific.

7. Judge Friedman explained that the "informed consent" form (for the approval of attorney fees and personal representative's commissions) is currently before the Rules Committee. Specifically, this is an attempt to make the consent form more clear so that lay persons understand exactly what they are signing when they consent to legal fees or personal representative's commissions in an estate. At this moment in time, the Rules Committee has asked for comments to the rule change and then the rule will be published in the March 8th *Daily Record*. Assuming there are no hurdles that occur, it is likely that the Court of Appeals will put the new rule into effect during the summer of 2010.

8. The Registers explained that they have no additional issues to discuss other than those presented above.

The next joint meeting is scheduled for Thursday, April 22, 2010, at 10:00 a.m., at the Judiciary Training Center, Annapolis, Maryland.

Respectfully submitted,

Jonathan D. Eisner