

# LWVMD STUDY CONTINUATION

## Administration of Justice in Maryland Winter – 2010

### Introduction

The League completed the first part of its Administration of Justice Study in 2009 which led to a concurrence that served to update and modernize a number of long held positions. At its Convention in 2009 further study was approved and the committee was instructed to expand the study on several fronts.

**Scope of Study:** The convention determined that the study committee should focus attention on the specific offices of Clerk of the Court, Register of Wills, and Sheriff, as well as the Orphans' Court judges. The committee's research would include the methods of selection for those offices in other states, the functions of the positions and changes in the election/selection process for those positions. The financing of the State's Judiciary including comparisons of some states' judiciary financing, revenues and expenditures would also be explored.

**Note:** Currently the League has no positions concerning the adjunct offices that support the administration of justice in the state, nor does it have a position on the way we finance Maryland's judiciary. This study is intended to both provide information on these offices to determine if the League wishes to establish positions and to advocate for change in the way they are structured.

Although it was suggested that the study include an exploration of a Family Court, the committee concluded that the League has ample positions under its Juvenile Corrections position to advocate for such a court and that no further study was indicated.

### State Funding for the Judiciary

As with most state agencies, the Maryland Judiciary is funded through the General Fund (86.7%), Special Funds which have a statutory funding source for a specific purpose or time frame (12.2%) and Federal Funds (1.0%), in FY 2010. In addition to the Courts of Appeals, Circuit Courts and District Courts, the Judiciary budget also funds the Administrative Office of the Courts, the Circuit Court Clerks and six other Court-related programs. The Maryland Judiciary must submit its budget request for the following fiscal year to the state legislature by November 1 each year.

Total expenditures for these 12 programs in FY 2009 amounted to \$413.1 million. Two-thirds of these expenditures were at the District and Circuit Court levels. Circuit Court judges and elected Circuit Court clerks expended \$140.6 million of state funds, and the District courts spent \$140.2 million.

But this is not the whole story. Most dealings with the Maryland Courts involve the payment of fees by individuals involved in the proceedings. There are several pages of fee schedules at all levels of the Court system, ranging from as little as \$2 for a "Reissue of Distress and Show Cause Order" to \$80 filing fees for docketing a civil action other than juvenile proceedings, for criminal case costs and for appeals from District to Circuit Court or for an appeal from an administrative agency. In FY 2009, the Judiciary recorded approximately \$437 million in revenue from these fees and other court related business. Circuit courts generated about 74% of the total and District courts contributed just over 22%.

However, unless these fees are collected and specifically attributable to a special fund, the Judiciary does not retain these revenues. In fact, the Clerk of the Court forwards about 95% of the revenue it collects through the transfer tax, recordation tax and business licenses to the respective county, although in some jurisdictions, the county collects the transfer tax and recordation tax directly. Some of the revenue is remitted to other Funds or governmental levels, including the Land Records Improvement Fund and the Maryland Legal Services Corporation. To sum up, there is no direct relationship between the funds the Courts collect and what is appropriated by the legislature to support the court system; the revenue collected and the Judiciary's budget are independent of one another.

## **Orphans' Court**

This court has been part of the Maryland Constitution since 1777, but dates back to colonial times. Twenty-one counties and Baltimore City have Orphans' Courts, each consisting of three judges, elected in partisan elections, who serve four-year terms. The judges must be citizens of the State and residents, for the preceding 12 months, in the city or county where they may be elected. The Governor appoints one of the elected judges to be chief judge. In case of a vacancy the Governor appoints the replacement for the remainder of the term subject to Senate confirmation.

The judges are not required to be lawyers, although some are. An informal survey in 2009 by the Attorney General revealed that only seven of the 22 jurisdictions in Maryland that have Orphans' Courts have judges who are lawyers: Anne Arundel (1); Baltimore City (3); Baltimore County (3); Howard (2); Prince George's (3); Queen Anne's (2); and Wicomico (1). Baltimore City judges must be attorneys admitted to the bar. In most jurisdictions the judges sit as a panel except Prince George's and Baltimore City where they sit as individuals.

Montgomery (1964) and Harford (1972) counties abolished their Orphans' Courts through constitutional amendments and transferred their functions to their Circuit Courts. In Harford County one Circuit Court judge serves as the Orphans' Court, and in Montgomery county different Circuit Court judges are rotated to perform the Orphans' Court functions.

Orphans' Court probably should be re-named Probate Court which would be more descriptive of its function, and as it is in other states. This court hears all contested matters regarding a decedent's estate, including validity of wills and legal questions involving transfers of property. The court also supervises estates that are probated judicially, approves accounts, awards personal representatives' commissions, and attorney's fees in all estates; and has concurrent jurisdiction with the circuit courts in the guardianship of minors and their property. Most cases are routine, but seriously contested ones may be appealed to the Circuit Court.

With the exception of Baltimore City, where the court sits full time and the judges are full time employees of the city, the courts meet several times a week or less depending on the workload. The Register of Wills serves as the Clerk to the Orphans' Court. Cases are moved quickly to the Orphans' Court, usually within 24 to 48 hours, and most are settled expeditiously. Orphans' Court judges are supported by training and legal advice. Judges are compensated with a wide range of salaries across the state. From a 2005 Fiscal Note, some salary ranges were: Baltimore City's chief judge, \$72,500. Baltimore County's chief judge received \$39,500. In Calvert County the chief judge's annual salary was \$7,950. St. Mary's County judges were paid \$4,000 while Somerset County's chief judge was compensated \$1,900.

Various commissions have been recommending the abolition of Orphans' Court since 1942. Most recently, in its Final Report on *The Commission on the Future of Maryland Courts* (1996), the Commission recommended that the Orphans' Courts should be abolished with its operations transferred to

the Circuit Court as it is in Montgomery and Harford counties. The reasons to abolish are the same through the years: the 1996 report says that it does not “take a collegial body of three persons, whether trained or not, to make the kind of decisions the Orphans’ Court Judges make.” The Report said that 80 to 90 percent of the decisions can be made by a “properly trained official serving in the Circuit Court”, and that this court does not have “well-established, uniform procedures (that) govern those (complex) cases in Circuit Court”.

However, discussions with several Register of Wills show that Orphans’ Court relieves the workload of the Circuit Court more economically than adding another judge to handle cases. The speed with which Orphans’ Court can dispatch cases is a huge advantage to those who wait anxiously to settle an estate: it can take months to get on the Circuit Court docket. In the years since the Commission report, training for the judges has been vastly improved. Orphans’ Court was designed as a lay court and so it remains to this day. There may be an advantage of judges sitting as a panel. Possibly their interaction may bring fairness and everyday common sense to adjudication of an estate rather than to subject petitioners to the views of a single judge.

Orphans’ Court judges are virtually never voted out of office and there have been no recent cases of dismissal of any judge. Orphans’ Court remains a local institution in most jurisdictions. It is deeply rooted in Maryland history and it might prove politically difficult to abolish it statewide.

### **Offices Related to the Courts**

#### **Clerk of Circuit Court**

This office is a public institution, rich in the history of our state. It is one of the oldest offices and harks back to the mid 17th century and the first Maryland settlement in St. Mary’s County. Robert Duckworth, the Anne Arundel County Clerk of the Court, is proud that he is the 42<sup>nd</sup> clerk of that court which has had a clerk since 1650—360 years!

Although the title of this office is “Clerk of the Court,” the duties extend well beyond providing administrative support for the Circuit Court. These additional duties include the recording of deeds and collecting taxes and fees based on property transactions, issuing licenses for fishing, hunting, sales of liquor and marriage. The office collects fees for these licenses which entail significant accounting duties. They also perform civil wedding ceremonies and process passport applications. Thus the Clerk of the Court serves as an important administrative officer for the county government. The duties of the office are largely defined by state law, with relatively little discretion permitted for local policy decisions.

Allocations for the Clerk of the Court come from the budget for the courts as part of the statewide judiciary budget. Each clerk works with the administration to obtain funding for the county’s needs. The Chief Judge apportions funds to each jurisdiction.

For this study, we interviewed Clerks of the Court in large and small counties. They have staffs ranging over 100 (for example, Anne Arundel County has a staff of 115), down to seven for the smallest county.

Because of the combination of duties relating to the court and the general county government, the Clerk of the Court must respond to the needs of the Circuit court (generally communicated by the Chief Judge) and the requirements of state law (with the advice of the Attorney General). Prior to undertaking the research for this fact sheet, the members of the study committee thought of the Clerk of the Court as an administrator for the court and were not aware of the other duties. It seems likely that voters may be similarly unaware of the dual roles of this official and so, in evaluating candidates for the office, may look

to skills and experience relating to the courts rather than the general administrative ability, particularly because candidates will be listed on the ballot under the heading Clerk of the Court.

In its review of this office, the study committee conducted a survey of the chief judges of the circuit courts and also interviewed several of the clerks of court in various counties. Both sets of officers were asked their views as to whether the clerk of the court should be elected or should be appointed. Not surprisingly, the clerks unanimously supported election to the office. The most common argument in favor of election was that it ensured responsiveness to the public and accountability for the conduct of the office. In contrast, a majority of the judges who responded to the survey said that the clerk should not be elected. A few indicated that they had no opinion, but only one expressed support for electing the clerk. Although none of the Maryland judges cited specific problems, concerns have been raised that there are risks that employees of the clerk may feel pressure to engage in campaigning in support of the incumbent, that campaign contributors may have undue influence, or that the court may have a partisan bias because its key officer is chosen in a partisan election.

The choice of electing or appointing the clerk of the court is complicated because of the hybrid nature of the office. Although the judges of the circuit court would be in the best position to evaluate the clerk's performance of duties related to maintaining court records, they would have no advantage over other county officials with regard to the effectiveness of the office in tax collection, issuing licenses, or maintaining real estate records. The clerks of court emphasize public service largely because they need the votes of the public they serve. In a sense, performing their duties can be a form of campaigning. Accountability to the public is hampered, however, by the misleading title of the office and the general lack of understanding of its duties. In addition, because nearly all the duties of the clerk of court are defined by state law, an election can have little effect on how the office is administered.

### **Register of Wills**

The Maryland Constitution states that there shall be a Register of Wills in each county and the City of Baltimore to be elected by the voters. The Register serves for four years. The Register can be removed from office for willful neglect or misdemeanor in office. If there is a vacancy, it is filled by the Judges of the Orphans' Court.

The Register of Wills is responsible for the appointment of personal representatives to administer estates and for overseeing the proper and timely administration of these proceedings. They assist and advise the public in the preparation of all required forms, maintains the permanent record of all proceedings, serve as Clerk to the Orphans' Court, track estates and refer delinquent matters to the Circuit Court. The Register also collects inheritance taxes, probate fees, and court costs. The Register audits accounts of personal representatives and guardians. Register staff handle all issues related to small estates under \$50,000.

The Register offices are funded by their collection of inheritance taxes and fees and commissions. If the collections are not sufficient to support operating expenses, State general funds would be used. The Register's budget is determined with the Comptroller's Office. Each Register retains 25% of the collected fees and taxes and the rest is sent to the Comptroller's office for the General Fund. The Comptroller's office issues salary checks. Any procurement exceeding \$2,500 needs to receive approval from the Comptroller's Office. Staffers for the Register of Wills are considered state employees. Staff size is as small as 3 and greater than 20. The State audits each Register office every three years.

Here are a few examples of Register of Wills collections and expenses for FY 2009:

<b>County</b>	<b>Total Collections</b>	<b>Inheritance Taxes</b>	<b>Fees and Commissions</b>	<b>Operating Expenses</b>
Charles	\$683,544	\$408,503	\$275,041	\$598,063
Howard	\$1,890,645	\$1,230,144	\$660,501	\$547,369
Montgomery	\$20,669,979	\$14,165,006	\$6,504,973	\$2,845,908
Wicomico	\$902,465	\$523,339	\$379,126	\$372,617

The forms and procedures for Register of Wills duties are uniform throughout the state. Registers of Wills have a professional Association which meets four times a year. Registers receive professional training and have immediate access to the Office of the Attorney General for legal advice. Web sites are uniform and maintained by the Comptroller's Office.

Interviews were conducted with Registers of Wills in Anne Arundel, Harford, Howard, Kent and Washington Counties. Elected in 2006, the Anne Arundel Register of Wills was the only one who had served less than one term. The other Registers of Wills had considerable experience having been elected at least three or more times. With one exception the interviewed Registers of Wills felt the position should be elected because it makes them more accountable to those who elected them. The exception felt the position should be one of appointment from a list of qualified individuals. The cost of elections is a factor as well as trying to inform the public about the duties and responsibilities of the office.

### **Sheriff**

**BACKGROUND:** The Maryland Constitution provides that Sheriffs be elected to a four year term in each County and Baltimore City. The elections are partisan. The Governor fills vacancies by appointment. Fees collected by the Sheriff are to be paid to the County or City treasury.

The word "sheriff" comes from the Old English (Saxon) "scirgerefa", a combination of "shire" and "reeve". A shire is the English equivalent of county and the reeve was a Saxon official appointed to keep the king's peace.

Every county and Baltimore City has an elected Sheriff. Anne Arundel, Baltimore, Frederick, Howard, Montgomery and Prince George's counties and Baltimore City also have a police force with an appointed chief. Carroll County (and Mount Airy), Walkersville in Frederick County, Calvert County, and Perryville in Cecil County each contract with the Maryland State Police "Resident Trooper Program" to provide additional law enforcement.

**RESIDENT TROOPERS:** Carroll County's program was the first and is still the most active. It began in 1974 with 10 troopers and now has 45 plus 5 in Mount Airy. The Carroll County Board of Commissioners decided in 2007 to "transition away" from the Resident Trooper Program and "pursue the creation of a County Police Department. The Sheriff was opposed to the Commissioners' decision and, in 2008, proposed an ordinance calling for the Sheriff's office to remain the sole law enforcement agency until the public decided by referendum to establish a police force. The County Delegation then introduced an emergency bill applying to any ordinance passed by the Commissioners that would create a police department. That bill was passed and enacted. It requires that any ordinance creating a police force for Carroll County will be subject to referendum at the 2010 statewide elections.

DUTIES OF SHERIFFS: Sheriffs' duties, where there is no police force and no Resident Trooper Program, include: maintaining public safety; enforcing laws by arresting suspected criminals; attending court sessions; keeping the peace in courtrooms; and carrying out court orders.

Duties of the Sheriff where there is also a police force, such as Baltimore County, include: providing court and building security; processing and serving legal papers such as ex parte and protective orders; evictions; transporting prisoners; and assisting with crowd control at public gatherings. The police department is responsible for law enforcement.

ELECTION OR APPOINTMENT OF SHERIFFS: Sheriffs' organizations strongly support election and argue that elections make them directly responsible to citizens and remove the sheriff from "undue influence by county officials." They also argue that "history has shown in those jurisdictions in which the Sheriff is appointed there is a decrease in quality, and discontinuity of law enforcement..."

Those who oppose election of sheriffs point to the possible politicization of law enforcement, an increase in patronage, and the possible influence of campaign funds. Supporters counter that argument by claiming that the office becomes more politicized, not less when subject to "the whims and caprices" of county officials.

**Sources:**

1. The Maryland State Constitution
2. *The Commission on the Future of Maryland Courts – Final Report* 12/15/1996
3. Finance Department of the Administrative Office of the Courts
4. Maryland Department of State Police – functions and "History of Maryland Law Enforcement" – [www.mdsp.org](http://www.mdsp.org)
5. Maryland Office of Legislative Audits – [www.ola.state.md.us](http://www.ola.state.md.us)
6. Maryland Sheriff's Association – [www.mdsheriffs.org](http://www.mdsheriffs.org)
7. Maryland Police Chiefs – [www.mdchiefs.org](http://www.mdchiefs.org)
8. National Sheriffs – [www.sheriffs.org](http://www.sheriffs.org)
9. Information from various Carroll and Baltimore county websites

**The Study Committee:** Rebecca Goode, chair. Also, Grace Kubofcik, Lois Stoner, Carol Sures, Kay Terry and Ralph Watkins. Special thanks to LWVMD Vice President Melpi Jeffries.

**Consensus Questions:**

**Orphans' Court:**

The judges of the Orphans' Courts currently are chosen in a partisan election. Should this be changed?

- a)  non-partisan election
- b)  appointment (by whom? Governor, county council, other?)

Should all Orphans' Court judges be attorneys? Are there advantages to having non-attorneys as the judges?

Harford and Montgomery counties have abolished their Orphans' Courts and their arrangement appears to work well. Should all Orphans' Courts be abolished with their functions absorbed into the Circuit courts?

Would you recommend any other changes in Orphans' Court?

**Clerks of the Court:**

The clerk of the circuit court in each Maryland county currently is chosen in a partisan election. Should this be changed?

If the selection method was to be changed would you support:

- a)  Non-partisan election;
- b)  appointment(1)  by the circuit court; (2)  by the County Executive or County Council; (3)  another official; or
- c)  other (please describe).

Would you recommend any other changes in the office of Clerk of Court?

**Register of Wills:**

The Register of Wills in each Maryland county currently is chosen in a partisan election. Should this be changed?

If the selection method was to be changed would you support:

- a)  Non-partisan election
- b)  appointment (by whom?)
- c)  other (please describe)

Would you recommend any other changes in the office of the Register of Wills?

**Sheriffs:**

The Sheriff in each Maryland county currently is chosen in a partisan election. Should this be changed?

If the selection method was to be changed would you support:

- a)  Non-partisan election
- b)  appointment (by whom?)
- c)  other (please describe)

Would you recommend any other changes in the office of Sheriff?