

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 1402
Circuit Court Judges – Selection and Tenure
DATE: February 26, 2020
(2/26)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 1402. This bill proposes an amendment to the Maryland Constitution relating to the selection and tenure of circuit court judges.

First, this bill provides that a candidate for circuit court does not have to run for election, either in a contested or retention election, should he or she receive confirmation by 80% of the Senate. The Judiciary has supported and continues to support efforts to make the process by which judges are appointed to the bench less political. The proposed legislation, however, transfers some of the governor's appointment power to the legislature, which could have a more politicizing effect on judicial appointments.

Everyone has the right to a fair, independent and impartial judiciary that reflects the community in which they live and in which those judges serve. Everyone has a right to appear before a judge free from political influence or social pressure. The rule of law should be everyone's focus not politics. This bill, however, rather than remove politics from the equation, makes it the primary avenue for a judge to attain or retain his or her seat. Abstention or a negative vote by merely ten senators would force a contested election. Thus, a small group could require any or all of a governor's appointees to face contested races.

Judges are not and should not act like politicians. Under this bill, judges would be in the position of having to lobby the entire Maryland Senate. In 2019, 10 circuit court judges were appointed, from lists comprised of 66 candidates, 40 of whom were on the "short list" of most qualified candidates approved by various nominating commissions. The volume of candidates seeking to meet with individual senators to permit an informed vote on qualifications would be daunting.

Second, the Judiciary strongly supports eliminating contested judicial elections for circuit court judges under any circumstances. This bill still provides for a contested election

should a candidate not be confirmed by at least 80% of the Senate. In all Maryland's courts, the governor appoints judicial candidates who fill out a comprehensive application and are vetted through a nominating commission. Before they even reach their interview with the nominating commission, however, they are also vetted by their local bar associations and by specialty bar associations – 13 of them.

With contested elections, lawyers who run against sitting circuit court judges need only be a 30-year old, five-year resident in good standing with the bar. There is no vetting or requirement that they have ever stepped into a courtroom. In addition, the sitting judge is bound by a code of ethics and can only tell voters, for example, "I will be fair, I will work hard, I will be impartial." And, although the lawyer candidates who run against the sitting judges should follow the Maryland Attorneys' Rules of Professional Conduct, there are dozens of examples where they do not. These opposing candidates often say anything they want, for example, "I will be tough on crime, I will always give long sentences to offenders with guns, I will always put addicts in jail." This often happens without repercussions.

Under this legislation, a judge in a contested race would face an undue, additional burden. A challenger would be able to campaign on the basis that the sitting judge was not approved by the Senate, without ever facing comparable scrutiny.

One of the most offensive aspects of contested elections is the need for judges to engage in fundraising. Almost always, attorneys who appear before the judges are the ones who contribute to a judge's re-election campaign. This does not inspire the trust and confidence of the public. This bill will not eliminate the need for judges to engage in fundraising.

Finally, this bill will cause confusion for voters. Nonpartisan judicial elections are already not well understood. With this legislation, the possibility exists that candidates for multiple circuit court vacancies in the same year would be elected in different methods on the same ballot, with one or more requiring only a retention vote, and others facing a contested race.

The Judiciary supports retention elections for circuit court judges just as we currently have for our highest appellate courts. Judges can still be scrutinized, voters can still vote, and we preserve the dignity of the bench and nurture the fragile trust of the people.

cc. Hon. Erek Barron
Judicial Council
Legislative Committee
Kelley O'Connor