

MARYLAND JUDICIAL CONFERENCE
OFFICE OF GOVERNMENT RELATIONS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Health and Government Operations
FROM: Legislative Committee
Sara Elalamy
410-260-1561
RE: House Bill 152
Public Advocate Act of 2022
DATE: January 6, 2022
(1/25)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 152. This bill would create an Office of the Public Advocate which would be responsible for serving as an independent liaison between state citizens and state government, facilitating the democratic engagement in state government, and responding to and investigating ethical complaints against state officials in the executive, legislative, and judicial branches.

This bill presents separation of power concerns, in particular, the authority granted the Public Advocate to receive, respond to and independently investigate ethical complaints against officials in the Judiciary including judges. Article 8 of the Maryland Declaration of Rights states, “[t]hat the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other.”

In addition, the Maryland Constitution, Article IV, § 18 empowers the Chief Judge of the Court of Appeals to be the Administrative Head of the Judiciary.

Also, in case law, courts historically have prohibited intrusions on inherent functions of any branch. The Court of Appeals has held that the main purpose of the separation of powers clause is to prevent one branch of government from usurping the essential functions and powers of another branch. See *Shell Oil Co. v. Supervisor of Assessments of Prince George's Cnty.*, 276 Md. 36, 46, 343 A.2d 521 (1975).

Therefore, it is constitutionally questionable as to how the office proposed in the legislation would interplay with existing internal oversight bodies in the Judiciary. Specifically, the Maryland Constitution, Art. 4, §4B gives the Commission on Judicial Disabilities the power to investigate complaints against any judge of the Court of Appeals, the Court of Special Appeals, the Circuit Court, the District Court, or the Orphans' Courts, which seems to overlap with the Public Advocate's charge.

Further, the Judicial Ethics Committee provides ethical guidance to judges upon their request. Maryland Rule 18-308(a) provides that a State official in the Judicial Branch who requests an opinion as to application of an ethics provision and is in compliance with an opinion of, or letter of advice issued by the Committee is protected from a charge of violation of that ethics provision. The proposed broad authority of the Public Advocate leaves open the possibility that it could question determinations made by the Judicial Ethics Committee.

To what extent would the Public Advocate be permitted to investigate actions taken by judges on the bench? In theory under this proposal, a member of the public could allege an ethical violation based on a judge's ruling. If the office was permitted to investigate such an allegation, there would be no question that the separation of powers doctrine had been violated. Questions of purely legal determinations by judges must only be handled through the regular appeals process.

Ultimately, the offered constitutional amendment does not provide sufficient detail about the Public Advocate's authority, including checks to ensure that the Public Advocate would not usurp essential Judiciary functions. Essential functions include, at the least, judicial actions in open cases, as well as the related or tangential functions of the Commission on Judicial Disabilities and the Judicial Ethics Committee.

cc. Hon. Vaughn Stewart
Judicial Council
Legislative Committee
Kelley O'Connor