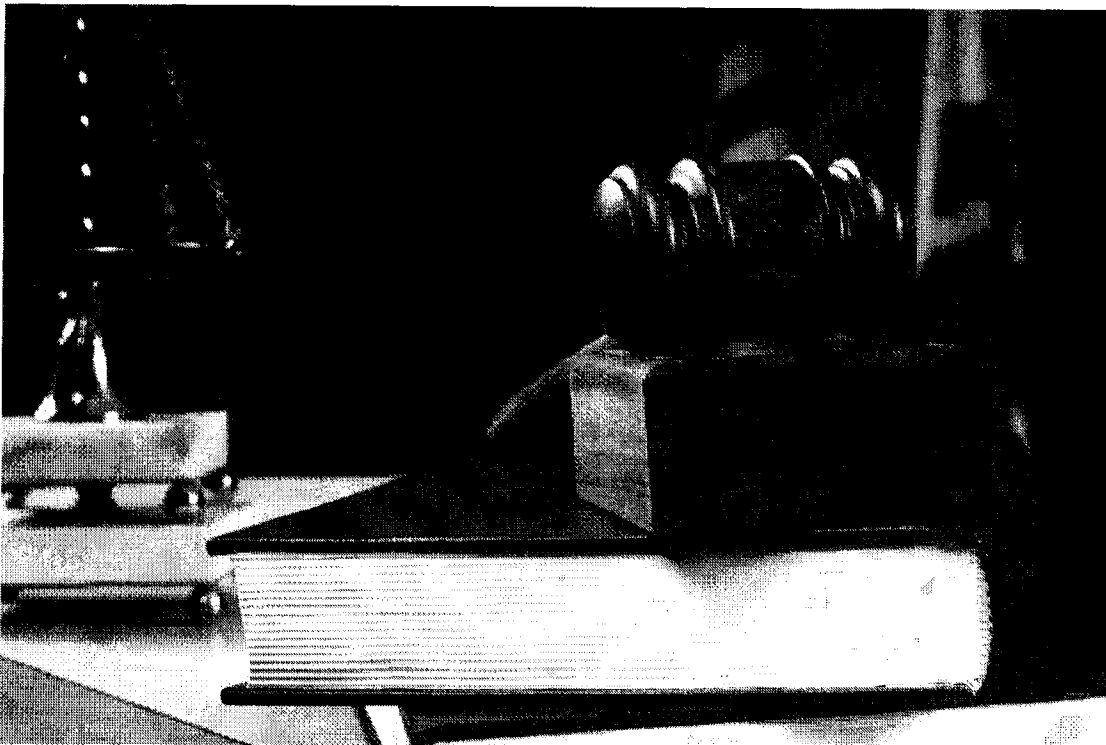


A Pursuit of Justice

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Maryland's Judicial Election System Needs Fixing Now More Than Ever



Once again the visual of Maryland's judicial elections in several counties and Baltimore City have illustrated the folly of contested elections of circuit court judges. This is particularly evident in Montgomery County, but also elsewhere in the state. This newspaper and others have recently reiterated their editorial position that reform in the form of substituting merit selection and retention elections for the current incoherent and illogical system is long overdue.

Maryland's judiciary should be diverse not only as to race, gender, and ethnicity, but also as to professional background experience and abilities. With that said, there is a consensus that every judge should have the following qualities—

Judicial temperament, intelligence, strong personal and professional ethics, courage and integrity, experience and education, personality and work habits suitable to courts workload. A positive attitude toward continuing legal judicial education, ability to communicate, civic and professional responsibility, good health and sound character.

It is clear therefore that the "system" should focus on selecting, appointing and retaining judges who are diverse and who possess these qualities. What effect do contested judicial elections have on the appointment and retention of judges who possess these qualities? The answer is not a positive affect...That is for sure!

This writer's history and experience is that from the time I arrived in Maryland in 1970 to attend American University Law School until I was elected to the Orphans Court in 1978, I was very involved politically, participating in the management of two state and local political campaigns in which all state and local offices including judicial offices were on the ballot in 1970 and 1974. In 1978 and 1982 I was on the ballot myself and successfully ran for Judge of the Orphans Court. In 1992, I along with two other Circuit Court Judges in Prince Georges County ran unopposed, as it turned out, for election to a 15 year term as a Circuit Court Judge.

For a period of over 15 years then, I was either involved in the management of judicial elections for Orphans Court and Circuit Court or a candidate myself for judicial office. Obviously after 1986 I abandoned any partisan thoughts and activities in order to be a full time judge, first of the District Court and then of the Circuit Court although in the years leading up to my election in 1992 to a full 15 year term as a Circuit Court Judge, I kept a wary eye over my shoulder at potential opposition candidates who would not be similarly, legally or ethically constrained. So I was either involved as a manager or a candidate for judicial office or an informed observer for over 40 years. I'm still watching as it turns out but enjoying it less.

My purpose in referencing my personal political and judicial history is to provide context for my opinion based on over 40 years of managing, participating as a candidate and observing contested judicial elections. That opinion is that contested judicial elections do not have a positive effect on appointing and retaining judges who are diverse and who possess the qualities necessary for Maryland to have judges who are "legally and most fully professionally qualified." In fact contested judicial elections discourage such applicants particularly those with successful private practices from seeking judicial offices.

During the years from 1970 to 2014 while I have participated in and observed contested judicial campaigns, I have **never** seen any of the qualities which are desirable in a judge discussed as an issue in any contested campaign by a challenger. Instead I have witnessed the following issues being raised in campaigns for "Orphans Court" (Probate Court)—

(1) "Whether a Licensed Practical Nurse (LPN) "could do more for orphans than those lawyers." (2) "Whether orphans who commit crimes should go to jail." (3) "The skyrocketing rates of intestacy" (4) "The Orphans Court Judges positions on abortion and (5) Whether as a candidate for reelection to the Orphans Court I would take an orphan away from a "parent" who spanked the orphan and/or do I spank my own children?"

As a candidate for a 15 year term on the Circuit Court I was asked many questions. My favorite came from a lady who identified herself as a "concerned citizen". She wanted to know "whether the Sitting Judges favored "condoms in the schools" and/or "prayer" in the schools." The answer I wanted to give was "We favor one or the other but not both". I did however resist that temptation.

My point is very simple. It is that even though the history and examples cited are anecdotal, they illustrate that at best judicial contested elections distract and at worst they destroy the effort to secure a diverse and qualified judiciary.

Others, particularly, the Maryland State Bar Association, in recently reaffirming its opposition to contested judicial elections set forth the well established reasons for opposing judicial elections. They need not be reported here in this space.

The arguments by the proponents of contested judicial elections are also familiar. To respond to a few—Yes, we have on occasion elected qualified men and women to the Circuit Court. That is not an argument for a system which focuses on irrelevant or even silly issues instead of what is important in selecting judges. Yes, there are plenty of applicants for circuit court judgeships even with a system of contested elections. But the quantity of applicants is not the issue. Quality is the issue and even if the quality is good it would be even better if contested elections were eliminated.

Finally, the pressure of contested elections has historically leveraged more appointments of minorities to Circuit Court Bench. Well they certainly don't do that now! As Rachel McGuckian, Former Chair of the MSBA's Litigation Section and Co-Chair of the Judicial Appointments Committee successfully pointed and "In the past decade, of the five sitting judges who lost elections, three were African American males, one was an African American female and one was a Caucasian male. All five of the lawyers who successfully replaced those sitting judges were Caucasian, four male and one female.

Maryland deserves the best judges available who can best be held accountable by Retention elections run on their record on whether they have demonstrated the qualities we all agree are important in a judge. Reform of the system is long overdue and time is of the essence.



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