

## **LWVMD Study Administration of Justice in Maryland - Winter 2009**

**Introduction:** The quality of Maryland's judiciary depends on the administrative and political environment in which judges make their decisions, adjudicate the laws under which we live, and so direct the order by which we live. These fundamentals explain why the League of Women of Maryland (LWVMD) has long been interested in the Administration of Justice and has adopted key support positions for improvements to our State Judiciary.

**Current LWVMD Positions:** The League's current judiciary positions are old, taken from 1963 through 1970. The LWVMD supports:

1. A statewide uniform and unified judicial system.
2. Appointment of judges by the governor based on recommendations of the judicial nominating commissions, with voter confirmation in nonpartisan merit retention elections
3. Effective, nonpartisan procedures for removing judges from office.

**Scope of Study:** The LWVMD, at its 2007 Convention, voted to update current positions and conduct a new study on the selection of judges, retention election of judges, public financing of judicial campaigns, the financing of the judiciary and the election of administrative offices related to the judiciary. The study committee reviewed LWVMD's positions and assembled information to fulfill the scope of work as charged. In this study we review practices in other states as well as recent actions on the topic before the State Legislature. The study provides an overview of Maryland's complex judicial system and its attendant administrative offices and it discusses the issues suggested in the scope of work. **As a result of this study, the committee recommends a concurrence which expands and updates our positions.**

### **Overview of Maryland's Court System**

The League has consistently supported a "unified" and "uniform" court system for Maryland in which the courts throughout the state operate as a single system, as opposed to each local court being part of a county or city government, dependent on local government for its budget and (potentially) being politically connected to local officials. Under a "uniform" court system structures and procedures would be identical throughout the state. Maryland has a four-tier court system, the result of a number of constitutional amendments and other changes during the 1970's.

**District Court** handles all landlord/tenant cases, civil claims for amounts up to \$25,000, motor vehicle violations, misdemeanors, specified felonies, and peace and protective orders. The District Court was created in 1970 to replace the former trial magistrates and people's courts, and it is a statewide, unified court. The District Court has no provisions for jury trials. It is divided into 12 geographical districts, each containing one or more political subdivisions. Currently there are 106 judgeships, including the Chief Judge, with at least one judge for each county and 26 in Baltimore City. ***LWVMD supported the Constitutional amendment approved in 1970 that created the District Court.***

**Circuit Courts**, Maryland's trial courts of general jurisdiction, have not been organized into a statewide unified court. They conduct trials in major civil cases, the more serious criminal matters and all family matters including juvenile. They also decide appeals from the District Court and certain administrative agencies.

The State is divided into eight judicial circuits. Each of the first seven serves two or more counties. The eighth serves Baltimore City. There are 153 Circuit Court judges with at least four judges per circuit and 30 in Baltimore City. There is no chief judge; instead eight administrative judges perform administrative duties in their respective circuits. ***LWVMD supported the 1980 Constitutional Amendment that consolidated the six courts of the Supreme Bench of Baltimore into a Baltimore City Circuit Court. The League also has (unsuccessfully) supported a statewide uniform and unified judicial system, urging the state assumption of Circuit Court costs and a unified court system.***

Judges may appoint Masters, who serve at the pleasure of the Circuit Court, to hear family law and juvenile cases. A party who objects to a Master's decision may ask a judge to review that decision at a new hearing. Not every jurisdiction utilizes the option to have Masters. *The League in 1996-1997 supported legislation to establish a Family Court to handle family-related juvenile cases. The measure was defeated.*

**Court of Special Appeals** is Maryland's intermediate appellate court, the second highest court in the State. Created in 1966 to ease the caseload of the Court of Appeals and to facilitate resolution of cases requiring appellate adjudication, its jurisdiction has gradually broadened. The court handles any case appealed from the Circuit Courts.

The Court of Special Appeals has 13 judges, one from each of the seven appellate judicial circuits and six from the State at large. The court hears cases in panels of at least three judges and the concurrence of the majority is necessary to decide a case. All judges may sit "en banc" to hear a case if the majority of the judges so order.

**Court of Appeals** is the highest court in Maryland. This court was created by the Maryland Constitution of 1776. The court of last resort in Maryland, its decisions are final except for cases involving the U.S. Constitution which may be appealed to the U.S. Supreme Court. Cases heard by this court are selected almost exclusively by a discretionary review process known as certiorari, which means the court may decide on the basis of a petition submitted to it, or on its own, to hear a case before or after it has been decided by the Court of Special Appeals. The court also may decide to review decisions of the circuit courts made on appeal from the District Court. In this way, the court can hear cases that require urgent attention, involve constitutional questions, or establish case law without having to wait for a decision from the Court of Special Appeals. For cases in which a death sentence is imposed, the Court of Appeals has exclusive jurisdiction over appeals. Other functions include: adopting rules of judicial administration, practice and procedure; admitting persons to the bar; and conducting disciplinary proceedings involving members of the bench and bar. *The League supported the strengthening of the administrative capability of the Chief Judge of the Court of Appeals and the administrative office of the courts.*

**Orphans' Court:** Although Maryland has a four-tiered court system, there is a fifth court, Orphans' Court that dates back to 1777. Twenty-one counties and Baltimore City have Orphans' Courts each consisting of three judges chosen by voters in a partisan election in the jurisdiction. The judges need not be lawyers and, except in Baltimore City, most are not. Montgomery (1964) and Harford (1972) counties abolished their Orphans' courts through constitutional amendments and transferred their functions to their Circuit Courts.

The basic function of the court is to administer estates. Most cases are routine, but seriously contested ones may be appealed to the Circuit Court. Decisions of this court may be appealed directly to the Court of Special Appeals. The principal staff to the Orphans' Court is the Register of Wills who is chosen by voters in a partisan election in the jurisdiction. The salaries of Orphan's Court judges vary widely across the state, ranging from a high of \$62,500 in Baltimore City to a low of \$1,800 in Garrett County.

Most estate-related cases are handled by the Register of Wills, but Orphan's Court judges must approve all payments made to attorneys representing an estate or to personal representatives of an estate. Orders approving an accounting in an estate must be signed by an Orphans' Court Judge.

In 2007, cross filed bills unsuccessfully introduced a constitutional amendment to require Orphans' Court judges to have a juris doctor degree or its equivalent. In 2008, another unsuccessful constitutional amendment attempt sought to prescribe qualifications for Orphan's Court judges in the City or counties in addition to those in the Maryland Constitution. *The LWVMD has taken no position on Orphan's Court.*

**Court Clerk:** The operation of a court requires administrative staff to receive documents and legal papers submitted by the attorneys, provide copies to the judges who are working on each case, and maintain files of all

documents as official records of the courts. To perform these functions, the Maryland Constitution specifies procedures to select clerks for each of the courts. The constitution provides that the Clerk of Court of Circuit Court and the Register of Wills be elected. The clerks of all the other courts are appointed by the judges of those courts. Under Maryland election law, candidates for Clerk of Court and Register of Wills are nominated in party primaries and appear on the general election ballot with party affiliation noted.

*The Commission on Maryland Courts-Final Report* (1996) suggested that the Clerk of Circuit Court office ought to be a merit appointment by the County Administrative Judge with the approval of the Chief Judge of the Circuit Court because the major function of the Clerk is to manage a clerical operation and the Clerk does not set public policy. ***The LWVMD has taken no position on Court Clerks.***

**Sheriffs:** In the Maryland Constitution, the article on the judiciary also describes the office of Sheriff. The duties that the constitution defines for Sheriff include delivering court orders to witnesses, persons charged with crimes, or people who have been ordered by the court to perform some task (such as pay money damages to a person they have injured). The Sheriff also holds in custody people awaiting trial, which means the supervision of the county jail is a primary responsibility. In these functions, the Sheriff acts primarily as an agent of the court. In the more populous counties which have established a police department, the Sheriff's duties are limited to the functions just listed. In more rural counties, the Sheriff also has responsibility for investigating crimes and performing other law enforcement duties. Although the role of the Sheriff varies from one county to another, in all counties the Sheriff is elected in a partisan election. ***The LWVMD has taken no position on Sheriffs.***

### **Selection of Judges and Terms, and Retention Elections**

In Maryland, judges are selected differently at each level of the court system. Constitutional amendments passed in 1970 (and later) constructed this system as a compromise after the rejection of the proposed 1968 Constitution that would have established a four tiered unified court system, with all judges appointed by the governor and subject to retention elections.

The Maryland Constitution requires that each person selected to be a judge must be a citizen and qualified voter in the State, be at least 30 years old and have been a resident of Maryland for at least five years and of the respective county or judicial circuit for at least six months. In addition, only those who have been admitted to practice law in Maryland may be elected or appointed to judgeships.

**District Court:** A constitutional amendment passed in 1970 provided that District Court judges would be appointed by the Governor, with the advice and consent of the Maryland Senate for a 10 year term, or until the judges attain the age of 70. If the judge is not yet 70 at the end of 10 years, he/she may be reappointed by the Governor with the Senate's consent. There are no elections for District Court.

**Circuit Court:** Selection of Circuit Court judges follows a different path. When a vacancy occurs, the Governor appoints a qualified person from a list submitted by the Judicial Nominating Commission to serve as judge until the first general election one year after the occurrence of the vacancy. This individual may run for election, as may any other attorney who meets the constitutional requirements noted above. Candidates file on both the Democratic and Republican ballots in the primary election. The top vote getters on each party's ballot move forward to the general election where a third-party or unaffiliated party can also join the race. Winners serve a 15-year term before standing for election again. ***LWVMD opposes this system for selecting Circuit Court judges.***

**Appeals Courts:** Yet another method is used for selection of judges at the Appeals Courts. The Governor initially appoints judges to the Appeals Courts with the advice and consent of the Senate. However, continuance in office depends on approval of the voters in a retention election one year after the vacancy occurs and at the general election every 10 years thereafter. ***LWVMD supports retention elections.***

**Judicial Nominating Commissions:** Judicial Nominating Commissions for different court levels were instituted by the Governor by Executive Order in the early 1970's to help ensure the selection of highly qualified persons for the Judiciary. The Executive Order establishes Judicial Nominating Commissions that recommend qualified candidates to the Governor. The Order outlines the composition and procedures of the Commissions whose members term of office is four years. Under the current Executive Order, effective April 27, 2007, the Appellate Courts Nominating Commission is made up of 17 people, 12 appointed by the Governor and five members submitted by the Maryland State Bar Association. There are now 16 Trial Courts Judicial Nominating Commissions, each made up of nine persons, six of whom are appointed by the Governor and the other three by the local Bar Association. They recommend individuals for the District and Circuit Courts. The Commissions must encourage qualified applicants from diverse backgrounds to apply and must seek as much information as possible as well as interview each applicant. Commissions should try to recommend at least three qualified candidates for each vacancy but may submit fewer names. The Governor may ask for additional names. *The LWVMD supports the use of Nominating Commissions.*

Many states including Maryland use the Missouri Plan, first adopted in 1940, for nominating judges. Under the Plan, a nominating commission screens candidates and forwards names to the governor for ultimate selection. Judges chosen through merit selection usually serve a short, provisional term on the bench before facing a retention election.

### **Judicial Discipline and Commission on Judicial Disabilities**

Because judges of all but District Court must stand for election, those judges may be removed from office by the voters whenever their terms end. There are times when misconduct by a judge is so severe, or a judge has become so disabled, that it may serve the interests of justice to remove him or her from office before the end of a term.

The Maryland Constitution authorizes the governor to remove a judge from office if a court has found that the judge is incompetent, has willfully neglected judicial duties, has misbehaved in office, or is guilty of any crime. A judge may be impeached and removed from office by "address" of the General Assembly, a procedure that requires two-thirds of each house to agree and requires that the accused judge be notified of the charges against him/her and have an opportunity to answer the charges. These provisions have rarely been used.

The Maryland Constitution also establishes an 11-member Commission on Judicial Disabilities that, in addition to recommending removal from office, can recommend less serious action in response to misconduct. Members are appointed by the governor with advice and consent of the Senate.

### **Judicial Evaluation Commissions**

Several states, not including Maryland, have established commissions to evaluate the performance of judges and to make recommendations to voters whether or not to retain them. These bodies do not hear accusations of misconduct by judges. Instead, these commissions review judicial performance on a regular schedule – often shortly before the judge would be subject to a retention election. Generally, such commissions have a balance of lawyers and non-lawyers as well as a balance between political parties. To protect the independence of judges, neutral criteria measure the performance of judicial duties rather than the outcome of particular cases.

Based on information gathered related to these criteria, the commission issues a report as to the judge's performance and, in some states, makes recommendations on whether the judge should be retained. These reports serve as a source of information not otherwise available in a retention election.

There are mixed feelings about the commissions. Some appreciate the need for a neutral set of evaluations and believe that a formal evaluation commission could be helpful while protecting judicial independence but there are concerns that the commissions could be manipulated by various political interests in state governments.

## **Judicial Compensation Commission**

Created by the General Assembly, the statute (Courts and Judicial Proceedings 1-708) delineates the Commission's mission: "The Commission shall study and make recommendations with respect to all aspects of judicial compensation, to the end that judicial compensation structure be adequate to assure that highly qualified persons will be attracted to the bench and will continue to serve there without unreasonable economic hardship."

The annual salary of judges is about \$30,000 less than judges in the District of Columbia, \$22,000 less than the regional average, and \$15,000 less than the next lowest paid judges in our region. .

## **Forms of Public Funding of Judicial Campaigns**

The LWVMD has, since 1964, supported the merit selection and non-competitive merit retention of judges. But, as long as judges of the Maryland Circuit Courts are subject to contested elections, we should be concerned how judicial campaigns are funded.

The League of Women Voters of the United States (LWVUS) supports, for federal elections, methods of financing political campaigns that ensure the public's right to know, combat corruption and undue influence, enable candidates to compete more equitably for public office and allow maximum citizen participation in the political process. (*We interpret this position as applying also to contested judicial elections in Maryland.*)

Deborah Goldberg, in *Public Funding of Judicial Elections: Financing Campaigns for Fair and Impartial Courts*, points out that there are three forms of public funding: the most common, direct cash grants to candidates; tax breaks or cash refunds to contributors; and in-kind benefits such as state-sponsored voters' guides, or community-access television stations. There are advantages and disadvantages to each approach:

- Direct cash grants are relatively simple to manage, but candidates may use the funds for activities that are not informative (such as automated telephone calls, bumper stickers, and yard signs). The public funding system we support for the General Assembly with its spending limits could, however, hold down such spending.
- Tax breaks, such as check-offs, are voluntary on the part of the contributors but often do not provide a realistic level of funding as campaigns become more and more expensive. The result, as evidenced in the Maryland gubernatorial system – and now in the Presidential system – is that candidates do not participate.
- Providing in-kind benefits should ensure that each voter receives the same information about all candidates, but when limited to a printed pamphlet may be overwhelmed by other forms or radio and television advertising.

## **Funding of Judicial Campaigns in Maryland Today**

Contribution limits for Maryland judicial campaigns are the same as for all other state offices, including the General Assembly. Individuals, unions, businesses and corporations may give a maximum of \$4,000 to one candidate, but no more than \$10,000 to all candidates in a four-year election cycle.

There is very little incentive for judges to raise campaign contributions in retention elections. In fact, data show that \$0.00 was raised in Maryland retention elections in 2002, 2004 and 2006. Ms. Goldberg argues, however, that judges in retention elections leave themselves "ill equipped to combat" a last minute "well-funded negative campaign launched against them by independent 'issue advocacy groups'." The Justice at Stake Campaign believes public funding would "provide comfort that (judges) will be able to respond if attacked for unpopular decisions..."

It can be argued that contested Circuit Court campaigns provide incentives for judges running for election to raise large sums of money to deter potential opponents. Data from UMBC show that approximately \$3.9 million was contributed to judicial candidates, PACs, and slates from January 1, 2003 to December 31, 2006. Most of that went to slates such as those for "sitting judges."

## **Funding of Judicial Campaigns in Other States**

States with contested elections have tried several different approaches for public funding campaign-related activities. Many states in the western part of the United States (including Alaska, California, Colorado, Oregon, Utah and Washington) publish pamphlets distributed to every registered voter in which each candidate submits a statement of reasons he or she should be elected. Unlike the Voters Guide published by the Maryland League, questions are not posed to the candidates. In some states, including Oregon, the League publishes a Guide separate from the state Guide that presents questions to the candidates.

Other states have enacted legislation providing grants to judicial candidates. Wisconsin began such a program in 1976, funded through a \$1 state tax return check-off. Taxpayer participation has declined over the years, however, and some candidates have turned down public funds in recent elections.

Funding of the North Carolina system comes from a \$3 check-off on the state income tax form and \$50 submitted by lawyers along with their annual "privilege license". The total program cost is about \$1.8 million per year. Twenty of the 28 candidates running for the appellate courts in 2004 and 2006, and nine of the 11 winners, opted into the public funding system. The LWV of NC was a leading supporter of this legislation.

To date, public-printed voter's pamphlets and direct cash grants have been used only in states which have contested elections for office. When there is more than one candidate for an office, it seems fair to provide each candidate the same amount of space in the voter's pamphlets or an equal amount of money for campaign funds.

When only one candidate's name appears on the ballot (as in retention elections), other questions come up. For example, would it be appropriate to publicly fund only the arguments in favor of retention, or should someone be authorized to submit arguments against the retention of that judge? And, if so, how should that person or group be selected?

Voter's pamphlets and information are popular with the public. In a survey co-sponsored by the Colorado LWV, 86% of respondents said they preferred to receive information about candidates in a special pamphlet mailed to their house. Television (78%) and newspaper information (76%) were ranked highly, while e-mail was the least favored method (40%).

## **Legislation Impacting Maryland's Court System**

LWVMD has worked continuously to improve the selection and retention of judges. In 1974 and 1975 the legislature approved the recommendations of the Commission on Judicial Reform which provided for adoption of the Missouri Plan for selection and retention of judges in the two Appeals Courts. Voters approved the amendment in 1976. The League supported efforts to streamline Baltimore City courts.

**Recent Legislation:** General Assembly legislation regarding the Circuit Court has focused on the election and term of office of Circuit Court Judges. A measure in the 2008 session sought to amend the Maryland Constitution by altering the method of election. The bill also proposed that the term of office be reduced from 15 to 10 years, similar to that for judges of the appeals courts. If the judge were rejected, the office would become vacant 10 days after the election returns were certified. The bill received an unfavorable House Judiciary vote as did substantially similar efforts in 2007, 2005, 2004 and 2003.

The 2007 General Assembly considered legislation that proposed the selection of Circuit Court judges in non partisan elections where a candidate would file and be certified on the ballot and any voter regardless of party affiliation, including independents, would be eligible to vote in the primary. For each open judgeship, the two candidates with the greatest number of votes would move on to the general election. This and identical bills failed in 2006 and 2003.

Of note, the issue of cross filing by political party for circuit judges dates back to 1941. In March, 2004 a suit was filed in St. Mary's Circuit Court on the issue of unaffiliated voters being disenfranchised. The case was

appealed to the Court of Special Appeals in 2004 (*Suessman vs Lamone* 383Md.697) and the Court held that there was no violation of the equal protection provisions of the Maryland and Federal constitutions “simply because some voters decline to join a political party but nevertheless wish to vote in the party’s primary”.

### **Room for Improvement.**

- A *Baltimore Sun* article (January, 2008) describing recent Circuit Court elections, said they have “degenerated into a free-for-all, with impartial judges forced to raise campaign cash in ever-larger amounts while locking out the fastest-growing political group in the state: independents. It’s time to change this system and make it fair for all citizens of Maryland.” The article also says that the “153 Circuit Court judges must enter an election that is nominally “nonpartisan,” and that “electing judges this way runs counter...to the counsel of the national and state bar associations, the recommendations of the Commission on the Future of Maryland’s Courts and a host of watchdog groups.” (including LWVMD).
- A *Washington Post* editorial (5/4/08) said that over half the civil cases filed each year in Montgomery County are family court cases, outnumbering criminal cases 3 to 1. *The Commission on the Future of Maryland Courts* (1996), recommended a family division to be established within Circuit Court to handle family-related and juvenile cases and that the Circuit Courts, whether there is a family division or not, should have experienced case managers to implement a differentiated case management system for such cases.
- Maryland does not produce an official voter’s pamphlet concerning the courts. Our Voters’ Guide does provide coverage for judicial elections. Maryland does not have public funding for judicial campaigns and does not have an evaluation commission.
- The LWVMD’s existing position favors merit selection of judges. Presently the merit selection panels are created by an Executive Order that could be revoked or revised by any governor. We have been fortunate that the system has been retained for as long as it has been through several governors. Merit selection authority could be written into the state constitution.

### **Proposed Concurrence**

Unification of the Circuit courts will be the principal focus of the League’s future effort and we will work to formalize the Judicial Nominating Commissions through a constitutional amendment. Note that neither has been achieved. While the three current support positions are essentially the same as now, the study committee believes the following wording is more comprehensive:

Support for:

1. A Constitutional provision for a statewide, uniform, unified judicial system in which all judges are trained attorneys.
2. Appointment of judges by the governor based on recommendations of the judicial nominating commissions, with voter confirmation in nonpartisan merit retention elections.
3. A method for the removal of judges that is effective, removed from partisan considerations and requires lay representation on any commission set up for that purpose.
4. A non-partisan Evaluation Commission that issues public reports on judges’ performance of their duties based on neutral criteria.
5. Public funding for judicial elections so long as contested elections exist.

## Glossary

**Appellate** - having the power to hear appeals.

**Bi-partisan Election** - an election in which a candidate may seek the nomination of both major parties. (In states with closed primaries, such as Maryland, this means that independent voters do not participate in the selection of nominees for the general election.) The top vote getter in each party's primary is then entered on the general election ballot, which does not reflect party affiliation. Judges of the Circuit Court run in a bi-partisan election.

**Contested Election** - an election in which several candidates compete for the same office. In Maryland, elections for judges for the Orphans Courts are contested and the Circuit Courts may be contested.

**En banc** - (from the Latin for bench) generally means that the entire court (all the judges on the bench) participates in the case. In the Court of Special Appeals, cases are ordinarily decided by a panel of 3 judges, but a party to a case may ask for a review "en banc" in which case all the judges would participate. This differs from "en banc" appeals within a Circuit Court. The Maryland Constitution permits a litigant to a case to request an appeal by a panel of 3 judges in the local Circuit Court rather than the Court of Special Appeals and a constitutional amendment was approved in 2006 to make this process easier.

**Felony** - a crime that is punishable by imprisonment for more than one year.

**Master** - a person appointed by a court to oversee fact finding, and possibly recommend a resolution of disputed issues, in a case pending before the court. Frequently the master is someone with special skills in the type of case (such as a family dispute or property valuation) under consideration. The master works under the supervision of a judge (and may file a report and recommendation for approval by the judge).

**Misdemeanor** – a minor crime that is punishable by a term of prison of not more than 1 year.

**Partisan Election** – an election in which parties choose the nominees who will appear on the general election ballot, which also indicates the party affiliation of the candidates.

**Retention Election** - an election in which voters are asked "should this person be continued in office?" Voters indicate "yes" or "no" and an affirmative vote by the majority of those voting is required for the person to be continued in office.

## Sources:

- 1) *The Commission on the Future of Maryland Courts – Final Report*, 12/15/1996.
- 2) Reports from the Leagues of Women Voters of North Carolina, Colorado and Oregon.
- 3) *The Maryland Court System*, LWV of Montgomery County, MD, Inc. Fact Sheet, 12/05.
- 4) *Maryland Government How it works. How to work it.* League of Women Voters of Maryland, 2005.
- 5) The Maryland State Constitution
- 6) Governor's Executive Order Executive Order: 01.01.2007.08
- 7) "North Carolina Voters for Clean Elections"
- 8) *Public Funding of Judicial Elections: Financing Campaigns for Fair and Impartial Courts*, Deborah Goldberg, 2002.
- 9) *Summary Guide to Candidacy and Campaign Finance Laws*, Maryland State Board of Elections.
- 10) *The Justice at Stake Campaign*, partnering with the Brennan Center for Justice and the National Institute on Money in State Politics.
- 11) *The New Politics of Judicial Elections 2006*, James Sample and Lauren Jones (Brennan Center for Justice at NYU School of Law) and Rachel Weiss.
- 12) Briefing by Maryland Court Administrator Frank Broccolina about the "Funding of the Maryland Judiciary and the Organizational Structure of the Maryland Court System, 1/14/2008.
- 13) Reports of the Maryland State Judiciary FY 2006 Statewide Caseflow Assessment of the Circuit Courts. (Two reports during 1/14/08 Broccolina briefing.)

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