

WRITTEN SUBMISSION, HON. RONALD H. JARASHOW, FORMER JUDGE

Submitted for the November 28, 2022, Public Hearing
Workgroup to Study Judicial Selection

Overview. This submission to the Workgroup will address some issues not otherwise addressed in the written testimony submitted for the public hearing, point to some objective relevant evidence, and explain my perspective concerning contested judicial elections. The current judicial elections procedures are fraught with political, ethical, and practical problems that undercut the purported goals of selecting judges who have been vetted and determined as qualified to serve as a circuit court judge. For background, after being appointed to the bench, I did not prevail in the 2010 general election and returned to private law practice in 2011.

Judge elections not like any other election. Other election candidates choose to run, organize life and work to make campaigning time, and can prepare financing and campaign infrastructure **before filing**. It is impossible for an appointed judge to be like any other election candidate. The application process occurs months before and an applicant never knows when Governor will appoint or if he / she will be appointed. When appointed, the appointee must close his / her law practice within 30 days. After appointment, a new judge is learning a new full-time job and must go through judge orientation and classes. A new judge hears cases every day. There is limited time or ability to plan a campaign, raise money, and go campaigning. I was appointed January 2010 and the primary election was in September. At candidate forums, the organizers seldom give judicial candidates time to speak; the major race candidates are invited to present.

Ethical considerations. A criticism of the current judicial election system is that judicial candidates must raise a substantial amount of money. People connected with the legal profession are the most likely contributors. This can be perceived as a conflict of interest because the candidates are taking money from lawyers and other professional interest groups who appear before the judge either while the judge is a candidate or after the judge is elected. This system may lead to complaints that a judge favors or disfavors people because they did or did not contribute to the candidate's election. In addition, there are ethical concerns that judges are soliciting money from people connected with legal profession.

Attached is a brief summary of amounts raised by judicial election candidates that come from reviewing the Maryland State Election Boards finance reports. For the county-wide elections, over \$200,000 must be raised. In the Anne Arundel County 2010 judicial campaign, the challenger who prevailed in the election then held a **post-election party** to retire her debt even though she was going to be sworn in as a sitting judge. She raised about \$168,000 before the November 2 election and \$161,500 AFTER BEING ELECTED A JUDGE. The MJCCC found that there was no prohibition against post-election fundraising by the elected judge.

Vetting process. The judicial application process is a lengthy application and examination procedure that evaluates applicants for nomination to the Governor. An applicant generally submits to be interviewed by approximately many different law related interest groups such as the County Bar Association, Maryland State Bar Association, Women's Bar Association, etc. The culmination of that interview process is the final interview with the judicial nominating commission. This rigorous interview process evaluates strengths and weaknesses of each candidate and ultimately results in the nomination to the Governor of three or more persons to fill each vacancy. The Governor's staff also investigates and evaluates the nominees. The goal is to ensure that qualified lawyers become judges "... who are most distinguished for integrity, wisdom and sound legal knowledge." *Md. Constitution*, Art. IV, Sec 2, Judiciary Dept. The public seldom knows or understands the application or vetting process that appointees went through versus a candidate who files who may never have been vetted.

Candidate Qualifications By Law. Under the current Maryland Constitution, any lawyer who is 30 years old who resides in a county for at least 5 years may be a judicial candidate. *Md. Constitution*, Art. IV, Sec 2, Judiciary Dept.

Personal Financial burden. In several cases, appointed judicial candidates must contribute substantial amounts to finance the judicial campaign. One former Circuit Court Judge told me that she contributed approximately \$90,000 of her own money to her judicial campaign.

Public misunderstanding. Members of the public are unable to make a distinction between a Circuit Court judicial election and any other candidate on the ballot. There are vast differences about this which the public is not aware. While judges are elected for 15 years, every other judicial position is elected for a limited term of four years, typically. Where any other elected official can be replaced in the next general election, judges do not reappear on any ballot for 15 years. Whereas there are checks and balances between the executive branch and legislative branches of government, judges have largely unlimited power to make decisions.

Voters Do Not Know Judicial Candidates and Political Party Influence. In my 2010 election, 202,000 votes were cast for Governor and only about 100,000 votes were cast for Judge. I lost my appointment by about 7% to a candidate whose last name started higher in the alphabet and was endorsed by a political party whose Governor candidate won 55% of the County vote. That candidate reportedly never tried a court case. The endorsing political party ignored endorsing the appointed judges because the appointing Governor was from the opposite political party. Six years later, the other political party central committee refused to endorse an appointed judge who was registered with the opposing political party.

Confusion, NOT Non-Partisan. Judicial candidates run as a member of the “judicial” party as opposed to being designated as a Democrat or Republican. But in the real world, a question most often asked of judicial candidates is whether they are a Democrat or Republican. As an appointed judge, it might be considered unethical to respond by identifying yourself as one or the other. In contrast, however, a challenger does not have that restriction of identifying with either political party. All candidates on the ballot are designated as “judicial” party without any indication of who is a sitting, appointed judge that went through the vetting process. Notwithstanding the designation “judicial” party, the judicial election is PARTISAN and NOT non-partisan according to *Suessmann v. Lamone*, 383 Md. 697, 729, 862 A.2d 1, 19 (2004) (“... judicial elections for the circuit courts, ... remain, despite appellants assertions to the contrary, partisan affairs.”).

Candidate misconduct has no penalty. Judicial elections are overseen by a volunteer committee known as the Maryland Judicial Campaign Conduct Committee (MJCCC). This group has no authority to punish misconduct by a judicial candidate. They regularly accept complaints, analyze accusations of misconduct, and issue sanction reports. For example, the 2010 Anne Arundel County challenger was found to have violated judicial campaign rules by distributing misleading campaign literature on election day that mischaracterized her as being an appointed judge along with my co-appointee to the bench. That literature used our black and yellow campaign colors (instead of her campaign colors of blue and white) with her photograph and my running mate that made it appear as if they were the two appointed judges. The law imposes no penalties for misleading judicial campaign conduct.

See <http://mdjccc.info/2010/pdfs/astidecision2011.pdf> (75 page MJCCC report finding that the 2010 A.A. County challenger violated campaign standards).

See <https://thedailyrecord.com/2011/01/13/asti-flyer-violated-campaign-conduct-standard-panel-finds/> (“...yellow-and-black Election Day flier was “likely to mislead” Anne Arundel County voters and therefore violated a standard of conduct that calls for “truthfulness and dignity” in judicial campaigns, an oversight panel said in an opinion released Thursday”).

Discourages Quality Appointees. The current election process discourages successful lawyers from seeking judicial appointment. A lawyer abandons a successful law practice to face the chance of losing in a general or primary election.

Lawsuits by judicial candidates. Some judicial candidates file lawsuits against judicial election candidates, volunteers, or others arising from the judicial election.

See Rickey Nelson Jones v. Mary E. Barbera, No. 1415, ST 2017 (CSA January 24, 2020), Unreported.

See Barber v. Md. Reporter, No. 1966, ST 2017 (CSA September 10, 2019), Unreported.

See Claudia Barber v. Ronald Jarashow, No. 2019 CA 006763 B, Superior Court Of The District Of Columbia (arising from the 2016 judicial election), dismissed June 18, 2020.

Attorney Grievance and Judicial Disability Complaints. Certain judicial candidate challengers and those candidate's supporters have been known to file complaints with the Attorney Grievance Commission and/or Judicial Disabilities Commission against appointed judge candidates attempting to discredit the judge's reputation. Although I am not privy to those confidential proceedings or decisions, I have been told that appointed judges, in some cases, pay for their own legal counsel.

Political Party Partisanship. I am critical of both County political parties.

In my 2010 contested judicial election, the County Republican Party Central Committee refused to consider me and my co-appointee, Judge Laura Kiessling (now Ripken) because we were appointed as Democrats and the challenger was running as the Republican candidate. The Central Committee endorsed only the challenger who had never been vetted in the judicial application process.

In the 2016 judicial election, the County Democratic Central Committee behaved similarly by refusing to run an ad supporting the four appointed judges in the annual Jeff Jackson Day Dinner program which our law firm paid to include. I was contacted a few days before the dinner explaining that because some of the four appointed judges were Republicans, they would not run the advertisement.

Elected Officials Political Endorsements. Elected officials from both parties make the judicial election into a partisan event.

In my 2010 judicial election, former Gov. Ehrlich (running against Gov. O'Malley in that election) endorsed the challenger by permitting her to post her campaign signs on top of his signs (which used the same blue and white colors) and he refused to either order the challenger to remove the signs or give us permission to also post our signs on top of his.

In my 2010 judicial election we had bipartisan support but just before the primary election, a leading Republican legislator who was my friend at the time and said he supported us, came out in literature as the lead sponsor for the Republican challenger. He explained that he said he was endorsing all Republican candidates and did not know his name would be included as supporting our challenger. Yet, he would not issue a retraction or permit us to use his name to advertise his support for us, the appointed judges.

In the 2016 judicial election, a leading Democrat elected official initially agreed to support the four appointed judges and then retracted that endorsement.

Conclusion. I am open minded about what type of judicial selection system would be better than the current selection system. Probably, it is impossible to totally eliminate political influence from the process. Yet, the current system that includes a contested judicial election where any 30 year old lawyer may challenge an appointed judge appears to me to be a long distance from satisfying the constitutional mandate that judges should be the "... most distinguished for integrity, wisdom and sound legal knowledge." *Md. Constitution*, Art. IV, Sec 2, Judiciary Dept.

Attachments

Chart, Judicial Campaign fundraising, selected committees.

Judicial Campaign misleading conduct advertising.

Post-Election Judge fundraising by successful challenger elected judge.

Summary of Selected Judicial Elections

From Review of Selected Judicial Campaign reports

By Ron Jarashow review of campaign reports

| <u>Amount raised</u> | <u>Yr Election</u> | <u>Judicial Candidate</u> | <u>Amount Contrib by Candidate</u> | <u>County</u> | <u>NOTES</u> |
|----------------------|--------------------|---------------------------------------|------------------------------------|---------------|-----------------------|
| \$168,334 | 2018 | Mark Crooks | \$27,000 | AA | Only through Primary. |
| \$200,898 | 2010 | Jarashow / Kiessler | | AA | |
| \$260,677 | 2016 | Vitale, Schaeffer, Klavans, McCormack | | AA | |
| \$261,780 | 2008 | Baltimore City Slate | | Balt. City | |
| \$159,082 | 2014 | Baltimore City Slate | | Balt. City | |
| \$372,370 | 2016 | Baltimore City Slate | | Balt. City | |
| \$167,985 | 2010 | Alison Asti | \$121,000 | AA | BEFORE NOV 2 vote |
| \$161,463 | 2010 | Alison Asti | | AA | AFTER NOV 2 vote |

Ron Jarashow & Laura Kiessling

CIRCUIT COURT JUDGES

RESPECTED AND ENDORSED BY

Arundel Judges State, Auth: Andrew R. Lombardo, CPA, Treas. POLICE · FIREFIGHTERS · DEPUTY SHERIFFS · TEACHERS
MARYLAND STATE BAR ASSOCIATION
MEMBERS OF THE JUDICIAL NOMINATING COMMISSIONS OF BOTH GOVERNORS
EHRlich AND O'MALLEY
ADVOCATES FOR VICTIMS RIGHTS · CITIZENS FOR JESSICA'S LAW

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Ron Jarashow

- 35 year career attorney with real courtroom experience
- In 2009, selected as one of the best courtroom and business lawyers in Anne Arundel County
- Represented police, victims, community groups, individuals and small businesses
- Volunteered for children through coaching and the Optimist Club, which supports a home that protects battered women and children, and other youth programs
- Wife, Nan, and he raised three sons in Anne Arundel County



Laura Kiessling

- Two decades as a tough prosecutor in our County
- Promoted to become first female Deputy States Attorney in Anne Arundel County
- Prosecuted child predators, rapists, and murderers
- Volunteered for children through organizations such as Annapolis and Anne Arundel County Boys and Girls Club and Cal Ripken Sr. Foundation
- Husband, Trevor, and she are raising their two children in Anne Arundel County

OUR JUDGES · HONEST · FAIR · IMPARTIAL

Alison Asti *for* Circuit Court Judge



The Maryland Constitution provides that our Judges should be lawyers who are "most distinguished for integrity, wisdom and sound legal knowledge." I believe that I am the candidate who best meets those requirements.

I am a lifelong resident of the County, a former President of the Maryland State Bar Association, a board member of the Maryland School of Law, and the past General Counsel of the Maryland Stadium Authority. I am most proud of my role in relocating the NFL Ravens to Baltimore and building Camden Yards and Ravens Stadium.

I have been recognized by Leadership in Law, Maryland Super Lawyers and Maryland's Top 100 Women. I have also been President of many state, local and national legal organizations.

I believe that the citizens of Anne Arundel County deserve to have judges they select – not judges who were selected by Martin O'Malley as a result of a compromised partisan process.

— Alison Asti

Independent • Qualified • Experienced



The Most Qualified Judge Candidates



Alison Asti

SAMPLE BALLOT
NOVEMBER 2, 2010
STATE OF MARYLAND, ANNE ARUNDEL COUNTY

**JUDGE OF THE CIRCUIT COURT
JUDICIAL CIRCUIT 5**
Vote for No More Than Two

Alison Asti



Laura S. Kiessling



Laura Kiessling



Please join us for a
VICTORY CELEBRATION
for
JUDGE-ELECT ALISON ASTI

Tuesday, December 7, 2010

6:00 p.m.-8:00 p.m. (VIP Reception 5:00 p.m.-6:00 p.m.)

La Fontaine Bleu

7514 S. Ritchie Hwy, Glen Burnie, MD 21061

TICKETS:

\$150 per Person

\$1,000 Table of 8

VIP TICKETS & SPONSORSHIP:

\$500 VIP Ticket

\$1,000 Sponsorship (includes 2 VIP Tickets)

RSVP OPTIONS:

1.) Purchase tickets online with a credit card at:

www.AlisonAsti.com

OR

2.) Make check payable and mail to:

Friends of Alison Asti

P.O. Box 527 / Millersville, MD 21108

OR

3.) Contact Ginger at 410-279-0605 or ghanahoe@hotmail.com

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