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 Health and Government Operations Committee
FROM:	Legislative Committee Suzanne D. Pelz, Esq. 410-260-1523
RE:	House Bill 1088 Nondiscrimination and LGBTQ+ Individuals
DATE:	March 3, 2021 (3/17)
POSITION:	Oppose, as drafted

The Judiciary applauds the policy aims of this legislation. Notwithstanding this laudable goal, the Judiciary is opposed, as drafted, to the mandate of certain training requirements. The bill declares that it is the policy of the State in the respective functions of (a) courts of equity, (b) the provision of child and family services, including at local departments, (c) housing and community development programs, and (d) the Department of Human Services and the Department of Juvenile Services to do the following: provide equal access to justice to all . . . regardless of race, color, creed, religion, sex, age, national origin, marital status, sexual orientation, gender identity, or disability; improve safety, well–being, and stability for lesbian, gay, bisexual, transgender, queer, questioning, and gender nonconforming youth served by or eligible to be served; ensure that families, kin, and prospective and current foster and adoptive parents are protected from discrimination on the basis of nonmerit factors while benefitting from or participating in services; prohibit discrimination on the basis of nonmerit factors, including race, color, creed, religion, sex, age, national origin, marital status, sexual orientation, gender identity, or disability in the administration of services]; and **provide appropriate training to employees and contractors in the State regarding lesbian, gay, bisexual, transgender, queer, questioning, and gender nonconforming individuals**.

The Judiciary is opposed to the training mandates for employees of the court system provided in bold above. Current laws recognize that the Chief Judge of the Court of Appeals has authority over the behavior and training of Judges in Maryland. Courts and Judicial Proceedings Article ("CJP") § 1-201 empowers the Court of Appeals to make rules and regulations for courts of the state. The Court of Appeals has enacted Title 18 of the Maryland Rules which addresses Judicial Conduct, Judicial Disabilities, and Discipline. Also, CJP § 13-401 recognizes the Commission on Judicial Disabilities, which is established by Article IV, § 4A of the Maryland Constitution, and grants the Commission powers, such as the power to administer oaths or issue subpoenas, that are helpful in carrying out its duty to investigate judicial misconduct.

By Administrative Order, on June 6, 2016, the Chief Judge of the Court of Appeals reorganized Judicial Education and renamed the same as the Judicial College of Maryland, "responsible for the continuing professional education of judges" and "[t]he Education Committee of the Judicial Council shall establish subcommittees and work groups to develop, with the support of the Judicial College, the courses, educational programs, and academic opportunities offered to judges, magistrates, commissioners, and other Judiciary employees…."

Most importantly, this bill violates the Maryland State Constitution's separation of powers doctrine by infringing on duties constitutionally assigned to the Judicial Branch. This legislation invites an analysis of the Separation of Powers that relies on the language of *Attorney Gen. of Maryland v. Waldron,* where the General Assembly acted outside of its "constitutional bailiwick" by imposing restrictions on retired judges receiving a pension to practice law. In overturning the statute at issue in *Waldron*, the Court of Appeals held that "Maryland's judiciary in the past generally has been able to harmonize its obligations with enactment by the General Assembly of a restricted class of statutes relating to the legal profession, passed by the Legislature pursuant to its interest in promoting the health, safety and welfare of the people of this State. This harmony heretofore has been possible because the legislation has been calculated to, and did, augment the ability of the courts to carry out their constitutional responsibilities; at the most, there was but a minimal intrusion." This bill, though, goes beyond "augment[ing]" the Judiciary's ability to carry out its responsibilities.

The power to ensure integrity and impartiality among judges is a core responsibility of the Judicial branch. Article IV, § 4A of the Maryland Constitution establishes the Commission on Judicial Disabilities, and § 4B assigns the Commission power to "[i]nvestigate complaints against any judge" and to "recommend to the Court of Appeals the removal, censure, or other appropriate disciplining of a judge." In addition, Section 4B assigns to the Court of Appeals the power to discipline a judge upon a finding of "misconduct while in office, or of persistent failure to perform the duties of the office, or of conduct prejudicial to the proper administration of justice."

House Bill 1088 is a means to, presumably, promote the health, safety, and welfare of the people of the state by ensuring a bench free of implicit bias. The bill, however, encroaches severely upon the Court of Appeals' constitutional duty to oversee the integrity and impartiality of State judges. Further, the bill ignores the existing mechanisms in the Judicial Branch to offer trainings and the expertise of the Judicial Council (specifically the Education Committee and the Committee on Equal Justice – see attached) and the Judicial College to determine the most suitable trainings for the bench. In doing so, the bill infringes on the constitutional role of the Chief Judge of the Court of Appeals as "administrative head of the Judicial system of the State."

cc. Hon. Gabriel Acevero
Judicial Council
Legislative Committee
Kelley O'Connor

FOR IMMEDIATE RELEASE
June 25, 2020

Government Relations and Public Affairs
187 Harry S. Truman Parkway
Annapolis, Maryland 21401
410-260-1488

Maryland Judiciary forms Committee on Equal Justice to address systemic inequalities

ANNAPOLIS, Md. – A new committee of the Judicial Council has been formed that will strengthen the Maryland Judiciary's commitment to equal justice under the law.

Formed at the direction of Chief Judge Mary Ellen Barbera, Maryland Court of Appeals, the Committee on Equal Justice, which is part of the governance structure of the Judicial Council, will make recommendations on strategies to dismantle any discriminatory behaviors in all aspects of the Judiciary's functions. The committee will identify necessary improvements, resources, and support services and develop educational opportunities for ongoing Judiciary-wide engagement in the pursuit of equal justice for all.

"We are at a crossroads in meeting the mandate of equal justice under law," said Chief Judge Barbera. "We must choose, deliberately and thoughtfully, to eliminate discrimination on the basis of race, background, or identity, whether or not it is done with intention, within the Judiciary or in the administration of justice. The Committee on Equal Justice will lead our work to identify what we must change or improve so that we provide fair, efficient, and effective justice for all in Maryland."

The Committee on Equal Justice, which will be chaired by Judge E. Gregory Wells, Maryland Court of Special Appeals, consists of more than 40 members from the Judiciary, including judges, court administrators, clerks, and staff.

"I am honored that Chief Judge Barbera has asked me to lead this important and timely committee," said Judge Wells. "Like so many of our institutions, we seek to ensure that the Judiciary is open and inclusive to all. The Committee on Equal Justice will be taking a hard look both inward and outward and will listen to all of our colleagues, our justice partners, and the public we serve."

The Committee on Equal Justice will ensure that judges and staff increase their knowledge and understanding of ethnic disparities, discrimination, and systemic racism, including implicit bias, micro-inequities, and micro-aggressions.

The Judiciary's announcement of the new committee comes after Chief Judge Barbera issued the Statement on Equal Justice under Law. The statement was distributed to the members of the Judiciary, the more than 40,000 attorneys who practice law in Maryland, and the public and is available on the Judiciary's website.

"Judge Wells and the members of the Committee on Equal Justice have vital work before them," said Chief Judge Barbera. "The committee will guide us in putting into practice the values to which we have committed in the Statement on Equal Justice under Law."

The first meeting of the committee will take place remotely in July.

# # #

CONTACT:
Nadine Maeser
Public Information Officer
nadine.maeser@mdcourts.gov
410-260-1488

Terri Charles
Asst. Public Information Officer
terri.charles@mdcourts.gov
410-260-1488