

PJC testimony SB 69 favorable.pdf

Uploaded by: Debra Gardner

Position: FAV



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**SB 69 Courts - Standing Committee on Rules of Practice and Procedure
Hearing before the Senate Judicial Proceedings Committee, February 3, 2022
Position: Favorable**

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization that seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. A core aspect of its mission includes government transparency and accountability, which are critical to confidence of the governed in the government. This principle applies to judicial administration and should be balanced equally with the principle that the judiciary must avoid political influences on access to and fair administration of the courts.

The PJC, through its Legal Director and other staff, regularly participates in proceedings of the Standing Committee on Rules of Practice and Procedure (Rules Committee or Committee) and its subcommittees, as well as in the open meetings of the Court of Appeals on Rules Committee recommendations. On several occasions, we have submitted proposals for rules changes or new rules which have subsequently been adopted. We have also been invited by the staff of the Rules Committee to participate as interested persons in many proposals under review by subcommittees and eventually the Committee and the Court. Such opportunities to contribute to the deliberations over the rules governing fair administration of Maryland courts have been invaluable to our client communities. The PJC thanks the Committee and its staff for these efforts to consider a broad range of relevant perspectives in the course of their work to improve the operation of the courts.

Recognizing that there will be debate over the separation of powers in connection with this bill, we offer our perspective on the important issue of composition of the Rules Committee. It is apparent that the Court strives to maintain a Committee that is diverse in terms of race and gender and representative of various court functions and the geography of the state. Different types of practice areas are also represented to some extent among the lawyers appointed by the Court to the Committee. What is missing from this diversity in voting membership of the Committee is any significant representation of the voices of those whose lives the courts impact on a daily basis and who otherwise lack access to the halls of justice. The Committee currently includes a number of lawyers in private practice, including some who represent plaintiffs in tort litigation, and also a State's Attorney and a member of the Attorney General's staff. But there are no lawyers from non-profit public interest organizations whose mission is to represent the interests of, e.g., low-income tenants, low-wage workers, low-income debtors, and others who are disproportionately people of color. Nor have there been any lawyers from such public interest organizations during the many years that the PJC's Legal Director has engaged with the Committee. Access to justice for these "constituents of the Maryland Judiciary," including when haled into court by interests that are represented among the voting members of the Committee, depends in part on the work of the Rules Committee and its recommendations to the Court of Appeals. The composition of the Committee does not yet meet the Court's commitment to equal justice under law. See <https://mdcourts.gov/sites/default/files/import/coappeals/pdfs/statementonequaljustice060920.pdf>.

The balance of "practice areas and constituents of the Maryland Judiciary" called for by SB 69 should be used to address this gap. And otherwise, the PJC hopes that the Court will heed this call in its appointments.

For the foregoing reasons, the PJC supports SB 69. Should you have any questions, please contact Debra Gardner, Legal Director, at 410-625-9409, ext. 228 or gardnerd@publicjustice.org.

The Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.

Sydnor_testimony SB0069 Courts Rules.pdf

Uploaded by: Eugene Clark

Position: FAV

CHARLES E. SYDNOR III, ESQ.
Legislative District 44
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Judicial Proceedings Committee

Joint Committees

Children, Youth, and Families

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Senator Charles E. Sydnor III
Testimony Regarding SB 0069: Courts – Standing Committee on
Rules of Practice and Procedure
Before the Senate Judicial Proceedings Committee
February 3, 2022

“We are at on a crossroads in meeting the mandate of equal justice under law. We must choose, deliberately and thoughtfully, to eliminate discrimination 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.”
Former Chief Judge Mary Ellen Barbera

Good afternoon Chair Smith, members of our Judicial Proceedings Committee,

Senate Bill 69 arises from the public listening session I attended for the Judiciary’s Committee on Equal Justice last summer on civil proceedings. Former Chief Judge Barbara directed that the Judiciary dismantle discriminatory behaviors in all aspects of the Judiciary’s functions. She stated that, “We must assure that our courts do not suffer bias, conscious or unconscious.”

To investigate Judge Barbara’s mandate, the Equal Justice Committee conducted a series of listening sessions on various issues. I participated in the listening session on civil proceedings. I joined with other members of the bar and wrote:

the rule makers themselves must be representative of the whole community. For example, if the private attorney members of the Rules Committee largely represent private business interests who are adverse to individuals in civil litigation, there may be an unintended bias for rules and procedures that appear to favor businesses since there are few voices on the Rules Committee who represent the contrary constituency. The various public interest organizations who serve Maryland’s most vulnerable populations do not appear to have any representatives on the Rules Committee, including the Office of the Public Defender, Maryland Legal Aid, and other similar entities.

While acknowledging that the Rules Committee has invited input from time to time from broader groups of stakeholders, those ‘guests’ are not afforded voting rights Those selected for membership on the Rules Committee have the power of the vote but those representing Maryland’s most at-risk groups in the Maryland court system have no voice in the final decisions and recommendations to the Court of Appeals.

Senate Bill 69 is intended to reflect some but not all of the recommendations made during that session and provide basic, guideposts for the Rules Committee to avoid the unintended appearance of bias by those recommending the rules governing court proceedings to the Court of Appeals.

Some may argue that SB 69 invades the powers and authority of the Judiciary; and that certainly is not how I perceive this bill. I suggest that SB69 is an important but limited check that we as members of the General Assembly should desire on behalf of our constituents who are impacted by the rules of procedure and practice occurring in the Court system.

For the aforementioned reasons and to ensure fundamental fairness in Maryland's judicial system, I ask that this committee provide SB 69 a favorable report.

MAJ - SB 69 - Courts - Rules Committee - FAV - 20

Uploaded by: Josh Howe

Position: FAV



SB 69
Courts - Standing Committee on Rules of Practice and Procedure

FAVORABLE

The Maryland Association for Justice, Inc. (MAJ) represents over 1,200 trial attorneys throughout the state of Maryland. MAJ advocates for the preservation of the civil justice system, the protection of the rights of consumers and the education and professional development of its members.

SB 69 would require the Standing Committee on Rules of Practice and Procedure of the Maryland Court of Appeals to maintain equal and balanced representation of members from various practice areas and constituents of the Maryland Judiciary, while also clarifying methods of removing members of the Standing Committee, and methods of disclosing personal or professional interests that may interfere with the work of the Standing Committee on Rules of Practice and Procedure.

1. The Rules Committee is an important committee which establishes the rules of court proceedings in Maryland.
2. The members must be diverse, and without bias, to properly establish fair rules.
3. This bill eliminates economic bias which promotes public trust in the judicial process.
4. Diversity of opinions, geography, and practice area is paramount to fair rules of court.
5. This bill requires, rather than promotes, true diversity on the rules committee.
6. A diverse committee will better serve the legal community and the public.

The Maryland Association for Justice urges a Favorable Report

Consumer Law Center Support for SB 69.pdf

Uploaded by: Phillip Robinson

Position: FAV

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To: Senate Judicial Proceedings Committee
From: Phillip Robinson
Date: February 1, 2022
Subject: **STATEMENT IN SUPPORT TO SB 69**

ON BEHALF OF MY CLIENTS WHO ARE PARTIES TO LITIGATION IN ALL OF MARYLAND'S COURTS, I URGE THE COMMITTEE TO SUPPORT SB 69 AS A LIMITED EFFORT TO MODERNIZE THE STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE.

Last summer the Maryland Judiciary launched a series of “listening sessions” as part of its Committee on Equal Justice. SB 69 is an effort to address some issues which were shared at the listening session on Civil Proceedings. The legislation is not intended to subsume the authority granted to the Court of Appeals to establish rules governing Maryland court proceedings. However, the legislation is intended for the purpose of making sure broad stakeholders of all constituencies in the Maryland judiciary system have a vote and not just a voice in that process and all key constituencies are represented in that process.

The General Assembly authorized the creation of the Rules Committee long ago. Cts. & Jud. Proc. § 13-301. It also has expressly authorized the employment of staff and payment of certain expenses. Cts. & Jud. Proc. §§ 13-302-1303. So, it is reasonable that the General Assembly can also provide other general guidance for the management of the Rules Committee as intended by SB 69 to ensure that that to process by which rules governing Maryland court proceedings are drafted and amended without bias, conscious or unconscious, so that fair, efficient, and effective justice for all of Maryland is carried out.

To carry out the comments presented to the Committee on Equal Justice last summer, SB 69 aims to ensure that the Rules Committee: (i) provides equal and balanced representation from a broader range of voices; (ii) ensures independence and avoidance of private party financial influence upon members; and (iii) establishes basic rules for good governance.

FOR THESE REASONS, I ENCOURAGE THE COMMITTEE TO SUPPORT AND VOTE FAVORABLE ON SB 69.

SB 69 Testimony.pdf

Uploaded by: Scott Borison

Position: FAV

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To: Senate Judicial Proceedings Committee
From: Scott C. Borison
Date: February 1, 2022
Subject: **STATEMENT IN SUPPORT OF SB 69**

THIS TESTIMONY IS IN SUPPORT OF SB 69. THERE IS A NEED FOR THE STANDING RULES COMMITTEE TO PROVIDE EQUAL AND BALANCED REPRESENTATION BECAUSE THE COMMITTEE AFFECTS ALL MARYLAND RESIDENTS. SB 69 IS A LIMITED EFFORT TO ENCOURAGE CHANGES TO MEET THAT GOAL.

Equal Justice has been the topic for recent public meetings held by the Maryland Judiciary. This proposed provides support for and encourages the efforts to promote equal justice in a committee that recommends judicial policy and procedures. It does not provide any mandates to the Court of Appeals. The legislation expresses that legislature's view that the membership of any committee is inclusive and all constituencies can have a seat at the table. It is appropriate for this branch of the government communicate its support and encouragement of the judiciary's effort to promote equal justice.

FOR THESE REASONS, I ENCOURAGE THE COMMITTEE TO SUPPORT AND VOTE FAVORABLE ON SB 69.

Respectfully submitted,

/s/ Scott C. Borison

Fatherhood Fairness Bill 2022 Senate Bill 0069.pdf

Uploaded by: Eric Smith

Position: UNF



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February 1, 2022

Maryland Senator Charles Sydnor & The Judicial Proceedings Committee

c/o Judicial Proceedings

216 James Senate Office Building

11 Bladen Street

Annapolis, MD 21401

Dear Senator Sydnor

Our nonprofit organization would like to offer an unfavorable vote. As the democratic process changes and the courts begin to operate according to Procedural Law this bill cannot get a favorable vote. As well the rules of this committee need to be amended to allow members from the community who “DO NOT SUPPORT THE MARYLAND JUDICIARY,” an opportunity to offer opinions. Opinions about how biased an unequal the family courts can be.

Sincerely,

The Winning Strategies Team

sb69.pdf

Uploaded by: Sara Elalamy

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 69
Courts – Standing Committee on Rules of Practice and Procedure
DATE: January 12, 2022
(2/3)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 69. This bill proposes to ensure that members of the Standing Committee on Rules and Procedure: 1) are representative of the various practice areas of the law as practiced in the State, 2) can be removed by the Court of Appeals for good cause, 3) publicly disclose conflicts of interest and recuse themselves appropriately, 4) are subject to removal for failure to disclose a conflict or recusing themselves, and 5) are not directly or indirectly compensated for their work save as noted in the bill.

Senate Bill 69 would be an unconstitutional interference with the Court’s exercise of its rule-making authority and would violate the principle of separation of powers of the three branches of government. Under Article IV § 18(a) of the Maryland Constitution, the Court of Appeals is empowered to regulate the practice and procedure in, and the judicial administration of, the courts of this State. To assist the Court in this endeavor, the Court has appointed its Standing Committee on Rules of Practice and Procedure [the “Rules Committee”]. The Rules Committee has no independent powers of its own. Its sole function is advisory. The Court of Appeals, in the exercise of its rule-making authority provided by the Maryland Constitution, may accept, reject, remand, or modify any rule recommendation of the Committee. That Constitutional delegation does not contemplate interference with the exercise of that authority by the General Assembly. It is a judicial function. The Court’s authority to create and regulate its Rules Committee is derived directly from the Maryland Constitution and has been recognized as such by the General Assembly in §§ 13-101 and 1-201 of the Courts Article. Just as the Court of Appeals is not empowered to tell the Governor or the members of the General Assembly who should provide advice to them, neither should the General Assembly have a role in the selection of the Court’s advisors.

In addition, Title 18, Chapters 100 and 200, and Title 19, Chapter 300 of the Maryland Rules govern the ethical obligations of the judges, judicial appointees, and attorneys who

serve on the Rules Committee. Rule 19-306.4, for example, governs the conduct of an attorney whose client may benefit from the actions of an organization of which the attorney is a member. Where Senate Bill 69 requires the attorney to “publicly disclose any personal or professional interests of any client,” Maryland Rule 19-306.4 preserves client confidentiality, as mandated by other ethical requirements. Existing ethical rules pertaining to judges, judicial appointees, and attorneys adequately address the conduct of those individuals who serve on the Rules Committee.

Subsection (e) is particularly troubling. Proposed Rules that come before the Committee may be helpful or hurtful to existing or prospective clients of attorney members. Those members are, and need to continue to be, guided by the existing ethical rules that govern their practice and behavior, not by a mandated public disclosure of confidential information that can be hurtful to the attorney’s client. The knowledge and experience that attorneys have in their practices is often invaluable in attempting to understand the problem sought to be addressed by a proposed Rule, and experience has shown that the attorney (and judicial) members understand the ethical constraints on whether and how such information may be imparted to the Committee or the Court and whether recusal is required. The recusal requirements in the bill will result in recusal by the Committee members who have the most knowledge and experience in a subject matter area. If, for example, amendments to a Rule in Title 4 of the Maryland Rules are under consideration, a State’s Attorney or criminal defense attorney who is a member of the Committee should not be required to “recuse from all proceedings related to the matter.” Such recusal would have the adverse operational effect of preventing the Court from receiving balanced rule-related advice that includes input from the Committee’s members who are most qualified to provide that advice.

Maryland Rule 16-701 specifies the composition of the Rules Committee. The current membership comprises eminent attorneys, judges, and others highly competent in judicial practice, procedure, and administration. The Committee is diverse racially and geographically, and by gender. It includes individuals with expertise in many different areas of the law. The Rules Committee consists of 25 persons selected and appointed exclusively by the Court. There are 3 District Court judges, 3 Circuit Court judges, 2 appellate judges, 15 practicing attorneys, the State Court Administrator, and one Circuit Court clerk. Seven of the members are people of color. Ten are women. The members come from every part of the State and from a variety of practice areas. Two of the attorney members are members of the Legislature, one chosen from nominations by the Senate President and one from nominations by the Speaker of the House of Delegates. All of the members are acutely aware of the ethical constraints to which they are bound, both as members of the Rules Committee and in their individual practices as judges, attorneys, or other officials. In those practices, they do or might receive direct or indirect compensation from other persons – clients, State or local agencies for whom they work – which would seem to be prohibited, or disclosable, by Senate Bill 69.

Senate Bill 69 would require that the Committee membership “include equal and balanced representation of members from various practice areas.” Even if it were possible to measure “equal” in this context, or determine which practice areas must be included in

the measurement, implementation of this requirement would not improve upon the diversity that currently exists. Senate Bill 69 also requires that “constituents” of the Maryland Judiciary be represented on the Committee. The bill does not specify whether particular groups of constituents, such as prisoners, are to be included or may be excluded from service on the Committee.

Senate Bill 69 may also have adverse operational effects on the Judiciary by adversely affecting the ability of the Court to find highly qualified individuals who are willing to serve on the Rules Committee. In addition to the imposition of an ethical obligation that is in conflict with other ethical obligations, Senate Bill 69 contains vague requirements, the violation of which could result in a Committee member’s public removal from the Committee. The meaning of “conduct that consciously or unconsciously casts a negative perception on the committee” is unclear, but Senate Bill 69 provides that it is grounds for public removal of a member “for good cause shown.”

If “for good cause shown” means that a due process hearing is contemplated prior to removal of a member from the Committee, no procedure for holding an evidentiary hearing is specified in the bill. If hearings are to be held, the cost of doing so would have a fiscal impact, albeit a small one, on the budget of the Judiciary. If no due process hearing is contemplated, the operational adverse effect of the bill is that well-qualified individuals may be reluctant to risk their professional reputations by serving on the Committee because there is no assurance of the opportunity to contest an alleged violation of a vague standard and the resultant public removal of the individual from the Committee.

Imposition of the arbitrary membership requirements set forth in Senate Bill 69 would have an adverse operational impact on the ability of the Court of Appeals to fulfill its constitutionally mandated duties. In summary, Senate Bill 69 not only is not needed to solve an assumed problem that experience has not been shown to exist but can significantly impede the very kind of discussion that is necessary to allow the Rules Committee and the Court to perform their assigned functions.

cc. Hon. Charles Sydnor
Judicial Council
Legislative Committee
Kelley O’Connor