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Judges denounce amendment

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A majority of Maryland's black judges have launched an effort to defeat a ballot question that will be put before voters next Tuesday -- a constitutional amendment that would allow jurists to remain on the bench until they are 75.

The Black Judges Conference, an informal group of the state's black judiciary, maintains that the amendment -- which would raise the mandatory retirement age from 70 -- would stunt the advancement of young, female and black lawyers by allowing current judges to stay on five years longer.

"The truth of the matter is that if you have a situation where a judge retires at 70, it opens the way for another judge to come in," said Judge Robert M. Bell, 51, the youngest member of the Court of Appeals and the state's highest-ranking black judge. "This delays the opening up of the ceiling for five years."

Judge Bell, who chairs the black judges' group and was appointed by Gov. William Donald Schaefer in 1991, maintains the measure is "a bad bill and we don't need it."

"We already have a mechanism for judges to serve beyond age 70," he said, referring to an arrangement for retired judges to return to the bench part time. "What we are doing is putting on the books an unnecessary piece of legislation whose benefits are negligible."

But proponents of Question No. 3, which will appear on the ballot statewide Nov. 8, counter that the amendment keeps experienced judges -- including women and minorities -- on the bench and is fairer than mandatory retirement at age 70.

"I do understand the sensitivity of the black judges, but I don't think defeating this constitutional amendment is going to move us very quickly to a more representative judiciary," said Del. Nancy K. Kopp, the Montgomery County Democrat who co-sponsored the bill for the constitutional amendment in the Maryland General Assembly this year.

"I am as concerned as the African-American judges are that we have fair representation on the bench, but I think that goes more to the point of the nominating and appointment process," Ms. Kopp said. "But I don't think this justifies an unfair, mandatory retirement process."

Ms. Kopp said she found the black judges' effort "surprising" since the group did not lobby the legislature when the matter came up in session earlier this year.

Last month, the 29-member Black Judges Conference mailed letters to individuals, civic groups and news organizations, urging defeat of the measure, after the majority voted to work against it, Judge Bell said.

The letter went out under the signature of Judge Harry A. Cole, 73, who retired at age 70 from the Court of Appeals in 1991 after serving nearly 14 years on the state's highest court.

In the letter, Judge Cole charged that Question 3 -- which was passed by the legislature this year by the "super" three-fifths majority required for constitutional amendments -- was nothing more than a means to keep two of the state's highest-ranking judges on the bench five more years.

Judge Cole asserted that the measure was designed solely to retain Judge Robert C. Murphy, 68, chief judge of the Court of Appeals since 1972, and Judge Robert F. Sweeney, 68, chief judge of the District Court system since its inception 1971. If voters approve the amendment, Judges Murphy and Sweeney could stay in their positions until 2001, instead of being forced to retire in 1996.

"This is wrong and the people of Maryland should not be hoodwinked into believing this is a good bill," Judge Cole wrote. "I hope you will urge the members of your organization to vote against this amendment."

Efforts to reach Judge Murphy were unsuccessful.

Judge Sweeney would only say, "Harry Cole is a distinguished Maryland jurist who wouldn't knowingly violate the jaywalking laws. We differ on this issue, but we agree on many, many more."

But Ms. Kopp denied that the mandatory retirement issue had anything to do with Judge Murphy or Judge Sweeney.

"They're just wrong, in terms of the origin of the bill and the intents of the sponsors," she said of the black judges' contention. "They're simply mistaken."

Ms. Kopp said that the issue first came up before the legislature in 1992, when the measure died -- despite support from groups such as the American Association of Retired Persons and the Maryland Commission for Women.

That year, she said, the bill was proposed in the wake of changes in federal law governing mandatory retirement.

Only 11.6 percent of the Maryland's judiciary -- 27 of those 233 judges sitting on the Court of Appeals, Court of Special Appeals, Circuit Court and District Court -- are between 65 and 70 years of age. All but 4 of the 27, including Judges Murphy and Sweeney, would be forced to retire during the tenure of the next governor, if the constitutional amendment is not approved by voters. All but three of the 27 are white males.