House Judiciary Committee Public Hearing
Sub Committee on Courts
House Bill 79 – Judicial Retirement
Thursday, April 18, 2013
205 Matthew J. Ryan Office Building
Harrisburg, PA 17120
10:00 – 12:30

Agenda

10:00 am  Welcoming remarks:
Judiciary Majority Chairman Glen Grell
Judiciary Minority John Sabatina

10:10 am  Honorable Kate Harper
Prime Sponsor of House Bill 79
House District # 61 – Montgomery County

10:20 am  Kenneth G. Cormley, Dean
Duquesne University, School of Law

10:40 am  Lynn A. Marks, Executive Director
Pennsylvanians for Modern Courts

Kaleena Laputka, University of Pennsylvania Law School Intern
Pennsylvanians for Modern Courts

11:00 am  Dr. Thomas J. Weida, M.D.
Professor, Family and Community Medicine
Penn State College of Medicine
Hershey Medical Center
Board Certified in Family Medicine and Geriatrics

11:20 am  Thomas G. Wilkinson, Jr., President
Pennsylvania Bar Association

Chancellor Kathleen Wilkinson
Philadelphia Bar Association

11:40 am  Joseph J. Mittleman, Esquire
Director of Judicial Programs, AOPC
Proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for compensation and retirement of justices, judges and justices of the peace.

The General Assembly of the Commonwealth of Pennsylvania hereby resolves as follows:

Section 1. The following amendment to the Constitution of Pennsylvania is proposed in accordance with Article XI:

That section 16(b) of Article V be amended to read:

§ 16. Compensation and retirement of justices, judges and justices of the peace.

* * *

(b) Justices, judges and justices of the peace shall be retired on the last day of the calendar year in which they attain the age of [70] 75 years. Former and retired justices, judges and justices of the peace shall receive such compensation as shall be provided by law. Except as provided by law, no salary, retirement benefit or other compensation, present or deferred, shall be paid to any justice, judge or justice of the
peace who, under section 18 or under Article VI, is suspended, 
removed or barred from holding judicial office for conviction of 
a felony or misconduct in office or conduct which prejudices the 
proper administration of justice or brings the judicial office 
into disrepute.

* * *

Section 2. (a) Upon the first passage by the General 
Assembly of this proposed constitutional amendment, the 
Secretary of the Commonwealth shall proceed immediately to 
comply with the advertising requirements of section 1 of Article 
XI of the Constitution of Pennsylvania and shall transmit the 
required advertisements to two newspapers in every county in 
which such newspapers are published in sufficient time after 
passage of this proposed constitutional amendment.

(b) Upon the second passage by the General Assembly of this 
proposed constitutional amendment, the Secretary of the 
Commonwealth shall proceed immediately to comply with the 
advertising requirements of section 1 of Article XI of the 
Constitution of Pennsylvania and shall transmit the required 
advertisements to two newspapers in every county in which such 
newspapers are published in sufficient time after passage of 
this proposed constitutional amendment. The Secretary of the 
Commonwealth shall submit this proposed constitutional amendment 
to the qualified electors of this Commonwealth at the first 
primary, general or municipal election which meets the 
requirements of and is in conformance with section 1 of Article 
XI of the Constitution of Pennsylvania and which occurs at least 
three months after the proposed constitutional amendment is 
passed by the General Assembly.
BILL SUMMARY

DATE: 2/26/13
BILL NO.: HB 79
PRINTER’S NO.: 58
PHONE NO.: 3-5294

COMMITTEE: Judiciary
PRIME SPONSOR: Harper
PREPARED BY: Thomas W. Dymek, Esq.

A. SYNOPSIS:

Amends the PA Constitution to provide for an increase in the mandatory retirement age for justices, judges and justices of the peace, from 70 years to 75 years.

B. BILL SUMMARY:

This joint resolution amends Article V, Section 16(b) of the PA Constitution to increase the mandatory retirement age for justices, judges and justices of the peace, from 70 years to 75 years.

Effective Date: As a proposed constitutional amendment, this legislation must pass each chamber of the General Assembly in two consecutive sessions and then must be presented to the voters for adoption.

C. CURRENT LAW:

Currently, Article V, Section 16(b) of the PA Constitution provides that justices, judges and justices of the peace are required to retire when they reach age 70. In addition, Article V, Section 18 sets forth a mechanism by which “mentally or physically disabled” justices, judges and justices of the peace may be removed from office.

TWD/Ich

This document is a summary of proposed legislation and is prepared only as general information for use by the Republican Members and staff of the Pennsylvania House of Representatives. The document does not represent the legislative intent of the Pennsylvania House of Representatives and may not be utilized as such.
Remarks of Representative Kate M. Harper, Esq.
Prime Sponsor of HB 79
PA House Judiciary Committee
Subcommittee on Courts Hearing on HB 79
April 18, 2013

Good Morning, Chairman Grell and Chairman Sabatina, Members of the Subcommittee and interested audience members. I appreciate the chance to talk to you about my HB 79, which would effect a Constitutional change to allow judges to serve until the end of the year in which they turn 75, instead of 70, as the current Constitutional provision reads. The current provision has been in effect since 1968, and I think we can all agree that there have been many, many demographic changes in the Commonwealth and in the nation since that year. Not the least of which, of course, is the change in life expectancy over those years which has advanced from age 70 to age 78, and it’s no longer that unusual to meet people living well into their 80’s and 90’s. Pennsylvania seems particularly blessed in that regard.

For some of us, who remember that back in 1968, “Don’t trust anyone over 30” was a familiar refrain, suddenly 75 doesn’t seem so old any more, and retiring at age 65 is coming to be viewed as “retiring early.”

My bill proposes raising the mandatory retirement age for judges from 70 to 75. Other proposed legislation in the Senate and several court cases would remove the age limit entirely.

In other states, there is no maximum age at which one is no longer allowed to serve as a judge, and there are, of course, some states that set the retirement age at 70, as Pennsylvania does, or at age 72, or 74, or 75. Hardy Vermonters are allowed to stay on the Bench to age 90.

The lawsuits, in fact, challenge the Commonwealth’s age 70 as “arbitrary” or as a violation of laws prohibiting age discrimination. These are all important things to consider, but none are the reason I introduced my bill.

For me, a person who has practiced law, at least part-time, for more than 30 years, I know and have seen in action an awful lot of judges. I have practiced before judges in their 40’s, 50’s, and 60’s in state courts where when they reach 70, they must take “senior status,” and in federal court, where there are lifetime appointments. I have seen these men and women in their courtrooms and in their communities, and I have a hard time believing that having a 71st birthday suddenly renders everyone incompetent to be a judge.

In fact, I think the opposite might be true. In his book, Outliers, Malcolm Gladwell posits the theory that it takes 10,000 hours of practice to achieve mastery in a field, whether it’s playing the violin or sinking a jump shot. That’s about five years if you are working at it fulltime, 40 hours a week for 50 weeks a year. But think, for a moment, about the role of Judge, and what it means to have “mastery” of the field of being a judge.

The job of a judge, I think, is very different from that of a duly elected legislator. As legislators, we are called upon to write good laws to advance civilization, correct perceived wrongs in the current system, and to be mindful of what our constituents want and expect. At the end of the day, it is not the most brilliant law that gets enacted, or the cleverest, or the most just. It is simply that bill which garners at least 102 votes in the House, 26 or more votes in the Senate, and one guy in the Governor’s office willing to sign his name to it.
The Judge, by contrast, is sitting in judgment on a specific set of facts, involving specific human beings, or businesses, who is then tasked with applying the law (which he did not write but which he is expected to know or to look up before rendering a decision) to the facts and people who stand in the Courtroom hopefully or anxiously waiting with baited breath for the Judge to see the facts as they do and to apply the correct law to those specific facts. The Legislator is worried about the fate of the Commonwealth and the Commonwealth’s citizens. The Judge is concerned about one citizen and how the law applies to this one case.

It seems to me, that whether we are talking about a legislator or a judge, the nature and extent of the human experiences that the person has, matters. If it were not so, a well-programmed computer could do either of the jobs, but it can’t.

Drill down a bit and apply these thoughts to some case examples:

- In deciding the custody of children aged, say, 4 and 6, would it not be helpful for the Judge to have had some experience with children of that age?
- In determining whether a son was protecting his Mother from her own frailties in minding her money for her, or taking advantage of her, would not some experience with the frail elderly be a useful vantage point for viewing the facts?
- In parsing a knotty question of title to real estate or just mineral or other rights in real estate, wouldn’t experience in these types of cases be useful?
- In trying to persuade lawyers to settle a case, wouldn’t many experiences dealing with difficult personalities, even these particular litigators’ personalities, be an advantage?
- For understanding veterans and their issues, isn’t it a god idea to have a judge who served in combat on the Bench?

I think the answer to those questions is yes. Experience matters.

At my law firm, our senior partner, Tom Timoney, namesake for Timoney Knox LLP, practiced until a few weeks before his death in his eighties. He was not only the “go to” guy for his area of law—wills, trusts and estates— because he had seen so many cases, so many situations, so many clients, he was also the guy people went to with interpersonal questions like, “The brother and sister are fighting over the cost of Mom’s headstone,” because he knew what to do to get them to come to a resolution. Fifty years practicing law, fifty years of marriage to the same woman, and with her, raising nine children, had taught him a lot about human nature. In his later years, those experiences were fermented and became wisdom.

In my home Montgomery County, Judge Horace Davenport, the County’s first black judge, was the head of the Settlement program for as long as the law allowed, as a senior judge. His percentage for bringing lawyers and their clients together was unparalleled and a huge factor in keeping the trial backlog manageable. Losing him due to age was a loss to the Court system, the lawyers and the litigants.

Now, I know that some will worry that an increasing percentage of seniors are afflicted with conditions like Alzheimer’s or dementia or other disabilities that would prevent them from being effective judges. However, we do not need a hard and fast rule that bars everyone over the age of 70 to deal with that issue. That’s why we have the Judicial Conduct Board, consisting of judges, lawyers and citizens, who can investigate complaints, and the Court of Judicial Discipline. Each of those bodies deals with specific complaints, investigations, and specific judges, and determines if they should be on the Bench or not.

The current mandatory retirement at age 70, by contrast, “throws the baby out with the bathwater,” ridding the Courts of wise, older judges who have become better with age, along with those whose abilities have declined.

As Rabbi Harold Kushner, author of many influential books, put it, “We do ourselves a disservice when we make old age something to be feared. Life is not a resource to be used up, so that the older we get, the less life we have left. Life is the accumulation of wisdom, love and experience of people encountered and obstacles overcome. The longer we live, the more life we possess.”

HB 79 stands for the proposition that mere age is NOT a disqualifier if the human being selected as a judge is otherwise competent to be a judge. In fact, if we want wise and just judges, making the right decisions for the citizen standing in front of them, we just might learn to prize extended experience, and the wisdom it brings.

Thank you.
TESTIMONY—PROPOSED CONSTITUTIONAL AMENDMENT:

RETIREMENT AGE OF JUDGES

DEAN KEN GORMLEY – DUQUESNE UNIVERSITY SCHOOL OF LAW

April 18, 2013

PUBLIC HEARING HB 79; HOUSE JUDICIARY COMMITTEE,

SUB-COMMITTEE ON COURTS

Good morning. My name is Ken Gormley and I have the privilege of serving as Dean of Duquesne University School of Law in Pittsburgh. It is an honor to have an opportunity to testify today, about this issue of importance to all citizens of Pennsylvania. My thanks to Representative Glen Grell, Chair of the House Judiciary Committee’s Sub-Committee on Courts, as well as Representative John Sabatina, the minority Chairman. Also, my thanks to Representative Ron Marsico, the Chair of the Judiciary Committee, and Representative Thomas Caltagirone, minority Chair, as well as members of both distinguished Committees. I will be brief, but I welcome any questions the Sub-Committee might have at the conclusion of my prepared remarks.

I have been teaching law in one fashion or another for over 30 years. My areas of expertise include Constitutional Law, as well as State Constitutional Law, which I have been teaching since 1985. I am editor of a book entitled: “The Pennsylvania Constitution: A Treatise on Rights and Liberties” (George T. Bisel 2004 & Supp. 2013). Thus, I continue to remain active as a teacher and scholar in the field of Pennsylvania Constitutional Law, and I suppose it is for that reason that I have been invited to testify today.

I support a proposed Constitutional amendment to Article V, Section 16(b) of the Pennsylvania Constitution, changing the first sentence to provide that “Justices, judges and justices of the peace shall be retired upon attaining the age of 75 years,” rather than “shall be retired upon attaining the age of 70 years.” I believe that such an amendment makes sense for practical reasons, as well as in furtherance of the overall long-term vitality of the Pennsylvania Constitution, which is designed to be amended to adapt itself over time through a systematic constitutional amendment process.

First, let me say a word about the pragmatic reasons for favoring this Constitutional amendment. At the time the current Constitution was overhauled during the Constitutional Convention of 1967-1968 – now nearly a half-century ago – the age established for the retirement of judges was sensible. The age of 70, for any jurist at that time, was an advanced one. Indeed, the debates at the Constitutional Convention expressly addressed this subject. The Framers were focused on selecting a definite, clear-cut, reasonable age for the retirement of judges, to replace the prior system by which judges in Pennsylvania were not required to retire at any specific time. The age of 70, in 1968, represented the high end of the spectrum. The average life expectancy in the United States at that time
was 66.6 years for males and 74.1 years for females, with an overall average of 70.2.\(^1\) Needless to say, there were very few women judges in Pennsylvania in 1968. Thus, the age selected was well beyond the average life expectancy of most judges on the bench at that time. Today, in 2013, the average projected life expectancy for males is 76.2 years and females 81.1 years, with a combined average of 78.7 years.\(^2\) By modern standards, therefore, a retirement age of 75 is a sensible one. It is especially sensible when one focuses on the female life expectancy that has now surpassed 80 years. The dramatic increase in the number of female judges serving today as compared to in 1968 is particularly important. It means that maintaining a retirement age of 70 disproportionately impacts female judges in an adverse fashion. Conversely, amending the Constitution to change the retirement age to 75 is particularly fair to the growing number of female jurists in this Commonwealth. Moreover, given advances in medical science, the age of 75 is much more in sync with the productive work cycle of all lawyers, jurists and professionals (generally) in our modern society.

I should note that the members of the Constitutional Convention who framed the current version of Article V, Section 16(b), in 1968, anticipated that the age of 70 might have to be altered as time passed and circumstances changed. During the Constitutional Convention, Delegate Mercer D. Tate, a Democrat from Philadelphia, proposed adding language that would permit this body -- the Pennsylvania Legislature -- to “make such changes in that mandatory retirement age (for judges) as it might deem appropriate from time to time.”\(^3\) Delegate Tate explained: “None of us knows sitting here today what medical science may be able to do with our longevity. It may be that age 70 will be entirely unrealistic 30, 50 or 75 years from now....Therefore, rather than have to go through the cumbersome task of a mandatory process, I would like to open the door for the Legislature to make some changes here.”\(^4\) Delegate W. Walter Braham, a highly-respected Republican from Lawrence County, concurred that it might be most prudent to give the Legislature flexibility to increase the retirement age. Setting the age too low, he said, did not “leave enough time” for a lawyer to move up the ladder of the profession and then to dedicate his or her prime years to serving on the judiciary. Delegate Braham thus emphasized that age 70 should be a minimum acceptable retirement age, not a hard-and-fast ceiling. “I wanted to see 70 retained as the bottom limit,” he stated. “I would not object to having it 70, and above.”\(^5\)

Ultimately, the proposal to add language permitting the Legislature to change the age of retirement by statute, periodically, did not gain a majority of votes. Yet this discussion demonstrates that the Delegates were extremely cognizant of the fact that the age of 70 selected for mandatory retirement might have to be revisited in future years.

Indeed, Reference Manual No. 5 of the Pennsylvania Constitutional Convention of 1967-1968, entitled “The Judiciary,” discussed in some detail the proposed mandatory retirement of judges at a

\(^1\) Laura B. Shrestha, CONG. RESEARCH SERV., RL32792, Life Expectancy in the United States, 27 (2006).
\(^3\) Pa. Const. Convention Journal, Vol. 1 no. 48, remarks of Delegate Tate, 1078 (Feb. 21, 1968)
\(^4\) id.
\(^5\) id. at 1079, remarks of Delegate Braham.
fixed age. This document, prepared by the Convention itself for its Delegates, reveals that a variety of possibilities were considered, some of which would have given more flexibility to the retirement age. For instance, the Pennsylvania Bar Association advocated a mandatory retirement age to be determined by the General Assembly, “but not less than seventy-two years for justices of the Supreme Court and judges of the Superior Court, and not less than seventy years for all other judges.” The principal goal was to lock down a specific age under Article V, so that the retirement age for judges did not remain open-ended. As Reference Manual No. 5 stated, regardless of which age was selected, establishing a fixed mandatory retirement age:

[E]liminates unpleasantness of removing aged and disabled judges on an individual selective basis. Mandatory retirement is more impersonal than individual removal; everyone is treated alike. The difficulty and unpleasantness of determining which judges are senile and which are not is largely avoided...prevention of harm by a few senile judges more than offsets loss of judges who retain full powers past normal age. Besides, the services of able retired judges may be secured by a provision for post-retirement service.

Even as Reference Manual No. 5 embraced a fixed retirement age of 70 for judges, however, it went on to note that it is: “[D]ifficult to fix a suitable retirement age... age is biological, not chronological. Moreover, with continuing advances in medical and health technology to be expected, a fixed retirement age may soon become unrealistic.”

Thus, even the drafters of Article V recognized that the retirement age of 70 was a compromise, at that moment in time, which might have to be revisited in the future. Their predictions have now come to pass. Forty-five years later, times have changed, more women have entered the legal profession, and both men and women are physically and mentally capable of performing judicial functions at a much higher level for much longer.

Second, it is both appropriate and fitting for this body, nearly a half century later, to use the amendment process set forth in Article XI of the Constitution to revise the retirement age for judges. The amendment process is designed for precisely these sorts of changes in our fundamental charter.

State Constitutions, unlike the federal Constitution, are designed for regular, relatively uncomplicated amendments. The U.S. Constitution purposely sets high hurdles before that document can be changed: It requires two thirds of both Houses of Congress, or two thirds of the fifty States, to

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7 Id. at 203. This was based upon an argument that “retirement age for trial judges should be lower than that for appellate judges because trial work is more exhausting and demanding.” The National Municipal League, in its sixth edition (1963) of its Model State Constitution, advocated a mandatory retirement of all judges at the age of seventy. Id.
8 Id.
9 Id. at 204.
propose an amendment; thereafter, ratification only occurs if agreed to by three fourths of the States.\textsuperscript{10} The Pennsylvania Constitution, on the other hand, is much more flexible when it comes to the amendment process. (This is true of most State Constitutions). The Pennsylvania Constitution requires only a simple majority vote by both Houses of the Legislature, in two successive sessions, along with publication in newspapers of general circulation to inform the citizenry. Thereafter, a simple majority of the electorate voting in a particular election can approve such an amendment and make it part of the State’s Constitution. The ease of this process is quite intentional. Pennsylvania’s Constitution – like most State Constitutions – is longer and more detailed than the federal Constitution. It includes topics ranging from the qualifications of judges of the Traffic Court (Article V, Sec. 12(b)) to the amount of debt that can be incurred by the City of Philadelphia (Article IX, Section (2)). State Constitutions like Pennsylvania’s were designed to be more readily amended in order to keep current with modern times. While the U. S. Constitution has only been amended seventeen times in its nearly 226 year history, the Pennsylvania Constitution has been completely overhauled four different times. Hundreds of provisions, both short and long, have been amended since the fundamental charter’s adoption in 1776.

Thus, I believe the proposed legislation currently before this Committee, changing the mandatory retirement age for judges from 70 to 75, is the best possible solution to an issue that has sparked lawsuits and controversy over the past several decades. I should note that I do not favor a constitutional amendment which would change the retirement age for judges to 80. Nor do I favor a provision that would leave the retirement age open-ended such that there was no mandatory retirement age at all. In my role as Dean of a Law School in this Commonwealth, I am extremely sensitive to the fact that younger men and women entering the legal profession need to have an opportunity to advance and, ultimately, to have a chance to serve the Commonwealth by election or appointment as judges on the courts of this Commonwealth. If there is no point at which judges must retire and/or take senior status, this may ultimately harm the citizens of this Commonwealth if there is no opportunity for fresh ideas, fresh talent, and a diverse pool of qualified candidates to have an opportunity to compete for judicial elections or appointment.

Yet I believe that changing the retirement age to 75 strikes the perfect balance. It adjusts the mandatory retirement age to reflect the fact that men and women live longer, and are mentally and physically productive longer. At the same time, it establishes a firm retirement age — just as the original provision did — so that there is an automatic process for judicial retirement rather than leaving this important matter to individual situations and circumstances.

Moreover, the new provision would still allow for judges who are active and competent to be assigned to temporary judicial service by the Supreme Court, pursuant to Article V, Section 16(c). Thus, jurists can continue to serve the Commonwealth even after retirement, in appropriate circumstances. Moreover, in the event a jurist has a physical or mental infirmity that limits his or her ability to function properly as a judge — even prior to reaching the mandatory retirement age — there are provisions under Article V, Section 18(d), as well as the inherent suspension powers of the Supreme Court, that permit

\textsuperscript{10} U.S. Const. art. V.
the Supreme Court to suspend an impaired jurist for good cause and/or to refer the matter to the Judicial Conduct Board.\textsuperscript{11}

Finally, there are several additional reasons that support making this Constitutional change, that I will mention only briefly.

First, voters will still have a chance to decide which judges should be retained, through the ordinary retention process. Thus, if voters do not think that a particular jurist is competent to continue doing his or her job due to any impairment, the voters are still empowered to make that decision.

Second, judges in Pennsylvania receive good, well-funded pensions at the time they retire. It benefits the citizens of this Commonwealth if judges continue to work longer if they are being paid using taxpayer dollars, in any event. Allowing judges to work more years, if they are getting paid anyway, seems to be a fiscally prudent approach.

Third, many judges who have reached the age of 70 have in fact continued to serve by appointment, beyond that retirement age. This is evidence that they are quite capable of doing productive work; indeed, it confirms that their judicial experience and expertise is invaluable in allowing our system of justice to work efficiently.

In conclusion, I believe that it is both prudent and appropriate for the General Assembly to amend the Constitution to revise the mandatory retirement age for judges from age 70 to age 75. In the end, I believe that such a change will benefit all citizens of this Commonwealth. It will ensure that able jurists -- both males and females -- who dedicate their careers and legal talents to serving the public on the bench will be able to do so throughout their productive years, rather than being removed at the peak of their productivity, due to a provision that is now outdated and anachronistic. At the same time, it strikes a careful balance by maintaining a specific retirement age that is fair and rational, thus eliminating the uncomfortable situation of requiring the Supreme Court to intervene on a regular basis to remove judges who are mentally or physically impaired. The latter situation should be a rare occurrence; the current proposal would help to ensure that this remains so. It would also have the salutary effect of ensuring that young men and women entering the legal profession have an opportunity to be elected or appointed to the bench, after they gain the requisite expertise and experience, rather than making it impossible to achieve turnover at a reasonable stage in an individual jurist’s career.

For all of these reasons, I support the current proposed Constitutional Amendment that is being considered by this Sub-Committee. I appreciate the opportunity to testify about this important matter, and I am happy to answer any questions that members of this Sub-Committee might have.

\textsuperscript{11} Article V, section 18(d) outlines the process for removal, stating, “any justice or judge...may be retired for disability seriously interfering with the performance of his duties” by the Judicial Conduct Board. Alternatively, Article V, section 10(a) provides that “[t]he Supreme Court shall exercise general supervisory and administrative authority over all the courts and justices of the peace...“ This provision has been used to expedite the process in the past, allowing the Supreme Court to suspend an impaired jurist and then refer the matter to the Judicial Board of Conduct for a final determination.
Testimony before the House Judiciary Committee on House Bill 79
Concerning Mandatory Judicial Retirement

Presented by Lynn A. Marks, PMC Executive Director and
Kaleena Laputka, PMC/University of Pennsylvania Law School Intern

(H.B. 79 P.N. 58)

Harrisburg
April 18, 2013

I. Introduction

Thank you for the opportunity to testify regarding H.B. 79. Pennsylvanians for Modern Courts\(^1\) and PMCAction\(^2\) are statewide nonpartisan court reform organizations that work to ensure that all Pennsylvanians can come to our courts with confidence that they will be heard by qualified, fair and impartial judges.

We are here today to serve as a source of information rather than to testify in support of or opposition to the bill. While judicial retirement is an important issue, PMC has not taken a position at this point. However, we have done extensive research on the topic and would like to bring to your attention some of the key arguments on both sides of the debate, as well as some questions.

Over the past five months, the introduction of both legislation and litigation has moved consideration of mandatory judicial retirement to the forefront of judicial policy debates throughout the Commonwealth. In addition to the bill before us today, there are two bills that have been referred to the Senate Judiciary Committee: S.B. 85 eliminates the mandatory retirement age for judges and S.B. 368 raises the age to 75.

Further, litigation is pending in both state and federal courts on the constitutionality of mandatory retirement provisions. The Pennsylvania Supreme Court has granted the plaintiffs’ King’s Bench petition. Arguments are scheduled for May 8.

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\(^1\) **Pennsylvanians for Modern Courts** is a statewide, nonprofit, nonpartisan organization that works to ensure that all Pennsylvanians can come to our courts for justice with confidence that the most qualified, fair and impartial judges will preside over their cases. PMC functions as a court watchdog, identifying and speaking out on issues that impact the public’s confidence in our courts.

\(^2\) **PMCAction** is a statewide nonpartisan, nonprofit organization that lobbies for court reform initiatives and educated the public and legislators about the need to reform the Commonwealth’s judicial system through the adoption of various reforms.
II. Current State of Judicial Retirement in Pennsylvania and the United States

In Pennsylvania, judges are required to retire at the end of the calendar year after they have reached 70. Judges may serve as senior judges until the end of the calendar year in which they turn 78. Senior judges must be certified by the Supreme Court each year.

Mandatory retirement has been in place since 1968. The provision is included in the state constitution. A bill to change the timetable of mandatory retirement from attainment of age 70 to the end of the calendar year in which a judge turns 70 was introduced in 1993. After several subsequent introductions in the Pennsylvania House of Representatives, a constitutional amendment was approved in 2001 to implement this change. In 2010, another bill was introduced aimed at eliminating mandatory retirement altogether. That bill failed to be reported out of the House Judiciary Committee.

Thirty-three states, plus the District of Columbia, have provisions requiring mandatory retirement of judges. Judicial retirement is constitutionally mandated in twenty-seven of those states, and required by statute in the remaining six. The mandatory retirement age around the country ranges from 70 to 75 years old and varies from state to state. In 2003, Vermont increased the age for mandatory retirement of judges to 90, making it the only state outside of the standard range.

Currently, sixteen states, including Pennsylvania, are considering bills introduced during the 2013-2014 legislative session that address mandatory judicial retirement. There is a national trend toward increasing and/or eliminating mandatory retirement requirements for judges. Despite the fact that there are numerous proposals on these issues, however, only

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4 Pa. Const. art. V, § 16(b) (“Justices, judges and justices of the peace shall be retired on the last day of the calendar year in which they attain the age of 70 years.”)
5 Bill Raftery, Ohio Issue 1: What other states tried to increase or remove their judicial retirement ages and how did they do?, Gavel to Gavel (Oct. 27, 2011), http://gaveltogavel.us/site/2011/10/27/ohio-issue-1-what-other-states-tried-to-increase-or-remove-their-retirement-ages-and-how-did-they-do/.
6 Id.
8 Id.
10 Id.
11 Id.
12 Bill Raftery, Update on mandatory judicial retirement legislation: bills in 16 states, but so far no enactments; Hawaii appears to be closest but has choppy history on the subject, Gavel to Gavel (Mar. 19, 2013), http://gaveltogavel.us/site/2013/03/19/update-on-mandatory-judicial-retirement-legislation-bills-in-17-states-but-so-far-no-enactments/.
13 See Bill Raftery, Ohio Issue 1: What other states tried to increase or remove their judicial retirement ages and how did they do?, Gavel to Gavel (Oct. 27, 2011), http://gaveltogavel.us/site/2011/10/27/ohio-issue-1-what-other-states-tried-to-increase-or-remove-their-retirement-ages-and-how-did-they-do/; Bill Raftery, Update on mandatory judicial retirement legislation: bills in 16 states, but so far no enactments; Hawaii appears to be closest but has
minimal change has been achieved.\textsuperscript{14} Over the course of nearly twenty years, four state legislatures have adopted statutes that alter judicial retirement.\textsuperscript{15} It is worth noting that many bills proposing to change mandatory judicial retirement also include provisions affecting other unrelated legislative initiatives.\textsuperscript{16} The failure of these legislative efforts to affect change relating to retirement may not accurately reflect the public's feelings on the issue, but rather, the public's negative attitude towards the unrelated proposals included in the same legislation.

III. Arguments

While there are many important considerations on all sides of this issue that need to be weighed, two arguments lie at the heart of this debate and are discussed below. Other arguments supporting positions to sustain retirement at age 70, increase it to 75, and eliminate it altogether are further presented in the attached chart.

A. Age-related Deterioration v. Increased Life Expectancy

Mandatory retirement provisions recognize that age-related deterioration of a judge's mental capabilities is a detriment to the court system. The role of a judge is intellectually and physically demanding. When a judge struggles to perform the position's necessary duties, it is the public that suffers.

The physical and mental decline that can occur with aging is the strongest argument in favor of maintaining mandatory judicial retirement. Proponents of mandatory retirement argue that it protects the integrity of the court by removing aging judges from the bench before problems arise. Since older judges are most at risk of becoming incompetent, mandatory retirement reduces the need for discipline that embarrasses the judges and threatens public confidence in the courts.

On the other hand, age affects individuals differently. There is no evidence to support the notion that 70 is a cutoff where age begins to take its toll.\textsuperscript{17} There are many examples of jurists who served splendidly well past the age of 70.\textsuperscript{18} Some of the most famous and revered judges of our time – Justice Holmes, Justice Brandeis, and Judge Learned Hand – served into their 80s.\textsuperscript{19}

\textsuperscript{14} Bill Raftery, \textit{Ohio Issue 1: What other states tried to increase or remove their judicial retirement ages and how did they do?}, Gavel to Gavel (Oct. 27, 2011), http://gaveltogavel.us/site/2011/10/27/ohio-issue-1-what-other-states-tried-to-increase-or-remove-their-retirement-ages-and-how-did-they-do/
\textsuperscript{15} Id. (Indiana 2011 [eliminate]; Kansas 2003 & 2010 [increase from 70 to 75]; North Carolina 1992 [increase from 70 to 72]; Vermont 2003 [increase from 70 to 90])
\textsuperscript{16} Id. (Arizona SCR 1001 altered provisions related to merit selection system, increased judicial term to 8 years and raised retirement age from 70 to 75.)
\textsuperscript{19} Id.
Even if 70 used to be an invisible threshold marking the descent into old age, times have changed. People are living longer. Advances in medicine have allowed people to stay healthy, active, vibrant, and productive for longer than ever before.

Further, the Judicial Discipline System is in place to remove unfit judges from the bench, regardless of age. Removal proceedings may be difficult for the court system and upsetting to the public, but they are necessary to ensure the quality of the judiciary. If anything, the disciplinary process should reassure the public that “bad apples” are removed from the bunch.

B. Creating Space for New Judges v. Loss of Institutional Wisdom

Mandatory retirement allows for the regular infusion of fresh blood into the judiciary and prevents incumbent, older judges from securing a monopoly over the bench. Without mandatory retirement, eager young lawyers aspiring to become judges might get frustrated waiting for years for a vacancy.

Courts are constantly evolving. Precedents and legal doctrines need to keep pace with the times. Proponents of mandatory retirement argue that older judges may have a difficult time adapting to new legal or cultural trends and young minds can bring new ideas to the forefront and help the judiciary move forward.

On the other hand, there is no evidence to support the assertion that younger judges are more open-minded or more aware of modern legal trends. The argument favoring younger judges also relies on two untrue assumptions. The first assumption is that age is a reliable indicator of a judge’s beliefs. The second assumption is that ideology is a sound qualification for judging.

Further, mandatory retirement opponents argue that there is a cost associated with the loss of institutional knowledge that accompanies mandatory retirement. They argue that judging is a “learn-by-doing” profession. The best judges tend to be the ones that have the most experience. Mandatory retirement forces the oldest judges, who often have the most experience, off the bench. While senior status allows some judges to continue serving, even senior judges are subject to age-related limitations.

20 Id.
21 Id.
24 Id. at 111-13.
25 Id.
Being a judge requires a specific skill-set. Along with a deep knowledge and understanding of the law, judging requires a cool head and even temperament. Proficiency in these skills is typically honed over a course of years. Further, age, wisdom, and practice breed confidence. A confident, seasoned jurist is able to perform duties effectively and efficiently. All of these characteristics – knowledge, experience, temperament, and confidence – are positively correlated with age.

IV. Outstanding Questions

1. What is the effect of changing mandatory retirement on senior judges?

   a. This legislation does not address the issue of senior judges. Currently, the senior judge system uses retired judges to fill in gaps and ease the caseload in Pennsylvania’s courts. These judges receive temporary assignments and are paid on a per diem basis for their work.

   Whether the age is increased to 75 or eliminated altogether, it is unclear whether senior judges are necessary. Their service is limited currently to age 78. If a mandatory age is eliminated, judges would no longer need a supplemental service option, as they could remain on the bench until they are ready to leave service entirely. On the other hand, senior judges have proved to be a vital court staffing resource. They help to alleviate the overload of cases burdening the court system. It is uncertain what would happen if this pool of judges were entirely eliminated.

   By way of comparison, the federal courts, which do not have mandatory retirement, allow judges to take “senior status.” This allows for openings on the bench for new judges, but avoids many of the problems with mandatory judicial retirement.

2. What is the financial impact of increasing or eliminating mandatory judicial retirement?

3. What effect, if any, will this have on the judicial discipline process?

   a. Other states without mandatory retirement include age-related “disability” within the jurisdiction of their disciplinary bodies. They do not have independent commissions that examine the fitness of judges over a certain age. Mental and physical decline is often encapsulated in the term “disability” and is reviewed according to the standard disciplinary procedures.

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30 Id.
31 Id. at 121.
32 Id.
33 Id.
4. Are there additional prophylactic measures that should be put in place if mandatory retirement is eliminated or increased?

   a. Periodic review of judges over a certain age could mitigate or eliminate the threat of age-related deterioration in the judiciary. To be effective, the review would have to consider several aspects of the judge’s performance including, but not limited to: efficiency, temperament, rate of reversal, and perhaps mental and physical acuity.

   This would require the commitment of resources from an already underfunded system. PMC has not found any other state that uses a similar process, so it is difficult to ascertain what the cost would actually be.

V. Other Considerations

   It is important to look at bills such as the one before us today in the context of the operation of the judiciary as a whole. Accordingly, there are a number of additional measures we believe would improve the functioning of the judiciary.

   1. Judicial Ethics Training: All judges should be required to attend periodic ethics training on an annual or semi-annual basis. These trainings would serve the dual purpose of reminding judges of their ethical obligations as well as providing a forum to address new ethical challenges that may arise during a judge’s term.

   2. Judicial Performance Review: All judges should be subject to judicial performance reviews during their term on the bench. These performance reviews would collect data regarding, among other qualities: the judge’s temperament, productivity, knowledge of the law, behavior on and off the bench, and rate of reversal. The data would be collected from litigants, lawyers, law clerks, court staff and self-evaluations completed by the judges, as well as samples of the judges’ written opinions and orders.

   States with official judicial performance reviews report that these reviews are a valuable source of information to the public who vote on whether or not a judge should be retained. Further, the reviews provide the judges themselves with honest feedback about their performance which allows for self-improvement.

VI. Conclusion

   The issues surrounding mandatory judicial retirement are complex. Whether mandatory retirement provisions are sustained, increased, or eliminated, the most important considerations are the quality and reputation of the judiciary. The correct course of action will be the one that best promotes the excellence and independence of the bench.

   Thank you again for the opportunity to speak with you today.
# JUDICIAL RETIREMENT

<table>
<thead>
<tr>
<th>SUSTAIN</th>
<th>EXTEND</th>
<th>ELIMINATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintain Mandatory Retirement at age 70</td>
<td>Increase Mandatory Retirement age to 75</td>
<td>Eliminate Mandatory Retirement age</td>
</tr>
<tr>
<td></td>
<td>H.B 79 P.N. 58; S.B. 368 P.N. 291</td>
<td>S.B. 85 P.N. 172</td>
</tr>
<tr>
<td>• Mental capabilities deteriorate with age</td>
<td>• Age is relative*</td>
<td>• Any age is arbitrary</td>
</tr>
<tr>
<td>o Judges may not recognize mental deterioration</td>
<td>• Increased life expectancy and better health, including mental health</td>
<td>• Raising to a particular age is not a permanent solution; as people live longer, appropriate mandatory retirement age may change again</td>
</tr>
<tr>
<td>o Allows removal of judges before problems arise</td>
<td>• Judicial discipline system removes unfit judges of any age*</td>
<td>• Decision to retire should be individual and voluntary</td>
</tr>
<tr>
<td>o Removal proceedings are embarrassing and can undermine public confidence in judiciary</td>
<td>• Nationally, judges unlikely to be removed for dementia</td>
<td>• No guarantee that newer, younger judges will perform better</td>
</tr>
<tr>
<td>• Senior judge system allows retirees to continue serving while enjoying some benefits of retirement</td>
<td>• Prevent loss of institutional experience and wisdom*</td>
<td>• No need for mandatory retirement because judges will choose to retire</td>
</tr>
<tr>
<td>o NOTE: senior judges have fewer staff, are paid per diem and service is still limited to 78</td>
<td>• Establishing a blanket policy (at any age) eliminates the need for difficult, individualized judgment calls about judicial fitness**</td>
<td>• Federal judges do not have mandatory retirement, but there are still vacancies</td>
</tr>
<tr>
<td>• Makes room for new, younger judges</td>
<td>• Compromise position</td>
<td>o NOTE: Federal judiciary also has senior judges, so judges can take senior status which creates vacancy, even though still sitting; uncertain whether will still have senior judges in PA</td>
</tr>
<tr>
<td>• Legal precedent supports the status quo</td>
<td></td>
<td>• Mandatory retirement may violate equal protection and due process rights</td>
</tr>
<tr>
<td>• Judges themselves are divided on whether change is necessary</td>
<td></td>
<td>• Other elected officials do not have mandatory retirement</td>
</tr>
<tr>
<td></td>
<td></td>
<td>o NOTE: other elected officials have shorter terms</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Could be done in conjunction with periodic testing on mental capabilities***</td>
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</tbody>
</table>

* Argument also applies to ELIMINATING retirement age  
** Argument also applies to SUSTAINING current retirement age  
*** Argument also applies to EXTENDING the retirement age
Good morning. Chairman Grell and Chairman Sabatina, thank you for inviting me to testify at today’s hearing. I would also like to thank Chairman Marsico and Chairman Caltagirone for authorizing this hearing examining the issue of raising the retirement age of our jurists. I am Dr. Thomas Weida, a family physician and Professor of Family and Community Medicine at the Penn State Hershey Medical Center and College of Medicine. I have been in practice for 25 years and am board certified in family medicine and geriatrics. I see a majority of patients who are over the age of 65 in my medical practice and appear today regarding the wisdom of increasing the mandatory retirement age of judges from 70 to 75.

The essential concern of increasing the mandatory retirement age is the deterioration of cognitive functioning in the elderly. Sadly, we all reach our peak mental acuity at age 25, with a progressive decline from then. Brain volume shrinks beginning at age 30. But like most organs of the body, the brain also has tremendous reserve, so that this decline for most individuals is not functionally noticeable in old age or even advanced old age.

According to a number of studies, the number of people over 65 with dementia compared to the population, known as the prevalence of dementia, increases with advancing age, ranging from 1.5% in the 65-69 year age group to about 3% in the 70-74 year age group. It approaches 6% in the 75-79 year age group. Therefore, even in advanced age, the prevalence of dementia which can interfere with decision making is relatively small, particularly up until age 75.

In animal studies, brain cells with advancing age can lose 45% of spiny dendrites which are responsible for learning and remembering new things. However, the stubby dendrites which are responsible for things which have been known for years suffer no decline. Hence, new memories may be more difficult to retain with age, but knowledge and expertise remain intact, oftentimes well into the 80’s.

We all know individuals whose mental capabilities remain sound well into their 80’s and 90’s. I have a number of patients 80 years of age in my practice who are highly functional mentally and physically, participating on boards of directors and running businesses. Penn State’s College of Medicine has no mandatory
retirement age. In the world of medicine and its critical decision making, individual functionality is favored over an arbitrary retirement age. Expertise trumps memorization of rote facts. Also, the Board of Medicine has no age at which a physician must relinquish his or her license. Medical licenses are revoked for performance issues, not after a predetermined age has been reached.

As such, age cannot be the only factor affecting mental acuity and reasoning. Only about 20-25 percent of the variation among people in standard measures of memory, problem-solving, and other executive functions, is the result of age. The rest—64 to 96 percent on different cognitive test scores, is the result of other factors.

Factors which negatively affect mental abilities as one ages are low education status, genetic factors, high blood pressure, diabetes, hardening of the arteries, smoking, depression, head trauma, poor diet and poor social networks.

Americans are living longer, now with an average life expectancy of 78. Additionally, they are living healthier longer which correlates with retained cognitive abilities.

What improves mental acuity with age is the same thing that improves the body’s overall functioning: aerobic exercise such as brisk walking. Three vigorous, 40-minute walks a week over a six month period improved memory and reasoning according to a study done at the University of Illinois. It also stimulated the birth of new brain neurons and increased the volume of white matter, which connects neurons, in areas responsible for such executive functions as planning. A Canadian study showed that use of non-steroidal anti-inflammatory drugs, wine consumption in moderation, coffee consumption and regular physical activity were associated with a reduced risk of Alzheimer’s disease. A study by Bruce Campbell showed that adult cognitive development continues indefinitely in active learners, that college-degreed, older adults who are actively engaged in learning use age-specific learning strategies and that the benefits of late-life learning appear to be an antidote to aging.

Studies show that individuals with higher levels of education have a lower prevalence of Alzheimer’s disease. Other studies show that engaging in mentally stimulating activities decreases the prevalence of dementia and that those elderly participating in daily mentally challenging activities show less decline on cognitive tests.

As such, there is no evidence that a specific age denotes a significant deterioration of thinking and reasoning which would interfere with judicial decisions. There are already sufficient safeguards in the Pennsylvania Constitution and with the Pennsylvania Supreme Court to remove judges who are cognitively impaired, a condition which can occur at any age. Therefore, I see no medical evidence to prevent increasing the mandatory retirement age for judges to 75.
There is no sharp decline of mental functioning between 70 and 75. We should not lose valuable expertise and wisdom on the bench by forcing retirement of jurists at age 70.
THOMAS J. WEIDA, M.D., F.A.A.F.P.

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Phone: (717) 531-8181  Cell: (717) 951-5894  Fax: (717) 531-3509
E-Mail: tweida@hmc.psu.edu

Current Position:
Professor, Department of Family and Community Medicine, Penn State Hershey College of Medicine (2004-present)
Medical Director for Information Technology, Department of Family and Community Medicine, Penn State Hershey Medical Center (2012-present)

Previous Position/Practice:
Medical Director, Penn State Hershey, University Physician Group, Fishburn Road (1997-2012)
Associate Professor, Department of Family and Community Medicine, Penn State Hershey College of Medicine (1997-2004)
Rothsville and Denver Medical Centers, private practice, managing partner, 1983-1997
Laboratory Director, Rothsville Medical Center, 1983-1997
Industrial Health Options, President, (Worker's Compensation Coordinated Care Organization), 1983-1997

Education:
College: Lehigh University 1974-1976
Entered Lehigh-Hahnemann six year BA-MD program in 1974 for the purpose of training primary care physicians
Phi Beta Kappa, 1977
Graduate: Hahnemann Medical College and Hospital 1976-1980
Lehigh-Hahnemann Family Medicine Award in recognition of academic excellence
Residency: Lancaster General Hospital, 1980-1983 Family Practice Residency

Licensure and Certifications:
Pennsylvania License
Fellow of the American Academy of Family Physicians, (F.A.A.F.P.), inducted 1984

Hospital Affiliations:
Active Staff, Milton S. Hershey Medical Center
Courtesy Staff, Lancaster General Hospital

Milton S. Hershey Medical Center
Penn State Hershey Medical Group, Fishburn Road, Medical Director, 1997-2012
Patient Access Task Force, 1998
Chair, Primary Care Advisory Panel to the PSGHS Formulary Steering Committee, 1998-1999
Medical Director, PSGHS Tel-A-Nurse, Hershey Area, 1998-1999
Co-Director, Fourth Year Primary Care Selective, 1998-2000
Fishburn Road Clinical Practice Committee, 1998-2000
Satellite Medical Directors Member, 1998-2012
Outpatient Board, Fishburn Road, 1998-present
Building Task Force, 1998-2012
Fishburn Road Quality Improvement Committee, 1998-2003
Fishburn Road Patient Education Committee, chair 1998-1999, member 1999-2010
Vision 20/20 Certificate of Appreciation, 1999
CORE Committee on Information Technology, 1999
Institute for HealthCare Improvement Pilot Project to Redesign Primary Care Delivery, 1999-2000
Revenue Enhancement Committee, 1999-2000
Pharmacy and Therapeutics Committee, 1999-Present
Pennsylvania Youth Apprenticeship Program, 1999-Present
Creator and Preceptor for Fourth Year Primary Care Selective in Practice Management/Family Practice, 1999- Present
Faculty Advisor for medical student research paper assessing Pennsylvania loan forgiveness program, 2000-2001
Faculty Advisor for medical student research project assessing Family Medicine residents’ CPT coding competency, 2005-2006
Interviewer, Penn State College of Medicine Applicants, 2000-present
Medical Director, Hershey Medical Center, Call Center, 2000-2009
Laboratory Director, Fishburn Road, 2000-2012
Practitioner Review Group for Revenue Enhancement, 2001-2002
Mini Medical School Community Outreach Program, Hershey Medical Center, Creator, Course Director and Host, 1999-2013
First to Fourth Year Primary Care Clerkship Preceptor, 1998-Present
Advisor to first year medical students, 2001-present
First Year physical diagnosis preceptor, 2005-present
Second Year physical diagnosis preceptor, 1999, 2005-present
Communication Skills preceptor, 2005-present
Family Medicine Resident preceptor, 2009-present
Primary Care Scholar’s Mock Interviews, 2003
Interviewing Skills Program, Preceptor, 2003
Unified Campus Team, Information Technology, member 2004 – 2008
Connected Clinical Integration Team, 2008-present
Medical Student Selection Committee, 2004 - present
Family and Community Medicine Promotions Committee, 2004 – 2009
Chair, Family Medicine Inter-department Review Committee, 2006
Co-Chair, Pharmaceutical Relations Task Force, 2006
Visiting Professor Rounds, Penn State Lebanon Good Samaritan Hospital Residency, 2006-present
Patient Centered Medical Home Development Committee, 2008 – present
Penn State Lebanon Good Samaritan Hospital Residency Continuity Care Clinic Start Up Co-Coordinator at Fishburn, 2009
Family Medicine Exceptional Role Model award by students, 2010
Physician Lead – e-Messaging and e-Prescribing Initiative, 2010
Ambulatory Electronic Health Record Oversight Group, 2010
Ambulatory Workflow Design Committee, 2011-present
Orders Workgroup, 2011-present
Penn State Hershey Medical Group (PSHMG) Information Technology Governing Council, 2010-present
PSHMG Board of Governors (BOG), at-large member, 2011-2014
PSHMG BOG Quality of Care Committee, 2011-2014
PSHMG BOG Outpatient Quality Bundle Subcommittee, Chair, 2011 – 2012
Search Committee for the Director of Web Services, 2012

American Medical Association
Member, 1977-1987, 1990-present
AAFP Delegate to the AMA House of Delegates, 2004-2008
Pennsylvania Medical Society Alternate Delegate to the AMA House of Delegates, 2010-2014

Pennsylvania Medical Society (PaMed)
Member, 1981-present
Alternate Delegate to PaMed Annual Meeting, 2010
Thomas J. Weida, M.D.

PaMed House of Delegates Reference Committee on Managed Care and Third Party Reimbursement, 2000
PAFP Delegate to PaMed Interspecialty Committee, 1992-2004
    Vice Chair PaMed Interspecialty Committee, 1999-2002
    Chair, PaMed Interspecialty Committee, 2002-2004
Task Force to Enhance Member Involvement, 1993-1994
Quick Response Committee on Medical Necessity, 1996
Quick Response Committee on the Scope of Practice, 1999
Special Committee on House of Delegates Restructuring, 2000
*Pennsylvania Medicine*, Editorial Board, 2000-2002
Quick Response Committee on Managed Care, 2001
Political Advocacy Executive Council, 2007-2011
Co-Chair Task Force on Emergency Room Overcrowding, 2011
PaMed House of Delegates Reference Committee on Advocacy, 2011
Pennsylvania Medical Society Board of Directors, 2011-2015
    Committee on Subsidiary and Foundation Relations, 2012-2013
    Finance Committee, 2013

*Lancaster County Medical Society*
Member, 1980-present
Board of Trustees, 1984-1988
Bylaws Committee, 1991-1997
Membership Committee, 1981-1990
Legislative Committee, 1991-2000

*American Academy of Family Physicians (AAFP):*
Member 1977-present
Publications Committee, 1979-1981
Scientific Program Committee, 1981-1983
New Physician's Committee, 1985-1987
AAFP Parke Davis Teacher Development Awards Committee, 1988-1990, Chair 1990
Members' AAFP Insurance and Financial Services Committee, 1991
Finance Committee, 1992-1993
Committee on Marketing and Public Relations, 1994-1996
    Subcommittee on AAFP 50th Anniversary, Chair, 1994-1996,
Bylaws Committee, 1998-2000
    Executive Committee of Bylaws Committee, 2000
Delegate to the AAFP, 1994-1999
Alternate Delegate to the AAFP, 1988-1993, 2000-2002
Congress of Delegates Reference Committee on Reports of Officers and Committees, 1995, 1997
Congress of Delegates Reference Committee on Bylaws, 1998
*AAFP Family Practice Management*, Editorial Board, 1993-2002
AAFP Tobacco Cessation Advisory Committee, 2002-present
AAFP Representative to the Mississippi Academy of Family Physicians Annual Meeting, 2010, 2011
AAFP Representative to the West Virginia Academy of Family Physicians Annual Meeting, 2012
AAFP Foundation Board of Directors, 2007-2008
    Audit Committee, 2007-2008
    Finance Committee, 2007-2008
    Development Committee, 2007-2008
    Insurance Committee, 2007-2008
    Board of Curators, 2007-2008
AAFP Board of Directors
    Subcommittee on Resolutions, Chair, 2003-2004
    Members Meeting of the AAFP Foundation, Chair, 2002-2004
    Subcommittee on Strategic Planning and Monitoring, 2003-2008
    Subcommittee on Inner City/Rural, 2004
Subcommittee on Selection and Screening, 2004 – 2008
Strike Force on Payment, 2005
Task Force on Leadership Development, 2006
Board Liaison to Washington DC Rally, 2006
Board Awards Subcommittee, Chair, 2008
Executive Committee, 2004-2008
AAFP Representative to the AMA Relative Value Update Committee (RUC), 2009-present

Elected Offices:
Vice-Speaker, AAFP Congress of Delegates, 2002-2004
Speaker, AAFP Congress of Delegates, 2004 - 2008

Pennsylvania Academy of Family Physicians (PAFP):
Member 1977-present
State Delegate to the AAFP National Conference of Student Affiliate Members, 1979
President of Hahnemann's Student Family Physician Group, 1979-1980
Delegate to the PAFP Annual Convention, 1980-2011
Vice Chair, 2002
Committee on Family Practice in Pennsylvania Medical Schools, 1981-1982
PAFP Ad Hoc Committee Regarding Cost of Medical Education, 1982-1983
Chair of the PAFP Committee on Resident and Student Affairs, 1983-1990
PAFP Ad Hoc Committee regarding Establishing a Non-Profit Foundation, 1984-1986
Committee on Bylaws, 1986-1988
Finance Committee, 1992-1993
PAFP Nominating Committee, 1994-1996, Chair, 1994
Chair, PAFP Task Force on Leadership Development, 1992-1994
Chair, PAFP Task Force to Study IPA/CCO, 1993-1994;
Chair, PAFP Task Force to Study PAFP Structure, 1993-1994
Liaison to Pennsylvania Blue Shield Primary Care Advisory Committee, 1994
PAFP Family Physician of the Year Selection Committee, 1995-2002
Planning Commission, 1996
Membership Commission, 1996
Building Task Force, 1999
Testified before Pennsylvania Congressional Committee on Tobacco, 1999
Bylaws Task Force, 2004-2013

Elected Offices:
Vice Speaker of the PAFP House of Delegates, 1984-1987
Speaker of the PAFP House of Delegates, 1988-1991
Vice President, PAFP, 1991
President Elect, PAFP, 1992
President, PAFP, 1993

Family Health Foundation of Pennsylvania:
Vice President, 1985-1992
Board Member, 1985-1994

Other Professional Organizations:
American Institute of Parliamentarians,
Member, 1990-present
Preferred Health Care of Lancaster County, (PPO)
Board Member, 1988-1995
President 1989-1993

*Lancaster General Hospital*
Utilization Review, Vice Chair, 1984-1985
Bylaws Committee, 1990-1996
Integrated Delivery System Task Force, 1994
LGH Board of Directors, 1995-1997

*Pennsylvania Primary Health Care Practitioner Advisory Committee, 1993-1995*
*Pennsylvania Physician Partners Alliance, Inc. (a MSO), Board of Directors, 1994-1997*

*Society of Teachers of Family Medicine*
Member, 1983-present
Member STFM/AAFP Conference on Patient Education National Planning Committee, 1994-2006
Reviewer, *Patient Care Award, STFM/AAFP Conferences on Patient Education, 1995-2003*
Member STFM/AAFP Conference on Practice Improvement National Planning Committee, 2006-2009

*Fellow of the College of Physicians of Philadelphia, inducted 1993*
Gateway Health Plan, Asthma Physician Advisory Workgroup, 2004
Governor’s Chronic Care Initiative, South Central PA Steering Committee, 2008 – 2011
Department of Health Chronic Care Initiative Steering Committee, 2011 – present
Member, PA Health Care Cost Containment Council (PHC4) Payment Data Advisory Committee, 2010-present

**Presentations:**


"Mental Health Services in a Family Practice Setting," 1992 First Annual Pennsylvania Rural Health Conference

"Managed Care in Rural Practices Panel Discussion," 1993 Second Annual Pennsylvania Rural Health Conference


"Health Watch," Host of Weekly Cable TV Show, 1994-1996;


"Practicing in a Managed Care Environment," Eric Family Practice Review Course, 1995


"Ready, Fire, Aim...Building Local, Regional and Statewide Alliances," Pennsylvania Medical Society Leadership Conference, 1997


"Patient Education for Pennies, Parts I and II," 50th Annual Meeting of the Kansas Academy of Family Physicians, 1998


"Working with Mid-Level Providers - Exploring philosophy, recruitment, marketing, patient response, and economics of mid-level providers," 1998

"Patient Education for Pennies," Hershey Medical Center Primary Care Colloquium, 1998
"Depression," Women's Health Education Seminar, Hershey, 1998
"The Evaluation and Management of Acute Exacerbations of COPD," Delaware Academy of Family Physicians meeting, 1999
Mini Medical School Community Outreach Program, Hershey Medical Center
  "Dizziness," 1999
  "Erectile Dysfunction," 2000
  "Health Policy," Panelist, 2003
"Coding for Clinicians," Pennsylvania Forum for Primary Health Care Annual Conference, 1999
"Time Management," Focus 2000: Primary Applications for Primary Care Providers, Erie, PA, 2000
"Capture the CPT Coding," Focus 2000: Primary Applications for Primary Care Providers, Erie, PA, 2000
"Practice Management, Coding Patient’s Visits," AHEC National Health Service Corps Educational Day, 2000
"Insights to Treatment of Depression, Anxiety and Sleep Disorders," 18th Annual PSCOM Winter CME Festival, Feb 2-5, 2000
"Patient Education in the FPC – How?" AAFP Residency Assistance Program Workshop for Faculty and Staff of Family Practice Residencies, Kansas City, MO, 2001
Med and Manage CME Program, Academic Coordinator, 2001
  "Patient Education for Pennies," 2001
  "Capture the CPT Coding," 2001
  "Time Management," 2001
  "Erectile Dysfunction," 2001
"Medical Liability Crisis," Health Watch Cable Access, 2003
"Future of Family Medicine," PAFP Residents and Students Assembly, 2003
"Nursing Home Crisis," Interview, ComCast TV, 2003
"Future of Family Medicine," Pennsylvania Academy of Family Physicians Residents and Students Conference, 2004
"Future of Family Medicine," Minnesota Academy of Family Physicians, 2004
"Future of Family Medicine," Illinois Academy of Family Physicians, 2004
"Back to the Future of Family Medicine," STFM Northeast Regional Meeting plenary speaker, 10/2005
"Back to the Future of Family Medicine," Georgia Academy of Family Physicians annual meeting, 11/2005
“Parliamentary Procedure Update,” Georgia Academy of Family Physicians annual meeting, 11/2005
Health Professionals roundtable of the Partnership for Prevention, AAFP representative and presentation on “Pay for Performance”, 9/15/06
“SGR Update,” Testimony before the United States House Energy and Commerce Committee Subcommittee on Health, Washington, DC, 9/28/06
“The Difficult Patient,” CME presentation, Beltz, Moldova, 10/24/06
Moderator for “Clinical Symposium,” Northern Regional CME meeting, Beltz, Moldova, 10/24/06
“A Day in the Live of a Family Physician in the USA,” CME presentation, National CME meeting for Moldovan family physicians, Chisnau, Moldova, 10/26/06
“Back to the Future of Family Medicine,” Primary Care Residency Colloquium, Hershey, PA, 12/8/06
“Leadership in Medicine,” Penn State University College of Medicine Primary Care Day, Hershey, PA, 10/7/07
“The Future of Family Medicine,” Carlisle Hospital, 1/5/07
“Stories from Practice, Back to the Future,” FPIG Meeting, Hershey, PA, 3/27/07
“From Seed to Flower: Growing Ideas into Policy,” Weida, T., Mabry, L, AAFP Annual Leadership Forum, Kansas City, KC, 5/5/07
“Ask and Act, Tobacco Cessation Strategies,” Maryland Academy of Family Physicians Annual Meeting, 6/21/07
“Rx for Pennsylvania: Healing the Health Care System,” Jefferson College of Medicine, Philadelphia, PA, 7/17/07
“Ask and Act, Tobacco Cessation Strategies,” Virginia Academy of Physician Assistants, Virginia Beach, VA, 7/27/07
“Back to the Future of Family Medicine,” AAFP National Conference of Resident and Student Members, Kansas City, MO, 8/1/07
“Ask and Act,” Iowa AFP Annual Meeting, Des Moines, IA, 10/18/2007
“CPT Coding,” Erie Annual CME Meeting, Erie, PA, 10/26/2007
“CPT Coding Simplicity,” AHEC regional meeting, Dubois, PA, 4/11/2008
“CPT Coding Simplicity,” AHEC regional meeting, Bradford, PA, 4/12/2008
“CPT Coding Simplicity,” AHEC regional meeting, Clearfield, PA, 5/2008
“CPT Coding Simplicity,” Michigan AFP Annual Meeting, Traverse City, MI, 7/2008
“Coordination of Care Among Physicians,” panelist participant, Pennsylvania Medical Society Annual Meeting, 10/2008
“CPT Coding,” Vermont Academy of Family Physicians, Montpelier, Vermont, 11/1/08
“Meetings, Meetings, and Meetings: Parliamentary Procedure,” University of Kansas, Wichita, Teleconference, 1/14/2009
“Money, Medicine, and Miracles,” Keynote Speaker, "Surmounting Economic Challenges to Primary Care,” Conference, Crozier Chester Medical Center, Philadelphia, PA, 4/17/2009
“Beyond the Organizational Tool Kit,” Pennsylvania Medical Society, Harrisburg, PA, 5/19/2009
“CPT & Me,” Susquehanna Health Center, Williamsport, PA, 6/12/2009
“Medical Coding,” South Central PA Academy of Family Physicians, Hershey, PA, 9/19/2009
“The Medical Home and Your Future Practice,” South Central PA Academy of Family Physicians, Hershey, PA, 9/19/2009
“Medicine, Money, and Miracles,” South Central PA Academy of Family Physicians, Hershey, PA, 9/19/2009
“CPT Coding, Parts I and II,” 29th Annual Multidisciplinary Aging Conference, Seven Springs, PA 10/30/2009
“Coding: A Record of Patient-Physician Interaction,” Philadelphia College of Osteopathic Medicine, 11/14/2009
“CPT Simplicity,” AAFP/STFM Practice Improvement Conference Pre-Conference Workshop, Savannah, GA, 12/4/09
“Better Coding, Better Cash, Part I” New York State Academy of Family Physicians, Lake Placid, NY, 1/30/10
“Better Coding, Better Cash, Part II” New York State Academy of Family Physicians, Lake Placid, NY, 1/31/10
“CPT Simplicity, Part I,” Lake Erie College of Osteopathic Medicine, Lake Erie, PA, 3/6/10
“CPT Simplicity, Part II,” Lake Erie College of Osteopathic Medicine, Lake Erie, PA, 3/6/10
“Inpatient Coding,” Susquehanna Health System, Williamsport, PA, 3/12/10
“Consensus Conference on HIDA Scans,” Participant, Society of Nuclear Medicine, Philadelphia, PA, 4/24/10
“Coding from the Bottom Up,” American Association of Professional Coders, York Chapter, York, PA, 5/11/10
“Better Coding, Better Cash,” Susquehanna Health System, Williamsport, PA, 5/26/10
“Family Medicine: The Wave of the Future or the Way of the Dinosaur,” Reading Family Medicine Residency Program, Reading, PA, 5/28/10
“Coding from the Bottom Up,” American Association of Professional Coders, Harrisburg Chapter, Harrisburg, PA, 6/10/10
“The Prescription Pad Should Make You Mad; Send Scripts Electronically,” PennState Faculty Organization Meeting, 7/7/2010
“Coding from the Bottom Up,” Mississippi Academy of Family Physicians Annual Meeting, Destin, Florida, 7/13/10
“Coding from the Bottom Up,” Warren Medical Staff, 8/10/2010
AAFP News interview regarding Medicare Tobacco Counseling Payment Changes, 8/27/2010
“Coding from the Bottom Up,” PennState Lebanon Residency Program, 10/5/2010
“Coding from the Bottom Up,” Pennsylvania Academy of Family Physicians South Central Chapter, Hershey, PA, 10/16/10
“Coding from the Bottom Up,” Family Medicine Education Consortium, Hershey, PA, 10/29/2010
“PCMH, ACO’s, Meaningful Use,” Hershey IT Department, 1/19/2011
“Coding from the Bottom Up,” Penn State Student Health Physicians, State College, PA, 4/12/2011
“Coding from the Bottom Up,” AHEC Meeting, State College, PA, 5/3/2011
“Medical Home,” AHEC Meeting, Lancaster, PA, 5/19/2011
“Coding from the Bottom Up,” AHEC Meeting, Lancaster, PA, 5/19/2011
“Medical Home,” AHEC Meeting, Scranton, PA, 6/9/2011
“Coding from the Bottom Up,” AHEC Meeting, Scranton, PA, 6/9/2011
“Coding From the Bottom Up,” Mississippi Academy of Family Physicians Annual Meeting, Sandestin, FL, 7/19/2011
“Introduction to the Patient Centered Medical Home,” Mount Nittany Medical Center, State College, PA, 8/18/2011
“Coding for Cash. Getting the Most for Your Hard Work,” Reading Hospital Family Medicine Residency Program, 10/14/2011
“Coding from the Bottom Up,” STFM Practice Improvement Conference, San Diego, CA, 12/3/2011
“Office Champions in Tobacco Cessation: Results From an AAFP Pilot Project,” STFM Practice Improvement Conference, San Diego, CA, 12/3/2011
“CPT Coding for Nurse Practitioner Students,” Penn State College of Medicine, 2/22/2012
“CPT Coding,” Lake Erie College of Medicine, Erie, PA, 4/19/2012
“Health Care Reform Discussion,” Panelist, Penn State College of Medicine, 4/23/2012
“Health Care Reform: Solving the US Health Care Puzzle,” Penn State College of Medicine Family Medicine Interest Group, 10/24/2012
“CPT Coding,” Wilkes-Barre Rural Health Corporation, 12/12/12
“Up in Smoke: Diabetes and Smoking,” Pennsylvania Academy of Family Medicine Webinar, 10/26/12
“Family Medicine: On the Horizon,” Penn State College of Medicine Family Medicine Interest Group, 12/17/2012

Publications:

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“We’re All Practicing Occupational Medicine,” Patient Care, February 15, 1996
“Has Your Life Reached the Boiling Point?” Family Practice Management, Nov/Dec 1996
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“Ascendant/Descendant,” Wild Onions XIII, 1999
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“Sleep Disorders: Patient’s History the Diagnostic Key,” Physician’s Weekly, March 17, 2003

Reviewer, Patient Education Materials, Family Health Foundation of America, 1998-2007
Peer Reviewer, American Family Physician, 2002-2007
Peer Reviewer, Journal of Family Practice, 2008-2012
Professional Honors/Citations:
AAFP/STFM 1993 Patient Care Patient Education Award
183 Top Docs in Harrisburg Area, Harrisburg Magazine, October 1998
AAFP Tobacco Cessation Office Champions pilot project award, 2011
Hershey Medical Center Organizational Goals & High Priority Projects Appreciation Luncheon, 2011
Hershey Medical Center Patient Satisfaction Recognition, 2011

Community Service:
Big Brothers, Big Sisters of Lancaster County, Board of Directors, 1987-1993; President, 1990
Honorary Director, 1993-present
Susquehanna Service Dogs, 2001–2004

Personal Information:
Birth date: September 26, 1956
Marital Status: Married
Wife: Jane Weida, M.D., FAAFP
Children: Nicholas, age 26; Katherine, age 24; Emily, age 22; Peter, age 19
Step Children: Amy, age 32, Cindy, age 26
Hobbies/Interests: Photography, Music, Art, Golf, Travel

Updated: 12/20/2012
Pennsylvania Bar Association Testimony Concerning
House Bill 79 Before the House Judiciary Committee

Good morning, Committee members and staff. I am Thomas G. Wilkinson, Pennsylvania Bar Association President, representing the 28,000 members of the Association. Thank you for inviting us to testify concerning the possible extension of the judicial retirement age for justices, judges and justices of the peace from 70 to 75 years of age.

Our members are keenly interested in legislation impacting our judiciary, and we appreciate the invitation to submit testimony that you may find helpful in your deliberations. The bill under consideration, which has been widely distributed to various committees and sections of our Association for comment, would amend Section 16(b) of Article V of the Constitution, and thus would require a majority vote of two consecutive sessions of the General Assembly as well as an affirmative vote by the electorate.

The current status of consideration of this bill within our Association is that a resolution emanating from our Judicial Administration Committee favoring the bill is scheduled to be considered by our Board of Governors and House of Delegates, which serves as our policymaking body, in May. We would be pleased to convey the outcome of those discussions to this Committee.

Recognizing that the PBA has not yet adopted a policy on the issue, we are prepared to offer various considerations on both sides of the matter that our members and staff have developed in their due diligence process to date. First, I will briefly review the arguments in favor, and then I will discuss the concerns that have been expressed about extending the judicial retirement age.

The arguments in favor include: (1) the average life expectancy has lengthened since the time the current mandatory retirement age was adopted; (2) many federal judges sit and perform at a high level well beyond age 70; (3) the justice system benefits from the experience and wisdom of long-serving judges; (4) there is a system in place to remove judges for misconduct or failure to perform duties; (5) modern American society's general rejection of judging people based on generalizations; and (6) the people should be empowered to decide the age of mandatory judicial retirement.

Mandatory judicial retirement was a result of the 1967-1968 Constitutional Convention. However, between 1970 and 2010 life expectancy for those already 65 years of age, according to the CDC, has increased from 15.2 to 19.1 years. If the life expectancy for a 65-year-old is now 84, it makes little sense to adhere to a mandatory retirement age of 70.
The federal judiciary has no mandatory retirement age. At the present time there are more than a dozen senior district judges older than 70 accepting case assignments in the Eastern District of Pennsylvania alone. Were there a mandatory retirement age of 70, Supreme Court Justices Breyer, Ginsburg, Kennedy, and Scalia would not be allowed to serve.

In *The Federalist No. 78*, Alexander Hamilton argued in favor of lifetime judicial appointments. Hamilton made two arguments that justify increasing the mandatory retirement age: the length of time it takes to master the law and that a temporary appointment will inhibit the best from becoming a judge. Why retire a productive judge with significant and valuable experience?

There is in place a process to remove judges. Article V, Section 18 of the Constitution provides for a Judicial Inquiry and Review Board, and for the removal of any justice or judge. The Supreme Court has adopted Rules of Judicial Procedure for the Court of Judicial Discipline and for the Judicial Conduct Board, which has jurisdiction to address any complaint arising under the Code of Judicial Conduct.

Significantly, our society has largely rejected judging people based on general characteristics. Instead, we judge people as individuals, recognizing that to do otherwise risks stereotyping. The federal Age Discrimination in Employment Act (ADEA), when enacted, prohibited discrimination against those 40 to 65 years of age; the upper limit was raised to 70 in 1978 and discarded completely in 1986. No institution is more important in ensuring that fundamental rights are protected than the judiciary, and yet in Pennsylvania, we stereotype judges by making them retire at 70. The fact that we already have a substantial number of senior judges sitting by appointment shows that state court judges can function effectively and productively beyond age 70.

Finally, as the drafters of the 1967-68 constitutional amendments intended for the people to have a say on the retirement age of judges, House Bill 79 should be passed as the first step to placing the issue before the voters.

The arguments against House Bill 79 include: (1) the current system affords an opportunity for senior judges to serve, but simply in a different capacity; (2) other states' practices; (3) concerns over declining mental and physical capacity among seniors; (4) the need for turnover on the bench; (5) avoiding potentially creating a shortage of judges; and (6) the uncertain financial and budgetary impacts of altering the current system.

Under the current system, judges who reach age 70 and who have shown that they are competent to continue to serve and whose services are needed in a particular county may apply to be certified as a senior judge with the approval of the Supreme Court. This system affords flexibility to address the caseload on a county-by-county basis and serves as a screen to ensure that well-qualified senior judges satisfy established criteria for service.

According to the National Center for State Courts, 24 other states have a mandatory retirement age below 75, 19 of which require retirement at 70. These provisions suggest some
broad-based consensus that judges should retire at a certain age and that such a retirement requirement is not unusual.

Judges have great power over people’s lives, and judges operating with some mental impairment or incapacity can do real harm. Reference Manual No. 1 prepared for the delegates of the 1967-1968 Pennsylvania Constitution Convention by the Preparatory Committee chaired by Lieutenant Governor Raymond Broderick noted, “Problem judges who neglect their duties or mistreat counsel or witnesses or whose age or health render them incapable of performing normal duties of their offices are not numerous, but completely destructive of judicial processes when they exist.” Given that we do not yet have a system for regular judicial performance assessment, and the vast majority of judges succeed in retention elections, the mandatory retirement age is a key tool for preventing less than capable judges from continuing to serve on the bench.

During the 1967-1968 Constitutional Convention, Delegate Strickler stated:
[Speaking for the sub-committee on Retirement, this committee considered this for a long time . . . . There are a lot good men who have to retire. All in all, considering age, a lot of them cannot function properly after 70. We feel the Constitution should state that specifically.

This statement still has some validity. A new study from the RAND Corporation estimates that almost 15 percent of Americans at least 71 have dementia as of 2010. Moreover, the “risk for dementia doubles every five years after age 65.” Hence, moving the judicial retirement age to 75 places citizens at some risk of appearing before an impaired judge.

Some of our members, particularly in rural counties with fewer judges, have expressed the view that there is a natural time for turnover on the bench, and there should be opportunities for well-qualified attorneys to seek judicial office. Extending the retirement age would tend to reduce the frequency of such opportunities.

Concern also has been expressed that extending the retirement age could decrease the number of available judges per county. Under the current system, a county has its allotment of judges and can also have senior judges sit per assignment. With a retirement age of 75, the judicial allotment per county will not increase, but the number of senior judges would likely decrease.

Finally, it is unclear at this stage what the budgetary impacts would be if the legislation were adopted. As noted, presumably the ranks of senior judges (currently numbering over 100 in the Common Pleas courts) would dwindle and some judges reaching the age of 70 would not desire to remain on the bench in a full-time capacity. While the actual financial impact may be revenue neutral over time, the fiscal consequences deserve further examination.

Regardless of the direction Pennsylvania proceeds, a careful review of the judicial retirement age is also an opportunity to consider the benefits of establishing a statewide judicial performance assessment system, in order to ensure that each and every judge maintains the competency and productivity the public has a right to expect. A PBA Task Force on Judicial
Performance Assessment has worked for several years developing a model for judicial performance assessment that would review a judge's performance in several critical areas, including performance and management, temperament and demeanor, and objectivity. Such a system would help to identify and address those hopefully rare instances where a judge no longer has the capacity to serve. A fair assessment system would help to ensure that all judges, particularly those more senior, would continue to serve the public effectively through retirement.

Thank you.

1 The Judicial Administration Committee's charge is to review, study and make recommendations concerning legislative issues regarding the operation, procedure and reform of the state and federal court systems. The committee also develops and recommends measures seeking to improve the administration of the courts and issues of court reform consistent with established PBA policy.


TESTIMONY OF KATHLEEN D. WILKINSON
CHANCELLOR, PHILADELPHIA BAR ASSOCIATION,
BEFORE PENNSYLVANIA HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE – SUBCOMMITTEE ON COURTS
REGARDING HB 79 – MANDATORY RETIREMENT AGE
FOR JUDGES IN THE COMMONWEALTH

Thursday, April 18, 2013
Harrisburg, PA

Good morning, Chairman Grell, Chairman Sabatina, Representative Harper, and members of the House Judiciary Committee Subcommittee on Courts. I am Kathleen Wilkinson, partner at the Philadelphia law firm of Wilson Elser Moskowitz Edelman & Dicker LLP and Chancellor of the Philadelphia Bar Association. On behalf of the 13,000 members of the oldest association of lawyers in the United States, thank you for the opportunity to be here today.

The Philadelphia Bar Association has a long history of advocating for a high-quality judiciary that wisely interprets and fairly applies the laws you enact.

We applaud the General Assembly for taking a strong interest in the viability of our courts and in the quality of justice afforded to our citizens.

I would like to begin by noting that the Philadelphia Bar Association has not taken an official position on House Bill 79. Additionally, my testimony here today does not address recent lawsuits challenging mandatory retirement pending before the state Supreme Court and U.S. District Court.

Current law requires judges to retire with an option to go on senior status at age 70. Judges are the only elected officials in the state who are required to step down at a certain age. No elected members of the executive or legislative branches of government face such a requirement.

Of course, Pennsylvanians have an important interest in maintaining a judiciary fully capable of performing the demanding tasks of judicial office.

At the same time, judges can perform their duties credibly, and indeed sometimes with great distinction, at advanced ages.

One need only consider the examples of Oliver Wendell Holmes, Louis Brandeis, and Billings Learned Hand to confirm this point. Each performed with distinction into his 80s. As such, members of the judiciary can be expected to have a substantial stock of productive years even after attaining age 70. Currently, four Justices of the United States Supreme Court – Ruth Bader Ginsberg, Stephen Breyer, Antonin Scalia and Anthony Kennedy – are over 70 years old. Their vigor and intellect are undiminished.
Thirty-three states and the District of Columbia have set mandatory retirement ages. Many states and the federal system recognize that older judges can continue to adjudicate full-time beyond their 70th birthdays.

The federal judiciary permits judges to remain active – that is, full-time – as long as they wish. Federal judges may choose to take senior status once they have been a federal judge at least 10 years and their age plus years on the bench add up to at least 80. This is called the “rule of 80.”

Senior federal judges who continue to work at least a third of the case load of an active judge in their court must be “certified” each year by their court’s chief judge and the chief judge of their circuit. Yearly certification is a given unless there is some impairment or if there are issues in the nature of personnel problems with the judge. No active judge can be removed without impeachment or being adjudicated an incompetent. Once a federal judge elects senior status, an active judgeship opening is created.

Pennsylvania also maintains a senior status system. According to the Pennsylvania Rules of Judicial Administration, a Pennsylvania judge must be at least 65 years old on the date on which he or she begins senior service, or have a combination of years of judicial service plus age that totals at least 80. In most cases, senior status ends on the last day of the calendar year in which a judge reaches age 78.

While an increase in the mandatory retirement age from 70 to 75 could introduce competency concerns, mechanisms already exist to address such issues. It is also within the purview of the Judicial Conduct Board of Pennsylvania to address complaints of mental or physical disability, in instances in which a judge is either mentally or physically unable to perform his or her duties.

The increased longevity of the general population, including the judiciary, makes it important to inquire periodically whether adjustments to mandatory retirement ages are justified.

The mandatory retirement provision has existed since 1969, at which time the life expectancy of the average person was approximately 70 years. By contrast, the current life expectancy is approximately 78 years because of healthier lifestyles, medical advances and environmental conditions.

Additionally, the expanding use of technology enables older judges to remain productive past 70. An increased mandatory retirement age would not necessarily reduce the quality or quantity of judicial output.

Of course, an increase in the mandatory retirement age is likely to cause incumbent judges to remain on the bench longer, thereby reducing the number of openings available for typically younger, aspiring judges. This past Sunday, the Baltimore Sun reported on the impending retirement of Robert M. Bell, Chief Judge of the Maryland Court of
Appeals, who will reach Maryland’s mandatory retirement age of 70 this July. Bell told the reporter for the Sun, “As time passes, you need the infusion of new energy and new visions and new ideas. You’re more likely to get that with new blood.”

While Judge Bell raises a good point, an extended retirement age may also serve to attract qualified lawyers at the height of their careers to run for the bench who otherwise may have thought that it was too late for them to do so.

An extended retirement age may also be a boon for women, who often experience career interruptions due to family obligations early in their careers and therefore may not feel ready to sit on the bench until later in their professional lives than their male counterparts. In addition, women have a greater average life expectancy than men.

What is clear is that judges of both genders can expect to live significantly beyond the current mandatory retirement age of 70.

In summary, increased longevity, technological developments, and other demographic trends make a compelling argument for an upward adjustment in the current mandatory retirement age of 70. As Representative Harper has indicated, by giving judges more time on the bench, the Commonwealth and its citizens will benefit from the knowledge, experience and temperament of seasoned jurists.

Thank you for the opportunity to address the Subcommittee on this issue of vital importance to our lawyer members and our community.
Testimony of Joseph J. Mittleman, Director of Judicial Programs, Administrative Office of Pennsylvania Courts
before the House Judiciary Committee Sub Committee on Courts
HB 79 – Judicial Retirement
April 18, 2013

Senior Judges in the Pennsylvania Unified Judicial System

Authority

- The authority for retired judges to perform judicial duties is found in the Constitution at Article V, Section 16(c) which states, "A former or retired justice or judge may, with his consent, be assigned by the Supreme Court on temporary judicial service as may be prescribed by rule of the Supreme Court."
- Rule 701 of the Rules of Judicial Administration prescribe the rules for certification and assignment of senior judges.
- Various sections of the Judicial Code contain some of the provisions of Rule 701.

Becoming a Senior Judge

- The requirements to qualify as a senior judge as set forth in statute and in rule are as follows:
  - Shall have served at least one full term of office (or, if an MDJ retiring due to reaching age 70, have served at least 5 years.)
  - Shall not have been defeated for retention or reelection.
  - Must be at least sixty-five years of age or have a combination of age plus years of service that totals at least eighty. (Applies to judges seeking senior status on or after January 4, 2010.)
  - Cannot serve after December 31 in the year in which the judge reaches age seventy-eight.
  - Cannot serve as a senior judge for more than ten years absent extraordinary circumstances and the approval of the Chief Justice. (Applies to judges entering senior status on or after January 1, 2008.)
- Judges seeking to be certified as a senior judge must complete an application on a form approved by the Supreme Court. Most judges apply for certification before retirement so there is no gap between commissioned service and senior service. Judges are permitted to delay certification after retirement and engage in other activities such as the practice of law and seek certification at a later time.
- Applications are submitted to the Court Administrator of Pennsylvania and if the applicant meets all criteria, the judge is certified for senior service.
Number of judges certified as of 4/18/2013:

<table>
<thead>
<tr>
<th>Court</th>
<th>Judges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Superior Court</td>
<td>5</td>
</tr>
<tr>
<td>Commonwealth Court</td>
<td>4</td>
</tr>
<tr>
<td>Common Pleas</td>
<td>102 (from 42 different counties)</td>
</tr>
<tr>
<td>Philadelphia MC</td>
<td>3</td>
</tr>
<tr>
<td>MDJs</td>
<td>114 (from 44 different counties)</td>
</tr>
<tr>
<td>Traffic Court</td>
<td>1</td>
</tr>
</tbody>
</table>

Assignment of Senior Judges

- Once certified, a senior judge is eligible for service anywhere in the state, although judges most typically sit in the county in which they had previously served or in counties nearby.
- Senior judges are assigned at the request of the president judge of an appellate court or a judicial district.
- Requests are submitted electronically to the Court Administrator of Pennsylvania for review and if an out-of-county judge is requested, for obtaining a judge. Requests are then submitted to the Chief Justice for approval.
- The president judge is required to state the reason for the request - a vacancy, a need for additional judicial resources to alleviate caseload, or the need for an out-of-county judge for a particular case.
- Appointment is either for a designated period of time or, when an out-of-county judge has been requested, for the duration of that specific case.
- Senior judges must abide by all restrictions placed upon commissioned judges except that senior judges do not have to live in the district from which they were elected; they do have to remain residents of Pennsylvania. Senior MDJs must continue to fulfill the annual continuing education requirements.
- Counties are expected to provide adequate facilities and support for senior judges, the costs for which are offset by the Senior Judge Support Reimbursement Grant as appropriated annually by the General Assembly.

Compensation

- Judges are paid the per diem rate as established by the General Assembly for each day of service.
- There is a statutory limit that a senior judge's per diems plus salary cannot exceed the salary of a commissioned judge of the same level.
- To ensure the prudent expenditure of the senior judge appropriation, we impose an administrative limit that a senior judge can only be paid for ten days per month. If a judge works more than ten days in a month, at the end of the fiscal year, if there are funds remaining in that appropriation, the money is distributed
pro rata for the unpaid days that the judges worked to at least give them a partial payment. In the 2011-12 fiscal year, common pleas judges worked a total of 962 days for which they received no compensation.

- Senior judges are also reimbursed for reasonable expenses - travel mileage, meals, and when necessary, overnight accommodations, subject to the approval of the AOPC.
Relevant Statutes and Rules

42 Pa.C.S.A. § 102. Definitions

* * * *

**Senior magisterial district judge.** A former or retired magisterial district judge who retires or otherwise vacates office after January 1, 1970, who has served at least one complete six year elected term as a magisterial district judge, and who, with his consent, is assigned on temporary magisterial service pursuant to section 4122(b) (relating to assignment of senior magisterial district judges).

**Senior judge.** A former or retired judge who shall not have been defeated for reelection and shall have served as a judge (whether or not continuously or on the same court) by election or appointment for an aggregate of at least ten years and any duly elected judge having an aggregate of six years of service as a judge who is required to retire at age 70 and who, with his consent, is assigned on temporary judicial service pursuant to section 4121(b) (relating to assignment of judges).

42 Pa.C.S.A. § 1906. Senior judge operational support grants

**(a) Program.**—The Court Administrator of Pennsylvania shall create a program to defray the costs imposed on counties by the rules of judicial administration for facilities and staff for senior judges assigned to the courts of common pleas.

**(b) Availability.**—Grants will be made available to counties based on the level of operational support provided by a county to:

1. Senior judges formerly of the judicial district in which the county is situated who are regularly or periodically assigned in that county or who are assigned pursuant to section 4544 (relating to convening multicounty investigating grand jury).

2. Visiting senior judges.

**(c) Purpose.**—Grants will be made available to counties to reimburse them for operational support provided by the county during the preceding calendar year. Grants will be calculated based on use of judicial chambers, utilization of the services of a law clerk and utilization of the services of a secretary, which chambers or services are deemed adequate and appropriate by the Administrative Office as follows:

1. Use of judicial chambers will be reimbursed at the rate of $60 per day, billable in one-half-day increments.

2. Utilization of services of a law clerk will be reimbursed at $20 per hour.

3. Utilization of services of a secretary will be reimbursed at $12 per hour.

**(d) Reimbursement.**—Counties will be reimbursed upon timely application by the board of commissioners or, in the absence of a board of commissioners, the executive authority of the county or, in the case of a county which is coterminous with a city of the first class, the
mayor of the city of the first class. The application shall be certified by the president judge
of the judicial district in which the county is situated, shall include such documentation as
may be required by the Administrative Office and shall be submitted as follows:

(1) Applications for reimbursement for operational support provided by counties during
calendar year 2001 shall be submitted by April 1, 2002, and grants shall be paid by June
30, 2002.

(2) The due dates for applications for operational support provided during calendar years
beginning January 1, 2002, and thereafter shall be established by the Court Administrator of
Pennsylvania.

(e) Minimum standards.--The Administrative Office shall set forth minimum standards
regarding adequacy, appropriateness and quality of judicial chambers and services required
to qualify for reimbursement.

(f) Reduction.--In the event that the total reimbursement qualifying for payment for any
calendar year exceeds the amount appropriated by the General Assembly for such purpose,
the Court Administrator of Pennsylvania shall proportionally reduce the grant for each
county so that the total of all grants does not exceed the amount appropriated.

(g) Limit on grant amount.--No county shall receive more than 20% of the amount
appropriated for senior judge operational support grants in any fiscal year.

(h) Report.--Not later than 60 days following payment of grants for any year, the Court
Administrator of Pennsylvania shall make a report to the Appropriations Committee of the
Senate and the Appropriations Committee of the House of Representatives setting forth the/payments made to counties and the services provided.

(i) Expiration.--This section shall expire on June 30, 2017, unless reenacted prior to that
date.

42 Pa.C.S.A. § 4121. Assignment of judges

(a) General rule.--Subject to general rules any judge may be temporarily assigned to
another court and may there hear and determine any matter with like effect as if duly
commissioned to sit in such other court.

(b) Senior judges.--A senior judge may, with his consent, be assigned on temporary
judicial service pursuant to subsection (a).

(c) Exception.--Only a judge who is a member of the bar of this Commonwealth shall be
temporarily assigned to a court to which only members of the bar of this Commonwealth
may be appointed or elected pursuant to section 3101 (relating to qualifications of judicial
officers generally). A judge of the Pittsburgh Magistrates Court or the Traffic Court of
Philadelphia may be temporarily assigned to a magisterial district with the same effect as an
assignment pursuant to section 4122 (relating to assignment of magisterial district judges).
42 Pa.C.S.A. § 4122. Assignment of magisterial district judges

(a) General rule.—Subject to general rules any magisterial district judge may be temporarily assigned to any other magisterial district or the Pittsburgh Magistrates Court or the Traffic Court of Philadelphia, and may there hear and determine any matter with like effect as if duly commissioned to sit in such other district or in such court.

(b) Senior magisterial district judges.—A senior magisterial district judge who shall not have been defeated for reelection or been suspended or removed from office may, with the senior magisterial district judge's consent, be assigned on temporary magisterial service pursuant to subsection (a). A senior magisterial district judge shall be paid a per diem salary at the same annual rate as is applicable in the district where the senior magisterial district judge is temporarily assigned and shall receive expenses at the same per diem rate as other magisterial district judges temporarily assigned.

(c) Additional compensation.—A magisterial district judge, assigned by the president judge of the court of common pleas to perform additional duties for a district other than the one in which the magisterial district judge is elected, shall be entitled to receive additional compensation of $20 per day when the magisterial district judge performs assigned duties, except that no additional compensation shall be allowed for routine duties scheduled by the president judge of the court of common pleas. Any assignment, compensable under this subsection, for which the per diem exceeds $100 a calendar month shall be approved by the Court Administrator of Pennsylvania.

42 Pa.C.S.A. § 4123. Assignment procedure

The procedure for effecting temporary assignments of judges and magisterial district judges, the kind, amount and method of payment for travel, lodgings and subsistence, and all other matters related to such temporary assignments, shall be governed by general rules established by the Supreme Court except as otherwise specifically provided.

42 Pa.C.S.A. § 4124. Assignment of senior Philadelphia Municipal Court judges

A senior judge of the Philadelphia Municipal Court who has not been defeated for reelection or suspended or removed from office and who has served an aggregate of four years as an elected judge and who is required to retire at age 70 may, with his consent, be assigned on temporary judicial service to that court.

Rule 701. Assignment of judges to courts.

(A) Conditions Applicable for the Certification of Senior Magisterial District Judges, Judges or Justices.
(1) To be eligible for senior certification, a magisterial district justice, judge or justice:

(a) shall have served as a magisterial district justice, judge or justice, whether or not continuously or on the same court, by election or appointment for an aggregate period equaling a full term of office;

(b) shall not have been defeated for reelection or retention; and

(c) shall be at least sixty-five years of age on the date on which he or she begins senior service, or have a combination of years of judicial service plus age that totals at least eighty. However, this subsection (c) shall not apply to those serving in senior status as of the effective date of this rule.

(2) In addition to paragraph (1), any duly elected district justice, judge or justice, having an aggregate of five years of judicial service, who is required to retire at age seventy, shall be eligible for certification.

(3) Senior status shall end on the last day of the calendar year in which a magisterial district judge, judge or justice attains age seventy-eight; however, those serving in senior status as of the effective date of this rule who were previously excepted from the age seventy-five limitation pursuant to the amendment of January 1, 1999 may continue to serve until the last day of the calendar year in which they attain age eighty.

(4) For certification of senior status, a district justice, judge or justice shall verify such additional information as required by the application for certification forms authorized under paragraph (B) below.

(5) A magisterial district judge, judge or justice may only be certified for senior status for a maximum of ten years, absent extraordinary circumstances, as determined by the Chief Justice. However, those serving in senior status as of the effective date of this rule may continue to serve until subject to the age limit of paragraph (3) above.

(B) Certification of Senior District Justices, Judges and Justices. The Administrative Office shall promulgate application forms, as approved by the Supreme Court, for certification of senior district justices, judges and justices. A former or retired district justice, judge or justice who requests assignment to temporary judicial service shall file the application for certification form with the Administrative Office, and, upon approval, shall be eligible for judicial assignment. Failure to comply with the provisions contained in the application form may result in the immediate revocation of senior certification.

(C) Request for the Assignment of Additional District Justices or Judges.

(1) Request for Assignment. Whenever a president judge deems additional judicial assistance necessary for the prompt and proper disposition of court business, he or his proxy shall transmit a formal request for judicial assistance to the Administrative Office. The request may be made in writing or it may be transmitted electronically.
An electronic request for judicial assistance shall be accomplished through a secure program developed by the Administrative Office for this purpose.

(2) Recommendation by the Court Administrator of Pennsylvania and Action by Chief Justice. Upon the recommendation of the Court Administrator, the Chief Justice may, by order, assign any retired, former, or active district justice, judge or justice to temporary judicial service on any court to fulfill a request by a president judge, or to reduce case inventories, or to serve the interest of justice. The order entered by the Chief Justice may be electronically transmitted to the Administrative Office of Pennsylvania Courts for processing.

Orders entered pursuant to this chapter may be transmitted by the Administrative Office to the Supreme Court prothonotary in hard copy or electronically. Electronically transmitted orders shall be docketed by the Supreme Court prothonotary in the same manner as hard copy orders. Electronically transmitted orders need not be printed by the Supreme Court prothonotary unless a request for public review is made.

(3) Duration of Assignment. Unless otherwise provided in the order of assignment, the order shall continue in effect after its stated expiration date until unfinished business pending before the assigned judge is completed.

(4) Certification of Service. The president judge of a district to which a district justice or judge has been temporarily assigned under this rule shall certify to the Administrative Office, on a certificate completed and signed by the assigned district justice or judge, the number of days of temporary judicial service and the amount of any compensation to which the assigned judge is entitled.

(5) Expenses of Assigned Judges. All judges assigned to duties outside of their judicial districts may, in addition to any per diem payment authorized by law, be reimbursed with the approval of the Court Administrator for necessary expenses, including hotel accommodations and meals, incident to such duties.

(6) Restrictions on Temporary Assignments. No judge shall be assigned under this rule to any court while any judge thereof is assigned to another court under this rule, except when required to take the place of a judge who is recused or disqualified, or is otherwise unavailable, or under other appropriate circumstances.

(7) Ceremonial Functions. District justices, judges and justices on temporary assignments shall have authority to conduct ceremonial functions, including performing weddings and administering oaths.

(D) Judicial Assignment Records. The Administrative Office shall maintain records of certification applications and assignments to temporary judicial service.

(E) Regional Administrative Units.

(1) Judicial districts through their president judges may petition the Supreme Court for approval to combine with other districts to form regional administrative units that provide for the assignment of district justices and judges to any other judicial district in the unit. Upon annual approval by the Supreme Court, district justices and judges,
when so assigned, shall exercise the same power and authority as vested in a district justice or judge of that judicial district.

(2) In cases where a judge has disqualified him or herself for any of the reasons specified in Canon 3 C of the Code of Judicial Conduct, the assignment of another judge to the case shall be made through the Administrative Office. In other instances of recusal, the assignment may be made through the Regional Unit, but in no case shall a recusing judge select his or her replacement.

(3) Each regional unit shall file with the Administrative Office a quarterly report of all assignments that occurred within the unit for that period.

(F) Suitable Facilities and Staffing for Senior Common Pleas Judges. Suitable facilities and adequate staff are to be provided for senior judges, the parameters of which are to be determined and promulgated by the Administrative Office.

Directive: In accordance with Rule of Judicial Administration 701(F), the Administrative Office of Pennsylvania Courts promulgates this directive establishing minimum standards for suitable facilities and adequate staff for the senior judges of the courts of common pleas.

The president judge of a judicial district, in consultation with the Court Administrator of Pennsylvania as needs may require, shall provide from available resources for each senior judge formerly of the judicial district who is regularly or periodically assigned in that district and for each visiting senior judge the following facilities and staff for matters arising under the appointment:

(1) the use of judicial chambers which shall be of adequate size and appropriately furnished, afford a measure of privacy, and include office equipment and supplies as are necessary to conduct judicial business;

(2) services of a law clerk who shall provide customary assistance including legal research and drafting of legal documents; and

(3) services of a secretary who shall provide customary assistance including typing correspondence, orders and opinions, answering phone calls and taking messages, receiving and sending mail and deliveries.


The annual judicial salaries for calendar year beginning January 1, 2013 will be adjusted by a cost-of-living factor as follows:

* * * *

(h) Senior judges. The compensation of the senior judges pursuant to 42 Pa.C.S. § 4121 (relating to assignment of judges) shall be $534 per day. In any calendar year the amount of compensation which a senior judge shall be permitted to earn as a senior judge shall not when added to retirement income paid by the Commonwealth for such senior judge exceed
the compensation payable by the Commonwealth to a judge then in regular active service on the court from which said senior judge retired. A senior judge who so elects may serve without being paid all or any portion of the compensation provided by this section.