

ADAM PAGNUCCO, JUDICIAL ELECTIONS

SITTING JUDGES CHAIR RESPONDS TO LOCK EM UP POST

JUNE 25, 2020

By Adam Pagnucco.

Sitting Judges slate chair J. Stephen McAuliffe sent us the response below to our [post on challenger Marilyn Pierre's "Lock em up" tweet](#).

As Ms. Pierre had an opportunity to respond to your article titled "[Judge Candidate on Floyd Cops: 'Lock Em Up,'](#)" the Sitting Judges Montgomery County Slate ("Sitting Judges") would appreciate the opportunity to respond as well.

First, the Sitting Judges appreciate the time and effort you took to construct your article, particularly relating to identifying the legal and factual inaccuracies in Ms. Pierre's tweet of June 1, 2020. The statements made by Ms. Pierre were made the day before the Primary Election and obviously intended to benefit her campaign. You pointed out Ms. Pierre's flawed conflation of crimes and civil causes of action, and her confusion of the appropriate burdens of proof in criminal matters. These are very basic legal concepts that Ms. Pierre either does not understand or ignores.

There might be some misunderstanding by your readers of why judges do not speak on pending criminal or other court matters or on political and socially charged issues, as do candidates for other offices. Your article indicates the reason is "because most are vetted by judicial nominating commissions and appointed by the governor"...and that [i]ncumbents who have gone through the vetting process claim that its thoroughness qualifies them as a judge and therefore should be respected by voters." Your article implies that judges are intentionally silent because they want to rest entirely on vetting, but it is far more than that. While vetting is important, this assertion misses the opportunity to inform the public that judges are obligated to comply with the Maryland Code of Judicial Conduct. *See* Maryland Rules 18-100.1 *et seq.* Restraint is necessary to maintain the integrity of the judicial system, which is why compliance with the Code of Conduct is mandatory.

Vetting of applicants for judicial positions is essential. Judges sit for a 15-year term, and have the ability to substantially impact the litigants that come before them. Vetting includes talking to lawyers who have been adverse to the applicant, judges in front of whom the applicants have appeared, organizations in which the applicant asserts she participated, and references provided by the applicants. Judges who are ill prepared, inflate their qualifications, are intemperate or who lack legal skills and acumen could not only ruin the lives of the people and businesses that

appear before them, but could also do immeasurable damage to the confidence of the community in our justice system. The vetting process is vital because it helps weed out those who, for example, have shown throughout their career a lack of understanding of fundamental legal concepts and the inability to articulate them, and who lack the temper and demeanor to be a good judge; it weeds out bad lawyers who will make bad judges.

Ms. Pierre applied nine (9) times for fourteen (14) different judicial vacancies in Montgomery County between 2012 and 2017. She was vetted numerous times over the years by many different specialty and minority bar groups, which reported their findings and recommendations to the Montgomery County Trial Courts Nominating Commission. Her applications were vetted and reviewed by Commissions appointed by both a Democrat (O'Malley) (5 applications for 9 positions) and a Republican (Hogan) (4 applications for 5 positions). Commissions are charged with the responsibility to nominate only lawyers "most distinguished for integrity, wisdom and sound legal knowledge" as set forth in the Constitution of Maryland. Ms. Pierre has never been nominated by any Commission and no longer participates in the vetting process.

Restraint is a fundamental requirement of the duties of this office. A judicial candidate who takes seriously the responsibility and duties of this office should never opine about the guilt or innocence of anyone before that individual has set foot before a jury of his or her peers, or been convicted of any crime, or pleaded guilty. Even then, judges remain silent, to avoid the appearance of bias or partiality. Judicial candidates, including Ms. Pierre, are bound by the same canons of ethics as judges in many respects. Rule 18-104.4 provides, in pertinent part, that judicial candidates:

(a) "shall act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary and maintain the dignity appropriate to judicial office"

Ms. Pierre has made statements that evidence partiality, in her tweets and elsewhere, in effort to gain favor at the polls. She has done so without consideration to the damage that a failure to understand or apply the burden of proof would have on this community, including on criminal defendants of color.

(b) "As to statements and materials made or produced during a campaign: (1) shall review, approve, and be responsible for the content of all campaign statements and materials produced by the candidate or by the candidate's campaign committee or other authorized agents" and (2) "shall take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities that the candidate is prohibited from doing by this Rule."

Ms. Pierre's tweet is consistent with her poor reputation in the legal community, and so her belated claim (made 3 weeks after the tweet and after any intended damage to the Sitting Judges Campaign was done) that a "volunteer" made the tweet is suspect at best. Frankly, the tweet is similar in style to prior social media posts by the candidate, but candidates are responsible for content regardless of authorship.

(c) “shall not knowingly, or with reckless disregard for the truth, misrepresent the candidate’s identity or qualifications, the identity or qualifications of an opponent, or any other fact, or make any false or misleading statement;”

Ms. Pierre has made blatantly false statements, including that “The sitting judges are somewhat diverse in that they are black, Asian, gay and straight, men and women. But they are not really diverse. They are an in-group. Most of them have worked at the same law firm, go to the same church, and are related by marriage.” While the statement that the sitting judges are diverse is true, her statement that “most of them have worked at the same law firm” is blatantly false. Her statement that they “go to the same church” is blatantly false. Her statement that “most of them are related by marriage” is blatantly false. These statements are not the only false statements made by Ms. Pierre during this campaign and her last campaign. The sitting judges in Montgomery County are indeed an “in-group” to the extent they have all been vetted and found qualified to sit as judges, and Ms. Pierre is certainly not in that “in-group.”

What the Sitting Judges Montgomery County Slate want to make clear is that sitting judges remain silent because they follow the Rules. Judges agreed to sacrifice their individual First Amendment freedoms for the good of the community they serve. They behave at all times (personally and professionally) in a manner consistent with the independence, integrity, and impartiality of the judiciary and maintain the dignity appropriate to judicial office. Ms. Pierre flouts that obligation now, and there is no reason to believe she will behave differently in the unfortunate event that she is elected.

Thank you.

J. Stephen McAuliffe, Chair
Elect Sitting Judges Montgomery County Slate

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