



**STATE OF MICHIGAN
54A JUDICIAL DISTRICT COURT**

JUDGE HUGH BARRINGTON CLARKE, JR
Phone: (517) 483-4441
hugh.clarke@lansingmi.gov

JUDGE FRANK J. DELUCA
JUDGE LOUISE ALDERSON
JUDGE STACIA BUCHANAN

November 29, 2018

Hon. Jim Runestad, Chairperson
House Judiciary Committee
P.O. Box 30014
Lansing, MI 48909

Re: Substitute for HB 6344

Dear Chairman Runestad:

I write in opposition to HB 6344 which was brought before the House Judiciary Committee Tuesday November 28, 2018. I was not aware that this legislation was set for a hearing and therefore I did not attend to address the committee on this legislation. After a call from a local reporter, I spoke with Mr. Carnegie and he indicated he would transmit any written comments I had to you and your committee members.

I oppose HB 6344 for several reasons. First and foremost, I believe this legislation will lower the ability to elect judges of color and thereby promote a diverse bench in Ingham County. Currently, Lansing has approximately 25% registered African American voters. Once elections are held county wide, that number of African American votes county wide plummets to 12%.

Over the past 38 years I have watched and worked on judicial and partisan election campaigns and I can attest that it is and continues to be difficult to get an African American elected to a countywide judicial position. In those 38 years, 3 African Americans have been elected to the judiciary who have run countywide. One this year, but she was unopposed for the Probate Court seat. The other two were elected approximately a decade or so apart from each other. Unlike those who appeared before the committee and may have conveyed their thoughts that this is not an issue, I am positive they do not bring the hands on experience in such elections as I do. Imagine how difficult your individual race might be if you effectively lost 13% of your base of support?

Second, by merging these courts, we will lose the ability to have racially diverse jury pools for selection at trial. Unlike many of the folks who worked on this legislation, none of them have the 30 plus years of jury trial experience that I had before being appointed to the 54A District Court in 2010. During that 30

year period, I tried hundreds of cases literally. My trials ranged from simple misdemeanors to complex murder cases and federal fraud cases. I can attest to the fact that in selecting a jury in Lansing (54A District Court) there are people of color represented in the pool.¹ The 54B (East Lansing) and 55th District Courts (balance of Ingham County) generally have no people of color in the jury pool. I can also attest that when selecting juries in the 30th Circuit Court when a typical homicide case would bring in a potential 60 jurors, all too often there were no people of color in the jury pool. At times there were no more than one (1) person out of the 60. Clearly, there was no diversity in those jury pools. I fear that will occur again if we have to select jurors on a countywide basis.

Now, this legislation provides that if a criminal offense occurs in Lansing (54A) that a jury of Lansing only citizens will be empaneled; East Lansing offense East Lansing jury and an offense anywhere else in Ingham County would be from the balance of the county. Aside from the potential confusion of handling 3 geographically separate jury pools for one court, this is a disaster waiting to happen. This is a poor attempt to respond to my concerns about the jury pool. If all three courts are merged, we will become a district court of the first class as set forth in this legislation. MCL 600.1307a(1) (a) provides the specific qualifications to be a juror: a United States citizen, 18 years of age or older and a resident in the county. The only exception is that if the district court is a court of the second or third class, the person need only be a resident of the district. With consolidation, there will be no second or third class district court.

Currently 54A (Lansing) District Court is a district court of the third class, therefore we select jurors from the City of Lansing proper. There are no other exceptions. The current proposed legislation if passed would set up a conflict among these two statutes of which protracted litigation would surely follow if the court tried to select a jury other than by the requirements of MCL 600.1307a. Unless I am mistaken, we would be the only court in the state operating outside of the specific statute. Additionally, I am sure this would open the floodgates for other district courts to want "me too" legislation to address their jury selection issues. The consolidation with the Genesee County District Courts has changed the landscape of juries in the City of Flint from majority African American (which was consistent with the population) to majority non-African American because they select their juries from the countywide pool. During their discussions, I am told that the circuit judge on the committee concluded it was not legal to do there what this legislation proposes by keeping criminal juries district specific.

Finally, as to the jury composition, this "fix it" language does not appear to address civil cases including landlord tenant cases where a jury may be demanded. So what will we have, district only juries for criminal cases, but countywide for civil cases? How is this fair or promote equal treatment of citizens coming before the court? I submit it does not. As a former defense attorney, I can tell you, each defendant wants to walk in a courtroom and believe they will be treated fairly and that the deck is not stacked against them. Manipulating jury qualifications in this matter will not lead to anyone feeling good about the process.

Next, this legislation proposes and confers powers and duties of what the chief judge of the court would be able to do in terms of assigning dockets. This is an invasion, unwarranted I might add into the province of the Supreme Court. There are court rules promulgated by the Michigan Supreme Court which set forth the power and duties of the chief judge of the courts of this state. I cannot fathom any reason why the legislature needs to wade into this area.

Hon. Jim Runestad, Chairperson

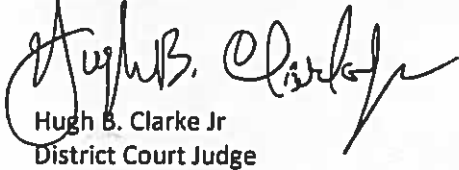
November 29, 2018

Page 3

The talks on consolidation are ongoing and have not reached the various legislative bodies of Lansing, East Lansing or Ingham County for a final decision or vote. The discussions of whether this is feasible will be ongoing for some time until an agreement is reached which is a long way off. Therefore, my question is why should this legislation be acted on before a plan, if there is one, is agreed upon? Frankly, that plan may require some legislative action not presently contemplated. Is there any reason this legislation cannot wait until the local units of government reach an agreement if they do?

Thank you for your consideration of my views expressed herein and I would ask that your committee decline taking any action on this legislation until such time as the local units of government each pass a resolution encompassing consolidation of the three district courts. At that time we can address the legislation and find a reasonable and legal solution to empaneling jurors and preserving the diversity of our respective bench's.

Respectfully,



Hugh B. Clarke Jr
District Court Judge

¹ Currently in 54A, we call in 16 to 17 potential jurors. Those panels generally have about 3 people of color in the pool which approximates the 25% African American voting population.

