

The Sun

**Bothe's age cited by overseeing judge
At 67, snubbed jurist is near mandatory retirement, Kaplan says**

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As supporters prepared to protest the snubbing of Baltimore Circuit Judge Elsbeth Bothe for reappointment, the judge who oversees her court said yesterday he told members of a judicial nominating commission that it made no sense for Judge Bothe to seek a second term when she could serve only a small portion of it.

The Trial Court Judicial Nominating Commission for Baltimore City went on to take the unusual step of refusing to recommend Judge Bothe, a 17-year veteran of the Baltimore bench, for reappointment by Gov. Parris N. Glendening. It was the first time in memory that a nominating commission has rebuffed the reappointment of a sitting circuit judge.

Mr. Glendening said last night that he would "most definitely" respect the recommendation of the 13-member panel.

The administrative judge, Joseph H. H. Kaplan, said yesterday: "Various people asked me about my position. I don't remember ever in the history of Baltimore City that anybody who was 67 or older applied to run again. When you have to retire at 70, it doesn't make any sense."

Judge Bothe, 68, was seeking an extension of her term through next year's general election, in which she would have run for a second, 15-year term. But even if she won, she would have had only about ten more months to serve before mandatory retirement.

Judges Bothe and Kaplan clashed last year when Judge Bothe openly criticized Judge Kaplan for meeting with City Council members about the theft trial of former city Comptroller Jacqueline F. McLean. Judge Kaplan since has said he regretted the meeting's appearance.

He said yesterday that the McLean incident had nothing to do with his comments to the nominating commissioners. He said he in no way tried to tell the 13-member commission what to do, and emphasized that he did not initiate the contact.

It is unclear to what extent Judge Kaplan's comments affected the commission's decision, if at all. Members have declined to explain their vote publicly, but privately several have acknowledged that some were troubled by Judge Bothe's habit of interrupting during trials, to the extent that some convictions in her court have been reversed by Maryland's appellate judges.

Supporters yesterday began a letter-writing campaign to urge Mr. Glendening to interview Judge Bothe, or to reject the list he was sent.

"We are concerned that such a closed process resulted in the unprecedented removal of a judge with long standing," said Stuart Comstock-Gay, executive director of the Maryland American Civil Liberties Union. Judge Bothe once worked as an ACLU lawyer.

"Judge Bothe is exceptionally productive," Baltimore State's Attorney Patricia C. Jessamy said yesterday. "I don't see any problem with her being recommended for whatever period of time."

Still shocked by the commission's rejection, Judge Bothe said yesterday she would no longer preside over jury trials. She feared that any defendant would automatically appeal a conviction because of the label of unfairness she said had been placed on her.

She said she will handle guilty pleas, sentencings and other matters for the time being.

She said she sees herself as a victim of an unfair nominating process, in which she didn't muster support precisely because sitting judges are routinely recommended for reappointment.

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"Having been a judge, I do not feel it is appropriate for me to supply names of individuals who are expected to say 'good things' about me," Judge Bothe wrote in a questionnaire submitted to the commission.

For Judge Bothe's spot, the commission submitted the names of Baltimore District Judge David W. Young; Bonita J. Dancy, a Circuit Court master; and lawyers Susan K. Gauvey, William S. Little, Allen L. Schwait, Gary I. Strausberg, William D. Quarles and Thomas J. S. Waxter Jr.

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