

# A 'helluva' judge nears retirement

## ■ Career winding down as Appeals Court prepares to rule on same-sex marriage

BY DOUGLAS TALLMAN

STAFF WRITER

*The Gazette* 6/22/07

ANNAPOLIS — As Judge Irma S. Raker nears her retirement from the bench, the Court of Appeals prepares for what is expected to be a momentous ruling. The seven-judge panel will decide whether a statutory limit to marriage between one man and one woman is unconstitutional.

Decisions with such broad impact on life in Maryland are not unusual for the court.

"The court is very aware of the impact of an issue," Raker said in an interview from her Rockville office.

Raker avoided any notion of how the court will rule, but she did say the case helps to illustrate the importance of judicial independence.

### Attack on courts' autonomy

Baltimore City Circuit Court Judge M. Brooke Murdock ruled in January 2006 that the state's 1973 definition of marriage violated the equal rights protections contained in the Maryland Constitution.

The ruling came at the start of the General Assembly session that year, and a handful of conservative lawmakers mounted an effort to impeach the 10-year jurist.

That independence has been attacked from other quarters. The Florida Legislature and the U.S. Congress tried to usurp the judge's authority in the Terry Schiavo case. Courts overturned those challenges.

On the West Coast, critics claim congressional attempts to divide the nine-state Ninth Circuit are an attempt to limit the power of the court.

"It's a threat to the independence of the judiciary when there's an attempt to remove or impeach a judge based on the substance of a judge's opinion," Raker said.

Judicial independence is necessary for cases to be decided on what is presented before the courts, without regard for public favor or public opinion, she said.

### The issues at hand

As supporters and opponents of same-sex marriage await the court's ruling, observers believe the court has three scenarios:

- The judges could rule the existing statute is constitutional, a decision that would mean same-sex marriage would remain illegal in Maryland.
- The court could rule the existing statute is unconstitutional and say nothing.

•Finally, it could rule the statute is unconstitutional and let the legislature sort it out.

In fact, all three options would send the matter to the legislature, Del. Kathleen M. Dumais said. Opponents have already tried to halt the court's actions with legislation that would make same-sex marriage illegal.

"If existing law is found to be constitutional, then I am quite sure the proponents of same-sex marriage will be submitting legislation granting rights to marriage or civil unions," said Dumais (D-Dist. 15) of Rockville.

Dumais helped to scuttle a ban on same-sex marriage last year by successfully amending legislation in the House Judiciary Committee to allow civil unions. With the change, the bill's original supporters were forced to oppose it.

The legislature's actions against the judiciary misled the public on how the rule of law works, said Mary Ellen Flynn, president of the Montgomery County Bar Association.

"She [Raker] very much respects the rule of law. She always said that if you're unhappy with a judge, file an appeal," Flynn said.

Raker, on the Court of Appeals since 1994, will reach the mandatory retirement age of 70 in April. After that, she plans a lot of skiing, serving as a mediator and returning to the bench as a retired judge.

"If we didn't have mandatory retirement, maybe I wouldn't be leaving, but it can turn out to be a good thing," she said.

## A long road

A woman whose career made strides for all women, her own professional life started with a stutter step.

In 1959, she had graduated college — she studied at the Center for International Law in The Hague, Netherlands — and was accepted into law school. But instead of entering, she got married and started a family. She entered the Washington College of Law at American University after her children were born.

In 1973, she was hired as Montgomery County's first woman prosecutor, appointed to the position by former state's attorney Andrew L. Sonner.

Sonner, now a judge on the

Court of Special Appeals, said there was no risk in hiring Raker.

"I'm not going to disagree with people who say it was a big deal that she was the first woman we hired," he said. "But she came very highly recommended."

Raker recalled her first day of work in 1973, walking into her third-floor office in the District Court in Silver Spring. A police officer came in and asked where the state's attorney was.

"I'm him," she replied.

"He was a tough-jawed detective who I'm sure thought, 'What's a woman going to do?'" Raker said. "With hard work, I convinced him that I was as good or better than anybody else out there."

After her appointment, the county hired its first woman public defender and first woman sheriff. More women were hired as police officers, and the county appointed a woman to lead the county police force.

Seven years later, Raker left the State's Attorney's Office for the District Court. A departing memento was a plaque that reads: "One helluva state's attorney."

"I'm really pleased with that because it didn't come easy," she said.

Two years after her District Court appointment, she was elevated to the county's Circuit Court. After 11 years, she was appointed to the Court of Appeals, the state's highest court.

## Life or death

If Raker had a chance to change one area of law, she would focus on what lawyers call the Borchardt decision, which revolves around a quirk in Maryland law involving the death penalty.

A judge or jury needed to accept "beyond a reasonable doubt" whether a defendant committed a capital crime. But that same judge or jury, in deciding the sentence, needs only a "preponderance of guilt" to decide whether the aggravating factors that support capital punishment outweigh the mitigating factors that support life without parole.

"If you need beyond a reasonable doubt to terminate parental

rights and beyond a reasonable doubt to send someone away after they stole a loaf of bread, to impose the ultimate sentence, death, it should be beyond a reasonable doubt," Raker said.

She first presented the argument in the case against Lawrence M. Borchardt, a death row inmate who died in prison last year. Only two other judges have joined in her dissents.

## Hard work pays off

Raker has drawn praise from many quarters.

"I think she's an independent thinker, and I think she's a strong judge. She's bright, articulate and fair, all three things I would seek in a judge at any level of the bench," said Dumais, a lawyer.

Flynn said she always appreciated the support Raker gave to new members of the bar association.

Raker also draws praise from Senate President Thomas V. Mike Miller Jr., possibly the most powerful lawyer in the state.

"Judge Raker is largely responsible for the many achievements the Court of Appeals has

had with the General Assembly," he said.

He attributed Raker's success to her personality and her work ethic.

"She's hard-working. She hasn't forgotten from whence she came. Some people forget they were lawyers. Hell, some forget they were people," said Miller (D-Dist. 27) of Chesapeake Beach. "The Court of Appeals is much better for her having been there."

"She goes about her duties with a certain level of grace and class that is obviously something that has been recognized not only statewide but also nationally," Somerset County Circuit Court Judge Daniel M. Long said.

He noted that Raker will receive one of five Margaret Brent Awards from the American Bar Association at its 2007 convention in California in August. The bar called her a "pioneering jurist and leader in criminal justice policy development."

It's a national award, but it is named for a 17th-century Marylander who demanded the right

to vote and the right to serve as Lord Baltimore's lawyer.

## Moving forward

Raker's seat is one of three Gov. Martin O'Malley (D) is likely to fill before the end of his first term. At least four judges could be in line for the job: Montgomery County Circuit Court Judges Michael D. Mason and Marielsa A. Bernard; and Judges Patrick Woodward and Mary Ellen Barbera of the Court of Special Appeals.

How will the court change with her departure?

"I don't think you'll see a major change or shift. What do I know? I'm not the one doing the appointing," Raker said.