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**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.