

DEC 10 2⁰¹⁰

MEMO



Senate of Pennsylvania

December 8, 2010

TO: ALL SENATORS

FROM: Stewart J. Greenleaf *Stewart*

SUBJECT: Cosponsorship -- **Certification examinations for district judges**

I am reintroducing **Senate Bill 1119**, proposing an amendment to Pennsylvania's constitution, to require a person who is not a lawyer to pass the certification examination before filing nominating petitions to become a candidate for magisterial district judge.

The state constitution currently requires that a non-lawyer pass a certification examination "prior to assuming office" as a magisterial district judge. Because of this language, a person may file nominating petitions, run for office, and then, if elected, take the certification examination. The elected candidate assumes office only after passing the examination. This practice, however, creates situations where the candidate elected fails the examination, thereby producing a vacancy. The vacancy, in turn, leads to delays in the administration of justice. The proposed constitutional amendment ensures that a magisterial district judge candidate is certified and need only be elected in order to assume office.

The same certification requirement for a non-lawyer filing for a magisterial district judge candidacy was included in the Magisterial District Reform Act (1976 Act 204). In Flegal v. Dixon, 372 A.2d 406 (Pa. 1977), however, the Pennsylvania Supreme Court declared the requirement unconstitutional. The court stated that the act's imposition of the more stringent requirement (that the examination must be passed before filing a nominating petition) was not mandated by the constitution. Therefore, a constitutional amendment is required in order to impose the pre-filing certification requirement on magisterial district judge candidates.

The proposed constitutional amendment also applies to candidates for judge of the Philadelphia traffic court and to nominees to fill vacancies.

As a proposed constitutional amendment, this legislation must pass each house of the General Assembly in two separate sessions and then must be presented to the voters for adoption.

It should be noted that the state constitution still refers to magisterial district judges as "justices of the peace." For many years the title "district justice" was used instead of "justice of the peace." However, 2004 Act 207 changed all statutory references from "district justice" to "magisterial district judge."

The Special Court Judges' Association of Pennsylvania supports this legislation.

If you would like to cosponsor this legislation, please contact Pat Snively of my office by e-mailing her at psnively@pasen.gov.