

**Standards
on
State Judicial
Selection**

**REPORT OF THE COMMISSION ON
STATE JUDICIAL SELECTION STANDARDS**

**AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON JUDICIAL INDEPENDENCE**

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Standards on State Judicial Selection

**Report of the
ABA Standing Committee on Judicial Independence
Commission on State Judicial Selection Standards**

July 2000

The Standards on State Judicial Selection were approved by the American Bar Association House of Delegates in July 2000.

The commentary contained herein does not necessarily represent the official position of the ABA. Only the text of the black-letter standards has been formally approved by the ABA House of Delegates as official policy. The commentary, although unofficial, serves as a useful explanation of the black-letter standards.

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Executive Summary

In 1999, the American Bar Association Standing Committee on Judicial Independence (“Standing Committee”) established a Commission on State Judicial Selection Standards (“Commission”). The Commission was charged with drafting model standards for the selection of state court judges. The work of the Commission was funded by a generous grant from the Open Society Institute. Commission members include representatives of the Standing Committee, the ABA Judicial Division, Conference of Chief Justices, Citizens for Independent Courts, League of Women Voters, and American Judicature Society. The Commission reviewed hundreds of documents and articles and heard testimony from fifteen experts, including judges, a state senator and a former governor, academics and a representative of the media. Draft standards were widely circulated among ABA entities, bar associations, courts and other interested organizations. Comments were received and incorporated as the Commission members deemed appropriate. There was widespread support for the standards among ABA entities and they were adopted by the ABA House of Delegates on July 11, 2000, without opposition.

The ABA has supported and continues to support a merit-based appointive system for judicial selection sometimes referred to as “merit selection.” The standards are intended as a waypoint in the transition towards such a system. In a large majority of states judges stand for election either in partisan or non-partisan elections, although many judges initially reach the bench through an interim appointment process. Often voters in states that elect judges are faced with crowded ballots and little to no information about judicial candidates. There has in recent years been an alarming increase in efforts by special interests to influence the outcome of judicial elections through both financial contributions and attack campaigning. With this new wave of participation, voters are faced with partisan and often misleading information about the candidates. Given these realities, public trust and confidence in state court judicial systems will be enhanced if candidates qualified for judicial office are identified for the electorate and those responsible for filling interim vacancies.

The standards address two main questions: what are the qualifications needed for a state judge and what is the best method to assess those qualifications. The evaluation of a judicial aspirant’s qualifications by a neutral, non-partisan, credible, deliberative body is a key element of traditional appointment systems. By incorporating this crucial element into an election system, as well as bolstering the process in appointment systems, the standards strive to provide a fundamental shift in the selection process, without advocating an institutional change in state judicial selection methods. The creation of credible, deliberative, non-partisan bodies to evaluate the qualifications of all judicial aspirants, regardless of whether that person stands for election, is nominated through the appointment process, or reaches the bench through the interim appointment process, serves to assure the public that those judicial aspirants have met a threshold set of qualifications.

The standards are intended to apply to state trial and appellate judges in courts of general jurisdiction, as well as judges in courts of limited jurisdiction such as those dealing in juvenile, family and probate matters. Excluded from the scope of the Standards are courts usually not of record, such as town or village courts, as well as administrative law judges.

The standards are presented in three parts. Part A sets forth detailed selection and retention criteria, while Part B identifies as primary actors those persons and groups that play significant roles in the process of judicial selection, either in appointive or elective based systems. Of the five designated primary actors, three are deliberative bodies identified as (1) Judicial Nominating Commissions, which exist in several states generally to provide nominations to the appointing authority; (2) Judicial Eligibility Commission, unique to these standards, which is a group formed to assess the qualifications of candidates in either elective systems or appointive systems where there is no existing nominating commission; and (3) Retention Evaluation Body, which evaluates judicial performance in judicial elections. The remaining two primary actors are identified as the Appointing Authority in appointive-based systems and the Endorsing Authority in states that provide for partisan election of judges. Part C recognizes the roles of various individual groups whose actions influence judicial selection. These include bar associations, judicial candidates, individual attorneys, public and private organizations and media interests.

Introduction

On July 11, 2000, the House of Delegates of the American Bar Association (“ABA”) adopted a Resolution approving the “black letter” Standards for State Judicial Selection and, as such, the Standards become policy of the ABA. This report which sets forth the background and rationale for the Standards, as well as commentary to the Standards, is prepared by the Commission on State Judicial Selection Standards of the ABA’s Standing Committee on Judicial Independence. Only the “black letter” Standards constitute ABA policy.

The Commission and Its Charge

In 1999, the American Bar Association Standing Committee on Judicial Independence established a Commission on State Judicial Selection Standards. The charge to the Commission was to draft model standards for selection of state court judges. The work of the Commission was funded by a generous grant from the Open Society Institute. The members of the Commission, together with the groups they represent, are:

Edward W. Madeira, Jr., Philadelphia, Pennsylvania, Commission Chair
ABA Standing Committee on Judicial Independence

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US League of Women Voters

Shelley A. Longmuir, Chicago, Illinois
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The Commission held public hearings on September 17, 1999, in Denver, Colorado, and on November 19, 1999, in Raleigh, North Carolina. The following testified before the Commission:

Robert Darcy, Oklahoma Judicial Evaluation Commission, Oklahoma City, Oklahoma
R. Bruce Dold, Deputy Editorial Page Editor, Chicago Tribune, Chicago, Illinois
Senator Robert Duncan, Texas State Senator, Lubbock, Texas
Governor John Gilligan, Former Governor of Ohio, Cincinnati, Ohio
Sandra Otaka, Member, Board of Directors, Asian American Bar Association of the Greater
Chicago Area, Chicago, Illinois
Douglas Phillips, Former Member, Colorado Judicial Nomination Commission, Denver,
Colorado
Burt Pines, Judicial Appointments Secretary to California Governor Gray Davis, Sacramento,
California
Harold Pope, President, National Bar Association, Detroit, Michigan
Hon. Frederic Rodgers, Past Chair, ABA Judicial Division, Golden, Colorado
George Soule, Chair, Minnesota Commission on Judicial Selection, Minneapolis, Minnesota
Richard Taylor, North Carolina Trial Lawyers Association, Raleigh, North Carolina
William Taylor, Counsel to the Joint Interim Judiciary Committee, Oregon Legislative
Assembly, Salem, Oregon
Michael Valdez, Colorado Bar Association, Director of Legislative Relations, Denver, Colorado

Transcripts of the hearings are available from the Standing Committee on Judicial Independence.

The reporters provided the Commission members with extensive materials on judicial selection, as well as interviewed a variety of individuals with a special interest in the methodology of judicial selection. The members met in person, as well as by telephone conference call, on several occasions. The proposed Standards were widely distributed to various ABA sections and entities, as well as other interested organizations, with the request for comments. Valuable assistance was received from a task force of the Litigation Section, chaired by Carolyn Lamm of Washington, DC, and Ronald Breaux of Dallas, Texas. There was broad support for the Standards and they were adopted by the ABA House of Delegates without opposition on July 11, 2000.

The Commission further wishes to express its gratitude for the generous assistance of the following, without whom the task would have been much more difficult: Senator Michael F. Feeley, Heidi Horvath, Michael Carrigan, Allan Head, William Scoggin, and Becky Blakenship.

Opening

There are more than 25,000 state court judges¹ throughout the country. They range from justices of the highest court of each of the 50 states to those who daily preside over trials of criminal, civil and family law matters. Some sit in majestic courtrooms in state capitols surrounded by portraits of other justices who have gone before them; others must preside over cases involving an individual's freedom and property in shabby surroundings in aging cities. Still others conduct trials in county courthouses where they are well-known and enjoy the respect of the local citizens. Whatever the courtroom setting, the judge is "a highly visible symbol of government under the rule of law."²

Collectively, they have a vital assignment – to administer justice according to the rule of law and to protect the rights of the people both as to each other and from excesses of the other branches of government. It is a task that is neither easy to explain nor to perform. The hallmark of judicial responsibility is the independence to perform this task "without fear or favor."³ Since public confidence is essential to deference to the judgments of courts, the appearance of impartiality is essential.⁴ Inherent in the task at whatever level is knowledge of the law and its application as appropriate to the facts. The proper administration of justice involves the exercise of judgment, discretion and much more. How do we identify individuals with the requisite qualifications to assure us that they will perform the judicial task with distinction and, given the reality that no one becomes a judge without being touched by the political brush, how do we assure that only those with the requisite qualities become judges? That is our task.

¹ For present purposes, we include state trial and appellate judges in courts of general jurisdiction, as well as judges in courts of specialized jurisdiction, such as those specializing in domestic, juvenile, and probate matters. We exclude from this effort the federal judiciary as well as the courts of limited jurisdiction and administrative law judges.

² 1990 ABA Model Code of Judicial Conduct ("Model Code"): Preamble. Several aspirations of goals, as well as limitations on judicial conduct, are contained in this Model Code.

³ Canon I Commentary of the Model Code states:

Deference to the judgment and rulings of courts depends upon public confidence in the integrity and independence of judges . . . which in turn depends upon their acting without fear or favor.

⁴ "the judges must free themselves not only from the crasser forms of obligation or commitment, but also, so far as humanly possible, from the ties of personal and group loyalties and implied commitment. A judge whose decisions are influenced by politics is putting the independence of the courts at risk." Archibald Cox, *The Independence of the Judiciary: History and Purposes*, U. DAYTON L. REV., Vol. 21:3, 566 *et seq.* (1996). See also, Model Code, especially Canons 2.4 and 5 and commentaries.

The overwhelming majority of our state court judges are dedicated to their work of administering justice, mostly for inadequate compensation and frequently with inadequate support and surroundings. It is unfortunate that there is insufficient support among the citizens or the legislators to remedy these inadequacies and a remarkable lack of understanding as to the significance of the judicial role even though the role of the judiciary “comes home in its effects to every man’s fireside; it passes on his property, his reputation, his life, his all.”⁵ Some states have identified qualities thought to be reliable predictors of solid judicial performance as well as procedures to assure that these qualities are relied upon in judicial selection. Other states unfortunately have not and we believe this failure provides a significant contribution to the erosion of the public’s respect for and confidence in the administration of justice.⁶

Our pledge of allegiance envisions one nation with “justice for all.” In the view of the founding fathers, justice was the aim of government and of a civil society.⁷ Centuries before, Justinian defined justice as the constant and perpetual wish to render everyone his [or her] due. Few have since improved on that definition. Justice systems involve complex interrelationships among all branches of government, federal, state and municipal. The judiciary performs a pervasive role in the administration of these justice systems of whatever origin. A judicial system must serve the people’s search for justice and, without the confidence and respect of the public, one of the principal aims of government fails. Alexander Hamilton’s observation that the “ordinary administration of criminal and civil justice . . . being the immediate and visible guardian of life and property . . . contributes more than any other circumstance to impressing upon the minds of the people affection, esteem and reverence for the government”⁸ is no longer true in large segments of the citizenry. Harold Pope, the President of the National Bar Association, in his testimony before the Commission, cited a recent survey “that over 60% of African-Americans, in general, and communities of color, in general, distrust the system of justice in this country.”

Constance Rice, Western Region Counsel with the NAACP Legal Defense and Educational Fund has testified: “I can no longer go to that sector of the public [poor African-American, poor whites, poor Latinos, poor Asian Pacific Americans . . .] and speak credibly about the integrity, the fairness or the lack of bias in our judicial system.”⁹ These attitudes and suspicions foretell a failure of Justice Hugo Black’s eloquent view that our courts “stand as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are victims of prejudice and public excitement.”¹⁰

⁵ Chief Justice John Marshall addressing the Virginia Constitutional Convention, January 1830.

⁶ Justice Thurgood Marshall wrote more recently: “We must never forget that the only real source of power that we as judges can tap is the respect of the people.” *Chicago Tribune*, Aug. 15, 1981.

⁷ Federalist No. 51, Madison. “Justice is the end of government. It is the end of civic sobriety. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.”

⁸ Federalist No. 17, Hamilton.

⁹ Testimony before ABA Commission on Separation of Powers and Judicial Independence, February 21, 1997.

¹⁰ *Chambers v. Florida*, 309 US 227 (1940).

This dissatisfaction with the administration of justice is also shared by many in the establishment who believe that courts have gone beyond deciding cases independently of their elected representatives or have adopted personalized social agendas without support in law, as well as other organized groups with specific interests who believe the courts are not adequately addressing their issues. This has led to efforts to turn courts into political playgrounds where it seems important to get the “right” person on the bench who will decide the “right” way.

Financial contributions to judicial elections are a prime cause of distrust in the integrity and independence of the judicial systems. Poll after poll confirms the widespread perception that judicial decisions favor the interests of the campaign contributors. In one state, a poll reported that almost half of the judges themselves agreed.¹¹ It is difficult for the people to view a judge who is dependent on partisan contributions to be independent in decision making.¹² Politics and money give the appearance of partiality and with that appearance, the erosion of justice. Chief Justice John Marshall viewed judges’ independence as the security for justice.¹³ Independence makes a system of impartial justice possible by enabling judges to protect and enforce the rights of the people and by allowing judges, without fear of reprisal, to strike down actions of the legislative and executive branches that exceed their designated powers. Independence is not for the personal benefit of the judges, but for the protection of the people. It does not encompass irresponsible judicial actions or conduct deleterious to the appearance of justice. In recognition of the potential problems with, or at least perceptions of problems created by judicial campaign contributions, the American Bar Association recently passed amendments to the Model Code of Judicial Conduct for the purpose of minimizing these effects.¹⁴

Judges who do not comply with these obligations weaken support for independence and invite popular distrust and legislative intrusion.

It is the right of the citizens of each state, generally through its constitution, to prescribe the process by which the judiciary is selected. For the last 224 years, there has been disagreement as reflected in the diverse approaches in many state constitutions and in the continuing debate in state legislatures. Our recommendations do not extend to championing one side of this debate, but rather explore minimum standards for the qualifications of those who seek appointment or election to the bench. What are the qualities that the people want in individuals charged with administering “justice for all”? How can it be ensured that judicial aspirants have those qualities and that only they will be selected?

¹¹ See *US News and World Report*, November 29, 1999 at p. 35-36, “The Very Best Judges That Money Can Buy,” and PBS *Frontline* television program “Justice for Sale.”

¹² Providing proposed remedies for the problems created by partisan financial contributions in judicial elections is beyond the scope of our project. We note and commend the paper “Choosing Justice: Reforming the Selection of State Judges” published by The Constitution Project. Appendix 2, an excerpt from that paper, is a brief history of judicial selection in the states.

¹³ Address to Virginia Constitutional Convention, January 1830, “. . . the greatest scourge an angry Heaven ever inflicted upon an ungrateful and sinning people was an ignorant, a corrupt or a dependent Judiciary.”

¹⁴ American Bar Association House of Delegates, Report 123, August 1999, Atlanta, Georgia.

Hamilton observed:

that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges, and making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge.¹⁵

Certainly requisite integrity and knowledge are a good start for a list of qualifications but as subsequently set forth in our recommendations, this list needs to be expanded to accommodate the present needs of our judicial systems. We propose standards for the identification of those expanded qualifications and propose a process to ensure that only those found fully qualified will be selected, whether through an appointive or elective process. From this perspective, the standards are fully consistent with the ABA's long standing preference for merit selection, and seek to find common ground between appointive and elective processes. This effort to bring the advantages of merit selection to the election process may help to invigorate judicial election reform and provide for merit elections.

¹⁵ Federalist No. 78, Hamilton. He later contrasted the qualification for a judgeship with those of legislators, suggesting that legislators, with their "natural propensity to party divisions" and the "habit of being continually marshaled on opposite sides will be too apt to stifle the voice both of law and equity." Federalist No. 81, Hamilton.

The Standards and Commentary

Rationale

Disagreement over the best method of selecting a qualified judiciary has existed since the founding of the United States, and has resulted in a variety of selection methods. Although direct appointment by the chief executive or by the legislature were the methods chosen by the original thirteen states, at various times during our history other means of selecting judges have been preferred.

At present, there are widely varying methods for selection of state court judges in the 50 states. A brief history of judicial selection methodologies is included as App. 2 to this report. In many states, most judges continue to reach the bench initially through direct appointment by the chief executive or the legislature. In some of these states, the judges are appointed after being nominated to the appointing authority by a commission of lawyers and persons who are not lawyers. In yet other states, judges come to office after successfully running in an election that may be either partisan or non-partisan. In many states different selection methods are used for the trial and appellate judiciaries or for trial judges in different geographic areas. Additionally, a large percentage of state judges initially reach the bench through an interim appointment process, even in states that elect judges.

The ABA has supported and continues to support a merit-based appointive system for judicial selection known as merit selection. These Standards are intended to be consistent with that system and should not be viewed as a retreat from the ABA's support for merit selection. Rather, the Standards may be viewed as a waypoint in the transition towards such a system.

There is a two-part thesis for our recommended standards. First, whatever the system for selection of state trial and appellate judges, there is an implied covenant with the people that the judges selected will be persons who have demonstrated by well-defined and well-recognized qualifications their fitness for judicial office.

Second, there should be a credible, deliberative body that, pursuant to published criteria and procedures, finds that persons considered for judicial office are qualified, by learning, experience and temperament, to decide the cases that come before them impartially and in accordance with the law. The credibility of this body is crucial and the components of credibility include: a method of appointing members to the body that transcends political partisanship; assurance of an appropriate balance of lawyer and non-lawyer members; assurance of bi-partisan, or non-partisan, determinations by providing for a balanced representation among the members of the major political parties; a membership that reflects the geographical, racial, ethnic and gender diversity of the jurisdiction; published criteria and procedures by which determinations of qualifications are made; and assurance that the deliberative body will be independent, such as provisions for staggered terms and an adequate budget.

The standards are premised on the notion that the most important constituency to be served by a judicial selection method is the American public. The public is the ultimate consumer of judicial services and is best served by a judicial selection process that is informed by and utilizes the expertise of certain key actors. The critical actors in the judicial selection process who are identified by these Standards are responsible to, representative of, or interact with the American public in varying ways. These actors have been divided into primary and supporting actors.

The four primary actors are the: *Appointing Authority*, *Endorsing Authority*, *Judicial Nominating Commission*, and *Judicial Eligibility Commission*. The *Appointing Authority* is generally the governor of a state and is thus accountable to the public through the ballot box for his or her choices in selecting judges. The *Endorsing Authority* is generally a political party that endorses candidates and similarly derives its legitimacy from the public through the electoral process. *Judicial Nominating Commissions* exist in various forms in several states, generally providing the appointing authority with a list of names found to be qualified for the particular judicial office. Depending upon its composition, procedures and criteria, a nominating commission may or may not constitute a “credible, deliberative body.” Where there is no existing credible, deliberative body, we recommend a *Judicial Eligibility Commission* which should be broadly representative of the public. It would review the qualifications of candidates and advise appointing authorities, endorsing authorities or where appropriate the electorate on the results of its deliberations. In those states where sitting judges face retention or other election, an additional primary actor can be the *Retention Evaluation Body*, which may conduct evaluations of the performance of these judges and provide reports to the electorate as to their qualifications for continuing in office. A *Judicial Eligibility Commission* may perform that evaluation and reporting function.

Of the primary actors, the *Judicial Eligibility Commission* is the most original. Unlike the others, the *Eligibility Commission* has no known counter-part in U.S. jurisdictions. Such a commission described herein can play an important role in either appointive or elective jurisdictions. As a credible, deliberative body, it may be provided for in different ways, for example, by amendment of the state constitution, legislative enactment, or executive order.

The *Judicial Eligibility Commission* (or a judicial nominating commission where in fact it is a “credible, deliberative body”) is intended to promote a quality judiciary, to provide public accountability and encourage judicial independence. By reviewing and evaluating qualifications of judicial aspirants, the Commission makes an important contribution in ensuring a qualified judiciary, regardless of selection method. As a body representative of the community, the *Commission* ensures public participation in the selection process and encourages dissemination of information about judicial nominees, which provides judicial accountability. This citizen involvement and awareness, coupled with a deliberative assessment of the qualifications of judicial aspirants, will protect judicial independence. Accordingly, the *Commission* strikes an essential accommodation among the multiple goals of judicial quality, judicial accountability and judicial independence.

The supporting actors include *Bar Associations, Judicial Candidates, Individual Attorneys, Public and Private Organizations* and *Media Interests*. Although the influence of these supporting actors on the judicial selection process may be less direct than that of the primary actors, in many instances it may be critically important. Therefore, the Standards that follow call for a judicial selection process that is informed by the expertise of all of these key actors and calls upon these key actors to conduct themselves in ways that are consistent with the overall goal of a *qualified, inclusive, and independent judiciary*.¹⁶

¹⁶These terms are defined in the following section.

Terminology

Appointing authority. An appointing authority is either an individual (*e.g.* the governor of a state) or a body (*e.g.* a state legislature or state supreme court) that has the ultimate authority to appoint an individual to judicial office. *See Standard B.3.*

Candidate. A person seeking judicial office through either appointment or election.

Endorsing authority. An endorsing authority is either an individual (*e.g.* a political party official) or a body (*e.g.* a political party slate-making committee) that plays a key gatekeeping role in endorsing a judicial candidate to fill a judicial vacancy through either a partisan or nonpartisan election. *See Standard B.4.*

Inclusive judiciary. A judiciary that includes individuals who are broadly representative of the population served.

Independent judiciary. Denotes an impartial judiciary that is free from inappropriate outside influences when deciding cases, and from inappropriate influences from other governmental entities when dealing with institutional matters.

Judicial eligibility commission. A judicial eligibility commission is a bi-partisan body of lawyers and public members that assists appointing authorities, endorsing authorities, and voters by evaluating the qualifications of candidates for judicial office. *See Standard B.1.*

Judicial nominating commission. A judicial nominating commission is a bi-partisan body of lawyers and public members that independently generates, screens and submits a list of judicial nominees to an official who is legally or voluntarily bound to make a selection from that list. *See Standard B.2.*

Open judicial selection process. A process in which the appointing or endorsing authority seeks and encourages information from a broad array of interested individuals and organizations.

Public member. A member of the public who is not a lawyer or a member of a bar association, and serves on a judicial eligibility commission or nominating commission.

Qualified judiciary. A judiciary selected on the basis of the criteria set forth in Standard A.1 and is used herein to describe a judiciary that is inclusive and independent.

Regularized judicial selection process. A process that proceeds according to a customary or pre-announced plan.

Retention evaluation body. A retention evaluation body is a bi-partisan body composed of lawyers and public members that evaluates the performance of judges who must stand in retention elections. *See Standard B.5.*

Part A: Judicial Selection and Retention Criteria.

Standard A.1: Selection Criteria. Judicial selection criteria should include, but not necessarily be limited to:

(i) **Experience.** A candidate for judicial office should be a member of the Bar of the highest court of a state for at least 10 years and have been engaged in the practice or teaching of law, public interest law, or service in the judicial system.

(ii) **Integrity.** The candidate should be of high moral character and enjoy a general reputation in the community for honesty, industry and diligence.

(iii) **Professional Competence.** Professional competence includes intellectual capacity, professional and personal judgment, writing and analytical ability, knowledge of the law and breadth of professional experience, including courtroom and trial experience. Candidates for appellate judgeships should further demonstrate scholarly writing and academic talent, and the ability to write to develop a coherent body of law.

(iv) **Judicial Temperament.** Judicial temperament includes a commitment to equal justice under law, freedom from bias, ability to decide issues according to law, courtesy and civility, open-mindedness and compassion.

(v) **Service to the Law and Contribution to the Effective Administration of Justice.** Service to the law and contribution to the effective administration of justice includes professionalism and a commitment to improving the availability of providing justice to all those within the jurisdiction.

Standard A.2: Retention Criteria. In addition to the criteria set forth in Standard A.1, in evaluating the judicial performance of a judge standing for retention election, the following should be considered:

- preparation, attentiveness and control over judicial proceedings;
- judicial management skills;
- courtesy to litigants, counsel and court personnel;
- public disciplinary sanctions; and
- quality of judicial opinions.

Commentary

Literature on judicial selection is replete with lists of criteria that should be considered in selecting a qualified judiciary. Although the selecting authority may feel pressured to emphasize certain selection criteria over others when making a particular appointment, the selecting authority should endeavor to consider a broad range of criteria when making an appointment. Depending on the nature of the judgeship, additional consideration may be desirable. For example, courtroom or trial experience may be especially pertinent for judgeships at the trial

level, while superior writing skills may be considered for appellate judgeships. Additionally, the appellate record of a judge might be considered. Studies of bar polling practices and the use of judicial nominating commissions have revealed a broad range of criteria. Lists of judicial selection criteria from a variety of sources are attached as an appendix.

Disclosure of selection criteria is essential. Although this standard prescribes no particular method for disclosure, the appointing authority should implement a disclosure format that is reasonably consistent, regularized, fair, and informative. Disclosure of selection criteria familiarizes the citizenry with the judicial selection procedure, and thus diminishes the perception of personal or political bias in the selection of judges. Additionally, disclosure of selection criteria encourages qualified candidates to seek judicial office by informing them of the qualities sought in a qualified judge.

Rules and procedures established by those responsible for assessing the qualifications of judicial candidates may require a waiver of confidentiality regarding disciplinary and legal proceedings concerning the judicial candidate. Moreover, participation in continuing legal education programs may be relevant when assessing judicial candidates, and should therefore be considered. Furthermore, a candidate's experiences with regard to volunteering time for the improvement of the legal system or the bettering of his or her community are also relevant. Finally, when assessing the qualifications of a sitting judge, a candidate's experiences with managing a caseload should be examined.

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Bernard L. Shientag, *The Personality of the Judge* (VAIL-HALLOU PRESS, New York, 1944).

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Part B: Primary Actors in Selection Process

Standard B.1: Judicial Eligibility Commission. To assist appointing authorities, endorsing authorities, and the electorate in achieving the goal of a qualified, inclusive, and independent judiciary, a credible, deliberative, bi-partisan body known as a Judicial Eligibility Commission should be created to review the qualifications of judicial candidates pursuant to recognized selection criteria.

(a) **Independence.** The Judicial Eligibility Commission should maintain its independence from all inappropriate influences, particularly from appointing and endorsing authorities, and should operate in a manner that instills public confidence and encourages applicants from a broad range of personal and professional backgrounds.

(b) **Selection of Members and Commission Composition.** Members of the Judicial Eligibility Commission should be selected by multiple sources, including, but not necessarily limited to, governors, legislatures, supreme courts, and bar associations. The Commission should be composed of both lawyer and public members, and their selection should be based on the personal qualities and integrity of the individual members.

(c) **Open, Regularized, Confidential Process.** The Judicial Eligibility Commission should establish rules and procedures for evaluating candidates for judicial office. Additionally, the Eligibility Commission should operate in an open, regularized fashion, while respecting the candidate's desire for confidentiality.

(d) **Screening and Recommendation of Candidates.** A Judicial Eligibility Commission should give careful and equal consideration to each candidate for a judicial office, and should apply judicial selection criteria set forth in Part A to determine whether a candidate is qualified for judicial office. Only the names of those candidates found qualified by the commission should be published and placed on the list of qualified candidates and reported to the appointing or endorsing authority.

(e) **Commission Scope and Funding.** The Judicial Eligibility Commission should be established and funded on a statewide basis. In larger or more populous states, regional commissions may be established but should be funded and operate under the aegis of a statewide commission.

Commentary

A Judicial Eligibility Commission is intended to be a credible, deliberative body that operates pursuant to a recognized set of criteria to achieve the goal of a qualified, inclusive, and independent judiciary. No person should come to the bench, or be retained in judicial office, unless that person is found qualified by a Judicial Eligibility Commission or its equivalent.

In a number of jurisdictions, the equivalent function is ably performed by judicial nominating commissions that have been established by state constitution, statute, or executive order. Where there is an effective judicial nominating commission in place, operating

satisfactorily as credible, deliberative bodies, there is no need for a Judicial Eligibility Commission.(see Standard B.2).

It is of paramount importance that Judicial Eligibility Commissions should operate independently from other actors in the judicial selection process. Much like nominating commissions, the primary purpose of a Judicial Eligibility Commission is to assist appointing authorities, endorsing authorities, and the electorate in the selection of a qualified, inclusive, and independent judiciary. To facilitate this goal, a Judicial Eligibility Commission must be an independent body that expresses opinions about judicial candidates based on the commission’s independent findings. If the influence of politics colors its judgment, the commission loses the confidence of the citizenry.

Establishing the credibility and independence of a Judicial Eligibility Commission begins with the selection of commission members. Although there is no rigid model, the selection of judicial nominating commissioners is instructive. Like nominating commissions, Eligibility Commissions should be composed of both lawyer and public members. State bar associations typically choose lawyer members of nominating commissions either through election or direct appointment by bar leaders. Lawyer members are also chosen by state supreme courts in some jurisdictions. Governors and legislative bodies typically select public members. Thus, a core body of Commissioners might be selected as follows:

- | | |
|---------------------------|----------------------|
| --Governor selects | two public members |
| --Legislature selects | two public members |
| --Supreme Court selects | two lawyer members |
| --Bar Association selects | three lawyer members |

Once this core group of nine commissioners is selected, a chair should be appointed. The chair might be a current or former member of the judiciary. In order to enhance the diversity of the commission, the Governor may appoint a limited number of additional commissioners. The chair should vote only to break a tie. In states where it may be deemed necessary to augment the commission membership when filling vacancies in certain geographic districts, two additional commissioners might be added from the district, a public member selected by the Governor and a lawyer member selected by the Supreme Court.

Commissioners may serve for no more than two three-year terms, and the terms of commissioners should be staggered. Members of a commission who would otherwise be eligible to hold judicial office should not be a candidate for a judicial vacancy while they are members of the commission or for four years following the end of their term on the commission.

All aspirants for judicial office in elective and appointive jurisdictions, including interim judicial appointments, should be required to submit their names for review of their qualifications to the Judicial Eligibility Commission. The candidates may submit their names either on their own or through an endorsing or appointing authority. Individual commissioners may also recruit candidates for judicial vacancies pursuant to commission rules.

The commission should review the qualifications of candidates carefully and fairly to determine whether they are “qualified” for the particular judicial vacancy. The determination

that a candidate is “qualified” should be based on the use of recognized judicial selection criteria. At a minimum, a candidate should not be rated “qualified” unless the candidate is found to have demonstrated these criteria.

Where the Judicial Eligibility Commission is reviewing the qualifications of sitting judges running for re-election or facing a retention election, the commission should consider the additional criteria listed in Standard A.2. In developing information on these candidates, the commission should consider the experience of bodies charged with the evaluation of judges facing retention elections (see Standard B.5). In particular, bar associations and other groups that conduct surveys of sitting judges should be consulted (see Standard C.1, Standard C.4, and Standard C.5). Surveys should be adequately funded to allow for a sound evaluation process.

Only those candidates deemed “qualified” by the commission should be placed on the list of candidates to be sent to the appointing or endorsing authority.

The commission should adopt an initial set of rules and procedures that govern its operations. These should be disseminated widely, particularly to bar and media sources.

Judicial Eligibility Commissions should be established and funded at the state level, with additional support from local governmental bodies where regional commissions are established. The funding should be sufficient to allow for adequate staffing and facilities.

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Standard B.2: Judicial Nominating Commission. In performing its recruiting, screening, and nominating roles, a Judicial Nominating Commission should operate in an open, regularized, and independent manner that encourages applications from the widest segment of the potential candidate pool and that employs a process that fairly assesses all candidates by using a broad range of selection criteria in an effort to achieve a qualified, inclusive, and independent judiciary.

(a) **Independence.** A Judicial Nominating Commission should maintain its independence from all inappropriate influences, particularly from the appointing authority, and should operate in a manner that instills public confidence and encourages applicants from a broad range of personal and professional backgrounds.

(b) **Selection of Members.** Selection of members should be based on the personal qualities and integrity of the individual, and not a particular member's propensity to vote for particular judicial candidates.

(c) **Open, Regularized, Confidential Process.** A Judicial Nominating Commission should establish rules and procedures for nominating candidates for judicial office. A Judicial Nominating Commission should operate in an open, regularized fashion that also respects the candidate's desire for confidentiality.

(d) **Recruitment of Candidates.** Nominating commissions should actively recruit qualified individuals for judgeships and in performing this function should operate in a manner that imparts public confidence in the judicial selection system, and encourages a broad range of applicants.

(e) **Screening and Deliberation of Candidates.** A Judicial Nominating Commission should give careful and equal attention to each candidate for a judicial office, and should apply selection criteria set forth in Part A in an effort to produce a qualified, inclusive, and independent judiciary.

(f) **Communication With Appointing Authority.** A member of a Judicial Nominating Commission should not initiate contact with the appointing authority while serving on a nominating commission.

Commentary

Judicial Nominating Commissions serve a unique function. They are responsible for the nomination of judicial candidates in Nonpartisan Court Plan jurisdictions (also referred to as Missouri Plan or Merit Plan jurisdictions). Their role places them in the position of nominating individuals for judgeships. Thus, members of Judicial Nominating Commissions hold positions of public trust and should conduct themselves in a manner that reflects highly upon the judicial selection process. Whenever feasible the citizenry should be informed, updated, and included in the nomination process.

Among the states, nominating commissions vary in their structure, composition and organization. Some states use one commission to select all judges, while other states use separate commissions for different judicial levels or separate commissions in different geographical areas. Typically, nominating commissions include an even number of lawyers and persons who are not lawyers. Often the commission will also include a single judge who usually cannot participate in voting, but can be of assistance in the procedural process. The state chief executive branch official usually selects lay commissioners. Lawyer commissioners are normally selected by either the chief executive branch official, bar association leaders, state attorneys general, state supreme court judges, or a combination of the aforementioned. Some states require legislative approval of some or all of the commission members.

Independence is essential to the successful operation of a Judicial Nominating Commission. Independence in this instance means the freedom to recruit, screen, and nominate judicial candidates as the commission sees fit, apart from undue influences stemming from political, personal, social, or business considerations. Undue influence is a dominating inclination to nominate based on criteria other than those related to judicial ability, judicial independence, and judiciary representation.

Nominating commissions should respect the value of an independent judiciary. At various times, commissioners may be unduly influenced by political or personal considerations that compromise the objectivity and fairness of the nomination process. Thus, commissioners should endeavor to reduce all undue influences based on a judicial candidate's political affiliations, an appointing authority's political agenda, or the commissioner's own political affiliations. If a commissioner, other commissioners, or a judicial candidate believes a commissioner's independence may be unduly compromised by influences associated with a general conflict of interest or an appearance of impropriety, the affected commissioner should consider removing him/herself from involvement in the selection of nominees for a particular vacancy.

Commissions should operate in an open, regularized, independent manner that is sensitive to the need of the public for information on judicial candidates, while also respecting a candidate's desire for confidentiality concerning his/her personal information. Nominating commissions are responsible for investigating the personal and professional lives of the judicial candidates. Due to the sensitive nature of such information, individuals may be apprehensive about applying for judgeships. In an effort to reduce the fear candidates may have of exposing their private histories, commissioners should keep candidate information confidential. In some cases, commissions may even decide to keep the names of applicants anonymous. However,

rules and procedures may require a waiver of confidentiality regarding disciplinary and legal proceedings concerning the judicial candidate.

Normally, each commission will select a chairperson. Usually this person is a state judge (generally a non-voting member of the commission), a voting committee member selected by the commission, or a rotating committee chairperson. The chairperson is usually the commission spokesperson. The spokesperson is the “outside voice” of the commission for purposes of communicating with media outlets, the citizenry, the candidates, and the appointing authority. Selecting a single person to represent the commission legitimizes the commission, and lessens the potential for disbursement of misinformation or unethical communications.

It is an accepted and unfortunate fact that all too often qualified judicial candidates will not actively seek judgeships. Hence, state law permitting, commissioners should actively seek out and encourage qualified individuals to apply. If the recruitment of a qualified individual jeopardizes the impartiality of a particular commissioner, the respective commissioner should be disqualified from either participating or voting and encourage the potential candidate to apply nevertheless.

To assist the recruitment process, these standards encourage the use of a published notice of judicial vacancy. The recruitment process should reflect the goal of achieving a qualified, inclusive and independent judiciary.

The screening and investigation process can vary greatly between jurisdictions. Part A addresses selection criteria and should be consulted. A commission should endeavor to design a selection system that is objective and fair. Particularly, a commission should be mindful of giving full consideration to lesser known, but highly qualified judicial candidates. Ultimately, a commission should screen and select candidates consistent with the goal described above.

Unless altered by state law or custom, the chairperson should normally submit an alphabetical list of the judicial nominees to the appointing authority. Unless altered by custom or state law, the list of nominees should contain only the names of the nominees without reference to political affiliation or commission preference.

Once the candidate names have been submitted, some states permit the appointing authority to contact and consult individual commissioners regarding the judicial nominees. At all times in the selection process, however, nominating commissions and commissioners should avoid “lobbying” appointing authorities in favor of particular judicial candidates. Many states require individual commissioners to disclose to the full commission any communication either with the appointing authority or as to private communication with judicial candidates.

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Standard B.3: Appointing Authority. The primary goal of individuals or official bodies who are responsible for judicial appointments should be a qualified, inclusive, and independent judiciary.

(a) Open, Regularized Process. In making appointments to the judiciary, the appointing authority should use an open, regularized process to review the qualifications of judicial candidates. The appointing authority should appoint only from lists of qualified candidates submitted by the Judicial Eligibility Commission (see Standard B.1) or a Judicial Nominating Commission (see Standard B.2).

(b) Selection. In reviewing the qualifications of candidates submitted by the Judicial Eligibility Commission or Judicial Nominating Commission, the appointing authority should consider a broad range of publicly disclosed selection criteria (see Part A). The appointing authority should select for judicial office only those individuals deemed qualified by the Judicial Eligibility Commission or Judicial Nominating Commission.

(c) Use of Judicial Nominating Commission and Judicial Eligibility Commission. The appointing authority should establish or assist in the establishment of either a Judicial Eligibility Commission (See Standard B.1) or a Judicial Nominating Commission (See Standard B.2).

Commentary

In the vast majority of American jurisdictions, chief executive branch officials have the authority to fill judicial vacancies by an appointment method. In four states (California, Maine, New Hampshire and New Jersey), the basic judicial selection system is solely gubernatorial appointment. In the twenty-five states employing a “merit plan” for judicial selection, the governor appoints from a list of persons chosen by a Judicial Nominating Commission. Even in the twenty-one states where the basic selection method is a partisan or nonpartisan election, the governor often appoints individuals to fill interim vacancies occurring between elections. In sum, appointment accounts for the initial selection of many judges in the United States.

The appointing authority should respect the value of an independent judiciary in the selection process. An independent judiciary is essential to the consistent application of the law in a democratic society. There are many influences in the selection process that could compromise the candidate’s independence when he or she reaches the bench. It is important that the election process be geared toward minimizing, if not eliminating, these compromising influences. For this reason, the appointing authority should respect judicial independence, even though it may come at some political costs. The temptation to “repay” campaign contributors or the party faithful with judgeships should be resisted. Downplaying such political considerations reinforces the perception of an independent and highly qualified judiciary.

Although appointing authorities will necessarily rely on numerous factors when selecting judges, their ultimate goal should be a qualified, inclusive, and independent judiciary. Typically, executive branch officials will seek candidates who share similar political philosophies. For this reason, the appointing authority often consults, or is pressured by, individuals who were influential in the appointing authority’s election to office. These influences may include political parties, other public officials, and influential private interests. Appointing authorities also confer with bar leaders in selecting qualified candidates. Although an appointing authority may therefore be subject to numerous influences and pressures when selecting judges, the appointing authority’s selection should rest primarily on the qualifications of the candidate. The appointing authority can best insure that a particular candidate is qualified for judicial office by using a Judicial Eligibility Commission (see Standard B.1) or a Judicial Nominating Commission (see Standard B.2).

An open, regularized process for the appointment of judges promotes objectivity by reducing the influence of inappropriate political pressures, and thereby adds legitimacy to the outcome. The use of an open, regularized process heightens the likelihood of achieving the goals of a qualified, inclusive, and independent judiciary. An open selection process will assist in the recruitment of a diverse candidate pool, thereby promoting the goal of achieving a judiciary that is representative of our society particularly in terms of race, ethnicity, gender, and age or other indicia of diversity.

If appointing authorities adhere to high standards regarding the judicial selection process, those responsible for confirming executive branch judicial appointees, usually legislative officials, will also be encouraged to adopt high standards. The confirming body should make every effort to achieve the goals of a qualified, inclusive and independent judiciary above partisanship and other irrelevant considerations.

The use of a Judicial Eligibility or a Judicial Nominating Commission assists the appointing authority in maintaining an open, regularized judicial selection process. In selecting members for either commission, the appointing authority should choose individuals of diverse backgrounds who are committed to the goals of achieving a qualified, inclusive, and independent judiciary.

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Standard B.4: Endorsing Authority. The primary goal of individuals or official bodies who are responsible for endorsing judicial candidates for election should be to facilitate the selection of a qualified, inclusive, and independent judiciary.

(a) Open, Regularized Process. In endorsing judicial candidates, the endorsing authority should use an open, regularized process to review the qualifications of judicial candidates. The endorsing authority should endorse only those candidates who appear on lists of qualified candidates submitted by the Judicial Eligibility Commission (see Standard B.1).

(b) Selection. In reviewing the qualifications of candidates submitted by a Judicial Eligibility Commission, the endorsing authority should consider a broad range of publicly disclosed selection criteria (see Part A).

(c) Use of a Judicial Eligibility Commission. The endorsing authority should encourage the use of a Judicial Eligibility Commission (see Standard B.1).

Commentary

Endorsing authorities usually play key roles in states that employ partisan or nonpartisan judicial election systems. An example of an endorsing authority is a political party slatemaking committee. A party slatemaking committee selects the judicial candidate who will represent the party in an upcoming judicial election. In many ways, a slatemaking committee is as influential as an appointing authority. Hence, similar to appointing authorities, endorsing authorities should select judicial candidates in a manner that brings legitimacy to the selection process and promotes the selection of a qualified, inclusive, and independent judiciary.

In an effort to formalize the process of endorsing judicial candidates, a Judicial Eligibility Commission (see Standard B.1) should be utilized by endorsing authorities. Through the use of an Eligibility Commission, members of the public and the bar can be further included in the process of deciding judicial candidate endorsements. The use of such a commission brings legitimacy to the endorsement process, and adds validity to the judicial selection process in general.

While it is understandable that an endorsing authority will consider factors such as party loyalty in making an endorsement, it is not inconsistent to also facilitate the selection of a qualified, inclusive, and independent judiciary. To promote this goal, endorsing authorities should abide by the findings of an Eligibility Commission.

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Standard B.5: Retention Evaluation Body. A retention evaluation body should operate in a manner that is consistent with the goal of achieving and maintaining a qualified, inclusive, and independent judiciary.

(a) Evaluation Methodology. A retention evaluation body should review judges based on the criteria set forth in Part A, and operate in a fair, efficient, confidential and logical manner.

(b) Dissemination. A retention evaluation body should disseminate evaluation results as broadly as possible and in a manner that educates the citizenry about the judicial candidates.

Commentary

Some states with judicial retention elections have established retention evaluation bodies, by statute or constitutional provision, that conduct surveys of those persons with direct knowledge of judges subject to retention. The results of these surveys are intended to aid voters in judicial retention elections. These states are Alaska, Arizona, Colorado, New Mexico, Tennessee, and Utah. Moreover, the state of Oklahoma has established an ad hoc body to perform this role. State formalization of the retention evaluation process adds legitimacy to the body's recommendations and allows the use of state funds to assist in researching candidates and disseminating the results. These bodies serve the direct purpose of educating the citizenry about judicial candidates facing retention. This trend of states to fund retention evaluation bodies is applauded. Such bodies should receive full and adequate funding and should utilize sound survey methods.

The American Judicature Society has recently published the first full report of four states that fund retention evaluation bodies. The report examines in detail the different versions of the retention evaluation bodies. Recommendations for establishing a state retention evaluation body are included in the report and should be consulted by persons interested in, or involved with, retention evaluation bodies.

Retention evaluations should occur in an objective environment, free from partisan or ideological interests. Evaluators should direct surveys at those persons with first-hand knowledge of the judge. Bodies should phrase questions with the goal of producing critical, specific, non-redundant responses from those polled. If the polling community is too large, random sampling should be utilized. At all times in the evaluating process, the identities of those polled should be kept confidential and anonymous comments should not be considered.

After the body has evaluated the candidates, the results should be disseminated to as large a voting audience as reasonably possible. Evaluators and others interested in judicial selection are encouraged to pool their resources in an attempt to effectively disseminate evaluation survey results. Results should be presented in an easy to understand logical form.

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Part C: Supporting Actors in Selection Process

Standard C.1: Bar Associations. State and local bar associations should place a high priority on facilitating the selection and retention of a qualified, inclusive, and independent judiciary.

(a) **Assisting Appointing Authority and Endorsing Authority.** Bar associations should assist the appointing authority and endorsing authority by encouraging the use of a Judicial Eligibility Commission (see Standard B.1) or Judicial Nominating Commission (See Standard B.2), and should assist such commission by conducting appropriate investigation and inquiry of their members and with their communities to review the qualifications of judicial candidates.

(b) **Selection of Members of Judicial Eligibility Commission or Judicial Nominating Commission.** Where bar associations are responsible for the selection of members of a Judicial Eligibility Commission or Judicial Nominating Commission, bar associations should operate in a manner that is independent of the appointing or endorsing authorities, with the goal of producing a qualified, inclusive, and independent judiciary. When making appointments to a Commission, bar associations should be mindful of the goal of achieving a commission that is independent and inclusive.

(c) **Service to the Law.** Bar associations should encourage their members to assist in the judicial selection process by serving on a Judicial Eligibility Commission or a Judicial Nominating Commission, and educating the electorate about the process of judicial selection.

(d) **Endorsement of Candidates.** Bar association endorsement of judicial candidates should reflect the goal of achieving a qualified, inclusive, and independent judiciary.

(e) **Educational Programs in Ethics for Candidates.** Bar associations should provide educational programs in ethics and judicial standards to candidates who must be held to such standards during any judicial election. This program shall also include state laws on financing judicial campaigns and disclosures.

Commentary

Public officials, media interests, and others often rely on bar associations to assist in monitoring, evaluating, and selecting judicial candidates and sitting judges. For this reason, bar associations play an important role in the judicial selection process. Commonly, bar associations may be more influential in elective states than in appointive jurisdictions, however, their role in appointive states can be significant.

There are two main ways bar associations help executive branch officials appoint judges. One way bar associations assist an appointing authority is by informing the authority about the judicial nominees. Appointing authorities inquire about the potential judicial candidates and

their qualifications and often bar associations respond through polls of their members or personal advice of bar leaders. Thus bar associations, and their representatives, have an obligation to be fair and thorough when discussing judicial nominees and their qualifications.

Bar associations also assist in the judicial selection process through the selection of judicial nominating commissioners and judicial eligibility commissioners. In many jurisdictions, state, or occasionally local, bar association leaders are directly responsible for the selection of commissioners. Even where bar associations are not directly responsible for the selection of commissioners, bar leaders are often consulted by appointing authorities to aid them in their commission appointments. In appointive jurisdictions where nominating commissions are not employed, bar associations should advocate the voluntary use of nominating commissions by the appointing authority. In states that do not yet have a Judicial Eligibility Commission, bar associations should encourage its implementation.

Whether nominating commissions are statutory or voluntary, bar associations should select commission members based solely on the independent judgment of the association member and not based on the judgment of public officials or political interests.

In many appointive jurisdictions, bar associations are responsible for evaluating judicial candidates and sitting judges subject to retention elections. This evaluation often takes the form of bar polls. The purpose of these polls is ultimately to inform the citizenry about the judicial candidates. The polls serve a second function by helping judges determine their own performance. To that end, “Guidelines for Reviewing Qualifications of Candidates for State Judicial Offices” published by the American Bar Association should be consulted and followed.

Bar associations are influential when deciding whether to endorse a judicial candidate in either a retention or general judicial election. A state or local bar association is in the unique position of “rating” a judge as qualified or not. Sometimes media endorsements follow bar association endorsements. When endorsing judges running for retention, bar associations should be mindful of their primary educational role. Bar associations should decide to endorse solely on the qualifications of the judicial candidates. Bar associations should bear in mind the objectives of producing a highly qualified, inclusive, and independent judiciary. After a bar poll is conducted, the results should be disseminated to as broad an audience as possible. In states that utilize judicial elections for initial appointments, bar associations can be helpful in creating Judicial Eligibility Commissions.

Bar associations should also provide educational programs in ethics and judicial standards to judicial candidates. These programs should address various ethical canons governing the election and campaign process, including state laws on financing judicial campaigns and disclosures. Bar associations might consider partnering with other organizations to provide such educational programs.

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Standard C.2: Judicial Candidates. Judicial candidates should conduct themselves in a manner that brings legitimacy to the judicial selection process and maintains the integrity of an independent judiciary.

(a) Disclosure. Judicial candidates should disclose all real or potential conflicts of business or personal interest related to a Judicial Eligibility Commission, Judicial Nominating Commission, endorsing authority, appointing authority, media outlet, or other relevant entity.

(b) Election Campaigns. Judicial candidates should comply with state law and ethical rules governing the selection of judges, and should act in a manner that brings legitimacy to the selection process. Judicial candidates in elective jurisdictions should comply with all relevant judicial ethics rules governing campaign activities.

(c) Judicial Eligibility Commission or Judicial Nominating Commission. Judicial candidates should supply information to a Judicial Eligibility Commission (see Standard B.1) or Judicial Nominating Commission (see Standard B.2) as required by law or rules of the appropriate commission.

(d) Confidentiality. A judicial candidate should keep confidential those Judicial Eligibility Commission or Judicial Nominating Commission activities that the commissioners would themselves be required to keep confidential.

Commentary

In appointive plan jurisdictions, the judicial candidate is usually a person interested in becoming a judge who must appear before a judicial commission or appointing authority, or is a sitting judge who must succeed in a retention election. In elective states, judicial candidates are usually attorneys or sitting judges who wish to be placed on a judicial ballot for selection by vote.

Judicial candidates are subject to certain rules and customs associated with judicial selection. The American Bar Association *Model Code of Judicial Conduct*, which has been adopted in some form in every state, regulates the conduct of judicial candidates. In particular, a judicial candidate should be aware of all relevant judicial ethics provisions in his or her jurisdiction and adhere strictly to them.

Every judicial selection process requires a fair inquiry concerning the qualities and characteristics of the judicial candidates. In presenting himself or herself to the appointing official or evaluating body, the judicial candidate should respond to all inquiries truthfully and supply any and all information relevant to his or her candidacy for judicial office. At all times prior to selection, judicial candidates should cooperate with Judicial Nominating Commissions (see Standard B.2) and Judicial Eligibility Commissions (see Standard B.1).

Pursuant to the dictates of the *Model Code of Judicial Conduct Canon 1* and *Canon 4*, judicial candidates should take steps to minimize the risk of conflict with judicial obligations. Additionally, these standards urge judicial candidates to avoid any personal or business related conflict of interest that may inappropriately affect the selection process. If a real conflict or a potential conflict of interest exists between a judicial candidate and a nominating commission, appointing authority, endorsing authority, eligibility commission, or media interest, the judicial candidate should take the necessary steps to disclose such a conflict to those responsible for judicial selection or review. If disclosure of a substantial conflict cannot diminish the ill effects of the controversy, or if disclosure is not a reasonable option, the judicial candidate should withdraw from the selection process.

Usually judges who reach office in an appointive plan jurisdiction are required to take part in a retention election within a specified number of years after reaching the bench. A retention election judicial candidate has no competing judicial candidate(s), but instead must secure an “approval” by receiving a positive vote by at least a majority of voters. *Canon 5* of the *Model Code of Judicial Conduct* regulates the activities of judicial retention election candidates. The judge who is going before the voters in a retention election should become familiar with the relevant judicial ethics provisions in his or her jurisdiction and comply with them. Judges facing retention should cooperate with state authorized evaluation bodies responsible for reviewing judicial candidates.

In most jurisdictions employing Judicial Nominating or Judicial Eligibility Commissions, certain discussions, findings, and research conducted by the commissions will be held confidential for the benefit of the judicial candidates and the selection procedure. Judicial candidates, whether successful or not, should abide by the jurisdiction's rules governing the confidentiality of the selection process and the work of the commissions.

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Standard C.3: Individual Attorneys. Consistent with their obligations under the Model Rules of Professional Conduct, attorneys should use their special knowledge of, and professional interest in, the judicial system to legitimize the judicial selection process and assist in achieving the goal of a qualified, inclusive, and independent judiciary.

Commentary

Attorneys have a strong professional interest in the judicial selection process and possess special knowledge about the judicial system and judicial candidates. It is for this reason that Judicial Nominating and Eligibility Commissions should have lawyer members. Attorneys also act as references for judicial candidates. Often, individual attorneys are consulted by appointing officials or polled by bar associations concerning judicial candidates. Additionally, attorneys may be contacted, or may even contact, media sources regarding judicial candidates. Thus, individual attorneys and law firms have a tremendous amount of power to influence the judicial selection process.

This special knowledge attorneys have about judicial candidates brings with it certain responsibilities. When lawyers are involved either directly or indirectly in judicial selection, they should conduct themselves in a manner that brings legitimacy and respect to the selection process. If an attorney knows of information that could be relevant to an evaluating commission or an appointing authority, the attorney should disclose such information. Ultimately, lawyers should place the legal system on a higher footing than either personal feelings or personal loyalties to other individuals.

In short, attorneys should seek to bring legitimacy to the judicial selection process by maintaining high standards of conduct in every aspect of their involvement in the process. In addition, they should insist that others conduct themselves in a manner that seeks to achieve the goal of a qualified, inclusive, and independent judiciary.

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Standard C.4: Public and Private Organizations. Public and private organizations which take public positions regarding the selection or election of judicial candidates should respect the desired goal of producing a qualified, inclusive, and independent judiciary.

Commentary

In a variety of ways, different private and public organizations influence the judicial selection process. While their impact on judicial selection varies greatly, these organizations should respect the goals of the selection process and not allow their particular interest or point of view to interfere with the goal of achieving a qualified, inclusive and independent judiciary. Organizations associated with particular issues and citizen groups can play a decisive role in deciding who should, or should not, be a judge. Of the various supporting actors affecting judicial selection, these groups may be the most unpredictable. The unpredictability of these groups makes their influence on the selection process difficult to measure. The large differences between these groups also make their influence difficult to assess.

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Susan B. Carbon and Larry C. Berkson, *Judicial Retention Elections in the United States* (AMERICAN JUDICATURE SOCIETY, 1980).

Standard C.5: Media Interests. The appointment and election of qualified judges is crucial to the administration of a sound justice system and the media are encouraged to make increased efforts to advise the public as to the qualifications of candidates for judicial office.

Commentary

Newspapers, magazines, television programs, Internet sites, radio programs, and other media sources together represent the large group of media interests. Collectively, this group can have an enormous impact on the selection of judges. Polls show that in our society voters receive candidate information mostly from some form of media service, and not from personal knowledge or personal contact with the candidates themselves. Americans trust the media to deliver candidate information in a fair and neutral manner. For these reasons, media interests should balance the coverage of judicial elections and campaigns in order to foster a democratic process.

In addition to standard “news articles,” media sources educate the citizenry about the process of judicial selection and judicial candidates through the standard editorial or “op-ed” piece. A media group’s decision to endorse or oppose a judicial candidate should rest primarily on the judicial capacity of the candidate, and not on any special relationship which exists between the media group and the judicial candidate. Media sources should also inform the public of any real or potential conflicts of interest related to business or personal associations with the judicial selection procedures, judicial candidates, or any other conflicts that may unduly influence the decision of the media group to endorse a judicial candidate.

Although the judicial selection process normally will generate less media interest in appointive jurisdictions than in elective jurisdictions, the press has an important role to play in educating the citizenry and insuring an open and fair process. Appointing authorities, endorsing authorities, judicial nominating and eligibility commissioners, and others responsible for judicial appointments will be more likely to maintain high standards of conduct if they know their actions may be the subject of press coverage. In addition, judges facing elections are sometimes the targets of interest groups that may be unfairly critical of a judge’s handling of certain cases. The media can play an important role not only in presenting fair coverage of candidates and substantive issues, but also in broadening their coverage to educate the public about the importance of maintaining the independence of the judiciary.

Lastly, media interests are encouraged to publish findings produced by the primary actors and bar associations.

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Appendix 1

JUDICIAL SELECTION IN THE STATES *APPELLATE AND GENERAL JURISDICTION COURTS*

“SUMMARY OF INITIAL SELECTION METHODS”

Merit Selection Through Nominating Commission*	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Partisan Election	Nonpartisan Election	Combined Merit Selection and Other Methods
Alaska	California (G)	Alabama	Georgia	Arizona
Colorado	Maine (G)	Arkansas	Idaho	Florida
Connecticut	New Jersey (G)	Illinois	Kentucky	Indiana
Delaware	Virginia (L)	Louisiana	Michigan	Kansas
District of Columbia		North Carolina	Minnesota	Missouri
Hawaii		Pennsylvania	Mississippi	New York
Iowa		Texas	Montana	Oklahoma
Maryland		West Virginia	Nevada	South Dakota
Massachusetts			North Dakota	Tennessee
Nebraska			Ohio	
New Hampshire			Oregon	
New Mexico			Washington	
Rhode Island			Wisconsin	
South Carolina				
Utah				
Vermont				
Wyoming				

*The following ten states use merit plans only to fill midterm vacancies on some or all levels of court: Alabama, Georgia, Idaho, Kentucky, Minnesota, Montana, Nevada, North Dakota, West Virginia, and Wisconsin.

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Appendix 2

A BRIEF HISTORY OF JUDICIAL SELECTION IN STATE COURTS

INTRODUCTION

In 1837, Francis Lieber observed that while the ancients could not create an independent judiciary, Americans were unable adequately to appreciate the one they had.¹ Today, however, those who appreciate judicial independence also recognize the need for a measure of accountability for judges, as well as insulation from political concerns.

Because judicial authority includes the power to review legislation, judges historically have been accused of exceeding that authority and usurping the role of the legislative branch. Such criticism dates to the earliest days of the American judicial system.² Unlike most state courts, the federal courts are staffed by judges who enjoy tenure for life. While criticism of life tenure dates to Thomas Jefferson, the framers of the Constitution concluded that life tenure was the most effective means of shielding judges from political and financial pressures. The states, on the other hand, reached a different conclusion.

A HISTORICAL PERSPECTIVE ON JUDICIAL ELECTIONS

The rationale for judicial elections was simple: because elected judges were chosen by the people themselves, they would inspire greater public trust, and their decisions, in turn, would command greater respect. Moreover, elections would provide judges with a background appropriate to the responsibilities inherent in the political role of judicial review. In theory, legislatures thus would be less likely to intrude upon judicial decisions, and if bad judges were elected, recourse would be available at the ballot box.

By the end of the nineteenth century, the weaknesses of judicial elections had become increasingly evident.³ In rural counties, elections intensified fears of hometown prejudice against nonresident parties. Elsewhere, judicial elections were often marked by a very low level of knowledge and interest among the electorate. There were also at least three more serious weaknesses that the advocates of judicial elections had not anticipated: the role of political parties; the need for and sources of campaign funds; and the substantive content of the campaigns themselves.⁴

STATE EFFORTS TO IMPROVE JUDICIAL SELECTION

Some states included provisions in their constitutions for the recall of elected officials,⁵ and seven extended these provisions to include judges. Colorado's constitution provided for public referenda to review judicial decisions. In 1911, outraged by a New York Court of Appeals decision invalidating the state's mandatory worker's compensation law,⁶ former president Theodore Roosevelt proposed that New York follow Colorado's example, granting the people a referendum on the constitutionality of legislation.⁷ Ohio, North Dakota, and Nebraska also amended their constitutions to require supermajority votes of their highest courts to invalidate legislation.⁸ Such efforts to subject judicial decisions to popular referendum eroded the judiciary's independence, particularly under elective systems.

In the late nineteenth century, the public grew increasingly suspicious of urban political machines and feared that judges could not be trusted to decide cases independently of their party sponsors. Political parties played a significant role in judicial elections, awarding nominations and support to party regulars and contributors.⁹ However, because the parties' interests extended beyond the outcome of a particular election, they did sometimes eliminate underqualified candidates who might otherwise have won election.¹⁰

The need for and sources of campaign funds presented a second concern.¹¹ Judicial candidates received contributions from lawyers and litigants who appeared in their courts, and even when such amounts were relatively small, the contributions raised at least an appearance of impropriety. This problem was exacerbated when a candidate retained surplus campaign funds or held postelection fundraisers to pay campaign debts.¹²

The substantive content of judicial campaigns presented a third difficulty (one that still exists). Political candidates had to appeal to their future constituents for votes, and they often did so by making promises regarding future policy decisions. However, judicial candidates who made such promises regarding their decisions in future cases (in which, by definition, the parties had not yet been heard) sacrificed the neutrality and objectivity they were expected to bring to the position. While professional ethical standards may have proscribed such campaign promises,¹³ candidates sometimes failed to practice appropriate restraint.¹⁴ Some also argued that free speech protection should outweigh concerns regarding judicial objectivity and its implications for due process.¹⁵

After 1912, the direct democracy movement faded.¹⁶ As lengthened ballots diminished the likelihood that voters were exercising knowing choices and increased the election prospects of candidates with familiar names but few qualifications, political parties found it increasingly difficult to prevent the election of underqualified judges.¹⁷ In this environment, a movement arose among the organized bar to improve methods of judicial selection and retention. Some states had fashioned "nonpartisan" elections by removing judicial candidates from partisan tickets. However, this weakened the parties' influence and simply made judges more vulnerable to other financial influences.¹⁸

This situation led to growing support among the bar for "merit selection." Under this method of judicial selection, candidates were nominated by a committee that examined their experience and credentials; those chosen were then subjected to retention elections (that is, elections in which the judge is unopposed, and voters simply decide whether the judge should remain in office). The merit selection method was first suggested by Albert Kales, vice president of the American Judicature Society, which was founded in 1913 by members of the bench and bar to improve judicial administration. In 1937, the American Bar Association adopted a merit selection policy, and in 1940, Missouri became the first state to establish a merit-selection method of choosing judges, which came to be known as "the Missouri plan." Eight more states

adopted a merit selection plan for at least some judicial vacancies over the next thirty years. In the 1970s, fifteen additional states adopted a form of appointive selection for at least some levels of their judiciaries. As a result of the variety among the plans that were adopted, almost no two states now have identical systems of judicial selection, and most have different systems for different types of courts.¹⁹ However, the trend since 1950 has been toward merit selection.

Retention elections were a device to satisfy the voters' desire for self-governance without risk of improper political influences on judges. As originally envisioned, a judge running unopposed in a retention election would be retained, in the absence of scandalous misconduct,²⁰ and for decades, retention elections worked as expected: no judge standing for retention failed to achieve it.

RECENT DEVELOPMENTS

About 1980, political parties and interest groups began to take an even greater interest in judicial elections. In some states, tort and insurance law moved to the top of the political agenda as campaign issues in judicial elections. By 1980, local groups of personal injury lawyers organized to work for the election of judges they believed would rule favorably for their clients. For a time, some observers felt that they controlled elections to the Supreme Court of Texas,²¹ and their success evoked a response from insurance companies and others whose financial interests were threatened by what they perceived to be a "plaintiffs' court." Now, nearly two decades since, many observers believe that the pendulum has swung in the opposite direction and now characterize the court as a "defendants' court." A similar series of events has occurred in Alabama,²² and, less visibly, in other states.²³

During this period, television advertising also entered judicial elections. Political advertisements on commercial television have affected judicial elections in two ways. First, the cost of advertising, especially on television, has increased the need for campaign funds. Second, expert consultants and focus groups have been used to tailor such advertising, which sometimes directs negative sentiments toward political adversaries. Such attacks can be effectively countered, if at all, only by a televised response, thus further raising the cost of judicial campaigns.

CONCLUSION

In recent years, polls have shown that the public overwhelmingly believes that judicial decisions are influenced by campaign contributions. In some states, recent headlines have called attention to large favorable judgments and fee-paying appointments (such as receiverships) granted to lawyers or parties who previously had made large campaign contributions to the judge(s) involved.²⁴ These concerns weaken public confidence in the independence of the judiciary.²⁵ These problems show no sign of abating, making the need for the reforms discussed in the accompanying report all the more urgent.

NOTES

1. Francis Lieber, *Manual of Political Ethics*, 2d ed., Theodore Woolsey, ed. (Philadelphia: J. B. Lippincott and Co., 1875), p. 363.
2. For example, in the early days of the republic, the New York State Legislature protested certain decisions made by Chancellor James Kent by forcing him into retirement. In Connecticut, a grand jury indicted its own presiding judge, Federalist Tapping Reeve, as a result of comments he made about Jefferson from the bench. Likewise, for ideological reasons, Pennsylvania Federalists deprived Jefferson's friend Thomas Cooper of his judgeship, and in 1813, a Federalist New Hampshire legislature expelled all Democratic judges from the state's courts. In 1824, as punishment for decisions adverse to tenants and debtors, Kentucky's Democratic legislature fired all Whig members of its highest court. By the 1830s, Jacksonian Democrats advocated the election of judges, and by the middle of the nineteenth century, judges were elected in all but a few states.
3. Steven P. Croley, *The Majoritarian Difficulty: Elective Judiciaries and The Rule of Law*, 62 U. Chi. L. Rev. 689, 713-29 (1995).
4. See, e.g., John v. Orth, *Tuesday, February 11, 1868: The Day North Carolina Chose Direct Election of Judges: A Transcript of the Debates from the 1868 Constitutional Convention*, 70 N.C. L. Rev. 1825 (1992).
5. Recall was first adopted in Oregon in 1908, and little consideration was given to the possible exclusion of judges from that provision. Allen H. Eaton, *The Oregon System: The Story of Direct Legislation in Oregon* (Chicago: A. C. McClurg and Co., 1912).
6. J. Patrick White, *Progressivism and the Judiciary: A Study of the Movement for Judicial Reform 1901-1917* (Ph.D. dissertation, University of Michigan, 1957), p. 349.
7. Speech at Carnegie Hall, New York, October 20, 1911, *The Works of Theodore Roosevelt*, Herman Hagedorn, ed. (New York: C. Scribner's Sons, 1925). An account of this remarkable event is provided by Edward Hartnett, *Why Is the Supreme Court of the United States Protecting State Judges from Popular Democracy?* 75 Tex. L. Rev. 907, 933-49 (1997).
8. White, *Progressivism and the Judiciary*, p. 420.
9. This remains a feature of partisan judicial elections in numerous states. Roy A. Schotland, *Elective Judges' Campaign Financing: Are State Judges' Robes the Emperor's Clothes of American Democracy?* 2 J. L. & Pol. 57, 65-66 (1985).
10. Absent party control, the election is often decided by name recognition. Schotland, *Elective Judges' Campaign Financing*, pp. 86-89, gives numerous examples.
11. *Ibid.*, pp. 59-63.
12. See, e.g., the event described in David Fraser, "Letter Asks Help to Cut Judge's Debt," *Arkansas Democrat-Gazette*, July 16, 1994, p. 1A.
13. Randall T. Shepard, *Campaign Speech: Restraint and Liberty in Judicial Ethics*, 9 Geo. J. Legal Ethics 1059, 1059-68 (1996).
14. See, e.g., Schotland, *Elective Judges' Campaign Financing*, pp. 66, 79-80.
15. *ACLU v. Florida Bar*, 744 F. Supp. 1094 (N.D. Fla. 1990); *J.C.J.D. v. R.J.C.R.*, 803 S.W.2d 953 (Ky. 1991); *Stretton v. Disciplinary Bd.*, 944 F.2d 137 (3d Cir. 1991); *Buckley v. Illinois Judicial Inquiry Board*, 997 F. 2d 224 (7th Cir. 1993).
16. See generally Patrick L. Baude, *A Comment on The Evolution of Direct Democracy in Western State Constitutions*, 28 N.M. L. Rev. 313 (1998).
17. William Howard Taft, *The Selection and Tenure of Judges*, 38 A.B.A. Rep. 418, 422-23 (1913).

18. See David Adamany and Philip DuBois, *Electing State Judges*, 1976 Wis. L. Rev. 731 (1976); Ray M. Harding, *The Case for Partisan Election of Judges*, 55 A. B. A. J. 1162 (1969); Philip Dubois, *Voting Cues in Nonpartisan Trial Court Elections*, 18 L. & Soc. Rev. 395 (1984).

19. A summary of the variations is provided in Polly Price, "Selection of State Court Judges," in Roger Clegg and James D. Miller, eds., *State Judiciaries and Impartiality: Judging the Judges* (Washington, D.C.: National Legal Center for the Public Interest, 1996), pp. 16-19.

20. Larry T. Aspin and William K. Hall, *Political Trust and Judicial Retention Elections*, 9 Law & Pol'y Q. 451 (1987).

21. Anthony Champagne, *The Selection and Retention of Judges in Texas*, 40 SW. L.J. 53, 90 (1986). *And see* American Tort Reform Association, "America's Third Party": A Study of Political Contributions by The Plaintiff's Lawyer Industry, Washington, D.C., 1994; Orrin W. Johnson and Laura Johnson Uris, *Judicial Selection in Texas: A Gathering Storm?* 23 Tex. Tech L. Rev. 525 (1992); Anthony Champagne, *Campaign Contributions in Texas Supreme Court Races*, 17 Crime, L. & Soc. J. 91 (1992); Anthony Champagne, *Judicial Reform in Texas*, 72 Judicature 146 (1988).

22. For an account of recent events in Alabama, see Glenn C. Noe, *Alabama Judicial Election Reform: A Skunk in Tort Hell*, 28 Cumb. L. Rev. 215 (1998).

23. For the Wisconsin experience, for example, see Nathan S. Heffernan, Speech, *Judicial Responsibility, Judicial Independence and the Election of Judges*, 80 Marq. L. Rev. 1031 (1997); Shirley S. Abrahamson, *Remarks Before the American Bar Association Commission on Separation of Powers and Judicial Independence*, 12 St. John's J. Legal Comment. 69 (1996). For the Michigan experience, see Kurt M. Brauer, *The Role of Campaign Fundraising in Michigan's Supreme Court Elections: Should We Throw the Baby Out with the Bathwater?* 44 Wayne L. Rev. 367 (1998).

24. For a recent example, the Supreme Court of Alabama upheld an enormous punitive damage award after every member of the court had received sizable contributions from counsel for the plaintiff. *ABC World News Tonight*, October 9, 1995 (transcript #5201); *Nightline*, October 24, 1995 (transcript #3762). Pennzoil lawyers contributed \$315,000 to members of the Texas court deciding its enormous claim against Texaco; and four of the judges receiving contributions were not facing reelection campaigns. Madison B. McClellan, Note, *Merit Appointment Versus Popular Election: A Reformer's Guide to Judicial Selection Methods in Florida*, 43 Fla. L. Rev. 529, 555 (1991). Alabama and Texas have since modified their rules of judicial conduct to prohibit this practice.

25. See, e.g., Stephen B. Bright, *Can Judicial Independence Be Attained in the South? Overcoming History, Elections, and Misperceptions about the Role of the Judiciary*, 14 Ga. St. U. L. Rev. 817, 845 (1998) (discussing "rapidly growing role of special interest groups").

Appendix 3

METHODS OF STATE JUDICIAL SELECTION

Courts of Last Resort

- Merit Selection through Nominating Commission: 24 states and the District of Columbia
- Gubernatorial Appointment: 4 states
- Legislative Appointment: 1 state
- Nonpartisan Election: 13 states
- Partisan Election: 8 states

Intermediate Appellate Courts

- Merit Selection through Nominating Commission: 19 states
- Gubernatorial Appointment: 2 states
- Legislative Appointment: 1 state
- Nonpartisan Election: 10 states
- Partisan Election: 7 states

Trial Courts of General Jurisdiction

- Merit Selection through Nominating Commission: 15 states and the District of Columbia
- Merit Selection through Nominating Commission/Partisan elections: 3 states
- Merit Selection through Nominating Commission/Nonpartisan elections: 1 state
- Gubernatorial Appointment: 3 states
- Gubernatorial Appointment/Nonpartisan elections: 1 state
- Legislative Appointment: 1 state
- Nonpartisan elections: 16 states
- Partisan elections: 10 states

NOTE: These charts summarize statistics pertaining to methods of initial judicial selection current as of July 1997, as reported by the American Judicature Society (AJS).

**METHODS OF JUDICIAL SELECTION FOR INITIAL FULL TERMS:
COURTS OF LAST RESORT, INTERMEDIATE APPELLATE COURTS AND TRIAL
COURTS OF GENERAL JURISDICTION**

	Courts of Last Resort	Intermediate Appellate Courts	Trial Courts of General Jurisdiction
Alabama	P	P	P
Alaska	MS/NC	MS/NC	MS/NC
Arizona	MS/NC	MS/NC	MS/NC;NP ¹
Arkansas	P	P	P
California	G	G	G; NP ²
Colorado	MS/NC	MS/NC	MS/NC
Connecticut	MS/NC	MS/NC	MS/NC
Delaware	MS/NC	---	MS/NC
D.C.	MS/NC	---	MS/NC
Florida	MS/NC	MS/NC	NP
Georgia	NP	NP	NP
Hawaii	MS/NC	MS/NC	MS/NC
Idaho	NP	NP	NP
Illinois	P	P	P
Indiana	MS/NC	MS/NC	MS/NC;P ³
Iowa	MS/NC	MS/NC	MS/NC

¹Merit Selection through Nominating Commission in counties with a population greater than 250,000; Nonpartisan elections in counties with a population less than 250,000.

²AJS reports that local electors choose either gubernatorial appointment or nonpartisan election to select trial courts of general jurisdiction.

³Indiana has two trial courts of general jurisdiction: the Superior Court and the Circuit Court. Merit Selection through Nominating Commission is used to select Superior Court judges in three counties and Circuit Court judges in one county; the remaining Superior Court and Circuit Court judges are chosen through partisan elections.

	Courts of Last Resort	Intermediate Appellate Courts	Trial Courts of General Jurisdiction
Kansas	MS/NC	MS/NC	MS/NC;P ⁴
Kentucky	NP	NP	NP
Louisiana ⁵	P	P	P
Maine	G	---	G
Maryland	MS/NC	MS/NC	MS/NC
Massachusetts	MS/NC	MS/NC	MS/NC
Michigan	NP	NP	NP
Minnesota	NP	NP	NP
Mississippi	NP	NP	NP
Missouri	MS/NC	MS/NC	MS/NC;P ⁶
Montana	NP	---	NP
Nebraska	MS/NC	MS/NC	MS/NC
Nevada	NP	---	NP
New Hampshire	G	---	G
New Jersey	G	G	G
New Mexico	MS/NC	MS/NC	MS/NC
New York	MS/NC	MS/NC	P
North Carolina	P	P	P
North Dakota	NP	---	NP
Ohio	NP	NP	NP

⁴Partisan elections are used to select trial court judges of general jurisdiction in seven districts. Merit selection through nominating commission is used to select the remaining trial court judges.

⁵Although AJS considers Louisiana's judicial races to be "partisan," the primaries are open to all candidates of all parties and judicial candidates generally do not solicit party support for their campaigns.

⁶Merit Selection through Nominating Commission is used to select trial court judges of general jurisdiction in four counties. The remaining trial court judges are selected through partisan elections.

	Courts of Last Resort	Intermediate Appellate Courts	Trial Courts of General Jurisdiction
Oklahoma	MS/NC	MS/NC	NP
Oregon	NP	NP	NP
Pennsylvania	P	P	P
Rhode Island	MS/NC	---	MS/NC
South Carolina	MS/NC	MS/NC	MS/NC
South Dakota	MS/NC	---	NP
Tennessee	MS/NC	MS/NC	P
Texas	P	P	P
Utah	MS/NC	MS/NC	MS/NC
Vermont	MS/NC	---	MS/NC
Virginia	L	L	L
Washington	NP	NP	NP
West Virginia	P	---	P
Wisconsin	NP	NP	NP
Wyoming	MS/NC	---	MS/NC

KEY:

MS/NC = Merit Selection through Nominating Commission
G = Gubernatorial Appointment without Nominating Commission
L = Legislative Appointment without Nominating Commission
NP = Nonpartisan Election
P = Partisan Election

Appendix 4

COMMISSION ON STATE JUDICIAL SELECTION STANDARDS

COMMISSIONER BIOGRAPHIES

Edward W. Madeira, Jr., Chair, is a partner with the law firm of Pepper Hamilton LLP in Philadelphia, Pennsylvania. He is the past chair of the American Bar Association Standing Committee on Federal Judicial Improvements and served in 1997 as chair of the ABA Commission on Separation of Powers and Judicial Independence. He is a member of the ABA Standing Committee on Judicial Independence. Mr. Madeira is past president of the Board of Directors of the Defender Association of Philadelphia. Long active in both the American Bar Association and Philadelphia Bar Association, Mr. Madeira is a former member of the Board of Delegates of both associations. He is a former adjunct professor at Villanova University School of Law. He is a member of the Council for the Future of the National Judicial College. He is a fellow of the American College of Trial Lawyers, a permanent member of the Judicial Conference for the Third Circuit, a member of the Product Liability Advisory Council, a member of the International Association of Defense Counsel, and an Associate Trustee of the University of Pennsylvania. He is also certified as a Judge Pro Tem in the First Judicial District of Pennsylvania. Mr. Madeira is a graduate of the University of Pennsylvania Law School, and clerked for Justice John C. Bell, Jr., on the Pennsylvania Supreme Court before joining his firm in 1953.

Patricia G. Brady, a member of the League of Women Voters since 1970, has served at every level of League activity – local, state, regional and national. That includes two terms on the national board of directors and more than 15 years on the League’s Lobby Corps, a volunteer group, which lobbies Congress. Mrs. Brady was a member of the Planning and Executive Committees for the National Conference on Public Trust and Confidence in the Judicial System held May 1999. She has also served as the League representative on various committees and coalitions, including the Courts and Community Advisory Committee (1993-95) and Citizens for an Independent Judiciary and has appeared on behalf of the League on several Worldnet Television programs under the auspices of the US Information Agency. Mrs. Brady has also served on various commissions and task forces of Fairfax County, Virginia. She holds a Bachelor of Science in Foreign Service degree and a Masters degree in international relations from Georgetown University. She also studied at the University of Madrid, Spain, holds a certificate from the Course on International and Comparative Law in Havana, Cuba (1958) and has taken courses in conflict resolution at George Mason University. Mrs. Brady worked at the Library of Congress in the Hispanic Foundation and in the Hispanic Law Division, where she served as Assistant Chief. In that position she was consultant to the Department of Justice in the case of U.S. v. States of Louisiana, Texas, Mississippi, Alabama and Florida heard by the Supreme Court in 1957. She has been listed in *Who’s Who in American Women* and *Who’s Who in the East*.

Shelley Longmuir is senior vice president of international, regulatory and governmental affairs for United Airlines. She is responsible for the company's relations with the executive and legislative branches of the U. S. government, and state and local governing bodies as well as with foreign government entities around the world. Prior to assuming her current position, Longmuir served as vice president – governmental affairs. Ms. Longmuir joined United in March 1993 as Senior Counsel – Governmental Affairs. Prior to joining United, she held senior positions in the Bush Administration at the U. S. Department of Transportation. She served as the Deputy General Counsel, Counselor to the Deputy Secretary and Chief of Staff to the Hon. Andrew H. Card for the Presidential Task Force and was responsible for coordinating the federal disaster relief efforts after Hurricane Andrew. Before her political appointments, she served as a criminal appellate attorney for the U. S. Department of Justice, and as a corporate lawyer for the law firm of Breed, Abbott & Morgan in New York City. Upon graduation from law school, Ms. Longmuir served as clerk for the Hon. Maryanne Trump Barry in federal court for the District of New Jersey. Ms. Longmuir holds a juris doctorate degree from New York University School of Law where she served as managing editor for the Journal of International Law & Politics. She graduated Magna Cum Laude, earning a double bachelor's degree in semiotics and English/Shakespearean literature from Brown University in Providence, Rhode Island where she was elected to Phi Beta Kappa. She is a member of the District of Columbia and the New York Bar Associations.

Hon. Thomas J. Moyer has served as Ohio's chief justice since 1987. Since taking office, he has worked with a broad range of citizens' groups, attorneys and judges to develop new programs to ensure that Ohio courts are prepared to meet both today's demands and those of the 21st century. Chief Justice Moyer has taken the lead in shaping initiatives, including: new programs to provide citizens with more control of resolving their disputes at less cost and in a reasonable time, and adoption of strict contribution limits for judicial campaigns. As chief justice, Tom Moyer chairs the Criminal Sentencing Commission that produces changes in felony laws to ensure prison space for violent and repeat offenders, and has recommended changes in misdemeanor, traffic and juvenile laws being considered by the General Assembly. In 1995-6, he chaired the national Conference of Chief Justices. In that role he testified before Congress and briefed the U.S. Attorney General on issues facing the state justice system. Justice Moyer received his undergraduate and law degrees from Ohio State University. Prior to his election as chief justice, he served eight years as judge of the Court of Appeals for Franklin County, four years as executive assistant to the Governor and eight years in private practice. He is past president of the Columbus Bar Association and the Columbus Board of Education. He chaired the Board of Directors of the Ohio State University Alumni Association and is on the Board of Trustees of Franklin University. The Chief Justice received the American Judicature Society Award for improving the administration of justice in Ohio. The Ohio State Bar Association presented him with its highest award, the Ohio Bar Medal, for his service to the profession in 1991; in 1996, he received the Ritter Award from the Ohio State Bar Foundation; and, in 1997, the National Center for State Courts presented him with its Distinguished Service Award. He received the Liberty Bell Award from the Columbus Bar Association; in 1998, received the Innovative Program Award from the Association of Family and Conciliation Courts, and was honored by the Phyllis Wheatley Association for "Open the Doors to Diversity and Success"; and, in 1999, he received the Better World Award from the Ohio Mediation Association and the Whitney North Seymour Medal from the American Arbitration Association. He co-chairs a national committee to develop model legislation for mediation in state courts.

Hon. Cara Lee Neville is a Hennepin County District judge in Minneapolis. She is past president of the National Association of Women Judges, the Douglas K. Amdahl Inn of Court and the Minnesota Trial Lawyers Association. Currently she is the state chair of the Fellows of the American Bar Foundation. Judge Neville has been active in the ABA Criminal Justice Section, where she served as chair, and also chaired the section's Task Force on Violent Crime By and Against Children. More recently, she served on the Ad Hoc Committee on Judicial Campaign Finance. She is a member of the ABA Nominating Committee and has served on the Judges Advisory Committee of the ABA Standing Committee on Ethics and Professional Responsibility, and as vice chair of the ABA Presidential Task Force Ad Hoc Committee on Crime and Violence. Other ABA committees she served on include: Special Task Force on Drugs; Providing Defense Service; Economics of Law Practice Committee; special advisor to the chair of the Criminal Justice Section on Attorney Specialization; and liaison to the ABA Criminal Justice Section for the Minnesota State Bar Association. She is also a member of the Torts and Insurance Practice Public Service Committee, and is the state delegate to the Judicial Division's National State Trial Judges Conference. Judge Neville co-authored the proposed rules of law on the judiciary and the status of judges in the Republic of Belarus for the ABA's Central and East European Law Initiative project. She also has been on the Blue Ribbon Advisory Committee on the Assessment of Indigent Defense Services and has been active in her state and county bar associations. Prior to becoming a judge, she was an assistant Hennepin County Public Defender; an adjunct professor of law at William Mitchell College of Law; and an assistant Hennepin County Attorney, serving as a prosecutor in the Criminal Division. She was also the executive director of the Minnesota Trial Lawyers Association. Judge Neville received her law degree from the William Mitchell College of Law.

Andrea Sheridan Ordin of Los Angeles, California is a partner in the Litigation and Government Regulation Sections of Morgan, Lewis and Bockius. Her practice with the firm has focused on complex business litigation, including securities class actions in state and federal court, antitrust defense and appellate litigation. Over the years, Ms. Ordin has led trial and negotiating teams in a variety of complex civil cases and has argued or participated in the briefing of more than 100 appellate cases in the state and federal courts. Ms. Ordin served as the United States Attorney for the Central District of California from 1977-1981. She was Chief Assistant Attorney General of the State of California, in charge of environmental, consumer, antitrust, charitable trust and civil rights litigation from 1983 through 1990. Ms. Ordin is a former president of the Los Angeles County Bar Association and chair of the Los Angeles County Bar Committee on Minorities in the Profession. She served on the Independent Commission to Study the Los Angeles Police Department (known as the Christopher Commission), that was formed after the Rodney King beating in Los Angeles. A former adjunct professor at U.C.L.A. School of Law, Ms Ordin is a frequent author and panelist for continuing legal education programs, emphasizing litigation and antitrust topics. Ms. Ordin received her undergraduate degree and her law degree from U.C.L.A.

Dean Joseph P. Tomain is Dean of the University of Cincinnati College of Law. Dean Tomain practiced law in New Jersey before beginning his career in legal education. He has taught at Drake University School of Law, and has served as visiting professor at the University of Texas School of Law. In addition to his administrative duties, teaching and scholarship, Dean Tomain serves on a number of civic organizations. He is Past President of the Board of the Volunteer Lawyers for the Poor Foundation and President of the Board of the Center for Chemical Addictions Treatment. He is a member of the Cincinnati Bar Association, the Black Lawyers Association/Cincinnati Bar Association Roundtable, the Ohio Courts Futures Commission, and Chair of the Thomas L. Conlan Education Foundation.

Marna S. Tucker is a partner in the Washington, D.C., law firm of Feldesman, Tucker, Leifer, Fidell & Bank. Ms. Tucker was the first woman president of the District of Columbia Bar Association and the first woman president of the National Conference of Bar Presidents. She currently serves on several legal and community organizations, including the Board of Visitors of the Georgetown University Law Center, as chair of the Mayor's Commission on Violence Against Women, chair of the Federal Judiciary Committee of the American College of Trial Lawyers, the Board of Equal Justice Law Library, the Board of the Center for Law and Social Policy, and the Board of the National Women's Law Center. A member of the District of Columbia Bar Board of Governors, Ms. Tucker has been a member of several committees, including the D.C. Bar Committee to Study Gender Bias in the Court, the D.C. Court Task Force on Gender Bias in the Courts, and the Board on Professional Responsibility and the Legal Ethics Committee. A member of the ABA House of Delegates since 1974, Ms. Tucker has held leadership positions with several ABA entities, including chair of the Committee on Professional Discipline, co-chair of the ABA Commission on Domestic Violence, co-chair of the Task Force on Domestic Violence, chair of Section of Individual Rights and Responsibilities, and chair of the Commission on Public Understanding About the Law. She was a founder of the ABA Women's Caucus. She was chair of the American Bar Foundation and is a life fellow. Ms. Tucker has received several honors and awards, including NAACP Legal Defense and Education Fund, Inc. Award for Exceptional Achievement for Advancing the Rights of Minorities and Women; Women's Legal Defense Fund Annual Award; Democratic Women's Congressional Caucus "A Woman Making History" Award; the Women's Bar Association of the District of Columbia Woman Lawyer of the Year Award; the National Legal Aid and Defender Association Annual Award, and the National Capital Area American Jewish Congress, Golda Meir Award. She received an honorary degree from the District of Columbia School of Law. Ms. Tucker is a fellow of the American College of Trial Lawyers and the American Academy of Matrimonial Lawyers. She received her undergraduate degree from the University of Texas and her law degree from the Georgetown Law Center, where she received the Alumni Achievement Award from the Georgetown University Alumni Club.

Hon. James Andrew Wynn, Jr. is a judge on the North Carolina Court of Appeals. He has long been an active member of the American Bar Association and currently serves on the Appellate Judges Conference Executive Committee and as Secretary of the Appellate Judges Conference. He is Treasurer of the North Carolina Judicial Conference, Vice President of the North Carolina Bar Association, and a member of the North Carolina Association of Black Lawyers and the North Carolina State Bar. Judge Wynn served as an Associate Justice on the North Carolina Supreme Court in 1998 and on the NC Court of Appeals for the preceding eight years. Prior to serving on the bench, he was in private practice at Fitch, Wynn & Associates from 1984-90; a

N.C. Assistant Appellate Defender in 1983; and in the United States Navy Judge Advocate General Corps, Naval Legal Service Office from 1979 - 83. He continues to serve on the US Navy JAG Corps reserve. Judge Wynn teaches throughout the country and has received numerous awards, including the NCATL 1995 Appellate Judge of the Year Award. Judge Wynn received his Bachelors of Arts in Journalism from UNC – Chapel Hill, his JD from Marquette University Law School, and his LLM from the University of Virginia School of Law.

James J. Alfini is a Professor of Law at Northern Illinois University. Professor Alfini teaches constitutional law, mediation theory and practice, legal ethics, and related courses. He served as dean of the NIU College of Law for six years and previously was a member of the law faculty at Florida State University. Earlier he served as Director of Research and Assistant Executive Director of the American Judicature Society. He received his undergraduate degree from Columbia University and his J.D. from Northwestern University. Professor Alfini is a past chair of the American Bar Association Dispute Resolution Section. He has published numerous books and articles, including *Judicial Conduct and Ethics with Shaman and Lubet*.

Jarrett Gable is a graduate of Northern Illinois University College of Law and served as Assistant Reporter to the ABA Commission on Judicial Selection Standards. While at NIU, Mr. Gable performed a criminal externship with the Kane County Public Defender's Office. He was a graduate assistant to the NIU Office of International Training and Development and undertook legal foreign study at the University of Bordeaux-Montesquieu IV. In addition, Mr. Gable was an assistant investigator to the Winnebago County Public Defender's Office in 1997 and served as an election commissioner for the NIU Student Association in 1996. Mr. Gable received his bachelors degree from Northern Illinois University.