

**AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES
August 11-12, 2003**

RESOLVED, That the American Bar Association adopts the Principles and Conclusions of the Commission on the 21st Century Judiciary, dated August 2003, to ensure judicial independence, accountability and efficiency.

FURTHER RESOLVED, That the American Bar Association urges all state, local and territorial bar associations to ensure the integrity of state and territorial judiciaries by promoting the implementation of the Principles and Conclusions of the Commission on the 21st Century Judiciary.

**American Bar Association
Commission on the 21st Century Judiciary**

**Principles and Conclusions
August 2003**

I. ENDURING PRINCIPLES

- A. Judges should uphold the law.
- B. Judges should be independent.
- C. Judges should be impartial.
- D. Judges should possess the appropriate temperament and character.
- E. Judges should possess the appropriate capabilities and credentials.
- F. Judges and the Judiciary should have the confidence of the public.
- G. The judicial system should be diverse and reflective of the society it serves.
- H. Judges should be constrained to perform their duties in a manner that justifies public faith and confidence in the courts.

II. PRESERVING THE JUDICIARY'S INSTITUTIONAL LEGITIMACY

A. Judicial Qualifications, Training and Evaluation

- States should establish credible, neutral, non-partisan and diverse deliberative bodies to assess the qualifications of all judicial aspirants so as to limit the candidate pool to those who are well qualified.
- The judicial branch should take primary responsibility for providing continuing judicial education, that continuing judicial education should be required for all judges, and that state appropriations should be sufficient to provide adequate funding for continuing judicial education programs.
- Congress should fully fund the State Justice Institute.
- States should fully fund the National Center for State Courts.
- States should develop judicial evaluation programs to assess the performance of all sitting judges.

B. Judicial Ethics and Discipline

- The American Bar Association should undertake a comprehensive review of the Model Code of Judicial Conduct.
- The codes of judicial conduct should be actively enforced.

C. Diversification of the Justice System

- Members of the legal profession should expand their use of training and recruitment programs to encourage lawyers who reflect diversity to join their firms, they should include them fully in firm life, and they should prepare them for pursuing careers on the bench following their years in practice.
- Courts should promote a representative work force and diverse court appointments.

- Courts should act aggressively to ensure that language barriers do not limit access to the justice system.
- Courts should have in place formal policies and processes for handling allegations of bias.
- Information regarding diversity should be shared among the courts in a state and among the states.
- Measures should be adopted to improve and expand jury pool representation.

D. Improving Court-Community Relationships

- Courts should take steps to promote public understanding of and confidence in the courts among jurors, witnesses and litigants.
- Courts should engage and collaborate with the communities of which they are a part, by hosting trips to courthouses and by judges and court administrators speaking in schools and other community settings.
- The continuation of problem-solving courts as a means to promote public confidence in the courts.

III. IMPROVING JUDICIAL SELECTION

A. The preferred system of state court judicial selection is a commission-based appointive system, with the following components:

- The governor should appoint judges from a pool of judicial aspirants whose qualifications have been reviewed and approved by a credible, neutral, non-partisan, diverse deliberative body or commission.
- Judicial appointees should serve until a specified age. Judges so appointed should not be subject to reselection processes, and should be entitled to retirement benefits upon completion of judicial service.
- Judges should not otherwise be subject to reselection, nonetheless remain subject to regular judicial performance evaluations and disciplinary processes that include removal for misconduct.

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B. Alternative Recommendations on Systems of Judicial Selection

- For states that cannot abandon the judicial reselection process altogether, judges should be subject to reappointment by a credible, neutral, non-partisan, diverse deliberative body.
- For states that cannot abandon judicial elections altogether, elections should be employed only at the point of initial selection.
- For states that retain judicial elections as a means of reselection, judges should stand for retention election, rather than run in contested elections.
- For states that retain contested judicial elections as a means to select or reselect judges, all such elections should be non-partisan and conducted in a non-partisan manner.
- For states that continue to employ judicial elections as a means of judicial reselection, judicial terms should be as long as possible.
- For states that use elections to select or reselect judges, states should provide the electorate with voter guides on the candidate(s).

- For states that use elections to select or reselect judges, state bars or other appropriate entities should initiate a dialogue among affected interests, in an effort to deescalate the contributions arms race in judicial campaigns.
- For states that use elections to select or reselect judges, state bars or other appropriate entities should reach out to candidates and affected interests, in an effort to establish voluntary guidelines on judicial campaign conduct.
- For states that do not abandon contested elections at the point of initial selection or reselection, states should create systems of public financing for appellate court elections.
- For states that retain contested judicial elections and do not adopt systems of public financing, states should impose limits on contributions to judicial candidates.

IV. PROMOTING AN INDEPENDENT JUDICIAL BRANCH THAT WORKS EFFECTIVELY WITH THE POLITICAL BRANCHES OF GOVERNMENT

- Standards for minimum funding of judicial systems should be established.
- The judiciary's budget should be segregated from that of the political branches, and it should be presented to the legislature for approval with a minimum of non-transferable line itemization.
- States should create independent commissions to establish judicial salaries.
- States should create opportunities for regular meetings among representatives from all three branches of government to promote inter-branch communication as a means to avoid unnecessary confrontations on such issues as court funding, judicial salaries, and structural reform of courts.

Report

The judicial systems of the United States at the beginning of the 21st Century remain unparalleled in their capacity to deliver fair and impartial justice, but these systems are in great jeopardy. Our state courts play a critical role in preserving American freedom and democracy. Almost 100 million cases are resolved peacefully and with relatively little fanfare by some 30,000 state judges each year. Increased political involvement in the judiciary, diminished public trust and confidence in the justice system, and uncertain resources supporting the courts, however, place burdens on the judiciary's capacity to continue to provide fair and impartial justice. Indeed, the escalating partisanship and corrosive effects of excessive money in judicial campaigns, coupled with changes in society at large and the courts themselves, have served to create an environment that places our system of justice, administered by independent and impartial judges, at risk.

Background

The American Bar Association (ABA) has long been dedicated to preserving of judicial independence and ensuring that justice is administered impartially throughout the federal and state courts, at all levels. As the national representative of the legal profession, the ABA remains keenly aware of the challenges facing the judicial systems and works to preserve judicial independence and impartiality. Uniquely situated to respond to threats to our justice systems, the ABA has a responsibility not only to respond to immediate challenges but also to look to the future and develop programs and initiatives to strengthen judicial administration as well as the public's trust and confidence in the judiciary.

Over the past decade, ABA leadership has exercised this important responsibility by initiating a variety of programs to support the judiciary. In 1996, the Committee on Separation of Powers and Judicial Independence issued a seminal report on the state of the judicial system. This report guided much of the recent work of the Association in the area of judicial independence. In 1997, the Special Committee on Judicial Independence was created to respond to unwarranted criticism of judges, promote public trust and confidence in, and understanding of, the role of the state judiciaries, and to develop programs throughout the states to preserve judicial independence. The Special Committee, which became a Standing Committee in 1999, undertook a number of important programmatic activities and, under the leadership of Alfred P. Carlton, Jr., secured over \$1,000,000 in outside funding to develop model programs. These programs include a model response to criticism of judges, standards on state judicial selection, and a model for public financing of judicial campaigns. Each of these initiatives marked the first time such topics were addressed on a national level and each has been adopted in the states, to various degrees.

In addition to the work of the Standing Committee, Philip Anderson, during his year as President of the ABA, organized three national programs on judicial independence, which culminated in a national conference on public trust and confidence in the judiciary. This conference provided an opportunity for extensive public outreach and collaboration, and set an agenda for the bar to focus on the public's perception of the role of the judiciary.

The Commission on the 21st Century Judiciary

Continuing with the important work done during his tenure as Chair of the Standing Committee on Judicial Independence, and with a keen appreciation for a changing landscape of how state

judges are selected, retained, provided independence, and made accountable, President Carlton, as ABA President-Elect, undertook a year long planning process to devise a strategy to address these challenges faced by state judiciaries. As a leading spokesperson for judicial independence, he recognized the need for the organized bar to think strategically and comprehensively about the myriad problems facing state judiciaries, many of which have arisen just in the last decade.

Upon becoming President of the ABA last August, Carlton convened the Commission on the 21st Century Judiciary to study, report and make recommendations with regard to various aspects of state judicial systems to ensure fairness, impartiality and accountability in the judiciary. President Carlton directed the Commission to provide a framework for addressing and alleviating the extent to which our courts have been excessively politicized. Further, the Commission was directed to explore ways to improve judicial selection and articulate principles to promote an independent and accountable judiciary. The Commission was charged with reaching out to the widest possible audience in developing recommendations for defusing the partisan battle over the courts and thereby preserving the principles that ensure judicial independence and accountability.

Abner Mikva, former U.S. Representative, White House Counsel, and Chief Judge of the US Court of Appeals for the District of Columbia Circuit, and William S. Sessions, former director of the FBI and U.S. District Judge, serve as honorary co-chairs of the Commission. Edward W. Madeira, Jr. of Philadelphia, who has long been active in judicial independence issues, chairs the Commission, and Charles Gardner Geyh, an Indiana University School of Law Professor, serves as reporter to the Commission. In addition, Commission members include Chief Justice Margaret Marshall of Massachusetts; Chief Justice Thomas Phillips of Texas; Barbara Roberts, former governor of Oregon; Stephen Zack of Florida; Thomas Ross of North Carolina, a former judge and state court administrator; Julius Chambers of North Carolina; Ric Duques, the chair of the board of First Data Corp.; George Frazza, former general counsel of Johnson & Johnson; Representative Pete Gallego of the Texas House of Representatives; and Patricia Hynes of New York. Jose Feliciano serves as the ABA Board of Governors liaison to the Commission. The work of the Commission was funded by generous grants from the Open Society Institute, The Joyce Foundation and the Z. Smith Reynolds Foundation, with additional support from Lexis-Nexis.

Recognizing the need for a wide representation of viewpoints, and in the spirit of collaboration that has so strengthened the work of the Association, an advisory committee was formed with representatives from a number of national organizations and ABA entities. The members of the advisory committee represented the ABA Section of Litigation, the ABA Judicial Division, the ABA Tort Trial and Insurance Practice Section, the ABA Section of Legal Education, the ABA Standing Committee on Strategic Communications, the ABA Section Officers Conference, the US Chamber of Commerce Institute for Legal Reform, the League of Women Voters of the United States, the Defense Research Institute, the American Trial Lawyers Association, the American College of Trial Lawyers, corporate counsel, and the Hispanic National Bar Association.

The Commission held public hearings in Detroit, Michigan; Philadelphia, Pennsylvania; Portland, Oregon; and Austin, Texas. At the hearings, experts on problem-solving courts, judicial compensation, court system funding, juvenile courts, death penalty litigation, and judicial selection were joined by leaders of national bar associations of color, state chief justices, and legal and political science scholars in providing testimony on critical issues contributing to excessive political pressures on the judiciary. Over thirty experts testified at these hearings and

provided the Commission with great insights into the challenges facing state judiciaries across the country. These hearings, as well as a plethora of written materials and testimony, guided the work of the commission in developing a series of recommendations for improvements in processes that impact both judicial independence and judicial accountability. By holding hearings in four regions of the country, the Commission recognized the wide disparity in challenges facing the judiciary, and expert testimony corroborated the belief that while some problems might occur in each state and locality, they manifest themselves and impact the states in very different ways. This perspective guided the Commission as it crafted its recommendations and fueled the Commission's thinking that there is no simple solution to any of these issues. Responses must be tailored to the unique challenges of each locale, and the ABA, as a national organization, must provide enough alternatives to make the recommendations useful. Thus, the recommendations crafted by the Commission are comprehensive, and tailored to provide options and choices for different states.

Following the hearings, the Commission held a colloquium in Raleigh, North Carolina, where over 150 judges, lawyers, members of the public, legal and political science scholars vetted the preliminary recommendations of the Commission. During the colloquium, participants engaged in an interactive dialogue on issues such as the changing role of the judge in American society; the role of the public in selecting and retaining judges; and the appropriate balance between judicial independence and accountability to the public. Using the colloquium as an opportunity for public participation allowed the Commission to garner additional input from across the country, making the completed product, a set of eight enduring principles and thirty-one recommendations, relevant, comprehensive, and adaptable.

In accomplishing its goals, the Commission developed a set of enduring principles that underscore the importance of an independent, impartial judiciary to uphold the rule of law in a constitutional, democratic republic and to maintain the trust and confidence of the public. In addition, the Commission explored recent developments among the states that have politicized the judiciary in ways that challenge some of those enduring principles. Finally, the Commission enumerated a series of recommendations to serve as a framework for the ABA and the states to begin to address and counteract developments that have politicized the courts unnecessarily.

Enduring Principles

The commission enumerates eight enduring principles that should be central components to each state's understanding of the role of the judiciary as a co-equal branch of government. The essential elements to promoting judicial independence, accountability and impartiality recognize that judges should uphold the rule of law and should be impartial and independent. Judges should possess the appropriate temperament and character, as well as appropriate capabilities and credentials. Judges should have the confidence of the public and the justice system should be diverse and reflect the society it serves. Finally, judges should be constrained to perform their duties in a manner that justifies public faith and confidence in the courts.

Challenges to State Judiciaries

The Commission identifies a number of factors and trends that have led to the politicization of state courts. These include the proliferation of controversial cases generally; the rediscovery of state constitutions to litigate constitutional rights and responsibilities; the increases in caseload; the interposition of intermediate appellate courts between trial courts and courts of last resort; the spread of the two-party system; and the emergence of single-issue groups, coupled with the emergence of a skeptical and conflicted public. In addition, the Commission recognizes changes in the nature of litigants, including a trend towards *pro se* litigation and its impact on the role of the trial judge, and the diversification of America and its impact on the public's

confidence in the courts, as well as changes in the role of the courts, including the rise of problem-solving courts.

These factors and trends contribute to increased politicization of the courts, where the fair and impartial administration of justice is at risk. Specifically, the Commission is concerned about state high court election campaigns that increasingly are focused on isolated issues of intense political interest coupled with the rising cost of judicial elections and the impact that expensive campaigns have on the public's perception that judges are influenced by their contributors. Further, the Commission is troubled by the recognition that some of the most politicized and misleading campaign related speech comes in the form of "issue advertising" developed by outside groups. These issue ads and the expensive campaigns are all the more troubling with the recognition that the public is insufficiently familiar with judicial candidates, judicial qualifications and the judicial system. Additionally, the Commission identifies as a cause of concern the considerable uncertainty surrounding the constitutionality of ethical limits on judicial campaign speech brought about by the recent decision of the Supreme Court of the United States in *Republican Party of Minnesota v. White*, 536 US 765 (2002). Finally, the Commission recognizes that relationships between courts and legislatures often have been problematic, manifested by attempts to cut the judiciary's budget, attempts to curb court jurisdiction, attempts to remove judges from office, and proposals for constitutional amendments to constrain the courts' constitutional interpretations.

The identification of these various trends is a crucial component to the work of the Commission. Previously, attempts to address factors impacting judicial independence have focused on one set of issues or one particular threat, i.e., judicial selection issues, the high cost of judicial elections, jury service, diversity in the profession and on the bench, or court funding, to name just a few. The Commission is looking from the perspective of the judiciary itself, trying to identify factors that impact the administration of justice in this new century. Taking a comprehensive view of the challenges facing the judiciary provides a fresh perspective. By identifying factors and trends, the Commission not only broadens the scope of its efforts, but recognizes that most trends are interrelated and solutions must also be interrelated. The comprehensive review of trends affecting the judiciary allows the Commission to deepen its understanding of threats to judicial independence and the administration of justice, and also allows the Commission to add depth to its recommendations, acknowledging the interrelated nature of these challenges and the critical need to craft state-specific solutions that take into account all aspects of judicial administration.

Commission Recommendations

The Commission offers thirty-one different recommendations designed to address the myriad challenges threatening state courts in the 21st Century. The recommendations can be grouped into three main categories.

A. Preserving the Judiciary's Institutional Legitimacy

The first set of recommendations is designed to preserve the judiciary's institutional legitimacy by improving judicial qualifications, training and evaluation. These recommendations recognize the vital role played by a variety of organizations dedicated to the preservation of an independent, accountable and impartial judiciary, such as the State Justice Institute and the National Center for State Courts. Additionally, these recommendations acknowledge that credible review of candidate qualifications before selection, and continuing judicial education after a candidate becomes a judge, ensures that state judiciaries are comprised of well qualified, highly trained individuals. To that end, the Commission recommends that states establish credible, neutral, non-partisan and diverse deliberative bodies to assess the

qualifications of all judicial aspirants so as to limit the candidate pool to those who are well qualified. Additionally, these recommendations recognize that the judicial branch should take primary responsibility for providing continuing judicial education and that not only should such judicial education be required of all judges but states should provide adequate funding to support these educational programs.

The next recommendations, focusing on judicial ethics and discipline, suggest a comprehensive review of the ABA Model Code of Judicial Conduct. Additionally, the Commission recommends that the codes of judicial conduct in the states should be actively enforced.

The Commission strongly recommends that increasing diversity of the judicial branch is more than an attractive goal for the 21st century judiciary; it is a necessity. Within fifty years, fully half of all Americans will be persons of color. But recent surveys reveal an alarming erosion of trust and confidence in the justice system among people of color. These surveys reveal that people of color do not believe that they are treated fairly by courts, and that because of factors such as language barriers, racial bias, and the increasing influence of money in judicial elections, their access to justice is inferior to that of non-Hispanic whites. Moreover, the lack of racial or ethnic diversity among legal professionals exacerbates these perceptions. Particularly important in this regard is the relative lack of minority judges in state judiciaries, a figure that is estimated at approximately 8%, while people of color comprise nearly 30% of the national population. The Commission is convinced that the continued failure to meaningfully diversify the courts will work to the detriment of the 21st Century judiciary's overall health, quality, and level of public support.

These recommendations recognize the critical importance of a diverse bench, with formal policies for addressing bias in the system, to ensuring public trust and confidence in the judiciary. Specific recommendations include expanding the use of training and recruitment programs to encourage minority lawyers to join firms; providing for the active promotion of a representative work force and diverse court appointments; creating formal policies and processes for handling allegations of bias; sharing information regarding diversity among courts both intra-state and inter-state; and adopting methods to eliminate language barriers and improve and expand jury pool representation.

Other recommendations address improving court-community relationships by furthering the use of problem-solving courts as well as encouraging greater outreach to the public. The Commission recommends a number of methods to improve outreach, including collaborating with members of the community by hosting trips to courthouses and by judges and court administrators speaking in schools and community settings. Additionally, the Commission recommends that steps should be taken to promote public understanding of and confidence in the courts among jurors, witnesses and litigants.

B. Improving Judicial Selection

Some of the most serious problems confronting our judicial systems today relate to judicial selection and reselection. Judicial election campaigns at all levels are increasingly focused on isolated issues of intense political interest. In the Commission's view, states should be concerned about the impact of judicial elections on judicial impartiality and the rule of law. Notwithstanding increasing concern about the judicial selection process in many states, judicial selection improvement is among the most contentious subjects that the Commission has been directed to address. Nowhere is the tension between judicial independence and judicial accountability more palpable than in the context of judicial selection. Although there is general consensus that selection systems should preserve and promote independence and accountability, determining how to strike that balance in a judicial selection system is subject to

intense debate. Additionally, nowhere is the challenge of balancing the theoretical with the practical more daunting than in the context of judicial selection. To overcome these difficulties, the Commission has presented its judicial selection recommendations by identifying a preferred system of judicial selection and then making alternative recommendations.

The Commission believes that the preferred system of state court judicial selection is a commission-based appointive system with components that include gubernatorial appointment from a pool of judicial aspirants whose qualifications have been reviewed and approved by a credible, neutral, non-partisan, diverse deliberative body. Additionally, judicial appointees should serve a single term of at least 15 years or until a specified age, should not otherwise be subject to reselection and should be provided appropriate retirement benefits upon completion of judicial service.

The Commission opposes the use of judicial elections as a means of initial selection and reselection, concluding that judicial elections are antithetical to a republican form of government. The Commission acknowledges, though, that support for judicial elections remains entrenched in many states. With that in mind, the Commission offers a series of alternative judicial selection recommendations aimed at ameliorating some of the deleterious effects of elections on the enduring principles of a good judicial system. In reviewing the reselection process, the Commission recommends that states use a credible, neutral, non-partisan, diverse deliberative body to handle judicial reappointment, and, if a state retains elections for reselection, then the Commission recommends that the elections be retention elections instead of contested elections. For states that retain elections as the method of judicial selection, the Commission also recommends that elections be non-partisan, that public financing should be provided for appellate level elections, that voter guides should be provided to the electorate, that judicial terms should be as long as possible, that states should impose limits on contributions to judicial candidates if public financing is not employed, that state bars or other appropriate entities should work to initiate a dialogue among affected interests to deescalate the contributions arms race in judicial campaigns, and that state bars or other interested entities should establish voluntary guidelines on campaign conduct.

C. Promoting an Independent Judicial Branch that Works Effectively with the Political Branches of Government

The Commission finally makes recommendations that relate to the capacity of the judiciary to preserve itself as a separate and co-equal branch of state government. Without some measure of institutional independence, state judiciaries would be so beholden to the political branches for their survival as to eviscerate their capacity to keep the political branches in check through the exercise of judicial review. While state constitutions often make the separation of powers among the branches explicit or delegate to the judicial branch specified powers of self-governance, state judiciaries are by no means completely independent. Most importantly, state constitutions typically give legislatures the power to authorize, or not authorize, the expenditure of funds for judicial budgets and salary increases. When exercised responsibly, the legislature's power of the purse constitutes an appropriate and essential check, but recently, states around the country have experienced budgetary deficits that often exert a disproportionate impact on judicial systems. It is this fiscal crisis, and the tenuous balance of power between the co-equal branches of government, that underlies this set of recommendations.

The Commission recommends that standards for minimum funding of judicial systems should be established. This does not mean setting minimum dollar amounts for state appropriations to the judicial branch. Rather, it means isolating the core functions that a judiciary must perform and the critical services it must provide, for the benefit of lawmakers confronting hard choices when

crafting state budgets. Minimum funding standards can assist judges and legislators in establishing the floor below which state budgets must not go if the judiciary's constitutional obligations are to be preserved. In addition, the Commission recommends that the judiciary's budget should be segregated from that of the political branches and it should be presented to the legislature for approval with a minimum of non-transferable line itemization. The state judiciary is not an administrative agency in the executive branch, but an independent branch of government and needs to be treated as such. The Commission urges states to abandon the antiquated practice of folding the judiciary's budget requests into the executive branch and giving the executive branch power to adjust the judiciary's appropriations requests before they are accepted by state legislatures. Further, the Commission recognizes that if the judiciary is to be capable, qualified and independent, it is imperative that judges be adequately compensated. Thus, the Commission recommends the creation of independent commissions to establish judicial salaries. Finally, the Commission recommends that states create opportunities for regular meetings among representatives from all three branches of government to promote inter-branch communication as a means to avoid unnecessary confrontations and provide for better understanding and more appropriate collaboration on such issues as court funding, judicial salaries, and structural reform of courts.

Conclusion

As an institution unique to American government, an independent judicial branch guarantees every citizen access to a branch of government designed to protect the rights and liberties afforded by federal and state constitutions. Fundamental to this unique role of the courts is the necessity for the judiciary to be distinct from the other two branches of government, functioning independently to ensure an effective role in our republican form of government. The differences unique to the judiciary, manifested in ethical restrictions on judges, judicial selection methods, and the nature of the judicial process, are vital aspects of maintaining balance among the branches of government.

Over time, however, the role of the judiciary has undergone a transformation, particularly in relation to the other branches. Judicial elections are a prime example of this erosion of separation in the nature and role of the branches of government. Recent judicial election cycles have seen a dramatic shift in the cost, tone and tenor of judicial campaigns. States have registered increases in judicial campaign expenditures that range from 100% to 350%. The involvement of third party interest groups and the shift in the tone and tenor of judicial campaigns, manifested by recent challenges to state codes of judicial ethics, have conspired to create an arena for judicial selection that jeopardizes the independence and impartiality of the judicial system and, more importantly, threatens to erode the public's trust and confidence in the system.

The changing nature of judicial campaigns and judicial selection is but one illustration of the shifting nature and role of the judiciary. Courts over the past decade have worked to confront issues of diversity on the bench and among court personnel. Judges have recognized the broadening role they can play in resolving disputes through problem-solving court models. These issues have allowed the courts to develop stronger ties to the community they serve while also becoming more representative of that community. The state courts handle an enormous volume of cases that literally touches the lives of most if not all Americans, indicating the importance of maintaining the judiciary as a branch of government capable of fulfilling its fundamental constitutional obligations in the separation of powers.

With the promulgation of a comprehensive set of recommendations, touching on aspects of the judicial system and considering a wide range of tensions and challenges, the Commission on

the 21st Century Judiciary proposes a series of recommendations for change that will maintain independent, impartial state judiciaries, functioning as effective, co-equal branches of government, for generations to come. The American Bar Association has, for over a century, been a national leader in efforts to preserve judicial independence and impartiality. The ABA, with the guidance of these comprehensive recommendations, will provide myriad options for improving the administration of justice to state and local leaders throughout the country.

Respectfully submitted,

Edward W. Madeira, Jr., Chair
Commission on the 21st Century Judiciary
August 2003

General Information Form

Submitting Entity: Commission on the 21st Century Judiciary

Submitted By: Edward W. Madeira, Jr., Chair

1. Summary of Recommendation

ABA President Alfred P. Carlton, Jr., convened the Commission on the 21st Century Judiciary to study and make recommendations with regard to various aspects of state judicial systems to ensure continued fairness, impartiality and accountability in the 21st Century judiciary. The recommendations address serious threats to state judicial systems, including threats to funding, independence, selection and diversity and makes recommendations to alleviate the intense pressures facing state court systems today.

2. Approval by Submitting Entity

The Commission approved the report and recommendation at a meeting on April 12, 2003.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

The American Bar Association has adopted a series of policy recommendations over the past two decades that address various aspects covered in this report. In April 1996 the Board of Governors urged support for the independence of the judiciary. In August 1996, the House of Delegates adopted policy in opposition to automatic term limits for judges. In February 1998 the House of Delegates adopted a model response to criticism of judges for state, local and territorial bar associations. In August 1999, the House of Delegates adopted amendments to the Model Code of Judicial Conduct. In July 2000,

the House of Delegates adopted the Standards on State Judicial Selection. In February 2002, the House of Delegates adopted policy reaffirming its support for merit selection and supporting public financing for state judicial candidates. In August 2002, the House of Delegates adopted policy encouraging state, local and territorial bar associations to establish judicial campaign conduct committees. No policy currently exists that takes a comprehensive approach to these issues by studying them all as inter-related.

5. What urgency exists which requires action at this meeting of the House?

State judiciaries are at risk, both institutionally and as a co-equal third branch of government. With a majority of states anticipating judicial elections next year, it is urgent that states look comprehensively at the judiciary, including funding, selection, diversity and compensation.

6. Status of Legislation. (If applicable.)

N/A

7. Cost to the Association. (Both direct and indirect costs.)

There are no costs to the Association.

8. Disclosure of Interest. (If applicable.)

N/A

9. Referrals.

The report and recommendations have been circulated to all ABA sections, divisions, forums, committees and commissions; the Conference of Chief Justices, State, Local and Territorial Bar Associations; and Justice at Stake and its partner organizations.

10. Contact Person. (Prior to the meeting.)

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11. Contact Person. (Who will present the report to the House.)

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