

# **THE MISSOURI COURT SYSTEM: AN ASSESSMENT**

**AMERICAN BAR ASSOCIATION  
STANDING COMMITTEE ON JUDICIAL INDEPENDENCE  
STATE COURT ASSESSMENT PROJECT**

**February 11, 2006**

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## Executive Summary

Court systems must regularly reexamine how well they are addressing the changing needs and concerns of the populace they serve. For that purpose, Chief Justice Michael Wolff requested that the Standing Committee on Judicial Independence (SCJI) of the American Bar Association conduct an independent assessment of the strengths and weaknesses of the Missouri court system. To do so, SCJI identified seven general areas pertinent to a properly functioning court system: (1) Qualifications, Experience, and Diversity; (2) Judicial Powers; (3) Financial Resources; (4) Structural Safeguards; (5) Accountability and Transparency; (6) Needs and Expectations of the Community; and (7) Efficiency. It also identified thirty-four factors within those areas useful in assessing the operation of a state court system. It then collected information on how well the Missouri courts fared on the factors by reviewing publicly available information and by conducting confidential interviews with knowledgeable persons throughout the state. Finally, for each factor SCJI rated the Missouri court system on a three-point scale. A *positive* rating meant that Missouri fully met that requirement. A *mixed* rating meant that Missouri showed both strengths and weaknesses or that interviewees did not agree about Missouri's performance. A *negative* rating indicated serious deficiencies.

It should be noted that a mixed or negative rating did not necessarily suggest a failure on the part of the Missouri judiciary itself. Some factors crucial for a properly functioning court system—such as security for court personnel and effective provision of legal assistance to indigent defendants—may be under the control of other

branches of government rather than the judiciary. Other deficiencies may be caused by insufficient resources, and the courts' funding is likewise beyond the judiciary's control.

Overall, twenty-four factors were rated "positive," eight "mixed" and two "negative". To summarize by general areas:

Qualifications, Experience and Diversity: The Missouri courts received a positive rating on four factors, relating to the qualifications of judges, their mode of selection, the training provided judges upon taking office, and continuing judicial education. They received a mixed rating on the diversity and representativeness of the Missouri judiciary. This rating reflects continuing disparities between percentages of women and people of color within the state population and their representation on the bench.

Judicial Powers: The Missouri courts received positive ratings on all three factors, relating to the allocation of jurisdiction among courts, administrative unification of the courts, and judicial control over rule-making.

Financial Resources: The Missouri courts received a positive rating for court security. They received a mixed rating on the judicial role in the budget process. Although the judiciary has control over the allocation and expenditure of funds once they are appropriated, its requests are routed through the governor, rather than routed directly to the legislature. Half of those interviewed expressed concern that appellate courts were under-funded, and a majority believed that was true for trial courts. The Missouri courts also received a mixed rating on judicial salaries. Although judicial salaries in Missouri are average in comparison with other states, interviewees disagreed about whether they are sufficient to attract and retain highly qualified judges. Finally, the Missouri courts

received a mixed rating on the condition of court facilities, which ranged from “spectacular” to “dismal.” Among particular concerns were accessibility for the handicapped and lack of private meeting space for attorneys and clients.

Structural Safeguards: The Missouri courts received positive ratings on all factors, including the length of judicial tenure, immunity for actions taken by judges in their official capacity, and unbiased assignment of judges to cases.

Accountability and Transparency: The Missouri courts received positive ratings on all factors, including the openness of court proceedings, the absence of improper outside influences on judicial decisions, the availability of a code of ethics to guide judges, and the effectiveness of procedures for evaluating judges, receiving complaints of judicial misconduct, and disciplining those who violate ethical norms.

Needs and Expectations of the Community: The Missouri courts received positive ratings relating to their handling of allegations of bias, their provision of translation services, their assistance to *pro se* litigants, and their creation of “problem-solving courts.” They received a mixed rating on “ensuring that those who come into contact with them are treated equally and accorded appropriate respect,” with respondents particularly noting the distrust of the courts among communities of color. They also received a mixed rating on ensuring access to justice for the poor, with respondents emphasizing the unavailability of sufficient legal aid for indigent litigants and the difficulty of pursuing claims without an attorney. Finally, they received a negative rating on ensuring equal justice to indigent defendants in criminal cases, with respondents highlighting the low pay, high turnover, and unreasonable caseloads for public defenders.

Efficiency: The Missouri courts received positive ratings on the number of judges and on their case-flow management system. They received mixed ratings on their use of technology to handle caseloads efficiently, with interviewees praising Case Net but noting that a system for electronic filing had yet to be implemented. They also received a mixed rating on their handling of caseloads, with a sizable minority of respondents complaining that cases were delayed too often due to the sheer volume of cases. Finally, they received a negative rating on the availability of staff necessary for the expeditious handling of cases, with respondents focusing on cuts in the Office of State Courts Administrator and on trial judges' lack of access to law clerks.

## **Introduction**

Court systems have a responsibility to afford access to those with disputes to resolve, to resolve those disputes in a timely and impartial fashion, and to provide equal justice under law. In order to continue meeting this responsibility, they must regularly reexamine how well they are addressing the changing needs and concerns of the populace they serve. As part of such a reexamination, Chief Justice Michael Wolff requested that the Standing Committee on Judicial Independence (SCJI) of the American Bar Association conduct an assessment of the strengths and weaknesses of the Missouri court system as part of the broader State Court Assessment Project inaugurated by SJCI. To ensure that this was a completely independent audit, the Chief Justice and the Missouri judiciary more generally played no role in the project beyond that original request. Nor did the Missouri Bar Association, beyond providing crucial logistical assistance at the outset of the project.

In conducting its assessment, SCJI identified initially seven general areas that are pertinent to a properly functioning court system: (1) Qualifications, Experience and Diversity; (2) Judicial Powers; (3) Financial Resources; (4) Structural Safeguards; (5) Accountability and Transparency; (6) Needs and Expectations of the Community; and (7) Efficiency.<sup>1</sup> It then identified thirty-four factors within those areas that can be used in assessing the operation of a state court system. Finally, SCJI collected information on how well the Missouri courts fare on these factors. More specifically, it reviewed

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<sup>1</sup> In doing so, SCJI adapted an approach that the ABA's Central European and Eurasian Law Initiative (CEELI) had used successfully in assessing judicial systems in developing countries in Eastern Europe and Eurasia. The ABA not only drew upon the seven categories utilized by CEELI but also

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publicly available information on the Missouri courts and conducted detailed, confidential interviews with a cross-section of persons from throughout the state who are knowledgeable about the Missouri judiciary. (A detailed discussion of the methodology for the interview phase of this project is contained in Appendix 1, and the list of questions for the interviews is found in Appendix 2.) Based on an analysis of the information collected from these sources, this report offers a comprehensive independent assessment of the strengths and weaknesses of the Missouri court system. On each factor the Missouri court system is assessed according to a three-point scale: positive, mixed, or negative. A *positive* rating means that Missouri has fully met that requirement for a properly functioning court system. A *mixed* rating means that Missouri has shown both strengths and weaknesses with regard to that factor or that the interviewees did not share a common view about Missouri's performance on that factor. A *negative* rating means that there are serious deficiencies that require attention. The factors and ratings are listed in Table 1 (pages 3-5). The report then provides a detailed discussion of the factors and of the bases for the ratings.

It should be emphasized that when the Missouri court system receives a mixed or negative rating on a factor, that does not necessarily indicate a failure on the part of the Missouri judiciary. Some factors may be crucial for a properly functioning court system—for example, security for court personnel and an effective system of providing legal assistance to indigent defendants—but may be under the control of other

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independently found that these were areas in which courts must operate effectively if they are to deliver equal justice under law.

branches of government. Moreover, some deficiencies may be caused by insufficient resources, and the courts' level of funding is likewise outside their control. Nevertheless, it is hoped that this report will assist in identifying steps that can be taken to further improve the operations of the Missouri court system.

**Table 1**

**Factors and the Performance of the Missouri Court System**

<b>FACTORS</b>		<b>RATING</b>
<b>I. QUALIFICATIONS, EXPERIENCE AND DIVERSITY</b>		<b>Page 5</b>
Factor 1	Judges, whether appellate or in courts of first resort, have the requisite education and experience necessary to discharge the obligations to their office.	Positive
Factor 2	Upon taking office, judges receive appropriate training to enable them to discharge the obligations of their office.	Positive
Factor 3	Judges are selected in such manner as will ensure that they will be independence in their decision-making, following the law and free from improper outside influences.	Positive
Factor 4	Judges are required to participate, at no cost to themselves in continuing judicial education programs which keep them abreast of changes in the law and procedures.	Positive
Factor 5	The judiciary is diverse and is representative of the communities which it serves.	Mixed
<b>II. JUDICIAL POWERS</b>		<b>Page 18</b>
Factor 6	The jurisdiction of each court in the judicial system is clearly established and does not overlap.	Positive
Factor 7	There is a unified state court judicial system that allows for a more effective administration of justice.	Positive
Factor 8	There is a unified administration of the judicial system with appropriate rule-making authority and designated administrative leadership.	Positive
<b>III. FINANCIAL RESOURCES</b>		<b>Page 21</b>
Factor 9	The judiciary has a meaningful opportunity to influence the amount of money allocated to it by the legislative and/or executive branches, and, once funds are allocated to the judiciary, the judiciary has control over its own budget and how such funds are expended.	Mixed

<b>FACTORS</b>		<b>RATING</b>
Factor 10	Judicial salaries are generally sufficient to attract and retain qualified judges, enabling them to support their families and live in a reasonably secure environment, without having to have recourse to other sources of income.	Mixed
Factor 11	Judicial buildings are conveniently located, easy to find, readily and conveniently accessible to the disabled, and they provide a respectable environment for the dispensation of justice with adequate infrastructure.	Mixed
Factor 12	Sufficient resources are allocated to protect judges, litigants, court personnel, the public, and judicial facilities from threats such as harassment, assault, assassination, and other threats to security.	
<b>IV. STRUCTURAL SAFEGUARDS</b>		<b>Page 31</b>
Factor 13	Judges, whether elected or appointed, have a guaranteed tenure protection until retirement age or the expiration of a substantial duration, i.e. 15 years or more.	Positive
Factor 14	Judges should receive immunity for actions taken in their official capacity.	Positive
Factor 15	Judges are assigned cases by an objective method such as by lottery or according to pertinent area of expertise.	Positive
<b>V. ACCOUNTABILITY AND TRANSPARENCY</b>		<b>Page 34</b>
Factor 16	Judges render decisions based solely on the facts and law without any improper outside influence.	Positive
Factor 17	Judges are removed from office or otherwise punished only for specified misconduct and through a transparent process governed by objective criteria.	Positive
Factor 18	A judicial code of ethics exists to address major issues such as conflicts of interest and other forms of inappropriate activity, and judges are required to receive training concerning the code before taking office and during their tenure.	
Factor 19	A structures system to evaluate judges is in place.	Positive
Factor 20	A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning judicial conduct.	Positive
Factor 21	Courtroom proceedings are open to, and can accommodate, the public and the media.	Positive
<b>VI. NEEDS AND EXPECTATIONS OF THE COMMUNITY</b>		<b>Page 43</b>
Factor 22	The judiciary does not discriminate on the basis of race, creed, gender, ethnicity, sexual orientation, or physical disability in hiring, promoting, and retaining judges or other court personnel. Efforts are made to ensure that the judicial branch at all levels is staffed by a diverse that is representative of the population that it serves.	Positive

<b>FACTORS</b>		<b>RATING</b>
Factor 23	Judges ensure that those who come into contact with them – whether jurors, witnesses, attorneys, or parties to litigation – are treated equally and accorded appropriate respect.	Mixed
Factor 24	The judiciary has in place formal policies and processes for handling allegations of bias.	Positive
Factor 25	The judiciary acts to ensure that language barriers do not limit access to the justice system.	Positive
Factor 26	The judiciary allows the adversary system of justice to operate effectively by ensuring that defendants in criminal cases receive legal representation as constitutionally required.	Negative
Factor 27	The judiciary has recognized and responded to the needs of <i>pro se</i> litigants.	Positive
Factor 28	The judiciary has demonstrated leadership in organizing, facilitating, supporting, and monitoring programs to enhance access to the justice system for those who cannot otherwise afford it.	Mixed
Factor 29	The judiciary has adopted and adapted practices to meet community needs by introducing such initiatives as “specialized problem-solving courts” and other innovations.	Positive
<b>VII. EFFICIENCY</b>		<b>Page 60</b>
Factor 30	Each judge has the basic human resource support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research.	Negative
Factor 31	Sufficient resources are allocated so that there are enough judges to ensure that the judicial system works efficiently and with a minimum of delay in processing cases, and that a system exists so new judicial positions are created as needed and vacancies are timely filled.	Positive
Factor 32	The judicial system has a caseload management system that ensures cases are heard in a reasonably efficient and timely manner.	Positive
Factor 33	The judicial system is committed to implementing technological advances to enable it to handle its caseload in a reasonably efficient manner.	Mixed
Factor 34	The judiciary handles its caseload in a reasonably efficient manner.	Mixed

### **I. Qualifications, Experience, and Diversity**

Vital to the success of any organization is the quality of the persons working in it. This is especially true for the courts. Without highly qualified and well-

trained judges who are committed to the ideal of equal justice under law and are free to pursue that ideal, one cannot expect an effective administration of justice. SCJI's initial set of factors, therefore, focuses on the quality of the Missouri judiciary.

**Factor 1: Judges, whether appellate or in courts of first resort, have the requisite education and experience necessary to discharge the obligations of their office.**

**Rating: POSITIVE.**

The necessity of qualified professionals serving as judges is axiomatic, and Missouri has instituted appropriate qualifications for jurists on the state bench. Article V, sec. 21 of the Missouri Constitution establishes the qualifications for service, which include United States citizenship, residency within the state (and for judges of the circuit courts and courts of appeals, within the area served), a minimum age, and legal training. These requirements parallel those in other states and are compatible with the American Bar Association's standards for judicial qualifications.

These constitutional requirements, of course, merely establish minimum standards that judges must meet. Judges must also possess personal integrity, knowledge of the law, judicial temperament, and various other qualities. These qualities cannot simply be mandated. States must establish a system of judicial selection that ensures that those elevated to the bench have such qualities.

Of those respondents who expressed an opinion, most rated the performance of the Appellate Judicial Commission in identifying qualified judges as either “very good” (28 percent) or “good” (56 percent).<sup>2</sup> Many acknowledged that

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<sup>2</sup> Throughout this report, the percentages reported will reflect the answers of respondents who offered an opinion. Respondents had the option of refusing to answer questions or not venturing an opinion, and they sometimes chose to do so, particularly on topics on which they were not knowledgeable.

although the system is non-partisan, this has not eliminated all politics from the selection process--as one respondent put it, "that's part of life in America."<sup>3</sup> Politics entered the process, the respondents suggested, not only in the selection of candidates for judgeships but also in the selection of the Commission itself, with interest groups "jockeying to get their members onto the Commission." One respondent thus insisted that "what needs to be examined is the process by which the commissioners are chosen." Some respondents wished that "the Commission were free from ideology" and that "Commissioners were forbidden to be members of any political party," but they acknowledged that this was unrealistic. Others proposed more input from the local bar in the selection process. Yet whatever problems might exist, one respondent concluded that "this is the best method we can come up with, as it is hard to remove politics completely," and another summarized what appeared to be the prevailing sentiment: "If it ain't broke, don't break it."

Respondents believed that the current appointment process for appellate judges led to the appointment of "mostly highly qualified judges" (33 percent) or "mostly qualified judges" (56 percent). Insofar as there was criticism, it reflected the failure of the process to attract the most highly qualified candidates. One respondent observed: "While the process produces qualified judges, there are more qualified persons who are not appointed because they lack political clout. Candidates refer to 'who they have lined up' to support them, referring to political connections." Because the process of self-promotion is "a little uncomfortable for lawyers who would be good judges," a

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<sup>3</sup> Unless otherwise identified, quotations are drawn from the interviews undertaken as part of this project. More identification of the source of quotations is not provided, in order to protect confidentiality.

respondent urged that the commission be “a little more proactive in finding” potential judges. Another offered a similar perspective: “Some situations arise where the people who made up the panel are not the three best qualified. It is a quasi-political process, which is why I give it a good instead of a very good.” Respondents disagreed about where blame lay for failures in the selection process. One suggested that “the Commission identifies qualified applicants, but the Governor’s selection can produce mixed results.” But another commented that “I think that it’s possible for a governor to have his hands tied and be given some bad choices, though that has not occurred at the appellate level.” Nonetheless, it bears repeating that the overall assessment of the appellate judiciary remained quite positive.

Respondents to a lesser extent rated the trial judiciary positively, with 20 percent rating trial judges as “mostly highly qualified,” 62 percent rating them as “mostly qualified,” and only 18 percent as saying that “too many are unqualified” or that “it varies.” Given the large number of judges, some respondents focused on judges in their own areas—as one noted, “Our community is fortunate to have experienced judges, highly qualified.” Others recognized some variation in qualifications: “I’ve seen a few I had a question or two about, but mostly qualified.” But by and large, the ratings were positive for trial judges as well.

Interestingly, the positive ratings for trial judges applied regardless of whether trial judges were selected by merit selection or by partisan election. Indeed, one respondent tied the quality of judges specifically to his community’s system of partisan selection: “Most qualified because ours is a partisan system—you get a selection from those who want to run. Some who could apply with a non-partisan system may not have

the nerve to run for an election in a partisan system. There is a financial risk to running, etc., so we get to choose from those who jump in the lake.”

This report examines the external influences on Missouri's system of judicial selection under Factor 3.

**Factor 2: Upon taking office, judges receive appropriate training to enable them to discharge the obligations of their office.**

**Rating: POSITIVE.**

Attorneys elevated to the bench require a shift in focus, orientation, and temperament, as they go from being advocates to being arbiters. In addition, after typically pursuing specialized legal practices, new judges must be prepared to preside over diverse types of cases. To undertake these responsibilities, they may need to re-familiarize themselves with areas of law that they may not have studied since law school, if ever. They also need instruction in the scope and character of their new responsibilities. This is true even for trial judges who are named to the appellate bench, although one respondent suggested that “trial judges probably need more training than appellate judges.”

Missouri has acted to meet the needs of new judges. It provides a week-long New Judge Orientation for all trial judges and appellate judges. The course covers professionalism, procedures, judicial ethics, the mechanics of being a judge, and bench and jury trials. The orientation course, while unique to Missouri, draws upon model programs from other states. Judges find the program helpful--almost 100% of new trial judges participate in the program.

The overall assessment of the training for new judges was strongly positive. Of those respondents who expressed an opinion, 21 percent rated the quality of training for judges as excellent, 66 percent rated it as adequate, and only 14 percent rated it as poor. One respondent enthused that “the best training I ever had was the trial college for new judges.” However, another remarked that “there is no training until the judge is appointed and attends Judicial College. Appellate judges also learn as they go, but they have better training if they have served as trial judges.” A third respondent agreed: there is “not much training at all before you take the bench.” It appears that these differences in response reflect disagreement about how effective any short course can be in preparing judges for the responsibilities that they will face on the bench. One respondent also raised the financial issue, claiming that “there was not enough funding to train judges” well. But another questioned the need for training altogether, asking: “Does it require training besides being a lawyer? To train would be yet another layer of expense.”

**Factor 3: Judges are selected in such manner as will ensure that they will be independent in their decision-making, following the law and free from improper outside influences.**

**Rating: POSITIVE**

The American Bar Association has developed guidelines to assist states in devising and/or reforming their systems of judicial selection, including both an optimal mode of selection and preferred alternatives within sub-optimal alternatives. The ABA guidelines on judicial selection endorse a commission-based appointive system, under which (1) the governor appoints judges from a pool of aspirants whose qualifications have been reviewed and approved by a credible, neutral, non-partisan, diverse

deliberative body or commission; (2) judicial appointees serve until a specified age, and (3) judges so appointed are not subject to reselection processes. For states that choose to have a process of judicial reselection, ABA guidelines endorse reappointment by a credible, neutral, non-partisan diverse deliberative body, rather than by election or political reappointment. For states that choose to employ judicial elections as a means of reselection, ABA guidelines endorse the use of retention election, rather than contested elections. For states that use contested judicial elections as a means to select or reselect judges, ABA guidelines indicate that all such elections should be non-partisan and conducted in a non-partisan manner. The guidelines also indicate that judicial terms should be as long as possible (see the discussion of Factor 13 below).

Missouri's nonpartisan system of selection for appellate judges and for associate and circuit judges in St. Louis City, St. Louis County, Jackson County, Platte County, and Clay County in many respects conforms to the optimal system outlined by ABA guidelines. This is not surprising. “Merit selection” was pioneered in Missouri—indeed, the system is often referred to as the Missouri Plan. This plan was copied by many other states and became the basis for model systems of judicial selection endorsed by the American Bar Association, the American Judicature Society, and other groups. Judges selected under this plan are nominated by a nonpartisan commission composed of knowledgeable persons chosen from the bar and from the general public, and the governor appoints judges from lists of qualified candidates compiled by the commission. Missouri does diverge from the ABA's optimal plan in requiring that judges selected under the plan periodically run in retention elections, and during the last election there was an organized effort to defeat an incumbent on the Missouri Supreme Court because

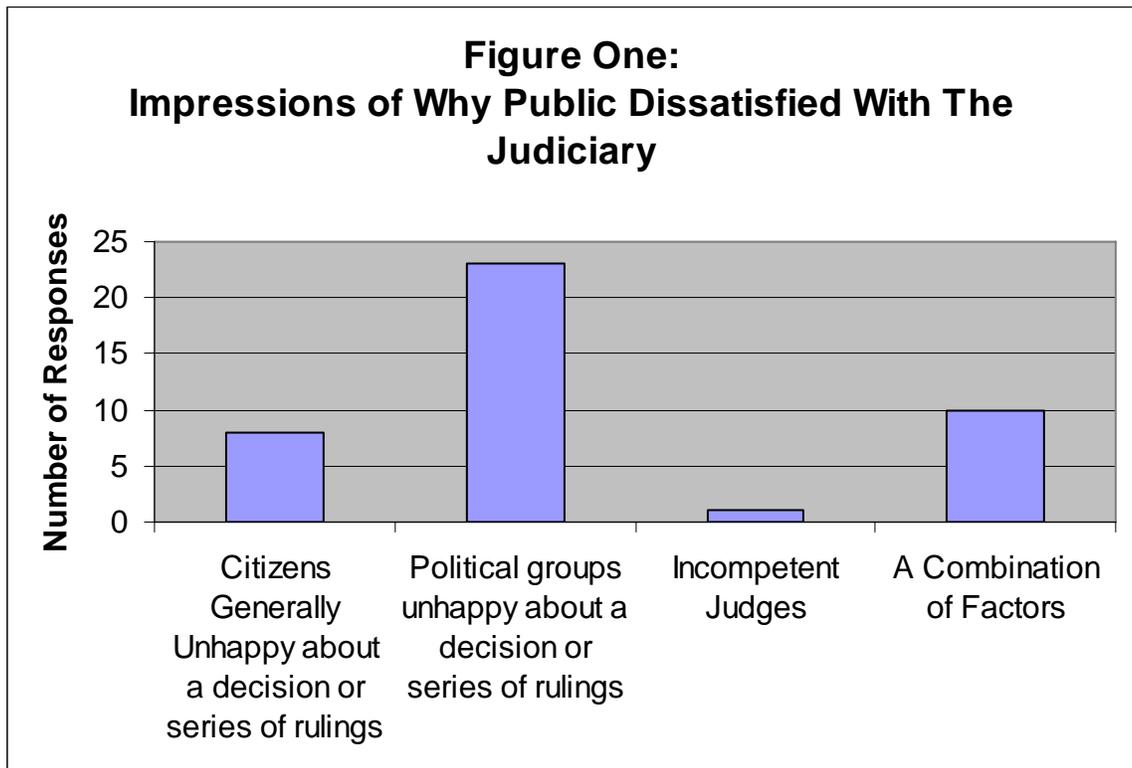
of his rulings in controversial cases. Missouri's system also diverges in requiring associate and circuit judges in most parts of the state to run in partisan elections for elevation to the bench and for reelection. The Administrative Office of the Courts estimates that only about 35 percent of these partisan elections are contested.

Almost all respondents commented on the political character of judicial selection in Missouri, although they were split as to whether interest groups exerted too much influence (32 percent) or did not (68 percent). As one respondent noted, "special interests are a fact of life." Those groups frequently identified as exerting excessive influence on the selection process included MATA (10 respondents) and MOADL (7 respondents), with no other groups mentioned more than twice. Respondents did not believe that either the state bar or sitting judges exerted too much influence—indeed, several (23 percent) agreed with one respondent who said that the bar "is the one group that should have more influence."

After the initial retention election, the term of office for appellate judges is twelve years, and for associate and circuit judges selected under the Missouri Plan six years. The term for appellate judges is considerably longer than the national average--of those states that reselect their judges, only three states have terms as long as or longer than Missouri's. But the term for judges on courts of first instance is merely at the national average. However, one respondent noted that "retention is almost automatic," and another concurred, observing that "judges seldom lose, and only when some grossly inappropriate conduct involved."

Nevertheless, several respondents expected serious opposition to the retention of judges to "significantly increase" (26 percent) or "slightly increase" (51

percent). As Figure 1 shows, responses varied as to why judges have been targeted for defeat in retention elections. Some respondents also detected a broader animosity toward the judiciary, which they variously attributed to societal factors (e.g., “general dissatisfaction with government”), to unfamiliarity with the judicial process, to disagreement with judges’ philosophies or the outcomes of individual cases (e.g., abortion and concealed handgun policy), and to concerns about a perceived “activist judiciary.”



To assist voters in assessing the performance of incumbent judges, the Missouri Bar Association conducts surveys on how judges up for reselection are performing, and it disseminates the results of these surveys prior to the election. Some respondents questioned the effectiveness of such efforts, given the competing messages

transmitted by interest groups involved in judicial elections. One observed that “groups have more money to wage attacks, and people often rely on their group’s message without questioning,” while another noted that “a small group in opposition can exert disproportionate influence, given the availability of faster and cheaper forms of communication.”

**Factor 4: Judges are required to participate, at no cost to themselves in continuing judicial education programs which keep them abreast of changes in the law and procedures.**

**Rating: POSITIVE.**

ABA policy recommends that the judicial branch take primary responsibility for providing continuing judicial education, that continuing judicial education be required for all judges, and that state appropriations be sufficient to provide adequate funding for continuing judicial education programs.

Missouri's practice largely coincides with ABA policy. All judges are obliged to take continuing legal education (CLE), and more than 90 percent participate annually. The Judicial College is offered twice a year to all trial judges. The Judicial Department Education Division and the Trial Judge Education Committee within the Office of State Courts Administrator design and implement the program at the Judicial College, which covers case law, legislative updates, and substantive legal issues relating to civil, criminal, and family law. This CLE training is devoted to practical skills training, not merely to legal theory, and therefore should serve to ameliorate judicial performance.

Respondents were generally positive about the effectiveness of Missouri's continuing education efforts, with 33 percent rating them “very effective” and 63 percent rating them “effective.” One respondent indicated that “the Missouri Bar has good CLEs for judges,” and another noted that he/she “frequently will hear a judge say that they had been to a conference and had learned x, y, and z.” The negative responses focused less on the content of the continuing education programs than on the utility of such instruction in comparison with practical experience. As one respondent put it, “Judges learn as they sit on the bench.” There was also concern about whether courts could afford to send their judges to CLE programs. One respondent noted that “there are problems regarding the cuts in funding for judges to attend seminars,” and another concurred that “judges could not attend the seminars they wanted due to financial constraints.” A third respondent emphasized the importance of judges being able to go out of state—“they can’t get the experience they need just dealing with each other in-state.”

**Factor 5: The judiciary is diverse and is representative of the communities which it serves.**

**Rating: MIXED**

The judiciary should be diverse and reflective of the society that it serves. A diverse judiciary encourages the belief that all groups within the state can receive impartial justice from the courts. A diverse judiciary also enables the court system to draw upon the talents of all of the state's population. Finally, diversity within the judiciary is imperative for symbolic reasons, because it signals a policy of inclusiveness. Although this need not mean that the percentage of judges of a particular race or gender will necessarily coincide with the percentage of that group in the state's population, significant disparities are cause for concern and for remedial action. A state court system

should regularly review its requirements and practices to identify barriers to inclusion and to eliminate them. It should also take affirmative steps to encourage members of underrepresented groups to serve on the bench.

Of Missouri's 362 judges, 78.7 percent are non-Hispanic white males. Sixty-four are female (17.7 percent); 23 are African-American (6.4 percent); 3 are Hispanics (0.8 percent); and 1 is Asian-American (0.3 percent).<sup>4</sup> Table 2, which provides a comparison of the composition of the judiciary with the gender and ethnic makeup of the communities that it serves, provides a further measure of Missouri's success in promoting a diverse judiciary.

TABLE 2  
BENCH AND POPULATION IN MISSOURI (2004)

	<u>Judiciary</u>	<u>Population</u>
<u>Gender</u>		
Male	82.3%	48.9%
Female	17.7%	51.1%
 <u>Race &amp; Ethnicity</u>		
Non-Hispanic White	92.6%	83.3%
Hispanics	0.8%	2.5%
African-Americans	6.4%	11.2%
Total Minority	7.5%	16.7%

These data permit several observations. First, there remain disparities between the percentage of various groups in the population and their representation on

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<sup>4</sup> This analysis is based on data provided by the office of the Missouri State Courts Administrator.

the Missouri bench. Second, these disparities have decreased over time—the number of women and minority group members on the bench is greater than it was a decade or a half century ago. Third, if the comparison had been between the percentage of various groups in the legal profession and their representation on the Missouri bench, the disparities would have decreased considerably. Thus, one respondent claimed that “the judiciary reflects the percentage of women in the bar,” and another noted about racial and ethnic minorities serving as judges that “in terms of a percentage of the bar, it’s not that far off, if you are looking at those minorities in the bar that are willing to be judges.” Of course, the under-representation of various groups in the legal profession may itself be a problem, if it results from discrimination or arbitrary barriers to entry, rather than a justification for under-representation on the bench. Finally, what is most important is not statistical representativeness but rather the absence of discrimination and efforts to remove obstacles that have kept members of under-represented groups from seeking or being selected for judgeships.

A majority of respondents (63 percent) believed that members of ethnic and racial minority groups are fairly represented on the Missouri bench, while 34 percent felt they were unfairly under-represented. Respondents noted that the percentage of minority group members on courts depended on the area served by the court, with “lots of minorities on the bench in urban areas, especially in St. Louis,” and “not much representation outstate.” Thus, the composition of the population in an area is reflected in the composition of the bench. The percentage of minority group members on courts also varied according to the level of court. As one respondent noted, “the Circuit Court in Jackson County is more fairly representative than is the Court of Appeals.” A majority

of respondents (69 percent) also believed that women were fairly represented on the Missouri bench, while 31 percent thought they were unfairly under-represented. Here too, respondents noted that representation of women “varied by type of court,” with women “more fairly represented at the trial level than at the appellate level.” One respondent attributed under-representation to a choice not to seek judicial office: “There are no minority judges in this circuit because minorities don’t run. They could get elected if they did. The same is true for women—“I know of only two women who ran for judge in the past 30 years.” Finally, it should be noted that respondents’ assessments reflected a view that seeking a more diverse bench was less important than ensuring the high quality of the judiciary. Thus, several respondents endorsed the idea of “a color- and gender-blind process to pick the best candidates” and the need to “pick the best candidates without `filling slot.’”

Respondents differed as to the role that diversity concerns played in the actual selection of judges: 72 percent thought that those involved in judicial selection considered it “very important” or “important,” while 28 percent rated it as “unimportant.” They were similarly divided as to whether those involved in judicial selection were committed to diversity or only paid it lip service. Some suggested that judicial selection commissions were “very careful” to consider diversity and noted that “every employer thinks about diversity when hiring.” Others disagreed, claiming that commissions thought about diversity “only when someone raises it as an issue” and that while they “give lip service to diversity, I am not sure that the principle is held near and dear to their heart.” Still others felt that diversity concerns were trumped by concerns for the quality of the judiciary-- “I think they’re looking mainly for qualified candidates.”

## **II. Judicial Powers**

**Factor 6: The jurisdiction of each court in the judicial system is clearly established and does not overlap.**

**Rating: POSITIVE.**

In emphasizing the importance of clearly established, non-overlapping jurisdictional lines, the concern is for more than a neat organizational chart. Historically the complexities of state court systems--particularly the myriad specialized courts with their overlapping jurisdictions--have interfered with the efficient and uniform administration of justice. Litigants often did not know in which court to file suits, and the varying procedural requirements from court to court meant that cases were often dismissed on procedural grounds, without consideration of their merits.

The Missouri Constitution does an exemplary job of identifying the courts in which the judicial power of the state is vested and in defining the jurisdiction of these various courts. Information about jurisdiction is communicated to potential litigants, including *pro se* litigants, through brochures and information on the web. There is no evidence that sizeable numbers of cases are dismissed because suits were filed in the wrong court, and no respondents identified any problems with the distribution of responsibilities among the state's courts.

**Factor 7: There is a unified state court judicial system that allows for a more effective administration of justice.**

**Rating: POSITIVE.**

For much of the twentieth century, most state court systems were essentially "non-systems," characterized by a proliferation of limited-jurisdiction and

specialized courts, often with their own distinctive rules of procedure and with overlapping and/or ill-defined jurisdictions. This led to uneven workloads among courts and to an unnecessary duplication of support personnel and facilities. Furthermore, insofar as courts were financed by local governments, this led to uneven funding for courts that sometimes interfered with a uniform administration of justice in the state.

Missouri has succeeded in consolidating its court system by mandating in its Constitution a unified court system and by making all courts part of that unified system. It has been less successful in promoting uniform financing of state courts, as some elements of the court system are funded by the state, other elements by county governments, and still other elements by municipalities. More specifically, the salaries of all judges and clerks are paid by the state, except for the salaries of municipal judges and clerks, which are paid by their respective municipalities. The counties are obliged to pay for operating expenses of the circuit courts. The state pays for the operating expenses of the Supreme Court and Court of Appeals.

**Factor 8: There is a unified administration of the judicial system with appropriate rule-making authority and designated administrative leadership.**

**Rating: POSITIVE**

The uniform and efficient administration of justice requires not merely structural unification of state courts but also administrative unification. Administrative unification rescues courts of first resort from immersion in local politics, ensures procedural uniformity throughout the state court system, and encourages better management of the courts--in short, it promotes a more efficient and uniform administration of justice. To achieve this, states need to (1) vest rulemaking authority in

the highest court in order to encourage uniform procedures throughout the court system, (2) make the chief justice the administrative head of the court system in order to promote a system-wide management perspective, (3) create chief judges of courts of first resort and empower them to strengthen management at that level, and (4) establish vertical lines of authority within the court system.

Missouri largely meets the requirements for a unified administration of the judicial system. It vests administrative responsibility for the judicial system in the Chief Justice of the Supreme Court, and to assist the Chief Justice, it has created an Office of State Courts Administrator, with the State Courts Administrator appointed by and responsible to the Chief Justice. Continuity in the administration of the court system is somewhat compromised by rotation of the office of Chief Justice every two years. The Supreme Court retains the power to make rules regarding practice and procedure, which enables it to ensure uniform administration of justice throughout the state. Yet this power is not exercised in isolation—as one respondent noted, “the Court consults with judges around the state, circulates proposed rules, and elicits comments before enacting them.” Respondents overwhelmingly concluded that the judiciary has sufficient rule-making authority, with 97 percent rating it either “definitely sufficient” or “probably sufficient.” As one respondent put it, “The judiciary has absolute power, which is appropriate.”

### **III. Financial Resources**

**Factor 9: The judiciary has a meaningful opportunity to influence the amount of money allocated to it by the legislative and/or executive branches, and, once funds are allocated to the judiciary, the judiciary has control over its own budget and how such funds are expended.**

**Rating: MIXED**

The judiciary cannot function effectively without adequate funding, yet it inevitably finds itself in competition for resources with other programs and priorities of state and local government. In order that it might be able to explain its needs and the rationale for its budget requests, the state judicial branch needs structured opportunities to convey those needs to those who will determine appropriations.

The judicial branch should have the same control over its internal operations as is enjoyed by the legislative and executive branches. That is, it should be able to establish its own priorities, devise its own budget, and oversee expenditures within the branch (subject, of course, to the same auditing requirements imposed on other governmental bodies). It should not be hamstrung by excessive restrictions on the use of funds appropriated to it, because the administrative leadership of the judicial branch is best situated to understand the workings of the courts and to allocate funds to ensure the efficient and effective administration of justice. Nor should judicial budgets be threatened or diminished in retaliation for unpopular decisions or decisions with which the executive or legislative branches disagree.

With these considerations in mind, the American Bar Association has established the following policy guidelines:

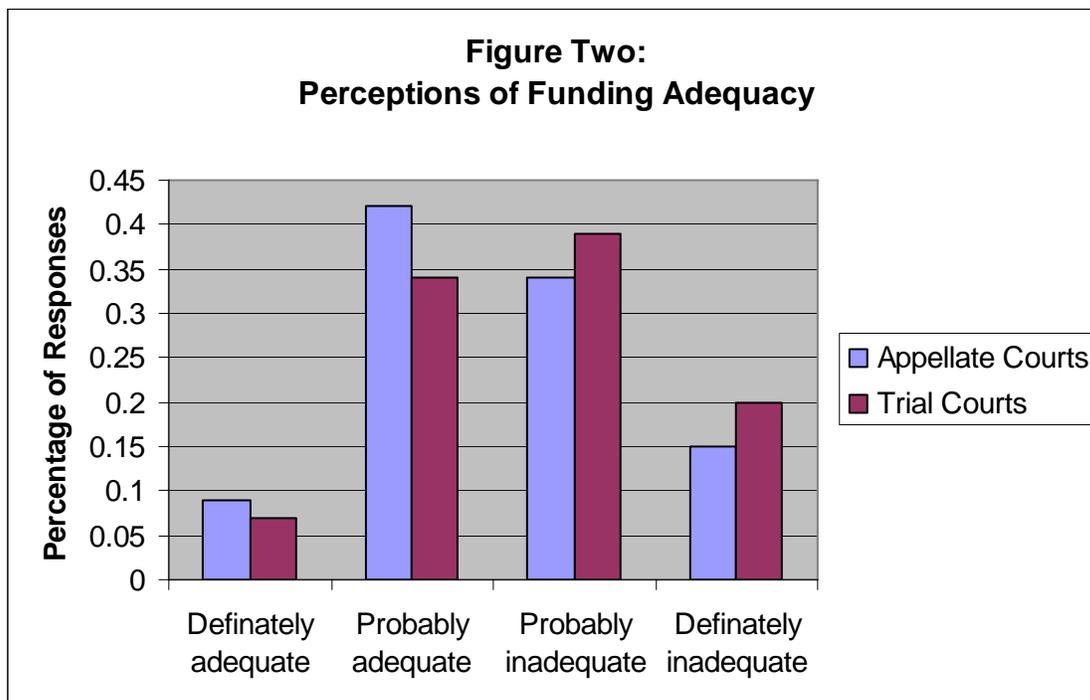
- a. Standards for minimum funding of judicial systems should be established.
- b. The judiciary's budget should be segregated from that of the political branches, and it should be presented to the legislature for approval with a minimum of non-transferable line itemization.

c. 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.

The judicial branch in Missouri does have the opportunity to devise its own budget, with the Office of State Courts Administrator preparing and presenting the budget information. But judicial budget requests are submitted to the Governor's office and become part of the gubernatorial budget submitted to the legislature, giving the governor the opportunity to change or edit parts of the judicial budget, just as he would the budget requests of a subordinate executive-branch agency. This seems incompatible with the status of the judiciary as a coequal branch of government.

The judiciary's budget is determined by the legislature, with funds coming from State General Revenue. Court fees and surcharges generally go into general revenue rather than being retained by the courts. Once the budget is approved, it is administered by the Office of State Courts Administrator, with the Circuit Court Budget Committee allocating the budget concerning court personnel. The judiciary thus determines how its budget is spent.

Almost half the respondents (49 percent) expressed concern that appellate courts were under-funded, and a majority (59 percent) believed that was true for trial courts (see Figure 2).



One respondent said: “I believe that the judicial budget is something like two percent of the entire state budget. That seems inadequate—and the folks in the legislature have shown no interest in paying attention to it.” Yet another respondent felt the problem was not unique to the judiciary but true of all aspects of state government: “State funding of everything is inadequate.” These funding difficulties were reflected in the operation of the courts. According to one respondent, “there is a backlog due to lack of funding,” and according to another, “this circuit is jammed up and has a backlog of cases. There is room for another division here.” Yet one respondent attributed the difficulties, at least at the trial court level, to problems in the allocation, as well as in the amount, of funds, noting: “The funds available for staff salaries have been tight and the allocation of resources creates more problems between rural and urban areas. There is enough staff here, but it probably depends on county. Some are over-funded, and others are under-

funded. Though trial courts are probably not appropriately funded overall, the money isn't allocated to suit the needs.”

Some respondents also noted that the budget process had on occasion become enmeshed in conflicts between the legislature and the courts over the substance of the courts' rulings. Thus, 11 percent indicated that legislators or the governor had “often” threatened judicial budgets because of unhappiness about judicial decisions, 40 percent indicated that this had happened “sometimes,” and 49 percent either “rarely” or “never.” While most respondents concluded that officials “haven't been successful in changing judicial opinions or philosophies,” some noted that “they have succeeded in creating worry and concern for judges.”

**Factor 10: Judicial salaries are generally sufficient to attract and retain qualified judges, enabling them to support their families and live in a reasonably secure environment, without having to have recourse to other sources of income.**

**Rating: MIXED**

As one respondent noted, “the position is not just about the money and it shouldn't be.” Yet judges do need to be able to provide for themselves and their families, and highly qualified prospective judges must not be deterred from seeking office by financial considerations. Because judges are prohibited by law from supplementing their income through the practice of law, they need an official salary that is adequate and is appropriate to the responsibilities they shoulder. Beyond that, their salaries must be protected against reductions in retaliation for unpopular decisions.

The adequacy of judicial salaries in Missouri can be measured in various ways. First, it might be measured through comparison with the salaries of other officials

in the state. Missouri judges fare quite well on that measure. The salaries of Supreme Court justices and Appellate Court judges exceed the salary of the Governor, and the salaries of Circuit Judges are higher than those of every other state official except the Governor. The salaries of Associate Judges are comparable to those of statewide elected officials, such as the Secretary of State, Auditor, and Treasurer. Judges receive the same benefits as other state employees. Thus, 64 percent of respondents thought judicial salaries were fair when compared to the salaries of other state officials, whereas 31 percent found them unfairly low, and 5 percent unfairly high. However, five respondents questioned the utility of such comparisons, arguing that “all across the board, the salaries of government officials and elected representatives are too low.”

The adequacy of judicial salaries might also be measured through comparison with the salaries of judges in other states.<sup>5</sup> The salaries for justices of the Supreme Court rank the state 30<sup>th</sup> out of 50, with salary levels (\$123,000) below the national average (\$130,328) and the national median (\$126,525). Salaries for Appellate Court judges (\$115,000) rank the state 25<sup>th</sup> out of 39 states (some states do not have intermediate courts of appeals), with salary levels (\$115,000) again below the national average (\$125,745) and the national median (\$122,085). Salaries for Circuit Court judges rank the state 35<sup>th</sup> out of 50, with salary levels (\$108,000) below the national average (\$117,328) and the national median (\$112,777).

Finally, the adequacy of judicial salaries might also be measured in terms of purchasing power, such that one determines whether the salaries keep up with the

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<sup>5</sup> Data for all comparisons are drawn from the National Center for State Courts, *Survey of Judicial Salaries*, April 1, 2005, found at: [www.ncsconline.org](http://www.ncsconline.org).

effects of inflation. Between 2000 and 2005, Missouri was one of only four states that did not increase judicial salaries. During that period nationally, salaries for state supreme court justices rose on average 3.0% per year, salaries for intermediate appellate court judges rose on average 2.9% per year, and salaries for judges on trial courts of general jurisdiction rose on average 3.1% per year. However, when Missouri's judicial salaries were adjusted in line with the cost of living in the state, the state ranked 21<sup>st</sup> in judicial salaries.

Responses to questions about the adequacy of salaries for appellate judges and trial judges were decidedly mixed. Only 45 percent believed that they were definitely or probably sufficient to attract and retain qualified appellate judges. As some respondents put it, "the proof is in the pudding—there are lots of applications every time there is a vacancy." One respondent opined that being an appellate judge "is a pretty soft job," and another said that "From where I sit as a peon, I think they make wonderful salaries." A third noted that from the perspective of "sitting down here in Southwest Missouri, they are well paid." But a majority of respondents (55 percent) thought that salaries for appellate judges were definitely or probably not sufficient. One respondent noted that "if you want to attract and retain qualified people, you have to pay them," and another asked: "Why would anyone leave a job where they're making six figures to come to Jefferson City and be a supreme court judge? You can't afford to do that."

However, 57 percent believed that current salaries were definitely or probably sufficient to attract and retain qualified trial judges—according to one respondent, "people want to be judge, and with health and retirement benefits, it is a heck of a deal." But a sizable minority (43 percent) thought the salaries of trial judges were

definitely or probably not sufficient to attract and retain qualified persons. Nevertheless, even those who favored higher salaries thought it unlikely that the problem would be addressed—one suggested that “if you raise judicial salaries, the public will squeal like a pig,” and another noted that “the legislature is tight-fisted with money for the courts.”

Missouri does protect its judges against the political manipulation of judicial salaries in order to influence judicial decisions. It vests responsibility in the Missouri Citizens Commission on Compensation for Elected Officials for making recommendation for salary increases. The legislature retains discretion as to whether to approve the recommendations and appropriate money for salary increases. Article V, section 20 of the Missouri Constitution protects against reductions of judicial salaries during a judge’s term of office.

**Factor 11: Judicial buildings are conveniently located, easy to find, readily and conveniently accessible to the disabled, and they provide a respectable environment for the dispensation of justice with adequate infrastructure.**

**Rating: MIXED**

This factor speaks to two related concerns. The primary concern is access to justice, the importance of which is recognized in Article I, section 14 of the Missouri Constitution: “That the courts of justice shall be open to every person, and certain remedy afforded to every injury to person, property, or character, and right and justice shall be administered without sale, denial or delay.” Thus, courts must have the facilities necessary to dispense justice to all who seek it. A secondary concern is the message conveyed by the facilities in which justice is administered. States should underscore the importance of the administration of justice by providing physical facilities appropriate for

ready access by the disabled and the maintenance of judicial independence, dignity, and efficiency.

Respondents noted wide variation in the quality of court facilities--one asserted that "it runs the spectrum from very nice to dumps." Fifty-nine percent rated court buildings and facilities as "excellent" or "good," 32 percent rated them as "fair," and 9 percent rated them as "poor." Some respondents distinguished between appellate courts and trial courts. According to one, "for the court of appeals and higher, facilities are good to excellent. But many county courthouses are in a deplorable state and condition, not adequate to comfortably try cases or for jury to be comfortable." Another respondent concurred: "There is a wide gap, as the new appellate courts are spectacular, while trial courts are dismal."

Other respondents distinguished among the county courthouses. Because courthouses tend to be older than other government buildings, the quality of facilities often depends upon the amount of renovation the county has provided. Among the facilities praised were those in Cole, Charleston, and Green counties, while respondents were less enthusiastic about facilities in Jackson and Perry counties. Respondents did not always agree in their assessments. One respondent said that "the City of St. Louis is bad," and another claimed that "the seating in St. Louis County Courthouse is not adequate," but a third insisted that "St. Louis County and St. Louis City have nice facilities in comparison to other jurisdictions." A complaint voiced by one respondent was the absence of a microphone system inside courtrooms, which affects both journalists and people with hearing problems.

Respondents varied in their views on how accessible courthouses were for the disabled, with particular concern voiced about older courthouses. One noted that the courthouse in Vernon County does not have elevators, and another that "Jackson Common Pleas was hard to get into." One respondent who rated facilities not accessible commented: "To me good accessibility means a person in a wheelchair or crutches should be able to get in and out on their own. The courts may be able to get disabled persons in with assistance, but that's not fair."

A majority of respondents (53 percent) believed that courts did not have adequate records and archive space, although a sizable minority (47 percent) concluded that technological advances had resolved the problem by making storage easier. One respondent did observe: "Cole County's records are in the attic, but at least in Cole they are on site, and the clerks can get the records within a day." However, many respondents (67 percent) did not believe that there were adequate facilities in courthouses for attorneys and clients to conduct confidential meetings. The issue aroused strong feelings. One respondent said that "the only private space was in the bathroom, and even that wasn't fully private," while another concurred: "Absolutely not--I often have to meet with clients in hallways." A third respondent drew the connection between the lack of facilities and access to justice: "If you want to discuss strategy in the hallway with a client, that's probably not effective."

**Factor 12: Sufficient resources are allocated to protect judges, litigants, court personnel, the public, and judicial facilities from threats such as harassment, assault, assassination, and other threats to security.**

**Rating: POSITIVE**

All participants in the judicial process--including judges, attorneys, plaintiffs, defendants, witnesses, and jurors--must enjoy adequate protection from security threats, so that they can pursue justice without fear or intimidation. The Missouri judiciary does not command its own security resources but rather generally relies on the Sheriff's Department for security. Most courthouses have screening programs to safeguard court facilities.

A bare majority of respondents (52 percent) suggested that threats to security or attempts to intimidate occur only rarely, whereas other respondents (48 percent) suggested that they are more frequent. Respondents identified judges and attorneys as the most frequent targets of threats and intimidation, but they also mentioned witnesses, litigants, and jurors as targets. According to one respondent, "In probably three-quarters of domestic cases and in some of the high-profile criminal cases, people feel threatened." A second respondent countered that he/she "did not feel threatened *inside* the courtroom," though threats may exist in the area of the court. Illustrative of this, according to a third respondent, was the practice of gang members in gang-related trials to congregate outside the courthouse in the hope of intimidating jurors. There are also instances of victims' families and defendants getting into altercations.

The means used to deal with threats and intimidation depend on the situation and the character of the threat. Extra security may be provided in high-profile criminal cases, including security details to protect judges and their homes. More frequently, threats are "typically handled by having the person removed or the bailiff or judge talk to them." Thus, one interviewee said that after being threatened while serving

as a trial judge, he/she "had a talk with the inmate," which solved the problem. But in some instances, those making threats are subject to criminal prosecution.

Most respondents gave high marks to those responsible for security: they "generally handled threats quickly and well." Thus, insofar as concerns for safety remain, "it is largely because of national incidents that have been publicized." Security has been beefed up in some respects--several respondents mentioned the installation of safety devices and metal detectors following a shooting in a St. Louis County divorce trial. A few respondents felt that greater security precautions were necessary. One suggested that there are "no security gates, and if there are, no one is monitoring them. Usually the bailiff is unarmed or just armed with mace."

#### **IV. Structural Safeguards**

**Factor 13: Judges, whether elected or appointed, have a guaranteed tenure protection until retirement age or the expiration of a substantial duration, i.e., 15 years or more.**

**Rating: POSITIVE**

A lengthy term of office for judges is important both to provide them with the opportunity to become expert in their responsibilities and to safeguard them from external pressures associated with the potential loss of office that might compromise the impartial administration of justice. Thus, the ABA's Commission on the 21<sup>st</sup> Century Judiciary recommended that "judges serve a single, lengthy term of at least 15 years."<sup>6</sup> Missouri does provide extended terms for its appellate judges--both Supreme Court

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<sup>6</sup> American Bar Association, Report of the Commission on the 21<sup>st</sup> Century Judiciary, *Justice in Jeopardy*, p. 70.

justices and Court of Appeals judges serve 12-year terms, which places them in the upper tier of judges nationwide who do not serve during good behavior. However, Missouri does not provide extended terms for trial judges--Circuit Judges serve six-year terms and Associate Judges four-year terms. These figures correspond with the median term length for trial judges nationwide.

Although the term length for Missouri judges, whether trial or appellate, falls below the standard recommended by the ABA, all judges may seek consecutive terms, as there are no term limits on judges. In practice, Missouri judges tend to have long tenure in office. Several respondents noted that it was very unusual for a judge to lose in a retention election or be denied reelection in a partisan race. Judges in Missouri may serve until the mandatory retirement age of 70, and even after they reach that age, retired judges may sit on senior status.

**Factor 14: Judges should receive immunity for actions taken in their official capacity.**

**Rating: POSITIVE.**

High-level governmental officials, are neither civilly nor criminally liable for actions taken in their official capacity. This protection promotes the public good by encouraging officials to exercise their powers vigorously and unhesitatingly. As the U.S. Supreme Court noted in *Spaulding v. Vilas* (1896), an executive-branch official “should not be under an apprehension that the motives that control his official conduct may, at any time, become the subject of inquiry in a civil suit for damages. It would seriously cripple the proper and effective administration of public affairs.”<sup>7</sup>

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<sup>7</sup> *Spaulding v. Vilas*, 161 U.S. 483, 498 (1896).

These same considerations apply with regard to judicial actions as well. In recognizing an absolute immunity for judges for actions taken within the judicial role, the U.S. Supreme Court noted that this immunity was “not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.”<sup>8</sup> Put differently, judicial immunity enables judges to fulfill their responsibilities without trepidation about the unpopularity of the rulings they render and thereby promotes the rule of law. Missouri law safeguards judicial immunity, and in *State ex rel. Raack v. Hon. Louis Kohn*, (1986) the Missouri Supreme Court confirmed that a judge with subject matter jurisdiction has judicial immunity from all actions taken, even when acting in excess of his jurisdiction.<sup>9</sup> Respondents reported that no problems had arisen regarding judicial immunity and that judges were adequately protected.

**Factor 15: Judges are assigned cases by an objective method such as by lottery or according to pertinent area of expertise.**

**Rating: POSITIVE.**

Absent acceptable professional reasons, such as expertise or workload, judges should be assigned to cases using a blind, random method. Non-random and non-blind case assignments that are not based on acceptable reasons undermine public confidence in the court system by making it appear that certain judges were chosen for

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<sup>8</sup> *Pierson v. Ray*, 386 U.S. 547, 554 (1967).

<sup>9</sup> *State ex rel. Raack v. Hon. Louis Kohn*, 720 S.W. 2d 941 (Mo banc 1986). See also *Nelson v. McDaniel*, 865 S.W.2d 747, 748 (Mo. Ct. App. 1993).

particular cases in order to preordain an outcome. Rules for case assignment should be open and specified, with such assignments being made by the court.

Missouri adheres to these standards. Local Court Rules govern assignment of cases within a circuit. Most courts use random judge assignment or cases are assigned by case type to certain divisions. The overwhelmingly majority of respondents (81 percent) found that the case assignment process was not manipulated by those within the judiciary nor (95 percent) inappropriately influenced by anyone outside the judicial system. As one respondent noted, “under the Rules of Civil Procedure each attorney has the ability to strike a judge for cause or to disqualify a judge without any reason to prevent such problems.” The few respondents who diverged from this consensus believed that there were occasional problems—for example, one said: “It may be coincidence, but Eastern Jackson County (Independence), a couple of judges seem to always get auto manufacturing/products liability cases,” and another asserted that there were “rare instances where a prominent lawyer or litigant may be given favorable treatment.” A third noted that “when the first judge selected by lottery is bumped off, the next judge sitting on the case is not selected by lottery. I think that both lawyers and judges take advantage of that. Lawyers will try to work it around to get a particular judge, and judges will use it to sit on particular cases.”

## **V. Accountability and Transparency**

**Factor 16: Judges render decisions based solely on the facts and law without any improper outside influence.**

**Rating: POSITIVE**

The administration of justice requires impartial judicial decision-making on the basis of law, free from improper external pressures that might bias judicial decisions, or provide the appearance of inappropriate influence. The canons of judicial conduct help safeguard judges from external pressures. Yet this freedom from external pressures does not mean that judges are free to decide based on their own personal views. Rather, judges are obliged to decide on the basis of law, and various accountability mechanisms operate to ensure fidelity to law in judicial decision-making in the states.

One such mechanism is the availability of appellate review. If a litigant believes that the judge has misinterpreted or misapplied the law, the litigant can seek review by a higher court, and this guards against error or misbehavior by the judge hearing a case. Moreover, the prospect of appellate review acts as a deterrent to judicial decision contrary to the law. Another factor ensuring fidelity to the law is the collegial character of appellate courts. When those courts review the rulings of lower courts, the requirement of gaining the support of other judges means that the mistakes or misbehavior of a single appellate judge will not determine the outcome. A third factor is the fact that courts must announce their rulings publicly and, at least in the case of appellate courts, present in judicial opinions the legal basis for them. These judicial opinions are subject to public scrutiny and criticism. Finally, in Missouri as in most other states, voters periodically have the opportunity to assess judicial performance and fidelity to law through elections or retention elections.

What is crucial, however, is that judges be free from attempts by officials or other persons to influence their decisions and compromise their impartiality. Some respondents (23 percent) believed that judges were “often” or “sometimes” threatened

with removal because of their decisions, while a large majority (77 percent) thought this occurred “rarely” or “never.” Typically, this takes the form of opposition to reselection of judges--several respondents made reference to the unsuccessful campaign to unseat Justice Teitleman in 2004. As one respondent noted, “There are groups that believe that the majority of judges are outcome-oriented and would like to get them out of office.”

However, respondents almost unanimously (90 percent) concluded that judicial rulings were not improperly influenced by public officials or interest groups, although some acknowledged that on occasion there were attempts to influence judicial decisions. As one respondent put it, “they try, but I don’t think they get it done.” Another concurred: “Lawyers may engage in more *ex parte* communications than they should, but it is doubtful that actually influences judges.” Respondents who disagreed wondered whether “it might happen” that state officials may influence judicial rulings, whether “sometimes” *ex parte* communications or prosecutors’ comments actually had an improper effect, or whether MADD affected judicial rulings.

**Factor 17: Judges are removed from office or otherwise punished only for specified misconduct and through a transparent process governed by objective criteria.**

**Rating: POSITIVE**

Ensuring the quality and integrity of the state bench is a paramount constitutional aim, and thus there must be mechanisms for assessing the fitness and performance of sitting judges. One way to ensure appropriate accountability while preserving the institutional legitimacy of the judicial system is to ensure that judges are removable “for cause.” Thus the Missouri Constitution provides for the impeachment of judges for serious misconduct in office. However, impeachment has proved to be an

unwieldy weapon and is only rarely employed. Another mechanism to ensure appropriate accountability is periodic reselection of judges. However, electoral accountability is only periodically available, given the lengthy terms of office of most judges, and voters may remove judges based on disagreement with their decisions, even when those decisions involve good-faith efforts to follow the law. Moreover, both impeachment and electoral defeat share the defect of allowing only one sort of punishment--removal from office--regardless of the gravity of the offense. Thus, a state needs to supplement these mechanisms with a more graduated system that provides for expeditious discipline graduated to the severity of the offense.

Missouri has for this purpose created the Commission on Retirement, Removal, and Discipline, a body comprised of judges, attorneys, and lay persons, which has the responsibility of holding judges accountable for violations of the canons of judicial conduct. The Commission has the authority to recommend removal of an offending judge or disciplinary measures short of removal, such as suspension from duties, a formal reprimand, or an informal (non-public) reprimand. The Commission has regularly exercised that authority, and judges guilty of wrongdoing have been removed or reprimanded.

**Factor 18: A judicial code of ethics exists to address major issues such as conflicts of interest and other forms of inappropriate activity, and judges are required to receive training concerning the code before taking office and during their tenure.**

**Rating: POSITIVE**

State court systems have an obligation to establish and enforce a code of judicial ethics. Because new judges may not be fully aware of their ethical obligations,

they must also educate the judges about those obligations. They must continue to make such education available throughout the judge's tenure as new standards are established and promulgated. Finally, they must provide a mechanism by which judges can obtain guidance when ethical issues arise in the course of their work.

Missouri has met its obligations on this factor. Judges receive ethics training before they ascend the bench during the New Judge Orientation. In addition, ethics training is regularly offered at trial judge college, appellate conferences and municipal judge training. When ethical concerns arise during the course of their service, judges can request an informal opinion from the legal counsel for Commission on Retirement, Removal, and Discipline or can request a formal opinion from the Commission in writing.

**Factor 19: A structured system to evaluate judges is in place.**

**Rating: POSITIVE**

In 2005 the ABA adopted Guidelines for the Evaluation of Judicial Performance, which encouraged court systems to develop and implement a formal evaluation program intended to improve the performance of individual judges and to enable those responsible for continuing judges in office to make informed decisions. The guidelines provided for dissemination of results as appropriate based on the particular purposes of the evaluation, whether judicial self-improvement or informed decision-making in the reselection process. The ABA Guidelines recommend criteria for evaluation and suggest procedures for the evaluation process.

Missouri's evaluation system is oriented exclusively to providing the public with information for the process of judicial reselection. The Missouri Bar surveys

lawyers to evaluate judges in the non-partisan court plan during the year in which they will appear on the ballot for retention. The lawyers' evaluations focus on key traits that effective and fair judges need to render justice. Trial judges--circuit and associate circuit level judges--are rated on attentiveness, courtesy, decisiveness, diligence, impartiality, expeditiousness, fairness, integrity, legal analysis and settlement skills. Appellate level judges are rated slightly differently. These judges are rated on courtesy, fairness, integrity, clarity of their decisions, and legal analysis skills. Lawyers rate each judge on a five-point scale, ranging from being poor (1) to excellent (5), and also vote on whether each judge should be retained. The Missouri Bar publishes the survey results on its website and prints 150,000 copies of the results along with bios and photos, distributing them statewide at courthouses, libraries, and various other locations.

The sole negative relates to the timing of judicial evaluations, which is linked to judicial reselection. However, evaluations conducted during the tenure of a judge and communicated to the judge can be extremely useful as a means of encouraging better performance. They thus serve as another measure designed to promote accountability within the judicial branch. The Missouri Bar Association is currently reconsidering its evaluation system in order to bring it more closely in line with ABA guidelines.

**Factor 20: A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning judicial conduct.**

**Rating: POSITIVE**

One important way that courts and judges remain accountable is through a process whereby complaints may be registered and heard. Courts systems must have in

place an accessible system so that judges, lawyers, and the public can register their complaints, and a mechanism by which those complaints can be investigated and valid complaints dealt with.

For this purpose, Article V, § 24 of the Missouri Constitution has established the Commission on Retirement, Removal, and Discipline, empowered it to investigate complaints against judges, and provided for it to recommend to the Supreme Court (after notice and a hearing) appropriate disciplinary action should the complaints prove valid. The commission can also recommend that the Supreme Court retire from office judges who are unable to discharge the duties of his office with efficiency because of permanent sickness or physical or mental infirmity.

Information about the Commission and the procedure for registering complaints is made available by the Missouri Bar both through information brochures that are distributed to the public and through the Bar's website ([www.mobar.org](http://www.mobar.org)). Respondents were divided over the effectiveness of this publicity, with 46 percent suggesting that it was easy to register a complaint and 54 believing it was difficult to do so. Those who thought it easy stressed the importance of the internet to the process: "if they know how to use as computer, it's easy." Those who found it difficult for the average person recognized that "a lawyer can always direct the person in the right direction." There is no question that the process is used: the Commission receives approximately 220 written complaints annually. This figure also belies claims that complainants are generally intimidated from using the system. As two respondents noted, any effort to intimidate "would be even more judicial misconduct." However, a couple respondents disagreed, insisting that "the perception is that if a person files against

one judge, then others will retaliate. The risk of retaliation by judges is a deterrent to using the complaint process.”

Most respondents believed that the Commission took its responsibility to investigate complaints seriously, although several noted that "some complaints are baseless," a product of dissatisfaction with case outcomes rather than of judicial misconduct. As one put it: “I think the Commission uses the standard of frivolity just as anyone else would.” A few respondents were more skeptical. One suggested that the seriousness of the Commission's investigation "has to do with who is doing the complaining. The system is biased against minorities, women, and the poor.” Another suggested that the Commission “looks at the past record of judges. If there are multiple complaints, then they recognize a problem, but only one or two complaints will be ignored.” A third questioned whether the Commission had the resources or manpower to perform its job adequately.

A few respondents did complain about the secretive nature of the process. They argued that after investigations have been completed, their results should be made public, as well as whatever sanctions were imposed. As one put it, there is “no way the average citizen knows about rulings by the Commission”

**Factor 21: Courtroom proceedings are open to, and can accommodate, the public and the media.**

**Rating: POSITIVE**

A defining feature of democratic government is openness. For the judiciary, this means that court proceedings should generally be open to members of the public and the media. However, courts should have the opportunity to regulate,

consistent with constitutional requirements, the manner in which the public or media have access to sensitive judicial proceedings. Likewise, members of the public should have ready access to pertinent court records, and before a court restricts public access to any document, it must determine that sealing the document serves a legitimate, overriding interest that outweighs the public's right of access.

Missouri has dealt with the issue of public and media access through both statutes and court rules. With a few statutory exceptions such as mental health proceedings and adoptions, court proceedings are generally open to the public. Statutory guidelines also guide judicial decisions on whether sensitive proceedings should be open or closed. Court Operating Rule 16 establishes in detail the guidelines that operate with regard to media access and coverage of cases, including the circumstances under which cameras will be permitted in the courtroom.

Court Operating Rule 2 governs public access to court records, including not only judgments, but also administrative records and other documents filed in the public record in connection with court proceedings. This rule creates a general presumption that court records will be open to any member of the public for purposes of inspection or copying. Statutes and court rules prescribe those records that shall remain confidential, and the Supreme Court has established guidelines in case law regarding the sealing of documents.

Respondents believed that the Missouri judiciary has been successful in safeguarding appropriate access to court proceedings and court records. They noted that courtroom proceedings were always open (45 percent) or usually open (51 percent), with the few exceptions (e.g., paternity cases and cases involving juveniles) fully justified by

privacy concerns. Eighty-four percent confirmed that complaints about lack of access were rare.

## **VI. Needs and Expectations of the Community**

**Factor 22: The judiciary does not discriminate on the basis of race, creed, gender, ethnicity, sexual orientation, or physical disability in hiring, promoting, and retaining judges or other court personnel. Efforts are made to ensure that the judicial branch at all levels is staffed by a diverse that is representative of the population that it serves.**

### **Rating: POSITIVE**

Both federal law and state law prohibit discrimination in hiring, promoting, and retaining judges or other court personnel. In addition, acts of illegal discrimination by the judiciary sap public confidence in its impartiality and undermine its legitimacy. Moreover, the moral and political authority of the judicial branch rests in no small part on the public's confidence in its impartiality. Yet public confidence in the legal system requires more than avoiding overt discrimination. The goal must be to ensure a racially, ethnically, and gender diverse judicial system, and steps must be taken to ensure that the judiciary is staffed by personnel that reflect the diversity of the communities that it serves.

The discussion of Factor 5 focused on the recruitment of women and minorities to the bench, concluding that progress had been made in recent years in promoting greater representativeness but that full removal of the barriers to inclusion had not occurred. With regard to the hiring of other employees of the judicial branch, respondents found no evidence of overt discrimination. A large majority (78 percent)

believed that an appropriate level of diversity existed in court staff. Two of those who found problems noted the virtual absence of men among court staff. Two others, while faulting the level of diversity, acknowledged that “the staff is racially diverse.”

**Factor 23: Judges ensure that those who come into contact with them – whether jurors, witnesses, attorneys, or parties to litigation – are treated equally and accorded appropriate respect.**

**Rating: MIXED**

Persons who come into the courts--whether as jurors, witnesses, attorneys, or parties to litigation--draw conclusions from that contact as to whether the courts provide a fair and impartial administration of justice. Those conclusions are based not only on the outcome of cases but also on how those who come into contact with the courts are treated by judges and by other court personnel. The conclusions may also reflect an overall assessment of, for example, the criminal justice system of which the courts are a part, rather than the actions of court personnel themselves. Yet when those in the judicial branch discriminate, when they harass or intimidate, when they fail to treat all persons with appropriate respect, they betray the ideal of equal justice under law. They also contribute to public cynicism about the administration of justice and undermine the legitimacy of the courts.

The Missouri Code of Judicial Ethics prohibits judges from engaging in conduct that could reasonably be perceived as harassing or invidiously discriminatory. Judges must be alert to avoid behavior that may be perceived as prejudicial or otherwise impairing the fairness of judicial proceedings. The Missouri Code of Judicial Ethics likewise requires judges to demand the same standard of conduct from court personnel

subject to their direction and control. To assist them in this, the Missouri judiciary offers training on diversity to judges and other court personnel, although they are not obliged to attend such sessions.

One area of particular concern is how courts treat the members of groups that have historically been the target of invidious discrimination. The survey results were not encouraging. A large majority of respondents (69 percent) indicated that most minorities believed the court system to be biased against them, a substantial number (28 percent) suggested that a significant percentage of minorities believe the system is biased, and no respondents thought that most minorities believed equal justice was provided. Moreover, most respondents thought that there were good reasons for this distrust. In part, the distrust arose from a history of discrimination: “they have felt that the system was biased for so long that it’s almost ingrained in their culture.” Respondents noted, for example, “the use of all-white juries over the years before *Batson*.” In part, however, the perception mirrored present-day realities. One respondent noted: “Real life experiences cause this perception especially in the African-American community because everyone knows someone who has been through the system.”

Several respondents attributed the distrust to economic factors—“economics plays a key role”—in particular, the inability of the poor to secure equal justice without legal representation or with only inadequate representation. Other respondents attributed the distrust to the lack of minority-group members in positions of authority within the courts. Still others noted the “over-representation of African-Americans in criminal justice system” and the racial “disparity in the incarcerated

population.” Indeed, most respondents assumed concerns about equal justice surface “more from a criminal standpoint than a civil standpoint.”

Some respondents contended that the courts were unfairly condemned for problems with the police and other law enforcement agencies—for example, “biases among the police also lead to the perception of bias in the court system,” as in the case of racial profiling. Yet others thought it appropriate to view courts as part of the criminal justice system, particularly given “results in the courtroom—the verdicts that judges and juries render.” Still others believed that the distrust was altogether unwarranted, that it stemmed from a misunderstanding of the courts and their operations. These respondents argued that the discriminatory practices of the past were being attributed to courts in the present that had abandoned those practices. Moreover, they disputed the belief that African-Americans received disproportionately severe sentences—“in Sikeston, this does not seem to be the case, as judges are sending all to jail for drug offenses.” A few acknowledged that “a large proportion of minorities are charged with crimes,” but saw that “as a result of them committing a disproportionate number of crimes.”

Although there are limits to what courts can do to combat the perception of injustice, the complaints themselves underline the importance of inclusiveness in staffing the courts (see Factors 5 and 22) and of providing capable legal assistance to indigent defendants accused of crime (see Factor 26).

Another area of concern involves the treatment of jurors, as more members of the public are likely to experience court proceedings as jurors than as litigants. It is essential, in the words of one respondent, that courts “respect jurors’ personal, professional, and family needs.” Fifty percent of respondents believed that

Missouri's courts structured the experience of jurors in such a way that they emerged with a positive view of the process. In part, this reflects their recognition of the serious task that they are called upon to perform. Several respondents noted that jurors took their responsibilities seriously: "jurors are proud to serve on a jury," are "interested in the case." and consider their service "a learning experience." As one respondent put it, "they get to see how the system operates, and they get to play a role in the outcome. They leave with a greater appreciation of the system after having been involved in it." In part, too, it reflects the efforts of judges and other court personnel to ensure that jurors have a positive experience. Thus, several respondents noted that "judges are very good at working with juries, making them feel valuable and meeting their needs during trial." However, one respondent disagreed in part, claiming that "some judges and clerks are conscientious in ensuring that judges have a positive experience, while others are not," and stressing the need for the Supreme Court to emphasize this to trial judges.

Other respondents felt that the experience of jurors was more mixed (41 percent) or negative (9 percent). One major factor was jurors' understandable concern about being required to miss work, foregoing income and perhaps causing problems for employers. Two respondents noted the "need to get employers on board," with one suggesting new legislation requiring employers to pay employees called to jury duty. A second major factor was delays in court. "Although most find it a positive experience, there have been instances when jurors are called and show up but court delays of trial or a settlement is reached, and they feel imposed upon." More generally, "sitting around waiting for jury duty is simply not pleasant," and this colors their view of the efficiency of the judicial process. One suggestion was greater use of written questionnaires for

potential jurors to avoid overlong *voir dire*. A third factor respondents noted was tied to court rules that jurors felt interfered with their ability to do their job well. Thus, three respondents noted juror frustration over the inadmissibility of pertinent evidence in criminal trials, and one suggested that instructions be given prior to trial to help them organize the information presented at trial. Finally, some respondents suggested that courts should treat jurors better by “budgeting more for accommodations and meals.”

**Factor 24: The judiciary has in place formal policies and processes for handling allegations of bias.**

**Rating: POSITIVE**

Bias has no place in a judicial system committed to the fair and impartial administration of justice. Therefore, it is essential that states have procedures for dealing with allegations of bias on the part of judges or other judicial branch employees that are expeditious, thorough, and fair to all involved. Missouri, like many other states, lodges this responsibility in the body generally concerned with policing judicial ethics, namely, the Commission on Retirement, Removal, and Discipline.

Respondents indicated that allegations of judicial bias affecting rulings arose "frequently" (17 percent), "only sometimes" (28 percent) or "rarely" (55 percent). In many instances, they suggested, the allegations came from “disgruntled participants who didn’t like judge’s decision.” In other instances, complaints related to the "philosophical orientation" of judges, with concerns expressed about "judges who were believed to be plaintiff-oriented or defendant-oriented" or "liberal or conservative" or have a “preexisting prejudice in favor of philosophical or legal position” or "who legislate from the bench." Yet whatever one's assessment of a judge's general approach

to legal issues, that approach does not involve judicial misconduct, and it is not susceptible to correction through the disciplinary process.

Of much greater concern are allegations of "racial bias in sentencing" or of "cronyism," that is, bias in favor of particular litigants, law firms, or political party adherents. Respondents noted that the former allegations were fairly frequent, while the latter were quite rare. Ninety-four percent of respondents who answered the question believed that the state did a "very good" or "good" job of investigating such complaints.

**Factor 25: The judiciary acts to ensure that language barriers do not limit access to the justice system.**

**Rating: POSITIVE**

Among the most critical demographic changes affecting the twenty-first century judiciary is the changing racial and ethnic makeup of the American public. The ethnic diversification of the United States through immigration and other factors has meant that those served by the courts speak a wide variety of languages. The judiciary must take reasonable steps to ensure that it can accommodate the linguistic diversity of the communities that it serves, including providing translation and interpretation services that are adequate to meet the needs of a diverse population.

Court interpreters in Missouri are certified through the National Center for State Courts and the Consortium for State Court Interpreter Certification. Currently, the only certified interpreters are those certified in Spanish. According to the Administrative Office of the Courts, the Missouri judiciary has sufficient funding to meet its needs for translation and interpretation services in criminal cases but not necessarily to cover those services for civil and juvenile matters.

Yet the experience of respondents was overall quite positive, with 74 percent indicating that courts usually met the needs of non-English-speaking participants, 14 percent indicating that they did so only some of the time, and 11 indicating that they usually failed to meet those needs.<sup>10</sup> One respondent noted a “lack of sign language interpreters for the hearing impaired.” Two respondents suggested that the problem of access to interpretation services was greater in rural areas, but another suggested that it was greater in urban areas because of greater demand. One respondent claimed that “only in major urban areas were interpretive services available at no fee,” but a majority of respondents disagreed with that view. Another respondent noted some confusion about who is responsible for providing interpretation services: “When the need fails to be met, it is due to the lack of money to pay the interpreter. There appears to be confusion at times regarding whether the Court, the Defendant, or someone else is to pay the interpreter.” A clear and broadly disseminated policy pronouncement would serve to remedy such confusion.

**Factor 26: The judiciary allows the adversary system of justice to operate effectively by ensuring that defendants in criminal cases receive legal representation as constitutionally required.**

**Rating: NEGATIVE**

The United States Constitution and most state constitutions guarantee adequate representation to defendants in criminal proceedings. Because a majority of defendants are indigent, this means that they require representation by state-appointed counsel. States have an obligation to appropriate the funding necessary to ensure that

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<sup>10</sup> The responses do not total one hundred percent because of rounding.

poor defendants have access to lawyers and to support services vital to their defense. The judicial branch obviously has no direct control over these funding decisions. But because it has primary responsibility for the administration of justice, it should seek to ensure that the state meets its responsibility to provide equal justice for all. If the state fails to meet its responsibility to provide competent counsel, this will produce miscarriages of justice and will undermine popular faith in the legal process.

In Missouri, as in other states, a majority of defendants in criminal cases cannot afford to hire an attorney. Missouri has therefore established by statute a public defender system, which is funded by General Revenue. Yet according to respondents, legal services for indigent defendants are chronically under-funded. As one respondent put it, “the status needs to be elevated; I think it’s viewed as a second class legal operation.” This under-funding has meant that salaries for public defenders are low, so that the position attracts primarily inexperienced attorneys, often fresh out of law school. Given this inexperience, almost half the respondents (46 percent) believed that there were not sufficient safeguards in place to prevent incompetent public defenders from representing indigent defendants. Under-funding has also meant that turnover in public defender offices is high, which aggravates the inexperience problem. Finally, under-funding has meant that public defenders must deal with excessive caseloads, making it difficult to mount an effective defense for those accused of crime.

A large majority of respondents concluded that these factors, taken together, have compromised the fair administration of justice for indigent defendants. As one respondent put it, “This leads to some of the biases in our court system.” Others were more cautious, noting that “although caseloads are too high and salaries too low, I

don't believe this threatens the administration of justice—we haven't reached the point of crisis.” In addition, these failures have a racial dimension. Given disparities in income among racial groups, the deficiencies of Missouri's public defender program have fallen especially heavily on persons of color, further encouraging the perception that the judicial system is biased against them and that they are denied equal justice (see the discussion of Factor 23 above). If one wishes to combat the perception of unequal justice, therefore, one must address the factors contributing to that perception, including the quality of defense counsel provided to indigent defendants.

Although respondents were concerned about the quality of defense services provided to indigent defendants generally, they did note that Missouri had made extra efforts to ensure adequate representation for defendants in capital cases. Several respondents praised the Capital Crimes Division, with one respondent asserting that the “death squad” is “pretty damn good.”

It should be emphasized that the “negative” rating on this factor does not reflect a failure on the part of the Missouri judiciary. The judiciary is not responsible for appropriation of funds and therefore cannot by itself remedy the perennial funding problems plaguing efforts to provide criminal defense for indigent defendants.

**Factor 27: The judiciary has recognized and responded to the needs of *pro se* litigants.**

**Rating: POSITIVE**

Although indigent defendants in criminal cases are guaranteed legal representation by the U.S. Constitution, indigent parties in civil cases are not. Given problems with the cost and availability of competent legal services, non-attorney litigants

have increasingly chosen to represent themselves in court. Although there are both interstate and intrastate differences in the level of *pro se* litigation, it is becoming the norm in some forums that involve mediation, arbitration, or other forms of alternative dispute resolution. It is also common in venues such as family/domestic relations courts. This is true in Missouri, as well as in other states. A 2003 study conducted by the Administrative Office of the Courts found that in family law related cases 80% of clerks reported that *pro se* litigants appeared regularly. Jackson County reported that in 79% of domestic relations cases at least party appeared *pro se*.

The failure to secure legal representation can raise problems. *Pro se* litigants may fail to use proper procedures and therefore jeopardize rights that a lawyer might have been able to protect. Their ignorance of law and legal procedure may oblige judges to assist the *pro se* litigants, and while this may contribute to a more effective presentation of arguments in a legal dispute, it may also appear to compromise judges' appearance of neutrality in a case. Nevertheless, the bar, the legislature, and/or judiciary have a responsibility to take reasonable steps to ensure that competent legal services are available to all litigants, whether or not they are represented by counsel.

Missouri has responded to the rise in *pro se* litigation by conducting training sessions for judges to help them deal with the special problems and challenges presented by *pro se* litigants. Yet despite the training available to judges, opinion remains divided about how well Missouri's courts are serving the needs of *pro se* litigants. Thus, 46 percent of respondents thought the courts were sufficiently serving those needs, 49 percent offered a mixed assessment, and only 6 percent thought they

failed to meet the needs.<sup>11</sup> Most respondents seemed to believe that judges have gone out of their way to protect the interests of *pro se* litigants--in fact, one respondent complained that judges have been "too effective" in doing so. More generally, respondents believed that "*pro se* litigants are perceived as a nuisance by bar members, but they are given their due in court." As one observed, "The judge is there to ensure the needs of *pro se* litigants are met and judges take this seriously. The judge ensures fairness and does it well." A minority argued that the courts' record was more mixed: "Some judges will help, but others will throw up their hands and offer no guidance." The problem is largely the difficulty of non-professionals seeking to participate in "a specialized operation: *pro se* litigants don't operate very well in it." Although the costs of legal representation may encourage laypersons to represent themselves, as one respondent concluded, "people that represent themselves get what they ask for."

The Supreme Court of Missouri and the Missouri Bar have recognized the problems posed by the rise in self-representation. They created a joint Pro Se Commission to study the *pro se* issue in Missouri and develop recommendations for dealing with it. After the Commission's report was presented to the Supreme Court in late 2005, the Supreme Court of Missouri created a Pro Se Implementation Committee to carry out those recommendations.

**Factor 28: The judiciary has demonstrated leadership in organizing, facilitating, supporting, and monitoring programs to enhance access to the justice system for those who cannot otherwise afford it.**

**Rating: MIXED**

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<sup>11</sup> Responses do not total one hundred percent because of rounding.

The adversarial system of justice is predicated upon each side of the litigation effectively presenting its case. Therefore, adequate representation by attorneys is critical in advancing the interests of the legal system, as well as those of the litigants. The judiciary has a responsibility to support and encourage the involvement of the legal community in providing representation to litigants *pro bono*. Several states, most notably Florida, Montana and Indiana, have established central statewide programs and infrastructure for the judiciary to encourage attorney involvement in their communities via *pro bono* representation. Courts in some states, including New York, Nevada, and Minnesota, have established local or district programs, while others leave these tasks up to the bar or private funding sources. By establishing a centralized system, usually consisting of a number of local committees and one standing committee, judges are involved in all aspects of furthering public service initiatives. These committees are responsible for conducting surveys that evaluate the current state of *pro bono* programs, developing a plan for improvement, implementing the plan, monitoring its implementation, and ultimately reporting on its level of success. In these centralized systems, judges are involved at the local and supervisory levels and thus help to ensure that representation is provided to those who cannot otherwise afford legal services.

The Missouri judiciary has worked with several Legal Services Corporations on promoting access to the courts. In addition, the Missouri bar has encouraged volunteer and *pro bono* efforts to provide legal services. Finally, there are various organizations -- for example, Catholic Legal Assistance -- that work independently in providing services.

These efforts are important for indigent litigants because, as one respondent put it, “the judiciary can’t do good unless litigants get to court; they must be able to file.” Yet respondents noted limits to the availability of counsel, essentially tied to funding. One respondent claimed that “Legal Services is under-funded; needs outpace their resources,” while another noted that this “lack of money prevents poorer litigants from obtaining the quality legal representation they need.” Still, some respondents acknowledged that “you can’t give everyone an attorney for free,” and one faulted the judiciary for “failing with regard to referring people to Legal Aid or privately funded ADR programs that would solve their problems without trial.”

Slightly more than half of respondents give the judiciary good marks in meeting the civil legal needs of poor litigants. Fifty-two percent of respondents believed the judiciary is doing a “very good” or “good” job, 31 percent believed it is doing an “adequate” job, and only 17 percent either a “bad” or “very bad” job. Respondents praised the courts for “bending over backwards to help explain to people with limited resources,” insisted that “the courts seem to be doing all that they can,” and concluded that “in spite of problems, the system still works well for most people.”

Those more critical of the process faulted the judiciary for creating unrealistic expectations. As one respondent put it, “The judicial system needs to do a better job telling the public what they do. Most don’t understand what the court system is designed to do. It is not designed to resolve disputes with neighbors.” Another concurred, noting that “most people have no involvement with the court system and do not have a lot of education, so they do not know where to start. The system needs to do a better job of helping” by expanding forms of communication about the court system.

Beyond that, some respondents complained that "the process is too complicated and takes too long" and that the delays and complications are overwhelming to those without attorneys. Litigants expect to have their cases resolved expeditiously, whereas it "takes a long time to get a trial date." Moreover, "the rules of procedure are easy to find out but difficult to comprehend." As a consequence, "for the average citizen, the system is probably scary and difficult to understand," and so the average person might think twice about beginning the process."

**Factor 29: The judiciary has adopted and adapted practices to meet community needs by introducing such initiatives as "specialized problem-solving courts" and other innovations.**

**Rating: POSITIVE**

In recent years, court systems throughout the country have inaugurated various "problem-solving courts" in an effort to address the underlying problems of defendants, victims, and communities. "Problem-solving courts" refers to special dockets established by a judge where the principles of collaborative justice are applied with participation of the court, the prosecutor, defense counsel and appropriate treatment providers. These courts are distinguished by a problem-solving focus, a team approach to decision-making, the integration of social services into the work of the court, direct interaction between the judge and defendants, judicial supervision of the treatment process for defendants, community outreach, and a proactive role for the judge inside and outside the courtroom. The first problem-solving courts were drug courts, started in the early 1990s in an effort to break the cycle of addiction, crime, and repeat incarceration by mandating that addicted defendants go to treatment programs. Since that time, the same

concept has been extended to domestic violence courts, juvenile drug courts, family treatment courts, mental health courts, community courts, peer/youth courts, and homeless courts.

There is an emerging consensus about the effectiveness of problem-solving courts. In August 2000 a joint resolution of the Conference of Chief Justices and the Conference of State Court Administrators expressly encouraged “where appropriate, the broad integration over the next decade of the principles and methods employed in the problem-solving courts into the administration of justice to improve court processes and outcomes while preserving the rule of law, enhancing judicial effectiveness, and meeting the needs and expectations of litigants, victims, and the community.” The American Bar Association has also endorsed problem-solving courts, noting that they “have shown considerable potential to address some of the most intractable problems state courts face—clogged dockets, strained budgets, recidivism, and perhaps most importantly, a lack of public confidence in the judicial system, especially within communities of color.”<sup>12</sup>

Thus, all state court systems should develop and implement problem-solving courts where appropriate to deal with the intractable problems facing them. They should also seek to coordinate their problem-solving initiatives on a statewide level.

Missouri has developed various problem-solving courts, including drug courts, mental health courts, DWI courts, family drug courts, juvenile drug courts, and courts to assist with parents not paying child support. It has also undertaken studies to evaluate the effectiveness of drug courts. Finally, it has been among those states

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<sup>12</sup> American Bar Association, Report of the Commission on the 21<sup>st</sup> Century Judiciary, *Justice in Jeopardy*, p. 50.

pioneering efforts to coordinate the operation of problem-solving courts on a statewide basis.

Respondents' assessment of the effectiveness of Missouri's specialty courts (e.g., drug courts) was overwhelmingly positive, with 92 percent rating them "very effective" or "somewhat effective" and only 8 percent rating them "somewhat ineffective." Several respondents attributed the effectiveness of drug courts to specialization, arguing that greater "familiarity with issue at bar" produced expertise and efficiency. Others emphasized the personalized attention to the problems of defendants. By increasing "the level of attention given to each defendant," by "concentrating on the individual and reinforcing and building up self-esteem," these courts "improve the lives of defendants rather than throwing them in jail." One respondent asserted that "for non-violent crimes, remediation and rehabilitation provides a better outcome than punishment," and another called the approach "at least as effective as prison and less expensive for young and first offenders." Several respondents also noted that drug courts led to cost savings, because "incarceration is very costly. Anything we can do to limit it is helpful from an economic standpoint." They therefore expressed concern that funding for drug courts was "spotty" and that "there's been a slash in the drug courts' budgets lately."

Those respondents who were skeptical of the drug courts' success claimed that there was a "high rate of recidivism" and that "funding could be used for education instead of specialty courts." These critics also questioned the change in role in these courts and judges. According to one respondent, "they are not really courts, they are

probation forums,” and another insisted that “there is a problem with due process and a lack of confidentiality for litigants.”

Respondents were split evenly over whether the specialty court approach of drug courts should be extended to other areas, with 47 percent of respondents favoring the creation of additional specialty courts and 53 percent opposing it. Proponents suggested a number of areas in which the drug-court approach could be adopted, including family court, child support, juvenile offenders, financial crimes (such as embezzlement and bad-check writing), and shoplifting and petty crimes.

## **VII. Efficiency**

**Factor 30: Each judge has the basic human resource support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research.**

### **RATING: NEGATIVE**

Obviously, the judiciary cannot provide for an efficient and effective administration of justice unless it has adequate staff, equipment, and physical facilities to carry out its responsibilities. However, developments in recent years in Missouri are not encouraging. There has been a loss of court personnel and cuts to the automation and judicial education budgets. In addition, the Office of State Courts Administrator has had to cut staff.

Most respondents (65 percent) believed that the courts need additional money in order to handle their caseloads efficiently. The problem seems to be felt differently in various parts of the state. One respondent observed that “we have enough staff here, but it probably depends on the county.” Another concurred, noting that in his county “there is a backlog due to lack of funding.” A third respondent noted that “the

funds available for staff salaries have been tight, and the allocation of resources creates more problems between rural and urban areas.” In particular, some respondents noted that not all judges have law clerks, which seem essential for the expeditious processing of cases. Even when trial judges do have access to the services of law clerks, often the clerks are shared among a large number of judges, which likewise poses a problem.

**Factor 31: Sufficient resources are allocated so that there are enough judges to ensure that the judicial system works efficiently and with a minimum of delay in processing cases, and that a system exists so new judicial positions are created as needed and vacancies are timely filled.**

**Rating: POSITIVE**

While there is no ideal ratio between the number of judges and the population, it is axiomatic that a single judge is only capable of clearing a limited number of cases per unit of time. Judicial efficiency suggests that judicial systems should be prepared to add judges and courts to respond to changing workloads.

According to data compiled by the National Center for State Courts in 2002, the average number of trial judges in a state per 100,000 population is 4. Missouri exceeds that figure with 5.4 trial judges per 100,000 population. The average number of filings per judge in 2002 was 1,760, and Missouri was slightly below that with 1,637 filings per judge.<sup>13</sup>

There do appear to be significant intrastate variations in judicial caseloads in Missouri, depending on jurisdiction, although there are no formal benchmarks for

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<sup>13</sup> National Center for State Courts, *Examining the Work of State Courts 2003*, available at: [www.ncsc.dni.us](http://www.ncsc.dni.us).

comparing the caseloads of judges within the state. The chief justice has authority to move judges from their "home" courts to deal with bottlenecks and other workload problems, and a judicial transfer program is in operation. Respondents were virtually unanimous in their praise of how Missouri's chief justices had exercised their authority to move judges, with 97 percent deeming their efforts either "very effective" or "effective."

**Factor 32: The judicial system has a case-flow management system that ensures cases are heard in a reasonably efficient and timely manner.**

**Rating: POSITIVE**

The basic work of any court is the processing and resolution of disputes. The public expects and deserves prompt and affordable justice. Delay devalues judgments, creates anxiety and uncertainty, results in the loss or deterioration of evidence, and needlessly increases costs. It is a prime cause of diminished public trust and confidence in the courts.

To combat unnecessary delay, courts need to supervise and manage the process by which cases move through the court system, from the point of initiation to the point of disposition. An effective case-flow management system must pull together diverse and opposed parties to have cases heard and resolved within reasonable time standards. The ABA Court Delay Reduction Standards have established time standards that courts can employ in managing the flow of cases.

The Missouri judiciary has sought to address case-flow problems through a statewide case management system. Court Operating Rule 17 has established time standards for the various types of cases and for events within those cases, and the Office

of State Courts Administrator monitors performance based on those standards. These technological advances have had some effect

Respondents believe that the courts' initiatives have succeeded. A majority (65 percent) of respondents believed that judges used effective case management techniques, whereas 35 percent believed they could "do a better job." Moreover, 72 percent believed that the judicial system responded "very well" or "well" when operational problems arose, while only 28 percent of respondents thought they responded "not too well" or "poorly."

Some respondents did voice specific concerns. One involved split docketing: "Central docketing and individual docketing at the same time is logistically hard to manage. The Supreme Court needs to step in and help resolve the issue." Another spoke from the perspective of an attorney: "Printed docket sheets with time frames help lawyers out. There I no reason not to break up cases by time, as is done with worker comp dockets."

**Factor 33: The judicial system is committed to implementing technological advances to enable it to handle its caseload in a reasonably efficient manner.**

**Rating: MIXED**

Advancing technology, especially in the areas of telecommunications and data storage, offers the promise of long-term cost reductions and increased efficiency in court operations. States should make available sufficient resources to ensure that the courts are able to take advantage of technological advances that make case filing and management easier, and courts should train their personnel to make effective use of the advanced technology available to them.

The Missouri judiciary provides training for judges and court staff on the use of technological resources at the judiciary's disposal. Members of the public can gain access to court records through Case Net:

<http://www.courts.mo.gov/casenet/base/welcome.do> , and several respondents agreed with one who said that “I really like this Case Net thing.” Others, however, noted that a system for electronic filing had yet to be implemented.

Respondents offered a mixed assessment of the Missouri judiciary's efforts in this area: 55 percent thought the courts were doing a good job of using technology, 14 percent thought they were improving, but 23 percent believed they were doing a poor job, and 8 percent believed that there was still room for improvement. Some attributed deficiencies to inadequate funding or to differences between urban and rural counties. One respondent thought that timing was a key factor: “We started before the true web-based internet search system was created. If we'd waited a little longer, we'd have a much better system that operated more cheaply. It's much harder here than in other courts.” But some placed the blame on courts that were reluctant to embrace technological advances: one complained that “it has been pulling teeth to get some courts to participate in the Case Net system,” and another noted that even now “not all circuits are on Case Net.” This latter group urged greater leadership in moving reluctant courts in the right direction.

Respondents had numerous suggestions for what that right direction might include: (1) electronic case filing, (2) video arraignment in criminal cases, (3) a rule change authorizing filing discovery motions electronically, (4) video conferencing in

complex cases, and (5) expanding the information available through Case Net so that people can see the reason for a court's ruling.

**Factor 34: The judiciary handles its caseload in a reasonably efficient manner.**

**Rating: MIXED**

For the courts, operational efficiency is usually associated with the timely delivery of judgments: as has often been noted, justice delayed is justice denied. Factors affecting the operational efficiency of courts include efficient court room management, information on the flow of cases, deployment of personnel and other resources to respond to case-flow problems, and rules and procedures designed to expedite the resolution of cases. Operational inefficiencies can serve to hide corrupt or discriminatory practices and behaviors on the part of judicial and administrative staff. Thus, judges should be trained in the techniques of effective courtroom management, and the judicial branch should ensure that those techniques are brought to bear.

Missouri judges receive some training in effective court room management techniques during New Judge Orientation. However, they are not currently trained in effective case management techniques. Nor is there a system in place to evaluate judges' managerial competence and efficiency or the overall efficiency of the judiciary.

A clear majority of respondents (76 percent) concluded that most judges did use effective management techniques in the courtroom, asserting that "most judges do an effective job," although it "varies from judge to judge." A considerably smaller group (24 percent) believed that judges could do a better job. This positive picture, however, did not mean that cases were consistently heard in a reasonably efficient and timely

manner. On that, respondents were more split, with 58 percent indicating that cases were heard efficiently but 42 percent suggesting that cases were delayed too often. In part, the problem was not lack of skill on the part of judges but rather manipulation of the system by attorneys for the advantage of their clients. Others emphasized the sheer volume of cases. One respondent suggested that “delays in urban areas might relate to volume,” and another observed that “domestic relations is an area in which cases are usually delayed. The dockets are so big that backlogs are inevitable. Most other Circuit Court cases progress well through the system.” The only solution offered was more funding.

### **Conclusion**

This independent assessment of the Missouri court system identified 34 factors pertinent to a properly functioning court system. Overall, the court system received positive ratings on 24 factors, mixed ratings on 8, and negative ratings on 2. To summarize by general areas:

**Qualifications, Experience and Diversity:** [Factors 1-5] There is a “positive” rating on each of the four factors relating to the qualifications of judges, their mode of selection, the training provided judges upon taking office, and continuing judicial education but a “mixed” rating on the diversity and representativeness of the judiciary.

**Judicial Powers:** [Factors 6-8] A “positive” rating was determined for all three factors relating to the allocation of jurisdiction among courts, administrative unification of the courts, and judicial control over rule-making.

**Financial Resources:** [Factors 9-12] There is a “positive” for court security but a “mixed” rating on the judicial role in the budget process. Although the

judiciary has control over the allocation and expenditure of funds once they are appropriated, its requests are routed through the governor, rather than routed directly to the legislature. There is a “mixed” rating on judicial salaries which reflects disagreements about whether they are sufficient to attract and retain highly qualified judges. Also rated “mixed” was the condition of court facilities, where responses ranged from “spectacular” to “dismal” and concern for accessibility for the handicapped.

**Structural Safeguards:** [Factors 13-15] Each of the factors received a “positive” rating, including the length of judicial tenure, immunity for actions taken by judges in their official capacity, and unbiased assignment of judges to cases.

**Accountability and Transparency:** [Factors 16-21] Again there was a “positive” rating on each factor, including the openness of court proceedings, the absence of improper outside influences on judicial decisions, the availability of a code of ethics to guide judges, and the effectiveness of procedures for evaluating judges, receiving complaints of judicial misconduct, and disciplining those who violate ethical norms.

**Needs and Expectations of the Community:** [Factors 22-29] There is a “positive” rating on handling all allegations of bias, provision of translation services, assistance to *pro se* litigants, and creation of “problem-solving courts.” A “mixed” rating was determined on “ensuring that those who come into contact with them are treated equally and accorded appropriate respect,” with respondents particularly noting the distrust of the courts among communities of color. A “mixed” rating was also given on ensuring access to justice for the poor, with respondents emphasizing the unavailability of sufficient legal aid for indigent litigants and the difficulty of pursuing claims without an attorney. A “negative” rating was provided on ensuring equal justice to indigent

defendants in criminal cases, with respondents highlighting the low pay, high turnover, and unreasonable caseloads for public defenders.

**Efficiency:** [Factors 30-34] There is a “positive” rating on number of judges and case-flow management system; but a “mixed” rating on use of technology to handle caseloads efficiently, with interviewees praising Case Net but noting that a system for electronic filing had yet to be implemented. There is also a “mixed” rating on handling of caseloads, with a sizable minority of respondents complaining that cases were delayed too often due to sheer volume. Finally a “negative” rating was made on the availability of staff necessary for expeditious handling of cases, with respondents focusing on cuts in the Office of State Courts Administrator and on trial judges’ lack of access to law clerks.

It was our intention to provide an independent, constructive assessment of the Missouri judicial system as an aid to the continuing efforts of the Court to improve the administration of justice following methodologies described in the foregoing report and appendices. We trust that this Report serves that purpose.

Respectfully submitted,

Steering Committee on State Court Assessment Project  
Honorable Louraine Arkfeld  
Anthony H. Barash  
Doreen D. Dodson  
Pamela C. Enslin  
Honorable Christel E. Marquardt  
Bruce Rubin  
Honorable Jon S. Tigar

By: \_\_\_\_\_  
Edward W. Madeira, Jr.  
Chair, Steering Committee

## **Appendix 1: Methodology**

The aim of this project has been to conduct a constructive assessment of the overall performance of the Missouri court system. To undertake this assessment, the project gathered factual information about the Missouri court system and also solicited informed opinion about how well it is performing. For purely factual information, the project staff relied heavily on the assistance of the Missouri Administrative Office of the Courts, which was invariably responsive and helpful to requests for information. The project staff also culled factual information from other publicly available sources, such as the web sites of the National Center for State Courts and of other organizations.

In soliciting opinions about the performance of the Missouri courts, the project adapted the approach pioneered by the American Bar Association's Central European and Eurasian Law Initiative (CEELI) in assessing judicial systems in developing countries in eastern Europe and Eurasia. CEELI based its assessments of national court systems on a set of extended interviews, usually 25-30, with knowledgeable persons in and out of government. This project considerably expanded the range of contacts, conducting extended interviews with 47 persons who are well informed about the Missouri courts. Efforts were made to ensure that the respondents represented a broad cross-section of the state's population, and interviewees were guaranteed that their participation in the project and their answers would remain confidential, in order to ensure candor in the interviews and to increase the reliability of results.

More specifically, the interview process included the following steps:

- The project staff developed a series of questions, based on the factors identified in the Report, to be asked of all interviewees.

These questions are listed in Appendix 2. Insofar as possible, close-ended questions—that is, questions with scaled responses-- were used to assist interviewers in accurately coding responses. The questions were field-tested before use in the project.

- Missouri was divided into ten areas for the purpose of conducting interviews in order to ensure that Missouri’s regional diversity was reflected in the interviewing process. These areas included: (1) Independence, (2) Kansas City (city and area), (3) northeast Missouri, (4) Joplin (southwest Missouri), (5) Jefferson City (central Missouri), (6) St. Louis County, (7) St. Louis (city), (8) St. Joseph (northwest Missouri), (9) Springfield (southwest, and (10) southeast Missouri.
- The Missouri Steering Committee<sup>14</sup> for this project selected interview teams consisting of two Missouri attorneys who would conduct the interviews in each area. Members of most of these ten teams participated in a five-hour-long training session to ensure a common approach to conducting the interviews. Those members unable to attend were able to view a tape of the training session. A hotline was provided for resolving any problems that might arise during the interview process. Each team conducted 4-5 interviews.
- The Missouri Steering Committee also recommended a pool of potential interviewees from throughout the state, and selections were then made from that pool based on availability, seeking to ensure that there were five interviewees from each geographic area and good geographic balance within the areas. Ruth Braun, a member of the staff of the Missouri Bar Association, then contacted those chosen to schedule the interviews.

In selecting the interviewees, efforts were also made to secure a cross-section of those knowledgeable about the Missouri court system and its operations, reflecting the regional, political, ideological, gender, racial, ethnic and other diversities of the state. Roughly half the interviewees were chosen from within government, including: (1) state senators and representatives, including members of the judiciary committees; (2) executive branch officials, especially those most involved with the Missouri courts; (3)

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<sup>14</sup> The members of the Steering Committee included: Honorable Ann K. Covington, R. Lawrence Ward, Ron Mitchell, Harold L. Whitfield, John Fox Arnold, and Honorable John C. Holstein.

retired judges; (4) state prosecutors; (5) representatives of state and local law enforcement; and (6) state public defenders. Wherever possible, efforts were made to obtain the participation of the senior or ranking members of the particular categories. Roughly half the interviewees were chosen from outside government, including: (1) representatives of state and local bar associations; (2) members of the plaintiff and defense trial bars; (3) members of the private criminal defense bar; (4) representatives of public interest, legal service, and legal aid groups; (5) representatives of citizen, civic, civil liberties, public interest and advocacy groups; (6) members of the print and electronic media; (7) members of the business community; and (8) knowledgeable academics.

- Each of the ten interview teams conducted extended interviews (typically lasting 1-2 hours) with 4-5 interviewees. The interview teams then forwarded the questionnaires and results from those interviews to the project staff.
- The project staff collated and analyzed the results from the interviews, and this information—together with the factual information previously collected—provided the basis for the report. The draft report was submitted to the American Bar Association’s Standing Committee on Judicial Independence for review and comment, and the final report reflects that input.

## Appendix 2: Interview Questionnaire

1. My first question is whether you think the Appellate Judicial Commission, which evaluates the qualifications of potential judges, does a good or a poor job. Do you think the commission does a very good job, a good job, fair, poor or very poor job at identifying qualified judges?

\_\_\_\_\_ Very Good

\_\_\_\_\_ Good

\_\_\_\_\_ Fair

\_\_\_\_\_ Poor

\_\_\_\_\_ Very Poor

\_\_\_\_\_ No opinion

\_\_\_\_\_ Refused

2. Do you think the current appointment process for Appellate Court judges in Missouri leads to the appointment of mostly highly qualified judges, mostly qualified judges, or too many unqualified judges?

\_\_\_\_\_ Mostly highly qualified

\_\_\_\_\_ Mostly qualified

\_\_\_\_\_ Too many unqualified

\_\_\_\_\_ "Mixed" or "Depends"

\_\_\_\_\_ No opinion

\_\_\_\_\_ Refusal

Potential probe: "Do you think the appointment process should be changed?"

Potential probe: "Why does the appointment process fail to produce qualified judges?"

3. What about the method of judicial selection for trial judges in the area where you live? Does this process lead to the selection of mostly highly qualified judges, mostly qualified judges, or many unqualified judges?

- Mostly highly qualified
- Mostly qualified
- Too many are unqualified
- "Mixed" or "Depends"
- No opinion
- Refusal

4. Next, we want to know what you think about the influence of various groups on the judicial selection and retention process in Missouri.

A. For example, what about the influence of interest groups? Do interest groups exert too much influence, too little influence, or about the right amount of influence on the selection process?

(Note: political parties are not interest groups; interest groups are the ACLU, NRA, etc.)

- too much influence
- too little influence
- about the right amount of influence
- No opinion
- Refusal

B. Can you name any specific interest groups that you think have too much influence over the selection process in Missouri?

C. What about the influence of the Missouri state bar?

- too much influence
- too little influence
- about the right amount of influence
- No opinion
- Refusal

D. What about the influence of sitting judges?

- too much influence
- too little influence
- about the right amount of influence
- No opinion
- Refusal

E. Can you provide any specific examples of inappropriate influence exercised by any groups over the selection process?

5A. A few appellate court judges have been targeted for defeat in retention elections. Do you have an opinion about why they were targeted? [NOTE: More than one response is possible; mark all selections chosen]

- Citizens generally unhappy about a decision or series of rulings
- Political groups unhappy about a decision or series of rulings
- Incompetent
- A combination of factors
- No opinion
- Refusal

5B. Do you expect serious opposition to the retention of judges to continue to be rare, to slightly increase, or to significantly increase in the near future?

- Remain rare
- Slightly increase
- Significantly increase
- No opinion
- Refusal

6. Do you think judicial salaries are sufficient to attract and retain qualified appellate judges?

- Salaries are definitely sufficient
- Salaries are probably sufficient
- Salaries are probably not sufficient
- Salaries are definitely not sufficient
- No opinion

7. What about salaries to attract and retain qualified trial judges (“Are these sufficient?”)?

- Salaries are definitely sufficient
- Salaries are probably sufficient
- Salaries are probably not sufficient
- Salaries are definitely not sufficient
- No opinion

8. Do you think judicial salaries in Missouri are fair or unfair compared to the salaries of other government officials such as the governor and elected representatives?

- Fair
- Unfair: Pay is too high
- Unfair: Pay is too low
- No opinion
- Refusal

9. What do you think about the quality of training for judges? Do you think Missouri judges receive excellent, adequate, or poor training prior to ascending to the bench?

- Excellent
- Adequate
- Poor
- No opinion
- Refusal

Probe: is your opinion different for appellate judges versus trial judges?

10. How effective or ineffective are continuing legal education programs at keeping judges up to date on changes in the law and procedures?

- Very effective
- Effective
- Ineffective
- Very ineffective
- No opinion
- Refused

11. Turning to the question of ethnic and racial diversity within the court system, do you think that minorities are fairly represented within the judiciary compared to the communities that they serve, or do you think that minorities are unfairly represented?

- minorities are fairly represented
- minorities are unfairly represented (under-represented)
- minorities are actually over-represented
- No opinion
- Refusal

12. Instead of race and ethnicity, what about gender diversity within the judiciary?

Are women fairly or unfairly represented within the judiciary?

- women are fairly represented
- women are unfairly represented (under-represented)
- women are actually over-represented
- No opinion
- Refusal

13. What about overall demographic diversity (gender and race) among the staff within the judicial branch? Is the demographic diversity that exists within communities fairly or unfairly represented in the staff of the judiciary?

- diversity is fair
- diversity is unfair (minorities are under-represented)
- minorities are actually over-represented)
- No opinion
- Refusal

14. Do you think that most of those directly involved in the judicial selection process consider judicial diversity to be an important or an unimportant criterion?

- Important—Very
- Important
- Unimportant
- Unimportant—Very
- No opinion
- Refusal

15. Do you think that most of those involved in selecting judges actively work to ensure a representative judiciary, or are they only supportive in principle, or are they uninterested in ensuring diversity?

- Working to ensure diversity
- Support only in principle
- Uninterested in ensuring diversity
- No opinion
- Refusal

16. What about perceptions of equal justice among racial and ethnic minorities in Missouri? Do you think that most minorities believe the judicial system guarantees them equal justice or that the judicial system is biased against them; or, do a significant percentage of minorities believe the system is biased even though most still believe the judicial system guarantees equal justice?

- Most minorities believe equal justice is provided
- A significant percentage believe the system is biased
- Most minorities believe the system is biased
- No opinion
- Refusal

Potential probe: (if “biased,” ask: “What do you think causes this perception?)

17. Moving on to the question of judicial control, are you aware of any current problems regarding the allocation of authority among courts in Missouri?

18. Does the judiciary have sufficient or insufficient control over the rule-making power?

- Definitely sufficient
- Probably sufficient
- Probably insufficient
- Definitely insufficient
- No opinion

Potential Probe: if “insufficient,” ask “why is it insufficient?”

19. Beyond the issue of judicial salaries, do you think the overall funding of the state’s appellate courts is adequate or inadequate?

- Definitely adequate
- Probably adequate
- Probably inadequate
- Definitely inadequate
- No opinion
- Refused

20. What about the state’s trial courts? Is their funding adequate or inadequate?

- Definitely adequate
- Probably adequate
- Probably inadequate
- Definitely inadequate
- No opinion
- Refused

21. Have legislators or the governor ever threatened judicial budgets because they are unhappy with judicial decisions?

- Yes—Often
- Yes—Sometimes
- Rarely
- Never
- No opinion
- Refusal

Potential probe: “Did they succeed in doing so?”

22. How often have specific judges been threatened with removal for handing down unpopular decisions?

- Often
- Sometimes
- Rarely
- Never
- No opinion
- Refusal

23A. The next series of questions are about the quality of court facilities. First, how would you rate the overall quality of the court buildings and facilities you are familiar with? Are they excellent, good, fair, poor, or very bad?

- Excellent
- Good
- Fair
- Poor
- Very bad
- No opinion

23B. How do court buildings and facilities compare to other government buildings? Are they in better condition, about the same, or are they in worse condition?

- Better
- About the same
- Worse
- No opinion

24. Are court facilities that you are familiar with conveniently accessible by the physically disabled?

- All are always accessible by the disabled
- Some are accessible, some are not
- Most are not accessible by the disabled
- No opinion

25. Do courts that you know about have adequate seating?

- Usually adequate
- Only some are adequate
- Many are inadequate
- Most are inadequate
- No opinion

26. Do the courts you know about have adequate records and archive space?

- Definitely have adequate space
- Probably have adequate space
- Probably have inadequate space
- Definitely have inadequate space
- No opinion

27. Are there adequate facilities at court houses where lawyers and their clients can conduct confidential meetings?

- Definitely adequate
- Probably adequate
- Probably inadequate
- Definitely inadequate
- No opinion

28. Turning to the issue of physical safety, do you think that participants in the judicial process, such as judges, litigants and lawyers, feel physically threatened in the normal course of litigation? Would you say participants often, sometimes, rarely or never feel threatened?

- Never feel threatened
- Rarely feel threatened
- Sometimes feel threatened
- Often feel threatened
- No opinion
- Refusal

Potential probe: if “threatened” ask, “Which participants?”

29. Do you know about any specific cases of threats of intimidation? If so, how were these cases handled?

30. Have there been any problems with the granting of legal immunity to judges?

31. The next series of questions are about the impartiality of judicial decisions. Do you think that government officials improperly influence judges?

32. Are you aware of groups or persons outside of government improperly influencing judges?

33A. Judges are ideally assigned cases by objective or random criteria, such as by lottery. Do you think that the case assignment process in Missouri is ever abused or inappropriately controlled by anyone within the judicial system?

33B. What about outsiders? Do you think that the case assignment process in Missouri is ever abused or inappropriately controlled by anyone outside of the judicial system?

34. Is there somewhere a judge can go to get advice or a ruling about ethical concerns?

- Yes
- No
- Unsure
- Refusal

Potential Probe: “Do judges actually use this resource?”

35. Does Missouri have a procedure for identifying and/or disciplining judges for ethical violations?

Probe: “Is this mechanism actually used, or does it merely exist on paper?”

36. Do you think that there are sufficient resources for investigations of alleged judicial improprieties?

37. Is information about how to register a complaint about judicial conduct easily available to the public, or is hard to find?

- Easily available
- Hard to find
- Don't know

38. Are citizens' complaints about judicial misconduct taken seriously and investigated, or are they ignored?

- Complaints are investigated
- Complaints are ignored
- Varies
- No opinion
- Refusal

Potential Probe: “Why are some complaints investigated while others are ignored?”

39. If a citizen files a complaint, are they ever made to feel intimidated?

Potential probe: “Intimidated by whom?”

Potential probe: “Are there any safeguards in place to protect against retribution?”

40. What if a judge is accused of misconduct on the bench? Is the judge guaranteed a fair and impartial hearing?

41. What about allegations of judicial biases affecting rulings? Do allegations of judicial bias arise frequently, only sometimes, or are they rare?

\_\_\_\_\_Frequently

\_\_\_\_\_Only sometimes

\_\_\_\_\_Rare

\_\_\_\_\_No opinion

Potential probe: “What kinds of bias claims come up most frequently?”

42. If judges are accused of bias, does the state do a good or a poor job at investigating these allegations?

\_\_\_\_\_State does a very good job

\_\_\_\_\_State does a good job

\_\_\_\_\_State does a poor job

\_\_\_\_\_State does a very poor job

\_\_\_\_\_No opinion

\_\_\_\_\_Refusal

Potential Probe: “Can you provide any examples of sanctions that were imposed on judges found guilty of bias?”

43. Moving on to questions about access to the courts, are courtroom proceedings always open to the public and the media, usually open, sometimes open or never open to the public?

- Always open
- Usually open
- Sometimes open
- Never open
- No opinion

44. Are complaints about a lack of access to judicial proceedings frequent, are they rare, or are complaints somewhere in-between frequent and rare?

- Frequently
- Rare
- In-Between
- No opinion

45. If a translator is needed, do the courts usually meet the needs of non-English speaking participants or do they usually fail to meet these needs?

- Usually meet the needs
- Only some of the time meet the needs
- Usually fail to meet the needs
- No opinion

Probe: “Are translators available in all parts of the state and at all levels of the judiciary?”

Potential Probe: “Are these services reasonably available regardless of ability to pay?”

46. Do public defenders have sufficient experience and resources to ensure a fair administration of justice?

Potential probe: “Is this because of high turnover? Caseloads are too high? Pay is inadequate?”

Potential probe: “Do you think this threatens the fair administration of justice?”

47. Does Missouri have sufficient or insufficient procedures to prevent incompetent public defenders from representing indigent defendants?

\_\_\_\_\_ Sufficient procedures

\_\_\_\_\_ Insufficient procedures

\_\_\_\_\_ Don't know

Probe: "Are there any extra judicial safeguards for protecting the rights of indigent defendants?"

48. Does Missouri make any extra efforts to ensure adequate representation in **capital cases**? For example, are there any additional procedures required for court-appointed lawyers or assigning public defenders in capital cases?

49. Next, do the courts sufficiently serve the needs of pro se litigants?

\_\_\_\_\_ Yes, sufficient

\_\_\_\_\_ It varies/depends

\_\_\_\_\_ No, insufficient

\_\_\_\_\_ No opinion

50. What is your impression about how well the courts service the civil legal needs of poor litigants? Does the judiciary do a very good, a good, adequate, bad, or a very bad job at this?

\_\_\_\_\_ Very Good

\_\_\_\_\_ Good

\_\_\_\_\_ Adequate

\_\_\_\_\_ Bad

\_\_\_\_\_ Very Bad

\_\_\_\_\_ No opinion

\_\_\_\_\_ Refused

Potential probe: “How do the courts meet or fail to meet their needs?”

51. Do you think that most citizens can easily obtain justice through the Missouri court system, or do you think that most citizens have a difficult time trying to obtain justice? (i.e., is the court system—it’s internal rules and access to information about how it works—easy or hard to navigate?)

- Most find it easy to obtain justice
- Experiences are mixed/depends
- Most find it difficult to obtain justice
- No opinion

Potential probe: “What makes you say that?”

52. What do you think about the performance of specialty courts in Missouri (such as drug courts)? Are these courts very effective, somewhat effective, somewhat ineffective or very ineffective?

- Very effective
- Somewhat effective
- Somewhat ineffective
- Very ineffective
- No opinion

Probe: “What makes them effective/ineffective?”

Probe: “Do specialty courts receive adequate funding?”

53. Would establishing additional specialty courts serve unmet needs or are additional courts unnecessary?

- Additional courts necessary
- Additional courts unnecessary
- No opinion

Potential probe: “What unmet needs you have in mind?”

54. Do you think current funding levels for the judiciary are sufficient for the courts to handle their caseloads, or do you think the courts need additional funding to handle their caseloads?

\_\_\_\_\_ Funding is sufficient

\_\_\_\_\_ Courts need additional funds

Potential probe: "Are specific courts more likely to face backlogs?"

55. How effectively does the Chief Justice use his authority to move judges from their "home" courts to resolve bottlenecks and other workload problems? (read answer option if necessary.)

\_\_\_\_\_ Very effectively

\_\_\_\_\_ Effectively

\_\_\_\_\_ Ineffectively

\_\_\_\_\_ Very ineffectively

\_\_\_\_\_ No opinion

\_\_\_\_\_ Refused

56. Is it your impression that most cases are heard in a reasonably efficient and timely manner or do you think that inappropriate delays occur too often?

\_\_\_\_\_ Cases heard efficiently

\_\_\_\_\_ Cases delayed too often

\_\_\_\_\_ No opinion

\_\_\_\_\_ Refused

57. Does the judiciary make good or poor use of technological resources to operate as efficiently as possible?

Potential probe: "For example, does the judiciary have an efficient electronic case filing and tracking system?"

58. When problems arise as to its operational efficiency, how well does the judicial system respond?

- Very well
- Well
- Not too well
- Very poorly
- No opinion

59. Do you think that most judges use effective court room management techniques, or could they do a better job?

- Efficient
- Could do a better job
- No opinion
- Refused

60. What about case management techniques? Do most judges use effective case management techniques or could they do a better job?

- Efficient
- Could do a better job
- No opinion
- Refused

61. The final two questions today are about jury trials in Missouri. First, do you think that juries function well or that they do not function well?

Open ended response

Potential probe: “Are there particular sorts of cases in which they don’t function well?”

Potential probe: “Why do they work well/not work well?”

62. Are citizens who perform jury service treated in such a way that they end up with a positive view of the experience, a negative view, or a mixed view?

\_\_\_\_ Positive view

\_\_\_\_ Mixed view

\_\_\_\_ Negative view

\_\_\_\_ No opinion

\_\_\_\_ Refused

Potential probe: "Why do you think that is the case?"

Potential probe (if negative view): "What could be done to improve the situation?"