

1938 Proposed Ohio Judicial Appointment Amendment

- Sought to modify Article IV of Ohio Constitution to provide for the appointment of judges to the Ohio Supreme Court and the Courts of Appeals, and for local control over appointment methods for lower courts.
- Elements of Proposal included:
 - creation of eight-member judicial council, consisting of: chief justice; one judge from courts of appeals; one common pleas judge; one judge from probate court; one judge from municipal court; and three practicing attorneys to be chosen by governor
 - judicial council submits to governor three to five names for each judicial vacancy
 - governor chooses one name from list
 - governor's selection sent to state Senate for confirmation within 60 days
 - judge, once confirmed, serves term; subsequent terms would require affirmative vote in a retention election
- Each county and municipality to decide by majority vote whether to adopt appointive system for their trial courts.
- Election held November 8, 1938.

Result: No: 1,237,443 (66.58%)
 Yes: 621,011 (33.42%)

Sources: <http://ballotpedia.org>

Michael E. Solimine and Richard B. Saphire, "The Selection of Judges in Ohio",
The History of Ohio Law (M. Benedict, J. Winkler, eds) at 219-221 (2004).

Ohio Judicial Appointment, Amendment 1 (1938)

From Ballotpedia

The Ohio Judicial Appointment Amendment was on the November 8, 1938 ballot in Ohio as an initiated constitutional amendment, where it was defeated.

This amendment sought to modified Article IV of the Ohio Constitution to provide for the appointment of judges of the Supreme Court and Court of Appeals, and for local control over appointment methods for lower courts.^[1]

Election results

Ohio Amendment 1 (1938)		
Result	Votes	Percentage
✖ No	1,237,443	66.58%
Yes	621,011	33.42%

Contents

- 1 Election results
- 2 Text of measure
- 3 See also
- 4 External links
- 5 References

Articles
Preamble
I • II • III • IV •
V • VI • VII •
VIII • IX • X •

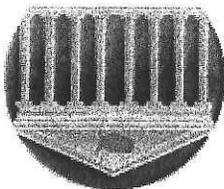


Ohio
Constitution

Not on ballot

By year
By state

Measures
Ballot



Voting on
State
Judiciary

Election results via: Ohio
Secretary of State

XI • XII • XIII •
XIV • XV •
XVI • XVII •
XVIII •
Schedule

(<http://www.sos.state.oh.us/sos/upload/elections/historical/issuehist.pdf>)

Text of measure

The language that appeared on the ballot:

“ An amendment to the Constitution of Ohio proposing that Section 1 of Article IV of the Constitution of Ohio be supplemented by adding sections 1a, 1b, 1c, 1d, 1e, 1f and 1g and that section 2, 5, 10, 13, 14, 15 and 18 of Article IV of the Constitution of Ohio be amended, so as to provide for the original appointment of judges of the supreme court and courts of appeals and to enable the voters of a county or municipality to adopt or rescind the adoption of the appointment method of selecting the judges of all lower courts in the county including municipal courts. The method of appointment is briefly as follows: when a vacancy occurs the governor reports the fact to the judicial council composed of eight members, as follows: one judge of the court of appeals, chosen by the judges of the courts of appeals; one common pleas judge, chosen by the common pleas judges, one probate judge, chosen by the probate judges; one municipal judge, chosen by the municipal judges; and three attorneys appointed by the governor. The judicial council recommends the names of not less than three nor more than five persons to the governor who must appoint one of those so recommended. The governor’s appointment requires confirmation by the senate.

At the end of each six years of service the judges so appointed are required to run against their records at the general election on a ballot without competing candidates for retention and continuation in office.

Judges already in office continue in office for the term for which elected. Counties and municipalities which do not vote to have their judges appointed will continue to elect them as at present. [2][3]

See also

- 1938 ballot measures
- Ohio 1938 ballot measures
- List of Ohio ballot measures

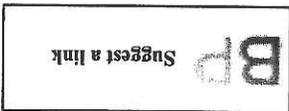
External links

- Historical Ohio Ballot Measure Election Results (<http://www.sos.state.oh.us/sos/upload/elections/historical/issuehist.pdf>)
- Sample Ballot (<http://news.google.com/newspapers?id=YujJAAVAIBA1&sjid=5YQMAAAIBA1&pg=6593%2C1693987>) (in the *Youngstown Vindicator*, November 6, 1938)

References

1. ↓ *Ohio Secretary of State*, "Amendment and Legislation: Proposed Constitutional Amendments, Initiated Legislation, and Laws Challenged by Referendum, Submitted to the Electors, (updated 1/24/13)" (<http://www.sos.state.oh.us/sos/upload/elections/historical/issuehist.pdf>)
2. ↓ *Youngstown Vindicator*, "Three Ballots to Be Handed Electors at the Polls Tuesday," November 6, 1938 (<http://news.google.com/newspapers?id=YujJAAVAIBA1&sjid=5YQMAAAIBA1&pg=6593%2C1693987>)
3. ↓ Note: This text is quoted verbatim from the original source. Any inconsistencies are attributed to the original source.

Retrieved from "http://ballotpedia.org/wiki/index.php?title=Ohio_Judicial_Appointment,_Amendment_1_(1938)&oldid=1957761"



1987 Ohio End the Direct Election of Appellate Judge, Issue 3

- Establish thirteen nominating commissions, one for supreme court and one for each court of appeals.
- Nominating commissions composed of equal numbers lawyers and non-lawyers.
- Each court of appeals commission would consist of eight to sixteen members, the actual number to be chosen by General Assembly.
- Supreme Court nominating commission composed of twenty-four members, with no more than half from same political party.
- Commission screens potential candidates for judicial vacancies and forwards list of three names to governor, who would select one for appointment.
- Within two to four years, judge would face unopposed retention election, and would have to receive at least 55% of vote.
- In any trial court district, a majority vote could apply this procedure to trial courts.
- GA required to enact implementing legislation within 180 days.
- Election held November 3, 1987.

Result:	No:	1,600,588	(64.56%)
	Yes:	878,685	(35.44%)

Sources: <http://ballotpedia.org>

Solimine and Saphire, "The Selection of Judge in Ohio".

Ohio End the Direct Election of Appellate Judges, Issue 3 (1987)

From Ballotpedia

The Ohio End the Direct

Election of Appellate

Judges Amendment, also

known as Issue 3, appeared

on the November 3, 1987

ballot in Ohio as an initiated

constitutional amendment,

where it was **defeated**.^[1]

This amendment would have

ended direct election of

justices and judges of the

state Supreme Court and

Court of Appeals.

Election results

Ohio Issue 3 (1987)		
Result	Votes	Percentage
* No	1,600,588	64.56%
Yes	878,685	35.44%

- 1 Election results
- 2 Text of measure
- 3 See also
- 4 External links
- 5 References

Contents

Articles
I • II • III • IV •
V • VI • VII •
VIII • IX • X •

Preamble



Ohio
Constitution

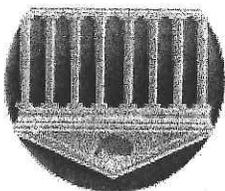
Not on ballot

By year

By state

Measures

Ballot



Judiciary

State

Voting on

Election results via: Ohio
Secretary of State

XI • XII • XIII •
XIV • XV •
XVI • XVII •
XVIII •
Schedule

(<http://www.sos.state.oh.us/sos/upload/elections/historical/issuehist.pdf>)

Text of measure

The language appeared on the ballot as:^[2]

“ Proposed Constitutional Amendment ”
To adopt Section 7 and amend Sections 6 and 13 of Article IV of the
Constitution of the State of Ohio

Present Ohio law provides for the direct election of the justices of the Supreme Court and judges of the Court of Appeals. This proposed amendment would:

1. Change the way Ohio selects its Supreme Court and Appeals Court judges by abolishing the direct election method.
2. Create judicial nominating commissions that would nominate three persons for each vacancy on the Ohio Supreme Court or Court of Appeals. The commission would be made up half of lawyer and half of non-lawyers. Of these, no more than half can have the same political affiliation. A judicial nomination commission shall nominate the persons who in the opinion of the commission have the highest personal and professional qualifications among those available. The governor must appoint one of the nominees.
3. Require persons appointed as judges to run without an opponent in a general election for retention in office in two to four years. A 55 percent “yes” vote would be required for retention for a full six-year term; less than 55 percent would create a vacancy in the office.

4. Allow judges who are presently serving either by election or appointment to run in the general election when their term expires.
5. Allow a majority vote of the electors in any court district to apply this procedure to their trial courts.
6. Require the general assembly to enact laws to implement this amendment no later than 180 days after its effective date.

Shall the proposed amendment be adopted?^[3]

See also

- Ohio 1987 ballot measures

- 1987 ballot measures

- List of Ohio ballot measures

- List of ballot measures by year

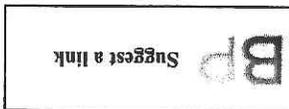
- List of ballot measures by state

External links

- Historical Ohio Ballot Measure Election Results (<http://www.sos.state.oh.us/upload/elections/historical/issuehist.pdf>)

References

1. ↓ *Ohio Secretary of State*, "Ohio 1987 ballot measures and election results," accessed July 31, 2013 (<http://www.sos.state.oh.us/sos/elections/Research/electResultsMain/1980-1989OfficialElectionResults/GenElectOverview11031987.aspx>)
2. ↓ *Toledo Blade*, "Proposed Amendment to the Ohio Constitution," October 18, 1987 (<http://news.google.com/newspapers?id=MKNPAAAAAIBAJ&sjid=7QIEAAAAAIBAJ&pg=6720%2C4339486>)



From: "Judicial Selection: The Process of Choosing Judges,"
 ABA, June 2008

asked to cast a "yes" or "no" vote as to whether that judge should remain on the bench. If voters choose not to retain a judge, that seat is declared vacant and a new judge is appointed using the same merit selection process.

Chart 1 provides an overview of current judicial selection methods among the states.

**Chart 1:
 Judicial Selection in the States: Appellate and General Jurisdiction Courts**

Commission-based appointment ¹	Gubernatorial (G) or legislative (L) appointment	Partisan election	Nonpartisan election	Combined merit selection and other methods ²
Alaska	California (G)	Alabama	Arkansas	Arizona
Colorado	Maine (G)	Illinois	Georgia	Florida
Connecticut	New Jersey (G)	Louisiana	Idaho	Indiana
Delaware	South Carolina (L)	Ohio ³	Kentucky	Kansas
D.C.	Virginia (L)	Pennsylvania	Michigan ⁴	Missouri
Hawaii		Texas	Minnesota	New York
Iowa			Mississippi	Oklahoma
Maryland			Montana	South Dakota
Massachusetts			Nevada	Tennessee
Nebraska			North Carolina	
New Hampshire			North Dakota	
New Mexico			Oregon	
Rhode Island			Washington	
Utah			West Virginia	
Vermont				
Wyoming				

¹ The following nine states use commission-based appointment only to fill midterm vacancies on some or all levels of court: Alabama, Georgia, Idaho, Kentucky, Minnesota, Montana, Nevada, North Dakota, and Wisconsin.

² In these states, appellate court judges are chosen through commission-based appointment, and trial court judges are chosen through commission-based appointment or in partisan or nonpartisan elections.

³ Although party affiliations for judicial candidates are not listed on the general election ballot, candidates are nominated in partisan primary elections.

⁴ Although party affiliations for supreme court candidates are not listed on the general election ballot, candidates may be nominated at party conventions.

REASONS FOR REFORM

Given the primacy of the judiciary in protecting and advancing the rule of law in a democratic society, the method used to select judges is important to every American. While any method of judicial selection may have flaws, it is the belief of the ABA, the American Judicature Society, and many legal experts and scholars across the nation that some form of merit selection should be used in every state. Merit selection encourages community involvement in judicial selection, limits the role of political favoritism, and ensures that judges are well qualified to occupy positions of public trust.

The majority of states continue to use some form of elective system to select and/or retain their judges. The popularity of both contested and retention elections is premised on a belief that judges should be accountable to the public, as are leaders in other branches of government. Legislators and other elected officials are meant to be representatives of the views

may provide greater diversity. Similarly, in a gubernatorial appointment system, outcomes may depend to a large extent on the political ideology of the governor, and the extent to which he is dependent upon minority support to be re-elected. Charts 2 and 3 provide an overview of the initial selection methods for women and minorities currently serving on state appellate courts. (Note that these charts indicate the methods through which judges actually attained their seats, as judges in some contested-election states were initially appointed to office.)

Chart 2
Women Judges on State Courts of Last Resort and Intermediate Appellate Courts

Merit Selection: 33.8%
Gubernatorial Appointment: 25.7%
Legislative Appointment: 1.6%
Partisan Election: 25.2%
Nonpartisan Election: 8.6%
Other Methods: * 5.1%

Source: American Judicature Society, May 2008.

*In Illinois the Supreme Court appoints judges to fill interim judicial vacancies, and in New Jersey the Chief Justice appoints judges to the intermediate appellate court.

Chart 3
Minority Judges on State Courts of Last Resort and Intermediate Appellate Courts

Merit Selection: 31.9%
Gubernatorial Appointment: 28.7%
Legislative Appointment: 1.3%
Partisan Election: 25.2%
Nonpartisan Election: 6.6%
Other Methods: * 6.3%

Source: American Judicature Society, May 2008.

*In Illinois the Supreme Court appoints judges to fill interim judicial vacancies, and in New Jersey the Chief Justice appoints judges to the intermediate appellate court.

WHERE SHOULD REFORM BEGIN?

The Process

Historically, the most effective selection reform efforts have involved groups from a broad spectrum of interests and a wide range of perspectives, including communities that have traditionally opposed merit selection. Reform necessarily requires broad coalitions of support, and advocates should strive to inform all citizens of the benefits of change. Public education about the current system and available alternatives is a critical step in the process.

Common Elements of State Judicial Selection Systems
Prepared by Richard B. Saphire

Establishment of nominating commissions

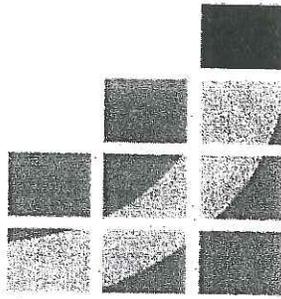
- **Most commonly established by constitutional amendment (see, e.g. IAALS Principles; Rhode Island); in some states by statute or executive order (see, e.g. New Hampshire)**
- **Composition of commissions: see IAALS Principles (attached)**
- **Commission “best practices”: see report of Chamber Institute for Legal Reform (Oct. 2009)(attached)**
- **Code of conduct for commissions: see AJS and ABA recommendations (attached)**
- ***Gubernatorial appointment*: commission submits list of proposed judges (3-5 names) to governor, who has specified period of time to choose one name from list. (There are three states – CA, Maine, N.J.; in Maine and N.J., governor’s nominee must be confirmed by state senate) – where governors have sole discretion to appoint judges).**

Retention elections

- **Take place within (e.g.) two or four years of judicial appointment, or at conclusion of term of office.**
- **Incumbent’s name is placed on ballot and voters are asked to cast a “yes” or “no” vote as to whether that judge should remain on bench for another term.**
- **If voters choose not to retain judge, the seat is declared vacant and a new judge is appointed using the merit selection process.**
- **Some states have created *judicial performance evaluations*. ABA has published “Guidelines for the Evaluation of Judicial Performance” (at www.abanet.org), as has the AJS (“Model Judicial Selection Provisions,” www.ajs.org). Performance evaluations sometime administered by an independent commission, created for that purpose and accountable to state highest court. Commissions include both lawyers and lay members. State and local bar associations may also conduct polls.**

- Example: in 1992, Arizona voters approved Proposition 109 (58% of vote), making it the only state with a constitutionally mandated judicial evaluation program. Features: 30 member commission (includes lawyers and lay people); commission conducts surveys; judges complete self-evaluations; commission members vote on whether judge "meets" or "does not meet" judicial performance standards. Commission teams meet with judges to discuss their reviews. Results of pre-election reviews are made public, while mid-term reviews are confidential. (See www.azjudges.info).

Model Provisions for Selecting Judges in a Commission-Based Appointment Process (IAALS, University of Denver; <http://iaals.du.edu> (see attached)).



QUALITY JUDGES INITIATIVE

Goals and Principles for Judicial Nominating Commissions

Goals:

- Creating a climate that encourages highly qualified applicants to apply.
- Providing the appointing authority with a pool of highly qualified applicants.
- Assuring that highly qualified individuals are appointed to the bench.
- Fostering public confidence in the nominating process and in the judiciary.
- Securing support for the nominating process and the judiciary from the other two branches.

Principles:

- The nominating commission should be constitutionally based.
- The commission should be balanced—politically, ideologically, and demographically. Racial/ethnic, gender, and geographic diversity among commission members should be encouraged, if not required.
- Commission members should be selected by multiple appointing authorities, and the process of applying to serve on the commission should be open to the public.
 - With multiple appointing authorities, it is less likely that a majority of commission members will be appointed by a single entity, thus further enhancing the public's confidence in the commission's independence.
- Judges should not have an undue influential role on the commission.
 - Because of the relevance of their experience, judges can make an invaluable contribution to the commission's work. At the same time, it is important that the commission be viewed as independent of other entities, including the judiciary, in



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Page 1 of 2

IAALS - <http://iaals.du.edu>

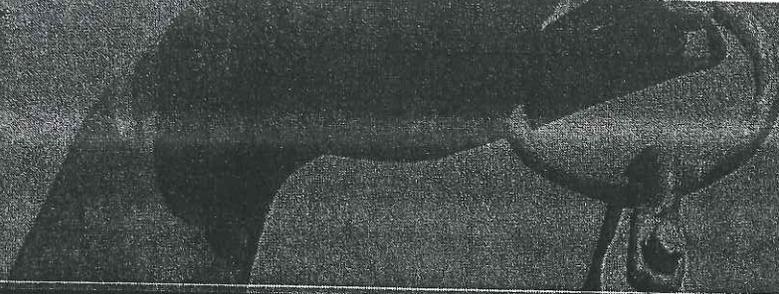




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- performing its role. If sitting judges serve on the commission ex officio, they should serve as non-voting chairs, except in the event of a tie vote.
- Lay members should comprise a substantial portion, or even a majority, of the commission.
- If lawyer members comprise a majority on the commission, they should not be selected exclusively by the organized bar.
- After the initial selection of commission members, members' terms should be staggered.
- This offers three advantages: preventing complete turnover in the commission's membership; providing new members with the benefit of existing members' experience; and ensuring rotation among appointing authorities.
- Governors should be required to make judicial appointments within a reasonable period of time. Legislative votes on confirmation, if required, should also occur within a reasonable period of time.
 - Potential appointees need to know in a timely fashion whether they will be appointed. One of the reasons that qualified candidates may not apply is because of the uncertainty it can introduce into their legal practice and its impact on their commitment to their clients. That uncertainty is amplified by open-ended timeframes.
- Commission meetings, including interviews, deliberations, and voting, should be open to the public.
 - The commission should have the option of meeting in executive session to discuss confidential information regarding applicants upon a super-majority vote of commission members.
- Commission members should be required to disclose potential conflicts of interest with respect to judicial applicants.
- The names of those who apply and who are ultimately nominated should be made public, and public comment should be encouraged.



PROMOTING “MERIT” *in*

MERIT SELECTION

A BEST PRACTICES GUIDE *to* COMMISSION-BASED JUDICIAL SELECTION



Released by the U.S. Chamber Institute for Legal Reform, October 2009

BEST PRACTICES for the SELECTION PROCESS

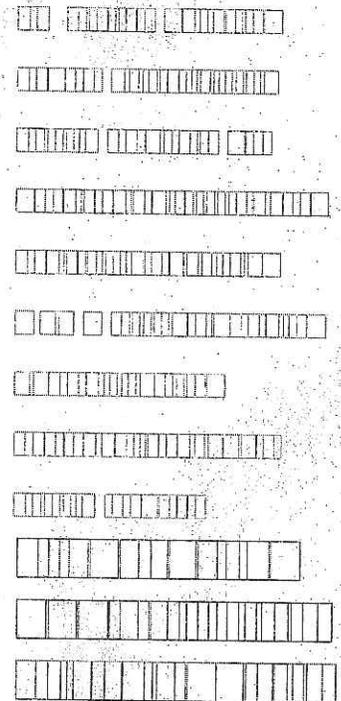
I. THE COMMISSION: SELECTION of MEMBERS, SIZE, COMPOSITION and ADMINISTRATION

• The process for declaring an interest in serving on a Commission should be open and accessible. (AJS) Vacancies and opportunities to serve on the Commission should be widely publicized.

• Lawyer members should be nominated by the executive board of the state bar and presented to the governor for his appointment. These nominations should be public. (AZ)

• Non-lawyer members should be appointed by the governor with the advice and consent of the state senate through a sizable (e.g., nine-member) non-attorney committee (no more than half-plus-one of the membership being from either political party). This committee should accept and solicit candidates, review their qualifications and advance the names of all applicants with the committee's recommendations to the governor. Again, the names and recommendations should be public. (AZ)

- The governor should make the appointments to the Commission with the advice and consent of the state senate. In making appointments to the Commission, the governor, the senate and the state bar should endeavor to see that geographic distribution and demographic diversity are achieved. (AZ)
- The Commission should be comprised of either 12 or 15 members, two-thirds of them non-lawyers. The chief justice of the state supreme court should also be a member (that is, a 13th or 16th member), serving as chair but voting only to break a tie. The Commission should be bi-partisan, no more than half (or half plus one) of either the lawyer members or the non-lawyer members being of the same party. Members other than the chief justice should serve staggered four-year terms. (AZ)
- All resources necessary to carrying out the Commission's official duties should be provided, including: staff, equipment and materials, and orientation and continuing education of members. (AJS)



COMMENTARY: The original purpose of using a commission-based merit selection system was to reduce the politicization of the judiciary system. As such, it is imperative that merit selection systems not simply hide the politics behind the closed doors of a Commission but drive out destructive influence through a system that is transparent and accessible to the public. The Commission should be a credible, deliberative, bi-partisan body. (ABA)

Credibility is crucial. The components of credibility consist of a process for appointing commissioners that is above political

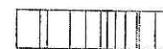
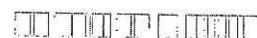
partisanshship, a carefully considered proportion of lawyer members to non-lawyer members, balanced representation of the political parties, geographic and demographic diversity, published criteria and procedures by which merit will be determined and assurances that the deliberative body will be independent. (ABA)

Retired U.S. Supreme Court Justice Sandra Day O'Connor, who began her judicial career in the state of Arizona, emphasizes that her home state has worked hard to ensure a cross-section of participants in its selection process by carefully choosing an independent process focused on bipartisanship and diversity. Further, O'Connor notes the requirement that more than half of Arizona's Commission members are non-lawyers. (See Sandra Day O'Connor, Ronnell Andersen Jones, # [REDACTED] Arizona Law Review, p. 7, 2009.) Substantial non-lawyer participation in a Commission is central to its effectiveness. The American Judicature Society has addressed this issue in some detail: "Requiring more non-lawyers than lawyers enhances public participation in the process. Lay members represent the public and have useful links to the community when screening and investigating applicants, and their non-legal perspective lends the process credibility and legitimacy in the eyes of the public." (AJS, p. 2)

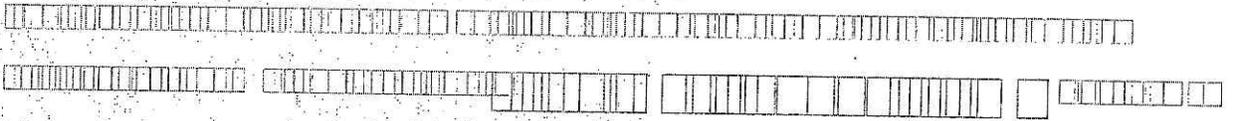
If a Commission is to fulfill its mandate, essential services must be made available. These services should include: necessary staff support for screening and investigating applicants; staff to coordinate Commission travel, meetings, conference calls and candidate interviews; office services; and any other necessary support that assures the Commission receives timely assistance. (AJS)

II. CODE *of* CONDUCT *for* COMMISSIONERS

- The Commission should have written ethical and procedural rules. A copy of the rules should be given to all judicial applicants and made available to the public. (AJS)
- Having Commission members take an oath of office should be considered. (AJS)
- Commission members, or “commissioners,” should disclose to the Commission all current or past personal and business relationships with a prospective applicant. In addition to disclosure, commissioners should recuse themselves from the room during discussions concerning any applicant who is their current business or law partner, and any applicants whom the commissioners believe they are incapable of considering impartially. They should refrain from voting on any such applicants. (MA)
- A Commission should not act unless a quorum exists. (AJS)
- After the Commission transmits to the governor the names of the applicants it is nominating, no commissioner should attempt, directly or indirectly, to influence the decision of the governor or the governor’s advisory staff. (MA)



COMMENTARY: The use of written, uniform rules reassures the public and potential applicants that the process is designed to treat all applicants equally and to nominate the best qualified persons. (AJS) The Commission rules should explicitly address, for example, situations that pose a conflict of interest to a commissioner. (AJS) In light of the importance of the Commission's role in judicial selection, more than a simple majority of Commission members should participate in the Commission's deliberations and decision making. (AJS) (In 2006 Massachusetts Governor Mitt Romney issued Executive Order 470 (No. 03-3) containing a code of conduct for members of the Massachusetts Judicial Nominating Commission that implemented several of the provisions described above.)



III. EDUCATION *of* COMMISSIONERS

- Upon becoming a member of the Commission, each new member should receive a formal orientation to include written and oral briefings.
- Every two or three years, there should be an educational program for commissioners in which the mission of the Commission and its policies and procedures are thoroughly reviewed.

COMMENTARY: It is important that commissioners have the opportunity periodically to step back from their work to assess what they are doing and how they are doing it. (AJS)

IV. QUALIFICATIONS of JUDICIAL CANDIDATES

- A candidate's merit should be the primary criterion for selection. Judicial selection criteria should include experience, integrity, professional competence, judicial temperament and service to the law. (ABA) Candidates should also have respect for the rule of law.

- Geographic and demographic diversity should be considered. (AZ)

- The selection criteria should be disclosed to the public. (ABA)

- The state should adopt age, residency and bar membership requirements for judicial candidates.

- The Commission may recruit qualified individuals to apply for judicial appointment. The Commission should carefully review the applications and investigate the applicants' qualifications. It should interview candidates whom it might nominate. (AJS)

- A minimum of three candidates should be nominated to the governor. If only three candidates are nominated, no more than two may be of the same political party. If more than three are nominated, no more than 60 percent may be of the same political party. (AZ)

COMMENTARY: Disclosure of selection criteria is essential; it familiarizes the citizenry with the judicial selection procedure and thus diminishes the perception of personal or political bias in the selection of judges. (ABA)

V. TRANSPARENCY *and* PUBLIC PARTICIPATION

- An open process is essential. The Commission should hold at least two public meetings to consider applicants for any vacancy. At the first of these meetings, the Commission should select a group of applicants to interview, and at the second meeting it should conduct interviews. The Commission should invite public comment about the applicants, either positive or negative, at the beginning of each session. The public should be welcome to remain and observe both the applicant interviews and the discussion of the applicants by Commission members. The portion of the meeting at which the Commission votes for those applicants whose names will be sent to the governor should also be open to the public. (AZ)
- Information provided to the Commission by applicants or third parties should be available to the public as appropriate.
- All applications for a judicial vacancy should be posted on the court's website. (AZ)
- Although the Commission may go into executive session to promote "open and frank discussion," two-thirds of the Commission members should be required to vote in favor of holding an executive session. (AZ)

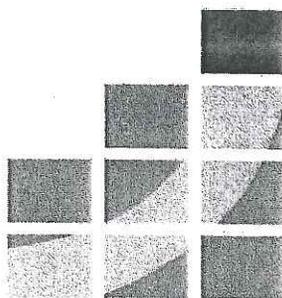
COMMENTARY: The judicial branch is one of three co-equal branches of government, and hearings should be open and

accessible to the public, as they are frequently in the other two branches. According to the American Bar Association, "The most important constituency to be served by a judicial selection method is the American public." (ABA, p. 2) For this reason, the general public should be permitted to learn who the candidates are and how they are evaluated. The public should also have the right to provide input.

VI. PRESENTATION and SELECTION of CANDIDATES

- The Commission should submit nominations to the governor within 60 days of the occurrence of the vacancy. (AZ)
- The governor must appoint one of the candidates received from the Commission. If the governor fails to appoint within 60 days of the nomination of candidates, the chief justice must appoint one of the nominees. (AZ)

COMMENTARY: Longstanding judicial vacancies can result in excessive caseloads for those who are on the bench, resulting often in inordinate delays. It is important to incorporate into any judicial selection process procedures that assure that vacancies will be filled in a prompt and appropriate way.



QUALITY JUDGES INITIATIVE

Model Provisions for Selecting Judges in a Commission-Based Appointment Process

Article 1 – Selection of Judges

Section 1 – Judicial Nominating Commission

Part 1. Commission established – composition, eligibility and restrictions, terms, vacancies.

A. There is hereby established a judicial nominating commission to select the best qualified persons to fill vacancies in the office of a justice or judge in courts of record of this state. The commission shall consist of [the chief justice, or his or her designee, who shall act as chairman and shall have no vote except in the event of a tie], [] attorney members, who shall be appointed by [] in a manner prescribed by law, and [] non-attorney members who shall be appointed by [] in a manner prescribed by law. The appointing authority shall endeavor to appoint commissioners who reflect the diversity of the population of this state. No more than one half of the persons appointed by each appointing authority shall be members of the same political party.

B. No member of the commission shall be permitted to do any of the following:

- (1) serve at the same time as a member of more than one judicial nominating commission;
- (2) serve at the same time as a member of any judicial nominating commission of this state and any judicial discipline commission of this state;
- (3) hold any elective or appointive state, federal, or political office while serving on the judicial nominating commission; or
- (4) be appointed to any judicial office of this state for [] years after the day on which his or her term on the judicial nominating commission expires.

C. The term of each member shall begin on January 1 of [year], except for any member appointed to fill a vacancy.



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Page 1 of 6

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(1) Members appointed initially shall serve as follows:

- (A) non-attorney members and attorney members until December 31, [year that is the year above plus one];
- (B) non-attorney members and attorney members until December 31, [year that is the year above plus three]; and
- (C) non-attorney members and attorney members until December 31, [year that is the year above plus five].

D. Vacancies on the commission shall be filled for the unexpired terms in the same manner as the original appointments. The commission shall notify the appointing authority of any vacancy no later than ten days after the commission learns of such vacancy. The appointing authority shall make an appointment no later than thirty days after the vacancy occurs, but if the appointing authority fails to do so within thirty days, the commission shall make the appointment. A member appointed to fill an unexpired term shall serve the remainder of that term. No member of the commission shall serve more than two full terms plus, if the initial appointment was to fill a vacancy, any balance remaining on an unexpired term.

Part 2. Commission powers and duties, supreme court rule-making powers.

- A. The nominating [commission] / [commissions] shall have the following powers and duties:
 - (1) Prior to making recommendations to the governor as provided in paragraph A of part 1 of section 3 of this article:
 - (A) To solicit and review written applications, including professional and personal references;
 - (B) To conduct background investigations;
 - (C) To hold public hearings and take public testimony on an applicant's judicial qualifications. The commission may hold an executive session as prescribed by law upon a two-thirds vote of a quorum of the members of the commission in a public hearing; and
 - (D) To conduct personal interviews with applicants;
 - (2) To consider applicants on the merit of their qualifications and life experience, including but not limited to:
 - (A) integrity;
 - (B) moral courage;
 - (C) temperament;
 - (D) judgment;
 - (E) wisdom;
 - (F) legal ability;
 - (G) legal experience;
 - (H) life experience;
 - (I) professional competence;
 - (J) likelihood of being deliberate and fair-minded in reaching decisions;
 - (K) likelihood of being industrious and prompt in performing duties as a judge; and

26.

- (1) commitment to serving the public and his/her community;
- (3) To make final decisions on nominees in an impartial and objective manner without regard to gender, race, ethnicity, religion, sexual orientation, or political affiliation; and
- (4) To vote in a public hearing on final decisions regarding a list of nominees for the governor.

B. Subject to approval by the [name of state] supreme court, the commission may promulgate rules and procedures necessary to implement and effectuate the provisions of this section 1 and section 3 of this article. Prior to the final promulgation of any such rule, the commission shall post a notice of the proposed rule, allow for a period for public comment, and give the public a full and fair opportunity at a public hearing to address the commission concerning the proposed rule.

Part 3. Attorney members, restrictions.

A. Persons appointed as attorney members of any nominating commission of the state of [name of state] shall be qualified electors of this state, and shall have been licensed and in good standing to practice law in this state for not less than five years. Former justices and judges may be appointed as attorney members, except that a former justice or judge may not be assigned or appointed to perform judicial duties while serving on the commission. Justices and judges actively performing judicial [duties] / [duties, except the Chief Justice appointed as ex officio chair of the commission,] shall not be appointed to any nominating commission of this state.

- B. For persons appointed as attorneys to any nominating commission of this state:
- (1) not more than [] persons shall be members of the same political party; and
 - (2) not more than [] persons shall be residents of any one county.

Part 4. Non-attorney members, restrictions.

A. Persons appointed as non-attorney members of any nominating commission of the state of [name of state] shall be qualified electors of this state for not less than five years, and shall not be judges or retired judges or admitted to practice law in any state or jurisdiction.

- B. For persons appointed as non-attorneys to any nominating commission of this state:
- (1) not more than [] persons shall be members of the same political party; and
 - (2) not more than [] persons shall be residents of any one county.

Part 5. Transparency, confidentiality.

A. All commission meetings shall be open to the public. In addition, the following shall be open for public inspection and posted on the internet website of the [commission] / [judicial branch]:

- (1) names of applicants for a judicial vacancy;
- (2) applications of candidates for a judicial vacancy, including application forms, resumes and other documents submitted to the commission in support of applications;

(3) commission forms and procedures; and
(4) commission meeting minutes, except any business conducted in executive session shall not be included in meeting minutes made available to the public.

B. Materials that, if made public, would violate an individual's right to privacy under [constitutional or statutory citation] shall be confidential. Confidential materials are not open for public inspection and include the following:
(1) any portion of an application for a judicial vacancy that reveals sensitive personal information entitled to protection under law;
(2) contents of personnel records, except that dates of employment, position titles, and classification and salaries of present and/or past employment by the state of [name of state] are public information;
(3) investigative research materials and internal communications that reveal sensitive personal information entitled to protection under law;
(4) solicited communications relating to the qualifications of an applicant; and
(5) unsolicited communications relating to the qualifications of an applicant, where the source requests confidentiality.

C. All documents and information obtained by or submitted to the commission and all results of judicial nominations are absolutely privileged, and no lawsuit predicated thereon may be brought. Statements made to the commission are absolutely privileged, provided, however, that this absolute privilege does not apply to statements made in any other forum.

Part 6. Self-recusal.

No member shall vote on any matter in which he or she has a substantial personal or pecuniary interest. Any member who believes that his or her personal or business relationship to any applicant for a judicial vacancy might prevent the member from fairly and objectively considering the qualifications of such applicant, or might otherwise involve a conflict of interest or create the appearance thereof, shall disclose the circumstances of the actual or apparent conflict to the commission and shall recuse himself or herself from discussing or voting on the nomination of that applicant.

Part 7. Immunity.

Commission members shall be immune from suit in any action, civil or criminal, based upon official acts performed in good faith as members of such commission.

Part 8. Commission expenses and funding.

All expenses of the commission shall be paid from the [specify fund name] established in [constitutional or statutory citation]. Members of the commission shall receive no compensation but shall be reimbursed from the [specify fund name] established in

[constitutional or statutory citation] for all expenses incurred in carrying out their official duties, upon approval of claims by the chair of the commission.

Section 2 – Office of Judicial Nomination

Part 1. Office created.

A. [insert desired language establishing office based on what branch of government, if any, will oversee the commission] Subject to the supervision of the commission established in section 1 of this article, the office shall:

- (1) provide all resources necessary to carry out the duties of the commission, including staff, equipment, and materials;
- (2) train members of the commission;
- (3) collect and disseminate information about judicial applicants; and
- (4) complete other duties as assigned by the commission.

B. All expenses of the office shall be paid from the [specify fund name] established in [constitutional or statutory citation].

Section 3 – Nominees for Judicial Vacancies

Part 1. Judicial nominees, public notice, restrictions.

A. The commission created in section 1 of this article shall submit to the governor and the public the names of [] / [not less than ___] / [not more than ___] persons best qualified to fill a vacancy in the office of a justice or judge of any court of record of this state. If the commission does not, within [] days after such vacancy occurs, submit the names of nominees as hereinabove provided, the [name of appointing authority] shall have the power to appoint any qualified person to fill such vacancy at any time thereafter prior to the time the names of the nominees to fill such vacancy are submitted to the governor as hereinabove provided. The commission shall notify the public of the names of nominees by press release and prominent posting on the website of the commission or, if no such website exists, the website of the judicial branch of this state.

B. Each nominee shall have been a resident of the counties or county in which that vacancy exists for at least one year prior to nomination, in addition to possessing the other qualifications required in [constitutional or statutory citation].

Section 4 – Gubernatorial Appointment

Part 1. Appointments for judicial vacancies, initial terms.

A. To fill a vacancy in the office of a justice or judge of any court of record of this state, the governor shall appoint on the basis of qualifications and life experience without regard to

political affiliation one of the persons nominated pursuant to part 1 of section 3 of this article by the commission established in section 1 of this article. If the governor does not, within [] days after such nominees are submitted by the commission created in section 1 of this article 1, appoint a judge as hereinabove provided, the [name of appointing authority] shall appoint on the basis of qualifications and life experience without regard to political affiliation one of such nominees to fill such vacancy.