



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MINUTES OF THE JUDICIAL BRANCH AND ADMINISTRATION OF JUSTICE COMMITTEE

FOR THE MEETING HELD
THURSDAY, JANUARY 15, 2015

Call to Order:

Chairman Abaray called the meeting of the Judicial Branch and Administration of Justice Committee to order at 1:30 p.m.

Members Present:

A quorum was present with committee members Abaray, Curtin, Fischer, Jacobson, Kurfess, Mulvihill, and Saphire in attendance.

Approval of Minutes:

The minutes of the November 13, 2014 meeting of the committee were approved.

Chair Abaray thanked Executive Director Steven Hollon for the more detailed minutes. Committee member Saphire moved to approve, committee member Mulvihill seconded. Minutes from the last meeting unanimously approved.

Reports and Recommendations

Article IV, Section 19 (Courts of Conciliation)

Article IV, Section 22 (Supreme Court Commission)

The committee then heard, for a second time, the reports and recommendations presented by Sen. Obhof at the last meeting in November 2014 on Article IV, Sections 19 and 22.

In the excused absence of Sen. Obhof, Mr. Hollon presented the proposed report and recommendation on Article IV, Section 19 regarding courts of conciliation, indicating that some minor changes had been made at the committee's request.

Chair Abaray asked for clarification whether, after the committee votes, the Coordinating Committee reviews the recommendations next.

Mr. Hollon said that there would be a Coordinating Committee meeting that afternoon at which he would be presenting these reports and recommendations for approval. He then said that next month the Coordinating Committee would meet in the morning to discuss these items a second time and, hopefully, approve them so they could then be presented to the Commission at its meeting later that day. The Commission would then have two full readings before voting on whether to forward the reports and recommendations to the General Assembly.

Chair Abaray said that she believes it might be more strategic if all committees reviewing obsolete provisions could organize them so as to make one presentation to voters. Mr. Hollon said this would be an appropriate discussion for the Coordinating Committee later that afternoon.

Chair Abaray asked whether there were any public comments on the proposal to repeal Article IV, Section 19, regarding Courts of Conciliation. There were no comments.

It was noted that the committee had a quorum. A vote was taken, and all present voted yes. Therefore the recommendation to repeal Article IV, Section 19, regarding Courts of Conciliation, will be forwarded.

Mr. Hollon then presented the Report and Recommendation for Article IV, Section 22, regarding the Supreme Court Commission.

Chair Abaray invited discussion or comments from the public. There were none. The committee then voted unanimously to approve the Report and Recommendation for Article IV, Section 22, regarding the Supreme Court Commission. Chair Abaray then acknowledged Sen. Obhof's work on this issue.

Speaker Kurfess commented he is not sure he has read everything on this, but was wondering if the history shows any time when the Supreme Court or the governor considered using this provision. Mr. Hollon answered that staff did not find any example of this in their research.

Chair Abaray commented she had raised a question regarding mediation in relation to Courts of Conciliation, but that the answer was that the Supreme Court already has authority for this. She said it might be possible to revisit the issue when it comes before the full Commission.

Presentation:

*Chief Justice Maureen O'Connor
Supreme Court of Ohio*

The committee then heard a presentation from Maureen O'Connor, Chief Justice of the Ohio Supreme Court, who spoke about her plan for judicial election reform.

Chief Justice O'Connor noted that these are ideas she has been promoting for over a year, and that they involve suggestions for reforms regarding the judiciary. She said the motivation for these reforms is that the public needs to understand why it is important for them to participate in the selection of the judiciary. She said that we have a good bench, but that it can improve. She

remarked that there is a disconnect, because many dedicated people serve in the judiciary, but that public opinion doesn't really reflect a level of confidence that is needed.

The Chief Justice continued by saying the reasons for reform are that the public is influenced by politics and contributions, and that voters do not have access to quality information. She said she believes we will always have an elective system for judges and that the public always says they want to keep electing judges. Her proposals are not a "get out the vote effort," and will not enhance the number of people who come to the polls and participate in elections. She said she simply wants a more informed electorate. She said that judges are always at the end of the ballot, and that ballot fatigue sets in. Voters do not think it is important enough to learn about judicial candidates so they do not vote. She said that in 2012, 40 percent of the electorate did not vote for judges, even though it was a presidential election year and there were large numbers of voters going to the polls.

Her suggestions include moving judicial elections to odd numbered years and putting judicial candidates at the top of ballot, educating voters about candidates, and increasing basic qualifications for judicial service. She said she believes these changes will emphasize that the judicial branch is as important as the other two branches.

The Chief Justice described a new website being launched that would provide information about all judicial candidates. This is being done with the assistance of the League of Women Voters and the Ray C. Bliss Institute of Applied Politics at the University of Akron. She said that in 2013 some 70 percent of judicial races in Ohio were unchallenged. She believes these measures will help increase the pool of persons interested in running for judge and engage the public to be more aware of the judiciary and the role they play. She believes the website will help improve voter knowledge and opinion about what judges do. She said her plan to increase basic qualifications for judge was something that former Chief Justice Thomas Moyer advocated, as well as trying to lengthen the terms for judicial office.

Chief Justice O'Connor then answered questions from the committee.

Committee member Sapphire asked what type of selection process the Chief Justice would prefer if she were setting up the constitution today. She said that Ohioans want to continue to elect their judges, noting that the question has been on the ballot in the 1930s, and in the 1980s, and there was a poll that said overwhelmingly that voters wanted to keep the ability to elect judges. She said other states have appointive processes, but that does not take the politics out of the process. One appealing method is an appointment system whereby, when there is a vacancy, candidates are screened by a neutral bipartisan committee, and then the governor appoints, after which there is an election in which the public determines whether to retain the judge. She said in that scheme the judge is running and being judged on his or her record. She said that method is still influenced by outside influences, but would be better than the system that we have. Another alternative, she said, would be to expand the number of years for a judicial term so that a judge is up for election less frequently and does not have to be political as frequently.

Mr. Sapphire asked what she thinks about a public financing system for judicial elections. Chief Justice O'Connor answered that this is not just under the control of candidates because you

cannot preclude interested third parties from getting involved, and there is no regulation on their dollars. Even if there is a limit, you can't keep special interest groups from getting involved.

Committee member Mulvihill asked the Chief Justice whether she thinks there is a problem with decisions being influenced by campaign contributions. She said that, rather than there being a problem, there is a perception of a problem. She assured the committee that judges in Ohio do not consider who their contributors are when they make their decisions. She said there is an overemphasis on thinking judges are memorizing contribution lists. She does not believe that judges are influenced by their donors.

Mr. Mulvihill then asked if a donor is going to your event and is prepared to write a check, what is the expectation of the donor? He said the donor is either expecting a quid pro quo or that the judge's view is consistent with the donor's, so either way it works. Chief Justice O'Connor said donors do not call judges and ask for a vote on a case; rather donations are about judicial philosophy or world view.

Mr. Mulvihill asked why the proposal was to move judicial elections to years when fewer people participate. Chief Justice O'Connor answered that this will be a culture change that will not happen overnight and that she anticipates participation will grow with time.

Mr. Mulvihill asked whether she was advocating putting party designation on the ballot, since that would give the voters more information. Chief Justice O'Connor agreed this would be a cue but said that it should be a miscue because party does not matter for judges. She said she is opposed to putting party designation on the ballot.

Rep. Curtin remarked that not all odd numbered year elections are created equal, asking whether, if we were to extend judicial terms from 6 years to 8 years, put in a two-term limit, have all judicial elections in a presidential year, and put the judges right below the president on the ballot, this would alleviate these concerns. Chief Justice O'Connor answered that moving judicial elections to the presidential years is problematic because competition is greater for media time, recognition, and dollars. She said she is trying to change the culture and anticipates that one thing will build on another.

Chair Abaray asked whether this proposal only affects Supreme Court races or whether it will affect all levels of the judiciary. Chief Justice O'Connor answered that it may send a mixed message to have the measures apply only to the Supreme Court and that her recommendation is not to distinguish between judicial races.

Chair Abaray asked whether the problems described could be resolved by limiting judges to only one term of service, which could be a long term. Chief Justice O'Connor said this would be a problem in that we would get a lot of people becoming judges either at the end of their careers or at the beginning to enhance a later law practice. She said she does not think members of the Supreme Court make decisions based upon their ability to run for another term

Chair Abaray asked whether a longer term of office would be appropriate, and wondered what the ideal length would be. Chief Justice O'Connor said maybe 8 or 10 years for common pleas judges, 12 for appellate, and 15 for supreme court.

Speaker Kurfess asked about the information website described by Chief Justice O'Connor, wondering what will and will not be included. He said that while the candidates themselves are limited to what they can say, those who have served in other branches of government and have a track record can use that personal history. Speaker Kurfess wondered if the website would be a public information system or would be simply allocating advertising time to candidates. Chief Justice O'Connor said that the website would include the candidate's occupation, history of cases tried as a lawyer, and judicial experience. She said if candidates want to put that they are members of a religious group, she thinks that is relevant information. Speaker Kurfess observed that some political purists are sometimes limited in what they think are legitimate considerations by a voter. Chief Justice O'Connor said the website will involve a committee that will decide what kind of information will go on the site, and that there will be a review of responses by candidates to be sure nothing inappropriate is included.

Adjournment:

The questions having come to a close, Judge Fischer moved to adjourn, Mr. Mulvihill seconded, and the meeting adjourned.

Attachments:

- Notice
- Agenda
- Roll call sheet
- Report and Recommendation Article IV Section 19, Courts of Conciliation
- Report and Recommendation Article IV, Section 22, Supreme Court Commission
- Biographical sketch of Chief Justice Maureen O'Connor
- Prepared remarks of Chief Justice Maureen O'Connor

Approval:

The minutes of the January 15, 2015 meeting of the Judicial Branch and the Administration of Justice Committee were approved at the March 12, 2015 meeting of the committee.

/s/ Janet Gilligan Abaray

Janet Gilligan Abaray, Chair

/s/ Patrick F. Fischer

Judge Patrick F. Fischer, Vice Chair