Alaska's Constitution

A Citizen's Guide

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ARTICLE IV

THE JUDICIARY

Alaska's judiciary article, like the legislative and executive articles, is short, flexible and incorporates modern constitutional concepts. It creates a unified court system with centralized administration; it provides for merit selection of judges; it balances the need for judicial independence with the need for judicial accountability to the people; and it allows the legislature to expand the court system to keep pace with a growing state.

Alaska's court system is efficient when compared to many others because it is unified. This means that all of the courts are part of a single state system. They are administered from one place, they all operate under the same rules, and they are all financed by the state legislature. We recognize this type of organization in the federal courts. Indeed, Alaska's judicial experience until statehood in 1959 was with the federal court system. In many states, the court system is fragmented into municipal courts, courts of special jurisdictions, county courts and state appellate courts, each with its own peculiar jurisdiction, its own rules and procedures, its own administration and its own source of funding. Also, in many states, legislative power to create new courts or modify the jurisdiction of constitutional courts is restricted or ambiguous. Judicial reforms long sought in these older states are embodied in Alaska's constitution.

Alaska's system of merit selection for judges seeks to produce a competent and independent judiciary. Article IV requires that judges be appointed by the governor from a list of nominees recommended by an independent body, the judicial council, described in Section 8 below. Thus, judgeships are not spoils of office. Also, judges are not elected. The convention delegates had no confidence in the electoral process to produce qualified judges. Appointed judges do not need to worry about how their decisions will affect their immediate chances of re-election, nor do they need to finance expensive campaigns from donations by private interests (including attorneys who appear before them).

Accountability of appointed judges to the people is provided by periodic "retention elections" in which judges stand before the electorate on their own records, without party labels. The question before the voters is simply whether a particular judge should remain in office. Retention elections for a judge occur at the first general election three years after the judge is appointed (except in the case of district court judges, where it is the first general election one year after appointment) and at four, six, eight, and ten-year intervals thereafter, depending on the court level. A judge can be impeached by

the legislature for "malfeasance or misfeasance" in the performance of duties. A judge can be removed from the bench by the supreme court, after a review by the council on judicial conduct, for mental or physical incapacitation or breach of ethics. However, a judge may not be recalled by the voters (see Article XI, Section 8).

Article IV is flexible because it specifies only the rudimentary structure of the court system and gives the legislature wide latitude to expand and shape the system to meet the needs of the state. The delegates created only two constitutional courts—the superior court (a trial court of general jurisdiction) and the supreme court (an appellate court). Unlike the supreme court, which is a single body with all of the justices sitting together to hear cases, the superior court has many judges in each of the four judicial districts of the state who hear cases sitting alone. At the time, a more elaborate (and more costly) structure was unnecessary. Yet the delegates anticipated the future by authorizing the legislature to expand the court system by adding judges and creating new courts.

These progressive features of Article IV, notably the unified court system and merit selection of judges, did not debut with the Alaska constitution. New Jersey pioneered the unified court system in its 1947 constitution, and Missouri initiated the merit selection of judges in its 1946 constitution. Yet Alaska's judiciary article is notable because it incorporated so many of the innovations hailed by constitutional reformers of the day. Many states have embraced these judiciary reforms in the years since Alaska's constitution was written.

Article IV has been amended five times, but only for fine-tuning. The basic features of the article have proven workable and remain unaltered. Today, Alaska's judiciary system is recognized nationally as one of the best in the United States.

Section 1. Judicial Power and Jurisdiction

> **The judicial power of the State is vested in a supreme court, a superior court and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.**

This section vests the judicial power of the state in the court system and creates the basic structure of that system. It consists of the superior court, which is a trial court, and the supreme court, which hears appeals from the trial court. This section also authorizes the legislature to create additional courts. The legislature has created the district court, which is another trial court that relieves the superior court of hearing lesser criminal and civil matters. It has also created the court of appeals for criminal cases, an intermediate appellate court that helps reduce the number of criminal appeals reaching the supreme court. Alaska's constitution gives to the legislature the task of prescribing the jurisdiction of the various courts, and in this respect it is not unusual, except perhaps in the clarity of its directive.

Importantly, this section also specifies that Alaska's court system is to be unified. Thus, any courts the legislature may create must be administered by the supreme court as part of a centralized state judicial system.

Judicial districts are commonly established in constitutions, but the delegates preferred to leave this matter to the legislature so districts could be easily modified from time to time with changing administrative needs of the judicial system. During territorial days, the federal courts were organized in four judicial districts—District One, southeast Alaska; District Two, northwest Alaska; District Three, southcentral Alaska; and District Four, interior Alaska. The legislature has adopted these four districts for the organization of the state judicial system (see AS 22.10.010 for the boundaries of each district).

The Alaska Supreme Court has declared that this section confers upon it certain inherent rule-making authority distinct from the rule-making authority granted in Section 15. It has said, for example, that it has exclusive power to regulate the practice of law in the state, and statutes dealing with this subject are an unconstitutional invasion of the judicial branch of government (see for example, *Citizens Coalition for Tort Reform v. McAlpine*, 810 P.2d 162, 1991.)

Section 2. Supreme Court

> **(a) The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court.**
>
> **(b) The chief justice shall be selected from among the justices of the supreme court by a majority vote of the justices. His term of office as chief justice is three years. A justice may serve more than one term as chief justice but he may not serve consecutive terms in that office**

Paragraph (a) of this section creates the "court of last resort" in the state judicial system. It sets the number of supreme court justices at three, but allows the legislature to increase that number "upon the request of the supreme court." This proviso (modeled on a similar proviso in Puerto Rico's constitution) was included to prevent the legislature from "packing" the supreme court with new justices as a means of changing a prevailing interpretation of the law. At the request of the court, the legislature expanded the number of justices to five in 1967 (16 other state supreme courts have five justices, 26 have seven justices, and seven have nine justices).

Paragraph (b) was added by amendment in 1970. Notice that paragraph (a) is silent on how the chief justice is to be selected. Prior to the 1970 amendment, the governor designated the chief justice. The

change followed a bitter conflict during the late 1960s between the court and the state bar association over the chief justice's exercise of his administrative prerogatives. The amendment was designed to prevent the accumulation of excessive power by one justice and to make the chief justice accountable to the other members of the court.

This section is, comparatively speaking, simple and terse. Absent are a number of provisions found in other constitutions pertaining to the supreme court, such as authorization to render advisory opinions at the request of the governor or legislature; a requirement for a supermajority vote to declare a legislative act unconstitutional; formal authorization to exercise the power of judicial review (i.e., to scrutinize the constitutionality of acts of the other branches of government); permission for "divisions" of the court (panels of fewer justices than the full bench) to hear and render decisions on cases; assignment of original jurisdiction to the court in certain cases (legislative redistricting cases, for example); or a requirement for broad geographical representation on the court.

Section 3. Superior Court

> **The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.**

The superior court is the trial court with original jurisdiction over all civil and criminal matters. To facilitate the work of the court, particularly in small communities without a superior court judge, the legislature immediately after statehood established a set of lower trial courts called district magistrate courts. Deputy magistrates were authorized to assist district magistrates by serving primarily in outlying areas. In 1966, the magistrate courts became the district courts of the present day, and deputy district magistrates became today's magistrates. (The history of the district court and the role of magistrates are discussed in *Buckalew v. Holloway,* 604 P.2d 240, 1979.) Thus, there are now two trial courts, the superior court and the district court.

The superior court deals with serious criminal offenses (felonies) and civil cases involving claims for recovery of money or damages in excess of $100,000. It hears cases on appeal from the district court, and it handles family and juvenile matters. The district court hears minor criminal cases (misdemeanors), violations of municipal ordinances, and civil cases involving sums less than $100,000. Magistrates are appointed by and serve at the pleasure of the presiding superior court judge in each district. They assist primarily, but not exclusively, in outlying areas with routine district court matters such as issuing marriage licenses, summons, and search and arrest warrants; setting bail; and solemnizing marriages.

Each superior and district court judge, and each magistrate, is assigned to one of the four judicial districts. One superior court judge in each district is designated presiding judge to coordinate

administrative matters. There are 40 superior court judgeships throughout Alaska, and 21 district court judgeships (2012).

Section 4. Qualifications of Justices and Judges

> **Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.**

The legislature has required that, in addition to meeting these minimum qualifications, supreme court justices and superior court judges must have been residents of the state for three years immediately preceding their appointment and engaged in the active practice of law for eight and five years respectively prior to their appointment (AS 22.05.070 and AS 22.10.090). Court of appeals and district court judges must meet the same minimum qualifications and must have been in the active practice of law for eight and three years, respectively (AS 22.07.040 and AS 22.15.160(a)). Magistrates, however, do not have to be licensed lawyers, and they need to be residents of the state only six months prior to being appointed (AS 22.15.160(b)).

Section 5. Nomination and Appointment

> **The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.**

A variety of methods are used to select judges in the states. Indeed, a variety of methods may be used to select judges of the different courts within the same state. Some judges are elected by the voters on either a partisan or nonpartisan basis; others are appointed, either by the legislature, the judiciary or, more commonly, the governor. The trend is toward appointment as a method of selection, coupled with the use of an impartial body that screens applicants on the basis of their qualifications. In Alaska, this screening body is titled the judicial council. The judicial council evaluates candidates for judgeships and submits several nominees to the governor who makes the final appointment. In other states, the legislature may confirm the governor's appointments. (In Connecticut, the legislature does the appointing from the list of nominees, and in California appellate court judges are appointed by the governor and confirmed by the commission on judicial appointment.)

Alaska was one of the early states to adopt this merit selection method of appointment by the governor from a list of nominees submitted by an independent body which evaluates the qualification of applicants. When a judicial vacancy occurs, the Alaska Judicial Council receives applications from

those interested in filling the position. It then evaluates the candidates on the basis of information derived from a poll of the bar association, letters of reference, background investigations, public hearings and interviews. The council must forward at least two names to the governor; frequently it sends more than two (on one occasion it sent nine names to the governor for a single vacancy).

The legislature has provided for judgeships in the two statutory courts (the district court and court of appeals) to be filled by this method too, although the constitution does not require it (AS 22.07.070 and AS 22.15.170). The legislature has also directed the judicial council to evaluate candidates for the state public defender's office (AS 18.85.050). Composition of the judicial council is specified in Section 8 of this article, and other duties are assigned to it in Section 9.

Section 6. Approval or Rejection

> **Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a nonpartisan ballot at the first general election held more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year.**

The merit selection method of filling judgeships is usually coupled with the retention election procedure outlined here. Under this procedure, the voters may remove a judge they believe is unfit for office, but, because the judge's name appears on the ballot only at certain intervals, it does not allow them to sweep away a judge on a sudden whim or impulse, and it gives a new judge time to establish a record which can be fairly evaluated. Thus, the retention election is designed to balance the need for judicial independence with the need for public accountability.

Only rarely are judges rejected at the polls (five as of 2010), and the vote in favor of retention is usually between 60 and 75 percent of the total. This is evidence of the generally high caliber of Alaska's judges. It must be noted, however, that the form of the retention elections tends to encourage a yes vote: there is no opposing candidate to the judge standing for election; the judge is nonpartisan; and he or she has the advantage of already being in office.

Recognizing that the public may have difficulty assessing a judge's performance, and mindful of the vulnerability of judges to last-minute smear campaigns, the legislature in 1975 directed the judicial council to evaluate judges standing for retention election and publish the results prior to the election. Several judges have been retained by the voters despite being deemed unqualified by the judicial council, but those rejected by the voters after 1975 had all been deemed unqualified by the council. Prior to the judicial council making recommendations on retention, one judge was rejected by the

voters—a supreme court justice in 1964. The process used by the council since 1975 to evaluate judges is described in the commentary on Section 9.

By statute, judges of the district court and court of appeals are also evaluated by the judicial council prior to their retention election. Only supreme court justices and judges of the court of appeals stand for retention on a statewide basis. Superior and district court judges stand in the judicial district they serve.

The date of a judge's "appointment" is the day the governor makes the appointment rather than the day the judge is installed in office. (See *State, Division of Elections v. Johnstone,* 669 P.2d 537, 1983.)

Section 7. Vacancy

> **The office of any supreme court justice or superior court judge becomes vacant ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself.**

This section is intended to give a judge leaving office sufficient time to wind up judicial business in an orderly manner and to minimize transition time by allowing the process for appointing a successor to commence in advance of the vacancy.

Section 8. Judicial Council

> **The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief of the supreme court shall be ex-officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.**

Among the states with an independent commission for nominating candidates for judgeships, Alaska is unusual because it has only one such body with responsibility for all appellate and trial courts in the state. In other states, each judicial district is likely to have its own nominating commission for judges who serve that district, and a separate statewide commission that nominates candidates exclusively for statewide appellate court vacancies. While Alaska has only one judicial council for all courts and all districts, its members are to be appointed "with due consideration to area representation."

The composition of the Alaska judicial council—seven members, three of whom are attorneys and three of whom are not attorneys, with the chief justice an ex-officio member and chairman—is similar to that of the statewide commissions in other states. However, in other states the balance is likely to be in favor of lay members rather than lawyers (in Hawaii and Arizona, for example, no more than four of the nine members may be attorneys). Also in other states, all appointees require legislative confirmation; in Alaska, only the lay members appointed by the governor must be confirmed. The privileged role of the state bar association in selecting members of the council, and therefore members of the judiciary, was challenged unsuccessfully in 2009 in federal court as a violation of the U.S. Constitution.

To emphasize the nonpartisan character of the judicial council, this section requires that appointments be made "without regard to political affiliation," although this seems to be a standard that would be difficult to enforce.

The prohibition against "dual office holding" is to avoid conflicts of interest on the part of members (see the commentary under Article II, Section 5).

Section 9. Additional Duties

> **The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.**

The primary constitutional duty of the judicial council is to screen applicants for supreme court and superior court vacancies and nominate qualified candidates for appointment by the governor (Section 5). This section gives it the additional duty of studying the judicial system and recommending improvements. Thus, for example, the judicial council has studied such matters as plea-bargaining, bail, sentencing, and use of the grand jury. These studies and recommendations are described in the biennial reports to the legislature and supreme court required by this section.

In addition, this section authorizes the legislature to assign other tasks to the judicial council. The legislature has charged the council with the task of screening applicants for vacancies in the district

court and court of appeals, as well as applicants for the state public defender's office. The main duty assigned to the council by the legislature, however, is that of publicly evaluating the performance of judges prior to their retention elections. (Retention elections are required by Section 6, above.)

To evaluate the fitness of judges for retention, the council surveys attorneys, police officers, probation officers, jurors, social workers, and court employees; it studies decisions of the judge and pertinent court records; and it solicits citizens' opinions through public hearings and other means. The council must publicize the results of its evaluations at least 60 days before the retention election. It does so by publishing them in newspapers around the state and in the official election pamphlet distributed to voters by the division of elections.

At the request of the supreme court, the judicial council also evaluates the performance of *pro tempore* judges (retired judges working under special assignments from the supreme court).

Section 10. Commission on Judicial Conduct

> **The Commission on Judicial Conduct shall consist of nine members, as follows: three persons who are justices or judges of state courts, elected by the justices and judges of state courts; three members who have practiced law in this state for ten years, appointed by the governor from nominations made by the governing body of the organized bar and subject to confirmation by a majority of the members of the legislature in joint session; and three persons who are not judges, retired judges, or members of the state bar, appointed by the governor and subject to confirmation by a majority of the members of the legislature in joint session. In addition to being subject to impeachment under Section 12 of this article, a justice or judge may be disqualified from acting as such and may be suspended, removed from office, retired, or censured by the supreme court upon the recommendation of the commission. The powers and duties of the commission and the bases for judicial disqualification shall be established by law.**

The purpose of this section is to provide an alternative to impeachment for removing a judge from the bench. Impeachment is a cumbersome process; furthermore, it is available only in the case of "malfeasance or misfeasance," which must be proved. It has taken two amendments to this section, however, to develop a satisfactory mechanism for removing or disciplining a judge.

Originally, this section set out a procedure for removing a judge for being incapacitated but not for misconduct. According to the original procedure, the judicial council could certify to the governor that a supreme court justice was incapacitated, whereupon the governor would appoint a three-member board to review the matter and decide whether to recommend to the governor that the justice

should be removed from office. With regard to judges of other courts, the judicial council could recommend early retirement to the supreme court, which was authorized to force a judge into retirement. This provision was similar to one in the 1950 Hawaii constitution.

On one occasion (in 1962), the judicial council used the original procedure to remove a judge. It became apparent, however, that the issues of judicial ethics and propriety were a greater threat to the integrity and public esteem of the judiciary than the infrequent problem of a mentally or physically impaired judge who refused to resign. Thus, the judicial council recommended that the legislature establish a separate commission with broad authority to investigate allegations of judicial misconduct, as well as incapacity, and to recommend disciplinary action. Council members had studied the California commission on judicial performance as a model for such a body. The council's recommendation led to a constitutional amendment in 1968 that created a nine-member commission on judicial qualifications.

In 1982, a second amendment changed the name of the body to the commission on judicial conduct to lessen public confusion about the respective roles of this commission and the judicial council. It also modified the composition of the body by reducing the number of judges from five to three, and increasing the number of lawyers from two to three and lay members from two to three.

The Alaska Commission on Judicial Conduct may investigate charges of disability as well as charges of unethical or improper behavior (such as showing bias or personal favoritism from the bench); it may not evaluate the quality or correctness of judicial decisions, or the general skill and competence of judges. The commission's authority is limited to making recommendations to the supreme court, which independently decides if suspension, censure or removal from office is appropriate (see *In re Robson,* 500 P.2d 657, 1972). Statutory provisions giving the commission authority to reprimand a judge were declared unconstitutional (*In re Inquiry Concerning a Judge,* 762 P.2d 1292, 1988).

As is the case with other boards overseeing professional licensing and standards, relatively few complaints filed with the commission eventually result in a public recommendation for disciplinary action. Nonetheless, the existence of the commission doubtless makes for a more circumspect judiciary.

Section 11. Retirement

> **Justices and judges shall be retired at the age of seventy except as provided in this article. The basis and amount of retirement pay shall be prescribed by law. Retired judges shall render no further service on the bench except for special assignments as provided by court rule.**

Unlike federal judges who are appointed for life (and who do not face periodic retention elections), state judges must retire at age 70. Mandatory retirement of state judges at 70 is common (two-thirds of the states provide for it, either by constitution or statute). It is considered necessary to prevent the possibility of a person of failing powers remaining on the bench, and it creates the opportunity for the infusion of new talent in the judiciary. On the other hand, it deprives the state of the services of experienced judges who remain intellectually vigorous after their seventieth birthday. Thus, after debating the matter, the framers of Alaska's constitution adopted mandatory retirement but left the door open for the supreme court to call on retired judges for ad hoc assignments (so-called *pro tempore* service).

Section 12. Impeachment

> **Impeachment of any justice or judge for malfeasance or misfeasance in the performance of his official duties shall be according to procedure prescribed for civil officers.**

Most constitutions provide for the removal of justices and judges by impeachment. However, it is a cumbersome and archaic procedure that is seldom used. It has not yet been used in Alaska. Therefore, alternative procedures for removal of judges for incapacity or misconduct, such as those found in Section 10, are common (and becoming more so). Judges are not subject to recall in Alaska (Article XI, Section 8). Alaska's impeachment procedure is described in Article II, Section 20.

Section 13. Compensation

> **Justices, judges, and members of the judicial council and the Commission on Judicial Qualifications shall receive compensation as prescribed by law. Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State.**

The first sentence in this section was amended in 1968 by adding the words "and the Commission on Judicial Qualifications." The amendment in 1982 that changed the name of the commission on judicial qualifications to the commission on judicial conduct inadvertently omitted express mention of this section, therefore the old name still appears here. Judges and justices receive salaries set by statute. However, the legislature has decided not to compensate members of the judicial council and the commission on judicial conduct for their service on these bodies. They receive only travel expenses and an allowance for living expenses while attending meetings. The prohibition in the second sentence of this section against reducing the salaries of judges in office is a means of safeguarding the independence of the judiciary. This and identical protection for the governor and

lieutenant governor in Article III, Section 15 help protect the integrity of the three branches of government.

Section 14. Restrictions

> **Supreme court justices and superior court judges while holding office may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions. Any supreme court justice or superior court judge filing for another elective public office forfeits his judicial position.**

This prohibition on dual office holding serves the same purposes as similar prohibitions that apply to legislators and the governor: it prevents conflicts of interest, concentrations of power and violations of the separation of powers (see Article II, Section 5). The additional prohibition here against holding office in a political party is intended to reinforce the nonpartisan character of the judiciary. Article II, Section 5, which prohibits dual office holding on the part of legislators, exempts employment by or election to a constitutional convention. No such exemptions appear in this section. This provision required a state judge to resign his position as a regent of the University of Alaska (1976 Informal Opinion Attorney General, December 27).

Section 15. Rule-making Power

> **The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.**

By granting the supreme court authority to make administrative and procedural rules, this section promotes the unity and operational efficiency of the entire court system. At the time of Alaska's constitutional convention, the American Bar Association strongly recommended a provision of this kind; and vesting the supreme court with the power to issue rules for all state courts continues to be urged as a desirable constitutional reform in states with balkanized court systems.

While other state constitutions also grant rule-making power to the supreme court, this provision is noteworthy because it allows the legislature to *amend* the rules governing practice and procedure by a two-thirds vote of each house. Florida has a similar provision, but there the legislature may only *repeal* a court rule by a two-thirds vote of each house. This provision is one of the important "checks and balances" of our governmental system, in this case a legislative check on the judicial branch. The

legislature cannot adopt court rules on its own initiative, but only change rules made by the court (the substance of this distinction might be difficult to find in practical circumstances, however). The court has said that adopting a law containing a provision that inadvertently changes a court rule is not a proper exercise of the authority granted to the legislature in this section *(Leege v. Martin,* 379 P.2d 447, 1963).

With the aim of discouraging public interest law suits against the state, the legislature in 2003 adopted a law that exposed public interest litigants to an assessment of the defendant's legal costs in cases when the defendant prevailed in court. This law affected the "public interest exception" to a rule of civil procedure that normally allowed partial costs to be awarded to the prevailing party. Litigation ensued, in which a Native village, several environmental organizations, and some labor unions argued that the legislature did not adopt the measure by a two-thirds majority vote and it was therefore invalid because the constitution requires a supermajority vote to change court rules. Reversing a lower court decision, the Alaska Supreme Court said that the measure changed a matter of substantive law, not procedure, and the legislature needed only a majority vote to do so (*State v. Native Village of Nunapitchuk*, 156 P.3d 389, 2007).

While this section says that court rules governing practice and procedure in both civil and criminal cases may be amended by the legislature by two-thirds vote, there are some basic rules governing the internal working of the courts that are an exercise of the inherent powers of the judicial system as a separate branch of government, and they are therefore presumably not subject to review by the legislature. The court has said that Section 1 of this article confers some exclusive rule-making authority (see, for example, *Application of Park*, 484 P.2d 690, 1971; and *Citizens Coalition for Tort Reform v. McAlpine*, 810 P.2d 162, 1991).

Section 16. Court Administration

> **The chief justice of the supreme court shall be the administrative head of all courts. He may assign judges from one court or division thereof to another for temporary service. The chief justice shall, with the approval of the supreme court, appoint an administrative director to serve at the pleasure of the supreme court and to supervise the administrative operations of the judicial system.**

The first sentence of this section further unifies the court system by centralizing its administration in the chief justice of the supreme court. It follows the 1947 New Jersey Constitution and the recommendation of the *Model State Constitution.* Many states now have comparable provisions. The second sentence allows the chief justice to cope with backlogs, equalize workloads and otherwise expedite the operation of the court system by temporarily assigning judges from one court to another and from one location to another.

Article IV

Responsibility for day-to-day administration of the court system falls to a professional court administrator who answers to the entire supreme court. Indeed, this was the subject of a 1970 amendment. Originally, the court administrator was hired with the approval of the entire court but served at the pleasure of the chief justice. The 1970 amendment made the administrator responsible to the entire court. The change sought to dilute the power of the chief justice; like the amendment of Section 2, it was an outgrowth of conflicts over the exercise of power by the first chief justice under the original constitutional provisions.