

SJR

22

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chairman
Sen. Dave Donley, Vice-Chair
Sen. John Cowdery
Sen. Gene Therriault
Sen. Johnny Ellis



State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: (907) 465-3922

Senate Judiciary Committee

SPONSOR STATEMENT

SJR 22
(4/4/01)

SJR 22 proposes an amendment to the Constitution of the State of Alaska changing the length of time between retention elections for supreme court justices and superior court judges. It is designed to increase public involvement in the judicial retention process and to increase the judicial branch's accountability to Alaskans.

Currently, each superior court judge and supreme court justice is subject to approval or rejection by the voters at the first general election held more than three years after he or she is appointed. After the initial election, supreme court justices are up for approval or rejection only every tenth year and superior court judges only every sixth year. SJR 22 changes both these intervals to six years for supreme court justices and four years for superior court judges.

Alaskans need more frequent opportunities to assess the performance of those who serve us in the judicial branch of government. Unfortunately, our courts are currently failing to make all decisions in a timely manner. There is one court decision that has been pending in the supreme court for more than three years. Information like this is critical to ensure public accountability of our judicial officers. Having retention elections more frequently will help ensure that the public is basing their decisions on the most timely information.

There are twenty-two states who select their judges by public elections and another ten states where the legislature either chooses or confirms appointees. Accordingly, in the majority of the United States there is much greater public input, than in Alaska, into who becomes a judge. In Alaska, the opportunity for the public's input comes only through the retention election process. Such a low level of accountability is poor public policy, especially when retention elections are so far apart. By allowing Alaskans to evaluate supreme court justices every six years and superior court judges every four years, we will ensure increased public accountability and better job performance.

DD/kk



American Bar Association
Judicial Administration Division



Standards of Judicial Administration
Volume III

STANDARDS
RELATING TO
APPELLATE
COURTS

STR 22

1994 EDITION



STANDARDS RELATING TO APPELLATE COURTS



766 5628

Section 3.52 Standards of Timely Disposition of Appellate Cases.

(a) Purpose. Time standards should be used as an administrative goal to assist in achieving caseload management that is efficient, productive, and produces quality results. Cases vary in complexity of legal issues and length of record, and no single fixed time standard is appropriate for each appeal. To measure the efficiency of an appellate court in processing its entire caseload, courts are encouraged to adopt standards which provide that, for any given period, a percentage of appeals complete each appellate function within a certain number of days. Some cases, however, are unique so that it is impracticable to set a goal for a particular time within which they should be resolved. Courts are encouraged to give the reference models set forth in subdivisions (c) and (d) herein and Sections 3.53, 3.54, and 3.55 serious consideration when formulating time standards for their particular court.

(b) Overall Time Standards. Timely disposition of appeals is a cooperative effort among those responsible for the administrative, lawyer, and judicial functions in a court system. See Sections 3.53, 3.54, and 3.55. Time standards should be developed by each court after appropriate involvement of, and consultation with, those whose work they monitor. These goals are not intended to become rules for appellate courts. Rather, their purpose is to establish a framework for periodic reassessment and constant betterment of goals which the court commits itself to achieve. States can adopt a variety of rules and procedures that will be designed to achieve these goals. The function of time standards is to establish a method for assessing whether those rules and procedures are successful.

(c) Reference Model: Time Standards for Supreme Courts.

(i) 50% of all cases should be resolved within 290 days from the time of the petition for certiorari from the intermediate court of appeals or from filing of the notice of appeal.

(ii) 90% of all cases should be resolved within one year of the petition for certiorari from the intermediate court of appeal or from filing of the notice of appeal.

(iii) The remaining ten percent should be resolved as expeditiously as possible, given the length of the record, the complexity of the issues, or other unusual circumstances.

For Refer

Not to be taken from

ANCHORAGE LAW LIBRARY

Appellate court should
time for the filing of
showing, and, when
have the discretion

court should exercise
cess and should con-
g procedures, prear-
es, and other devices
n time standards for

mission of appellate
those currently set un-
dure. If the transcript
to Section 3.53, the
efs should start from
ments is filed but no
tice of appeal.

in a timely fashion is
l. In meeting this ob-
assist in the enforce-
programs designed to
n of time cannot be
a. The lawyer should
is to be dismissed or

ferences have been
. Although their effect
ertain, lawyers should
entation with and use
may be used to explore
n appeal, and discuss
the appellate process.
necessitate the tolling
n all other cases, the
er to grant, deny, or

shorten the time standard for submission of briefs. An extension of time for the submission of briefs should be given only for good cause. Shorter briefing times should be considered for accelerated review and review of nonfinal orders.

References

American Bar Association, Judicial Administration Division, *Standards Relating to Appellate Delay Reduction* (1988).

Joy A. Chapper, National Center for State Courts, *Intermediate Appellate Courts, Improving Case Processing: Final Report* (1990).

Judith Resnick, "Managerial Judges," 96 *Harv. L. Rev.* 374 (1982).

Superior Court of New Jersey, Appellate Division, *Manual of Procedure for the Civil Appeals Settlement Program* (1991).

Section 3.55 Time Standards for Judicial Functions.

(a) Regular Review.

(i) Oral Argument. A case should be set on the oral argument calendar within 55 days of filing of the appellee's brief.

(ii) Without Oral Argument. If the case is to be submitted to a panel or a court *en banc* without argument, it should be submitted to the panel or the assigned judge within 35 days of the filing of appellee's brief.

(iii) Opinion Preparation. Opinions should be prepared within 55 days from the date of oral argument or the date of assignment. Opinions in death penalty cases and cases of extraordinary complexity should be prepared within 90 days from the date of oral argument or date of assignment and preparation time should be specially monitored by the chief judge.

(iv) Voting on Circulating Opinions. Opinions should be circulated to all judges simultaneously. All written dissents should be filed within 30 days of receipt of the opinion. Judges on the state's highest court not filing a written dissent should indicate their vote within 20 days of receipt of an opinion. Judges on

intermediate appellate courts not filing a written dissent should indicate their vote within 15 days of receipt of an opinion.

(v) Prerelease Processing. The total time outside the prescribed time periods in this section for processing an opinion for final release should not exceed 20 days. This includes the time necessary to address a dissent.

(b) Accelerated Review or Review of Nonfinal Orders. Opinions for the states' highest courts should be prepared within 30 days from the date of oral argument or the date of assignment. Opinions for intermediate courts of appeal should be prepared within 15 days from the date of oral argument or the date of assignment.

(c) Memorandum Opinions. Irrespective of the type of review, memorandum opinions should be prepared within 30 days of oral argument or date of assignment.

Commentary

Judicial decision-making is the final step in the appellate process. The time standards for this function involve a number of inter-related phases. Various alternatives are available in each phase to help reduce the time required to complete the required tasks. The appellate court should be flexible in choosing these alternatives based upon the nature of the case and the capabilities of the court and its personnel.

Effective use of central staff attorneys can promote cooperative efforts and relieve the judges of duties not central to the collegial responsibility of deciding an appellate case. See Section 3.62. Central staff attorneys can be responsible for the initial screening of cases to assist in determining whether there is a question of the existence of appellate jurisdiction, determining whether oral argument should be dispensed with, and deciding upon the form of the opinion. The central staff attorney may be delegated the duty of coordinating and conducting preargument conferences. Finally, central staff attorneys may also be used to coordinate the circulation of opinions, prepare summaries where appropriate, and oversee the operation of case assignment procedures.

After briefs are received, the court must decide how the case is to be presented. The two mechanisms normally available are oral



alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501-1969 (907) 279-2526 FAX (907) 276-5046
http://www.ajc.state.ak.us E-mail: postmaster@ajc.state.ak.us

EXECUTIVE DIRECTOR
William T. Cotton

NON-ATTORNEY MEMBERS
Eleanor Andrews
Katie Hurley
Gigi Pilcher

ATTORNEY MEMBERS
Geoffrey G. Currell
Robert B. Groseclose
Robert H. Wagstaff

CHAIR, EX OFFICIO
Dana Fabe
Chief Justice
Supreme Court

Facsimile Transmittal

To: Senate Finance Committee - See Below
Stephanie Cole & Chris Christensen

Fax #: See Below

Date: 4/3/01

Time: 9:50

From: Bill Cotton

Number of pages (including this cover sheet) 5

If you have any problems or questions, please contact Bill Cotton
at (907) 279-2526.

Comments:

Robin Taylor 465-3922, Dave Donley 465-6595, Johnny Ellis 465-2529, John Cowdery 465-2069,
Gene Therriault 465-3884, Stephanie Cole 264-0881, Chris Christensen 264-8291



alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501-1969 (907) 279-2526 FAX (907) 276-5046
http://www.ajc.state.ak.us E-Mail: postmaster@ajc.state.ak.us

EXECUTIVE DIRECTOR
William T. Cotton

NON-ATTORNEY MEMBERS
Eleanor Andrews
Katie Hurley
Gigi Pilcher

ATTORNEY MEMBERS
Geoffrey G. Currell
Robert B. Groseclose
Robert H. Wagstaff

CHAIR, EX OFFICIO
Dana Fabe
Chief Justice
Supreme Court

MEMORANDUM

TO: Senate Finance Committee

CC: Stephanie Cole, Administrative Director
Chris Christensen, Staff Counsel

FROM: William T. Cotton, Executive Director

DATE: April 3, 2001

RE: Judges with significant private and public law backgrounds

The Committee requested information on the number of judges with significant private and public law backgrounds (more than a year). A list of judges with the relevant information is attached.

I note that it is not the case that the great majority of judges have only a public law background. Over two-thirds of judges (40 of 58) have significant private practice experience.

I re-emphasize that the Council believes that SJR22 will make it harder for the Council to attract these highly qualified attorneys from private practice.

Type of Prior Experience for Sitting Judges			
Level/Judge Name	Mostly Public	Mostly Private	Significant Both
Carpenceti, Walter			X
Bryner, Alex	X		
Eastough, Robert L.		X	
Fabe, Dana	X		
Matthews, Warren		X	
Supreme Total	2	2	1
Appellate			
Mannheimer, David	X		
Stewart, David C.			X
Coats, Robert			X
Appellate Total	1	0	2
Superior			
Andrews, Elaine M.	X		
Brown, Harold M.			X
Beistline, Ralph R.		X	
Card, Larry D.			X
Collins, Patricia A.			X
Curda, Dale O			X
Cutler, Bev	X		
Erllich, Richard		X	X
Esch, Ben			X
Gonzalez, Rene J.			X
Gleason, Sharon		X	
Greene, Mary E.	X		

Hensley, Dan A.			X
Hopwood, Donald D			X
Joannides, Stephanie			X
Jeffery, Michael	X		
Link, Jonathan			X
Michalski, Peter A	X		
Pengilly, Charles	X		
Recse, John			X
Rindner, Mark			X
Sanders, Eric			X
Savell, Richard D.			X
Smith, Eric			X
Steinkruger, Niesje J.			X
Stephens, Trevor			X
Tan, Sen K.	X		
Thompson, Michael A.			X
Torrisi, Fred			X
Weeks, Larry R.			X
Wolverton, Michael	X		
Zervos, Larry C			X
Superior Total	8	3	22
District			
Adams, Sam	X		
Ashman, Peter G.			X
Bolger, Joel H.			X
Finn, Natalie	X		
Froehlich, Peter	X		

Funk, Raymond	X		
Kauvar, Jane	X		
Lohff, John R.			X
Lombardi, Suzanne			X
Nolan, Nancy			X
Miller, Kevin	X		
Motyka, Gregory J.			X
Murphy, Sig		X	
Neville	X		
Rhoades, Stephanie			X
Wanamaker, James N.			X
Wood, Mark I.			X
District Total	7	1	9
Total	18	6	34

**GENERAL INFORMATION REGARDING
THE SELECTION, RETENTION AND
TERMS OF OFFICE FOR JUDGES**

CONTENTS

Page	
1	Summary Memorandum: LAA Legal Research 1/30/01
2	Judicial Appointments: Legislative Research Report 3/3/98 cover sheet
3	Judicial Appointments: Alaska Court System
4	Judicial Selection: Predominant Selection Methods
5	Average Term for Elected Judges – 4/4/01 Memorandum
6-7	Terms of Judges: All States
8	“Judging How Justices Are Chosen” – Center for Public Policy Sept/Oct 2000
9-11	Selection and Retention of Judges: All States
12-15	The Alaska Court System Opposes SJR 22
16-17	The Alaska Judicial Council opposition to shortening retention terms to four years as proposed by SJR 15 (1999)
18	Sponsor Statement – SJR 15 (1999) – A Constitutional Amendment providing four year terms for judges and that Judicial Appointments be confirmed by the Legislature Judges
19	Press Release – SJR 15 (1999)

Legislative Research Services

Alaska State Legislature
Legislative Affairs Agency
Division of Legal and Research Services

State Capitol
Juneau, AK 99801
Phone: 907-465-3991
Fax: 907-465-3908

January 30, 2001

Memorandum

TO: Senator Dave Donley

FROM: Cherie Nienhuis^{CN}
Legislative Analyst

RE: Judicial Selection in Other States
Legislative Research Request 01.104

You asked for information on how other states select their judges; specifically if judges are appointed or elected, and if they are appointed, whether they must be confirmed and by whom.

I have attached Legislative Research Report 98.047, "Judicial Appointments," which explains judicial appointments and contains a very useful table on how other states select their judges. In addition, I have photocopied Table 4.4, "Selection and Retention of Judges," from The Council of State Government's, *The Book of the States, 2000-01*, which should provide updated information. Those states with laws that require consent of appointments from any entity have been highlighted.

I hope you find this information useful. Please do not hesitate to contact us if you have questions or need additional information.

Legislative Research Report 98.047
March 3, 1998

Judicial Appointments

Legislative Research Services
Division of Legal and Research Services
Legislative Affairs Agency
Alaska State Legislature

Prepared by Patricia Young, Legislative Analyst



*Legislative Research Services
130 Seward Street, Room 218
Juneau, AK 99801
907-465-3991
907-463-3351 (fax)
www.legis.state.ak.us/fogro/fogros.htm*

JUDICIAL APPOINTMENTS

You wished to know the procedure by which judges are appointed to fill vacancies in the Alaska Court System. You were particularly interested in knowing with whom the authority for making such appointments resides.

In Alaska, only the governor has the authority to make permanent judicial appointments. Article IV, Section 5, of the Alaska Constitution specifies that the governor will choose and appoint justices to the supreme court and judges to the superior court from a list of nominees submitted by the Alaska Judicial Council.¹ Although the constitution does not require it, the legislature has provided that judgeships in the court of appeals and district court be filled in the same manner.² Following their appointments, justices and judges are subject to periodic retention elections.

The chief justice—who is selected by majority vote of the supreme court justices from among themselves—has the power to appoint a retired judge to serve *pro tempore* (or *pro tem*, i.e., temporarily) as a justice or judge in any court of the state.³ Such *pro tempore* appointments may be made for one or more court cases or for up to two years, except that a *pro tempore* judge or justice may complete a trial or appeal that is in progress at the conclusion of the appointment. Appointments may also be renewed.

The chief justice also has the power to assign judges from one court or division to another for temporary service.⁴ Additionally, the chief justice selects—with the approval of the supreme court—an administrative director who may, with the permission of the chief justice, assign sitting judges to serve in judicial districts outside their own when the courts are in need of assistance and the judges consent to the assignments.⁵ A single temporary assignment of a judicial officer to another judicial district may not exceed 90 days, unless the judicial officer consents to the additional assignment. Assignments in excess of 90 days or any assignment to which a judicial officer has not consented may be made only by special order of the chief justice.⁶

The following table shows the method states predominantly use when selecting and appointing judges and justices. I hope this information is helpful. Please let me know if you have questions or need further information.

¹ States use a variety of methods to select judges, depending on the court; however, the most commonly used selection process involves nomination of qualified candidates by a special, nonpartisan nominating body (usually composed of both attorneys and nonattorneys); appointment by the governor; and periodic voting by the electorate in regard to judges' retention of office. According to the Council of State Governments's *Book of the States, 1986-87*, nineteen states (including Alaska) and the District of Columbia use this type of selection process, which is generally known as a merit or commission system. Nine states select judges by partisan elections; another 13 by nonpartisan elections. The legislature is involved, to some degree, in the selection of judges in eight of the remaining nine states.

² Alaska Statute 22.07.070 (vacancies in the court of appeals) and AS 22.15.170 (selection of district judges and magistrates). The presiding judge of the superior court in each judicial district appoints magistrates, who serve a judicial function at the local level. The presiding judge also may appoint persons to act for up to one year in the capacity of district judges, as needed.

³ Alaska State Constitution, Article IV, Section 11, allows for "special assignments [of retired judges and justices] as provided by court rule." Alaska Rules of Court, Administrative Rule 23, provides for the chief justice, or another justice designated by the chief justice, to appoint, by special assignment, retired justices and judges to sit *pro tempore*.

⁴ Alaska State Constitution, Article IV, Section 18 (court administration).

⁵ Alaska State Constitution, Article VI, Section 16, provides that the chief justice shall appoint an administrator. Alaska Rules of Court, Administrative Rule 1, enumerates the duties of the administrative director of the courts.

⁶ Alaska Rules of Court, Administrative Rule 24 (f) (length of assignment).

**Table 1: Judicial Selection—Predominant Selection Method
Intermediate Appellate Court and Court of Last Resort**

Partisan Election	Nonpartisan Election	Selection Commission	Elected or Appointed by Legislature	Other
Alabama	Georgia	Alaska	Connecticut (b)	California (f)
Arkansas	Idaho	Arizona	Rhode Island (c)	Maine (g)
Illinois	Kentucky	Colorado	South Carolina (d)	New Hampshire (h)
Mississippi	Louisiana	Delaware	Virginia (e)	New Jersey (a)
North Carolina	Michigan	Florida		New York (i)
Pennsylvania	Minnesota	Hawaii (a)		
Tennessee	Montana	Indiana		
Texas	Nevada	Iowa		
West Virginia	North Dakota	Kansas		
	Ohio	Maryland (a)		
	Oregon	Massachusetts		
	Washington	Missouri		
	Wisconsin	Nebraska		
		New Mexico		
		Oklahoma		
		South Dakota		
		Utah		
		Vermont (a)		
		Wyoming		
		District of Columbia (e)		

NOTES:

Many states use a variety of methods for selecting judges. We have attempted to place each state in the category that describes its most predominant practice for selecting intermediate appellate court and court of last resort judges. For more detail, see Table 4.4, "Selection and Retention of Judges," Council of State Governments, *Book of the States, 1996-97*. States in which governors appoint judges from among nominees submitted by an impartial body that screens applicants have been categorized under "Selection Commission."

(a) Appointments made with advice and consent of the senate.

(b) Appointments made by the legislature from nominations submitted by governor exclusively from candidates submitted by the selection commission.

(c) Supreme court justices elected by legislature; superior, district, and family court judges appointed by governor with advice and consent of senate.

(d) Supreme court, court of appeals, circuit court, and family court judges elected by legislature from names submitted on a nonpartisan basis by judiciary committee of legislature. Probate judges elected on partisan ballot. Magistrates are appointed by governor with advice and consent of senate.

(e) Elected by majority vote of the legislature.

(f) Supreme court and courts of appeal judges appointed by governor and confirmed by commission on judicial appointments.

(g) Appointments made by governor with advice and consent of senate; no nominating commission.

(h) Appointments made by governor and confirmed by majority vote of elected five-member executive council; no nominating commission.

(i) Court of appeals judges appointed by governor with advice and consent of senate; no nominating commission. Others elected on partisan ballot.

SOURCE:

Council of State Governments, *The Book of the States, 1996-97*.

MEMO

TO: DD
FROM: JOMO

AVERAGE TERM FOR ELECTED JUDGES

STATE	SUPERIOR	APPELLATE	SUPREME
Alabama	6	6	6
Arkansas	?	8	8
California	?	12	12
Florida	?	?	?
Georgia	4	6	6
Idaho	?	?	6
Illinois	?	?	?
Kentucky	?	?	?
Louisiana	?	?	?
Maryland	15	?	15
Michigan	?	?	8
Minnesota	6	6	6
Mississippi	?	?	8
Montana	?	?	?
Nevada	?	?	6
New Mexico	8	8	8
North Carolina	8	8	8
North Dakota	?	?	10
Ohio	?	6	6
Oklahoma	?	?	?
Oregon	6	6	6
Pennsylvania	?	?	?
Texas	?	?	6
Washington	?	?	6
West Virginia	?	?	12
Wisconsin	?	?	10
	53	66	153
average from data:	9	7	8
average without outliers	6	7	8

Table 4.1
STATE COURTS OF LAST RESORT

State or other jurisdiction	Name of court	Justices chosen by			Term (in years) (c)	Chief justice	
		At large	By district	No. of judges (b)		Method of selection	Term of service as chief justice
Alabama	S.C.	*		9 (d)	6	Popular election	6 years
Alaska	S.C.	*		5	10	By court	3 years (e)
Arizona	S.C.	*		5	6	By court	5 years
Arkansas	S.C.	*		7	8	Popular election	8 years
California	S.C.	*		7	12	Appointed by governor	12 years
Colorado	S.C.	*		7	10	By court	Indefinite
Connecticut	S.C.	*		7 (f)	8	Legislative appointment (g)	8 years
Delaware	S.C.	*		5	12	Appointed by governor	12 years
Florida	S.C.	(h)		7	6	By court	2 years
Georgia	S.C.	*		7	6	By court	4 years
Hawaii	S.C.	*		5	10	Appointed by governor, with consent of Senate (i)	10 years
Idaho	S.C.	*		5	6	By court	4 years
Illinois	S.C.		*	7	10	By court	3 years
Indiana	S.C.	*		5	10 (j)	Judicial nominating commission appointment	5 years
Iowa	S.C.	*		9	8	By court	8 years or duration of term
Kansas	S.C.	*		7	6	Rotation by seniority	Indefinite
Kentucky	S.C.		*	7	8	By court	4 years
Louisiana	S.C.		*	8 (k)	10	By seniority of service	Duration of service
Maine	S.J.C.	*		7	7	Appointed by governor	7 years
Maryland	C.A.		*	7	10	Appointed by governor	Indefinite
Massachusetts	S.J.C.	*		7 (l)	To age 70	Appointed by governor (m)	To age 70
Michigan	S.C.	*		7	8	By court	2 years
Minnesota	S.C.	*		7	6	Popular election	6 years
Mississippi	S.C.		*	9 (n)	8	By seniority of service	Duration of service
Missouri	S.C.	*		7	12	By court (o)	2 years
Montana	S.C.	*		7	8	Popular election	8 years
Nebraska	S.C.		*(p)	7	6 (q)	Appointed by governor from Judicial Nominating Commission	Duration of service
Nevada	S.C.	*		5	6	Rotation	2 years
New Hampshire	S.C.	*		5	To age 70	Appointed by governor with approval of elected executive council	To age 70
New Jersey	S.C.	*		7	7 (r)	Appointed by governor, with consent of Senate	Duration of service
New Mexico	S.C.	*		5 (s)	8	By court	2 years
New York	C.A.	*		7	14	Appointed by governor from Judicial Nomination Commission	14 years
North Carolina	S.C.	*		7	8	Popular election	8 years
North Dakota	S.C.	*		5	10	By Supreme and district court judges	5 years (t)
Ohio	S.C.	*		7	6	Popular election	6 years
Oklahoma	S.C.		*	9	6	By court	2 years
	C.C.A.		*	5	6	By court	2 years
Oregon	S.C.	*		7	6	By court	6 years
Pennsylvania	S.C.	*		7	10	Rotation by seniority	Duration of term
Rhode Island	S.C.	*		5	Life	Appointed by governor from Judicial Nominating Commission	Life
South Carolina	S.C.	*		5	10	Legislative election	10 years
South Dakota	S.C.		*(u)	5	8	By court	4 years
Tennessee	S.C.	*		5	8	By court	4 years
Texas	S.C.	*		9	6	Partisan election	6 years
	C.C.A.	*		9	6	Partisan election	6 years (v)
Utah	S.C.	*		5	10 (w)	By court	4 years
Vermont	S.C.	*		5	6	Appointed by governor from Judicial Nomination Commission, with consent of Senate	6 years
Virginia	S.C.	*		7	12	Seniority	Indefinite
Washington	S.C.	*		9	6	By court	4 years
West Virginia	S.C.A.		*	5	12	Rotation by seniority	1 year
Wisconsin	S.C.	*		7	10	Seniority	Until declined
Wyoming	S.C.	*		5	8	By court	At the pleasure of the court
Dist. of Columbia	C.A.	*		9	15	Judicial Nominating Commission appointment	4 years
American Samoa	H.C.	*		8 (x)	(y)	Appointed by Secretary of the Interior	(w)
Puerto Rico	S.C.	*		7	To age 70	Appointed by Governor, with consent of Senate	To age 70

Sources: Court Statistics Project, *State Court Caseload Statistics, 1998* (National Center for State Courts 1999) and *State Court Organization 1998*; state constitutions, statutes and court administration offices.

- Key:
 S.C. — Supreme Court
 S.C.A. — Supreme Court of Appeals
 S.J.C. — Supreme Judicial Court
 C.A. — Court of Appeals
 C.C.A. — Court of Criminal Appeals
 H.C. — High Court
 (a) See Table 4.4, "Selection and Retention of Judges," for details.
 (b) Number includes chief justice.
 (c) The initial term may be shorter. See Table 4.4, "Selection and Retention of Judges," for details.
 (d) 9 justices sit in panels of 5 or en banc.
 (e) A justice may serve more than one term as chief justice, but may not serve consecutive terms in that position.
 (f) 7 justices sit in panels of 5 (membership rotates daily); upon order of chief justice, 6 or 7 may sit on panel.
 (g) Governor nominates from candidates submitted by Judicial Selection Commission.
 (h) Regional (5), Statewide (2), Regional based on District of Appeal.
 (i) Judicial Selection Commission nominates.

- (j) Initial two years; retention 10 years.
 (k) Includes one assigned from courts of appeal.
 (l) 7 justices sit on the court, and 5 justices sit en banc.
 (m) Chief Justices are appointed, until age 70, by the Governor with the advice and consent of the Executive (Governor's) Council.
 (n) 9 justices sit in panels of 1 and en banc.
 (o) Selection is typically rotated among the judges.
 (p) Chief justice chosen statewide; associate judges chosen by district.
 (q) More than three years for first election and every six years thereafter.
 (r) Followed by tenure.
 (s) 5 justices sit in panels of 3.
 (t) Or expiration of term, whichever is first.
 (u) Initially chosen by district; retention determined statewide.
 (v) Presiding judge of Court of Criminal Appeals.
 (w) Initial three years; retention 10 years.
 (x) Chief judges and associate judges sit on appellate and trial divisions.
 (y) For good behavior.

Table 4.2 7/10/00
STATE INTERMEDIATE APPELLATE COURTS AND GENERAL TRIAL COURTS.
NUMBER OF JUDGES AND TERMS

State or other jurisdiction	Intermediate appellate court			General trial court		
	Name of court	No. of judges	Term (years)	Name of court	No. of judges	Term (years)
Alabama	Court of Criminal Appeals	5	6	Circuit Court	131	6
	Court of Civil Appeals	5	8			
Alaska	Court of Appeals	3	8	Superior Court	40 (a)	6
Arizona	Court of Appeals	22	8	Superior Court	136 (i)	4
Arkansas	Court of Appeals	12	8	Chancery/Probate Court and Circuit Court	106 (b)	(b)
California	Court of Appeals	93	12	Superior Court	1,012 (c)	6
Colorado	Court of Appeals	16	8	District Court	154 (d)	6
Connecticut	Appellate Court	9	8	Superior Court	167	8
Delaware	...	...	...	Superior Court	17	12
				Court of Chancery	(e)	12
Florida	District Courts of Appeals	61	8	Circuit Court	468	6
Georgia	Court of Appeals	10	6	Superior Court	175	4
Hawaii	Intermediate Court of Appeals	4	10	Circuit Court	27 (f)	10
Idaho	Court of Appeals	3	8	District Court	37 (g)	4
Illinois	Appellate Court	42 (h)	10	Circuit Court	497 (i)	6 (j)
Indiana	Court of Appeals	15 (k)	10 (l)	Superior Court, Probate Court and Circuit Court	279	6
Iowa	Court of Appeals	6	6	District Court	328 (m)	6
Kansas	Court of Appeals	10	4	District Court	156 (n)	4
Kentucky	Court of Appeals	14	8	Circuit Court	108	8
Louisiana	Court of Appeals	54	10	District Court	222 (o)	6
Maine	...	...	...	Superior Court	18	7
Maryland	Court of Special Appeals	13	10	Circuit Court	140	15
Massachusetts	Appeals Court	14	(p)	Superior Court	80	(p)
Michigan	Court of Appeals	28	6	Circuit Court	210	6
Minnesota	Court of Appeals	16	6	District Court	254	6
Mississippi	Court of Appeals	10	8	Circuit Court	49	4
Missouri	Court of Appeals	32	12	Circuit Court	135(q)	6
Montana	...	...	...	District Court	37 (r)	6
Nebraska	Court of Appeals	6	8 (s)	District Court	53	8 (t)
Nevada	...	...	...	District Court	51	6
New Hampshire	...	...	...	Superior Court	28(u)	(u)
New Jersey	Appellate Division of Superior Court	32	7 (v)	Superior Court	384(w)	7 (x)
New Mexico	Court of Appeals	10	8	District Court	72	8
New York	Appellate Division of Supreme Court	56	5 (y)	Supreme Court and County Court	496	(z)
	Appellate Terms of Supreme Court	15	5 (y)			
North Carolina	Court of Appeals	12	8	Superior Court	99(aa)	8
North Dakota	...	...	...	District Court	43	6
Ohio	Court of Appeals	68	6	Court of Common Pleas	372	6
Oklahoma	Court of Appeals	12	6	District Court	71 (bb)	4
Oregon	Court of Appeals	10	8	Circuit Court	160	6
				Tax Court	1	8
Pennsylvania	Superior Court	15	10	Court of Common Pleas	385	10
	Commonwealth Court	9	10			
Rhode Island	...	...	Life	Superior Court	22	Life
South Carolina	Court of Appeals	9	6	Circuit Court	46 (cc)	6
South Dakota	...	...	...	Circuit Court	37 (dd)	8
Tennessee	Court of Appeals	12	8	Chancery Court	33	8
	Court of Criminal Appeals	12	8	Circuit Court	85	8
				Criminal Court	31	8
				Probate Court	2	(ee)
Texas	Court of Appeals	80	6	District Court	396	4
Utah	Court of Appeals	7	10 (ff)	District Court	70 (gg)	6
Vermont	...	...	...	Superior Court and District Court	29 (hh)	6
Virginia	Court of Appeals	10	8	Circuit Court	148	8
Washington	Court of Appeals	21	8	Superior Court	167	4
West Virginia	...	...	...	Circuit Court	62	8
Wisconsin	Court of Appeals	16	6	Circuit Court	234	6
Wyoming	...	...	...	District Court	17	6
Dist. of Columbia	...	...	...	Superior Court	59	15
Puerto Rico	Circuit Court of Appeals	33	16	Court of First Instance	315	12

Sources: National Center for State Courts, State Court Caseload Statistics: Annual Report 1998 and State Court Organization 1998

Key:

... — Court does not exist in jurisdiction or not applicable.

(a) Plus eight masters.

(b) There are 30 circuit court judges who serve four-year terms. Chancery probate court, consists of 33 judges who serve six-year terms. (43 additional judges serve both circuit and chancery courts)

(c) Plus 205 commissioners.

(d) Plus 32 magistrates.

(e) One chancellor and four vice-chancellors.

(f) Plus 15 family judges.

(g) Plus 81 full-time magistrate/judges.

(h) Plus 10 supplemental judges.

(i) Plus 318 associate judges, and 50 permissive associate judges

(j) Associate judges 4 years

(k) Plus one tax court judge

(l) Two years initial, 10 years retention

(m) Includes 112 district judges, 54 district associate judges, 7 senior judges, 12 associate juvenile judges, 135 part-time magistrates, one associate probate judge, and 7 alternate district associate judges

(n) Plus 69 district magistrates.

(o) Plus eleven commissioners.

(p) To age 70

(q) Plus 175 associate circuit judges.

(r) Plus six judges for water court and one for workers' compensation court

(s) More than three years for first election and every six years thereafter

(t) The initial term is for 3 years but not more than 5 years

(u) Plus 11 full-time marital masters.

(v) Followed by tenure

(w) Plus 21 surrogates.

(x) On reappointment until age 70

(y) Of duration

(z) Fourteen years for Supreme Court, 10 years for county court

(aa) Plus 100 clerks with estate jurisdiction

(bb) Plus 77 associate judges and 73 special judges

(cc) Plus 21 masters-in-equity

(dd) Plus 8 low magistrates, 7 part-time law magistrates, 92 full-time clerk magistrates, and 58 part-time clerk magistrates

(ee) Locally determined

(ff) Three years initial, six years retention

(gg) Plus 7 domestic court commissioners

(hh) District and superior court judges also serve as family court judges

(i) Plus two part-time judges

Judging How Justices Are Chosen

By Lawrence W. Reed

Some legal observers contend it's time to change the way Michigan Supreme Court justices are selected. Is this a wise idea? Let's look at the current process and its results.

Candidates for the court are nominated by political parties at summer conventions, after which they officially run and appear on the ballot as "nonpartisan." When a vacancy occurs because of death or resignation, the governor appoints a replacement, who must face voters in the next general election.

Surveying just a handful of states reveals no uniform number of justices or a standard method of selection that would appear to have decisive advantages over the others. Michigan's court has seven justices; West Virginia, Tennessee, and Indiana are among the states that have only five on their highest courts; the supreme court of Texas, like its federal counterpart, has nine.

At least one state, Tennessee, requires its high court to meet in multiple locations. Some states, but not all, require state senate confirmation of gubernatorial nominations to their supreme court. In some states, justices run as partisans from the very beginning; in others, they are nonpartisan throughout the process. Michigan's partisan/nonpartisan hybrid is somewhat unusual, but there is little evidence to suggest it has produced inferior justices.

In Maryland, members of the state's highest court are initially appointed by the governor and confirmed by the state senate. After that they run for office on their records, unopposed. If voters reject a judge's retention in office, the office becomes vacant and must be filled by a new appointee. The process may look nonpartisan because no political party officially nominates a justice, and competing court candidates don't go head-to-head in noisy elections, but governors almost always choose men and women who share their personal and political philosophies.

While the process of partisan nomination followed by nonpartisan campaigning may appear contradictory, "problems" with it are overblown. A party endorsement does not dictate how a justice may rule in any future case; rather, it is reflective of the fact that a jurist's track record and philosophy are generally compatible with a particular party's broad perspective. Requiring candidates to run on a party line in November may be more consistent, but it might also prompt too many voters to make their decisions based on party labels rather than the qualities and performance of the candidates. If voters have to dig a little bit to learn who's running and why, that's probably a healthy thing.

Proposals to make Michigan Supreme Court slots purely appointive—as they are at the federal level, subject to Senate confirmation for life terms—would do away with the messy electoral process altogether. But that reform would not necessarily guarantee high-quality, squeaky-clean justices immune to either cash or politics.

Moreover, periodically putting incumbents and wannabes before the voters gives citizens the opportunity to rectify appointive mistakes. Even though most voters spend appallingly little time learning much about who is on the ballot, Michigan citizens don't want to give up their right to vote on who serves on their highest court.

A few observers have occasionally argued that some form of "merit selection" is missing from Michigan's Supreme Court. They usually advocate

that the governor name justices only from a pre-approved list, which almost always means a list approved by the State Bar or some committee thereof. Supposedly, this would assure that we get the best and most qualified . . . but the legal community is not some angelic and dispassionate group of altruists. It is made up of its own elite and factions, each with its own agenda. Governors have some incentive to choose good people for spots on the court and if they fail, at least the voters under the current system can rectify their mistakes.

If the present system unduly politicizes the Court or forces candidates to compromise their integrity by grubbing for campaign money, one small reform could ameliorate that. It would be drawn from the so-called "Missouri system" and

would require that justices go before the voters in retention elections when their terms are up. By voting "yes" or "no" voters would decide whether to retain or remove a justice, but wouldn't choose between competing candidates on the ballot.

Fundamentally, however, the current process has not failed Michigan citizens. Rather, it has produced what is arguably the best state supreme court in the nation: a body of eminently qualified, experienced, and sensible jurists, the majority of whom believe in interpreting law, not manufacturing it from the bench. Let's be careful we don't "fix" what appears not to be broken.

Surveying just a handful of states reveals no uniform number of justices or a standard method of selection that would appear to have decisive advantages over all the others.

Lawrence W. Reed is president of the Midland, Michigan-based Mackinac Center for Public Policy.

Table 4.4
SELECTION AND RETENTION OF JUDGES

<i>State or other jurisdiction</i>	<i>How selected and retained</i>
Alabama	Appellate, circuit, district and probate judges elected on partisan ballots. Municipal court judges appointed by the governing body of the municipality (majority vote of its members).
Alaska	Supreme Court, court of appeals, superior court and district court judges appointed by governor from nominations submitted by Judicial Council. Supreme Court, court of appeals and superior court judges approved or rejected on nonpartisan retention ballot at first general election held more than three years after appointment. Reconfirmation every 10, eight and six years, respectively. District court judges approved or rejected at first general election held more than two years after appointment. Reconfirmation every four years. District court magistrates appointed by and serve at pleasure of presiding judge of superior court in each judicial district.
Arizona	Supreme Court justices and court of appeals judges appointed by governor from a list of not less than three nominees submitted by a nine-member Commission on Appellate Court Appointments. Superior court judges (in counties with population greater than 250,000) appointed by governor from a list of not less than three nominees submitted by a nine-member commission on trial court appointments. Judges initially hold office for term ending 60 days following next regular general election after expiration of two-year term. Judges who file declaration of intention to be retained in office run at next regular general election on nonpartisan retention ballot. Superior court judges in counties having population less than 250,000 elected on nonpartisan ballot; justices of the peace elected on partisan ballot; police judges and magistrates selected as provided by charter or ordinance; Tucson city magistrates appointed and reappointed by mayor and council from nominees submitted by nonpartisan Merit Selection Commission on magistrate appointments.
Arkansas	All elected on partisan ballot.
California	Supreme Court and courts of appeal judges appointed by governor, confirmed by Commission on Judicial Appointments. Judges run unopposed on nonpartisan retention ballot at next general election after appointment. Superior court judges elected on nonpartisan ballot with counties having the option to use selection method described above; judges elected to full term at next general election on nonpartisan ballot. Municipal court and justice court judges initially appointed by governor and county board of supervisors, respectively, retain office by election on non-partisan ballot.
Colorado	Supreme Court and court of appeals judges appointed by governor from nominees submitted by Supreme Court Nominating Commission. District judges appointed by governor from nominees submitted by Judicial District Nominating Commission. After initial appointive term of two years, judges run on nonpartisan retention ballot. Municipal judges appointed by municipal governing body. Denver County judges appointed by mayor from list submitted by nominating commission; judges run on nonpartisan retention ballot.
Connecticut	Judges of the Supreme Court, appellate court, and district court appointed by Legislature from nominations submitted by governor exclusively from candidates submitted by the Judicial Selection Commission. Judicial Review Council makes recommendations on nominations for reappointment. Probate judges elected on partisan ballots.
Delaware	All appointed by governor from list submitted by a judicial nominating commission (which is established by executive order) with consent of majority of Senate.
Florida	Supreme Court and district courts of appeal judges appointed by governor from nominees submitted by appropriate judicial nominating commission. Judges run for retention at next general election preceding expiration of term. Circuit and county court judges elected on nonpartisan ballots.
Georgia	Supreme Court, court of appeals, superior court, and state court judges elected on nonpartisan ballots. For the magistrate courts, the chief magistrate is selected in a partisan election; additional magistrates are appointed by the chief magistrate with the consent of the judges of the superior court. Probate judges and justices of peace elected on partisan ballots. Juvenile and municipal court judges appointed.
Hawaii	Supreme Court and intermediate court of appeals justices and circuit court judges nominated by Judicial Selection Commission (on list of four to six names) and appointed by governor with consent of Senate. Judges reappointed to subsequent terms by the Judicial Selection Commission. District court judges nominated by Commission (on list of at least six names) and appointed by chief justice.
Idaho	Supreme Court and court of appeals justices and district court judges elected on nonpartisan ballot. Magistrates appointed on nonpartisan merit basis by District Magistrates Commission and run for retention in first general election next succeeding the 18-month period following initial appointment; thereafter, run every four years.
Illinois	Supreme Court, appellate court and circuit court judges nominated at primary elections or by petition and elected at general or judicial elections on partisan ballot. Judges run in uncontested retention elections for subsequent terms. Circuit court associate judges are appointed by circuit judges for four-year terms.
Indiana	Supreme Court justices and court of appeals judges are appointed by governor from list of three nominees submitted by seven-member Judicial Nominating Commission. Judges serve until next general election after two years from appointment date; thereafter, run for retention on record. Circuit, superior and county judges in most counties run on partisan ballot. Circuit court judges in Vanderburgh County run on a nonpartisan ballot. Superior court judges in Allen County run on a nonpartisan ballot. The majority of superior court judges in Lake County, and all superior court judges in St. Joseph and Vanderburgh counties, are appointed by the governor upon recommendation of the Judicial Nominating Commission. Probate court and city court judges are selected by partisan elections.
Iowa	Supreme Court, court of appeals and district court judges appointed by governor from lists submitted by nominating commissions. Judges serve an initial one-year term until January 1 following next general election, then run on records for retention. Judicial magistrates appointed by county judicial magistrate appointing commission. District associate judges are appointed by the district judges of the judicial election district from persons nominated by the County Magistrate Appointing Commission, and stand for retention every four years thereafter.

See footnotes at end of table.

SELECTION AND RETENTION OF JUDGES — Continued

<i>State or other jurisdiction</i>	<i>How selected and retained</i>
Kansas	Supreme Court and court of appeals judges appointed by governor from nominations submitted by Supreme Court Nominating Commission. Judges serve until second Monday in January following first general election after one year in office; thereafter run on record for retention every six (Supreme Court) and four (court of appeals) years. District judges in 17 judicial districts are appointed by governor through nonpartisan commission plan. District judges in 14 judicial districts are elected on partisan ballot.
Kentucky	All judges elected on nonpartisan ballot.
Louisiana	All justices and judges elected on partisan basis, but state has open primary which requires all candidates to appear on a single ballot.
Maine	All appointed by governor with confirmation of the Senate, except probate judges who are elected on partisan ballot. Governor reappoints and Senate reconfirms for seven-year terms.
Maryland	Court of Appeals and court of special appeals judges nominated by judicial nominating commission, and appointed by governor with advice and consent of Senate. Judges run on record for retention at next general election after one year of service. Judges of circuit courts and Supreme Bench of Baltimore City nominated by commission and appointed by governor. Judges of circuit court run on nonpartisan ballot in first general election after year of service (may be challenged by other candidates). District court judges nominated by commission and appointed by governor, subject to Senate confirmation. Judges of the district court appointed by governor, with Senate confirmation. Judges of the orphans' court are selected in nonpartisan elections.
Massachusetts	All nominated and appointed by governor with advice and consent of Governor's Council. Judicial Nominating Commission, established by executive order, submits names on nonpartisan basis to governor.
Michigan	Nominated in party conventions, all except district court magistrates are elected on nonpartisan ballot at general election. District court magistrates appointed by district court judges, with approval of county board of commissioners.
Minnesota	All elected on nonpartisan ballot.
Mississippi	All elected on nonpartisan ballot, except municipal court judges who are appointed by governing authority of each municipality.
Missouri	Judges of Supreme Court, court of appeals and the circuit courts of Jackson, Clay, Platte, and St. Louis counties appointed initially by governor from nominations submitted by judicial selection commissions. Judges run for retention after one year in office. All other judges elected on partisan ballot.
Montana	All elected on nonpartisan ballot. Judges unopposed in reelection effort, run for retention. Water court judges are appointed by chief justice; Workers' Compensation judges are appointed by the governor.
Nebraska	All judges appointed initially by governor from nominees submitted by judicial nominating commissions. Judges run for retention on non-partisan ballot in general election following initial three-year term; subsequent terms are six years.
Nevada	All elected on nonpartisan ballot.
New Hampshire	All appointed by governor and confirmed by majority vote of elected five-member executive council.
New Jersey	Judges of Supreme Court, superior court, tax court and municipal court appointed by governor with advice and consent of Senate, except judges of municipal courts serving a single municipality who are appointed by the governing body. Judges are reappointed for seven-year terms by the governor (to age 70) with the advice and consent of Senate. Surrogates selected in partisan elections.
New Mexico	Supreme Court, court of appeals, district and metropolitan judges appointed by governor from list submitted by a judicial nominating commission. At next general election, after appointment, judges run for full terms in partisan, contested election. The elected judge runs for subsequent terms in uncontested retention elections. Judges of probate court and municipal and magistrate courts are selected in partisan elections.
New York	All elected on partisan ballot, except judges of Court of Appeals, who are appointed by governor from list submitted by commission on judicial nomination with advice and consent of Senate. Governor also appoints judges of court of claims and designates members of appellate division of supreme court. Mayor of New York City appoints judges of criminal and family courts in the city from list submitted by a judicial nominating commission, established by mayor's executive order.
North Carolina	All elected on partisan ballot, except special judges of superior court who are appointed by governor, and magistrates, who are appointed by senior resident superior court judge.
North Dakota	All elected on nonpartisan ballot.
Ohio	All nominated in partisan primary elections, but in general elections, party affiliations not listed on ballot. Court of claims judges may be appointed by chief justice of Supreme Court from ranks of Supreme Court, court of appeals, court of common pleas or retired judges.
Oklahoma	Supreme Court, Court of Criminal Appeals, court of appeals and Workers' Compensation Court judges appointed by governor from list of three names submitted by judicial nominating commission. Judges run for retention on nonpartisan ballot at first general election following completion of one year's service; Workers' Compensation Court judges reappointed by governor. District and associate district judges elected on nonpartisan ballot. Special judges appointed by district judges within judicial administrative districts. Municipal judges appointed by governing body of municipality.
Oregon	All judges elected on nonpartisan ballot for six-year terms, except municipal judges who are generally appointed and serve as prescribed by city council.
Pennsylvania	All initially elected on partisan ballot and thereafter on nonpartisan retention ballot, except magistrates (Pittsburgh) who are appointed by mayor with advice and consent of city council.
Rhode Island	All judges appointed by governor from list submitted by Judicial Nominating Commission, with the separate advice and consent of the Senate and House of Representatives. All judges hold office during good behavior.

SELECTION AND RETENTION OF JUDGES — Continued

<i>State or other jurisdiction</i>	<i>How selected and retained</i>
South Carolina	Supreme Court, court of appeals, circuit court and family court judges elected by legislature from names submitted on a nonpartisan basis by Judicial Merit Selection Commission. Probate judges elected on partisan ballot. Magistrates appointed by governor with advice and consent of Senate. Municipal judges appointed by mayor and aldermen of city.
South Dakota	Supreme Court justices appointed by governor from nominees submitted by Judicial Qualifications Commission. Justices run for retention at first general election after three years in office. Circuit court judges elected on nonpartisan ballot. Magistrates appointed by presiding judge of judicial court with approval of Supreme Court.
Tennessee	Judges of the Supreme Court and intermediate appellate courts appointed initially by governor from list of three nominees submitted by Appellate Court Nominating Commission. Judges run on nonpartisan retention ballot at biennial general election held more than 30 days after occurrence of vacancy. All other judges elected on partisan ballot, except some municipal and city court judges, who are appointed by governing body of city.
Texas	All elected on partisan ballot (method of selection for municipal judges determined by city charter or local ordinance).
Utah	Supreme Court, district court, circuit court and juvenile court judges appointed by governor from list of at least three nominees submitted by Judicial Nominating Commission. Judges run unopposed for retention in general election following initial three-year term; thereafter run on record for retention every 10 (Supreme Court) and six (other courts of record) years.
Vermont	Supreme Court justices, superior court and district and family court judges nominated by Judicial Nominating Board and appointed by governor with advice and consent of Senate. Judges retained by vote of general assembly for six-year terms.
Virginia	All full-time judges elected by majority vote of legislature.
Washington	Supreme Court, court of appeals, superior court and district court judges elected on nonpartisan ballot. Municipal judges in cities having a population greater than 400,000 are elected on nonpartisan ballot; municipal judges in cities of less than 400,000 appointed in manner determined by city legislative body.
West Virginia	Supreme Court of Appeals judges, circuit court judges and magistrates elected on partisan ballot. Municipal judges selected according to city charter.
Wisconsin	Supreme Court, court of appeals and circuit court judges elected on nonpartisan ballot. Municipal court judges selected according to bylaw or ordinance adopted by city council, town board or village board.
Wyoming	Supreme Court justices, district and county court judges appointed by governor from list of three nominees submitted by Judicial Nominating Commission. Judges run for retention on nonpartisan ballot at first general election occurring more than one year after appointment. Justices of the peace elected on nonpartisan ballot. Municipal (police) judges appointed by mayor with consent of council.
Dist. of Columbia	Court of Appeals and superior court judges nominated by president of the United States from a list of persons recommended by District of Columbia Judicial Nominating Commission; appointed upon advice and consent of U.S. Senate.
American Samoa	Chief justice and associate justice(s) appointed by the U.S. Secretary of the Interior pursuant to presidential delegation of authority. Associate judges appointed by governor of American Samoa on recommendation of the chief justice, and subsequently confirmed by the Senate of American Samoa.
Guam	All appointed by governor with consent of legislature from list of nominees submitted by Judicial Council; thereafter, run on record for retention every seven years.
Nn. Mariana Islands	All appointed by governor with advice and consent of Senate.
Puerto Rico	All appointed by governor with advice and consent of Senate.
U.S. Virgin Islands	All appointed by governor with advice and consent of legislature.

Sources: Judicial Selection in the United States: A Compendium of Provisions, 3rd Edition (Chicago: American Judicature Society), Forthcoming 2000; "Judicial Selection in the States: Appellate and General Jurisdiction Courts," American Judicature Society.

Note: Unless otherwise specified, judges included in this table are in the state courts of last resort and intermediate appellate and general trial courts.



ALASKA COURT SYSTEM
State of Alaska Court System
Office of the Administrative Director

Stephanie J. Cole
Administrative Director

303 K Street
Anchorage, Alaska 99501
(907) 264-0547
(907) 264-0881
scole@courts.state.ak.us

THE ALASKA COURT SYSTEM OPPOSES SJR 22

SJR 22 would shorten the periods between retention elections for supreme court justices and superior court judges. The proposed shortened retention periods would increase costs to the state, lower voters' scrutiny of individual judges, and are not in line with retention terms in other merit selection states.

The people of Alaska have the opportunity to approve or reject judges at periodic retention elections. Alaska has the nation's most extensive system for seeking public input on retention. The Judicial Council surveys lawyers, law enforcement officers, jurors, court employees and children's caseworkers. It looks at a judge's disciplinary record, disqualifications from assigned cases, appellate record, and the evaluation by the CourtWatch program. The Judicial Council holds public hearings to allow people to testify about their experiences with judges who are standing for retention. Most of this information is made available to the voters. A judge will be voted out of office if enough voters are unhappy with the judge's performance.

The following periods between retention elections are established in the Alaska Constitution:

- Supreme Court Justice: At first general election held more than three years after appointment, and then every 10th year
- Superior Court Judge: At the first general election held more than three years after appointment, and then every 6th year

Alaska's Constitution strikes the right balance between public accountability and judicial independence. Alaska's Constitutional delegates worked hard to create a judicial merit and selection system that delicately balances the public's right to an accountable judiciary with the important goal of a strong and independent judiciary. The current proposal to change retention terms would upset that balance and damage the integrity of Article IV. The convention minutes show that the drafters specifically considered and rejected a proposal to decrease the retention term for supreme court justices to six years.

Shortening retention terms would decrease voters' scrutiny of individual judges. Shortening retention terms would cause more judges to be on the ballot at each general election. Voters are bombarded with information about candidates and ballot propositions. Voters have limited time to study information on judges standing for retention, and increasing the number of judges on the ballot would only exacerbate that problem.

Shorter retention terms increase costs. The judicial evaluation process is integral to retention elections. The Judicial Council provides voters with important information on the performance of each judge or justice, so that voters can make informed retention decisions. Increasing the frequency of retention elections would increase the number, and thus the cost, of these evaluations.

Alaska's current retention terms are in line with retention terms in other merit selection states. Twenty other states have merit selection and retention laws similar to Alaska's. Retention terms in many of those states are similar to or longer than Alaska's current terms.

Retention terms in Colorado, South Carolina and Utah are identical to Alaska's. Six states have retention terms longer than Alaska's: California (12 years supreme, 6 years trial court), Hawaii (10 year terms), Indiana (10 years supreme court, 6 years superior courts), Maryland (10 years), Massachusetts (to age 70) and Missouri (12 years supreme court, 6 years circuit court).

Retention terms in eight other states are significantly longer than the terms proposed in SJR 22: Florida (6 years supreme, 6 years circuit), Iowa (8 years, 6 years), Nebraska (6 years), New Mexico (8 years for appellate, 6 years for district), South Dakota (8 years for supreme court), Tennessee (8 years supreme court), Vermont (6 years), Wyoming (8 years for supreme, 6 years for district court).

Even the states with the shortest retention terms have longer terms than are proposed in SJR 22: Arizona (6 years supreme, 4 years superior), Kansas (6 years supreme court, 4 years district court), Oklahoma (6 years supreme court, 4 years district court).

how long?

Shorter terms will tend to discourage the most highly qualified people from seeking judicial office. Short-term positions are inherently less attractive because of the lack of job security. Highly skilled attorneys with well established practices will be less inclined to leave their private-sector positions knowing that they must stand for retention at four year intervals.

Voters already have an early opportunity to vote on supreme court justices and superior court judges. Alaska's retention system requires newly appointed superior court judges and justices to first stand for retention after a short, probationary term (three years after appointment). This evaluation period gives judges early feedback on their performance and gives voters an early chance to unseat them if necessary.

The Alaska Judicial Council opposes shortening retention terms to four years as proposed by SJR 15

Alaska's Constitution strikes the right balance between public accountability and judicial independence. Even a cursory review of the minutes of the Constitutional convention shows that Alaska's Constitutional delegates worked hard to create a judicial merit selection system that delicately balances the public's right to an accountable judiciary with the important goal of an independent judiciary able to protect the Constitutional rights of citizens. The current proposal to change retention terms would upset that balance and damage the integrity of Article IV. Indeed, the drafters of our constitution specifically considered and rejected lowering the retention term for supreme court justices to even six years. The American Judicature Society recommends retention terms of at least eight years.

Shorter terms discourage qualified attorneys from applying. Shorter retention terms, with the lesser job security they entail, will discourage highly qualified judicial applicants. This will be especially true for experienced and successful private practitioners. The result of SJR 15 may be a lesser qualified judiciary with less experience representing private citizens.

Increased numbers of judges on the ballot decrease voters' scrutiny of individual judges. At each general election voters are bombarded with information about candidates and ballot propositions leading to what are referred to as "bed-sheet ballots." Voters already have limited time to study information on judges standing for retention. (There are 33 judges now scheduled to be on the ballot this year.) Increasing the numbers of judges on the ballot would only exacerbate that problem.

Shorter retention terms increase costs. An integral part of retention elections is the retention evaluation process. The Judicial Council gathers extensive information on each judge or justice and provides that information to the voters so that they can make informed retention decisions. Increasing the frequency of retention elections would increase the costs of the evaluation or, in the alternative, lead to a less intensive evaluation. Election costs also would increase.

Alaska's current retention terms are in line with retention terms in other merit selection states. Twenty other states have merit selection and retention laws similar to Alaska's. Retention terms in many of those states are similar to or longer than Alaska's current terms, while only three of those states have terms even approaching the four years proposed in SJR 15. No other merit selection states have terms as short as proposed by SJR 15.

Retention terms in Colorado, Indiana, South Carolina and Utah are identical to Alaska's. Five states have longer retention terms longer than Alaska's: California (12 years supreme, 6 years trial court), Hawaii (10 year terms), Maryland (10 years), Massachusetts (to age 70) and Missouri (12 years supreme court, 6 years circuit court).

require Senate confirmation of appointees.

Retention terms in eight other states are significantly longer than the terms proposed in SJR 15: Florida (6 years supreme, 6 years circuit), Iowa (8 years, 6 years), Nebraska (6 years), New Mexico (8 years for appellate, 6 years for district), South Dakota (8 years for supreme court), Tennessee (8 years supreme court), Vermont (6 years), Wyoming (8 years for supreme, 6 years for district court).

Only three states have retention terms even approaching the terms proposed in SJR 15: Arizona (6 years supreme, 4 years superior), Kansas (6 years supreme court, 4 years district court), Oklahoma (6 years supreme court, 4 years district court).

The Judicial Council's thorough evaluation process is more effective in ensuring public accountability than shorter retention terms. Alaska has a system of judicial performance evaluation that is used as a model throughout the United States and in many other countries. The Judicial Council has created a system in which more than 7,500 people in 1998 had an opportunity to critique judicial performance. Citizens commenting included jurors, citizens at public hearings, police, probation officers, social workers, court employees, attorneys and independent court watchers. Their input was summarized and considered by the Judicial Council along with detailed information about appellate affirmances and reversals, peremptory challenges, promptness, conflicts of interest and other aspects of performance. The information was available throughout the state in news articles, on the Internet, in the Alaska Voters' Pamphlet and through other media.

The Judicial Council already conducts mid-term evaluations of judges. The Council conducts attorney and peace officer surveys every two years of judges who are on the ballot that year, or who will be on the ballot 2 ½ years in the future. The mid-term evaluation gives judges a chance to improve performance and the Council advance notice of any problems.

Voters already have an early opportunity to vote on supreme court justices and superior court judges. Alaska's retention system requires newly appointed superior court judges and justices to first stand for retention after a short, probationary term (three years after appointment). This evaluation period gives judges early feedback on their performance and gives voters an early chance to assess the judges.

Conclusion. Alaska already has a system that emphasizes both judicial accountability and judicial independence. A thorough evaluation gives Alaska voters more information on judicial performance than is available anywhere else in the world. The judicial independence so prized by our constitutional drafters allows courts to protect the constitutional rights of Alaskans. Shortening retention terms as proposed in SJR15, shorter than in any merit selection state, will upset this delicate balance. The change is unnecessary, expensive, and would discourage quality judicial applicants. Ultimately, the goal of the Judicial Council is to maximize judicial excellence. This proposal is counterproductive to that goal.

Sponsor Statement - SJR 15 (1999)

SJR 15 proposes amendments to the Constitution of the State of Alaska that are designed to bring a measure of public involvement to the judicial selection process, and to increase the judicial branch's accountability to Alaskans. It does so in three ways.

First, SJR 15 allows the governor to fill court vacancies by appointing any attorney who meets the qualifications set out in the constitution and state statutes. This differs from the current system, in which the governor's choices are limited to only those nominees selected by the Alaska Judicial Council (AJC), a body which has little political accountability. Three of the six voting members on the AJC are selected by the Alaska Bar Association and are not required to undergo any type of confirmation process. The other three are non-attorney members appointed by the governor and subject to legislative confirmation. Since AJC members serve lengthy six-year terms, and only half are chosen by elected officials accountable to the voters, opportunities to change the composition of the council are exceedingly rare.

Under Article IV, Section 5 of the Alaska Constitution, the AJC is allowed to submit as few as two names to the governor to fill each judicial vacancy. Out of the thousands of attorneys in Alaska, the governor can choose only among those hand-picked few approved by AJC. This makes the governor's appointment power largely ceremonial. A committee of six persons exercises near total control over who is permitted to serve in one of the three branches of state government. There is no other example in our constitutional order of such enormous power being concentrated in the hands of a few non-elected functionaries. It is also noteworthy that three of the six AJC members are attorneys who are permitted to represent clients in the courtrooms of judges who may some day apply and be considered by the AJC to fill future vacancies on higher courts.

The second change proposed by SJR 15 is to require legislative confirmation of the governor's appointments to fill vacancies on the superior court and supreme court. This is similar to the federal system, in which the president's appointees to fill vacancies on the federal bench are confirmed by the U.S. Senate. Many other states also require some form of legislative confirmation, which allows the public to participate in the process through their elected representatives. Confirmation hearings provide a valuable opportunity for judicial nominees to be questioned about their philosophy on interpreting and applying statutory and constitutional law.

Finally, SJR 15 would increase the frequency of judicial retention elections. Currently, each superior court judge and supreme court justice is subject to approval or rejection by the voters at the first general election held more than three years after he or she is appointed. After the initial retention election, supreme court justices are up for approval or rejection every tenth year and superior court judges every sixth year. SJR 15 changes these intervals to six years for supreme court justices and four years for superior court judges. This change will provide Alaska voters more frequent opportunities to assess the performance of those who serve us in the judicial branch of government.

Prepared by Mike Pauley, Staff Aide to Senator Loren Leman (907-465-3841)
Last updated: March 22, 2000

(1999)

Resolution Proposes Increased Accountability from Judiciary

Juneau – A proposed constitutional amendment introduced today by Senator Loren Leman (R-Anchorage) and Senator Dave Donley (R-Anchorage) will provide increased accountability from state judges and change the process for filling judicial vacancies.

"The role of the court system in Alaska government has changed in recent years, and this change has not been for the better," stated Senator Leman. "Increasingly, state judges have abandoned their constitutional role as *interpreters* of the law, and are instead beginning to *write* the law. But this is the responsibility of *elected* public officials, who are accountable to the people. If judges continue to act as policymakers, then we need to allow the voters and the other two branches of government to place some checks on their growing power."

Senate Joint Resolution 15 provides for more frequent retention elections of judicial officers. Supreme court justices would appear on the ballot once every six years, instead of the current ten year term. Likewise, superior court judges would appear on the ballot every fourth year instead of every six years. SJR 15 also changes the judicial appointment process by allowing the governor to appoint any licensed attorney in Alaska to fill judicial vacancies, instead of limiting the governor's selection to a small list of nominees approved by the attorney-dominated Alaska Judicial Council. The governor's judicial appointees would not take office until confirmed by a majority of the legislature meeting in joint session, just as the U.S. Senate confirms all Presidential appointees to the federal courts.

"This amendment will help restore the delicate balance of power between our three branches of government," commented Senator Leman. "Judges are servants of the people, similar to other government officials, and must be accountable to the people." SJR 15 will allow the governor, the legislature, and the voters to have greater input in the judicial selection process.

Senator Donley noted that the Supreme Court's *Bess v. Ulmer* decision last year provides a vivid example of why judicial reform is needed. "In the *Bess* decision, the Supreme Court denied the people of Alaska their right to vote on a constitutional amendment related to prisoners' rights, without even allowing the parties to brief the issue. This amendment was designed to correct the worst excesses of the flawed *Cleary* settlement, as well as several other court decisions giving convicted prisoners in Alaska special rights. With the *Bess* ruling, voters have been denied the opportunity to correct this court's previous flawed decisions. That sets a dangerous precedent that undermines democratic self-government in Alaska."

###