

DOCKET No. 09-35860

---

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

KENNETH KIRK, CARL ANDERS EKSTROM and MICHAEL MILLER,

*Plaintiffs-Appellants,*

v.

CHIEF JUSTICE WALTER CARPENETI, In His Official Capacity as Ex Officio  
Member of the Alaska Judicial Council, et. al.,

*Defendants-Appellees.*

---

Appeal from the United States District Court  
for the District of Alaska  
No. 09-CV-00136 JWS

---

**ADDENDUM TO BRIEF FOR AMERICAN JUDICATURE SOCIETY,  
AMICUS CURIAE, IN SUPPORT OF APPELLEE AND AFFIRMANCE OF  
THE JUDGMENT OF THE DISTRICT COURT**

MICHAEL MADDIGAN (S.B. #163450)  
CHAD GEVING (S.B. #233648)  
TAMAR MALINEK (S.B. #264080)  
O'MELVENY & MYERS LLP  
400 South Hope Street  
Los Angeles, CA 90071-2899  
Telephone: (213) 430-6000  
Facsimile: (213) 430-6407  
*Amicus Curiae* Counsel on Behalf of American  
Judicature Society

# TABLE OF CONTENTS

	Page
I. STATE LAW CONSTITUTIONAL AND STATUTORY PROVISIONS .....	- 1 -
A. ALABAMA .....	- 1 -
1. Constitutional Provisions .....	- 1 -
B. DISTRICT OF COLUMBIA .....	- 21 -
1. Statutory Provisions .....	- 21 -
2. District of Columbia Bar Local Rules .....	- 27 -
C. HAWAII .....	- 27 -
1. Constitutional Provisions .....	- 27 -
D. INDIANA .....	- 29 -
1. Constitutional Provisions .....	- 29 -
2. Statutory Provisions .....	- 30 -
E. IOWA.....	- 32 -
1. Constitutional Provisions .....	- 32 -
2. Statutory Provisions .....	- 33 -
F. KANSAS.....	- 39 -
1. Constitutional Provisions .....	- 39 -
2. Statutory Provisions .....	- 41 -
G. KENTUCKY.....	- 50 -
1. Constitutional Provisions .....	- 50 -
2. Statutory Provisions .....	- 51 -
3. Supreme Court Local Rules .....	- 52 -
H. MISSOURI .....	- 56 -
1. Constitutional Provisions .....	- 56 -
I. NEBRASKA.....	- 59 -
1. Constitutional Provisions .....	- 59 -
2. Statutory Provisions .....	- 61 -
J. NEVADA.....	- 66 -
1. Constitutional Provisions .....	- 66 -
2. Supreme Court Local Rules .....	- 68 -
K. NEW MEXICO.....	- 69 -

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
1. Constitutional Provisions .....	- 69 -
2. New Mexico Bar Local Rules.....	- 71 -
L. OKLAHOMA .....	- 74 -
1. Constitutional Provisions .....	- 74 -
2. Statutory Provisions .....	- 76 -
M. SOUTH DAKOTA .....	- 78 -
1. Constitutional Provisions .....	- 78 -
2. Statutory Provisions .....	- 79 -
N. VERMONT.....	- 81 -
1. Constitutional Provisions .....	- 81 -
2. Statutory Provisions .....	- 81 -
O. WYOMING .....	- 83 -
1. Constitutional Provisions .....	- 83 -
2. Statutory Provisions .....	- 86 -
II. FEDERAL REGULATORY PROVISIONS.....	- 86 -
A. MAGISTRATE JUDGES .....	- 86 -
1. Regulations Of The Judicial Conference Of The United States Establishing The Standards And Procedures For The Appointment And Reappointment Of United States Magistrate Judges.....	- 86 -
B. BANKRUPTCY JUDGES.....	- 87 -
1. Regulations of the Judicial Conference of the United States for the Selection, Appointment, and Reappointment of United States Bankruptcy Judges .....	- 87 -
2. Judicial Council of the Ninth Circuit: Regulations Governing the Appointment of U.S. Bankruptcy Judges .....	- 88 -

# **I. STATE LAW CONSTITUTIONAL AND STATUTORY PROVISIONS**

## **A. ALABAMA**

### **1. Constitutional Provisions**

#### **Ala. Const., Art. VI, § 153 --Election or appointment of judges of inferior courts.**

The judges of such inferior courts of law and equity as may be by law established, shall be elected or appointed in such mode as the legislature may prescribe.

#### **Ala. Const., Art. VI, § 158 --Vacancies in office of supreme court justices, elected judges and chancellors.**

Vacancies in the office of any of the justices of the supreme court or judges who hold office by election, or chancellors of this state, shall be filled by appointment by the governor. The appointee shall hold his office until the next general election for any state officer held at least six months after the vacancy occurs, and until his successor is elected and qualified; the successor chosen at such election shall hold office for the unexpired term and until his successor is elected and qualified.

#### **Ala. Const., amend. 83 --Vacancies in Office of Judge of Circuit Court Holding at Birmingham.**

All vacancies in the office of judge of the circuit court holding at Birmingham which shall occur subsequent to January 15, 1951 shall be filled in the manner and for the time as herein provided.

The Jefferson county judicial commission is hereby created for the purpose of nominating to the governor persons for appointment to such a vacancy. The members of such commission shall be (a) two persons who are members of the Alabama state bar, and (b) two persons who are not members of the Alabama state bar, and (c) one judge of the circuit court holding at Birmingham.

All members of such commission must reside in the territorial jurisdiction of the circuit court holding at Birmingham.

The two members of such commission who are required to be members of the Alabama state bar shall be elected by the members of such bar who are regularly licensed and qualified to practice law in this state and who reside in the territorial jurisdiction of the circuit court holding at Birmingham. The executive committee of the Birmingham bar association or its successor body in such capacity, is authorized and directed to make rules, not inconsistent with this amendment, for the election of such members of such commission as are required to be members of the Alabama state bar. Such executive committee shall certify in writing to the probate judge of Jefferson county the names of the persons elected as members of such commission by such members of such bar.

The senator and representatives in the Alabama legislature from Jefferson county shall elect the two members of such commission who are required not to be members of the Alabama state bar. Such senator and representatives shall certify in writing to such probate judge the names of the persons elected by them as such members.

The judges of the circuit court holding at Birmingham shall elect the member of such commission who is required to be a judge of such circuit court. The judges of such circuit court shall certify in writing to such probate judge the name of the circuit judge elected by such circuit judges as such member.

The terms of office of all members of such commission shall be six years, except that the terms of office of the two members of the state bar first elected shall be for one and two years respectively, and of the two members first elected by the senator and representatives in the Alabama legislature from Jefferson county shall be for three and four years respectively, and the term of the circuit judge elected by the circuit judges shall be for five years; the length of such terms of office of the members of such commission being indicated by the respective electing bodies. The terms of the initial members of such commission shall begin on January 16, 1951. A vacancy in the office of a member of such commission shall be filled for the unexpired term in the same manner as such member was originally chosen.

The probate judge of Jefferson county shall record all such certificates of election and shall safely and permanently keep the original certificates. Forthwith upon his receipt and recordation of every such certificate, he shall send to the governor a certified copy of every such certificate.

No member of such commission shall be eligible to succeed himself as such member or for nomination to the governor for appointment as judge of such circuit court during the term of office for which such member shall have been selected.

The members of such commission shall not receive any salary or other compensation for their services as such members. No member of such commission other than the member required to be a judge of the circuit court shall hold any public office, and no member of such commission shall hold any official position in any political party.

If, subsequent to January 15, 1951, a vacancy occurs in the office of judge of the circuit court holding at Birmingham, such commission shall nominate to the governor three persons having the qualifications for such office. Such nomination shall be made only by the concurrence of a majority of the members of such commission. The governor shall appoint to the office in which the vacancy exists one of the three persons so nominated for such office. The appointee shall hold such office until the next general election for any state officer held at least six months after the vacancy occurs and until his successor is elected and qualified; the successor shall hold office for the unexpired term and until his successor is elected and qualified.

This amendment shall be self-executing.

**Ala. Const., amend. 110 --Filling Vacancy in Office of Judge of Jefferson County Circuit Court.**

Any vacancy occurring in the office of judge of the tenth judicial circuit comprised of Jefferson county only, which is required to be filled by appointment on nominations made by a judicial commission, shall be made within ninety days from the date of the submission of such nominations. In the event the governor fails to fill the vacancy from such nominations within such period, the appointment shall be made by the chief justice of the supreme court of Alabama.

**Ala. Const., amend. 328 --Amendment of Article VI.**

Article VI of the Constitution of Alabama of 1901, as amended, and amendments 317 and 323 thereof, are hereby repealed and in lieu thereof the following article shall be adopted:

6.14. Vacancies in judicial office.

The office of a judge shall be vacant if he dies, resigns, retires, or is removed. Vacancies in any judicial office shall be filled by appointment by the governor; however, vacancies occurring in any judicial office in Jefferson county shall be filled as now provided by amendments 83 and 110 to the Constitution of Alabama of 1901 and vacancies occurring in Shelby, Madison, Wilcox, Monroe, Conecuh, Clarke, Washington, Henry, Etowah, Walker, Tallapoosa, Pickens, Greene, Tuscaloosa, St. Clair county shall be filled as provided in the Constitution of 1901 with amendments now or hereafter adopted, or as may be otherwise established by a properly advertised and enacted local law. A judge, other than a probate judge, appointed to fill a vacancy, shall serve an initial term lasting until the first Monday after the second Tuesday in January following the next general election held after he has completed one year in office. At such election such judicial office shall be filled for a full term of office beginning at the end of the appointed term.

**Ala. Const., amend. 408 --Procedure for Filling Vacancies in Office of Judge of Circuit Court and Office of Judge of District Court in Mobile County.**

All vacancies in the office of judge of the circuit court and the office of judge of the district court of Mobile county which shall occur subsequent to January 15, 1982, shall be filled in the manner and for the time as herein provided.

The Mobile county judicial commission is hereby created for the purpose of nominating to the governor persons for appointment to such a vacancy. The members of such commission shall be (a) two persons who are members of the Alabama state bar, and (b) two persons who are not members of the Alabama state bar, and (c) one judge of the circuit court of Mobile county.

All members of such commission must reside in the territorial jurisdiction of the circuit court of Mobile county.

The two members of such commission who are required to be members of the Alabama state bar shall be elected by the members of such bar who are regularly licensed and qualified to practice law in this state and who reside in the territorial jurisdiction of the circuit court of Mobile county. The executive committee of the Mobile county bar association or its successor body in such capacity, is authorized and directed to make rules, not inconsistent with this amendment, for the election of such members of such commission as are required to be members of the Alabama state bar. Such executive committee shall certify in writing to the probate judge of Mobile county the names of the persons elected as members of such commission by such members of such bar.

The senators and representatives in the Alabama legislature from Mobile county shall elect the two members of such commission who are required not to be members of the Alabama state bar. Such senators and representatives shall certify in writing to such probate judge the names of the persons elected by them as such members.

The judges of the circuit court of Mobile county shall elect the member of such commission who is required to be a judge of such circuit court. The judges of such circuit court shall certify in writing to such probate judge the name of the circuit judge elected by such circuit judges as such member.

The terms of office of all members of such commission shall be six years, except that the terms of office of the two members of the state bar first elected shall be for one and two years respectively, and of the two members first elected by the senators and representatives in the Alabama legislature from Mobile county shall be for three and four years respectively, and the term of the circuit judge elected by the circuit judges shall be for five years; the length of such terms of office of the members of such commission being indicated by the respective electing bodies. The terms of the initial members of such commission shall begin on January 16, 1982. A vacancy in the office of a member of such commission shall be filled for the unexpired term in the same manner as such member was originally chosen.

The probate judge of Mobile county shall record all such certificates of election and shall safely and permanently keep the original certificates. Forthwith upon his receipt and recordation of every such certificate, he shall send to the governor a certified copy of every such certificate.



No member of such commission shall be eligible to succeed himself as such member or for nomination to the governor for appointment as judge of such circuit court or district court during the term of office for which such member shall have been selected.

The members of such commission shall not receive any salary or other compensation for their services as such members. No member of such commission other than the member required to be a judge of the circuit court shall hold any public office, and no member of such commission shall hold any official position in any political party.

If, subsequent to January 15, 1982, a vacancy occurs in the office of judge of the circuit court or in the office of judge of the district court of Mobile county, such commission shall nominate to the governor three persons having the qualifications for such office. Such nomination shall be made only by the concurrence of a majority of the members of such commission. The governor shall appoint to the office in which the vacancy exists one of the three persons so nominated for such office. Any vacancy occurring in the office of judge of the circuit or district court of Mobile county, which is required to be filled by appointment on nominations made by a judicial commission, shall be made within ninety days from the date of the submission of such nominations. In the event the governor fails to fill the vacancy from such nominations within such period, the appointment shall be made by the chief justice of the supreme court of Alabama. The appointee shall hold such office until the next general election for any state officer held at least six months after the vacancy occurs and until his successor is elected and qualified; the successor shall hold office for the unexpired term and until his successor is elected and qualified.

This amendment shall be self-executing.

**Ala. Const., amend. 607 --Amendment of Amendment No. 334.**

All vacancies in the office of judge of the circuit court and the office of judge of the district court holding in Madison County shall be filled in the manner and for the time as herein provided.

The Madison County Judicial Commission is created for the purpose of nominating to the Governor persons for appointment to such a vacancy. The

commission shall be composed of nine members. The members of the commission shall be two persons who are members of the Alabama State Bar, one judge of the circuit court holding in Madison County, two members appointed by Members of the Alabama House of Representatives who represent Madison County, irrespective of whether such Members of the House of Representatives reside in Madison County, two members appointed by Members of the Alabama Senate who represent Madison County, irrespective of whether such Members of the Senate reside in Madison County, and two members appointed jointly by these Members of the House of Representatives and Members of the Senate.

All members of the commission shall reside in the territorial jurisdiction of the circuit court holding in Madison County.

The two members of the commission who are required to be members of the Alabama State Bar shall be elected by the members of such bar who are regularly licensed and qualified to practice law in this state and who reside in the territorial jurisdiction of the circuit court holding in Madison County. The Executive Committee of the Madison County Bar Association or its successor body in such capacity, is authorized and directed to make rules, not inconsistent with this amendment, for the election of such members of the commission as are required to be members of the Alabama State Bar. The executive committee shall certify in writing to the Judge of Probate of Madison County the names of the persons elected as members of the commission by these members of the bar.

The Members of the Alabama House of Representatives who represent Madison County, irrespective of whether these members reside in Madison County, shall make one initial appointment of a member of the commission immediately upon the adoption of the amendment adding this amendatory language and shall make the other initial appointment upon the first expiration of the term of office of a member previously appointed pursuant to this amendment by the Senators and Representatives in the Alabama Legislature residing in Madison County. These Members of the Alabama House of Representatives representing Madison County shall make all succeeding appointments to these two positions. These appointees shall not be members of the Alabama State Bar.

The Members of the Alabama Senate representing Madison County, irrespective of whether these members reside in Madison County, shall make

one initial appointment of a member of the commission immediately upon the adoption of the amendment adding this amendatory language and shall make the other initial appointment upon the expiration of the term of office of the last member previously appointed pursuant to this amendment by the Senators and Representatives of the Alabama Legislature residing in Madison County. These Members of the Alabama Senate representing Madison County shall make all succeeding appointments to these two positions. These appointees shall not be members of the Alabama State Bar.

The Members of the House of Representatives and Senate representing Madison County, irrespective of whether these members reside in Madison County, shall jointly make two initial appointments upon the adoption of the amendment adding this amendatory language. These Members of the House of Representatives and the Senate shall jointly make all succeeding appointments to these two positions. These appointees shall not be members of the Alabama State Bar.

These Members of the House of Representatives and Senate, respectively, shall certify in writing to the Judge of Probate of Madison County the names of persons appointed by them to the commission.

The judges of the circuit court holding in Madison County shall elect the member of the commission who is required to be a judge of the circuit court. The judges of the circuit court shall certify in writing to the judge of probate the name of the circuit judge elected by the circuit judges as a member.

The terms of office of all members of the commission shall be six years. A vacancy in the office of a member of the commission shall be filled for the unexpired term in the same manner as the member was originally chosen.

The Judge of Probate of Madison County shall record all such certificates of election and shall safely and permanently keep the original certificates. Forthwith upon his or her receipt and recordation of every certificate, the judge of probate shall send to the Governor a certified copy of every certificate.

No member of the commission shall be eligible for nomination to the Governor for appointment as judge of the circuit court or the district court during the term of office of the commission member.

The members of the commission shall not receive any salary or other compensation for their services as members. No member of the commission other than the member required to be a judge of the circuit court shall hold any public office, and no member of the commission shall hold any official position in any political party.

If a vacancy occurs in the office of judge of the circuit court or the office of judge of the district court holding in Madison County, the commission shall nominate to the Governor three persons having the qualifications for the office. The names of all persons considered for nomination shall be available for review by the public and shall be deemed a public record. A nomination shall be made only by the concurrence of at least five members of the commission, which vote shall be conducted at a public meeting. The member of the commission elected by the judges of the circuit court holding in Madison County shall only vote on matters before the commission in instances when the vote by other commission members has resulted in a tie. The Governor shall appoint to the office in which the vacancy exists one of the three persons so nominated for the office. If the Governor fails to make an appointment from the list within 30 days from the date it is presented to the Governor, the appointment shall be made by the Chief Justice or the acting Chief Justice of the Supreme Court from the same list. The appointee shall hold such office until the next general election for any state officer held at least six months after the vacancy occurs and until a successor is elected and qualified. At the general election, the judicial office shall be filled for a full term of office to commence on the first Monday after the second Tuesday in January following the general election.

**Ala. Const., amend. 615 --Procedure for Filling Vacancies in Office of Judge of Circuit Court, Judge of District Court, and District Attorney in Talladega County.**

In Talladega County, all vacancies in the offices of judge of the circuit court, judge of the district court, and district attorney shall be filled in the manner and for the time as provided in this amendment.

The Talladega County Judicial Commission is created for the purpose of nominating to the Governor persons for appointment to any vacancy in the offices of judge of the circuit court, judge of the district court, and district attorney. The five members of the commission shall consist of the following: The presiding judge of the Circuit Court of Talladega County, as a

nonvoting ex officio member who may only vote in the event of a tie vote among the other four members of the commission, and who shall preside over all meetings of the commission; the commissioner of the Alabama State Board of Bar Commissioners representing Talladega County, as an ex officio voting member; and three residents of Talladega County who are not members of the Alabama State Bar. Appointed members shall serve for terms of four years. A vacancy in the office of a member of the commission shall be filled for the unexpired term in the same manner as the member was originally chosen. The term of office for the initial appointed members of the commission shall begin immediately upon appointment.

The nonlawyer members of the commission shall be appointed by mutual consent of the members of the state Legislature who represent Talladega County. The nonlawyer members of the commission shall not be eligible to serve two successive terms.

The presiding judge of the Circuit Court of Talladega County shall certify in writing to the Judge of Probate of Talladega County his or her own name and the name of the Alabama State Bar Commissioner representing Talladega County, as ex officio members. The appropriate members of the state Legislature representing Talladega County shall certify in writing to the Judge of Probate of Talladega County the names of the three resident members appointed to the commission.

The Judge of Probate of Talladega County shall record all certificates of election and shall safely and permanently keep the original and all subsequent certificates of election. Immediately upon receipt and recordation of a certificate of election, the judge of probate shall send a certified copy to the Governor.

No member of the commission shall seek appointment as a judge of the circuit court, judge of the district court, or district attorney during the term of office for which the member has been selected.

The members of the commission shall not receive any salary or other compensation for their service as members. No appointed member of the commission shall hold any public office. No member of the commission shall hold any official position in any political party.

If, after the ratification of this amendment, a vacancy occurs in Talladega County in the offices of judge of the circuit court, judge of the district court, or district attorney, the presiding judge of the Circuit Court of Talladega County shall call a meeting of the commission to fill the vacancy. The commission shall nominate three persons having the qualifications for the vacant office. The nominations shall be made only by the concurrence of a majority of the members of the commission. The presiding judge of the circuit court shall certify the three nominees to the Governor, who shall appoint one to the office in which the vacancy exists. If the Governor fails to make an appointment from the submitted list within 30 days from the date of submission, the appointment shall be made from the list by the Chief Justice of the Supreme Court of Alabama. If the appointment is for a judicial vacancy, the appointee shall hold office for an initial term lasting until the first Monday after the second Tuesday in January following the next general election held after completing one year in office. At the election, the judicial office shall be filled for a full term of office beginning at the end of the appointed term. If the appointment is for the office of district attorney, the appointee shall hold office for the term or the remainder of the unexpired term as provided by law.

**Ala. Const., amend. 660 --Baldwin County Judicial Commission.**

All vacancies in the office of judge of the circuit court and the office of judge of the district court holding in Baldwin County shall be filled in the manner and for the time as herein provided.

The Baldwin County Judicial Commission is created for the purpose of nominating to the Governor persons for appointment to a vacancy. The commission shall be composed of five members. The members of the commission shall be one person who is a member of the Alabama State Bar nominated by the Baldwin County Bar Association, the presiding circuit judge holding in Baldwin County, one member selected by the Baldwin County Commission, one member selected by the Baldwin County Mayors' Association where at least two thirds of the members are in attendance at the meeting where the selection is made, and one member who is not a member of the Legislature selected by the Baldwin County Legislative Delegation selected by random selection as designed by the members of the Alabama House of Representatives and the Alabama Senate who represent Baldwin County.

All members of the commission shall reside in the territorial jurisdiction of the circuit court holding in Baldwin County.

Only the member selected by the Baldwin County Bar Association and the presiding circuit judge holding in Baldwin County may be a member of the Alabama State Bar. The member of the commission who is required to be a member of the Alabama State Bar shall be elected by the members of the bar who are regularly licensed and qualified to practice law in this state and who reside in the territorial jurisdiction of the circuit court holding in Baldwin County. The Executive Committee of the Baldwin County Bar Association, or its successor body in that capacity, shall make rules, not inconsistent with this amendment, for the election of the member of the commission required to be a member of the Alabama State Bar. The executive committee shall certify in writing to the Judge of Probate of Baldwin County the name of the person elected as member of the commission by these members of the bar.

The presiding circuit judge holding in Baldwin County shall certify in writing to the Judge of Probate of Baldwin County the remaining names of the persons selected as members of the commission.

The terms of office of all members of the commission shall be six years. In event that an initial appointment or vacancy is not filled in 30 days, the vacancy shall be filled by the members of the Baldwin County Legislative Delegation residing in Baldwin County within 10 days. A vacancy in the office of a member of the commission shall be filled for the unexpired term in the same manner as the member was originally chosen.

The Judge of Probate of Baldwin County shall record all certificates of election and shall safely and permanently keep the original certificates. Forthwith upon his or her receipt and recordation of every certificate, the judge of probate shall send to the Governor a certified copy of every certificate.

No member of the commission shall be eligible for nomination to the Governor for appointment as judge of the circuit court or the district court during the term of office of the commission member.

The members of the commission shall not receive any salary or other compensation for their services as members. No member of the commission other than the member required to be a judge of the circuit court shall hold

any public office, and no member of the commission shall hold any official position in any political party.

If a vacancy occurs in the office of judge of the circuit court or the office of judge of the district court holding in Baldwin County, the commission shall nominate within 30 days to the Governor three persons having the qualifications for the office. If the commission fails to nominate three names during the 30-day period, the names shall be selected by the members of the Baldwin County Legislative Delegation residing in the county within 10 days. The names of all persons considered for nomination shall be available for review by the public and shall be deemed a public record. The Governor shall appoint to the office in which the vacancy exists one of the three persons so nominated for the office. If the Governor fails to make an appointment from the list within 30 days from the date it is presented to the Governor, the appointment shall be made by the Chief Justice or the acting Chief Justice of the Supreme Court from the same list. The appointee shall hold the office until the next general election for any state officer held at least six months after the vacancy occurs and until a successor is elected and qualified. At the general election, the judicial office shall be filled for a full term of office to commence on the first Monday after the second Tuesday in January following the general election.

**Ala. Const., amend. 741 --Tuscaloosa County Judicial Commission.**

(a) In Tuscaloosa County, all vacancies in the offices of judge of the circuit court and judge of the district court shall be filled in the manner and for the time as provided in this amendment. The Tuscaloosa County Judicial Commission is created for the purpose of nominating to the Governor persons for appointment to any vacancy in the office of judge of the circuit court and judge of the district court. The nine members of the commission shall consist of the following: One attorney primarily or substantially engaged in a plaintiff civil practice; one attorney primarily or substantially engaged in a defense civil practice; one attorney primarily or substantially engaged in a domestic relations practice; one attorney primarily or substantially engaged in a criminal defense practice; the District Attorney for Tuscaloosa County; the Presiding Judge of the Circuit Court of Tuscaloosa County; and three people who are not members of the Alabama State Bar. Each member shall reside in the territorial jurisdiction of the Circuit Court of Tuscaloosa County.



(b) Members of the commission shall be elected in the following manner:

(1) At least 30 days prior to the Tuscaloosa County Bar Association meeting at which any Alabama State Bar member of the Tuscaloosa County Judicial Commission shall be elected, the Executive Committee of the Tuscaloosa County Bar Association shall provide notice of such election and a list of at least two nominees for each vacancy on the Tuscaloosa County Judicial Commission, except for the positions held by the District Attorney for Tuscaloosa County and the Presiding Judge of the Circuit Court of Tuscaloosa County, to all members of the Tuscaloosa County Bar Association. Any member may submit additional nominations in writing to the President or Secretary of the Tuscaloosa County Bar Association no later than 14 days after the date upon which the list of nominees was provided, specifying the position on the commission for which the nomination is made. All nominees shall be members in good standing of the Alabama and Tuscaloosa County Bar Associations and shall have been engaged in the active practice of law for at least five years.

(2) After the 14-day period for nominations has passed, the Tuscaloosa County Bar Executive Committee shall certify each nominee who meets the criteria for election to the commission.

(3) The names of all nominees certified by the executive committee for each vacant position shall be provided to all members of the Tuscaloosa County Bar Association at least seven days prior to the announced date of the election. The standing rules and regulations of the Tuscaloosa County Bar Association shall govern the election process during the bar association meeting.

(4) The members of the commission who are not members of the state bar shall be selected by a majority of the Tuscaloosa County Legislative Delegation. At least 14 days prior to any meeting for the selection of the members to the commission who are not members of the state bar, the Presiding Judge of the Circuit Court of Tuscaloosa County shall notify the Chair of the Tuscaloosa County Legislative Delegation and all members of the Tuscaloosa Legislative Delegation of the need for a meeting to select candidates for the commission. The Chair of the Tuscaloosa County Legislative Delegation shall also notify the members of the legislative delegation and the presiding

circuit court judge of the circuit of the time and location of the meeting. At the meeting, the senators and representatives shall select the members to be appointed to the commission. The Chair of the Tuscaloosa Legislative Delegation shall certify in writing to the Secretary of the Tuscaloosa County Bar Association the name of the individuals selected.

(c) The Secretary of the Tuscaloosa County Bar Association shall certify in writing to the Tuscaloosa County Judge of Probate the names of the members of the commission. The judge of probate shall record all certificates of election and shall safely and permanently keep the original certificates. Upon receipt of the certificate of election, the judge of probate shall send a certified copy to the Governor.

(d) The terms of office of the appointed members of the commission shall be six years. The length of each term shall be designated by the Executive Committee of the Tuscaloosa County Bar Association. Any vacancy on the Tuscaloosa County Judicial Commission shall be filled for the unexpired term in the same manner as the member was originally chosen.

(e) No member shall receive any salary or other compensation for services. No member of the commission, other than the Tuscaloosa County District Attorney and the Presiding Judge of the Circuit Court of Tuscaloosa County shall hold any elected office nor shall any member hold any official position in any political party.

(f) If, after the ratification of this amendment, a vacancy occurs in Tuscaloosa County in the office of judge of the circuit court or judge of the district court, the commission shall submit to the Governor within 45 days after the vacancy occurs a slate of three persons who are qualified for the office. The nominations shall be made only by the concurrence of a majority of the members of the commission. The presiding judge of the circuit court shall certify the three nominees to the Governor, who shall appoint one to the office in which the vacancy exists. If the Governor fails to make an appointment from the submitted list within 60 days from the date of submission, the commission shall submit a new list as provided in this section to the Governor.

**Ala. Const., amend. 780 -- Baldwin County: Amendment to Amendment 660.**

All vacancies in the office of judge of the circuit court and the office of judge of the district court holding in Baldwin County shall be filled in the manner and for the time as herein provided.

The Baldwin County Judicial Commission is created for the purpose of nominating to the Governor persons for appointment to a vacancy. The commission shall be composed of five members. The members of the commission shall be one person who is a member of the Alabama State Bar nominated by the Baldwin County Bar Association, the presiding circuit judge holding in Baldwin County, one member selected by the Baldwin County Commission, one member selected by the Baldwin County Mayors' Association where at least two thirds of the members are in attendance at the meeting where the selection is made, and one member who is not a member of the Legislature selected by the Baldwin County Legislative Delegation selected by random selection as designed by the members of the Alabama House of Representatives and the Alabama Senate who represent Baldwin County.

All members of the commission shall reside in the territorial jurisdiction of the circuit court holding in Baldwin County.

Only the member selected by the Baldwin County Bar Association and the presiding circuit judge holding in Baldwin County may be a member of the Alabama State Bar. The member of the commission who is required to be a member of the Alabama State Bar shall be elected by the members of the Baldwin County Bar Association who are regularly licensed and qualified to practice law in this state and who reside in the territorial jurisdiction of the circuit court holding in Baldwin County. The Executive Committee of the Baldwin County Bar Association, or its successor body in that capacity, shall make rules, not inconsistent with this amendment, for the election of the member of the commission required to be a member of the Alabama State Bar. The executive committee shall certify in writing to the Judge of Probate of Baldwin County the name of the person elected as member of the commission by these members of the bar.

The presiding circuit judge holding in Baldwin County shall certify in writing to the Judge of Probate of Baldwin County the remaining names of the persons selected as members of the commission.

The terms of office of all members of the commission shall be six years. In event that an initial appointment or vacancy is not filled in 30 days, the vacancy shall be filled by the members of the Baldwin County Legislative Delegation residing in Baldwin County within 10 days. A vacancy in the office of a member of the commission shall be filled for the unexpired term in the same manner as the member was originally chosen.

The Judge of Probate of Baldwin County shall record all certificates of election and shall safely and permanently keep the original certificates. Forthwith upon his or her receipt and recordation of every certificate, the judge of probate shall send to the Governor a certified copy of every certificate.

No member of the commission shall be eligible for nomination to the Governor for appointment as judge of the circuit court or the district court during the term of office of the commission member.

The members of the commission shall not receive any salary or other compensation for their services as members. No member of the commission other than the member required to be a judge of the circuit court shall hold any public office, and no member of the commission shall hold any official position in any political party.

If a vacancy occurs in the office of judge of the circuit court or the office of judge of the district court holding in Baldwin County, the commission shall nominate within 30 days to the Governor three persons having the qualifications for the office. If the commission fails to nominate three names during the 30-day period, the names shall be selected by the members of the Baldwin County Legislative Delegation residing in the county within 10 days. The names of all persons considered for nomination shall be available for review by the public and shall be deemed a public record. The Governor shall appoint to the office in which the vacancy exists one of the three persons so nominated for the office. If the Governor fails to make an appointment from the list within 30 days from the date it is presented to the Governor, the appointment shall be made by the Chief Justice or the acting Chief Justice of the Supreme Court from the same list. The appointee shall hold the office until the next general election for any state officer held at least six months after the vacancy occurs and until a successor is elected and qualified. At the general election, the judicial office shall be filled for a full

term of office to commence on the first Monday after the second Tuesday in January following the general election.

**Ala. Const., amend. 804 --Shelby County.**

All vacancies in the office of the judge of the circuit court and the office of the judge of the district court of the 18th Judicial Circuit shall be filled in the manner and for the time as herein provided.

The Shelby County Judicial Commission is hereby created for the purpose of nominating to the Governor persons for appointment to a vacancy. The commission shall be composed of five members. The members of the commission shall be as follows: Two persons who are members of the Alabama State Bar; two persons who are not members of the Alabama State Bar; and the presiding judge of the 18th Judicial Circuit.

All members of the commission shall reside in the territorial jurisdiction of the 18th Judicial Circuit.

The two members of the commission who are required to be members of the Alabama State Bar shall be elected by the members of the bar who are regularly licensed and qualified to practice law in this state. The Executive Committee of the Shelby County Bar Association, or its successor body in such capacity, is authorized and directed to make rules, not inconsistent with this amendment, for the election of the two members of the commission who are required to be members of the Alabama State Bar. The executive committee shall certify in writing to the Judge of Probate of Shelby County the names of the persons elected as members of the commission by the members of the bar and the name of the presiding judge of the circuit court who shall serve on the commission by virtue of his or her position as presiding judge.

The members of the Legislature representing Shelby County shall elect the two members of the commission who are required not to be members of the Alabama State Bar. The members of the Legislature representing Shelby County shall certify in writing to the judge of probate the names of the persons elected by them as members.

The terms of office of all members of the commission shall be six years, except that the terms of office of the two members of the State Bar first

elected shall be for one and two years respectively, and of the two members first elected by the members of the Legislature representing Shelby County shall be for three and four years respectively; the length of the terms of office of the members of the commission being indicated by the respective electing bodies. The terms of the initial members of the commission shall begin on January 1, 2009. A vacancy in the office of a member of the commission shall be filled for the unexpired term in the same manner as that member was originally chosen.

The Judge of Probate of Shelby County shall record all certificates of election and shall safely and permanently keep the original certificates. Upon receipt and recordation of each certificate, the judge of probate shall send to the Governor a certified copy of each certificate.

No member of the commission shall be eligible to succeed himself or herself as a member or for nomination to the Governor for appointment as judge of the circuit or district court during the term of office for which the member shall have been selected.

The members of the commission shall not receive any salary or other compensation for their services as members. No member of the commission other than the member who is the presiding judge of the 18th Judicial Circuit shall hold any public office and no member of the commission shall hold any official position in any political party.

If, subsequent to January 1, 2009, a vacancy occurs in the office of judge of the circuit or district court in the 18th Judicial Circuit, the commission shall nominate to the Governor three persons having the qualifications for the office. The nomination shall be made only by the concurrence of a majority of the members of the commission. The Governor shall appoint to the office in which the vacancy exists one of the three persons so nominated for the office. The appointee shall hold office until the next general election for any state officer held at least six months after the vacancy occurs and until his or her successor is elected and qualified; the successor shall hold office for the unexpired term and until his or her successor is elected and qualified.

Any vacancy occurring in the office of judge of the 18th Judicial Circuit, which is required to be filled by appointment on nominations made by the commission, shall be made within 90 days from the date of the submission of the nominations. In the event the Governor fails to fill the vacancy from

the nominations within that period, the appointment shall be made by the Chief Justice of the Supreme Court of Alabama.

**Ala. Const., amend. 819 --Lauderdale County.**

All vacancies in the office of judge of the circuit court and the office of judge of the district court holding in Lauderdale County shall be filled in the manner and for the time as herein provided.

The Lauderdale County Judicial Commission is created for the purpose of nominating to the Governor persons for appointment to a vacancy. The commission shall be composed of five members, two of whom shall be appointed by the members of the bar residing in the county, two shall be appointed by the members of the county commission, and one, who shall be the chair, shall be appointed by the Chief Justice or the Acting Chief Justice of the Alabama Supreme Court.

All members of the commission shall reside in the territorial jurisdiction of the circuit court holding in Lauderdale County.

The Lauderdale County Bar Association, the Lauderdale County Commission, and the Chief Justice or Acting Chief Justice of the Alabama Supreme Court shall each certify in writing to the Judge of Probate of Lauderdale County the names of the persons selected as members of the commission.

The terms of office of all members of the commission shall be six years. In the event that an initial appointment or vacancy of a member of the commission is not filled in 30 days, the appointment or vacancy shall be filled by the Chief Justice or Acting Chief Justice of the Alabama Supreme Court within 10 days. A vacancy in the office of a member of the commission shall be filled for the unexpired term in the same manner as the member was originally chosen.

The Judge of Probate of Lauderdale County shall record all certificates of election and shall safely and permanently keep the original certificates. Forthwith upon his or her receipt and recordation of every certificate, the judge of probate shall send to the Governor a certified copy of every certificate.

No member of the commission shall be eligible for nomination to the Governor for appointment as judge of the circuit court or the district court during the term of office of the commission member.

The members of the commission shall not receive any salary or other compensation for their services as members. No member of the commission shall hold any public office, and no member of the commission shall hold any official position in any political party.

If a vacancy occurs in the office of judge of the circuit court or the office of judge of the district court holding in Lauderdale County, the commission shall nominate within 30 days to the Governor three persons having the qualifications for the office. If the commission fails to nominate three names during the 30-day period, the names shall be selected by the Chief Justice or Acting Chief Justice of the Alabama Supreme Court within 10 days. The names of all persons considered for nomination shall be available for review by the public and shall be deemed a public record. The Governor shall appoint to the office in which the vacancy exists one of the three persons so nominated for the office. If the Governor fails to make an appointment from the list within 30 days from the date it is presented to the Governor, the appointment shall be made by the Chief Justice or the Acting Chief Justice of the Alabama Supreme Court from the same list. The appointee shall hold the office until the next general election for any state officer held at least six months after the vacancy occurs and until a successor is elected and qualified. At the general election, the judicial office shall be filled for a full term of office to commence on the first Monday after the second Tuesday in January following the general election.

## **B. DISTRICT OF COLUMBIA**

### **1. Statutory Provisions**

#### **D.C. Code § 1-204.31(b) --Judicial powers.**

(b) The chief judge of a District of Columbia court shall be designated by the District of Columbia Judicial Nominating [Nomination] Commission established by § 1-204.34 from among the judges of the court in regular active service, and shall serve as chief judge for a term of four years or until a successor is designated, except that the term as chief judge shall not extend



beyond the chief judge's term as a judge of a District of Columbia court. An individual shall be eligible for redesignation as chief judge.

**D.C. Code § 1-204.33 --Nomination and appointment of judges.**

(a) Except as provided in § 1-204.34(d)(1), the President shall nominate, from the list of persons recommended by the District of Columbia Judicial Nomination Commission established under § 1-204.34, and, by and with the advice and consent of the Senate, appoint all judges of the District of Columbia courts.

(b) No person may be nominated or appointed a judge of a District of Columbia court unless the person -

(1) is a citizen of the United States;

(2) is an active member of the unified District of Columbia Bar and has been engaged in the active practice of law in the District for the five years immediately preceding the nomination or for such five years has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or the District of Columbia government;

(3) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least ninety days immediately prior to the nomination, and shall retain such residency while serving as such judge, except judges appointed prior to the effective date of this part who retain residency as required by § 11-1501(a) shall not be required to be residents of the District to be eligible for reappointment or to serve any term to which reappointed;

(4) is recommended to the President, for such nomination and appointment, by the District of Columbia Judicial Nomination Commission; and

(5) has not served, within a period of two years prior to the nomination, as a member of the Tenure Commission or of the District of Columbia Judicial Nomination Commission.

(c) Not less than six months prior to the expiration of the judge's term of office, any judge of the District of Columbia courts may file with the Tenure Commission a declaration of candidacy for reappointment. If a declaration is not so filed by any judge, a vacancy shall result from the expiration of the term of office and shall be filled by appointment as provided in subsections (a) and (b) of this section. If a declaration is so filed, the Tenure Commission shall, not less than sixty days prior to the expiration of the declaring candidate's term of office, prepare and submit to the President a written evaluation of the declaring candidate's performance during the present term of office and the candidate's fitness for reappointment to another term. If the Tenure Commission determines the declaring candidate to be well qualified for reappointment to another term, then the term of such declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension, or removal. If the Tenure Commission determines the declaring candidate to be qualified for reappointment to another term, then the President may nominate such candidate, in which case the President shall submit to the Senate for advice and consent the renomination of the declaring candidate as judge. If the President determines not to so nominate such declaring candidate, the President shall nominate another candidate for such position only in accordance with the provisions of subsections (a) and (b) of this section. If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to another term, then the President shall not submit to the Senate for advice and consent the renomination of the declaring candidate as judge and such judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia court.

**D.C. Code § 1-204.34 --District of Columbia Judicial Nomination Commission.**

(a) There is established for the District of Columbia the District of Columbia Judicial Nomination Commission (hereafter in this section referred to as the 'Commission'). The Commission shall consist of seven members selected in accordance with the provisions of subsection (b). Such members shall serve for terms of six years, except that the member selected in accordance with subsection (b)(4)(A) shall serve for five years; of the members first selected in accordance with subsection (b)(4)(B), one member shall serve for three years and one member shall serve for six years; of the members first selected in accordance with subsection (b)(4)(C), one member shall serve for a term of three years and one member shall serve for five

years; the member first selected in accordance with subsection (b)(4)(D) shall serve for six years; and the member first appointed in accordance with subsection (b)(4)(E) shall serve for six years. In making the respective first appointments according to subsections (b)(4)(B) and (b)(4)(C), the Mayor and the Board of Governors of the unified District of Columbia Bar shall designate, at the time of such appointments, which member shall serve for the shorter term and which member shall serve for the longer term.

(b) (1) No person may be appointed to the Commission unless the person

-

(A) is a citizen of the United States;

(B) is a bona fide resident of the District and has maintained an actual place of abode in the District for at least 90 days immediately prior to appointment; and

(C) is not a member, officer, or employee of the legislative branch or of an executive or military department or agency of the United States (listed in sections 101 and 102 of title 5 of the United States Code); and (except with respect to the person appointed or designated according to paragraph (4) (E)) is not an officer or employee of the judicial branch of the United States, or an officer or employee of the District government (including its judicial branch).

(2) Any vacancy on the Commission shall be filled in the same manner in which the original appointment was made. Any person so appointed to fill a vacancy occurring other than upon the expiration of a prior term shall serve only for the remainder of the unexpired term of such person's predecessor.

(3) It shall be the function of the Commission to submit nominees for appointment to positions as judges of the District of Columbia courts in accordance with § 1-204.33.

(4) In addition to all other qualifications listed in this section, lawyer members of the Commission shall have the qualifications prescribed for persons appointed as judges for the District of Columbia courts. Members of the Commission shall be appointed as follows:

(A) One member shall be appointed by the President of the United States.

(B) Two members shall be appointed by the Board of Governors of the unified District of Columbia Bar, both of whom shall have been engaged in the practice of law in the District for at least five successive years preceding their appointment.

(C) Two members shall be appointed by the Mayor, one of whom shall not be a lawyer.

(D) One member shall be appointed by the Council, and shall not be a lawyer.

(E) One member shall be appointed by the chief judge of the United States District Court for the District of Columbia, and such member shall be an active or retired Federal judge serving in the District.

(5) Members of the Commission shall serve without compensation for services rendered in connection with their official duties on the Commission.

(c) (1) The Commission shall act only at meetings called by the Chairman or a majority of the Commission held after notice has been given of such meeting to all Commission members. Meetings of the Commission may be closed to the public. Section 1-207.42 shall not apply to meetings of the Commission.

(2) The Commission shall choose annually, from among its members, a Chairman, and such other officers as it may deem necessary. The Commission may adopt such rules of procedures not inconsistent with this chapter as may be necessary to govern the business of the Commission.

(3) The District government shall furnish to the Commission, upon the request of the Commission, such records, information, services, and such other assistance and facilities as may be necessary to enable the

Commission properly to perform its function. Information, records, and other materials furnished to or developed by the Commission in the performance of its duties under this section shall be privileged and confidential. Section 552 of title 5, United States Code (known as the Freedom of Information Act), shall not apply to any such materials.

- (d) (1) In the event of a vacancy in any position of the judge of a District of Columbia court, the Commission shall, within sixty days following the occurrence of such vacancy, submit to the President, for possible nomination and appointment, a list of three persons for each vacancy. If more than one vacancy exists at one given time, the Commission must submit lists in which no person is named more than once and the President may select more than one nominee from one list. Whenever a vacancy will occur by reason of the expiration of such judge's term of office, the Commission's list of nominees shall be submitted to the President not less than sixty days prior to the occurrence of such vacancy. In the event the President fails to nominate, for Senate confirmation, one of the persons on the list submitted to the President under this section within sixty days after receiving such list, the Commission shall nominate, and with the advice and consent of the Senate, appoint one of those persons to fill the vacancy for which such list was originally submitted to the President.
- (2) In the event any person recommended by the Commission to the President requests that the recommendation be withdrawn, dies, or in any other way becomes disqualified to serve as a judge of the District of Columbia courts, the Commission shall promptly recommend to the President one person to replace the person originally recommended.
- (3) In no instance shall the Commission recommend any person, who in the event of timely nomination following a recommendation by the Commission, does not meet, upon such nomination, the qualifications specified in § 1-204.33.
- (4) Upon submission to the President, the name of any individual recommended under this subsection shall be made public by the Judicial Nomination Commission.

2. District of Columbia Bar Local Rules

**D.C. Bar R. IV --Board of Governors.**

Section 1. Composition of Board. The affairs of the Bar shall be managed and directed by a Board of Governors consisting of the officers of the Bar and the immediate past-president of the Bar, who shall be ex officio members of the Board, and fifteen members elected by the members of the Bar in the manner prescribed by the By-laws.

Section 2. Term. Qualifications. Nomination and Election. Of the first elected members of the Board of Governors, five shall be elected for a term of one year, five for a term of two years, and five for a term of three years. As each such term expires each newly elected member shall be elected for a term of three years; provided, however, that in each case Board members shall continue to serve until their successors shall be elected and shall qualify. No person shall be eligible to serve on the Board of Governors unless he is an active member of the Bar. No person shall be eligible to election to the Board of Governors for more than two consecutive three-year terms.

**C. HAWAII**

1. Constitutional Provisions

**Haw. Const. Art. VI, § 3**

The governor, with the consent of the senate, shall fill a vacancy in the office of the chief justice, supreme court, intermediate appellate court and circuit courts, by appointing a person from a list of not less than four, and not more than six, nominees for the vacancy, presented to the governor by the judicial selection commission.

If the governor fails to make any appointment within thirty days of presentation, or within ten days of the senate's rejection of any previous appointment, the appointment shall be made by the judicial selection commission from the list with the consent of the senate. If the senate fails to reject any appointment within thirty days thereof, it shall be deemed to have given its consent to such appointment. If the senate shall reject any appointment, the governor shall make another appointment from the list within ten days thereof. The same appointment and consent procedure shall

be followed until a valid appointment has been made, or failing this, the commission shall make the appointment from the list, without senate consent.

The chief justice, with the consent of the senate, shall fill a vacancy in the district courts by appointing a person from a list of not less than six nominees for the vacancy presented by the judicial selection commission. If the chief justice fails to make the appointment within thirty days of presentation, or within ten days of the senate's rejection of any previous appointment, the appointment shall be made by the judicial selection commission from the list with the consent of the senate. The senate shall hold a public hearing and vote on each appointment within thirty days of any appointment. If the senate fails to do so, the nomination shall be returned to the commission and the commission shall make the appointment from the list without senate consent. The chief justice shall appoint per diem district court judges as provided by law.

#### **Haw. Const., Art. VI, § 4**

There shall be a judicial selection commission that shall consist of nine members. The governor shall appoint two members to the commission. No more than one of the two members shall be a licensed attorney. The president of the senate and the speaker of the house of representatives shall each respectively appoint two members to the commission. The chief justice of the supreme court shall appoint one member to the commission. Members in good standing of the bar of the State shall elect two of their number to the commission in an election conducted by the supreme court or its delegate. No more than four members of the commission shall be licensed attorneys. At all times, at least one member of the commission shall be a resident of a county other than the City and County of Honolulu.

The commission shall be selected and shall operate in a wholly nonpartisan manner. After the initial formation of the commission, elections and appointments to the commission shall be for staggered terms of six years each. Notwithstanding the foregoing, no member of the commission shall serve for more than six years on the commission.

Each member of the judicial selection commission shall be a resident of the State and a citizen of the United States. No member shall run for or hold any other elected office under the United States, the State or its political

subdivisions. No member shall take an active part in political management or in political campaigns. No member shall be eligible for appointment to the judicial office of the State so long as the person is a member of the judicial commission and for a period of three years thereafter. No act of the judicial selection commission shall be valid except by concurrence of the majority of its voting members.

## **D. INDIANA**

### 1. Constitutional Provisions

#### **Ind. Const., Art. 7, § 9 --Judicial Nominating Commission.**

There shall be one judicial nominating commission for the Supreme Court and Court of Appeals. This commission shall, in addition, be the commission on judicial qualifications for the Supreme Court and Court of Appeals.

The judicial nominating commission shall consist of seven members, a majority of whom shall form a quorum, one of whom shall be the Chief Justice of the State or a Justice of the Supreme Court whom he may designate, who shall act as chairman. Those admitted to the practice of law shall elect three of their number to serve as members of said commission. All elections shall be in such manner as the General Assembly may provide. The Governor shall appoint to the commission three citizens, not admitted to the practice of law. The terms of office and compensation for members of a judicial nominating commission shall be fixed by the General Assembly. No member of a judicial nominating commission other than the Chief Justice or his designee shall hold any other salaried public office. No member shall hold an office in a political party or organization. No member of the judicial nominating commission shall be eligible for appointment to a judicial office so long as he is a member of the commission and for a period of three years thereafter.

#### **Ind. Const., Art. 7, § 10 --Selection of Justices of the Supreme Court and Judges of the Court of Appeals.**

A vacancy in a judicial office in the Supreme Court or Court of Appeals shall be filled by the Governor, without regard to political affiliation, from a list of three nominees presented to him by the judicial nominating



commission. If the Governor shall fail to make an appointment from the list within sixty days from the day it is presented to him, the appointment shall be made by the Chief Justice or the acting Chief Justice from the same list.

2. Statutory Provisions

**Ind. Code § 33-27-1-2 --“Attorney commissioners.”**

“Attorney commissioners” means the three (3) individuals admitted to the practice of law who are elected to the judicial nominating commission by the electors.

**Ind. Code § 33-27-1-3 --“Electors.”**

“Electors” means individuals who are attorneys in good standing admitted to the practice of law in Indiana.

**Ind. Code § 33-27-1-5 --“Nonattorney commissioners.”**

“Nonattorney commissioners” means the three (3) individuals not admitted to the practice of law who are appointed to the judicial nominating commission by the governor.

**Ind. Code § 33-27-2-2 --Attorney commissioners; electors and elections; residency; term; vacancy.**

(a) For purposes of electing attorney members to the judicial nominating commission, the state shall be divided into three (3) districts, corresponding to the First District, the Second District, and the Third District of the court of appeals.

(b) The qualified electors consist of the individuals who are registered with the clerk of the supreme court as attorneys in good standing under the requirements of the supreme court.

(c) The electors of each district shall elect one (1) resident of their district who is admitted to the practice of law in Indiana to the judicial nominating commission. The term of office of each elected member is three (3) years, beginning on the first day of January following the election. During the month before the expiration of an elected member's term of office, an

election shall be held to fill the succeeding three (3) year term of office. Attorney commissioners on the commission must reside for the term of their office in the district from which they were elected. An attorney commissioner is considered to have resigned the position if the residency of the attorney commissioner changes from the court of appeals district for which the attorney commissioner was elected.

(d) Except when a term of office has less than ninety (90) days remaining, vacancies in the office of an attorney commissioner to the judicial nominating commission shall be filled for the unexpired term of the member creating the vacancy by a special election. An attorney commissioner who is elected to fill an unexpired term shall commence the attorney commissioner's duties immediately upon the certification of the new attorney commissioner's election to the secretary of state.

**Ind. Code § 33-27-3-4(a) --Failure of governor to appoint; appointment by chief justice; changes in list.**

(a) If the governor fails to make an appointment not later than sixty (60) days after the date the names of the nominees are submitted to the governor, the chief justice shall make the appointment from the nominees.

**Ind. Code § 33-24-2-1 --Approval or rejection of justices.**

Justices of the supreme court shall be approved or rejected by the electorate of the state under Article 7, Section 11 of the Constitution of the State of Indiana.

**Ind. Code § 33-25-2-1 --Approval or rejection of appeals court judges.**

Judges of the court of appeals shall be approved or rejected by the electorate of Indiana under Article 7, Section 11 of the Constitution of the State of Indiana.

## **E. IOWA**

### **1. Constitutional Provisions**

#### **Iowa Const., Art. V, § 15 --Vacancies in courts.**

Vacancies in the supreme court and district court shall be filled by appointment by the governor from lists of nominees submitted by the appropriate judicial nominating commission. Three nominees shall be submitted for each supreme court vacancy, and two nominees shall be submitted for each district court vacancy. If the governor fails for thirty days to make the appointment, it shall be made from such nominees by the chief justice of the supreme court.

#### **Iowa Const., Art. V, § 16 --State and district nominating commissions.**

There shall be a state judicial nominating commission. Such commission shall make nominations to fill vacancies in the supreme court. Until July 4, 1973, and thereafter unless otherwise provided by law, the state judicial nominating commission shall be composed and selected as follows: There shall be not less than three nor more than eight appointive members, as provided by law, and an equal number of elective members on such commission, all of whom shall be electors of the state. The appointive members shall be appointed by the governor subject to confirmation by the senate. The elective members shall be elected by the resident members of the bar of the state. The judge of the supreme court who is senior in length of service on said court, other than the chief justice, shall also be a member of such commission and shall be its chairman.

There shall be a district judicial nominating commission in each judicial district of the state. Such commissions shall make nominations to fill vacancies in the district court within their respective districts. Until July 4, 1973, and thereafter unless otherwise provided by law, district judicial nominating commissions shall be composed and selected as follows: There shall be not less than three nor more than six appointive members, as provided by law, and an equal number of elective members on each such commission, all of whom shall be electors of the district. The appointive members shall be appointed by the governor. The elective members shall be elected by the resident members of the bar of the district. The district judge

of such district who is senior in length of service shall also be a member of such commission and shall be its chairman.

Due consideration shall be given to area representation in the appointment and election of judicial nominating commission members. Appointive and elective members of judicial nominating commissions shall serve for six-year terms, shall be ineligible for a second six-year term on the same commission, shall hold no office of profit of the United States or of the state during their terms, shall be chosen without reference to political affiliation, and shall have such other qualifications as may be prescribed by law. As near as may be, the terms of one-third of such members shall expire every two years.

## 2. Statutory Provisions

### **Iowa Stat. § 46.1 --Appointment of state judicial nominating commissioners.**

The governor shall appoint, subject to confirmation by the senate, one eligible elector of each congressional district to the state judicial nominating commission for a six-year term beginning and ending as provided in section 69.19. The terms of no more than three nor less than two of the members shall expire within the same two-year period. No more than a simple majority of the members appointed shall be of the same gender.

### **Iowa Stat. § 46.2 --Election of state judicial nominating commissioners.**

The resident members of the bar of each congressional district shall elect one eligible elector of the district to the state judicial nominating commission for a six-year term beginning July 1. The terms of no more than three nor less than two of the members shall expire within the same two-year period, the expiration dates being governed by the expiration dates of the terms of the original appointive members. The members of the bar of the respective congressional districts shall in January, immediately preceding the expiration of the term of a member of the commission, elect a successor for a like term. For the first elective term open on or after July 1, 1987, in the odd-numbered districts the elected member shall be a woman and in the even-numbered districts the elected member shall be a man. Thereafter, the districts shall alternate between women and men elected members.

**Iowa Stat. § 46.3 --Appointment of district judicial nominating commissioners.**

The governor shall appoint five eligible electors of each judicial election district to the district judicial nominating commission. Appointments shall be to staggered terms of six years each and shall be made in the month of January for terms commencing February 1 of even-numbered years. No more than a simple majority of the commissioners appointed shall be of the same gender.

**Iowa Stat. § 46.4 --Election of district judicial nominating commissioners.**

The resident members of the bar of each judicial election district shall elect five eligible electors of the district to the district judicial nominating commission. Commissioners shall be elected to staggered terms of six years each. The elections shall be held in the month of January for terms commencing February 1 of even-numbered years.

For terms commencing February 1, 1988, and every six years thereafter, one elected commissioner in each district shall be a woman and one shall be a man. For terms commencing February 1, 1990, and every six years thereafter, one elected commissioner in each district shall be a woman and one shall be a man. For the term commencing February 1, 1992, in the odd-numbered districts the elected commissioner shall be a woman and in the even-numbered districts the elected commissioner shall be a man. For the terms commencing every six years thereafter, the districts shall alternate between women and men elected commissioners.

**Iowa Stat. § 46.15 --Appointments to be from nominees.**

1. All appointments to the supreme court and court of appeals shall be made from the nominees of the state judicial nominating commission, and all appointments to the district court shall be made from the nominees of the district judicial nominating commission.
2. If the governor fails to make an appointment within thirty days after a list of nominees has been submitted, the appointment shall be made from the list of nominees by the chief justice of the supreme court.

**Iowa Stat. § 602.6304 --Appointment and resignation of district associate judges.**

1. The district associate judges authorized by sections 602.6301 and 602.6302 shall be appointed by the district judges of the judicial election district from persons nominated by the county magistrate appointing commission. In the case of a district associate judge to be appointed to more than one county, the appointment shall be from persons nominated by the county magistrate appointing commissions acting jointly and in the case of a district associate judge to be appointed to more than one judicial election district of the same judicial district, the appointment shall be by a majority of the district judges in each judicial election district.

2. In November of any year in which an impending vacancy is created because a district associate judge is not retained in office pursuant to a judicial election, the county magistrate appointing commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as district associate judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district not later than December 15 of that year the names of three applicants who are nominated by the commission for the vacancy. If there are three or fewer applicants the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered.

3. Within thirty days after a county magistrate appointing commission receives notification of an actual or impending vacancy in the office of district associate judge, other than a vacancy referred to in subsection 2, the commission shall certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy. The commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as district associate judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy. If there are three or fewer

applicants the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered. As used in this subsection, a vacancy is created by the death, retirement, resignation, or removal of a district associate judge, or by an increase in the number of positions authorized.

4. Within fifteen days after the chief judge of a judicial district has received the list of nominees to fill a vacancy in the office of district associate judge, the district judges in the judicial election district shall, by majority vote, appoint one of those nominees to fill the vacancy.

5. A district associate judge who seeks to resign from the office of district associate judge shall notify in writing the chief judge of the judicial district as to the district associate judge's intention to resign and the effective date of the resignation. The chief judge of the judicial district, upon receipt of the notice, shall notify the county magistrate appointing commission and the state court administrator of the actual or impending vacancy in the office of district associate judge due to resignation.

6. The supreme court may prescribe rules of procedure to be used by county magistrate appointing commissions when exercising the duties specified in this section.

**Iowa Stat. § 602.6403 --Appointment, qualification, and resignation of magistrates.**

1. By June 1 of each year in which magistrates' terms expire, the county magistrate appointing commission shall appoint, except as otherwise provided in section 602.6302, the number of magistrates apportioned to the county by the state court administrator under section 602.6401, the number of magistrates required pursuant to substitution orders in effect under section 602.6303, and may appoint an additional magistrate when allowed by section 602.6402. The commission shall not appoint more magistrates than are authorized for the county by this article.

2. The magistrate appointing commission for each county shall prescribe the contents of an application, in addition to any application form provided by the supreme court, for an appointment pursuant to this section. The commission shall publicize notice of any vacancy to be filled in at least two

publications in all official county newspapers in the county. The commission shall accept applications for a minimum of fifteen days prior to making an appointment, and shall make available during that period of time any printed application forms the commission prescribes.

3. Within thirty days following receipt of notification of a vacancy in the office of magistrate, the commission shall appoint a person to the office to serve the remainder of the unexpired term. For purposes of this section, vacancy means a death, resignation, retirement, or removal of a magistrate, or an increase in the number of positions authorized.

4. The term of office of a magistrate is four years, commencing August 1, 1989. However, the terms of all magistrates in a county are deemed to expire if a substitution under section 602.6302 or the allocation under section 602.6401 results in a reduction in the number of magistrates in a county where the magistrates hold office.

5. The commission shall promptly certify the names and addresses of appointees to the clerk of the district court and to the chief judge of the judicial district. The clerk of the district court shall certify to the state court administrator the names and addresses of these appointees.

6. Before assuming office, a magistrate shall subscribe and file in the office of the state court administrator the oath of office specified in section 63.6.

7. Before the commencement of the term of a magistrate, the members of the magistrate appointing commission may reconsider the appointment. Written notification of the reasons for reconsideration and time and place for the meeting must be sent to the magistrate appointee and the clerk of the district court. The commission may reconvene and decertify the magistrate appointee for good cause. Notice of the decertification and a statement of the reasons justifying the decertification shall be promptly sent to the clerk of the district court, the chief judge of the judicial district, and the state court administrator.

8. Annually, the state court administrator shall cause a school of instruction to be conducted for magistrates, and each magistrate shall attend prior to the time of taking office unless excused by the chief justice for good cause. A magistrate appointed to fill a vacancy shall attend the first school of



instruction that is held following the appointment, unless excused by the chief justice for good cause.

9. A magistrate who seeks to resign from the office of magistrate shall notify in writing the chief judge of the judicial district as to the magistrate's intention to resign and the effective date of the resignation. The chief judge of the judicial district, upon receipt of the notice, shall notify the county magistrate appointing commission and the state court administrator of the vacancy in the office of magistrate due to resignation.

**Iowa Stat. § 602.6501 --Composition of county magistrate appointing commissions.**

1. A magistrate appointing commission is established in each county. The commission shall be composed of the following members:

a. A district judge designated by the chief judge of the judicial district to serve until a successor is designated.

b. Three members appointed by the board of supervisors, or the lesser number provided in section 602.6503, subsection 1.

c. Two attorneys elected by the attorneys in the county, or the lesser number provided in section 602.6504, subsection 1.

2. The clerk of the district court shall maintain a permanent record of the name, address, and term of office of each commissioner.

3. A member of a magistrate appointing commission shall be reimbursed for actual and necessary expenses reasonably incurred in the performance of official duties. Reimbursements are payable by the county in which the member serves, upon certification of the expenses to the county auditor by the clerk of the district court. The district judges of each judicial district may prescribe rules for the administration of this subsection.

**F. KANSAS**

1. Constitutional Provisions

**Kan. Const., Art. 3, § 5 --Selection of justices of the supreme court.**

(a) Any vacancy occurring in the office of any justice of the supreme court and any position to be open thereon as a result of enlargement of the court, or the retirement or failure of an incumbent to file his declaration of candidacy to succeed himself as hereinafter required, or failure of a justice to be elected to succeed himself, shall be filled by appointment by the governor of one of three persons possessing the qualifications of office who shall be nominated and whose names shall be submitted to the governor by the supreme court nominating commission established as hereinafter provided.

(b) In event of the failure of the governor to make the appointment within sixty days from the time the names of the nominees are submitted to him, the chief justice of the supreme court shall make the appointment from such nominees.

(c) Each justice of the supreme court appointed pursuant to provisions of subsection (a) of this section shall hold office for an initial term ending on the second Monday in January following the first general election that occurs after the expiration of twelve months in office. Not less than sixty days prior to the holding of the general election next preceding the expiration of his term of office, any justice of the supreme court may file in the office of the secretary of state a declaration of candidacy for election to succeed himself. If a declaration is not so filed, the position held by such justice shall be open from the expiration of his term of office. If such declaration is filed, his name shall be submitted at the next general election to the electors of the state on a separate judicial ballot, without party designation, reading substantially as follows:

"Shall \_\_\_\_\_  
(Here insert name of justice.)

\_\_\_\_\_  
(Here insert the title of the court.)

be retained in office?"

If a majority of those voting on the question vote against retaining him in office, the position or office which he holds shall be open upon the expiration of his term of office; otherwise he shall, unless removed for cause, remain in office for the regular term of six years from the second Monday in January following such election. At the expiration of each term he shall, unless by law he is compelled to retire, be eligible for retention in office by election in the manner prescribed in this section.

(d) A nonpartisan nominating commission whose duty it shall be to nominate and submit to the governor the names of persons for appointment to fill vacancies in the office of any justice of the supreme court is hereby established, and shall be known as the "supreme court nominating commission." Said commission shall be organized as hereinafter provided.

(e) The supreme court nominating commission shall be composed as follows: One member, who shall be chairman, chosen from among their number by the members of the bar who are residents of and licensed in Kansas; one member from each congressional district chosen from among their number by the resident members of the bar in each such district; and one member, who is not a lawyer, from each congressional district, appointed by the governor from among the residents of each such district.

(f) The terms of office, the procedure for selection and certification of the members of the commission and provision for their compensation or expenses shall be as provided by the legislature.

(g) No member of the supreme court nominating commission shall, while he is a member, hold any other public office by appointment or any official position in a political party or for six months thereafter be eligible for nomination for the office of justice of the supreme court. The commission may act only by the concurrence of a majority of its members.

**Kan. Const., Art. 3, § 6 --District courts.**

(a) The state shall be divided into judicial districts as provided by law. Each judicial district shall have at least one district judge. The term of office of each judge of the district court shall be four years. District court shall be held at such times and places as may be provided by law. The district judges shall be elected by the electors of the respective judicial districts unless the

electors of a judicial district have adopted and not subsequently rejected a method of nonpartisan selection. The legislature shall provide a method of nonpartisan selection of district judges and for the manner of submission and resubmission thereof to the electors of a judicial district. A nonpartisan method of selection of district judges may be adopted, and once adopted may be rejected, only by a majority of electors of a judicial district voting on the question at an election in which the proposition is submitted. Whenever a vacancy occurs in the office of district judge, it shall be filled by appointment by the governor until the next general election that occurs more than thirty days after such vacancy, or as may be provided by such nonpartisan method of selection.

(b) The district courts shall have such jurisdiction in their respective districts as may be provided by law.

(c) The legislature shall provide for clerks of the district courts.

(d) Provision may be made by law for judges pro tem of the district court.

(e) The supreme court or any justice thereof shall have the power to assign judges of district courts temporarily to other districts.

(f) The supreme court may assign a district judge to serve temporarily on the supreme court.

## 2. Statutory Provisions

### **Kan. Stat. Ann. § 20-3004 --Nomination of judges by supreme court nominating commission; meetings; quorum; final action; qualifications and selection of nominees; meetings not subject to open meetings act.**

(a) In addition to the powers and duties prescribed by K.S.A. 20-119 through 20-131, and amendments thereto, the supreme court nominating commission established by section 5 of article 3 of the constitution of the state of Kansas shall nominate persons to serve as judges of the court of appeals as provided in this act. To carry out its duties under this act, the commission shall meet only upon call of the chairperson, and the commission shall not take any final action except at such meeting. For the purpose of this act, a majority of the commission shall constitute a quorum to do business, but no final action shall be taken except upon a vote of the majority of the members of the

commission. For the purposes of this act, the commission shall not be subject to the Kansas open meetings act as provided in K.S.A. 75-4317 et seq., and amendments thereto.

(b) Any person nominated by the commission to serve as a judge of the court of appeals shall have the qualifications prescribed by subsection (a) of K.S.A. 20-3002 and shall be a person of recognized integrity, character, ability, experience and judicial temperament, to the end that persons serving as judges of the court of appeals will be the best qualified therefor. In order to obtain the best qualified persons as nominees, the commission shall not be limited in its consideration of potential nominees to those persons whose names have been submitted to the commission or who have expressed a willingness to serve.

(c) The commission may authorize one or more members of the commission to tender a nomination to any qualified person in order to ascertain such person's willingness to serve if nominated, but any such tender of nomination shall be subject to final action of the commission under the conditions prescribed by subsection (a).

(d) No member of the supreme court nominating commission shall be eligible for nomination for the office of judge of the court of appeals while a member of such commission or for six months thereafter.

**Kan. Stat. Ann. § 20-3002(b) --Judges; number; qualifications; selection; compensation; expenses; assignment to the supreme court.**

(b) Judges of the court of appeals shall be selected in the manner provided by K.S.A. 20-3003 through 20-3010, and amendments thereto. Each judge of the court of appeals shall receive an annual salary in the amount prescribed by law. No judge of the court of appeals may receive additional compensation for official services performed by the judge. Each such judge shall be reimbursed for expenses incurred in the performance of such judge's official duties in the same manner and to the same extent justices of the supreme court are reimbursed for such expenses.

**Kan. Stat. Ann. § 20-2901 --Proposition of method of selection of judges of district court; submission of proposition on filing of petition or in newly established district.**

(a) The proposition of the method of selecting judges of the district court shall be submitted to the qualified electors in each judicial district, as authorized by section 6 of article 3 of the Kansas constitution, when a petition therefor is submitted to the secretary of state in accordance with this section. In the case of a petition for the adoption of the nonpartisan method of selection, the following shall appear on the petition:

“We request an election to determine whether judges of the district court in this district shall continue to be elected or shall be appointed by the governor upon nominations by a district nominating commission and subject to retention in office by a vote of the voters.”

In the case of a petition for the rejection of the nonpartisan method of selection, the following shall appear on the petition:

"We request an election to determine whether judges of the district court in this district shall continue to be appointed by the governor upon nominations by a district nominating commission and subject to retention in office by a vote of the voters or shall be elected."

(b) The proposition of the method of selecting judges of the district court shall be submitted to the qualified electors in:

(1) Any newly established judicial district which consists of all or parts of two or more previously established districts which used different methods of selecting judges of the district court and

(2) any judicial district to which new territory is attached if any portion of such territory was transferred from a district which used a method of selecting its judges which is different from the method used in any other district from which any portion of the territory was transferred or the district to which the territory is attached.

(c) The proposition on the ballot at an election held pursuant to this section for the adoption of nonpartisan selection shall be as follows:

"The present method of electing judges of the district court in this judicial district shall be discontinued and there is hereby adopted in this judicial district the nonpartisan method of selection of judges by the governor upon nominations by a district nominating commission and subject to retention in office by a vote of the voters." Provision shall be made for marking the question "Yes" or "No."

(d) The proposition on the ballot at an election held pursuant to this section for the repeal of nonpartisan selection shall be as follows:

"The present method of nonpartisan selection of judges of the district court in this judicial district by the governor upon nominations by a district nominating commission and subject to retention in office by a vote of the voters shall be discontinued and there is hereby adopted in this judicial district the election of judges of the district court by the voters." Provision shall be made for marking the question "Yes" or "No."

(e) The proposition on the ballot at any election held pursuant to subsection (b) shall be as follows:

"Judges of the district court in this judicial district shall be selected:  
(vote for only one of the following methods)

(1) By election by the voters.

(2) By nonpartisan appointment by the governor from among nominations by a district nominating commission and subject to election on retention in office by a vote of the voters."

(f) If a majority of the votes cast and counted on the proposition is in favor of the nonpartisan method of selection or against election of judges of the district court, the provisions of this act shall govern the selection and retention of judges of the district court in the judicial district, notwithstanding any other law providing for the election of judges of the district court, until such time as the proposition of the method of selection of the judges of the district court is resubmitted to the voters of the judicial district and a different method of selection is approved by the voters as provided by this section. If a majority of the votes cast and counted is in favor of election of judges of the district court or against the nonpartisan

method of selection, vacancies in the office of judge of the district court in the judicial district shall be filled in the manner provided by law for the filling of such vacancies in judicial districts in which judges of the district court are elected, until such time as the proposition of the method of selection of the judges of the district court is resubmitted to the voters of the judicial district and a different method of selection is approved by the voters as provided by this section.

(g) Except as provided in subsection (b), when the proposition of the method of selecting judges of the district court is submitted to the electors in a judicial district in 1984 or in any subsequent year, such proposition may be resubmitted to the electors in the judicial district not more often than once every eight years thereafter, whenever there shall be submitted to the secretary of state a petition signed by qualified electors of the judicial district, equal in number to not less than 5% of the electors of the judicial district who voted for the office of secretary of state at the last preceding general election. In such event, the secretary of state shall cause the appropriate proposition as stated in subsection (c) or (d) to be placed on the ballot at the next succeeding general election in an even-numbered year which occurs more than 90 days after the date such petition is filed with the secretary of state.

(h) It shall be the duty of the state board of canvassers to canvass the votes in each judicial district voting on the proposition of the method of selection of judges of the district court in the manner prescribed by K.S.A. 25-3206 and amendments thereto. Upon completion of the final canvass and certification of the results, the secretary of state shall transmit a copy of the results for each such judicial district to the chief justice of the supreme court. Upon receipt thereof, the chief justice shall notify the clerk of the supreme court and the board of county commissioners of each county in a judicial district which voted in favor of the nonpartisan method of selection of their respective duties under this act, and the chief justice shall designate a chairperson of the commission for each such judicial district, as provided in K.S.A. 20-2903 and amendments thereto.



**Kan. Stat. Ann. § 20-2902 --Application of 20-2903 to 20-2913 to judicial districts adopting proposition of nonpartisan selection of judges of the district court, judicial district defined; effect on terms of incumbent judges; constitutional restriction on political activities; removal.**

(a) The provisions of K.S.A. 20-2903 to 20-2913, inclusive, and amendments thereto, shall apply only in judicial districts in which the proposition of nonpartisan selection of judges of the district court has been approved by the qualified electors of such judicial districts, as provided in K.S.A. 20-2901, and as used in K.S.A. 20-2903 to 20-2913, inclusive, and amendments thereto, the term "judicial district" shall mean any judicial district to which said sections apply.

(b) The provisions of this act shall not affect the term of office of any person serving as judge of the district court at the time of any general election at which the proposition for nonpartisan selection of judges of the district court is on the ballot, nor shall it affect the term of office of any person elected as judge of the district court at any such election; but upon the expiration of the term of office of any such judge in a judicial district in which the qualified electors thereof have approved nonpartisan selection of judges of the district court, as provided in K.S.A. 20-2901, the retention of such judge in office or the selection of a successor to such office shall be governed by K.S.A. 20-2903 to 20-2913, inclusive, and amendments thereto.

(c) Whenever a judicial district shall approve the proposition of nonpartisan selection of judges of the district court as provided in K.S.A. 20-2901, each district court judge serving in such judicial district shall be subject to the restrictions imposed on his or her political activities by section 8 of article 3 of the Kansas constitution. Any such judge who violates said restrictions shall be subject to removal from office in the manner prescribed by law.

**Kan. Stat. Ann. § 20-2903 --District judicial nominating commission; establishment; composition; chairperson, appointment, duties; purpose of commission.**

(a) There is hereby established in each judicial district a district judicial nominating commission, which shall consist of an equal number of lawyers and non-lawyers. The lawyer members of each nominating commission shall be elected as provided in K.S.A. 20-2904, and the non-lawyer members shall be appointed as provided in K.S.A. 20-2905. The chairperson of the

commission shall be a justice of the supreme court or a district judge who is not a judge in such judicial district, to be appointed by and serve at the pleasure of the chief justice of the supreme court. It shall be the duty of the chairperson to preside at all meetings of the commission, but he or she shall not be entitled to vote.

(b) The purpose of the district judicial nominating commission shall be to nominate persons for appointment to the office of judge of the district court in a judicial district. Any person so nominated shall have the qualifications prescribed by law for such office, and shall be a person of recognized integrity, character, ability, experience and judicial temperament, to the end that persons serving as judges of the district court will be the best qualified therefor.

**Kan. Stat. Ann. § 20-2904 --Same; lawyer members; qualifications; selection.**

(a) Lawyer members of the district judicial nominating commission shall be elected by the lawyers who are qualified electors of the judicial district and who are registered with the clerk of the supreme court pursuant to rule 208 of such court. Each lawyer member of a district judicial nominating commission shall be a qualified elector of such judicial district. The number of lawyer members to be elected to the district judicial nominating commission of a judicial district shall be as follows:

(1) In a judicial district consisting of a single county, the number of members elected shall be equal to the number of nonlawyer members appointed pursuant to subsection (a)(1) of K.S.A. 20-2905, and amendments thereto.

(2) In a judicial district consisting of two counties, four members shall be elected.

(3) In a judicial district consisting of three or more counties, the number of members elected shall equal the number of counties in such judicial district.

(b) Between December 1 and December 15 of the year in which nonpartisan selection of judges of the district court is approved by the electors of the judicial district as provided in K.S.A. 20-2901, and amendments thereto, the clerk of the supreme court shall send to each lawyer

by ordinary first class mail a form for nominating one lawyer for election to the commission. Any such nomination shall be received in the office of the clerk of the supreme court on or before January 1 of the following year, together with the written consent of the nominee. After receipt of all nominations which are timely submitted, the clerk shall prepare a ballot containing the names of all lawyers so nominated and shall mail one such ballot and instructions for voting such ballot to each registered lawyer in the judicial district. Ballots shall be prepared in such manner that each lawyer receiving the same shall be instructed to vote for not more than the number of positions to be filled. Each such ballot shall be accompanied by a certificate to be signed and returned by the lawyer voting such ballot, evidencing the qualifications of such lawyer to vote and certifying that the ballot was voted by such person. In any judicial district in which the number of nominees does not exceed the number of positions to be filled, the clerk shall declare those nominees to be elected without preparation of a ballot.

In order to insure that the election of lawyer members is by secret ballot, the clerk shall provide a separate envelope for the ballot, in which the voted ballot only shall be placed, and the envelope containing the voted ballot shall be placed in another envelope, also to be supplied by the clerk, together with the signed certificate, and received in the office of the clerk of the supreme court on or before February 15 of such year. The ballots returned as provided in this section shall be canvassed within five days thereafter. The canvassers shall consist of the clerk of the supreme court and two or more persons who are registered members of the bar residing in Kansas, either practicing lawyers, justices or judges, designated to act as such by the chief justice. The canvassers shall open and canvass the ballots and shall tabulate and sign the results as a record in the office of the clerk.

(c) After the ballots are counted and tabulated in descending order from the nominee receiving the highest number of votes the canvassers shall declare to be elected those nominees who are equal in number to the number of lawyers to be elected and who have the greatest number of votes.

In the event of a tie creating more nominees to be elected than there are positions to be filled, the canvassers shall determine the person or persons to be elected by lot. In the event that less than the required number of lawyers is elected, the positions for which lawyers have not been elected shall be declared vacant and the vacancies filled in the manner prescribed by subsection (e) of K.S.A. 20-2906, and amendments thereto.

(d) The procedure provided in this section for election of lawyers to serve as members of the first district judicial nominating commission established in a judicial district shall apply to the election of lawyers to succeed lawyer members of the commission whose terms of office expire, except that the form for submitting a nomination shall be sent between December 1 and December 15 of the year preceding the year in which such terms of office expire, and the dates prescribed for submission of nominations and the mailing, returning and canvassing of ballots shall apply in the year in which such terms of office expire.

**Kan. Stat. Ann. § 20-2905 --Same; nonlawyer members; numbers; qualifications; appointments; certification.**

(a) The appointments of nonlawyer members of a district judicial nominating commission shall be made as follows:

(1) In a judicial district consisting of a single county, each member of the board of county commissioners of such county shall appoint one nonlawyer to serve as a member of the nominating commission.

(2) In a judicial district consisting of two counties, the board of county commissioners of each such county shall appoint two nonlawyers to serve as members of the nominating commission.

(3) In a judicial district consisting of three or more counties, the board of county commissioners of each such county shall appoint one nonlawyer to serve as a member of the nominating commission.

Each nonlawyer member of the nominating commission shall be a qualified elector of the county from which such member is appointed.

(b) All appointments of nonlawyers to serve as members of the first district judicial nominating commission of a judicial district shall be made and certified to the clerk of the supreme court on or before February 15 of the year following the general election at which the nonpartisan selection of judges of the district court is approved. Thereafter, all appointments of nonlawyers to serve for full terms on the commission shall be made and certified to the clerk of the supreme court on or before February 15 of the year in which such terms of office commence.

## **G. KENTUCKY**

### **1. Constitutional Provisions**

#### **Ky. Const. § 118 --Vacancies.**

(1) A vacancy in the office of a justice of the Supreme Court, or of a judge of the Court of Appeals, circuit or district court which under Section 152 of this Constitution is to be filled by appointment by the Governor shall be filled by the Governor from a list of three names presented to him by the appropriate judicial nominating commission. If the Governor fails to make an appointment from the list within sixty days from the date it is presented to him, the appointment shall be made from the same list by the chief justice of the Supreme Court.

(2) There shall be one judicial nominating commission for the Supreme Court and the Court of Appeals, one for each judicial circuit, and one for each judicial district, except that a circuit and district having the same boundary shall have but one judicial nominating commission. Each commission shall consist of seven members, one of whom shall be the chief justice of the Supreme Court, who shall be chairman. Two members of each commission shall be members of the bar, who shall be elected by their fellow members. The other four members shall be appointed by the Governor from among persons not members of the bar, and these four shall include at least two members of each of the two political parties of the Commonwealth having the largest number of voters. Members of a judicial circuit or judicial district nominating commission must be residents of the circuit or district, respectively, and the lawyer members of the commission shall be elected by the members of the bar residing in the circuit or district, respectively. The terms of office of members of judicial nominating commissions shall be fixed by the General Assembly. No person shall be elected or appointed a member of a judicial nominating commission who holds any other public office or any office in a political party or organization

#### **Ky. Const. § 152 --Vacancies - When filled by appointment, when by election-- Who to fill.**

Except as otherwise provided in this Constitution, vacancies in all elective offices shall be filled by election or appointment, as follows: If the unexpired term will end at the next succeeding annual election at which

either city, town, county, district or State officers are to be elected, the office shall be filled by appointment for the remainder of the term. If the unexpired term will not end at the next succeeding annual election at which either city, town, county, district or State officers are to be elected, and if three months intervene before said succeeding annual election at which either city, town, county, district or State officers are to be elected, the office shall be filled by appointment until said election, and then said vacancy shall be filled by election for the remainder of the term. If three months do not intervene between the happening of said vacancy and the next succeeding election at which city, town, county, district or State officers are to be elected, the office shall be filled by appointment until the second succeeding annual election at which city, town, county, district or State officers are to be elected; and then, if any part of the term remains unexpired, the office shall be filled by election until the regular time for the election of officers to fill said offices. Vacancies in all offices for the State at large, or for districts larger than a county, shall be filled by appointment of the Governor; all other appointments shall be made as may be prescribed by law. No person shall ever be appointed a member of the General Assembly, but vacancies therein may be filled at a special election, in such manner as may be provided by law.

## 2. Statutory Provisions

### **Ky. Rev. Stat. Ann. § 34.010 --Terms - Appointments.**

(1) Members of judicial nominating commissions, both statewide and local, shall hold office for a term of four (4) years and until such time as their successors shall be appointed or elected, except as provided in subsection (2).

(2) Of those members appointed by the Governor to the first judicial nominating commissions, the appointments shall be as follows:

(a) One (1) member of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall be appointed for a term to expire January 1, 1980; and

(b) One (1) member of the political party having the largest number of registered voters and one (1) member of the political party having the

second largest number of registered voters shall be appointed for a term to expire January 1, 1978.

(3) Thereafter, as each term expires, the vacancy so created shall be filled by an appointee from the same political party for a term of four (4) years.

(4) Appointments or elections to fill the unexpired term of a member shall be for the remainder of the term.

(5) Members representing the bar shall be elected according to rules promulgated by the Supreme Court with the expenses of the elections being paid from the State Treasury.

### 3. Supreme Court Local Rules

#### **Ky. Sup. Ct. R. 7.030 --Nomination and election – regular elections.**

(1) Candidates for election as bar representatives on the commission shall be nominated by the board or by written petition as herein provided.

(2) On or before June 1 of the years in which regular elections are to be held under this rule the board shall by majority vote nominate candidates for election to the various commissions as specified in paragraph (c) of this rule. The board shall immediately certify the names of its nominees to the director. On or before July 1 the director shall mail to the members specified in paragraph (c) of this rule a list or lists of the candidates so nominated.

(3) (a) For the commission for the Supreme Court and the Court of Appeals the board shall nominate one (1) qualified member from each appellate district. The director shall mail a list of the candidates so nominated to each member residing in the Commonwealth of Kentucky.

(b) For the commissions for each judicial circuit the board shall nominate two (2) qualified members. To the extent practicable, in multi-county circuits the board shall nominate candidates from different counties in the circuit. The director shall mail a list of the candidates so nominated to each member residing in the circuit.

(c) Lists of the board's nominees for election to the various commissions may be combined as one list and may be included in one mailing.

(4) Any other qualified member may file a written petition for candidacy for the commission for the Supreme Court and the Court of Appeals, signed by himself and not less than ten (10) other members residing in the Commonwealth of Kentucky, or may file a written petition for candidacy for the commission for a judicial circuit, signed by himself and not less than two (2) other members residing in the circuit. In his petition the member shall state that he does not hold any other public office or any office in a political party or organization. All such petitions shall be filed with the director on or before August 15 of the year in which the regular election for members of the commissions is to be held. The director shall acknowledge receipt of each candidate's petition by return mail. All petitions shall be considered public records and shall be available for inspection at reasonable hours. On or before September 1 the director shall mail to the members specified in paragraph (c) of this rule a list or lists of the candidates, including those nominated by the board and those nominated by petition.

(5) The eligibility of a candidate in a regular election may be challenged by any member entitled to vote in the election of the commission for which the challenged party is a candidate. Such challenge shall be in writing signed by the challenger, certifying that a copy has been served upon the challenged party or parties, and filed with the director on or before September 15 of the year in which the election is to be held. It shall be summarily heard by a hearing committee consisting of three (3) disinterested members appointed by the president. The parties shall be entitled to appear in person or by or with counsel. The hearing shall be held and a final decision rendered in writing on or before the following September 25. The party or parties aggrieved by such decision may appeal to the Supreme Court by a petition for review filed with the clerk of that court on or before the following October 1 and certifying that a copy has been served on the adversary party or parties. The matter shall be summarily heard and determined as ordered by the court.

(6) Ballots shall be prepared by the director. Ballots for the various commissions shall be on separate sheets of paper but may be included in one mailing. The ballot for each commission shall include the names of the candidates, listed in alphabetical order, and the addresses at which they



reside. There shall be printed on each ballot in boldface type the words "This ballot must be received by the director on or before the first Tuesday following the first Monday in November" and the words, "You must vote for two and two only or your ballot will not be counted."

(7) On or before October 10 of the year in which the election is to be held the ballots shall be mailed, with return envelopes, to the following members: A ballot for the commission for the Supreme Court and the Court of Appeals shall be sent to each member residing in the Commonwealth of Kentucky; a ballot for the commission for each judicial circuit shall be sent to each member residing in the circuit.

(8) The completed ballot shall be sealed in an unmarked inner envelope which shall be sealed in an outer return envelope. The outer envelope shall be addressed to the director and shall contain the words "Official Ballot--Not to be opened until the day of the regular election" and lines for the signature and county of residence of the attorney casting the ballot. Failure to sign or to indicate the proper county of residence shall invalidate the ballot.

(9) All ballots must be received by the director on or before the day of the regular election. On or before the following December 1 a canvassing board consisting of five (5) members appointed by the president shall meet in the office of the director and tabulate the votes. Each candidate or a representative designated by him in writing may be present at the meeting of the canvassing board.

(10) The two (2) candidates for each commission receiving the highest number of votes shall be elected. If two (2) or more candidates are found to have received an equal number of votes, the election shall be fairly determined by lot under the supervision of and in the presence of the canvassing board.

(11) The canvassing board shall immediately make and forward to the Chief Justice and the director a written certification of the election. The director shall promptly notify each candidate of the results of the election and shall publish the results in the next official association publication.

(12) On or before December 10 following the election any defeated candidate may contest the election of his successful opponent or opponents. Such contest shall be by written petition to the Supreme Court stating the

grounds of contest and certifying that a copy has been served on the adversary party or parties. The matter shall be summarily heard and determined in such manner, and relief granted or denied upon such grounds, as the court shall deem fair and equitable.

(13) As soon as practicable after the election the director shall certify to the Supreme Court for its approval an itemization of all costs incurred in the election of members to the commissions. Upon its approval of such costs the court shall order payment to the association out of the state treasury.

(14) Within sixty (60) days after the election the director shall transmit all petitions, ballots and other applicable records to the administrative director of the courts.

**Ky. Sup. Ct. R. 3.070 --The board; functions and membership.**

The Board is the governing body of the Association and the agent of the Court for the purpose of administering and enforcing the Rules. It shall consist of the President, the President-Elect, the Vice President, the immediate Past President, the Chair of the Young Lawyer's Section, and two attorneys elected from the membership.

**Ky. Sup. Ct. R. 3.080 --Selection and tenure of board of governors; filling vacancies on the board.**

The elected members of the board for each appellate district shall be nominated and elected, in the manner prescribed in the bylaws, by the members of the association residing in the appellate district. Each governor shall hold office for two years and/or until his successor is elected and qualified. No governor who has served three consecutive full terms, after July 1, 1971, shall be eligible to again serve without at least one term of said office intervening. The terms of the two governors from each appellate district shall expire in alternate years. Bylaws shall provide for an annual election, to be held simultaneously in all appellate districts in which more than one person has been nominated as governor, for the purpose of electing successors to those governors whose terms of office shall expire. Any vacancy on the board may be filled for the remainder of the term in such manner as the bylaws may prescribe. The KENTUCKY BENCH & BAR shall in the April and July issues prior to the expiration of the term of governor carry a notice to the membership of the expiration.

## H. MISSOURI

### 1. Constitutional Provisions

#### **Mo. Const., Art. V, § 25(a) --Nonpartisan selection of judges; courts subject to plan; appointments to fill vacancies.**

Whenever a vacancy shall occur in the office of judge of any of the following courts of this state, to wit: The supreme court, the court of appeals, or in the office of circuit or associate circuit judge within the city of St. Louis and Jackson County, the governor shall fill such vacancy by appointing one of three persons possessing the qualifications for such office, who shall be nominated and whose names shall be submitted to the governor by a nonpartisan judicial commission established and organized as hereinafter provided. If the governor fails to appoint any of the nominees within sixty days after the list of nominees is submitted, the nonpartisan judicial commission making the nomination shall appoint one of the nominees to fill the vacancy.

#### **Mo. Const., Art. V, § 25(b) --Adoption of plan in other circuits; petitions and elections; form of petition ballots.**

At any general election the qualified voters of any judicial circuit outside of the city of St. Louis and Jackson County, may by a majority of those voting on the question elect to have the circuit and associate circuit judges appointed by the governor in the manner provided for the appointment of judges to the courts designated in section 25(a), or, outside the city of St. Louis and Jackson County, to discontinue any such plan. The question of whether the circuit and associate circuit judges of any such circuit shall be so appointed shall be submitted to the voters of each county in any circuit at the next general election whenever petitions therefor signed by ten percent of the legal voters of each county in the circuit voting for the office of governor at the last election thereof are filed in the office of secretary of state at least 90 days before such election. The question shall be presented as follows:

"Shall the circuit and associate circuit judges of the ..... judicial circuit be selected as provided in Section 25 of Article V of the Missouri Constitution? Yes No (Mark One)"

The provisions of law with respect to initiative petitions shall apply insofar as applicable relative to the certification of the petitions to local officials by the secretary of state, the preparation, printing, publishing and distribution of the judicial ballots required by this section, the holding and conduct of the election, and the counting, canvassing, return, certification, and proclamation of the votes. If a majority of the votes upon the question are cast in favor of the adoption in each county comprising the circuit, the nonpartisan selection of the circuit and associate judges shall be adopted in the circuit. The question of selection of circuit and associate circuit judges in the manner provided in section 25(a) shall not be submitted more often than once every four years. If any judicial circuit adopts the nonpartisan selection of the circuit and associate circuit judges under the provisions of this section, the question of its discontinuance shall not be submitted more often than once every four years and may be submitted at any general election and shall be proceeded upon insofar as may be applicable in like manner as prescribed in this section for the original adoption of the plan.

The petition shall be in substantially the following form:

To the Honorable Officials in general charge of elections for the county of ..... for the state of Missouri:

We, the undersigned, legal voters of the state of Missouri, and of the county of ....., respectfully demand that the question of the discontinuance of the nonpartisan selection of the circuit and associate circuit judges be submitted to the legal voters of the ..... judicial circuit, for their approval or rejection, at the general election to be held on the ..... day of ....., A.D. 19...

The ballot shall provide as follows:

"Shall the nonpartisan appointment by the governor of the circuit and associate circuit judges be discontinued in the ..... judicial circuit?"

Yes

No

(Place an "X" in one square.)"

If a majority of the votes upon the question are cast in favor of such discontinuance in each county comprising the circuit, the nonpartisan selection of the circuit and associate circuit judges shall be discontinued in such judicial circuit.

If the nonpartisan selection of the judges be discontinued in any such judicial circuit, other than the city of St. Louis and Jackson County, the selection of such judges therein shall be made as otherwise prescribed by law. This section shall be self-enforcing.

**Mo. Const., Art. V, § 25(d) --Nonpartisan judicial commission; number, qualifications, selection and terms of members; majority rule; reimbursement of expenses; rules of supreme court.**

Nonpartisan judicial commissions whose duty it shall be to nominate and submit to the governor names of persons for appointment as provided by sections 25(a)-(g) are hereby established and shall be organized on the following basis: For vacancies in the office of judge of the supreme court or of the court of appeals, there shall be one such commission, to be known as "The Appellate Judicial Commission"; for vacancies in the office of circuit judge or associate circuit judge of any circuit court subject to the provisions of sections 25(a)-(g) there shall be one such commission, to be known as "The ..... Circuit Judicial Commission", for each judicial circuit which shall be subject to the provisions of sections 25(a)-(g); the appellate judicial commission shall consist of a judge of the supreme court selected by the members of the supreme court, and the remaining members shall be chosen in the following manner: The members of the bar of this state residing in each court of appeals district shall elect one of their number to serve as a member of said commission, and the governor shall appoint one citizen, not a member of the bar, from among the residents of each court of appeals district, to serve as a member of said commission, and the members of the commission shall select one of their number to serve as chairman. Each circuit judicial commission shall consist of five members, one of whom shall be the chief judge of the district of the court of appeals within which the judicial circuit of such commission, or the major portion of the population of said circuit is situated and the remaining four members shall be chosen in the following manner: The members of the bar of this state residing in the judicial circuit of such commission shall elect two of their number to serve as members of said commission, and the governor shall appoint two citizens, not members of the bar, from among the residents of said judicial circuit to

serve as members of said commission, the members of the commission shall select one of their number to serve as chairman; and the terms of office of the members of such commission shall be fixed by law, but no law shall increase or diminish the term of any member then in office. No member of any such commission other than a judge shall hold any public office, and no member shall hold any official position in a political party. Every such commission may act only by the concurrence of a majority of its members. The members of such commission shall receive no salary or other compensation for their services but they shall receive their necessary traveling and other expenses incurred while actually engaged in the discharge of their official duties. All such commissions shall be administered, and all elections provided for under this section shall be held and regulated, under such rules as the supreme court shall promulgate.

## **I. NEBRASKA**

### **1. Constitutional Provisions**

#### **Neb. Const., Art. V, § 21 --Merit plan for selection of judges; terms of office; filling of vacancies; procedure; voting for nominee.**

1. In the case of any vacancy in the Supreme Court or in any district court or in such other court or courts made subject to this provision by law, such vacancy shall be filled by the Governor from a list of at least two nominees presented to him by the appropriate judicial nominating commission. If the Governor shall fail to make an appointment from the list within sixty days from the date it is presented to him, the appointment shall be made by the Chief Justice or the acting Chief Justice of the Supreme Court from the same list.

2. In all other cases, any vacancy shall be filled as provided by law.

3. At the next general election following the expiration of three years from the date of appointment of any judge under the provisions of subsection (1) of this section and every six years thereafter as long as such judge retains office, each Justice or Judge of the Supreme Court or district court or such other court or courts as the Legislature shall provide shall have his right to remain in office subject to approval or rejection by the electorate in such manner as the Legislature shall provide; PROVIDED, that every judge holding or elected to an office described in subsection (1) of this section on

the effective date of this amendment whether by election or appointment, upon qualification shall be deemed to have been selected and to have once received the approval of the electorate as herein provided, and shall be required to submit his right to continue in office to the approval or rejection of the electorate at the general election next preceding the expiration of the term of office for which such judge was elected or appointed, and every six years thereafter. In the case of the Chief Justice of the Supreme Court, the electorate of the entire state shall vote on the question of approval or rejection. In the case of any Judge of the Supreme Court, other than the Chief Justice, and any judge of the district court or any other court made subject to subsection (1) of this section, the electorate of the district from which such judge was selected shall vote on the question of such approval or rejection.

4. There shall be a judicial nominating commission for the Chief Justice of the Supreme Court and one for each judicial district of the Supreme Court and of the district court and one for each area or district served by any other court made subject to subsection (1) of this section by law. Each judicial nominating commission shall consist of nine members, one of whom shall be a Judge of the Supreme Court who shall be designated by the Governor and shall act as chairman, but shall not be entitled to vote. The members of the bar of the state residing in the area from which the nominees are to be selected shall designate four of their number to serve as members of said commission, and the Governor shall appoint four citizens, not admitted to practice law before the courts of the state, from among the residents of the same geographical area to serve as members of said commission. Not more than four of such voting members shall be of the same political party. The terms of office for members of each judicial nominating commission shall be staggered and shall be fixed by the Legislature. The nominees of any such commission cannot include a member of such commission or any person who has served as a member of such commission within a period of two years immediately preceding his nomination or for such additional period as the Legislature shall provide. The names of candidates shall be released to the public prior to a public hearing.

Members of the nominating commission shall vote for the nominee of their choice by roll call. Each candidate must receive a majority of the voting members of the nominating commission to have his name submitted to the Governor.

## 2. Statutory Provisions

### **Neb. Rev. Stat. § 24-1101 --Court of Appeals; created; panels; judges; appointment; salary; other laws applicable.**

(1) There is hereby created the Court of Appeals which shall consist of six judges. The court shall sit in panels of three judges to conduct the business of the court. The decision of a majority of the judges of the panel to which a case is submitted shall constitute the decision of the court for that case. The membership of the panels shall be assigned and regularly rotated by the Chief Judge of the Court of Appeals in such a manner as to provide each judge the opportunity to serve a proportionate amount of time with every other judge on the court.

(2) One judge of the Court of Appeals shall be appointed by the Governor from each Supreme Court judicial district. For purposes of this section, a judge's residence on the effective date of appointment shall be considered the judge's residence while he or she serves on the Court of Appeals. Prior to September 13, 1997, the Supreme Court shall each year select one judge of the Court of Appeals as Chief Judge. Upon the expiration of the term of the Chief Judge in office on September 13, 1997, and each two years thereafter, the judges of the Court of Appeals shall by majority vote nominate one of their number to be Chief Judge for the ensuing two years, which judge shall, upon the ratification of the selection by the Supreme Court, serve as Chief Judge for that two-year period.

(3) Judges of the Court of Appeals shall be paid an amount equal to ninety-five percent of the salary set for the Chief Justice and judges of the Supreme Court.

(4) Judges of the Court of Appeals shall be subject to the same provisions relating to selection, filling of a vacancy, term of office, discipline, removal from office, and retirement as are all other judges covered by Article V of the Constitution of Nebraska.

### **Neb. Rev. Stat. § 24-802 --Judicial nominating commission; residence requirements.**

Except for the judge of the Supreme Court who is required to be a member of a judicial nominating commission, each member or alternate member of a



commission shall be a resident of the judicial district or area of the state served by such commission except as provided in subsection (2) of section 24-806. Except for the Chief Justice, the member of the Supreme Court designated to serve on a particular nominating commission shall not be a member who was originally selected from the district served by such nominating commission.

**Neb. Rev. Stat. § 24-803 --Judicial nominating commission; members; term; appointments by Governor; elections by lawyers.**

(1) Except as provided in subsection (3) of this section, as the term of a member of a judicial nominating commission initially appointed or selected expires, the term of office of each successor member shall be for a period of four years. The Governor shall appoint all successor members of each nominating commission who are judges of the Supreme Court and citizen members or alternate citizen members. The Governor shall appoint two alternate citizen members, not of the same political party, to each nominating commission. The term of office of an alternate citizen member of a commission shall be for a period of four years except that the initial appointments shall terminate on December 31, 1999. The lawyers residing in the judicial district or area of the state served by a judicial nominating commission shall select all successor and alternate lawyer members of such commission in the manner prescribed in section 24-806. The term of office of an alternate lawyer member of a commission shall be for a period of four years. No member of any nominating commission, including the Supreme Court member of any such commission, shall serve more than a total of eight consecutive years as a member of the commission, and if such member has served for more than six years as a member of the commission, he or she shall not be eligible for reelection or reappointment. Alternate lawyer and citizen members shall be selected to fill vacancies in their order of election or appointment.

(2) For purposes of this section and Article V, section 21, of the Constitution of Nebraska, a member of a judicial nominating commission shall be deemed to have served on such commission if he or she was a member of the commission at the time of the publication of the notice required by subsection (1) of section 24-810.

(3) On and after January 1, 1997, members of the judicial nominating commissions for the office of judge of the district court shall also serve as

members of the judicial nominating commissions for the office of judge of the county court for counties located within the district court judicial districts served, except that members of the judicial nominating commissions for district judge and county judge in districts 1, 3, 4, and 10 shall be appointed or selected separately to serve on such commissions.

**Neb. Rev. Stat. § 24-806 --Judicial nominating commission; lawyer members; qualifications; nominations; election.**

(1) Lawyer members and alternate lawyer members of any judicial nominating commission shall be members of the bar of the State of Nebraska and shall reside in the judicial district or area of the state served by the commission except as provided in subsection (2) of this section. Not more than two lawyer members of each commission shall be registered members of the same political party or category, and not more than two alternate lawyer members shall be registered members of the same political party or category. Nominations for lawyer members of each commission shall be solicited in writing by the Clerk of the Supreme Court from all the lawyers of the district or area served on or before September 1 of each even-numbered year. Nominations of lawyer members shall be made in writing and filed in the office of the Clerk of the Supreme Court on or before October 1 of each even-numbered year. Each nomination of a lawyer member shall be accompanied by a written consent of the nominee to serve as a member of the commission if elected. The nominations shall be solicited and distributed on the ballot by the Clerk of the Supreme Court from the legally recognized political parties and in such a manner as will permit the final selection to be made within the required political party.

(2) If solicited nominations are insufficient to provide candidates from the permissible political parties for each vacancy, the Executive Council of the Nebraska State Bar Association, within ten days after the last day for filing nominations, shall nominate additional candidates for the position so that there shall be a qualified candidate for each position. Such candidates need not reside in the judicial district or area served by such judicial nominating commission.

(3) The Clerk of the Supreme Court shall mail a ballot with the name of each nominee to all members of the bar of Nebraska residing in the judicial district or area designating a date at least ten days and not more than fourteen days after the date of such mailing by the Clerk of the Supreme

Court when the ballots will be opened and counted. The ballots shall be counted by a board consisting of the Clerk of the Supreme Court, the Secretary of State, and the Attorney General or by alternates designated by any of them to serve in his or her place. The Clerk of the Supreme Court shall insure that the election is so conducted as to maintain the secrecy of the ballot and the validity of the results. The candidate of the required political party receiving the highest number of votes shall be considered as having been elected to the commission. The candidate of the required political party receiving the next highest number of votes shall be considered as having been elected an alternate lawyer member of the commission and shall serve as a lawyer member of the commission in the event of a lawyer member vacancy of the same political party or category on the commission created either by resignation or disqualification. In the case of a resignation, an alternate lawyer member shall continue to serve as a member of the commission until the term of office of his or her predecessor expires.

(4) In any election when more than one lawyer member of a judicial nominating commission is to be elected, the nominees shall be submitted without designation of the term. Each voter shall be instructed to vote for as many nominees as there are vacancies to be filled. The candidate receiving the highest number of votes shall be considered as having been elected for the longest term. The candidate receiving the next highest number of votes shall be deemed to have been elected for next to the longest term, and if an alternate lawyer member or members are to be elected, the candidate or candidates receiving the third and fourth highest number of votes shall be deemed elected as the alternate lawyer member or members. In case of ties the determination shall be made by lot by the counting board.

**Neb. Rev. Stat. § 24-808 --Judicial nominating commissions; vacancies; filled, how.**

Each year, on or before September 1, the Clerk of the Supreme Court shall determine what, if any, vacancies exist on any judicial nominating commission and shall report the status of each judicial nominating commission to the Governor. Vacancies relating to any members or alternate citizen members of such commissions appointed by the Governor shall be filled promptly by appointment by the Governor for the unexpired term. Vacancies of lawyer members or alternate lawyer members of the judicial nominating commission shall be filled promptly by a special election for the

unexpired term, conducted by the Clerk of the Supreme Court in the manner applicable to the regular election of lawyer members of the commissions.

**Neb. Rev. Stat. § 43-2,114 --Judge; nomination; appointment; retention; vacancy.**

All judges of separate juvenile courts shall be nominated, appointed, and retained in office in accordance with the provisions of Article V, section 21, of the Constitution of Nebraska. Each of such judges shall hold office until his or her successor is selected and qualified. Any vacancy in the office of judge of the separate juvenile courts shall be filled by nomination and appointment as provided by Article V, section 21, of the Constitution of Nebraska.

**Neb. Rev. Stat. § 43-2,117 --Judicial nominating commission; selection; provisions applicable.**

Judicial nominating commissions for the office of judge of the separate juvenile court shall be selected in the manner and subject to all of the terms and provisions of law relating to judicial nominating commissions generally, as provided by the Constitution of Nebraska and the laws of this state.

**Neb. Rev. Stat. § 48-152 --Nebraska Workers' Compensation Court; creation; jurisdiction; judges; selected or retained in office.**

Recognizing that (1) industrial relations between employers and employees within the State of Nebraska are affected with a vital public interest, (2) an impartial and efficient administration of the Nebraska Workers' Compensation Act is essential to the prosperity and well-being of the state, and (3) suitable laws should be enacted for the establishing and for the preservation of such an administration of the Nebraska Workers' Compensation Act, there is hereby created, pursuant to the provisions of Article V, section 1, of the Nebraska Constitution, a court, consisting of seven judges, to be selected or retained in office in accordance with the provisions of Article V, section 21, of the Nebraska Constitution and to be known as the Nebraska Workers' Compensation Court, which court shall have authority to administer and enforce all of the provisions of the Nebraska Workers' Compensation Act, and any amendments thereof, except such as are committed to the courts of appellate jurisdiction or as otherwise provided by law.

**Neb. Rev. Stat. § 48-152.01 --Nebraska Workers' Compensation Court; judges; judicial nominating commission; selection.**

The members of the judicial nominating commission for the Nebraska Workers' Compensation Court shall be selected on a statewide basis as provided in section 24-803.

**J. NEVADA**

1. Constitutional Provisions<sup>1</sup>

**Nev. Const., Art. VI, § 20 --Filling of vacancies occurring before expiration of term of office in Supreme Court or among district judges; Commission on Judicial Selection.**

1. When a vacancy occurs before the expiration of any term of office in the Supreme Court or among the district judges, the Governor shall appoint a justice or judge from among three nominees selected for such individual vacancy by the Commission on Judicial Selection.
2. The term of office of any justice or judge so appointed expires on the first Monday of January following the next general election.
3. Each nomination for the Supreme Court shall be made by the permanent Commission, composed of:
  - (a) The Chief Justice or an associate justice designated by him;
  - (b) Three members of the State Bar of Nevada, a public corporation created by statute, appointed by its Board of Governors; and
  - (c) Three persons, not members of the legal profession, appointed by the Governor.

---

<sup>1</sup> Amendments to the Nevada Constitution have been proposed by the Legislature. If passed and ratified by the voters, the amendments will become effective on November 23, 2010. Regardless, Nevada will continue to use merit selection panels with attorney members elected by the state bar Board of Governors.

4. Each nomination for the district court shall be made by a temporary commission composed of:

(a) The permanent Commission;

(b) A member of the State Bar of Nevada resident in the judicial district in which the vacancy occurs, appointed by the Board of Governors of the State Bar of Nevada; and

(c) A resident of such judicial district, not a member of the legal profession, appointed by the Governor.

5. If at any time the State Bar of Nevada ceases to exist as a public corporation or ceases to include all attorneys admitted to practice before the courts of this State, the Legislature shall provide by law, or if it fails to do so the Court shall provide by rule, for the appointment of attorneys at law to the positions designated in this Section to be occupied by members of the State Bar of Nevada.

6. The term of office of each appointive member of the permanent Commission, except the first members, is 4 years. Each appointing authority shall appoint one of the members first appointed for a term of 2 years. If a vacancy occurs, the appointing authority shall fill the vacancy for the unexpired term. The additional members of a temporary commission shall be appointed when a vacancy occurs, and their terms shall expire when the nominations for such vacancy have been transmitted to the Governor.

7. An appointing authority shall not appoint to the permanent Commission more than:

(a) One resident of any county.

(b) Two members of the same political party.

No member of the permanent Commission may be a member of a Commission on Judicial Discipline.

8. After the expiration of 30 days from the date on which the Commission on Judicial Selection has delivered to him its list of nominees for any vacancy, if the Governor has not made the appointment required by this

Section, he shall make no other appointment to any public office until he has appointed a justice or judge from the list submitted.

If a commission on judicial selection is established by another section of this Constitution to nominate persons to fill vacancies on the Supreme Court, such commission shall serve as the permanent Commission established by subsection 3 of this Section.

2. Supreme Court Local Rules

**Nev. Sup. Ct. R. 81 --Board of governors: Election of members; term.**

1. The board of governors shall hold office until their successors are elected and qualified as hereinafter provided.
2. The board of governors of the state bar shall be composed of 15 members to be elected as follows:
  - (a) Nine members shall be elected from district No. 1, which shall consist of Clark County;
  - (b) One member shall be elected from district No. 2, which shall consist of the counties of White Pine, Elko, Eureka, Churchill, Lander, Humboldt, Lyon, Lincoln, Douglas, Mineral, Nye, Esmeralda, Pershing and Storey;
  - (c) One member shall be elected from district No. 3, which shall consist of Carson City; and
  - (d) Four members shall be elected from district No. 4, which shall consist of Washoe County.
3. The members of the board of governors shall be elected for two-year terms. No attorney may serve on the board of governors for more than a lifetime total of eight years. The time served in filling a partial term created by a vacancy shall not be included in computing the eight-year lifetime limit, nor shall the eight-year lifetime limit preclude a member of the board who serves as president-elect during his or her eighth year from thereafter serving as president.

4. Only active members of the state bar who reside in Nevada and have an official address pursuant to Rule 79 in the respective counties as provided in subsection (2) above, are eligible to be elected as a governor therefrom.

**Nev. Sup. Ct. R. 82 --Board of governors: Nominations; mailing of ballots; vacancies.**

1. Within 30 days prior to each annual meeting of the state bar, members of the board of governors shall be elected as provided for in this rule and in Rule 81.

2. Nominations for governors shall be by petition signed by at least five members entitled to vote for such nominees. The election shall be by ballot. The ballot shall be mailed to those entitled to vote at least 30 days prior to the date of canvassing the ballots and shall be returned by mail, and the ballots shall be canvassed within 30 days prior to the ensuing annual meeting. In other respects the election shall be as the board of governors shall direct.

3. Only active members of the state bar who are residents of Nevada and have an official address pursuant to Rule 79 in the respective counties, as provided in Rule 81(2), shall be entitled to vote for the governor or governors therefrom.

4. Vacancies on the board of governors shall be filled by the supreme court by appointment.

**K. NEW MEXICO**

1. Constitutional Provisions

**N.M. Const., Art. VI, § 35 --Appellate judges nominating commission.**

There is created the "appellate judges nominating commission", consisting of: the chief justice of the supreme court or the chief justice's designee from the supreme court; two judges of the court of appeals appointed by the chief judge of the court of appeals; the governor, the speaker of the house of representatives and the president pro tempore of the senate shall each appoint two persons, one of whom shall be an attorney licensed to practice law in this state and the other who shall be a citizen who is not licensed to



practice law in any state; the dean of the university of New Mexico school of law, who shall serve as chairman of the commission and shall vote only in the event of a tie vote; four members of the state bar of New Mexico, representing civil and criminal prosecution and defense, appointed by the president of the state bar and the judges on this committee. The appointments shall be made in such manner that each of the two largest major political parties, as defined by the Election Code, shall be equally represented on the commission. If necessary, the president of the state bar and the judges on this committee shall make the minimum number of additional appointments of members of the state bar as is necessary to make each of the two largest major political parties be equally represented on the commission. These additional members of the state bar shall be appointed such that the diverse interests of the state bar are represented. The dean of the university of New Mexico school of law shall be the final arbiter of whether such diverse interests are represented. Members of the commission shall be appointed for terms as may be provided by law. If a position on the commission becomes vacant for any reason, the successor shall be selected by the original appointing authority in the same manner as the original appointment was made and shall serve for the remainder of the term vacated.

The commission shall actively solicit, accept and evaluate applications from qualified lawyers for the position of justice of the supreme court or judge of the court of appeals and may require an applicant to submit any information it deems relevant to the consideration of his application.

Upon the occurrence of an actual vacancy in the office of justice of the supreme court or judge of the court of appeals, the commission shall meet within thirty days and within that period submit to the governor the names of persons qualified for the judicial office and recommended for appointment to that office by a majority of the commission.

Immediately after receiving the commission nominations, the governor may make one request of the commission for submission of additional names, and the commission shall promptly submit such additional names if a majority of the commission finds that additional persons would be qualified and recommends those persons for appointment to the judicial office. The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of justice of the supreme court or judge of the court of appeals within thirty days after receiving final nominations from the commission by appointing one of the persons nominated by the commission

for appointment to that office. If the governor fails to make the appointment within that period or from those nominations, the appointment shall be made from those nominations by the chief justice or the acting chief justice of the supreme court. Any person appointed shall serve until the next general election. That person's successor shall be chosen at such election and shall hold the office until the expiration of the original term.

**N.M. Const., Art. VI, § 36 --District court judges nominating committee.**

There is created the "district court judges nominating committee" for each judicial district. Each and every provision of Section 35 of Article 6 of this constitution shall apply to the "district judges nominating committee" except that: the chief judge of the district court of that judicial district or the chief judge's designee from that district court shall sit on the committee; there shall be only one appointment from the court of appeals; and the citizen members and state bar members shall be persons who reside in that judicial district.

**N.M. Const., Art. VI, § 37 --Metropolitan court judges nominating committee.**

There is created the "metropolitan court judges nominating committee" for each metropolitan court. Each and every provision of Section 35 of Article 6 of this constitution shall apply to the metropolitan court judicial nominating committee except that: no judge of the court of appeals shall sit on the committee; the chief judge of the district court of the judicial district in which the metropolitan court is located or the chief judge's designee from that district court shall sit on the committee; the chief judge of that metropolitan court or the chief judge's designee from that metropolitan court shall sit on the committee only in the case of a vacancy in a metropolitan court; and the citizen members and state bar members shall be persons who reside in the judicial district in which that metropolitan court is located.

2. New Mexico Bar Local Rules

**N.M. R. N.M. Bar 24-101 --Board of Bar Commissioners.**

A. Organization of the State Bar of New Mexico. In order to aid the courts in improving the administration of justice, to promote the interests of the legal profession in the State of New Mexico, to promote and support the needs of all members, to be cognizant of the needs of individual and minority

members of the profession, including the full and equal participation of minorities and women in the state bar and the profession at large, to improve the relations between the legal profession and the public, to encourage and assist in the delivery of legal services to all in need of such services, to foster and maintain high ideals of integrity, learning, competence and public service, to provide a forum for the discussion of subjects pertaining to the practice of law and law reform, to promote and provide continuing legal education in technical fields of substantive law and practice and to participate in the legislative, executive and judicial processes by informing its membership about issues affecting the legal system and relating to the purpose of the state bar, and upon approval by the Board of Bar Commissioners, to take such further action as may be necessary to present the views of the bar commission to the appropriate court, executive office or legislative body for consideration; and to the end that the responsibility of the legal profession and the individual members thereof may be more effectively and efficiently discharged in the public interest, and acting within the powers vested in it by the constitution of this state and its inherent power over members of the legal profession as officers of the court, the Supreme Court of New Mexico does hereby create and continue an organization known as the State Bar of New Mexico, and all persons now or hereafter licensed in this state to engage in the practice of law shall be members of the State Bar of New Mexico in accordance with the rules of this court. The State Bar of New Mexico may incorporate, sue and be sued, may enter into contracts and acquire, hold, encumber, dispose of and deal in and with real and personal property, and promote and further the aims as set forth herein and hereinafter in these rules.

Except as otherwise provided by the rule adopted by the Supreme Court, no person shall practice law in this state or hold himself or herself out as one who may practice law in this state unless such person is an active member of the state bar, and no suspended or disbarred member shall practice law in this state or hold himself or herself out as one who may practice law in this state, while suspended or disbarred.

...

C. Board membership and powers. The Board of Bar Commissioners shall be the governing board of the state bar. Each commissioner shall have one vote. Except as otherwise provided by Paragraph I, the board shall consist of twenty-one (21) bar commissioners, consisting of those district bar

commissioners elected pursuant to Paragraph D, and the chair of the Young Lawyers Division and the elected delegate of the Senior Lawyers Division. The board has perpetual succession and may use a common seal. The board may employ an executive director. The board may adopt bylaws applicable to the state bar and the board; provided, however, any such bylaws inconsistent with these rules shall be invalid.

E. Terms of office. The district bar commissioners shall be elected to terms of three (3) years and shall hold office until their successors are elected and qualified.

F. Vacancies. Vacancies on the board of the district bar commissioners shall be filled by appointment of the board, and district bar commissioners so appointed shall serve until the next regular election of district bar commissioners, at which time an election of a district bar commissioner to fill the unexpired term shall be held.

G. Nominations for district commissioners. Nominations to the office of district bar commissioner shall be by the written petition of any ten or more active status members of the bar in good standing. Any number of candidates may be nominated on a single petition which shall be received by the executive director within a period to be fixed by the bylaws of the State Bar of New Mexico. No state or federal judge shall be eligible to serve as a member of the board of the state bar while in office.

H. Election results. The annual election of commissioners shall close at noon on November 30th and the ballots canvassed by at least three commissioners not running for reelection, appointed by the president and the results published in the Bar Bulletin.

I. Officers of board of commissioners; election. In accordance with the bylaws of the state bar, the Board of Bar Commissioners shall elect a president, a president-elect, a vice president, and a secretary-treasurer, who shall take office. All of said officers shall be members of the Board of Bar Commissioners and shall be officers of the state bar and of its Board of Bar Commissioners. Terms of office for the officers of the board shall commence January 1st and those officers shall serve for one (1) year.

## **L. OKLAHOMA**

### **1. Constitutional Provisions**

#### **Okla. Const., Art. 7B, § 1 --Governing provisions - definitions.**

(a) The provisions of this Article shall govern the selection and tenure of all Justices of the Supreme Court and Judges of the Court of Criminal Appeals of the State of Oklahoma, to which the provisions hereof may be extended as hereinafter provided, other provisions of the Constitution or statutes of the State of Oklahoma to the contrary notwithstanding, and the provisions of Article VII as proposed by House Joint Resolution No. 508 of the First Session of the Thirty-first Oklahoma Legislature to the contrary notwithstanding.

(b) As used in this Section, "Judicial Office" means the offices of Justice of the Supreme Court and Judges of the Court of Criminal Appeals and "Judicial Officer" means a Justice or Judge of each such court, excluding retired or supernumerary Justices or Judges.

#### **Okla. Const., Art. 7B, § 3 --Judicial Nominating Commission.**

(a) There is established as a part of the Judicial Department a Judicial Nominating Commission of thirteen (13) members, to consist of:

(1) six (6) members to be appointed by the Governor, one (1) from each congressional district established by the Statutes of Oklahoma and existing at the date of the adoption of this Article, none of whom shall be admitted to practice law in the State of Oklahoma;

(2) six (6) members, one (1) from each congressional district established by the Statutes of Oklahoma and existing at the date of the adoption of this Article who are, however, members of the Oklahoma Bar Association and who have been elected by the other active members of their district under procedures adopted by the Board of Governors of the Oklahoma Bar Association, until changed by statute; and

(3) one (1) member at large who shall not have been admitted to the practice of law in the State of Oklahoma or any other State, but who

shall be a resident of the State of Oklahoma, to be selected by not less than eight (8) members of the Nominating Commission. In the event eight (8) members of the Commission cannot agree upon the member at large within thirty (30) days of the initial organization of the Commission or within thirty (30) days of a vacancy in the member at large position, the Governor shall make the appointment of the member at large.

The Commission shall elect one of its members to serve as Chairman for a term of one (1) year.

The six (6) lay members of the Commission who are appointed by the Governor shall be appointed within ninety (90) days from the date that this Article becomes effective. Two (2) members shall be appointed for a term of two (2) years, two (2) members for a term of four (4) years, and two (2) members for a term of six (6) years. The Oklahoma Bar Association shall hold its election and certify to the Secretary of State its members within ninety (90) days from the effective date of this Article, two (2) of whom shall be elected for a term of two (2) years, two (2) for a term of four (4) years, and two (2) for a term of six (6) years. Thereafter all of the members of the Commission, whether elected or appointed, shall serve for a term of six (6) years, except that the member at large shall serve for a term of two (2) years.

(b) Vacancies arising during the term of any lay commissioner, other than the member at large, shall be filled by appointment by the Governor for the remainder of his term. Vacancies of any lawyer commissioner shall be filled by the Board of Governors of the Oklahoma Bar Association for the remainder of his term.

(c) In the event of vacancy in the member at large position, the said vacancy shall be filled in the same manner as the original selection.

(d) Of those Commissioners named by the Governor, not more than three (3) shall belong to any one political party.

(e) The concurrence of the majority of Commissioners in office at the time shall be sufficient to decide any question, unless otherwise provided herein. The Commission shall have jurisdiction to determine whether the

qualifications of nominees to hold Judicial Office have been met and to determine the existence of vacancies on the Commission.

(f) No Commissioner, while a member of the Commission, shall hold any other public office by election or appointment or any official position in a political party and he shall not be eligible, while a member of the Commission and for five (5) years thereafter, for nomination as a Judicial Officer.

(g) Commissioners shall serve without compensation but the Legislature shall provide funds to reimburse them for their necessary travel and lodging expenses while performing their duties as such Commissioners.

(h) No Commissioner shall be permitted to succeed himself.

(i) As used herein, the words "Oklahoma Bar Association" shall include any successor thereof and any future form of the organized Bar of this State.

**Okla. Const., Art. 7B, § 4 --Vacancy in Judicial Office - Filling.**

When a vacancy in any Judicial Office, however arising, occurs or is certain to occur, the Judicial Nominating Commission shall choose and submit to the Governor and the Chief Justice of the Supreme Court three (3) nominees, each of whom has previously notified the Commission in writing that he will serve as a Judicial Officer if appointed. The Governor shall appoint one (1) of the nominees to fill the vacancy, but if he fails to do so within sixty (60) days the Chief Justice of the Supreme Court shall appoint one (1) of the nominees, the appointment to be certified by the Secretary of State.

2. Statutory Provisions

**Okla. Stat. tit. 20 § 30.17 --Vacancies.**

In case a Judge of the Court of Civil Appeals dies, retires, resigns, or is removed from office, the Governor shall fill the vacancy by appointment from the congressional district where the vacancy exists of a person having the required qualifications. The Judicial Nominating Commission shall choose and submit to the Governor and the Chief Justice of the Supreme Court three nominees, each of whom has previously notified the Commission in writing that he or she will serve as a Judge if appointed. The

Governor shall appoint one of the nominees to fill the vacancy, but if he fails to do so within sixty (60) days the Chief Justice of the Supreme Court shall appoint one of the nominees, the appointment to be certified by the Secretary of State.

**Okla. Stat. tit. 20 § 33 --Districts Nomination, appointment and retention of Judges.**

The state is hereby divided into five (5) Court of Criminal Appeals judicial districts. From each of said districts candidates for Judge of the Court of Criminal Appeals shall be nominated and appointed in the manner provided by Article VII B of the Oklahoma Constitution. All Judges of the Court of Criminal Appeals may seek retention in office pursuant to the provisions of Section 2 of Article VII B of the Oklahoma Constitution and each Judge shall be voted for by the qualified voters of the state at large.

The Court of Criminal Appeals Judicial District No. 1 shall embrace and include the following counties: Craig, Delaware, Mayes, Nowata, Ottawa, Rogers, Tulsa, and Wagoner.

The Court of Criminal Appeals Judicial District No. 2 shall embrace and include the following counties: Adair, Cherokee, Cleveland, Creek, Kay, Lincoln, Logan, Muskogee, Noble, Okfuskee, Okmulgee, Osage, Pawnee, Payne, Pottawatomie, and Washington.

The Court of Criminal Appeals Judicial District No. 3 shall embrace and include the following counties: Atoka, Bryan, Carter, Coal, Choctaw, Garvin, Grady, Haskell, Hughes, Jefferson, Johnston, Latimer, Leflore, Love, Marshall, McClain, McCurtain, McIntosh, Murray, Pittsburg, Pontotoc, Pushmataha, Seminole, Sequoyah, and Stephens.

The Court of Criminal Appeals Judicial District No. 4 shall embrace and include the following counties: Canadian and Oklahoma.

The Court of Criminal Appeals Judicial District No. 5 shall embrace and include Alfalfa, Beaver, Beckham, Blaine, Caddo, Cimarron, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kingfisher, Kiowa, Major, Roger Mills, Texas, Tillman, Washita, Woods, and Woodward.



**Okla. Stat. tit. 51 § 10(A) --Vacancies - Appointments - Special elections.**

All vacancies in state offices, except in offices of the members of the Legislature, members of the House of Representatives from Oklahoma in the Congress of the United States of America and members of the Senate of the United States of America, shall be filled by appointment by the Governor. When a vacancy occurs in the office of district judge, associate district judge, or judge of any intermediate appellate court, the Governor shall, in filling such vacancy, utilize the services of the Judicial Nominating Commission in the manner as provided for in the filling of judicial offices under Section 4, Article 7B of the Oklahoma Constitution.

**M. SOUTH DAKOTA**

1. Constitutional Provisions

**S.D. Const., Art. V, § 7 --Judicial selection.**

Circuit court judges shall be elected in a nonpolitical election by the electorate of the circuit each represents for an eight-year term.

A vacancy, as defined by law, in the office of a Supreme Court justice or circuit court judge, shall be filled by appointment of the Governor from one of two or more persons nominated by the judicial qualifications commission. The appointment to fill a vacancy of a circuit court judge shall be for the balance of the unexpired term; and the appointment to fill a vacancy of a Supreme Court justice shall be subject to approval or rejection as hereinafter set forth.

Retention of each Supreme Court justice shall, in the manner provided by law, be subject to approval or rejection on a nonpolitical ballot at the first general election following the expiration of three years from the date of his appointment. Thereafter, each Supreme Court justice shall be subject to approval or rejection in like manner every eighth year. All incumbent Supreme Court justices at the time of the effective date of this amendment shall be subject to a retention election in the general election in the year in which their respective existing terms expire.

**S.D. Const., Art. V, § 9 --Qualifications commission.**

The Legislature shall provide by law for the establishment of a judicial qualifications commission which have such powers as the Legislature may provide, including the power to investigate complaints against any justice or judge and to conduct confidential hearings concerning the removal or involuntary retirement of a justice or judge. The Supreme Court shall prescribe by rule the means to implement and enforce the powers of the commission. On recommendation of the judicial qualifications commission the Supreme Court, after hearing, may censure, remove or retire a justice or judge for action which constitutes willful misconduct in office, willful and persistent failure to perform his duties, habitual intemperance, disability that seriously interferes with the performance of the duties or conduct prejudicial to the administration of justice which brings a judicial office into disrepute. No justice or judge shall sit in judgment in any hearing involving his own removal or retirement.

2. Statutory Provisions

**S.D. Codified Laws § 16-1A-2 --Commission created--Composition--  
Appointment of members--Terms of office.**

There is hereby created a Commission on Judicial Qualifications which shall consist of seven members:

- (1) Two judges of the circuit court, elected by the judicial conference;
- (2) Three members of the bar practicing law in this state, no more than two of whom may be of the same political party, appointed by the president of the state bar; and
- (3) Two citizens who are not judges, retired judges or members of the state bar, and not of the same political party, appointed by the Governor.

The term of office for a commission member is four years. No person may serve more than two terms as a member of the commission.

**S.D. Codified Laws § 16-17-3 --Membership of State Bar.**

The membership of the State Bar shall be all persons who are now or may hereafter be entitled to practice law in this state.

**S.D. Codified Laws § 16-17-5 --Board of commissioners.**

The State Bar shall continue to have power to elect a board of commissioners and to determine the number of such commissioners, their qualifications, terms of office, powers, and duties and the time, place, and manner of their election.

**S. D. Codified Laws, Appendix, § 16-17-6 --Qualifications, number, circuits.**

The government of the State Bar shall be vested in a Board of Commissioners which shall be composed of one member nominated from and residing within each of the judicial circuits of the State of South Dakota, and six members to be elected from the state at large, and the President and President Elect, who shall be ex officio members thereof. No two of the Commissioners at large shall reside within the same judicial circuit. Each Commissioner shall be an active member of the State Bar at the time of his election and a resident of the State of South Dakota. No Commissioner shall be eligible to hold office for two successive terms after the 1979 Bar Commission election.

**S. D. Codified Laws, Appendix, § 16-17-14 --Offices.**

The officers of the State Bar shall be a President, a President Elect, and a Secretary-Treasurer.

**S. D. Codified Laws Appendix, § 16-17-18 --Elections.**

At the conclusion of the annual meeting the President of the State Bar shall install the President Elect as President. Thereafter the President Elect shall be elected from the active members of the State Bar by a majority vote of the active members of the State Bar present and voting. Vacancies occurring in the offices of President and President Elect between annual meetings may be filled by the Board of Commissioners, and any person elected by the Board to fill any vacancy shall hold office until the next annual meeting of the State Bar until his successor is elected.

## N. VERMONT

### 1. Constitutional Provisions

#### **Vt. Const., Ch. 2, § 32 --Filling judicial vacancies.**

The Governor, with the advice and consent of the Senate, shall fill a vacancy in the office of the Chief justice of the State, associate justice of the Supreme Court or judge of any other court, except the office of Assistant Judge and of Judge of Probate, from a list of nominees presented by a judicial nominating body established by the General Assembly having authority to apply reasonable standards of selection.

#### **Vt. Const., Ch. 2, § 33 --Interim judicial appointments.**

When the Senate is not in session, the Governor may make an interim appointment to fill a vacancy in the office of chief justice, associate justice of the Supreme Court or judge of any other court, except the office of Assistant Judge and of Judge of Probate, from a list of nominees presented by the judicial nominating body. A justice or judge so appointed shall hold office, with all the powers incident to the office, until the Senate convenes and acts upon the appointment submitted by the Governor. Thereafter, the appointee shall continue in office if the Senate consents to the appointment. If the appointment is not confirmed upon vote of the Senate, the appointment shall be terminated and a vacancy in the office will be created.

### 2. Statutory Provisions

#### **Vt. Stat. Ann. tit. 4 § 4(a) --Justices.**

(a) The supreme court shall consist of one chief justice and four associate justices, appointed in accordance with the constitution and chapter 15 of this title or retained in office under subsection (c) of this section.

#### **Vt. Stat. Ann. tit. 4 § 444(b) --Judges; number, appointment, limitations.**

(b) District judges shall be appointed in accordance with the constitution and chapter 15 of this title or retained in office under section 604(a) of this title. Terms of office of district judges, except in the case of an appointment to fill a vacancy or unexpired term, shall be for a term of six years from and including April 1 in the year of their appointment or retention. A district

judge shall remain in office until a successor is appointed and qualified, unless sooner removed for cause or unless he or she resigns.

**Vt. Stat. Ann. tit. 4 § 601 --Judicial nominating board created; composition.**

(a) A judicial nominating board is created for the nomination of supreme court justices, and superior and district judges.

(b) The board shall consist of eleven members who shall be selected as follows:

(1) The governor shall appoint two members who are not attorneys at law.

(2) The senate shall elect three of its members, not all of whom shall be members of the same party, and only one of whom may be an attorney at law.

(3) The house shall elect three of its members, not all of whom shall be members of the same party, and only one of whom may be an attorney at law.

(4) Attorneys at law admitted to practice before the supreme court of Vermont, and residing in the state, shall elect three of their number as members of the board. The supreme court shall regulate the manner of their nomination and election.

(5) The members of the board appointed by the governor shall serve for terms of two years and may serve for no more than three terms. The members of the board elected by the house and senate shall serve for terms of two years and may serve for no more than three consecutive terms. The members of the board elected by the attorneys at law shall serve for terms of two years and may serve for no more than three consecutive terms. All appointments or elections shall be between January 1 and February 1 of each odd-numbered year, except to fill a vacancy. Members shall serve until their successors are elected or appointed.

(6) The members shall elect their own chair who will serve for a term of two years.

(c) The members of the judicial nominating board shall be entitled to compensation of \$30.00 a day for the time spent in the performance of their duties, and reimbursement for their actual and necessary expenses incurred in the performance of their duties.

(d) The judicial nominating board shall adopt rules under chapter 25 of Title 3 which shall establish criteria and standards for the nomination of qualified candidates for judicial appointment including, but not limited to such factors as integrity, legal knowledge and ability, judicial temperament, impartiality, health, experience, diligence, administrative and communicative skills, social consciousness and public service.

(e) A quorum of the committee shall consist of eight members.

(f) The board is authorized to use the staff and services of appropriate state agencies and departments as necessary to conduct investigations of applicants.

**Vt. Stat. Ann. tit. 4 § 603 --Judges; appointment.**

Whenever the governor appoints a supreme court justice or a superior or district judge, he shall do so from the list of names of qualified persons submitted to him by the judicial nominating board. The names of candidates submitted and not selected shall remain confidential.

**O. WYOMING**

1. Constitutional Provisions

**Wyo. Const., Art. V, § 4 --Supreme court generally; number; election of chief justice; quorum; vacancies in supreme court or district court; judicial nominating commission; terms; standing for retention in office.**

(a) The supreme court of the state shall consist of not less than three nor more than five justices as may be determined by the legislature. The justices of the court shall elect one of their number to serve as chief justice for such term and with such authority as shall be prescribed by law. A majority of the justices shall constitute a quorum, and a concurrence of a majority of such quorum shall be sufficient to decide any matter. If a justice of the supreme

court for any reason shall not participate in hearing any matter, the chief justice may designate one of the district judges to act for such nonparticipating justice.

(b) A vacancy in the office of justice of the supreme court or judge of any district court or of such other courts that may be made subject to this provision by law, shall be filled by a qualified person appointed by the governor from a list of three nominees that shall be submitted by the judicial nominating commission. The commission shall submit such a list not later than 60 days after the death, retirement, tender of resignation, removal, failure of an incumbent to file a declaration of candidacy or certification of a negative majority vote on the question of retention in office under section [subsection] (g) hereof. If the governor shall fail to make any such appointment within 30 days from the day the list is submitted to him, such appointment shall be made by the chief justice from the list within 15 days.

(c) There shall be a judicial nominating commission for the supreme court, district courts and any other courts to which these provisions may be extended by law. The commission shall consist of seven members, one of whom shall be the chief justice, or a justice of the supreme court designated by the chief justice to act for him, who shall be chairman thereof. In addition to the chief justice, or his designee, three resident members of the bar engaged in active practice shall be elected by the Wyoming state bar and three electors of the state not admitted to practice law shall be appointed by the governor to serve on said commission for such staggered terms as shall be prescribed by law. No more than two members of said commission who are residents of the same judicial district may qualify to serve any term or part of a term on the commission. In the case of courts having less than statewide authority, each judicial district not otherwise represented by a member on the commission, and each county, should the provisions hereof be extended by law to courts of lesser jurisdiction than district courts, shall be represented by two nonvoting advisors to the commission when an appointment to a court in such unrepresented district, or county, is pending; both of such advisors shall be residents of the district, or county, and one shall be a member of the bar appointed by the governing body of the Wyoming state bar and one shall be a non-attorney advisor appointed by the governor.

(d) No member of the commission excepting the chairman shall hold any federal, state or county public office or any political party office, and after

serving a full term he shall not be eligible for reelection or reappointment to succeed himself on the commission. No member of the judicial nominating commission shall be eligible for appointment to any judicial office while he is a member of the commission nor for a period of one year after the expiration of his term for which he was elected or appointed.

Vacancies in the office of commissioner shall be filled for the unexpired terms in the same manner as the original appointments. Additional qualifications of members of the commission may be prescribed by law.

(e) The chairman of the commission shall cast votes only in the event of ties. The commission shall operate under rules adopted by the supreme court. Members of the commission shall be entitled to no compensation other than expenses incurred for travel and subsistence while attending meetings of the commission.

(f) The terms of supreme court justices shall be eight years and the terms of district court judges shall be six years.

(g) Each justice or judge selected under these provisions shall serve for one year after his appointment and until the first Monday in January following the next general election after the expiration of such year. He shall, at such general election, stand for retention in office on a ballot which shall submit to the appropriate electorate the question whether such justice or judge shall be retained in office for another term or part of a term, and upon filing a declaration of candidacy in the form and at the times prescribed by law, he shall, at the general election next held before the expiration of each term, stand for retention on such ballots. The electorate of the whole state shall vote on the question of retention or rejection of justices of the supreme court, and any other statewide court; the electorate of the several judicial districts shall vote on the question of retention or rejection of judges of their respective districts, and the electorate of such other subdivisions of the state as shall be prescribed by law shall vote on the question of retention or rejection of any other judges to which these provisions may be extended.

(h) A justice or judge selected hereunder, or one that is in office upon the effective date of this amendment, who shall desire to retain his judicial office a succeeding term, following the expiration of his existing term of office, shall file with the appropriate office not more than 6 months nor less than 3 months before the general election to be held before the expiration of



his existing term of office a declaration of intent to stand for election for a succeeding term. When such a declaration of intent is filed, the appropriate electorate shall vote upon a nonpartisan judicial ballot on the question of retention in or rejection from office of such justice or judge, and if a majority of those voting on the question vote affirmatively, the justice or judge shall be elected to serve the succeeding term prescribed by law. If a justice or judge fails to file such a declaration within the time specified, or if a majority of those voting on the question vote negatively to any judicial candidacy, a vacancy will thereby be created in that office at the end of its existing term.

2. Statutory Provisions

**Wyo. Stat. Ann. § 22-18-110 --Supreme court justices and district court judges.**

A vacancy in the office of justice of the supreme court or judge of any district court shall be filled by a qualified person appointed by the governor under section 4, of article 5 of the constitution of Wyoming.

**II. FEDERAL REGULATORY PROVISIONS**

**A. MAGISTRATE JUDGES**

1. Regulations Of The Judicial Conference Of The United States Establishing The Standards And Procedures For The Appointment And Reappointment Of United States Magistrate Judges

**Sec. 3.01 --Establishment of Panel.**

Before the appointment or reappointment of a United States magistrate judge, the court, by majority vote of the active district judges, shall appoint a merit selection panel which shall recommend to the court for consideration individuals whose character, experience, ability, and commitment to equal justice under the law fully qualify them to serve as a United States magistrate judge.

**Sec. 3.02 --Membership.**

(a) The panel shall be composed of a chairperson and other members appointed by majority vote of the active district judges of the court. The

panel shall have no fewer than seven members, including the chairperson.

(b) Members of the panel shall receive no compensation for their service, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law.

(c) The panel shall consist of lawyers and other members of the community. At least two members of the panel shall be non-lawyers. Each members of the panel shall be a resident of the district within which the appointment is to be made. No federal judge, including a senior, retired, or recalled judge, or other district court officer or district court employee shall be appointed as a member of the panel. This prohibition does not preclude United States attorneys and assistant United States attorneys, and federal defenders and assistant federal defenders from serving on the panel.

(d) No person shall be considered for selection by the court while service as a member of the panel or for a period of one year after completion of such service. The Committee on the Administration of the Magistrate Judges System is authorized to grant waivers to this provision on an individual case basis.

#### **Sec. 4.01 --Selection from List and Majority Decision of Judges.**

The active district judges shall select from the list provided by the panel. However, if no applicant receives a majority vote of the active district judges, the court shall request a second list of five names. The court is then free to select from either list. If, again, no applicant receives a majority vote, the chief judge shall make the selection for the court from either list.

#### **B. BANKRUPTCY JUDGES**

1. Regulations of the Judicial Conference of the United States for the Selection, Appointment, and Reappointment of United States Bankruptcy Judges

#### **Sec. 3.01 --Establishment of Panel.**

Before nominations are made, the council may appoint a merit selection panel which shall recommend for nomination individuals whose character, experience, ability, and commitment to equal justice under the law fully qualify them to serve as United States bankruptcy judges. The council may authorize the chief judge of the circuit to appoint panels under this section

### **Sec. 3.02 --Membership.**

(a) The panel shall be composed of a chairman and other members appointed by majority vote of the judicial council. The panel shall have no fewer than three members, including the chairman.

(b) Members of the panel shall receive no compensation for their service, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law.

(c) Each member of the panel shall be a resident of the circuit within which the appointment is to be made.

(d) No person shall be considered as a nominee while serving as a member of the panel or for a period of one year after completion of such service.

### **Sec. 3.05 --Alternative to Panel.**

If the council does not appoint a panel under section 3.01, the council or a subcommittee of the members of the council may perform the duties set forth in section 3.03.

2. Judicial Council of the Ninth Circuit: Regulations Governing the Appointment of U.S. Bankruptcy Judges

### **Sec. 3.01 --Local Merit Screening Committees.**

The Judicial Council shall establish local merit screening committees in each district. The local merit screening committee shall recommend to the Court-Council Committee on Bankruptcy Appointments the names of individuals best qualified under the law and these regulations to serve as United States Bankruptcy Judge.

### **Sec. 3.02 --Membership of Local Merit Screening Committees.**

(a) Local merit screening committees should include:

- 1) the chief judge or the designee of the chief judge of the district in which the bankruptcy judge is to be appointed,
- 2) the president or the designee of the president of the state bar association,

- 3) the president or the designee of the president of one or more local bar associations within the district,
- 4) the dean or designee of the dean of a law school located within the district, and
- 5) the administrative circuit judge or the designee of the administrative circuit judge of the circuit geographical unit in which the bankruptcy judge is to be appointed,
- 6) the chief bankruptcy judge of the district in which the bankruptcy judge is to be appointed, except when a resident incumbent judge is seeking appointment to an additional term.

(b) Any judge, bar president, law school dean or other person designating a member of the local merit screening committee should designate individuals interested in the operation of the bankruptcy courts.

(c) Any choices that must be made regarding membership on a local merit screening committee shall be made by the Chief District Judge of the district in which the bankruptcy judge is to be appointed.

(d) The members of the local merit screening committee will select their own chairperson.

(e) The Circuit Executive or designee of the Circuit Executive may serve as secretary to the local merit screening committee and may attend all meetings of the committee.

(f) No person shall be an applicant for a bankruptcy judge position while serving as a member of the local merit screening committee or for a period of one year after completion of such service, except that a resident incumbent chief bankruptcy judge may apply for appointment to an additional term notwithstanding the fact that he or she has served as a member of the screening committee within the previous year.

(g) Members of the local merit screening committee shall receive no compensation for their service, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law.