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Judicial Selection and Tenure

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JUDICIAL SELECTION AND TENURE.

By MILO N. FEIGHTNER*

INTRODUCTION

[By Editors]

President Milo N. Feightner selected from Martindale Hubbell an outstanding lawyer from each state of the Union, who is also a member of the American Bar Association, and submitted to him a questionnaire as to the nomination and selection of judges, their tenure in office, and whether or not satisfactory judges have been obtained under such system. He received replies from forty-three of the forty-eight states, and has submitted to the Journal an abstract of each of these replies, arranged alphabetically by states, which we print for the information of members of the Indiana Bar.

We preface these abstracts by a brief composite summary.

In 34 states Judges are chosen by the electorate in a general election, while nine use some other method of selection. Six of those states which do not elect their Judges at the polls have provided for appointment by the Governor; three states allow their General Assemblies to elect Judges. The nine appointing states are in the eastern section and each was once a member of the original 13 colonies. Though their system of selection by appointment is in the minority, the attorney supplying our information from each of these states was of the opinion that the method is satisfactory to the members of their Bar.

From the 34 electing states 18 report that they are satisfied with their system in general, 12 say their system is unsatisfactory, and four do not commit themselves. In the electing states nine use a separate ballot for candidates for Judge while 25 use one general ballot for all offices. Seven of the nine states using the separate ballot find their system generally satisfactory, one reports unsatisfactory, and one makes no report either way. Eleven of the 25 states using the general ballot are satisfied, 11 are dissatisfied, while three make no

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report. Five of eight states using the non-partisan ballot are satisfied, two are not, and one makes no report. Iowa reports that the non-partisan ballot was tried and then abandoned as unsatisfactory.

In the 34 electing states a majority allow the candidates to be selected in the primaries, by the members of each party, on a partisan ballot. In an appreciable number of states the candidates are nominated by their respective parties at conventions. This is particularly true of the candidates for the higher courts. Twenty of the 34 states use the party emblem on the ballot in connection with judicial offices while 14 do not. Several of the reports received clearly indicated that a special effort was made to divorce the judiciary from politics. It is interesting to note that while reports from 11 states asserted that politics did not enter into the selection of Judges, several added that when it was necessary for the Governor to appoint to fill a vacancy, politics was invariably a consideration.

Massachusetts is the only state that gives its Governor unrestricted authority to appoint Judges, and the appointment there is for life. The report from Massachusetts stated that politics did enter into the selection of Judges of lower courts, but not in the appointment of Supreme Judges—adding that Governors frequently appointed Supreme Judges of an opposite political party. The system is reported as generally satisfactory to the Bar of Massachusetts.

In South Carolina, Vermont, and Virginia the General Assemblies select the Judges for the various courts. This unusual method of selection is reported as generally satisfactory. South Carolina qualifies this by saying that members of the Bar are opposed to the recent practice of selecting Judges from the ranks of the legislature itself.

In the other states which are classified as appointive, the Governor selects the appointee subject to the advice of a council, or a required confirmation by the General Assembly—or one branch of it.

More than half of the states polled (26 of the 43) have a four or six-year term. The fourteen states with terms

longer than six years are all on or near the Atlantic seaboard. Of these fourteen states six elect Judges, while in eight the electorate has no direct voice in their selection.

Vermont is unusual in that the Judges are elected by the legislature for a term of two years. It is reported that the Judges are usually re-elected in Vermont, and that the system is satisfactory.

In Montana the voter nominates the candidates at a non-partisan primary and has the privilege of voting to select each of the two men who will oppose each other in the fall election. This system is reported as unsatisfactory.

A number of lawyers favor the endorsement of candidates for Judge by members of the Bar. In Los Angeles County, California, it is reported that the endorsement of an incumbent insures his re-election.

Thirty-four of the 43 states reporting said that their Judges usually held successive terms, either by re-election or reappointment. Including Massachusetts, where appointments are made for life, and New Hampshire, where Judges serve until 70 years of age, this would indicate that in 36 of the states there is continuity in office—either by appointment for long terms, reappointment, or re-election.

PRESIDENT FEIGHTNER'S ABSTRACT

ALABAMA

1. Judges elected. Names appear on ballot with other candidates.
2. Names appear on ballot by petition filed with Secretary of State.
3. Party emblem on ballot.
4. Politics enters into selection.
5. Candidates can select any ticket on which he chooses to run.
6. Candidates usually re-elected.
7. Term of office six years.
8. Method of selection satisfactory.

ARIZONA

1. Judges elected at general election.
2. Elected on ticket with candidates for other offices.
3. Nominated on petition of members of a political party. Name then goes on primary ballot. Party emblem on primary ballot.

4. Candidate nominated at primary then has name on general election ballot but no party emblem above judge's name. Names of candidates for other offices below judges' names with party emblem above their names. Line on ballot separates judges' names from other candidates.

5. Judges usually re-elected.
6. Term of office four years.
7. Method of selection satisfactory to public but not to bar.

CALIFORNIA

1. Judges elected. Candidates' names for judge appear on ballot with names for other offices.

2. Candidates by filing application get names on primary ballot. When nominated, name goes on general election ballot.

3. Party emblem on primary ballot but all names of candidates appear on all ballots at election.

4. But little politics in selection of judges.

5. Judges are usually re-elected. Bar of Los Angeles by plebescite endorses candidates which is effective.

6. Supreme judges serve 12 years. Appellate judges 12 years. Other judges 6 years.

7. Method of selection not satisfactory to bar.

COLORADO

1. Elected. Names appear on ballot with candidates for other offices.

2. Candidates selected by delegates to a convention, then nominated at primary.

3. Each voter when he votes must declare his politics.

4. Party emblem on ballot. Politics enters into selection.

5. Judges not always re-elected.

6. Supreme Court Judges serve 10 years, District Judges 6 years.

7. Method of selection not very satisfactory.

CONNECTICUT

1. Judges of Supreme Court and of Superior Court nominated by Governor and appointed by General Assembly.

2. All judges serve 8 years.

3. Politics enters into selection of judges.

4. Judges usually reappointed.

5. Method of selection satisfactory.

DELAWARE

1. Appointed by Governor and confirmed by Senate. Constitution requires that no more than three of the five law judges in the state be of the same political party.

2. Terms 12 years and usually re-appointed.

3. Politics of little consequence in selection of judges.

4. Method of selection satisfactory.

FLORIDA

1. Judges elected.
2. Name of judges appear on ballot with other candidates for office.
3. Candidates for judge nominated at primary.
4. Candidates run on party ticket.
5. Politics enters into selection of judges.
6. Judges usually re-elected.
7. Judges for supreme court elected for 6 years, equity judges 6 years.
8. Method of selection satisfactory.

GEORGIA

1. Judges elected.
2. Names on ticket with other candidates.
3. No party emblem.
4. Politics in selection enters.
5. Judges re-elected usually.
6. Terms nisi prius 4 years, appellate 6 years.

IDAHO

1. Judges elected on non-partisan ticket.
2. Candidates' names appear on separate ballot.
3. Candidates not nominated. Placed on ballot by petition.
4. No party emblem on ballot.
5. No politics enter into election. Vacancies filled by governor and appointees hold office until next election.
6. Judges usually re-elected.
7. Supreme judges elected for 6 years, others for 4 years.
8. Method of selection satisfactory to bar and public.

ILLINOIS

1. Judges elected. Circuit and Supreme Judges elected at separate election; others at general election.
2. Candidates selected by political parties.
3. Party emblem on ballot.
4. Politics enters into election.
5. Judges usually re-elected.
6. Supreme judges serve 9 years; Circuit judges 6 years.
7. Method of selection not very satisfactory.

IOWA

1. Judges elected.
2. Names appear on judicial ticket of party.
3. Candidates nominated by state and district judicial convention of each party.
4. Party emblem on ballot.
5. Politics enters into selection.
6. Recently not re-elected.

7. Supreme judges serve 6 years; District judges 4 years.
8. Non-partisan selection tried, then abandoned.

KANSAS

1. Judges elected.
2. Names appear on ballot with candidates for other offices.
3. Judges nominated by political party at primary.
4. Party emblem on ballot.
5. Politics enters into selection of judges.
6. Judges usually re-elected.
7. Supreme judges serve 6 years, district judges 2 years.
8. Method of selection satisfactory.

KENTUCKY

1. Elected.
2. Candidates on ticket with other candidates.
3. Nominated with other candidates.
4. Party emblem on ticket.
5. Vacancies filled by Governor.
6. Politics does not enter into selection in Fayette County.
7. Usually re-elected for 6 years.
8. Method satisfactory.

LOUISIANA

1. Candidates selected at primary.
2. Candidates names appear on ballot with names of other candidates.
3. Candidates nominated by political parties.
4. Emblem on election ballot but none on primary ballot.
5. Politics enters in selection.
6. Judges usually re-elected.
7. Supreme judges elected for 14 years; Circuit judges for 12 years; others for 6 years.
8. Method of selection not satisfactory to bar.

MAINE

1. All judges appointed by Governor.
2. A state council of seven must approve appointments.
3. Politics enters into selection.
4. Judges usually re-appointed. Governor at times appoints a judge of opposite politics.
5. Terms of municipal judges 4 years, others 7 years.
6. Method of selection satisfactory.

MARYLAND

1. Elected; names appear on ballot with candidates for other offices.
2. Candidates nominated by political party.
3. Party emblem on ticket.

4. Judges elected when legislature elected.
5. Politics enters into selection.
6. Judges usually re-elected. Must retire at 70, but receive pension. Term 15 years.
7. Method of selection not satisfactory to bar.

MASSACHUSETTS

1. Judges appointed for life by the Governor.
2. Politics enters into appointment of judges of lower courts, but not in appointment of Supreme Judges, Governor often appointing judges of opposite politics.
3. Method of selection satisfactory.

MISSISSIPPI

1. Judges elected.
2. Names appear on separate ballot. Election in off year.
3. Judges are not nominated by political parties.
4. No party emblem on ballot.
5. No politics in selection of judges.
6. Judges usually re-elected.
7. Elected for four years.
8. Method of selection satisfactory.

MINNESOTA

1. Judges elected.
2. Names of candidates appear on ballot with candidates for other offices.
3. Candidates are not nominated by political party but are nominated at primary.
4. No party emblem on ballot where judges names appear.
5. Some politics enters into selection of judges.
6. Judges usually re-elected.
7. All judges selected for 6 years.
8. Method of selection satisfactory.

MISSOURI

1. Judges elected.
2. Names appear on ballot with other candidates.
3. Nominated by political party.
4. Party emblem on ticket.
5. Politics enters in selection but with lesser degree than other candidates.
6. Politics enters into selection.
7. Method of selection unsatisfactory.

MONTANA

1. Judges elected.
2. Names appear on separate ballot.
3. Nominated at non-partisan primary where the voter votes for twice the number of candidates there are offices to fill.

4. No party emblem on ballot for judge.
5. Politics enters into selection.
6. Supreme judges elected for 6 years, others for 4 years.
7. Method of selection unsatisfactory. Believe voters not qualified to select judges.

NEBRASKA

1. Judges elected.
2. Names on separate non-partisan ballot.
3. Nominated at primary on non-partisan ballot.
4. No party emblem on candidates ballot.
5. No politics in selection.
6. Usually re-elected.
7. Terms nisi prius 4 years; Supreme Judges 6 years.
8. Method satisfactory.

NEVADA

1. Judges elected.
2. Names of candidates appear on ballot with names of candidates for other offices.
3. Candidates nominated at primary.
4. No party emblem appears in connection with candidates names either on primary ballot or general election ballot.
5. Candidates nominated by political parties.
6. Politics enters into selection of judges.
7. Judges usually re-elected.
8. Supreme judges elected for 6 years, district judges for 4 years.
9. Method of selection satisfactory.

NEW HAMPSHIRE

1. Judges appointed by Governor and council.
2. No politics in appointment.
3. Judges serve until 70 years of age.
4. Method of selection satisfactory.

NEW JERSEY

1. Separate law and equity courts. Chancellor appointed by Governor. Vice Chancellors appointed by Chancellor. Term of office 7 years.
2. Law judges, appeals court, Supreme Court, Common Pleas Court appointed by Governor. Common Pleas judges confirmed by senate.
3. Supreme court consists of Chief Justice and nine associate judges appointed by Governor who serve 7 years and they are re-appointed from term to term.
4. Politics enters into appointments. All appointments must be confirmed by Senate.
5. Judges are reappointed and method of selection satisfactory.

NEW MEXICO

1. Judges elected.
2. Elected on one ticket.
3. Nominated on one ticket.
4. Party emblem on ticket.
5. Politics enters into selection.
6. Supreme judges elected for 8 years, others for 6 years.
7. Method of selection unsatisfactory.

NEW YORK

1. Judges elected on ticket with candidates for other offices.
2. Nominated by delegates at a party convention.
3. Party emblem on ballot.
4. Politics enters into selection.
7. Usually re-elected.
8. Term 14 years.
9. Method of selection satisfactory.

NORTH CAROLINA

1. All candidates for judge nominated by political parties. (Supreme and Superior Judges.)
2. Both Supreme and Superior Judges nominated by political parties and their names appear on State ballot and elected as other State officers. Superior judges are nominated in the superior district but names go on State ballot. Six superior judges are appointed by the Governor. System not likely to be changed but I think it has many defects.
3. All judges selected for 8 years.

NORTH DAKOTA

1. Judges elected.
2. Names of candidates for judge appear on ballot with candidates for other offices on non-partisan ballot.
3. Judges nominated at primary on non-partisan ballot.
4. No party emblem on ballot on primary ballot or on general election ballot.
5. No politics in election. Sometimes politics when appointment to fill vacancies by Governor.
7. Judges usually reelected.
8. Supreme Judges hold office for 10 years, others for 6 years.

OHIO

1. Judges elected; separate ballot on which appears "Judicial Ballot."
2. Candidates names appear on primary ballot by petition; certain per cent of vote cast for head of ticket at last election.
3. No party emblem but voters are liberal in voting for judicial candidates.
4. Judges frequently re-elected. Term of office 6 years. Selection by our method not satisfactory.

OREGON

1. Judges elected at general election.
2. Names of judges appear on separate ballot.
3. Candidates file application to go on ballot with Secretary of State. Names then go on ballot. Names of incumbent judges seldom contested.
4. No party emblem on ballot.
5. No politics in selection.
6. Supreme judges serve 6 years, Circuit judges 6 years.
7. Method of selection satisfactory.

PENNSYLVANIA

1. Judges elected.
2. Names appear on ballot with other candidates.
3. Candidates nominated at primary with other candidates.
4. No emblem on ballot but name of party appears.
5. Governor fills vacancies.
6. Judges who are satisfactory frequently renominated by both parties and re-elected without opposition.
7. Terms—Supreme Court 21 years; ineligible for re-election; other courts 10 years.

SOUTH CAROLINA

1. Judges elected by state General Assembly in joint session.
2. Nominations oral and roll call made.
3. Lately judges have been selected from the assembly and that is not popular.
4. Judges are re-elected.
5. Judges serve 8 years.
6. Method of election generally satisfactory.

SOUTH DAKOTA

1. Judges elected. Names appear on separate ballot.
2. Candidates names appear on ballot by petition. Non-partisan ballot.
3. No party emblem on ballot.
4. No politics in selection except where Governor appoints to fill vacancy.
5. Judges usually re-elected.
6. Supreme judges serve 6 years; circuit judges 4 years.
7. Method of selection satisfactory.

TENNESSEE

1. Judges elected.
2. Names of candidates appear on ballot with candidates for other offices.
3. Candidates nominated for Supreme and Appellate judges by conventions.
4. In some instances the local bar endorses candidates who become the candidates and they are usually elected.
5. Candidates for lower courts may have their names appear on the ballot by petition.

6. Politics enters into selection but judges are usually re-elected. Judges elected for 8 years.

7. Method of selection satisfactory but believes bar associations should endorse candidates.

TEXAS

1. Nominated by political parties.
2. Politics enters into selection.
3. All judges selected for 4 years.
4. Supreme Court consists of 3 judges and then two commissions, 3 each appointed by Governor.
5. Names of candidates appear on ballot with other candidates for office.
6. Judges usually re-elected.
7. Method of selection unsatisfactory.

UTAH

1. Judges elected. Names appear on ballot with candidates for other offices.
2. Candidates nominated at primaries.
3. Party emblem on ballot.
4. Politics enters into selection.
5. Supreme Judges serve 10 years, District Judges 4 years.
6. Method of selection not satisfactory.

VERMONT

1. Municipal judges appointed by Governor; other judges appointed by legislature.
2. Judges appointed for two years and reappointed.
3. Politics enters into selection.
4. Term of office of all judges 2 years.
5. Method of selection satisfactory to bar and public.

VIRGINIA

1. Judges elected by legislature.
2. Candidates nominated in the session of the legislature and politics enters into selection.
3. Any legislator has a right to nominate in the session. At times judges are nominated in a caucus.
4. No ballots. Governor in filling vacancies frequently appoints a judge endorsed by bar associations.
5. Legislature usually re-elects judges.
6. Supreme judges elected for 12 years, others for 8 years.
7. Method of selection satisfactory.

WEST VIRGINIA

1. Elected.
2. Elected on ballot with names of candidates for other offices.

3. Candidates nominated at conventions; other candidates for office nominated at primaries.
4. Party emblem on ballot.
5. Politics enters into selection.
6. Judges re-elected but election follows result of other election.
7. Supreme judges elected for 12 years, nisi prius 8 years.
8. Method of selection generally satisfactory.

WISCONSIN

1. Judges not elected at general election. No election 30 days before or after a general election.
2. Judges can hold no office except a judicial office for the term for which he was elected. Judge must be 25 years old. No party emblem on ballot. Supreme judges elected for 10 years, others for 6 years. But one judge elected at a time. Seven Supreme Judges. No politics in appointments. Majority of judges Democrats for a long time when state strong Republican. Voters have veto on appointment of judges as the appointee must come up for election soon after appointment. Judges usually re-elected.
3. Candidates get on election ballot by petition. No party nominations.
4. Method satisfactory.

WYOMING

1. Judges elected.
2. Names of candidates appear on separate ballot.
3. Candidates nominated at primary by ballot where any one with certain qualifications may be a candidate.
4. No party emblem on ticket.
5. No politics in selection.
6. Judges usually re-elected.
7. Supreme judges serve 8 years, others 6 years.
8. Method of selection satisfactory.

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