

INSIDE MERIT SELECTION

★ ★ ★ A NATIONAL SURVEY OF JUDICIAL NOMINATING COMMISSIONERS ★ ★ ★



★ ★ ★ ★ ★ BY RACHEL PAINE CAUFIELD, PH.D

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Founded in 1913, the American Judicature Society is an independent, non-partisan, membership organization working nationally to protect the integrity of the American justice system. AJS's diverse and broadly based membership – including judges, lawyers and members of the public – promotes fair and impartial courts through research, publications, education and advocacy for judicial reform. The work of AJS focuses primarily on judicial ethics, judicial selection, access to justice, criminal justice reform and the jury system. AJS membership is open to anyone who supports the improvement of the nation's courts.

Acknowledgements

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Executive Summary

During the summer of 2011, The American Judicature Society conducted a nationwide survey of Judicial Nominating Commissioners. Nominating Commissions exist in 36 states and the District of Columbia to recruit, screen, evaluate, and recommend individuals for appointment to the state courts. The survey was designed to gather information about the membership, rules, procedures, practices, and effectiveness of Judicial Nominating Commissions from those who know it best – the Commissioners. This information can be used to better understand how current systems operate and to evaluate proposals that would alter existing merit selection systems or institute new ones.

With 487 respondents hailing from 30 states and the District of Columbia, this is the largest survey of its kind. Taken as a whole, the data indicates that Judicial Nominating Commissions are highly functional decision-making bodies that operate in a way that is consistent with the goals that guided their creation. Specifically, the results show that:

- When compared to past studies, Commissions appear to have become more systematic in their work, with more formalized written rules of procedures, greater levels of transparency and public access, more diversity in membership, and more intentional efforts to minimize or eliminate the influence of political factors in their evaluation and recommendation of individuals to serve on the bench.
- A large majority of lawyer members work in private practice, with both the plaintiff and defense bars well-represented among survey participants. Non-lawyer Commissioners are well-distributed across a large range of professional pursuits, though a substantial number are retired or self-employed.
- Approximately one third of Commissioners who responded have held public office and just over twenty percent have held a party office. It is more common for non-lawyer Commissioners to report that they have served as a party officer or public official.
- More survey respondents identified as Democrats than Republicans. Those Commissioners appointed by the governor are both more likely to be strong Democrats and more likely to be strong or moderate Republicans than are those selected through other means.
- Seventy-eight percent of survey respondents report that their Commission uses written operating procedures; specific evaluative criteria are the most common. Nearly 75% of Commissioners report that they are subject to provisions regarding ethics, most commonly rules governing conflicts of interest.

- Bar association publications and public websites are regarded as the most common recruitment tools, although word of mouth and recommendations from other Commissioners are considered to be important as well.
- In evaluating judicial applicants, Commissioners are uniform in their assessments of which information is most useful, with no significant differences between lawyer, non-lawyer, and judge members. In-person interviews were most commonly recognized as “absolutely essential” in the process, followed by review of disciplinary records, criminal history, and tax documents, as well as applicant questionnaires.
- Commissioners report that mental health is the most important criteria that they use to assess applicants, followed closely by professional reputation and the ability to communicate effectively. In contrast, political experience or affiliations receive the lowest ratings, alongside personal and demographic characteristics of applicants. Overwhelmingly, Commission members affirm that criteria are widely shared, and that the applicants who are recommended receive very broad support.
- Nearly all Commissioners report that their Commission uses formal in-person interviews, and a majority say that they interview all applicants for the judicial position, without pre-screening; formal interviews are conducted by the full Commission, but in some states applicants also meet separately with individual Commissioners. Nearly three quarters of Commissioners who answered the survey report that Commission interviews last for thirty minutes or less.
- A majority of survey participants say that their Commission uses standard voting procedures to determine which judicial applicants will be recommended to the appointing authority. The most common voting procedures are secret ballot or voice vote.
- Most Commissioners note that their procedures are made public, and that the names of applicants are publicly available.
- Regarding Commissioners’ assessments of the process, there is wide agreement that the merit selection process is fair, that it works to promote highly-qualified individuals for service on the bench, that it appropriately constrains the power of the governor, and that it helps to minimize the role of partisan politics. Overwhelmingly, Commissioners believe that their service is worthwhile, and there is broad support for the proposition that merit selection is preferable to contestable judicial elections.
- Of those who responded to the survey, there is widespread agreement that party affiliation and other political considerations are generally not important in the process of selecting individuals for recommendation to the governor (or other appointing authority).
- Commissioners agree that lawyer members and non-lawyer members have very positive working relationships, and that members work together and respect input from their peers.
- Diversity is generally recognized as a goal of the Judicial Nominating Commissions, although respondents also say that race, gender, and sexual orientation are generally not important considerations in the decision-making of their Commission.



Introduction

No matter how excellent the laws and administrative methods of a civilized people may be, they cannot yield satisfactory results save as they are administered by skilled and competent judicial officers. It may be that in the savage or pioneer stage of life robust common sense in a judge was an entirely satisfactory substitute for professional training, but to the world as we know it that day will never return; and if it did we should still be forced to consider some method of assuring in our judges that kind of common sense. In a word, tolerable results may be produced by rather poor governmental machinery when handled by experts; but the best administrative machinery, if somewhat complicated, cannot be well managed by the incompetent. So, unless we assure the selection of proper men [and women] as judges, we cannot hope to escape from a large measure of just dissatisfaction with the work of our courts.¹

For over two centuries, the American states have been engaged in a process of finding the best ways to select their judges. The debate over judicial selection, which began before the founding of the nation, is an ongoing conversation about the judicial function in a democratic society.² The act of judging, like all human endeavors, depends upon the individual capacities of those entrusted to exercise the authority inherent in the job. Thus, methods of judicial selection and retention implicate a wide range of foundational questions: the nature of individual rights and liberties and how they will be safeguarded, the sources and limitations of government power, and the competing interests of citizen and state (to mention but a few). As states have struggled to ensure highly-qualified, knowledgeable, accessible, adaptable, and accountable judiciaries, the methods used to staff the bench have frequently engendered fervent debate.

Beginning in the early 20th Century, judicial reformers took up the cause of judicial selection, with particular concern about the detrimental effects of judicial elections, including control by party factions and dependence upon the “wisdom” of ill-informed voters who lacked information about the candidates.³ Among those most concerned with the problem at the time, elections were perceived to undermine the impartiality of the judiciary, promote individuals who were motivated by partisan politics and potentially unqualified for the job, deter qualified individuals from attempting to attain a judgeship, and, ultimately, significantly erode the integrity of the judicial process. The most prominent call for reform came in Roscoe Pound’s speech to the American Bar Association in 1906, in which he posited that “putting courts into politics, and compelling judges to become politicians in many jurisdictions [had] almost destroyed the traditional respect for the bench.”⁴ Over the next few decades, in an effort led by the first Director of Research at

The American Judicature Society Albert Kales and prominent political scientist Harold Laski, a new system of selection was proposed that came to be known as judicial merit selection.⁵

After a particularly contentious period in its own history,⁶ Missouri became the first state to adopt “merit selection” in 1940.⁷ Since its adoption, the merit selection system has become increasingly common (See Appendix A for a timeline of state adoption of merit selection). Though no two states use an identical system (See Appendix B for summary characteristics of all merit selection systems), there are a few common characteristics that define “merit selection” plans. First, all use a committee to evaluate candidates for judicial office. These committees, frequently named “Judicial Nominating Commissions” or “JNCs”⁸ are made up of lawyers and non-lawyers. As a general rule, attorney members are elected by the state or local Bar Association, while non-attorney Commissioners are selected by the governor, sometimes subject to legislative confirmation.⁹ Second, merit selection systems generally restrict the governor’s authority by requiring that a gubernatorial appointment be made from a list of individuals recommended by the Judicial Nominating Commission. Some states require legislative confirmation of judicial appointments, while others only require gubernatorial appointment to the bench. Finally, most states that have implemented Commission-based appointment of judges include retention elections, whereby sitting judges will appear on the ballot in uncontested elections, and voters will simply vote “Yes” or “No” to determine whether a judge will remain in office for another term.

Judicial Nominating Commissions have been called the “key” to judicial merit selection.¹⁰ Put simply, the work of the Commission – soliciting applications, reviewing application materials, interviewing judicial applicants, and determining which individuals are best suited to a judicial position – is essential to filling vacant judgeships. Not only are Nominating Commissioners taking on the responsibility of vetting would-be judges (a function usually reserved for the governor and her staff in pure appointive systems), but the Commission-based system is expressly designed to ensure that staffing of the judiciary is not determined by unfettered political control by the governor.¹¹ Similarly, retention elections effectively allow the public to exercise “veto” authority by removing judges from office. But the public does not, in turn, have the power to replace that judge.¹² Should a sitting judge fail to win retention, the job of reviewing potential replacements and winnowing the field for gubernatorial appointment falls to the Judicial Nominating Commission.

Because these Commissions have such a central role in the process of selecting judges, they are frequently the topic of derision and praise. For those who support merit selection systems, Judicial Nominating Commissions are often characterized as a way to minimize political influence in the choice of judges, with representation from among those who best know the judicial system (lawyer members) balanced by citizen (non-lawyer) input.¹³ Among those who oppose merit selection, Judicial Nominating Commissions have been characterized as secret elite cabals controlled by the trial Bar, without public accountability and favoring “liberal” applicants.¹⁴ These characterizations, however, are frequently based on weak or anecdotal evidence and thus serve more as points of

argument than strong empirical assessments of the structure, function, procedures, and membership of Judicial Nominating Commissions as they currently operate.

Previous studies of Judicial Nominating Commissions are limited. The earliest study was conducted by Watson and Downing (1969) as a means to evaluate the extent to which political influences were present in Missouri's Non-Partisan Court Plan.¹⁵ They find a remarkable degree of partisan and ideological manipulation in populating the Commission as well as in Commission decision-making. Most notably, their interview of lawyers and court-watchers in Missouri finds highly polarized bar elections for membership on the Commission, with intense competition between the plaintiffs and defense bars. At the same time, the interviewees noted a high degree of control by the governor through appointment of non-lawyer members and the use of "panel-wiring" whereby the governor would indicate a preferred judicial applicant and the Commission would recommend the preferred applicant alongside others who might as well be chosen at random. As one prominent reviewer wrote at the time "In short, the [Non-Partisan Court] Plan does not elevate the selection process above the politically polluted atmosphere. It merely shifts political arenas – out of the issueless and pedestrian considerations of ward and county politics into the only slightly less base perspective of gubernatorial cronyism and bar factionalism."¹⁶

Watson and Downing did not survey Nominating Commissioners systematically, and their report is overwhelmingly based upon outsiders' perspectives. Information about how Commissioners – those inside the system – assess the work of the Commission is noticeably absent. Despite the perceptions of political manipulation, the lawyers and court-watchers who were interviewed by Watson and Downing did evaluate judges appointed under the Non-Partisan Court Plan higher on a wide array of judicial attributes, indicating that perhaps the initial goals of adoption were being realized, even amid these perceptions of political influence.¹⁷

The first full treatment of Nominating Commissions that relied on evidence collected directly from Commissioners was published by Ashman and Alfini in 1974.¹⁸ Based on a systematic field research design supplemented with a national survey of Commissioners, Ashman and Alfini produced a comprehensive study of membership, rules, procedures, and practices. In many important respects, their findings contradict the geographically-limited and outsider-focused Watson and Downing study. For example, they find wide acceptance among Commissioners that political considerations play an extremely limited role in the Commission's deliberations and decisions, that lawyers and non-lawyers work well together, that the governor's preferences are given virtually no weight in the final voting, and that Commissioners consciously repudiate partisan influences.¹⁹ They do, however, find noteworthy differences between lawyer members and their non-lawyer peers in the relative weight given to various evaluative criteria and they sum up their assessment of outside influences by saying "it would be naïve to think that partisan politics and bar associations do not influence the composition and deliberations of some

Judicial Nominating Commissions... we simply wish to emphasize the futility of thinking of Nominating Commissions as hermetically sealed, self-contained entities.”²⁰

Consistent with this sentiment, Henschen et. al. conducted a national survey of Nominating Commissioners in 1989 to better understand the political, economic, and social characteristics they bring to the process.²¹ Demographically, they find significant improvements in the gender diversity of Commissioners since Ashman and Alfini’s 1974 survey, although Commissions still demonstrated a remarkable lack of diversity when it came to race and religion. They also find high levels of political activism among Commissioners, and raise questions about the degree to which Commissioners’ political ties may “damage the system’s legitimacy.”²² Without looking further into the deliberative processes that are used, however, they are unable to draw inferences about the degree to which the political activity of Commissioners may influence the Commissions’ decision-making.

Most recently, Joanne Martin conducted a comprehensive national survey of the Chairs of Judicial Nominating Commissions in 1994 that, like the Ashman and Alfini study, included a series of questions about the policies and operating procedures of the Commissions as well as individual assessments of Commission decision-making.²³ Two and a half decades after the initial Watson and Downing study, Martin finds a very different picture of Commission deliberation. Commission Chairs reported that political considerations rarely, if ever, entered into their deliberative processes and a full 89% indicated that they were satisfied with the quality of the candidates they recommended to the appointing authority. At the same time, Commission Chairs did indicate a desire for more highly-qualified applicants and perceived that judicial compensation was the single most important factor in recruiting highly-qualified candidates.

Taken as a whole, these prior research efforts portray a multi-faceted picture of how merit selection systems function in practice. Certainly, all have indicated some degree of political influence in the process, whether through bar politics (Watson and Downing), gubernatorial appointment of judges (Watson and Downing, Martin), the selection of individuals to serve on Nominating Commissions (Henschen et. al, Watson and Downing), the criteria that are used to evaluate applicants (Ashman and Alfini, Watson and Downing), or the relationship between lawyer and non-lawyer members (Ashman and Alfini, Watson and Downing, Martin). *In significant ways, the research also presents a picture of Commissions becoming more systematic in their work, with more codified rules governing their decision-making processes, more transparency, more diversity, and more self-conscious and intentional efforts to remove political influences from the deliberations.* Thus, while no judicial selection process will ever eradicate all traces of politics, the existing literature appears to indicate a significant trend toward reduction in arbitrary or politically-motivated decision-making.

Since 1994, no study of Judicial Nominating Commissioners has been undertaken. To remedy the dearth of empirical information regarding Judicial Nominating Commissions around the country and the individuals who serve on these Commissions, The American Judicature Society conducted a survey of Commissioners during the summer of 2011. The survey included questions about the personal and professional characteristics of sitting Commissioners, the policies and procedures of the Commissions, the evaluative criteria that are used, the relationship between lawyer and non-lawyer members, the Commissioners' relationship with the governor, the role of political and partisan influences, the importance of diversity in Commission decision-making, and the Commissioners' overall assessments of the process.

With 487 respondents, the survey is the largest of its kind.²⁴



Methodology

The online survey instrument was developed over the summer of 2011 and the full battery of questions is included as Appendix D. Judicial Nominating Commissions have been established in 36 states and the District of Columbia. During the spring of 2011, staff members identified all publicly available information about the individuals currently serving on Judicial Nominating Commissions. In those states where Commissioners are not identified on a public website or in a state publication, Commission chairs and/or judicial administrative staff members who work with the Commission(s) were identified. In every state that currently uses a Nominating Commission, communication with the Commission Chair and/or staff member was initiated, and each was given two options for how they would like to distribute the survey to Commissioners:

1. The Judicial Nominating Commission Chair and/or administrative staff members would distribute the invitation to participate in the survey (see Appendix C) to members of the Nominating Commission(s) for which they had authority.
2. The Judicial Nominating Commission Chair and/or administrative staff members could provide AJS staff with contact information for the Commissioners and AJS staff would communicate directly with Commissioners by sending an invitation to participate in the survey.

The first invitation to participate in the survey was distributed on July 25, 2011 with a follow-up invitation/reminder distributed on August 10. A second follow-up postcard reminder was sent out on August 15.

The respondents do not represent a random sample of Judicial Nominating Commissioners. Instead, responses were gathered from those

Commissioners who voluntarily visited the online survey. For those Commissioners who did not have access to the internet or had trouble accessing the survey, an option to have a hard copy mailed to them was provided; fourteen Commissioners received and returned a hard copy of the survey.

Given the sensitive nature of their work, all commissioners were guaranteed full anonymity and confidentiality in their survey responses. Therefore, when specific quotes are used, all identifying characteristics have been removed. This confidentiality allows confidence in the results, by permitting commissioners to be honest and candid in their responses. It also contributes to confidence in the generalizability of the results reported here.

The survey responses allow a full assessment of the merit selection process as it is practiced in states across the country. The questions allow us to better understand the makeup of Nominating Commissions, the rules and procedures that govern Commission decision-making, the relationships between Commissioners, the role of political considerations in the process, and the extent of public involvement in the Commission's deliberations. Furthermore, questions pertaining to the work of the Commission permit a better understanding of the system by those who know it best, the Commissioners who serve.



Who serves?

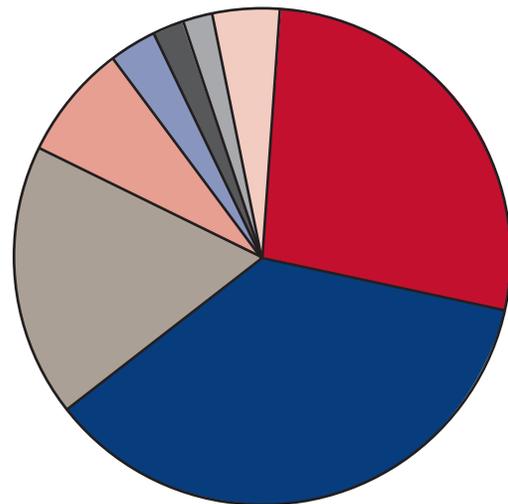
Although not a random sample of Commissioners, the 487 respondents hail from thirty states and the District of Columbia. As Table I reports, large numbers of Commissioners from Nebraska, Iowa, and Colorado responded to the survey. In each of these states, Judicial Nominating Commissions in each judicial district screen individuals for the courts of general jurisdiction, so there are exceptionally large numbers of Commissioners in these three states, accounting for the large number of respondents. For example, Nebraska has a Judicial Nominating Commission for the chief justiceship, one for each district of the Supreme Court, Court of Appeals, and District Court, and one for the courts of limited jurisdiction, with thirty three Nominating Commissions in total. Each Nominating Commission consists of nine people, four lawyers elected by the state Bar Association, four non-lawyers appointed by the governor, and a Supreme Court justice who serves as *ex officio* chair. In Iowa, one statewide Judicial Nominating Commission composed of 15 members reviews applicants for the Supreme Court and Court of Appeals. Fourteen similar Commissions are used to select members of the District Courts, each of which has 11 members. An additional 99 Commissions of 6 members each screen applicants for positions as District Associate Judge and Magistrate Judge. In total, there are over 750 Nominating Commissioners in the state. In contrast, Georgia has one Nominating Commission, established by Executive Order, with 20 members.

The majority of survey respondents were new to their Commission, with 16% having served less than one year; the vast majority have participated in the review process fewer than four times (27.2% report that they have not yet participated in the review of applicants for a judicial vacancy, and 38% report that they have done so for 3 or fewer vacancies). Judge members appear to have slightly more experience in terms of the number of

vacancies for which they have reviewed applicants than lawyer or non-lawyer members, but this difference is not statistically significant.

In most states, members of the Judicial Nominating Commission(s) serve a relatively short term of office, generally between 2 years and 6 years (see Appendix B). A few states, including Wisconsin, Minnesota, Massachusetts, and Georgia, allow Commissioners to serve at the governor's discretion, which may mean longer terms of office.²⁶ Given short terms for Nominating Commissioners, which are typically implemented to ensure turnover in Commission membership

Since joining your current judicial nominating commission, how many times have you participated in the review of applicants to fill a judicial vacancy?



and avoid entrenched strategic alliances among Commissioners, it is unsurprising that so many Commission members are new to the process.²⁷ In addition, turnover frequently occurs in the summer, when the survey was administered.

Finally, 82.8% of Commissioners who responded to the survey report that this is their first experience serving on a Judicial Nominating Commission, while only 17.2% indicated that they have served on other Judicial Nominating Commissions in addition

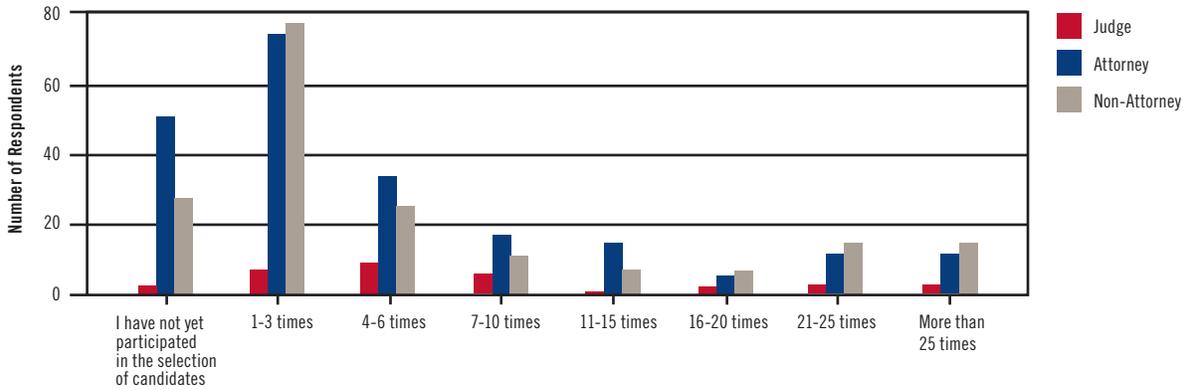
TABLE 1: Geographic Representation of Respondents

In which state does your commission operate?

Answer Options	Percentage	Count
Alabama.....	0.0%	0
Alaska.....	1.0%	4
Arizona.....	6.3%	24
Arkansas.....	Does not use Nominating Commissions	0
California.....	Does not use Nominating Commissions	0
Colorado.....	12.3%	47
Connecticut.....	0.8%	3
Delaware.....	1.3%	5
District of Columbia.....	1.0%	4
Florida.....	2.1%	8
Georgia.....	0.8%	3
Hawaii.....	1.3%	5
Idaho.....	1.0%	4
Illinois.....	Does not use Nominating Commissions	0
Indiana.....	0.5%	2
Iowa.....	13.1%	50
Kansas.....	3.4%	13
Kentucky.....	0.0%	0
Louisiana.....	Does not use Nominating Commissions	0
Maine.....	0.3%	1
Maryland.....	8.6%	33
Massachusetts.....	0.0%	0
Michigan.....	Does not use Nominating Commissions	0
Minnesota.....	4.4%	17
Mississippi.....	Does not use Nominating Commissions	0
Missouri.....	3.7%	14
Montana.....	0.3%	1
Nebraska.....	27.7%	106
Nevada.....	0.3%	1
New Hampshire.....	0.5%	2
New Jersey.....	0.0%	0
New Mexico.....	1.0%	4
New York.....	0.8%	3
North Carolina.....	Does not use Nominating Commissions	0
North Dakota.....	0.5%	2
Ohio.....	Does not use Nominating Commissions	0
Oklahoma.....	0.8%	3
Oregon.....	Does not use Nominating Commissions	0
Pennsylvania.....	Does not use Nominating Commissions	0
Rhode Island.....	0.8%	3
South Carolina.....	Does not use Nominating Commissions	0
South Dakota.....	1.6%	6
Tennessee.....	1.8%	7
Texas.....	Does not use Nominating Commissions	0
Utah.....	0.0%	0
Vermont.....	0.5%	2
Virginia.....	Does not use Nominating Commissions	0
Washington.....	Does not use Nominating Commissions	0
West Virginia.....	Does not use Nominating Commissions ²⁵	0
Wisconsin.....	0.3%	1
Wyoming.....	1.3%	5

answered question 383 | skipped question 104

Since joining your current judicial nominating commission, how many times have you participated in the review of applicants to fill a judicial vacancy?



Are you currently a member of multiple judicial nominating commissions?

Answer Options	Percentage	Count
Yes	5.2%	25
No	94.8%	452

answered question 477 | skipped question 10

Have you ever been a member of another judicial nominating commission?

Answer Options	Percentage	Count
Yes	17.2%	82
No	82.8%	396

answered question 478 | skipped question 9

to their current service. Twenty five (5.2%) Commissioners who responded say that they serve on multiple Commissions. Of these 25 respondents, four (16%) are judges, eleven (44%) are lawyers, seven (28%) are non-lawyers, and three (12%) did not indicate their role. Membership on multiple Commissions occurs in those states where subsets of Commissioners in one geographic area are also responsible for reviewing applicants for smaller geographic subdivisions that fall within their Commission's jurisdiction. Seventy-two percent

report that they fill vacancies for one or more counties, and 84% indicate that they are charged with screening applicants for trial courts. For purposes of analysis, the 25 Commissioners who serve on multiple Commissions are excluded from discussion of survey results regarding questions about specific Commission practices, as their service on multiple Commissions makes it unclear which Commission they are referencing in their responses. ★

MEMBERSHIP & ROLES

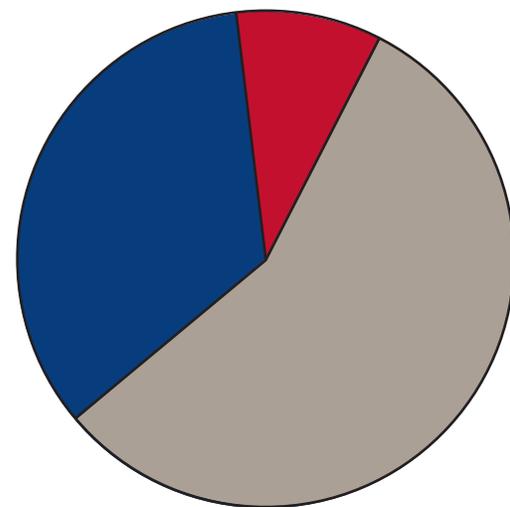
Merit selection systems are generally designed to include both lawyers and non-lawyer citizen Commission members, with the goal of balancing the expertise of the legal community with the sentiments of the citizenry. Often a judge will serve as *ex officio* chair, lending their reputation and experience to the process. Lawyers possess a unique ability to understand the work of the courts, to evaluate applicants' written materials including legal decisions or case briefs, and to assess the specialized knowledge and experience of potential judges. Citizen members, in turn, provide a voice for the public at large, ensure accountability in decision-making processes, and provide representation of the community in which they live. As noted in The American Judicature Society's *Model Judicial Selection Provisions*:

In a democratic society it is important that public bodies such as Judicial Nominating Commissions are broadly representative of the communities they serve. Care should be taken to ensure that the composition of the Commission is reflective of the geographic and demographic makeup of the state or district and that neither political party has more than a simple majority of Commission members. A balanced Commission will include attorneys who can advise on the needs of the court and the professional qualifications of applicants. Lay members represent the public and have useful links to the community when screening and investigating applicants, and their non-legal perspective lends the process credibility and legitimacy in the eyes of the public. For these reasons, some jurisdictions have opted for a majority of lay members on the Commission. If a judge is a Commission member, s/he should have limited power so as to avoid exercising undue influence over other Commission members.²⁸

The pool of survey respondents includes healthy subsamples of judge, lawyer, and non-lawyer members of Judicial Nominating Commissions, with 23 (4.7%) identifying as judges, 202 (41.5%) identifying as attorneys, and 159 (32.6%) identifying as non-attorneys. Of these subsets, it is worth noting that Commissioners are chosen

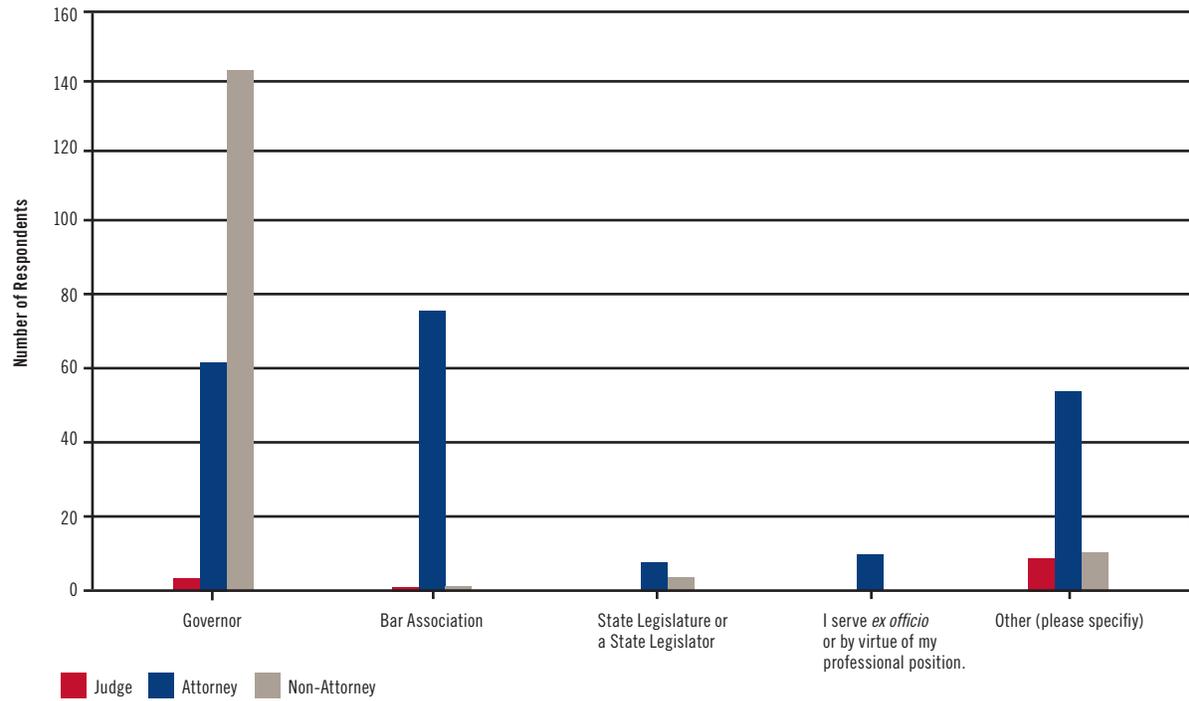
for Commission service in predictable ways: non-lawyers are overwhelmingly selected by the governor,²⁹ lawyers are elected by the state or local Bar Association and judges report that they either serve *ex officio* as a result of their office or are chosen for the Commission in some other way (usually by seniority or by appointment by the Chief Judge). What is perhaps most notable, however, is the very large number of lawyers who are appointed by the governor. The common characterization of lawyer members of Judicial Nominating Commissioners is that of bar-elected representatives of the legal community. The data, however, indicate that of the 199 attorneys responding to the question, 63 (31.7%) were selected by the governor, while 76 (38.2%) were selected by the Bar Association. Some states allow the governor to make all appointments to the Nominating Commission and others practice merit selection by virtue of an Executive Order that guarantees the governor control over the makeup of the Commission. But the lawyers reporting that they were selected by the governor are not limited to states where the governor has extensive power over Commission membership. ★

Which of the following best describes your status as a member of your judicial nominating commission?



■ Judge ■ Attorney ■ Non-Attorney

Who appointed you to your current commission?



PROFESSIONAL BACKGROUND OF COMMISSIONERS

A series of survey questions was designed to assess the professional background of Nominating Commissioners. Among the 23 judge members who participated in the survey, 14 (63.6%) served on a general jurisdiction trial court, 5 (22.7%) served on an intermediate appellate court, and 3 (13.6%) were members of the state’s high court.

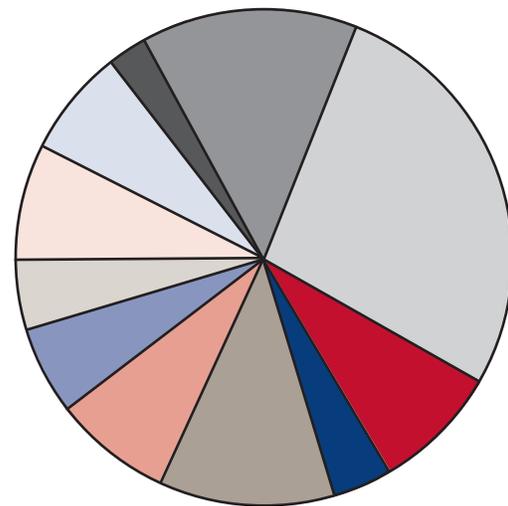
Any assumption that lawyer members hail from only one segment of the bar is mistaken – in fact, the plaintiffs and defense bars are both well-represented.

Among lawyer Commissioners, those in private practice vastly outnumbered those in other professional settings. 82% of the 202 attorneys who responded said that they worked at a private firm, with an additional 9% saying that they work in state or local government.

Of those at private firms (a total of 164 respondents), 99 (60.7%) say that they are a partner or shareholder at a firm with associates, 33 (20.2%) say that they are a solo practitioner, 15 (9.2%) say that they are a partner or shareholder at a firm without associates, and 11 (6.7%) say that they are an associate with a law firm. The very high percentage of partners or shareholders indicates that attorney Commissioners represent the elite of the legal community. Regarding the type of work that these practitioners do, 21.9% indicate that their firm represents primarily plaintiffs, while 26% report that they tend to represent defendants (47.9% say that they represent an approximately equal mix of plaintiffs and defendants).³⁰ Any assumption that lawyer members hail from only one segment of the bar is mistaken – in fact, the plaintiffs and defense bars are both well-represented.

Among non-lawyer lay Commissioners, there are few clear trends regarding the kind of individuals selected

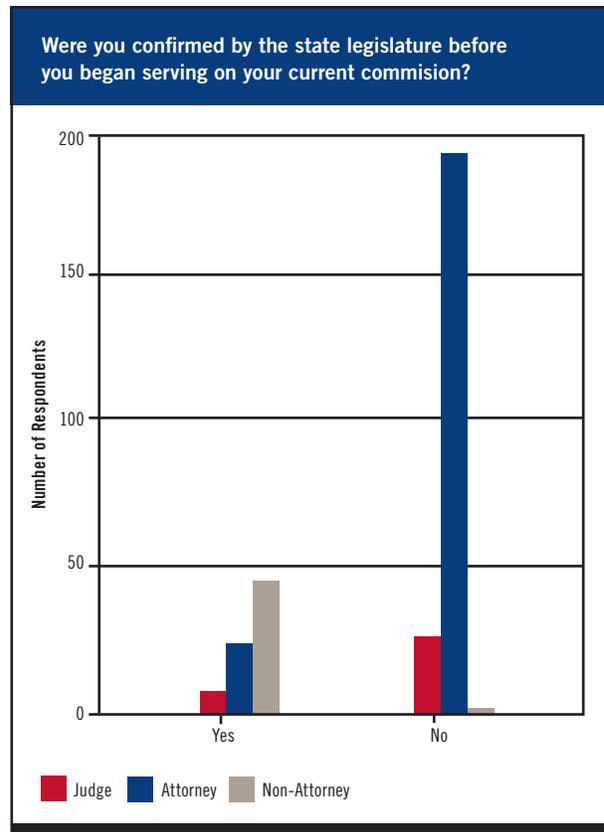
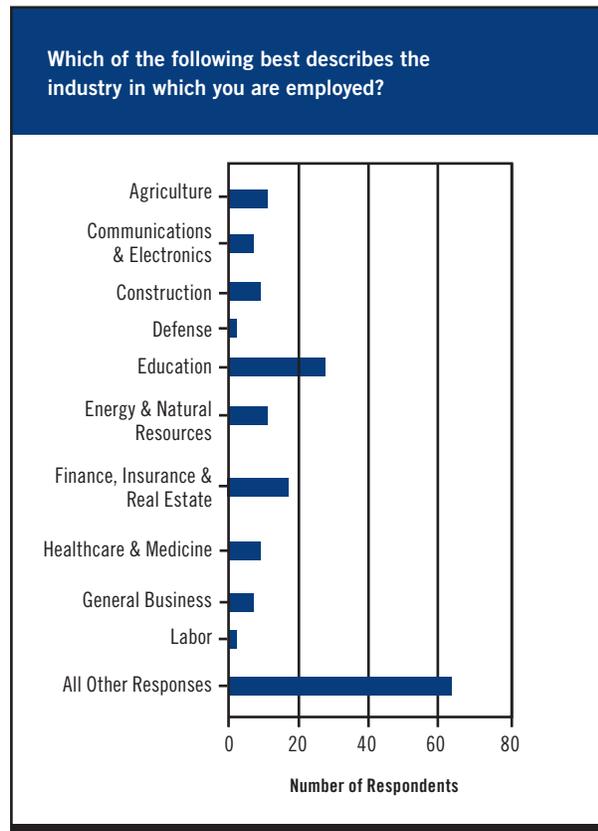
Which of the following describes your place of employment? (non-lawyer Commissioners)



to serve in the nominating process. A large number are retired (included among all “other” responses, 15% of non-attorneys volunteered that they were retired), and the self-employed are over-represented.

When asked about the industry in which they are employed, education tops the list with 18.1% of non-lawyer Commissioners indicating work in the educational sector, followed by finance, insurance and real estate (10.1%), agriculture (6.7%), and healthcare/medicine (5.4%). Among the large number of non-lawyer Commissioners who volunteered a response not offered, a fairly large number (23 in total) listed work in criminal justice, corrections, and social services, including victim advocacy and work as a volunteer guardian *ad litem*.

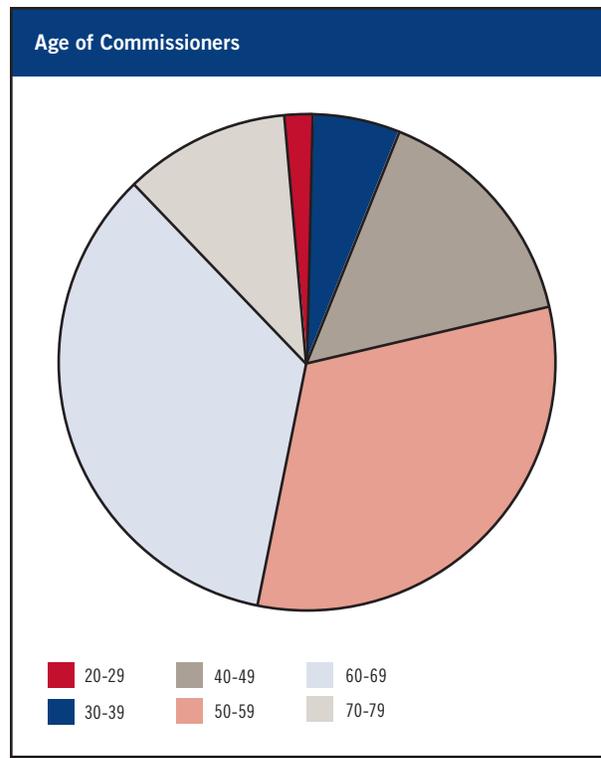
Most states do not require legislative confirmation of Judicial Nominating Commission appointments, but Commissioners appointed by the governor, whether lawyers or non-lawyers, are the most likely to be subject to legislative confirmation. By large majorities, Commissioners in all three categories report that they were not confirmed by the state legislature. Of the 52 Commissioners who indicate that they were confirmed, 35 (67.3%) were non-attorneys. Put differently, 85.7% of judges report that they were not confirmed by the state legislature prior to beginning their Commission service,³¹ 93% of attorneys report that they were not confirmed, and 77.0% of non-attorney members report that they were not subject to legislative confirmation. ★



DEMOGRAPHIC INFORMATION AND DIVERSITY

Prior studies of Commissioners have found that they are overwhelmingly white and male, with the average lawyer Commissioner older than the legal community at large “presumably because [younger lawyers] have not been in practice long enough to have come into contact with a substantial number of fellow attorneys through bar association activities and other professional work.”³² In terms of age, the average Commissioner responding to our survey was 57.8 years old, with a range from 27 to 91. Comparing these survey results against those collected by Ashman and Alfini in 1973, it appears that Commissions have grown significantly older in their makeup over the past 38 years. At the same time, we see a distinct trend toward greater representation in terms of gender and race. Over time, more women have been appointed as Commissioners: 32% of all respondents were women, up from 10% in 1973 and 25% in 1989. The numbers of African American and Hispanic Commissioners are also growing, though the change appears to be happening very slowly. The percentage of White commissioners has gradually declined, from 98% in 1973 to 93% in 1989 to 88.9% in 2011, as the percent of Commissioners who identify as African American (4.2%), Asian or Pacific Islander (1.6%) and American Indian (.5%) seem to be inching upward. The percentage of Commissioners who identify as being of Hispanic, Latino, or Spanish origin appears to have leveled off at their 1989 levels.³³

No study of Nominating Commissioners has ever included questions of gender identity or sexual orientation. With increasing focus on diversity on the bench, and the growing recognition that diverse voices on the Nominating Commission may help advance the cause of judicial diversity, sexual orientation among Nominating Commissioners may have a significant effect upon the likelihood for growing numbers of openly LGBT judges in the states. Of the 376 Commissioners responding to the question, only 9 (2.3%) identified themselves as gay or lesbian, with an additional 2 (.5%) identifying as bisexual; 93.1% responded that they were heterosexual or “straight.”



	Ashman and Alfini (1973)	Henschen at al (1990)	2011 AJS Survey
AGE	41 or younger (15%)	40 or younger (17%)	41 or younger (8.5%)
	42-47 (20%)	41-50 (32%)	42-47 (9.9%)
	48-53 (23%)	51-60 (24%)	48-53 (12.4%)
	54-59 (19%)		54-59 (22.3%)
	60 or older (23%)	61-70 (20%)	60 or older (46.9%)
RACE	White (98%)	White (93%)	White (88.9%)
	Black (2%)	Black (3%)	Black (4.2%)
	Hispanic (.2%)	Hispanic (2%)	Hispanic (1.7%)
	Other (.2%)	Other (2%)	Asian or Pacific Islander (1.6%)
			American Indian (.5%)
			Prefer not to answer (3.2%)
GENDER	Male (90%)	Male (75%)	Male (65.1%)
	Female (10%)	Female (25%)	Female (32.0%)
			Prefer not to answer (2.9%)



Procedures and Rules

To say that no two merit selection systems work in exactly the same way is an understatement. In fact, Judicial Nominating Commissions across the country operate with widely divergent rules and procedures, due in part to the large variation in the statutory and constitutional provisions that govern these entities, and in part because of the discretion that has been granted to Nominating Commissions to design and implement their own Commission practices.

While statutory or constitutional language may provide guidance to the Commission, it may also leave the Commissioners substantial leeway to develop working rules that will guide the process of screening applicants and making recommendations. For example, authorizing provisions may outline the evaluative criteria for the Commission to use, without guidance on voting procedures, recruitment of applicants, or the degree to which Commission deliberations will be open to the public. As a result, some Commissions function with sophisticated written rules and procedures that govern every step of the process while others operate with only an informal understanding of how they will exercise their responsibilities. It is frequently difficult to track the extent to which rules and procedures, including formal ethics provisions, are utilized because so many Commissions operate at different levels and with differing degrees of organization. In any given state, it is possible that a statewide Supreme Court Nominating Commission may use extensive written rules to guide their work, while District Court Nominating Commissions deviate from the written rules that statewide Commission has established, and county Nominating Commissions may (or may not) independently develop written rules. Thus, understanding Commissioners' reliance on formalized rules and procedures is essential to understanding how these Commissions go about their job of recruiting, screening, and interviewing applicants, deliberating to determine

who is best qualified, and voting on a list of names that will be submitted to the governor or other appointing authority.

The American Judicature Society recommends formalized written procedures for all Judicial Nominating Commissions:

If the Commission does not have written procedural rules, including selection criteria, Commissioners should develop and adopt them. The use of uniform rules reassures members of the public and potential applicants that the process is designed to treat all applicants in an even-handed and fair manner, and to identify the best-qualified persons to nominate for the judgeship. AJS recommends that a copy of the rules be included with the questionnaire sent to applicants, and that the rules also be made available to the public – either upon request, through the media, by posting them on a court website, or in a manner best suited to the jurisdiction.³⁵

Commentary in the *AJS Model Judicial Selection Provisions* similarly states that:

The benefits of standard, written procedures are many. Written rules guide Commissioners and applicants. They help ensure that all applications are handled similarly, and reassure the public that the process is fair and will withstand scrutiny.³⁶

Of our survey respondents, 78% report that their Commission operates with written operating procedures, while just 7.1% report that their Commission does not have written operating procedures (14.9% indicate that they do not know whether their Commission has written operating procedures or not).³⁷ This is a remarkable change since Ashman and Alfini's 1973 study of

Nominating Commissions, where they write that

It appears... that most of the Commissions either have not exercised their authority to adopt procedural rules or, if they have adopted rules, have neglected to commit them to written form. Sixty percent of the Commissioners who responded to our questionnaire indicated that the operating procedures of their Commission were not written or codified in any manner.³⁸

Furthermore, most Commissioners indicated that the rules of the Commission were a matter of public record, with 65.9% responding that their Commission makes an effort to publicize the rules governing Commission procedures. Just as previous studies of Nominating Commissions have found some disagreement among Commissioners about what constitutes “written rules of procedure” and whether their Commission has adopted formal rules,³⁹ a breakdown by state indicates disparities in whether procedures have been formalized. This is likely attributable to two factors. First, new Commissioners are often unaware of the extent to which Commission procedures have been codified. Perhaps more importantly, the discretionary nature of the Commission’s work in many states has led some Commissions to adopt formal written

procedures while other Commissions operating in the same state may fail to do so.

Among the most common provisions included in written rules of procedure were statements that outline the evaluative criteria that will be used by the Commission in its consideration of applicants, with nearly 7 in 10 Commissioners recognizing this as a part of their written operating procedures. Over half also indicated that their Commission had written rules prohibiting discrimination and just over 40% cited provisions that require partisan balance among members of the Commission. Approximately 30% also reported provisions that encourage Commission recruitment of applicants, rules governing the demographic and geographic diversity of Nominating Commissioners, and written guidelines or requirements regarding diversity among those recommended to the governor as nominees to the bench.

Just as formalized rules appear to be far more common today than they were in 1973, Commissioners overwhelmingly report that they are bound by written ethics provisions, with three-fourths of all Commissioners responding that these rules are used for their Commission. Of those reporting that members are required to adhere to codified ethical guidelines, approximately 75% cite rules

Which of the following are included in your commission's written operating procedures? (Indicate all that apply).		
Answer Options	Percentage	Count
A provision recommending that commissioners recruit applicants	30.7%.....	102
A provision regarding demographic diversity among commissioners	30.1%.....	100
A provision regarding partisan balance among commissioners	42.5%.....	141
A provision regarding geographical diversity among commissioners	32.2%.....	107
A provision regarding discrimination	55.1%.....	183
A provision providing the criteria the commission should use when evaluating applicants.....	69.0%.....	229
Not Applicable	1.8%.....	6
Don't know	17.8%.....	59
Other (please specify)	3.0%.....	10

answered question 332 | skipped question 120

governing recusal in cases of conflict of interest and requirements of confidentiality. By contrast, other ethics provisions, including prohibition on political activity by members of the Nominating Commission, restrictions on communications with the governor or other appointing authority, and

disclosure of any communication about the process with the governor or other appointing authority appear to be far less common. While it is possible that Commissioners are simply unaware of these rules, it appears as though these guidelines have yet to become the norm. ★

Which of the following are included in your commission's ethics provisions?		
Answer Options	Percentage	Count
A provision requiring you to disqualify yourself in the event of a conflict of interest.....	75.3%.....	250
A provision requiring commissioners to disclose communication with the governor (or other appointing authority)	10.2%.....	34
A provision prohibiting communication with the governor (or other appointing authority)	10.8%.....	36
A requirement that commissioners keep committee deliberations confidential	74.4%.....	247
A prohibition on political activity by commissioners	15.1%.....	50
Not Applicable	1.5%.....	5
Don't know	10.8%.....	36
Other (please specify)	4.5%.....	15

answered question 332 | skipped question 120

RECRUITMENT OF APPLICANTS

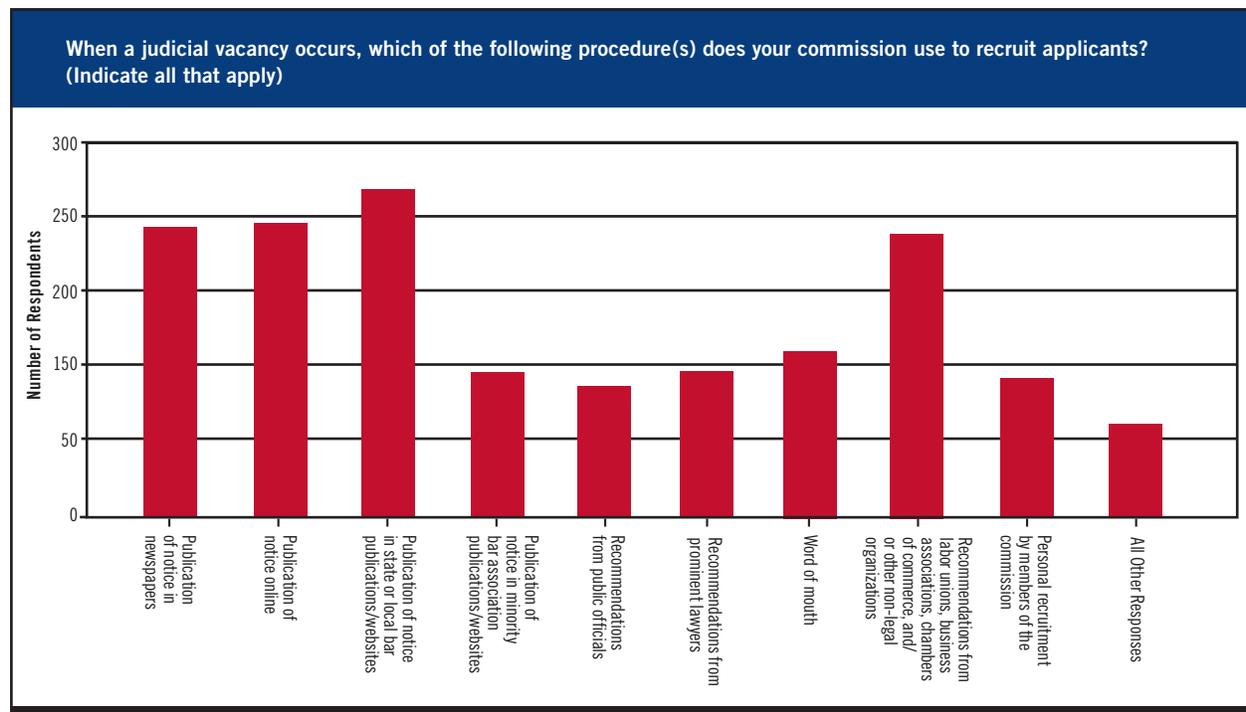
Judicial Nominating Commissioners are charged with the task of screening judicial applicants, assessing qualifications, and making recommendations regarding which individuals are best suited to the bench. Before they can begin the screening process, however, they must solicit applications. When a judicial vacancy occurs, Commissions are often given the responsibility to advertise the position and provide information about the timeline and process for consideration of judicial applicants.⁴⁰ How they do so is often left to the Commissioners to decide, and the call for applications can be distributed in a wide variety of ways. *Commissioners report that the most common means of soliciting applications is through publication in newspapers and Bar Association journals, as well as online postings.*

Interestingly, specialized and minority bar publications are far less likely to be used by the Commissions, and recommendations from public officials and prominent attorneys are generally utilized about the same amount as specialized bar publications. For those interested in advancing demographic and professional diversity on the bench, this is particularly important, as women and

minorities as well as attorneys in certain practice areas may be ill-served by a Commission that looks to existing political and legal elites as a means of identifying applicants rather than utilizing smaller publications that reach targeted populations in under-represented demographic or professional groups. *Also significant is the reliance on word of mouth as a tool to solicit applications, cited by 49.6% of respondents, indicating that Commissioners rely on a close-knit legal community to function as a means to notify qualified individuals of the vacancy and the procedures for application.*

Similarly, the practice of personally recruiting applicants can be problematic,⁴¹ in that it may be perceived as a conflict of interest to have Commissioners inviting applications from their network of personal and professional connections, and it may lead those who are recruited to believe that they have an advantage in the review process. Nonetheless, *nearly a quarter (23.9%) of Commissioners who responded to the survey report that the Commission relies on personal recruitment by Commission members.*

Also noteworthy is the number of applications Commissioners report receiving for vacancies. The modal category, 6-10 applications, was selected



by 37.3% of all respondents. This is the modal category for Commissions reviewing applicants on all levels of state courts, with only slightly higher numbers reported for appellate level courts. While high workloads may undermine the careful screening of applicants, as the time commitment would be simply impossible to manage for unpaid Commissioners operating with little staff assistance, a small number of applications can have the effect of promoting those applicants who take the time to apply, regardless of their relative merits when compared with other qualified individuals in the state. For example, the Commission that selects nominees to the Utah appellate courts has 45 days to screen applicants and submit a list of 5-7 qualified candidates to the governor. If only 6-10 applications are submitted, then any individual who commits the time to submitting an application has a remarkable chance of having their name forwarded to the governor for appointment. *Low numbers of applications also has the unintended consequence that the Nominating Commission may be serving in the capacity of weeding out unqualified applicants rather than truly having an opportunity to identify the best qualified applicants.* For those who are concerned about the power of a Nominating Commission to substantially restrict the governor's choices, however, the small number of applications may be a reassuring finding. *

“We accept all applications, and some of the applicants may be recruited by all of the above methods. We would not do personal recruiting based on recommendations from public officials, for example, but surely some applicants have applied due to encouragement from public officials.”

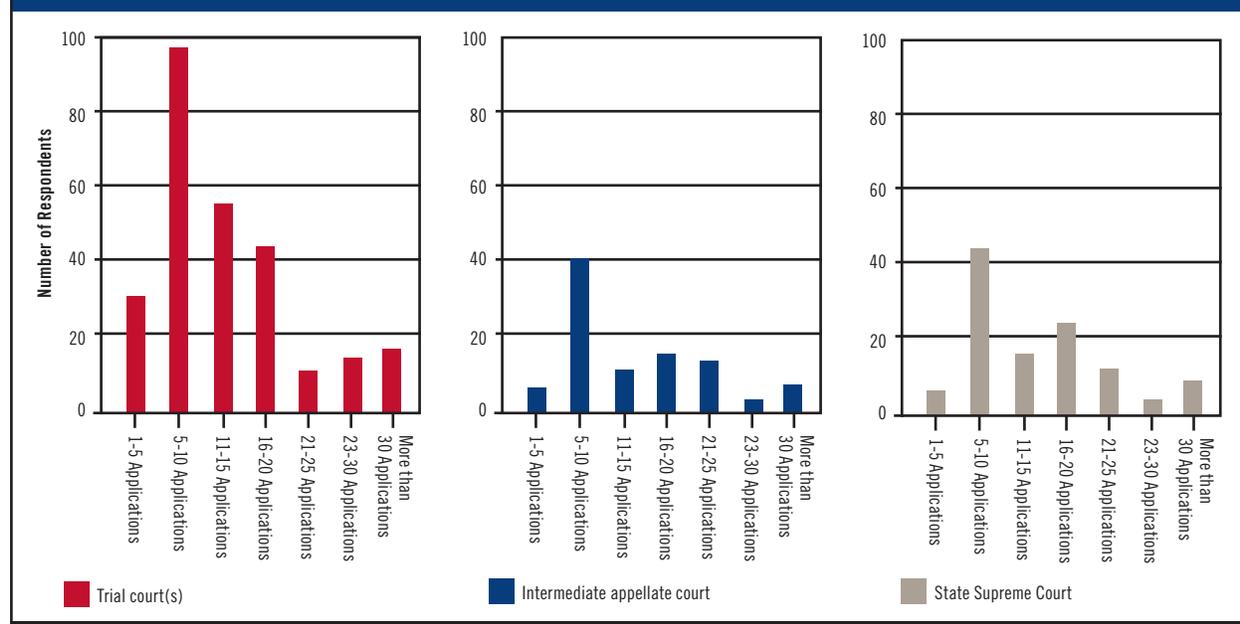
-survey comment by commissioner

For a typical vacancy, how many applications does your commission receive?

Answer Options	Percentage	Count
1-5 Applications	11.9%	46
6-10 Applications	37.3%	144
11-15 Applications	17.9%	69
16-20 Applications	16.8%	65
21-25 Applications	6.7%	26
25-30 Applications	4.1%	16
More than 30 Applications	5.2%	20

answered question 386 | skipped question 101

For a typical vacancy, how many applications does your commission receive?



SCREENING APPLICANTS

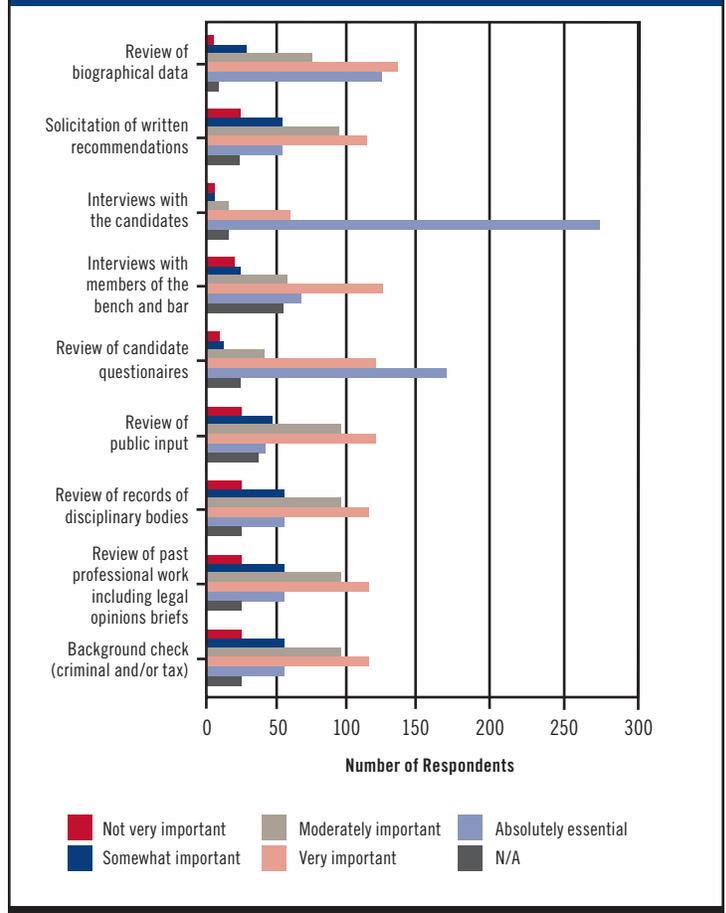
“In my experience, [recruitment] was not part of our responsibility. The recruitment and notification was not done by the members of the Judicial Commission.”

-survey comment by commissioner

The process of reviewing applications is the signature of the merit selection process. Statutory, constitutional or Executive Order language typically restricts the time in which the Commission must work, with virtually all Commissions required to submit names to the governor (or other appointing authority) within an established timeline generally ranging between 30 and 90 days.⁴² The first step in this process is to collect information about the applicants, usually including a detailed uniform application that is submitted by each individual wishing to submit their name for the position. Commissions, however, generally seek to independently solicit additional information, and some Commissions have detailed procedures providing for personal reference checks, review of criminal tax and disciplinary records, and submission of public comments in addition to Commission interviews with all or some of the applicants.⁴³

In evaluating the significance of various sources of information, by far the most widely appreciated among Commissioners were interviews with the applicants. Interviews will be addressed in more detail in later sections. For now, it is worth noting that *nearly 3 in 4 respondents (72.9%) rated the interviews as “absolutely essential” information sources in the review process. A majority of respondents also identified reviews of disciplinary records and reviews of criminal history and tax documents as “absolutely essential” in the process of assessing applicants. Review of candidate questionnaires also received significant*

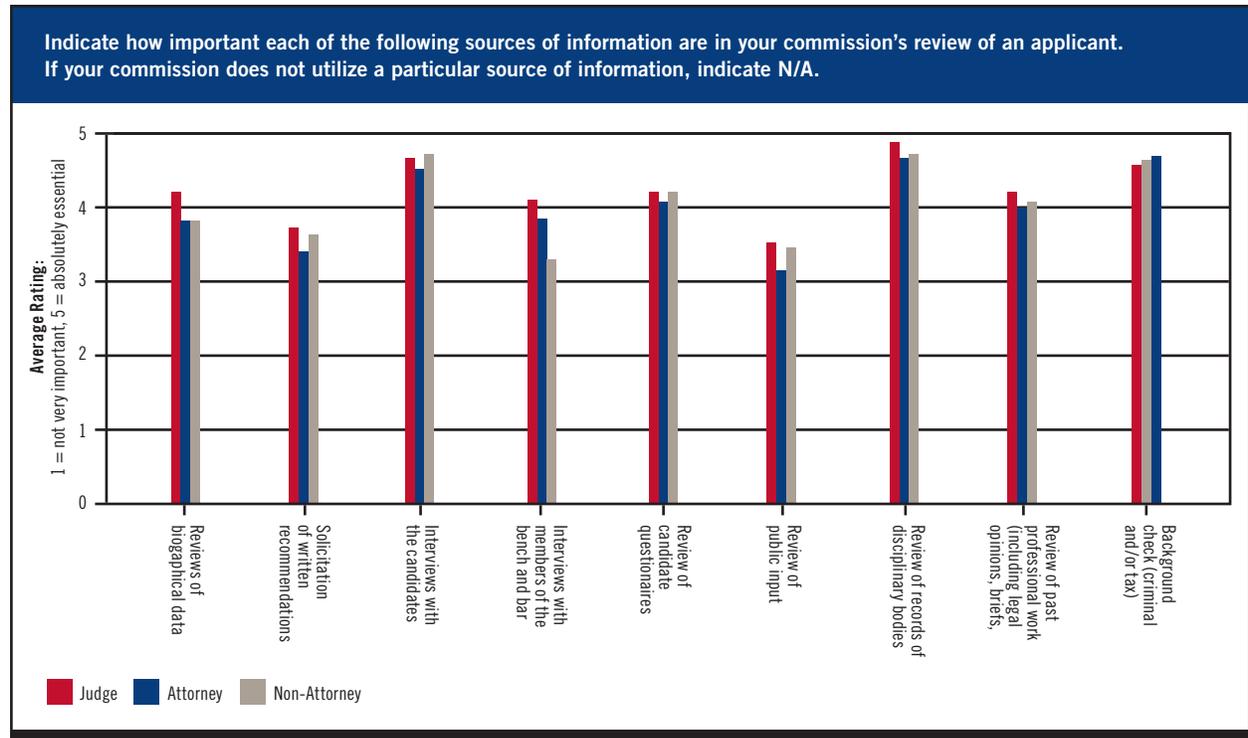
Indicate how important each of the following sources of information are in your commission’s review of an applicant. If your commission does not utilize a particular source of information, indicate N/A.



attention from Commissioners, with a near majority (46.8%) citing it as “absolutely essential.” All other information sources included in the survey were generally regarded as “very important” (the modal category), although public input seems to have less significance in the work of the Commissions. One fifth (20.5%) of all Commissioners who responded to the survey rated “review of public input” as “not very important” or “somewhat important” and only 11.1% evaluated it as “absolutely essential”; “review of public input” received the lowest average rating of all information sources. Interestingly, there are few differences between lawyer members, non-lawyer members, and judge members when evaluating the importance of informational sources.

Judges who serve on Judicial Nominating Commissions appear to value solicited written recommendations less than lawyer and non-lawyer members. They appear to put more emphasis on interviews with judges and lawyers familiar with the applicants' work as well as personal review of past legal briefs, judicial opinions, and/or published articles.

Lawyer and non-lawyer members demonstrate remarkable agreement on the value of all information sources, sharing the modal response in all but two; "solicitation of written recommendations" is slightly more valued by non-lawyers than by lawyers and "review of biographical data" is slightly more valued by lawyers than non-lawyers on the Commissions. The differences are not statistically significant. *



INTERVIEWS

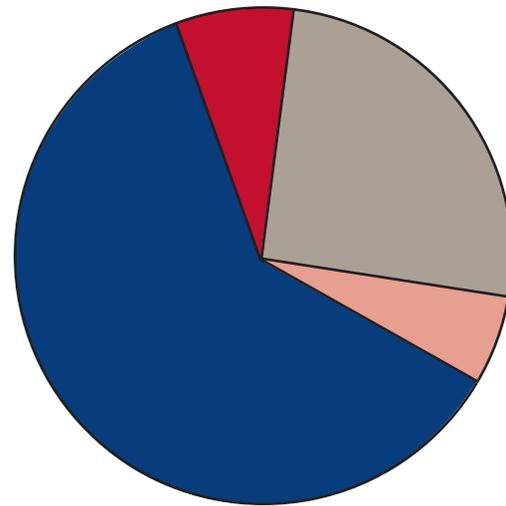
As reported, Commissioners overwhelmingly report that interviews are an important source of information as they evaluate the strengths and weaknesses of a potential judge. Interviews offer the Commission an opportunity to hear from the applicant directly, to ask questions and clarify inconsistencies or concerns about the applicant's record. In some cases, Commissions will conduct an initial screening to determine a set of finalists who will be interviewed in person.⁴⁵ Other Commissions regularly interview all applicants, regardless of whether the application materials indicate that they will be a viable candidate for recommendation to the appointing authority. In either scenario, Commissioners generally can use an interview with an applicant as a way to assess personal presentation, verbal communication abilities, temperament, and to request additional information about application materials:

The interview is a critical step in the selection process. Up to this point, from the applicant questionnaire and investigation results, the Commission has been collecting information about the applicant. Now the Commission can gather additional information from the applicant. The interview thus provides an opportunity to meet the person behind the application, allowing each Commissioner to assess the applicant's demeanor, attitudes, oral communication abilities, maturity and candor... Effective interviews provide an additional basis for comparing candidates, supplementing information gleaned from the applicant questionnaire and investigation.⁴⁶

Personal interviews may also permit non-lawyer members with an opportunity to meet the applicant, granting them knowledge that lawyer members may already possess as a result of their knowledge of and relationships within the legal community.⁴⁷

Survey respondents overwhelmingly indicate that their Commission conducts personal interviews with all applicants. *More than 9 in 10 (91.9%) report that their Commission holds formal candidate interviews, while a mere 2.3% say that they do not do so. Of those who do interview applicants, 60.9% say that their Commission interviews all*

Thinking about the formal candidate interviews your commission conducts, does the commission interview:



■ Candidates who meet minimum requirements ■ All candidates
■ Only the candidates selected for final review ■ Don't know

applicants, 25.5% say that they screen individuals before determining who will get an interview with the Commission, 7.8% say that their Commission interviews only those who meet minimum requirements (age, experience, etc), and 5.8% say that they are unfamiliar with the Commission's practices regarding interviews.

There are two noteworthy qualifications regarding interviews. First, a number of Commissioners report that members of their Commission meet with applicants individually outside of formal interviews. Second, although interviews are widespread, they do not appear to be particularly in-depth.

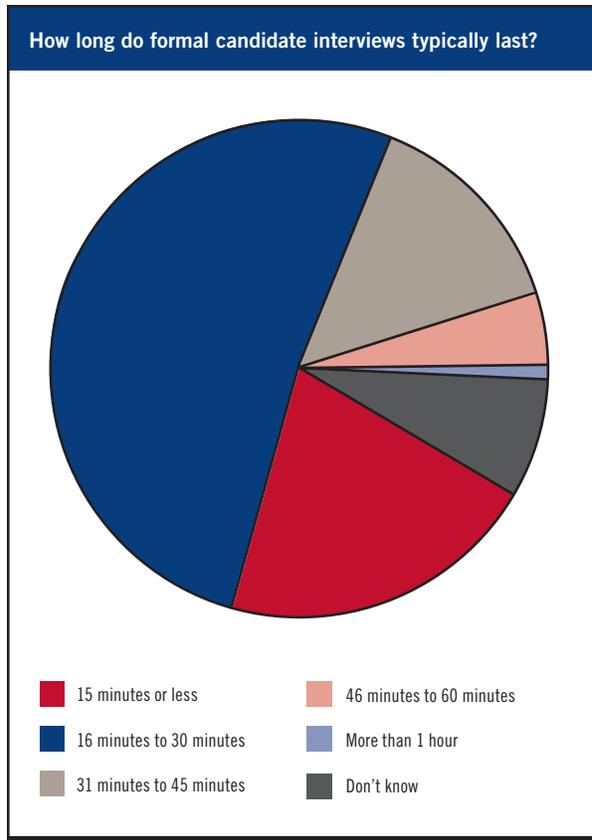
The American Judicature Society's *Handbook for Judicial Nominating Commissioners* recommends full Commission interviews of at least 30 minutes, with uniform questions, perhaps supplemented by unique questions that may be necessary to address specific concerns in an applicant's file.⁴⁸ Interviews with the full Commission guarantee that all Commissioners have the same information and experience with an applicant, ensure that all applicants appear before the Commission under the same conditions, and help to mitigate against the possibility of improper questioning by any

one Commissioner who may wish to undermine the process by focusing on personal or political characteristics of the applicant. Similarly, good interviews will allow the applicant sufficient time to answer questions fully and thoughtfully and will give Commissioners ample time to follow up and really gain a familiarity with the individual, and “most Commissioners agree that interviews should rarely be less than 30 minutes.”⁴⁹ Nonetheless, *Commissioners who participated in the survey indicate that although formal interviews are conducted by the entire Commission (93.2% say that this is the case), meetings and interviews between individual Commissioners and applicants are not uncommon. In fact, fully a quarter (24.6%) of respondents indicate that these meetings happen outside of the formal interview process.*⁵⁰ These individual meetings are extremely common in Iowa, where applicants are expected to make arrangements to meet with each Commissioner in addition to their formal Commission interview, pursuant to operating procedures that state:

Members of the Commission may personally interview candidates to determine their qualifications. Each candidate has the right to contact Commission members to ascertain if the Commission member desires to interview the candidate privately in advance of the Commission meeting. Such contacts, however, are not mandatory. In addition, the entire Commission may arrange interviews with all or any candidates the Commission believes to be qualified for the judicial vacancy to be filled.⁵¹

Unsurprisingly, 27.1% of all Commissioners who report meetings with applicants outside of formal interviews hail from Iowa, followed closely by 21.2% who serve in Nebraska, and 20% who serve in Maryland.⁵²

Similarly, the vast majority of Commissioners who answered the survey report that their Commission interviews are fairly short, with 21.1% responding that interviews are typically 15 minutes or less and an additional 51.6% responding that interviews are typically 16-30 minutes long. Given the apparent trend toward interviewing all applicants, and the volunteer nature of Commission service, the increased workloads may be responsible for these short interviews. Although 16-30 minutes is the modal category regardless of the presence or lack of screening process (i.e. whether or not all applicants are interviewed in person, or only those



who have been screened and selected as viable candidates), it does appear that those Commissions that interview all applicants generally have shorter interviews. ★

“I myself hold true to how the person will best serve the needs of the public in a fair and impartial manner. Communication is a very important part of my decision process as much teaching and explanation must occur in court.”

-survey comment by commissioner

EVALUATIVE CRITERIA

Every Commissioner is charged with a responsibility to evaluate applicants for the bench and determine which individuals are best suited to judicial service. To do so, they must weigh evidence submitted by the applicant, review the record, and evaluate outside input. Judging, however, is never an exact science, and determining who is most qualified can be an extremely difficult task. Certainly, professional reputation, experience, legal knowledge, communication skills, work ethic, temperament, fairness, and integrity are all essential components of a good judge. At the same time, different courts require different skill sets – the exemplary trial judge and the exceptional appellate judge likely have some similar characteristics, but may have vastly different strengths and styles. While one may excel at written communication, decisiveness, and caseload management, the other may rely on collegiality and expansive legal knowledge. In some jurisdictions, trial court judges must travel and quickly adapt to changing professional circumstances. In appellate courts, judges must have a capacity to balance competing legal principles while maintaining relationships with dissenting colleagues. How these qualities are best assessed, however, is something that Commissioners must consistently ask, and must attempt to answer in order to perform their job effectively. One scholar, assessing judicial selection methods, writes:

Initially, there is the problem of reaching agreement on what attributes make someone a qualified judge. While it might be possible to agree on some general attributes, it is difficult to quantify them in any one individual, and just as difficult to determine ways to design an imperfect tool such as a judicial selection system to promote these attributes. Further, even assuming that these difficulties can be overcome, there is the problem of garnering public support for such a system. Unfortunately, judicial candidates, unlike eggs, do not come with a generally-recognized quality grade stamped on their forehead, visible to all.⁵³

Most famously, Maurice Rosenberg has written that “a black robe and gavel do not by themselves make an able judge of an able lawyer.”⁵⁴

Commissioners evaluate information based upon their perceptions of those qualities that are most likely to predict success in the position, but specific criteria individually appear to have very little independent impact. To determine those evaluative criteria that carry the most weight in Commission assessments, we asked the Commissioners about a variety of factors and the importance they have in the Commissioners’ review process. For each criteria, we asked Commissioners to “evaluate how important [it] is to *you* when reviewing an applicant.” As such, the responses are based on individual decision-making processes rather than the Commissioners’ assessments of their collective decision-making processes. Answers ranged from “not very important” (1) to “absolutely essential” (5).

“There are many positive personal characteristics and some negative ones you look for in evaluating applicants. For example positive: good listeners, independent, firm but fair, courage, absolute stability, legal experience, ability to get along with others, industry, and of course all the old ones like honesty and integrity. Avoid applicants with an agenda, looking for work, who seem likely to become arrogant or abuse their power, possess improper prejudices, or have had significant legal or ethical lapses.

-survey comment by commissioner

The only criteria that was widely rated as “absolutely essential” by the Commissioners completing the survey was “applicant’s mental health,” with 46.3% of all respondents categorizing it as such. The only single criteria that received a comparable average rating among Commissioners was “applicant’s professional reputation,” with an average score of 4.26 (the modal category for professional reputation was “very important,” while the modal category for mental health was “absolutely essential”). Those criteria that received scant attention from Commissioners include personal and demographic characteristics and past political experience and/or affiliations. The ten lowest average ratings, for which “not very important” was

the modal category in every case, were: applicant's race/ethnicity, applicant's gender, applicant's sexual orientation or gender identity, applicant's prior service as a public defender, applicant's prior experience as an elected or appointed public official, applicant's experience holding office in a political party, applicant's party affiliation, recommendations or ratings from labor unions, recommendations or ratings from civil rights groups, and recommendations or ratings from law enforcement. *The ten highest rated criteria, following applicants' mental health and professional reputation, were written communication skills, oral communication skills, number of years of legal practice, amount of trial experience, honors and professional distinctions, recommendations and ratings from other Commissioners, participation in civic or community affairs, and prior service as a judge or magistrate.*

While Commissioners consistently note that political affiliation and prior political experience are not important in their evaluation of an applicant, it is worthwhile to contrast this with the importance allotted to recommendations or ratings by fellow Commissioners. Certainly, this is not the most important consideration reported, but given earlier indications that recommendations by other Commissioners are considered important for recruiting efforts, and that they also play a role in the evaluation process, the collegiality of Commission interactions could potentially pose a problem should it result in favoritism. For those who are particularly interested in practices that could increase diversity on the bench, the lack of attention paid to race or ethnicity, gender, and sexual orientation combined with the lack of recruiting among minority bar associations

Answer Options	Not very Important (1)	Somewhat Important (2)	Moderately Important (3)	Very Important (4)	Absolutely Essential (5)	Rating Average	Count
Applicant's age	11 (30.87%)	119 (32.51%)	108 (29.51%)	25 (6.83%)	1 (0.27%)	2.13	366
Applicant's physical health	33 (8.99%)	65 (17.71%)	125 (34.06%)	117 (31.88%)	27 (7.36%)	3.11	367
Applicant's mental health	5 (1.39%)	9 (2.49%)	42 (11.63%)	138 (38.23%)	167 (46.26%)	4.25	361
Applicant's gender	247 (66.94%)	60 (16.26%)	50 (13.55%)	12 (3.25%)	0 (0.00%)	1.53	369
Applicant's race or ethnicity	231 (63.11%)	57 (15.57%)	65 (17.76%)	13 (3.55%)	0 (0.00%)	1.62	368
Applicant's sexual orientation or gender identity	311 (84.28%)	43 (11.65%)	13 (3.52%)	1 (0.27%)	1 (0.27%)	1.21	370
Applicant's law school record (including their academic performance and the prestige of the law school)	76 (20.65%)	94 (25.54%)	115 (31.25%)	75 (20.38%)	8 (2.17%)	2.58	369
Number of years applicant has practiced law	6 (1.62%)	33 (8.92%)	124 (33.51%)	171 (46.22%)	36 (9.73%)	3.54	370
Amount of trial experience	3 (0.81%)	23 (6.23%)	93 (25.20%)	198 (53.66%)	52 (14.09%)	3.74	369
Amount of appellate experience	55 (15.11%)	87 (23.90%)	113 (31.04%)	92 (25.27%)	17 (4.67%)	2.80	364
Amount of academic or teaching experience	103 (28.07%)	106 (28.88%)	119 (32.43%)	36 (9.81%)	3 (0.82%)	2.26	367
Honors and distinctions applicant has received as an attorney, judge, and/or magistrate	12 (3.25%)	56 (15.18%)	136 (36.86%)	144 (39.02%)	21 (5.69%)	3.29	369
Applicant's prior service as a judge or magistrate	29 (7.92%)	62 (16.94%)	118 (32.24%)	135 (36.89%)	22 (6.01%)	3.16	366
Applicant's prior service as a prosecutor	104 (28.57%)	112 (30.77%)	99 (27.20%)	44 (12.09%)	5 (1.37%)	2.27	364
Applicant's prior service as a public defender	119 (32.69%)	116 (31.87%)	96 (26.37%)	30 (8.24%)	3 (0.82%)	2.13	364
Applicant's pro bono legal service	61 (16.76%)	111 (30.49%)	135 (37.09%)	50 (13.74%)	7 (1.92%)	2.54	364
Applicant's prior experience as an elected or appointed public official	154 (41.96%)	98 (26.70%)	68 (18.53%)	41 (11.17%)	6 (1.63%)	2.04	367

Shaded cells represent the modal category.

Answer Options	Not very Important (1)	Somewhat Important (2)	Moderately Important (3)	Very Important (4)	Absolutely Essential (5)	Rating Average	Count
Applicant's prior experience holding office in a political party	299 (81.25%)	48 (13.04%)	12 (3.26%)	8 (2.17%)	1 (0.27%)	1.27	368
Applicant's professional reputation	2 (.55%)	8 (2.19%)	30 (8.20%)	178 (48.63%)	148 (40.44%)	4.26	366
Applicant's written communication skills	0 (0.00%)	9 (2.46%)	57 (15.57%)	198 (54.10%)	102 (27.87%)	4.07	366
Applicant's oral communication skills	0 (0.00%)	11 (2.98%)	56 (15.18%)	191 (51.76%)	111 (30.08%)	4.09	369
Applicant's party affiliation	319 (86.68%)	26 (7.07%)	15 (4.08%)	4 (1.09%)	4 (1.09%)	1.23	368
Applicant's participation in civic or community affairs	17 (4.66%)	49 (13.42%)	164 (44.93%)	117 (32.05%)	18 (4.93%)	3.19	365
Recommendations or ratings from bar groups	49 (13.24%)	59 (15.95%)	139 (37.57%)	105 (28.38%)	18 (4.86%)	2.96	370
Recommendations or ratings from public officials	107 (29.16%)	101 (27.52%)	116 (31.61%)	37 (10.08%)	6 (1.63%)	2.28	367
Recommendations or ratings from other commission members	21 (5.72%)	40 (10.90%)	146 (39.78%)	142 (38.69%)	18 (4.90%)	3.26	367
Recommendations or ratings from labor unions	277 (75.68%)	57 (15.57%)	23 (6.28%)	8 (2.19%)	1 (0.27%)	1.86	366
Recommendations or ratings from civil rights groups	151 (41.48%)	90 (24.73%)	93 (25.55%)	26 (7.14%)	4 (1.10%)	2.02	364
Recommendations or ratings from law enforcement	120 (33.06%)	111 (30.58%)	89 (24.52%)	39 (10.74%)	4 (1.10%)	2.16	363
Recommendations or ratings from non-legal professional and business associations	96 (26.09%)	116 (31.52%)	109 (29.62%)	40 (10.87%)	7 (1.90%)	2.31	368
Other (please specify)							
answered question 370 skipped question 117							

Shaded cells represent the modal category.

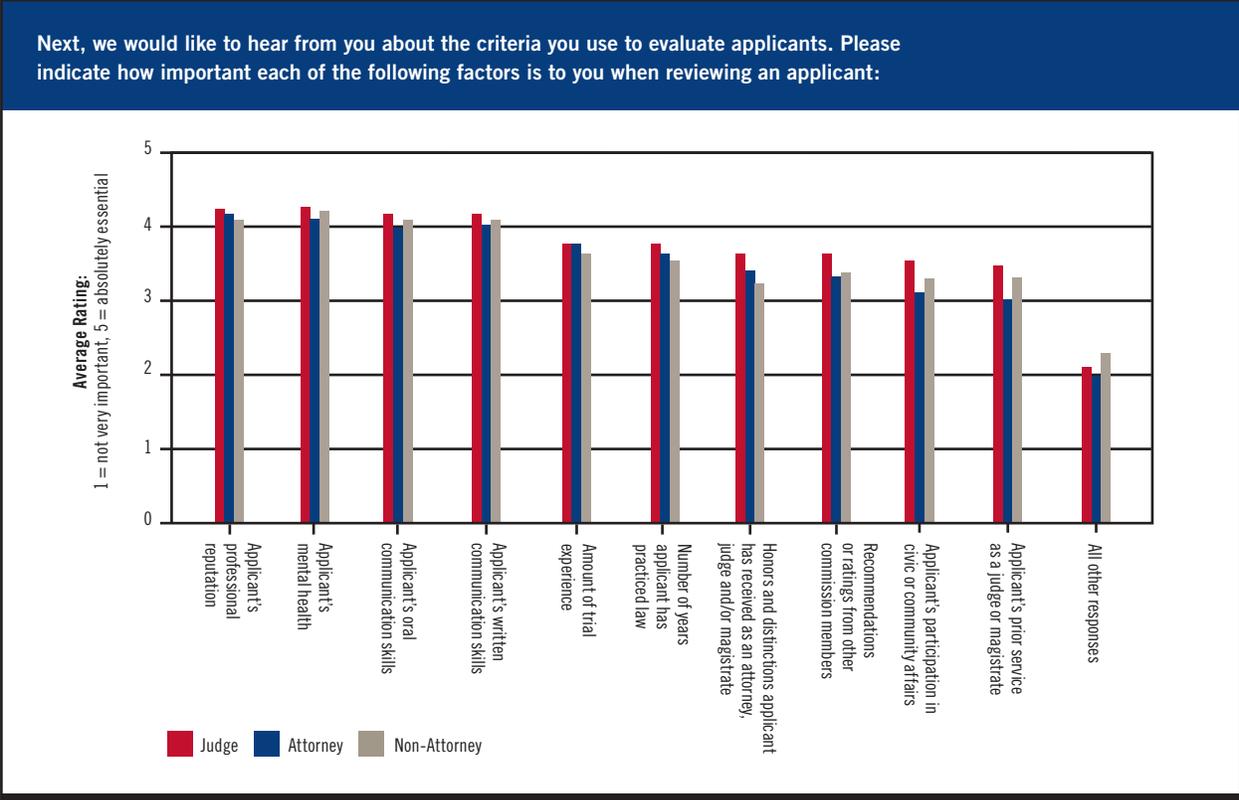
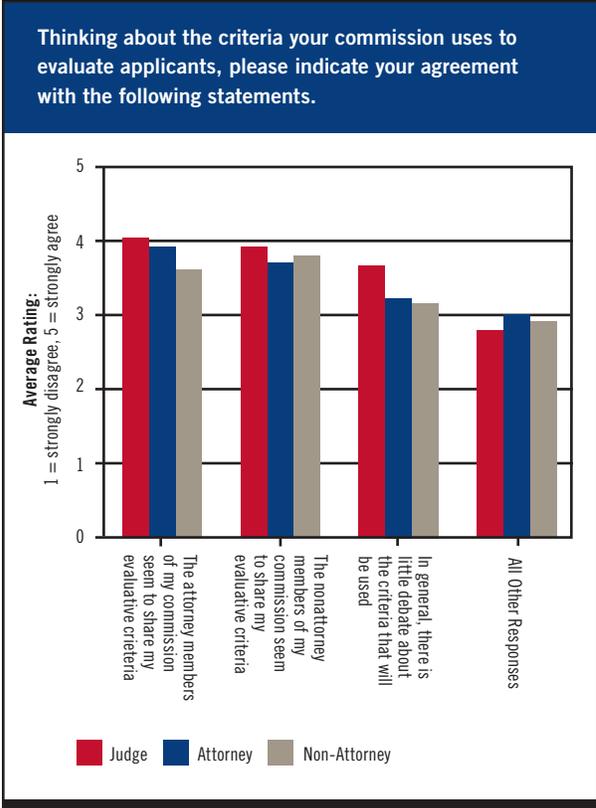
could suggest that Commissions not only do not reach out to women and minority attorneys to seek applications for judicial vacancies, but they are unlikely to actively consider these personal characteristics during the process of review.

Given frequent concerns about the degree to which lawyers and non-lawyers participate in the process differently, it is particularly important to assess whether they deviate in terms of assessments of specific evaluative criteria. *The survey responses indicate remarkable agreement among judges, lawyers, and non-lawyers who serve on Judicial Nominating Commissions. Despite a few minor inconsistencies in ratings, those factors considered most important are universally valued by all Commissioners.* To directly assess the Commissioners' sense of common purpose in the use of evaluative criteria, we asked Commissioners whether they felt that

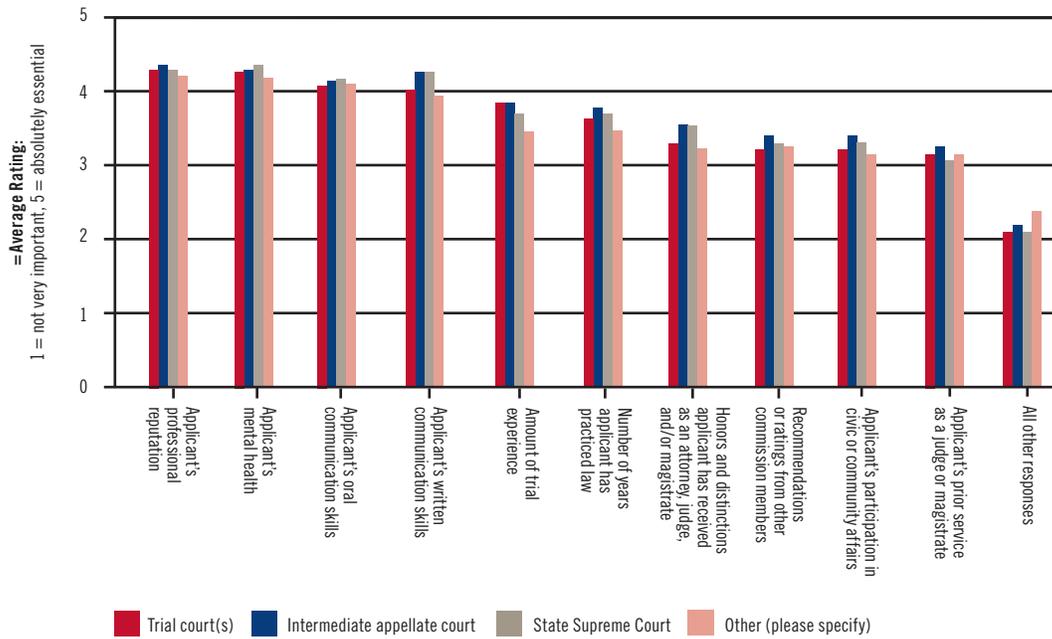
their criteria were generally shared by non-lawyer members, by lawyer members, and the Commission as a whole. *At very high rates, Commissioners report that there is little debate about the criteria that the Commission will use, and members overwhelmingly report that the lawyer members and non-lawyer members share their standards for reviewing applicants. Most importantly, lawyers feel that both non-lawyer and lawyer members share their criteria, and non-lawyers concur in this assessment. Thus, the survey respondents offer striking evidence that lawyers and non-lawyers do not have substantial disagreements about the relevant characteristics that will be used to evaluate potential judges.*

Similarly, and perhaps more surprising, there appears to be remarkable similarity among Commissioners regardless of the level of court they are staffing. *Commissioners report nearly uniform*

agreement on the most important criteria, with very minor differences between Commissions working to screen applicants for trial courts, and those working to evaluate applicants for appellate courts, including state high courts. Despite common assumptions that Judicial Nominating Commissioners are uniquely tailored in their review processes to assess those skill sets most relevant for *specific* judicial functions, the findings indicate that, with very minor deviations, this is not the case. *The only possible exception is the role of written communication skills, which appear to be more highly valued by Commissioners that review applications to fill vacancies on appellate courts.* ★



Next, we would like to hear from you about the criteria you use to evaluate applicants.
Please indicate how important each of the following factors is to you when reviewing an applicant:



DELIBERATIONS & VOTING PROCEDURES

Once Commissioners have evaluated the candidates, they must deliberate and vote to determine which individuals are best suited to fill the vacancy. These steps are the culmination of a long assessment of applicant qualifications, and ultimately determine which individuals will be recommended to the governor or other appointing authority. As previous studies have documented, voting procedures vary considerably, and a single Commission may, in fact, use multiple balloting methods to determine which applicants will get the nod.⁵⁵ Although written voting procedures can significantly enhance the legitimacy and fairness of the process, a number of Commissions have been known to operate on the basis of consensus or other *ad hoc* decision-making procedures. As recommended by the *Handbook for Judicial Nominating Commissioners*, a codified procedure that specifically lays out the threshold for Commission recommendation will avoid manipulation and confusion.⁵⁶ In so doing, it will also serve to enhance the integrity of the process, avoid the appearance of favoritism or “panel-stacking,”⁵⁷ and help ensure that the public, the applicants, and the governor can feel secure in the knowledge that the process functions to staff the courts with the best qualified judges.

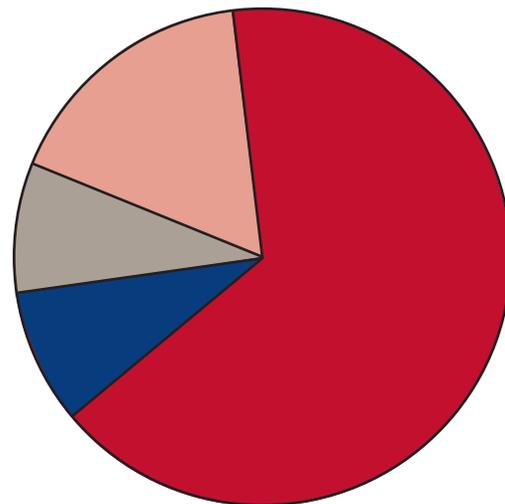
“We have very open and frank deliberations.”
-survey comment by commissioner

Specific voting procedures can take many forms⁵⁸ and Commissioners are often permitted authority to determine their own decision-making rules.⁵⁹ The survey therefore asked Commissioners to share information about the methods of voting that are used by their Commission. *A majority of Commissioners (56.3%) report that their Commission has standard voting procedures that are used for all vacancies, with minorities saying that established voting procedures are usually used, but deviations do sometimes occur (10.4%) or that their Commission has no established standard set of voting rules (13.3%), with 20% reporting that they do not know about the body’s voting procedures. When asked about the form of voting, 45% report that a secret ballot is used, while 33% say that the Commission uses voice vote to make decisions.*

“I believe the deliberative process we follow is a good one. All aspects of a qualified applicant are considered as it is vitally important that our judges reflect their community. However we consider all aspects in our voting decisions. It is vitally important for a judge to not just have good skills but [to be] a part of the community they serve.”

-survey comment by commissioner

Which statement best describes your commission’s voting procedures?



- My commission always uses the same set of voting procedures for each vacancy
- My commission has a set of voting procedures that are usually used, but the commission sometimes uses alternative voting rules.
- My commission does not have a standard set of voting procedures.
- Don't Know

How does your commission usually vote?

Answer Options	Percentage	Count
Secret ballot	45.0%	185
Voice vote.....	30.4%	125
Don't know	16.3%	67
Other (please specify)	8.3%	34

answered question 411 | skipped question 76

Certainly, outcomes are heavily dependent on the voting threshold that is utilized to make decisions. In a majority of cases, respondents say that decisions about which applicants will be recommended for appointment are made by a majority vote, though approximately one in four report that a supermajority is necessary and nearly one in ten say that unanimous or near-unanimous support is necessary.

Taken as a whole, the survey findings indicate that Commissions have vastly more sophisticated rules and procedures than they did in 1974, when Ashman and Alfini surveyed Nominating Commissioners about their practices. Although codification of rules and procedures is still uneven, Commissioners report remarkable progress in creating consistent decision-making processes with significant agreement on the standards that will be used to assess judicial applicants. ★

“We generally go through applicants once, and remove all [of those] where there is unanimous, or nearly unanimous consent [that they] will not be final contenders. We then take a preliminary vote, with each [commission] member getting three votes (the number of applicants we ultimately select). While there is no preset number, the balloting virtually always results in a group which clearly has substantial support, and a group which doesn’t.”

-survey comment by commissioner

Thinking about your commission’s voting procedures, how much support is needed for a candidate to be nominated?		
Answer Options	Percentage	Count
Majority Support	57.5%.....	231
Support of more than a majority of commissioners, but less than unanimous support.....	23.9%.....	96
Unanimous (or near-unanimous) support.....	9.7%.....	39
Other (please specify)	9.0%.....	36

answered question 402 | skipped question 85

TRANSPARENCY

Discussions of how merit selection systems function often question the degree to which Judicial Nominating Commissions include the public, and the extent to which the work of the Commissions is open to public scrutiny. In their discussion of Missouri's Non-Partisan Court Plan, Watson and Downing embarked on a detailed observation of the Commission's work, finding that the political nature of judicial selection was still present, but simply moved behind closed doors. Today, their findings continue to be cited as evidence that judicial merit selection serves as a means to allow elites to dominate the process, without transparency or accountability.⁶⁰

Supporters of merit selection counter that the inclusion of non-lawyer Commissioners institutionalizes public input, while Commission practices may dictate public participation in other ways (through public hearings, etc). In his assessments of the Missouri Non-Partisan Court Plan, Elmo B. Hunter wrote:

The laymen keep the entire selection process objective. They help remind the other Commission members that the courts are not just to serve lawyers and their interests, but truly and ultimately belong to the people who are entitled to the best.⁶¹

Every Commission must balance the goal of accountability against confidentiality of applicants' professional and personal information. While accountability can help improve the process by ensuring fair and even-handed consideration of applicants, keeping information confidential can ensure a high-quality pool of candidates by guaranteeing that an applicant will not suffer professional ramifications such as loss of business to their law practice or a perception that they are less committed to their current position by virtue of their interest in obtaining a judgeship. Furthermore, review of tax records and financial transactions as well as interviews with past employers or colleagues can pose ethical dilemmas when a Commission makes all information public, particularly in areas with small and inter-connected legal communities.

Statutory and constitutional authorizing language may dictate the degree to which the Commission can be accessible to the public. In Missouri, formal language demands confidentiality in virtually all Commission proceedings.⁶² In Hawaii, confidentiality interests restrict knowledge of who has applied for a judicial vacancy, potentially impairing the Commission's ability to even request professional references for information about an applicant during the screening process.⁶³ In sharp contrast, Arizona's merit selection system is generally considered a model of transparency, as the Commission is included in the state's open meetings law and all aspects of the decision-making process are open to citizens and the media.⁶⁴ Over the past decade, there has been a decided trend toward transparency in Judicial Nominating Commission proceedings. In 2011, Commissions in at least three states opened all applicant interviews to the public for the first time (Iowa, Nebraska, and Missouri), including live-streaming the interviews via web, for easy access by interested citizens.

Survey respondents were asked about the degree of public disclosure of all aspects of Commission decision-making. Overall, the responses indicate that *Commissions make their procedures available as a matter of public record (66.6% of Commissioners report that the procedures are publicly available), and names of applicants are generally made public (71.3% of Commissioners report that a list of applicants is made available)*. The review process itself, however, including applicant files, interviews, Commission deliberations, and voting remains largely removed from the public.

Commissioners are divided on whether interviews are open to the public, with 39.0% reporting that all interviews are open and 45.5% saying that all interviews are private. *Sixty-six percent of Commissioners indicate that all deliberations are conducted outside of public view, and sixty-four percent say that votes remain confidential. Notably, all Commissioners who said that deliberations were open to the public and all commissioners who reported that votes were made public served in Arizona*. In other words, Commission discussion about applicants and Commissioners' votes on who will be recommended to the governor is kept confidential in every state except Arizona.

Are your commission's procedures a matter of public record?

Answer Options	Percentage	Count
Yes	66.6%	233
No	10.3%	36
Don't know	0.3%	1

answered question 416 | skipped question 71

Are the names of applicants available to the public?

Answer Options	Percentage	Count
Yes	71.3%	298
No	16.7%	70
Don't know	12.0%	50

answered question 419 | skipped question 68

Are applicant files (or portions of applications) available to the public?

Answer Options	Percentage	Count
Yes	22.9%	96
No	48.2%	202
Don't know	29.9%	121

answered question 419 | skipped question 68

Are applicant interviews open to the public?

Answer Options	Percentage	Count
All interviews are open to the public.....	39.0%	151
Some applicant interviews are open to the public.....	6.5%	25
All applicant interviews are private.....	45.5%	176
Don't know	9.0%	35

answered question 387 | skipped question 100

Are commission deliberations open to the public?

Answer Options	Percentage	Count
Yes, deliberations are open to the public.....	11.7%.....	49
No, deliberations are not open to the public, but a record of the deliberations is available to the public.....	8.1%.....	34
No, deliberations are not open to the public.....	66.5%.....	278
Don't know.....	13.6%.....	57

answered question 418 | skipped question 69

Are commission votes a matter of public record?

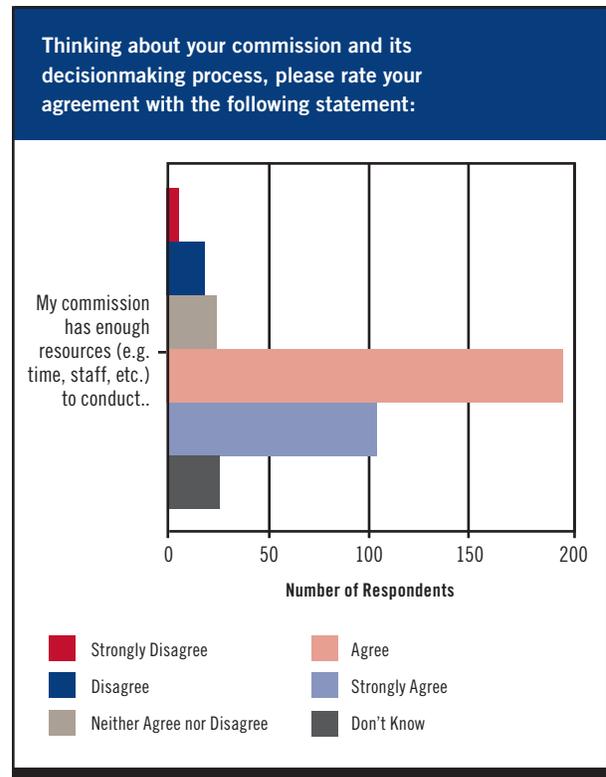
Answer Options	Percentage	Count
Yes.....	13.5%.....	56
No.....	63.9%.....	266
Don't know.....	22.6%.....	94

answered question 416 | skipped question 71



RESOURCES

Judicial Nominating Commissions perform vitally important tasks, but they generally do so with little staff support and very limited resources.⁷⁴ Commissioners volunteer their time, and although expenses (usually only including travel costs to attend Commission meetings) are generally covered by the judicial branch budget, there are rarely staff or administrative resources available. Nonetheless, *79.1% of Commissioners who participated in the survey agreed or strongly agreed that their Commission had sufficient resources to conduct its work effectively.*



Commissioners' Assessments of the Process

Those who serve on Nominating Commissions have a unique perspective on how judicial merit selection systems function in practice. Despite observers' attempts to characterize Commissions, few have extensive first-hand experience with Commission work upon which they can base their evaluations, and it is rare for Commissioners to speak extensively about their perceptions of the process beyond formal announcements or press releases. The survey, therefore, provides a unique opportunity to find out how Commissioners assess the policies, procedures, and practices of their Commissions and how the system appears to be functioning from their vantage point.

Overall, Commissioners are exceptionally satisfied with the work of their Commissions, and feel that participation on the Commission is worthwhile.⁶⁵ While participation in the survey is voluntary, the confidentiality of the survey would suggest that those who are dissatisfied with the process would have a rare opportunity to express these sentiments. Nonetheless, 64.9% of Commissioners strongly agree that their work on the Commission is "worthwhile," with an additional 30.3% agreeing with the statement. A combined 91% indicate that their Commission's decision-making process is fair (55.8% of commissioners who took the survey strongly agree while 35.5% agree). Similarly, 92% agree or strongly agree that their work on the Commission helps to ensure that highly-qualified judges are appointed to the bench and 85% agree or strongly agree that the Commission helps to insulate the process from partisan politics.

Commissioners also indicated strong confidence that judicial merit selection is better than competitive elections to select judges. Commission members have an extraordinary role to play in selecting judges and therefore are far more satisfied with the merit selection process than they would be with competitive elections where

they would not have the opportunity to exercise this power. If, however, Judicial Nominating Commissions are driven by ideology and politics hidden behind closed doors, then we should expect some general discontent with the process, particularly among Commissioners who feel as though their peers are rigging the system.

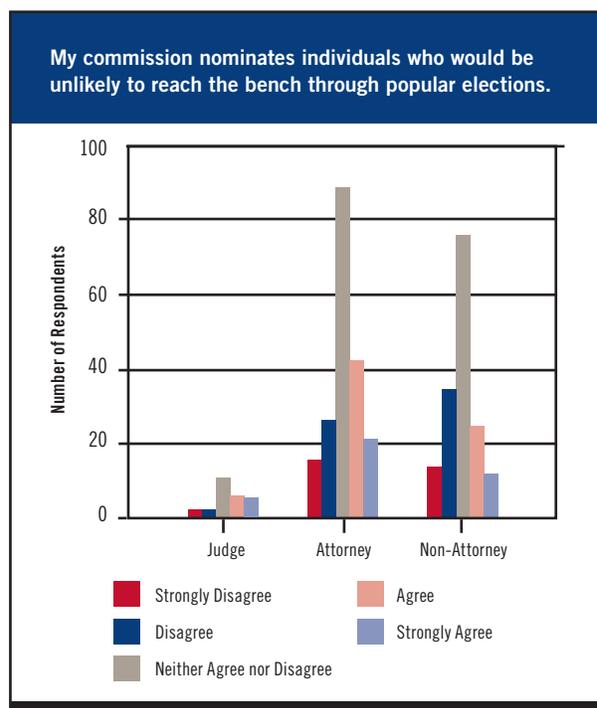
Generally speaking, survey respondents agreed that their Commission chose individuals who were more qualified than those who would likely be selected through popular elections, that merit selection was better at promoting diversity than judicial elections, and that merit selection was, overall, a better system of choosing judges. There was far more hesitation, however, when Commissioners were asked about whether the Commission chose individuals who were unlikely to reach the bench through popular election; Commissioners are generally uncertain whether this is the case. Also notable is that the degree of support for merit selection as opposed to popular elections was very strong among judge members, moderately strong among lawyer members, and weaker for non-lawyer citizen Commissioners.

Regarding the Commission's power to constrain the choices of the governor, Commissioners are fairly confident that the Commission does not simply nominate individuals who share the views of the governor and indicate that the system provides an appropriate check on the power of the governor. Given some concerns that governors may exert undue influence on members of the Commission⁶⁶ (most notably through appointing the non-lawyer members to their positions on the Judicial Nominating Commission), and, on the other hand, opposing concerns that the system empowers the Nominating Commission at the expense of the governor, the findings indicate that Commissioners feel as though they occupy a middle ground, neither succumbing to the political and ideological preferences of the governor nor seizing power that

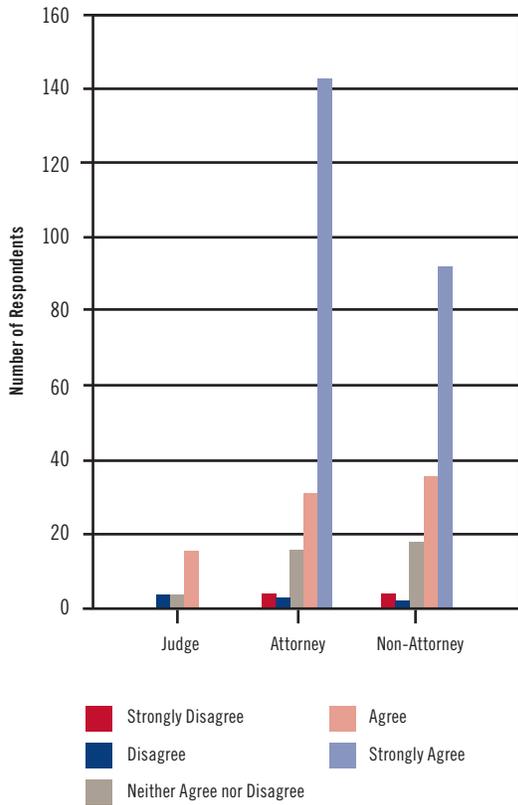
Answer Options	Strongly disagree (1)	Disagree (2)	Neither Agree Nor Disagree (3)	Agree (4)	Strongly Agree (5)	Average
"Judicial nominating commissions are a better way to select judges than popular elections"	1.3%	0.8%	9.9%	19.8%	68.2%	4.53
"The individuals that my commission recommends are more qualified than those who would be chosen through popular elections."	1.3%	2.1%	20.5%	31.3%	44.9%	4.16
"My commission's work promotes diversity on the bench better than popular elections."	1.3%	2.3%	34.9%	32.8%	28.7%	3.85
"My commission nominates individuals who would be unlikely to reach the bench through popular elections."	7.4%	15.9%	48.3%	19.2%	9.2%	3.07

Shaded cells represent the modal category.

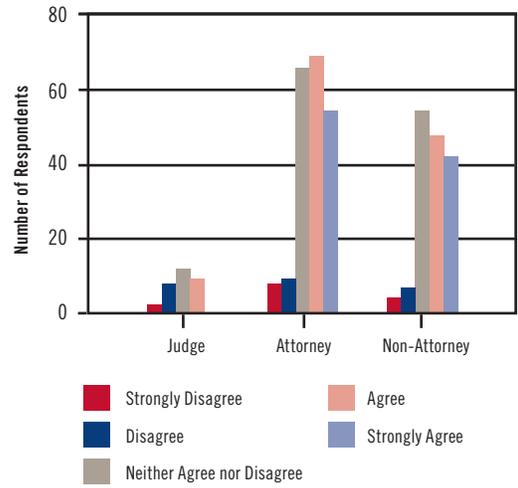
rightfully belongs to the executive. More than 7 in 10 respondents said that the Commission provides an "appropriate" check on the governor's (or other appointing authority's) ability to select judges.⁶⁷ At the same time, 39.7% of Commissioners responding to the survey said that they "neither agreed nor disagreed" with the statement that "my Commission nominates judges that represent the governor's (or other appointing authority's) views," 29.8% disagreed and 24.2% strongly disagreed. While non-lawyer members of the Commission have a slightly less enthusiastic response regarding the Commission's authority to check the role of the governor in judicial appointments, they similarly have a slightly more enthusiastic response regarding the Commission's alignment with the views of the governor. Most non-lawyer members are gubernatorial appointments, and therefore these assessments are likely the result of their allegiance to the governor. Lawyer members, who are usually elected to their position by the Bar Association and therefore serve independently from the governor, have more confidence in the Commission's role restricting gubernatorial authority and, as expected, a lesser perception that Commission recommendations generally reflect the views of the governor. ★



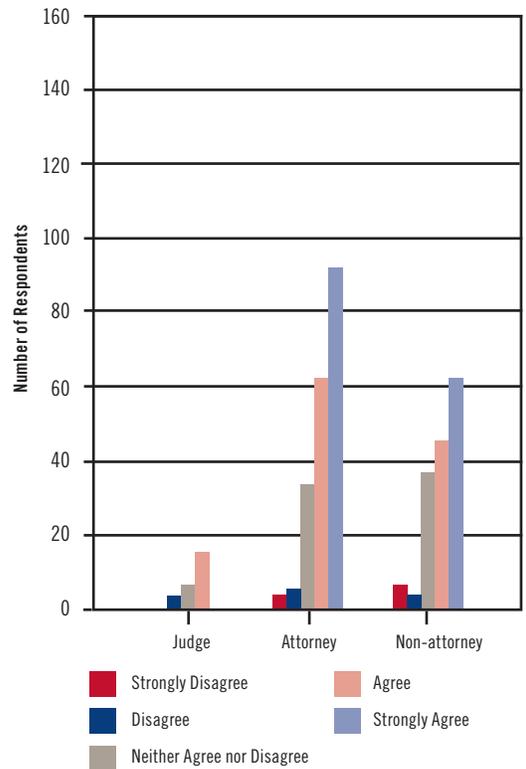
Judicial nominating commissions are a better way to select judges than popular elections.



My commission's work promotes diversity on the bench better than popular elections.



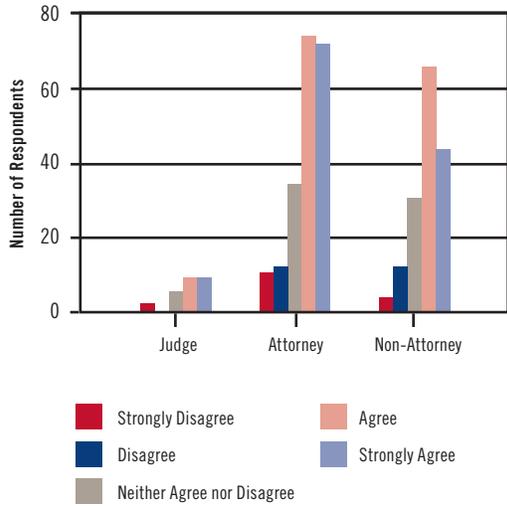
The individuals that my commission recommends are more qualified than those who would be chosen through popular election.



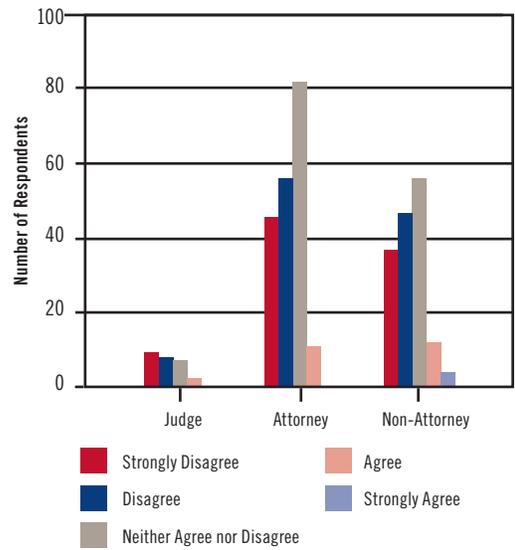
“Most non-lawyer members are gubernatorial appointments, and therefore these assessments are likely the result of their allegiance to the governor.”

-survey comment by commissioner

My commission provides an appropriate check on the governor's (or other appointing authority's) ability to select judges.



My commission nominates judges that represent the governor's (or other appointing authority's) views.



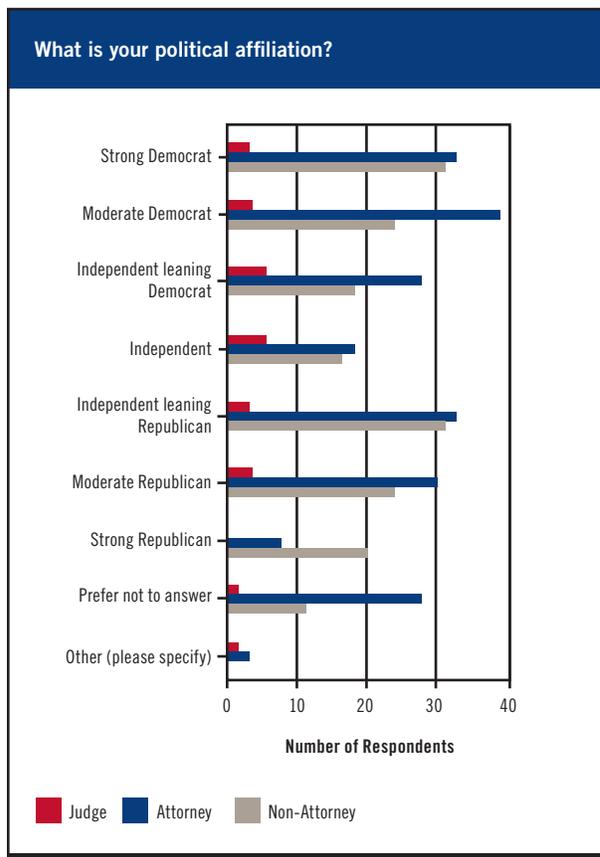
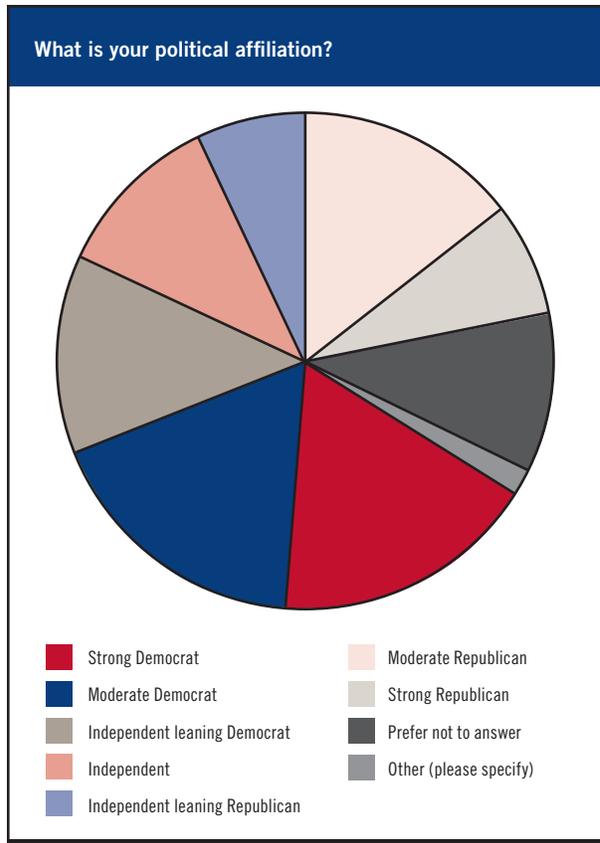
POLITICAL CONSIDERATIONS

Ideally, the screening process that is at the core of the Commission’s work is one that prioritizes the qualifications of individual applicants and eliminates, to every extent possible, political, ideological, and partisan influences in the selection of judges. At a practical level, it may be virtually impossible to achieve this goal. Nonetheless, the ideal merit selection system is structured in a way that is intended to insulate the process from politically motivated decisions regarding who will occupy positions on the bench. To evaluate the extent to which Commissioners rely on political considerations, or perceive that their fellow Commissioners rely on political considerations, a series of questions were included specifically addressing a wide array of potential political influences on Commission decision-making.

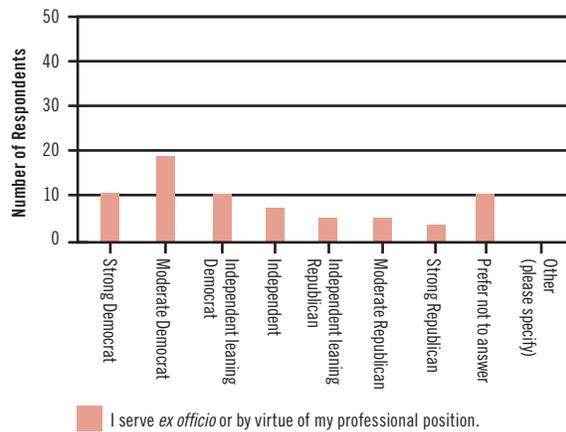
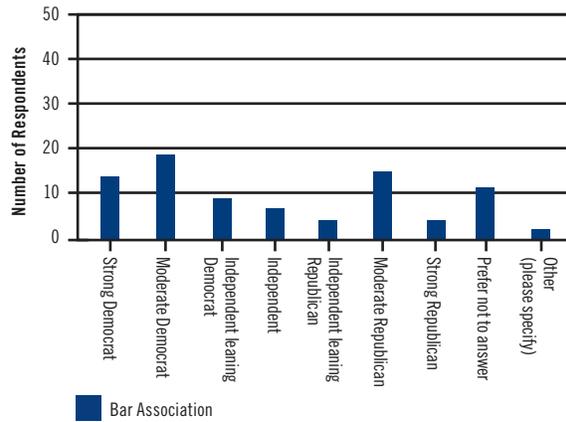
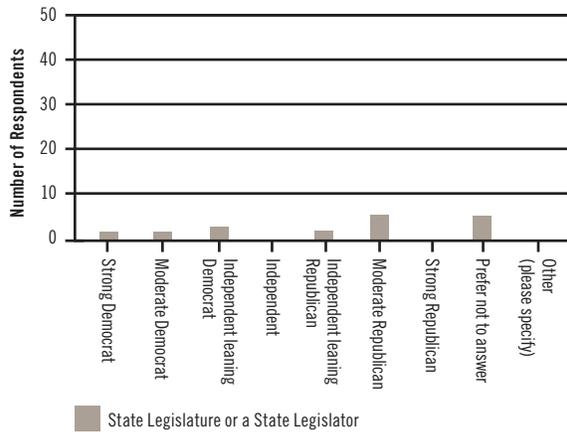
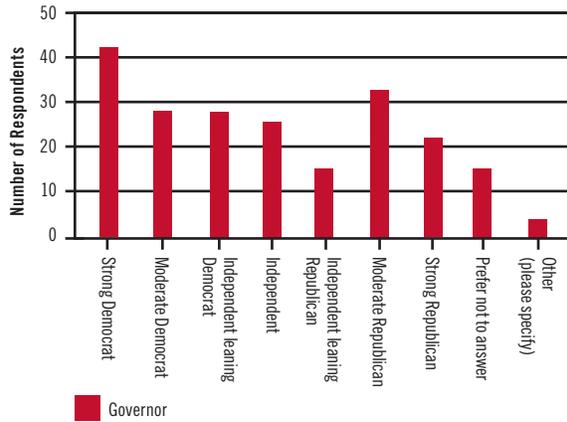
First, and most important, are the political affiliations and loyalties of the Commissioners themselves. When asked about their party affiliations, respondents generally indicated a widely diverging range of ideological positions. While the distribution skews toward Democrats, it does not do so as dramatically as some observers might expect. A combined 35.7% of respondents self-identify as strong or moderate Democrats, while a combined 21.8% say that they are strong or moderate Republicans.

“I try to select the best applicants for the position at hand, without regard to politics. I have served on our commission for several years and find that the lawyer members tend to influence and sometimes sway the laymembers who defer to us for guidance. I sometimes experience frustration over what I perceive as “nitpicking” over some of the female applicants, when that same process does not often apply to the male applicants. It seems to me that women are evaluated much more for temperament than the male applicants.”

-survey comment by commissioner



What is your political affiliation?



When broken down by the selection method by which the Commissioner came to serve and their role on the Commission, there are few significant differences to note. *Those Commissioners appointed by the governor are both more likely to be strong Democrats and more likely to be strong or moderate Republicans than are those elected by the Bar Association. Lawyer members chosen by their respective bars are more polarized than any other group, with high numbers of strong Democrats and strong Republicans. Among those who serve ex officio, the proportion who identify as independent-leaning Republicans is higher than among any other group.*

Regarding political activity of Commissioners, Henschen et. al. found that:

in addition to reflecting high levels of educational attainment and occupational status, Judicial Nominating Commissioners

also evidence high levels of political and civic involvement. Two thirds (67 per cent) of the Commissioners are members of civic organizations, over one-fourth (26 per cent) have held party office and nearly one third (31 per cent) have held public office. It is even more striking that 33 per cent of the law Commissioners have served in a party office, while 24 per cent have held some public post. Given that only 3 per cent of the population nationwide have even been candidates for public office, Commissioners can certainly be considered politically active.⁶⁸

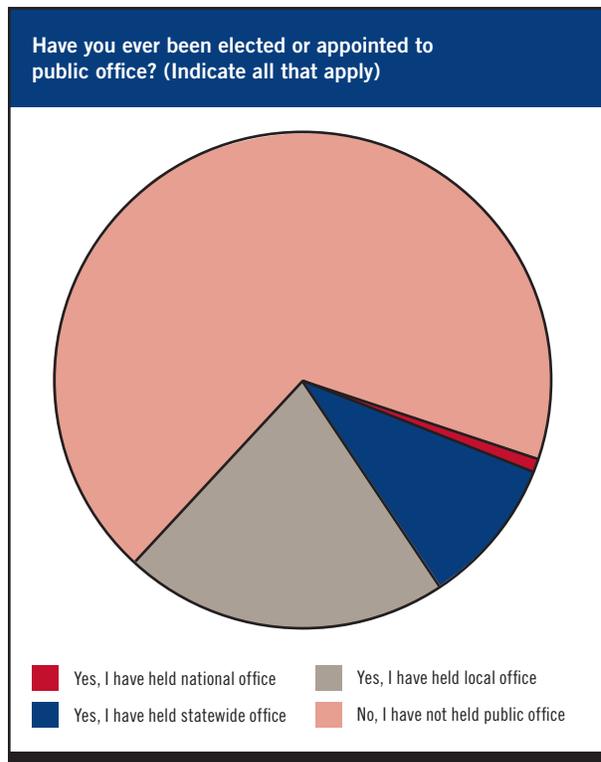
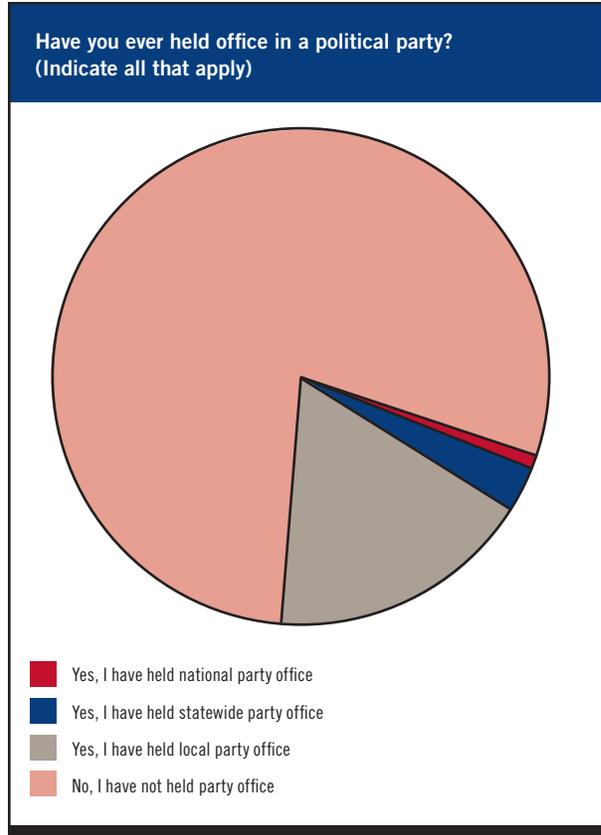
Respondents to this survey indicate similar levels of political involvement. *Approximately 31% of Commissioners report that they have held public office and just over one in five has held a party office. Unlike previous findings, however, rates of public service are higher for non-lawyer Commissioners,*

with 24.5% of non-lawyers reporting that they have served as an officer in their political party, and 34.4% indicating that they have occupied a position as a public official.

The relationship between the appointing authority and the Commission conducting a screening process can be complicated. The Commission is explicitly charged with making recommendations to the governor or other appointing authority. At the same time, some members of the Commission are often selected by the governor. That the membership is determined, in part, by the governor and yet intended to operate independently has the potential to create a significant conflict.

When asked about the role of the governor, however, respondents indicate that while they may know what attributes the governor or other appointing authority desires, their decision-making is not dramatically affected by this knowledge. Just under 3 in 10 commissioners say that the Commission knows what qualities the governor desires in a judicial appointment, with approximately 1 in 4 indicating neither agreement nor disagreement with the statement. When asked whether the Commissioners translate this to indicate that the governor favors individual applicants, it appears that they do not: 61% indicated that the Commission does not typically know which applicants the governor would prefer.

To address Watson and Downing’s finding of “panel-wiring” whereby the Commission purposefully includes the governor’s preferred applicant on a list of recommendations, alongside other choices who are either decidedly not favored by the governor or who are essentially randomly chosen by the Commission with the knowledge that they will not be selected for judicial service, questions about whether the Commission engages in this kind of manipulation of the recommendations were included. The findings clearly indicate that these are not common practices. *A majority of those who responded said that the Commission did not try to recommend individuals who meet the governor’s preferred criteria (just 16.8% said that it did), and an overwhelming majority indicated disagreement with the suggestion that the Commission would purposefully nominate individuals who clearly did*



not meet the governor's preferred criteria (72.6% disagreed or strongly disagreed, while just 3.6% agreed that this happened).

In fact, most Commissioners who answered the survey reported that members of the Commission usually did not know which of the recommended individuals would ultimately be chosen by the governor (just 6.7% agreed that the Commission would "often know" which candidate would be selected). Nearly 3 in 4 respondents said that the political preferences of the governor did not have an effect on the Judicial Nominating Commission's decision-making process.

With regard to party affiliation, approximately 25% agree that the Commission usually knows the party affiliation of applicants, with just over 50% indicating that this is generally not the case. Commissioners agree, however, that party affiliation and other political considerations are generally not important in the process of selecting individuals for recommendation to the governor. In fact, just over

10% of those who responded agreed that political considerations played a role, while 73% disagreed, and 82% agree that recommendations are based on professional qualifications rather than political calculations (60.8% strongly agree with this overall assessment of Commission decision-making).

*Although the political appointment of Commissioners may raise concerns about the degree to which elected officials influence the process through these appointments, there appear to be only minor differences among Commissioners who were selected by the Bar Association, those who were appointed by the governor or state legislature, and those who serve by virtue of their position (*ex officio* judge members). In short, *the survey finds no statistically significant differences between those individuals selected by the Bar and those chosen by the governor (and possibly confirmed by the legislature) or state legislature in their perceptions about the role of political considerations in the process.* ★*

Answer Options	Strongly disagree (1)	Disagree (2)	Neither Agree Nor Disagree (3)	Agree (4)	Strongly Agree (5)	Average
"Members of my commission typically know what attributes the governor (or other appointing authority) desires in a judge"	15.4%	18.3%	24.9%	29.1%	3.9%	2.45
"Upon initial review of applications, members of my commission typically know which applicant(s) the governor (or other appointing authorities) would prefer to select"	27.5%	33.5%	21.0%	9.4%	0.3%	2.14
"My commission tries to nominate candidates who meet the governor's (or other appointing authority's) desired criteria"	20.9%	30.1%	24.6%	12.6%	4.2%	2.87
"My commission purposely nominates some candidates who do not meet the governor's (or other appointing authority's) desired criteria"	36.8%	35.8%	16.4%	2.6%	1.0%	1.87
"When compiling the list of nominees, members of my commission often know which candidate the governor (or other appointing authority) will select from the list of nominees"	31.7%	33.5%	20.8%	6.2%	0.5%	2.03
"The political preferences of the governor (or other appointing authority) have no effect on the decisions my commission makes"	2.1%	4.9%	11.2%	33.5%	38.7%	4.13
"Members of my commission usually know applicant's party affiliations"	19.2%	30.9%	16.6%	16.9%	7.3%	2.58
"Political considerations, such as applicant's party affiliations, play a role in my commission's nomination process"	37.2%	35.9%	11.3%	5.5%	4.7%	1.99
"My commission chooses its nominees based on their professional qualifications rather than based on political calculations"	0.8%	0.5%	3.4%	21.4%	60.8%	4.62

Shaded cells represent the modal category.

Thinking about your commission and its decision-making process, please rate your agreement with the following statements:

Answer Options	Governor	Bar Association	State Legislature or a State Legislator	I serve <i>ex officio</i> or by virtue of my professional position	Other (please specify)	Rating Average	Count
Upon initial review of applicants, members of my commission typically know which applicant(s) the governor (or other appointing authority) would prefer to select.							
Strongly Disagree (1)	68	15	2	4	17	2.14	384
Disagree (2)	74	25	5	3	21		
Neither Agree nor Disagree (3)	41	18	4	2	16		
Agree (4)	13	13	0	0	10		
Strongly Agree (5)	0	0	1	0	0		
Don't Know	16	7	0	1	8		
	1.99	2.41	2.42	1.78	2.30		
When compiling the list of nominees, members of any commission often know which candidate the governor (or other appointing authority) will select from the list of nominees.							
Strongly Disagree (1)	71	21	3	5	22	2.03	384
Disagree (2)	76	21	3	3	25		
Neither Agree nor Disagree (3)	37	22	5	1	15		
Agree (4)	13	7	1	0	3		
Strongly Agree (5)	2	0	0	0	0		
Don't Know	13	7	0	1	7		
	1.99	2.21	2.33	1.56	1.98		
Members of my commission typically know what attributes the governor (or other appointing authority) desires in a judge.							
Strongly Disagree (1)	32	13	1	2	11	2.87	381
Disagree (2)	39	14	2	3	11		
Neither Agree nor Disagree (3)	52	19	6	2	16		
Agree (4)	63	23	1	2	22		
Strongly Agree (5)	9	2	1	0	3		
Don't Know	14	7	1	1	9		
	2.89	2.82	2.91	2.44	2.92		
Members of my commission usually know applicants' party affiliations.							
Strongly Disagree (1)	44	11	2	3	14	2.58	384
Disagree (2)	64	20	4	3	27		
Neither Agree nor Disagree (3)	35	18	1	0	10		
Agree (4)	27	19	4	2	13		
Strongly Agree (5)	23	4	1	0	0		
Don't Know	19	6	0	2	8		
	2.59	2.79	2.83	2.13	2.34		

Thinking about your commission and its decision-making process, please rate your agreement with the following statements:

Answer Options	Governor	Bar Association	State Legislature or a State Legislator	I serve <i>ex officio</i> or by virtue of my professional position	Other (please specify)	Rating Average	Count
Political considerations, such as applicants' party affiliations, play a role in my commission's nominating process.							
Strongly Disagree (1)	76	29	3	5	29	1.99	381
Disagree (2)	73	27	5	4	27		
Neither Agree nor Disagree (3)	24	10	2	0	7		
Agree (4)	12	5	1	0	3		
Strongly Agree (5)	15	1	1	0	1		
Don't Know	10	5	0	1	5		
	2.09	1.92	2.33	1.44	1.81		
My commission tries to nominate candidates who meet the governor's (or other appointing authority's) desired criteria.							
Strongly Disagree (1)	39	18	2	4	17	2.45	381
Disagree (2)	62	28	4	2	18		
Neither Agree nor Disagree (3)	53	18	6	1	16		
Agree (4)	33	5	0	1	9		
Strongly Agree (5)	12	0	0	1	3		
Don't Know	12	8	0	1	8		
	2.58	2.14	2.33	2.22	2.41		
My commission purposely nominates some candidates who do not meet the governor's (or other appointing authority's) desired criteria							
Strongly Disagree (1)	79	21	5	7	29	1.87	382
Disagree (2)	75	28	7	1	25		
Neither Agree nor Disagree (3)	39	14	0	1	9		
Agree (4)	4	4	0	0	2		
Strongly Agree (5)	2	2	0	0	0		
Don't Know	12	9	0	1	6		
	1.87	2.10	1.58	1.33	1.75		
My commission chooses its nominees based on their professional qualifications rather than based on political calculations.							
Strongly Disagree (1)	3	0	0	0	0	4.62	382
Disagree (2)	2	0	0	0	0		
Neither Agree nor Disagree (3)	9	2	1	0	1		
Agree (4)	45	18	3	1	15		
Strongly Agree (5)	129	45	7	6	45		
Don't Know	24	12	0	3	11		
	4.57	4.66	4.55	4.86	4.72		

LAWYER/NON-LAWYER RELATIONSHIPS

One of the most frequent complaints raised by opponents of merit selection is the inclusion of members of the bar on the Judicial Nominating Commission. While the original proposals were designed to balance the input of non-lawyers who are representative of the public with specialized legal practitioners who have knowledge and expertise germane to the selection of judges, recent criticisms have pointed to the bar’s role as essentially undemocratic, institutionalizing the preferences of the organized bar and therefore undermining the interests of the citizenry at large.⁶⁹ This complaint has formed the basis for three unsuccessful lawsuits challenging the makeup of the Nominating Commission in Alaska, Iowa, and Kansas.⁷⁰

Similarly, claims are often made about the working relationships that develop within Nominating Commissions, including an oft-repeated claim that attorney members dominate the deliberations of the Commission, and that non-attorney “citizen” Commissioners are expected to follow the preferences of those representing the bar. Our survey results show that among Commissioners, these concerns are simply not justified. As discussed earlier, there is a remarkable level of agreement on the evaluative criteria that

Commissioners use to assess applicants, with no discernible differences emerging between lawyers and non-lawyers.

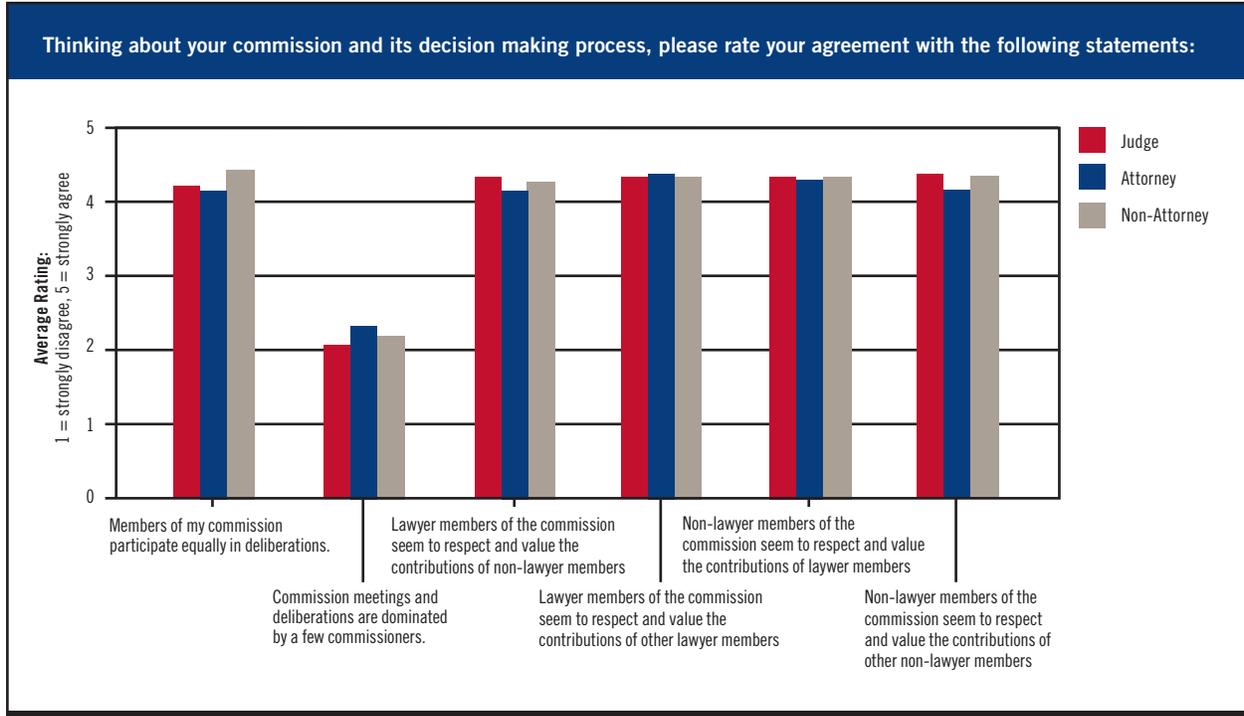
When asked explicitly about the interaction of attorney and non-attorney members, those who responded to the survey report positive working relationships, consistent with the findings of Ashman and Alfini’s early survey results.⁷¹ Specifically, all groups report high levels of agreement with the statement “members of my Commission participate equally in deliberations,” with slightly lower numbers of attorney members expressing strong agreement (38.1% of judge members strongly agree, another 38.1% of judge members agree; 48.3% of non-lawyers strongly agree while 33.6% agree; 29.8% of lawyers strongly agree, and 48.7% agree). Interestingly, non-attorney Commissioners are more likely to express strong disagreement with the statement that “Commission meetings and deliberations are dominated by a few Commissioners,” although the findings indicate significant disagreement with the statement among all Commissioners.

When asked about the degree to which Commissioners seem to respect and value the contributions of their fellow Commissioners, the results are similarly striking. In fact, *there is no evidence to suggest a divide between*

Thinking about your commission and its decision-making process, please rate your agreement with the following statements:							
Answer Options	Governor	Bar Association	State Legislature or a State Legislator	I serve <i>ex officio</i> or by virtue of my professional position	Other (please specify)	Rating Average	Count
The political preferences of a governor (or other appointing authority) have no effect on the decisions my commission makes.							
Strongly Disagree (1)	4	1	1	2	0	4.12	384
Disagree (2)	13	3	0	0	3		
Neither Agree nor Disagree (3)	25	8	4	0	6		
Agree (4)	72	24	4	3	26		
Strongly Agree (5)	81	33	3	4	27		
Don't Know	18	9	0	1	9		
	4.09	4.23	3.67	3.78	4.24		
answered question 385 skipped question 92							

attorney members and non-attorney members. At exceptionally high levels, and with very few exceptions, Commissioners agree that lawyers respect the contributions of both other lawyer members and non-lawyer members, just as they agree that

non-lawyers respect the contributions of other non-lawyer members and lawyer members. Any claim that Commissions are dominated by those elected by the Bar is simply not supported by the survey data. ★



DIVERSITY

“Ours is a small enough community that the commissioners usually know all of the applicants or at least know of each applicant. Although we interview each applicant, it is usually fairly easy to narrow the field quite quickly. We are concerned about ethnicity and/or gender of applicants only to the extent that we believe diversity on the bench is important.”

-survey comment by commissioner

In the past decade, a number of scholars interested in questions of diversity have sought to understand how Commission processes affect the number of women and minorities currently serving in our state judiciaries. In general, there is support for the idea that diversity among Commission members can promote a more diverse group of appointees. For example, the Brennan Center for Justice at New York University School of Law has promoted a set of “best practices” that can be used by Commissions to enhance the prospects for women and minorities in the process based upon a set of interviews with Nominating Commissioners. They write that:

Today, white males are overrepresented on state appellate benches by a margin of nearly two-to-one. Almost every other demographic group is underrepresented when compared to their share of the nation’s population. There is also evidence that the number of black male judges is actually decreasing. (One study found that there were proportionately fewer black male state appellate judges in 1999 than there were in 1985.) There are still fewer female judges than male, despite the fact that the majority of today’s law students are female, as are approximately half of all recent law degree recipients. This pattern is most prevalent in states’ highest courts, where women have historically been almost completely absent.⁷²

In discussing the role of diversity in Commission deliberations, the report finds that many Commission members lack a vision of how individual race or gender characteristics might be incorporated into their decision-making.

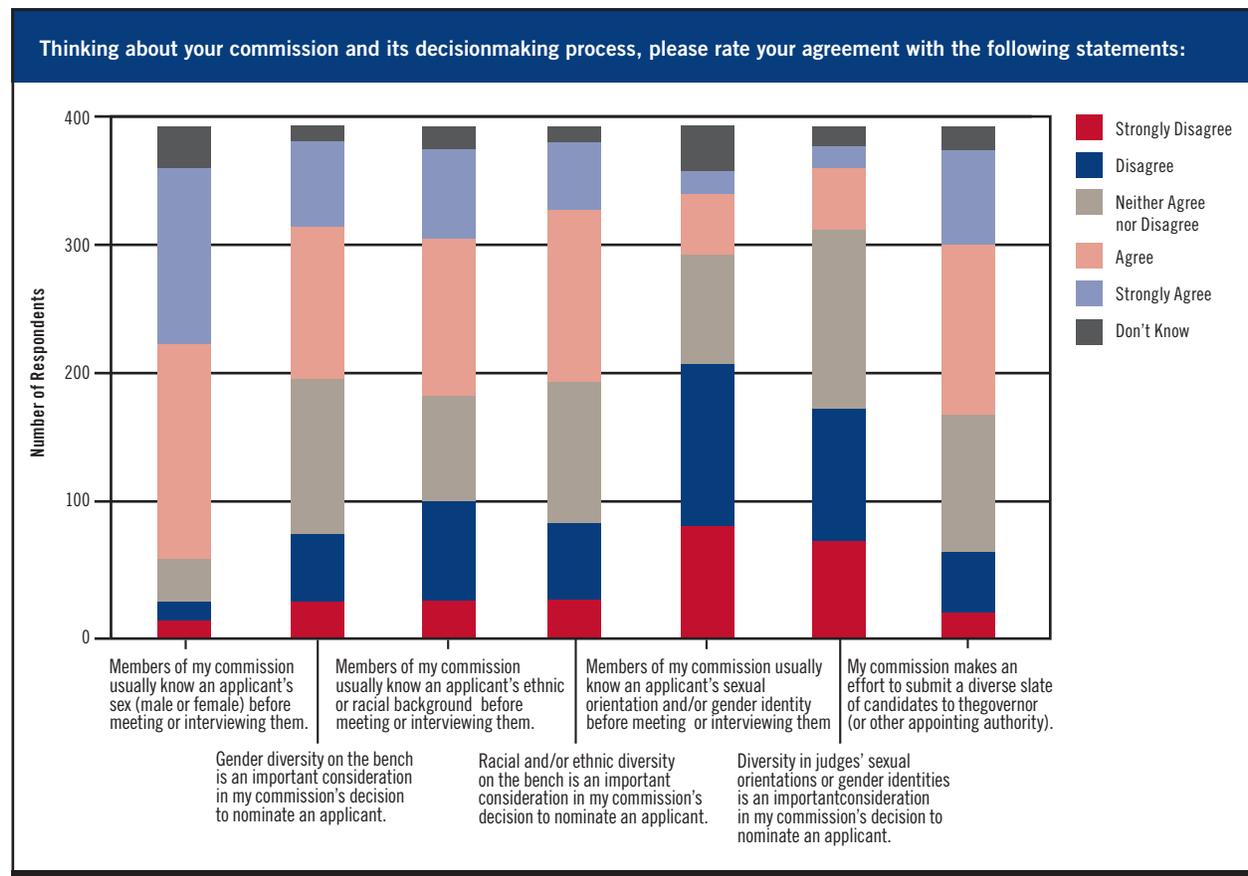
Few Commissioners we talked to could or would articulate exactly how the race or gender of applicants is weighed or considered during the nominating process. A few viewed a candidate’s minority status or gender as a “tie-breaker” between similarly qualified candidates. Others simply looked at it as a “plus” for a candidate that might keep a candidate in the pool for longer. Still other Commissioners described diversity as a factor that they examined after the deliberations. If the “short list” of nominees for presentation to the governor was not diverse, then the Commission would reconsider candidates to see whether they could produce a more diverse short list.⁷³

The Brennan Center report concludes by advocating strategic and active recruitment of applicants from under-represented populations. As discussed above, Commissioners who responded to the survey indicate that this recruitment generally does not occur. There are two additional considerations that must be addressed, however. First, it is unclear the extent to which Commissioners want to incorporate diversity into their consideration of judicial applicants. Second, to the degree that they do desire to advance the cause of judicial diversity, they need to be aware of an applicant’s race and gender in order to do so. Given the nature of the screening process, this information may not be easy to obtain in all cases.

Of the 393 respondents who answered questions about the role of diversity, 35.5% agreed that the Commission makes an effort to submit a diverse slate of candidates to the governor, with another 17.6% indicating strong agreement. While Commissioners may perceive an intention to recommend diverse candidates, they simultaneously seem significantly less committed to the idea that diversity of race or gender are important considerations in the Commission’s decision-making processes. Furthermore, respondents indicate that

Commissioners are not always aware of an applicant's race or gender prior to the in-person interview. Initial screening processes, therefore, occur largely without this information. Commissioners are far more confident that they can identify the gender of an applicant before meeting them than they are able to identify the applicant's

race. Of all diversity considerations, *commissioners are decidedly less enthusiastic about the importance of gender identity or sexual orientation than they are about race or gender. They are similarly less confident in their ability to know the sexual orientation or gender identity of the applicants.* ★



“While our Commission does seek to promote diversity on the bench, diversity in and of itself is not a controlling factor. The controlling factors are a person’s reputation in the community, recommendations from the community the person will serve and the person’s legal skills and life experiences. It is interesting to note that the use of these criteria results in diversity on the bench given that a great number of applicants we see are highly qualified and come from diverse parts of our community.”

-survey comment by commissioner

Thinking about your commission and its decision-making process, please rate your agreement with the following statements:								
Answer Options	Strongly Disagree (1)	Disagree (2)	Neither Agree Nor Disagree (3)	Agree (4)	Strongly Agree (5)	Don't Know	Rating Average	Count
Members of my commission usually know an applicant's sex (male or female) before meeting or interviewing them.	12	12	30	175	124	39	4.10	392
Gender diversity on the bench is an important consideration in my commission's decision to nominate an applicant.	26	49	122	119	56	18	3.35	390
Members of my commission usually know an applicant's ethnic or racial background before meeting or interviewing them.	26	74	83	117	64	28	3.33	392
Racial and/or ethnic diversity on the bench is an important consideration in my commission's decision to nominate an applicant.	29	51	116	128	48	21	3.31	393
Members of my commission usually know an applicant's sexual orientation and/or gender identity before meeting or interviewing them.	76	127	84	51	18	35	2.46	391
Diversity in judges' sexual orientations or gender identities is an important consideration in my commission's decision to nominate an applicant.	66	100	149	37	18	23	2.57	393
My commission makes an effort to submit a diverse slate of candidates to the governor (or other appointing authority).	18	39	102	139	69	25	3.55	392
answered question 394 skipped question 93								

Shaded cells represent the modal category.



Conclusion

Taken as a whole, the survey results indicate that Judicial Nominating Commissions are highly functional decision-making units that engage in a fair and independent assessment of judicial applicants. With few exceptions, Commissioners report that they are satisfied with the system, and there is remarkable agreement that the processes remain insulated from partisan politics or gubernatorial influence. Although Commissioners remain largely White and male, there is increasing evidence of gender diversity in Commission membership, although racial diversity is increasing at a far slower pace. Professionally, Commissioners represent a wide range of backgrounds, including representation of a broad swath of the legal practice as lawyer Commissioners.

Procedurally, the findings, consistent with prior research, suggest a continued trend toward more formal written operating rules and ethics provisions. Very large majorities of Commissioners report formalized procedures in reviewing applications, interviewing applicants, conducting commission deliberations, and voting. While this is clearly indicative of a significant improvement over the past few decades, there does appear to be room for improvement. *Most notably, many Commissioners report that they are unfamiliar with the rules and procedures of their Commission, raising the question of how this information can be more systematically and effectively distributed and communicated to members. Recruitment efforts could more purposefully target underrepresented populations and rising talent.* Regarding interviews, the survey results suggest that Commissions are tending to interview more applicants, but spending less time with applicants in the interview. Screening processes, which allow the Commission to narrow the field before meeting for in-person interviews, might allow for greater attention to each individual interview, resulting in more useful and in-depth information. This may be particularly important for applicants who lack extensive connections in the legal community, a group of individuals who are rarely targeted in recruitment efforts. *By addressing and improving recruitment efforts and interviewing techniques, the ambiguous role of diversity might also be more clearly delineated by Judicial Nominating Commissions.* At the very least, conscious attention to the subject may be helpful to Commissioners who sense an abstract desire to attract and recommend individuals who represent the community but have less firm ideas about how the Commission might do this.

Across the board, we see consensus among survey participants that lawyer and non-lawyer members work well together and respect each other's contributions. Lawyers and non-lawyers tend to agree on the criteria for evaluation, the role of political influences, and the relationship between the governor and the Commission. Arguments that merit selection systems are dominated by members of the bar appear to be unfounded, based upon the evidence offered by the Commissioners themselves. Ideologically, lawyer members and non-lawyer members span the political spectrum, although members are slightly more likely to be Democrats than Republicans (a likely result of gubernatorial appointment of non-attorneys during a period in which Democratic governors outnumbered Republican governors).

The survey results reveal a picture of Judicial Nominating Commissions that provides reason to believe that the merit selection system is working well in states across the country. Though no system of selection is perfect, there is ample evidence to suggest that Judicial Nominating Commissions are operating in a way that is consistent with the original goals of those who fought to enact merit selection and, by doing so, help to promote and maintain a fair and impartial justice system for the generations to follow.



Endnotes

¹ James Parker Hall, *The Selection, Tenure, and Retirement of Judges (address before Ohio State Bar Association at Cincinnati, December 29, 1915)*, 3 J. Am. Jud. Soc. 37.

² These debates are not unique to democratic societies, although the present study is focused exclusively on an American context.

³ As discussed elsewhere, partisan popular elections to choose judges had long attracted attention and concern. Proposals to switch to nonpartisan elections were very popular during the early 20th Century. See Larry C. Berkson, updated by Rachel Caufield and Malia Reddick, *Judicial Selection in the United States: A Special Report*. Available at http://judicialselection.com/uploads/documents/Berkson_1196091951709.pdf.

⁴ Roscoe Pound, *The Causes of Popular Dissatisfaction With the Administration of Justice*, 29 ANNU. REP. A.B.A. (1906).

⁵ As discussed by Epstein, Knight, and Shvetsova, the reform impulse was not a “natural” or “nonpolitical” result of popular frustration. Rather, it was coordinated by a group of legal elites, particularly bar leaders, whose “preferences over judicial selection and retention mechanisms will vary depending on their beliefs about present and future political conditions.” Nonetheless, the proposition that the reform movement was based *entirely* on political considerations, without attention to systemic concerns about the quality and dignity of the judicial branch is similarly over-simplified. See Lee Epstein, Jack Knight, and Olga Shvetsova, *Selecting Selection Systems*, in JUDICIAL INDEPENDENCE AT THE CROSSROADS: AN INTERDISCIPLINARY APPROACH (Stephen B. Burbank and Barry Friedman, Ed., Sage Publications 2002).

⁶ Several important political developments gave rise to the movement to adopt merit selection in Missouri. First, judicial elections were squarely controlled by party machines, and political leaders would ensure that judges who failed to reinforce the party’s goals would be removed from the bench in the next election. Between 1918 and 1941, only two Supreme Court justices were successfully reelected. Second, Democratic party boss Tom Pendergast was so displeased by a ruling that he joined forces with another party faction to unsuccessfully oppose the 1938 reelection of a very popular and well-respected supreme court justice. His involvement in the race, however, brought to light the extraordinary power that party factions expected to exercise in the selection and retention of judges, based purely on partisan political motivations. This influence caused a good deal of concern among lawyers and a number of well-respected citizens around the state. Finally, Judge Padberg was elected to the St. Louis Circuit Court despite the fact that he was not a practicing lawyer, but had been a pharmacist for the preceding eight years. During his tenure, a grand jury with extensive political connections failed to return indictments for election fraud (a decision that was later reversed). The *St. Louis Post Dispatch* said that “Padberg’s six years on the bench have been a humiliation to the law and to the city.” Missouri Bar Report By Commission on Judicial Independence, *History of Merit Selection*. Available at <http://www.mobar.org/nonpartisancourtplan/history.htm>. In discussing adoption of the Missouri Non-Partisan Court Plan, Laurance Hyde describes the impetus by saying:

most important was the situation in our two large cities, St. Louis and Kansas City, where selection and tenure of judges was mainly controlled by politicians, and political machines, very apparently not working in the public interest. Conditions were continuously getting worse so that it was rather generally felt that something had to be done about it. Then, too, it was realized that under the party primary and election system, in statewide and large city elections, selection and tenure of judges depended upon issues wholly irrelevant to any judge’s ability, record, or qualifications. This was illustrated by the experience in Missouri, where, in twenty years between the first and second world wars (1919 to 1939) only twice (1922 and 1936) was a judge of the Supreme Court of Missouri, who had served a full term, re-elected to another term. This result was due to the fact that the ten elections during this period turned on national political issues and the judges got only the party vote regardless of individual merit.

Laurance M. Hyde, *The Missouri Non-Partisan Court Plan*, in JUDICIAL SELECTION AND TENURE: SELECTED READINGS (Glenn R. Winters, Ed., The American Judicature Society 1973), at 91.

⁷ Because Missouri was the first state to adopt the proposed “merit selection,” the system is often referred to as “The Missouri Plan.” In Missouri, however, the judicial selection system is known as the Nonpartisan Court Plan. Although Missouri’s Nonpartisan Court Plan remains the longest merit selection system in operation, two important caveats should be made. First, it is a misnomer, as there are many variants of “merit selection,” some of which differ dramatically from Missouri’s system. Second, not all judges in Missouri are appointed through the Missouri Nonpartisan Court Plan. Under the state’s Constitution, circuit court judges in St. Louis and Jackson County (Kansas City) are also appointed through merit selection. The Constitution also permits other counties to adopt merit selection through a majority vote of citizens living in the circuit, and the plan has been adopted by Clay, Platte, St. Louis, and Greene Counties in this manner. American Judicature Society, JUDICIAL SELECTION IN THE STATES: SELECTION OF JUDGES, available at: http://www.judicialselection.us/judicial_selection/methods/selection_of_judges.cfm?state=MO

⁸ There are many different names for these commissions. For example, in Vermont, they’re called the Judicial Nominating Board, in Alaska and Idaho, they’re called Judicial Councils, in Connecticut and Hawaii, they’re called the Judicial Selection Commissions, and in Montana, they’re labeled Judicial Nomination Commissions. “Judicial Nominating Commission” is common, and is frequently used as the generic term to refer to these bodies.

⁹ See Appendix B for rules regarding the composition of nominating commissions and the selection process in each state.

¹⁰ Ashman and Alfini, in delineating the characteristics that define merit selection, write that “the nonpartisan merit selection plan is defined for our purposes as a judicial selection system which employs: **A permanent nonpartisan commission of lawyers and nonlawyers that initially and independently generates, screens, and submits a list of judicial nominees to an official who is legally or voluntarily bound to make a final selection from the list**” (emphasis in original). Allan Ashman and James J. Alfini, *THE KEY TO JUDICIAL MERIT SELECTION: THE NOMINATING PROCESS* (Chicago: The American Judicature Society 1974), at 12.

¹¹ Russell D. Niles, *The Changing Politics of Judicial Selection: A Merit Plan for New York*, in *JUDICIAL SELECTION AND TENURE: SELECTED READINGS* (Glenn R. Winters, Ed., The American Judicature Society 1973) at 145. In proposing a merit selection plan for New York, based on interviews with commissioners in four states, he says:

The evidence is very strong that the commission plan has taken the nominating process out of the [political] reward system. A commissioner may favor a member of his own party and the governor certainly often does, but there is a universal denial of being influenced by the candidate’s past service to a party or by his financial contributions to political campaigns.... *The commission has insulated the executive from certain political pressures* [emphasis added].

¹² In a few jurisdictions, incumbent judges run in a “retention election” only after initially winning a contested election. In New Mexico, for example, a judicial vacancy is filled through a merit selection process, whereby the appropriate commission recommends individuals and the governor chooses one from the list. Once appointed, the judge must compete in a contested partisan election. Provided that they win that election, they compete in retention elections thereafter and must receive 57% “Yes” votes to retain their seat on the bench. See American Judicature Society, *JUDICIAL SELECTION IN THE STATES: NEW MEXICO*, available at http://www.judicialselection.us/judicial_selection/index.cfm?state=NM.

¹³ See, for example, Glenn R. Winters, who wrote:

I think the lawyer viewpoint is important, just as is the judicial viewpoint, and lawyers and judges are useful commission members for those reasons. An all-lawyer commission, however, would tend to exaggerate the purely technical skills of a good lawyer, and the broader viewpoint of the layman on non-legal considerations of general intelligence, education, personal integrity, and other human qualities is needed.

Glenn R. Winters, *The Merit Plan for Judicial Selection and Tenure – It’s Historical Development*, in *JUDICIAL SELECTION AND TENURE: SELECTED READINGS* (Glenn R. Winters, Ed., The American Judicature Society 1973) at 41.

¹⁴ Most recently, these arguments have been put forward by members of The Federalist Society in a coordinated effort to alter or eliminate merit selection systems around the country. For example, Stephen J. Ware writes that:

the legal profession desires a larger voice in judicial selection for the same reason that other interest groups do – to advance their cause through judicial policymaking. ‘Merit’ selection gives them that added leverage. All the better if they can sell their old line of increased political influence over the courts by using the attractive, but phony, label of ‘neutral professionalism.’ Critics of ‘merit’ selection point out that lawyers comprise an interest group just like other interest groups. Bar associations aggressively lobby for the interests of their lawyer-members. While they may also articulate reasons why the policies that favor them also serve the public interest, bar associations have repeatedly advocated for policies that favor lawyers and that have been viewed by others as harming the public as a whole. The selection of justices through a process controlled by the bar is just one example of this form of advocacy.

Stephen J. Ware, The Federalist Society, *Selection to the Kansas Supreme Court*, (2007) at 11; See also Stephen J. Ware, *The Bar’s Extraordinarily Powerful Role in Selecting the Kansas Supreme Court*, 18 KAN. J. L. PUB. POL. 392 (2009); Brian T. Fitzpatrick, *The Politics of Merit Selection*, 74 MO. L. REV. 675 (2009).

¹⁵ Richard A. Watson and Rondal G. Downing, *THE POLITICS OF THE BENCH AND BAR: JUDICIAL SELECTION UNDER THE MISSOURI NON-PARTISAN COURT PLAN* (New York: John Wiley & Sons 1969).

¹⁶ Bradley Canon, *Politics of the Bench and Bar: Judicial Selection Under the Missouri Non-Partisan Court Plan* 31 J. POL. 1115 (1969).

¹⁷ Watson & Downing, *supra* note 15.

¹⁸ Ashman & Alfini, *supra* note 10.

¹⁹ *Ibid.*

²⁰ *Ibid.* at 85.

²¹ Beth M. Henschen, Robert Moog, and Steven Davis, *Judicial Nominating Commissioners: A national profile*, 73 *Judicature* 328 (1990).

²² *Ibid.* at 334.

²³ Joanne Martin, American Bar Foundation, *Merit Selection Commissions: What Do They Do? How Effective Are They?* (1994).

²⁴ Henschen et. al. *supra* note 21 have a larger number of respondents to their national survey. But their work was restricted to personal characteristics rather than the work of the commission. There has been no study of nominating commission procedures and deliberative practices that has included as many respondents as the current study.

²⁵ American Judicature Society, *JUDICIAL SELECTION IN THE STATES: JUDICIAL NOMINATING COMMISSIONS*, available at http://www.judicialselection.us/judicial_selection/methods/judicial_nominating_commissions.cfm?state= (“In 2010, the legislature created a judicial vacancy advisory commission to assist the governor in filling midterm vacancies on the supreme court of appeals, circuit court, and family court. The commission is composed of eleven members. The governor (or the governor’s designee), the president of the West Virginia State Bar, and the dean of the West Virginia University College of Law serve as *ex officio* commission members. In addition, the governor appoints four nonlawyer members, and four lawyer members from a list of ten to twenty nominees submitted by the board of governors of the state bar. No more than four appointed commission members may belong to the same political party, and no more than three appointed members may be residents of the same congressional district. Appointed members serve staggered, six-year terms. Commission members select one of the appointed members to serve as chair for a three-year term.”)

²⁶ Georgia, Massachusetts, and Wisconsin are all states that use merit selection of judges by virtue of an executive order of the

Governor. Therefore, the governor has sole responsibility for establishing and populating the judicial nominating commission. In Minnesota, the nominating commission exists to fill interim vacancies. The Commission on Judicial Selection was established by the state legislature in 1989, and the governor is not required to use the Commission in screening candidates for the District Courts. Typically, the governor has used the Commission for District Court vacancies as well as vacancies on the supreme court and court of appeals. The governor is not required to appoint someone recommended by the commission. The governor and the supreme court are required to appoint both lawyers and non-lawyers; the governor's appointees serve at the pleasure of the governor while the supreme court's appointees serve four year terms that automatically end when a governor's term of office ends. *Ibid.*

²⁷ It is worth noting that in Rhode Island, despite statutory limitations on the terms of judicial nominating commission members, turnover is extremely rare and a large number of commissioners are currently serving past their initial term length, despite not being formally re-appointed to the position.

²⁸ Marla N. Greenstein, revised by Kathleen Sampson, American Judicature Society, *Handbook for Judicial Nominating Commissioners* (2004, 2nd Ed.).

²⁹ One non-lawyer commissioner reported that were appointed to the commission by the Bar Association. This appears to be an error in self-reporting, as the state in which they serve requires that all non-lawyers be appointed by the governor.

³⁰ A follow up question asked about the kind of litigants the practice represented (individuals, private entities, public entities, etc), but only 16 commissioners responded to the question, which does not allow sufficient information to merit discussion of the results.

³¹ It is unclear, however, whether judges are referring to confirmation by the state legislature to become a judge, thereby requiring service on the nominating commission, or if they are referring to confirmation specifically to serve on the nominating commission. Therefore, a cautious interpretation of these results would indicate that it is likely that the percent of judges who serve on nominating commissions who were subject to legislative confirmation *for their service on the nominating commission* is actually lower than is reported here.

³² Henschen, et. al., *supra* note 21.

³³ Henschen, et. al., *supra* note 21.

³⁴ Kevin M. Esterling & Seth S. Andersen, *Diversity and the Judicial Merit Selection Process: A Statistical Report*, in RESEARCH ON JUDICIAL SELECTION (Chicago: The American Judicature Society 1999); Ciara Torres-Spelliscy, Monique Chase & Emma Greenman, Brennan Center for Justice, *Increasing Judicial Diversity* (2010); Linda Merola & Jon Gould, The Lawyers Committee on Civil Rights under Law, The Justice At Stake Campaign, & The Center for Justice, Law, and Society, *Improving Diversity on the State Courts: A Report from the Bench* (2009).

³⁵ Greenstein & Sampson, *supra* note 28, at 33.

³⁶ The American Judicature Society, *Model Judicial Selection Provisions* (2008) available at http://www.judicialselection.us/uploads/documents/MJSP_ptr_3962CC5301809.pdf, at 4.

³⁷ The 25 individual respondents who indicated that they serve on multiple commissions have been removed from the dataset for purposes of these questions, because it is unclear which commission they would be referencing in their answers.

³⁸ Ashman and Alfini, *supra* note 10, at 42.

³⁹ Ashman and Alfini, *supra* note 10, at 42-43.

⁴⁰ A number of respondents volunteered that solicitation of applications was a function of the judicial branch, or that "this is something done for the commission, not by the commission."

⁴¹ Ashman and Alfini, *supra* note 10, at 49 (writing that "Active recruitment poses certain problems. A commission member who personally solicits a certain individual who he feels is well qualified runs the risk of having this individual assume that he ultimately will be nominated if he throws his hat in the ring.")

⁴² There are a few exceptions to this general rule. For example, for unexpected vacancies on the New York Court of Appeals (the state's highest appellate court), the commission has 120 days to submit names. At the other end of the spectrum, Iowa commissions that review applicants for positions as District Associate Judge and Magistrate Judge have 15-30 days.

⁴³ Martin's survey of Judicial Nominating Commission Chairs includes information about what information is included in "law enforcement agency background checks." The most common are personal history and history of the applicant's legal practice (38% and 30% respectively). The least common was information about psychiatric examinations (8%). Martin, *supra* note 23, at 12.

⁴⁴ Martin finds that only 63% of Commission Chairs reported seeking written recommendations, while 100% reported that their Commission relies on review of biographical data and interviews with the applicants. Martin, *supra* note 23, at 10.

⁴⁵ The American Judicature Society's *Handbook for Judicial Nominating Commissioners* recommends a preliminary screening process: "Commissions that regularly encounter a large pool of applicants often have the chair or a special subcommittee conduct a preliminary screening of the applications. Where the applicant pool exceeds by several times the number of names required to be submitted to the appointing authority, it may be advisable to employ a preliminary screening device. By reducing the number of applicants under consideration, a preliminary screening sets the stage for more efficient screening and investigation by the full commission." Greenstein & Sampson, *supra* note 28, at 106.

⁴⁶ Greenstein & Sampson, *supra* note 28, at 132.

⁴⁷ See Ashman and Alfini, *supra* note 10, at 54.

⁴⁸ Greenstein & Sampson, *supra* note 28, at 132-137.

⁴⁹ Greenstein & Sampson, *supra* note 28, at 137.

⁵⁰ Of the Commission Chairs surveyed by Joanne Martin in the mid-90s, 70% said that their Commission interviewed all applicants, 20% said that the Commission interviewed only those selected for final review, 8% said they interviewed any applicant who met the minimum requirements, and 3% said that they did not interview applicants. Regarding interview practices, she writes:

Only two of the 76 responding commissioners said that their commission did not interview candidates; one of the two reported that a public hearing is held where the candidates may be asked questions and the other appeared to be making a distinction between 'commission' and 'commissioners,' implying that while the commission sitting as a whole did not interview candidates, the individual members of the commission did (p. 12).

Martin, *supra* note 23 at 12.

⁵¹ Internal Rules of Procedure of State Judicial Nominating Commission. On file with author.

⁵² In Nebraska, the rules explicitly invite the commission to hold private interviews with applicants: "The commission is encouraged to hold private interviews with candidates prior to or following the public hearing." Available at <http://www.supremecourt.ne.gov/rules/pdf/Ch1Art6.pdf>. Maryland is a state where merit selection is established by Executive Order, and rules are therefore established at the governor's discretion. Nonetheless, the guidelines for interviews do not explicitly or implicitly suggest that these individual meetings with judicial applicants are to occur. The executive order states that:

A Commission shall interview each applicant for each vacancy for which it is responsible for recommending candidates. The interview shall be **in person** unless, due to extraordinary circumstances, a candidate is unable to appear in person. In cases of extraordinary circumstances, and upon prior approval of the Governor, **an interview may be held via video teleconference**. An example of an extraordinary circumstance is unavailability in person due to military service to the country. An example of a circumstance that is not extraordinary is a vacation. In considering a person's application for appointment to fill a vacancy, a Commission shall consider the applicant's integrity, maturity, temperament, diligence, legal knowledge, intellectual ability, professional experience, community service, and any other qualifications that the Commission deems important for judicial service, as well as the importance of having a diverse judiciary (emphasis added).

Available at <http://www.gov.state.md.us/executiveorders/01.01.2008.04eo.pdf>.

⁵³ Jeffrey D. Jackson, *Beyond Quality: First Principles in Judicial Selection and their Application to a Commission-Based Selection System*, 34 *FORDHAM URB. L. J.* 125 (2007) at 126.

⁵⁴ Maurice K. Rosenberg, *The Qualities of Justices – Are They Strainable?* 44 *TEX. L. REV.* 1063 (1966).

⁵⁵ Ashman and Alfini, *supra* note 10, at 57 (writing that "Not only do balloting procedures differ from one commission to another, but more than one balloting technique may be used at different times by a single commission.")

⁵⁶ Greenstein & Sampson, *supra* note 28, at 154.

⁵⁷ Watson and Downing, *supra* note 15, at 103.

⁵⁸ Greenstein & Sampson, *supra* note 28, at 154-157.

⁵⁹ A few states do include voting requirements in the constitutional or statutory language establishing the merit selection system. These may take the form of either specific procedural voting rules or, at least, a minimum threshold that applicants must achieve in order to be recommended to the appointing authority.

⁶⁰ See, for example, Ware, *supra* note 14, at 9-10 (fn 35).

⁶¹ Elmo B. Hunter, *A Missouri Judge Views Judicial Selection and Tenure*, in *JUDICIAL SELECTION AND TENURE: SELECTED READINGS* (Glenn R. Winters, Ed., The American Judicature Society 1973) at 113.

⁶² Missouri's rule 10.28 says:

When a vacancy occurs or when it is known that a vacancy will occur at a definite future date, the chairman shall publicize the same and solicit the submission of names of individuals qualified for such vacancy. When the commission announces that it is accepting applications, it shall encourage members of the public to nominate well qualified candidates for the commission to consider. Prior to the meeting of the commission, an appropriate questionnaire shall be sent to each person whose name is proposed, to be completed and returned to the chairman of the commission. Copies of the completed questionnaire shall be provided each member of the commission prior to the meeting called for the taking of the formal action by the commission in making its nominations.

(b) Except as provided in Rule 10.28(d), no publicity shall be given by the commission of the names of persons under consideration for nomination. The commission may submit the names of applicants to others on a confidential basis for the purpose of securing appropriate background information to the extent authorized by the applicants' signed written waivers.

(c) Any meeting called for the purpose of taking formal action in making nominations necessarily involves discussion of applicants' personal information and shall, therefore, be a closed meeting. All matters discussed at said meeting, except the matters contained in the certificate of nomination, shall be kept confidential.

(d) Prior to any meeting called to take formal action in making nominations, the commission will select from all the applicants those it will interview. Each of the selected applicants shall be interviewed by the commission as a whole, and those interviews shall be public. The names of those to be interviewed, the time and place of the public interviews, and information relating to the number and characteristics of all applicants shall be released prior to the public interviews. Other than the names of the persons it selects to interview, the commission shall not release any personally identifiable information about any person not included in the certificate of nomination.

(e) Within 72 hours of submitting the certificate of nomination, the commission shall transmit to the governor the applications and other information submitted to the commission pertaining to the persons contained in the certificate of

nomination. Within the same time, the commission shall make public a copy of the applications submitted by the persons included in the certificate of nomination, but with personal or confidential information redacted. Judicial Branch of Missouri, Rule 10 – *Nonpartisan Judicial Commissions*, Available at <http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/f17cc30b8a6987ba86256ca600521281?OpenDocument>.

⁶³ Section Two of the Hawaii Judicial Selection Rules states:

SECTION TWO: CONFIDENTIALITY

A. Under the Constitution of the State of Hawai'i, the commission's proceedings must be confidential. Therefore, all commission records, proceedings, and business, including the names of all proposed nominees and the names of nominees forwarded to the appointing authority, shall be confidential and may not be discussed outside commission meetings, except among commission members, or as made necessary by Rule 9 or Rule 12, or pursuant to Rule 13.

B. No commissioner shall engage in ex parte communications on matters relating to commission proceedings, except as provided in these rules.

C. All communications between commissioners, between a commissioner and an applicant or petitioner, or between a commissioner and any other person or organization with respect to the judicial qualifications of an applicant or petitioner shall be kept confidential and discussed only among commission members. A commissioner or ex-commissioner shall not disclose confidential information, except as provided in these rules.

Supreme Court of the State of Hawai'i, *Judicial Selection Commission Rules*, available at <http://www.state.hi.us/jud/ctrules/jscri.htm#SECTION%20TWO:%20CONFIDENTIALITY>.

⁶⁴ Arizona Judicial Branch, *Uniform Rules of Procedure*, available at <http://www.azcourts.gov/jnc/UniformRulesofProcedure.aspx>.

⁶⁵ Similarly, Commission Chairs reported being generally satisfied with the quality of candidates that were referred to the appointing authority in Martin's 1994 study. 59% said they were satisfied in the majority of instances, and 30% said that they were always satisfied. Martin, *supra* note 23.

⁶⁶ Watson and Downing, *supra* note 15.

⁶⁷ 39.9% of respondents agreed with this statement, and 31.8% strongly agreed.

⁶⁸ Henschen et. al. *supra* note 21.

⁶⁹ See, for example, Brian Fitzpatrick's claim that:

Even if bar associations are better able to identify more intelligent or more qualified judges than are voters or public officials, it does not follow that they are less inclined to consider the political beliefs of judicial candidates. In my view, state bar associations are just as likely to be concerned – if not more concerned – with the decisional propensities of judicial candidates as are voters and elected officials. Moreover, insofar as a judge's personal ideological preferences are correlated with his or her decisions, and insofar as those preferences are often more easily observed than his or her decisional propensities, it is hard for me to believe that state bar associations accord those preferences any less weight than voters or elected officials when they select judges. In short, I am skeptical that merit selection *removes* politics from judicial selection. Rather, merit selection may simply *move* the politics of judicial selection into closer alignment with the ideological preferences of the bar.

Fitzpatrick, *supra* note 14, at 676.

⁷⁰ All of these lawsuits have been brought in coordination with James Bopp's James Madison Center for Free Speech. See *Kirk v. Carpeneti* 623 F. 3d 889 (9th Cir. 2010); *Carlson v. Wiggins* 760 F. Supp. 2d 811 (S.D. IA 2011) Dist. Court, SD Iowa 2011; *Dool v. Burke* (D. Kansas 2010).

⁷¹ Ashman and Alfini write that "The open-ended responses to our questionnaires reveal that very few lay members felt dominated by the lawyers and that equally few lawyer members felt the lay members to be superfluous" *supra* note 10 at 25. They continue by referencing a study of the Massachusetts commission that arrives at a similar conclusion, saying "the laymen... realized that they were as perceptive as the lawyers about people, and equally adept in evaluating available information. While laymen had to defer to lawyer opinions about legal experience, they had strong, independent views and were by no means dominated or manipulated by the lawyers. Lawyer perceptions of the lay members confirm the capacity and desirability of lay participation. Most felt that lay people provided a more detached view of the system, bringing a consumer citizen perspective to bear, and counteracting the 'chumminess' that tends to exist among lawyers." John A. Robertson and John B. Gordon, *Merit Screening of Judges in Massachusetts: The Experience of the Ad Hoc Committee*, 58 MASSACHUSETTS LAW Q., 138 (1973).

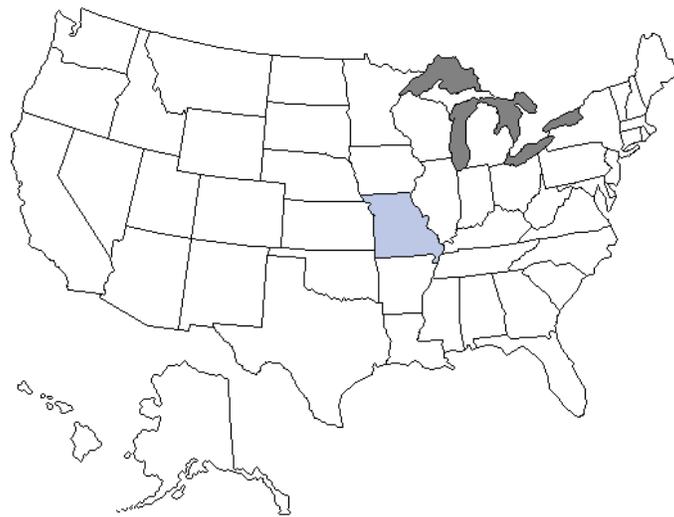
⁷² Torres-Spelliscy, et. al., *supra* note 34.

⁷³ *Ibid.* at 23.

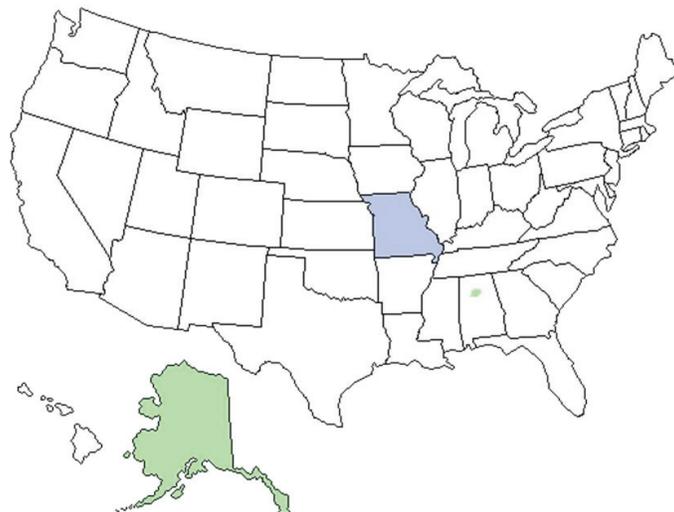
⁷⁴ See American Judicature Society, *supra* note 25 (including information about reported costs of Judicial Nominating Commissions).

Appendix A: Progression of Judicial Merit Selection in the United States

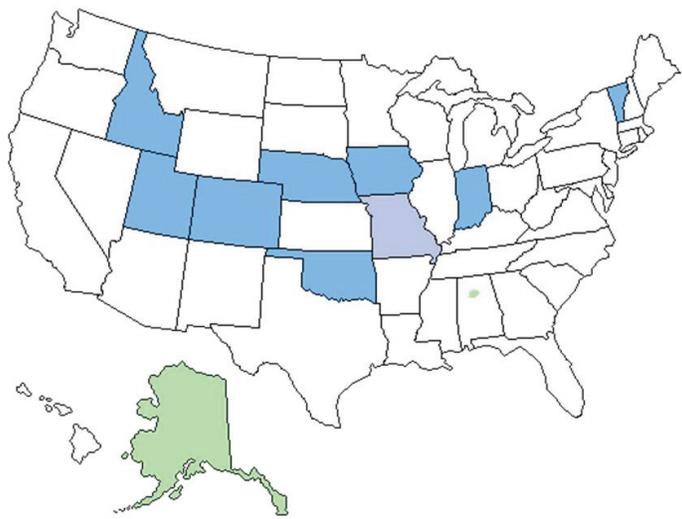
1940s



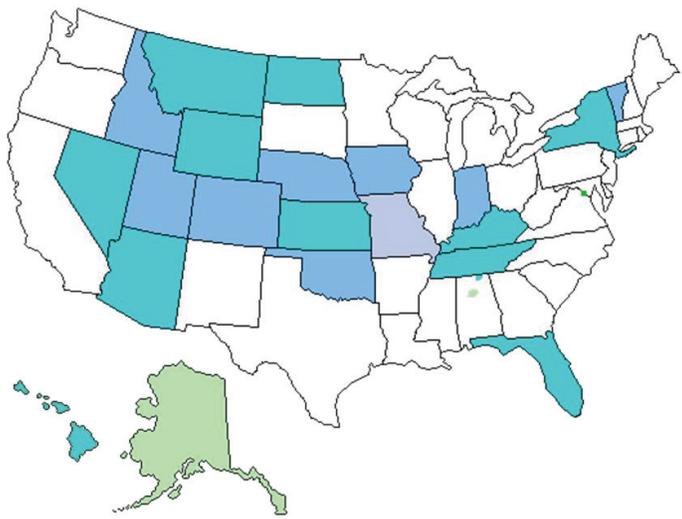
1950s



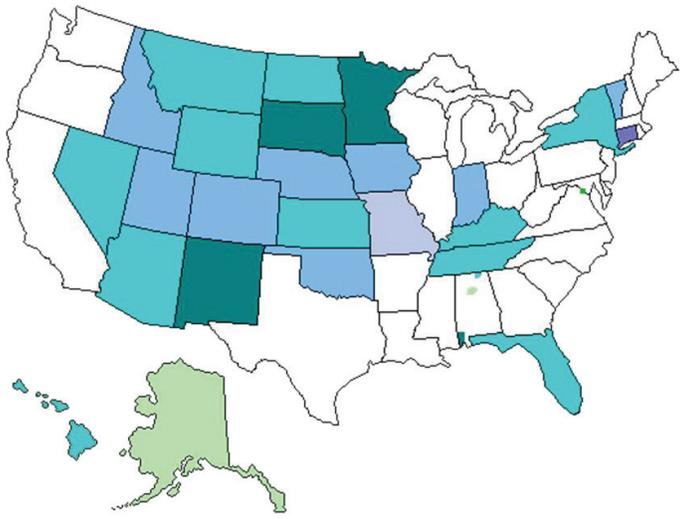
1960s



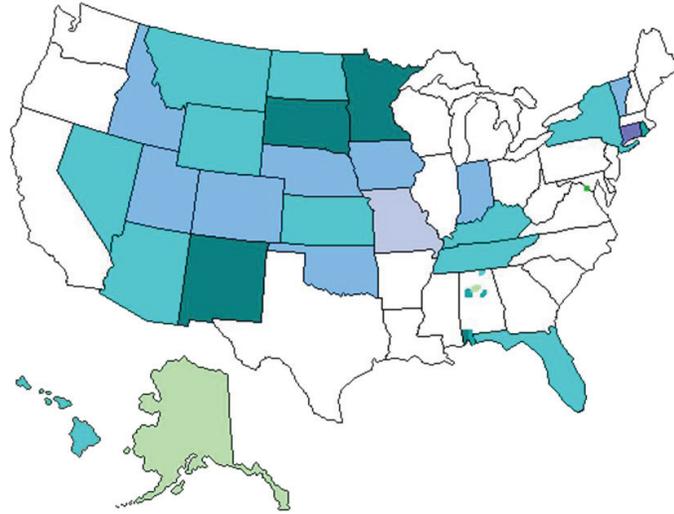
1970s



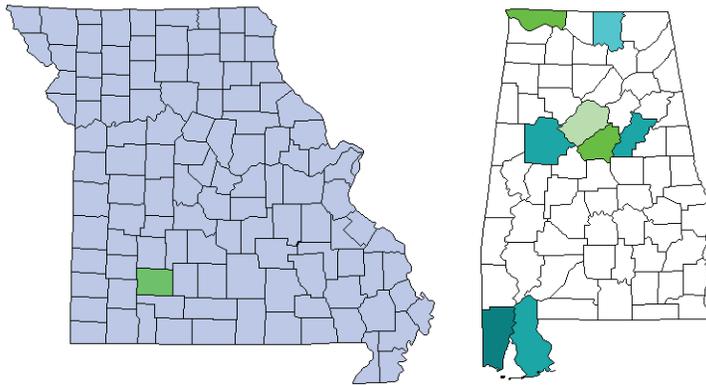
1980s



1990s



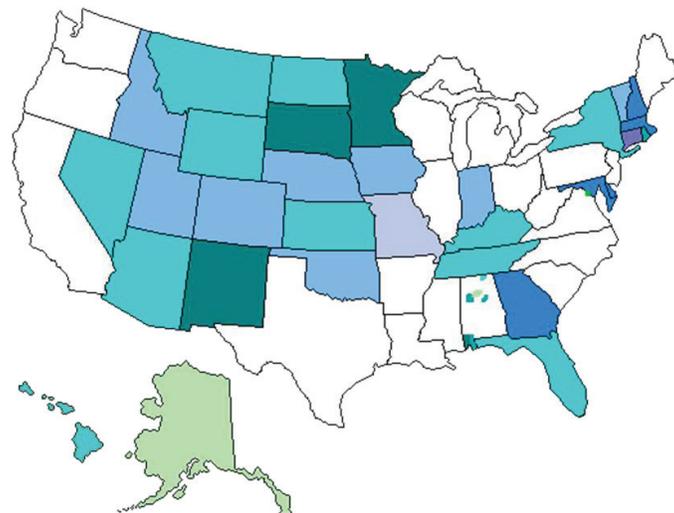
2008 ELECTIONS



MISSOURI

ALABAMA

JUDICIAL MERIT SELECTION TODAY



Appendix B: Existing Merit Selection Systems

CHARACTERISTICS OF MERIT SELECTION PLANS: SCOPE OF THE PLANS

State/Jurisdiction	Year established	Level of court	Legal basis of plan	Type of vacancy	Number of commissions	Number of commissioners
Alabama						
Baldwin County	1999	Circuit Court District Court	CA	Interim	1	5: 1L; 3N; 1J
Jefferson County ¹	1950	Circuit Court	CA	Interim	1	5: 2L; 2N; 1J
Lauderdale County	2008	Circuit Court District Court	CA	Interim	1	5: 2L; 3E
Madison County	1974, revised 1996	Circuit Court District Court	CA	Interim	1	9: 2L; 6N; 1J
Mobile County	1982	Circuit Court District Court	CA	Interim	1	5: 2L; 2N; 1J
Shelby County	2008	Circuit Court District Court	CA	Interim	1	5: 2L; 2N; 1J
Talladega County	1996	Circuit Court District Court	CA	Interim	1	5: 1L; 3N; 1J
Tuscaloosa County	1990, revised 2002	Circuit Court District Court	CA	Interim	1	9: 5L; 3NL; 1J
Alaska						
	1959	Supreme Court	C	Initial and Interim	1	7: 3L; 3N; 1J
	1959	Superior Court	C	Initial and Interim		
	1980, amended 1985	Court of Appeals	S	Initial and Interim		
	1959	District Courts and Magistrates	S	Initial and Interim		
Arizona						
	1974, amended 1992	Supreme Court Court of Appeals	C	Initial and Interim	1	16: 5L, 10NL, 1J
		Maricopa County Superior Court	C	Initial and Interim	1	
		Pima County Superior Court	C	Initial and Interim	1	
Colorado						
	1967	Supreme Court Court of Appeals District Court	C	Initial and Interim	1	14: 6L, 7NL, 1J
		County Court Denver Juvenile Court Denver Probate Court	C	Initial and Interim	22	8: 1J; at least 4NL; no more than 3L ²
			S	Initial and Interim		
Connecticut						
	1986	Supreme Court Appellate Court Superior Court	C	Initial and Interim	1	12: 6L, 6NL, 0J
Delaware						
	1977; revised 1978, 1985, 2001, 2009	All Courts, including Magistrates	EO	Initial and Interim	1	11: 5L, 4NL, 2E
D.C.						
	1973, amended 1977, 1984, 1986, 1996	Court of Appeals Superior Court	HR	Initial and Interim	1	7: 2NL, 2L, 2E, 1J
Florida						
	1972; amended 1976, 1984, 1996, 1998, 2011	Supreme Court District Court of Appeal Circuit Court County Court	C C C	Initial and Interim Initial and Interim Interim	1 5 20	9: 6L, 3E, 0J
Georgia						
	1972 to present	Supreme Court Court of Appeals Superior Court State Court	EO	Interim	1	20 ³

State/Jurisdiction	Year established	Level of court	Legal basis of plan	Type of vacancy	Number of commissions	Number of commissioners
Hawaii	1959, amended 1978, 1994	Supreme Court Intermediate Court of Appeals Circuit Court District Court ⁴	C	Initial, Interim, and Retention	1	9: 4L, 5NL, 0J
Idaho	1967; amended 1985, 1990	Supreme Court Court of Appeals District Court	S	Interim Interim Interim	1	7:2L, 3NL, 2J
Indiana	1970	Supreme Court Court of Appeals Tax Court	C	Initial and Interim	1	7: 1J, 3L, 3NL
Allen County	1985	Superior Court	S	Initial and Interim	1	7: 3L, 3NL, 1J
Lake County	1983	Superior Court	S	Interim	1	9: 4L, 4NL, 1J ⁵
St. Joseph County	1973	Superior Court	S	Initial and Interim	1	7: 3L, 3NL, 1J
Iowa	1962, 1963; amended 1976, 1983	Supreme Court	C	Initial and Interim	1	15: 7L, 7E, 1J ⁶
	1962, 1963; amended 1976, 1983	Court of Appeals	S	Initial and Interim		
	1962, 1963; amended 1976, 1983	District Court	C	Initial and Interim	14	11: 5L, 5E, 1J ⁶
	1983, amended 1986	District Associate Judges ⁶	S	Initial and Interim	99	6: 2L, 3E, 1J
	1983; amended 1989, 1990, 1998	Magistrate Judges ⁷	S	Initial and Interim		
Kansas	1958	Supreme Court	C	Initial and Interim	1	9: 5L, 4NL, 0J
	1975	Court of Appeals	S	Initial and Interim		
	1972	District Court (optional)	C	Initial and Interim	17	# of L's / NL's varies according to judicial district; ⁸ 1J
Kentucky	1976	Supreme Court Court of Appeals Circuit Court District Court	C C	Interim Interim	1 56	7: 2L, 4NL, 1J
Maine⁹	2003	Supreme Judicial Court Superior Court		Initial and Interim	1	14L
Maryland	1970, revised 1974, 1979, 1982, 1987, 1988, 1991, 1995, 1999, 2003, 2007	Court of Appeals Court of Special Appeals District Court Circuit Court	EO EO	Initial and Interim Initial and Interim	1 16	17 9
Massachusetts	1970 to present	Appeals Court Trial Court	EO	Initial and Interim	1	21
Minnesota	1983, revised 1990, 1992	District Court Workers' Compensation Court of Appeals	S	Interim	1	13: up to 8L, at least 5NL, 0J ¹⁰

State/Jurisdiction	Year established	Level of court	Legal basis of plan	Type of vacancy	Number of commissions	Number of commissioners
Missouri	1940, revised 1976	Supreme Court	C	Initial and Interim	1	7: 3L, 3NL, 1J
City of St. Louis	1940, revised 1976	Court of Appeals Circuit Judge	C	Initial and Interim	1	5: 2L, 2NL, 1J
Greene County	2008	Associate Circuit Judge Circuit Judge	C	Initial and Interim	1	
Jackson County	1940, revised 1976	Associate Circuit Judge Circuit Judge	C	Initial and Interim	1	
St. Louis County	1976	Associate Circuit Judge Circuit Judge	C	Initial and Interim	1	
Clay & Platte Counties	1976	Associate Circuit Judge Circuit Judge	C	Initial and Interim	2	
Montana	1973, amended 1977, 1979, 1987, 1991, 1992, 1991	Supreme Court District Court	C	Interim	1	7: 2L, 4NL, 1J
	1987	Worker's Compensation Judge Chief Water Judge	S	Initial and Interim		
Nebraska	1962, amended 1972	Supreme Court Court of Appeals District Court County Court Juvenile Court Worker's Compensation Court	C S C S S S	Initial and Interim Initial and Interim Initial and Interim Initial and Interim Initial and Interim Initial and Interim	7 6 12 4 ¹¹ 3 1	9: 4L, 4NL, 1J
Nevada	1976	Supreme Court District Court	C	Interim	1 1 ¹²	7:3L, 3NL, 1J 9:4L, 4NL, 1J
New Hampshire	2000, 2005	Supreme Court Superior Court District Court Probate Court	EO	Initial and Interim	1	11: 6L, 5NL
New Jersey	2006, amended 2010	Supreme Court	EO	Initial and Interim	1	7 ¹³
New Mexico	1988	Supreme Court Court of Appeals	C	Initial and Interim	1	14: 8L, 3NL, 3J ¹⁴
	1988	District Court Metropolitan Court (Bernalillo County)	C C	Initial and Interim Initial and Interim	13 1	14: 8L, 3NL, 3J ¹⁴ 14: 8L, 3NL, 3J ¹⁴
New York	1977	Court of Appeals	C	Initial and Interim	1	12: 4L, 4NL, 4E, 0J
	1975 to present	Appellate Div. of the Supreme Court Supreme Court Court of Claims County Court Surrogate's Court Family Court	EO EO EO EO	Initial and Interim Interim Initial and Interim Interim	4 1 4	13 13 14
New York City	1978 to present	Criminal Court Family Court Civil Court	EO	Initial and Interim Interim	1	19
North Dakota	1976; amended 1998	Supreme Court District Court	C	Interim	1 1	6: 3L/J, 3NL 9: 3L/J, 3NL, 3E ¹⁵

State/Jurisdiction	Year established	Level of court	Legal basis of plan	Type of vacancy	Number of commissions	Number of commissioners
Oklahoma	1967, amended 2010	Supreme Court	C	Initial and Interim	1	15: 6L, 9NL, 0J
	1987, amended 1996	Court of Criminal Appeals	S	Initial and Interim		
	1980, amended 2001	Court of Civil Appeals	S	Interim		
	1977	District Court Workers' Compensation Court	S S	Initial and Interim		
Rhode Island	1994	Supreme Court Superior Court Family Court District Court Worker's Compensation Court Administrative Adjudication Court	C	Initial and Interim	1	9: 4L, 4NL, 1E 0J
South Dakota	1980	Supreme Court Circuit Court	C	Initial and Interim Interim	1	7: 3L, 2NL, 2J
Tennessee	1971; amended 1974, 1986, 1994, 1999, 2001	Supreme Court Court of Criminal Appeals	S	Initial and Interim	1	17: At least 10L; at least 1N
	2009 1994	Court of Appeals Trial Courts	S S	Interim		
Utah	1967, amended 1985, 1992, 1994, 2010	Supreme Court Court of Appeals	C	Initial and Interim	1	7: 2L, 2NL, 2E, 1J
		District Court Juvenile Court	C C	Initial and Interim	8	7: 2L, 2NL, 2E, 1J
Vermont	1967; amended 1969, 1971, 1975, 1979, 1985	Supreme Court Superior Court District Court	C	Initial and Interim	1	11: 3L, 6NL, 2E
West Virginia	2010	Supreme Court of Appeals Circuit Court Family Court	S	Interim	1	11: 6L, 4NL, 1E ¹⁵
Wisconsin¹⁷	2003	Supreme Court Court of Appeals Circuit Court	EO	Interim	7	9L
Wyoming	1973	Supreme Court District Court Circuit Court	C	Initial and Interim	1	7: 3L, 3NL, 1J ¹⁸

C = Constitutional
S = Statutory
EO = Executive Order
HR = Home Rule

L = Lawyer
NL = Non-lawyer
E = Either Lawyer or Non-lawyer
J = Judge

1. **Alabama (Jefferson County).** The Jefferson County Commission nominates candidates for vacancies in the Birmingham Division only.
2. **Colorado.** In judicial districts with populations greater than 35,000, there must be three lawyer and four non-lawyer members. In judicial districts with populations of 35,000 or less, there must be at least four non-lawyer members; a majority vote of the governor, the attorney general, and the chief justice determines how many of the remaining three members must be lawyers.
3. **Georgia.** Under an Executive Order signed on January 10, 2011, Governor Nathan Deal appointed 20 members to the Commission, although there are no provisions that explicitly require 20 members.
4. **Hawaii.** The chief justice makes appointments to the district courts.
5. **Indiana (Lake County).** Two lawyer and two non-lawyer members must be men; two lawyer and two non-lawyer members must be women; at least one lawyer and one non-lawyer member must be a minority.
6. **Iowa.** The mandatory ratio of lawyers to non-lawyers is not specified; traditionally, the governor appoints only non-lawyers and the bar elects only lawyers. No more than a simple majority of members appointed by the governor may be of the same gender, and the bar must alternate between electing male and female members.
7. **Iowa.** District judges appoint district associate judges from lists of nominees recommended by the county magistrate appointing commission. The county magistrate appointing commission appoints magistrates.
8. **Kansas.** The number of commission members varies with the number of counties in each judicial district; however, there must be an equal number of lawyers and non-lawyers on each commission.
9. **Maine.** Governor Baldacci established the Judicial Selection Committee to “advise [him] about matters related to judicial appointments and recommend candidates to fill vacancies.” Members include a representative from the attorney general’s office and practicing attorneys.
10. **Minnesota.** There are nine commission members who serve “at-large” to fill any district court or workers’ compensation court of appeals vacancies. In addition, there are four commission members—two lawyers and two non-lawyers—appointed from the district in which the vacancy exists.
11. **Nebraska.** The district court judicial nominating commissions also nominate county court judges, except in Districts 1, 3, 4, and 10, in which there are separate county and district judicial nominating commissions.
12. **Nevada.** Nominations for district court vacancies are made by temporary commissions that are assembled as each vacancy occurs and exist only until nominations have been submitted to the governor. These temporary commissions consist of members of the permanent commission and one lawyer and one non-lawyer resident of the judicial district in which the vacancy occurs.
13. **New Jersey.** Governor Christie’s 2010 Executive Order 32 states that the Commission will be comprised of 7 members, with no fewer than 3 former judges. The Commission may include lawyers, but shall not include any lawyer serving as a member of the State Bar Association’s Judicial and Prosecutorial Appointments committee.
14. **New Mexico.** The president of the state bar and the judges on the commission are authorized to make the minimum number of additional appointments of members of the state bar as is necessary for equal representation on the commission of the two largest political parties.
15. **North Dakota.** When a vacancy occurs on the district court, the governor, chief judge, and president of the state bar each appoint an additional temporary member, who may or may not be a lawyer, from the judicial district in which the vacancy occurs; these members serve until the vacancy is filled.
16. **West Virginia:** The governor (or the governor’s designee), the President of the West Virginia State Bar, and the Dean of the West Virginia University College of Law serve *ex officio*.
17. **Wisconsin.** Pursuant to Executive Order 29, Governor Walker’s Advisory Council on Judicial Selection reviews applications for interim judicial vacancies and recommends qualified candidates. All members are appointed by the governor and serve 12 month terms. The number of commissioners is not outlined in the Executive Order. The governor is not bound by the council’s recommendations.
18. **Wyoming.** When a vacancy occurs on a district or circuit court, and that district or county is not represented on the commission, one lawyer and one non-lawyer from that district or county are appointed as temporary, nonvoting advisors to the commission.

Appendix C: Letter to Invite Participation

ADVOCATING INTEGRITY IN
AMERICAN JUSTICE

10 August 2011

Dear Commissioner:

The American Judicature Society (AJS) is conducting a survey of judicial nominating commissioners. This survey is an attempt to learn more about the policies, practices, and procedures of judicial nominating commissions from those who know them best: the commissioners. Your service on a judicial nominating commission provides you with a unique opportunity to help us understand the workings of these commissions. To this end, we invite you to take 10-15 minutes of your time to complete the American Judicature Society's 2011 Survey of Judicial Nominating Commissioners. The survey is available online: http://www.ajs.org/selection/jnc/jnc_survey.asp. If you do not have internet access to complete the survey, please call us, and we will send you the survey in printed form.

The American Judicature Society, a nonpartisan, nonprofit membership organization, works to maintain the independence and integrity of the courts and to increase public understanding of the justice system. For nearly a century, the American Judicature Society has conducted research on issues regarding judicial selection and judicial administration.

Over the years, AJS has had the opportunity to speak with hundreds of nominating commissioners, many of whom have expressed an interest in learning more about other commissions and/or improving their own commission. Given these requests, AJS has periodically surveyed nominating commissioners and used the results to inform commissioners about the practices and procedures of commissions nationwide.

The results of this survey will be used to revise the American Judicature Society's Handbook for Judicial Nominating Commissioners, to update and evaluate AJS's Model Judicial Selection Provisions, and to enhance AJS's Judicial Nominating Commission Network. To learn more about these publications and the programs and services we offer to judicial nominating commissioners, please visit our website.

Your privacy is very important to us, and all responses to the survey will be anonymous. Should you have any questions about the survey or AJS, feel free to contact Dr. Rachel Paine Caufield, Research Fellow in the American Judicature Society's Hunter Center for Judicial Selection, at jncsurvey@ajs.org or toll free at (800) 626-4089. Thank you in advance for your participation in the survey.

Sincerely,



Seth S. Andersen
Executive Director



AMERICAN JUDICATURE SOCIETY
THE OPPERMAN CENTER AT DRAKE UNIVERSITY
2700 UNIVERSITY AVENUE | DES MOINES, IA 50311
800-626-4089 | FAX 515-279-3090 | [AJS.ORG](http://ajs.org)

Appendix D: Survey Instrument

AMERICAN JUDICATURE SOCIETY SURVEY OF JUDICIAL NOMINATING COMMISSIONERS

Welcome to the 2011 Survey of Judicial Nominating Commissioners! Please answer the following questions thinking about your service on your current judicial nominating commission. If you serve on multiple commissions, please answer the questions thinking about the commission that has most recently reviewed applications.

Of course, your privacy is very important to us, and all responses to the survey will be anonymous. Should you have any questions about the survey or AJS, feel free to contact Dr. Rachel Paine Caufield, Research Fellow in the American Judicature Society's Hunter Center for Judicial Selection, at jncsurvey@ajs.org or toll free at (800) 626-4089. Thank you in advance for your participation in the survey.

1. How long have you served on your current commission?

Amount of Time Served: Number of Years: _____ Number of Months: _____

2. Since joining your current judicial nominating commission, how many times have you participated in the review of applicants to fill a judicial vacancy?

- I have not yet participated in the selection of candidates 1-3 times 4-6 times 7-10 times 11-15 times
 16-20 times 21-25 times More than 25 times

3. Have you ever been a member of another judicial nominating commission?

- Yes No

4. Are you currently a member of multiple judicial nominating commissions?

- Yes No

5. Who appointed you to your current commission?

- Governor Bar Association State Legislature or State Legislator
 I serve ex officio or by virtue of my professional position Other (please specify) _____

6. Were you confirmed by the state legislature before you began serving on your current commission?

- Yes No

7. For which court(s) does your commission review applicants? (Indicate all that apply)

- Trial court(s) Intermediate appellate court State Supreme Court Other (please specify) _____

8. Which geographic area(s) does this include?

- Entire state One or more counties One or more municipalities Other (please specify) _____

9. Does your commission review applications for all judicial vacancies within its jurisdiction, or does the commission only review applications to fill interim vacancies?

- All judicial positions Interim vacancies only Don't know

10. Does your commission have written operating procedures?

- Yes No Don't know

11. Are members of your commission bound by written ethics provisions, such as prohibitions on political activity, requirements of confidentiality, and rules governing conflicts of interest?

- Yes No Don't know

12. When a judicial vacancy occurs, which of the following procedure(s) does your commission use to recruit applicants? (Indicate all that apply)

- | | |
|---|---|
| <input type="checkbox"/> Publication of notice in newspapers | <input type="checkbox"/> Recommendations from public officials |
| <input type="checkbox"/> Publication of notice online | <input type="checkbox"/> Recommendations from prominent lawyers |
| <input type="checkbox"/> Publication of notice in state or local bar publications/websites | <input type="checkbox"/> Word of mouth |
| <input type="checkbox"/> Publication of notice in minority bar association publications/websites | <input type="checkbox"/> Recommendations from labor unions, business associations, chambers of commerce, and/or other nonlegal organizations. |
| <input type="checkbox"/> Publication of notice in specialty bar association publications/websites | <input type="checkbox"/> Personal recruitment by members of the commission |
| | <input type="checkbox"/> Other (please specify) |

13. For a typical vacancy, how many applications does your commission receive?

- | | | | |
|---|---|--|---|
| <input type="checkbox"/> 1-5 Applications | <input type="checkbox"/> 6-10 Applications | <input type="checkbox"/> 11-15 Applications | <input type="checkbox"/> 16-20 Applications |
| <input type="checkbox"/> 21-25 Applications | <input type="checkbox"/> 25-30 Applications | <input type="checkbox"/> More than 30 Applications | |

14. Indicate how important each of the following sources of information are in your commission's review of an applicant. If your commission does not utilize a particular source of information, indicate N/A.

	Not very important	Somewhat important	Moderately important	Very important	Absolutely essential	N/A
Review of past professional work (including legal opinions, briefs, law review articles)	<input type="checkbox"/>					
Interviews with members of the bench and bar	<input type="checkbox"/>					
Solicitation of written recommendations	<input type="checkbox"/>					
Review of candidate questionnaires	<input type="checkbox"/>					
Review of records of disciplinary bodies	<input type="checkbox"/>					
Interviews with the candidates	<input type="checkbox"/>					
Review of public input	<input type="checkbox"/>					
Review of biographical data	<input type="checkbox"/>					
Background check (criminal and/or tax)	<input type="checkbox"/>					
Other (please specify) _____						

15. Are the names of applicants available to the public?

- Yes No Don't know

16. Are applicant files (or portions of applications) available to the public?

- Yes No Don't know

17. Does your commission conduct formal candidate interviews?

- Yes No Don't know

18. Outside of formal interviews, do commissioners meet with and/or interview applicants individually?

- Yes No Don't know

19. Thinking about the formal candidate interviews your commission conducts, does the commission interview:

- All candidates Candidates who meet minimum requirements
 Only the candidates selected for final review Don't know

20. Who participates in the formal candidate interviews conducted by your commission?

- All members of the commission at a formal A subcommittee of the commission
 Individual members of the commission Don't know Other (please specify) _____

21. How long do formal candidate interviews typically last?

- 15 minutes or less 16-30 minutes 31-45 minutes
 46-60 minutes More than one hour Don't know

22. Are applicant interviews open to the public?

- All interviews are open to the public Some applicant interviews are open to the public
 All applicant interviews are private Don't know

23. Are commission deliberations open to the public?

- Yes, deliberations are open to the public No, deliberations are not open to the public
 No, deliberations are not open to the public, but a record of the deliberations is available to the public Don't know

24. Which statement best describes your commission's voting procedures?

- My commission always uses the same set of voting procedures for each vacancy My commission has a set of voting procedures that are usually used, but the commission sometimes uses alternative voting rules
 My commission does not have a standard set of voting procedures Don't know

25. Thinking about your commission's voting procedures, how much support is needed for a candidate to be nominated?

- Majority Support Support of more than a majority of commissioners, but less than unanimous support
 Unanimous (or near-unanimous) support Other (please specify)

26. How does your commission usually vote?

- Secret ballot Voice vote Don't know Other (please specify) _____

27. Are commission votes a matter of public record?

Yes No Don't know

We would like to hear from you about your experiences as a member of a judicial nominating commission. We'd first like to ask you some questions about your perceptions of your commission and the work it does.

28. Thinking about your time on a judicial nominating commission, please rate your agreement with the following statements:

	Strongly Disagree	Disagree	Neither agree nor Disagree	Agree	Strongly Agree
My commission's decision-making process is fair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My work as a member of the commission promotes fair and impartial courts.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The individuals that my commission recommends are more qualified than those who would be chosen through popular elections.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My work on the commission helps to put highly-qualified judges on the bench.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My commission's work promotes diversity on the bench better than popular elections.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The time and energy that I devote to the nominating commission is worthwhile.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My commission nominates individuals who would be unlikely to reach the bench through popular elections.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judicial nominating commissions are a better way to select judges than popular elections.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My commission provides an appropriate check on the governor's (or other appointing authority's) ability to select judges.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judicial nominating commissions help to insulate the process of choosing judges from partisan politics.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My commission nominates judges that represent the governor's (or other appointing authority's) views	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

29. Thinking about your commission and its decisionmaking process, please rate your agreement with the following statements:

	Strongly Disagree	Disagree	Neither agree nor Disagree	Agree	Strongly Agree
Members of my commission usually know an applicant's ethnic or racial background before meeting or interviewing them.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My commission makes an effort to submit a diverse slate of candidates to the governor (or other appointing authority).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Members of my commission usually know an applicant's sex (male or female) before meeting or interviewing them.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Diversity in judges' sexual orientations or gender identities is an important consideration in my commission's decision to nominate an applicant.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gender diversity on the bench is an important consideration in my commission's decision to nominate an applicant.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Members of my commission usually know an applicant's sexual orientation and/or gender identity before meeting or interviewing them.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Racial and/or ethnic diversity on the bench is an important consideration in my commission's decision to nominate an applicant.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

30. Thinking about your commission and its decisionmaking process, please rate your agreement with the following statements:

	Strongly Disagree	Disagree	Neither agree nor Disagree	Agree	Strongly Agree
My commission purposely nominates some candidates who do not meet the governor's (or other appointing authority's) desired criteria.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My commission tries to nominate candidates who meet the governor's (or other appointing authority's) desired criteria.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The political preferences of the governor (or other appointing authority) have no effect on the decisions my commission makes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
When compiling the list of nominees, members of my commission often know which candidate the governor (or other appointing authority) will select from the list of nominees.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Upon initial review of applications, members of my commission typically know which applicant(s) the governor (or other appointing authority) would prefer to select.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My commission chooses its nominees based on their professional qualifications rather than based on political calculations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Political considerations, such as applicants' party affiliations, play a role in my commission's nomination process.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Members of my commission usually know applicants' party affiliations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Members of my commission typically know what attributes the governor (or other appointing authority) desires in a judge.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

31. Thinking about your commission and its decisionmaking process, please rate your agreement with the following statements:

	Strongly Disagree	Disagree	Neither agree nor Disagree	Agree	Strongly Agree
Nonlawyer members of the commission seem to respect and value the contributions of other nonlawyer members of the commission.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lawyer members of the commission seem to respect and value the contributions of nonlawyer members of the commission.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Members of my commission participate equally in deliberations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Nonlawyer members of the commission seem to respect and value the contributions of lawyer members of the commission..	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Commission meetings and deliberations are dominated by a few commissioners.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lawyer members of the commission seem to respect and value the contributions of other lawyer members of the commission.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

32. Thinking about your commission and its decisionmaking process, please rate your agreement with the following statements:

	Strongly Disagree	Disagree	Neither agree nor Disagree	Agree	Strongly Agree
My commission has enough resources (e.g. time, staff, etc.) to conduct its work effectively.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**33. Next, we would like to hear from you about the criteria you use to evaluate applicants.
Please indicate how important each of the following factors is to you when reviewing an applicant.**

	Not very important	Somewhat important	Moderately important	Very important	Absolutely essential	N/A
Recommendations or ratings from public officials.	<input type="checkbox"/>					
Applicant's prior service as a public defender						
Recommendations or ratings from bar groups	<input type="checkbox"/>					
Applicant's prior experience holding office in a political party	<input type="checkbox"/>					
Applicant's physical health	<input type="checkbox"/>					
Recommendations or ratings from labor unions	<input type="checkbox"/>					
Recommendations or ratings from civil rights groups	<input type="checkbox"/>					
Applicant's party affiliation	<input type="checkbox"/>					
Applicant's written communication skills	<input type="checkbox"/>					
Applicant's professional reputation	<input type="checkbox"/>					
Applicant's participation in civic or community affairs	<input type="checkbox"/>					
Applicant's race or ethnicity	<input type="checkbox"/>					
Amount of academic or teaching experience	<input type="checkbox"/>					
Amount of appellate experience	<input type="checkbox"/>					
Number of years applicant has practiced law	<input type="checkbox"/>					
Applicant's law school record (including their academic performance and the prestige of the law school)	<input type="checkbox"/>					
Honors and distinctions applicant has received as an attorney, judge, and/or magistrate	<input type="checkbox"/>					
Applicant's oral communication skills	<input type="checkbox"/>					
Applicant's gender	<input type="checkbox"/>					
Applicant's prior experience as an elected or appointed public official	<input type="checkbox"/>					
Applicant's mental health	<input type="checkbox"/>					
Amount of trial experience						
Applicant's age	<input type="checkbox"/>					
Applicant's sexual orientation or gender identity	<input type="checkbox"/>					
Applicant's prior service as a judge or magistrate	<input type="checkbox"/>					

33. (continued)

	Not very important	Somewhat important	Moderately important	Very important	Absolutely essential	N/A
Applicant's pro bono legal service	<input type="checkbox"/>					
Recommendations or ratings from law enforcement	<input type="checkbox"/>					
Recommendations or ratings from non-legal professional and business associations	<input type="checkbox"/>					
Recommendations or ratings from other commission members	<input type="checkbox"/>					
Other (please specify) _____						

34. Is there anything else you'd like to share about the criteria you use to evaluate applicants for judicial position?

35. Thinking about the criteria used to evaluate applicants, please indicate your agreement with the following statements.

	Strongly Disagree	Disagree	Neither agree nor Disagree	Agree	Strongly Agree
In general, there is little debate about the criteria that will be used to evaluate applicants.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The attorney members of my commission seem to share my evaluative criteria.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The nonattorney members of my commission seem to share my evaluative criteria.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Most of the applicants my commission recommends are supported by nearly all of the commissioners.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Most of the applicants my commission recommends receive only the minimum amount of support necessary to be nominated.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

36. Is there anything else you'd like to share about the criteria you use to evaluate applicants for judicial position?

37. In what year were you born?

Year: _____

38. In which state does your commission operate?

State: _____

39. Which of the following best describes your status as a member of your judicial nominating commission?

Judge Attorney Nonattorney

40. Which of the following best describes the court upon which you sit?

Limited jurisdiction trial court General jurisdiction trial court Intermediate appellate court
 State supreme court I am not a judge

41. What is your race?

White Black or African American American Indian
 Asian or Pacific Islander Prefer not to answer Other (please specify) _____

42. Are you of Hispanic, Latino, or Spanish origin?

Yes No Prefer not to answer

43. What is your gender?

- Male Female Prefer not to answer

44. Do you consider yourself to be

- Heterosexual or straight Gay or lesbian Bisexual Prefer not to answer

45. Have you ever been elected or appointed to public office? (Indicate all that apply)

- Yes, I have held national office Yes, I have held statewide office
 Yes, I have held local office No, I have not held public office

46. Have you ever held office in a political party? (Indicate all that apply)

- Yes, I have held national party office Yes, I have held statewide party office
 Yes, I have held local party office No, I have not held party office

47. What is your political affiliation?

- Strong Democrat Moderate Democrat Independent leaning Democrat
 Independent Independent leaning Republican Moderate Republican
 Strong Republican Prefer not to answer Other (please specify)