

JUDICIAL IMPARTIALITY THE NEXT STEPS



A PROGRESS REPORT
JANUARY 2004

A report on the activities
through 2003 of the
JUDICIAL QUALIFICATIONS & TERM LENGTHS
CAMPAIGN FINANCE DISCLOSURE
and VOTER EDUCATION & PUBLIC FUNDING
WORK GROUPS

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Judicial Impartiality: The Next Steps was convened by:

The Ray C. Bliss Institute of Applied Politics
The John Glenn Institute for Public Service and Public Policy
League of Women Voters of Ohio
Chief Justice Thomas J. Moyer, Supreme Court of Ohio
The Ohio State Bar Association

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INTRODUCTION

On March 6, 2003, 33 Ohioans gathered in Columbus to discuss Ohio's judicial selection system. Participants in **Judicial Impartiality: The Next Steps** identified several subjects that merited additional discussion and consideration. These subjects are summarized in the May 2003 report, *A Call to Action: A Preliminary Report on Forum Proceedings* available at <http://www.thenextsteps.org/report.pdf>.

Following the March 6 forum and issuance of the preliminary report, the five convening individuals and organizations established four work groups to address subjects of judicial qualifications, judicial term lengths, voter education and public financing, and campaign finance disclosure. These work groups consisted of individuals who participated in or attended the forum and citizens who volunteered following the event. Each work group was tasked with the responsibility of reviewing specific topics that were discussed at the forum, performing relevant research, and developing specific recommendations for the "next steps" to be taken in promoting judicial independence and impartiality in Ohio.

Since May 2003, each work group has met to discuss the issues assigned to it. Because of the related nature of the issues assigned to the judicial qualifications and term lengths work group, those work groups met together and have presented joint recommendations. Each work group has prepared a written report summarizing its discussions and specific recommendations. These reports have been reviewed by the conveners and consolidated into this report.

The purpose of this report is to update the public on the work that has occurred since March 6 and to solicit expressions of support for and other comments on the specific recommendations developed by the work groups. Your reaction to this report can be submitted to the conveners by e-mail at info@thenextsteps.org.

We look forward to your comments and appreciate your continued interest in judicial impartiality.

JUDICIAL QUALIFICATIONS AND TERM LENGTHS WORK GROUP

Deborah Merritt, John Glenn Institute for Public Service and Public Policy, *chair*

The Judicial Qualifications and Term Lengths Work Group met on four occasions during June through October 2003. The recommendations of the combined work group are set forth below.

Length of Terms of Judicial Office

Under current law, all Ohio judges are elected to serve six-year terms of office. The work group believes lengthening the terms of judicial office is an appropriate means of promoting judicial independence while ensuring continued accountability to the public. Longer terms mean less-frequent elections and, therefore, less-frequent campaigning and fund-raising. Together with other proposals from the work group, longer terms of office also should aid in attracting a broader pool of candidates who might otherwise be reluctant to abandon an established law practice for the uncertainty of a relatively short term of elective office.

The work group recommends the following regarding length of judicial terms of office:

<u>COURT</u>	<u>CURRENT</u>	<u>PROPOSED</u>
County and part-time municipal	Six years	Eight years ¹
Full-time municipal and common pleas	Six years	10 years ¹
Court of appeals and Supreme Court	Six years	12 years

The group agreed that no change in term lengths should take effect before the 2005 election.

¹ Language in the Ohio Constitution may preclude terms longer than six years for municipal and county court judges. We are exploring the impact of this language. If the language does preclude longer terms, the work group would propose longer terms only for common pleas judges (10 years), appellate judges (12 years) and Supreme Court justices (12 years).

Judicial Qualifications — Years of Practice

Currently, a person may be appointed to or run for judicial office if he or she:

- Is an attorney admitted to the practice of law in Ohio
- Has engaged in the practice of law in Ohio or served as a judge of a federal or state court of record for a total of at least six years preceding appointment or commencement of the term
- Is a resident of the territory to be served by the court.

The work group believes these minimum requirements are, in many cases, below the requirements imposed in other states, and should be enhanced to ensure the selection of more experienced judges. Subject to the limitations set forth below, the work group recommends the following regarding the “years of practice” qualification for election or appointment to judicial office:

COURT	CURRENT	PROPOSED
Municipal and county	Six years	Six years
Common pleas	Six years	10 years
Appeals	Six years	12 years
Supreme Court	Six years	15 years

In all cases, the work group recommends eliminating the requirement that the practice of law occur “in this state.” The “practice of law” would be defined in the statute as “any definition of the practice of law set forth in decisions of the Supreme Court or any rules that the court might adopt.”

In addition to satisfying the “practice of law” requirement, elected or appointed judges would have to satisfy the following two criteria:

- Be admitted to the practice of law in Ohio
- Be in good standing and registered for active status with the Supreme Court of Ohio.

The work group discussed but rejected a proposal to include a more rigorous definition of the practice of law, such as identifying specific areas that would or would not constitute the practice of law. Many members believed that such a list would be interpreted as exclusive and would lead to challenges to qualifications of candidates that would have to be resolved by county boards of election or the courts.

Lastly, the work group suggests that counties with a population of less than 20,000 be permitted to retain the current six-year qualification for common pleas judges through a vote of the electors in each county. A local option was considered advisable for these five counties given the relatively small number of potential attorneys in those counties who might be eligible for election or appointment to judicial office.

Judicial Qualifications — Mandatory Training

The work group strongly endorses a requirement that all judicial candidates be required to complete a prescribed training course designed specifically for prospective judges. The mandatory training would consist of a minimum of 40 hours of course work completed, in most cases, during a period not to exceed two years prior to filing nominating petitions for judicial office. The courses would be developed and offered by the Supreme Court's Judicial College and should include courses in rules of procedure, constitutional law, judicial demeanor and decorum, judicial ethics and court administration.

Although the work group believes many candidates should be able and required to complete the mandatory course work before filing nominating petitions, it recognizes the wide variety of circumstances that lead to a judicial vacancy and potential candidacy. Rather than mandating the completion of the training prior to the filing of nominating petitions, the work group suggests that candidates be given a 45-day period following the filing deadline to complete the training. Judges who are appointed by the governor to fill a vacancy would be required to complete the training within the later of one year after their appointment or filing of nominating petitions to appear on the ballot. Similarly, judges who are first elected in an election for an unexpired term that occurs less than six months before the filing deadline for the next regular election do not have to fulfill the training requirement until one year after their initial election.

The work group also discussed and rejected two additional provisions related to the mandatory training. First, some thought was given to allowing a full or partial exemption from the training requirement for attorneys who are certified as specialists. This proposal was narrowly rejected, in part because of the limited number of areas of practice certified as specialty areas and the possibility that a certified specialty area would not relate at all to the types of cases over which the judge would preside. Second, some members proposed that the training requirement be coupled with an examination to ensure something more than passive course attendance on the part of attendees. This proposal was not adopted, in part, due to concerns over the details of developing and

administering the examination and based on a belief that the courses would include live instruction and elements of active participation.

Judicial Qualifications — Judicial Selection Commissions

The group reviewed the Report from the Commission on State Judicial Selection Standards of the American Bar Association, which recommends using judicial qualifications commissions, but concluded that this approach was unlikely to win support in Ohio at this time.

Judicial Compensation — Salary

The work group was unanimous in its view that current compensation for Ohio judges is unsatisfactory and serves as a deterrent to attracting qualified candidates who might otherwise wish to seek judicial office. The work group also believes a mechanism should be in place whereby Ohio judges receive periodic and appropriate pay raises without having to lobby the General Assembly for salary adjustments.

The work group offers the following proposals for legislative consideration:

- The General Assembly could raise current salaries to a specified level and add a statutory annual cost-of-living adjustment to those salaries. The work group proposes establishing base salaries at a percentage of the salary established for comparable federal judges, with municipal court judges receiving 95 percent of the salary established for common pleas judges. Under this approach, there would be no continuing statutory reference to federal salaries. Rather, the federal salaries would simply be used as a method of establishing the base salary. The annual cost-of-living adjustment would be designated in the statute or pegged to some acceptable index, as is the case under current law.
- The General Assembly would establish the salary for Ohio judges at a percentage of the salary of comparable federal judges and use this “nexus” on a continuing basis. Salaries for municipal court judges would, again, be set at 95 percent of salaries for common pleas judges. Any increase in federal judicial salaries approved by Congress would result in an automatic increase in state judicial salaries.

A majority of the work group expressed a preference for the latter approach, but recognizes the former may be more likely to gain acceptance by the General Assembly. The latter approach could be made more palatable, and perhaps constitutional, by giving the General Assembly a certain period of time to reject the pay raises that would result from federal action. The work group also recognized that tying state judicial salaries to a percentage of existing or proposed federal judicial salaries would require significant initial increases and that those increases might have to be phased-in over a period of years.

The group briefly discussed judicial compensation commissions, which have been successful in some states, but concluded that this approach has not worked in Ohio.

Judicial Compensation — Senior Status

Several members of the group expressed enthusiasm for a revised senior status system that would allow judges to elect senior status between the ages of 65 and 70. Once on senior status, they would receive 75 percent of their active status pay while performing up to 50 percent of their prior workload. Some group members endorsed this system as a way of attracting more qualified candidates to the judiciary while also developing an experienced cadre of senior judges. At the same time, group members expressed concern over the cost, and some noted that many judicial candidates retain pension rights from their previous careers. A system of this nature might also require changes in the constitution, which seems unlikely.

Judicial Compensation — Other Items

The work group also discussed the following compensation proposals without adopting specific recommendations:

- Reducing the number of years of service required of judges before they become eligible for full retirement benefits
- Increasing the per diems for travel related to service as a visiting judge
- Providing better life insurance benefits for retired judges.

CAMPAIGN FINANCE DISCLOSURE WORK GROUP

Terry McCoy, League of Women Voters of Ohio, *chair*

The Campaign Finance Disclosure Work Group met four times between May and September, and worked assiduously to reconcile differing viewpoints. Agreement was reached on some modest disclosure possibilities, and these are outlined below. The major issue — whether state law should be amended to require the disclosure of the financiers of third-party “issue ads” — was deferred pending a decision by the U.S. Supreme Court on the constitutionality of the Bipartisan Campaign Finance Act. A decision upholding the constitutionality of that act was rendered in mid-December, and the work group is planning to reconvene in early 2004 to assess its impact and the possibility for further reforms in Ohio.

Campaign Finance Disclosure — Courts of Appeal

Intermediate appellate court candidates who raise more than \$10,000 during a reporting period should be required to file electronically through disk or e-mail so their contribution information can be available on the Internet before elections. The reporting periods are pre- and post-primary election and pre- and post-general election. Once the reporting threshold has been triggered, the candidates should continue to file electronically even if the campaign committee does not generate \$10,000 during the remaining filing periods. Candidates who are required to file reports electronically should also be required to file two-day business statement electronically. Any candidate for appeals court judge who does not trigger the filing threshold (or exceed \$10,000 during a reporting period) may file electronically through disk or e-mail. This change in disclosure would need to be accomplished legislatively.

Contribution information for intermediate appellate court candidates should be centrally warehoused with the Ohio secretary of state and available on its Web site. This includes candidates who do not file electronically. These contributions should be data-entered by the secretary of state and be made available within 10 business days. If all candidates for a particular term file electronically, the Ohio secretary of state will upload these contributions at the same time. This change in disclosure would need to be accomplished legislatively.

Intermediate appellate court candidates should be required to identify the employer of individuals of contributions more than \$100. Best effort should be eliminated and the candidate should require that contributors identify their law firms, rather than simply their occupation. Contributions that are unidentified should be held “in escrow” for a time period (perhaps three months). These

contributions could be deposited into a separate account and simply considered “frozen” until properly identified. If the candidate committees are unable to identify, these funds should be returned to the contributor or given to the Clients’ Security Fund. The Clients’ Security Fund was established by the Supreme Court and compensates clients who suffer financial loss as a result of attorney misconduct. This change in disclosure would need to be accomplished legislatively.

Attorneys or law firms that have pending matters or have been on the docket in the past 12 months must disclose this to the candidate to whom they are contributing. The candidate should then report this as part of the campaign filings. The Supreme Court of Ohio could make this change in disclosure through rule-making. The secretary of state would need to change the required forms for both paper and electronic filing of contribution reports.

The Supreme Court of Ohio should provide for enforcement of campaign disclosure criteria. Penalties for violating campaign finance regulations should be established by the court. This change in disclosure would need to be accomplished legislatively.

Campaign Finance Disclosure — Supreme Court

Candidates for the Supreme Court of Ohio should be required to identify the employer of individuals of contributions more than \$100. Best effort should be eliminated and the candidate should require that contributors identify their law firms, rather than simply their occupation. Contributions that are unidentified should be held in held “in escrow” for a time period (perhaps three months). These contributions could be deposited into a separate account and simply considered “frozen” until properly identified. If the candidate committees are unable to identify, these funds should be returned to the contributor or given to the Clients’ Security Fund. This change in disclosure would need to be accomplished legislatively.

Once the reporting threshold has been triggered, candidates should continue to file electronically even if their committees do not generate \$10,000 during the remaining filing periods. This change in disclosure would need to be accomplished legislatively.

Any contributions after the post-primary filing deadlines should be included in the June monthly report. Currently, candidate committees are not required to provide contribution information between the post-primary election filing and the beginning of the monthly filing. This is a short period of a few weeks but some

candidates wait until the pre-general election filing to provide this information. This change in disclosure would need to be accomplished legislatively.

Attorneys or law firms that have pending matters or have been on the docket in the past 12 months must disclose this to the candidate to whom they are contributing. The candidate should then report this as part of the campaign filings. The Supreme Court of Ohio could make this change in disclosure through rule-making. The secretary of state would need to change the required forms for both paper and electronic filing of contribution reports.

The Supreme Court of Ohio should provide for enforcement of campaign disclosure criteria. Penalties for violating campaign finance regulations should be established by the court. This change in disclosure would need to be accomplished legislatively.

Campaign Finance Disclosure — County Political Parties

Judicial candidates can only accept contributions from county political party committees if the funds are segregated or in a judicial account. To improve disclosure, county political party committees that receive more than \$25,000 during an election cycle to their state candidate accounts should file electronically through disk or e-mail so that these contributions can be available on the Internet before the election. Because most intermediate appellate court districts consist of multiple counties, contributions to intermediate appellate court candidates from county political party committees should be from the statewide candidate accounts. Requiring candidates to accept only from segregated funds can be accomplished through rule-making by the Supreme Court. The electronic filing of contributions to the Ohio secretary of state would need to be accomplished legislatively.

Contribution information to county political party state candidate accounts should be centrally warehoused with the Ohio secretary of state and available at its Web site. This includes statewide candidate accounts that did not reach the \$25,000 threshold and therefore did not file electronically. These contributions should be data-entered by the secretary of state and be made available within 10 business days. This change in disclosure would need to be accomplished legislatively.

VOTER EDUCATION AND PUBLIC FUNDING WORK GROUP

John Green, Ray Bliss Institute of Applied Politics, *chair*

The Voter Education and Public Funding Work Group had two very productive meetings in the summer of 2003. A consensus emerged on a voter guide on judicial races and a document was developed. There was also a consensus that further exploration of public financing of judicial campaigns was desirable and necessary. Accordingly, the next work group meeting will focus public financing options, including a review of information from other states.

The work group has had wide ranging discussions on the idea of an official voter guide for judicial elections and arrived at some recommendations, which are listed below.

It is worth noting that many members of the group would like to see the state of Ohio sponsor a voting guide for all statewide offices in Ohio. Others feel that such a proposal would be beyond the work group's purview.

However, there is agreement that a more limited voter guide for state Supreme Court candidates in 2004 would be worth pursuing. Such an effort could be thought of as a demonstration project that would lead to a more extensive voter guide in the future, including all judicial candidates or perhaps eventually all candidates.

What follows are a list of recommended parameters. Where relevant, the text first presents the consensus position of the group, and then ideas that might apply to a demonstration project for state Supreme Court candidates in 2004.

Administration

There was consensus that the office of the secretary of state should compile and disseminate the voter guide. This is the model that is used most successfully in other states. The secretary of state has expressed a willingness to assist in the development of a voter guide for the 2004 Supreme Court elections.

It was recognized that in 2004, it might be practical to have a special committee compile and disseminate the voter guide for state Supreme Court nominees. Such a special committee has been formed and will meet in early 2004. Members of this committee include a representative of the Ohio secretary of state, League of Women Voters, the Ohio State Bar Association, the Bliss Institute, and the Glenn Institute. Other groups may be invited to join the effort following this initial meeting.

Procedures

Ideally, the candidates included in the voter guide would submit information to the office of secretary of state when the candidates file to be on the ballot, either in the primary or the general election. This information would then be compiled in a timely fashion and sent back to the candidates for corrections. Most states with voter guide have elaborate sets of deadlines.

It was recognized that for 2004, a special committee might need to set deadlines and contact the candidates directly. This could be done for the primary, but certainly for the general election.

Contents

There was consensus that the following items be included in the guide:

1. *Description of the office sought.* A brief description of the office sought, including the duties, terms, and compensation. It was felt that such a description was especially important for judicial offices because the public knows little about such offices.
2. *Name and contact information.* The candidate's full name, plus information voters could use to contact the candidate for further information, such as the mailing address of the candidate's official campaign committee, telephone, fax, Web site, and e-mail. It was felt that this information should be required of all candidates (and sought by the compilers if the candidate does not reply).
3. *Basic background information.* City of residence; number of years of residence in Ohio; occupation; employer; education; date admitted to the bar; and legal/judicial experience. This material should be provided by the candidate and left blank if the candidate does not reply.
4. *Candidate statement.* A maximum of 300 words provided by the candidate on his or her qualifications, career, professional associations, community activities, family, and other matters the candidate regards as relevant. This material should be provided by the candidate and left blank if the candidate does not reply. The opinion was also expressed that background

information such as professional association, community activity, and legal/judicial experience be separate entries under #3 (above) so that the 300 words could allow for a full discussion of why the candidate is seeking the office, and his or her qualifications.

5. *Endorsements*: A list of groups, individuals, or institutions that have endorsed the election of the candidate. This material should be provided by the candidate and left blank if the candidate does not reply.
6. *Bar association ratings*: A list of ratings by bar associations. This material should be provided by the candidate and left blank if the candidate does not reply.

Dissemination

There was consensus on the following scope and timing of dissemination of the voter guide.

1. *Scope*. Ideally, a copy of the voter guide would be mailed to all households with registered voters in Ohio. It was recognized that a distribution of this magnitude might not be possible in a demonstration project in 2004.
2. *Publicity*. There was consensus that the distribution of the voter guide needs to be accompanied by extensive publicity. Notice in major newspapers and on radio and television was recommended. It was suggested that the voter guide could be placed on the secretary of state Web site (as in most states with voter guides). Further, it suggested that notice of the voter guide be made in the public service announcements made by the secretary of state to encourage voting.
3. *Timing*. There was a consensus that the voter guide needs to be delivered to households two weeks before the election.

Funding

There was consensus that staff support for the voter guide should be part of the secretary of state's budget. It was suggested that the voter guide could be paid for with an additional fee included in the candidate filing fees.

It was recognized that such funding is unlikely to be available for a voter guide in 2004. It was suggested that some funds might be available under the federal Help American Vote Act and from donations from news organizations and other groups.

The Question of Private Sponsorship of Voter Guide

There was an extensive debate, but no consensus, on whether it would be appropriate to allow corporations and other institutions to support the voter guide in return for advertising or notice in the guide.

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