

INFORM. INSPIRE. DEVELOP CIVIC LEADERS.

THE POLICY CIRCLE

JUDICIAL SELECTION





WHAT IS JUDICIAL SELECTION?



DUE TO OUR IMPORTANT ROLE IN VOTING FOR CANDIDATES FOR THE EXECUTIVE AND LEGISLATIVE BRANCHES, IT IS EASY TO REMEMBER THESE BRANCHES OF GOVERNMENT. THE JUDICIAL BRANCH, ON THE OTHER HAND, "IS EXPECTED TO APPLY THE LAW IMPARTIALLY WITHOUT REGARD FOR POLITICS OR OTHER CONSIDERATION – BEING IN THIS WAY INDEPENDENT – BUT ALSO BE RESPONSIBLE FOR THE QUALITY OF THEIR DECISION-MAKING – BEING IN THIS WAY ACCOUNTABLE."

THIS COMBINATION OF INDEPENDENCE FROM POLITICS AND ACCOUNTABILITY MAKES SELECTING JUDGES A UNIQUE AND IMPORTANT PROCESS. EVERY DAY, CITIZENS FULFILL THEIR CIVIC DUTY BY REPORTING FOR JURY DUTY OR PROVIDING TESTIMONY. BASED ON OUR CONSTITUTIONAL RIGHT "TO A FAIR TRIAL BEFORE A COMPETENT JUDGE AND A JURY OF ONE'S PEERS," UNDERSTANDING HOW JUDGES REACH THE BENCH, AND HOW WE CAN IMPACT THAT DECISION, IS JUST AS IMPORTANT FOR OURSELVES AND OUR FELLOW AMERICANS AS IS CHOOSING CANDIDATES FOR THE EXECUTIVE AND LEGISLATIVE BRANCHES.



➤ FACTS TO KNOW ◀



MOST U.S. COURTS ARE TRIAL OR APPELLATE COURTS. IN TRIAL COURTS, A JUDGE OR JURY RESOLVES DISPUTES BETWEEN PARTIES. THE LOSING SIDE GOES TO AN APPELLATE COURT IF THEY ARE UNHAPPY WITH THE RESULTS OF THE TRIAL. APPELLATE COURTS DECIDE IF THE LAW WAS CORRECTLY APPLIED IN THE TRIAL.

IN TOTAL, THERE ARE ABOUT 30,000 STATE JUDGES AND OVER 1,700 FEDERAL JUDGES. JUDICIAL TERMS RANGE FROM 4 TO 15 YEARS. NO STATES IMPOSE TERM LIMITS ON JUDGES, BUT 32 STATES AND THE DISTRICT OF COLUMBIA IMPOSE A MANDATORY RETIREMENT AGE.

THE U.S. HAS TWO DIFFERENT JUDICIAL SYSTEMS - THE FEDERAL SYSTEM AND THE STATE SYSTEM. THE FEDERAL COURT SYSTEM CONSISTS OF 94 DISTRICT LEVEL TRIAL COURTS THAT ARE ORGANIZED INTO 12 REGIONAL CIRCUITS, EACH WITH ITS OWN COURT OF APPEALS. THE HIGHEST COURT OF APPEALS, AND HIGHEST U.S. COURT, IS THE SUPREME COURT.

THE FEDERAL SYSTEM OFTEN GETS THE MOST ATTENTION BECAUSE OF THE SUPREME COURT, BUT THE STATE SYSTEMS DO MUCH MORE WORK AND ARE FAR LARGER. EACH STATE HAS ITS OWN COURT SYSTEM WITH TRIAL AND APPELLATE COURTS, AND USUALLY ITS OWN "COURT OF LAST RESORT," USUALLY CALLED A SUPREME COURT.

JUDICIAL SELECTION AT THE FEDERAL LEVEL



THE U.S. CONSTITUTION SAYS "THE PRESIDENT 'SHALL NOMINATE, AND BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, SHALL APPOINT' JUDGES" IN THE FEDERAL COURT SYSTEM. THIS INCLUDES THE FEDERAL TRIAL AND APPELLATE, AND THE SUPREME COURT. THERE ARE NO STANDARD QUALIFICATIONS FOR BECOMING A FEDERAL JUDGE IN TERMS OF MINIMUM AGE, YEARS OF EXPERIENCE, OR SPECIFIC LEGAL TRAINING, BUT A LAW DEGREE IS IMPLICIT.

MEMBERS OF THE WHITE HOUSE STAFF AND THE DEPARTMENT OF JUSTICE IDENTIFY RECOMMENDED POTENTIAL NOMINEES, AND REVIEW THE DETAILED QUESTIONNAIRE THAT NOMINEES MUST COMPLETE REGARDING THEIR BACKGROUND AND LEGAL EXPERIENCE THE FBI ALSO RUNS BACKGROUND CHECKS AND THE AMERICAN BAR ASSOCIATION'S COMMITTEE ON THE FEDERAL JUDICIARY EVALUATES POSSIBLE NOMINEES' PROFESSIONAL QUALIFICATIONS. ALL OF THESE REVIEWS CAN FACTOR INTO THE PRESIDENT'S FINAL DECISION WHEN MAKING NOMINATIONS.



SENATORS ARE USUALLY VERY ACTIVE IN FILLING JUDICIAL VACANCIES IN THEIR STATES. SENATORS IN 21 STATES USE MERIT-BASED SELECTION COMMISSIONS TO SCREEN POSSIBLE NOMINEES AND SUBMIT RECOMMENDATIONS TO THE WHITE HOUSE FOR FEDERAL JUDGESHIPS IN THEIR STATES. THE PRESIDENT IS NOT OBLIGATED TO NOMINATE A CANDIDATE RECOMMENDED BY HOME-STATE SENATORS BUT OFTEN DOES. BASED ON A NORM KNOWN AS "SENATORIAL COURTESY," THE SENATE JUDICIARY COMMITTEE WILL NOT PROCESS JUDICIAL NOMINEES THAT DO NOT HAVE THE APPROVAL OF BOTH HOME-STATE SENATORS.

MOST FEDERAL JUDGES "ENJOY LIFE TENURE," ALTHOUGH SOME INCLUDING BANKRUPTCY AND MAGISTRATE JUDGES HAVE SET TERM LIMITS AND MAY BE REAPPOINTED. FEDERAL JUDGES MAY RETIRE, BUT THERE IS NO MANDATORY RETIREMENT AGE. MANY ELECT TO TAKE "SENIOR STATUS," WHICH PERMITS A LIGHTER WORK-LOAD AND CREATES A VACANCY FOR THE PRESIDENT TO FILL.



JUDICIAL SELECTION AT THE STATE LEVEL



STATES EMPLOY FIVE MAIN METHODS FOR SELECTING JUDGES:

- **GUBERNATORIAL APPOINTMENTS**, WHERE THE GOVERNOR APPOINTS JUDGES, SOMETIMES WITH APPROVAL REQUIRED FROM THE STATE LEGISLATURE.
- **ASSISTED APPOINTMENTS**, WHERE A NOMINATING COMMISSION RECOMMENDS CANDIDATES TO THE GOVERNOR, WHO THEN APPOINTS A JUDGE, SOMETIMES WITH ADDITIONAL CONFIRMATION FROM THE LEGISLATURE REQUIRED.

- **PARTISAN ELECTIONS**, WHERE JUDGES APPEAR AS CANDIDATES ON A BALLOT, ALONG WITH A POLITICAL AFFILIATION, AND ARE ELECTED BY VOTERS.
- **NONPARTISAN ELECTIONS**, WHERE JUDGES ARE ELECTED BY VOTERS BUT THEIR NAMES ARE LISTED ON BALLOTS WITHOUT PARTY AFFILIATIONS.
- **LEGISLATIVE ELECTIONS**, WHERE THE STATE LEGISLATURE SELECTS JUDGES.



EVERY JUDGE IN EVERY STATE'S SUPREME COURT, INTERMEDIATE APPELLATE COURTS, AND MAJOR TRIAL COURTS IS REQUIRED TO HAVE A LAW DEGREE. OTHER QUALIFICATIONS, SUCH AS AGE, YEARS OF LEGAL EXPERIENCE, CITIZENSHIP, OR RESIDENCE, ARE DETERMINED BY EACH INDIVIDUAL STATE.

TERM LENGTHS ALSO VARY BY STATE AND BY LEVEL OF COURT. NO STATES IMPOSE TERM LIMITS, BUT 32 STATES AND DC IMPOSE A MANDATORY RETIREMENT AGE.

METHODS FOR EVALUATING JUDGES VARY BY STATE. SOME STATES HAVE OFFICIAL EVALUATION PROCEDURES LED BY INDEPENDENT COMMISSIONS OF JUDGES, ATTORNEYS, AND LAYPERSONS WHO HAVE BEEN SELECTED BY GOVERNMENT OFFICIALS, STATE BAR ASSOCIATION MEMBERS, OR THE STATE JUDICIAL COUNCIL. IN OTHER STATES, BAR ASSOCIATIONS OR CIVIC ORGANIZATIONS EVALUATE JUDGES USING PUBLIC RECORDS OR QUESTIONNAIRES COMPLETED BY ATTORNEYS, JURORS, LITIGANTS, WITNESSES, COURT STAFF MEMBERS, AND OTHER JUDGES. IN STATES WITH ELECTIONS, SUMMARIES OF A JUDGE'S EVALUATION ARE USUALLY MADE AVAILABLE TO THE PUBLIC. EVEN IN STATES WITHOUT ELECTIONS, EVALUATIONS ARE OFTEN MADE AVAILABLE TO PROMOTE PUBLIC CONFIDENCE IN THE JUDICIAL SYSTEM. IN OTHER STATES, EVALUATIONS ARE SHARED ONLY WITH THE APPOINTING ELECTED OFFICIAL – USUALLY THE GOVERNOR – OR WITH THE JUDGE FOR SELF-IMPROVEMENT.





MISCONDUCT & REMOVAL



FEDERAL- THE JUDICIAL CONDUCT AND DISABILITY ACT OF 1980 ALLOWS ANY INDIVIDUAL TO FILE A COMPLAINT AGAINST A JUDGE. COMPLAINTS ARE SUBMITTED TO THE CHIEF JUDGES OF COURTS OF APPEALS, WHO EITHER DISMISS THE COMPLAINT IF IT IS WITHOUT MERIT, OR APPOINT A COMMITTEE OF JUDGES TO INVESTIGATE THE COMPLAINT. THE COMMITTEE REPORTS FINDINGS BACK TO A CIRCUIT JUDICIAL COUNCIL CONSISTING OF THE CHIEF CIRCUIT JUDGE AND AN EQUAL NUMBER OF JUDGES FROM DISTRICT COURTS AND COURTS OF APPEALS. IF DISCIPLINARY ACTION IS NECESSARY, IT COULD BE A REPRIMAND OR SUSPENSION, A REQUEST FOR RESIGNATION, OR A RECOMMENDATION TO CONSIDER REMOVING THE JUDGE FROM OFFICE. REMOVING A FEDERAL JUDGE FROM OFFICE CAN ONLY HAPPEN BY IMPEACHMENT. THE HOUSE OF REPRESENTATIVES IMPEACHES A SITTING JUDGE BY MAJORITY VOTE. THE CASE THEN MOVES TO THE SENATE, WHICH CAN CONVICT AND REMOVE A JUDGE BY A TWO-THIRDS MAJORITY VOTE.

STATE- EVERY STATE HAS A JUDICIAL DISCIPLINE COMMISSION TO HANDLE JUDICIAL MISCONDUCT CASES. THESE USUALLY CONSIST OF JUDGES, LAWYERS, AND LAYPERSONS, APPOINTED BY OTHER PUBLIC OFFICIALS OR BAR MEMBERS. WHEN SOMEONE FILES A COMPLAINT AGAINST A JUDGE, THIS COMMISSION PROCEEDS WITH A CONFIDENTIAL INVESTIGATION, DETERMINES IF THE JUDGE ACTED IN VIOLATION OF THE STATE'S PARTICULAR CODE OF JUDICIAL CONDUCT, AND DECIDES WHAT SANCTIONS SHOULD BE IMPOSED, IF NECESSARY. SANCTIONS INCLUDE REPRIMAND, SUSPENSION, INVOLUNTARY RETIREMENT, OR REMOVAL FROM OFFICE. STATES ORDINARILY EMPLOY ONE OF THREE METHODS TO REMOVE A JUDGE FROM OFFICE. ALMOST ALL STATES ALLOW THE STATE LEGISLATURE TO IMPEACH AND REMOVE JUDGES FROM OFFICE IF IT IS PROVED THAT THE JUDGE COMMITTED OFFENSES IDENTIFIED AS IMPEACHABLE BY STATE LAW. IMPEACHMENT HAS RARELY BEEN USED AT THE STATE LEVEL. JUDGES MAY ALSO BE REMOVED THROUGH A "BILL OF ADDRESS" IN SOME STATES. THE BILL OF ADDRESS PROCESS ALLOWS THE LEGISLATURE (USUALLY WITH CONSENT FROM THE GOVERNOR) TO VOTE FOR A JUDGE TO BE REMOVED FROM OFFICE. IN EIGHT STATES, VOTERS ARE DIRECTLY INVOLVED IN THE PROCESS THROUGH RECALL ELECTIONS.

➤ WHAT YOU CAN DO ◀

MEASURE -

DO YOU KNOW THE JUDICIAL VACANCIES IN YOUR STATE OR DISTRICT? WHAT ARE YOUR STATE'S METHODS FOR FILLING JUDICIAL VACANCIES? WHAT ARE YOUR STATE'S QUALIFICATIONS FOR BECOMING A JUDGE? WHERE ARE YOUR STATE'S COURTS AND ADMINISTRATIVE OFFICES?



IDENTIFY -

WHO SERVE AS JUDGES IN YOUR STATE'S OR DISTRICT'S COURTS? WHAT ROLE DOES THE GOVERNOR PLAY? IS THERE A COMMISSION?



REACH OUT -

FIND ALLIES IN YOUR COMMUNITY OR IN NEARBY TOWNS AND ELSEWHERE IN THE STATE. FOSTER COLLABORATIVE RELATIONSHIPS WITH LOCAL BUSINESSES, COMMUNITY ORGANIZATIONS, AND SCHOOL BOARDS.

PLAN -

SET MILESTONES BASED ON YOUR STATE'S LEGISLATIVE CALENDAR OR LOCAL COMMUNITY CALENDAR.



EXECUTE -

EXPLORE YOUR STATE'S COURT STRUCTURE AND WHO YOUR STATE JUDGES ARE WITH BALLOTPEDIA'S COURTS AND JUDGES BY STATE MAP. FIND OUT ABOUT FEDERAL DISTRICT COURT JUDGES IN YOUR STATE, AS WELL AS YOUR STATE SUPREME COURT JUDGES, APPELLATE JUDGES, TRIAL COURT JUDGES, AND MUNICIPAL JUDGES. DETERMINE WHETHER YOUR JUDGES WERE APPOINTED, AND IF SO, BY WHOM? SEE WHAT, IF ANY, JUDICIAL ELECTIONS TAKE PLACE IN YOUR STATE WITH BALLOTPEDIA'S JUDICIAL ELECTION PORTAL. EXPLORE PAST JUDICIAL ELECTION RESULTS AND SEE UPCOMING ELECTION INFORMATION. DETERMINE WHETHER YOUR JUDGES WERE ELECTED IN PARTISAN ELECTIONS, AND IF SO, TO WHICH PARTY DO THEY BELONG? SEE IF THERE IS ROOM FOR YOUR STATE OR DISTRICT TO IMPLEMENT JUDICIAL EVALUATION PLANS, IF IT HAS NOT ALREADY.

