



Management Brief

NGA Office of Management Consulting & Training

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Advisory Boards for Judicial Appointments

Introduction

The NGA Office of Management Consulting & Training often receives inquiries from governors' legal counsels concerning the judicial appointment processes in other states. One common related question is whether or not states have advisory boards for judicial appointments.

In order to provide useful and complete information on this topic, the NGA Office of Management Consulting & Training prepared a brief survey for governors' legal counsels in June 2004. In total, 29 states participated in this survey on advisory boards for judicial appointments. This management brief is based on the responses received to these survey questions, and it provides comparative data on state practices across the country.

Participating States

Alaska	Massachusetts	Oregon
Arkansas	Michigan	Rhode Island
California	Minnesota	South Dakota
Florida	Montana	Tennessee
Georgia	Nebraska	Texas
Hawaii	Nevada	Vermont
Indiana	New Mexico	Washington
Kansas	North Dakota	West Virginia
Kentucky	Ohio	Wisconsin
Maine	Oklahoma	

Advisory Boards & Activities

Of the 29 states participating in the survey, 24 states (82.8 percent) have an advisory board that makes recommendations to the governor on judicial appointments and 5 states (17.2 percent) do not. For the remainder of the survey results listed here, unless otherwise indicated, percentages and numbers are based on the 24 state respondents with advisory boards for judicial appointments.

In states where an advisory board has been established for judicial appointments, the majority of these bodies have had their activities formalized in statutes and/or regulations. Overall, 20 states (83.8 percent) have formalized advisory boards compared to 4 with boards that exist by custom only (16.7 percent). **Minnesota** is one example of a state where this body exists by custom only. The governor has appointed a judicial selection committee to provide recommendations for judicial appointments to trial courts. However, as set forth in the state constitution, the governor retains full authority to make judicial appointments as he/she sees fit.

Some states that directly elect judges may also have advisory boards to assist with special circumstances. In **West Virginia**, state judges are elected but the governor appoints judges when a vacancy is created by death, retirement, or other reasons.

Maine has a very formal advisory board structure, established by executive order, with 18 members to advise the governor. Subcommittees of the board vet candidates for different regions, and no member of the subcommittees may be from the region in which the candidate would sit were he/she appointed.

Candidate Recommendation Process

The majority of advisory boards recommend candidates for the governor's consideration (21 states; 87.5 percent), while a few states report that the advisory body only vets the governor's choices (3 states; 12.5 percent).

From a sample of 21 states, on average, there are usually 3 names listed on the roster of candidates recommended to the governor. In **Florida**, the advisory board can submit anywhere from 3 to 6 names and the governor can ask for additional nominees if fewer than the maximum number have been sent. By contrast, the nomination board in **Vermont** is not limited in the number of names it may recommend to the governor.

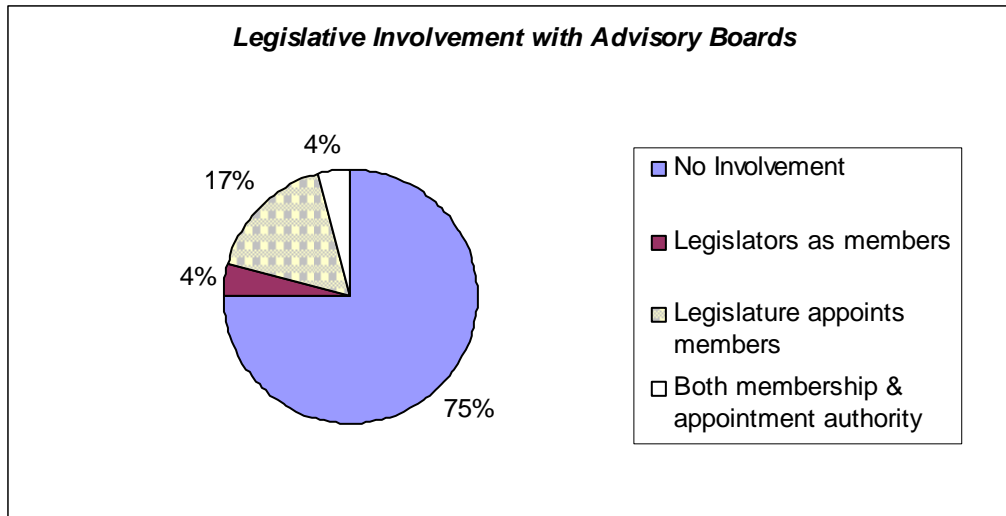
Typically—this is the case in 17 out of the 24 responding states with advisory boards—the governor cannot nominate a person who is not on the list of candidates. In **North Dakota**, once a list of candidates is submitted to the governor, the governor has the option to choose a candidate from the list, return the list and ask the nominating committee to reconvene, or call for a special election.

Most states do not allow a person who is recommended but not selected to remain an automatic candidate for the next series of appointments. Of the survey respondents, 87.5 percent maintain this policy.

Legislative Involvement

For the majority of states with advisory boards for judicial appointments, the governor maintains primary oversight over the appointment process as there is no legislative involvement with these bodies either in membership or through appointment authority.

States where the legislature appoints some or all members to the advisory body include **Hawaii**, **New Mexico**, **Rhode Island**, and **Tennessee**. **Montana** is the only state to respond that legislators serve as members on their advisory board, while **Vermont** is the only responding state where legislators are involved both in appointing and serving as members of the board.



Total State Respondents = 24

Questions for Judicial Candidates

Based on survey responses, there is an even split on whether or not advisory boards have standard questions used to vet judges. Of the 12 responding states that do have standard questions, 8 states are willing to share this information with colleagues across the country.

In **Georgia**, the governor’s Judicial Nominating Commission nominates up to 5 members. The commission has a standard application for applicants to submit, but candidates are not asked standard questions at interviews.

State Examples

Given that the judicial appointments process varies from state to state, the NGA survey results listed here can only provide an overview of common practice. This section provides specific examples of policies in four different states in order to accurately showcase the varying methods of handling judicial appointments.

Hawaii

The Hawaii State Judicial Selection Commission is a body composed of nine members, no more than four of whom may be lawyers, and the members serve staggered six-year terms. Two are appointed by the governor, two by the senate president, two by the speaker of the house, one by the chief justice of the Supreme Court, and two are elected by the members of the Hawaii State Bar Association. The governor is the appointing authority to nominate judges of the Supreme Court, Intermediate Court of Appeals, and Circuit Court for an initial ten-year term. The governor selects appointees from a list of not less than four and not more than six names submitted by the Judicial Selection Commission. The commission submits a list of at least six names to the chief justice who nominates judges for district and district family court to six-year terms. All nominations are subject to confirmation by the state senate. The data and procedure in Hawaii remains confidential throughout the merit selection process. (This includes the identity of applicants, records, interviews, deliberations, and voting.) When a judge requests that he or she be retained, the commission is the sole body to determine whether that judge is retained or rejected. There are no appeals from the commission's decision in this area.

Hawaii Judicial Selection Commission

http://www.courts.state.hi.us/page_server/Courts/2E049BDF320E2D71F0456B57B6.html

Indiana

The governor of Indiana fills all appellate vacancies and also fills vacancies on the trial bench when someone dies, resigns, or retires between elections. There is a nominating commission created by the state constitution for vacancies on appellate courts. Members serve three-year terms and consist of 3 lay citizens appointed by the governor, one from each of three geographic districts, and three attorney members elected by the lawyers residing in their respective districts. The chief justice of Indiana serves as chairman the commission. The commission recruits and interviews applicants to fill vacancies on the Supreme Court, the Court of Appeals, and the Tax Court, and forwards to the governor the names of 3 nominees for each position. There is no legislative involvement with the advisory body either through membership or appointment authority, and no legislative confirmation is required for appointments. For the most part, the judicial appointment process in Indiana is not confidential. Names of judicial candidates generally are public, but deliberations of the nominating commission and within the governor's office are confidential. Three counties have nominating commissions for trial judgeships created by statute. For the other 89 counties, there is no nominating body for trial court judgeships and all the vetting is done within the Indiana governor's office based on applications which are directly submitted.

Indiana Judicial Nominating Commission

<http://www.in.gov/judiciary/admin/judqual/nomcomm.html>

Kentucky

Kentucky has a Judicial Nominating Commission for each jurisdiction, and since judges are elected, the commission only acts when there is an interim vacancy by forwarding 3 names to the governor. The commission consists of 2 lawyers elected by the local bar association and 4 citizens appointed by the governor (two Democrats, two Republicans). The chief justice of the Supreme Court also serves on each jurisdiction's commission. When appointments are made before early August, the appointee must run for election in November; those selected after this date do not have to sit for election until the next election cycle. There is no legislative involvement with the advisory body either through membership or appointment authority, and no legislative confirmation is required for appointments. The governor must choose from the list within 30 days, otherwise he/she forfeits appointment authority and the chief justice of the Supreme Court appoints from the list.

Kentucky Judicial Nominating Commission

<http://www.lrc.state.ky.us/KRS/034-00/CHAPTER.HTM>

New Mexico

As specified in the New Mexico state constitution, the judicial nominating commission is chaired by the dean of the University of New Mexico School of Law. Members of the judiciary including the specific level of court sit on the commission as well as appointees by state leaders (governor, speaker of the house, and president pro tempore of the senate). Each state leader has two appointments, one attorney and one non-attorney. The president of the state bar association appoints four attorneys and any additional members necessary to provide political balance to the commission. Vacancies are advertised and open to all qualified applicants. The commission meets, interviews each candidate, and votes in open session on which and how many applicants to recommend to the governor for appointment. Discussion is permitted in closed session. The governor must choose from the list of recommendations provided by the nominating commission (consisting of 2 or more names), however, the governor may send the list back once for reconsideration. The governor must choose from the list within 30 days, otherwise he/she forfeits appointment authority and the chief justice of the Supreme Court appoints from the list. No legislative confirmation is required for appointments and the nominating commission uses standard questions to vet candidates. The appointed judge must stand for contested election during the next general election cycle and then stand for retention elections at the end of each term (terms vary depending on the level of judgeship).

New Mexico Judicial Selection
<http://lawschool.unm.edu/judsel/process/eval-criteria.htm>

NGA Contact

For more in-depth information on judicial appointments, advisory boards, and to obtain specific details about individual state practices (including samples of candidate questions), please contact Christie Amberman at NGA (202/624-5370; camberman@nga.org).

Additional Resources

American Judicature Society

<http://www.ajs.org/>

The American Judicature Society is a nonpartisan organization with a national membership of judges, lawyers and other citizens interested in the administration of justice. The AJS is affiliated with Drake University and works to maintain the independence and integrity of the courts and increase public understanding of the justice system.

- *Judicial Selection in the States Project*
<http://www.ajs.org/js/select.htm>

This website provides comprehensive information on the judicial selection processes in each of the fifty states and the District of Columbia (for year 2003). Topics covered include methods of selecting, retaining, and removing judges; successful and failed reform efforts; the roles of parties, interest groups, and professional organizations in selecting judges; and the diversity of the bench.

- *Handbook for Judicial Nominating Commissioners*
http://www.ajs.org/selection/sel_jnc_handbook.asp

The Handbook for Judicial Nominating Commissioners (revised and updated 2nd Edition, 2004) leads commissioners step-by-step through the commission process: from getting organized, to establishing evaluative criteria, to publicizing the judicial vacancy, to investigating and screening applicants, to interviewing, to voting and submitting names to the appointing authority. Two expanded chapters address specific commission ethics considerations and privacy and confidentiality concerns.

Georgia Press Release (8/25/04)

“Judicial Nominating Commission Recommends Applicants to Fill Judicial Vacancy”
<http://www.gov.state.ga.us/press/2004/press553.shtml>

Massachusetts Judicial Nominating Commission

<http://www.mass.gov/jnc>

The website for the Massachusetts commission provides current updates on judicial vacancies and applications for positions as either a judge or a clerk-magistrate. Massachusetts has a commissioner’s handbook available in hard copy by contacting the executive director of the commission. The executive order creating Massachusetts’ judicial nominating process includes some first-in-the-nation reforms such as “blind review” where the applicant’s name, references, and identifying information are excluded from the initial decision by the commission on whether to grant an interview.