



Judicial Selection and Retention

By Juliann Jenson

The Colorado Constitution allows voters to decide whether justices and judges stay on the bench after they have been appointed and have had time to establish a judicial record by serving an initial term. Some form of this process, otherwise known as the merit selection and retention of justices and judges, is used in the majority of states. The intent is to emphasize judicial qualifications over political or social connections.

This *issue brief* provides an overview of the merit selection and retention of justices and judges in Colorado, including nominations and appointments, performance evaluations, retention elections, election results, as well as other factors that may impact length of time on the bench.

Background

In 1966, Colorado voters approved a constitutional amendment that repealed the partisan election of justices and judges and enacted the current judicial selection and retention process. This process requires justices and judges to be nominated by a judicial nominating commission and then be appointed by the Governor. Thereafter, justices and judges must go before voters in a retention election if they wish to maintain their seat on the bench. In Colorado, justices serve on the Supreme Court, and judges serve on all other courts.

State court types. Colorado law requires that the merit selection and retention process be used for all levels of state courts, including the Supreme Court, Court of Appeals, district courts, county courts, Denver Probate Court, Denver Juvenile Court, and any other court created by the state legislature. Municipal courts are not part of the state court

system, and municipal judges are generally appointed.

Nomination, Appointment, and Terms

When a judicial vacancy occurs on a court, a judicial nominating commission is responsible for interviewing applicants and subsequently making recommendations to the Governor for consideration and appointment to an initial term.

Nominating commissions. In Colorado, there are two types of nominating commissions. One is a statewide commission that considers applications for Supreme Court justices and Court of Appeals judges. The other is the district commission for each of Colorado's 22 judicial districts. The district commissions focus on their respective district and county court judges, both of who must reside in the district in which they serve.

The nominating commissions must meet and review judicial applicants within 30 days after a court vacancy is announced. Candidate qualifications are based on written applications, personal and professional recommendations, and interviews.

Appointments. The Governor appoints justices and judges from recommendation lists compiled by the nominating commissions. The names of three nominees must be submitted to the Governor for vacancies on the Court of Appeals or Supreme Court, and two or three names may be submitted for district or county court vacancies. If the Governor does not make an appointment within 15 days of receiving a candidate list, the Chief Justice of the Supreme Court must appoint a candidate from the same list.

Terms of office. Upon appointment, justices and judges serve a two-year provisional term of office. Following provisional terms, and if retained in a retention election, Supreme Court justices serve ten-year terms, Court of Appeals judges serve eight-year terms, district court judges serve six-year terms, and county court judges serve four-year terms.

Judicial Performance Evaluations

All justices and judges in Colorado receive a performance review or evaluation before being placed on the ballot in a retention election. The evaluations are conducted by nonpartisan, volunteer commissions, appointed by the Chief Justice, Governor, President of the Senate and Speaker of the House.

The commissions attempt to measure a justice or judge's integrity, legal knowledge, communication skills, judicial temperament, and administrative performance. The evaluations are based on reviews of judicial opinions and orders, information collected from courtroom observation, interviews with the judges, self-evaluations, and selected surveys of individuals who recently appeared before the justice or judge.

The evaluations are first shared with the justice or judge prior to the date by which he or she is required to declare candidacy for retention. Thereafter, the commission makes a recommendation published online at the Office of Judicial Performance Evaluation (OJPE) website and in the State Ballot Information Booklet (the "Blue Book") before the retention election. The final evaluation results include a narrative for each justice or judge with a recommendation of "meets performance standards" or "does not meet performance standards."

Retention Elections

In Colorado, justices and judges stand for retention at the end of their first provisional term, as well as after each subsequent judicial term. Elections are held during the November general election in even-numbered years, and voters are asked

whether incumbent justices or judges should remain in office for another term. Justices and judges do not face an opponent, are not allowed to campaign or fundraise, and retain their position if the majority of voters cast a "yes" vote.

Election Results

Although voters in Colorado have the power to vote justices and judges out of office, voters rarely do so, even when judicial performance commissions make unfavorable reviews. The OJPE found that since 1998 only three of the last ten judges who received a substandard review have lost an election. However, OJPE reports that judges who receive a negative rating tend to receive fewer "yes" votes even if they prevail in the election. For example, from 1990 to 2016, voters retained 99 percent of the judges receiving positive recommendations compared to 64 percent of those who did not.

Other Ways to Remove a Justice or Judge

Favorable outcomes in retention elections do not preclude justices and judges from judicial discipline, impeachment, or mandatory retirement.

Judicial discipline. The Commission on Judicial Discipline, established in the state constitution, provides oversight for all Colorado justices and judges. Upon its recommendation, the Supreme Court may remove, retire, suspend, censure, reprimand, or discipline a justice or judge.

Impeachment. Justices and judges may be impeached by the General Assembly for high crimes, misdemeanors, or malfeasance in office. This standard generally applies to criminal actions, as well as any serious misuse or abuse of office, such as tax evasion or obstruction of justice.

Retirement. Justices and judges may not hold their offices past the age of 72. Retirees from the bench may temporarily resume judicial duties through the Senior Judge Program.