

JUDICIAL SELECTION IN S.C. – THE PROCESS

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Judicial selection in South Carolina is a complicated multi-step process. Most members of the judiciary are elected by the General Assembly. However, some judges are appointed by the Governor, after nomination from the General Assembly or other sub-section including; senatorial delegation or municipal council. Probate Judges in South Carolina have the sole distinction of election by the general electorate. Probate judges have been elected through the general election since 1890.

A. AN OVERVIEW OF THE COURT SYSTEM:

The hierarchy of the court system is as follows:

1. Supreme Court –
 - a. Each member of the Supreme Court is elected to ten year terms. The court consists of a Chief Justice and four associate justices. The terms are staggered so that one member of the court is elected every two years. A justice may be re-elected to any number of terms. The Supreme Court acts in its appellate capacity that includes cases on certiorari from the Court of Appeals and seven classes of appeals which come directly from circuit and family court cases within the exclusive jurisdiction of the court.
 - b. Candidates for the Supreme Court must first be screened by the Judicial Merit Selection Commission prior to being presented for election by the General Assembly. The five justices are arranged and elected by seat. Candidates can be from any geographical region in the State.
 - c. The Supreme Court has exclusive jurisdiction over:
 - i. Cases involving the sentence of death;
 - ii. Appeals from Circuit Courts setting public utility rates;
 - iii. Cases involving the constitutionality of state law or local ordinances;
 - iv. Cases involving state or local bonds or other indebtedness;
 - v. Cases pertaining to elections;
 - vi. Cases concerning the limiting of grand jury investigations;
 - vii. Appeals of family court orders related to abortion by a minor;
 - d. The Supreme Court also has rulemaking authority for the unified judicial system, including ethics regulations
2. Court of Appeals – Each member of the Court of Appeals is elected to six year terms. The court consists of a Chief Judge and eight associate judges who may sit in three panels of three or may sit as a whole. The terms are staggered as well. Jurisdiction of the Court of Appeals covers questions of law and equity arising from the circuit and family courts except those seven classes stated above which are the exclusive jurisdiction of the S.C. Supreme Court.

Candidates for the Court of Appeals must first be screened and found qualified by the Judicial Merit Selection Commission prior to being presented for election by the General Assembly.² The nine judges of the Court of Appeals are arranged and elected by seat. Candidates can be from any geographical region in the State.

² Article V, Section 27 of the S.C. Constitution

3. Circuit Courts – There are forty-six circuit court judges of who thirty-three are elected by the General Assembly from the sixteen judicial circuits for six year terms and thirteen are elected by the General Assembly from the state at-large for six year terms. Circuit Courts have jurisdiction over Common Pleas [civil] cases and General Sessions [criminal] cases. Candidates for the Circuit Court must first be screened and found qualified by the Judicial Merit Selection Commission prior to being presented for election by the General Assembly.
4. Family Courts – Judges are elected by a joint public vote of the General Assembly. Candidates for the Family Court must first be screened and found qualified by the Judicial Merit Selection Commission prior to being presented for election by the General Assembly.³ At least two family court judges are elected for staggered six year terms to each of the sixteen judicial circuits, with fifty-two judges who rotate primarily from county to county within their resident circuits. Jurisdiction of the family court is limited to domestic or family relations and juvenile-minors under the age of seventeen-cases.
5. Masters-in-Equity – Masters-in-Equity are appointed by the Governor with the advice and consent of the General Assembly to a term of six years. Upon a vacancy in the office of master-in-equity, candidates therefore shall submit an application to the Judicial Merit Selection Commission. Upon completion of reports and recommendations, the commission shall submit such reports and recommendations on master-in-equity candidates to the appropriate county legislative delegation. The county legislative delegation shall then submit the name of a candidate to the Governor for consideration for appointment. Nothing shall prevent the Governor from rejecting the person nominated by the delegation. In this event, the delegation shall submit another name for consideration. No person found NOT qualified by the commission may be appointed to the office of Master-in-Equity. Each Master may serve in full or part-time capacity. Masters have jurisdiction in equity matters referred to them by the Circuit Court. There are currently twenty-one Masters-in-Equity.
6. Magistrate Courts – Magistrates are appointed for each county by the Governor, by and with the advice and consent of the Senate. Recommendations for magistrates are given to the Governor by the county senatorial delegation. Since July 1, 2001, all persons seeking a magistrate position must pass an eligibility test, unless exempted, and must have at least two years education beyond a high school degree. Since July 1, 2005, persons applying to be a magistrate must have a baccalaureate degree.
7. Municipal Courts – Municipal Judges are appointed by the municipal council. The term of the judge is set by municipal council, but cannot exceed four years, but not less than two years. Each municipal judge must pass a recertification examination within eight years after passing the initial certification examination. Municipal courts may be set up by ordinance, or upon prior agreement with county governing body, cases within the jurisdiction of the Municipal Court may be heard in magistrate court. Jurisdiction of the municipal courts covers cases arising under ordinances of the municipality and over all offenses which are subject to a fine not exceeding \$500.00 or imprisonment not exceeding 30 days or both and which occur within the municipality. Approximately 200 municipalities in South Carolina have chosen to create municipal courts.

³ Article V, Section 27 of the S.C. Constitution

8. Probate Courts – Each county in South Carolina has a probate court and popularly elected judge. The judges of the probate court shall be elected by qualified electors of the respective counties for the term of four years. The election for such offices shall be held at each alternative general election, reckoning from the year 1890. Probate courts have jurisdiction over marriage licenses, estates of deceased persons, involuntary commitments to mental institutions. They also have exclusive jurisdiction over trusts and concurrent jurisdiction with Circuit Courts over powers of attorney.

B. JUDICIAL MERIT SELECTION COMMISSION:

- a. The judicial Merit Selection Commission first screens the candidates and recommends three candidates who are then voted on by the General Assembly...
- b. The Commission is made up of ten members. Five members are appointed by Speaker of the House, and of these three members must be serving members of the General Assembly and two members must be selected from the general public.
- c. Five members of the Commission are appointed by the Chairman of the Senate Judiciary Committee and two members appointed by the President Pro Tempore of the Senate and of these, three must be serving members of the General Assembly and two members must be selected from the general public.

On September 17, 2008, the League of Women Voters of S.C. along with the S.C. Bar Association and the S.C. Women Lawyers' Association hosted a Forum held at the Palmetto Club in Columbia, SC to address the issue of "Judicial Selection in South Carolina; Ensuring Quality, Independence and Diversity on the Bench."

The Forum drew a large diverse audience that overfilled the room and made for a lively and interesting discussion. The Panel consisted of Chief Justice Jean H. Toal of the S.C. Supreme Court; Rep. Gregory Delleney, Chairman of the Judicial Merit Selection Committee; Barbara George Barton, a local attorney and former SCWLA President and Ladder Group Chairman; Prof. John Freeman, Professor Emeritus of the S.C. School of Law and a member of the Judicial Merit Selection Committee; Prof. John L.S. Simpkins, Professor of Law at Charleston School of Law and a specialist in Constitutional and Diversity issues; and I.S. Leevy Johnson, a local attorney and former member of the Legislature. The Forum was moderated by Prof. Constance A. Anastopoulo, Professor of Law at Charleston School of Law.

The General Assembly elects state judges who are first screened by the Judicial Merit Selection Committee and recommends three candidates who are then voted on by the General Assembly in a joint session.

The Commission is made up of ten members. Five members are appointed by Speaker of the House, and of these, three members must be serving members of the General Assembly and two members must be selected from the general public.

Five members of the Commission are appointed by the Chairman of the Senate Judiciary Committee and two members appointed by the President Pro Tempore of the Senate and of these, three must be serving members of the General Assembly and two members must be selected from the general public. Currently, only one woman serves on the Committee.

Moderator, Prof. Constance Anastopoulo provided statistical data of the state's population and the current judiciary. In a state with a population of approximately 4 million, approximately 68% are Caucasian, 30% are African-American, and 2.6% are Hispanic. Additionally, 52% are female and 48% are male. The Judiciary consists of several levels beginning with the highest court, S.C. Supreme Court. There are five judges who make up the court of which one is African-American and one is Female. The Court of Appeals is the second highest court which is comprised of nine judges of whom one is African-American and three are Female. The second largest branch of the judiciary is the Circuit Court, which is comprised of forty-six judges of whom five are African-Americans and six are Female. The largest branch of the judiciary is comprised of the Family Court judges which are fifty-two in number of whom two are African-American and fifteen are Female. Anastopoulo went on to describe the Masters-in-Equity and Administrative law judges and ended with the Probate Court judges. Unlike the other branches of the judiciary, each county in South Carolina has a probate court and popularly elected judge. There are currently forty-six probate judges of whom two are African-American and twenty-six or over 50% are Female.

At the Forum, S.C. Supreme Court Chief Justice Toal defended the state's judiciary but acknowledged that it lacks needed diversity. Toal added that every year since she became Chief Justice, she has asked the legislature to develop a new methodology to diversify the judiciary.

Prof. John Freeman, a member of the S.C. Judicial Merit Selection Committee provided an overview of the system and compared South Carolina's process to that of other states which have a general election or blended system. Based on his observations, he conceded that S.C.'s system may not be the best, but it is better than the alternatives used in other states.

Prof. John Simpkins stated that the lack of diversity in the judiciary in S.C. reflected a bigger problem in S.C. Prof. Simpkins noted that many talented and well educated African-Americans who obtain a law degree find little to draw them back to South Carolina and therefore the state is losing some of the best and brightest talent because of a lack of opportunity in the state.

Panelist Barbara Barton addressed the issue more directly complaining of a system dominated and controlled "by white males" which, she asserted, contributed to the lack of diversity in the system.

Panelist I.S. Leevy Johnson a former legislator said from his perspective, many blacks don't even try to seek a judgeship when the prospect of an appointment seems too small when the amount of time and energy required, including leaving your family and business to meet with members of the legislature, is so great.

Additionally, Rep. Gregory Delleney, R-Chester, stated that as Chairman of the Judicial Merit Selection Committee, he believes that if there is a lack of diversity on the bench, it is attributable to the lack of quality minority and female candidates in the "pool" of individuals who apply for appointments. He provided statistics for current seats available and the number of minority/female candidates who have made applications for those seats. Additionally, he stated that limiting the number of candidates who are selected by his Committee to move onto a full vote by the entire General Assembly to three is contributing to the number of quality candidates having an opportunity.

After each panelist spoke, Prof. Anastopoulo took questions from the audience. Among the diverse audience, most African-Americans who addressed the panel complained that the system is by its design, stacked against minorities and women, and in favor of the candidates who reflect the make up of the majority of the Merit Selection Committee, as well as the General Assembly as a whole.

While the Forum provided no answers to issues raised in the discussion, it clearly tapped into an area of debate that is of concern to the public and needs further attention.