HAWAII CONSTITUTIONAL CONVENTION STUDIES 1978

Article V: The Judiciary

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THE JUDICIARY

JUDICIARY POWER

Section 1. The judicial power of the State shall be vested in one supreme court, circuit courts, and in such inferior courts as the legislature may from time to time establish. The several courts shall have original and appellate jurisdiction as provided by law.

SUPREME COURT

Section 2. The supreme court shall consist of a chief justice and four associate justices. When necessary, the chief justice shall assign a judge or judges of a circuit court to serve temporarily on the supreme court. As prescribed by law, retired justices of the supreme court also may serve temporarily on the supreme court at the request of the chief justice. In case of a vacancy in the office of chief justice, or if he is ill, absent or otherwise unable to serve, an associate justice designated in accordance with the rules of the supreme court shall serve temporarily in his place. [Am Const Con 1968 and election Nov 5, 1968]

APPOINTMENT OF JUSTICES AND JUDGES

Section 3. The governor shall nominate and, by and with the advice and consent of the senate, appoint the justices of the supreme court and the judges of the circuit courts. No nomination shall be sent to the senate, and no interim appointment shall be made when the senate is not in session, until after ten days' public notice by the governor.

QUALIFICATIONS

No justice or judge shall hold any other office or position of profit under the State or the United States. No person shall be eligible for the office of justice or judge unless he shall have been admitted to practice law before the supreme court of this State for at least ten years. Any justice or judge who shall become a candidate for an elective office shall thereby forfeit his office.

TENURE; COMPENSATION; RETIREMENT

The term of office of a justice of the supreme court and of a judge of a circuit court shall be ten years. They shall receive for their services such compensation as may be prescribed by law, but no less than twenty-eight thousand dollars for the chief justice, twenty-seven thousand dollars for associate justices and twenty-five thousand dollars for circuit court judges, a year. Their compensation shall not be decreased during their respective terms of office, unless by general law applying to all salaried officers of the State. They shall be retired upon attaining the age of seventy years. They shall be included in any retirement law of the State. [Am Const Con 1968 and election Nov 5, 1968]

RETIREMENT FOR INCAPACITY AND REMOVAL

Section 4. Whenever a commission or agency, authorized by law for such purpose, shall certify to the governor that any justice of the supreme court or judge of a circuit court appears to be so incapacitated as substantially to prevent him from performing his judicial duties or has acted in a manner that constitutes wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, the governor shall appoint a board of three persons, as provided by law, to inquire into the circumstances. If the board recommends that the justice or judge should not remain in office, the governor shall remove or retire him from office. [Am Const Con 1968 and election Nov 5, 1968]

ADMINISTRATION

Section 5. The chief justice of the supreme court shall be the administrative head of the courts. He may assign judges from one circuit court to another for temporary service. With the approval of the supreme court he shall appoint an administrative director to serve at his pleasure.

RULES

Section 6. The supreme court shall have power to promulgate rules and regulations in all civil and criminal cases for all courts relating to process, practice, procedure and appeals, which shall have the force and effect of law.

Chapter 1
INTRODUCTION

A fundamental function of every state is to preserve itself and its citizens from internal danger.[1] The state must protect itself from internal breaches of the peace such as assault and battery or treason. It must also prevent the undermining of the social order by keeping open the avenues of social progress, including the adjudication of disputes between citizens. It is in this process that the courts play a prominent role. "They provide the instrumentality for the trial of disputes between the individuals and between the state and individuals...."[2] While performing this function, the courts safeguard the democratic processes and the rights of the individual. In doing so, the court and the entire judiciary system serve as the formal mechanism for resolving conflicts and lessening the frictions between individuals within the state.

The recent history of Hawaii's judiciary has been a positive one. Prior to the 1968 Constitutional Convention, Associate Justice Tom Clark of the United States Supreme Court, in a speech in Hawaii, declared that, "Hawaii, in its seventh year of statehood, has one of the best judicial structures in the nation."[3] Among the features of the judiciary that elicited praise were: the centralization of administrative, budgetary, and statistical control in the chief justice; the creation of the office of administrative director; the granting of broad rule-making power to the Supreme Court; the establishment of the judicial council to serve in an advisory capacity; and the flexibility provided by its provisions on court structure and jurisdiction.[4]

Seemingly in recognition of the judiciary's strong progress since statehood,[5] the 1968 Constitutional Convention did little to alter those constitutional provisions dealing with the court system.[6] Since that time, there have been no amendments to the constitutional provisions establishing the state's judiciary.[7]

Notwithstanding the smooth functioning of the judiciary in the recent past, modifications improving the system's capacity to deal with future judicial

needs are possible.[8] In general, however, all such concerns should be considered within the context of how detailed provisions dealing with the judiciary should be written into the constitution. In the past, many states' constitutions contained judicial articles with great detail.[9] As a result, many states have operated under constitutions whose judicial organization has been outworn or archaic.[10] With the growth of population, shifts in economic base, and industrial and agricultural expansion, most states have found their judicial articles outmoded and have resorted to repeated constitutional amendments. Recognizing that the process of constitutional amendment is arduous and time consuming,[11] commentators have urged that the judicial provisions be drafted so as to provide a flexible structure by which a court system could adjust to changes dictated by an expanding society.[12]

Mindful of that admonition, the following chapters examine the major constitutional provisions shaping Hawaii's judicial system.[13] The following 3 chapters analyze issues of judicial structure. Chapter 2 looks at judicial organization in relation to its capacity to perform its primary function, the resolution of conflicts between individuals. It is followed by chapter 3 which addresses the related question of supreme court size. Chapter 4, in turn, looks to the mechanics of the judicial system, court administration.

The remaining chapters only indirectly deal with the capacity of Hawaii's judiciary as a force in conflict resolution. They deal, instead, with those factors governing the legitimacy of the court system as a valid mechanism for settling disputes. Chapter 5 reviews the alternatives for how judges are selected. The qualifications of judges provide the focus for chapter 6. In chapter 7, 2 factors which influence the judiciary's ability to attract competent personnel--tenure and compensation--are discussed. The last chapter examines the issues dealing with retirement, removal, and judicial discipline.

Chapter 2
JUDICIAL ORGANIZATION

PART I. INTRODUCTION

Before delving into the particulars of judicial organization, it is helpful to take a step back and to consider the framework within which a court structure should be viewed. A governance structure represents a set of rules and supporting policies that call for alterations in community behavior patterns in the name of the common good.[1] An essential step in the implementation of such governance mechanisms in modern societies is the creation of a structure for administering legal justice. For example, judicial systems rely on keepers of the peace such as police, judges, and jailers as well as a supporting cast of administrative functionaries.

Whatever else it is, a system of justice is an expression of collective economic choice to alter what would otherwise result if individual choices were left unregulated.[2] Some argue from a political point of view that decent and effective administration is a primary consideration of governance because its alternatives are turmoil and rebellion. It is thus said that effective administration of the laws is a fundamentally necessary social service outside the ordinary considerations of economic choice.[3] But on the other hand, being a political and social necessity does not detract from the reality that a judicial system is a commitment of public resources for a function whose special objective is the peaceful protection of life and property. "In its objectives, organization and cost consequences, a system of administered justice is thus a social welfare program in substantially the same sense as the modern refinements of social security, health insurance, and public education are social welfare programs."[4]

Viewed in this light, the judicial system reflects the collective preference for public order and individual justice as compared with the advancement of other objectives. In considering the size and service level associated with a structure of judicial administration, it is possible to frame the analysis in a manner similar to that of establishing any other social welfare program. For

example, relative to the judicial system, the questions raised can take the form of: How important is having well-trained judges in all courts? Of what practical value is the grand jury system given the due process safeguards already built into the present system? How much public resources should we commit to cutting back the backlog of court cases and minimizing delay? The answer to such questions involve the size and quality of the judicial administration system. In turn, those factors reflect a public commitment to the establishment of formal structure for the resolution of social conflicts. The level of such a commitment in Hawaii was approximately 1.7 per cent of the state's total resources in the past few years.[5]

This chapter addresses one aspect of how those resources are employed in the administration of justice. In looking at court organization, this chapter focuses upon the issue most relevant for the purposes of constitutional design--the capacity of Hawaii's judicial structure to resolve the disputes of its citizens.[6] In the parts that follow, 2 different dimensions of that adjudicatory function are separately analyzed. First, the capacity of trial courts and their ability to dispose of the controversies brought to them in recent years is reviewed. The second dimension involves judicial appeal. The factors influencing the demand for judicial services set the stage for appreciating the external forces bearing on court capacity.

PART II. DEMAND FOR JUDICIAL SERVICES

The ability of the judicial structure to dispose of the conflicts brought before it is, in part, determined by the magnitude of the demands made upon its services. Given a fixed organizational structure, the demand for court services may be higher or lower than its short-run service capacity. In recent years, a number of factors which explain the magnitude of demand for judicial services and changes in court caseloads have been identified.[7] These factors do not all work in the same direction.[8] Five such factors are briefly set out below:[9]

(1) Underlying Social Activity. There is a positive relationship between the volume of social activity and the number of cases arising out of that activity. For example, the number of

criminal, highway accidents, commercial, or domestic controversies is related to population size.[10]

(2) Certainty of the Law. A negative relationship can be expected between the certainty (predictability) of the law and the number of litigated cases. The more certain the law, the fewer the number of legal disputes and cases litigated. Over time, the development of legal precedents tends to promote certainty.[11]

(3) Substantive Legal Rights. The creation of new or the expansion of existing substantive legal rights produces an increase in the number of cases. Creating new rights, e.g., the right of privacy and the right to exclude illegally obtained evidence from trials brings a new activity within the law and creates a new class of disputes. Curbing the reach of the law has the opposite effect.[12]

(4) Cost of Legal Services. Decreases in the cost of legal services increase the number of cases brought. For example, subsidizing legal services for a particular class of claimants, by reducing the costs of litigation to those persons, increases their demand for court services.[13]

(5) Court Response Time. Courts can react to increased demand for their services by increasing the waiting period for litigants.[14] When delay functions to ration access to the courts,[15] the number of cases brought to court is reduced.[16] Conversely, if the waiting period is shortened, the number of cases filed is increased.

Each of the above forces are factors outside the determinants of judicial capacity. However, each, in turn, affects the perceived adequacy of the court's ability to resolve social conflicts. In a situation where the demand for court services appears to overshadow the judiciary's capacity to act, notwithstanding the policy option to tailor the demand for court services to existing organizational capacities, it may be desirable to expand the supply of judicial services provided. Factors tending to increase judicial caseloads do so only as a consequence of policy determinations of substantive law that are independent of questions of court capacity, e.g., legislative actions providing low cost legal services to indigents. The policy preference of foreclosing judicial access to accommodate a set court capacity imposes the costs of foregone substantive, and more often, civil rights. To the extent that the judiciary is best suited among the 3 branches of government for protecting individual liberties, such costs might be an unacceptable articulation of state policy. Recognizing that such an

altogether different policy direction exists, discussion turns from the demand side of the judicial system to supply considerations and court capacity.

PART III. TRIAL COURTS

Trial courts have traditionally been the initial public forum for resolving the disputes brought to the judiciary. In serving that function, the courts allow for and depend upon the parties to the controversy to present their positions on how the problem should be solved. After gathering such information, an arm of the state--either a judge or a jury--definitively resolves the problem in favor of one of the parties. The processes for disposing of such controversies are well established and grounded in English common law. Without altering current procedural safeguards, the number and organization of the trial courts determine how many cases the judicial system can dispose of in a given time period.

The trial court structure in Hawaii is composed of 2 classes of courts.[17] Circuit courts have been provided for in the Hawaii Constitution.[18] Family courts, though not mentioned in the Constitution, also have been created as a specialized division within the circuit courts.[19] They are designed to deal expressly with juvenile offenders and matters of domestic relations.[20] A second class of trial court is the district court. Unlike the circuit courts, district courts are not specifically included in the Constitution.[21] They have been established by the state legislature.[22] Four geographically set judicial circuits have been delineated to divide the workload among the state's circuit and district courts.[23]

The major difference between the 2 types of trial courts rests in their respective subject matter jurisdictions--the types of problems the court is empowered to settle. District court authority is generally limited to controversies involving less than $5,000 and criminal misdemeanors.[24] Circuit courts have the authority to resolve civil suits involving $1,000 or more, probate proceedings, criminal felony cases, and domestic affairs.[25]

For a systemic overview of Hawaii's trial court structure, a discussion of a number of factors characterizing its capacity for settling societal conflicts is helpful. Three such factors are the rate at which cases are terminated, the judicial resources available to the courts, and the time elapsed between case entry and termination. Existing data in these areas are incomplete but what is available presents a rough picture of how Hawaii's trial court system has operated in recent years.[26] For convenience, the information is presented by the type of forum to which the cases are brought--circuit court, district court, and family court. The total number of proceedings before the circuit courts during the past 5 years was compared against the number terminated. The circuit courts were able to terminate approximately one-third of the cases before them each year.[27] The evidence suggests that the termination rate has tended to drop during the last 5 years.

THE ABILITY OF CIRCUIT COURTS TO DISPOSE OF CASES HAS DROPPED SLIGHTLY[28]

Year	Termination Rate
1972	38.01%
1973	40.92
1974	33.73
1975	37.71
1976	32.13

This may partially be explained by the fact that the demand for court services increased during that period. The total number of cases before the circuit courts rose from 22,500 in 1972 to 25,200 in 1976.[29] Also during the last few years, the average time necessary for dealing with a case, as suggested by existing data from the first circuit, tended to decrease. For example, the average time between service of answer to trial in jury tried tort cases was lowered from 20.4 to 16.8 months in 1969 and 1974, respectively.[30] It is also noteworthy that the number of circuit court judgeships other than in family court correspondingly rose from 11.5 in 1972 to 15 in 1976.[31]

Similar data for the state's district courts show a higher rate of termination. The large proportion of traffic and other minor violations explain why the cases terminated by the courts in a given year exceed 90 per cent of

their total caseload.[32] But even among the relatively more serious civil and criminal actions the rate of termination exceeds 70 per cent.[33]

THE DISTRICT COURT TERMINATION RATE FOR CRIMINAL AND CIVIL CASES HAS EXCEEDED 70 PER CENT IN RECENT YEARS[34]

Year	Termination Rate
1972	80.39%
1973	77.50
1974	72.71
1975	77.86
1976	72.30

Even though there is a decrease in termination rate, the number of civil and criminal cases before the district courts rose considerably during the 5-year period, especially in the last 2 years.[35] A total of 33,920 such cases were before the district courts in 1972. The number had jumped to 37,846 by 1976. No estimates averaging how long it takes to dispose of civil and criminal cases have been developed for that time period but the number of district judgeships has risen. In 1975, 2 additional judges were appointed to join the 8 judges already serving the districts.[36]

The Hawaii family courts with a total of 7 full-time judges,[37] have consistently handled more than 25,000 cases annually for the last 5 years. During this same period, the rate of disposition of juvenile and domestic problems was approximately 65 per cent.[38]

APPROXIMATELY 65 PER CENT OF FAMILY COURT CASES ARE TERMINATED ANNUALLY[39]

Year	Termination Rate
1972	62.47%
1973	67.11
1974	64.97
1975	66.26
1976	63.93

The number of cases filed with the family courts suggests that their caseloads may be slowly increasing.[40] No information regarding the elapsed time needed to dispose of family court cases is currently available.

In total, the number of cases brought to Hawaii's trial courts have shown a gradual increase.[41] At the same time there does not appear to be a substantial decline in the courts' ability to resolve those cases. Preliminary evidence shows that different types of courts have varying capacities to dispose of the cases brought before them. Such differences might be explained by the varying levels of judicial and other resources available to the different types of courts. However, a more plausible explanation rests in the differences of severity and complexity associated with the types of cases allocated to the different classes of courts. To the extent that such jurisdictional requirements of the courts are related to the termination rates of the 3 types of courts, the ability of the courts to dispose of their caseloads may reflect less upon their capacity than their ability to tailor justice to the seriousness of the controversy. Even though, for example, those prosecuted for criminal felonies are preferably brought to trial with due haste, the matter at stake in those major cases and their potential effect on the lives of the individuals involved warrant the additional time for the parties to adequately prepare for their day in court.

Perhaps the role of the judicial system within the governance structure necessitates a more humanistic and less economic approach for analyzing the judiciary's capacity to settle the conflicts among Hawaii's people.[42] However, it is necessary to concede that in many ways, the judicial system can be seen as producing services in the same manner as other governmentally sponsored social welfare programs. It is unfortunate that the newly developing field of judicial management has yet to offer much guidance in establishing standards bearing on court capacity to produce public services. The capacity and size of the judiciary should perhaps be viewed in its most aggregate sense. Hawaii presently has approximately 4.5 trial judges for each 100,000 persons.[43] In comparison with other states, this figure indicates that Hawaii ranks among the top third for level of trial court capacity.[44]

PART IV. APPELLATE COURTS

An altogether different dimension of the judiciary's function involves appellate review. Appellate courts perform 2 basic functions. They review trial court proceedings to determine whether they have been conducted according to the law and applicable procedure. Secondly, courts of appeal develop the rules of law that are within the competence of the judicial branch to announce and interpret.[45]

The review function normally is performed when a party aggrieved by the decision of a trial court makes an appeal. In adjudicating that litigant's rights, the review is undertaken chiefly for that party's benefit. In contrast, the function of developing the law is performed for the benefit of the community at large. The purpose of settling questions of law is only incidentally for the benefit of the particular litigants.[46]

In Hawaii, the appellate function is presently vested in the state's Supreme Court. The 5-member court is responsible for resolving cases taken on appeal from the state's trial courts.[47] When compared with other states, Hawaii is among the top half of states in its ratio of appellate judges to population.[48] For every 100,000 persons, there is 0.6 appellate judgeships.[49] However, a different and perhaps more appropriate mode of comparison involves the ratio of appellate judges to trial judges. For each 100 trial judges in the state, Hawaii currently has 12.8 appellate judges.[50] This proportion of judges serving in appellate capacity ranks at the bottom third of a listing of states.[51] To the extent that the demands upon the Supreme Court are dependent upon the number of trial courts producing reviewable questions, the appellate to trial judge ratio suggests that Hawaii's appellate capacity might be low in comparison with other states. Other data tend to support this statement.

The Hawaii Supreme Court's ability to accommodate demands for its services appears to have declined in the past few years.[52]

THE SUPREME COURT'S RATE OF TERMINATING CASES HAS DECLINED[53]

Year	Termination Rate
1971	73.82%
1972	70.79
1973	69.82
1974	67.31
1975	63.98
1976	59.91

At the turn of this decade, the Supreme Court successfully disposed of 73.82 per cent of all appellate proceedings, However, that termination rate fell to 59.91 per cent by 1976. At the same time the Court's ability to successfully review its cases has declined, the time needed for terminating an appellate case has lengthened.

THE TIME NEEDED TO TERMINATE AN APPELLATE PROCEEDING HAS INCREASED[54]

Year	Average Elapsed Time (Months)
1972	12.6
1973	14.2
1974	13.1
1975	14.1
1976	19.5

Between 1972 and 1976, the average time from the date an appeal was filed until an opinion is rendered rose from 12.6 to 19.5 months. The number of justices on the Court remained constant over that period. Such evidence suggests that judicial productivity may be lagging. However, further analysis dispels this notion.

Two points can be made. First, the number of written opinions produced by the Court in recent years has not changed substantially.

THE NUMBER OF OPINIONS PRODUCED BY THE SUPREME COURT HAS NOT CHANGED[55]

Year	Opinions
1971	98
1972	82
1973	104
1974	99
1975	97
1976	96

The 5-member Supreme Court has drafted an average of 96 opinions annually for the last 6 years. The relatively low variation in number of opinions from year to year indicates that the productivity levels of the justices have not changed. Secondly, the Supreme Court has experienced a radical increase in its workload, especially during the last 2 years.

THE NUMBER OF APPEALS FILED WITH THE SUPREME COURT HAS INCREASED IN RECENT YEARS[56]

Year	Primary Cases	Supplemental Proceedings	Total Filings
1971	171	240	411
1972	121	191	312
1973	171	196	367
1974	178	241	419
1975	194	253	447
1976	265	375	640

While approximately 400 appellate matters were brought to the Supreme Court in 1971, the number exceeded 600 in 1976. Even though some appellate questions are supplemental to other appellate cases, court records indicate a corresponding increase in both types of issues.

Such evidence has led a number of judicial authorities to believe that the appellate capacity of Hawaii's judiciary is inadequate for dealing with the demands placed upon it.[57] A 1977 study conducted by the National Center for State Courts concluded that "...the Hawaii Supreme Court has not been able to stay current with its rapidly expanding caseload".[58] The chief justice of the Hawaii Supreme Court, William S. Richardson, stated in a recent speech to the Hawaii Bar Association that:[59]

> From first-hand experience I can tell you that our appellate system as presently structured is inadequate to meet the needs of the decade ahead...within the next few years, the Supreme Court as presently structured will be unable to handle the level of filings.

The chief justice went on to say that he has reached "the personal conclusion that the long-term solution [to the appellate capacity problem] is the establishment of an intermediate court of appeals".[60] In addition to the chief justice's preference for creating a supplementary appellate structure, however, there are a number of alternative ways for expanding the appellate capacity of the judiciary. The listing below sketches the breadth of possibilities and outlines the most frequently mentioned alternatives:

Strategy	Alternatives	Type of Action Required
Increase Supreme Court staff	Professional staff could be added whose function would be to screen the cases filed with the Court. Under the supervision of the Court, such staff would have the authority to recommend dismissal of certain cases.	Statutory amendment; and Budget appropriation.
	Law clerks presently assist the justices in legal research and drafting opinions. Their numbers were increased in the 1977 fiscal year. More clerkships could be established.	Budget allocation.
Change Supreme Court structure	The size of the Court may be increased. Subject to the considerations raised in a later chapter, the number of justices may be expanded to produce added capacity.	Constitutional amendment; and Budget appropriation.
	Court organization may be altered to provide for review by rotating panels of justices. Appeals are presently reviewed by all justices of the Court (Hawaii Revised Statutes, sec. 602-11). Splitting the Court may be preferable if court size were increased.	Constitutional amendment; Statutory amendment; and Budget appropriation.

Strategy	Alternatives	Type of Action Required
Change Supreme Court jurisdiction	Right of review could be restricted to selected types of cases. Present court jurisdictional provisions embody the one right to review policy. (See Hawaii Revised Statutes, secs. 641-1, 641-11, 641-12)	Statutory amendment.
	Appeal by certiorari gives the Court discretion in which case it wishes to review. Upon application for appeal, the Court decides whether to accept the case for review. Adoption of such a process is not inconsistent with the current "right of one review" policy.	Statutory amendment.
Create Appellate Courts	Intermediate Appellate Court could be structured between the trial and supreme courts. Twenty-four states currently have such courts.	Constitutional amendment; Statutory amendment; and Budget appropriation.
	A Circuit Court Appellate Division could be established to handle appeals from inferior trial courts.	Constitutional amendment (arguable); Statutory amendment; and Budget appropriation.

Even given the large number of possibilities for remedying the problem, they can be categorized for the purposes of constitutional analysis. Assuming that recent increases in demand for Supreme Court services evidence a problem of sufficient magnitude for state action, there are 3 constitutional strategies for doing so. To address the Hawaii judiciary's needs for appellate capacity, constitutional alternatives include retaining the status quo, increasing legislative discretion, or constructing a new appellate structure.

Constitutional Status Quo

The status quo strategy entails leaving the constitutional provisions regarding the judiciary untouched. Reliance on this strategy forecloses both the creation of intermediate appellate court structures and changing the Supreme Court's organization.

The constitutional section most relevant to the creation of additional appellate courts reads as follows:[61]

> The judicial power of the State shall be vested in one supreme court, circuit courts, and in such inferior courts as the legislature may from time to time establish. The several courts shall have original and appellate jurisdiction as provided by law.

There has been no case authority interpreting whether this section prohibits the creation of an appellate court superior to the circuit courts. But the prevailing construction of this provision focuses on the placement of the term "such inferior courts".[62] Because there are 2 courts--the Supreme Court and the circuit court--to which "inferior courts" may refer, it has been concluded that the term applies to courts inferior to the circuit courts because of the manner in which it is written.

A second constitutional provision currently makes changes to the supreme court structure unlikely. Section 3 of Article V states that "[t]he supreme court shall consist of a chief justice and four associate justices." The 5-justice court is firmly set in the Constitution and its size cannot be altered without a constitutional amendment.[63] However, while not directly forbidding the use of judicial panels the present court size strongly mitigates against their use given the chief justice's large role as administrative head of the judiciary.

The status quo option, on the other hand, does not restrict the state legislature's authority to adopt any of the other statutory remedies outlined earlier. Supreme court staffing levels and jurisdictional requisites would still be retained as possible mechanisms for increasing the judiciary's appellate capacity.[64]

Increasing Legislative Discretion

In addition to those legislative options available if no constitutional changes are made, constitutional amendments can be designed to broaden the range of discretion given to the legislature. From the standpoint of constitutional analysis, all questions associated with a call for increased appellate capacity can be ignored because the effect of such amendments would be to place the burden of defining, determining, and creating appellate capacity completely in the hands of the state legislature.

Two types of amendments would cast the judiciary's problem regarding appellate capacity completely in the arms of the legislature.[65] A first type of constitutional change would expand the legislature's authority to create courts inferior to the supreme court. Such amendments would focus on what is presently section 1 of Article V dealing with the overall judiciary structure. The second type of amendments involve section 3 of Article V regarding the Supreme Court. To maximize flexibility of the supreme court structure, references to its size may be deleted from the Hawaii Constitution.[66] The legislature would thereby be afforded the discretion under present law,[67] to set the size of the court relative to its corresponding workload. Both types of amendments, however, tend to increase judiciary reliance on the legislature and tend to undermine the judiciary's independence.

Constructing a New Appellate Structure

Antithetical to increasing legislative discretion is the strategy for constitutionally producing additional appellate capacity in the judiciary. In addition to adding to the number of justices on the supreme court,[68] focus here turns to establishing an intermediate appellate court.[69] An amendment creating such a court would mandate that the legislature appropriate the funds necessary for its operation. However, the extent to which the legislature would have control over that new court would be determined by the specificity of detail built into the constitutional amendments.

The means for constitutionally creating an intermediate appellate court can be viewed as falling within a continuum. The continuum represents the extent of detail and specificity contained in the new constitutional provision. At one end of the spectrum an amendment may only refer to the establishment of an intermediate appellate court. Such a change would be consistent with the present format of the Hawaii Constitution which briefly vests judicial power "in one supreme court, circuit courts, and in such inferior courts".[70] Under such a scheme, the legislature is granted wide discretion in the new court's size, structure, and jurisdiction. The Model State Constitution recommends that this approach be used.[71] At the other end of the continuum would be a detailed insertion setting out jurisdictional, compositional, and structural matters. A wide variety of prototypes for modeling such a constitutional amendment presently exists. Twenty-four states currently have operating intermediate courts of appeal.[72] Such detail prevents the legislature from emasculating an attempt to construct additional appellate capacity and further promotes independence in judicial functioning. On the other hand, excessive constitutional detail detracts from judicial flexibility and minimizes the ability to cope with future changes in demand for appellate services.

In summary, the structure of Hawaii's judiciary can be viewed from the perspective of its capacity to resolve the conflicts among the state's people. In doing so, awareness of the factors affecting the level of service demanded from the judiciary is separable from those determinative of the court's ability to cope with those controversies brought before it. Because government is better equipped to affect the latter set of factors, discussion of judicial organization focuses on the trial and appellate courts and their ability to settle those conflicts introduced to their forums. While there is little evidence that trial court resources have inadequately grown to accommodate the increased demands for their services in recent years, questions regarding the sufficiency of current appellate capacity have been raised. In fashioning a constitutional design accommodating such questions, different policy consequences result. On the one hand, giving the legislature discretion in constructing appellate capacity increases flexibility in tailoring appellate organization to the types of demands placed upon it. On the other hand, firmly delineated constitutional standards insure independence in judicial functioning.

Chapter 3
SIZE OF SUPREME COURT

The size of Hawaii's Supreme Court is presently established in the state constitution.[1] In contrast, some state constitutions and the U.S. Constitution do not set the size of their supreme courts.[2] It may be argued that not prescribing the size of the supreme Court allows for greater flexibility in judicial structure. For example, where workload increases of the court warrant it, the size of the court may be expanded or contracted to fit the circumstances. Where no provisions regarding supreme court size are included in a constitution, the number of justices is set by statute. On the other hand, such flexibility may threaten the independence of the judiciary. The potential for "court-packing" undermines the doctrine of separation of powers inherent in our present constitutional scheme.

In Hawaii, the state's highest court is composed of 4 associate justices and a chief justice.[3] The present size of the court was initially set by the Constitutional Convention of 1950. The provision was untouched by the 1968 Constitutional Convention.[4]

Prior to 1959, the Hawaii Supreme Court had 3 judicial seats.[5] Its size was increased to 5 upon statehood when the Constitution designed by the 1950 Constitutional Convention went into effect. The 1950 Convention concluded that:[6]

> ...a supreme court of five is desirable to keep to a minimum the number of cases in which justices of the supreme court are disqualified and their places filled by substitute judges.... The cost of maintaining the judiciary is exceedingly small as compared with the executive and legislative branches of government.

The current size of the Hawaii Supreme Court is comparable to that of many other states. The following table reflects a survey of state supreme court size:[7]

MOST STATE SUPREME COURTS HAVE FIVE OR SEVEN MEMBERS

No. of Justices	No. of States
3	1
5	18
6	2
7	22
9	7

There are a number of considerations in setting the number of judgeships on the supreme court. Five such factors are:

(1) Court Workload. It can be argued that the most important criterion in fixing the number of justices is the amount of work facing the court.[8] There should be a sufficient number of justices to insure ample time for reflection and deliberation in the preparation of opinions.

(2) Range of Views. The court should have enough members to insure a breadth of views. The larger the size of the court, the greater the potential for differing viewpoints.[9]

(3) Ease of Deliberation. The size of the court should also be small enough to allow meaningful and close deliberations.[10] The number should facilitate the formation of the types of working relationships required to establish concurrence of opinion on difficult legal questions.[11]

(4) Cost. A limiting consideration in fixing the size is the expense of a large tribunal, especially in smaller states. Aside from added judges' salaries, a large court can become quite costly if adequate staff services for each additional judge, e.g., law clerks and secretaries, and office accommodations are taken into account.[12]

(5) Odd-Number Justices. A supreme court should have an odd number of justices so that decisions can be reached by majority vote.[13] The odd number avoids, as far as is possible, an even division of the court.[14]

In Hawaii and the great majority of states, the Supreme Court represents the whole state rather than a district. The justices are selected at large. A minority of 8 states choose their supreme court justices on the basis of geographic districts.[15]

The manner in which the chief justice is selected varies in greater degree. The means for selecting chief justices vary from state to state but they can be categorized into 3 groups. In the first group, the chief justice seat is treated as a separate office and a person is either elected or appointed as the chief justice. A total of 23 states, including Hawaii, fall within this category. Tenure characteristics identify the second group. In 12 states, the chief justice designation automatically goes to the judge who is oldest in service or who has the shortest term remaining. The third category is characterized by judicial determination. Fifteen states permit the members of the supreme court to select the chief justice from among themselves.[16]

Related to the issue of court size is the mechanism for finding temporary replacements for supreme court justices. The need for appointing substitute justices on a case-by-case basis may arise because of vacancy due to illness, disqualification, death, or when a justice has retired but no successor has been named. Present constitutional provisions[17] create 2 pools from which temporary judges to the Supreme Court can be selected. "When necessary, the chief justice shall assign a judge or judges of a circuit court to serve temporarily on the supreme court."[18] This provision was placed in the 1950 Constitution in order to cope with contingencies. Prior to that time, the territorial supreme court was composed of 3 judges and the death of a justice led to an impasse in case decision.[19] The provision was not touched by the 1968 Constitutional Convention. Instead, the Convention expanded the pool of candidates from which interim justices could be selected.[20] Circuit court case backlogs were the major impetus for identifying a second source of substitute justices.[21] As a consequence, it was provided that "[a]s prescribed by law, retired justices of the supreme court also may serve temporarily on the supreme court at the request of the chief justice."[22] However, the amended provision is introduced by the phrase "as prescribed by law". The phrase was included because the legislature was felt to be best situated to determine those qualifications and limitations under which a retired justice could serve. Such factors include consent of retired judges, compensation if any, limitation to those not in private practice, age ceilings, and certain other procedures for recalling a retired justice.[23] Subsequent legislation has set such guidelines.[24]

Chapter 4
JUDICIAL ADMINISTRATION

The concept of court unification has been central to nearly all proposals for state court reform in this century.[1] A unified system of courts is organized according to uniform and simple divisions of jurisdiction and operates under a common administrative authority.[2] The premise underlying the movement toward unifying court systems is the expectation that "[r]endition of equal justice throughout a court system is possible only if the system as a whole applies equal standards through rationally allocated effort."[3] Unified court systems are characterized by the following 4 components:[4]

(1) The elimination of overlapping and conflicting jurisdictional boundaries (of both subject matter and geography);

(2) Hierarchical and centralized state court structure with administrative responsibility vested with the chief justice and state court of last resort. Authority often includes assignment of judges, promulgation of rules, designation of presiding judges of local trial courts and general administrative procedures relating to jury selection, case processing time standards, monitoring techniques, and statistical collection;

(3) Unitary budgeting, and financing of the courts at the state level;

(4) Separate personnel system centrally run by the state court administrator covering a range of personnel functions (recruitment, selection, promotion) and encompassing all personnel including clerks of court.

Along with many other states,[5] Hawaii has moved in the direction of unifying its judicial system.[6]

Steps to unify Hawaii's court system date back to 1965. Prior to that time, the district courts were the responsibility of each of the individual counties in the state. The 1965 Act[7] fixing responsibility for the district courts placed their administration and operation in the hands of the state government.[8] However, it was not until 1970 that the district courts became courts of record.[9]

Before that change, it was necessary to appeal to the circuit courts to establish a record.[10] In addition, the same legislative action altered the organizational structure of the district court system.[11] Where previously there were 27 separate district courts, 4 district courts were organized along county and concurrent judicial circuit lines.[12] Although the statute calling for such changes was adopted in 1970, its provisions did not take effect until 1972.[13]

With such changes,[14] Hawaii's judicial system became a 2-tier trial court system. Since the last century, there has been much debate regarding the desirability of single or 2-tiered trial court systems.[15] In contrast to the 2-tiered organization, the single trial court system involves only one level of trial courts with general subject matter jurisdiction.[16] However, one commentator[17] has recently reported that the single level system[18] is found in only Idaho and South Dakota. On the other hand, only Hawaii, Rhode Island, and Virginia currently have 2-tiered trial courts in the pure sense.[19] Twenty-four states diverge from either model because they have intermediate courts of appeal.[20] Other states have more than 2 types of trial courts and also do not fit either model.[21]

Hawaii's court structure diverges from the unified court concept in another regard. There are 3 specialized courts in the state's judiciary--the tax appeal court,[22] the land court,[23] and the family courts.[24] The tax appeal court is a statewide court of record with original jurisdiction in all disputes between the tax assessor and taxpayer.[25] Based in Honolulu, this court is staffed by circuit court judges.[26] The land court similarly is presided over by circuit judges.[27] It exercises exclusive original jurisdiction over controversies involving land titles and easements.[28] The family courts are also part of the circuit court structure.[29] The family courts have exclusive original jurisdiction over juvenile offenders and matters of domestic relations.[30] It may be argued that the unified court system is not consistent with the existence of specialized courts or more than one level of trial courts.[31] However, other recent commentators have contended that the notion of a unified court structure is not antithetical to more than one type of trial court. Instead of focusing on the number of courts, the key lies in the state's method for handling the controversies brought before its courts.[32] To the extent that jurisdictional and

procedural requisites are clear-cut and easily recognizable, it cannot be easily said that the desired effects resulting from a unified system would not be advanced.

A second area evidencing Hawaii's movement toward a more unified judiciary involves administrative and procedural centralization. Hawaii's Constitution has long designated the chief justice as the administrative head of the courts.[33] Constitutional[34] and statutory[35] provisions also allow for an administrative director to assist the court in maintaining the judicial machinery. The Supreme Court is further authorized to appoint a judicial council whose function is to advise the Court in the administration of the judiciary.[36] Such centralized administrative authority provides maximum flexibility in the deployment of judicial resources. This approach has been advocated by both the American Bar Association[37] and the National Municipal League.[38]

Another dimension of the centralized administration of the judiciary involves the rule-making powers. It has been generally advocated that the courts should have the authority to prescribe the rules of procedure governing judicial proceedings.[39] This scheme provides flexibility because amendments to rules can be made by the court without resort to the slower legislative process.[40] Hawaii's Constitution has granted the Court such authority since statehood in 1959.[41] Thirty-one other states similarly vest the authority in the Supreme Court. Eight others place it partially in the court. In 22 states where the court has exclusive rule-making authority, the legislature has no veto power over the rules promulgated by the court.[42]

The financing of Hawaii's judiciary is a third area evidencing the shift toward a more unified system. For Hawaii, this shift occurred in 1974 through 2 separate but related actions. The Hawaii Constitution was amended by the Hawaii electorate in the general election of 1974 to exclude the judiciary's budget from the item veto powers of the governor.[43] In a second action, the state legislature provided for a separate judiciary budget independent from the executive budget.[44] The purpose for such actions was to safeguard the judiciary from the governor and to confer upon the judiciary the separate and co-equal status intended by the Hawaii Constitution.[45] Such financial

independence has been advocated by proponents of a unified court system for years.[46] While only 12 states[47] have been reported to approach this ideal, Hawaii's current financing system can be seen as one of the most advanced of those budgetary processes establishing judicial independence.

A final area in which Hawaii has moved toward judicial unification is the court's personnel management system. During the 1977 session, the state legislature passed a law creating a separate personnel system for Hawaii's judiciary.[48] Prior to adoption of the act, nonjudicial staff of the courts were subject to the civil service regulations covering employees of the executive branch.[49] The purpose of the new statute was to conform the personnel laws of the state to the concept that the judiciary is a separate branch of government.[50] Such an approach is consistent with the American Bar Association's position that the personnel of a court system be selected and managed by regulations promulgated by the judiciary itself.[51]

It can be said that Hawaii has moved consistently and methodically toward the establishing of a unified court system. Until very recently, there have been no questions raised regarding the desirability of such a judicial structure. However, scholars are presently beginning to challenge the conventional wisdom regarding court unification, at least in a theoretical manner.[52] In general, such critics contend that a highly centralized judicial system may actually be dysfunctional.[53] One scholar has argued that the unified system does not adequately deal "with the reality of a complex set of contextual forces including environment, technology, human resources, and time".[54] Another critic similarly argues that the standardized processes of a unified system "promote[s] more bureaucracy and less flexibility".[55] Indeed, there is little empirical evidence to suggest that the unified court system is better than a nonunified one.[56] However, there is also no hard evidence indicating that the converse is true. While such a debate can be expected to rage on for the next decade, it is sufficient at this point to understand that the judiciary can be viewed as an organization in many ways similar to other social welfare agencies. To the extent that the judiciary is organized as a decentralized and adaptive system, it can be said that the resulting system will not administer justice equally. On the other hand, a centralized, unified system can result in an inflexible

bureaucratic system whose ability to tailor justice to the needs of the citizenry is impaired. As applied to the State of Hawaii, however, it has generally been recognized that the direction toward court unification has been the correct approach for revitalizing and overhauling the state's judicial branch of government.[57]

Chapter 5
JUDICIAL SELECTION

The selection of competent judges is the most important aspect of establishing and maintaining an excellent court system. Judges perform the central function in resolving societal conflicts and providing standards of proficiency and conscientiousness that guide members of the bar, court auxiliary staff, and the general public.[1]

The task of choosing judges is a difficult matter of judgment. No reliable yardsticks have been developed for measuring those characteristics essential for a judge: professional competence, intellectual ability, integrity of character, and a knowledge of human relations.[2]

Because there are no hard standards as to what constitutes a good judge, the search for the most competent boils down to seeking the best method of selection. No constitutional provision can guarantee that those charged with the task of judicial selection will in fact exercise good judgment. No selection process, like other organizational designs, is foolproof. Instead, what is desirable is a selection mechanism that minimizes the likelihood that the best qualified will not be selected.

Five Ways to Choose Judges

In the United States, 5 alternative processes for selecting judges have evolved since the country's birth. Two of them involve popular elections. They are either based on partisan or nonpartisan politics. Another 2 mechanisms for judicial selection entail appointments by either the executive or legislative branches of government. The fifth alternative, originally designed in Missouri, includes both appointment and election.

The evolution of judicial selection procedures has been influenced by historical forces. The Declaration of Independence states that the King of

England "made judges dependent upon his will alone for tenure of their offices and the amount and payment of their salaries". Reflecting this grievance, the 13 states, after independence, sought to do away with one-man control of the judiciary. Seven states provided for the selection of judges by the legislature while the 6 remaining states vested the power with the governor, with restrictions.[3] Appointments by the governors were made subject to approval of some group of citizens such as the state legislature,[4] governor's council,[5] or a special "council of appointment".[6] The U.S. Constitution provides for the appointment of the federal judiciary by the President with the advice and consent of the senate.[7] Although the appointive system was retained upon independence from England, those systems developed by the 13 states expanded the base of who controlled the judiciary and who selected the judges.

In the early nineteenth century, social forces pushed for a further expansion of who participated in choosing judges. After 1830 to the Civil War, a period of rapid and vast changes in the political, social, and economic life of the country often referred to as the era of Jacksonian democracy, it was openly asserted that judicial appointments were the spoils of partisan politics and selections were made not on account of ability and fitness but as a reward for political services. Partly in response to these criticisms, many states adopted provisions for filling judicial offices by popular election. Mississippi adopted an elective judiciary in 1832. New York did the same in 1846, and thereafter, many of the original states and all of the newly created states turned to the elective method.[8]

By the turn of the century, however, many states were dissatisfied with the involvement of political parties in the election of judges. In response, they altered their election systems and adopted a nonpartisan ballot system under which the names of the judicial candidates appeared on a special ballot without party designation.

It should be noted that not all states joined the initial movement toward popular election. Seven states, Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, Rhode Island, and South Carolina, never adopted the elective systems and other states returned to the appointive systems--Virginia,

after 14 years of the elective system; Vermont, after 20 years; and Florida and Mississippi, in 1868.

It was not until the mid-twentieth century that a hybrid process embracing both the appointment and election instruments was designed. In 1940, Missouri adopted a system requiring the governor to choose judges from a panel of 3 names recommended by a nominating commission. The commission was headed by a judge and consisted equally of lawyers and members of the public. The appointee would hold office for one year. At the following election, the voters, on a separate noncompetitive judicial ballot, would decide whether to retain the judge for a full term. Since then, a number of states have adopted some or all of the features of the Missouri Plan. For example, in California, the commission on judicial qualifications, which is composed of 5 judges, 2 lawyers, and 2 members of the public, does not nominate but confirms the governor's appointments.

At present, the bulk of the states still rely on the election process for choosing judges for their highest court.[9]

THE MAJORITY OF STATES STILL ELECT JUDGES

Selection Mechanism	Number of States
Election	24
Appointment	11
Missouri or Merit Plan	15

A number of states have switched to the Missouri Plan in the last decade.[10] In 1968, only 6 states chose their supreme court justices by the Missouri Plan.[11] Fifteen states have now adopted that selection mechanism.[12] Why a state would prefer one selection process over another has been the subject of much debate. The arguments associated with each alternative are set out later in this chapter.

Legislative and Executive Appointments

Of the 11 states using the appointive mechanism for choosing supreme court justices, 4 rely on the state legislature to make such selections.[13] Under the legislative appointment scheme, the typical process for selection involves a judicial election in which only members of the state legislature are allowed to participate. The remaining 7 states, including Hawaii,[14] place primary reliance on the governor for choosing judges.[15] Generally, the executive appointment process calls for gubernatorial nomination followed by confirmation of the legislature, typically the state senate.

Hawaii's tradition under an appointive judiciary system has been a long one. The earlier constitutions of Hawaii of 1852, 1864, 1887, and the constitution of the Republic all provided for an appointive judiciary. That tradition was continued when Hawaii became a territory.[16] Upon statehood, the appointive system adopted provided for gubernatorial appointment with the advice and consent of the state senate.[17] The 1968 Constitutional Convention decided to retain that method of selection.[18] It was felt that with the system requiring gubernatorial appointment and senate confirmation, those making the selection were directly accountable to the electorate for their actions. Furthermore, there had been no evidence of past abuse under the executive appointment process.[19]

Such a system of executive nomination and appointment with the consent of the legislative body is provided for in the federal system of judge selection.[20] It is generally acknowledged to produce a higher caliber of judges than that of the state court systems.[21]

Appointive systems for judge selection, be they legislative or gubernatorial, have been associated with the following arguments:[22]

ARGUMENTS RAISED BY AN APPOINTIVE SYSTEM OF JUDGE SELECTION

For

- The appointing officer can develop the staff and resources to obtain information and make intelligent assessments of judicial candidates.
- The appointing official is clearly responsible for the quality of judicial applicants and a series of bad appointments can politically be damaging.
- The appointive system can produce a balanced as well as a qualified judiciary--in that the governor can appoint certain candidates with particularly good qualifications, notwithstanding that they have little political backing.
- The appointive system will produce qualified candidates who would not otherwise subject themselves to the rigors of a political campaign.
- The appointive system at the federal level has produced judges of generally high caliber.
- A judge, once appointed to the bench, is not obligated to the executive or anyone else, but is responsive and obligated only to do justice according to law and conscience.

Against

- The appointive method, far from divorcing judges from politics, increases the political considerations involved in the selection of judges since the appointing officer is a political officer subject to political pressures.
- Even if the governor has made a series of bad judicial appointments, the electorate may not want to throw the governor out because the governor may be a good executive in all the other functions of government.
- Appointment by the governor and confirmation by the senate undermines the independence of the judiciary and destroys the separation of powers of the 3 branches of our government.
- Judges who are selected by the governor under the appointive system may become subservient to the executive.
- There is as much politics involved in an appointive system as there is in an elective system, but the politics involved in an appointive system is more invidious in that there is participation by a few and the appointee only looks to a few after appointment.
- The purely appointive system does not provide a regularized method of actively seeking out talent for the benches in a nonpolitical way.
- An appointive system is inherently undemocratic in that it deprives the people of direct control of the judicial branch of the government.

For	Against
	- Even where judicial appointments must receive confirmation by somebody independent of the appointing officer, there is no substantial protection against inferior selection. At best confirming bodies have only a veto power--while they may reject one appointee, they cannot be certain that the next appointee proposed will be better qualified.

Election of Judges

Although the election process remains the most frequently used means for choosing judges, the number of states relying on this procedure has decreased in the last decade. A total of 31 states determined the membership of their highest courts by popular election in 1968.[23] By 1976, this figure dropped to 24.[24] Among those states presently electing supreme court judges, 13 tie the campaign and voting processes to political party affiliations. The remaining 11 states have nonpartisan elections.[25]

The salient arguments related to elective judicial systems can be presented as follows:[26]

ARGUMENTS RAISED BY AN ELECTIVE SYSTEM OF JUDGE SELECTION

For	Against
- The elective method has worked well in the past and produced a qualified, impartial, and effective judiciary.	- The voters, as a whole, know relatively little about judicial candidates, nor do they have any great desire to know much more. Studies have shown that voters either do not vote for judicial candidates at all or else vote solely on the basis of
- The elective system assures that the judicial branch of government	

For	Against
is directly responsible to the people so that it will not be in a position to impose political, social, and economic policies which are contrary to the fundamental aims of the people.	party affiliation or some other more or less arbitrary basis.
- The elective system is said to have the advantage of assuring the selection of judges representative of the various ethnic, religious, and other groups of the community.	- The elective system engenders a loss of public confidence in the independence of the judiciary in that it fosters the impression that elected judges, in order to keep up their political connections, must refrain from taking action which offends the party leaders.
- Since the voters are deemed qualified to elect the governor and the legislators, they are equally qualified to elect their own judges.	- The elective system forces the incumbent judge to take time from judicial duties to campaign, thereby increasing the work of the other judges and disrupting the court schedule.
- The election of judges insures that the judiciary is an independent branch of our government in that a judge need not look to the executive or legislative branch for appointment and confirmation.	- The elective system is not designed to select the most able judges in that local political leaders do the nominating, not on the basis of ability, character, and professional standing but with primarily political factors in mind.
	- The elective method compels judges to become politicians, operates to discourage able individuals from seeking judicial office, and once they achieve the office, it may operate to remove them for reasons not fundamentally connected with judicial performance.
	- It is practically impossible for the public to know which candidates possess the requisite abilities to make competent judges since judicial campaigns receive relatively little news coverage.

The common forms of campaigning by judicial candidates are billboard posters and pamphlets, appearances with other candidates on the slate at party rallies and functions, and speeches before religious, civic, and social organizations. However, a judicial election is somewhat unique in that the campaign waged by a candidate is limited to some extent by Canon 30 of the Canons of Judicial Ethics which provides:[27]

> A candidate for judicial position should not make, or suffer others to make for him, promises of conduct in office which appeal to the cupidity or prejudices of the appointing or electing powers; he should not announce in advance his conclusions of law on disputed issues to secure class support and he should do nothing while a candidate to create the impression that, if chosen, he will administer his office with bias, partiality or improper discrimination.

To avoid some of the undesirable political influences of the elective system, states have adopted variations of the elective method. In 1962, Illinois adopted a procedure under which the judges of its appellate courts and trial courts of general jurisdiction, who are initially selected by partisan elections, may be retained in office after the expiration of their regular term by a noncompetitive election. The voters are merely asked whether the incumbent judge should be retained for another term. This plan was urged on the ground that it would prevent the loss of good judges who fail to be renominated or reelected for reasons not involving the quality of their performance in office.

Twelve states have switched to the nonpartisan election, under which the names of the judicial candidates appeared on a special ballot or a regular ballot without party emblems or designation.[28] Advocates of this plan say that it eliminates the undesirable political influences while still preserving the public's right of selection. Critics, however, point out that this plan:

- Nullifies whatever responsibility political parties feel to the voters to provide competent candidates and thereby closes one avenue which may be open to voter pressures for good judicial candidates.
- Where appeal to voters on political grounds is made impossible by the nonpartisan ballot, other considerations equally irrelevant to judicial qualifications are injected into the election such as race, religion, pleasing television image, proper place on the ballot, or having a familiar name.
- Nonpartisan elections deprive the judicial candidate of any financial and campaign support the candidate's party may provide, thereby requiring the candidate to rely on personal income or become beholden to friends for contribution.

The Missouri or Merit Selection Plan

The Missouri Plan, sometimes called the Merit Selection Plan, is presently used to select judges for the court of last resort in 15 states.[29] Although there are numerous variations on the Plan, the process generally consists of 3 steps:

(1) Nomination of slates of judicial candidates by nonpartisan, lay-professional nominating commissions.

(2) Appointment of the judge by the governor from the slate submitted by the nominating commission.

(3) The appointee serves an initial term, then submits to a noncompetitive election in which the electorate decides whether or not to retain the appointee for a regular term.

The nominating committee usually consists of the chief justice of the supreme court and an equal number of lawyers and members of the public. The public members are appointed by the governor, while the state bar members generally elect the lawyer members of the commission.

The Missouri Plan has been the topic of much debate within the last decade.[30] Even though there is no hard evidence that the claims made by its proponents are true, especially that of eliminating politics from the selection process, the campaign for the Missouri Plan has been fairly successful. Through 1975, in addition to the 14 states with a Missouri Plan for supreme court judges, 8 states had also adopted the Plan in part to select their judges for courts other than the supreme court.[31] In such debates, the points raised can be summarized as follows:[32]

ARGUMENTS RAISED BY THE MISSOURI SYSTEM OF JUDGE SELECTION

For	Against
- Use of the nominating commission helps insure that only well-qualified candidates are considered for judicial office and prevents	- Removal of judges from election by the people deprives the people of a basic inherent right.

For

mediocre candidates from being selected for political reasons.

- The Plan retains the important advantages of the appointive scheme, that is, participation in the selection process of an authority (the governor) who is qualified and able to assess judicial candidates and who is directly answerable to the people.

- The nominating committee arrangement insulates judicial selection from the adverse effect of politics, inevitable in appointive selection of judges. It is immaterial if the executive chooses to select only nominees from the executive's political party so long as the nominating committee submits only the best qualified appointees.

- In Missouri, the Plan has resulted in a partisan composition of the bench. Of the first 60 judges appointed under the Plan, 70 per cent were from the same political party of the governor and 30 per cent were from the opposite political party.

- Public confidence in the Plan in Missouri has been good. In 1940, the Plan was adopted by a 90,000 vote majority. Resubmitted in 1942 at the insistence of opponents who argued that the people had not understood the Plan, voters reendorsed it by a 180,000 vote majority.

- Under the Plan, any judge, being free of political preoccupations, will be a better judge because the

Against

- The courts are not taken out of politics but the traditional politics of party leaders and machines have been replaced by bar and gubernatorial politics.

- The system diffuses the responsibility of selection since a governor could claim that good selections could not be made due to the inferior quality of those on the lists.

- It appears that only one Missouri judge has been defeated under the referendum feature of the Plan since it went into operation in 1940 which shows that the Plan perpetuates present judges in office for the balance of their lives, making it almost impossible to remove unqualified judges.

- The attorneys have too much power and authority over the nominating process.

- The nominating committee places the governor's "preferred" candidates on the list of nominees to accommodate the governor.

- There is no reason that in the retention election, the public would be any better informed after a judge has served one or more years in office.

- Since nominating commissions predominantly consist of judges and attorneys, their orientation in judicial selection will be to emphasize strictly technical abilities rather than other qualities and types of experience which may be more relevant to the needs of the community.

For	Against
judge's working hours and mind will be devoted only to judicial work.	
- Since the retention election under the Plan is disassociated from politics, the chances that a judge will be removed from office on political grounds unconnected with ability as a judge are greatly reduced.	
- The Missouri Plan still reserves to the people a veto on judicial candidates. The public is rarely in a position to know in advance how good a judicial candidate is, but if the candidate's record as a judge is outstandingly poor, the voters can ascertain the facts and remove the judge.	
- The security of tenure provided by the Plan attracts attorneys who would not have submitted themselves to the ordeals of the old political system.	

It should be noted that the Hawaii Constitution provides for the appointment only of the justices of the Supreme Court and the judges of the circuit court. The method of selecting district court magistrates is left to the legislature which has provided that district judges be appointed by the chief justice of the Supreme Court.[33] District judges hold office for 6 years and until their successors are appointed and qualified. Any district judge may be summarily removed from office and judicial commission removed by the Supreme Court whenever the Supreme Court deems such removal necessary for the public good.[34]

The Impact of Selection Systems

Beyond the arguments that can be advanced for different means for selecting judges, little evidence substantiating the claims associated with each

alternative exist. In the last few years, however, a number of empirical studies comparing the differential impacts of the various selection mechanisms have been undertaken. Their findings shed some light on whether the selection process is related to who are chosen and how they resolve the conflicts brought before them. The conclusions of the studies comparing selections systems can be broken down into 2 categories. Much of the data from existing studies have focused on the characteristics of those selected for judgeships under the different schemes. To the extent that selection systems tend to single out different classes or types of persons for judgeships, such mechanisms indirectly influence public acceptance and the authority of the judicial system. In contrast, little data regarding the nature of decisional outcomes under the different mechanisms have been gathered. The decisional propensities of the judges selected under the various plans have a direct impact on how conflicts are resolved and the policy prejudices of the judiciary.

Empirical data suggest that different judicial selection mechanisms have a smaller impact on the characteristics of those chosen than the arguments raised above might indicate.[35] In the last few years, debate in the literature regarding the various selection systems has caused researchers to study the characteristics of those selected by the various selection modes. Empirical data based on a number of characteristics have been produced.

First, it is not clear that the various different selection processes tend to choose judges with substantially different prior career experiences.[36] Although it can be said that state legislative service tends to be conducive to selection under a legislative appointment scheme and while gubernatorial appointment systems have more of an impact on the frequency of selecting former prosecutors, no other findings regarding prior experience are conclusive. Regional factors of political culture are equally as important in determining what career background is most conducive for judgeship.[37] For example, the utility of a trial judgeship as a stepping stone to a state supreme court is determined equally by the region of the country as well as type of selection mechanism.[38]

Second, there is virtually no difference in the technical competence of elected and appointed state supreme court justices.[39] When measuring

competence by the relative prestige of judges in the eyes of the academic legal community, there is minimal difference in the esteem in which appointed and elected judges are held by law professors, the frequency their opinions are used in casebooks, or the extent to which they are cited favorably by other courts.[40] Also, little can be said regarding the different abilities of appointed or elected courts in processing court workloads and the cases submitted before them.[41]

Related to the technical competence of those selected is the differential effect of various selection mechanisms on their educational background. Early researchers concluded that the method of judicial selection was strongly determinative of the educational background of those singled out for judgeships.[42] However, a more current study reveals that regional factors bear upon the educational background of state supreme court justices equally.[43] Beyond this, it is not possible to say more than that a large majority of judges possess degrees from institutions of higher learning.

Third, the social factors characterizing judges are affected only slightly by the selection processes. Political party affiliations and ethnicity are factors considered by both voters and governors selecting judges.[44] Nagel concludes that party affiliation is a strong consideration in making judicial appointments by governors. He goes on to further state that appointments across ethnic lines are slightly more rare than appointments across party lines.[45] Similar findings regarding voter tendencies in judicial selection show that while political party affiliation is a less important concern in judicial elections than other political offices, ethnicity, in contrast, is of greater importance in voting for judges.[46] Even under the selection plan designed explicitly to eliminate such considerations of political and social factors, the Missouri Plan, prominent researchers have found that the selection process is often touched by political forces.[47] Studies of the Missouri Plan have shown that concerns over partisan and social characteristics found in purely elective and appointive systems occur, though to a lesser extent, at the commission formation stage of the selection process.[48]

Like those works characterizing the judges produced by the different selection systems, empirical studies documenting judicial decision propensities are few. One researcher found that elected judges tend to be more liberal than those who are appointed.[49] Such a conclusion held true even when political party affiliation, e.g., Republican Party, was held constant. However, appointed judges were found to decide in favor of the injured party in less ideological motor vehicle accident and tax cases and judges with longer tenure were more liberal in handling the constitutional rights of criminal suspects.[50] Another dimension of the decisional inclination of judges regards partisanship in conflict resolution. When appointed and elected judges are compared, some data show that judges on appointed courts tend to be more nonpartisan than judges on elected courts.[51] Appointed judges are less likely to vote like typical democrats or typical republicans. A typical democratic judge or an atypical republican judge tended to vote in favor of the administrative agency in business regulation cases, the claimant in unemployment compensation cases, and the employee in worker's compensation cases.[52]

Even though existing behavioral studies show little difference in impact results from alternative selection systems, they do provide a tentative picture of the nature of the trade-offs involved. Where liberalism and public participation are valued over nonpartisanship and technical competence, a selection process embodying an election mechanism may be preferred to one including judicial appointment. Even acknowledging the existence of such trade-offs, however, 2 factors must be kept in mind. The magnitude of the trade-offs and the certainty with which they occur in a particular state speak loudly against immediate exclusion of any judicial selection alternatives.

Chapter 6
QUALIFICATIONS OF JUDGES

Once the method of selecting a judge has been determined, a related issue involves whether minimal qualifications for judgeship should be set out in the constitution. A majority of states include minimum standards for judgeship in their constitutions.[1] Only 4 states' constitutions do not provide for judicial qualifications.[2] It can be argued that constitutional silence regarding judicial qualifications increases the pool of candidates available to those choosing judges and gives the legislature wide discretion in setting statutory criteria. However, without constitutionally established minimums, the selection process becomes vulnerable to tampering and increases the likelihood of producing judges of poor quality.

State constitutions contain 4 common types of qualifications required for judges. They involve United States citizenship, state residency, minimum age, and legal training.

PREREQUISITES FOR JUDGESHIP

Type of Qualification	States Having Qualifications[3]
U.S. Citizenship	40
State Residency	33
Minimum Age	21
Legal Training	36

United States citizenship is a prerequisite for some or all judges in 40 states. The Hawaii Constitution contains no citizenship requirement for judicial eligibility.[4] Thirty-three states require that some or all of their judges be residents of the state. Among those states, 23 have constitutions establishing standards for length of residency.[5] The periods of residency required range from 1 to 9 years. Within the group of 21 states with age requirements for judgeship, the minimum ages necessary range between 25 to 35.[6] Hawaii has no such residency or age qualifications set out in its constitution except as may be indirectly required under the "years of practice" provision next discussed.

Legal Training

The majority of states also constitutionally require that their judges have legal backgrounds. Thirty-six states, including Hawaii,[7] have constitutional provisions listing legal training as a prerequisite for judgeship.[8] Fifteen of those states also prescribe a minimum period of legal practice in the state as a further qualification for candidacy.[9] The time periods required range from 3 years to 10 years. The Hawaii constitutional standard calls for supreme court and circuit court judges to "...have been admitted to practice law before the supreme court of [the] State for at least ten years".[10] Hawaii district court judges are statutorily required to "have been an attorney licensed to practice in all courts of the State for at least five years".[11]

The requirement that judges be licensed to practice law before the supreme court precludes all nonlawyers from sitting on the bench. Critics of this arrangement contend that the decision-making process is such that nonlawyers can and should be able to sit as judges. They contend that judges are not coldly objective and impersonal and that whenever they interpret contracts, property rights, or due process of law, they necessarily enact into law parts of a system of social philosophy.[12] Recognizing this nonlegal, political aspect of judicial decision-making, these critics conclude that nonlawyers as well as lawyers should be sitting on the bench. The argument for nonlawyers as judges is primarily directed at positions in the high appellate court level since it is at this level that final decisions on controversial matters of social and political importance are made.[13]

Those who support the requirement of legal experience point out that the nonlegal, political aspects of judicial decision-making will remain as long as we have individuals as judges rather than machines. What is important, however, is that the judges have the legal training to recognize precedent and know the restrictions which were established over the years by the collective judgment of the profession. Only within these confines of precedent and tradition, can a judge effectively exercise "freedom" of choice. Moreover, they point out, the legal training requirement does not necessarily mean that the resulting judges will be narrow-minded and out of touch with the times. Instead, they point to

such legal trained judges as Holmes, Brandeis, and Cardozo. Finally, they point out that the bulk of the questions brought before judges are not controversial--that is, not susceptible of being treated as political, but merely require the application of rules of conduct about which there is little dispute to a variety of factual situations. In these cases, legal training is essential to ensure that the right rule of conduct is applied.

Conflict of Interest

The Hawaii Constitution contains 2 provisions that are designed to prevent situations of judicial conflict of interest. Section 3 of Article V prohibits a supreme court or circuit court judge from holding any other state or federal office or position for profit.[14] The standard does not prevent a judge from being appointed or elected to another public office which carries no compensation.[15] However, a second provision in section 3 requires that judges who become candidates for elective offices forfeit their office.[16] Although there has been no case authority interpreting this requirement, the fact that the 1950 Constitutional Convention intended the provision to mean "office of profit", and that the 1968 Constitutional Convention made no changes to the section suggest that forfeiture of office would only be necessary if the elective office was for compensation. No similar statutory standard for Hawaii district court judges exists. However, additional statutory qualifications applying to all state judges forbid the practice of law[17] and prohibit a former judge from representing parties to an "action or proceeding which has been previously tried before him as a judge".[18]

Chapter 7
JUDICIAL TENURE AND COMPENSATION

Judicial tenure and compensation are related to the selection process in that they should be designed to bring to and maintain on the bench the best judicial talent that is available.[1] Retired Associate U.S. Supreme Court Justice Tom Clark summarized the problem succinctly: "Selection must attract successful lawyers, inducing them to abandon a lucrative practice for the public service. This alone can be accomplished when appointment is based on merit, tenure is reasonably long, compensation commensurate, retirement attractive and widows' pensions adequate."[2]

Adequate tenure and compensation provisions are also fundamental in insuring the independence of the judiciary.[3] A judge who must be reelected or reappointed after a short term of years or whose compensation is subject to legislative change may find it difficult to make fully impartial decisions on controversial issues.

In this chapter, focus first turns to the issues raised by judicial tenure or length of office. It is followed by discussion of 3 components of judicial compensation--judge's salary, judge's retirement compensation, and death benefits.

Judicial Tenure

The arguments in favor of longer tenure are those outlined above--to attract highly qualified and competent persons to the bench and to preserve the independence and impartiality of the judiciary. Following this reasoning the National Municipal League recommends that tenure be during good behavior after an initial term of office.[4] Similarly, the American Bar Association advocates that a "judge, upon appointment, hold office during good behavior".[5] However, few states have adopted that position.

The terms for judges in the state supreme courts range from 6 years in 15 states[6] to lifetime tenure in New Jersey and Rhode Island.[7] The State of Maryland has the longest set term of office at 15 years.[8] Two states, Massachusetts and New Hampshire, have set their judicial terms of office to end at age 70.[9] The preponderance of states with limitations on their judges' length of office indicates a reluctance to provide too much judicial security and total independence. The arguments for limiting tenure are that it makes it possible to remove judges who have not performed their duties well; that shorter terms would help make our judges acutely aware of the social and economic changes going on in our society; and that it prevents judges from remaining on the bench to advanced ages when their efficiency is severely curtailed.[10]

The Hawaii Constitution provides 10-year terms of office for supreme court and circuit court judges.[11] Prior to 1968 when the Constitution was amended, tenure for supreme court justices was set at 7 years.[12] The term of office for circuit court judges also was constitutionally established at 6 years.[13] The reasons given for increasing the term of office reflected a desire to attract highly competent candidates for judgeship positions.[14]

Related to the original term of office for judges is the method of judicial retention. Most of the states, including Hawaii, require that the incumbent judge be reelected or reappointed, whichever method is used by the state.[15] However, in recent years there has been some modification, particularly as more states have adopted the Missouri system of judge selection.[16] Under the Missouri Plan, an incumbent judge seeks retention in office at the end of the term by simply filing a declaration to that effect. At the next election, the judge's name is placed on a ballot without opposition and the voters are asked whether the judge should be retained for another term. The benefits of this retention plan are:

(1) There is no need for political campaigns. The judge need not solicit funds from the party or friends.

(2) No judicial time is lost on the campaign trail.

(3) While assuring incumbent judges of longer tenure, it still reserves to the people a veto on judicial candidates, a

> privilege which is thwarted under the appointment for life tenure.

On the other hand, critics of the retention plan point out that it is unlikely that the voters will be any more interested or capable of determining the judge's qualifications after the judge has served one term and that the effect of the plan would be to ensure the judge's retention and make it harder to remove the mediocre or mildly unethical judge.

New Jersey has an altogether different retention scheme. In New Jersey, the judge serves an initial 7-year term and upon reappointment serves for life. Under this system the governor and indirectly, the people, are given a chance, after reflection on the judge's record, to decide whether or not the judge should be given life tenure.

Judicial Salary

It is generally agreed that judicial compensation should be set so as to attract to the bench able and well-qualified persons.[17] The major problem in this area is the extent to which details of the compensation scheme are set out in the constitution. It is said that the failure to incorporate judicial salaries into the constitution permits the legislature to reflect disapproval of decisions by reducing the judges' salary, thereby endangering the independence of the judiciary.[18] However, in view of price-level fluctuations, incorporation in the constitutions of specific judicial salaries is generally not recommended.[19] The difficulty of constitutional amendments results in delaying the adoption of rectifying change until long after the need has become manifest.

The Hawaii Constitution provides in part that:[20]

> [Judges] shall receive for their services such compensation as may be prescribed by law, but no less than twenty-eight thousand dollars for the chief justice, twenty-seven thousand dollars for associate justices, and twenty-five thousand dollars for circuit court judges, a year. Their compensation shall not be decreased during their respective terms of office, unless by general law applying to all salaried officers of the State.

As the wording of the section indicates, the compensation levels listed serve as salary minimums, which shall not be reduced unless a law is passed reducing the compensation of all salaried officers of the state. Judicial salaries have been increased by the legislature, since the constitutional provision was amended in 1968. The chief justice of the Supreme Court currently earns $47,500 annually.[21] Associate justices have salaries set at $45,000.[22] Statutory provisions also establish circuit judge compensation at $42,500.[23] The salaries of district court judges, however, are not constitutionally insured. District judge compensation is determined by statute[24] and not directly protected against reduction during a term of office.[25] Their salary is currently set at $40,000 a year.[26] These compensation levels for Hawaii's judges compare favorably with those judges in other states.[27]

The Model State Constitution has recommended the following means for setting judicial salaries:[28]

> The judges of the courts of this state shall receive such salaries as may be provided by law, which shall not be diminished during their term of office.

Although the provision allows the legislature to fix judicial salaries, the restriction regarding diminution of salary is intended to enhance judicial security and independence.[29]

California has developed an altogether different means for establishing judicial salaries. The state constitution contains no provision relating to judges' compensation.[30] A statutory provision requires that judicial salaries be increased annually as determined by changes in the state's consumer price index.[31] Assuming that the initial salary levels are adequate for attracting highly qualified members of the bar to enter the judiciary, such a statute insures that salaries continue to do so over time.[32]

Retirement Benefits

Adequate retirement benefits also contribute to attracting highly qualified candidates for judicial positions. Retirement benefits serve to provide security for judges who have devoted a major portion of their working lifetime to public service.[33] An ideal retirement plan offers sufficient benefits to encourage judges to retire when they can no longer work at full capacity. Furthermore, with liberal disability pensions as inducements, disabled judges can be persuaded to retire voluntarily. If pension benefits are low or unavailable, judges may be compelled by necessity to resist efforts to persuade or compel them to retire.[34]

The provision of the Hawaii Constitution dealing with retirement benefits states that: "...[judges] shall be included in any retirement law of the State."[35] Although all the statutes setting forth the pension benefits of judges are too numerous for elaboration here,[36] their more salient points are enumerated below:

(1) Circuit and supreme court judges become eligible for retirement benefits after 10 years of service.[37]

(2) Supreme court and circuit court judges receive pensions based on the amount they contribute to the retirement system[38] and a supplementary allowance. The supplement represents a proportion of the judge's average final compensation.[39] The proportion is increased by 3-1/2 per cent for each year of credited service.[40]

(3) The retirement allowance for circuit and supreme court judges cannot exceed 75 per cent of their average final compensation.[41]

Even given the special provisions regarding judicial retirement benefits,[42] it has been argued in the past that this aspect of judicial compensation needs "liberalization".[43] Since it is usual for attorneys to begin their judicial careers only after they have distinguished themselves in some other area of the law and often when they are in their 50's, many retiring judges do not enjoy the maximum benefits that other state employees may enjoy. In addition, the

judge's post-retirement income is further reduced by the limitations created by judicial ethics with respect to participation in business activities while on the bench.[44]

To the extent, however, that special provisions adapted to the needs of the judiciary may be necessary, statutory rather than constitutional action may be more appropriate. While it could be argued that constitutionally secured retirement benefits avoid incidents of legislative tampering, the complexity involved in and expertise required for designing workable retirement packages support retention of that function with the legislature. Hawaii's present program of retirement benefits for judges appears comparable to those in many other states as indicated by Appendix I.

Death Benefits

Related to retirement benefits are those payable to judges' beneficiaries at their death.[45] Like retirement benefits, death benefits help attract marginally interested candidates for judgeships because of the financial security they offer the judge's family. Hawaii's Constitution contains no provision concerning judicial death benefits. However, state laws provide for 3 types of support for a judge's beneficiaries:

(1) Death of Retired Judge.[46] The beneficiary is entitled to the remainder of the retirement benefits owed to the judge. In the event that the judge passes away within one year of retirement, the beneficiary has an option on how to receive those benefits.

(2) Ordinary Death During Service.[47] The total amount contributed by the judge[48] as well as a supplemental payment based on the deceased's length of service and compensation level[49] becomes payable to the beneficiary.

(3) Accidental Death During Service.[50] When the death of a judge occurs accidentally in the actual performance of duty, beneficiaries receive the accumulated amount contributed and a pension equaling 50 per cent of the judge's average final compensation for a statutorily set period.

How Hawaii's statutorily established death benefits compare with those of other states can be determined from Appendix J.

Chapter 8
RETIREMENT, REMOVAL, AND DISCIPLINE

In the public's mind, it is the judge who is the primary guardian of justice and the impartial arbiter of disputes between individuals.[1] As a consequence, the legitimacy of the entire judicial process rests on the confidence of the public in the rationality and integrity of those acting as judges.[2] Regardless of the method of judicial selection, all states are occasionally faced with the problems of judges and justices who cannot properly discharge their duties because of their age, incompetency, arbitrariness, judicial misconduct, extra-judicial misconduct or other breaches of judicial ethics.[3] In view of the trend to ensure longer tenure for judges through merit retention plans and longer terms, the need for some reasonable system for the discipline, retirement, or removal of judges when circumstances warrant such action becomes apparent.

The problem of discharging judges who can no longer undertake their duties properly has been recognized by all states, and they all possess mechanisms for removing judges.[4] In the last few years, however, focus has turned to designing more effective procedures for dealing with judges whose performances are tainted with misconduct or disability.[5] An initial point of departure in examining these mechanisms is the retirement standard for judgeship.

Mandatory Retirement

Although there is no general consensus, it is accepted by most that there should be an age for compulsory retirement of judges. Compulsory retirement makes possible the orderly termination of service of people who, on the average, have reached an age when their physical and mental powers do not permit them to carry a full workload. Compulsory retirement works arbitrarily in many cases, unless the age of compulsory retirement is fixed so high as to defeat its purpose. The consequences of not having compulsory retirement, however, are

unfortunate and sometimes unpleasant, both for the court system and for the judges themselves. No spectacle is more tragic than that of judges who hang on in office beyond their point of disability.[6]

A mandatory retirement age is designed primarily to protect the legal system from extreme advanced age and senility in judges. It is said that younger individuals appointed as successors would sharply increase the productivity of the courts.[7] The objection that it would deprive the courts of the services of experienced judges is usually answered by a provision allowing a retired judge to be recalled to the bench for special cases or when the judicial dockets are overcrowded.[8]

More than half of the states now have provisions for mandatory retirement.[9] The latest stated retirement age ranges from 65 to 75 in Washington.[10] Six states encourage retirement by providing that failure to retire after a maximum age causes forfeiture or reduction in retirement benefits.[11]

The Hawaii Constitution provides for mandatory retirement at age 70.[12] This provision was initially inserted to the state's first constitution.[13] The delegates to Hawaii's 1950 Constitutional Convention recognized that there have been great judges who remained on the bench until age 90,[14] however, it was felt that this factor was outweighed by the need "to prevent incapacitated judges from remaining on the bench after the time when they are no longer able fully to discharge their duties".[15] This judgment was not challenged at the subsequent Constitutional Convention of 1968.[16]

Removal and Disciplining of Judges

Over the years, a number of procedures for dealing with judicial misconduct and disability have developed. The mechanisms can be described as being either traditional or modern. Historically, instances of judicial incompetence or misconduct were handled by 3 traditional procedures--impeachment, address, and recall.

Impeachment is legislative action generally brought by the lower house and tried by the upper house, with conviction requiring a 2/3 vote. Forty-two states have constitutional provisions for impeachment.[17] The process is a cumbersome one not often invoked. For example, a survey taken in 1960 showed that prior to that date, legislative attempts to invoke impeachment procedures were made 50 times in 17 states. The results were 19 removals and 3 resignations.[18]

Similar to the impeachment process is the address to the executive. An address is a concurrent resolution of both houses of the legislature requesting the governor to remove a judge from office.[19] Fifteen states have established procedures for address.[20] This method also has become a largely theoretical device through disuse. One researcher found in 1971 that there had been no instance of reliance on the address since 1940.[21]

Hawaii has neither an address nor an impeachment procedure. The Hawaii Constitution, however, provided for the removal of judges by the state legislature prior to 1968.[22] The 1950 Constitutional Convention stated that "...[judges] shall be subject to removal from office upon the concurrence of two-thirds of the membership of each house of the legislature, sitting in joint session, for such causes and in such manner as may be provided by law".[23] This provision was deleted by a 1968 constitutional amendment. The deletion was for the purpose of incorporating the removal clause with the provision for retiring incompetent judges.[24]

Both the impeachment and address process vest the power to remove judges in the legislative branch of government. The arguments associated with whether legislative authority in this area is desirable are set forth below:

LEGISLATIVE POWER TO REMOVE JUDGES

Pros	Cons
- Legislative supervision discourages flagrant misuse of judicial authority.	- The pressure of regular legislative business makes it difficult, if not impossible, to devote the required time to hold a formal trial of a particular judge.
- Where the judiciary may not be able to discipline its own members, the legislature may be the only body with the requisite independence, power, and direct responsibility to the people to perform this disciplinary function.	- The legislature is a policy making, not an adjudicative body. Its size and procedures are poorly fitted to trying cases and its members are not prepared to assume the role of judges in an area with which they have little familiarity.
	- Since the legislature is a partisan body, political considerations may predominate in a disciplinary trial of a judge.

In contrast, the recall process vests power for removing judges in the public. Recall is a procedure whereby a judge must face a special recall election if a certain percentage of voters sign a petition requesting removal.[25] Only 8 states rely upon this removal procedure.[26] It should be noted that as recent as 1976, the voters of Montana adopted a referendum measure establishing a recall procedure for all public officers through their general election.[27]

Recalls of judges have been rare.[28] The reasons for its disuse are that recall, like impeachment and address, is characterized by a general lack of publicity and hence is likely to occur only in flagrant instances of misconduct, the gathering of signatures for the recall petition may be quite expensive, and finally, a successful recall campaign might require persons in positions to be hurt by a judge, such as practicing attorneys, to take a strong public stand against the judge without assurance that the matter would reach the desired conclusion.[29]

Whatever the reason for disuse of the traditional procedures, recent years have found the traditional disciplinary procedures either superseded or supplemented, or both, by modern mechanisms.[30] Between 1960 and 1975, over

35 jurisdictions adopted various modern procedures that provided 9 effective procedures for dealing with those judges whose services ought to be terminated because of disability or misconduct in office.[31] Although the variations among these procedures, both potential and existing, are numerous, the 2 developed in New York and California were prototypes for other variations. To further an understanding of how these 2 machineries work, they are described in detail.

The New York Court on the Judiciary

The court on the judiciary is composed of 5 judges who convene only when a complaint is filed by specifically authorized officials.[32] The judiciary court has the power to censure, suspend, or remove for cause any judge within the New York judicial system.[33] Removal for cause includes misconduct in office, persistent failure to perform duties, habitual intemperance, and conduct prejudicial to the administration of justice.[34] The court is also empowered to retire a judge for mental or physical disabilities.[35] Once charges are considered by the judiciary court, notice of the case and the hearing date must be given to the governor, the president of the senate and the speaker of the assembly.[36] After such notice, the legislature may act to prefer its own charges for removal and stay the proceedings of the court on the judiciary.[37] A 1974 amendment to the New York Constitution establishes a commission on judicial conduct whose function is to review judicial performance and recommend the convening of the judiciary court.[38]

Modified versions of this New York model can now be found in 9 states.[39] The arguments considered by those states prior to adoption of the process are presented below:[40]

ARGUMENTS ASSOCIATED WITH THE NEW YORK PLAN FOR JUDICIAL DISCIPLINE

Pros	Cons
- The New York system has proven to be particularly well-suited to providing confidential, flexible, and effective treatment of problems of judicial discipline.	- The court on the judiciary operates on an ad hoc basis only. It has no permanent staff which can receive complaints and investigate charges on a confidential basis.
- Several senior appellate judges, who share in the responsibility for the administration of the entire judicial system are represented on the court on the judiciary and are directly involved in the entire proceeding.	- The court on the judiciary does not observe basic rules of fair procedure, since it acts both as prosecutor and judge, and there is no appeal from its decisions.
- The New York system has worked well when called upon, operates at little cost to the taxpayer, and is particularly well-suited to a state like New York where other disciplinary procedures exist.	- From the moment notice of any case is given to the governor and the presiding officers of both legislative houses, the proceedings of the judiciary court are no longer confidential.

The essence of the New York system is its reliance on the judiciary to police the actions of its members. In general, the variations on the model have tended to differ primarily in the extent of centralized control held by a state's supreme court. For example, the New Jersey Constitution provides that the judges of the lower courts are subject to removal by the supreme court.[41] However, to the extent that such centralization of review is related to independent judicial behavior because of limited access to the disciplinary machinery, the process tends to undermine objectives for judicial accountability.

California Commission on Judicial Performance[42]

The California commission on judicial performance, created in 1960, is composed of 9 members--5 judges selected by the state supreme court, 2 lawyers elected by the board of governors of the state bar association and 2 members of the public appointed by the governor with the advice and consent of the senate.[43] It has jurisdiction over all levels of the state judiciary. It is

empowered to investigate a complaint submitted by any person concerning the incapacity or misconduct of a state judge and to recommend to the supreme court that the judge be retired or removed.[44] To aid in its investigation, the commission is given the power to subpoena witnesses, order hearings and make findings[45] and has been given professional staff.[46]

The commission can only make recommendations to the supreme court. The supreme court, after reviewing the record of the proceedings and, if necessary, ordering additional evidence, may order the removal or retirement as recommended or it may wholly reject the commission's recommendations.[47]

Upon recommendation of the commission, the supreme court may retire a judge for a disability that seriously interferes with the judge's performance and is or is likely to become permanent.[48] The supreme court may also "...censure or remove a judge for action occurring not more than 6 years prior to the commencement of the judge's current term that constitutes wilful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute".[49] However, the commission is also empowered to "...privately admonish a judge found to have engaged in an improper action or a dereliction of duty, subject to review in the Supreme Court in the manner provided for review of causes decided by a court of appeal".[50] The California Constitution now also has a separate section affecting supreme court justices. It states that:[51]

> A recommendation of the Commission on Judicial Performance for the censure, removal or retirement of a judge of the Supreme Court shall be determined by a tribunal of 7 court of appeal judges selected by lot.

All complaints, inquiries, investigations, and hearings of the commission up to the point of recommending some action to the supreme court are confidential.[52]

The arguments relating to the desirability of a commission structure similar to California's are outlined in the table below:

ARGUMENTS ASSOCIATED WITH THE CALIFORNIA DISCIPLINARY PROCEDURE

Pros

- The plan has proved to be a success in California and has had a marked effect in raising the already high level of the California judiciary.
- The commission is a permanent agency with a full-time staff to receive and investigate complaints in any form from lawyers, other judges, or from the public.
- The confidentiality of its actions protects the innocent judge from irreparable damage caused by publicity resulting from the filing of a claim which later proves to be groundless.
- The commission can only make recommendations. The supreme court, after reviewing the evidence, makes the final decision thereby giving the accused judge a second chance to present a case.
- The provision allowing the commission to retire a judge with pension benefits provides a flexible and workable remedy which can be used when outright removal is too harsh a punishment.
- The plan provides an effective means for a private citizen to seek relief against the wrongful act of a judge.
- In a number of instances, complaints disclose situations which, while not serious enough to warrant removal, nevertheless disclose practices which should be discontinued or improved.

Cons

- The ability of the commission to induce problem judges to resign or retire before there is any public proceeding might lead to an atmosphere where judges would be unwilling to criticize the commission for fear of reprisal.
- It is improper for the same body--the commission--to investigate, prosecute, and adjudicate a case.
- The sensitivity of disciplinary proceedings makes it desirable that the commission be controlled only by senior appellate judges who are fully familiar with the working of the state judicial system.
- A permanent disciplinary commission would have a strong incentive to produce "results", that is, to cause a certain number of judges to leave the bench. It could make a commission unduly zealous in putting pressure on judges to resign for reasons which would not in fact justify removal or involuntary retirement.

Pros	Cons
The very existence of the commission acts as a deterrent to judicial misconduct.	

Since the adoption of California's removal and disciplinary procedure in 1960, 27 states have borrowed from the scheme either in whole or in part.[53] Generally, major variations to the procedure in other states have expanded the power of the commission[54] or vested the removal power in the governor rather than the supreme court.[55] The latter mechanism is relied upon by the State of Hawaii.[56]

Hawaii's Constitution contains a 2-step judge removal procedure involving both an advisory commission and a removal board.[57] A 5-member commission on judicial qualification certifies to the governor that a judge may no longer be qualified to continue in that capacity.[58] The commission's proceedings are confidential[59] and its review is restricted to whether a:[60]

> ...justice of the supreme court or judge of a circuit court appears to be so incapacitated as substantially to prevent him from performing his judicial duties or has acted in a manner that constitutes wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute,...

Upon such certification, the governor appoints a 3-member board of judicial removal.[61] The board, after due investigation, may make a recommendation to remove the judge or justice.[62] Within 30 days after such a recommendation,[63] the governor either may remove or retire a judge or justice.[64] No disciplinary alternatives other than removal or retirement are provided. Although members to the commission on judicial qualification have been appointed, the removal mechanism has yet to be used.

The thrust of the commission approach to reviewing judicial performance is to place the mechanism for judicial discipline in the hands of an independent agency. To the extent that an understanding of the state's legal system is

necessary for effective functioning of a commission member, however, it is desirable to impose qualifications for membership. Many states, in deference to this theory, have included requirements that a proportion of the commission be composed of judiciary members.[65]

It can be said that whatever disciplinary procedure is adopted, trade-offs are involved. Confidentiality is needed for full and impartial investigation, as well as to protect the reputation of the judge in question until completion of the inquiry.[66] Public confidence in the judiciary, however, and its disciplinary machinery are dependent upon the visibility of the attempts to maintain quality.[67] Because both these objectives cannot be advanced in harmony, it is necessary to devise a disciplinary mechanism that provides the most appropriate balance for the unique social setting of each state. To the extent that such a balance can be struck, the aims of judicial independence and public accountability can also be properly served.

FOOTNOTES

Chapter 1

1. Arthur T. Vanderbilt, *Judges and Jurors: Their Functions, Qualifications and Selection* (Boston: Boston University Press, 1956), p. 1.

2. *Ibid.*

3. *Honolulu Advertiser*, January 27, 1967, p. A-14.

4. See also, Ernest C. Friesen, Jr. and others, *Managing the Courts* (Indianapolis: The Bobbs-Merrill, Co., Inc., 1971); Public Administration Service, "The Judicial Department," *Constitutional Studies*, prepared on behalf of the Alaska Statehood Committee for the Alaska Constitutional Convention, Vol. 2, Part VII (Juneau, Alaska: 1955). But see, David J. Saari, "Modern Court Management Trends in Court Organization Concepts--1976," *The Justice System Journal*, Spring 1976, p. 19; Geoff Gallas, "The Conventional Wisdom of State Court Administration: A Critical Assessment and an Alternative Approach," *The Justice System Journal*, Spring 1976, p. 35.

5. For a concise description of the historical development of the judiciary system in Hawaii, see Hawaii, The Judiciary, *Annual Report--Bicentennial Edition, July 1, 1975 to June 30, 1976* (Honolulu: 1977), pp. 3-11.

6. See Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, Standing Committee Report No. 40, pp. 196-203.

7. But in 1974, a constitutional amendment to the article dealing with the executive was adopted by the Hawaii electorate, 1974 Haw. Sess. Laws, S.B. 1943-74 and election November 5, 1974. The amendment excludes from the item veto items which are appropriated to be expended by the judicial and legislative branches. *Hawaii Const.* art. III, sec. 17.

8. See newspaper article in which the Hawaii Supreme Court Chief Justice calls for the creation of an intermediate level appellate court structure for the state, *Honolulu Advertiser*, November 5, 1976, p. A-10.

9. For example, see *Maryland Const.* art. IV and *New York Const.* art. VI.

10. National Municipal League, *Model State Constitution* (6th ed.; New York: 1968), pp. 77-78; J. Wesley McWilliams, "Court Integration and Unification in the Model Judicial Article," *Journal of the American Judicature Society*, 47(1) (June 1963), p. 13; Public Administration Service, p. 4; Victor G. Rosenblum, "Judicial Reform; Needs and Prospects," *The 50 States and Their Local Governments*, ed. James W. Fesler (New York: Alfred A. Knopf, 1967), pp. 432-434.

11. Court reform becomes either a matter of piecemeal constitutional amendment or is not attempted at all. This is because of the difficulties in integrating existing courts into a rational scheme or in abolishing courts whose judiciary and other personnel have obtained a vested interest in their continuation even though their usefulness has been outlived.

12. *Ibid.*, Roscoe Pound, "The Causes of Popular Dissatisfaction with the Administration of Justice," *Journal of the American Judicature Society*, 46(3) (August 1962), pp. 55-56; J. Wesley McWilliams, p. 9; Public Administration Service, p. 18; New York (State), Temporary State Commission on the Constitutional Convention, *The Judiciary*, No. 12 (New York: 1967), p. 12; Victor G. Rosenblum, pp. 432-434.

13. Other provisions affecting the state's judicial system can be found in the Bill of Rights, *Hawaii Const.* art. I. They are discussed in *Hawaii Constitutional Convention Studies 1978, Article I: Bill of Rights.*

Chapter 2

1. The following passages have been adapted in part from Geoffrey C. Hazard, Jr., "Rationing Justice," 8 *J. of L. and Econ.* 1 (1965).

2. Ernest C. Friesen, Jr. and others, *Managing the Courts* (Indianapolis: The Bobbs-Merrill Co., Inc., 1971), pp. 17-18.

3. *Ibid.*, p. 20; Hazard, p. 3.

4. Hazard, p. 3.

5. Review of the judiciary's annual reports show the following:

Fiscal Year	Per Cent of State's General Fund
1970	2.18
1971	1.98
1972	1.78
1973	1.78
1974	1.67
1975	1.37
1976	1.71

Source: *Hawaii, The Judiciary Annual Report, for fiscal years 1969-1970 to 1975-1976 (Honolulu).*

6. Other questions dealing with the efficiency of the organizational structure and its components are addressed in chapter 4 regarding judicial administration. Also, it is only arguable whether constitutional detail regarding how the judiciary is organized into specific components such as for jurisdiction or special functions like tax matters is advisable. Other public entities such as the legislature or the court administrative director's office appear better equipped to perform the fact-finding and deliberative functions necessary in addressing such issues. Instead, the emphasis on judicial organization here cuts at a larger policy question regarding the administration of justice--how much is enough?

7. Only within the last decade have legal and academic scholars turned their energies to analyzing judicial structures as social systems. Within this newly developing body of literature, the factors influencing the demand for court services have been set out in Gerhard Casper and Richard A. Posner, "A Study of the Supreme Court's Caseload," *The Journal of Legal Studies*, June

1974, p. 339; Richard A. Posner, "An Economic Approach to Legal Procedure and Judicial Administration," *The Journal of Legal Studies*, June 1973, p. 399; William M. Landes, "An Economic Analysis of the Courts," *J. of L. and Econ.*, April 1971, p. 61.

8. That is, some tend to increase demand for judicial services and, *in contrast, some lead to decreases* in court caseloads.

9. Casper and Posner, pp. 346-349.

10. Other things being equal, increases in volume of activity should result in an increase in the number of legal disputes, including the number of disputes that are litigated. This statement might be overbroad, however. Casper and Posner present statistical evidence showing that underlying activity does not influence appellate caseloads. Casper and Posner, pp. 346-360.

11. This is especially true at the appellate level where legal rather than factual issues predominate. Furthermore, other things being equal, legal certainty should increase over time as precedents accumulate. In spite of the influence of increasing underlying activity, growth in the number of cases over time may be offset by an increase in the number of precedents in a given subject area. By increasing the certainty of the law, the amount of litigation is reduced. Casper and Posner explain this relationship as follows:

> *One might therefore expect the time pattern of cases in a particular area of law to be roughly as shown in Figure 2. The initial level of litigation is high due to the uncertainty likely to be found in a new area of law and rises rapidly due to the increase in the level of the underlying activity. But by increasing the number of precedents produced the increase in litigation eventually reinforces the effect of time on the accumulation of precedents and the consequent reduction of uncertainty, leading to a decline in the volume of litigation.* *Ibid.*, p. 347.

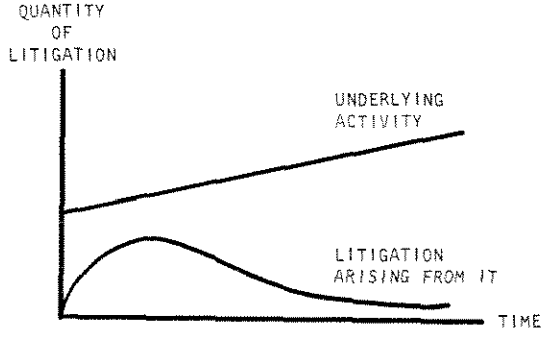


Figure 2
THE TIME PROFILE OF LITIGATION

12. Changes in legal procedure can have the same positive or negative effect.

13. Reference here is primarily to such public welfare programs as Legal Aid and Legal Assistance. However, another potential factor mentioned in conjunction with increased demand for judicial services has been the prepaid legal services concept. One researcher has argued such increases *in demand for court services would be minimal* because prepaid legal service plans are oriented around and promote preventative law. See Richard F. Kahle, Jr., *Prepaid Legal Services and Hawaii*, Legislative Reference Bureau, Report No. 4 (Honolulu: 1975), p. 36.

14. The court can also react by reducing the fraction of cases it accepts for review. However, this has not been the usual response of the courts. Most courts, especially at the trial level, are not empowered to refuse to hear cases within their jurisdiction. The U.S. Supreme Court, through the certiorari process, has the power to refuse review and has relied upon it to prevent an imbalance between the supply of and demand for their services. *Ibid.*, p. 348.

15. For an economic analysis of how delay acts to ration judicial resources for trial, see Landes, pp. 74-77.

16. Whether delay or refusal rations access to the court, the value of court services is reduced to the litigant bringing the action. The analysis of delay becomes somewhat complex where appellate review is involved. Some applications for review are filed for the purpose of delaying the entry of final judgment because the applicant has been unsuccessful below. To this class of applicants, the longer the court delays in acting, the more valuable *the appellate review.* *Ibid.*, p. 348. However, this argument appears to be of little consequence in Hawaii. The *Hawaii Rules of Civil Procedure* allows execution of a judgment to be stayed either by the posting of a supersedas bond (Rule 73(c)) or a bond on appeal (Rule 73(b)). Under such a system, the advantages fostered by delay appear minimal.

17. See Appendix A.

18. *Hawaii Const.* art. V, sec. 1.

19. *Hawaii Rev. Stat.*, ch. 571.

20. Statutory provisions also authorize the creation of district family courts. *Hawaii Rev. Stat.*, secs. 571-8 to 571-8.5. The jurisdiction of the district family courts is determined by the circuit court in which they sit. *Hawaii Rev. Stat.*, sec. 571-8.4. The statistical analysis branch under the admininistrative director of the courts indicates that caseload figures compiled do not distinguish between the 2 types of courts. For the purposes of this discussion regarding court capacity, it is likewise not necessary to differentiate between whether the family court function is performed by a circuit or district court judge.

21. The 1968 Constitutional Convention rejected proposals according the district courts constitutional status because the legislature already possessed the power to accomplish the ends sought by the proposals. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, Standing Committee Report No. 40, p. 197.

22. *Hawaii Rev. Stat.*, ch. 604. Prior to 1965, the counties were responsible for the district courts. See *Hawaii Rev. Stat.*, sec. 27-1(5). Also, under the district courts, the violations

bureau processes citations for traffic and other offenses such as air pollution, harbor boating, and industrial safety. Hawaii, *The Judiciary Annual Report, 1975-1976* (Honolulu: 1976), p. 41.

23. *Hawaii Rev. Stat.*, sec. 604-1.

24. *Hawaii Rev. Stat.*, secs. 604-5 and 604-8.

25. The foregoing is not intended to be an exhaustive enumeration of circuit court jurisdiction. For the purpose of this discussion, it is sufficient for the reader to understand that the circuit court is generally vested with authority to handle larger civil controversies and more serious criminal offenses. The curious reader wishing to research the specific subject matter jurisdictional standards of the circuit courts should consult *Hawaii Rev. Stat.*, secs. 603-21.5 to 603-21.8, 571-11 to 571-14, 604-5, and 604-8.

26. Discussion of judicial capacity here will not focus on normative standards of how much capacity the system should have given the resources allocated to it. No formula for measuring the capacity to produce justice has yet been developed. Instead, the analytical mode used here examines the relationship the judicial structure and the demands placed upon it.

27. HAWAII CIRCUIT COURTS - ALL CIRCUITS

Fiscal Year	Total Caseload	Terminations	Per Cent
1972	22,504	8,553	38.01
1973	22,786	9,323	40.92
1974	22,787	7,686	33.73
1975	24,755	9,334	37.71
1976	25,190	8,094	32.13

Source: *Hawaii, The Judiciary Annual Report, for fiscal years 1971-72 to 1975-76 (Honolulu).*

28. *Ibid.*

29. *Ibid.*

30. CIRCUIT COURT OF THE FIRST CIRCUIT
PERSONAL INJURY JURY TRIED CASES

Year	Average Time (Months) Service of Answer to Trial	Ready Date to Trial
1969	20.4	10.9
1970	19.7	7.8
1971	19.0	5.7
1972	19.2	8.0
1973	14.9	6.3
1974	16.8	9.1

Source: *Compiled by Statistical Analysis Center of the Hawaii Judiciary, 1977.*

31. These figures do not include the 2 circuit judges presiding over the family courts. The number of judgeships reported has been calculated by the Statistical Analysis Center of the Hawaii Judiciary.

NUMBER OF JUDGES - CIRCUIT COURTS
STATE OF HAWAII

	FY 71/72	FY 72/73	FY 73/74	FY 74/75	FY 75/76	FY 76/77
First Circuit	7.5	8	7.4	10.7	11	10.9
Criminal	3	3	3	3.4	3	3.5
Civil	4.5	5	4.4	7.3	8	7.4
Second Circuit	1	1	1	1	1	1.2
Third Circuit	2	2	1.5	2	2	2
Fifth Circuit	1	1	1	1	1	1
Totals	11.5	12	10.9	14.7	15	15.1

Source: *The data displayed in this table were compiled by Dorothy Kawamoto of the Judiciary's Statistical Analysis Center.*

32. See Hawaii, *The Judiciary Annual Report, 1975-1976*, p. 64.

33. HAWAII DISTRICT COURTS - ALL CIRCUITS

Fiscal Year	Criminal and Civil Caseload	Terminations	Per Cent
1972	33,920	27,269	80.39
1973	33,475	25,943	77.50
1974	32,418	23,572	72.71
1975	41,539	32,344	77.86
1976	37,846	27,362	72.30

Source: *Hawaii, The Judiciary Annual Report, for fiscal years 1971-72 to 1975-76 (Honolulu).*

34. *Ibid.*

35. *Ibid.*

36. These totals do not include the 5 family district court judges found in the first circuit.

NUMBER OF JUDGES - DISTRICT COURTS
STATE OF HAWAII

	FY 71/72*	FY 72/73	FY 73/74	FY 74/75	FY 75/76	FY 76/77
First Circuit	7.9	8	8.3	10.1	10.7	11.8
Second Circuit	2	2	2	2	2	1.8
Third Circuit	2	2	1.9	2	2	2
Fifth Circuit	1	1	1	1	1	1
Totals	12.9	13	13.2	15.1	15.7	16.6

Source: *The data presented in this table were compiled by Dorothy Kawamoto of the Judiciary's Statistical Analysis Center.*

*The number indicated is the number of full-time district judges from January 1, 1972 through June 30, 1972 (Act 188/70).

37. The first circuit only has full-time family court judges. In the other 3 circuits the family court caseload is handled by circuit court judges. Approximately 80 per cent of the annual caseload arises from the first circuit. See Hawaii, *The Judiciary Annual Report, 1975-1976*, pp. 59-60.

38. HAWAII FAMILY COURTS - ALL CIRCUITS

Fiscal Year	Total Caseload	Terminations	Per Cent
1972	27,559	17,215	62.47
1973	26,399	17,716	67.11
1974	25,103	16,310	64.97
1975	25,678	17,015	66.26
1976	28,992	17,256	63.93

Source: *Hawaii, The Judiciary Annual Report, for fiscal years 1971-72 to 1975-76 (Honolulu).*

39. *Ibid.*

40. The number of cases filed in the family court in recent years is presented in the table below. Cases filed differ from total cases in that total cases include both cases filed during the year and cases carried over from the previous year.

Year	Cases Filed
1971-72	17,747
1972-73	16,055
1973-74	16,420
1974-75	16,885
1975-76	18,329

Source: *Hawaii, The Judiciary Annual Report, for fiscal years 1971-1972 to 1975-1976 (Honolulu).*

41. In fact, the total number of proceedings handled by the courts was 589,389 in 1972. The same figure totaled 685,554 in 1976.

42. See Thomas C. Heller "The Importance of Normative Decision Making: The Limitations of Legal Economics as a Basis for a Liberal Jurisprudence," 1976 *Wis. L. Rev.* 385 (1976).

43. See Appendix B.

44. See Appendix B.

45. American Bar Association, *Standards Relating to Court Organization*, 1974, pp. 33-34.

46. *Ibid.*, p. 34.

47. See *Hawaii Rev. Stat.*, sec. 602-5; Hawaii, *The Judiciary Annual Report, 1975-1976*, p. 29.

48. See Appendix B.

49. See Appendix B.

50. See Appendix B.

51. See Appendix B.

52. HAWAII SUPREME COURT CASELOAD

Fiscal Year	Total Cases	Terminations	Per Cent
1971	508	375	73.82
1972	445	315	70.79
1973	497	347	69.82
1974	569	383	67.31
1975	633	405	63.98
1976	868	520	59.91

Source: *Hawaii, The Judiciary Annual Report, for fiscal years 1971-72 to 1975-76 (Honolulu).*

53. *Ibid.*

54. Data compiled by the Statistical Analysis Center of the Hawaii Judiciary.

55. Hawaii, *The Judiciary Annual Report*, for fiscal years 1970-1971 to 1975-76 (Honolulu).

56. *Ibid.*

57. They further argue that remedial action should be taken quickly. A change in judicial structure and operation would require a start-up time of at least 2 years before total implementation.

58. National Center for State Courts, *Hawaii Appellate Report* (Draft) (San Francisco: 1977), p. 7.

59. As excerpted from the *Honolulu Advertiser*, November 5, 1976, p. A-10 and the *Honolulu Star-Bulletin*, November 5, 1976, p. A-3.

60. *Ibid.*

61. *Hawaii Const.* art. V, sec. 1.

62. National Center for State Courts, p. 9.

63. See discussion in chapter 3 regarding size of Supreme Court.

64. But it is necessary to note that increasing capacity in reference to changing jurisdiction means expanding court ability to deal with more of certain types of cases. At the same time other classes of controversies would be barred from Supreme Court review.

65. This analysis assumes that current provisions delegating the authority for the creation of new courts in the legislature would remain unchanged. See *Hawaii Const.* art. V, sec. 1. However, it may be argued that the policy of judicial independence infers that the power to create courts should rest in the judiciary. That is, to further minimize judicial reliance on the legislature, the Supreme Court could, at its discretion, be empowered to establish inferior courts. A striking corollary to that notion involves budgetary control. Complete judicial independence would divest the legislature of its authority to appropriate funding for the judicial branch. One way to insure judicial independence would be to earmark a set percentage of the state's general revenues for the judiciary. To the extent that concern over judicial accountability can be discounted by the fact that a state constitutional convention may be called again in another 10 years, when amendments can be proposed, such a policy direction regarding the judiciary may be desirable.

66. See discussion in chapter 3 concerning size of Supreme Court.

67. *Hawaii Const.* art. V, sec. 1.

68. See chapter 3.

69. As noted earlier, consideration has been given to the creation of an appellate division in the circuit courts. State law currently gives the circuit courts jurisdiction over limited classes of appellate cases. *Hawaii Rev. Stat.*, sec. 603-21.8. See also, *State v. Gustafson*, 54 Haw. 519, 511 P.2d 161 (1973). They involve appeals taken from the district courts. Recent discussion of a circuit court appellate division has questioned the constitutionality of expanding that function to reviewing cases from the circuit courts. It is argued that creating an appellate division of the circuit courts to handle appeals from the circuit courts themselves would violate the "inferior courts" provision of the Constitution. See footnote 62 above.

70. *Hawaii Const.* art. V, sec. 1.

71. National Municipal League, *Model State Constitution* (6th ed.; New York: 1968), p. 12.

72. Marlin O. Osthus, *Intermediate Appellate Courts* (Chicago: American Judicature Society, 1976), p. 3. This work succinctly sketches out the wide variation in structuring intermediate appellate courts. For a recent proposal for organizing such a court in Hawaii, see National Center for State Courts.

Chapter 3

1. *Hawaii Const.* art. V, sec. 2.

2. See *U.S. Const.* art. III, sec. 1; *Alabama Const.* art. IV, sec. 140.

3. *Hawaii Const.* art. V, sec. 2.

4. A review of documents from the 1968 Hawaii Constitutional Convention suggests that the size of the court was not an issue. There is no statement of why 5 justices were determined to be the size most appropriate to the judicial needs of Hawaii.

5. See Hawaii Organic Act, *Hawaii Rev. Stat.*, Vol. 1, p. 28.

6. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. I, Standing Committee Report No. 37, p. 174.

7. See Appendix C.

8. See Wayne K. Minami, *Article V: The Judiciary*, Hawaii Constitutional Convention Studies (Honolulu: University of Hawaii, Legislative Reference Bureau, 1968), p. 11; National Municipal League, *Model State Constitution* (6th ed.; New York: 1968), p. 82; hereinafter cited as *Model State Constitution*.

9. American Bar Association, *Standards Relating to Court Organization* (1974), p. 34.

10. *Model State Constitution*, p. 82.

11. American Bar Association, p. 34.

12. *Model State Constitution*, p. 83.

13. American Bar Association, p. 34.

14. *Model State Constitution*, p. 82.

15. See Appendix C.

16. See Appendix C.

17. *Hawaii Const.* art. V, sec. 2.

18. *Ibid.*

19. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. I, Standing Committee Report No. 37, p. 174.

20. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, Standing Committee Report No. 40, p. 197.

21. Documents from the 1968 Constitutional Convention explain that:

> *Your Committee is aware of the current backlog of cases in the circuit court so that whenever a circuit court judge is called upon for temporary duty in the supreme court, this can only be done at the expense of an imposition upon his trial calendar. On a number of occasions, this has also necessitated the expense of calling upon a neighbor island circuit court judge to sit one day at the hearings and return from time to time to engage in conference deliberations before a final decision is rendered. Further, to call upon circuit court judges to sit in review of circuit court cases places that judge in a sometimes embarrassing situation of overruling the decisions of his peers.*
>
> *On the other hand, retired justices represent a heretofore untapped reservoir of knowledge and experience available for temporary duty on the supreme court whenever the need arises. A justice may retire from the supreme court for any number of reasons, the least of which is incompetency, and therefore it is seemingly such a waste for the supreme court not to call upon the special talents, knowledge and experience of one of its former members who, all other things being equal, is as capable as anyone else to sit on that court.* (*Ibid.*)

22. *Hawaii Const.* art. V, sec. 2.

23. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, Standing Committee Report No. 40, p. 198.

24. *Hawaii Rev. Stat.*, sec. 602-11.

Chapter 4

1. Larry C. Berkson, "The Emerging Ideal of Court Unification," *Judicature*, March 1977, p. 373.

2. American Bar Association, *Standards Relating to Court Organization* (1974), p. 4; hereinafter cited as ABA.

3. *Ibid.*, p. 5.

4. Excerpted from Geoff Gallas, "The Conventional Wisdom of State Court Administration: A Critical Assessment and an Alternative Approach," *The Judicial System Journal*, Spring 1976, p. 35. See also, Berkson, p. 373.

5. That many states have moved toward court unification is evidenced by the size and resources available for their administration and the evolution of professional court executives. See Harvey E. Solomon, "The Rise of the Court Executive," *Judicature*, October 1976, p. 114; Robert A. Shapiro and Rachel H. Doan, "A Profile of State Court Administrators," *Judicature*, October 1976, p. 119; Council of State Governments, *State Court Systems - Revised 1976* (Lexington, Ky.: 1976), Table 11, p. 34. Notwithstanding the actual success of attempts to unify court systems, one commentator has characterized the widespread acceptance of the unified judiciary concept as a "conventional wisdom". Gallas, p. 35.

6. Hawaii, *The Judiciary Annual Report, 1975-1976* (Honolulu: 1976), p. 10.

7. 1965 Haw. Sess. Laws, Act 97.

8. *Hawaii Rev. Stat.*, sec. 27-1.

9. *Hawaii Rev. Stat.*, sec. 604-17.

10. See *Hawaii Rev. Stat.*, sec. 641-1 (1968).

11. 1970 Haw. Sess. Laws, Act 188.

12. Hawaii, *The Judiciary Annual Report, 1971-1972* (Honolulu: 1972), p. 37.

13. 1970 Haw. Sess. Laws, Act 188, sec. 42.

14. There were also a number of other changes. For example, the title of the district court's presiding officer was changed from "district magistrate" to "district judge". See *Hawaii Rev. Stat.*, sec. 604-1.

15. For a good overview of the actors in the debate and their respective preferences, see Berkson, pp. 373-376.

16. See National Municipal League, *Model State Constitution* (6th ed.; New York: 1968), p. 78; hereinafter cited as *Model State Constitution*.

17. Berkson, p. 375.

18. For the original work setting out the single level court structure, see Roscoe Pound, "The Causes of Popular Dissatisfaction with the Administration of Justice," a speech delivered at the annual meeting of the American Bar Association in St. Paul, Minnesota, August 29, 1906, 20 *Journal of the American Judicature Society* 178, 183 (February 1937).

19. See Roscoe Pound, "Principles and Outline of a Modern Unified Court System," 23 *Journal of the American Judicature Society* 225 (April 1940), for the original description of the 2-tiered trial court structure.

20. Marlin O. Osthus, *Intermediate Appellate Courts* (Chicago: American Judicature Society, 1976), p. 3.

21. Berkson, p. 375.

22. See generally, *Hawaii Rev. Stat.*, ch. 232.

23. See generally, *Hawaii Rev. Stat.*, ch. 501.

24. See generally, *Hawaii Rev. Stat.*, ch. 571.

25. Hawaii, *The Judiciary Annual Report, 1975-1976*, p. 31.

26. *Hawaii Rev. Stat.*, sec. 232-8.

27. *Hawaii Rev. Stat.*, sec. 501-2.

28. *Hawaii Rev. Stat.*, sec. 501-1.

29. *Hawaii Rev. Stat.*, sec. 571-3.

30. See *Hawaii Rev. Stat.*, sec. 571-11.

31. See Berkson, p. 374.

32. *Ibid.*, p. 375.

33. *Hawaii Const.* art. V, sec. 5 (1968), and *Hawaii Const.* art. V, sec. 5 (1950).

34. *Ibid.*

35. *Hawaii Rev. Stat.*, sec. 601-2.

36. *Hawaii Rev. Stat.*, sec. 601-4.

37. ABA, pp. 86-91.

38. *Model State Constitution*, pp. 89-90.

39. ABA, pp. 72-74.

40. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. I, Standing Committee Report No. 37, p. 175.

41. *Hawaii Const.* art. V, sec. 6 (1950); *Hawaii Rev. Stat.*, sec. 602-21.

42. Berkson, p. 377. In other states, the rule-making power is vested in either a judicial council or the state legislature. *Ibid.*

43. *Hawaii Const.* art. III, sec. 17; see 1974 Haw. Sess. Laws, Senate Bill 1943-74.

44. 1974 Haw. Sess. Laws, Act 159; see specifically, amendment to *Hawaii Rev. Stat.*, sec. 37-62 in section 3.

45. 1974 Haw. Sess. Laws, Act 159, sec. 1, and Senate Bill 1943-74.

46. Berkson, pp. 380-381; ABA, pp. 97-106; *Model State Constitution*, p. 90.

47. Alaska, Colorado, Connecticut, Hawaii, Minnesota, New Jersey, New Mexico, North Carolina, Rhode Island, Tennessee, Vermont, and Virginia. Berkson, p. 381.

48. 1977 Haw. Sess. Laws, Act 159.

49. Statutory provisions also exempt the administrative director of the courts from civil service regulations. *Hawaii Rev. Stat.*, sec. 601-3.

50. 1977 Haw. Sess. Laws, Act 159, sec. 1.

51. ABA, pp. 91-96.

52. Berkson, p. 373.

53. *Ibid.*

54. Gallas, p. 55.

55. David J. Saari, "Modern Court Management: Trends in Court Organization Concepts - 1976," *The Justice System Journal*, Spring 1976, p. 19.

56. Berkson, p. 373.

57. See Hawaii, *The Judiciary Annual Report, 1975-1976*, p. 10.

Chapter 5

1. American Bar Association, *Standards Relating to Court Organization* (1974), p. 43.

2. *Ibid.*, pp. 39-40; see also, Arthur T. Vanderbilt, *Judges and Jurors: Their Functions, Qualifications and Selection* (Boston: Boston University Press, 1956), pp. 26-32; Maurice Rosenberg, "Qualities of Justice--Are They Strainable," 44 *Tex. L. Rev.*, 1063-1080 (1966); New York (State), Temporary State Commission on the Constitutional Convention, *The Judiciary*, No. 12 (New York: 1967), p. 14.

3. Selected by legislature--Connecticut, Georgia, New Jersey, North Carolina, Rhode Island, South Carolina, and Virginia. Selected by governor--Delaware, Maryland, Massachusetts, New Hampshire, New York, and Pennsylvania.

4. Delaware and Pennsylvania.

5. Maryland, Massachusetts, and New Hampshire.

6. New York.

7. *U.S. Const.* art. II, sec. 2.

8. Glenn R. Winters and Robert E. Allard, "Judicial Selection and Tenure in the United States," *The Courts, the Public, and the Law Explosion*, ed. Harry W. Jones for American Assembly (Englewood Cliffs, N.J.: Prentice-Hall, 1965), pp. 148-149.

9. See Appendix E.

10. See James J. Alfini, "Partisan Pressures on the Nonpartisan Plan," *Judicature*, December 1974, p. 217.

11. Wayne K. Minami, *Article V: The Judiciary*, Hawaii Constitutional Convention Studies (Honolulu: University of Hawaii, Legislative Reference Bureau, 1968), p. 11.

12. See Appendix E.

13. See Appendix E.

14. *Hawaii Const.* art. V, sec. 3.

15. See Appendix E.

16. The Organic Act provided:

> *...that the President shall nominate and, by and with the advice and consent of the Senate, appoint the chief justice and justices of the Supreme Court, the judges of the circuit courts, who shall hold their respective offices for four years, unless sooner removed by the President.* (Hawaii Organic Act, *Hawaii Rev. Stat.*, Vol. 1, p. 28).

17. *Hawaii Const.* art. V, sec. 3, (1950).

18. *Hawaii Const.* art. V, sec. 3. For rationale behind this action, see Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, Standing Committee Report No. 40, p. 199.

19. *Ibid.*

20. In discussing the pros and cons of the appointive system of selecting judges, reference is often made to the virtues and limitations of the federal system. It may therefore be helpful to set out the procedures of the federal system.

    The United States Constitution provides that the President:

    > *...shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court and all other Officers of the United States whose Appointments are not herein otherwise provided for, and which shall be established by Law.* (*U.S. Const.* art. II, sec. 2)

    Though the constitutional language is simple, a rather complex appointing procedure has built up over the years in the form of custom and tradition. Much of this section is taken from Harold W. Chase, "Federal Judges: The Appointing Process," 61 *Minn. L. Rev.* 185 (1966).

    In the federal system senatorial courtesy exists from the fact that the Senate was given the power to advise and consent to appointments. A custom soon developed whereby Senators would support a colleague who objected to an appointment to a federal office in the Senator's state; provided the Senator and the President were of the same party. It was only necessary that the Senator state that the nominee was personally obnoxious. Therefore, it is often said that although the President is free in choosing, senatorial wishes are in reality controlling, particularly in appointments to the district courts. A commentator, however, observes that this conclusion is "too narrowly drawn and too absolutely stated" in that although the Senators may be favorably disposed to support an individual Senator who opposes a nominee to an office in the Senator's state, they still require the Senator to give persuasive reasons for opposing the nominee and have on occasions rebuffed the objecting Senator.

    The responsibility of searching for and screening of candidates is generally assigned by the President to the Attorney General. However, the President carefully reviews the recommended nominations before submitting them to the Senate.

    Under Senate rules the Judiciary Committee passes on all nominations to the federal bench and makes recommendations to the Senate. Customarily a

subcommittee holds hearings on all such nominations, but in most cases, the hearing is perfunctory.

An FBI investigation is customarily made of serious contenders for nomination to federal judicial posts. The investigation seeks information on the character of the person as well as an indication of the professional standing of the possible nominee. An adverse report from the FBI is considered lethal to a candidacy.

21. Vanderbilt, p. 39; Hugh Scott, "Legislative Proposals for Reform of the Federal Judiciary," *Journal of the American Judicature Society*, 50(2) (August-September 1966), p. 52. For instance, the American Bar Association's Committee on the Judiciary found that 63 per cent of the appointments to the federal judiciary made in 1965 were found to qualify for the two highest ratings the committee gives (*New York Times*, February 15, 1967, p. 22). Critics, however, point out that the high caliber of federal judges may be due in great part to other factors than the method of selection--to the fact, for example, that the federal judiciary, because of the higher pay and greater prestige, has more appeal for the talented lawyer and that, because of the great sweep of the federal powers, the bar and the press concern themselves more deeply with federal judicial appointments. Samuel I. Rosenman, "A Better Way to Select Judges," *Journal of the American Judicature Society* (October 1964), p. 89. The federal appointive system has also been criticized for producing mediocre rather than corrupt judges because lawyers are likely to be appointed who orient their careers to politics rather than towards excellence in the law (Herbert Brownell, "Too Many Judges Are Political Hacks," *Saturday Evening Post*, April 18, 1964, pp. 10, 12).

22. For a detailed discussion of the merits and demerits of the appointive system, see Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. II, pp. 358-359, 387-415. See also, New York (State), Temporary State Commission on the Constitutional Convention, pp. 14-33; Winters and Allard, pp. 159-162; Rosenman, p. 89; National Municipal League, *Model State Constitution* (6th ed.; New York: 1968), pp. 86-87; Royce H. Savage, "Justice for a New Era," *Journal of the American Judicature Society*, 49(3) (August 1965), pp. 50-51; Robert Drinan, "Judicial Appointments for Life by the Executive Branch of Government: Reflections on the Massachusetts Experience," 44 *Tex. L. Rev.* 1103-1116 (1966); Vanderbilt, pp. 26-50.

23. Minami, p. 11.

24. See Appendix E. The 6 states changed from a popular election to the Missouri Plan.

25. *Ibid.*

26. Edmund B. Spaeth, Jr., "Reflections on a Judicial Campaign," *Judicature*, June/July 1976, p. 10. See also, citation at footnote 20.

27. American Bar Association, Committee of Judicial Ethics, *Canons of Judicial Ethics*.

28. See Appendix E.

29. See Appendix E.

30. The issue of whether to adopt the Missouri Plan has been particularly volatile in Florida where controversy has raged since 1968. See Burton Atkins, "Judges' Perspective on Judicial Selection," *State Government*, Summer 1976, p. 180; Earl B. Hadlow, "Can Federal Merit Selection Work?", *Judicature*, February 1976, p. 324.

31. This figure differs from the 14 reported above. The difference is explained by the fact that the lower figure reflects the number of states using the Missouri Plan for choosing their Supreme Court justices. The larger number includes other lower state courts.

32. Arguments for and against the Missouri Plan can be found in: Allan Ashman and James J. Alfini, *The Key to Judicial Merit Selection: The Nominating Process* (American Judicature Society, 1974); Atkins, pp. 180-186; R. Stanley Lowe, "Merit Selection in the Equality State," *Judicature*, February 1976, p. 328; Alfini, p. 217; Winters and Allard, pp. 146-165; New York (State), Temporary State Commission on the Constitutional Convention, pp. 20-33; 3 articles entitled "Twenty-Five Years Under the Missouri Plan," *Journal of the American Judicature Society*, 49(5) (October 1965), pp. 92-108; W. St. John Gerwood, "Judicial Selection and Tenure--The Model Article Provisions," *Journal of the American Judicature Society*, 47(1) (June 1963), pp. 21-26; Forrest M. Hemker, "Experience Under the Missouri Non-Partisan Court Plan," *Journal of the American Judicature Society*, 43(5) (February 1960), pp. 159-161; Glenn R. Winters and Bob Allard, "Two Dozen Misconceptions About Judicial Selection and Tenure," *Journal of the American Judicature Society*, 48(7) (December 1964), pp. 138-144; Richard A. Watson, "Missouri Lawyers Evaluate the Merit Plan for Selection and Tenure of Judges," *American Bar Association Journal*, 52(6) (June 1966), pp. 539-542; Richard Watkins, Ronald Downing and Frederick Spiegel, "Bar Politics, Judicial Selection and Representation of Social Interest," *American Political Science Review*, 61(1) (March 1967), pp. 54-71.

33. *Hawaii Rev. Stat.*, sec. 604-2.

34. *Ibid.*

35. Stuart S. Nagel, *Comparing Elected and Appointed Judicial Systems* (Beverly Hills: Sage Publications, 1973); Bradley C. Canon, "The Impact of Formal Selection Processes on the Characteristics of Judges--Reconsidered," *6 L. and Soc'y Rev.* 579 (1972).

36. Canon, p. 585.

37. *Ibid.*

38. Canon reports that the most frequent prior office held was that of trial judge. As Table 1 indicates there is considerable variation in the selection systems, running from 76% former judges in the gubernatorial appointment states to 45% in the nonpartisan election states.

TABLE 1: SELECTED CHARACTERISTICS OF JUSTICES BY SELECTION SYSTEM

	Partisan Election (N = 197)	Non-Partisan Election (N = 199)	Missouri Plan (N = 37)	Gubernatorial Appointments (N = 97)	Legislative Election (N = 31)
In-state birth[a]	77%	66%	65%	85%	90%
In-state undergraduate education	81	64	70	65	86
In-state legal education	74	63	68	39	64
Possesses B.A. degree	53	53	54	78	68
Possesses law degree	86	86	89	97	82
Prosecutorial experience	56	59	53	39	23
Legislative experience	17	17	11	21	45
Previous judicial experience	58	45	57	76	65
Experience in atty. general's office	19	21	22	22	9
Democratic party affiliation	80	35	42	43	67
Religion					
Jewish	3	3	4	8	0
Catholic	13	19	28	28	11
High status Protestant[b]	35	39	26	52	56
Low status Protestant[b]	48	48	44	14	33

[a] The percentages listed for this and all subsequent characteristics except religion are based on dichotomous responses, i.e., 23% of the partisan elected justices were born out of state, 19% of them received their undergraduate education out of state, etc. All justices for whom there is no information or for whom a particular response is inappropriate have been eliminated from the percentage calculations.

[b] Schmidhauser's (1960: 38-39) categorizations are used here. The high-status category is composed predominantly of Episcopalians, Presbyterians, Congregationalists, and Unitarians.

Table 2, however, indicates exactly the same range across regions. Again, we are faced with the question of causal responsibility: selection system or region.

TABLE 2: SELECTED CHARACTERISTICS OF JUSTICES BY REGION

	Northeast (N = 92)	South (N = 135)	Midwest (N = 122)	West (N = 92)
In-state birth[a]	87%	81%	77%	50%
In-state undergraduate education	72	84	78	57
In-state legal education	47	80	76	45
Possesses B.A. degree	73	54	52	57
Possesses law degree	90	83	92	88
Prosecutorial experience	39	48	60	58
Legislative experience	21	27	16	11
Previous judicial experience	76	57	45	58
Experience in atty. general's office	19	19	19	22
Democratic party affiliation	39	97	29	55
Religion				
Jewish	6	1	2	8
Catholic	31	3	15	22
High-status Protestant[b]	46	40	35	35
Low-status Protestant	17	56	48	35

[a] See note a in Table 1.
[b] See note b in Table 1.

Imposing controls produces mixed results. In New York and Pennsylvania, 83% of the justices were former trial judges, a figure approximately the regional average and much above that for the partisan election system. And in Hawaii, 62% were trial judges, a figure much closer to the regional average than the system average. But the legislative election states fell about half way between the regional and system averages (South Carolina and Virginia = 61%; Rhode Island and Vermont = 69%; N = 18 and 13, respectively). And in the nonpartisan election states, there were regional differences (Midwest = 41%; West = 53%; N = 53 and 56, respectively), but in both regions the averages were below the overall regional average indicating that the system has some effect here. Finally, in the 4 partisan election states in the Midwest (Illinois, Iowa, Indiana, and Michigan, N = 45), 59% of the justices were once trial judges; this figure is quite similar to the system average and well above the regional average, thus pointing to the impact of the system here.

In sum, neither system nor region seems to be the dominant influence here insofar as the use of control states can indicate. While regional factors seem more pervasive in the Northeast, system differences are dominant in the Midwest. But neither seems very important in the South and West. In other words, the utility of the trial judgeship as a stepping stone to the state's highest bench is affected by both region and system, sometimes relatively independently and sometimes seemingly inextricably intertwined. *Ibid.*

39. Nagel, p. 16.

40. *Ibid.*

41. *Ibid.*, p. 17.

42. See studies cited in Minami, p. 24.

43. The tables in footnote 38 provide the basis for Canon's analysis:

> *Table 1 shows that while partisan, non-partisan, and Missouri Plan states have virtually similar percentages of justices with a B.A. degree, gubernatorial appointment and legislative election states have a much higher percentage. And Table 2 shows that the Northeast has a significantly higher proportion of B.A. degree holders on its courts than any other region. In the two deviant states in the Northeast, New York and Pennsylvania, 76% of the justices have a college degree. This figure is right on that of the Northeast region and is considerably above that of all the partisan election states. Thus, it seems that New York and Pennsylvania are affected on this dimension by their region, not their selection system.*
>
> *But 3 other deviant states show a contrary trend. In South Carolina and Virginia, the only Southern states to use the legislative election system, 72% of the justices have B.A. degrees, a figure not very different from the legislative selection average and quite a bit above their regional average. Another deviant state, Hawaii, also lends support to the influence of the selection system. There the governor appoints the justices and 87% of them possess a B.A. degree. While somewhat higher than the gubernatorial appointment average, this figure is grossly above the regional average of 56%.*
>
> *In short, our control states indicate that both region and selection system have a bearing on the educational background of the justices. Regional patterns are perhaps more important in the Northeast, but selection systems seem to have an influence in the rest of the country.* Canon, pp. 585-586.

44. Nagel, pp. 17-35.

45. *Ibid.*, pp. 24-25. The basis for Nagel's conclusions is not entirely persuasive. Equating ethnicity with religious affiliation, he says:

> *In the sample of 19 state governors, 16 were Protestants, 2 Catholic, and 1 unknown. Nine of the 16 never appointed a Catholic or Jew, although 7 of the 16 appointed at least 1 Catholic or Jew. The*

2 Catholic governors both appointed at least 1 Catholic or Jew. The reason for fewer appointments along religious lines than along party lines may relate to the greater visibility, feeling of need, and the presence of legal requirements for bipartisan supreme courts but not for bi-ethnic supreme courts. Using a national sample of state supreme courts, political parties are much better represented in comparison to the general population than are the diverse American ethnic groups.

46. *Ibid.*, pp. 21-23.

47. James J. Alfini, "Partisan Pressures on the Nonpartisan Plan," *Judicature*, December 1974, p. 216; Allan Ashman and James J. Alfini, *The Key to Judicial Merit Selection: The Nominating Process* (American Judicature Society, 1974); Richard A. Watson and Randal G. Downing, *The Politics of the Bench and Bar* (New York: John Wiley and Sons, Inc., 1969).

48. Alfini, pp. 217-219.

49. Nagel states that:

> *The explanation for the greater liberalism of elected judges possibly lies in the fact that elected judges may be more likely to be lawyers who have risen up from the political ranks and who have characteristics more like those of the general population or at least the more liberal elements in the general population. Appointed judges, on the other hand, may be more likely to be lawyers who formerly worked for top conservative law firms from which they were appointed to judgeships.* Nagel, p. 36.

50. Nagel indicates that:

> *Tax cases and motor vehicle accident cases did not follow the general pattern of elected judges being more liberal. The explanation in tax cases might be that there is no clearly liberal position in tax cases unless one knows the type of tax (e.g., income or sales) or the type of taxpayer (e.g., corporate or consumer). Liberals do tend to favor the government in business regulation cases, but they disfavor the government in criminal cases, particularly where constitutional rights are involved. Some otherwise liberal judges have been known for their anti-government decisions in tax cases, such as Judge Musmanno of the elected Pennsylvania Supreme Court.*
>
> *The explanation for motor vehicle accident cases may be more complicated. Like the tax cases, they may involve a mixture of issues as to both liability (on which liberals tend to find for the plaintiff) and damages (on which liberals sometimes do not think in dollar amounts as large as wealthy non-liberal types do, provided liability has been established). The personal injury cases may also be less ideological than the other types of cases and thus they may not distinguish liberal elected judges from conservative appointed ones as clearly as more divisive types of cases. The degree of divisiveness of the case can be determined by calculating the average percentage of dissents for each type of case or the average margin of victory for each type of case. Tax and personal injury decisions did not correlate as highly with party, ethnic background, or liberalism attitudes as did business regulation, employee injury, criminal, or many other types of cases.*
>
> *Perhaps another explanation for why elected judges were not so liberal in motor vehicle accident cases is...[because] judges who are put up for election, rather than receiving an interim appointment from the governor, generally have good vote-getting images by way of having (1) attended a prestige law school (and thus come from wealthier backgrounds), (2) served many years in a prior judgeship (and thus are older judges), and (3) received scholarly recognition by way of publication or membership in scholarly honorary organizations (and thus are more established). These characteristics are not consistently good general decisional predictors, as are party, religion, and liberalism; but they do happen to have a relatively high correlation with voting against the monetary claims of the injured party in motor vehicle accident cases.* Nagel, pp. 10-11.

51. *Ibid.*, p. 13.

52. This can be explained because long term of office correlates positively with being appointed and positively with nonpartisanship. Long term, however, does not explain the positive correlation between being appointed and nonpartisanship, because the correlation remains when long-tenured appointed judges are compared with long-tenured elected judges. Likewise, appointed judges are not more successful in suppressing their values than elected judges, as is indicated by the fact that appointed judges with liberal questionnaire attitudes tended to vote just as liberally as elected judges with liberal questionnaire attitudes.

    Possibly the best explanation for the positive correlation (other than attributing it to chance in spite of the size of the correlation and the size of the sample) is that judges on appointed courts view their roles as being more nonpartisan than do judges on elected courts. Appointed judges may have a more positive attitude toward judicial law-making rather than mere law-finding, but such a role perception does not necessarily relate to partisanship or nonpartisanship. Nagel, pp. 13-16.

Chapter 6

1. See Appendix F.

2. See Appendix F.

3. See Appendix F.

4. Prior to 1976, U.S. citizenship was in effect required because judges needed to be members of the Hawaii Bar. *Hawaii Const.* art. V, sec. 3. Eligibility standards for the Hawaii Bar before

1976 included U.S. citizenship. However, the Supreme Court Rules were amended in May of 1976 to allow noncitizens to practice before the state courts. See *Rules of the Supreme Court of the State of Hawaii*, Rule 15(a), p. 13. Given the present 10-year requirement for legal practice in the State (*Hawaii Const.* art. V, sec. 3), aliens cannot qualify for judicial positions until 1987.

5. See Appendix F.

6. See Appendix F.

7. *Hawaii Const.* art. V, sec. 3.

8. See Appendix F.

9. See Appendix F.

10. *Hawaii Const.* art. V, sec. 3.

11. *Hawaii Rev. Stat.*, sec. 604-2.

12. See Glendon Schubert, ed., *Judicial Behavior: A Reader in Theory and Research* (Chicago: Rand-McNally, 1964), pp. 9-39 which contains excerpts from Benjamin Cardozo, *The Nature of the Judicial Process*; Jerome Frank, *Law and the Modern Mind*; and Harold Lasswell, *Power and Personality*.

13. Kenneth N. Vines, "Courts as Political and Governmental Agencies," *Politics in the American States*, ed. Herbert Jacobs and Kenneth N. Vines (Boston: Little, Brown, 1965), pp. 240-245.

14. *Hawaii Const.* art. V, sec. 3.

15. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. I, Standing Committee Report No. 37, pp. 174-175.

16. *Hawaii Const.* art. V, sec. 3.

17. *Hawaii Rev. Stat.*, sec. 601-8.

18. *Hawaii Rev. Stat.*, sec. 601-9.

Chapter 7

1. American Bar Association, *Standards Relating to Court Organization* (1974), p. 59; hereinafter cited as ABA.

2. Tom Clark in *Honolulu Advertiser*, January 27, 1967, p. A-14.

3. National Municipal League, *Model State Constitution* (6th ed.; New York: 1968), p. 89; hereinafter cited as *Model State Constitution*. ABA, p. 59.

4. *Model State Constitution*, pp. 79-81.

5. ABA, p. 48.

6. Alabama, Arizona, Florida, Georgia, Idaho, Kansas, Minnesota, Nebraska, Nevada, Ohio, Oklahoma, Oregon, Texas, Vermont, and Washington.

7. See Appendix G.

8. See Appendix G.

9. See Appendix G.

10. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. II, pp. 370-379.

11. *Hawaii Const.* art. V, sec. 3.

12. *Hawaii Const.* art. V, sec. 3 (1950).

13. *Ibid.*

14. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, Standing Committee Report No. 40, p. 200.

15. See Appendix G.

16. See chapter 5.

17. ABA, p. 59.

18. *Ibid.*

19. *Ibid.*, p. 60.

20. *Hawaii Const.* art. V, sec. 3.

21. *Hawaii Rev. Stat.*, sec. 602-2.

22. *Ibid.*

23. *Hawaii Rev. Stat.*, sec. 603-5.

24. *Hawaii Rev. Stat.*, sec. 604-2.5.

25. The reference to "[t]heir compensation" in the third paragraph of section 3 in article V applies to supreme court and circuit court judges.

26. *Hawaii Rev. Stat.* sec. 604-2.5.

27. See Appendix H.

28. *Model State Constitution*, p. 14.

29. *Ibid.*, p. 89.

30. See *Calif. Const.* art. VI, sec. 19, which authorizes the state legislature to set judicial salaries.

31. *Calif. Govt. Code*, sec. 68203.

32. Two other factors related to judicial salary levels involve medical benefits and reimbursement for expenses. ABA, pp. 62-63. Health benefits for judges are presently covered by chapter 87, *Hawaii Rev. Stat.* Judges are eligible for per diem reimbursement under the terms of *Hawaii Rev. Stat.*, sec. 78-15.

33. ABA, p. 61.

34. *Ibid.* Hawaii's retirement laws provide for disability payments to judges. See *Hawaii Rev. Stat.*, secs. 88-75 to 88-80.

35. *Hawaii Const.* art. V, sec. 3.

36. See *Hawaii Rev. Stat.*, ch. 88.

37. *Hawaii Rev. Stat.*, sec. 88-73. Another code section, *Hawaii Rev. Stat.*, sec. 88-21, defines the term "judges" to include only supreme court and circuit court judges. District court judges are not mentioned and their retirement eligibility is subject to the general provisions of

section 88-73. As a further note, it can be pointed out that judicial tenure provisions of the constitution now are identical to the length of service necessary for retirement benefit eligibility. The 1968 constitutional amendment to section 3 of Article V increased the terms of office for circuit and supreme court justices to 10 years.

38. See the general provisions of *Hawaii Rev. Stat.*, sec. 88-74.

39. For definition of term "average final compensation", see *Hawaii Rev. Stat.*, sec. 88-81.

40. *Hawaii Rev. Stat.*, sec. 88-74(3). Under the definitional provisions of *Hawaii Rev. Stat.*, sec. 88-21, district court judges are not entitled to receive the supplemental allowance.

41. *Hawaii Rev. Stat.*, sec. 88-74(3)(B). The general provisions of section 88-74, however, establish the retirement allowance ceiling for district court judges and other state employees at 80 per cent of their average final compensation.

42. Reference here is to the shorter eligibility requirement of 10 years and the supplemental allowance based on the 3-1/2 per cent increase for each year of service. This compares to the 25-year service requirement and 2-1/2 per cent increase in supplemental allowance generally applicable to other public employees. See *Hawaii Rev. Stat.*, secs. 88-73 and 88-74. In contrast, the maximum retirement allowance for state employees is higher than that of circuit and supreme court judges. See footnote 41 above. It has been estimated that it would require 18 years of service at 3-1/2 per cent to produce a 75 per cent benefit where the annuity from the member's contribution was taken into account. This estimate was based on a circuit court judge retiring at age 60 with no other creditable government service. Wayne K. Minami, *Article V: The Judiciary*, Hawaii Constitutional Convention Studies (Honolulu: University of Hawaii, Legislative Reference Bureau, 1968), p. 32.

43. *Consensus Statement, Citizens' Conference on the Administration of Justice*, Honolulu, Hawaii, January 26-28, 1967.

44. Subsequent to the 1968 Constitutional Convention, there have been no substantive changes in the retirement laws affecting judge pension benefits. This might reflect the sentiment that the extension of judicial tenure which insured retirement benefit eligibility after one full term of office is sufficient "liberalization". See, Hawaii Constitutional Convention, 1968, *Proceedings*, Vol. I, Standing Committee Report No. 40, p. 200. It is reasonable to further argue that similar types of increases to judge retirement benefit packages have little effect on luring the most esteemed members of the legal profession away from the private sector.

45. The term "beneficiary" is defined as:

> *"Beneficiary": the recipient of any benefit from the [retirement] system or, as the context may indicate, the natural person or persons designated by a member to receive the benefits payable in the event of his death. Hawaii Rev. Stat.*, sec. 88-21.

This may include the judge's spouse and children.

46. *Hawaii Rev. Stat.*, sec. 88-83.

47. *Hawaii Rev. Stat.*, sec. 88-84.

48. This includes accumulated contributions and contributions to the post-retirement fund. *Ibid.*

49. The amount of the supplemental payment is equal to 50 per cent of the compensation earned by the judge during the year immediately preceding death if the judge had at least one year but not more than 10 full years of credited service. The amount is increased by 5 per cent of the compensation for each full year of service in excess of 10 years, to a maximum of 100 per cent of such compensation. However, if the judge had at least one year of credited service, the amount, together with accumulated contributions shall not be less than 100 per cent of the compensation. *Ibid.*

50. *Hawaii Rev. Stat.*, sec. 88-85.

Chapter 8

1. Comment, Judicial Discipline, Removal, and Retirement, 1976 *Wis. L. Rev.* 563 (1976); hereinafter cited as Comment on Judicial Discipline.

2. *Ibid.*; Note, Courts--Judicial Removal--Establishment of Judicial Commission for Removal of Judges Precludes Legislative Investigation of Judicial Misconduct, 84 *Harv. L. Rev.* 1002, 1005 (1971); Frank Greenberg, "The Task of Judging the Judges," *Judicature*, May 1976, p. 459.

3. American Bar Association, *Standards Relating to Court Organization* (1974), pp. 50-57; hereinafter cited as ABA; National Municipal League, *Model State Constitution* (6th ed.; New York: 1968), pp. 84-88; hereinafter cited as *Model State Constitution*; Greenberg, pp. 460-461; William Thomas Braithwaite, *Who Judges the Judges* (Chicago: American Bar Foundation, 1971), pp. 3-11; Jack Frankel, "Judicial Discipline and Removal," 44 *Tex. L. Rev.* 1117-1134 (1966); "Remedies for Judicial Misconduct and Disability: Removal and Discipline of Judges," 41 *N.Y.U. L. Rev.* 149-197 (1966).

4. See Appendix K.

5. Comment on Judicial Discipline, p. 564.

6. ABA, pp. 64-65; *Model State Constitution*, p. 88.

7. *Model State Constitution*, p. 88; J. Earl Major, "Why Not Mandatory Retirement for Federal Judges?", *American Bar Association Journal*, 52(1) (January 1966), pp. 29-31.

8. See discussion regarding Hawaii provisions for calling upon retired judges in chapter 3.

9. See Appendix L.

10. See Appendix L.

11. Alabama, Arkansas, California, Maine, Montana, and North Dakota. See Appendix L.

12. *Hawaii Const.* art. V, sec. 3.

13. *Hawaii Const.* art. V, sec. 3 (1950).

14. Hawaii, Constitutional Convention, 1950, *Proceedings*, Standing Committee Report No. 37, p. 174.

15. *Ibid.*

16. Documents from the 1968 Constitutional Convention do not mention the compulsory retirement provision. See Hawaii, Constitutional Convention, 1968, *Proceedings*, Standing Committee Report No. 40, pp. 196-203.

17. See Appendix K.

18. Comment on Judicial Discipline, p. 565.

19. *Ibid.* For example, see *Wisconsin Const.* art. VII, sec. 13.

20. See Appendix K.

21. Braithwaite, p. 13.

22. *Hawaii Const.* art. V, sec. 3 (1950).

23. *Ibid.*

24. Hawaii, Constitutional Convention, 1968, *Proceedings*, Standing Committee Report No. 40, p. 201. The removal clause is now found in *Hawaii Const.* art. V, sec. 4.

25. Comment on Judicial Discipline, p. 565.

26. See Appendix K.

27. Montana, Secretary of State, *Voter Information for Proposed Constitutional Amendments, Referendums, Initiatives, General Election, November 2, 1976*, pp. 25-30; "Ballot Box Score," *State Government News*, December 1976, p. 4.

28. Comment on Judicial Discipline, p. 565; Braithwaite, pp. 12-13.

29. Comment on Judicial Discipline, p. 565.

30. Braithwaite, p. 13.

31. Comment on Judicial Discipline, p. 564. It is interesting to note that Braithwaite in 1971 reported 25 states as having adopted modern mechanisms between 1960 and 1970. Braithwaite, p. 13.

32. *New York Const.* art. VI, sec. 22b.

33. *New York Const.* art. VI, sec. 22c.

34. *New York Const.* art. VI, sec. 22a.

35. *Ibid.*

36. *New York Const.* art. VI, sec. 22e.

37. *Ibid.* "But a proceeding by the court on the judiciary for the retirement of a judge or justice for mental or physical disability preventing the proper performance of his judicial duties shall not be stayed." *Ibid.*

38. *New York Const.* art. VI, secs. 22k and 22l.

39. See Appendix K.

40. Braithwaite, p. 66.

41 *New Jersey Const.* art. VI, sec. VI(4).

42. Until 1976, this commission was named the Commission on Judicial Qualifications. See Proposition 7 adopted by California voters in general election of 1976. "Ballot Box Score," p. 4. The constitutional and statutory provisions dealing with this commission are found in *California Const.* art. VI, secs. 8 and 18, and *Calif. Govt. Code*, secs. 68701 to 68755.

43. *California Const.* art. VI, sec. 8.

44. *California Const.* art. VI, sec. 18.

45. *Calif. Govt. Code*, sec. 68750.

46. *Calif. Govt. Code*, sec. 68702.

47. *California Const.* art. VI, sec. 18.

48. *Ibid.*

49. *Ibid.*, as amended in 1976.

50. *Ibid.*

51. *Ibid.*

52. See *California Const.* art. VI, sec. 18(f).

53. See Appendix K.

54. For example, the New Mexico, Indiana, and Oregon judicial commissions may discipline or remove judges. *Ibid.*

55. For example, New Jersey allows the governor to appoint a 3-member commission which may recommend the governor's action for judge retirement. See Appendix K.

56. *Hawaii Const.* art. V, sec. 4.

57. *Ibid.*

58. *Ibid.* For the details of the commission's composition, duties, and procedures, see *Hawaii Rev. Stat.*, secs. 610-1 to 610-3.

59. *Hawaii Rev. Stat.*, sec. 610-3.

60. *Hawaii Const.* art. V, sec. 4.

61. *Hawaii Rev. Stat.*, sec. 610-11.

62. *Hawaii Rev. Stat.*, sec. 610-12.

63. *Hawaii Rev. Stat.*, sec. 610-13.

64. *Hawaii Const.* art. V, sec. 4.

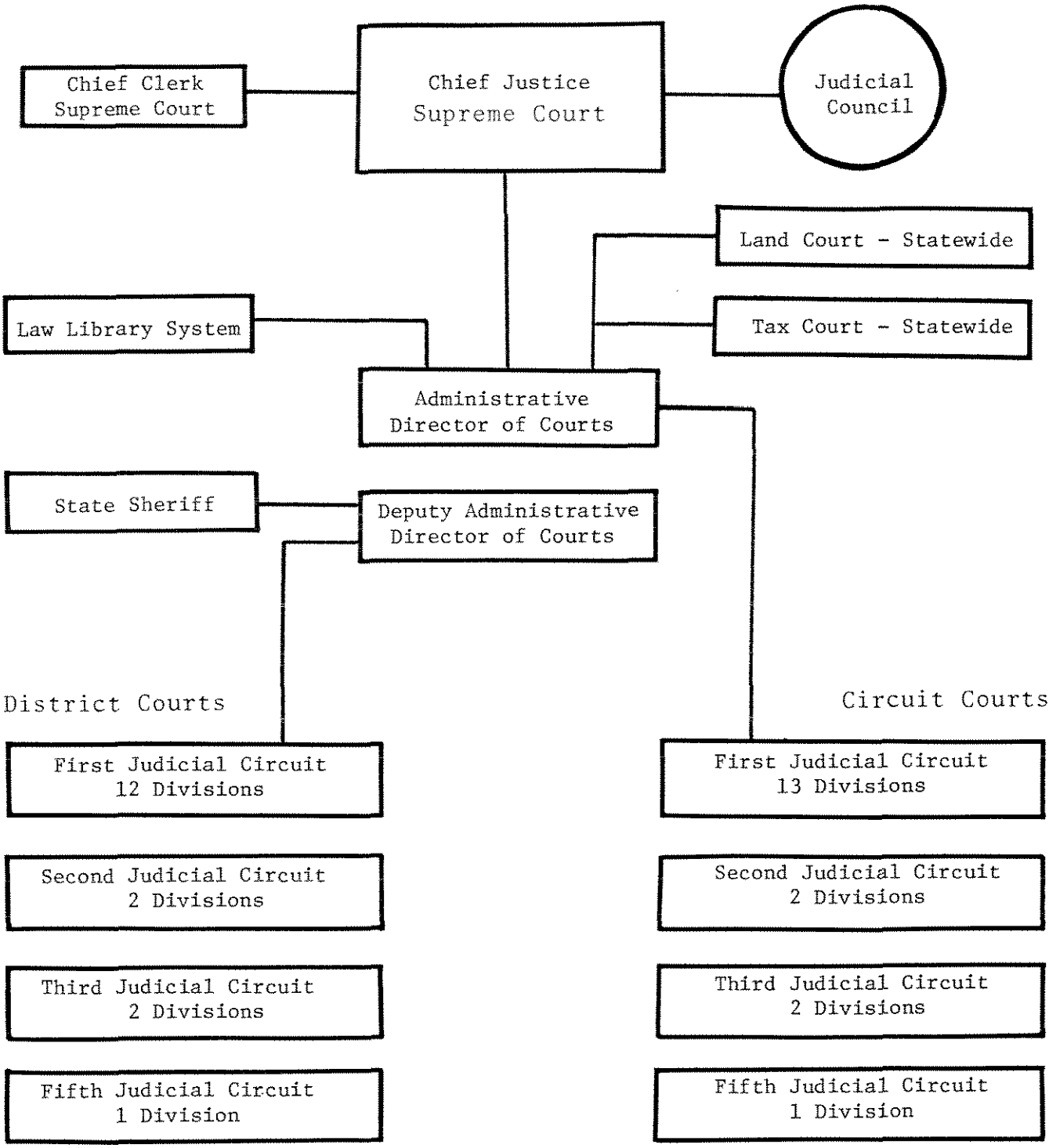
65. Greenberg, pp. 461-462.

66. *Ibid.*, p. 463.

67. *Ibid.*

Appendix A

ORGANIZATIONAL STRUCTURE OF THE
HAWAII JUDICIARY



Source: *Hawaii, The Judiciary Annual Report: 1975-1976 (Honolulu: 1976).*

Appendix B

JUDGE SURVEY

The State of Louisiana recently conducted a survey on the number of judges at the level of trial courts of general jurisdiction, intermediate appellate courts, and court of last resort.

According to the results which were released, Hawaii had 4.5 trial judges per 100,000 population.[1] The next question which arises is how do we rank nationally?

We infer from the data that six of the fifty states failed to respond to the survey:

Massachusetts
New Mexico
New York
Pennsylvania
South Dakota
Wisconsin.

Among respondents were 44 states, Puerto Rico and Washington, D.C.

Three sets of statistics were published: (1) number of trial judges per 100,000 population, (2) appeal judges per 100,000 population, and (3) appeal judges per 100 trial judges.

The number of trial judges per 100,000 population ranged from a low of nine tenths of a judge (South Carolina) to a high of 11.2 judges per 100,000 population (Alaska). Hawaii ranked number 14 in the standings.[2]

The number of appeal judges per 100,000 population ranged from one tenth of a judge (South Carolina and Virginia) to a high of 1.5 judges (Alaska). Hawaii ranked in middle ground: 13 to 23 with 10 other states.[3]

The number of appeal judges per 100 trial judges ranged from a low of 4.1 (Minnesota) to a high of 50.0 (Maine). Hawaii with 12.8 appeal judges per 100 trial judges ranked number 36.[4]

Source: *From the Office of the Administrative Director of the Courts, the Hawaii judiciary.*

1. *The original report received from the Judiciary reported 2.1 trial judges per 100,000 population. However, this figure was computed on the basis of 18 circuit court trial judges. Such a total excluded Hawaii's 21 district court judges. The district judges were accounted for and the ratio was recalculated.*

2. *The study originally ranked Hawaii 10th in the standings. However, it was noted that the rankings were rated with lowest ratio getting the highest ranking and highest ratio the lowest. From the standpoint of examining judicial capacity, it was felt that such a ranking was misrepresentative because the higher ratio suggests greater capacity. Accordingly, the recalculated ratio was compared against the other reported figures and a new ranking was created.*

3. *The same situation as indicated in note 2 above existed here. The rankings reported were inverted to more accurately reflect relative judicial capacity.*

4. *Because the number of trial judges was misreported, the resulting ratio was misleading. The figures were thus, recalculated and the rankings recomputed.*

STATE	TRIAL COURT	INTERMEDIATE APPEALS COURT	COURT OF LAST RESORT	TRL JDG PER 100,000 POP	APP JDG PER 100,000 POP	APP JDG PER 100 TRL JDG
Alabama	108	8	9	3.0	0.4	15.7
Alaska	37	0	5	11.2	1.5	13.5
Arizona	72	12	5	3.4	0.8	23.6
Arkansas	56	0	7	2.7	0.3	12.5
California	520	56	7	2.5	0.3	12.1
Colorado	94	10	7	3.8	0.6	18.0
Connecticut	40	4	6	1.3	0.3	25.0
Delaware	18	4	3	3.1	1.2	38.8
Florida	287	25	7	3.7	0.4	11.1
Georgia	91	9	7	1.9	0.3	17.5
Hawaii	39	0	5	4.5	0.6	12.8
Idaho	27	0	5	3.5	0.6	18.5
Illinois	610	34	7	5.4	0.3	6.7
Indiana	248	9	5	4.6	0.2	5.6
Iowa	92	5	9	3.1	0.4	15.2
Kansas	131	7	7	5.7	0.6	10.6
Kentucky	87	14	7	2.6	0.6	24.1
Louisiana	152	30	7	4.0	0.9	24.3
Maine	14	0	7	1.3	0.6	50.0
Maryland	90	13	7	2.2	0.4	22.2
Massachusetts	0	0	0	0.0	0.0	0.0
Michigan	512	18	7	5.6	0.2	4.8
Minnesota	215	0	9	5.5	0.2	4.1
Mississippi	65	0	9	2.8	0.3	13.8
Missouri	115	22	7	2.4	0.6	25.2
Montana	29	0	5	4.0	0.6	17.2
Nebraska	45	0	7	2.9	0.4	15.5
Nevada	26	0	5	4.7	0.9	19.2
New Hampshire	13	0	5	1.6	0.6	38.4
New Jersey	271	21	7	3.6	0.3	10.3

STATE	TRIAL COURT	INTERMEDIATE APPEALS COURT	COURT OF LAST RESORT	TRL JDG PER 100,000 POP	APP JDG PER 100,000 POP	APP JDG PER 100 TRL JDG
New Mexico	0	0	0	0.0	0.0	0.0
New York	0	0	0	0.0	0.0	0.0
North Carolina	55	9	7	1.0	0.3	29.0
North Dakota	19	0	5	2.9	0.7	26.3
Ohio	184	38	7	1.7	0.4	24.4
Oklahoma	143	6	9	5.3	0.6	12.5
Oregon	70	6	7	3.1	0.5	18.5
Pennsylvania	0	0	0	0.0	0.0	0.0
Puerto Rico	187	0	8	6.3	0.2	4.2
Rhode Island	17	0	5	1.7	0.5	29.4
South Carolina	25	0	5	0.9	0.1	20.0
South Dakota	0	0	0	0.0	0.0	0.0
Tennessee	117	18	5	2.8	0.5	19.6
Texas	261	42	9	2.2	0.4	21.4
Utah	24	0	5	2.0	0.4	20.8
Vermont	19	0	5	4.0	1.0	26.3
Virginia	107	0	7	2.2	0.1	6.5
Washington	101	12	9	2.9	0.6	20.7
West Virginia	57	0	5	3.1	0.2	8.7
Wisconsin	0	0	0	0.0	0.0	0.0
Wyoming	15	0	5	4.2	1.4	33.3
Washington, D.C.	44	0	9	5.9	1.2	20.4

Appendix C

NUMBER OF JUDGES

State or other jurisdiction	Appellate courts		Major trial courts				
	Court of last resort	Intermediate appellate court	Chancery court	Circuit court	District court	Superior court	Other trial courts
Alabama	9	8	...	108	...	...	...
Alaska	5	...	...	...	...	17	...
Arizona	5	12	...	...	...	67	...
Arkansas	7	...	26	29	...	...	...
California	7	56	...	...	...	522	...
Colorado	7	10	...	...	94	...	...
Connecticut	6	...	...	...	...	43	...
Delaware	3	...	3	...	...	11	...
Florida	7	20	...	263	...	...	...
Georgia	7	9	...	...	...	86	...
Hawaii	5	...	...	13	...	...	...
Idaho	5	...	...	...	24	...	...
Illinois	7	34	...	360	...	...	250(a)
Indiana	5	9	...	88	...	78	4
Iowa	9	...	...	...	292(b)	...	...
Kansas	7	(c)	...	...	64	...	...
Kentucky(d)	7	...	...	83	...	...	...
Louisiana	7	29	...	...	125	...	...
Maine	6	...	...	...	...	14	...
Maryland	7	12	...	63	...	...	22
Massachusetts	7	6	...	...	...	46	...
Michigan	7	18	...	138	...	...	23
Minnesota	9	...	...	...	72	...	...
Mississippi	9	...	25	24	...	...	...
Missouri	7	22	...	112	...	...	...
Montana	5	...	...	...	28	...	...
Nebraska	7	...	...	...	45	...	...
Nevada	5	...	...	...	25	...	...
New Hampshire	5	...	...	...	...	13	...
New Jersey	7	22	...	...	...	120	103
New Mexico	5	5	...	...	32	...	...
New York	7	24(e)	...	...	...	...	257
North Carolina	7	9	...	...	...	55	...
North Dakota	5	...	...	...	19	...	...
Ohio	7	38	...	...	...	...	296
Oklahoma	9	9(f)	...	...	185	...	...
Oregon	7	6	...	70	...	...	...
Pennsylvania	7	14	...	...	...	...	285
Rhode Island	5	...	...	...	...	15	...
South Carolina	5	...	...	16	...	...	...
South Dakota	5	...	...	36	...	...	...
Tennessee	5	16(f)	26	54	...	...	27
Texas	9	47(f)	...	...	220	...	...
Utah	5	...	...	...	21	...	21
Vermont	5	...	...	...	...	7	...
Virginia	7	...	...	103	...	...	...
Washington	9	12	...	...	...	100	...
West Virginia	5	...	...	50	...	...	...
Wisconsin	7	...	...	53	...	...	126
Wyoming	5	...	...	...	13	...	...
District of Columbia(g)	9	...	...	...	...	44	...
Guam	3	...	...	...	...	5	...
Puerto Rico	8	...	...	...	...	89	...

(a) Associate judges of circuit court.
(b) A unified system with 85 District Court Judges who possess the full jurisdiction of the court. An additional 19 District Associate Judges, 19 full-time Judicial Magistrates, and 169 part-time Judicial Magistrates have limited jurisdiction.
(c) New court of appeals takes effect January 1977.
(d) See footnote (d) on Table 1.
(e) Twenty-four justices permanently authorized; in addition, as of October 1975, 18 justices and certificated retired justices had been temporarily designated.
(f) In Oklahoma, there are 3 judges on the Court of Criminal Appeals and 6 on the Court of Appeals. In Tennessee there are 9 judges on the Court of Appeals and 7 members on the Court of Criminal Appeals. In Texas there are 5 judges on the Court of Criminal Appeals and 42 on the Court of Civil Appeals.
(g) Information reflects 1974 survey. Later information not available.

Source: *Book of the States, 1976-77 (Lexington, Ky.: Council of State Governments, 1976), p. 93.*

Appendix D

STATE COURTS OF LAST RESORT

State or other jurisdiction	Name of Court*	Justices chosen: At large	Justices chosen: By district	Chief Justice†: Method of selection	Chief Justice†: Term
Alabama	S.C.	★	..	Popular election	6 yrs.
Alaska	S.C.	★(a)	..	First nominated by Judicial Council and appointed by Governor, then confirmation by election	10 yrs.
Arizona	S.C.	★	..	Selected by Court	5 yrs.
Arkansas	S.C.	★	..	Popular election	8 yrs.
California	S.C.	★(a)	..	First appointed by Governor, then subject to approval by popular election	12 yrs.
Colorado	S.C.	★(a)	..	Appointed by Court	Pleasure of Court
Connecticut	S.C.	★(b)	..	Nominated by Gov., apptd. by Gen. Assembly	8 yrs.
Delaware	S.C.	★(c)	..	Appointed by Governor, confirmed by Senate	12 yrs.
Florida	S.C.	★	..	Appointed by Court	2 yrs.
Georgia	S.C.	★	..	Appointed by Court	Remainder of term as Justice
Hawaii	S.C.	★(c)	..	Appointed by Governor with consent of Senate	10 yrs.
Idaho	S.C.	★	..	Justice with shortest time to serve	Remainder of term as Justice
Illinois	S.C.	..	★	Elected by Court	3 yrs.
Indiana	S.C.	★	..	Judicial Nomination Commission	5 yrs.
Iowa	S.C.	★(a)	..	Selected by Court	Remainder of term as Justice
Kansas	S.C.	★(a)	..	Seniority of service	Remainder of term as Justice
Kentucky(d)	S.C.	..	★	Seniority of service-rotation	12 to 18 mos.
Louisiana	S.C.	..	★	Seniority of service	Remainder of term as Justice
Maine	S.J.C.	★(c)	..	Appointed by Governor with consent of Council	7 yrs.
Maryland	C.A.	..	★(a)	Selected by Governor	Remainder of term as Judge
Massachusetts	S.J.C.	★(c)	..	Appointed by Governor with consent of Council	To age 70
Michigan	S.C.	★	..	Selected by Court	2 yrs.
Minnesota	S.C.	★	..	Popular election	6 yrs.
Mississippi	S.C.	..	★	Seniority of service	Remainder of term as Justice
Missouri	S.C.	★(a)	..	Appointed by Court-rotation	2 yrs.
Montana	S.C.	★	..	Popular election	8 yrs.
Nebraska	S.C.	..	★(a)	Appointed by Governor, as other judges	6 yrs.
Nevada	S.C.	★	..	Justice whose commission is oldest —rotation	2 yrs.
New Hampshire	S.C.	★(c)	..	Appointed by Governor and Council	To age 70
New Jersey	S.C.	★(c)	..	Appointed by Governor with consent of Senate	7 yrs. with reappointment to age 70
New Mexico	S.C.	★	..	Justice with shortest time to serve	Remainder of term as Justice
New York	C.A.	★	..	Popular election	14 yrs.
North Carolina	S.C.	★	..	Popular election	8 yrs.
North Dakota	S.C.	★	..	Selected by Supreme and district court judges meeting together	5 yrs. or until expiration of term as Justice, whichever occurs first
Ohio	S.C.	★	..	Popular election	6 yrs.
Oklahoma	S.C.	..	★(a)	Chosen by Court	2 yrs.
Oregon	S.C.	★	..	Majority vote of members of Supreme Court	6 yrs.
Pennsylvania	S.C.	★	..	Seniority of service	Remainder of term as Justice
Rhode Island	S.C.	★(e)	..	Elected by Legislature	Life
South Carolina	S.C.	★(e)	..	Elected by General Assembly	10 yrs.
South Dakota	S.C.	..	★	Appointed by Court	4 yrs.
Tennessee	S.C.	★(f)	..	Appointed by Court	Pleasure of Court
Texas	S.C.	★	..	Popular election	6 yrs.
Utah	S.C.	★(a)	..	Justice with shortest time to serve	Remainder of term as Justice
Vermont	S.C.	★	..	Appointed by Governor	6 yrs.
Virginia	S.C.	★(e)	..	Seniority of service	Remainder of term as Justice
Washington	S.C.	★	..	Judge with shortest time to serve(g)	2 yrs.
West Virginia	S.C.A.	★	..	Selected by Court	Pleasure of Court
Wisconsin	S.C.	★	..	Seniority of service	Remainder of term as Justice
Wyoming	S.C.	★(h)	..	Selected by Court	Pleasure of Court
Dist. of Columbia(i)	C.A.	★	..	Designated by President of the United States	4 yrs.
Guam	S.C.	★	..	Appointed by Governor	5 years
Puerto Rico	S.C.	★(c)	..	Appointed by Governor with consent of Senate	To age 70

*Explanation of symbols: S. C. — Supreme Court; C. A. — Court of Appeals; S. J. C. — Supreme Judicial Court; S. C. A. — Supreme Court of Appeals.

†Title is Chief Justice, except Chief Judge in Maryland and New York; President in West Virginia; and Presiding Judge in South Dakota.

(a) Justices originally appointed by Gdvernor, subsequently stand for retention on their record. For details, see Table 5.

(b) Justices are nominated by Governor, appointed by General Assembly.

(c) Justices are appointed by Governor, with consent of Senate; in Maine, Massachusetts, New Hampshire with consent of Council.

(d) Kentucky adopted a new judicial article at the November 1975 general election. Implementing legislation is before the General Assembly for its consideration. This table reflects information prior to implementation of new judicial article.

(e) Justices are elected by Legislature.

(f) Justices are chosen at large (each voter may vote for five) but not more than two may reside in any one of the three geographical regions of the State.

(g) Senior judge next up for election who has not yet served as Chief Justice.

(h) Justices are appointed by Governor from a list of 3 submitted by Nominating Committee.

(i) Information reflects 1974 survey. Later data not available.

Source: *Book of the States, 1976-77 (Lexington, Ky.: Council of State Governments, 1976), p. 92.*

Appendix E

FINAL SELECTION OF JUDGES

Alabama.....	Appellate, circuit, district, and probate judges elected on partisan ballots. Judges of municipal courts are appointed by the governing body of the municipality as of 1977.
Alaska.....	Supreme Court Justices, superior, and district court judges appointed by Governor from nominations by Judicial Council. Approved or rejected at first general election held more than 3 years after appointment. Reconfirmed every 10, 6, and 4 years, respectively. Magistrates appointed by and serve at pleasure of the presiding judges of each judicial district.
Arizona.....	Supreme Court Justices and court of appeals judges appointed by Governor from a list of not less than 3 for each vacancy submitted by a 9-member Commission on Appellate Court Appointments. Maricopa and Pima County superior court judges appointed by Governor from a list of not less than 3 for each vacancy submitted by a 9-member Commission on Trial Court Appointments for each county. Superior court judges of other 12 counties elected on nonpartisan ballot (partisan primary); justices of the peace elected on partisan ballot; city and town magistrates selected as provided by charter or ordinance, usually appointed by mayor and council.
Arkansas.....	All elected on partisan ballot.
California.....	Supreme Court and courts of appeal judges appointed by Governor with approval of Commission on Judicial Appointments. Run for reelection on record. All judges elected on nonpartisan ballot.
Colorado.....	Judges of all courts, except Denver County and municipal, appointed initially by Governor from lists submitted by nonpartisan nominating commissions; run on record for retention. Municipal judges appointed by city councils or town boards. Denver County judges appointed by mayor from list submitted by nominating commission; judges run on record for retention.
Connecticut.....	All appointed by Legislature from nominations submitted by Governor, except that probate judges are elected on partisan ballot.
Delaware.....	All appointed by Governor with consent of Senate.

Florida..... All elected on nonpartisan ballot.

Georgia..... All elected on partisan ballot except that county and some city court judges are appointed by the Governor with consent of the Senate.

Hawaii..... Supreme Court justices and circuit court judges appointed by the Governor with consent of the Senate. District magistrates appointed by Chief Justice of the State.

Idaho..... Supreme Court and district court judges are elected on nonpartisan ballot. Magistrates appointed by District Magistrate's Commission for initial 2-year term; thereafter, run on record for retention for 4-year term on nonpartisan ballot.

Illinois..... All elected on partisan ballot and run on record for retention. Associate judges are appointed by circuit judges and serve 4-year terms.

Indiana..... Judges of appellate courts appointed by Governor from a list of 3 for each vacancy submitted by a 7-member Judicial Nomination Commission. Governor appoints members of municipal courts and several counties have judicial nominating commissions which submit a list of nominees to the Governor for appointment. All other judges are elected.

Iowa..... Judges of Supreme and district courts appointed initially by Governor from lists submitted by nonpartisan nominating commissions. Appointee serves initial 1-year term and then runs on record for retention. District associate judges run on record for retention; if not retained or office becomes vacant, replaced by a full-time judicial magistrate. Full-time judicial magistrates appointed by district judges in the judicial election district from nominees submitted by county judicial magistrate appointing commission. Part-time judicial magistrates appointed by county judicial magistrate appointing commissions.

Kansas..... Supreme Court Judges appointed by Governor from list submitted by nominating commission. Run on record for retention. Nonpartisan selection method adopted for judges of courts of general jurisdiction in 23 of 29 districts.

Kentucky..... Judges of Court of Appeals and circuit court judges elected on nonpartisan ballot. All others elected on partisan ballot.

Louisiana..... All elected on open (bipartisan) ballot.

Maine..... All appointed by Governor with consent of Executive Council except that probate judges are elected on partisan ballot.

Maryland..... Judges of Court of Appeals, Court of Special Appeals, Circuit Courts and Supreme Bench of Baltimore City appointed by Governor, elected on nonpartisan ballot after at least one year's service. District court judges appointed by Governor subject to confirmation by Senate.

Massachusetts..... All appointed by Governor with consent of Executive Council. Judicial Nominating Commission, established by executive order, advises Governor on appointment of judges.

Michigan..... All elected on nonpartisan ballot, except municipal judges in accordance with local charters by local city councils.

Minnesota..... All elected on nonpartisan ballot. Vacancy filled by gubernatorial appointment.

Mississippi..... All elected on partisan ballot, except that city police court justices are appointed by governing authority of each municipality.

Missouri..... Judges of Supreme Court, Court of Appeals, circuit and probate courts in St. Louis City and County, Jackson County, Platte County, Clay County and St. Louis Court of Criminal Correction appointed initially by Governor from nominations submitted by special commissions. Run on record for reelection. All other judges elected on partisan ballot.

Montana..... All elected on nonpartisan ballot. Vacancies on Supreme or district courts and Workmen's Compensation Judge filled by Governor according to established appointment procedure.

Nebraska..... Judges of all courts appointed initially by Governor from lists submitted by bipartisan nominating commissions. Run on record for retention in office in general election following initial term of 3 years; subsequent terms are 6 years.

Nevada..... Merit Selection Plan (adopted by voters in November 1976 election).

New Hampshire.....	All appointed by Governor with confirmation of Executive Council.
New Jersey.....	All appointed by Governor with consent of Senate except that magistrates of municipal courts serving one municipality only are appointed by governing bodies.
New Mexico.....	All elected on partisan ballot.
New York.....	All elected on partisan ballot except that Governor appoints judges of court of claims and designates members of appellate division of Supreme Court, and Mayor of the City of New York appoints judges of the criminal and family courts in the City of New York.
North Carolina....	All elected on partisan ballot.
North Dakota.....	All elected on nonpartisan ballot.
Ohio.....	All elected on nonpartisan ballot except court of claims judges who may be appointed by Chief Justice of Supreme Court from ranks of Supreme Court, court of appeals, court of common pleas, or retired judges.
Oklahoma.....	Supreme Court Justices and Court of Criminal Appeals Judges appointed by Governor from lists of three submitted by Judicial Nominating Commission. If Governor fails to make appointment within 60 days after occurrence of vacancy, appointment is made by Chief Justice from the same list. Run for election on their records at first general election following completion of 12 months' service for unexpired term. Judges of Court of Appeals, district and associate district judges elected on nonpartisan ballot in adversary popular election. Special district judges appointed by district judges. Municipal judges appointed by governing body of municipality.
Oregon.....	All elected on nonpartisan ballot for a 6-year term, except that most municipal judges are appointed by city councils (elected in three cities).
Pennsylvania.....	All originally elected on partisan ballot; thereafter, on nonpartisan retention ballot.
Rhode Island.....	Supreme Court Justices elected by Legislature. Superior, family and district court justices and justices of the peace appointed by Governor, with consent of Senate (except for justices of the peace); probate and municipal court judges appointed by city or town councils.

South Carolina.... Supreme Court and circuit court judges elected by Legislature. City judges, magistrates, and some county judges and family court judges appointed by Governor--the latter on recommendation of the legislative delegation in the area served by the court. Probate judges and some county judges elected on partisan ballot.

South Dakota..... All elected on nonpartisan ballot, except magistrates (law trained and others), who are appointed by the presiding judge of the judicial circuit in which the county is located.

Tennessee..... Judges of intermediate appellate courts appointed initially by Governor from nominations submitted by special commission. Run on record for reelection. The Supreme Court judges and all other judges elected on partisan ballot.

Texas..... All elected on partisan ballot except municipal judges, most of whom are appointed by municipal governing body.

Utah..... Supreme and district court judges appointed by Governor from lists of three nominees submitted by nominating commissions. If Governor fails to make appointment within 30 days, the Chief Justice appoints. Judges run for retention in office at next succeeding election; they may be opposed by others on nonpartisan judicial ballots. Juvenile court judges are initially appointed by the Governor from a list of not less than 2 nominated by the Juvenile Court Commission, and retained in office by gubernatorial appointment. Town justices of the peace are appointed by town trustees. City judges and county justices of the peace are elected.

Vermont..... Supreme Court Justices, superior court judges (presiding judges of county courts) and district court judges appointed by Governor with consent of Senate from list of persons designated as qualified by the Judicial Selection Board. Supreme, superior, and district court judges retained in office by vote of Legislature. Assistant judges of county courts and probate judges elected on partisan ballot in the territorial area of their jurisdiction.

Virginia..... Supreme Court and all major trial court judges elected by Legislature. All judges of General District Juvenile and Domestic Relations Courts elected by Legislature. Committee on District Courts, in the case of part-time judges, certifies that a vacancy exists. Thereupon all part-time judges of General District Courts and General District Juvenile and Domestic Relations Courts are appointed by circuit judges.

Washington.....	All elected on nonpartisan ballot except that municipal judges in second, third and fourth class cities are appointed by mayor.
West Virginia.....	Judges of all courts of record elected on partisan ballot.
Wisconsin.....	All elected on nonpartisan ballot.
Wyoming.....	Supreme Court Justices and district court judges appointed by Governor from a list of 3 submitted by nominating committee and stand for retention at next election after 1-year in office. Justices of the peace elected on nonpartisan ballot.

Source: *Book of the States, 1976-77 (Lexington, Ky.: Council of State Governments, 1976), pp. 98-100.*

Appendix F

JUDICIAL QUALIFICATIONS - CONSTITUTIONAL MANDATES

State	Requires U.S. Citizenship[a]	Requires Residence in State	Length of Residence	Minimum Age	Learned in the Law	Required Length of Practice (member of state bar; licensed)	Mandatory Retirement Age
Alabama	Yes	Yes	5 yrs.	25	Yes	NS	70
Alaska (Supreme Ct)	Yes	Yes	3 yrs.	NS	Yes	8 yrs.	70
(Superior Ct)	Yes	Yes	3 yrs.	NS	Yes	5 yrs.	
Arizona (Supreme Ct)	Yes	Yes	10 yrs.	NS	Yes	10 yrs.	70
(Superior Ct)	Yes	Yes	5 yrs.	30	Yes	5 yrs.	
Arkansas (Supreme Ct)	Yes	Yes	2 yrs.	30	Yes	8 yrs.	NS
(Circuit Ct)	Yes	Yes	2 yrs.	28	Yes	6 yrs.	
(County Ct)	Yes	Yes	2 yrs.	25	NS	NS	
California (Supreme Ct)	Yes	NS	NS	NS	Yes	10 yrs.	NS
(Municipal Ct)	Yes	NS	NS	NS	Yes	5 yrs.	
Colorado (Supreme Ct)	Yes	Yes	NS	NS	Yes	5 yrs.	72
(District Ct)	Yes	Yes	NS	NS	Yes	5 yrs.	
Connecticut	NS	NS	NS	NS	NS	NS	70
Delaware	Yes	Yes	NS	NS	Yes	NS	NS
Florida (Supreme Ct)	Yes	Yes	NS	NS	Yes	10 yrs.	70
(Circuit Ct)	Yes	Yes	NS	NS	Yes	5 yrs.	
Georgia	Yes	Yes	3 yrs.	30	Yes	7 yrs.	NS
Hawaii	NS	NS	NS	NS	Yes	10 yrs.	70
Idaho (District Ct)	Yes	Yes	2 yrs.	30	Yes	NS	70
Illinois	Yes	Yes	NS	NS	Yes	NS	NS
Indiana	Yes	Yes	5 yrs.	NS	Yes	10 yrs.	NS
Iowa	Yes	NS	NS	NS	Yes	NS	72
Kansas	Yes	NS	NS	30	Yes	NS	70
Kentucky (Supreme Ct)	Yes	Yes	5 yrs.	35	Yes	8 yrs.	NS
(Circuit Ct)	Yes	Yes	2 yrs.	35	Yes	8 yrs.	
Louisiana	NS	Yes	2 yrs.	NS	Yes	5 yrs.	75
Maine	NS	NS	NS	NS	NS	NS	71
Maryland	Yes	Yes	5 yrs.	30	Yes	NS	70
Massachusetts	NS	NS	NS	NS	NS	NS	NS
Michigan	Yes	NS	NS	NS	Yes	NS	70
Minnesota	NS	NS	NS	NS	Yes	NS	70
Mississippi	NS	Yes	5 yrs.	30	Yes	5 yrs.	65
Missouri (Supreme Ct)	Yes-15 yrs.	Yes	9 yrs.	30	Yes	NS	70
(Circuit Ct)	Yes-10 yrs.	Yes	3 yrs.	30	Yes	NS	
Montana	Yes	Yes	2 yrs.	NS	Yes	5 yrs.	70
Nebraska	Yes	Yes	3 yrs.	30	NS	NS	72
Nevada	Yes	NS	NS	NS	NS	NS	NS
New Hampshire	NS	NS	NS	NS	NS	NS	70
New Jersey	NS	NS	NS	NS	Yes	10 yrs.	70
New Mexico	Yes	Yes	3 yrs.	30	Yes	3 yrs.	NS
New York	Yes	Yes	NS	NS	Yes	10 yrs.	70
North Carolina	Yes	NS	NS	NS	NS	NS	NS
North Dakota (Supreme Ct)	Yes	Yes	3 yrs.	30	Yes	NS	73
(Circuit Ct)	Yes	Yes	2 yrs.	25	Yes	NS	
Ohio	Yes	NS	NS	NS	NS	NS	NS
Oklahoma (Supreme Ct)	Yes	Yes	1 yr.	30	Yes	5 yrs.	NS
(District Ct)	Yes	Yes	NS	NS	Yes	4 yrs.	
Oregon	Yes	Yes	3 yrs.	NS	NS	NS	75
Pennsylvania	Yes	Yes	1 yrs.	NS	Yes	NS	NS
Rhode Island	Yes	NS	NS	NS	NS	NS	NS
South Carolina	Yes	Yes	5 yrs.	26	Yes	5 yrs.	72
South Dakota	Yes	Yes	NS	NS	NS	NS	70
Tennessee (Supreme Ct)	Yes	Yes	5 yrs.	35	NS	NS	NS
(Circuit Ct)	Yes	Yes	5 yrs.	30	NS	NS	
Texas (Supreme Ct)	Yes	Yes	NS	35	Yes	10 yrs.	70
(District Ct)	Yes	Yes	2 yrs.	NS	Yes	4 yrs.	
Utah (Supreme Ct)	NS	Yes	5 yrs.	30	Yes	NS	70
(District Ct)	NS	Yes	3 yrs.	25	Yes	NS	
Vermont	Yes	NS	NS	NS	NS	NS	NS
Virginia	Yes	Yes	NS	NS	Yes	5 yrs.	70
Washington	Yes	NS	NS	NS	Yes	NS	75
West Virginia	Yes	Yes	NS	30	NS	NS	NS
Wisconsin	Yes	Yes	NS	25	Yes	NS	70
Wyoming (Supreme Ct)	Yes	Yes	3 yrs.	30	Yes	9 yrs.	70
(District Ct)	Yes	Yes	2 yrs.	28	Yes	NS	
TOTAL (Affirmative)	40	33	-	21	36	-	
(Not Stated)	10	17	27	29	14	15	

Source: *Legislative Drafting Research Fund, Constitutions of the United States, National and State (New York: Columbia University, 1975), Vols. 1-5.*

a. *The state constitutions of Kentucky, Maine, Michigan, North Carolina, Ohio, Rhode Island, Tennessee, Vermont, Virginia, and Washington do not specifically state U.S. citizenship as a requirement for judicial offices; however, this qualification is mandated by state statutes.*

NS = Not stated.

Appendix G

TERMS OF JUDGES
(In years)

State or other jurisdiction	Appellate courts: Court of last resort	Appellate courts: Intermediate appellate court	Major trial courts: Chancery court	Major trial courts: Circuit court	Major trial courts: District court	Major trial courts: Superior court	Major trial courts: Other trial courts	Courts of limited jurisdiction: Probate court	Courts of limited jurisdiction: County court	Courts of limited jurisdiction: Municipal court	Courts of limited jurisdiction: Justice, magistrate, or police court	Courts of limited jurisdiction: Other courts
Alabama	6	6	...	6	...	...	...	6	6(a)	(b)	2(a)	...
Alaska	10	...	...	...	...	6	...	...	...	...	(c)	4(d)
Arizona	6	6	...	...	...	4	...	...	...	...	4(e)	...
Arkansas	8	...	6	4	...	...	...	...	2	2–4	2	2(f)
California	12	12	...	...	...	6	...	...	...	6	6	...
Colorado	10	8	...	...	6	...	...	6	4	(g)	...	6(h,l)
Connecticut	8	...	...	...	...	8	...	4	...	...	...	4(d,f)
Delaware	12	...	12	...	...	12	...	...	...	12	4	12
Florida	6	6	...	6	...	...	...	...	4	...	...	...
Georgia	6	6	...	...	...	4–8	...	4	...	...	4	4(j);1–4(k)
Hawaii	10	...	...	10	...	...	...	...	...	...	...	6(d)
Idaho	6	...	...	...	4	...	...	...	...	...	2–4(l)	...
Illinois	10	10	...	6	...	...	4(m)	...	...	...	...	...
Indiana	10	10	...	6	...	4	4(j)	4	...	4	...	4(h)
Iowa	8	...	...	...	6(k)	...	...	...	...	...	...	...
Kansas	6	(n)	...	...	4	...	...	2	2	...	4	2
Kentucky(o)	8	...	...	6	...	...	...	...	4	...	4	...
Louisiana	10	10	...	...	6	...	...	...	...	6	4	6(h,p)
Maine	7	...	...	...	...	7	...	4	...	...	...	7(d)
Maryland	15	15	...	15	...	...	15(q)	4	...	10(d)	...	...
Massachusetts	To age 70	To age 70	...	...	...	To age 70	...	To age 70	...	To age 70	...	To age 70(r)
Michigan	8	6(s)	...	6(s)	...	...	6(s,t)	6	...	6	...	6(d,f,s)
Minnesota	6	...	...	...	6	...	...	6	6	6	...	...
Mississippi	8	...	4	4	...	...	...	...	4	4	4	4(p)
Missouri	12	12	...	6	...	...	...	4	...	2–4	4	4(u)
Montana	8	...	...	...	6	...	...	...	...	2	4	6(v)
Nebraska	6	...	...	...	6	...	...	...	6(w)	6	...	6(h)
Nevada	6	...	...	...	4	...	...	...	...	1(x)	2	...
New Hampshire	To age 70	...	...	...	...	To age 70	...	To age 70	...	To age 70	...	To age 70(d)
New Jersey	7 with reappointment for life	7 with reappointment for life	...	...	...	7 with reappointment for life	5(y)	...	...	3	...	5(h,z)
New Mexico	8	8	...	...	6	...	...	2	...	4	4	4(aa)
New York	14(ab)	5(ac)	...	...	...	...	14	10(ad)	10	(ae)	4(af)	10(p);6(d);9(ag)
North Carolina	8	8	...	...	...	8	...	...	...	...	...	4(d)
North Dakota	10	...	...	...	6	...	...	...	4	4	4	...
Ohio	6	6	...	...	...	...	6(f)	...	4	6	...	(ah)
Oklahoma	6	6	...	...	4(al)	...	...	...	...	2(g)	...	...
Oregon	6	6	...	6	...	...	...	...	6	(c)	6	6(d)
Pennsylvania	10	10	...	...	...	...	10(d)	...	...	6(aj)	6(e)	...
Rhode Island	Life	...	...	...	...	Life	...	1(g)	...	...	2	(p);10(d)
South Carolina	10	...	...	6	...	...	...	4	4	(g)	(ak)	6(p)
South Dakota	8	...	...	8	...	...	...	...	...	...	(c)	...
Tennessee	8	8	8	8	...	...	8(am)	...	8	(an)	...	8(ao)
Texas	6	6	...	...	4	...	...	4	4	(g)	4	4
Utah	10	...	...	...	6	...	...	...	...	6	4	6(h)
Vermont	6	...	...	...	...	6(ap)	...	2	...	...	2	6(d)
Virginia	12	...	...	8	...	...	...	...	...	...	...	6(aq)
Washington	6	6	...	...	...	4	...	...	...	4	4	...
West Virginia	12	...	...	8	...	...	...	...	...	8(ar)	8(ar)	...
Wisconsin	10	...	...	6	...	...	6(as)	...	...	2	...	...
Wyoming	8	...	...	...	6	...	...	...	...	(an)	4	4(as)
Dist. of Col.(al)	15	...	...	...	...	15	...	...	...	...	...	...
Guam	5	...	...	...	...	5	...	...	...	...	...	...
Puerto Rico	To age 70	...	...	...	...	12	...	...	...	5	4	8(d)

TERMS OF JUDGES
(Footnotes)

(a) Effective January 1977, the county court and justice court will be abolished and replaced by a state trial court of limited jurisdiction named the district court. District judges will serve terms of 6 years.
(b) Effective December 1977, full-time municipal court judges will serve terms of 4 years and part-time municipal judges will serve terms of 2 years.
(c) Alaska: magistrates at pleasure of appointing authority. South Dakota: magistrates. Oregon: at pleasure of appointing authority, except when elected for a term of 2 years.
(d) District courts.
(e) Justices of the peace. Arizona: term of city or town magistrates provided by charter or ordinance.
(f) Courts of common pleas. Arkansas: presided over by county judge.
(g) Dependent on municipal charters and ordinances. Colorado: 2 years in statutory cities and towns. Oklahoma: usually 2 years or at pleasure of appointing authority.
(h) Juvenile courts.
(i) Superior court and Denver juvenile court.
(j) Criminal courts.
(k) District associate judges and full-time magistrates, 4 years; part-time magistrates, 2 years.
(l) Appointed for 2-year term initially; elected for 4-year term thereafter.
(m) Associate judges of circuit court.
(n) New court of appeals takes effect January 1977. Court of appeals judges will serve terms of 4 years.
(o) See footnote (d) on Table 1.
(p) Family courts. Rhode Island: during good behavior.
(q) Supreme bench of Baltimore city.
(r) District courts, juvenile courts, land and housing courts, probate courts.
(s) Terms for new judgeships are for 10, 8, or 6 years; elected thereafter for 6-year terms.
(t) Recorders court of Detroit.
(u) St. Louis court of criminal corrections.
(v) Workmen's compensation judge.
(w) Effective January 1977.
(x) Police judges. Term of 1 year unless a longer period is fixed by acts incorporating such cities.
(y) County courts.
(z) County district courts.
(aa) Small claims courts.
(ab) To age 70; judges may be certificated thereafter as Supreme Court judges (intermediate appellate court) for 2-year terms up to age 76.
(ac) To age 70; judges may be certificated thereafter for 2-year terms up to age 76.
(ad) Surrogate's court. In New York City, term is 14 years.
(ae) In New York City, 10; outside New York City, determined by each city.
(af) Town and village courts.
(ag) Courts of claims.
(ah) Court of claims. May be an incumbent judge of the Supreme Court, court of appeals, court of common pleas, or retired judge, any of whom sit by temporary assignment of the Chief Justice of the Supreme Court.
(ai) Special district judges serve at pleasure of district judges by whom they are appointed.
(aj) Philadelphia municipal court.
(ak) Terms not uniform; fixed by General Assembly.
(al) Information reflects 1974 survey. Later information not available.
(am) State district courts.
(an) Set by statute, which varies.
(ao) Courts of general sessions, domestic relations, and juvenile courts.
(ap) Superior courts: 6 years for superior judges, 4 years for assistant judges.
(aq) General district court and general district juvenile and domestic relations courts.
(ar) Municipal and police courts variable. Term set at discretion of Legislature.
(as) County courts.

Source: *Book of the States, 1976-77* (Lexington, Ky.: Council of State Governments, 1976), pp. 94-95.

Appendix H

COMPENSATION OF JUDGES OF STATE APPELLATE COURTS AND TRIAL COURTS OF GENERAL JURISDICTION*

State or other jurisdiction	Appellate courts		Major trial courts				
	Court of last resort	Intermediate appellate court	Chancery court	Circuit court	District court	Superior court	Other trial courts
Alabama	$33,500	$33,000	....	$25,000(a)	....	....	....
Alaska	52,992	....	....	....	....	$48,576	....
Arizona	37,000	35,000	....	....	....	33,000(b)	....
Arkansas	31,189(c)	....	$29,013	29,013	....	....	....
California	57,985(c,d)	54,361(d)	....	....	....	45,299(d,e)	....
Colorado	35,000(c)	32,000	....	....	$28,000	....	....
Connecticut	36,000(c,f)	....	....	....	....	34,500(f)	....
Delaware	42,000(c)	....	39,000(f)	....	....	39,000(f)	....
Florida	40,000	38,000	....	36,000	....	....	....
Georgia	40,000	39,500	....	....	....	32,500(a)	....
Hawaii	45,000(c)	....	....	42,500	....	....	....
Idaho	30,000	....	....	....	27,000	....	....
Illinois	50,000	45,000	....	42,500	....	....	$37,000
Indiana	38,100(g)	38,100(g)	....	26,500–31,500(a)	....	26,500–31,500(a)	26,500–31,500
Iowa	36,000(c)	....	....	....	31,500(f,h)	....	....
Kansas	32,500(c)	(i)	....	....	27,500(j)	....	....
Kentucky(k)	31,500	....	....	26,000	....	....	....
Louisiana	50,000	47,500	....	....	42,500–45,000(l)	....	....
Maine	26,000(c)	....	....	....	....	25,500	....
Maryland	44,100(c)	41,400(f)	....	39,200	....	....	39,200
Massachusetts	40,738(c)	37,771(f)	....	....	....	36,203(f)	....
Michigan	43,500	41,961	....	26,500–41,959(a)	....	....	43,372
Minnesota	36,500(c)	....	....	....	32,000(a)	....	....
Mississippi	26,000(c)	....	22,000(f)	22,000(f)	....	....	....
Missouri	36,500	34,000	....	31,000	....	....	....
Montana	27,000(c)	....	....	....	25,000	....	....
Nebraska	35,500	....	....	....	32,500–34,000(a)	....	....
Nevada	35,000	....	....	....	30,000	....	....
New Hampshire	34,060(c)	....	....	....	....	33,956(f)	....
New Jersey	48,000(c)	45,000	....	....	....	40,000(m)	40,000
New Mexico	32,000	30,500	....	....	29,500	....	....
New York	60,575(c)	51,627(f,n)	....	....	....	....	48,998(n)
North Carolina	38,000(c)	35,500(f)	....	....	....	30,500(g)	....
North Dakota	32,000(c)	....	....	....	30,000	....	....
Ohio	40,000(c)	37,000	....	....	....	....	23,500–34,000(o)
Oklahoma	30,000	26,000	....	....	16,500–25,000(p)	....	....
Oregon	35,200	34,104	....	31,900	....	....	....
Pennsylvania	50,000(c)	48,000(f)	....	....	....	....	40,000–41,000(q)
Rhode Island	33,000(c,r)	....	....	....	....	31,000(f,n)	....
South Carolina	36,000(c)	....	....	36,000	....	....	....

South Dakota.....	28,000	....	....	26,000	....	....	....
Tennessee.....	39,330(c,t)	36,052(f,t)	32,775(t)	32,775(t)	....	....	32,775(t)
Texas.....	45,600(c)	40,000(f)	....	....	31,000(a)	....	....
Utah.....	30,000	....	....	....	27,500	....	....
Vermont.....	29,900(c)	....	....	....	....	25,800(f)	....
Virginia.....	41,300(c,g)	....	....	31,350(a)	....	....	....
Washington.....	39,412	36,325	....	....	....	34,250	....
West Virginia.....	32,500	....	....	28,500	....	....	....
Wisconsin.....	42,462(c)	....	....	28,788	....	....	26,394(a)
Wyoming.....	32,500	....	....	....	30,000	....	....
Dist. of Columbia(s)	38,750	....	....	....	....	36,000	....
Guam.....	33,000(c)	....	....	....	....	30,000(f)	....
Puerto Rico.....	32,000	....	....	....	....	26,000	....

*Compensation is shown according to most recent legislation even though laws may not yet have taken effect.

(a) Range based on varying optional county supplements. In Indiana, range depends on population of circuit.

(b) Half paid by State, half by county.

(c) These jurisdictions pay additional amounts to Chief Justices of courts of last resort: New Hampshire, $208; Delaware and Texas (also presiding judge), $500; Iowa, Mississippi, Montana, North Carolina, Rhode Island, and Virginia, $1,000; Maryland, $1,100; Vermont, $1,300; Massachusetts, $1,498; Maine and North Dakota, $1,500; Guam, $2,000; Colorado, Hawaii, Kansas, New Jersey, Pennsylvania, and Tennessee, $2,500; New York, $2,568; Arkansas, $2,835; Minnesota and Ohio, $3,500; California, $3,624; Connecticut, $4,000; South Carolina, $5,000; Wisconsin, $5,538.

(d) Cost-of-living increase yearly based on California consumer price index.

(e) Partially paid by State, partially by county, based on statutory population formula.

(f) Additional amounts paid to various judges. Connecticut: chief court administrator, an associate justice of court of last resort, $2,000; chief judge of superior court, $500. Delaware: presiding judge of chancery and superior courts, $500. Iowa: chief judge of district court, $500. Maryland: presiding judge of intermediate appellate court, $1,100. Massachusetts: chief justice of appellate court, $1,449; chief justice of superior court, $1,568. Mississippi: presiding judge of chancery and superior courts, $500. New Hampshire: presiding judge of superior court, $208. New York: presiding judge of intermediate appellate court, $3,639. North Carolina: presiding judge of intermediate appellate court, $1,000. Pennsylvania: presiding judge of intermediate appellate court, $1,500. Rhode Island: presiding judge of superior court, $1,000. Tennessee: presiding judge of intermediate appellate court, $1,000. Texas: chief justice of intermediate appellate court, $500. Vermont: presiding judge of superior court, $1,000. Guam: presiding judge, $500.

(g) These jurisdictions pay an expense allowance: Indiana, $3,000; North Carolina, $5,500; Virginia, $3,000 in lieu of per diem.

(h) District associate judges and full-time judicial magistrates, $23,500; part-time judicial magistrates, $6,000.

(i) New court of appeals takes effect January 1977.

(j) Receive county supplements up to $2,532 in 6 urban districts.

(k) See footnote (d) on Table 1.

(l) Judges in single-parish districts with population in excess of 225,000 receive $45,000; all others receive $42,500.

(m) Assignment judges receive $43,000 salary.

(n) $10,500 of this is cost to locality (county or New York City).

(o) Variation in salary based on population.

(p) Unified court system. District judges, $25,000; associate district judges paid on basis of population ranges and may be supplemented by counties.

(q) Variations in salary based on number of judges and population. Additional amounts from $500 to $2,500 paid president judges and administrative and president judges of divisions.

(r) Salary supplemented by state service longevity at 7, 15, and 20 years, up to 20 percent.

(s) Information reflects 1974 survey. Later information not available.

(t) Cost-of-living increase.

Source: *Book of the States, 1976-77 (Lexington, Ky.: Council of State Governments, 1976), pp. 96-97.*

Appendix I

RETIREMENT AND PENSION PROVISIONS FOR JUDGES OF STATE APPELLATE COURTS AND TRIAL COURTS OF GENERAL JURISDICTION*

State or other jurisdiction	Minimum age	Minimum years' service	Amount of annuity	Amount of judge's contribution	Judges to whom applicable
Alabama(a)	Any age	10(b)	75%	4.5%	Supreme, appeals, circuit
Alaska(a)	60	5(b,c)	¾ pay(d)	7%(e)	Supreme, superior
Arizona(a)	65	12(b)	Up to 2/3 pay(f)	5.5%	Supreme, appeals, superior
Arkansas(a)	65 Any age	14(b) 20	½ pay (g,h)	4%	Supreme, circuit, chancery
California(a)	60 66 to 70 Over 70	20(b) 18(b)-10(b) 10(b)	¾ pay (g,h) 65% pay (g,h) ½ pay (g,h,i)	8%	Supreme, appeals, superior
Colorado(a)	72 65	10-30(j) 10	$5,000-$7,000(j) $5,000	none	Supreme
	65(k) 65(k) 60	16 10 20	½ pay(l) 2/5 pay(l) ½ pay(m)	7% 7%	Supreme, appeals, district Supreme, appeals, district
Connecticut(a)	65(af)	No minimum	2/3 pay(n)	5%(o)	Supreme, superior
Delaware(p)	Any age	24(q)	3% of highest salary times no. of years served(r)	$500 per year	Supreme, superior, chancery
Florida(a)	62 55	8(b) 10	3 1/3% each year comp. for each year service(i) (s)	8%	Supreme, appeals, circuit
Georgia	65 65 Any age 70	10 20 19(b) 11(b)	75% of salary Up to $12,000 Up to $12,000 Up to $12,000	7.5% none 5%	Supreme, appeals Supreme Superior
Hawaii(a)	55 Any age	5 10(b)	3½% of average final comp. for each year service(i) Up to ¾ pay(i)	6%	Supreme, circuit
Idaho(a)	65 Any age	8 20(b)	(g,t)	4% of current base salary	Supreme, district
Illinois(a)	60	10(b)	Up to 85% pay(u)	7½%(v)	Supreme, appellate, circuit, associate
Indiana(p)	65	8(b,w)	Up to $10,000(w)	5%(x)	Supreme, appellate, circuit, superior, criminal
Iowa(a)	65 Any age	6(b) 25(b)	Up to ½ last salary(g,y)	4% basic salary(z)	Supreme, district
Kansas(a)	62(ab)	10(b)	3 1/3% of pay for each year of service(i,ac)	6%	Supreme, district
Kentucky(p,bm)	65 Any age	8(b) 8	(ad) (ad,ae)	3%	Supreme, circuit
Louisiana(a)	70 65 65 Any age	20(b) 25(b) 20(b) 23(b)	full pay(g) full pay(g) 2/3 pay(g)	none none none	Supreme, appeals, district Supreme, appeals Supreme, appeals, district
Maine(a)	65(b) 70(b)	12 7	¾ pay(h)	none	Supreme, superior
Maryland(a)	60(b) 60(b,ah)	No minimum No minimum	Up to $13,600(ag) Up to 2/3 annual salary(ag)	none 6%	Appeals, circuit, Baltimore City Appeals, circuit, Baltimore City
Massachusetts(a)	70 65	10 15	¾ pay(ai) ¾ pay	5%(ai)	Supreme, appeals, superior
Michigan(a)	70(b) 65(b) 60(b) Any age(b)	11 12 16 25	½ pay(ak)	3.5%	Supreme, appeals, circuit, recorders
Minnesota(a)	65	No minimum(b)	Up to 60% final pay(al)	5.85%	Supreme, district
Mississippi(p)	60 Any age	No minimum(b) No minimum(b)	(l) (l,am)	1.65%	Supreme, chancery, circuit
Missouri(a)	65	12	50% of salary	5% of salary	Supreme, appeals, circuit
Montana(a)	65	5(b)	(an)	6%	Supreme, district
Nebraska(a)	65(ao) 65(ao)	10(b) No minimum	3 1/3% pay for each year service(ac) 2.5% total salary earned since start of contrib.(ac)	4-6%(ap) 6%	Supreme, district
Nevada(p)	60 60	20 12	2/3 base salary 1/3 base salary(aq)	none	Supreme, district
New Hampshire(a)	60 65	10(b) 10(b)	Up to ½ pay(ar) Up to ¾ pay(ar)	9-12%(as)	Supreme, superior

State or other jurisdiction	Minimum age	Minimum years' service	Amount of annuity	Amount of judge's contribution	Judges to whom applicable
New Jersey(a)	70 65 60	10(b) 15(b) 20(b)	¾ pay	none	Supreme, superior
New Mexico(a)	64	5(b)	75% salary of last year	10%	Supreme, appeals, district
New York(a)	Varies(at)	Varies(b,au)	Varies(ar)	Varies(av)	Appeals, appellate, supreme
North Carolina(a)	65(aw)	5	4% of pay for each year of service(g)	6%	Supreme, appeals
	65(aw)	5	3.5% of pay for each year of service(g)	6%	Superior
North Dakota(a)	70(ax) 65(ax)	10(ax)	½ pay(g,h,i,ax)	5%	Supreme, district
Ohio(a)	60 55 Any age	5 25(av) 32	(ar)	8%	Supreme, appeals, common pleas
Oklahoma(p)	70 65 60	8 10 20	Up to ¼ pay(az)	4% of 75% salary	Supreme, appeals, district
Oregon(a)	70(ao) 65(ao,ba)	12(b) 16(b)	45% pay(i,j)	7% salary for max. of 16 yrs.	Supreme, appeals, circuit
Pennsylvania(a)	Any age 60	10 No minimum	Varies(i,av)	Varies(av)	Supreme, superior, commonwealth, common pleas
Rhode Island(p)	70 65 65 Any age	15(i) 20(i) 10(i) 20(i)	Full pay(g) ¾ pay	none none	Supreme, superior Supreme, superior
South Carolina(a)	72 70 65 Any age	No minimum 15(b) 20(b) 25(b)	2/3 pay(h)	4%	Supreme, circuit
South Dakota(p)	65 Any age	15(b) 20(b)	½ pay(i)	4%	Supreme, circuit
Tennessee(a)	65 54	Less than 24(b) 8(b)	Up to ¾ pay(h,bb)	8%	Supreme, appeals, circuit, chancery, criminal, law equity
Texas(a)	65	10(b)	½ pay(i,bc)	6%	Supreme, appeals, district
Utah(a)	70(b) 65(b)	6 10	Varies(bd) Varies(bf)	2%(be)	Supreme, district
Vermont(a)	70(ao)	12	40% final salary(i,bc)	5%	Supreme, superior
Virginia(a)	65(b) 60(b)	10 25	¾ pay(i) ¾ pay	5%(bg) 5%(bg)	Supreme, circuit Circuit
Washington(a)	70 Any age Any age	10 18(b,bh) 12(b,bh)	½ pay(bh) ½ pay(bh) (bh,bi)	7.5%	Supreme, appeals, superior
West Virginia(p)	65 73	16(b) 8	¾ pay	6%	Supreme, circuit
Wisconsin(a)	55(ao)	No minimum	(ar,am,ao)	(bj)	Supreme, circuit
Wyoming(p)	65(bk)	18(bl)	50% of salary(h)	none	Supreme, district
Dist. of Col.(aa)	50	10	3.5% each year of service	3.5%	Appeals, superior
Guam(p)	Any age(b)	20	85% of salary	none	Supreme, superior
Puerto Rico(a)	60 Any age	10(b,ap) 30(b,ap)	Up to 75%(i,bb) 75%(i,bb)	7.5%	Supreme, superior

(Footnotes on next two pages.)

*The judges' retirement system is the same as for all public employees in Guam; Hawaii (but with better benefits for judges); Mississippi, New Hampshire, New York, Ohio, Pennsylvania (but different benefits for judges); and Wisconsin (with better benefits for judges than for most other employees). It is a separate system in all other States, except that in Vermont it is supplementary to the state employee retirement system, and in Nevada most judges join the latter, to which they contribute, for better protection; in Connecticut, any judge who had at least 10 years of state service to his credit for purposes of the state employees' retirement system may, within 5 years after appointment as a judge, elect to remain or be reinstated in the state employees' retirement system rather than become or remain a member of the judges' retirement system. Because the Alabama constitution prohibits payment of pensions, retired judges serve as supernumerary judges and are subject to call to assist judges in their State.

(a) Failure of judges to retire at 70 causes them to lose all pension benefits in Alabama, Arkansas, Minnesota, and Montana (State's contribution); 50% of benefits in Tennessee; judges lose all benefits in North Dakota by failure to retire at 73. If retiring after age 70, judges' and widows' benefits are reduced in California. In New Mexico, a judge who does not retire at age 70 forfeits widows' benefits. In Maine, retirement must occur before the 71st birthday. In Massachusetts, all judges compelled to retire upon attaining age 70. In Ohio, a judge may not be appointed or elected to a term beginning after his 70th birthday. Retirement is compulsory at age 70 in Alaska, Arizona (unless elected prior to December 5, 1974, in which case the judge shall continue in office for the term to which elected), Connecticut, Florida (but a judge may complete term if he has served at least half of it when reaching age 70), Hawaii, Idaho, Illinois, Kansas, Louisiana, Maryland, Michigan, Montana, New Hampshire, New Jersey, New York, North Carolina (trial court judges), Pennsylvania, Utah (trial judges), Virginia (judges of courts of record), Wisconsin and Puerto Rico, except that in Idaho, Kansas, Michigan, and Montana a judge may complete a term started before reaching age 70, and in Wisconsin may serve until July 31 after reaching age 70. Also, in New York retired judges may be certificated by an administrative board as active retired justices of the Supreme Court for three successive periods of 2 years, up to age 76. Retirement is compulsory at age 72 in Colorado, Iowa, Nebraska, North Carolina (appellate judges), South Carolina and Utah (Supreme Court), and at age 75 in Oregon, Texas, Virginia (Supreme Court), and Washington. In Missouri, retirement is compulsory at 70 for those judges under the Missouri Nonpartisan Court Plan. A judge with less than 12 years of experience (20-24 years in Tennessee) may retire at a reduced retirement compensation in the proportion that his period of judicial service bears to 12 years (20-24 years in Tennessee); these respective provisions do not apply to judges serving before they became effective in Arkansas, Florida, Illinois, Iowa, Massachusetts, Pennsylvania, Tennessee, and Texas. Retirement is optional at age 65 in Nebraska, at age 60 (with 15 years' service) or at any age involuntarily with 12 years' service in Washington, and at 55 in Wisconsin.

(b) Disabled judges in these States may retire on pensions at any age if they have completed the following number of years of service: Alabama, Arizona (2/3 of salary after 10 years' service; if fewer years, proportion that years of service bear to 10 times 2/3 of salary), Florida (except no minimum if permanently and totally disabled in line of duty), and New Mexico, 5; Iowa, Oregon, and Minnesota (district), 6; South Carolina, Texas and Virginia (when certified by Supreme Court, at 2/3 pay), 7; Idaho, 8; Hawaii, Illinois, Michigan, New Hampshire, South Dakota, Tennessee, Washington (at ½ final average salary), and West Virginia, 10; Minnesota (Supreme) and Utah, 12. In Alaska, 2 years if forced to retire, 5 years in case of voluntary retirement; in Georgia, disabled superior court judges may retire at 62 after 10 years' service; in Louisiana, at full pay after 20 years; if less, in proportion that years of service bear to 20, but 2/3 minimum. Retirement pension allowed regardless of length of service in Arkansas, California (at 65% of pay), Indiana, Kentucky, Maine (with full retirement benefits), Maryland (between July 1, 1975, and July 1, 1977, at 1/3 salary), Nebraska (3 1/3% per year of service), New Jersey (¾ pay). A permanently disabled judge in New Hampshire, regardless of length of service, is entitled to half of his annual salary up to age 70; if he has served 10 years, he then is eligible for pension. In Kansas, any judge found permanently disabled may retire and receive full benefits. In Montana, a permanently disabled judge may retire, regardless of years of service, and receive a retirement allowance calculated on the actuarial equivalent of his own and the State's annuity standing to his credit at the time of his disability retirement. In New York, in case of accidental disability sustained in performance of judicial duties: under state retirement system, 75% of final average salary (average of 3 highest consecutive years) if injury is sustained before age 60; under New York City retirement system, 75% of final 5-year average; no minimum service requirement under either system. In case of ordinary disability, 10-year minimum service requirement under both systems; benefits determined according to one of many plans. In Guam, permanently disabled or for failure of retention, a justice or judge is entitled to pension as follows: if service is 16 or more but less than 20, 85% of salary at time he relinquished the office; if service is less than 16 but more than 10, proportionately; if service is less than 10 and removal was upon the sole ground of disability, 50% of salary. In Puerto Rico, any judge found disabled may retire and receive up to 50% annual salary.

(c) Retirement pay does not begin until age 60, but an actuarial equivalent may commence at age 55 or after 20 years of service.

(d) 5% of salary received per year of service.

(e) For judges appointed after January 1, 1976; for those appointed earlier, none.

(f) Two-thirds of salary after 20 years' service; if fewer years, proportion that years of service bear to 20.

(g) Retired judges, with their consent, may be assigned to any court in Arkansas, California, and Louisiana; to any other than the Supreme Court in Rhode Island; to the court from which they retired in North Dakota; to the District Court in Iowa; they may be called as emergency judges in North Carolina appellate and superior courts, and only if under mandatory retirement age. In North Dakota, they also are eligible to serve as referees in civil cases or judicial proceedings; if requested, they may serve as legal counsel in the office of the Attorney General, in any executive department, commission or bureau of the State, or for any committee of the Legislative Assembly. A retired judge in Idaho may be requested to serve as a district judge or on the Supreme Court. In Rhode Island, retirement at full pay obligates judge to recall for part-time duty.

(h) Pension is listed portion of salary being paid to sitting justices. Amount of pension changes with changes in salary.

(i) Options available for reduced annuities, with continuing or increased annuities for surviving spouse and benefits to other named beneficiaries. Also, in Hawaii, annuity purchasable by accumulated contributions, up to 75% of final compensation.

(j) For minimum years service of 10, 20, or 30 years, amount of annuity is $5,000, $6,000, and $7,000 respectively.

(k) Under public employees' retirement system.

(l) In Colorado, based on average salary during last 5 years of service; in Oregon, during 5 highest paid out of last 10 years of service.

(m) Judges receive 1% per year for all years over 20 they serve on bench; therefore, given figure could exceed 50%.

(n) In case of retirement, other than for disability, after less than 10 years' service, between ages 65 and 70, pension is dollar amount of full pension multiplied by the number of years of actual service over the number 10 or the number of years of service which would have been completed had the judge served until age 70, whichever number is less. All other pensions, including those for disability, are full pensions.

(o) For judges first appointed after May 20, 1967; for those appointed earlier, none.

(p) No compulsory retirement age.

(q) If not reappointed at end of 12-year term, eligible for pension upon reaching age 65.

(r) With certain maximum and minimum provisions.

(s) Judges between ages 55 and 60 with minimum of 10 years' service may retire and receive reduced benefits—the actuarial equivalent of retirement at 60 with 10 years' service.

(t) 2½% of current annual compensation of office from which judge retired multiplied by number of years of service as district and/or Supreme Court judge, not to exceed 25 years of service.

(u) Seven-twentieths after 10 years and 5% per year thereafter with a maximum of 85% based on salary on last day in office; however, the annuity to a participant whose retirement occurs prior to age 60 (except for disability) is reduced ½ of 1% for each month his age is under 60 years. The annuity is increased by 2% per year if annuitant elects cost-of-living supplement.

(v) Plus 2½% if married, unless judge elects against coverage for widow's pension within 30 days of becoming a judge or of getting married; plus 1% if judge elects to participate in cost-of-living increase in pension.

(w) If judge retires after service of 8 years or more but before he has served 12 years, retirement benefit is 2/3 of sum he would have received after 12 years' service.

(x) 5% of salary paid by State but not to exceed $500 annually nor payable for more than 16 years.

(y) 3% of average basic salary for last 3 years multiplied by years of service in one or more of the courts covered.

(z) A judge removed for cause, other than permanent disability, forfeits retirement rights but receives return of his contribution.

(aa) Reflects 1974 survey. Later information not available.

(ab) Normal retirement age is 65; early retirement at age 62 optional, with reduced benefits.

(ac) Up to 65% salary (including Social Security benefits in Nebraska). In Kansas, salary being drawn at date of retirement. In Nebraska, average salary of last 4 years on bench.

(ad) 5% of average compensation during last 5 years of service multiplied by number of years of service, not to exceed 100% of final compensation.

(ae) Equal to annuity upon retirement at age 65 if judge elects to have payments commence at age 65; if earlier, reduced actuarially.

(af) Judge may retire at any age if he has completed 25 years of service or if he becomes disabled.

(ag) Under noncontributory plan, after 16 years of service, $13,600 for judges of court of appeals; $12,800 for judges of court of special appeals, $12,000 for all other judges. Varying supplemental payments provided by some counties. Recent legislation has placed restrictions on future supplementations and a ceiling on current supplementations: State pension and any local supplementation may not exceed $20,000. All active judges now belong to the contributory plan and the above applies to retired judges and spouses only. If the judge retires before acquiring 16 years of service, then the retirement is pro rated, calculated on 2/3 of present salary times years of service that has been divided by 16.

(ah) Judges appointed after July 1, 1969, required to participate in this contributory plan.

(ai) Those who retire at age 70 with less than 10 years' service will receive pro rata pensions.

(aj) Judges first appointed after January 1, 1975, must contribute to the pension system; those appointed before that date need not.

(ak) An additional 2.5% annual salary is paid for each year of service beyond the first 12 years, up to a maximum of 16 years (60% of state salary).

(al) 2.5% per year of service, average of high 5 years, up to maximum of 60% final pay.

(am) Based on average salary for the highest 5 years preceding retirement; 3 years for Wisconsin.

(an) 3 1/3% of salary up to 15 years of service, plus 1% of salary for each additional year of service.

(ao) Also under Social Security.

(ap) 6% for judges becoming members of system after December 25, 1969, and original members who elected to participate in new program. 4% for original members.

(aq) Plus 4.166% per year beyond 12.

(ar) New Hampshire, New York, Ohio and Wisconsin—based on length of service. In New York, judges in state retirement system before July 1, 1973, receive 1/60 of final average salary (average of 3 highest consecutive years) for each year of service if less than 20 years and 1/50 of final average salary for each year of service if 20 or more years with maximum of 75% of final average salary. Judges in state retirement system after July 1, 1973, receive same benefits generally, but maximum amount payable is 60% of first $12,000 of final average salary and 50% of any final average salary over $12,000. Judges in New York City Career Pension Plan receive 55% of final year's salary after 25 years of service or 1.2% for every year of service, plus annuity, for less than 25 years of service; there is no maximum limit of benefits. In Ohio, 2% of final average salary (highest 3 years) multiplied by number of years of service.

(as) Based on age when contributions began.

(at) Judges in state retirement system before July 1, 1973, or in New York City Career Pension Plan, 55; judges in state retirement system after July 1, 1973, 62 (retirement possible with reduced benefits, 55-62).

(au) Judges in state retirement system before July 1, 1973, or in New York City Career Pension Plan, no minimum; judges in state retirement system after July 1, 1973, 5 years.

(av) In New York, no contribution to state retirement system; contribution to New York City retirement system based on age. In Pennsylvania, depending on age and other factors, including length of service as judge, previous nonjudicial state employment, average of salary of best 5 years, and retirement plan selected.

(aw) Earlier retirement optional at reduced benefits.

(ax) For each year between 65 and 70, required years of service reduced by 2. If upon retirement required minimum years not completed, annuity reduced in proportion that years of service bear to required years of service.

(ay) On a computed basis.

(az) 4½% of salary at time of retirement multiplied by number of years of service, up to 75% of salary at time of retirement. This rate will be based on statutory salary rate of the position as authorized for the month of June, 1971.

(ba) Judges who cease to hold office before attaining age 65 and who have served for an aggregate of from 12 to 16 years and contributed to the judges' retirement fund for 16 years may receive pension at 65.

(bb) 3.75% of salary for each year of service, up to 75% of salary, after 20 years of service only for those who joined system prior to September 1, 1974.

(bc) In addition to Social Security. Plus 3½% of salary for each year of service above 12, up to full pay after 30 or more years of service.

(bd) 3% of final average monthly salary for first 10 years, 2% for next 10 years, and 1% for all over 20 years.

(be) In addition, State pays 6% on behalf of judge.

(bf) 2.5% of final average monthly salary for first 10 years, 2% for next 10 years, and 1% for all over 20 years.

(bg) For judges appointed prior to 1970, depending on age upon taking office: under 40, 2%; to 55, 2½%; over 55, 3%.

(bh) For additional years of service, 1/18 of full salary allowed per year, up to 75% of salary at time of retirement.

(bi) Proportion of half pay that years of service bear to 18, beginning 18 years after induction date or upon reaching 70.

(bj) 5% of earnings subject to Social Security base and 7% of earnings in excess of this base.

(bk) Office of each justice and judge becomes vacant when the incumbent reaches the age of 70.

(bl) One of 4 standards must be met for judge to be eligible for retirement: 1) minimum of 18 years as judge, or 2) a total not less than 15 years if judge is 65 or more, or 3) a total not less than 12 years if judge has reached age 70 or more, or 4) not less than 6 years and attained age 65, the total number years service being consecutive or otherwise as a judge of either or both Supreme or district court.

(bm) See footnote (d) on Table 10.

Source: *Council of State Governments, State Court Systems - Revised 1976 (Lexington, Ky.: 1976), pp. 15-18.*

Appendix J

DIRECT RETIREMENT BENEFITS FOR WIDOWS AND OTHER DEPENDENTS OF JUDGES*

State or other jurisdiction	*Benefits*	*Applicable to judges of* (a)
Alabama	If judge dies prior to retirement, but after minimum of 5 years service, spouse receives annual benefits equal to 3% of his annual salary for each year of service, not to exceed 30% of such salary; widow of district judge will receive annual benefits under same terms but not exceeding $5,500 per year.	S.C.; C.A.; C.C.; D.C.
Alaska	Widow receives ½ judge's monthly retirement pay for life or until she remarries, provided she was married to the judge for at least 2 years immediately preceding his death and he had served at least 2 years. If, at death, the judge had less than the required years of service, or would have been entitled to less than 60% of the monthly salary authorized for his office, widow is entitled to monthly compensation equal to 30% of salary for judge at the time each payment is made. Surviving dependent child(ren) are entitled to receive, in equal shares, 50% of the amount of the survivors benefits where there is no surviving or qualified spouse. If there are both eligible surviving child(ren) and spouse who reside in separate households, they share equally in the authorized benefits.	S.C.; Sr.C.; D.C.
Arizona	If judge dies after having served 12 or more years or after he has retired, his widow—if she had been married to him for at least 10 years or is at least 62 years old—receives for life or until remarriage, 1/3 of the benefits paid to such judge or to which he would have been entitled had he retired at or reached age 65.	S.C.; C.A.; Sr.C.
Arkansas	Widow receives ½ of judge's annuity for life or until she remarries, provided she has been married to deceased judge for not less than 5 years and is living with him at the time of his death. If judge is survived by widow and minor children, 1/4 of benefits paid to her and 1/4 to the children's guardian during their minority. When they cease to be minors, full benefits are paid to the widow. If no widow survives, total benefits are paid to guardian of minor dependents until they cease to be minors.	S.C.; Ch.C.; C.C.
California	If judge who retired at or before age 70 dies during retirement, widow receives ½ of retirement allowance until her death or remarriage. If, however, judge retired after age 70, widow receives an annuity only if judge elected to receive a reduced pension. If judge dies before retirement but after becoming eligible for retirement, widow receives an allowance equal to ½ of unmodified retirement allowance that would be payable to the judge were he living and retired, until her death or remarriage. If judge dies prior to retirement after more than 10 but less than 20 years' service, widow receives 1.625% of monthly salary paid to judge holding the office to which deceased judge was last elected, multiplied by number of years of service of deceased judge. If judge dies prior to retirement after 20 or more years of service and before he is eligible to retire, widow receives 37.5% of monthly salary paid to judge holding the office to which deceased judge was last elected. *These benefits apply if a judge so elects and pays $2 extra per month.* If a judge dies in office after January 1, 1966, widow receives 25% of monthly salary paid to judge holding the office to which deceased judge was last elected, until her death.	S.C.; C.A.; Sr.C.; M.C.
Colorado	If judge has completed at least 5 years' service and dies prior to eligibility for retirement, the widow or dependent widower receives until death or remarriage 25% per month of average monthly salary for the 5 years immediately preceding death. If aggregate payments received are less than accumulated deductions credited to the judge's account at time of death, remainder goes to designated beneficiary or the legal representatives of the judge. On death of Supreme Court justice who has served at least 10 years, if widow is 65 and was married to deceased justice for 20 years, she receives a $5,000 pension for life or until remarriage.	S.C.; C.A.; D.C.; C.C.; Sr.C.; J.C.
Connecticut	If a judge dies before or after retirement, the surviving spouse of the judge receives 33% of the salary currently fixed for the judicial office held by the deceased judge at the time of retirement or death. In the event there is no surviving spouse, this amount is paid to guardian of youngest child under 18 years of age for support of such child and other children under 18 until they reach the age of 18. If surviving spouse receiving above amount dies, youngest child is entitled as above.	S.C.; Sr.C.; C.C.P.; J.C.
Delaware	Widow of judge on a pension or who dies after 12 years in office receives 2/3 of his pension for life or until she remarries.	S.C.; Ch.C.; Sr.C.; C.C.P.; F.C.
Florida	*Judge may elect to receive a reduced pension and provide that the same reduced pension* be paid to the surviving widow or beneficiary for life.	S.C.; D.C.A.; C.C.
Georgia	Widows of Supreme Court justices and Court of Appeals judges retiring at ¾ pay receive ½ of such amount.	S.C.; C.A.
Hawaii	Under 2 of 5 options available to a judge upon retirement, he may elect to retire on a reduced pension which upon his death will continue to be paid to his widow or other beneficiary for life.	S.C.; C.C.

State or other jurisdiction	Benefits	Applicable to judges of (a)
Idaho	If a judge dies during retirement, widow receives 30% of the judge's retirement pay. If judge at time of death is under age 65 and not receiving retirement compensation, widow receives 30% of retirement compensation the judge would have been entitled to at age 65. If judge at time of death is at least 65 years old and not receiving retirement compensation, widow receives 30% of retirement compensation the judge would have been entitled to at time of death. Surviving spouse is entitled to these allowances as long as she does not remarry. Allowance is based on current annual compensation of office held by deceased judge.	S.C.; D.C.
Illinois	A married judge automatically participates in the widows' annuities plan unless he elects against it within 30 days after becoming a judge or getting married. He contributes 2.5% of compensation in addition to contributions to regular retirement plan. If judge dies after 10 years' service and before retirement, widow is entitled to benefits if: (a) she was married to judge for at least 1 year immediately preceding his death; (b) she was still married to judge on date of death and at least 52 years of age. If younger, she receives pension upon reaching 52. If deceased judge was retired and receiving benefits, his widow receives 2/3 of pension the judge was receiving. If judge was not retired, widow receives 2/3 of pension judge would have been entitled to on date of his death. If judge's service was too short to qualify for pension, widow receives 7½% of his last salary.	S.C.; A.C.; C.C.
Indiana	The widow of a judge who at the time of death was qualified to receive benefits is entitled to 50% of the amount the deceased judge was drawing or would have been entitled to draw.	S.C.; A.C.; C.C.; Sr.C.; Cr.C.; P.C.; J.C.
Iowa	The survivor of a judge who was qualified for retirement compensation under the system at the time of his death, is entitled to receive an annuity of ½ the amount of the annuity the judge was receiving or would have been entitled to receive at the time of his death, or if the judge died before age 65, then ½ of the amount he would have been entitled to receive at age 65 based on his years of service. Such annuity shall begin on the judge's death, or on the date the judge would have been 65 if he died earlier than age 65, or upon the survivor reaching age 60, whichever is later. "Survivor" means the surviving spouse of a person who was a judge, if married to the judge for at least 5 years immediately preceding his death, but does not include a surviving spouse who remarries. In the event the judge dies leaving a survivor but without receiving in annuities an amount equal to his credit, the balance shall be credited to the account of his survivor, and if the survivor dies without remarrying and without receiving in annuities an amount equal to said balance, the amount then remaining shall be paid to the survivor's legal representative.	S.C.; D.C.(b)
Kansas	Judge may exercise option to receive reduced retirement pension and have joint annuitant receive up to 50% of amount he otherwise would receive. Joint annuitant is entitled to her share beyond judge's death. Benefits are also available to surviving spouse of judge dying in office who was eligible for retirement.	S.C.; A.C.; D.C.
Kentucky(c)	The widow of a judge who at death was receiving a pension, or of a judge receiving a disability retirement allowance, is entitled to ½ of his pension, provided she was married to him at retirement. If a judge dies in office before normal retirement age (65), the widow receives ½ of the pension he would have received at 65, computed on the basis of his final compensation at death. If judge dies in office after age 65, the widow receives ½ of the pension he would have been entitled to on the basis of years of service at time of death. If judge dies while receiving actuarially reduced pension or if he would have been entitled to pension at 65, widow receives ½ of pension the judge would have received when reaching 65. If there is no widow, surviving children under 18 share same benefits as widow until age 18.	S.C.; C.C.
Louisiana	Upon the death of any judge of a court of record or any retired judge of a court of record, surviving widow receives for life 1/3 of salary or ½ of retirement pay any such judge received prior to death or retirement, whichever is greater, if (a) she remains unmarried, and (b) she was married to the judge at the date of his death.	S.C.; C.A.; D.C.; City C.; M.C.
Maine	Whether justice dies in office or after retirement, widow is entitled to 3/8 of currently effective salary of a justice for as long as she remains unmarried. If there is no widow, child or children up to age 18 entitled to same benefit—in case of several children, divided among them.	S.C.; Sr.C.; D.C.
Maryland	If judge dies in active service, widow receives for life or until remarriage ½ pension judge would have been eligible for on date of his death; such pension to be computed on basis of service without regard to age requirements. If judge dies after retiring, widow receives for life ½ pension judge was receiving under same conditions as above.	C.A.; C.S.A.; C.C.; Courts of Baltimore City; D.C.

State or other jurisdiction	Benefits	Applicable to judges of (a)
Massachusetts	A judge with 10 years' continuous service in the judiciary, at attainment of age 70 (65 with 15 years' service), may choose an alternative pension at a lower annual rate, actuarially computed, in which case 2/3 thereof will go to his widow for life. On death of an eligible judge, or before 70, of a judge 45 or over, with 10 years' continuous service, his widow receives a pension computed on the alternative basis but with a reduction of the 75% base by 1% for each year or part thereof decedent was under 70 or 65 in the case of a decedent with 15 years' service and over 55. Judges compelled to retire at age 70 with less than 10 years' service receive a pension equal to 10% of ¾ of his salary at time of retirement for every year of judicial service.	All courts except Boston Housing Court
Michigan	If judge dies in service or after retirement and has had 8 or more years of service, spouse receives for life ½ of pension provided for the judge. Prior to retirement judge may select optional form of payment: (a) judge shall be paid reduced pension for life with provision that upon death full reduced pension shall be paid to spouse, or (b) judge shall be paid reduced pension for life with provision that upon death ½ reduced pension shall be paid to spouse.	S.C.; C.A.; C.C.
Minnesota	The widow of a judge who had been married to him 3 years prior to his death or retirement, who has attained age 40 and has not remarried, receives ½ of the pension which the judge—if he died in office—would have been eligible for at time of death (regardless of length of service), or was receiving at death if retired. If judge retired, widow receives pension only if joint annuity selected at time of retirement.	S.C.; D.C.; Co.C.; P.C.; M.C.
Mississippi	Judges may elect to receive reduced pensions to ensure continued benefit payments, after death, to their widows.	S.C.; Ch.C.; C.C.; Co.C.; P.C.; City C.
Missouri	The surviving spouse of the deceased judge receives 50% of the monthly retirement income the judge was drawing or was entitled to draw at the time of death. Benefits are payable so long as the spouse remains unmarried. The surviving spouse must have been married to the judge for at least 2 years immediately preceding his death and also on the day of the last termination of his employment as a judge. If there is no surviving spouse eligible to receive the benefits, any unemancipated minor child of the deceased judge shall share in the benefits equally with all other unemancipated minor children of the deceased judge.	S.C.; C.A.; C.C.; P.C.; Magistrate Court; C.C.P.; St. Louis Court of Criminal Corrections
Montana	Direct retirement benefits for widows and other dependents.	S.C.; D.C.
Nebraska	Judges may elect to provide annuities for spouses.	S.C.; D.C.; C.C.; M.C.; J.C.
Nevada	On death of judge entitled to retirement, the surviving spouse receives $400 a month for life, providing surviving spouse has attained age of 65 years.	S.C.; D.C.
New Hampshire	A judge who elects to be a member of the state retirement system and who sustains accidental death not caused by willful negligence shall receive a state annuity which, together with any survivor insurance benefit, shall not be less than 50% of his final average compensation, payable to his widow, if any, otherwise to his dependent children under 18 years of age, if any, otherwise to dependent father or mother for their life.	S.C.; Sr.C.
New Jersey	If judge dies in office surviving spouse receives ¼ pay during widowhood, plus lump sum payment of 1½ final salary. If death occurs after retirement, widow receives ¼ of judge's annual salary for life, provided marriage of 4 years duration prior to judge's death, unless death was accidental, in which case 4-year requirement waived.	S.C.; A.D. of Sr.C.; Sr.C.; Co.C.
New Mexico	If judge dies during retirement, his widow receives 75% of his retirement allowance until her death or remarriage, provided the judge retires on or before his 70th birthday, or within 1 year after becoming eligible for retirement. If he remains in office past his 70th birthday, he forfeits the widow's benefits.	S.C.; C.A.; D.C.
New York	In case of accidental death sustained in performance of judicial duties and not caused by willful negligence, ½ judge's final average compensation (in state retirement system, highest of 3 consecutive years; in New York City system, average of last 5 years) goes to the widow until she dies or remarries, to children under 18 years of age in absence of surviving widow or after her death or remarriage, or to dependent parent for life if there is no widow or children under 18. Children receive such amount until the age of 18 years. Ordinary death benefits are paid, according to any one of many plans, after 1 year of service in state retirement system (6 months of service in New York City system).	All state courts
North Carolina	One half of the amount to which the judge was entitled.	S.C.; A.C.; D.C.; Sr.C.
North Dakota	Judge may elect to receive: (a) ¾ of retirement salary, with ½ of it payable to his widow; or (b) 2/3 of retirement salary, with like amount payable to his widow; or (c) ½ of retirement salary, with like amount payable to his wife when she attains age 62. In all instances the surviving spouse is eligible for benefits upon reaching age 62 and until she remarries. If judge who is	S.C.; D.C.

State or other jurisdiction	Benefits	Applicable to judges of (a)
North Dakota (Continued)	eligible for retirement pay dies without having chosen any of the above alternatives, his widow is eligible for option (a). Judges appointed or elected for first time after July 1, 1973, are subject to Public Employees Retirement System.	
Ohio	Widows of judges who choose to join the Public Employees Retirement System (voluntary for elected officials) would have certain benefits, with the amount of income depending on length of service and income of the deceased judge, in addition to a death benefit.	S.C.; A.C.; C.C.P.; M.C.; Co.C.
Oklahoma	The surviving spouse of a judge with at least 10 years of service, if married to the decedent when his judicial employment terminated and if married to him at least one year immediately before his death, may at age 60 receive 50% of the decedent's retirement benefits or 40% of the retirement benefits to which the decedent would have been entitled on the date of his death. Remarriage under age 60 disqualifies the surviving spouse from these benefits.	All state courts
Oregon	Surviving spouse of any judge or former judge who at time of his death was contributing to judges' retirement fund or was eligible to receive retirement pay from the fund and who has served for not less than 6 consecutive years or 1 full 6-year term, shall receive for so long as said spouse lives and remains unmarried, a pension based on a percentage of a basic amount fixed by statute (22.5% of judge's final average pay), ranging from 100% to 20% depending upon the number of years served. A surviving spouse not entitled to a pension receives amount equal to aggregate deductions from salary of judge, without interest. Pension rights do not survive death of surviving spouse. If the judge and his spouse have been married less than 10 consecutive years and the surviving spouse is more than 3 years younger than deceased judge, the pension shall be automatically adjusted to a pension actuarially equivalent to the unadjusted pension payable to surviving spouse not more than 3 years younger than deceased judge. If the judge and his spouse have been married for more than 10 consecutive years, no adjustment shall be made. Judge may elect to receive reduced retirement benefits and proportionately increase pension of surviving spouse.	S.C.; C.A.; C.C.; D.C.
Pennsylvania	Under State Employees' Retirement System, a judge may elect one of the following optional plans: (a) full retirement—maximum amount each month for life; on death, beneficiaries receive balance of judge's contributions, if any; (b) percentage of maximum amount monthly for life, with present value placed on annuity; on death, beneficiaries receive unused balance of present value; (c) percentage of maximum amount based on age of judge and of beneficiaries; on death, beneficiary receives same monthly payment for life; (d) same as (c), except greater percentage during judge's life, but on death, beneficiary receives ½ of monthly payment; (e) permits selection of some other plan.	All state courts
Rhode Island	Upon death of judge after retirement or during active service while eligible for retirement, widow receives for life or until she remarries 1/3 judge's retirement pay or salary at time of death. Widow of judge who was not eligible for retirement but had served at least 10 years receives ¼ of his salary at time of death for life or until she remarries. Within 2 years after retirement, judge may elect to receive ¼ of his retirement pay so that widow receives ½ of his retirement pay after his death for life or until she remarries.	S.C.; Sr.C.; D.C.; F.C.
South Carolina	If judge dies while in active service or after retirement, widow receives for life and as long as she remains unmarried, 1/3 of the pension which the judge would have received.	S.C.; C.C.
South Dakota	A judge who has served at least 10 years may elect to assign 1/3 of his retirement pay to his wife who, upon the judge's retirement or death in office, will receive the 1/3 during her lifetime or until remarriage.	S.C.; C.C.
Tennessee	Widow receives ½ of deceased judge's retirement benefit for life or until remarriage for those in system prior to September 1, 1974.	S.C.; A.C.; Ch.C.; C.C.; Cr.C.; law-equity
Texas	Upon retirement, a judge may accept a reduced annuity and provide for benefits for his widow or other dependent on an actuarial basis.	S.C.; A.C.; D.C.
Utah	The widow of a judge, upon his death, receives ½ of his pension if she is of the same age or older than the judge; if she is one or more years younger, her pension is reduced actuarially.	S.C.; D.C.; J.C.; M.C.
Vermont	Upon retirement a judge may accept a reduced annuity and provide for benefits for his widow or other dependent on an actuarial basis.	S.C.; Sr.C.
Virginia	A judge who retires on account of age or disability may elect, in lieu of retirement salary, to receive a last-survivor annuity—an annuity during his lifetime, and after his death an annuity of equal or lesser amount to his widow during her lifetime. Value of such annuity is computed on the basis of the ages of the retiring judge and his wife on actual date of his retirement, and on	S.C.; C.C.

State or other jurisdiction	Benefits	Applicable to judges of (a)
Virginia (Continued)	the retirement salary computed at actual retirement age. Widow of judge who dies in office after at least 10 years' service receives ½ of pension the judge was eligible for at time of death.	
Washington	If deceased judge is retired or is eligible for retirement, widow receives, for remainder of her life or until she remarries, ½ of pension paid or due the judge (but not less than 25% of judge's final average salary), if she has been married to the judge continuously for 3 years, or was his wife prior to his retirement. A second retirement act, *the Judicial Retirement System, was created in 1971 and became* effective August 9, 1971. Membership in this system is mandatory for all judges appointed or elected on or after August 9, 1971; further, judges covered under the first or "old" system had the option of transferring to the "new" system before September 1, 1972. This means that ultimately all judges of courts of record will be covered under the 1971 system. Pertinent provisions of the system are: (1) judges contribute 7½% of their salary and the State contributes an equal amount on a quarterly basis; (2) a judge may retire at the age of 60 years after 15 or more years of service, and must retire at the end of *the calendar year in which age 75 is attained; and* (3) a judge may retire for disability after 10 years of service. Retired judges who have income from employment other than that excluded by statute shall have his retirement benefit reduced by the amount that his combined retirement benefit and employment income exceed the current monthly salary paid to a judge of the court level from which the judge retired.	S.C.; Sr.C.
West Virginia	The widow of a judge who dies after having served 16 years or more as judge of any court of record is entitled to 40% of his salary for life or until she remarries.	S.C.; C.C.
Wisconsin	If judge dies before retirement and prior to age 60 and if he has not provided in writing for benefits to be paid in the form of monthly annuity payments, his beneficiary may elect to receive the death benefits as a single cash sum or an annuity. Upon retirement, judge may elect to receive either (1) a regular life annuity which completely terminates upon his death, or, (2) a certain annuity for 180 months, and if the judge dies before the chosen time, the balance is paid to his beneficiary. Or he may elect a joint survivorship annuity (with reduction based on his and his beneficiary's ages), *with the beneficiary receiving a life annuity of 75% of the judge's* pension. If judge dies before retirement and after attaining age 60, he is assumed to have retired immediately prior to his death and to have elected a joint survivorship annuity with the beneficiary receiving a life annuity of 100% of the judge's pension.	S.C.; C.C.; Co.C.
Wyoming	No benefits for spouses or dependents.	
Guam	None unless justice was a member of general retirement system.	
Puerto Rico	Upon reaching minimum retirement age, a judge may elect to receive a reduced pension and to provide an annuity for his widow, actuarially computed upon his death. Whenever such a reversionary annuity is provided, no death benefit (1 year's salary) shall be paid. The reversionary *annuity must amount to a minimum of* $120 a year and may not exceed the reduced annuity payable to the judge.	D.C.

*This table excludes provisions regarding refunds to widows of unused amounts contributed to the retirement fund by their late husbands towards their own pensions; it includes provisions by which judges may elect to receive reduced pensions for themselves in order to ensure continued benefit payments, after death, to their wives, for States which made such information available. There may be additional States having such provisions.

(a) Symbols:

A.C.	Appellate Court	Cr.C.	Criminal Court
A.D.	Appellate Division	D.C.	District Court
C.A.	Court of Appeals	D.C.A.	District Court of Appeals
Ch.C.	Chancery Court	F.C.	Family Court
C.C.	Circuit Court	J.C.	Juvenile Court
City C.	City Court	M.C.	Municipal Court
Co.C.	County Court	P.C.	Probate Court
C.C.P.	Court of Common Pleas	S.C.	Supreme Court
C.S.A.	Court of Special Appeals	Sr.C.	Superior Court

(b) District Court Judges and District Associate Judges only.

(c) See footnote (d) on Table 10.

Source: Council of State Governments, State Court Systems - Revised 1976 (Lexington, Ky.: 1976), pp. 19-23.

Appendix K

METHODS FOR REMOVAL OF JUDGES AND FILLING OF VACANCIES

State or other jurisdiction	*How removed*	*Vacancies: how filled*
Alabama	All judges subject to impeachment. All except justices of Supreme Court may be removed by Supreme Court. A Judicial Inquiry Commission and Court of the Judiciary were created in new constitution for purpose of investigating and acting upon complaints. Court of the Judiciary is empowered to remove, suspend, censure, or otherwise discipline a judge.	By Governor, until the next general election, when judge is elected to fill unexpired term. Ad interim appointees customarily elected for a full term.
Alaska	All justices and judges subject to impeachment for malfeasance or misfeasance. Impeachment by 2/3 vote of Senate; trial in House, with a Supreme Court justice, designated by the court, presiding. Concurrence of 2/3 vote of House required for removal. On recommendation of Judicial Qualifications Commission or on own motion, Supreme Court may suspend judge from office without salary when in U.S. he pleads guilty or no contest or is found guilty of a crime punishable as a felony under Alaska or federal law or of any other crime involving moral turpitude under that law. If conviction is reversed, suspension terminates, and he shall be paid salary for period of suspension. If conviction becomes final, removal from office by Supreme Court. On recommendation of Judicial Qualifications Commission, Supreme Court may (1) retire judge for disability that seriously interferes with performance of duties and is or is likely to become permanent, and (2) censure or remove judge for action occurring not more than 6 years before commencement of current term which constitutes willful misconduct in office, willful and persistent failure to perform duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.	Filled by Governor from nominations by Judicial Council.
Arizona	Every public officer subject to recall. Electors, equal to 25% of votes cast at last preceding general election, may petition for recall. All judges, except justices of courts not of record, subject to impeachment by 2/3 of vote of Senate. Upon recommendation of Commission on Judicial Qualifications, Supreme Court may remove judges from all courts (except city magistrate) for willful misconduct in office, willful and persistent failure to perform duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or may retire them for disability that seriously interferes with performance of duties and is, or is likely to become, permanent.	Supreme Court justices, Court of Appeals judges, and Pima County Superior Court judges selected in manner provided for in original appointment. Superior Court judges of the other 12 counties by Governor, until the next general election when judge is elected to fill unexpired term. Justices of the peace by county board of supervisors for balance of term. City magistrates by the mayor and council.
Arkansas	Judges of the Supreme and circuit courts and chancellors are subject to removal by impeachment or by the Governor upon the joint address of 2/3 of the members elected to each house of the General Assembly.	By Governor until next general election. Ad interim appointees ineligible for election.
California	Judges of all state courts subject to impeachment. All judges subject to recall by voters. Suspension without salary by Supreme Court when they plead guilty or no contest or are found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude, and removal by the Supreme Court upon final conviction of such crimes. Upon recommendation of Commission on Judicial Qualifications, Supreme Court may remove judges from all courts for willful misconduct in office, willful and persistent failure to perform duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or may retire them for disability that seriously interferes with performance of duties and is, or is likely to become, permanent.	Supreme Court and Courts of Appeal judges, by Governor with approval of Commission on Judicial Appointments, until next gubernatorial election. If elected, fills unexpired term of predecessor. Superior court judges, by Governor, until next election. Judge then elected serves full term. Municipal court judges, by Governor, for unexpired term of predecessor. Justice court judges, by board of supervisors of county or by special election, until next election, when judge is elected to serve unexpired term.
Colorado	Judges of Supreme, Appeals, District, and county courts, by impeachment or (except judges of the Denver County Court) on recommendation of the Commission on Judicial Qualifications, by the Supreme Court, for willful misconduct in office, willful or persistent failure to perform duties, or habitual intemperance, as well as for disability seriously interfering with performance of duties and likely to become of a permanent character.	By the Governor, from lists submitted by Judicial Nominating Commissions.

State or other jurisdiction	How removed	Vacancies: how filled
Colorado (Continued)	Denver County Court and municipal judges may be removed according to charter and ordinance provisions.	
Connecticut	Judges of the Supreme and Superior Courts may be removed by impeachment. Governor shall also remove them on the address of 2/3 of each house of the General Assembly. All judicial officers may be removed by impeachment; tried by the Senate, 2/3 vote. Judges of Supreme, Superior, Common Pleas, Circuit and Juvenile Courts may retire or be retired for disability. The Judicial Review Council may, after hearing, recommend that a judge not be reappointed, that he be retired for disability, or that impeachment proceedings be instituted against him. *	By Governor until the next General Assembly or until a successor shall be elected or appointed.
Delaware	Court on the Judiciary has power to retire judge for permanent mental or physical disability, or to censure or remove judge from office for misconduct. All civil officers may be impeached.	As in case of original appointment.
Florida	Justices of the Supreme Court, and judges of the District Courts of Appeal and circuit courts may be impeached for misdemeanor in office. Any such justice or judge may be disciplined or removed by the Supreme Court on recommendation of a Judicial Qualifications Commission for willful or persistent failure to perform his duties or for conduct unbecoming a member of the judiciary, or may be retired for disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent nature.	By the Governor, until the next general election, from recommendations provided by an appropriate Judicial Nominating Commission.
Georgia	Judges are subject to impeachment for cause, and removed from office. Trial by Senate, 2/3 vote. A Judicial Qualification Commission investigates charges of alleged misconduct or incapacity and certifies its findings to the Supreme Court. Any justice or judge may then be retired, removed, or censured by the Supreme Court upon recommendation of the Judicial Qualification Commission.	By the Governor, until the next general election.
Hawaii	A Commission for Judicial Qualification investigates charges of alleged misconduct or incapacity and certifies its findings to the Governor. Any justice or judge then may be retired or removed by the Governor upon recommendation by an especially appointed board of judicial removal.	Supreme and Circuit Court vacancies by Governor, by and with advice and consent of Senate. Pending official appointment, chief justice may assign circuit judge to serve temporarily on Supreme Court or on any vacant circuit court bench. District court vacancies filled by chief justice.
Idaho	Judges are subject to impeachment for cause, and removed from office. Impeachment trial by Senate, 2/3 vote. Supreme and district court judges subject to removal by Supreme Court after investigation and recommendation by Judicial Council. Magistrates may be removed by district court judges of judicial district sitting en banc, upon majority vote, in accordance with Supreme Court rules.	Supreme and District Court vacancies filled by Governor, from names recommended by Judicial Council, for unexpired term; magistrates by district magistrate's commissions for unexpired term.
Illinois	After notice and hearing, any judge may be removed for cause by a commission composed of one judge of the Supreme Court selected by that court, two judges of the Appellate Court selected by that court, and two circuit judges selected by the Supreme Court. Such commission is permanently convened by the Supreme Court rule for disciplinary action against judges to consider complaints of physical or mental disability. All civil officers may be impeached by the Legislature.	By election at the next general election.
Indiana	Appellate judges may be removed by vote of the Supreme Court on own motion or that of Judicial Qualifications Commission. Nonappellate judges are also subject to disciplinary power of Supreme Court, which includes the power to suspend a judge without pay.	Appellate vacancies are filled in the same manner as initial selection. If a trial judge is suspended, Supreme Court appoints a pro tem to serve. If a trial judge is removed, Governor appoints a person to serve until next general election.
Iowa	Supreme and District Court judges subject to impeachment. Upon recommendation of Commission on Judicial Qualifications, such judges and district associate judges also may be retired for permanent disability or removed for failure to perform	All vacancies created by removal are filled in the same manner as original final selection.

State or other jurisdiction	How removed	Vacancies: how filled
Iowa (Continued)	duties, habitual intemperance, willful misconduct, or substantial violations of the canons of judicial ethics, by order of the Supreme Court. *Judicial magistrates may be removed by a tribunal consisting of 3 district court* judges in the judicial election district of the magistrate's residence.	
Kansas	All officers under constitution subject to impeachment. In addition to impeachment, all judges below Supreme Court level are subject to retirement for incapacity, and to discipline, suspension, and removal, for cause, by the Supreme Court after appropriate hearing.	For Supreme Court, by Governor from list submitted by Nominating Commission, until next general election, when appointee runs on his record. For district court in 23 districts by Governor from list submitted by district judicial nominating commission until next general election when appointee runs on record; in 6 districts the Governor appoints until next general election.
Kentucky(a)	Removal by Governor on the address of 2/3 of each house of the General Assembly. All civil officers subject to impeachment.	By the Governor, until the next regular election.
Louisiana	Upon investigation and recommendation by Judiciary Commission, Supreme Court can censure, suspend with or without salary, remove from office, or retire involuntarily a judge for misconduct relating to his official duties or willful and persistent failure to perform his duties, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, conduct while in office which would constitute a felony, or conviction of a felony, as well as retire a judge for disability which is, or is likely to become, of a permanent character. All state and district officers may be impeached.	*By special election called by* the Governor and held within 6 months after the vacancy occurs. Until the vacancy is filled, the Supreme Court appoints a qualified person, who is ineligible as a candidate at the election.
Maine	Judges may be impeached by the House; removal upon 2/3 vote at trial by Senate. Judges also may be removed by the Governor with the advice of the Council on the *address of both branches of the Legislature.* Judges of Supreme Judicial, Superior and district courts may be retired for disability.	Vacancies filled as in case of original appointment, except that vacancies in office of judges of probate are filled by the Governor, with the advice and consent of the Council, until January 1 after the next November election.
Maryland	Judges of Court of Appeals, Court of Special Appeals, trial courts of general jurisdiction, and District Court by the Governor, on conviction in a court of law or on impeachment; or on the address of the General Assembly, 2/3 of each house concurring in such address. Impeachment trial by Senate, conviction on 2/3 vote. Removal or retirement by Court of Appeals after hearing and recommendation by Commission on Judicial Disabilities, for misconduct in office, persistent failure to perform duties, conduct prejudicial to the proper administration of justice, or disability seriously interfering with the performance of duties, which is, or is likely to become, of a permanent character. Elected judge convicted of felony or misdemeanor relating to his public duties and involving moral turpitude is removed from office by operation of law when conviction becomes final.	By the Governor, from Nominating Commission list, until first *biennial election for congressional* representative after the expiration of the term or the first general election 1 year after the occurrence of the vacancy. Appointees customarily elected to full term. District Court judges appointed and confirmed by Senate (no election).
Massachusetts	The Governor, with the consent of the Executive Council, may remove judges upon the address of both houses of the Legislature. Also, after hearing, he may, with the consent of the Council, retire a judge because of advanced age or mental or physical disability. All officers may be removed by impeachment.	As in the case of an original appointment.
Michigan	House of Representatives directs impeachment by a majority vote. Impeachment trial by Senate, 2/3 vote for conviction. Governor may remove judge for reasonable cause insufficient for impeachment with concurrence of 2/3 of the members of each house of the Legislature. On recommendation of Judicial Tenure Commission, Supreme Court may censure, suspend with or without salary, retire, or remove a judge for conviction of a felony, physical or mental disability, or persistent failure to perform duties, misconduct in office, or habitual intemperance or conduct clearly prejudicial to the administration of justice.	For all courts of record, by Governor, until January 1, next succeeding first general election held after vacancy occurs, at which successor is elected for unexpired term of predecessor. *Vacancies on municipal* courts filled by local city councils. Supreme Court may authorize persons who have been elected and served as judges to perform judicial duties for limited periods or specific assignments.

State or other jurisdiction	How removed	Vacancies: how filled
Minnesota	Supreme and district court judges may be impeached. On recommendation of Judicial Tenure Commission, Supreme Court may censure, suspend with or without salary, retire, or remove a judge for conviction of a felony, physical or mental disability, or persistent failure to perform duties, misconduct in office, or habitual intemperance or conduct prejudicial to the administration of justice.	Filled by Governor until next general election occurring more than 1 year after appointment.
Mississippi	Presentment, indictment by a grand jury, and conviction of a high crime or misdemeanor in office. All civil officers may be impeached by 2/3 of members present of the House, and removed after trial by Senate. Also, for reasonable cause which shall not be sufficient ground for impeachment, the Governor shall, on the joint address of 2/3 of each branch of the Legislature, remove from office the judges of the Supreme and inferior courts.	By Governor during recess of Senate. Filled at next congressional election if there is one prior to the expiration of the term.
Missouri	All judges are subject to retirement, removal, or discipline on recommendation of a majority of members of a committee composed of two citizens (not members of the Bar) appointed by the Governor, two lawyers appointed by the governing body of the Missouri Bar, one judge of the Court of Appeals elected by a majority of that court, and one circuit judge selected by a majority of circuit judges in the State.	By Governor until next general election, except that vacancies in the Supreme Court, Court of Appeals, circuit and probate courts of City of St. Louis, St. Louis, Clay, Platte, and Jackson Counties, and the St. Louis Court of Criminal Correction are filled by Governor from nominations by a nonpartisan commission until the next general election after the judge has been in office at least a year.
Montana	All judicial officers subject to impeachment. Impeachment by 2/3 vote of House. Upon recommendation of Judicial Standards Commission, Supreme Court may suspend a judicial officer and remove same upon conviction where a felony or other crime involves moral turpitude; also, can order censure suspension, removal, or retirement for cause. **	Justices of Supreme Court, district court judges, and Workmen's Compensation judge by Governor; justices of peace by boards of county commissioners. Judge so appointed holds until next general election.
Nebraska	Impeachment by majority of Legislature; in case of impeachment of Supreme Court justice, all judges of district courts sit as court of impeachment—2/3 concurrence required; in case of other judicial impeachments, heard by Supreme Court as court of impeachment. Also, provisions similar to those in California for removal of judges by Supreme Court on recommendation of a Judicial Qualifications Commission.	By Governor, from lists submitted by nonpartisan judicial nominating commissions.
Nevada	All judicial officers except justices of peace subject to impeachment. Impeachment by 2/3 vote of each branch of Legislature, provided that no member of either branch shall be eligible to fill the vacancy so created. Trial by Senate, 2/3 vote. Also subject to removal by legislative resolution and by recall.	By Governor.
New Hampshire	Governor with consent of Council may remove judges upon the address of both houses of the Legislature. Any officer of the State may be impeached.	Vacancies filled by Governor with consent of Council.
New Jersey	Proceedings can be initiated by either house of the Legislature, the Governor, or the Supreme Court on its own motion for removal of judges of all but Supreme Court, for misconduct in office, willful neglect of duty or other conduct evidencing unfitness for judicial office, or for incompetence. Hearing, not to be held until conclusion of any independent criminal or administrative proceeding involving the grounds for removal, by Supreme Court en banc or by a panel of 3 justices or judges designated by chief justice. Pending determination of removal proceeding, court may suspend a judge with or without pay for a maximum of 90 days. Justices of Supreme Court, and judges of Superior Court and county courts subject to impeachment. Because of prerequisite of bar membership, they also may lose qualifications for judicial office by disciplinary proceedings resulting in disbarment. Effective July 1974, the Supreme Court created an Advisory Committee on Judicial Conduct. The Committee is authorized to receive complaints against judges alleging facts indicating the following: (1) misconduct in office; (2) willful failure to perform their duties; (3) incompetence; (4) habitual intemperance; (5) engagement in partisan politics; (6) conduct prejudicial to the administration of justice that brings the judicial office into disrepute; or, (7) may be suffering from a mental or physical	By Governor, with advice and consent of Senate.

State or other jurisdiction	How removed	Vacancies: how filled
New Jersey (Continued)	disability which is disabling him and may continue to disable him indefinitely or permanently from the performance of his duties. Whenever the committee concludes from a preliminary investigation that circumstances, if established at a plenary hearing, may call for censure, suspension, or removal of the judge, the committee makes such a recommendation to the Supreme Court, together with the documentation supporting its position. On certification of Supreme Court, Governor may appoint 3-man commission to inquire into incapacity of Supreme, Superior or county court judge. On its recommendation, Governor may retire judge from office.	
New Mexico	*All state officers and judges of the district courts* may be impeached. Through the judicial standards commission, any justice, judge, or magistrate may be disciplined or removed for willful misconduct in office or willful and persistent failure to perform his duties or habitual intemperance, or may be retired for disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent character.	Governor appoints to fill vacancy until next general election.
New York	Any judge may be removed by impeachment. Judges of the Court of Appeals and justices of the Supreme Court may be removed by 2/3 concurrence of both houses of the Legislature. Judges of the Court of Claims, county courts, Surrogate's Court, Family Court, the Civil and Criminal Courts of the city of New York, and district courts may be removed by 2/3 vote of the Senate, on recommendation of the Governor. All judges of superior courts may be removed for cause or retired for disability by *a Court on the Judiciary. Judges of the Civil and Criminal Courts* of the city of New York, district courts, city courts, town courts, and village courts may be removed for cause or retired for disability by the appropriate Appellate Division of the Supreme Court.	Vacancies in elective judgeships filled at the next general election for full term; until the election, Governor makes the appointment (with the concurrence of the Senate if it is in session), except in the following cases: Civil Court of the city of New York appointed by the Mayor; district courts appointed by the appropriate district governing body; city courts (outside the city of New York), town courts, and village courts appointed by appropriate governing body as prescribed by the Legislature.
North Carolina	Upon recommendation of the Judicial Standards Commission, the Supreme Court may censure or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Any justice or judge may be removed by the same process, for mental or physical incapacity interfering with the performance of his duties which is or is likely to become permanent.	By Governor until next general election. Ad interim appointees customarily elected for remainder of unexpired term.
North Dakota	Supreme and district court judges by impeachment for habitual drunkenness, crimes, corrupt conduct, malfeasance, or misdemeanor in office. County judges by Governor after hearing. Impeachment trial by Senate, conviction 2/3 vote. All judges may be recalled. Upon recommendation of Commission on Judicial Qualifications, Supreme Court may remove judges from all courts for willful misconduct in office, willful and persistent failure to perform duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or may retire them for disability that seriously interferes with performance of duties and is, or is likely to become, permanent.	Supreme Court judges by Governor until next general election. District court judges appointed by Governor to fill unexpired term.
Ohio	*By concurrent resolution of 2/3 of members of both houses of the General Assembly.* All judges may be removed by impeachment. Trial by Senate, conviction on 2/3 vote. By disqualification as a result of disciplinary action as provided in Rule V, Supreme Court. Removal for cause upon filing of a petition signed by at least 15% of the electors in the preceding gubernatorial election; trial by court or jury. Removal, retirement, or suspension without pay for cause following complaint filed in the Supreme Court; hearing before a commission of judges named by the Supreme Court. Appeal from commission to Supreme Court.	By Governor until next election, when judge is elected to fill unexpired term.
Oklahoma	By impeachment for willful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any offense involving moral turpitude. *Removal by order of Court on the Judiciary for gross neglect of duty, corruption*	Vacancies on Supreme Court and Court of Criminal Appeals by *Governor, as in case of original*

State or other jurisdiction	How removed	Vacancies: how filled
Oklahoma (Continued)	in office, habitual drunkenness, commission while in office of any offense involving moral turpitude, gross partiality in office, oppression in office, or any other grounds hereinafter specified by the Legislature. Compulsory retirement, with or without compensation, for mental or physical disability preventing proper performance of office duties, or incompetence to perform duties of the office.	appointment. Appointee to vacancy occurring during unexpired term serves for remainder of that term if retained by election after completing 12 months' service. Vacancies on Court of Appeals and District Court filled by Governor for unexpired term; in making appointment, he may but need not use aid of Judicial Nominating Committee.
Oregon	Any judge may be involuntarily retired for mental or physical disability after certification by a special commission; he may appeal to Supreme Court. On recommendation of Commission on Judicial Fitness, Supreme Court may remove a judge of any court for conviction of a felony or a crime involving moral turpitude, willful misconduct in a judicial office involving moral turpitude, willful or persistent failure to perform judicial duties, habitual drunkenness, or illegal use of narcotic drugs.	By Governor until next general election, at which time a judge is elected to fill the unexpired term.
Pennsylvania	All judges, as all civil officers, may be impeached by House for any misdemeanor in office. Trial by Senate, 2/3 vote for conviction. Upon recommendation of the Judicial Inquiry and Review Board, any justice or judge may be suspended, removed, or otherwise disciplined by the Supreme Court for specified forms of misconduct, neglect of duty, or disability.	By Governor, until the first Monday of January following next judicial election which shall occur more than 10 months after vacancy occurs. If Senate is in session, advice and consent of 2/3 of its members, except majority for justices of the peace.
Rhode Island	Supreme Court judges, by a resolution of the General Assembly voted by a majority in each house at the annual session for the election of public officers. All judicial officers may be impeached. Trial by Senate, 2/3 vote of all members elected thereto for conviction.	In case of vacancy on Supreme Court, the office may be filled by the Grand Committee of the Legislature until the next annual election. In case of impeachment, inability, or temporary absence, Governor appoints a person to fill vacancy. Vacancies on Superior, Family, and district courts may be filled by Governor with advice and consent of Senate.
South Carolina	By impeachment or by Governor on address of 2/3 of each house of General Assembly.	By Governor if unexpired term does not exceed 1 year; otherwise, by General Assembly to fill unexpired term.
South Dakota	Supreme Court judges and circuit court judges may be removed by impeachment. Trial by Senate, 2/3 vote for conviction. Recommendation by Judicial Qualifications Commission to Supreme Court for removal.	Supreme and circuit court judges by the Governor, for balance of term.
Tennessee	By impeachment for misfeasance or malfeasance in office; by concurrent resolution of 2/3 of each house of the Legislature when the judge is physically or mentally unable to perform his duties.	By Governor until next general election. County judge by county court; but if they do not elect to fill vacancy, Governor may do so. Judge elected fills unexpired term.
Texas	Supreme Court, and Appeals and district court judges may be removed by impeachment, Senate, 2/3 vote, or by joint address, 2/3 vote of both houses. District judges may be removed also by the Supreme Court. County judges and justices of the peace may be removed by district judges. Upon charges filed by the Judicial Qualifications Commission, all judges in the State may be involuntarily retired for disability or removed for misconduct by the Supreme Court.	Appellate, district, domestic relations, and juvenile court judges by Governor, until next general election. County courts by county commissioner's court. Municipal judges by governing body of municipality. Judge elected fills unexpired term.
Utah	By concurrent vote of 2/3 of the members of each house of the Legislature. All judicial officers except justices of peace may be impeached. Trial by Senate, conviction on 2/3 vote.	By Governor, upon recommendation of Judicial Selection Commission, until next general election. Judge elected fills unexpired term.

State or other jurisdiction	How removed	Vacancies: how filled
Utah (Continued)	Removal from office by Supreme Court upon recommendation of Commission on Judicial Qualifications for willful misconduct in office, final conviction of a crime punishable as a felony, persistent failure to perform duties, habitual use of alcohol or drugs which interferes with performance of judicial duties; retirement for disability seriously interfering with performance of duties which is, or is likely to become, of a permanent character.	
Vermont	All judicial officers impeachable. Trial by Senate, conviction on 2/3 vote. Supreme Court has disciplinary control over all judicial officers not inconsistent with constitutional powers of the General Assembly; it has power to impose sanctions, including suspension from judicial duties for the balance of the term of the judicial officer charged.	Supreme Court and superior court vacancy filled by Governor, from list of 3 or more persons selected by Judicial Selection Board. Interim vacancies of assistant judges of county courts filled by Governor.
Virginia	All judges may be impeached by House. Trial by Senate. Conviction on 2/3 vote of members present. By Supreme Court after charges against judge have been certified by Judicial Inquiry and Review Commission. By concurrent vote of majority of elected members of both houses of General Assembly.	A successor shall be elected for the unexpired term by the General Assembly. If General Assembly not in session, Governor makes appointment to expire 30 days after commencement of next session. Ad interim appointee customarily elected to full term.
Washington	By joint resolution of the Legislature, in which 3/4 of the members of each house concur, for incompetency, corruption, malfeasance, delinquency in office, or other sufficient cause stated in resolution. Any judge of any court of record may be impeached. Trial by Senate. Conviction on 2/3 vote.	Vacancies on appellate and general trial courts filled by Governor until next general election, when election to fill the unexpired term.
West Virginia	Removal by concurrent vote of both houses of the Legislature in which 2/3 of the members of each house must concur, when a judge is incapable of discharging the duties of his office because of age, disease, mental or bodily infirmity, or intemperance. By impeachment by a 2/3 vote of the Legislature for maladministration, corruption, incompetency, gross immorality, neglect of duty, or any crime or misdemeanor.	By Governor if unexpired term is less than 2 years; if more than 2 years, Governor may appoint judge until next general election when a judge is elected to fill the unexpired term.
Wisconsin	All judges subject to impeachment. Supreme, circuit, and county court judges by the address of both houses of the Legislature, 2/3 of all members of each house concurring and hearing, and by recall. Since all judges of courts of record must be licensed to practice law in Wisconsin, removal also can be by disbarment. A judge of the Supreme or circuit court may be removed for physical or mental disability upon voluntary or involuntary petition and upon hearing by a disability board.	By Governor until next regular judicial election is held, when judge is elected for a full term. At any election only one Supreme Court justice may be elected, so that appointee holds until next available election. Disabled Supreme Court justice replaced by Governor. Disabled circuit court judge may be replaced through appointment by chief justice from list of reserve judges (retired judges on assignment); if not available, Governor may fill the temporary vacancy which continues during disability of judge or until he dies or his term expires.
Wyoming	All judicial officers, except justices of peace, by impeachment. Trial by Senate, 2/3 vote for conviction. May be retired by Supreme Court on recommendation of Judicial Supervisory Commission. Justices of the peace by Supreme Court after hearing before panel of 3 district judges.	By Governor from a list of 3 submitted by Judicial Nominating Commission, for approximately 1 year, then stand for election for retention in office. Justices of the peace by appointment by county commissioners.
District of Columbia(b)	All judges shall be removed from office by the Commission on Judicial Disabilities and Tenure, upon conviction of a felony (including a federal crime), for willful misconduct in office, for willful and persistent failure to perform judicial duties, or for other conduct prejudicial to the administration of justice or which brings the office into disrepute.	By the President of the United States upon the advice and consent of U.S. Senate for a term of 15 years.

State or other jurisdiction	How removed	Vacancies: how filled
Guam	Any justice or judge may be removed by a special court of 3 judges on recommendation of a Judicial Qualification Commission for misconduct or incapacity.	By Governor for term of 5 years.
Puerto Rico	Supreme Court justices by impeachment for treason, bribery, other felonies, and misdemeanors involving moral turpitude. Indictment by 2/3 of total number of House members and trial by Senate. Conviction by 3/4 of total number of senators. All other judges may be removed by Supreme Court for cause as provided by judiciary act, after hearing upon complaint on charges brought by order of the chief justice, who shall disqualify himself in the final proceedings.	By Governor, as in case of original appointment.

(a) See footnote (d) on Table 10.

(b) Reflects 1974 survey. Later information not available.

*The voters of Connecticut authorized the Supreme Court to remove or suspend nonelected judges in the November 1976 election.

**In the November 1976 election, the voters of Montana approved a recall procedure applicable to any public officer.

Source: Council of State Governments, State Court Systems - Revised 1976 (Lexington, Ky.: 1976), pp. 24-31.

Appendix L

JUDICIAL RETIREMENT AGE

State	Age
Alabama	70(F)
Alaska	70
Arizona	70
Arkansas	70(F)(NS)
California	70(R)
Colorado	72
Connecticut	70(SR)
Florida	70
Hawaii	70
Idaho	70(NS)
Iowa	72(N)(NS)
Kansas	70(NS)
Louisiana	70
Maine	71(F)(NS)
Maryland	70(NS)
Michigan	70
Minnesota	70(N)(NS)
Mississippi	65(N)(NA)
Missouri	70(N)
Montana	70(F)(NS)
Nebraska	72(N)(NS)
New Hampshire	70
New Jersey	70
New York	70(N)
North Dakota	73(F)(NS)
Oregon	75
South Carolina	72(NS)
South Dakota	70(NS)
Texas	70
Utah	72(NS)
Virginia	70(N)(NS)
Washington	75
Wisconsin	70

LEGEND:
- (F) These are the benefits at which retirement benefits are forfeited if a judge or justice does not retire.
- (R) Age at which retirement benefits are reduced if a judge or justice does not retire.
- (N) Consult state summaries, these data, taken alone, may be misleading.
- (NS) Not stated in constitution.
- (SR) State referee.

Source: *Judicature, November 1974, pp. 197-202, as updated by Clifford Higa of the Legislative Reference Bureau staff in 1977.*