

ARTICLE VI

CONSTITUTIONAL AMENDMENT

MERIT SELECTION OF APPELLATE JUDICIAL CANDIDATES

A. Article VI, § 6.13 [“Election of Judges”] of the Alabama Constitution, a part of Amendment Number 328, shall be deleted, and there shall be substituted therefor the following:

6.13. SELECTION, EVALUATION AND RETENTION OF JUSTICES AND APPELLATE JUDGES.

(a) Judicial Nominating Commission for Appellate Courts.

For selection of justices and appellate judges, there shall be a Judicial Nominating Commission for the appellate courts. The appointment of members, and the activities and operation of the Commission, shall be governed by the following provisions:

(1) Membership.

The membership shall be comprised of nine members, selected as follows:

A. Four Non-Attorney Members: Four members who are not attorneys licensed to practice in the state (including at least one who is African-American and at least one who is a woman) shall be appointed by the Governor, the Lieutenant Governor and the Speaker of the House.

B. Four Attorney Members: Three members (at least one who is a woman) who are licensed to practice law in the State of Alabama shall be elected by the

Board of Bar Commissioners of the Alabama State Bar. One of these members shall be primarily and substantially engaged in a plaintiff practice and shall be a member of the Alabama Trial Lawyers Association or its successor. One of these members shall be primarily and substantially engaged in a defense civil practice and shall be a member of the Alabama Defense Lawyers Association or its successor. The third member shall be a practicing attorney who shall not be a member of either of those associations. One member who is licensed to practice law in the state shall be appointed by the Alabama Lawyers Association, or its successor, by means of a process which that Association authorizes.

C. Judicial Member: One member shall be an incumbent justice or appellate judge who shall be elected by the justices and appellate judges of the state. The judicial member shall serve as Chairperson of the Judicial Nominating Commission and vote only in case of a tie.

(2) **Qualifications and Restrictions.**

A. All members shall be qualified voters of the state.

B. No member shall be eligible for appointment to a state appellate judicial office while that member serves on the Judicial Nominating Commission for one year thereafter.

C. No member of the Judicial Nominating Commission shall simultaneously serve as a member of the Judicial Evaluation Commission.

D. With the exception of the judicial member, no member of the

Judicial Nominating Commission may hold any office under the United States, the state, or any other governmental entity, for which compensation is received, other than as a member of a military reserve component.

(3) **Diversity.**

All appointments and elections of members to the Judicial Nominating Commission shall be made with due consideration to the geographic (including both rural and urban geographic areas), gender, racial and ethnic diversity of the state, and without regard to political affiliation.

(4) **Terms of Office.**

A. **Full Term of Office.** The term of office for each member shall be for a period of four years, except as is provided for in §(4)B below.

B. **Initial Term.** In order that membership terms of the Judicial Nominating Commission be staggered, the initial terms of the members shall be as follows:

1. Non-Attorney Members: The initial terms of the members who are not attorneys and who are appointed by the Governor, Lieutenant Governor and the Speaker of the House shall be:

(i) one member - one year

(ii) one member - two years

(iii) two members - three years

2. Attorney Members: The initial terms for attorney members elected by the State Bar Association shall be:

- (i) one attorney - one year
- (ii) one attorney - two years
- (iii) one attorney - three years

The attorney selected by the Alabama Lawyers Association shall serve an initial term of two years.

3. Judicial Member: The initial term of the member elected by the justices and appellate judges shall be for one year.

C. Subsequent Terms. After the initial term, all appointments (except to fill vacancies) shall be for the full term. No person may serve more than one full term (neither an initial term under §(4)B above, nor an appointment under §(4)D below to fill a vacancy, shall be deemed to be a “full term”).

D. Vacancies. If a vacancy occurs, the designated appointing/electing authority shall select a qualified person to complete the unexpired portion of the term.

(b) **Nomination and Appointment.**

The governor shall fill any vacancy [see § 6.14] in an office of supreme court justice, court of civil appeals judge, or court of criminal appeals judge, by appointing one person nominated by the Judicial Nominating Commission for that office. The Judicial

Nominating Commission shall nominate three qualified persons who seek appointment to the office for each vacancy. No appellate judicial officer shall be eligible for nomination or appointment to an appellate judicial office as a result of a vacancy arising from his or her own resignation, retirement, or removal from that office or, in the case of the expiration of his or her term, he or she declining, failing to qualify, or being ineligible for a retention election under § (c) below, or, after having qualified, failing to be retained in office as a result of the retention election. If the governor fails to fill a vacancy within thirty (30) days from the day the nominees are submitted, the presiding judge of the court for which the vacancy exists shall appoint one of the nominated persons, and if no presiding judge is sitting in that court, such appointment shall be made by the Chief Justice of the State of Alabama.

(c) **Retention Elections.**

(1) **Eligibility.**

Justices and appellate judges who hold office as of the date of the ratification of this amendment shall remain in office for the balance of their respective terms. At the expiration of his or her term, a justice or an appellate judge may seek retention in office as provided for herein.

(2) **Procedure for Qualification for Retention.**

To qualify for a retention election, a justice or an appellate judge must be evaluated (see § 6.13(c)(3) below) and, after such evaluation, must file in the office of the Secretary of State within a reasonable time before the general election in the year

preceding the expiration of the term for which he or she was elected, appointed or retained, a declaration that he or she will be a candidate for retention. The Judicial Evaluation Commission shall establish the deadline for filing the declaration for retention with the Secretary of State. (See § 6.13(f)(2) below.) A justice or an appellate judge appointed, and having taken the oath of office after the deadline for qualification for retention election in the year preceding the expiration of the term of office, shall serve the balance of the term, and upon expiration of the term of office a vacancy shall exist which shall be filled by appointment in accordance with the provisions of § 6.13(b) above.

(3) **Judicial Evaluation.**

The retention election shall be preceded by a judicial evaluation that will provide information to voters prior to the election. (See § 6.13(d) below.)

(4) **Judicial Retention Ballot.**

A nonpartisan judicial ballot shall be provided for each justice or judge seeking an additional term for appellate judgeship for the state as a whole. The ballot shall read substantially as follows:

“Shall _____ be retained for six years as a [justice] (judge) of the
_____ [Supreme Court] [Court of Civil Appeals] [Court
of Criminal Appeals] of Alabama?

yes _____ no _____

(5) **Electorate Vote.**

Any justice or appellate judge who seeks an additional term for the same judicial office shall be retained in office by vote of the electorate in the general election. The retention election shall be nonpartisan. For a justice or an appellate judge to be retained, he or she must be approved by the affirmative vote of a majority of those voting in the retention election.

(d) **Evaluation of Justices and Appellate Judges.**

(1) **Purpose.**

There is hereby established within the state a judicial evaluation program that will (1) provide persons voting on the retention of state justices and appellate judges with fair, responsible and constructive information about judicial performance; (2) facilitate self-improvement of such justices and appellate judges; (3) identify the need for improvements in the content of judicial education; (4) increase public awareness of the work of the judiciary; and (5) ensure that the quality of state justices and appellate judges, and their performance, is maintained at the highest level.

(2) **Judicial Evaluation Commission.**

For the evaluation of justices and appellate judges subject to a retention election, there shall be a Judicial Evaluation Commission. The appointment of members, and the activities and operations of the Commission, shall be governed by the following provisions:

A. **Membership.** The membership shall be comprised of eleven members at least two of whom shall be women, selected as follows:

1. Five Non-Attorney Members: Five members who are not attorneys licensed to practice law in the state (including at least two who are African-Americans) shall be appointed by the Governor, Lieutenant Governor and the Speaker of the House.

2. Four Attorney Members: Three members who are licensed to practice law in the State of Alabama shall be elected by the Board of Bar Commissioners of the Alabama State Bar, which shall give due consideration in making such elections to assuring that a cross-section of the bar is represented on the Commission. One member who is licensed to practice law in the state shall be appointed by the Alabama Lawyers Association, or its successor, by means of a process which that Association authorizes.

3. Two Judicial Members: One member shall be the Chief Justice of the Supreme Court. The other judicial member shall be either the Presiding Judge of the Court of Civil Appeals or the Presiding Judge of the Court of Criminal Appeals as designated by the Chief Justice of the Supreme Court.

B. Chair and Vice-Chair. The Judicial Evaluation Commission members shall elect a chair and a vice-chair every three years. The chair shall preside at all meetings of the Commission and shall be the designated spokesperson for the Commission. In the absence of the chair, the vice-chair shall preside.

C. Qualifications and Restrictions.

1. All members shall be qualified voters of the state.

2. No member shall be eligible for appointment to a state appellate judicial office while that member serves on the Judicial Evaluation Commission and for one year thereafter.

3. No member of the Judicial Evaluation Commission shall simultaneously serve as a member of the Judicial Nominating Commission.

4. With the exception of the judicial members, no member of the Judicial Evaluation Commission may hold any office under the United States, the state, or any other governmental entity, for which compensation is received, other than as a member of a military reserve component.

5. A judicial member shall not participate in or vote on his or her own evaluation.

D. Diversity. All appointments and elections of members to the Judicial Evaluation Commission shall be made with due consideration to the geographic (including both rural and urban geographic areas), gender, racial and ethnic diversity of the state, and without regard to political affiliation.

E. Terms of Office.

1. Full Term of Office. The term of office for each member (other than the judicial members) shall be for a period of six years, except as is provided for in § E.2 below.

2. Initial Term. In order that the membership terms of the

Judicial Evaluation Commission be staggered, the initial terms of the attorney and non-attorney members shall be as follows:

(i) Non-Attorney Members: The initial terms of the members who are not attorneys and who are appointed by the Governor, Lieutenant Governor and the Speaker of the House shall be:

(A) two members - two years

(B) one member - three years

(C) two members - four years

(ii) Attorney members: The initial terms for attorney members elected by the State Bar Association shall be:

(A) one attorney - two years

(B) one attorney - three years

(C) one attorney - four years

The attorney selected by the Alabama Lawyers Association shall serve an initial term of three years.

3. Subsequent Terms. After the initial term, all appointments (except to fill vacancies) shall be for the full term. No person may serve more than two full terms (neither an initial term under § E.2 above, nor an appointment under § E.4 below to fill a vacancy, shall be deemed to be a “full term”).

4. Vacancies. If a vacancy occurs, the designated appointing/electing authority shall select a qualified person to complete the unexpired portion of the term.

~~F.~~ Powers and Duties of the Commission. The powers and duties of the Judicial Evaluation Commission are hereby established as follows: To develop and implement techniques and procedures for evaluating all justices and appellate judges subject to retention.

(3) **Recommendations on Retention of Justices and Appellate Judges.**

A. Procedure. In order to be eligible for retention evaluation, a justice or an appellate judge must provide written notification to the Judicial Evaluation Commission within the time frame established by the Commission of his or her intent to stand for retention election. The Judicial Evaluation Commission shall conduct an evaluation of all justices and appellate judges, as appropriate, who have timely notified the Commission that they intend to stand for retention election. The evaluation shall be completed and a narrative profile prepared for communication to the respective justice or appellate judge within a reasonable period of time prior to the last day on which a justice or an appellate judge can publicly declare, by filing a declaration with the Secretary of State, his or her intent to stand for retention election. The justice or appellate judge shall have the opportunity to meet with the Commission, or otherwise respond to the evaluation, within a reasonable time following receipt of such evaluation. If such a meeting is held or response is made, the Commission may revise its evaluation. The Commission shall adopt rules of procedure, including the necessary time requirements, to

effectuate this section. (See § 6.13(f)(2) below.)

B. Report to the Public. After the requirement in § (3)A above is met, the Judicial Evaluation Commission shall compile a narrative summary of the evaluation findings and, no later than sixty (60) days prior to the retention election, make recommendations to the public regarding the justices or appellate judges subject to retention. The recommendation shall be stated as either (1) retain, (2) do not retain, or (3) no opinion. With respect to a recommendation of (1) retain or (2) do not retain, a narrative explanation may be provided to the public when, in the discretion of the Commission, such an explanation is deemed necessary to meet the purposes of the Commission as set forth in § 6.13(d) above.

(e) Reimbursement and Administrative Assistance.

(1) Expenses.

Members of the Judicial Nominating Commission and the Judicial Evaluation Commission shall not be compensated but shall be reimbursed by the judicial branch of government for all reasonable and necessary travel expenses incurred in the carrying out of their official duties.

(2) Assistance.

The Administrative Office of Courts shall provide administrative assistance and support to each commission in the carrying out of the respective commission's official duties.

(f) **Powers of the Judicial Nominating Commission and Judicial Evaluation Commission.**

(1) **The Judicial Nominating Commission.**

This Commission shall have the power to adopt reasonable rules and procedures to aid in its selection of the more qualified nominees for judicial office.

(2) **The Judicial Evaluation Commission.**

This Commission shall have the power to adopt reasonable rules and procedures to aid in its evaluation of the judicial performance of justices and appellate judges standing for retention election.

(g) **Privileged Information.**

All documents and information obtained by or submitted to the Judicial Nominating Commission or the Judicial Evaluation Commission, and all results of judicial recommendations or evaluations, are absolutely privileged and confidential; and no judicial action predicated thereon may be brought in any court. Statements made to these commissions are absolutely privileged and confidential; provided, however, that this absolute privilege and confidentiality does not apply to statements made in any other forum. Members of these commissions and staff shall be immune from suit and liability for any conduct in the course of their official duties.

(h) **Conflict With Existing Provisions of Article VI.**

Any provisions of Article VI of the Constitution, as amended by Amendment No.

328 or otherwise amended, in conflict with this amendment, are expressly repealed.

(g) **Severability.**

If any portion of this amendment should be declared invalid or unenforceable for any reason by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity and enforceability of any of the remaining portions of this amendment, which shall continue to be effective and constitute the law of this state.

Article VI, § 6.14 [“Vacancies in Judicial Office”] of the Alabama Constitution, a part of Amendment 328, is hereby amended as follows:

I. The first sentence of said § 6.14 is hereby deleted and the following is substituted in lieu thereof:

“(a) Vacancy Defined.

“The office of a justice or judge shall be deemed vacant if he or she dies, resigns, retires (either voluntarily or involuntarily under § 6.18(a) of this article), or is removed from office. An appellate judicial office shall also be deemed vacant upon the expiration of an appellate judicial officer’s term when that judicial officer declines, fails to qualify for or is ineligible for a retention election under §6.13 or this article or, after having qualified, fails to be retained in office as a result of the retention election.”

“(b) Filling Appellate Vacancy.

“Vacancies occurring in any Supreme Court, Court of Civil Appeals or

Court of Criminal Appeals judicial office shall be filled by appointment by the governor in accordance with §6.13 of this article.”

“(c) Filling Lower Court Vacancy.”

II. In the second sentence of said Section 6.14 (which, as amended by the foregoing will become the first sentence of subsection (c), “Filling Lower Court Vacancy”, insert immediately after the words “Vacancies in any” and prior to “judicial office” the words “circuit, district, or probate”.

Article VI, § 6.16 [“Retirement”] is hereby deleted and following substituted therefor:

“6.16. Retirement.

“The legislature shall provide by law for the retirement of judges, including supernumerary judges, with such conditions, retirement benefits, and pensions for them and their dependents, as it may prescribe.”