

6/03/08

## PROPOSED SYSTEM FOR MERIT SCREENING AND ELECTION OF NORTH CAROLINA APPELLATE JUDGES

The Joint Task Force on Judicial Selection requests the participating organizations (NCBA, NCATL, NCADA, NCAWA, NCABL) to consider replacing the current method of selecting appellate judges in North Carolina with a system of merit screening followed by a nonpartisan election. After winning the initial contested election, a judge seeking another term would face a retention election. This memorandum describes the purpose and basic features of the proposed system.

### I. PURPOSE

The proposed system has several objectives:

- a. Ensure that each candidate for appellate judge is qualified to serve;
- b. Attract excellent lawyers and judges to seek service on the appellate bench;
- c. Reduce the cost and duration of judicial elections;
- d. Make public financing of judicial elections more effective;
- e. Increase judicial independence while preserving judicial accountability;
- f. Foster diversity on the appellate bench;
- g. Improve the quality of the appellate bench;
- h. Increase public respect for the judiciary.

### II. MERIT SCREENING

When a vacancy occurs in the Supreme Court or Court of Appeals, individuals who desire to fill that position submit an application to a merit screening panel ("panel"). A vacancy can occur in four circumstances: 1) a judge leaves office before the term expires (e.g., death, resignation, age); 2) an incumbent does not seek reelection ("open seat"); 3) an incumbent is rejected in a retention election; 4) the General Assembly creates a new judicial position.

#### A. COMPOSITION OF MERIT SCREENING PANEL

The panel consists of twelve lawyers and three non-lawyers. The Senate President Pro Tem, the Senate Minority Leader, the Speaker of the House, the House Minority Leader and the Governor ("appointers") each choose two lawyer members of the panel. Each appointer selects one lawyer from a list of three names submitted by one of five bar organizations (NCBA, NCATL, NCADA, NCAWA, NCABL). The bar organizations rotate from one appointer to another with each successive vacancy on the panel; over the course of five successive appointments, each of the appointers names one lawyer member from each of the five bar groups. If a bar organization does not make a recommendation for an appointment within 30 days of notification of the vacancy, the designated appointer for that bar

organization may, at his or her discretion, select a lawyer to serve in that position on the panel. In addition to appointing a lawyer from the list submitted by the bar organization, each appointer selects a second lawyer member of the panel at his or her discretion. If the appointer fails to make any of his/her appointments within 30 days of receipt of the list of names submitted by the bar organization, the members of the panel shall select a member from that list, and the Lieutenant Governor shall select the second "at large" lawyer member. The ten initial lawyer appointees select two additional lawyer members and three public members, for a total of fifteen members.

The initial members have staggered terms of four and six years. All subsequent terms are four years. **No panel member shall serve more than a partial term of less than four years plus a term of four years.** [Adam and Wade - The bolded sentence is not clear. Until this point, the document does not mention a "partial term" for panel members. I assume we were thinking of someone appointed to finish the term of a member who could not complete her term. How about: "A panel member who has served a full term is not eligible for reappointment." That leaves the process of appointment to fill an unexpired term on the panel for another day.]

After the ten initial appointments are made, the Governor's discretionary appointee shall serve as interim chair of the panel and shall convene the panel to select the two additional lawyer members and three public members. The interim chair shall not have a vote except to break a tie. After the five additional members are selected, the interim chair shall convene the full panel, which will then select a permanent chair.

The merit screening panel should reflect the diversity of the state, including race, gender, ethnicity, political party, and geography. The lawyer members of the panel should reflect the diversity of the profession. The statute should specifically encourage diversity, but not impose numerical requirements for particular categories. The appointers should work in concert so that the group of ten lawyers is diverse and broadly representative. In naming the additional members, the panel should also be directed to foster diversity.

## B. SCREENING PROCESS

Each potential candidate is required to file an application with the panel. After considering the applicants' qualifications, including information from multiple outside sources, the panel nominates two qualified applicants from among those who are qualified. If there are fewer than two qualified applicants, the application process will be reopened. Applicants will be reviewed based upon criteria that will be determined by the panel, although strong consideration should be given to using the American Bar Association's Judicial Selection and Retention Criteria. In selecting among qualified applicants, the panel will seek to foster diversity of race, gender, ethnicity and geography in the judiciary.

A person who has been a member of the panel shall not be eligible to apply for selection as appellate judge within two years after the person's service on the panel.

### III. INITIAL ELECTION

The candidates selected by the panel face each other in a nonpartisan general election. Each candidate has the option of receiving public financing.

### IV. TERM OF OFFICE

As in the current system, the initial term and subsequent terms are for eight years.

### V. INTERIM GUBERNATORIAL APPOINTMENT

When a vacancy occurs before the term expires (e.g., death, resignation, age) or after an incumbent loses a retention election, the panel solicits and considers applications for that seat and submits two qualified nominees to the Governor. The Governor appoints one of those nominees to fill the vacant seat until the next general election. In that election, the nominee not selected by the Governor will face the interim appointee. If the nominee who was not selected by the Governor chooses not to challenge the incumbent then the incumbent will be subject to a retention election.

### VI. RETENTION ELECTION

An elected incumbent who wants another term is subject to a retention election. In a retention election, the incumbent does not face an opposition candidate; instead, the voters are asked whether or not the incumbent should receive another term. Before the retention election, a sub-committee of the merit screening panel ("evaluation subcommittee") issues a public report evaluating the incumbent's performance. The members of the evaluation subcommittee shall not include anyone who was a member of the panel when it initially nominated the incumbent.

### VII. TRANSITION TO NEW SYSTEM

Each current incumbent who has won a contested election will not be subject to screening by the panel. The panel will neither determine whether a current incumbent is qualified to serve another term nor nominate an opponent. A current incumbent (like a future incumbent) who wants another term will face a retention election, and the evaluation subcommittee shall issue its assessment of the incumbent's performance.

### VIII. CONSTITUTIONAL AMENDMENT

Conversion to the proposed system will require a constitutional amendment.