

Court Reorganization and Selection of Judges

GLOSSARY

Circuit court

Has jurisdiction in all civil cases (usually brought by those seeking redress for a perceived wrong), cases involving more than \$25,000, all criminal cases (brought by the state against individuals charged with public offenses) involving felony or serious misdemeanor charges, and cases appealed from lower courts. Michigan is divided into 56 judicial circuits.

District court

Has jurisdiction in all civil cases involving up to \$25,000 and misdemeanors carrying punishment of not more than one year; also handles arraignment, bail hearings, and preliminary examination for accused felons. Michigan is divided into 98 district court jurisdictions.

Family Court Division of circuit court

A new division of the court; began operations on January 1, 1998. Has jurisdiction over most family-related legal issues—i.e., divorce, child custody, paternity, support, visitation, juvenile delinquency, abuse and neglect, and adoption.

Probate court

Oversees probating of wills, administration of estates and trusts, and cases of guardianship and committal of the mentally ill and handicapped.

BACKGROUND

Michigan's trial court system comprises circuit, probate, and district courts and a small number of individual courts of limited jurisdiction.

Court Reorganization

The circuit and probate courts were established by the state constitution, which also mandates that there be at least one judge in every judicial circuit and a probate court in every county (unless voters establish a multicounty probate district). Given Michigan's large size and uneven population distribution, this system has drawn increasing criticism for dispensing an uneven quality of justice, with a huge case backlog in some courts, while others have too few cases to keep the judge busy. Several studies both within and outside the judicial branch had long supported merging some courts so as to permit more efficient use of judges and staff. To this momentum was added growing legislative pressure for courts to be more "user friendly" and, specifically, more family friendly. (Until reorganization, for example, a family involved in a divorce could have had property, custody, and juvenile justice issues pending in different courts.)

In 1995 the supreme court issued a report titled, "Justice in Michigan, A Program for Reforming the Judicial Branch of Government." The report recommends many reforms, among them

- consolidation, through a constitutional amendment, of circuit and probate court;
- appointment of all chief trial judges by the supreme court rather than by local elections among the judges themselves; and
- a revised funding system for the courts.

After the court published the report, in which it had noted its constitutional role as administrator and evaluator of the full court system, the court began to implement the changes within its authority. It initiated at once a system of trial-court chief-judge appointments and launched, in six district courts across the state, two-year pilot projects in which all the trial courts—district, circuit, and probate—were combined into one judicial system permitted to establish its own divisions (e.g., family, criminal, and appellate) to handle specific cases.

In 1996 the legislative branch responded by giving the supreme court both less and more than it had asked for: less in the case of a constitutional amendment, to which the legislature still has not acceded, and more in the form of new performance-review panels, transfer of responsibility for court employees from the local courts to municipal government, and abolition of Detroit Recorder's Court. These changes were enacted by Public Act 374; another statute, P.A. 388, created a new Family Court Division within circuit court.

Two other key provisions of the 1996 court reform statutes created commissions.

- A 23-member Trial Court Assessment Commission, composed of members appointed by the governor from nominees submitted by the chief justice of the supreme court, state court administrator, local government associations, State Bar of Michigan, and legislature. The commission is charged with developing a weighted caseload formula and recommending a funding system based on the formula. In addition, the commission is to propose to the legislature the number of judges needed for the state's trial courts and any changes in the court system necessary to implement such a staffing pattern. The commission has not yet issued its initial report, which was due in December 1997; biennial updates are to follow.
- A Judicial Performance Commission appointed by the supreme court is charged with developing standards for judicial conduct and evaluating judicial performance. While statistics on caseloads previously maintained by the State Court Administrator's office allowed reviewers to draw inference about judicial performance, the data were neither comparable statewide nor accessible to the general public. The performance commission is required to make public the results of judicial evaluations, which are to be based on standards developed by the commission. If the supreme court fails to develop and implement these standards by January 1, 2000, each Michigan judge will be compelled to annually make a public report of his/her performance using standards promulgated by the National Center for Courts.

Selection of Judges

Most state and local judges in the United States are selected by one or a combination of the following four methods:

- Gubernatorial appointment
- Gubernatorial appointment followed by retention election
- Partisan election
- Nonpartisan election

There are a few exceptions: In three states the legislature appoints or elects judges, and in three states mid-term vacancies are filled by supreme court appointment.

In about a third of the states the chief executive appoints judges, with advice and consent of a legislative body. The remainder favor some version of popular election, in some cases after an initial appointment. In Michigan, all judges are elected, including members of the supreme court; vacancies are filled by gubernatorial appointment.

Although in Michigan, gubernatorial appointments to fill vacancies occur at the governor's discretion, all chief executives in recent memory have established a careful screening process to assure that appointees are professionally and personally suitable. In 33 states there is a formal screening process, usually in some form of judicial nominating commission that "vets" judicial appointments: Nominating commissions present a list of candidates from which the appointing executive is required to choose, thereby minimizing the potential for political patronage while guaranteeing that the candidates meet certain qualifications.

DISCUSSION

Court Reorganization

While agreeing on the need for a more efficient and cost-effective court system, the judicial and legislative branches disagreed on how to create it. The Michigan Supreme Court, following recommendations from the 1995 study it had commissioned on court reorganization, urged that probate and circuit

court functions be merged so as to make the courts more responsive to regional needs, and also called for a constitutional amendment to remove the existing mandate that there be at least one circuit and probate judge in every county. The report also argued against abolishing Detroit Recorder's Court. But the legislature did not dispose quite as the judiciary proposed. Instead, it reorganized in ways both sweeping and detailed, encroaching—in the view of many—on the court's traditional, if not constitutional, responsibility for its own housekeeping.

Observers sympathetic to the historical separation of power among the branches of government were hard-pressed not to view as intrusive the legislative incursions into judicial caseload assessment and performance review. And while the judicial branch had requested a funding review, the legislature responded not by making across-the-board appropriations increases but by abolishing recorder's court and also reassigning, for budget and supervisory purposes, trial-court personnel from the courts to the counties. This latter action addressed a bone of contention between local trial courts—who had set the schedules and hours of court employees (for example, using overtime on Friday to avoid having to continue a trial on Monday)—and county governments, the budgets of which funded these employees' salaries. During debate on P.A. 374, local-government associations successfully lobbied the legislature for budgetary control of the court employees whose salaries they pay.

No legislative consensus emerged on language for the requested constitutional amendment to merge probate court and circuit court and thus eliminate the need for a full-time probate judge in rural areas. Instead, P.A. 388 created the new Family Court Division within circuit court and assigned it many of probate court's functions. The areas of responsibility left for probate court pertain to questions of guardianship, conservatorship, committal, and estates, which many observers argue also are family matters.

If the legislative intervention most deeply felt within the judicial branch was the transfer of court-employee supervision to local government, the initiative most

apparent to the public was the dissolution of Detroit Recorders Court and its absorption into Wayne County Circuit Court.

Recorders court traced its history back 173 years and had authority over all crimes committed in the city, from which its judges and juries also were drawn. Supporters of retaining the court argued in vain that the court reflected a historic recognition of the uniqueness of urban crime and criminal-justice problems while also providing the means by which many African-American lawyers became judges. Rancorous debate and several lawsuits held that the push to eliminate recorders court seemed to be more about race than about efficiency. Proponents of dissolution argued that Detroit was the only major Michigan city with its own criminal court and thereby received what they contended was a hugely disproportionate share of appropriated funds.

All this legislative initiative created political furor—with some citizen groups trying unsuccessfully to block the dissolution of recorders's court—and left many judges deeply disturbed over what they saw as interference by the legislative branch in internal management of the courts. Some judges privately urged the supreme court to declare the legislature's actions unconstitutional. The high court took a high road, however, and in 1997 administratively created a 17-member statewide Intergovernmental Advisory Council to help resolve disputes over local court administration. The council's appointment closely followed another court order directing state judges to work cooperatively with local funding units in managing trial court personnel and budgeting. Notwithstanding the constitutional mandate for the supreme court to administer the state's trial-court operations, the legislative branch has given the judicial branch detailed and pointed instruction about how to conduct its operations and manage its personnel. To date, the judicial branch has strained to find ways to live within these new confines. Supporters of this considerable legislative intervention into court affairs contend that longstanding judiciary inefficiencies and imperviousness to public scrutiny inevitably made

the court system a candidate for reorganization from without.

Selection of Judges

As mentioned, Michigan has an elected judiciary, although almost half the sitting judges in the state reached the bench initially by gubernatorial appointment to a mid-term vacancy. Michigan's judiciary ostensibly is nonpartisan, but supreme court justices, although they run on a nonpartisan ticket, must be nominated by a political party. This hybrid method of selection and retention has been in place since 1850. Critics of the system point out that voters make their decisions with little information about candidates. Thus, judicial selection is based on name recognition, which has little bearing on judicial qualification. In the absence of a well-recognized name, candidates must mount campaigns with concomitant fund-raising efforts, and many who would be well-suited for judicial office are unwilling to do this.

Moreover, because matters before a judge may be reassigned when the demands of campaigning make her/him unavailable, many observers believe that Michigan's method of judicial selection results in disruption that is unfair to people with cases pending. Others believe that the more important issue is that it leads in some instances to less than well-qualified people being elected. An issue that arises every ten years is whether members of the supreme court—who, to be nominated and renominated, must have and retain ties to a political party—can set aside their partisan roots and vote, if necessary, objectively on legislative reapportionment.

Over the years a number of proposals have been made, unsuccessfully, to change the electoral aspect of the judicial system, including a 1980 proposal to substantially shorten the length of Michigan's ballot—the nation's longest—by eliminating judicial candidates (along with those for state-wide elected education boards) and making them all

gubernatorial appointees. As too few signatures were gathered, the petition drive for a shorter ballot failed.

FOR ADDITIONAL INFORMATION

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