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INTERMEDIATE COURTS OF APPEAL IN THE SEVERAL STATES

INTRODUCTION

Twenty-four states now have appellate level courts; that is, an appeals court between the inferior state trial courts of general or limited jurisdiction and the state court of last resort. Although Wisconsin law provides for some appeals to the circuit court from administrative decisions and for certain county court decisions, the structure of the Wisconsin court system does not contain a general intermediate appellate level. Most appeals from county court, and all appeals from circuit court, are directly to the Supreme Court. A complete description of Wisconsin's Judicial Branch can be found in the WISCONSIN BLUE BOOK.

Creation of an intermediate appellate level court in Wisconsin would require a constitutional amendment. Such a change was recommended by the Citizens Study Committee on Judicial Reorganization, a Governor's task force which issued its final report in January 1973; the Advisory Committee on Judicial Reorganization of the Legislative Council's Judiciary Committee, which developed 1973 AJR 5; and the Chief Justice of the Wisconsin Supreme Court. Three joint resolutions proposing to amend the constitution for the purpose of reorganizing the state court system, all of which provide for an appellate court, failed first consideration adoption in the 1973 Wisconsin Legislature (1973 SJR 114 and 1973 AJR 5 and 9).

Because it is frequently advocated that Wisconsin create an appellate level court, selected data from the states that have appeals courts is compiled in this brief. Primary sources for this data include individual state constitutions and statutes, plus a recent Council of State Governments publication: STATE COURT SYSTEMS -- A STATISTICAL SUMMARY PREPARED FOR THE CONFERENCE OF CHIEF JUSTICES (revised 1974), April 1974.

HIGHLIGHTS

Number of intermediate appeals court states -- Twenty-four of the fifty states now have intermediate appellate level courts. Several states have created separate appeals courts for civil and criminal cases. In Kentucky, Maryland and New York, the court of last resort is named the Court of Appeals, which can lead to some confusion, but the latter two states also have an intermediate court.

Number of judges -- The number of appellate court judges per state ranges from a high of 48 (California) to a low of 5 (New Mexico), with an average of 17.6.

Terms -- The terms of state appellate court judges range from a high of 15 years (Maryland) to a low of 5 years (New York), with an average of about 8 years. In Massachusetts, Appeals Court judges serve following appointment until age 70.

Compensation -- The basic annual compensation of state appellate court judges ranges from a high $48,000 (Pennsylvania) to a low of $22,360 (Oklahoma), with an average of $34,000 to $35,000. Some states provide additional compensation in the form of expense allowances. Presiding judges commonly receive additional pay.

Selection of judges -- Fifteen of the 24 states that have intermediate appeals courts initially elect appellate court judges. Judges in the remaining states are appointed, but in most cases the judges initially selected by appointment must later be elected for retention in office, based on their performance (the so-called "Missouri plan" approach).

Article VII, Section 9, of the Wisconsin Constitution requires that judges be elected on a nonpartisan ballot at an election separate from any general election for state or county officers. Section 8.05(4)(f) of the Wisconsin Statutes provides that judicial elections be at the spring election. Statute Section 5.02(3) sets the spring election as the first Tuesday in April. Regular terms of elected judges and justices commence the first Monday in January, 10 months after the election.

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Since judges in Wisconsin are elected, rather than appointed, additional emphasis has been given below to the 15 states that initially elect their appellate court judges.

The state constitutions of 13 of the 15 states require an intermediate appellate level court. In Alabama and Oregon the constitutions authorize the legislature to create an appeals court, but do not require it.

Qualifications -- Where stated, qualifications for appellate court judges commonly include that a judge must: (1) be a citizen and a qualified elector, (2) have resided in the state or district for a minimum period (ranging from one month to 5 years), (3) have attained a minimum age (ranging from 21 to 35 years), (4) be "learned in the law", (5) have a minimum number of years of legal experience (a 3 to 10-year range), and (6) be a member of, or admitted to, the state bar.

Time of election -- Of the states that initially elect appellate judges, the election in all 15 states is held in conjunction with the fall general election. The time of election is fixed by state constitution in all but two states (Arizona and Washington). In 13 of the 15 states, the term of office commences the following January. Exceptions are terms beginning the following December (Illinois) and the following February (Ohio).

Some appellate court judges are elected at large, while in other states, they are elected from specific districts established by law.

Number of judges per capita -- Based on the 1970 census of population, in the 15 states that initially elect appellate court judges, the average number of persons per judge is a bit over 400,000. The ratio ranges from a high of approximately 948,000 in Massachusetts to a low of 140,000 in Louisiana. It is of interest to note that if the average ratio of population to judges is applied to Wisconsin, the state would require around eleven appellate court judges.

Table I

SELECTED DATA ON STATE INTERMEDIATE APPELLATE COURTS

State	Name of Court	No. of Judges	Terms (yrs.)	Compensation (annual)	Initial Selection[1] Appointed	Initial Selection[1] Elected
Alabama	Court of Criminal Appeals Court of Civil Appeals	5}=8 3}	6	$33,000		X(P)
Arizona	Court of Appeals	12	6	30,000		X(NP)[2]
California	Courts of Appeal	48	12	45,139[3]	X	
Colorado	Court of Appeals	6	8	32,000	X	
Florida	District Courts of Appeal	20	6	34,000		X(NP)
Georgia	Court of Appeals	9	6	32,500		X(P)
Illinois	Appellate Court	34	10	40,000		X(P)
Indiana	Court of Appeals	9	10	29,000[4]	X	
Louisiana	Courts of Appeals	26	12	35,000		X(P)
Maryland	Court of Special Appeals	10	15	37,500[5]	X	
Massachusetts	Appeals Court	6	(To age 70)	35,566[5]	X	
Michigan	Court of Appeals	12	6	41,961		X(NP)
Missouri	Courts of Appeals	18	12	30,000	X	
New Jersey	Appellate Division of Superior Court	18	7[6]	42,000	X	
New Mexico	Court of Appeals	5	8	28,000		X(P)
New York	Appellate Divisions of Supreme Court	31	5[7]	40,182 — 46,682[4,5]	X[8]	
North Carolina	Court of Appeals	9	8	30,500[5]		X(P)
Ohio	Courts of Appeals	38	6	37,000		X(NP)
Oklahoma	Court of Criminal Appeals Court of Appeals	3}=9 6}	6	22,360	X[9]	X(NP)[9]
Oregon	Court of Appeals	6	6	31,000		X(NP)
Pennsylvania	Superior Court Commonwealth Court	7}=14 7}	10	48,000[5]		X(P)
Tennessee	Court of Criminal Appeals Court of Appeals	7}=16 9}	8	27,500[3,5]	X	
Texas	Court of Criminal Appeals Court of Civil Appeals	5}=47 42}	6	35,000		X(P)
Washington	Court of Appeals	12	6	35,000		X(NP)

[1]Most initially appointed judges must later be elected for retention, based on their record in office. Symbols: NP — nonpartisan election ballot; P — partisan ballot.

[2]Arizona — Primary election ballot partisan.

[3]Annual cost of living increase is provided in California and Tennessee.

[4]Additional annual expense allowance is provided: Indiana — $3,000; New York — $8,000 ($9,000 for presiding justice).

[5]Presiding judge receives additional compensation: Md. $1,000; Mass. — $1,364; N.Y. — $1,592; N.C. — $1,000; Penn. — $1,500; Tenn. — $1,000; Tex. — $500.

[6]New Jersey — Reappointed for life after initial 7-year term.

[7]New York — Designated Appellate Division justices serve 5 years or unexpired portion of 14-year Supreme Court term, whichever is less (except presiding justice serves entire term).

[8]New York — Justices of Appellate Division are designated by governor from Supreme Court, which is elected at the fall general election on a partisan ballot for a term commencing the following January 1.

[9]Oklahoma — Court of Criminal Appeals is appointed; Court of Appeals is elected.

Table II

THE RELATION OF ELECTION DATES TO TERM COMMENCEMENT OF INTERMEDIATE APPELLATE JUDGES

State[1]	Time of Election: Fall General Election	Time of Election: Other	Authority: Constitution	Authority: Statute	Term Commences (following election)
Alabama	X			X	January – 1st Monday after 2nd Tuesday
Arizona	X			X	January – 1st Monday
Florida	X		X		January – 1st Tuesday after 1st Monday
Georgia	X		X		January – 1st day of month
Illinois	X			X	December – 1st Monday
Louisiana	X		X		January – 1st of month
Michigan	X		X		January – 1st of month
New Mexico	X		X		January – 1st of month
North Carolina	X		X		January – 1st of month
Ohio	X		X		February – 9th day of month
Oklahoma	X		X		January – 2nd Monday
Oregon	X		X		January – 1st Monday
Pennsylvania	X		X		January – 1st Monday
Texas	X		X		January – 1st of month
Washington	X			X	January – 2nd Monday

[1]Data presented only on those states that initially select appellate court judges by election.