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Judiciary

M-5 Judicial Selection

Current Method for Filling Vacancies

Article 3, Section 5 of the *Kansas Constitution* governs selection of Kansas Supreme Court justices. Since its amendment in 1958, Section 5 has specified any vacancy on the Court shall be filled through the Governor's appointment of one of three candidates nominated by the Supreme Court Nominating Commission (the Commission). The nonpartisan Commission has nine members: a chairman who is an attorney chosen by the members of the Kansas bar; one attorney member from each congressional district chosen by members of the Kansas bar that reside in such district; and one non-attorney member from each congressional district appointed by the Governor.

The process for filling vacancies on the Kansas Court of Appeals is governed by statute and was amended by passage of 2013 HB 2019 to allow the Governor, with the consent of the Senate, to appoint a qualified person to fill a vacancy. Under this new procedure, the Governor must make an appointment within 60 days of receiving notice of the vacancy from the Clerk of the Supreme Court. Otherwise, the Chief Justice of the Supreme Court, with the consent of the Senate, will appoint a qualified person for the position. The Senate is required to vote to consent to the appointment within 60 days of being received or, if the Senate is not in session and will not be in session within the 60-day time limit, within 20 days of the next session. If the Senate fails to vote within the time limit, its consent will be deemed given. If the appointee does not receive a majority vote in the Senate, the Governor will appoint another qualified person within 60 days, and the same consent procedure will be followed.

Once appointed, Supreme Court justices and Court of Appeals judges are subject to retention elections following their first full year in office and at the end of each term. Supreme Court justices serve six-year terms, and Court of Appeals judges serve four-year terms.

Recent Legislative Efforts

As the Kansas Court of Appeals is governed by statute, amending the method for filling vacancies on that court requires only a statutory amendment. The method for filling vacancies on the Kansas Supreme Court is governed by the *Kansas Constitution*, however, requiring a constitutional amendment to modify that process. Article 14, Section

1 of the *Kansas Constitution* allows amendments to be made through approval by popular vote of a legislative proposal. Specifically, it provides that a concurrent resolution originating in either house of the Legislature that is approved by two-thirds of all members will be considered by Kansas voters at the next election. If a majority of those voting on any such amendment approve the amendment, it becomes a part of the *Kansas Constitution*.

During the 2013 Legislative Session, the Kansas Legislature considered numerous bills and concurrent resolutions related to judicial selection. One of these concurrent resolutions, HCR 5002, which was approved by the House Judiciary Committee, would have submitted a constitutional amendment to the qualified electors of the State to modify the method of selection for justices of the Kansas Supreme Court and add the law governing the Court of Appeals to the *Kansas Constitution*. Specifically, the amendment would have eliminated the Supreme Court Nominating Commission and allowed the Governor to appoint qualified persons to the Supreme Court and Court of Appeals using

the procedure adopted for the Court of Appeals in 2013 HB 2019. While the method of appointment would have been modified, both Supreme Court justices and Court of Appeals judges would have continued to be subject to retention elections.

Appointment and Confirmation Subsequent to Passage of 2013 HB 2019

In addition to modifying the method for filling vacancies on the Kansas Court of Appeals, 2013 HB 2019 also removed a provision making the 14th Court of Appeals position subject to appropriations. This created a vacancy on the court, allowing Governor Sam Brownback to appoint Caleb Stegall on August 20, 2013. During the 2013 Special Session, which was called to amend the state's Hard 50 sentence in response to a U.S. Supreme Court decision, *Alleyne v. U.S.*, 133 S.Ct. 2151 (June 17, 2013), the Senate confirmed Mr. Stegall in a unanimous vote.

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