

**STUDY COMMISSION
ON
THE MISSISSIPPI JUDICIAL SYSTEM**

Report to the Mississippi Legislature

December 2001

Carroll H. Ingram, Chairman

Study Commission on the Mississippi Judicial System

Chairman

Carroll H. Ingram
Ingram and Associates, PLLC
Hattiesburg, Mississippi

Vice-Chairman

Leslie D. King,
Presiding Judge,
Mississippi Court of Appeals
Jackson, Mississippi

Members

Edward Blackmon
Mississippi House of Representatives
Canton, Mississippi

Roger H. McMillin, Jr., Chief Judge
Mississippi Court of Appeals
Jackson, Mississippi

Neely C. Carlton
Mississippi State Senate
Greenville, Mississippi

Robin Alfred Midcalf
County Court Judge
Gulfport, Mississippi

Robert P. Chamberlin
Mississippi State Senate
Hernando, Mississippi

Edward E. Patten, Jr.
Chancery Court Judge
Hazlehurst, Mississippi

Kay B. Cobb, Justice
Mississippi Supreme Court
Jackson, Mississippi

Edwin Lloyd Pittman, Chief Justice
Mississippi Supreme Court
Jackson, Mississippi

Danny E. Cupit
Law Offices of Danny E. Cupit
Jackson, Mississippi

Lenore L. Prather,
Former Chief Justice
Mississippi Supreme Court
Columbus, Mississippi

Donald C. Dornan, Jr., President-Elect
Mississippi State Bar
Biloxi, Mississippi

Thomas Upton Reynolds
Mississippi House of Representatives
Charleston, Mississippi

James O. Dukes, *in memoriam*
Bryant, Clark, Dukes, Blakeslee,
Ramsay & Hammond
Gulfport, Mississippi

Keith Starrett
Circuit Court Judge
McComb, Mississippi

Bruce Strong
Justice Court Judge
Biloxi, Mississippi

Carlton W. Reeves
Piggott, Reeves, Johnson & Minor
Jackson, Mississippi

James E. Thomas, Judge
Mississippi Court of Appeals
Jackson, Mississippi

Bennie L. Turner
Mississippi State Senate
West Point, Mississippi

Thandi Wade
Tatum and Wade
Jackson, Mississippi

William L. Waller, Jr., Justice
Mississippi Supreme Court
Jackson, Mississippi

Percy W. Watson
Mississippi House of Representatives
Hattiesburg, Mississippi

Amy D. Whitten
The Whitten Group
Oxford, Mississippi

Senior Consultants

Eric Clark
Mississippi Secretary of State
Jackson, Mississippi

Harold D. Miller
Butler, Snow, O'Mara, Stevens &
Cannada
Jackson, Mississippi

Consultants

Leslie Scott
Mississippi Secretary of State's Office
Jackson, Mississippi

Toni Terry
Mississippi Secretary of State's Office
Jackson, Mississippi

David A. Roberts
Mississippi Secretary of State's Office
Jackson, Mississippi

Staff

Jack E. Pool
Mississippi Supreme Court
Jackson, Mississippi

Glenn S. Swartzfager
Mississippi Supreme Court
Jackson, Mississippi

Johanna M. McMullan
Mississippi Court of Appeals
Jackson, Mississippi

Frank L. Hadden, III
Mississippi Supreme Court
Jackson, Mississippi

TABLE OF CONTENTS

EXECUTIVE SUMMARY	vi
I. INTRODUCTION	1
A. History of Judicial Selection in Mississippi	1
B. Present System of Judicial Selection in Mississippi	2
C. Systems of Judicial Selection in Other States	3
II. METHODS OF JUDICIAL SELECTION	
A. Commission Conclusions	
1. The Commission concludes that the cost of judicial campaigns is escalating.	6
2. The Commission concludes there is a pervasive perception by the public that the Mississippi Judiciary is no longer independent, but rather is subject to the influence of special interest groups or individuals who donate money to their election campaigns.	7
3. The Commission concludes that outstanding judicial candidates may be discouraged from seeking judicial office because of the large amount of money they are required to raise in order to effectively compete for a judicial office.	7
4. The Commission concludes that outstanding judicial candidates may be discouraged from accepting judicial appointments because of the present special election law.	8
5. The Commission concludes that outstanding judicial candidates may be discouraged from seeking or remaining in judicial office because their terms are relatively short.	9
6. The Commission concludes that the influence of campaign contributions and unregulated "soft money" on	

judicial campaigns has created the majority of the current problems.10

B. Commission Recommendations

1. The Commission recommends amending the special election laws.13

2. The Commission recommends longer terms for trial court judges. 14

3. The Commission recommends amending the campaign disclosure and reporting laws. 15

4. The Commission recommends amending the statute which imposes judicial contribution limits. 17

III. JUDICIAL SALARIES

A. Commission Conclusions

1. The Mississippi public expects learned, honorable men and women of the utmost integrity to serve as members of the judiciary. 18

2. The private sector actively seeks experienced judges who bring valuable insight from the bench to private practice. . . . 19

3. Mississippi trial judges are paid substantially less than the southeastern average. 21

4. Mississippi is losing competent and highly qualified prosecutors to the private sector as a result of insufficient compensation. 22

B. Commission Recommendations

1. The Commission recommends a \$10,000 salary increase for district attorneys, chancery and circuit court judges and

Supreme Court Justices and a \$14,000 salary increase for Court of Appeals Judges.	23
--	----

IV. TERMS AND CASE MANAGEMENT

A. Commission Conclusions

1. The Commission concludes that there is a public perception that there is a delay in the administration of justice in the Mississippi Court system.	25
2. The Commission concludes that there is no uniform tracking system among the circuit and chancery clerks in order to ascertain the number of cases currently pending before each judge.	25
3. The Commission concludes that special attention must be given to the Hinds County courts because of its unique posture as the seat of state government and statutory role in cases involving the state and its agencies.	26
4. The Commission concludes that as a result of ever-increasing caseloads, trial court judges need the flexibility to hire at least one full-time law clerk	26
5. The Commission concludes that special attention must be paid to the criminal justice system and its supporting agencies	27
6. The Commission concludes that the State must fund an adequate indigent defense system.	27

B. Commission Recommendations

1. The Commission recommends that the Administrative Office of Courts implement a uniform tracking system among circuit and chancery court clerks in order to properly ascertain the number of cases pending before each judge.	28
---	----

2. The Commission recommends that before any statewide changes to the tracking system are made, that the Administrative Office of Courts should establish pilot programs in geographically diverse areas to insure a properly functioning system.	29
3. The Commission recommends that trial judges be given the funding to hire at least one full-time law clerk for each judge.	29
4. The Commission recommends that increased funding be given to the supporting agencies of the criminal justice system.	30
5. The Commission recommends that the State fund and staff an adequate indigent defense system at levels equivalent to district attorneys offices.	31

V. JUSTICE COURTS

A. Commission Conclusions

1. The Commission concludes that there is a public perception that justice court judges lack the level of training necessary to properly deal with legal issues.	32
2. The Commission concludes that justice court judges elections should be held in the same manner as elections for the rest of the Mississippi judiciary.	32
3. The Commission concludes that the terms of justice court judges are relatively short.	33

B. Commission Recommendations

1. The Commission recommends raising the educational requirements of justice court judges and salary levels commensurate with educational requirements.	33
--	----

2. The Commission recommends the election of justice court judges in nonpartisan elections to be held at the same time as elections for the Mississippi judiciary.	34
3. The Commission recommends extending the terms of the justice court judges to six years.	35

VI. STATUTES

A. Commission Conclusions

1. No statutory limitations regarding the timing of receipt of financial contributions by judicial candidates exist and the only available regulation of such activity is found in the Code of Judicial Conduct in Canon 7.B.(2).	36
2. The Mississippi Supreme Court currently has under consideration a proposed revision to the Code of Judicial Conduct which is now in the public comment phase which would amend Canon 7.B.(2) to provide that a judicial candidate’s committees shall not solicit or accept contributions earlier than sixty days before the qualifying deadline or later than 120 days after the candidate's last election.	37

B. Commission Recommendations

1. Because the Supreme Court is in the process of addressing the problem and because of the uncertainty that might arise were there to be a statutory enactment that conflicted with the Judicial Canons, the Commission makes no recommendations in this area at this time.	37
---	-----------

VII. CONCLUSION 38

EXECUTIVE SUMMARY

The Study Commission on the Mississippi Judicial System was created by the Mississippi Legislature during the 2000 regular session. House Concurrent Resolution 96 charged the Commission to examine and determine whether the present method of judicial selection should be changed. The Resolution also directed the Commission to study the current laws governing judicial campaign advertising and contributions to judicial campaigns, as well as any other matters relating to the judicial system, and to make recommendations to promote the administration of justice in the State of Mississippi.

The Commission established several internal committees. The Methods and Selection Committee studied documents related to judicial reform, and solicited comments and suggestions from judicial candidates and interested organizations in an open work session. The Terms and Case Management Committee studied court terms and management of the court system in general in Mississippi, while the Salaries and Compensation Committee conducted a detailed study of the appropriate compensation and support for the judiciary in Mississippi and concluded that Mississippi is in serious need of a more fully compensated judiciary in order to promote justice for the benefit of the people of Mississippi. The Justice Courts Committee conducted a comprehensive study of the Mississippi Justice Courts, and the Statutes Committee analyzed the reporting deadlines and requirements for Mississippi judicial candidates.

Commission Conclusions and Recommendations Regarding The Mississippi Judicial System

The Commission makes the following conclusions and recommendations:

A. Commission Conclusions Regarding Methods of Judicial Selection

1. The Commission concludes that the cost of judicial campaigns is escalating.
2. The Commission concludes there is a serious risk of a public perception that the Mississippi Judiciary is no longer independent, but rather is subject to the influence of special interest groups or individuals who donate money to their election campaigns.

3. The Commission concludes that outstanding judicial candidates may be discouraged from seeking judicial office because of the large amount of money they are required to raise in order to effectively compete for a judicial office.

4. The Commission concludes that outstanding judicial candidates may be discouraged from accepting judicial appointments because of the present special election law.

5. The Commission concludes that outstanding judicial candidates for circuit court judge, chancery court judge and county court judge may be discouraged from seeking or remaining in judicial office because their terms are relatively short.

6. The Commission concludes that the influence of campaign contributions and unregulated "soft money" on judicial campaigns has created the majority of the current problems.

B. Commission Recommendations Regarding Methods of Judicial Selection

1. The Commission Recommends Amending the Special Election Laws.

2. The Commission Recommends Longer Terms for Trial Court Judges.

3. The Commission Recommends Amending the Campaign Disclosure and Reporting Laws.

4. The Commission Recommends Amending the Statute Which Imposes Judicial Contribution Limits.

C. Commission Conclusions Regarding Judicial Salaries

1. The Mississippi public expects learned, honorable men and women of the utmost integrity to serve as members of the judiciary.

2. The private sector actively seeks experienced judges who bring valuable insight from the bench to private practice.
3. Mississippi trial judges are paid substantially less than the Southeastern average.
4. Mississippi is losing competent and highly qualified prosecutors to the private sector as a result of insufficient compensation.

D. Commission Recommendations Regarding Judicial Salaries

1. The Commission recommends a \$10,000 salary increase for district attorneys, chancery and circuit court judges and Supreme Court Justices and a \$14,000 salary increase for the Court of Appeals Judges.

E. Commission Conclusions Regarding Terms and Case Management

1. The Commission concludes that there is a public perception that there is a delay in the administration of justice in the Mississippi Court system.
2. The Commission concludes that there is no uniform tracking system among the circuit and chancery clerks in order to ascertain the number of cases currently pending before each judge.
3. The Commission concludes that special attention must be given to the Hinds County courts because of their unique posture as the seat of State government and statutory role in cases involving the state and its agencies.
4. The Commission concludes that as a result of ever-increasing caseloads, trial court judges need the flexibility to hire at least one full-time law clerk.
5. The Commission concludes that special attention needs to be paid to the criminal justice system and its supporting agencies.

6. The Commission concludes that the State must fund an adequate indigent defense system.

F. Commission Recommendations Regarding Terms and Case Management

1. The Commission recommends that the Administrative Office of Courts should implement a uniform tracking system among circuit and chancery court clerks in order to properly ascertain the number of cases pending before each judge.

2. The Commission recommends that before any statewide changes to the tracking system are made, that the Administrative Office of Courts should establish pilot programs in geographically diverse areas to insure a properly functioning system.

3. The Commission recommends that trial judges be given the funding to hire at least one full-time law clerk for each judge.

4. The Commission recommends that increased funding be given to the supporting agencies of the criminal justice system such as the Mississippi Crime Lab.

5. The Commission recommends that the State fund and staff an adequate indigent defense system at levels equivalent to district attorneys' offices.

G. Commission Conclusions Regarding Justice Courts

1. The Commission concludes that there is a public perception that Justice Court Judges lack the level of training necessary to properly deal with legal issues.

2. The Commission concludes that Justice Court Judges elections should be held in the same manner as elections for the other members of the Mississippi judiciary.

3. The Commission concludes that the terms of Justice Court Judges are relatively short.

H. Commission Recommendations Regarding Justice Courts

1. The Commission recommends raising the educational requirements of Justice Court Judges.
2. The Commission recommends the election of Justice Court Judges in nonpartisan elections to be held at the same time as elections for the Mississippi judiciary
3. The Commission recommends extending the terms of the Justice Court Judges to six years.

OPENING

The judicial branch is a vital part of our democracy. The manner in which judicial officers are selected influences the quality of the operation of the courts and impacts the level of the public's confidence in our court system.

Historically, there has been considerable debate over the method of selection and the tenure of judges. That question remains a serious issue in the current climate in Mississippi. It appears that the judicial election environment is becoming evermore politicized, and as a result thereof, there is a serious risk that the public's perception of the judiciary in Mississippi will be undermined. A lack of confidence in the manner in which judges are selected, as well as other aspects of the judiciary in Mississippi, results in questions about the efficacy of the entire legal system. Questions about the judiciary's integrity and capability proliferate when the public perceives that a judicial candidate or a judge is beholden to a particular interest.

The amount of money required to conduct a successful judicial campaign has risen steadily. When judicial candidates raise such large sums of money in the course of campaigns, it only serves to erode the public's trust and confidence that the judicial branch can and does perform its duties with independence and impartiality. Overworked judges and crowded dockets also serve to hamper the speedy administration of justice, and thus further erode the public's trust and confidence in the judiciary.

In response to the public's concerns that campaign contributions and advertisements may be undermining judicial integrity and independence, the Mississippi Legislature established the Study Commission on the Mississippi Judicial System in order to study, maintain and strengthen confidence in the judicial system and the means by which judges are selected.

House Concurrent Resolution 96 charged the Commission with examining the method of selection of the judiciary in Mississippi, and whether changes to the current system of judicial selection should be implemented. The Resolution also directed that the Commission examine the current laws governing judicial campaign advertising and contributions to judicial campaigns and to make specific recommendations for improvements to promote integrity and confidence in the judicial system. The Resolution also authorized the Commission to consider any other matters relating to the judicial system and make recommendations to promote the administration of justice in the State of Mississippi.

With this mandate, the Study Commission on the Mississippi Judicial System formed several internal committees including the Methods and Selection Committee, the Terms and Case Management Committee, the Justice Courts Committee, the Salaries Committee, and the Statutes Committee. Each of the committees met several times. The Terms and Case Management Committee sent out letters requesting input to various trial judges throughout the state, while the Justice Courts Committee sent out questionnaires to the justice court judges, and also attended the seminar for justice court judges sponsored by the Mississippi Judicial College. The Methods and Selection Committee held a public work session in which several entities, including political action committees, and former judicial candidates participated. Those participants included:

Honorable James W. Smith, Jr., Supreme Court Justice
Honorable Frank G. Vollor, Circuit Court Judge
Honorable Keith Starrett, Circuit Court Judge
Richard D. Wilcox, President, Business & Industry Political Education
Committee
Reuben Anderson, former Justice, Mississippi Supreme Court,
Mississippi Economic Council
Crystal Wise Martin, Magnolia Bar Association
Shane F. Langston, Mississippi Trial Lawyers Association
Ronald H. Aldridge, National Federation of Businesses

The full Commission met on July 19, 2001, August 10, 2001, September 14, 2001, October 12, 2001, November 9, 2001, November 30, 2001, and December 14, 2001 for a total of seven times. The Commission filed an interim report with Speaker of the House Timothy R. Ford, Lieutenant Governor Amy Tuck, and Chief Justice Edwin Lloyd Pittman on November 30, 2001.

I. INTRODUCTION

Because House Concurrent Resolution 96 charged the Commission with examining the method of selection of the judiciary in Mississippi, and whether changes to the current system of judicial selection should be implemented, a short discussion of judicial selection in Mississippi is appropriate.

A. History of Judicial Selection in Mississippi

From its admission to the Union in 1817 until 1832, Mississippi's Supreme Court Judges were appointed by the State legislature. Miss. Const. art. IV, § 9 (1817). Mississippi ratified a new constitution in 1832 and became the first state to select its trial and appellate judges by popular election. Miss. Const. art. IV, §§ 2 and 3 (1832). In 1868, Mississippi's "Reconstruction" constitution was ratified. It provided that Mississippi judges would be appointed by the governor with the advice and consent of the Mississippi State Senate. Miss. Const. art. 6, § 2 (1868). In 1890, Mississippi approved a new state constitution, but maintained the appointment procedure. Miss. Const, art. 6, § 145 (1890). However, that constitutional provision was amended in 1912 to allow the election of circuit and chancery judges. In 1914, another constitutional amendment was ratified. That amendment, which became effective in 1916, made the Supreme Court an elective office. Mississippi's judges have been elected since that time.

B. Present System of Judicial Selection in Mississippi

Under the existing constitutional framework, all Mississippi judges are elected by the people. The Justices of the Mississippi Supreme Court are elected to eight year terms pursuant to Article 6, Section 149 of the Mississippi Constitution of 1890 and Mississippi Code Annotated Section 23-15-991 (Rev. 2001), while Judges of the Mississippi Court of Appeals are elected to eight-year terms pursuant to Section 9-4-5 of the Mississippi Code Annotated (Supp. 2001). The judges of circuit and chancery courts presently serve terms of four years pursuant to Article 6, Section 153 of the Mississippi Constitution of 1890, and Sections 9-5-1 and 9-7-1 of the Mississippi Code Annotated (Supp. 2001). County court judges serve the same term as circuit and chancery court judges pursuant to Mississippi Code Annotated Section 9-9-5 (Rev. 1991).

An important change in Mississippi's judicial election process occurred in 1994. Several statutes were adopted which proscribed political party affiliations for judicial candidates and eliminated party primaries for almost all judicial elections. With the exception of races for justice court judge,¹ judicial elections became "nonpartisan." Miss. Code Ann. § 23-15-976 (Rev. 2001). Since 1994, all judicial candidates have offered for election in the general election in November. When

¹Presently, the office of Justice Court Judge is included in the definition of a judicial office pursuant to Miss. Code Ann. § 23-15-975 (Rev. 2001).

necessary, a runoff is held two weeks later. Miss. Code Ann. § 23-15-981 (Rev. 2001).

Pursuant to Article 6, Section 177 of the Mississippi Constitution of 1890, and section 9-1-103 of the Mississippi Code Annotated, when there is a vacancy created in a judicial office by death, removal, resignation, retirement, or the creation of a new office for which there is no incumbent, the vacancy is filled by the governor. However, the vacancy "shall be filled for the unexpired term by the qualified electors at the next regular election for state officers or for representatives in Congress occurring more than nine (9) months after the existence of the vacancy to be filled . . ." Miss. Code Ann. § 23-15-849 (Rev. 2001). Thus, if more than nine months remain between the appointment and the next regular election, there will be a special election for the judicial office at the next regular election.

C. Systems of Judicial Selection in Other States

Presently, there are several systems of judicial selection throughout the United States. The first system is the election system. Eight states select their judges in partisan elections: Alabama, Arkansas, Illinois, Louisiana, North Carolina, Pennsylvania, Texas and West Virginia. An additional thirteen states hold nonpartisan elections for their judicial offices: Georgia, Idaho, Kentucky, Michigan, Minnesota, Mississippi, Montana, Nevada, North Dakota, Ohio, Oregon, Washington and Wisconsin. *Judicial Selection in the United States: A Compendium of Provisions,*

3rd Edition, Chicago: American Judicature Society, 2000.

Judges' terms in the different elected judge states vary widely. The terms for appellate and trial court judges also vary. The terms for appellate judges in most jurisdictions are six years. Some are longer. For example, West Virginia's supreme court judges serve twelve-year terms. Trial court terms in judicial election states are generally shorter.

The second form of judicial selection in the United States is the appointment system. In California,² Maine and New Jersey, judges are appointed by the governor. In Virginia, the state legislature appoints judges by a majority vote. *Judicial Selection in the United States: A Compendium of Provisions*, 3rd Edition, Chicago: American Judicature Society, 2000. Federal judges are, of course, appointed to life terms. Appointed judges serve a twelve-year term in California and Virginia and seven years in New Jersey and Maine. At the end of the term, the governor may reappoint the judge or may appoint a new person in Maine, Virginia and New Jersey. In California, the judge is subject to a retention election at the end of the term. The retention election is simply a yes or no vote on the judge's prior performance. There is no known opponent at the retention election stage.

Dissatisfaction with existing methods of judicial selection led to the

²In California, the governor's appointment is subject to confirmation by a commission composed of the Attorney General of California, the Chief Justice of the California Supreme Court, and a presiding justice of the Courts of Appeal.

formulation of the third system of judicial selection known as the merit system, which is also sometimes called the "Missouri Plan." Merit selection and retention is generally defined to include: an initial screening of applicants for judicial vacancies on the basis of merit by a nonpartisan nominating commission; an appointment by the governor of one individual from a list of nominees provided by the commission; and an uncontested, nonpartisan retention election held after the completion of the appointee's initial term in office.

In 1940, Missouri adopted the first merit plan for judicial selection and retention.³ The "Missouri Plan" has become the model for sixteen states and the District of Columbia. Jurisdictions which currently utilize a merit plan with retention elections include: Alaska, Colorado, Connecticut, Delaware, Hawaii, Iowa, Maryland, Massachusetts, Nebraska, New Hampshire, New Mexico, Rhode Island, South Carolina, Utah, Vermont, and Wyoming.

A number of states have a merit selection system for a portion of its judges (generally, appellate judges) while maintaining elections for others. These nine states include Arizona, Florida, Indiana, Kansas, Missouri, New York, Oklahoma, South Dakota and Tennessee.

Additionally, ten states which hold elections for judicial office also utilize a

³It should be noted that not all of Missouri follows its own selection plan. Only four of the larger metropolitan counties presently have a merit selection system for circuit court judges.

merit plan to fill midterm vacancies on some or all court levels. These states with a partial merit plan in place include: Alabama, Georgia, Idaho, Kentucky, Minnesota, Montana, Nevada, North Dakota, West Virginia and Wisconsin.

II. METHODS OF JUDICIAL SELECTION

A. Commission Conclusions

1. The Commission concludes that the cost of judicial campaigns is escalating.

It has become apparent that the costs of conducting judicial campaigns in Mississippi, and nationwide for that matter, have dramatically increased in recent times. A race for the Mississippi Supreme Court or the Mississippi Court of Appeals can require a candidate to raise and spend several hundred thousand dollars. One individual who addressed the committee during the public work session stated that in his second bid for the bench, he raised more than twice the amount of money raised in his initial bid for the bench.⁴ In some states, such as Alabama, recent campaigns for appellate court positions have cost more than one million dollars.⁵

⁴Methods and Selection Committee Public Work Session, October 24, 2001.

⁵*Commission of Public Financing of Judicial Campaigns: American Bar Association Standing Committee on Judicial Independence*, July 2001, at 9 - 11.

2. The Commission concludes there is a pervasive perception by the public that the Mississippi judiciary is no longer independent, but rather is subject to the influence of special interest groups or individuals who donate money to their election campaigns.

The prevailing theme throughout the Methods and Selection Committee's public work session was that there may be a perception by the public that the judiciary in Mississippi is subject to the influence of individuals or special interest groups who donate money to their campaigns.⁶ When the donations are made to judicial campaigns by political action committees, attorneys, or parties who are routinely involved in litigation, the situation is exacerbated. Whether or not it is true, such donations, especially in large amounts, create a perception among the public that justice is for sale. Anytime a judge rules in favor of a lawyer, litigant or a special interest group who has made a contribution to his or her campaign, there is a risk that the judge's actions will be placed under suspicion.

3. The Commission concludes that outstanding judicial candidates may be discouraged from seeking judicial office because of the large amount of money they are required to raise in order to effectively compete for a judicial office.

It is safe to say that the majority of judicial candidates hate to raise money, and would rather focus on the tasks at hand--communicating their qualifications out to the public and discussing the issues. However, in this day and time, it is difficult, if not impossible, to operate a competitive judicial campaign without raising large sums

⁶Methods and Selection Committee Public Work Session, October 24, 2001.

of money.⁷ Rather than be faced with the task of raising large sums of money, some studies have found that many outstanding judicial candidates simply forego the opportunity to seek a judicial office.⁸

4. The Commission concludes that outstanding judicial candidates may be discouraged from accepting judicial appointments because of the present special election law.

Under the present system, judicial vacancies are filled by the Governor.⁹ However, if more than nine months remain between the appointment and the next regular judicial election, the appointee is required to participate in a special election to fill the unexpired term of the office.¹⁰ This can result in a situation in which the appointee will assume the judicial office and then be required to immediately begin the task of campaigning for an election a year away. Furthermore, in some situations, after that special election is held, the winner of the special election will be required to seek office again, a mere two years later. Thus, the judge will be required to spend an inordinate amount of time campaigning and fund-raising instead of devoting full attention to his or her judicial duties.

⁷See Commission Conclusion A, *supra*.

⁸*Commission of Public Financing of Judicial Campaigns: American Bar Association Standing Committee on Judicial Independence*, July 2001, at 24 - 26.

⁹Miss. Const. art. 6, § 177, and Miss. Code Ann. § 9-1-103 (Rev. 1991).

¹⁰*Id.*

5. The Commission concludes that outstanding judicial candidates for circuit court judge, chancery court judge and county court judge may be discouraged from seeking or remaining in judicial office because their terms are relatively short.

Presently, judges for circuit court, chancery court and county courts serve terms of four years.¹¹ Compared to some of the other states in the nation, Mississippi trial court judges have relatively short terms. For instance Alabama, California, Florida, Illinois, Louisiana, Nevada, North Dakota, Ohio, Oregon, and portions of Missouri, have six year terms for their trial court judges. In Kentucky, Tennessee and West Virginia, trial court judges are elected to serve terms of eight years, while in New York and Pennsylvania, trial court judges serve terms of ten years.

For reasons similar to those enumerated for the special election law, Mississippi's relatively short terms may discourage outstanding candidates from seeking judicial offices. Whether it is concluding business for the previous campaign, raising money for the next election or actually campaigning, a portion of an incumbent trial judge's time under the present system is, in all likelihood, devoted to managing some aspect of his or her campaign. Such a distraction could, at worst, interfere with a judge's impartiality, and at a minimum divert the judge's time from a crowded docket.

¹¹ See Miss. Const. art. 6, § 153; Miss. Code. Ann. § 9-5-1 (Supp. 2001); Miss. Code Ann. § 9-7-1 (Supp. 2001); and Miss. Code Ann. § 9-9-5 (Rev. 1991).

6. The Commission concludes that the influence of campaign contributions and unregulated "soft money" on judicial campaigns has created the majority of the current problems.

During the elections in the year of 2000 for the Mississippi Supreme Court, the United States Chamber of Commerce placed a number of advertisements on local television stations. At least two of the candidates turned to the courts for relief, alleging that the U.S. Chamber had violated the campaign reporting and disclosure laws of Mississippi. The U.S. Chamber took the position that it was exempt from the reporting and disclosure laws of Mississippi because the advertisements were actually "issue advertisements" and did not advocate the election of any candidate.¹² Injunctive relief was granted on two different occasions in one case, and the United States Supreme Court subsequently stayed the lower court's injunction on both occasions. One of those cases¹³ is presently pending before the United States Court of Appeals for the Fifth Circuit, which heard oral argument on November 7, 2001.

In the comments and suggestions received by the Commission, there seemed to be a consensus that the effect of independent expenditures or "soft money" is of great concern in judicial elections, and that regulation is needed. During the Methods and Selection Committee's open work session, at least one candidate informed the

¹²See *Chamber of Commerce of the United States of America v. Moore*, No. 3:00-cv-778WS (S.D. Miss. Nov. 2, 2000).

¹³*Chamber of Commerce of the United States of America v. Moore*, No. 3:00-cv-778WS (S.D. Miss. Nov. 2, 2000), appeal docketed, No. 00-60779 (5th Cir. Nov. 3, 2000).

Committee that he wished the U.S. Chamber had stayed out of his race, while another candidate in whose race the U.S. Chamber advertised, was of the opinion that such independent expenditures are "wrong."¹⁴ The U.S. Chamber was invited to address the Methods and Selection Committee; however, it did not respond to the invitation.

Outside influences such as this, unregulated and undisclosed, have a pervasive and negative influence on Mississippi judicial campaigns, especially in races in which judges neither seek nor want assistance of outside organizations. Expenditures of this type are responsible for many of the current problems in judicial elections. Regardless of where the money originates, the public perceives these independent expenditures as an attempt to influence the Mississippi judiciary, and thus, these expenditures only serve to further erode the public's confidence in Mississippi's judicial system.

B. Commission Recommendations

The Commission studied documents related to judicial election reform and solicited comments and recommendations from judicial candidates and interested organizations during an open work session. The following is representative of the suggestions received:

1. Limiting judicial campaign contributions to \$25,000;
2. Prohibiting contributions to judicial campaigns from attorneys;

¹⁴Methods and Selection Committee Public Work Session, October 24, 2001.

3. Limiting judicial campaign contributions to \$50 per person;
4. A judicial campaign Oversight Committee with authority and jurisdiction to address campaign abuses, including injunctive relief;
5. Penalties for failure to report campaign contributions, including funds from out of state organizations;
6. Greater enforcement of existing campaign laws;
7. Amending the Code of Judicial Conduct to allow more meaningful candidate information to be provided to the public;
8. Removing all campaign contribution limits with full disclosure and reporting requirements;
9. A judicial nominating committee for interim appointments;
10. Removing time limits for judicial candidates to raise money;
11. Creation of a blind commission or body to receive and disperse campaign contributions; and
12. Adoption of a more stringent standard of recusal.¹⁵

The Commission studied the strengths and weaknesses of judicial selection methods throughout the United States, and throughout its deliberations, the Commission considered and revisited the issue of whether Mississippi should change

¹⁵It is noteworthy that the Commission, by and through its Methods and Selection Committee, considered a more stringent recusal rule. However, the Commission was unable to come to a consensus that would allow the Commission to recommend implementation. It should also be noted that a variation of the rule considered by the Commission has been proposed by the Mississippi Supreme Court in its proposed amendments to the Code of Judicial Conduct. *See In Re: Code of Judicial Conduct*, No. 89-R-99013-SCT (Miss. Oct. 25, 2001).

its system of selecting judges. Some organizations and media outlets have encouraged such a change. At the original meeting of the Commission and at each subsequent meeting, it was the consensus of the Commission that there is substantial and valid reasons to retain an elective judiciary. That is not to say that an appointed system or merit selection system is not sound and valid methods of selecting trial and appellate judges. However, the Commission was of the opinion that its time would be best spent on making recommendations for the improvement of the present system of electing judges.

Based on the foregoing, the Commission makes the following recommendations which flow from its conclusions:

1. The Commission recommends amending the special election law.

As stated above, judges appointed to fill judicial vacancies in some instances may be required to participate in a special election within a very short period of time following their appointment, and then may be required to participate a short time later in the regular election for their office. Thus, an inordinate amount of the judge's time is drawn from attending the duties of his or her office in order to campaign and raise campaign funds. The Commission is of the opinion that section 23-15-849 of the Mississippi Code Annotated (Rev. 2001)¹⁶ should be amended to allow the appointee

¹⁶Although Miss. Code Ann. Section 23-15-849 (Supp. 2001) does not directly apply to vacancies for a county judge, Miss. Code Ann. Section 9-9-5 (Rev. 1991) provides that vacancies in county judge shall be filled in the same manner as circuit judge.

to serve out the remainder of the term. Such an amendment would allow the appointee to become familiar with the office before being required to seek election. It would also result in fewer elections and lower judicial election costs to the state of Mississippi.

2. The Commission recommends longer terms for trial court judges.

Presently, trial court judges in Mississippi serve four year terms.¹⁷ The Commission recommends that the Article 6, Section 153 of the Mississippi Constitution of 1890, and Mississippi Code Annotated Sections 9-5-1 and 9-7-1 (Supp. 2001) be amended to provide for eight-year terms for the judges of circuit, chancery and county courts.¹⁸ Again, the Commission is of the opinion that such a measure will allow the judges to focus on the task of being a judge instead of having to constantly gear up to operate a judicial campaign. Furthermore, since this change would result in fewer judicial elections, the state of Mississippi would realize a cost savings in administering judicial elections. While the Commission recognizes that

¹⁷ See Miss. Const. art. 6, § 153; Miss. Code. Ann. § 9-5-1 (Supp. 2001), Miss. Code Ann. § 9-7-1 (Supp. 2001), and Miss. Code Ann. § 9-9-5 (Rev. 1991).

¹⁸The terms of county court judges are set by Miss. Code Ann. § 9-9-5 (Rev. 1991) which states that the county court judges shall hold office for the same term as circuit judges, and thus, assuming that the terms of circuit court judges are extended, Miss. Code Ann. § 9-9-5 (Rev. 1991) would not have to be amended in order to extend the terms of county court judges.

amending the Constitution is no small task, it is of the opinion that it is not an insurmountable obstacle.

3. The Commission recommends amending the campaign disclosure and reporting laws.

As previously stated, one of the conclusions of the Commission is that the influence of unregulated and unreported "soft money" on judicial campaigns has created the majority of the current problems in judicial elections.¹⁹ In an attempt to provide better monitoring and reporting of independent expenditures, and thus provide the public with a clearer picture of how a candidate's campaign is actually being financed, the Commission recommends amending the Campaign Disclosure and Reporting Laws in several ways. First, it is recommended that in Mississippi Code Annotated Section 23-15-801(j) (Rev. 2001), the definition of "independent expenditure" be amended to include the following language: "or an expenditure made by a person for the purpose of supporting and/or opposing a candidate for judicial office including the publication, advertisement or the release of information, or payment therefor, containing favorable or unfavorable information about a judicial candidate."²⁰

¹⁹See Commission Conclusion G, *supra*.

²⁰The Commission is aware that this is a controversial issue, aspects of which are presently pending before the United States Court of Appeals for the Fifth Circuit, including whether, pursuant to *Buckley v. Valeo*, 424 U.S. 1 (1976), independent expenditures may even be constitutionally subjected to election reporting and disclosure laws. See *Chamber of Commerce of the United States of America v.*

Next, it is recommended that Section 23-15-807 of the Mississippi Code Annotated (Rev. 2001) be amended by adding a subpart (g) which would give the Secretary of State, upon reasonable notice and probable cause that a violation of this section has occurred, the authority to audit the books and records of a political committee, as well as subpoena the appropriate records, to determine if a violation of this section has occurred.

Third, it is recommended that Mississippi Code Annotated Section 23-15-813(a)(ii) (Rev. 2001) be amended to broaden the discretion of the Secretary of State in imposing the civil penalty required by the statute for delinquent filings. Presently, the statute only provides for a \$50 per day penalty. It is recommended that the penalty be increased so as to allow the Secretary of State discretion to assess a penalty of up to \$10,000 per day.

Finally, it is recommended that Section 23-15-813 of the Mississippi Code Annotated (Rev. 2001) be amended by adding a subpart (e) to allow the Secretary of State or any aggrieved party to seek injunctive relief to prohibit any candidate or political committee which is delinquent in the filing of a campaign finance disclosure report required under Mississippi Code Annotated Sections 23-15-801 through 23-

Moore, No. 3:00-cv-778WS (S.D. Miss. Nov. 2, 2000), appeal docketed, No. 00-60779 (5th Cir. Nov. 3, 2000). The Commission recognizes that details of this recommendation may need to be altered in order for it to remain constitutional.

15-813 (Rev. 2001) from making any further campaign expenditures or to prohibit any other person or entity from disseminating any information including publications and advertisements purchased with such campaign expenditures, and for other relief.

Broadening the definition of "independent expenditure" and increasing the Secretary of State's powers to enforce the Campaign Disclosure and Reporting Laws, as well as the civil penalty for noncompliance with those laws, would likely reduce the amount of unregulated and unreported "soft money" in judicial campaigns. A reduction of independent expenditures in judicial campaigns should decrease the negative effect such expenditures have on judicial campaigns, and thereby enhance the public's opinion of judicial campaigns and offices in Mississippi by helping reduce the public's perception that independent expenditures are an attempt to influence the Mississippi judiciary.

4. The Commission recommends amending the statute which imposes judicial contribution limits.

During the Commission's deliberations, there was a concern expressed that Mississippi law is not completely clear that indirect donations to judicial campaigns are prohibited. By making donations to a judicial campaign through a third party, entities may be able to circumvent the present campaign contribution limits. Thus, in order to clarify that indirect contributions to judicial campaigns is unlawful, the Commission recommends that Section 23-15-1021 of the Mississippi Code Annotated (Rev. 2001) be amended to specifically provide a penalty for such unlawful indirect

donations. Clarifying that such donations are prohibited may further help provide the public with a more accurate view of how judicial campaigns are actually being financed.

III. JUDICIAL SALARIES

The Commission, by and through the Salaries Committee, conducted a detailed study of the appropriate compensation and support for the judiciary in Mississippi and concluded that Mississippi is in serious need of a more fully compensated judiciary in order to promote justice for the benefit of the people of Mississippi. The temptation is to simply recommend that all judges should be paid more and leave it at that, but the subject has more depth as evidenced by the Commission's conclusions and recommendations which follow.

A. Commission Conclusions

1. The Mississippi public expects learned, honorable men and women of the utmost integrity to serve as members of the judiciary.

The various editorials that have been published throughout the Commission's deliberations call for "equal justice under the law," a "fair and impartial judiciary," and a "politically clean environment for judicial candidates." Perhaps, the Chief Justice of the United States Supreme Court, William H. Rehnquist, summarized it best when he said:

The right to one's day in court is meaningless if the judge who hears the case lacks the talent, experience, and the temperament that will enable

him to protect imperiled rights and render a fair decision.

There is an expectation of equal justice, fairness, impartiality, education, experience, and temperament fitting to the judiciary. The public expects learned, honorable men and women of the utmost integrity. These are reasonable expectations, expectations that are the foundations of any good judge and expectations which all should aspire to meet. One must be mindful, however, that those who exhibit characteristics as set forth above have marketability in areas other than public service and quite often enjoy success in the private sector.

2. The private sector actively seeks experienced judges who bring valuable insight from the bench to private practice.

The basic salary for a member of the Mississippi judiciary is as follows:

Chief Justice of the Supreme Court	\$104,900
Presiding Justice of the Supreme Court	\$102,900
Associate Justices of the Supreme Court	\$102,300
Chief Judge of the Court of Appeals	\$ 98,300
Associate Judges of the Court of Appeals	\$ 95,500
Chancery Court Judges	\$ 94,700
Circuit Court Judges	\$ 94,700

The Mississippi Bar conducted an Economic and Technology Survey of its members for the year 1999. Nineteen hundred and fifty-two surveys were mailed with a 25.1% response rate. The survey reflects that in 1999, the average partner of a law firm earned \$125,087 from the practice of law. In 1999, associates with six to ten years of practice averaged a salary of \$81,650.

One must keep in mind that these numbers are two years old, and from all accounts there is at present a high demand for competent, experienced attorneys. In any event, the average partner in a law firm in 1999 made from \$30,387 to \$20,187 more than a judge in the State of Mississippi, depending upon which position the judge holds.

The private sector wants experienced judges who bring valuable insight from the bench to private practice. In the last twenty-four months, the judiciary has lost to private practice the Honorable Fred L. Banks, Jr., from the Supreme Court; the Honorable John H. Whitfield; the Honorable John T. Kitchens; the Honorable Barry W. Ford; and the Honorable L. Breland Hilburn from the circuit court bench. Honorable Reuben V. Anderson, former Justice of the Mississippi Supreme Court, was lost to private practice outside the last twenty-four months.

It is a disturbing trend for experienced members of the judiciary to leave the bench for private practice, particularly when a number of those openly state that compensation is part of the reason. The *Commercial Dispatch* of Columbus, Mississippi, wrote an editorial titled, "Dedication, Not Dollars, Could Improve Judiciary," and stated:

It would be nice to see more of them run for office because it is a time-honored public service to a noble cause and an important sacrificial element of our democratic way of life instead of a means to a highly paid end. That sort of mindset is every bit as fundamental to reforming the system as greater voter accountability, and the legal community

should not be left off that hook of responsibility too easily.

The Commission disagrees with this in part. Public service is a noble cause but, by the same token, it is not necessary for public servants to sacrifice in order to serve. All state court trial judges, as a basic requirement, were practicing attorneys with four years of undergraduate college and three years of law school, most of whom sacrificed to obtain their educations. Upon taking the bench, they take on the responsibility of deciding issues of great importance, ranging from the sentence that a criminal might receive and what rehabilitative intervention might restore him to useful citizenship to which parent will receive custody of their children and what portion of the marital estate each will receive in complicated equitable distributions attendant to a divorce. The State of Mississippi should compensate people based upon the responsibility that they assume, and there is clear precedent for this. For example, the average salary for a Mississippi community college president is in excess of \$115,000, which exceeds the salary of the Chief Justice of the Supreme Court by \$10,000.

3. Mississippi trial judges are paid substantially less than the southeastern average.

One must consider the overworked phrase, "the southeastern average." The National Center for State Courts published a paper entitled *Survey of Judicial Salaries*. This report shows the following salaries for trial judges:

Alabama	\$113,092
Arkansas	\$112,728
Louisiana	\$102,520
Tennessee	\$108,036
Average:	\$106,594

The above contiguous states pay their trial judges an average of \$11,894 more than Mississippi. If the State of Florida at \$130,000, the State of Georgia at \$121,769, and the State of Texas at \$107,150 are added to the above states, the average salary is \$112,185, which is \$17,485 above the State of Mississippi.

4. Mississippi is losing competent and highly qualified prosecutors to the private sector as a result of insufficient compensation.

A growing problem across the state has been the attrition of state prosecutors. Just as with the judiciary, Mississippi is faced with the problem of losing competent and highly qualified prosecutors to the private sector primarily as a result of insufficient compensation. Like judges, district attorneys and assistant district attorneys are required to have obtained a four-year undergraduate college degree and a doctor of jurisprudence in preparation for such a position. Prosecutors are vested with a large amount of discretion in the prosecution and the ultimate disposition of criminal cases. Properly exercising such broad discretion is not a task to be taken lightly. However, when a prosecutor's discretion is properly exercised, dockets are cleared and efficiency is assured in the criminal justice system, and thus in the Mississippi judicial system as a whole.

B. Commission Recommendations

1. The Commission recommends a \$10,000 salary increase for district attorneys, chancery and circuit court judges and Supreme Court Justices and a \$14,000 salary increase for Court of Appeals Judges.

The Commission recommends a \$10,000 salary increase for district attorneys, chancery and circuit court judges, and Supreme Court Justices, and a \$14,000 salary increase for Court of Appeals Judges. The responsibility that the judiciary undertakes in making decisions that affect people's lives and the appellate courts in creating the body of law and precedent that will chart the course of individual rights, property rights, and insure equal and impartial justice, demands just compensation.

Furthermore, if Mississippi expects to retain learned, honorable men and women of the utmost integrity as members of the judiciary, the salaries for the judiciary should be more competitive. Although the State can never fully compete with the private sector, becoming more competitive gives competent judges a choice to serve the public and to do so without substantial sacrifice.

The State of Mississippi has many financial obligations that stretch the tax dollars beyond all reason. Including the justices of the Supreme Court, judges of the Court of Appeals, circuit court judges and chancery court judges, there are approximately 113 judicial positions in Mississippi. Compared to other aspects of state government, the number of positions is relatively small.

To increase the salaries of all the trial judges to the average of Mississippi's

contiguous states with corresponding increases for the judges of the Court of Appeals and Supreme Court justices would cost the State of Mississippi less than \$1.4 million, excluding the fringe benefits. This is a very small percentage of the state budget, which last year totaled \$3.5 billion. There are non-tax alternatives to funding judicial salary increases. For example, in 1999 the State of Alabama used an increase in court costs as a way to fund increases in judicial salaries. There is no reason why those utilizing the court system should not bear a portion of the responsibility in funding its personnel.

According to the Administrative Office of Courts data for fiscal year 2000, there were approximately 94,580 new civil filings in chancery court and 31,658 new civil filings in circuit court, for a total of 116, 238. A simple \$15 per case increase on new civil cases generates nearly \$41.75 million. The foregoing example clearly shows that it is possible for salary increases to be made without making a significant impact on the state budget.

IV. TERMS AND CASE MANAGEMENT

The Commission, by and through the Terms and Case Management Committee, discussed with lawyers in the public and private sectors and judges its concerns regarding the perceived delay in the administration of justice in our court system. With the idea of identifying issues affecting case management and eliciting ideas on increasing the efficiency of court proceedings thereby resulting in the speedy

resolution of cases, a letter was sent to sixteen circuit judges, eleven chancellors, and six county/youth court judges throughout the state. The significant response received from these letters was of great benefit in aiding the Commission in formulating its conclusions and recommendations regarding terms and case management of the Mississippi court system.

A. Commission Conclusions

1. The Commission concludes that there is a public perception that there is a delay in the administration of justice in the Mississippi Court system.

It has become apparent that there is a public perception by the citizens of the State of Mississippi that there is a delay in the administration of justice in the Mississippi court system. Numerous editorials and news stories have been written on this topic. It is not uncommon for cases to remain on a court's docket for several years. In some courts there are as few as two terms a year for as little as six days each, and it can take an extraordinary amount of time to actually have a case tried.

2. The Commission concludes that there is no uniform tracking system among the circuit and chancery clerks in order to ascertain the number of cases currently pending before each judge.

The current system does not have rules to control how cases are to be counted. Various methods are being used by court clerks and calculations vary from clerk to clerk, county to county, and district to district. For instance in some districts, cases with multiple indictments are counted as one case, while in others they are counted as multiple cases. If there is no uniformity in the court, there can be no uniform time

standards to which judges can adhere.

3. The Commission concludes that special attention must be given to the Hinds County courts because of its unique posture as the seat of State government and statutory role in cases involving the state and its agencies.

The Commission concludes that special attention must be given to the Hinds County courts because of its unique posture as the seat of state government. Furthermore, of their special statutory role which vests exclusive jurisdiction in them over cases involving the state and its agencies, more cases are necessarily directed to the circuit and chancery courts in that county.

4. The Commission concludes that as a result of ever-increasing caseloads, trial court judges need the flexibility to hire at least one full-time law clerk.

The Commission concludes that as a result of ever increasing workloads, trial court judges need the flexibility to hire at least one full-time law clerk. The practice of law has in large part changed dramatically as a result of the technology and capability of today's lawyer. This has resulted in escalating numbers of motions which are filed and that must be resolved before a case is concluded. A variety of motions are commonly presented to judges in every case. These motions include, *inter alia*: (1) motion to compel discovery and related discovery motions; (2) motion to transfer; (3) motion to consolidate; (4) motion to dismiss; (5) motion for summary judgment; (6) jury instruction conferences; (7) motion to set-aside judgment; (8)

motion for additur or remittitur; and (9) motion for judgment notwithstanding the verdict. Preparing for hearings on these motions and giving proper attention and consideration to the briefs and arguments of counsel are made extremely difficult without the assistance of a full-time law clerk. Full-time law clerks are essential.

5. The Commission concludes that special attention must be paid to the criminal justice system and its supporting agencies.

The Commission concludes that special attention must be paid to the criminal justice system and its supporting agencies. These supporting agencies often play a key role in prosecuting criminal cases, and if there is a delay within the agency, that delay often transfers over to the court system. For example, the Mississippi Crime Lab facilities are woefully understaffed and evidence is not analyzed in a timely or efficient manner. If there is no analysis, there can be no trial.

6. The Commission concludes that the State must fund an adequate indigent defense system.

The Commission concludes that the State must fund an adequate indigent defense system. The present system of indigent defense in Mississippi is woefully inefficient. It is a burden on the counties. Part-time public defender systems lead to part-time justice as can be seen by the delays caused by conflicts in public defenders' schedules.

B. Commission Recommendations

1. The Commission recommends that the Administrative Office of Courts implement a uniform tracking system among circuit and chancery court

clerks in order to properly ascertain the number of cases pending before each judge.

Currently, judges in Mississippi cannot operate their courtrooms on a proactive basis because they are not aware of what cases are even before them until such time as they are asked to rule upon a motion. Getting the case before the judge early in the process, as is done in the federal system, and having the case assigned to a particular track--depending upon the issues and complexity of the case should lead to quicker and more timely resolution of cases.

Therefore, the Commission recommends that the Administrative Office of Courts implement a uniform tracking system among the circuit and chancery clerks in order to ascertain the number of cases currently pending before each judge. Once a uniform system is established to count the number of cases pending before each judge, a system should be implemented which would weigh the caseload of the various judges. For example, it is beyond dispute that a capital murder case should not be weighed equally with a burglary case. Similarly, a simple trespass case would generally not outweigh a complex medical malpractice, product liability, or cases involving multiple parties. To devise such a system the Administrative Office of Courts should seek the input and advice of the trial judges' conferences, bar associations and clerks' associations in creating these systems. The data must be accurate and comprehensive before any uniform time standards are implemented.

2. The Commission recommends that before any statewide changes to the tracking system are made, that the Administrative Office of Courts should establish pilot programs in geographically diverse areas to insure a properly functioning system.

The Commission recommends that before making any statewide changes, the Administrative Office of Courts should establish pilot programs in various areas that account for geographic diversity and not simply focus exclusively on the areas with the most case filings. One size may not fit all. Any weaknesses in the system should be resolved prior to implementing any program statewide.

Moreover, the Commission recommends that special attention be given to the Hinds County courts. As previously stated, Hinds County courts receive more case filings because of its unique position of being the seat of state government, as well as having exclusive jurisdiction over state agency cases and appeals. The Administrative Office of Courts should consider these factors when implementing any type of case management system.

3. The Commission recommends that trial judges be given the funding to hire at least one full-time law clerk for each judge.

Trial courts also sit as appellate courts on occasion which requires the reading and digesting of transcripts and “appellate” briefs. Trial judges must accomplish these tasks while at the same time managing their trial docket. Presently, our Supreme Court Justices and Court of Appeals Judges each have two law clerks and staff attorneys to assist them in handling their case loads. Similarly, in the federal system

each judge has at least two law clerks, the magistrate judges each has one law clerk and the courts have staff attorneys to assist them. Our state trial court judges should not have to choose between having a court administrator, secretary or law clerk.

4. The Commission recommends that increased funding be given to the supporting agencies of the criminal justice system.

The Commission recommends that increased funding²¹ be given to the supporting agencies of the criminal justice system such as the Mississippi Crime Lab. As previously stated, these agencies are woefully underfunded and understaffed, and when a backlog occurs in these agencies, the entire court system is affected. These delays not only hinder the courts in resolving criminal cases in the constitutionally speedy manner, but they also inhibit the courts from disposing of civil matters in a timely manner since criminal cases take priority over civil cases. Increasing the funding and staffing of these support agencies should help alleviate the backlog within those agencies, and thus criminal cases, as well as ensuring that civil cases, can be tried in a more efficient and timely manner.

²¹As with all of its recommendations which require increased expenditure of State funds, the Commission realizes that the State is presently in the midst of a budget dilemma. However, the Commission is of the opinion that implementation of these recommendations is absolutely necessary in order to improve the Mississippi Judicial System.

5. The Commission recommends that the State fund and staff an adequate indigent defense system at levels equivalent to district attorneys' offices.

The Commission recommends that the State fund and staff an adequate indigent defense system at levels equivalent to district attorneys' offices. As indicated, the present system in most counties of relying on appointments or part-time public defenders is woefully inadequate and burdensome on the counties. Heavy caseloads of attorneys representing indigent defendants only serve to cause delay and further exacerbate the situation. The Commission realizes that this recommendation may not garner the utmost public support. However, the Commission is of the opinion that it is necessary in order to achieve maximum efficiency of Mississippi's judicial system.

V. JUSTICE COURTS

One problem facing Mississippi's justice court system is the lack confidence and credibility in the justice court system—a concern facing other levels of our judiciary as well. Lack of confidence and integrity and public cynicism in the judicial system is a prevailing problem many judges face. The power of the judiciary arises from the public's respect for and confidence in the judiciary which is, ultimately, based on judicial independence, integrity and competence.

One would expect that those seeking to serve the public would maintain the high level of integrity that is required for a judicial office. However, there are some

means of stimulating public confidence in those who serve in the positions of justice court judges. With that in mind, the Commission, by and through its Justice Courts Committee, sent out a questionnaire to all of the Justice Court Judges in Mississippi, and also attended the Justice Court Judges' seminar in Jackson, Mississippi put on by the Mississippi Judicial College, to seek input from Mississippi's Justice Court Judges. The responses received were enlightening and very beneficial in helping the Commission formulate the following conclusions and recommendations.

A. Commission Conclusions

1. The Commission concludes that there is a public perception that Justice Court Judges lack the level of training necessary to properly deal with legal issues.

The principal problem facing Mississippi's justice court system is the lack of confidence and credibility in the justice court system. The Commission concludes that one of the most prominent reasons for the lack of confidence and credibility in the system is the public perception that justice court judges lack the level of training necessary to properly deal with legal issues.

2. The Commission concludes that Justice Court Judges elections should be held in the same manner as elections for the rest of the Mississippi judiciary.

Presently, with the exception of justice court judges, all judges in Mississippi are required to seek election in nonpartisan elections. *See* Miss. Code Ann. § 23-15-976 (Rev. 2001). Additionally, justice court judges are required to seek election at

the same time as other partisan elections for public office. Confidence in the justice court system may be increased by mandating that justice court judges campaign for election in nonpartisan fashion at the same time as other members of the judiciary seek office.

3. The Commission concludes that the terms of justice court judges are relatively short.

Presently, justice court judges serve four year terms. *See* Miss. Code Ann. § 23-15-193 (Rev. 2001). As previously mentioned, compared to some of the other states in the nation, four year terms are relatively short, and such relatively short terms may discourage outstanding candidates from seeking a judicial office.

B. Commission Recommendations

1. The Commission recommends raising the educational requirements of justice court judges and salary levels commensurate with educational requirements.

Current educational requirements for a justice court judge position are a high school diploma or a general education diploma. *See* Miss. Const. art. 6, § 171. To address the concern of quality and credibility in the judicial system, the Commission recommends that no person be eligible for the office of justice court judge who has not attained a bachelor's degree from a recognized and accredited four-year college. Raising the educational requirements will reap a quality class of candidates and improve the delivery of justice.

Having discussed and considered the matter of increasing the educational

requirements for justice court judges to the level of an associate's degree, the Commission is of the opinion that such a requirement would not create the desired result of raising the quality and credibility of the justice court system that requiring a college degree would have.

It is also recommended that any legislation to this end include sufficient language "grandfathering" in those currently serving in such positions who do not hold a four-year college degree and exempting them from such a requirement, so long as the candidate has had continuous service, should they opt to seek reelection. Furthermore, the Commission recommends to the Legislature that requiring higher educated individuals for these positions necessarily demand that the State pay such individuals at a level commensurate with their education and experience.

2. The Commission recommends the election of Justice Court Judges in nonpartisan elections to be held at the same time as elections for the Mississippi judiciary

The legislature has determined that partisan elections conflict with the notion that judges are required to discharge their judicial duties in a nonpartisan fashion. *See* Miss. Code Ann. § 23-15-974 *et seq.* (Supp. 2000). By requiring justice court judges to handle their campaigns in a nonpartisan fashion, the effect should be a more positive view of the justice court judges and their commitment to serve the public in a nonpartisan, equal and fair manner. Having studied and determined that the current partisan system runs afoul of the justice's court judge's responsibility to remain fair

and impartial, it is recommended that the Legislature revise the current laws to require justice court judge candidates to manage and operate their campaigns in a nonpartisan fashion. Furthermore, it is recommended that justice court judge candidates be bound to the same code of conduct, rules and statutes as other judges during and following a judicial race.

The Commission is also of the opinion that after requiring nonpartisan elections for justice court judges, the dilemma resulting from such a change would be the conflict of justice court candidates campaign and elections occurring at the same time as other partisan positions for public office. Because the Legislature created a separate time for electing its judges, all of whom seek election on a nonpartisan basis, the natural conclusion would be to likewise require the justice court judges' elections be held at the same time that circuit chancery and appellate court elections occur. Therefore, the Commission also recommends that elections for justice court judges be held at the same time as the elections for the rest of the Mississippi judiciary.

3. The Commission recommends extending the terms of the justice court judges to six years.

Judicial terms in Mississippi are relatively short in comparison to those of other states. Extended terms of justice court judges will serve to create more consistency in the judiciary, will encourage those already serving as justice court judges to seek another term and aide in returning those with experience to the bench.

In addition, extending the terms for justice court judges will likewise facilitate the confidence in the judiciary by encouraging those qualified persons who might not consider seeking judicial office because of the frequency of elections. Extending the terms decreases the number of elections thereby making the position more attractive for qualified applicants. The Commission therefore recommends that the Mississippi Legislature lengthen terms for justice court judges from their present four year terms to six year terms.

VI. STATUTES

A. Commission Conclusions

1. The Commission concludes that no statutory limitations regarding the timing of receipt of financial contributions by judicial candidates exist and the only available regulation of such activity is found in the Code of Judicial Conduct in Canon 7.B.(2).

The sole issue discussed by the Commission regarding statutory problems was the suggestion by former Commission member Honorable Michael P. Mills that the Commission explore the possibility of tightening the rules regarding timing of receipt of financial contributions by judicial candidates.

The Commission's investigation revealed that there are presently no statutory limitations on such matters and that the only available regulation of such activity appeared in the Code of Judicial Conduct, in Canon 7.B.(2), where the following pertinent provision appears:

A candidate's committee may solicit funds for his/her campaign no earlier than 60 days before the qualifying deadline and not later than 90 days after the last election in which he participates during the election year.

Former Justice Mills was of the opinion that this regulation was ineffective in preventing the receipt of campaign finance funds outside the indicated time limits by asserting that the actual solicitation that produced the funds took place within the permitted period.

2. The Mississippi Supreme Court currently has under consideration a proposed revision to the Code of Judicial Conduct which is now in the public comment phase which would amend Canon 7.B.(2) to provide that a judicial candidate's committees shall not solicit or accept contributions earlier than sixty days before the qualifying deadline or later than 120 days after the candidate's last election.

The Commission notes that the Mississippi Supreme Court currently has under consideration a proposed revision to the Code of Judicial Conduct which is now in the public comment phase which would amend the above-quoted provision to read as follows:

A candidate's committees shall not solicit or accept contributions and public support for the candidate's campaign earlier than 60 days before the qualifying deadline or later than 120 days after the last election in which the candidate participates during the election year.

B. Commission Recommendation

1. Because the Supreme Court is in the process of addressing the problem and because of the uncertainty that might arise were there to be a statutory enactment that conflicted with the Judicial

Canons, the Commission makes no recommendations in this area at this time.

Because the Supreme Court is in the process of addressing the concern articulated by Justice Mills and because of the uncertainty that might arise were there to be a statutory enactment that conflicted with the Judicial Canons, the Commission makes no recommendations in this area at this time. If, for some reason, the proposed amendment to the Canons or some suitable substitute addressing the issue is not adopted, then it might be appropriate for the Legislature to provide firm guidelines relating to both the solicitation and acceptance of campaign funding donations.

VII. CONCLUSION

The Commission has endeavored to fully and faithfully carry out the mandate of the Legislature. The Commission realizes the need to improve the public's perception of the judiciary in Mississippi. However, that need must be balanced against the constitutional framework within which the State of Mississippi and the United States of America were founded. The freedom of expression is a right not easily curtailed, nor should it be. It is with those principles in mind that this Commission has carefully considered and made the recommendations contained in this report, and in so doing, the Commission feels that it has been successful in striking a balance between competing interests in an effort to accomplish this goal.

RESPECTFULLY SUBMITTED, this the _____ day of December, 2001.

CARROLL H. INGRAM, CHAIRMAN
JUDICIAL STUDY COMMISSION