

LAW WEEK COLORADO

Celebrating 50 Years of Merit Selection

Even without partisan contests for judges, Colorado voters still get a say on Election Day when it comes to who stays and who goes

BY RUSSELL CARPARELLI
COLORADO JUDICIAL INSTITUTE

Each day, hundreds of Coloradans enter our state's courthouses.

They are plaintiffs, defendants, lawyers, witnesses and jurors, and they all expect our courts to address each case and each party fairly and impartially. Every day, more than 300 Colorado state court judges enter the state's courthouses committed to fulfilling those expectations.

Until the mid-1960s, Colorado elected state court judges in partisan elections. The political parties' candidates solicited financial contributions from lawyers, law firms and others to mount their campaigns. When sitting judges completed their terms of office and sought re-election, they again solicited contributions.

In 1966, Colorado's voters decided there was a better way. They amended the state constitution to end partisan elections and establish a merit-selection system instead.

Under Colorado's system, lawyers who want to serve as trial court judges submit applications to one of 22 local nominating commissions, and those who want to serve on the Court of Appeals or Supreme Court submit applications to a statewide nominating commission.

Of the 169 Coloradans who serve on these commissions, 96 are not lawyers and 73 are lawyers. For more information about the commissions, go to www.coloradojudicialperformance.gov/faqs.cfm. To find the names of the statewide and local commissioners, go to www.coloradojudicialperformance.gov/commission.cfm and coloradojudicialperformance.gov/members.cfm. Any citizen, regardless of political affiliation, can apply to serve on a judicial nominating commission. The application is at colorado.gov/governor/boards-commissions-application.

The commissioners consider judicial applicants' essays explaining why they want to serve as judges and information about the applicants' qualifications including: education, work history, areas of legal knowledge and expertise, names of judges before whom they have appeared, names of lawyers against whom they have litigated, letters from references, professional and public service and personal life.

The commissioners typically interview more than a dozen of the most qualified applicants. Before the interviews, the commissioners contact each applicant's references, as well as the judges and lawyers listed in the application, to ask about the applicant's legal skills, integrity and temperament. The

commissioners select the two or three best qualified applicants as nominees and submit their names to the governor for the judicial position being filled.

The governor's staff conducts background checks and solicits information about the nominees from community leaders, the legal profession and the general population. The governor typically interviews each nominee and appoints one to fill the judicial vacancy. Colorado's governors have consistently appointed outstanding judges without regard to the nominees' political affiliations or participation in political party activities. The system fills positions in accordance with strict deadlines to ensure that cases are not delayed as a result of unfilled judicial vacancies.

At the next general election after a judge has served two years, voters determine whether the judge should be retained in office. For nearly 30 years, judicial performance commissions — 22 local for each of the state's judicial districts and one statewide — have visited courtrooms to evaluate judges and have collected evaluations from parties, jurors and lawyers.

Of the 230 Coloradans who serve on these commissions, 138 are not lawyers and 92 are lawyers. In addition, each commission

writes a one-page recommendation about each judge and publishes it in the Blue Book, the election guide that the Colorado Legislative Council provides to all voters in our state. The evaluation process continues throughout each judge's service on the bench, as does the retention election process by which the voters decide whether each judge should serve an additional term of office.

On Nov. 8, Colorado voters will again decide which state court judges are performing well enough to continue to serve and which judges should not. That vote counts, and Colorado's judicial performance evaluation system provides the information needed to vote. To read evaluations of each judge who appears on the Nov. 8 ballot, go to www.ojpe.org or knowyourjudge.com/. Community groups that would like a presentation about Colorado's judicial selection and performance systems can request a presentation at www.ourcourtscolorado.org/.

— *Russell Carparelli retired as a judge on the Colorado Court of Appeals in 2013. He is a co-founder of Our Courts America and Our Courts Colorado and is an emeritus board member of the Colorado Judicial Institute. He is active nationally on issues of judicial selection, judicial performance and public education about fair and impartial courts.*