

Select Vermont Constitutional and Statutory Provisions Regarding Judicial Selection and Retention

Vermont Constitution

§ 32. [FILLING JUDICIAL VACANCIES]

The Governor, with the advice and consent of the Senate, shall fill a vacancy in the office of the Chief justice of the State, associate justice of the Supreme Court or judge of any other court, except the office of Assistant Judge and of Judge of Probate, from a list of nominees presented by a judicial nominating body established by the General Assembly having authority to apply reasonable standards of selection.

§ 33. [INTERIM JUDICIAL APPOINTMENTS]

When the Senate is not in session, the Governor may make an interim appointment to fill a vacancy in the office of chief justice, associate justice of the Supreme Court or judge of any other court, except the office of Assistant Judge and of Judge of Probate, from a list of nominees presented by the judicial nominating body. A justice or judge so appointed shall hold office, with all the powers incident to the office, until the Senate convenes and acts upon the appointment submitted by the Governor. Thereafter, the appointee shall continue in office if the Senate consents to the appointment. If the appointment is not confirmed upon vote of the Senate, the appointment shall be terminated and a vacancy in the office will be created.

§ 34. [JUDICIAL TERM OF OFFICE]

The justices of the Supreme Court and judges of all subordinate courts, except Assistant Judges and Judges of Probate, shall hold office for terms of six years except when holding office under an interim appointment. At the end of the initial six year term and at the end of each six year term thereafter, such justice or judge may give notice in the manner provided by law of a desire to continue in office. When such justice or judge gives the required notice, the question of continuance in office shall be submitted to the General Assembly and the justice or judge shall continue in office for another term of six years unless a majority of the members of the General Assembly voting on the question vote against continuation in office.

Vermont Statutes

4 V.S.A. § 4(c): (c) A Supreme Court Justice may file in the Office of the Secretary of State, on or before September 1 of the year preceding the expiration of the term for which he or she was appointed or retained, a declaration that he or she will be a candidate for retention. However, a Justice appointed and having taken the oath of office after September 1 of the year preceding the expiration of the term of office shall automatically be a candidate for retention without filing notice. When a Justice files such a declaration, his or her name shall be submitted to the General Assembly for a vote on retention. The General Assembly shall vote upon one ballot on

the question "Shall the following Supreme Court Justices be retained in office?" The names of the Justices shall be followed by "Yes ___ No ___ ." If a majority of those voting on the question vote against retention, upon expiration of the term of office a vacancy shall exist which shall be filled by appointment in accordance with the Constitution and chapter 15 of this title; if the majority vote is in favor of retention, the Justice shall, unless removed for cause, remain in office for another term, and, at its end, shall be eligible for retention in office in the manner herein prescribed.

4 V.S.A. § 607: (a) There is created the Joint Committee on Judicial Retention composed of four members of the House of Representatives appointed by the Speaker of the House and four members of the Senate appointed by the Committee on Committees of the Senate. The appointments shall be made, if practicable, within seven days of the convening of each biennial session of the General Assembly.

(b) The Committee shall endeavor to hold its organizational meeting within seven days of its appointment and shall elect a chair from among its membership and adopt rules of procedure consistent with the rules of the Senate.

(c) The Committee may use the staff and services of the Office of Legislative Counsel and the Office of Legislative Operations to, in addition to other duties, obtain information on the performance of a judge or Justice by soliciting comments from members of the Vermont Bar and the public. (Added 1975, No. 204 (Adj. Sess.), § 11; amended 1985, No. 98, § 6; 2013, No. 161 (Adj. Sess.), § 72; 2019, No. 144 (Adj. Sess.), § 25.)

4 V.S.A. § 608: (a) Declarations submitted to the General Assembly by a Supreme Court Justice under subsection 4(c) of this title, by a Superior Court judge under subsection 71(b) of this title, or by a magistrate under subsection 461(c) of this title shall be referred immediately to the Joint Committee on Judicial Retention. The declarations shall be accompanied by a supporting statement by the judge, the Justice, or the magistrate seeking retention. In the case of a Superior Court judge or magistrate, the declaration shall also be accompanied by information on the next succeeding rotation schedule for the judge seeking retention.

(b) The Joint Committee responsible for the recommendation of retention shall review the candidacies of those Justices, Superior judges, and magistrates desiring to succeed themselves. In conducting its review, the Committee shall evaluate judicial performance, including such factors as integrity, judicial temperament, impartiality, health, diligence, legal knowledge and ability, and administrative and communicative skills.

(c) For the purpose of receiving information and hearing testimony, the Joint Committee responsible for the recommendation of retention shall hold hearings which, if possible, shall not commence until the General Assembly is in session. Information obtained under subsection 607(c) of this title shall be confidential until the Committee commences its hearings under this subsection.

(d) A judge, a Justice, or a magistrate seeking retention has the right to present oral or written testimony to the Committee relative to his or her retention, may be represented by counsel, and may present witnesses to testify in his or her behalf. Copies of written comments received by

the Committee shall be forwarded to the judge, the Justice, or the magistrate. A judge, a Justice, or a magistrate seeking retention has the right to a reasonable time period to prepare and present to the Committee a response to any testimony or written complaint adverse to his or her retention and has the right to be present during any public hearing conducted by the Committee.

(e) On or before the tenth Thursday after the convening of each biennial and adjourned session, the Committee shall report to the General Assembly its recommendation whether the candidates should continue in office, with any amplifying information which it may deem appropriate, in order that the General Assembly may discharge its obligation under Chapter II § 34 of the Constitution of the State of Vermont.

(f) In the performance of its official functions, the Joint Committee on Judicial Retention may by a majority vote of its membership issue subpoenas to compel the attendance of witnesses to testify under oath and to produce documents.

(g) The votes on retention under subsections 4(c), 71(b), and 461(c) of this title shall be conducted in one joint assembly of the General Assembly, except that in the event that the Joint Committee reports to the General Assembly that it is not able to make its recommendation on a particular Justice, judge, or magistrate under subsection (b) of this section on or before the date set for such joint assembly, the vote on such individual or individuals shall be deferred to a subsequent joint assembly, and separate ballots shall be used despite any other statutory provisions relating to the votes on retention. (Added 1975, No. 204 (Adj. Sess.), § 12; amended 1979, No. 109 (Adj. Sess.); 1985, No. 98, § 7; 2009, No. 154 (Adj. Sess.), § 36; 2013, No. 142 (Adj. Sess.), § 13; 2015, No. 131 (Adj. Sess.), § 21.)