

## **The Hows and Whys of Judicial Elections in Georgia—a Citizen’s Primer**

*By the Atlanta Bar Association’s Reputation and the Public Trust Committee, Special to the Daily Report (published in the Daily Report on Monday, March 3, 2014, pages 5-6)*

One of the Atlanta Bar Association’s stated goals is “To enhance the reputation of lawyers, judges, and the legal system.” Toward that, the Atlanta Bar’s Reputation and the Public Trust Committee identifies public perceptions of lawyers, educates the public and lawyers about our profession, and develops practical programs and remedial measures.

We hope this information about the judicial election process and its transparency will serve ultimately to protect the independence of the judiciary and the public’s trust in its impartiality. We aim to ensure that lawyers and others in the legal profession as well as the general public are fully informed regarding how Georgia’s judges are selected, how their campaigns are funded, the ethical rules that apply to them and their campaigns and the important role each of us plays in the process.

For many people, including lawyers, how judges become and keep their jobs is a mystery.

Are judges elected? Are they appointed? The answer is both.

Are elections partisan or non-partisan? It depends.

Are judges elected in popular elections or retention elections? That too, depends.

How are judicial elections funded? They are funded like any other election campaign— through donations to campaign funds.

### Selection of State Court Judges

Unlike judges in the federal court system, most of whom hold lifetime appointments, most judges in the state court judicial system are elected by citizens in non-partisan races. Trial court judges (state and superior courts) are elected to four-year terms in non-partisan races during the primary elections. State court judges are elected by county. Superior court judges are elected by judicial circuits. In metro Atlanta, these circuits consist only of one county, but in less densely populated areas, circuits consist of multiple counties. Judicial circuits can be found at <http://www.cscj.org/circuits/find>.

Appellate court judges (the Georgia Supreme Court and Georgia Court of Appeals) are elected to six-year terms in statewide non-partisan races during the primary elections.

Some judges of other courts, such as probate court judges, are elected in partisan races. Magistrate court judges also may be elected in partisan races.

Some municipal court judges, such as City of Atlanta judges, are appointed (often by the mayor), and may face election first in retention elections, in which citizens vote to keep or reject an

incumbent judge. Details about municipal courts are beyond the scope of this article, because they differ from city to city. Other types of judges, such as juvenile court judges, associate magistrate judges and administrative law judges are appointed to their positions.

Although all trial and appellate court judges eventually must run for election, many judges first are appointed by the governor to their judicial positions. The governor has the authority to make appointments to fill vacancies caused by the death, resignation or retirement of sitting judges or the creation of additional judgeships within a county or circuit.

In recent years, both Republican and Democratic governors have relied on the Judicial Nominating Commission to interview and recommend candidates to the governor, although there is no requirement that the governor utilize the JNC or follow its recommendations. The governor appoints the members of the JNC, which generally includes lawyers and judges from around the state. The JNC's members and procedures can be found at [www.jnc.georgia.gov](http://www.jnc.georgia.gov).

When there is a judicial vacancy, the JNC publishes notice of the vacancy and opens the application process. Various groups, such as the State Bar of Georgia, the Atlanta Bar Association, the Georgia Association for Women Lawyers, the Gate City Bar Association and other local bar associations, weigh in, making presentations about the applicants to the JNC. After interviewing the applicants, the JNC sends the governor a recommended short list, usually between three and five names. The governor interviews the applicants on the short list and makes the appointment to fill the vacancy. Although the governor is not bound to appoint one of the candidates recommended by the JNC, or even to use the JNC, appointments virtually always come from the JNC's short list.

An appointed judge who wants to remain on the bench runs as the incumbent for election in the next election for that seat.

### Financing Judicial Elections

When judicial candidates run for election, they must follow the same campaign finance rules as all other candidates. Election campaigns cost money, and like other candidates, sitting and prospective judges are permitted to raise money for their campaigns. All judicial candidates are required to file campaign disclosure reports that list each contribution and expenditure that exceeds \$100. These reports are available to the public at [www.ethics.ga.gov](http://www.ethics.ga.gov).

As with other elections, there are contribution limits for judicial races. The maximum annual contribution a donor can make to any one statewide judicial candidate is \$6,300 and an additional \$3,700 in the event of a runoff election. For county- and circuit-wide races, the annual contribution limit per donor is \$2,500 and an additional \$1,300 for runoff elections.

Lawyers often are active participants and donors in judicial campaigns, because they are most involved with and knowledgeable about the judicial system. A lawyer's assistance with or financial contribution to a judicial election does not automatically require a judge to recuse from cases involving that lawyer. Judges and lawyers are mindful of the importance of impartiality of

the judiciary and the potential effect that even the appearance of impropriety could have on public confidence in the judicial system.

Our legal system is based upon the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. For that reason, judges are required to disclose financial and in-kind contributions exceeding \$100 to their campaigns. If the contributions are within legal limits, a judge is not automatically required to recuse from presiding over a case solely because one or more of the lawyers donated to, or otherwise were involved with, the judge's election campaign.

However, if a situation arises where there is a reasonable question as to the judge's impartiality, because of considerations concerning the amount, timing, or impact of the contribution, then recusal or disqualification may be appropriate.

Similarly, there are ethical and professional rules that govern the conduct of Bar members, and a lawyer should not suggest to anyone, either clients or opposing parties, that he or she has the ability to affect a judge's decisions because of the lawyer's involvement in or monetary contribution to a judicial campaign. A copy of Georgia's ethical and professional rules that govern lawyers' conduct can be found at [www.gabar.org/barrules/ethicsandprofessionalism](http://www.gabar.org/barrules/ethicsandprofessionalism).

### Ethical Rules

The conduct of judges is governed by the Georgia Code of Judicial Conduct. The Code can be found at [www.gajqc.com](http://www.gajqc.com). Intrinsic to the Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system.

The Code sets forth an ethical framework for judges and requires sitting judges and candidates for the judiciary to behave in such a manner as to avoid even the appearance of impropriety. Canon 3(E) of the Code establishes standards as to when a judge should recuse from hearing a case. While there are some bright-line rules, such as prohibiting a judge from hearing a case when he or she is related to a party or an attorney in that case, the application of other factors depends on the circumstances presented.

Canon 7 governs campaign conduct by judges and judicial candidates.

Judges are held accountable to the public through both the election process and the Judicial Qualifications Commission (JQC). The JQC is a constitutional commission comprised of members appointed by the governor, the Georgia Supreme Court and the State Bar of Georgia. It investigates complaints from citizens about judges. If the JQC believes that a judge has violated his oath of office or violated one of the canons in the Code, the JQC can seek discipline or removal of a sitting judge. More information about the JQC can be found at [www.gajqc.com](http://www.gajqc.com).

One of the most fundamental principles in our legal system is that everyone has the right to a fair trial and that impartial and unbiased judges will interpret and apply the laws. This concept is important to everyone—citizens, lawyers and judges alike—and a perception or suggestion that

judges would be swayed by campaign contributions would damage the reputation of the judiciary and the public's faith in it.

Education about how our judges become judges and keep their jobs, transparency in the election process, including public disclosure of campaign contributions and compliance with the Judicial Code of Conduct, thus helps protect the independence of the judiciary and the public's faith in its impartiality.

*The Atlanta Bar Association Reputation and the Public Trust Committee prepared this article in consultation with Jeff Davis, the director of the Judicial Qualifications Commission. The members of the Reputation and the Public Trust Committee for 2013-2014 are: James C. Bonner, Jr., Fulton County State Court Judge Susan E. Edlein, Emory University Law School Associate Dean A. James Elliott, Henry D. Fellows, Georgia Supreme Court Justice Carol W. Hunstein, Nicole G. Iannarone (vice-chairwoman), W. Seaborn Jones, John Marshall Law School Dean Richardson Lynn, Fulton County Superior Court Judge Robert C. McBurney, Georgia Court of Appeals Judge Christopher J. McFadden, Jenny K. Mittelman, Georgia Supreme Court Justice David E. Nahmias, William U. Norwood, III, Georgia State University College of Law Associate Dean Roy M. Sobelson, Rita A. Sheffey (chairwoman), Michael B. Terry, Fulton County Superior Court Chief Judge Gail S. Tusan and Fulton County Superior Court Senior Judge Melvin K. Westmoreland.*