

## **Our Judges: Who are They and How Did They Get There?**

**Note to the presenting attorney:** You will need to do some limited research before you present this speech. Please note which judicial district you are in and be ready, during the question and answer portion, to tell your audience which counties comprise the district. In addition, if you are in a district where the district judge travels, call him or her to see how many miles the judge has to drive each year and when the judge is in each county. You may ask the audience later to identify what district they are in and to name at least one district judge. The portions of the speech that require special input are highlighted.

Good day to you all and thanks for coming! Today I want to briefly speak to you about three things. To lay a foundation I'll give you a very brief overview of our state's court structure. I will also explain how a lawyer is actually selected to wear the "black robe of justice" in Oklahoma, and the general duties of each type of judge. That really is kind of interesting. Finally we'll talk about what may be the most interesting topic, should judges be elected or appointed? My remarks will be brief and I hope you will have some questions or opinions for me to share with other members of the bar. I'm going to be talking about the district and appellate courts today and not about the city or municipal courts.

The core of justice in this country and in Oklahoma centers around the court system. Fortunately, Oklahoma has adopted a very simple judicial structure. It is also one of the best judicial systems in the nation due to the safeguards built into it. These safeguards include the different methods for choosing judges for the different levels of courts - election and appointment. This means that generally appellate judges who review a trial judge's actions were chosen by a different method than the trial judge. This difference was intended to enhance objectivity, independence and fairness of the judicial system. There is the power of the people to, in effect, remove a judge by exercising their right to vote. Also, we have a complaint and disciplinary system for judges. One can write the Council on Judicial Complaints which investigates complaints against judges.

When the State Legislature adopted the judicial reform act in the 1960's, all the old positions and designations of judges were abolished. Before then we had such things as the Superior Courts, County Courts, Courts of Common Pleas, and so forth and so forth. They were all consolidated into the District Court, which now hear everything from criminal cases to divorce; from probate to civil suits. District courts have the authority to hear virtually any type of case and have three categories of judges; district judge, associate district judge and special judge. Every judge has a unique role to play in dispensing justice. District and associate district judges generally are elected. Special judges are not elected but are appointed by the district judge(s). Appellate judges are appointed. I will explain the appointment process of appellate judges in a few minutes.

Oklahoma has been divided into twenty-six (26) judicial districts. Each district has been assigned a specific number of district judges, which has changed from time to time. As you might have guessed, District Seven, which includes Oklahoma County, and District Fourteen, which includes Tulsa County, have the greatest number of district judges. Where a district has more than one district judge, they meet and select the Presiding Judge.

Each district has at least two counties in it, and several have three or more: however not every county in a district gets a district judge. When there is more than one county in the district but only one district judge, the judge is required to travel and sit in each county.

**Time for a pop quiz. Can anyone tell me what judicial district we are in? How about the name of the district judge(s)? Actually we are in the ( ) judicial district and have ( ) district judge(s).**

**(NAME YOUR DISTRICT JUDGE HERE AND THE NUMBER OF MILES THE JUDGE TRAVELS. IF THE DISTRICT HAS MORE THAN ONE DISTRICT JUDGE, NAME THE PRESIDING JUDGE.)**

Although a county may share a district judge with another, each county has its own associate district judge. Whether the county needs its own district judge is determined by the legislature, taking into consideration the population and, at least somewhat, the number of lawsuits filed. About 37 counties have a population over 30,000 and so they also have a special judge. Some of these counties have more than one special judge depending upon population and need. The Chief Justice of the Oklahoma Supreme Court has the authority to appoint additional special judges, as the Chief Justice deems necessary. You may have already guessed that any new position must first be funded by the legislature.

In case you are interested, I have a handout that lists all the districts and their respective counties.

Just in case I have totally confused you, let's look at this judicial district, Number \_\_\_\_\_ as an example of what I have been talking about. **The district covers the counties of -----. It has (\_\_\_\_\_)\_ district judge(s).** All the counties in the district have an associate district judge and **(all)(name the counties)** have a special judge. **(If appropriate, the district judge travels back and forth between---- and-----.)**

Every four years, district and associate judges are elected on a non-partisan basis. The state statutes set out in detail which judges must live where. All of the judges elected must have been both a registered voter and resident of the appropriate county for least six months before the first day of the filing period. That's pretty simple and straightforward. As you would expect, the candidate must also have an active law license and be admitted to practice in Oklahoma. If a vacancy happens in between elections, a new district or associate district judge is appointed by the Governor. I'll talk about that appointment procedure in when I discuss appellate judges.

Under the election procedure, any licensed attorney has the right to pay the filing fee (currently about \$200) and stand for election. There is no other approval procedure other than the voice of the people who elect the judge.

Unlike district and associate district judges, appellate judges do not run for reelection. Instead, every six years their names are placed on what is called a retention ballot. The voters vote "yes" or "no" to retain the judge. If the judge is not retained, the selection procedure would be the same for appointing a new appellate judge.

**Can anyone name two judges on the Court of Criminal Appeals? Can anyone name two Supreme Court Justices? How about one Judge sitting on the Court of Civil Appeals?**

The procedure to become an appellate judge is a two-step process. When a vacancy occurs, lawyers and judges can submit applications to the Judicial Nominating Commission which is made up of thirteen lawyers and non-lawyers. Seven are non-lawyer members. Six of these are appointed by the Governor, one from each congressional district. One non-lawyer member at large is selected by not less than eight members of the Nominating Commission. The six lawyer members are elected by the other active bar members of their district, one from each congressional district. The judicial applicants are then investigated by the OSBI and interviewed by the Commission.

The names of the Commission's top three candidates are then forwarded to the Governor, who makes the final selection from that list. That same procedure is used to fill district or associate district judge positions when a vacancy occurs between elections.

**Does this appointment procedure seem more or less political to you than a popular election process?**

Here is a good active listening question for you. **If the same people were considered for a district judge spot by the public in a general election and also by the appointment process of the Commission and Governor, what do you think the chance would be that the same individual would be picked by both methods? Why? What do you think about that?**

Now that we have identified the types of judges, what can they do?

The district judge is responsible for the division of case load within a given district. The district judge may set administrative procedures for the associate district and special judge, if any, to follow. The district judge can hear or rule on any type of case. The associate district judge also has the authority, subject to case assignment, to hear all types of cases. However, the special judge is somewhat limited in authority and has what is referred to as "limited jurisdiction." That simply means the special judge hears matters of lesser dollar value or uncontested cases. Our statutes prohibit a special judge from hearing any action for the recovery of money in excess of \$10,000, unless all parties agree to waive that rule. Most special judges hear the small claims cases and conduct preliminary hearings in criminal matters. They also hear family law cases and uncontested matters. Like every rule, there are exceptions and special judges may be called upon to hear other matters.

Are we having fun yet?

If someone is unhappy about a decision of the district court, there are three appellate courts that hear appeals. The Court of Criminal Appeals is the highest court for criminal matters and hears all criminal appeals. The Court of Civil Appeals is an interim court. It is assigned cases from the Oklahoma Supreme Court and renders opinions. The Supreme Court has the final say on all civil cases that are appealed. It can and does overrule decisions of the Court of Civil Appeals. The Supreme Court also rules on original matters filed with them. Many opinions from all three appellate courts are published, but not all of them.

That's about it for how a lawyer is selected to wear the black robe and what he or she does afterwards. Now for the interesting part-should we appoint or elect district judges?

First, we must consider judicial independence as it is the foundation of our judicial system. Judicial independence is protected by the U.S. Constitution because the founders had first-hand experience being a persecuted minority, in courts they felt were unfairly controlled by the ruling party. This experience convinced the founders that Americans needed independent courts to be protected from unreasonable searches and seizures, star chamber trials, and other examples of overreaching government power. To make the rule of law a reality, the founders knew that courts had to protect the rights even of criminal defendants accused of serious crimes.

The benefits of judicial independence includes assuring all Americans that cases will be decided on their merits. All litigants know that their case will be decided according to the law and the facts, not the whims of shifting political currents. In other words, decisions are based on what is right and just, and not what is popular at the moment. Throughout American history, the independence of the judiciary has protected individual liberties and prevented possible tyranny by the majority. Some examples include ending segregation and protecting citizens from unwarranted government intrusion. Despite occasional periods of tension, these protections have generally worked for more than two centuries to keep the judiciary free from partisan politics. At times, some judges have come under fire by politicians and the general public because their decisions seem unfair or inconsistent with the public's sense of justice. Some critics have even suggested that judges should be removed for unfavorable rulings.

Contrary to the federal system where judges are appointed for life, the popular election of state judges started with Andrew Jackson and the populist trend towards accountability to the people. That lasted until the 1920's when the trend went back to appointments. The 1940's saw the pendulum swing back towards elections. Nationwide approximately eighty-seven percent of all state court judges are selected or retained on the basis of popular elections.

What are the pros and cons? In theory, elections give the voters an opportunity to voice approval or concern about the judge's performance. In theory, that's a good thing. The process of requiring these judges to stand for public election can be viewed as a safeguard and a way to remove judges by electing someone else to that position. Although Oklahoma has a judicial disciplinary process to remove judges for misconduct, elections provide the public with a closer bond to their elected judge. Is that good or bad?

Judges should decide cases based on their knowledge of the facts and the law. **What would be the impact of allowing partisan politics to influence their decisions? What would be the impact of allowing public opinions to sway decisions?**

Obviously, any judges' decision can be criticized, and debate over decisions and the general direction of courts can be healthy. **When does criticism slide over into attacks on the courts that should concern us? Is it important to support the authority of a judge to make a decision, even when the decision does not agree with our sense of fairness or justice?**

**If a judge makes a decision that is totally within the law but is unpopular, should the public be allowed to make that judge be accountable to the public through the election process? Do you think a judge has ever lost an election for making an unpopular decision in a case or do you think the public considers the entire record, abilities and characteristics of judges when voting?**

**Can we have judicial independence and judicial accountability at the same time? Does the right to appeal decisions to higher courts suffice to correct errors?**

Anytime a judicial race is contested, a campaign ensues. A judicial campaign has similarities to other

campaigns but is very different in that it is very important for judges to be independent and not favor one person over another.

Judicial candidates and incumbents are constrained by the Code of Judicial Conduct in making campaign speeches and statements. They should not say how they would rule in a case if it came before them, or what their predisposition is towards a particular situation or issue. Therefore, if a judge is criticized for taking certain action in a case, the sitting judge may not be in a position to respond. The judge's duty is to follow the law. There are many situations in cases where a judge exercises discretion totally within the law. This may cause disagreements among critics, however the judge is usually not free to publicly respond to the criticism.

In recent years, well-funded campaigns in some states have removed judges who rendered unpopular decisions. The "facts" of these decisions are often oversimplified or even distorted during the campaign. Judges are usually prevented by ethical rules from responding to these criticisms or discussing the case. This is an example of tension between judicial independence and accountability to the people, but not necessarily accountability to the letter of the law.

As is the case with other elected officials (Congressman, County Commissioner, etc), many voters, especially in large districts, do not know their judges because they have no need or occasion to know them. The best information available on judges is from those who work in the judicial system, the lawyers who appear before the judge, or other people who know the candidates and know the desirable characteristics of a good judge. Desirable characteristics are that the person is fair, unbiased, independent, follows the law, and has integrity and a good work ethic.

**Is it important to you to have a voice, by way of popular vote, in electing your judges?**

**Do the judicial elections serve the public? Remember our pop quiz to name a district judge? Can anyone give me the name of an associate district judge?**

I would venture to say that most of you who have had experiences with judges come away with a positive opinion about the judge. Of course, there is a flip side.

**If a lawyer runs against the judge can you think of any potentially problematic situations?**

**On the other hand, do you believe that the politics are removed if a judge goes through the appointment process?**

**So, what's good and what's problematic with our system? Is it better to appoint or to have judges elected by popular vote?**

You can see the problem-accountability versus independence. It is not an easy question to answer. This question has and will give rise to some very spirited debate.

Thanks for your attention and now it's your turn. I'll be happy to take questions about our judicial system.