

## **EXECUTIVE SUMMARY**

The ABA Commission on Public Financing of Judicial Campaigns was convened by the ABA Standing Committee on Judicial Independence in accordance with a directive from ABA House of Delegates in 1999 to examine the feasibility of public financing of judicial elections. The Commission's honorary co-chairs are Hon. Howard Baker and Hon. Abner Mikva, its chair is D. Dudley Oldham of Houston, Texas, and its membership includes representatives from the League of Women Voters and the Conference of Chief Justices, as well as a number of ABA entities. Professor Charlie Geyh of Indiana University School of Law served as Reporter to the Commission. The Commission, which received substantial funding from the Joyce Foundation and additional support from the Open Society Institute, held three public hearings over the course of one year, heard from more than 25 witnesses and reviewed voluminous documents and reports.

The Commission unanimously recommends that states that elect judges in contested elections finance judicial elections with public funds. In reaching this conclusion, the Commission recognizes that judicial elections are unique from elections for legislators and executives. These latter public officials are elected to be representative of and responsive to constituencies whereas judges are not representative officials but are responsive to the rule of law rather than constituencies. The Commission concludes that public financing of judicial elections will address the perceived impropriety associated with judicial candidates accepting private contributions from individuals and organizations interested in the outcomes of cases those candidates may later decide as judges. In support of its recommendation, the Commission makes several findings and offers several principles to help guide the development of a public financing scheme for judicial elections.

### **Primary Recommendation**

The Commission recommends that states which select judges in contested elections finance judicial elections with public funds, as a means to address the perceived impropriety associated with judicial candidates accepting private contributions from individuals and organizations interested in the outcomes of cases those candidates may later decide as judges.

## **Findings Regarding Judicial Elections**

1. The Commission finds that the cost of judicial campaigns is escalating.
2. The Commission finds that to cover their election costs, judges must accept funds from contributors many of whom may be interested in the outcomes of cases before them.
3. The Commission finds that when campaign costs exceed contributions received, judges often take out loans to make up the difference.
4. The Commission finds that organizations interested in the outcomes of judicial elections often initiate advertising campaigns on behalf of or in opposition to a candidate, independent of the candidate's own campaign.
5. The Commission finds that when judges make decisions that favor contributors, they may be accused of favoritism.
6. The Commission finds a pervasive public perception that campaign contributions influence judicial decision-making.
7. The Commission finds that judges are uncomfortable soliciting contributions, which may discourage outstanding judicial candidates from seeking or remaining in judicial office.
8. The Commission finds that qualified candidates who lack connections to wealthy contributors may be impaired in their ability to compete effectively for judicial office.
9. The Commission finds that when judges are required to campaign like political branch candidates, it contributes to the inappropriate politicization of the judiciary.
10. The Commission finds that the only significant public financing program for judicial campaigns implemented to date has not been adequately funded.

## **Principles in Support of Public Financing of Judicial Elections**

1. Public financing programs must be sensitive to Constitutional limitations on states' power to regulate judicial campaign finance.
2. Public financing programs should be designed to best suit the particular needs of a particular state or territory.
3. Public financing programs are most suitable for primary and general election campaigns of high court judges, and in some cases, intermediate appellate judges.
4. Public financing programs should provide judicial candidates with full public funding in amounts sufficient to encourage participation.
5. Public financing programs should be restricted to serious candidates in contested elections who have met specified criteria indicating a certain level of support.
6. Public financing programs should be conditioned on the candidates' agreement to forego private financing and to limit their use of public funds to legitimate campaign purposes.
7. States and territories should address the impact of independent campaign expenditures and recognize the impact of general issue advocacy on public financing programs.
8. Public financing programs should distribute funds in the form of bloc grants to candidates and should also provide voter guides to the electorate.
9. Public financing programs should be funded from a stable and sufficient revenue source.
10. Public financing programs should be administered by an independent and adequately staffed entity.

The recommendations were reviewed by the ABA Standing Committee on Judicial Independence after additional comments were received. A report with recommendations was submitted to the ABA House of Delegates, the ABA's policy making body, and adopted at the ABA 2002 Midyear meeting in Philadelphia in February 2002.