

TLAW President's Column  
by Jacqueline B. Dixon

The Tennessee Plan is the system for merit selection, evaluation, and retention elections for judges in Tennessee. The Tennessee Plan sunsets this year if legislation is not enacted to continue it. Because of the sunset provision and in part due to the recent litigation between the Judicial Selection Commission, the Governor and candidates for the Tennessee Supreme Court, the Tennessee Plan is getting a lot of attention in our legislature. There have been more than a dozen bills introduced this year relative to the judicial selection process. Something will happen this year. It is TLAW's official position, as adopted by the board following its January meeting, that the Tennessee Plan should continue.

Although merit selection has been a feature of the Tennessee judicial system since 1971, the Tennessee Plan was adopted in 1994. When there is a judicial vacancy, the Tennessee Judicial Selection Commission screens all candidates for appointment to trial court and appellate level judgeships. The Commission then furnishes three names to the Governor who appoints a new judge to fill the vacancy. Appellate level judges are then subject to yes-no retention elections. This system has done great things for increasing the number of women serving on the bench in Tennessee. But that is not the only reason we all need to fight to preserve the Tennessee Plan. While it may not be perfect, it goes a long way toward keeping politics out of the judicial selection process at the appellate court levels.

Seven states use partisan elections to pick the members of their highest courts. Alabama's 2006 Supreme Court race was the most expensive in the United States last year and the most expensive ever in Alabama with \$7.3 million being raised in direct contributions. The Alabama State Bar now has a task force seeking an end to partisan elections. While \$7.3 million is a huge amount of money, the record for the most expensive court race belongs to Illinois where candidates for their Supreme Court raised \$9.3 million in 2004. It is interesting to note that the 2006 winner in Alabama is now their first female chief justice, Democrat Sue Cobb Bell, who beat the Republican incumbent, Drayton Nabors. The Alabama State Bar is pushing for a plan which would replace the partisan elections with retention elections. In Alabama, the effect of the big budget campaigns funded by law firms or businesses that have cases before the courts are causing people to question the fairness of the judiciary.

The Tennessee Plan has been instrumental in getting women and minorities on the bench. According to statistics from the Administrative Office of the Courts, prior to September 1994, there had been one woman serve on the Tennessee Supreme Court and that same woman (TLAW member and Judge Cissy Daughtrey who now sits on the federal

appellate court for the 6<sup>th</sup> Circuit) had been the only woman to serve on the Tennessee Court of Criminal Appeals. There had been eight women serve as state trial court judges. What a big difference the Tennessee Plan and twelve years have made! Tennessee currently has two women on the Supreme Court, three on the Court of Appeals, one on the Court of Criminal Appeals and twenty-five female trial court judges! Of the current judges, there is one minority serving on the Court of Criminal Appeals and eleven members of minorities who serve as trial court judges. Since September 30, 1994 and as of January of this year, the total applicants for judicial vacancies have been 72% male and 28% female. Of those applicants, 11% were minorities. Of the names submitted to the governor by the Judicial Selection Commission, 75% were male, 25% were female, and 11% were minorities. The governor has appointed 72% males, 28% females and 7% minorities to the judicial vacancies. While Tennessee clearly has a way to go for the judiciary to mirror the general population, progress has been made in the past twelve plus years.

We all need to work to preserve the Tennessee Plan by contacting our legislators and explaining to them why the plan works and is important. When having these discussions, mention the fact that statewide retention election of appellate judges assures the accountability of judges to the public. Explain the formal judicial performance evaluation process which provides the public with information which it needs to make informed choices about retention of appellate judges. (Note that there is additional information contained in this newsletter about a vacancy on the Judicial Evaluation Commission.) Remind them that judicial performance evaluations maintain the fairness and impartiality of the bench by focusing not on results or outcomes in particular cases but on overall judicial performance. Tell them how Tennessee's system reduces the role of partisan politics and campaign contributions in appellate level judicial races. Finally, let them know that merit selection of appellate judges and trial judges provides a screening process in gubernatorial appointments and has worked to improve the overall quality of our judiciary while making it look more like our state's population by helping to increase the number of women and minorities serving. If we all work together, the Tennessee Plan will survive. If you want additional information or a list of pending legislation concerning the judicial selection process, you may contact me at [jdixon@hwylaw.com](mailto:jdixon@hwylaw.com).