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The Civil, Criminal and Disciplinary Liability of Judges

I. INTRODUCTION

Few if any legal systems extend to judges such an extensive immunity from civil and disciplinary liability, but also subject them to an equivalent degree of political accountability, as the United States. In comparative terms, the United States represents polar extremes in both the breadth of judicial immunity from civil liability as well as the extent of political accountability throughout a judge's career. Justified by history and the felt need to protect individual judges from inappropriate outside interference, judges in the federal (national) and state judiciaries enjoy extensive immunity from direct civil liability. Unlike federal judges with life tenure, nearly all state judges are also subject to some form of formal periodic political accountability to remain in office after an initial term of years through either the electoral process or reappointment.

A subtle form of political accountability may also apply today in the federal system, inasmuch as sitting judges constitute roughly half of all judicial appointments to federal district and appellate courts. The United States remains in the mainstream perhaps only with respect to the criminal liability of judges. Both federal and state judges may be prosecuted for criminal acts related to judicial functions, such as bribery and extortion, and judges in both systems are subject to rarely used processes of impeachment and conviction for removal. In addition, judges in all jurisdictions are increasingly subject to some form of internal disciplinary action.

A notable feature of the U.S. judicial systems (federal and state) is an emphasis on the autonomy of each individual judge. The processes for selection vary[1] but in the U.S. as in other common law

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1. For federal courts and courts in three states (Maine, New Hampshire and New Jersey) judges are selected by executive appointment and limited legislative (upper house) confirmation. California has a similar process for executive appointment and legislative confirmation for the Supreme Court and courts of appeal. Superior

systems judges serve during their tenure for a single judicial position. Once the selection process is completed, the judge in office enjoys a broad scope of individual autonomy. Unless removed or selected once more for another—generally preferred, higher—judicial position, judges serve on the particular bench in the court to which they were appointed or elected for the duration of their prescribed tenure in office, limited as detailed below to a fixed term of years except in the federal system and all but three states. Judges are in effect masters of their individual courtrooms. No agency or single office for overall judicial administration exits in any jurisdiction the United States. At the federal level, Judicial Councils with some general administrative responsibility, such as the development of mechanisms for caseload management and case assignment of judges, have been created by statute for each circuit. They comprise the chief circuit judge and an equal number of district and other circuit court judges. A national Judicial Conference also exists but it meets only twice a year. Its principal task is to recommend policy, not to administer the court system.

As detailed below, every state has created one or more special commissions to set ethical standards and deal with individual cases of alleged judicial misconduct, but these agencies do not have any general responsibility for judicial administration. Nor do judges advance in any routine fashion during their careers from one court to another, either at the same level or from lower to higher courts. A meaningful opportunity does exist for lower court judges to move to a higher court through political appointment or election, especially for federal district and state court judges, but such advancement is neither routine nor an aspect of a predetermined pattern of career advancement. Higher courts of appeal have no general administrative authority or responsibility for judicial administration of lower courts within their jurisdiction. Their supervisory role is generally limited to the formal appellate process, and in the federal system to

court (first instance) judges are selected by nonpartisan election. In 14 states (Alaska, Colorado, Connecticut, Delaware, Hawaii, Iowa, Maryland, Massachusetts, Nebraska, New Mexico, Rhode Island, Utah, Vermont, and Wyoming) and the District of Columbia, judges at all levels are nominated for appointment by a non-partisan commission. Judges at all levels in South Carolina and Virginia are selected by the legislature without a nominating commission. In 9 states judges at the appellate level are nominated by commission but at least some first instance judges are selected by partisan (Kansas, Missouri, New York, Tennessee), or non partisan (Arizona, Florida, Oklahoma, South Dakota) election. Indiana has both partisan and nonpartisan elections depending on the county in which the court is located. In 21 states judges are initially selected in either partisan (Alabama, Illinois, Louisiana, Ohio, Pennsylvania, Texas, West Virginia) or nonpartisan elections (Arkansas, Georgia, Idaho, Kentucky, Michigan, Minnesota, Mississippi, Montana, Nevada, North Carolina, North Dakota, Oregon, Washington, Wisconsin). American Judicature Society, Judicial Selection in the States: Appellate and General Jurisdiction Courts (January 2004), available at http://www.ajs.org/selection/sel_stateselect.aspm. See *infra* for data on retention of judicial office after expiration of the initial term.

the limited disciplinary oversight of the chief judges and judicial councils in each circuit.

II. JUDICIAL IMMUNITY FROM CIVIL LIABILITY

Judges in the U.S. enjoy absolute immunity from civil liability for any act performed in the judge's judicial role.[2] Immunity applies for all federal judges and apparently all state judges, even with respect to the most egregiously *ultra vires*, corrupt or malicious acts,[3] so long as the judge is acting within the scope of the court's general jurisdiction pursuant to a judicial function. The principle of judicial immunity from civil liability was initially recognized as an applicable common law rule in the United States by early 19th century state courts.[4]

The U.S. Supreme Court first articulated and applied the rule in 1868 in an appeal from a ruling by a lower federal court in Massachusetts that had dismissed an action for civil damages brought by a former attorney against a Massachusetts Superior Court judge, who had allegedly wrongfully disbarred him. Writing for a unanimous court, Justice Field upheld the dismissal, stating that judges with general jurisdiction are absolutely immune from civil damages for any judicial act even when they act outside of their jurisdiction.[5] Both of the two earliest Supreme Court decisions—*Randall v. Brigham* and *Bradley v. Fisher*—involved damage actions brought by an attorney for wrongful disbarment.

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2. The rule has been repeatedly articulated and applied in U.S. Supreme Court decisions for nearly a century and a half. See Randall v. Brigham, 74 U.S. (7 Wall.) 523 (1868); Bradley v. Fisher, 80 U.S. (13 Wall.) 335 (1872); Alzua v. Johnson, 231 U.S. 106 (1913); Pierson v. Ray, 386 U.S. 547 (1978); Stump v. Sparkman, 435 U.S. 349 (1978); Mirales v. Waco, 502 U.S. 9 (1991). A survey noted below of over 240 reported decisions involving judicial immunity decided by both state and federal courts between 2000 and mid summer 2005 revealed no inconsistent state or federal decision. For an outstanding study of judicial immunity from civil liability, see Jeffrey M. Shaman, Judicial Immunity from Civil and Criminal Liability, 27 San Diego L. Rev. 1 (1990).

3. Prior to the late 19th century a half dozen states denied immunity to judges for "malicious" acts. Note, Liability of Judicial Officers Under Section 1983, 79 Yale L. J. 322, 386-27 (1969).

4. Peter H. Schuck, The Civil Liability of Judges, 37 Am. J. Comp. L. 655, 662 (1989); Shaman, *supra* note 2; Note, *supra* note 3.

5. Field added the proviso ""unless perhaps where the acts, in excess of jurisdiction, are done maliciously or corruptly." 74 U.S. (7 Wall.) 523, 536. Three years later in *Bradley v. Fisher,* the case most often cited as the basis for the American rule, again writing for the Court, Field retracted the proviso. See J. Randolph Block, *Stump v. Sparkman* and the History of Judicial Immunity, 1980 *Duke L. Rev.* 879, 900. In 1868 apparently the decisional law in only six states (Indiana, Iowa, Kentucky, Maryland, South Carolina, and Tennessee) exempted malicious and corrupt acts from immunity. Note, Liability of Judicial Officers Under Section 1983, 79 Yale L. J. 322, 327 (1969). By the turn of the century nearly all had expressly adopted *Bradley v. Fisher*'s more inclusive principle. See, e.g., Londegan v. Hammer, 30 Iowa 508 (1870); McBurnie v. Sullivan, 152 Ky 686 (X); Brewer v. Mele, 337 Md 271 (1995); Webb v. Fischer Tenn. 701 (1902).

In 1913, the Court extended immunity to a justice of the Philippine Supreme Court faced with allegations that he had procured a civil judgment against the plaintiff by making false statements to other judges on the bench.[6] In the opinion for a unanimous court, Justice Holmes wrote, "Whatever may have been the Spanish law, this a principle so deeply seated in our system that we should regard it as carried into the Philippines by implication as soon as we established courts in those islands."[7] The Court reaffirmed the principle in a 1967 civil rights case for false arrest and imprisonment brought against local police officers and a municipal police court judge.[8] Justice Douglas dissented.[9] A decade later in *Stump v. Sparkman* (1978), the Court applied the principle in a case considered by many to represent one of the most egregious examples of judicial misconduct.[10] In *Stump,* the Court held that a state court judge who had approved a petition sought by the mother of a teenage girl for sterilization without hearing or notice to the girl or indeed anyone else. The family physician had refused to perform the requested operation without court sanction. The judge was allegedly a family friend. The daughter did not learn of the operation until years later, when two years after marriage without conception she sought medical advice. In 1991, the Court reversed *per curiam* without hearing a Ninth Circuit decision allowing a civil action against a judge who had allegedly directed police officers forcefully to seize the attorney and bring him into the courtroom.[11] The Court reasoned that the order to the police officers constituted a "judicial act."

Absolute immunity from civil liability is not limited to judges. Judicial decisions have extended it to all persons exercising judicial functions, including justices of the peace, magistrates, other lay judges, court commissioners, court-appointed mediators, law clerks, and others performing judicial or quasi-judicial acts.[12] In *Butz v. Economu*, for example, the U.S. Supreme Court held that the immunity principle applied to the adjudicatory functions of administrative agency hearing examiners and administrative law judges,[13] Judicial immunity has been held not to apply, however, to private persons alleged to be co-conspirators with a protected judge using the judicial process to defraud.[14]

Under the accepted formulation of the immunity principle, a judge is not immune from civil liability for misconduct that either

6. Alzua v. Johnson, 231 U.S. 106 (1913).
7. 231 U.S. at 111.
8. Pierson v. Ray, 386 U.S. 547 (1978).
9. 386 U.S. at 558.
10. See, e.g., Schuck, *supra* note 3, at 663; Block *supra* note 4, at 880.
11. Mirales v. Waco, 502 U.S. 9 (1991).
12. See cases cited in Shaman, *supra* note 2.
13. 438 U.S. 478 (1978).
14. Dennis v. Sparks, 449 U.S. 24 (1980).

does not constitute a judicial act or is outside the Court's subject matter jurisdiction. Nearly all reported cases turn on the question of whether the judge's alleged misconduct constituted a "judicial act."[15] In *Forrester v. White*,[16] for example, the Court held that a state court judge could be held accountable for violations of Title VII of the Civil Rights Act of 1964 for having demoted and fired a probation officer on account of her gender. In an opinion authored by Justice O'Connor, the Court reasoned that to hire or fire probation officers and other court personnel is an administrative not a judicial function or act.

A survey of over 240 reported federal and decisions between 2000 and mid-2005 revealed only two cases in which judicial immunity was held not to bar a civil damage action against a judge. In one, *Viator v. Miller*,[17] a Louisiana Court of Appeals denied immunity to a city court judge was sued by the ex-husband of his secretary. The husband alleged the judge, who presided over the divorce, had begun an affair with the secretary while he was in private practice and which continued during his tenure as judge. The court determined that the alleged misdeeds were "by-products of the defendant's private practice or were undertaken outside of his judicial capacity."[18] The second was an Alabama case involving a damage action against a municipality from false imprisonment that resulted from the failure of the magistrate to fax a warrant-recall order to the police department.[19] The municipality argued that it was protected from civil liability by the immunity of the magistrate. The Alabama Supreme Court agreed but held that judicial immunity did not apply inasmuch as faxing the warrant-recall was an administrative act not a judicial act.[20]

Judicial immunity does not apply to injunctive relief or to statutory-sanctioned awards of attorney's fees. The U.S. Supreme Court addressed both issues in a civil rights action against the Virginia Supreme Court and its chief justice brought by a consumer organization challenging the Virginia Court's promulgation and enforcement of rules against attorney advertising.[21] The plaintiffs sought declaratory and injunctive relief, as well as an award of attorney's fees. The Court held that in prescribing rules to regulate the practice of law the Virginia court acted in a legislative capacity and thereby enjoyed legislative immunity from suit. So, too, in the enforcement of such rules, the Court continued, the Virginia justice enjoyed judicial immunity

15. See, e.g., cases cited by Schuck, supra note 3, at 665.
16. Forrester v. White, 484 U.S. 219 (1988).
17. 900 So. 2d 1135 (La. App. 3rd Cir., 2005).
18. Id. at 1140.
19. City of Bayou La Batre v. Robinson, 785 So 2d 1128 (Ala. Sup. Ct., 2000).
20. 785 So. 2d at 1131-32.
21. Supreme Court of Virginia. v. Consumers Union of United States, 446 U.S. 719 (1980).

but judicial immunity, the Court held without further explanation, did not bar declaratory and injunctive relief in the Virginia' Court's enforcement capacity. The Court expressly declined, however, to decide whether judicial immunity would bar prospective relief. With respect to the district court's award of attorney's fees, the Court balked. Without evidence of congressional intent a discretionary award by the trial court was deemed inconsistent with the legislative immunity enjoyed by the Virginia Court.

The U.S. Supreme Court addressed both issues again four years later in *Pulliam v. Allen.*[22] The case involved a section 1983 action by persons who had been jailed by a state magistrate when unable to provide bail after arrest for nonincarcerable misdemeanors. Justice Blackman, writing for a five justice majority (Blackman, Brennan, White, Marshall and Stevens), concluded that as a matter of history, policy, and congressional intent, judicial immunity did not bar prospective injunctive relief nor a fee award in a civil rights action under 42 U.S.C. §1988 even in cases where damages would be barred. Joined by Chief Justice Burger and Justices Rehnquist and O'Connor, Justice Powell disagreed on all points in his dissent.

Judicial immunity does not in fact insulate judges from cost-imposing civil suits or reputational injury from public exposure of misconduct. The number of unsustainable damage actions actually filed suggests that plaintiffs may purposefully seek such indirect sanctions. To the extent plaintiffs or their lawyers are willing to bear the costs of litigating dismissible claims, defendant judges are forced to defend and thus to pay the cost of at least time and effort for their defense, in many cases through one or two appeals. Insurance[23] or other arrangements may relieve judges from personally bearing the full costs of their defense. Nevertheless, as a matter of course like other defendants they bear the burden of expended time and effort. Fee awards, requiring accountable judges to pay both their own as well as the prevailing plaintiffs' attorney's fees, may be rare, as some suggest.[24] However, as the survey of recent cases indicates, damage actions in large number continue to be filed against judges who although protected by judicial immunity still pay a price even if not the actual costs of their albeit successful defense. Moreover, unlike the prevailing disciplinary controls described below, lawsuits are transparent. Even prompt dismissal of a suit exposes judicial misbehavior, particularly within the peer community of other judges and the legal profession generally. Perhaps for this reason, too, although routinely

22. 466 U.S. 522 (1984).

23. Peter Schuck notes a significant increase in personal liability insurance claims by judges after the Supreme Court's 1984 decision in *Pulliam v. Allen*. Schuck, *supra* note 3, at 665.

24. See, e.g., . Schuck, *supra* note 3, at 665.

dismissed, lawsuits against judges for wrongful judicial acts are so uncommonly common.

III. CRIMINAL LIABILITY

The broad immunity from civil liability that judges in the U.S. enjoy does not extend to criminal conduct.[25] Judges are liable for any criminal conduct on or off the bench. *Ex parte Virginia*[26] is the leading federal case. In 1878 the petitioner, a county court judge in Virginia, was arrested for having unlawfully excluded African-Americans from serving as jurors in violation of the Civil Rights Act of 1875. Although the Court rejected the argument that jury selection constituted a judicial act, the majority concluded by violating the statute the judge had acted without judicial authority.

A lack of statistics or other information to document the extent of criminal prosecution of judges in the U.S., however, is notable. Public exposure of judicial corruption remains rare and, apparently, criminal prosecution is even less frequent or at least less publicized.[27] Little, if any, empirical evidence exists to enable any meaningful evaluation of the extent of judicial corruption and the relative application and utility of criminal sanctions.

IV. REMOVAL BY IMPEACHMENT AND CONVICTION

More data are available with respect to formal procedures for the removal of judges. Federal and nearly all state judges are subject to removal by impeachment and conviction. The potential reach of impeachment proceedings is belied by actual practice. Article II, section 4 of the U.S. Constitution provides for removal of federal judges by impeachment (by the House of Representatives) and conviction (by the Senate) for "Treason, Bribery, or other high Crimes and Misdemeanors." However, only 13 judges have ever been impeached and of these only seven were actually convicted and removed.

Most state constitutions have similar provisions, although the grounds vary.[28] Removal of judges by impeachment and conviction is even less frequent in the states, however, than at the federal level. A study by the American Judicature Society found that between 1989 and 2004 only two state judges were impeached and only one con-

25. See discussion and cases cited in Shaman, *supra* note 2, at 8-10.

26. 100 U.S. 339 (1880).

27. Noting the prosecution of corrupt judges in Cook County (Chicago) Illinois in the 1980s resulting from the FBI's Operation Greylord as well as more recent bribery scandals and prosecutions in Ohio, Florida and Nee York, Geoffrey Miller devotes only one brief paragraph to criminal prosecution of judges in his recent article on "bad judges". Geoffrey P. Miller, *Bad Judges*, 83 TEX. L. REV. 431, 435 (2004).

28. American Judicature Society, Methods for Removing State Judges 1 (2004), http://www.ajs.org/ethics/eth_impeachment.asp (last visited 8/26/05).

victed.[29] A February 2004 study for the Connecticut General Assembly by Christopher Reinhart of the Office of Legislative Research (OLR) discovered only 32 instances of formal investigation for possible impeachment of any state judge since 1785. In only 10 cases was the judge in question actually impeached, convicted and removed.[30]

V. Disciplinary Controls

Since the 1960s, federal and state judges have been increasingly subject to some form of oversight and disciplinary controls. Concern over the need for more effective mechanisms for judicial oversight led states in the 1960s and 1970s to establish judicial commissions to receive and review complaints regarding judicial misconduct. Beginning with California in 1960, followed by Ohio and Texas in 1965, by 1979 all but one state had created such a commission. (In 1988 Arkansas adopted its Judicial Discipline and Disability Commission by constitutional amendment.). Some states (Alabama, Delaware, Illinois, New Hampshire, Ohio, Oklahoma, West Virginia, Wisconsin) have established two or three agencies to deal separately with the review, investigation, and prosecution of complaints, the adjudication and application of sanctions, and finally appeals. Some commissions, such as the California Commission on Judicial Performance since 1995[31] and the New York State Commission on Judicial Conduct,[32] are empowered to impose sanctions, including removal. Others, such as Louisiana and Washington State, may only recommend sanctions for some other agency, typically the state supreme court, to impose.[33]

The composition of these state disciplinary commissions also varies. Judges are well represented, sometimes a plurality (e.g., Alabama, Florida, Kansas, Kentucky, Nebraska, Texas) but most often a fourth or a third of the members, but more rarely a majority (but see Arizona, Michigan, Mississippi, South Carolina, Tennessee, West Virginia) except in states with separate agency for adjudication or appeals (e.g., Delaware, Illinois, Ohio, Oklahoma). The methods for selection are equally varied. The majority of states (26) and the District of Columbia have adopted a constituency system for selection with judges, usually the supreme court or chief justice, selecting the

29. Id.

30. http://www.cga.ct.gov/2004/rpt/2004-R-0184.htm (last visited 8/26/05).

31. California Constitution, Art. VI. Section 18 (d). See Miller, *supra* note 7, at n.311. Prior to 1995 the California commission could only recommend removal to the California Supreme Court. http://cjp.ca.gov/pubdisc.htm.

32. New York Constitution, Article 6, Section 23.

33. The Louisiana Judiciary Commission is empowered only to recommend sanctions, including compulsory retirement and removal, for imposition by the Louisiana Supreme Court. Louisiana Constitution, Article V, Section 25 (C). See Miller, *supra* note 7, at fn. 310. In contrast the Washington State Commission on Judicial Conduct may reprimand and censure a judge but only recommend to the state supreme court his or her removal. Washington Constitution, Article IV, Section 31.

judges; the state bar, the attorneys and the governor, usually subject to legislative confirmation, any members of the general public. In 11 states (California, Colorado, Illinois, Iowa, Maine, Massachusetts, Montana, New York, Oklahoma, Pennsylvania), the judges are selected by judges (generally of the state's highest court) but all other members are appointed by the governor (again usually subject to legislative conformation). Nine slates leave the selection of commission members entirely to judges (Delaware, Hawaii, Kansas, Louisiana, New Jersey, Ohio, South Carolina, Vermont, West Virginia). Two states provide for gubernatorial selection of all commission members (Maryland and Minnesota) and the Virginia General Assembly selects all members of their Judicial Inquiry and Review Commission.[34]

As judicial commissions were being established in each state, concern grew over the need for more effective disciplinary controls for federal judges or at least some procedure for complaints against judges for misconduct. The result was the Judicial Conduct and Disability Act of 1980,[35] which expanded the procedures for dealing with judicial misconduct by establishing for the first time a procedure for formal complaints of misconduct against individual federal judges but not a separate investigation or adjudicatory commission or agency. Thus, since 1980 at the federal level,[36] the chief judge for each circuit has be given limited responsibility for disciplinary oversight over all federal judges in the circuit. The statute provides for written complaints against any judge in a circuit to be filed with the clerk of the relevant court of appeals. The chief judge of the circuit is required to screen the complaints. Unless he or she determines that adequate corrective measures have already been taken, the judge must either dismiss it or to refer it to a special committee comprising the chief judge and an equal number of circuit and district judges. The committee investigates the charges and reports its findings to the judicial council for the circuit, which has ultimate authority to take corrective action, including censure and reprimand, but not removal.[37] The Act also established a National Commission on Judicial Discipline and Removal to study the problem of judicial discipline and recommend needed changes. In 1993 the Commission met, concluded that the existing procedures were adequate, and promptly went out of existence.

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34. American Judicature Society, Judicial Selection in the States, *supra* note 1, Appendix C.

35. 28 U.S.C. §372(c).

36. The Judicial Improvements Act of 2002 (228 U.S.C. §§ 351-364) replaced the 1980 Judicial Conduct and Disability Act (28 U.S.C. §372 (c)) but did not substantially alter the procedures for judicial oversight under the prior legislation.

37. Miller, supra note 7.

Evaluations of the effectiveness of existing disciplinary controls at both state and federal levels are mixed. The formal removal or involuntary retirement of judges remains rare. The most frequently imposed sanctions are relatively minor, such as public censure or admonishment. In California, example, 20 judges have been removed, 37 censured, 35 admonished, and 17 reproved since 1960 by either the Supreme Court or the Commission on Judicial Performance. The vast majority of complaints, however, are made by disgruntled litigants and are dismissed for lack of merit.[38] Critics also express concern over the influence judges themselves have in the disciplinary process, a lack of transparency, and the lack of resources devoted to the commissions.[39]

VI. Political Accountability

The primary means of ensuring judicial accountability in the United States is political. As noted at the outset, one of the distinguishing features of the judicial systems in the United States is the extent of political influence in the initial process for selection. In 30 states, first instance judges are elected in either a partisan or nonpartisan contest. Federal judges are the judges of at least the highest appellate court and are initially selected by executive appointment with legislative confirmation. In two states, judges are selected by the legislature. Even in the remaining states where judges are nominated by a nonpartisan commission, less transparent but no less significant political considerations are inexorably in play inasmuch as the members of the commissions themselves are selected though political appointment. However influential political considerations may be in the selection process, continuing political accountability is assured only where judicial tenure is limited to a term of years and renewal depends upon either reappointment by one or more of the political branches or reelection (including retention elections). It is telling therefore that judges in all but four jurisdictions in the United States are subject to reappointment or election at the end of a limited initial term of office.[40]

Only in the federal system and, as of 2004, one state (Rhode Island) do judges at any level have lifetime tenure. In two states (Massachusetts and New Hampshire), all judges are subject to mandatory retirement at age 70. Judges in all other states and the District of Columbia have limited tenure and in order to remain in office must

38. See. e.g., Sambhav N. Sakar, Comment: Disciplining the Professional Judge, 88 Calif. L. Rev. 1233 (2000).

39. Miller, supra note 7, at 466-469.

40. Data on tenure of judges and various forms of political accountability from American Judicature Society, Judicial Selection in the States: Appellate and General Jurisdiction Courts (January 2004), available at http://www.ajs.org/selection/sel_stateselect.aspm (site last visited 8/22/05).

submit to some form of political scrutiny. Many states provide for longer initial terms of office for appellate judges, especially at the highest level, than for courts of first instance, but with the three aforementioned exceptions, no state judge or justice remains in office for more than 15 years without being subject to either a retention vote (Alaska, Colorado, Illinois, Iowa, Nebraska, Pennsylvania, Tennessee, Utah and Wyoming), or either a partisan or nonpartisan election in which they may be opposed by a competing candidate for the office (Alabama, Arkansas, Georgia, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nevada, New Mexico,[41]or reappointment (by governor with confirmation of one or both houses of the legislature or by a judicial commission)) or both.

The District of Columbia has the longest initial term of office (15 years) followed by New York (14 years for Court of Appeals [New York's highest court] justices and Supreme Court [first instance] judges but, oddly, not appellate division judges, whose initial term is only five years). California (Supreme Court justices and Courts of Appeal judges), Delaware, Virginia (Supreme Court justices), West Virginia (Supreme Court justices) have initial 12 year terms. In 23 states, the initial term of office is six years or less. The terms vary from seven to 10 years for all judges in 11 states.

VII. INFORMAL CONSTRAINTS

In the United States, peer approval, public approbation, the promise of future appointment to a higher court or re-election (retention) appear to be the principal means of assuring judicial accountability. No empirical evidence even suggests that the formal, legal controls have significant effect. Except as a cost-imposing or reputational constraint, judicial immunity forecloses the use of civil liability. Neither the potential for criminal liability, or removal through impeachment and conviction, nor disciplinary processes appear to have much effect. In lieu of such formal mechanisms, the informal approbation of other judges, particularly the chief judge of circuit or district courts in the federal seem to be the most applicable and presumably effective sanction.[42]

41. New Mexico combines a in initial appointment for an eight or six year term by a nominating commission fo0llwed by partisan election for a second term with an retention election thereafter.

42. Charles Gardener Geyh, *Informal Methods of Judicial Discipline,* 142 U. PA. L. REV. 243 (2005).