



2022 Judicial Recruitment Bar Survey

Report and Findings

ABOUT THIS REPORT

Idaho law provides two ways to select new judges: by election or by appointment. Both processes are nonpartisan. The latter is necessary to fill vacancies and maintain the work of the courts when vacancies happen between elections. Depending on the type of judge, appointments are made by a district magistrates commission — a group of specific local officials, attorneys and members of the public — or by the governor, who picks from a short list of applicants vetted and submitted by the Idaho Judicial Council.

This report deals with the judicial selection process for appointments.

In March 2022, the Idaho Supreme Court surveyed attorneys of the Idaho State Bar and current and retired judges about their thoughts on judicial selection. The Court was particularly concerned that district court vacancies have received fewer highly qualified applicants in recent years. These pages summarize the findings from that survey.

For more information on Idaho's judicial structure, please visit annualreport.isc.idaho.gov.

METHODS

5,700 active members of the Idaho State Bar — including sitting judges — were invited to take the survey through an emailed link to an anonymous Qualtrics form. In total, 1,611 Bar members participated, resulting in a response rate of 28.3%.

Members of the Bar were asked questions about their interests in becoming a judge, their concerns with the judicial selection process, potential sources of bias in the selection process, reasons for not completing standard Bar questionnaires on judicial applicants, and areas of improvement for the judicial selection process.

WHO PARTICIPATED?

Respondents were asked to provide a variety of demographic information. The table on page 2 summarizes the results. The modal respondent, representing the most common demographics in the survey, was a practicing attorney with more than 20 years of experience who worked in the 4th Judicial District and focused on private practice litigation.

SURVEY PARTICIPANTS

		<i>Percent</i>
<i>Current Position</i>	Attorney	87.9%
	Magistrate Judge	6.7%
	District Judge	3.1%
	Retired Judge/Justice	2%
	Retired Attorney	0.8%
	Appellate Judge/Justice	0.3%
<i>Years of Experience</i>	More than 20 years	40.4%
	11-20 years	26.4%
	5-10 years	15.4%
	Less than 5 years	11.5%
<i>Practice Emphasis</i>	Private Practice - Litigation	43.7%
	Government Agency - Litigation	24.7%
	Private Practice - Transactional	14.1%
	In-House Counsel - Transactional	6.0%
	Government Agency - Transactional	5.7%
	In-House Counsel - Litigation	2.8%
	Not Currently Practicing	2.4%
	Not Currently Employed	0.6%
<i>Jurisdiction</i>	Fourth District	44.1%
	First District	9.6%
	Seventh District	9.3%
	Fifth District	7.6%
	Third District	7.2%
	Out of State	6.5%
	Second District	5.7%
	Sixth District	5.5%
	Federal Courts	4.5%

CONCERNS ABOUT JUDGESHIPS

Seven-tenths of respondents reported interest in being a judge, but only two out of every ten said they had previously applied for an opening.

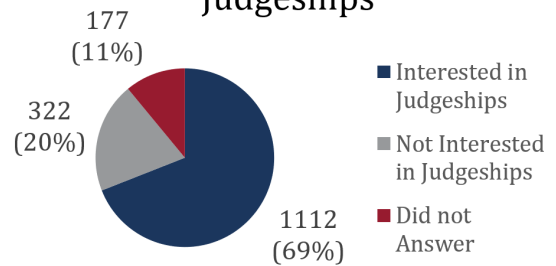
Respondents who had applied for judgeships in the past were asked to select one or more motivations for applying from a supplied list of choices. Their selections are shown in the chart labeled "Benefits Of Judicial Positions." Most respondents cited problem solving, public service and contributing to the community as motivations. Few said they were motivated by having stable pay or the chance to learn different areas of the law. While respondents had the option to write in their own motivation rather than pick from the list, most who wrote did so to justify their selection from the list.

All respondents were asked to select one or more concerns about applying for judgeships or to write in their own response. The chart labeled "Most Common Concerns About Judicial Positions" summarizes how often respondents picked specific concerns. The most frequently mentioned concern was the judicial selection process itself. Few respondents picked concerns about satisfaction in their current jobs or negative public and personal perceptions of the judiciary. Most respondents again used the write-in option to justify their selections.

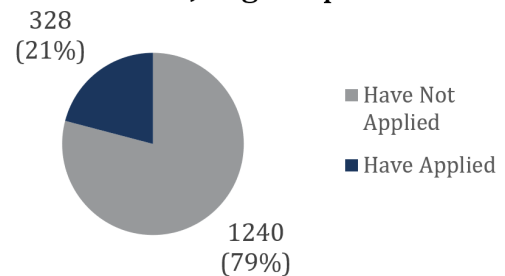
Respondents were then asked to rank their selected concerns in order of importance. In contrast with the previous chart, "Most Significant Concerns About Judicial Positions" shows how strongly respondents felt about each concern. This chart shows the concerns that ranked as most significant; very few respondents selected any other options.

Finally, the "Reported Salaries" table shows current general pay levels reported by attorneys who have been members of the Idaho State Bar for 21 to 30 years. Idaho district judges currently receive \$140,000 a year, meaning nearly half of attorneys in this experience range are paid more. (For comments on how this affects recruitment, see page 11.)

Percent with Interest in Judgeships



Percent Who Have Applied for Judgeships

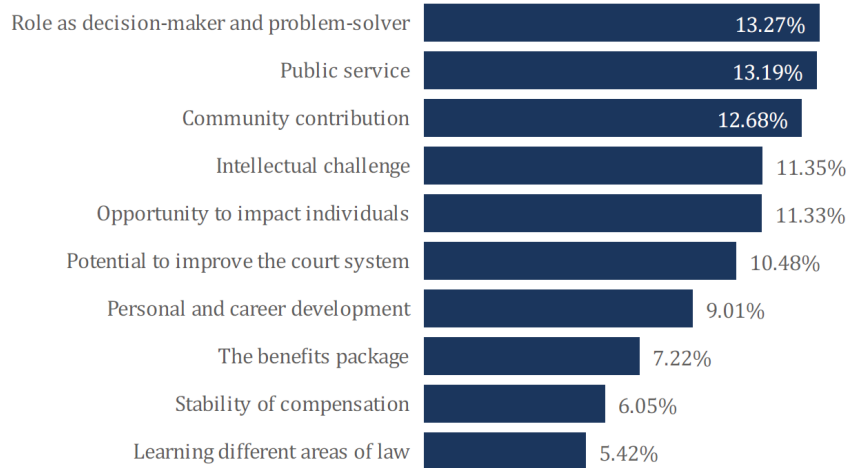


Totals only include respondents who answered this question.

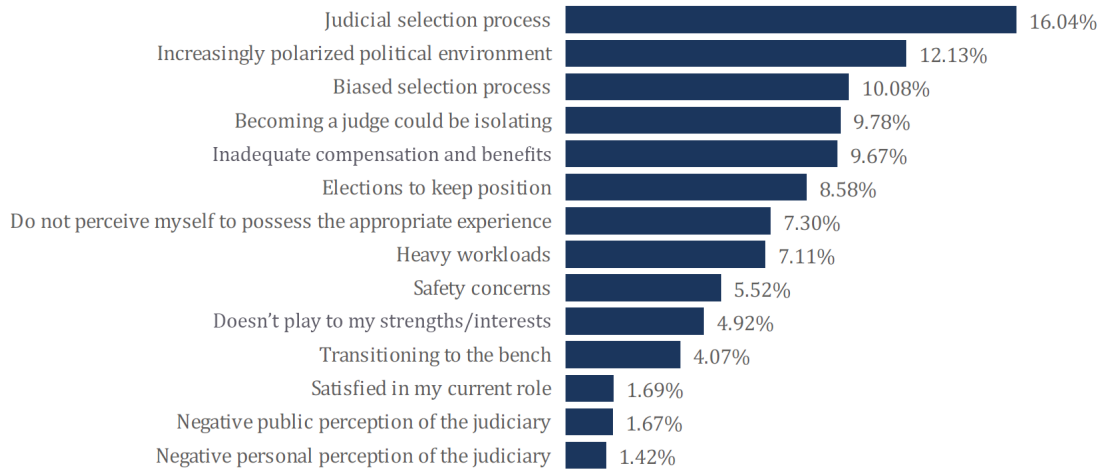
Reported Salaries for Attorneys with 21-30 Years' Membership in the Idaho State Bar

50% of attorneys make more than: \$130,000
40% make more than: \$165,000
30% make more than: \$175,000
20% make more than: \$220,000
10% make more than: \$300,000

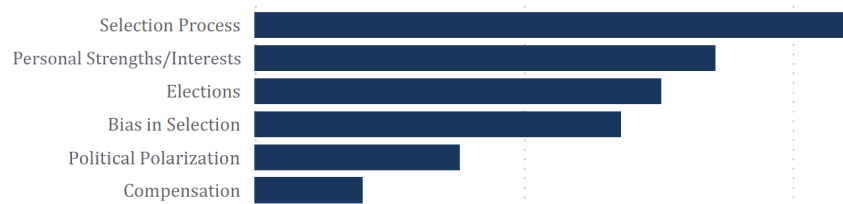
Benefits Of Judicial Positions



Most Common Concerns About Judicial Positions



Most Significant Concerns About Judicial Positions



PERCEPTIONS ON BIAS IN THE SELECTION PROCESS

Respondents were asked to indicate whether they perceived bias in the judicial selection process across various categories. Overall, three of every 10 respondents (30%) said they saw bias in at least one area of the process. The remaining majority did not indicate they saw any bias.

The most commonly reported biases involved political ideals or sex. (See chart at right for details.) The survey asked general information about bias, but not which selection process (Judicial Council or magistrates commission) respondents were thinking of while answering.

Respondents who identified at least one bias were offered the chance to elaborate in an open-ended response. The table at right lists the percentage of respondents who indicated they saw bias in specific areas. The rest of these pages summarize trends in the open-ended comments.

A separate question asked about respondents' views on diversity as a whole. Eight of every 10 respondents said they believe overall diversity is very or moderately important in judicial selection.

Source of Perceived Bias	Percent Reporting
Political Ideals	18.3%
Sex	13.3%
Age	7.1%
Residency / Geographic Location	7.0%
Religion	5.9%
Race	4.2%
Sexual Orientation	2.9%
National Origin	2.2%
Disability	1.1%
Veteran Status	0.7%

RACE

Most respondents who cited racial bias said they believe white judicial candidates receive preference over minorities. About 23% stated the opposite and said they think selection committees favor minority candidates to increase diversity on the bench.

Of those who perceived a preference for white candidates, some described the lack of diversity as alienating to minorities and a barrier to judicial service. Other respondents said they believed a lack of diversity on selection committees contributes to a lack of diversity in judges.

POLITICAL IDEALS

Judicial positions in Idaho are nonpartisan. Nevertheless, most respondents who said they saw political bias believed judicial applicants must identify with a particular political party or have political beliefs that align with the people who are making the appointment.

Many of the respondents mentioned the importance of political connections (“it’s not what you know, it’s who you know”). Finally, several respondents described concerns with interview questions they believed were designed to elicit responses about an applicant’s political affiliation.

RELIGION

Respondents who selected this area said they see a strong preference for appointing judges who are heavily involved in a church; some described perceived favoritism for certain faiths by region. Certain respondents said they were asked about their religion in the application process, and described perceptions equating a person’s religious devoutness to their ability to be fair.

SEX

Most respondents in this area described a bias against women. This included comments that the gender balance of appointed judges does not reflect the makeup of those practicing law in their districts. Respondents often said it appears women must be more qualified than men to be considered for the same position. One specifically described being asked how she would be a mother and raise children while working as a judge.

Just under half of the respondents claimed that unqualified or less-qualified women were being selected over more-qualified men, and cited specific examples.

Statewide data from the Idaho State Bar shows that in mid-2022, about 30% of active Bar members were women. Roughly 22% of active Bar members were women who've held an Idaho law license long enough to become a magistrate judge, which requires five years of legal practice. Roughly 16% were women licensed long enough to become a district or appellate judge, which requires 10 years of legal practice.

Data from the Administrative Office of the Courts shows that at the time of the Bar survey, 27% of state judges were women. The exact percentage varied by type of judge (see chart above). It is important to note that these are statewide figures. Local gender balance differs geographically across Idaho; not yet studied is how that compares to the distribution of where Bar members live.

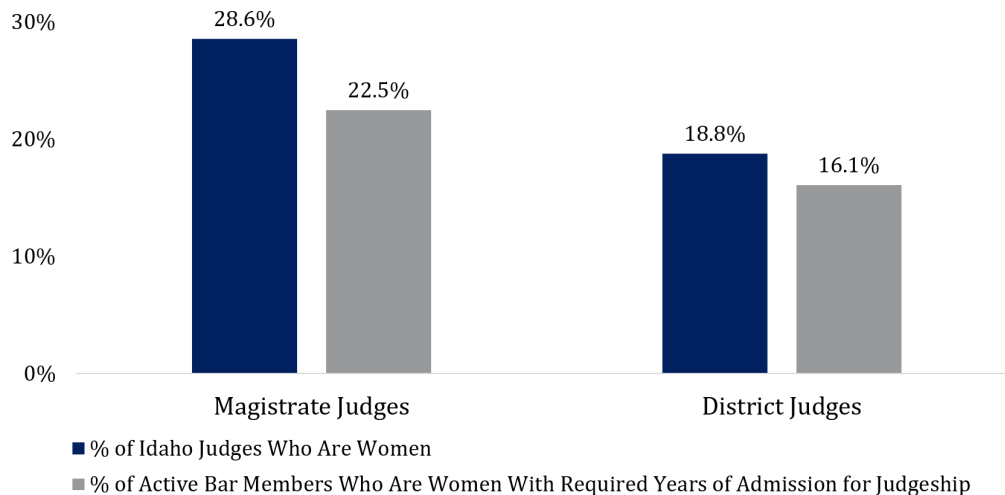
RESIDENCY / GEOGRAPHIC LOCATION

Most people who mentioned this bias said they believed selection committees favor applicants who live in the area where the newly appointed judge would serve. A smaller group said more directly that qualifications and experience took a back seat to geographic location, and that they had seen this in practice with multiple appointments.

SEXUAL ORIENTATION & GENDER IDENTITY

Nearly all respondents who perceived bias involving sexual orientation and gender identity commented that either the state of Idaho was biased against members of the LGBTQ community, or that there is a lack of LGBTQ diversity in Idaho's judges. Multiple respondents described identifying with the community as "career suicide."

Women on the Bench vs. Women with Required Years of Practice



This chart compares sitting Idaho judges with active members of the Idaho State Bar who have been admitted to the Bar long enough to meet certain requirements in Idaho law for the identified judgeship. The data may not account for active members who spent time inactive, or for members who were previously licensed in other states.

OTHER SOURCES OF BIAS

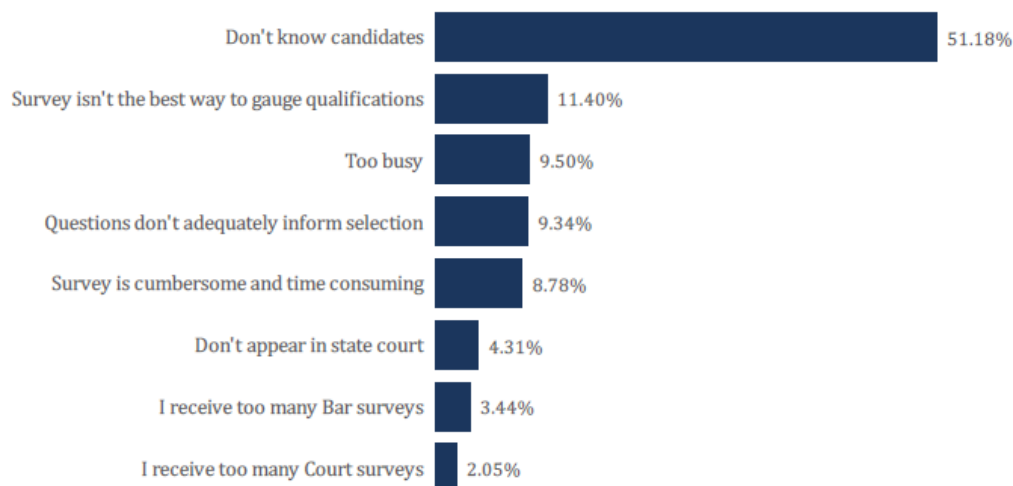
Respondents mentioned other biases relating to applicants' professional connections; again, the importance of "who you know" over "what you know." Examples included working with specific law firms, practicing in the insurance industry, having graduated from a specific university and already having family members in politics and the judiciary.

Other respondents said they felt the process favored applicants with trial experience, often meaning better results for applicants with criminal case experience.

Some respondents described a perceived pattern of public sector employees being appointed to the bench over applicants coming from private practice; others claimed bias against prosecutors and public defenders.

BAR QUESTIONNAIRE CHALLENGES

Reasons for Not Completing Bar Questionnaires



No matter which selection committee is involved, the judicial selection process includes a questionnaire sent to all members of the Bar asking for anonymous feedback on the applicants. Generally, only a small fraction of Bar members respond.

The largest hurdle to getting more responses is familiarity with judicial applicants. Respondents to the March 2022 survey that formed the basis for this report often said they only participate in the questionnaires when they know the applicants involved. Respondents generally said they are concerned about providing negative ratings for applicants who they do not know well. (While no survey responses mentioned it, the Idaho Rules of Professional Conduct forbid lawyers from making any sort of comment about a judicial candidate "with reckless disregard" for the truth.)

Many respondents also said they weren't sure if the questionnaires have any effect on who is selected. Of those who did feel they have an impact, many felt the questionnaires appear easy to manipulate. This often included claims that various groups coordinate responses for applicants. (Whether this actually happens, it's clearly a widespread belief.)

A smaller group was concerned about the anonymity of these questionnaires. Some respondents said this was a reason they did not participate. Others said this approach provides insufficient information about applicants. And a few gave specific examples of times when they believed their responses were shared with applicants. Roughly a dozen people criticized the anonymity of the questionnaires; some said they believe people can make any sort of claim without consequences.

RESPONSE BREAKOUT PAST APPLICANTS

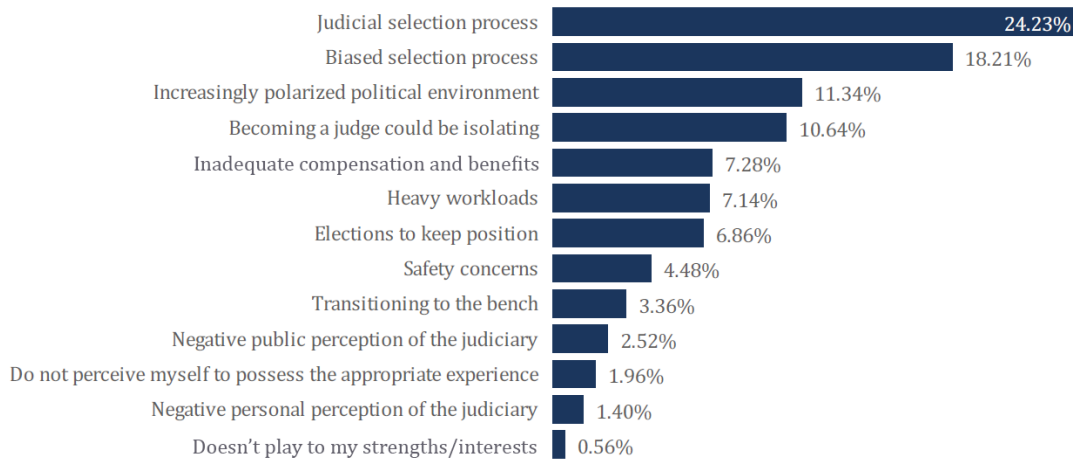
As noted earlier in this report, 328 survey respondents (328 people) said they had previously applied for a judgeship. Compared to others, this group was somewhat more likely to report perceived bias in the selection process but notably, were less likely to identify concerns in other areas mentioned in the survey.

Nine-tenths of respondents identifying themselves as past applicants said they were attorneys, and nearly one-tenth sitting judges. About 60% said they had more than 20 years of experience in the legal field. Attorney respondents were closely split between government and private-practice work with about 6% working as in-house counsel.

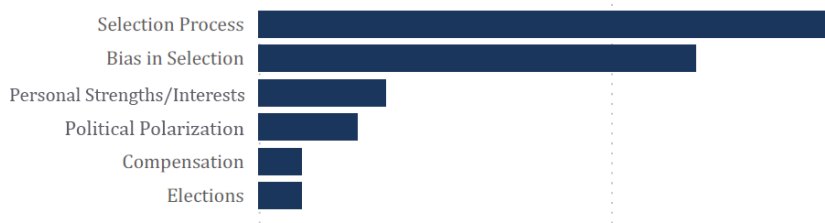
Past applicants ranked as their most significant concerns issues around the selection process in general, and around bias in selection. They were far less worried about other issues, as illustrated in the chart below.

About 40% of respondents in this group said they perceived bias in the judicial selection process — the highest percentage of any group examined. They were slightly more likely to report geographic bias (where applicants were from).

Past Applicants: Most Common Concerns



Past Applicants: Most Significant Concerns



RESPONSE BREAKOUT JUDGES

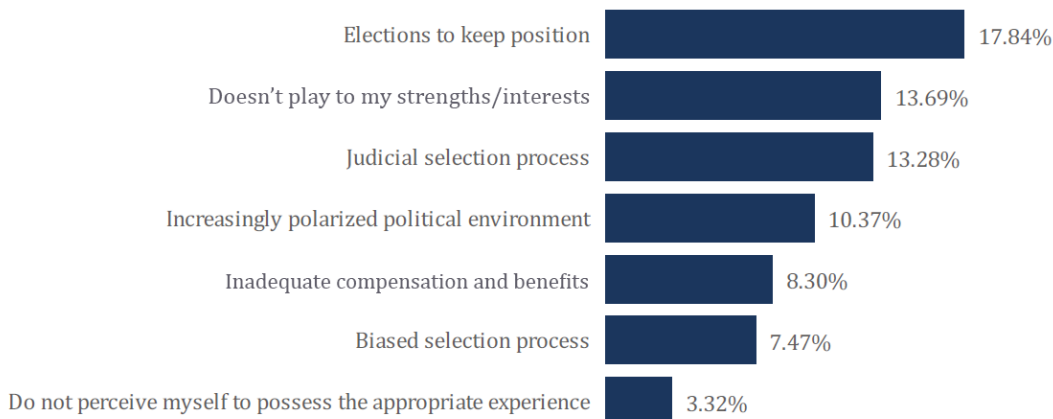
One hundred and thirty judges and justices, some of them retired, responded to the survey that informed this report. In total they formed 8% of respondents. Generally, judges were much less likely to perceive bias in the selection process, but provided feedback on a variety of other concerns.

Two-thirds of this group identified themselves as magistrate judges, who are appointed by district magistrates commissions and are the most common type of judge in Idaho. About 31% were district judges and 3% were an appellate judge or justice. The appointment process at the district and appellate levels is handled by the Idaho Judicial Council.

One-fourth of respondents in this group reported being satisfied in their current roles. Others identified various concerns about judicial positions, including the unique challenges of judicial elections and about maintaining interest in the work. Unlike others, judges did not rank their concerns.

Just 14% perceived bias in the selection process, the lowest percentage of any group examined. Once again, political ideals and sex ranked most highly among perceived biases by those reporting them.

Judges: Most Common Concerns



IMPROVING THE PROCESS

Members of the Idaho State Bar were invited to provide written, open-ended comments on recommended ways to improve the judicial selection process, judicial recruitment and judicial service. Responses were categorized into the themes presented on this page.

BAR QUESTIONNAIRES

As noted on page 8, unfamiliarity with the applicants was the most common reason Bar members said they don't complete questionnaires that evaluate potential judges. While not as common as other topics on this page, some respondents offered solutions to this through the write-in prompts.

Suggestions included limiting questionnaire responses by only allowing people who have direct experience with an applicant to fill one out. A similar recommendation would weigh responses based on how long a person has known or worked with an applicant.

Others suggested creating a website with information about applicants, their backgrounds and qualifications.

Some respondents thought the survey categories should be adjusted. Recommendations here included a shift in focus away from writing, and an emphasis on qualities such as temperament and experience with specific types of cases. A small subgroup said the questionnaires should be dropped altogether or, if kept, the responses, Bar numbers and respondent names should become public.

Many respondents were unconvinced that their feedback is taken seriously or that it plays any role in selecting a judge. These respondents asked for more communication about decisions made from questionnaire results.

JUDICIAL PAY

While respondents ranked the judicial selection process itself as their greatest concern, the most common recommended changes submitted through the write-in forms involved salary, particularly for district judges. Survey responses described large pay cuts of up to 50% that effective and qualified attorneys would need to take in order to join the bench (see the table on page 5). Many cited examples of higher pay for judges in nearby states.

UNDERSTANDING LIFE AS A JUDGE

The second-most-common write-in response involved providing more information to potential judges. Respondents called out the importance of understanding the judicial selection process and the judiciary as a career. Many described judicial responsibilities as a “mystery” or a “black box.” Suggestions included clearly outlining the requirements and selection process for Idaho judges on the Idaho State Bar’s website. (A version of this information is [available online](#) in the Idaho Judicial Branch's Annual Report.) Another idea was to create videos or host lectures describing a day in the life of an Idaho judge. These may be similar to the recruitment workshops the Idaho Supreme Court holds each time a vacancy opens for a district judge, offering attorneys a chance to meet with a panel of judges who share their experiences with both judicial selection and judicial service.

SELECTION COMMITTEES

Respondents who advised changes to the Judicial Council or magistrates commissions focused on the makeup of these groups. Most supported increasing their diversity or removing politicians from the process. These comments came consistently throughout written response options in the survey and comprise the third-most-common response topic on this page.

Most comments on politicians focused on those (such as mayors) who are direct members of these bodies. A minority suggested ending the governor's role in appointing district judges from a short list provided by the Judicial Council. Fewer still advised an opposite approach, giving the governor full control over the selection of all judges and justices in Idaho without any councils or commissions involved. Separately, some respondents said the governor should get a list of all candidates and their qualifications, not just the short list.

Comments on diversity included adding more women and providing more balanced representation from the legal community (including both prosecutors and defense attorneys as members, for example, or both magistrate and district judges).

CONCLUSIONS

Idaho's attorneys and judges see the state's judicial selection process as the greatest challenge to improving judicial recruitment. But as seen in this report, that concern involves a number of more nuanced areas.

Survey respondents in their comments suggested potential steps forward. These most often were increasing judicial pay and providing more information to potential judges, including about the selection process, possible career trajectories and the daily experience of working as a judge.

A majority of survey respondents, when offered the chance, did not indicate they saw bias in the judicial selection process. But the Idaho Judicial Council and district magistrates commissions still face some perceptions of bias and questions about the diversity of their members. Respondents suggested that selection committees sometimes ask inappropriate questions about politics and gender, and described a belief that certain types of attorneys are "next in line" for judicial positions. The Council and commissions should consider assessing their processes to identify ways to reduce or eliminate these perceptions.

Members of the Idaho State Bar provide important information on judicial applicants through questionnaires distributed during each selection process. But very few respond, mainly because they either feel their responses are ignored or don't know applicants well enough to evaluate their work. Selection committees should consider providing more education to attorneys about how the questionnaires are used and the value of their results. Providing a website with information on judicial applicants may increase response rates, as would allowing respondents to select up front the applicants they know to avoid rating unfamiliar candidates.



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